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November 14, 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 for filing this original and ten copies of the reply comments of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced matter. We are enclosing one additional copy of the comments. 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.

INTRODUCTION

Rate Counsel is in receipt of the following initial comments submitted on behalf of other stakeholders in this matter:

Third party suppliers ("TPSs"):

1. Direct Energy, LP ("Direct Energy")
2. New Jersey Retail Choice Coalition ("NJRCC")
3. Infinite Energy, Inc. ("Infinite Energy")

4. Marathon Energy
5. East Coast Gas & Power of New Jersey, LLC ("East Coast")

New Jersey Gas Distribution Companies ("GDCs")

1. South Jersey Industries ("SJI"), on behalf of South Jersey Gas Company ("SJG") and Elizabethtown Gas Company ("ETG")
2. Public Service Electric and Gas Company ("PSE&G")
3. New Jersey Natural Gas Company ("NJNG")
4. Levitan and Associates, Inc. ("Levitan") consultant to NJNG.[1]

Others:

1. The Environmental Defense Fund and New Jersey Conservation Foundation ("EDF/NJCF")
2. PBF Logistics ("PBF"), which operates a FERC-approved pipeline that runs under the Delaware Rivers from the Philadelphia Airport to Paulsboro, New Jersey.

Based on Rate Counsel's review of the materials submitted to date, there remains no substantial evidence to support a re-examination of the current structure of New Jersey's retail gas supply market, and no reason for the Board of Public Utilities ("BPU" or "Board") to use this proceeding to endorse additional acquisitions of interstate pipeline capacity by the GDCs. For the reasons stated in Rate Counsel's initial comments and below, Rate Counsel urges the Board to close this stakeholder proceeding with no further action. In the alternative, Rate Counsel submits that any further proceedings should be conducted as "contested case" proceedings in which Rate Counsel and other stakeholders are afforded the right to discovery and an evidentiary hearing on all issues of fact, and the right to submit briefs on all factual and legal issues.

[1] On October 30, 2019 Rate Counsel submitted a motion to strike Levitan's comments, and to ask the 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. That motion remains pending.

RATE COUNSEL'S REPLY COMMENTS

A. The TPSs Have Not Shown a Basis for Considering Changes to the Current Structure of New Jersey's Retail Gas Market.

In its initial comments Rate Counsel noted this stakeholder proceeding arose from another proceeding in which the Petitioner, the Retail Energy Supply Association ("RESA"), had filed to demonstrate a basis for changing the current structure of the retail gas supply market in New Jersey. Rate Counsel Initial Comments at 4; I/M/O 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., Docket No. GX01050394, BPU Dkt. No. GO17121241, Decision and Order at 5 (Feb. 27, 2019) (the "RESA Order"). RESA has not participated in this current proceeding to date, and no other stakeholder has presented any substantial justification for considering changes to the State's current gas supply market.

The comments filed on behalf of TPSs confirm that they have been able to obtain the resources needed to serve their New Jersey customers. Direct Energy states that it "has substantial firm capacity to meet the needs of its New Jersey customers for the term of their contracts," and that "[a]s our customer profile evolves, Direct Energy is able to make appropriate adjustments to our firm capacity in the secondary market to meet our customers' needs going forward." Direct Energy Initial Comments at 2-3. Marathon Energy and East Coast indicate that they are able to rely on resources other than long-term firm pipeline capacity to supply their customers. Marathon Energy Initial Comments at 2-3; East Coast Initial Comments, par. II.2.a.

None of the comments filed on behalf of the TPSs suggest that they are not able to meet their commitments to their customers.

The written comments filed on behalf of the TPSs confirm that their concern is the cost, not the availability, of gas capacity and supply resources. These comments focus on the TPSs' claims that they are not able to match the costs of the gas capacity and supply portfolios the GDCs maintain to serve their basic gas supply service ("BGSS") customers. Direct Energy Initial Comments at 1, 4; NJRCC Initial Comments at 2; Infinite Energy Comments at 3.

As a remedy for their claimed competitive disadvantage, the TPSs are advocating for an opportunity to share in the resources that GDCs procure for their BGSS customers. While this would presumably benefit the TPSs, none of the comments submitted to date include any data, analysis or other documentation that the proposed market structure would benefit consumers. They also have not presented any evidence to address deficiencies that were specifically noted in the RESA Order: the absence of a showing that the GDCs have sufficient capacity for a release program of the type being proposed, and the lack of evidence identifying the impacts such a program would have on BGSS customers. RESA Order at 5. In the absence of such documentation, there is no basis for the Board to consider changes to the current market structure.

