



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

October 30, 2019

By Hand-Delivery and Electronic Mail

Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Exploration of Gas Capacity and Related Issues
BPU Docket No. GO19070846**

Dear Secretary Camacho-Welch:

Please accept the original and ten copies of this letter as the Division of Rate Counsel's ("Rate Counsel") Motion to (1) strike the comments of Levitan and Associates ("Levitan") and the report it prepared for New Jersey Natural Gas Company ("NJNG") from the record in this matter, and (2) ask the Board of Public Utilities ("Board") to obtain a determination from the State Ethics Commission regarding whether Levitan may continue to serve as a consultant to the Board under its existing contracts. We are enclosing one additional copy of this letter. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Thank you for your consideration and assistance.

Electronic copies of this letter are being sent to the electronic distribution list that was circulated following the stakeholder meeting held in this matter on October 1, 2019, including additions to date.

On October 22, 2019, NJNG filed comments with the Board attaching a report prepared by Levitan on behalf of NJNG in the above referenced proceeding. Separately, Levitan filed its own comments in this matter. At the same time, Levitan is acting as a consultant to the Board in at least two pending matters: (1) the Zero Emission Credit (“ZEC”) proceedings in the Board’s Docket No. EO18080899, and the Offshore Wind proceedings in BPU Docket No. QO18121289. Levitan’s attempt to advocate in support of a regulated entity appearing before the Board in the current proceeding creates a conflict of interest. It has long been the policy of the State that a vendor working on behalf of the State must be free of conflict. Executive Order #189 (Kean) was issued in 1988 based on a recognition that

it is essential that all persons supplying goods or services to the State of New Jersey, or performing contracts or otherwise executing public works with the assistance of and subject to the approval of the State, must meet a standard of responsibility which assures the State and its citizens that such persons will both compete and perform honestly in their dealings with the State and avoid conflicts of interest....

The Executive Order (EO) applies to any “vendor,” defined as “any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.” EO 189 states:

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee ... in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

EO 189 (Kean) also requires the head of each department or agency in the Executive Branch “with the lawful authority to engage in State contracting” to adopt regulations “to include the minimum standards” set forth in the EO.

While it does not appear that the BPU has established such regulations, the Department of Treasury, of which the BPU is in but not of, has. N.J.A.C. 17:12-6.3 (establishing as grounds for debarment from state contracting an effort to “influence or attempt to influence or cause to be

Honorable Aida Camacho-Welch, Secretary

October 30, 2019

Page 3

influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee”). Treasury has also included this same language in its “Business Ethics Guide” <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf> and as a standard term and condition in its contracts.

<https://www.nj.gov/treasury/purchase/forms/StandardTermsandConditions.pdf> Those Treasury Standard Terms and Conditions have been appended by the BPU to at least one Request for Proposals for outside consulting services. See,

<http://www.pdcbank.state.nj.us/bpu/pdf/energy/bgs/BGS-Auction-Monitor-2017-RFP-Documents.pdf>.

By submitting comments to the BPU on behalf of itself and on behalf of NJNG, an entity regulated by the Board, Levitan is attempting to influence the Board to adopt NJNG’s positions on the matter before the Board. As Levitan is simultaneously advising the Board as a consultant pursuant to various contracts, the appearance of Levitan before the Board does tend to impair the independence and objectivity of the Board. At minimum, it leads to the appearance of undue influence as Levitan has access to the Board and its Commissioners that other commenters do not have. Moreover, because Levitan is in the position of advising the Board in several matters, there is certainly an implication that Levitan’s advocacy in this matter will be given more weight than the opinions of others. Levitan simultaneously acting as the Board’s consultant and appearing before the Board on behalf of a regulated entity is thus contrary to E.O. 189 (1988) and is a violation of the ethical rules governing vendors with contracts with the State.

Accordingly, Rate Counsel respectfully requests that the Board (1) strike Levitan’s comments and the report it prepared for NJNG from the record in the stakeholder proceedings in

Honorable Aida Camacho-Welch, Secretary

October 30, 2019

Page 4

this docket, and (2) obtain a determination from the State Ethics Commission regarding whether Levitan may continue to serve as a consultant to the Board under its existing contracts.

Respectfully submitted,

By: 
Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

c: energy.comments@bpu.nj.gov
Pamela Owen, ASC, DAG (hard copy and e-mail)
Paul E. Flanagan, BPU (hard copy and e-mail)
Abraham Silverman, BPU (hard copy and e-mail)
Lanhi Saldana, BPU (hard copy and e-mail)
Stacy Peterson, BPU (hard copy and e-mail)
Jacqueline Galka, BPU (hard copy and e-mail)
e-mail distribution list (e-mail only)