

January 30, 2020

**VIA FEDERAL EXPRESS OVERNIGHT DELIVERY**

Honorable Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

GO 200 10091

Re: In the Matter of the Petition of New Jersey Natural Gas Company and Essential Power OPP, LLC for Approval of (1) an Amendment to the Service Agreement and (2) a Protective Order and Exemption from Public Disclosure or Confidential Information  
BPU Docket No.

**FILING CONTAINS CONFIDENTIAL INFORMATION**

Dear Secretary Camacho-Welch:

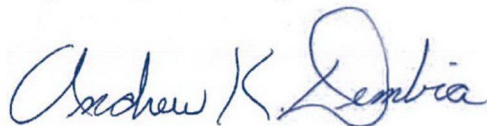
Enclosed for filing please find an original and ten (10) copies of a petition being filed on behalf of New Jersey Natural Gas Company ("NJNG") and Essential Power OPP, LLC ("Essential Power") for approval of (1) an amendment to a gas service agreement between Essential Power and NJNG and (2) a Protective Order and exemption from public disclosure of confidential information. Included with the petition are copies of the Redacted Public Version of the Original and Amended Gas Service Agreements, the Unredacted Confidential Versions of the Original and Amended Gas Service Agreements, an Affidavit of confidentiality by Mark G. Kahrer, Vice President, Regulatory Affairs for NJNG, and an Affidavit of confidentiality by James W. Crawford, Vice President for Essential Power.

Copies of the petition and the Public Redacted Version of the Original and Amended Gas Service Agreements are being served upon the persons listed on the attached service list. The Unredacted Confidential Version of the Original and Amended Gas Service Agreements will be provided to BPU Staff, Rate Counsel and the assigned Deputy Attorney General upon execution of a confidentiality agreement.

CMS  
Legal  
DA  
RPA  
S. Peterson  
Energy

Kindly acknowledge receipt of this filing by date stamping the enclosed copy of this letter and returning same in the self-addressed, stamped envelope.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew K. Dembia". The signature is written in a cursive style with a large, stylized initial "D".

Andrew K. Dembia  
Regulatory Affairs Counsel  
New Jersey Natural Gas Company

AKD:sf

C: Service List

Enclosures

Original

JAN 31  
2020

BOARD OF PUBLIC UTILITIES

JAN 31 2020

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

<b>IN THE MATTER OF THE PETITION OF</b>	)	<b>BPU</b>
<b>NEW JERSEY NATURAL GAS COMPANY AND</b>	)	<b>DOCKET NO.</b>
<b>ESSENTIAL POWER OPP, LLC FOR APPROVAL OF</b>	)	
<b>(1) AN AMENDMENT TO THE SERVICE AGREEMENT</b>	)	
<b>AND (2) A PROTECTIVE ORDER AND EXEMPTION</b>	)	
<b>FROM PUBLIC DISCLOSURE OF CONFIDENTIAL</b>	)	<b>PETITION</b>
<b>INFORMATION</b>	)	

To: **THE HONORABLE COMMISSIONERS OF  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES:**

New Jersey Natural Gas Company ("NJNG" or the "Company") and Essential Power OPP, LLC ("Essential Power") respectfully petition the New Jersey Board of Public Utilities (the "Board" or "BPU") for approval of an amendment to the Service Agreement for Service Classification FT Agreement ("Original Service Agreement") between NJNG and Essential Power pursuant to *N.J.S.A.* 48:2-13, 48:2-21 and 48:2- 23, and (ii) a Protective Order and exemption from public disclosure of confidential information pursuant to *N.J.S.A.* 47:1A *et seq.*, as follows:

NJNG is a corporation duly organized under the laws of the State of New Jersey and is a public utility engaged in the distribution and transportation of natural gas subject to the jurisdiction of the Board with the principal business office located at 1415 Wyckoff Road, Wall, New Jersey 07719. The Company is a local natural gas distribution company providing regulated retail natural gas service to over nearly 560,000 customers in Monmouth, Ocean, Burlington, Middlesex and Morris counties.

Essential Power, as successor in interest to Ocean Peaking Power, LLC, owns and operates dispatchable electric generation facility located at 122 Energy Way, Lakewood, New Jersey.

