



October 22, 2019

SUBMITTED VIA EMAIL TO ENERGY.COMMENTS@BPU.NJ.GOV

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 S. Clinton Avenue
Post Office Box 350
Trenton, NJ 08625

Re: Comment of Environmental Defense Fund and New Jersey Conservation Foundation on Docket No. GO19070846, In the Matter of the Exploration of Gas Capacity and Related Issues

Dear Secretary Camacho-Welch:

Environmental Defense Fund (“EDF”) and the New Jersey Conservation Fund (“NJCF”) respectfully submit this comment to New Jersey Board of Public Utilities (“Board” or “BPU”) Docket No. GO19070846, In the Matter of the Exploration of Gas Capacity and Related Issues. This comment explains that: (1) analyses presented by other participants in this docket, particularly that by Levitan & Associates, understate available transportation capacity serving New Jersey; (2) the Board should update its gas supply assessment processes so that they are more transparent and thorough, with the opportunity for intervention by interested parties and evidentiary proceedings; and (3) in any such proceedings, the impacts of natural gas supply arrangements and pipeline transportation contracts on New Jersey climate policy should be considered. Attached to this comment is the affidavit of Greg Lander, President of Skipping Stone, who conducted an analysis of gas supply available in New Jersey on behalf of EDF.

This docket was initiated by the Board in response to a petition filed by the Retail Energy Supply Association (“RESA”) seeking a proceeding to establish a mechanism for the release of gas capacity to the State’s third party suppliers (“TPSs”).¹ The Board found that RESA did not demonstrate “that the utilities have sufficient gas capacity to create the type of capacity release program that RESA is proposing,” so the Board opened this proceeding to “explore gas capacity

¹ Decision & Order: *In the Matter of the Verified Petition of the Retail Energy Supply Association to Reopen the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 Et Seq., and Establish Gas Capacity Procurement Programs*, BPU Docket No. GO17121241 (Feb. 27, 2019).

issues and the related issue of savings achieved by residential customers served by TPSs.”² The Board has directed EDF towards this docket as an “appropriate proceeding” in which to participate and raise issues related to gas capacity.³

At the October 1, 2019 meeting in this proceeding Levitan & Associates presented a series of slides, prepared on behalf of New Jersey Natural Gas, addressing gas capacity in New Jersey available to the four natural gas utilities. The slides correspond to a larger report on the same topic.⁴ Levitan & Associates’ analysis is not tailored to the focus of this proceeding, which was initiated on behalf of TPSs and is intended to address the possible creation of a capacity release mechanism. Nonetheless, in these comments, EDF and NJCF identify shortcomings with the Levitan Report which systematically understate pipeline capacity to serve natural gas demand in New Jersey, *see* Part 1. EDF respectfully notes that this mismatch between the stated purposes of this docket and the out-of-scope Levitan Report further illuminates the need for the Board to establish a comprehensive, transparent gas supply planning process that includes the opportunity for intervention by interested parties and evidentiary hearings, *see* Part 2.

1. A Thorough Analysis of Gas Capacity in New Jersey Must Include All Sources.

The natural gas pipeline system has dramatically expanded over the past decade, primarily through *producer-push projects*, whereby producers and marketers have contracted for new capacity to move low-cost production, particularly from Pennsylvania and West Virginia. A recent example of such projects is Atlantic Sunrise, which is primarily subscribed by producers. In general, these projects allow producer-push shippers to sell pipeline capacity and bundled supply to end users. Numerous such producers/marketers have identified delivery points in New Jersey as a destination for northeast production, either as a primary point or as a means to transact up and down the Northeast and Mid-Atlantic regions by “segmentation”⁵ and/or

² *Id.*; *see also* Notice: *In the Matter of the Exploration of Gas Capacity and Related Issues*, BPU Docket No. GO19070846 (Sept. 10, 2019).