Cogentrix Energy Power Management, LLC, with its principal office located at 13860 Ballantyne Corporate Place, Suite 300, Charlotte, NC 28277 is the asset manager for Essential Power. NJNG and Essential Power are currently parties to the Original Service Agreement, dated October 28, 2002 pursuant to which Essential Power has received transportation service on the NJNG transmission and distribution system and natural gas supply from NJNG. The BPU Order approving the Original Service Agreement is attached hereto as Exhibit A.

Communications and correspondence relating to this filing should be sent to:

Mark G. Kahrer, Vice President Regulatory Affairs  
and  
Andrew K. Dembia Esq., Regulatory Affairs Counsel  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P. O. Box 1464  
Wall, New Jersey 07719  
Phone: (732) 938-1214 (Kahrer)  
Phone: (732) 938-1073 (Dembia)  
Fax:(732) 938-2620  
[mkahrer@njng.com](mailto:mkahrer@njng.com)  
[adembia@njng.com](mailto:adembia@njng.com)

Felix M. Khalatnikov, Esq.  
Vice President & Associate General Counsel  
Cogentrix Energy Power Management, LLC  
150 College Road West, Suite 300  
Princeton, NJ 08540  
Phone: (609) 917-3904  
[felixkhalatnikov@cogentrix.com](mailto:felixkhalatnikov@cogentrix.com)

This Petition is accompanied by the *redacted* and *unredacted* copies of:

- Exhibit A: Original Service Agreement - Public Version
- Exhibit B: Original Service Agreement - Redacted Public Version
- Exhibit C: First Amendment to Original Service Agreement - Redacted Public Version
- Exhibit D: Original Unredacted Confidential Service Agreement

- Exhibit E: First Amendment to Original Unredacted Confidential Service Agreement
- Exhibit F: Affidavit - Mark G. Kahrer, Vice President Regulatory Affairs, for NJNG.
- Exhibit G: Affidavit - James W. Crawford, Jr. Vice President, for Essential Power.

The Petition also includes the affidavits requesting confidential treatment of the First Amendment to Service Agreement, Exhibits F and G above, which are attached hereto and made part of this Petition. The Unredacted Confidential Version of the First Amendment to Service Agreement will be provided to BPU Staff, the Division of Rate Counsel and the assigned Deputy Attorney General upon execution of a Non-Disclosure Agreement. A proposed draft Non-Disclosure Agreement is attached to this Petition as Exhibit H.

NJNG is subject to regulation by the Board for the purposes of assuring that NJNG customers receive safe, adequate and proper natural gas service pursuant to *N.J.S.A. 48:2-23*. As such, the Company must and does maintain its public utility infrastructure to meet its regulatory service obligations to its customers. That infrastructure is comprised of the property, plant, facilities and equipment within the Company's natural gas distribution and transmission system throughout its service territory. NJNG is also subject to retail rate regulation by the Board, to assure safe, adequate and proper natural gas service, pursuant to *N.J.S.A. 48:2-21 et seq.*

## **I. BACKGROUND**

The Original Service Agreement states that it is the intent that Essential Power's actual daily takes under the service agreement exactly match daily nominations, and that Essential Power's actual daily deliveries exactly match actual daily takes. An Operational Balancing Account ("OBA") is provided if Essential Power's actual deliveries vary from its actual takes on any

given gas day. NJNG contacted Essential Power on or about December 19, 2018 to discuss amending the natural gas volumes set forth in the Original Service Agreement regarding the OBA.

Texas Eastern Transmission (“Tetco”) has begun implementing more frequent Operational Flow Orders (“OFOs”) limiting NJNG’s tolerance for under and over deliveries. The frequency and length of the OFOs require NJNG to amend the volume parameters of Essential Power’s OBA. NJNG believes that the Board’s approval of the First Amendment to Service Agreement is in the best interest of its customers.

## **II. FIRST AMENDMENT SERVICE AGREEMENT**

On May 8, 2019, Essential Power and NJNG executed a First Amendment to the Original Service Agreement attached hereto as Exhibit C - **REDACTED PUBLIC VERSION** and Exhibit E - **UNREDACTED CONFIDENTIAL VERSION**. Under the First Amendment to Service Agreement, the OBA amounts set forth therein under Article VI B have been modified. NJNG represents that no other amendments to the Original Agreement have been made.