³ EDF sought to intervene and raise these concerns in three gas utilities’ Basic Gas Supply Service proceedings, arguing that the annual BGSS proceedings should involve review of gas utility “overall gas purchasing strategies.” *See* BPU Docket No. GR19050675, BPU Docket No. GR19050678, and BPU Docket No. GR19050679. The Board recently denied EDF’s interventions in all three proceedings, noting that EDF could raise its issues in “other appropriate proceedings” such as the Energy Master Plan, among others. *See Decision and Order Approving Stipulation for Provisional BGSS, BSC, and CIP Rates* at 7, Docket No. GR19050675 (Sept. 11, 2019); *Decision and Order Approving Stipulation Regarding Provisional BGSS Rate* at 6, Docket No. GR19050678 (Sept. 11, 2019); *Decision and Order Approving Stipulation for Provisional BGSS, BSC, and CIP Rates* at 8, Docket No. GR19050679 (Sept. 11, 2019).

⁴ Levitan & Associates, *Availability of Natural Gas Capacity to Meet New Jersey LDC Customer Needs*, prepared for New Jersey Natural Gas (June 10, 2019) (“Levitan Report”). It appears that Levitan & Associates has not submitted the complete report to this docket, but did submit a written comment that relies on the report.

⁵ “Segmentation” enables multiple uses of a shipper’s capacity path to receive and deliver supplies along its route so long as such uses do not overlap. For example, a shipper with capacity from Pennsylvania to Georgia can use all of its capacity to receive gas in Pennsylvania, deliver all of the gas in northern New Jersey, then receive gas up to all of its capacity into that same contract in southern New Jersey, Maryland, or Virginia and take the gas to the end of its capacity in Georgia.

displacement. The bottom line is that such producer-push contracts are the source of significant pipeline capacity and gas supply expansion into New Jersey.

This expanded supply and transportation capacity should not be overlooked when assessing gas supply. EDF and NJCF reviewed the slides presented by Levitan & Associates at the October 1, 2019 Board meeting and the corresponding report, and identified a number of such shortcomings with the scope of its analysis. Notably, the Levitan Report omits consideration of any contract quantities held by any party other than a New Jersey LDC shipper, a producer/marketer with primary delivery to a New Jersey LDC location, or a New Jersey end-user, *even where the intended delivery points for such deliveries are in New Jersey or available to New Jersey.*

Detailed analysis of pipeline utilization reveals that these producer- and/or marketer-held transportation rights are being extensively used by New Jersey customers, and in fact, significant quantities are essentially locked into the state. Ignoring the availability and ongoing use of such producer/marketer push capacity presents an inaccurate representation of the pipeline system serving New Jersey, and in this instance, risks imposing the cost of unnecessary (and therefore uneconomic) capacity onto the backs of retail utility ratepayers.

The Levitan Report concludes that “new natural gas infrastructure will be needed in the near term if the LDCs are to meet their reliability goals,” but the report omits discussion and consideration of existing natural gas transmission capacity in New Jersey that is available to and being extensively used to provide transportation capacity and/or bundled supply into the state. The Levitan Report is more notable for what it omits than for what it includes, suggesting that the analysis was narrowly structured to support a preconceived thesis—that new pipeline capacity is needed—without considering several sources of supply that currently target deliveries to the New Jersey and New York area. It is crucial that these conclusions be critically reviewed, because overlooking existing infrastructure can lead to inefficient allocation of capital to the detriment of customers and market participants due to overbuild based on incorrect assessments of available capacity.

a. The Levitan Report Fails to Account for Stranded TETCO Capacity that Can be Used for New Jersey Deliveries.

A significant amount of capacity on the Texas Eastern Transmission pipeline (“TETCO”) is stranded capacity in New Jersey, meaning that it is readily available for New Jersey utilities and third-party suppliers to purchase and deliver to customers. The Levitan Report fails to account for that capacity as an option for New Jersey local distribution companies.

There is currently at least 334,471 Dekatherms/day (“Dthd”) of natural gas capacity available on TETCO, which runs through New Jersey to Manhattan. Texas Eastern contracted with the New York utility Consolidated Edison (“ConEd”) and several producer-marketers for a total of 800,000 Dthd on TETCO to the ConEd Manhattan Delivery point. Of that 800,000 Dthd, ConEd has 170,000 Dthd contracted. However, ConEd does not have the receiving capacity to accept

all of the 800,000 Dthd of capacity at the Manhattan entry point. The maximum deliveries ever made to that location are 465,529 Dthd, indicating that at least 334,471 Dthd of capacity are available for use in New Jersey.