## **III. REQUEST FOR PROTECTIVE ORDER AND EXEMPTION FROM PUBLIC DISCLOSURE.**

Pursuant to the New Jersey Open Public Records Act (“OPRA”), *N.J.S.A. 47:1A et seq.*, certain information is exempt from public disclosure, specifically, “trade secrets and proprietary commercial or financial information”, as well as “information which, if disclosed, would give an advantage to competitors or bidders”. See, *N.J.S.A. 47:1A-1.1*. The pricing and delivery terms and conditions in the First Amendment to Service Agreement contain financially and/or commercially

sensitive information, which if disclosed, would cause direct harm to Essential Power and give a direct advantage to Essential Power's competitors. Furthermore, disclosure of such confidential information could provide other similarly situated customers of NJNG an unfair advantage in potentially negotiating a similar service agreement. See Exhibit F – Affidavit of Mark G. Kahrer and Exhibit G – Affidavit of James W. Crawford, Jr. As such, NJNG and Essential Power specifically request that the Board treat and maintain the First Amendment to Service Agreement as confidential and not subject to public disclosure under OPRA.

**IV. RATEPAYERS WILL BENEFIT FROM THE FIRST AMENDMENT TO SERVICE AGREEMENT.**

The benefit that will flow to gas ratepayers from the First Amendment to Service Agreement is lower risk of incurring an OFO penalty for under or over deliveries. NJNG respectfully asserts that ratepayer benefits would be realized through approval of the First Amendment to Service Agreement. For the reasons set forth in this Petition, NJNG believes that approval of the First Amendment to Service Agreement between NJNG and Essential Power is in the public interest, and respectfully requests prompt Board approval of the amendment to the previously Board approved Original Service Agreement.

**V. CONCLUSION**

**WHEREFORE**, New Jersey Natural Gas Company respectfully requests that the Board grant the following:

- (1) Approve, on an expedited basis, the First Amendment to the Service Agreement between Essential Power and New Jersey Natural Gas Company;
- (2) Approve the request for a protective order and keep certain information confidential and exempt from public disclosure under the New Jersey Open Public Records Act; and
- (3) Provide any other relief deemed just and equitable.

Respectfully submitted,

NEW JERSEY NATURAL GAS COMPANY

By:



Andrew K. Dembia, Esq.  
Attorney for New Jersey Natural Gas Company

By:



Felix M. Khalatnikov, Esq.  
Vice President & Associate General Counsel  
Cogentrix Energy Power Management, LLC

Dated: 1/30/2020

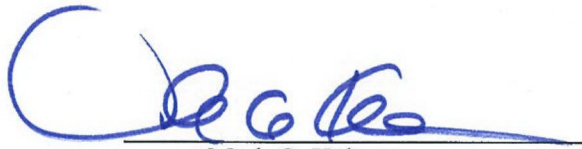


**VERIFICATION**

MARK G. KARER of full age, being duly sworn according to law, on his oath deposes and says:

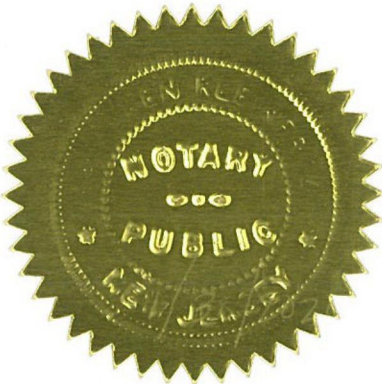
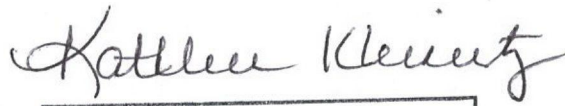
1. I am Vice President, Regulatory Affairs for New Jersey Natural Gas Company, the Petitioner in the foregoing Petition.

2. I have read the annexed Petition, along with the Exhibits attached thereto, and the matters and things contained therein are true to the best of my knowledge and belief.



Mark G. Karer

Sworn and subscribed to )  
before me this 29<sup>th</sup> )  
day of January 2020 )



SUBSCRIBED AND SWORN TO  
BEFORE ME ON THIS DAY

JAN 29 2020

KATHLEEN KLEINERTZ  
NOTARY PUBLIC, STATE OF NEW JERSEY  
MY COMMISSION EXPIRES 08/30/2021

# **EXHIBIT A**

## **BPU Order Approving Original Service Agreement**

NEW JERSEY NATURAL GAS CO.  
RECEIVED

JUL 01 2003

REGULATORY AFFAIRS



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

ENERGY

IN THE MATTER OF THE PETITION OF  
NEW JERSEY NATURAL GAS COMPANY  
FOR APPROVAL OF A SERVICE  
AGREEMENT BETWEEN NJNG AND  
OCEAN PEAKING POWER L.L.C.

) DECISION AND ORDER

) DOCKET NO. GR02120947

(Service List Attached)

BY THE BOARD:

On December 20, 2002, New Jersey Natural Gas Company ("New Jersey Natural," "Petitioner," "Company" or "NJNG") filed a petition with the New Jersey Board of Public Utilities ("Board") seeking Board approval of a Service Agreement ("Agreement") for Service Classification FT ("Firm Transportation") between Petitioner and Ocean Peaking Power L.L.C. ("OPP"). Subsequent to filing this petition, on April 1, 2003, Petitioner filed with the Secretary of the Board, a letter dated March 31, 2003, requesting confidential treatment of certain commercially sensitive proprietary information pursuant to N.J.A.C. 14:1-12, et. seq.

In this instant filing, New Jersey Natural proposes to provide firm transportation service to OPP subject to certain limitations at specified electric generation facilities that OPP owns and will operate in Lakewood, New Jersey. OPP, a Delaware corporation, owns and will operate a gas-fired electric generation facility in Lakewood, New Jersey. The facility consists of two General Electric combustion turbine units. This facility is rated at 330 megawatts ("MW") and is designed to achieve a maximum dispatch of 1,050 hours per year of operation due to air permit limitations. The corresponding maximum natural gas consumption is approximately 3.7 billions cubic feet ("Bcf") per year.

On October 28, 2002, New Jersey Natural and OPP entered into a Service Agreement for Service Classification FT, whereby NJNG will provide firm transportation service to OPP. The

Agreement provides for NJNG to deliver a maximum daily quantity ("MDQ") of 56,000 dekatherms ("Dths") of OPP's own natural gas, plus gas for retention by NJNG for fuel use and unaccounted for gas, for redelivery by NJNG to OPP's facility at Lakewood, New Jersey. The Agreement provides that the FT service during the summer period, defined as the period beginning May 15 and ending September 15, is subject to a maximum hourly take limitation of 3,500 Dths per hour at a minimum pressure of 425 pounds per square inch ("PSIG").

For non-summer period, September 16 through May 14, the Service Agreement provides that OPP is not entitled to any specific minimum level of service. The Agreement further provides that NJNG will use its best efforts to provide firm transportation service as requested during such periods. Service will begin on the date of commercial operation of OPP's facility, or by August 1, 2003, whichever date is earlier, and will continue for a primary term of ten (10) years, with successive one (1) year terms thereafter unless terminated by either NJNG or OPP on six months prior written notice.

The Service Agreement requires OPP to pay a fixed monthly demand charge; three (3) separate variable rates based on the time of year service is provided; a fuel retention rate; an operational balancing charge; and all other generally applicable administrative, delivery and meter-related charges for Rate Schedule FT service pursuant to NJNG's tariff.

The Service Agreement also provides that OPP will pay the operational balancing charge to NJNG if OPP's actual daily takes exceed its actual daily deliveries (above a specified tolerance level), and that OPP may be further subject to overrun usage charges under certain specified defined circumstances.

In order to serve OPP, New Jersey Natural Gas needed to make certain incremental capital investment by constructing a metering station located on OPP's property and facilities necessary to tie the new service into the Company's existing high pressure large capacity distribution facilities. NJNG will use internally generated funds to finance the construction costs and capital investment necessary to provide service to OPP.

The Company asserts that the Agreement will provide important benefits to it, and its existing customers, OPP, and the State of New Jersey. The Company benefits by improving its system load factor since the OPP peaking facility's usage will primarily be during NJNG's off-peak period. The Company further asserts that the increased load factor will substantially enhance the utilization of Petitioner's backbone distribution facilities from the point of the Company's interconnection with the Texas Eastern pipeline system in Jamesburg, New Jersey to OPP's facility in Lakewood, New Jersey. The Company and its existing customers will derive both financial and operational benefits from the enhanced utilization of these facilities.