The Levitan Report acknowledges that the TETCO “Manhattan delivery point is currently underutilized due to limited receipt capacity at the Con Edison side of the delivery meter.”⁶ But the Report declines to consider that capacity as a valid resource for New Jersey customers, because of a remote concern that “flow volumes on the expansion facilities will increase in the years ahead.”⁷ The expansion referred to in the Levitan Report, however, is still seeking regulatory approvals and it is not clear if or when any such expansion will be in service. Should such expansion be approved and under development, it will be appropriate to reassess the supply/demand balance for New Jersey considering market fundamentals at that time. In the current context, New Jersey customers are taking delivery from the TETCO capacity and it is inaccurate to discount or omit this capacity from consideration based on speculation.

b. The Levitan Report Mistakenly Assumes that Capacity is Not Available for New Jersey Because Downstream Recipients Could Utilize It.

The Levitan Report states that capacity in New Jersey held by shippers who also deliver to other pipelines is not available to New Jersey markets because that capacity will be used by the shippers on the downstream pipeline. While this is plausible, a closer analysis of takeaway capacity on the downstream pipelines (in particular Algonquin Gas Transmission (“AGT”)) reveals that there is more capacity contracted to that pipeline in New Jersey than there are firm contracts for takeaway capacity from New Jersey. This means that there is a surplus of capacity that exists, that can’t be used on this downstream pipeline, and which could be (and is) used in the state.

Specifically, the Levitan Report makes this assertion with regard to AGT.⁸ But detailed operational and market analysis conducted by Skipping Stone demonstrates that in aggregate there is more capacity *into* AGT across the pipelines that deliver gas into the AGT pipeline, than there is firm takeaway capacity *on* AGT.⁹ There are instances where the takeaways from interconnects in New Jersey between AGT and the feeding pipeline exceed the firm contracts on the feeding pipelines. Even after accounting for the feeding pipeline deficiencies by deducting them from the excess of shipper capacity to AGT, however, there remains excess capacity available in New Jersey relative to firm takeaways on AGT.

⁶ Levitan Report at 23.

⁷ *Id.*

⁸ Levitan Report at 13 (stating that for the Algonquin pipeline capacity that is deliverable to interconnections in New Jersey, “New England is within the capacity path, and a more likely secondary destination for the capacity than New Jersey”).

⁹ See Affidavit of Greg Lander, Exhibit GL-2.

Of the excess capacity on AGT, 360,841 Dthd is on the Tennessee pipeline and passes locations where Transco can receive gas from Tennessee for use in New Jersey.¹⁰ That 360,841 Dthd should be considered in any assessment of available capacity in the state.

c. The Levitan Report Mischaracterizes the Amount of Capacity That Can Feed the Station 210 Pooling Point.

The Levitan Report only counts that capacity which shippers bought with Station 210 as their primary delivery point,¹¹ but this is a mischaracterization which fails to consider additional pipeline capacity that has access to the Station 210 pooling point on its way south to other markets. There is an additional 1,792,610 Dthd of such capacity. And in addition to the southbound capacity that can access the Station 210 pooling point, there is another 133,476 Dthd of northbound capacity past Station 210 which originates in Zones 2, 3, and 4 that is held by Zone 5 Markets. This northbound capacity can be used to serve the native loads of the shippers holding this capacity and then be used to receive gas into that capacity in Zones 5 and southerly Zone 6 and deliver it to Station 210 on a firm in-path basis.¹²

The sum of these two amounts is 1,926,086 Dthd. Notably, even if those North to South shippers with native load (i.e., those inside of the 1,792,610 Dthd of capacity accessible to Station 210) determined to take all of their gas to their native markets and not segment any of their capacity, there would still be 736,086 Dthd of capacity accessible to Station 210 that is held by marketers and shippers with Zone 6 to Zones 4 and 5 segmentable capacity.

Thus, there is capacity available to New Jersey shippers from the Station 210 pooling point beyond just the existing firm contracts held by the natural gas utilities and suppliers in the state. The Levitan Report undercounted this capacity.

d. There is More Available Gas Capacity in New Jersey than that Cataloged in the Levitan Report.