The Division of Ratepayer Advocate ("RPA"), New Jersey Natural, and the Staff are the parties to this matter. The RPA and Staff have propounded formal and informal discovery requests on the Company.

In its Petition and in its discovery responses, the Petitioner asserts that it anticipates the revenues from the Service Agreement to be greater than the annual cost of rendering service ensuring that it and its existing customers will not be harmed through the addition of the OPP load requirements. The Company also expects the majority of revenues will be recovered through fixed demand charges over the term of the Agreement and projects that the incremental margin generated through this firm off-peak load will offset the costs that must be borne to serve growing peak period requirements in the region around the OPP facility. The Company further

asserts in its petition that this project represents an important source of funds to enable the Company to undertake infrastructure projects, thus diminishing the need for traditional base rate case relief to fund incremental improvement additions to rate base, while enabling the Company to expand its system and provide greater access to natural gas service.

The Company asserts that the Service Agreement is necessary for OPP to obtain natural gas service to fuel its requirements. Environmental benefits are also expected to result from this OPP project. The electricity generated at the OPP facility will be sold into the Pennsylvania-New Jersey-Maryland ("PJM") electric grid, enhancing reliability in an area of projected growth and improving the quality of electric service in the State, especially during the summer, since this is a peaking facility. Moreover, OPP is located at a previously developed commercial site, thus minimizing the environmental impact of the new facility.

In its Petition, the Company proposes to retain all of the revenues associated with the monthly demand and variable charges in the Agreement in view of the capital and ongoing expenditures made to serve OPP's requirements. The Petition further proposes that the fuel retained under the fuel retention rate provisions of the Service Agreement, as well as balancing charge revenues, shall be credited to the Company's Basic Gas Supply Service ("BGSS") or any successive mechanism dedicated to recovering gas costs from customers.

#### Request For Confidential Treatment

On April 1, 2003, Petitioner filed with the Secretary of the Board, a letter, dated March 31, 2003, requesting confidential treatment of certain commercially sensitive and proprietary information pursuant to N.J.A.C. 14:1-12, *et seq.* The Company submitted a confidential copy of the information and a preliminary public copy of the information for which the confidential treatment is sought and a Substantiation of Claim as required under N.J.A.C. 14:1-12.8. Petitioner submitted the confidential copy sealed and under separate cover as required by N.J.A.C. 14:1-12.3(d). NJNG maintains the specific rates and charges OPP has agreed to pay are commercially sensitive and are therefore, entitled to confidential treatment.

NJNG requests that the responses to certain data requests propounded in this proceeding be determined as confidential information within the meaning of N.J.A.C. 14:1-12.1, *et seq.* and that such confidential information be protected against disclosure. Specifically, these responses include RAR-1, RAR-2, RAR-8 and RAR-9 and either discuss rates and charges or detailed cost estimates for facilities to be constructed to tie new service into NJNG's existing high pressure, large capacity distribution facilities and metering station to be located in OPP's property.

NJNG argues that disclosure of the rates and charges and revenue and cost information would directly harm NJNG's future competitive or bidding position when negotiating other rates and charges for firm transportation services. Moreover, the public release of information related to facilities and construction costs and revenues would also harm NJNG when negotiating term and conditions of similar services to be provided to others.

After several discovery and settlement conferences, on June 12, 2003, NJNG, the RPA, and Staff executed the attached Stipulation.

#### Stipulation

The Stipulation briefly describes the OPP facility and the Service Agreement entered into by New Jersey Natural and OPP. The Stipulation defines the date of commercial operation of OPP's facility, and sets forth the terms detailing the sharing of revenues associated with the

monthly demand and variable charges. The parties agree that the gross margins associated with the monthly demand and variable charges of the Agreement will be shared, whereby fifty percent will be retained by NJNG and the remaining fifty percent credited to the Company's BGSS clause for the first four years of the Agreement, terminating May 31, 2007. For the remaining six years of the primary term of the Agreement, sharing of the gross margins shall equal the sharing formulae approved by the Board in its review of NJNG's incentives, which review is expected to commence prior to October 31, 2003. In the event NJNG files a base rate case during the term of the Agreement, the sharing mechanism set forth in the Stipulation shall terminate upon receipt of a final Board Order in that base rate case. Furthermore, the Stipulation provides that all fuel retained by NJNG under the fuel retention provisions and all operating balancing charge revenues recovered under the Service Agreement to be credited to the BGSS clause.

Additionally, the Stipulation provides that the parties reserve their right to review the actual construction costs incurred by the Company associated with a metering station and related facilities necessary to tie the new service into the Company's existing distribution facilities and to take whatever position the parties wish on NJNG's recovery of such costs in the Company's next base rate case.

The parties to the Stipulation have agreed that the proposed rates, terms and conditions of the Service Agreement are reasonable and that the Service Agreement should be made effective upon Board approval.

#### Discussion and Findings

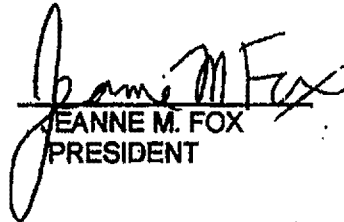
Based upon its review of the Petition, the subsequent Stipulation and the documents submitted in this matter, the Board **HEREBY FINDS** that the June 12, 2003 Stipulation is reasonable and in the public interest, in that OPP will make additional contributions to the BGSS recovery of related gas costs through fuel retention and an operating balancing charge. It will also make additional contributions to the BGSS through the 50% sharing of gross revenues for the first four years of the Agreement terminating May 31, 2007, and the continued sharing of gross revenues for the next six years pursuant to the sharing formulae to be approved by the Board in its prospective comprehensive review of NJNG's incentives. In the event that the Board may not render a decision in the NJNG incentive proceeding prior to the termination of the initial four year sharing mechanism on May 31, 2007, the Board **DIRECTS** the parties to commence settlement discussions to resolve the sharing issue for the remaining six years of the term of the Agreement and if no resolution is reached to bring this matter before the Board for a decision prior to May 31, 2007.

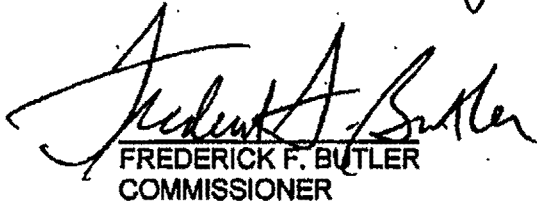
Moreover, the terms of the Agreement obligate OPP to continue the payment of the demand charges for a minimum of ten years and that the expected revenue streams will cover the incremental annual expenses associated with the additional capital investment made to serve OPP. The Stipulation also provides that to the extent there is a revenue deficiency associated with metering and related facilities capital expenditures, calculated by reference to the revenues NJNG receives under the Service Agreement from OPP less the costs associated with such metering and related facilities, then any such revenue deficiencies shall be borne solely by NJNG, and not by any of NJNG's other customers. As a result, ratepayers will be protected from bearing the cost of the incremental investment to serve this additional load. Lastly, the OPP facility will provide power into the electric PJM grid in an area of projected growth during the summer electric peak. At the same time, the Company's system load factor should improve, since OPP's primary usage will occur during New Jersey Natural's off peak period.

Accordingly, the Board HEREBY APPROVES the Stipulation, Petition and Agreement effective on the date of this Order. In approving this matter, the Board emphasizes that this Order is intended to address the facts and circumstances contained in the Petition in this Docket and has no precedential effect upon any pending or future proceeding. With respect to the request for confidential treatment of certain commercially sensitive and proprietary information, the Board FINDS that this issue should be decided by the Board's Custodian of Records pursuant to the Board's regulations, if and when, a request is made for release of such data under the Open Public Records Act pursuant to N.J.A.C 14:1-12.

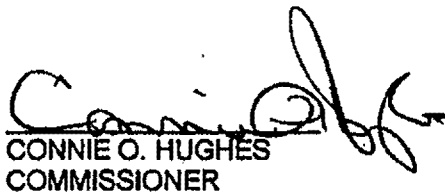
DATED: 6/20/03

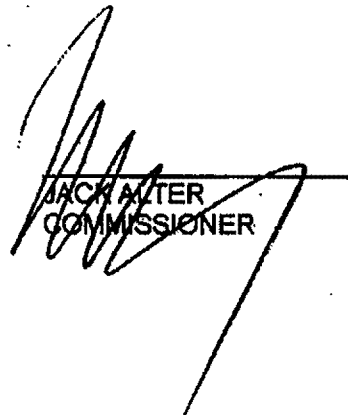
BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CAROL J. MURPHY  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities