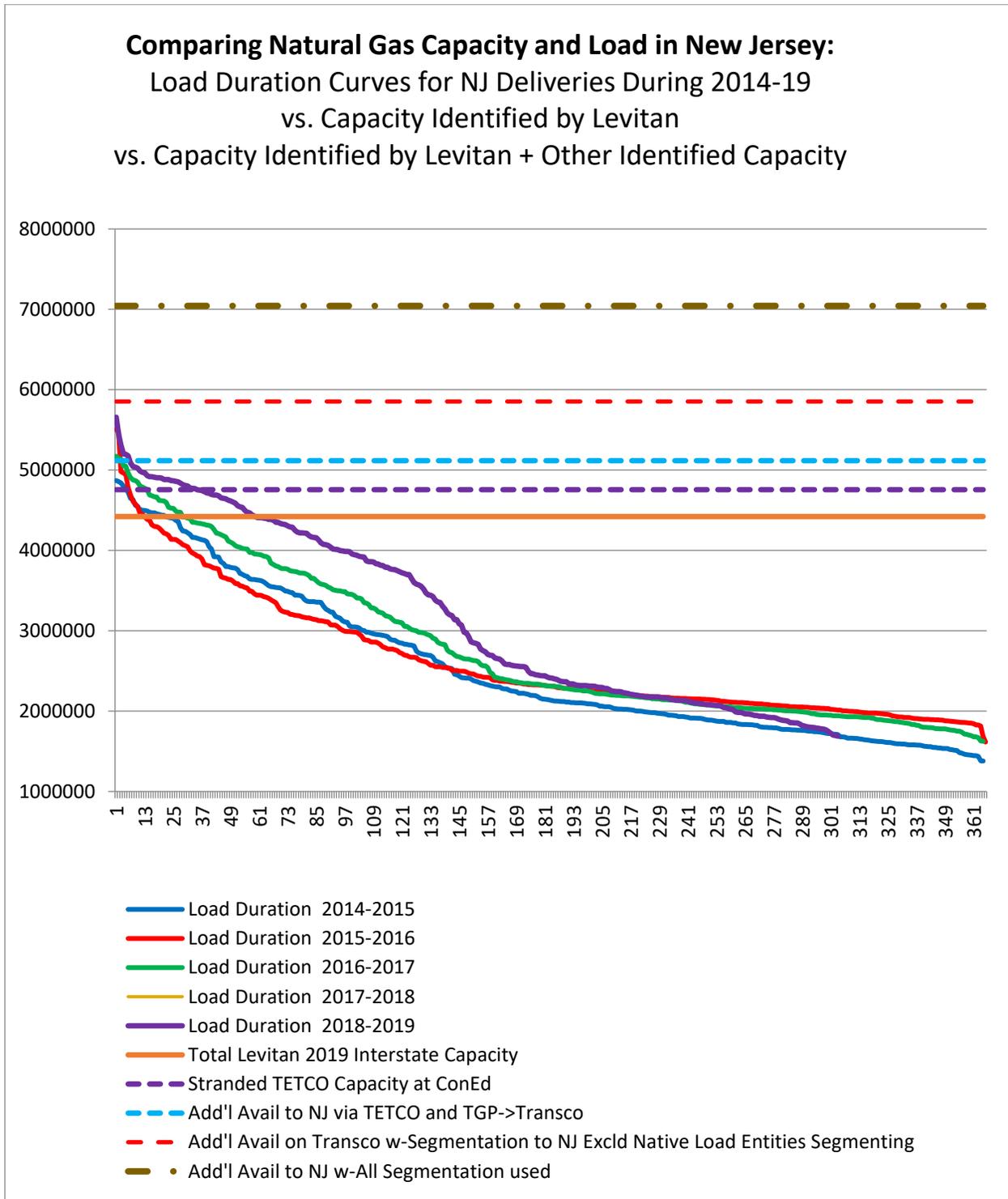
The total additional natural gas transportation capacity available to New Jersey, as detailed in Parts 1(a)-(c) above, is 1,431,398 Dthd, which is omitted from consideration in the Levitan Report. The chart below demonstrates these additional sources of capacity. Of this 1,431,398 Dthd, fully 695,312 Dthd has no home other than to be sold off of the TETCO or Transco pipelines into New Jersey markets because it is otherwise stranded in New Jersey. These volumes must be considered as part of any assessment of need for capacity in New Jersey, because overlooking existing infrastructure can lead to obligating captive retail customers to long term costs for unnecessary capacity expansion. Notably, due to the affiliate (self-dealing)

¹⁰ In total, 515,096 Dthd of excess AGT capacity exists that is or can be delivered to pipelines that can serve New Jersey. Of that amount, 360,841 Dthd is readily accessible from the Tennessee and Transco pipelines.

¹¹ See, e.g., Levitan Report at iii-iv, 7-8 (“The need to compete for supply from the [Station 210] pool means that there is a risk that sufficient supplies will not be able to be arranged.”).

¹² See *supra* n.5 (describing segmentation of pipeline capacity).

relationship between numerous PennEast shippers and developers, those obligations would impose undue risk on ratepayers to the benefit of those same utilities' shareholders.



2. The Board Should Update its Gas Supply Planning Process with a Longer-Term Focus and Greater Transparency.

As EDF has advocated previously before this body, it is essential that the Board of Public Utilities implement robust gas supply planning processes with opportunities for public participation.¹³ The current process is replete with deficiencies that impose avoidable risks on retail customers. An audit report conducted by NorthStar Consulting Group of New Jersey Natural Gas and its affiliates concludes that “the current planning process is inadequate to support portfolio decisions.”¹⁴ The NorthStar report noted, for example, that there is no consideration of year-round system capacity relative to non-peak system requirements, no assessments of alternative delivery options (e.g., winter only or peaking contracts), and no consideration of uncertainties in future demand, market prices or other supply risks.¹⁵

A number of the concerns raised by RESA in its petition that led the Board to open this docket, Docket No. GO19070846, point to the need for more comprehensive, transparent gas supply planning in New Jersey. RESA asserts that “a review of New Jersey’s retail gas market is long overdue” and “the current GDC gas capacity release programs have not been investigated or reviewed in a focused Board proceeding in over a decade,” rendering those programs “generic and outdated,” and thus not “well-subscribed, utilized, or easily understood.”¹⁶ RESA also emphasizes the lack of transparency, stating that “there is no clear understanding of how much capacity the GDCs hold and whether or not there is underutilized capacity that could be more effectively used through a capacity release program.”¹⁷ In addition, at least one commenter¹⁸ has suggested the Board consider a mandatory capacity release program in New Jersey similar to that used in other states; where the firm customers of the gas distribution companies (“GDCs”) that migrate to competitive suppliers have the capacity that the GDC has obtained to serve their requirements follow them to the competitive supplier for the duration of that relationship; and then return to the GDC at termination. As implemented in other states, such a program could prevent over-booking of capacity and would ensure reliability.¹⁹

These issues identified by third-party suppliers in this docket are indicative of the broader need for a more comprehensive planning process.

¹³ See, e.g., EDF Motions to Intervene in BPU Docket No. GR19050675, BPU Docket No. GR19050678, and BPU Docket No. GR19050679.

¹⁴ NorthStar Consulting Group, Audit of Affiliated Transactions between New Jersey Natural Gas Company and New Jersey Resources and Affiliates at 108 (June 26, 2014, <https://www.bpu.state.nj.us/bpu/pdf/auditpdfs/NorthStar%20NJNG%20Audit%20Final%20Report%206-26-14%20double%20sided.pdf>).

¹⁵ *Id.* at 108.

¹⁶ Decision & Order: *In the Matter of the Verified Petition of the Retail Energy Supply Association to Reopen the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 Et Seq., and Establish Gas Capacity Procurement Programs* at 2, BPU Docket No. GO17121241 (Feb. 27, 2019) (describing RESA’s petition).

¹⁷ *Id.* at 4 (describing RESA’s petition).

¹⁸ Comment of Marathon Energy, submitted to Docket No. GO19070846, *In the Matter of the Exploration of Gas Capacity and Related Issues* (Oct. 21, 2019).

¹⁹ In the states that EDF is familiar with, the competitive marketers are required to use the release capacity to deliver in periods of high demand, or return that capacity to the GDC through mandatory recall by the GDC.

EDF and NJCF respectfully suggest that the Board should update its gas supply procurement and gas utility overview processes with a longer-term focus and greater transparency. Under current procedures, the BPU's first significant review of long-term utility contractual commitments for pipeline transportation services occurs *after* new capacity is placed into service when the contract costs are requested through a Basis Gas Supply Service, or BGSS, proceeding. EDF and NJCF suggest that reforms should include earlier review of gas utility pipeline contracts *before* commencement of construction for new capacity. Moreover, a more robust planning process should include: (1) procedural changes to allow for increased stakeholder participation and input; (2) changes to how the BPU should review and consider gas supply information, by explicitly linking a utility's long-term gas supply plan to the ultimate costs that are recovered; and (3) changes to the types of information utilities should submit to better inform gas supply decision-making. Ratepayers and the public interest would be served by a more robust and transparent gas supply planning process.

a. The Board Should Engage in Heightened Review of Affiliate Relationships in the Context of Pipeline Development.

The Federal Energy Regulatory Commission has been unwilling to address affiliate relationships underlying the agreements with future shippers on a pipeline, commonly known as precedent agreements. Precedent agreements are often the primary basis for FERC pipeline certification orders.

FERC has suggested that the practice of gas utilities entering precedent agreements and relying on procurement decisions of local distribution companies is best left to state regulators. EDF and NJCF submit that the Board is empowered to review such matters and should assess whether it is prudent for gas utilities to take long term service on new pipelines, including those pipelines developed by the gas utilities' affiliates.

b. The Board Should Specifically Consider Non-Pipeline Alternatives.

We respectfully submit that the Board should be expecting or requiring that such non-pipeline alternatives be integrated into the utilities' and the state's formal planning and needs assessments as part of a prudent planning process. EDF and NJCF further submit that non-pipeline solutions can be compared to traditional solutions on an apples-to-apples basis, through quantitative and transparent cost/benefit analysis.

3. This Proceeding Should be Conducted in Furtherance of the State's Climate Goals.

Any natural gas supply planning process, including this proceeding, should be conducted in furtherance of the State's energy goals and emissions reduction targets. We respectfully suggest that New Jersey gas utilities, third-party suppliers, and the Board must update their approach to

handling gas supply questions, because a continued business-as-usual approach to gas expansion could hinder the State from meeting its emissions limits.

New Jersey is developing its 2019 Energy Master Plan (“EMP”), to “set forth a strategic vision for the production, distribution, consumption, and conservation of energy” that will enable the state to achieve 100% clean energy by 2050; and it recently strengthened its Global Warming Response Act to prioritize short-lived climate pollutants.²⁰ New Jersey’s natural gas system is implicitly raised as an issue in the 2019 Draft EMP (in connection with the section on decarbonizing heat and the section on decarbonizing electric generation, both of which envision reduced reliance on natural gas, as well as in connection with the requirement that gas utilities reduce natural gas consumption). But to date, there remains a significant disconnect between New Jersey’s natural gas policies and its ambitious climate goals.

Gas distributors should be required to demonstrate that their gas portfolio decisions conform to and are consistent with State climate policy and greenhouse gas reduction goals. EDF and NJCF respectfully suggest that the proceeding at hand, *In the Matter of the Exploration of Gas Capacity and Related Issues*, should incorporate consideration of the emissions impacts of the various pathways by which third-party suppliers procure capacity for customers. More efficient use of existing gas capacity infrastructure, where available, should be prioritized over construction of additional infrastructure that would impose stranded cost risks and/or make New Jersey’s climate goals less attainable.

4. Conclusion.

EDF and NJCF appreciate the opportunity to comment on this proceeding and welcome future engagement as the process continues. We respectfully request the Board take the forgoing comments and accompanying affidavit of Greg Lander into consideration in Docket No. GO19070846.

Respectfully submitted,

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²⁰ Draft 2019 New Jersey Energy Master Plan, Policy Vision to 2050 at 20 (June 10, 2019), <https://nj.gov/emp/pdf/Draft%202019%20EMP%20Final.pdf>.

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