In this regard, the Board should reject Infinite Energy's suggestion that the Board should consider the Atlanta Gas Light ("AGL") retail gas supply market as a model for New Jersey. Infinite Energy Initial Comments at 2. Infinite Energy's comments describe the AGL market in some detail, but do not present any evidence that this model has produced better results for AGL's customers, or that it would benefit New Jersey consumers. It is also important to note that AGL's retail gas market was implemented under a statute that differs in crucial respects from the applicable provisions of New Jersey's Electric Discount and Energy Competition Act ("EDECA"). N.J.S.A. 48:3-49 et seq. Competition was introduced in AGL's service territory under the provisions of Georgia's Natural Gas Competition and Deregulation Act, Ga. Code Ann. sec. 46-4-150 et seq. The Georgia statute includes provisions that explicitly required AGL to assign capacity and provide peaking resources with third party suppliers, and that required all of AGL's customers to choose or be assigned to a TPS. Ga. Code Ann. secs. 46-4-154(c)(4), 46-4-155(b) & (e), and 46-4-156. Our legislature has chosen to allow but not compel customers of the New Jersey GDCs to choose a non-utility natural gas supplier, requiring the GDCs to provide BGSS unless and until the Board "specifically finds it to be no longer in the public interest ..." N.J.S.A. 48:3-58(r). Since New Jersey's GDCs have a continuing obligation to provide BGSS to those customers who prefer a regulated source of supply, they, unlike AGL, must maintain the gas capacity and supply resources they need to meet these obligations. EDECA and the Board's regulations prohibit the GDCs from using their gas capacity and supply and other resources in an anticompetitive manner. N.J.S.A. 48:3-58(k)(1); N.J.A.C. 14:4-3.3. However, neither EDECA nor the Board's regulations require the GDCs to maintain resources beyond those required to provide BGSS in order to meet the needs of the TPSs. Because of the important differences in the legal and regulatory structures governing natural gas competition in the two states, Georgia should not be considered a model for New Jersey.

B. GDCs Have Not Shown a Need for the Board to Take Any Action Relating to Their Proposed Acquisitions of Interstate Pipeline Capacity.

The initial comments filed on behalf of the GDCs assert that they will need to acquire additional upstream pipeline capacity in order to supply their BGSS customers for the next five years. SJI Initial Comments at 4-5, PSE&G Initial Comments at 3-4, 5 NJNG Initial Comments, response to question 1a. To bolster this position, NJNG submitted a report (the "Levitan Report") prepared by Levitan, which purports to assess the pipeline capacity available to serve the New Jersey market. Levitan Report at 1. In addition, Levitan submitted its own comments in support of the conclusions in the Levitan Report. Levitan Initial Comments at 1-3.

While the GDCs and Levitan do not propose any specific Board action, Rate Counsel is concerned that these comments, if taken at face value, could lead the Board to take action to prioritize acquisitions of upstream pipeline capacity such as the contested PennEast Pipeline project over other, more cost-effective, options. Rate Counsel is providing the following analysis in order to provide an appropriate context for any consideration of acquisitions of upstream pipeline capacity. As is explained in more detail below, Levitan and GDCs focus on one option for bringing gas to their customers—interstate pipeline capacity that is contractually committed for delivery in New Jersey. They ignore the thriving market for delivered gas that exists in New Jersey and disregard the resources that support this market. They fail to consider the availability of capacity with primary delivery points outside of New Jersey that can be used and is being used to supply New Jersey. They also ignore the fact that producers in the Marcellus Shale production area are paying to build capacity to transport gas into New Jersey, making the gas available without the need to commit ratepayers to many years of fixed payments. These deficiencies are detailed below.

Overview of Gas Capacity Planning Principles

The purpose of GDC capacity planning is to develop a portfolio of transportation, storage, peaking and gas supply resources that will provide customers with a reliable supply of gas at a reasonable cost, taking into account a range of possible demand, cost, and resource availability outcomes. An integrated resource planning process also includes end-use efficiency programs, demand response arrangements, and other non-gas options to reduce gas consumption. A common measure of the adequacy of a gas capacity plan is the relationship between the total daily delivery capacity of the resource portfolio and the estimated customer demand under design conditions. In New Jersey a "design day" is a day with extremely cold temperatures. Information showing the projected design day surplus or deficit over a five-year planning period is included with each New Jersey GDC's annual BGSS rate filing.

Long term contracts for upstream pipeline transportation services represent just one element of a GDC capacity portfolio. To diversify supply sources and reduce exposure to fixed pipeline reservation charges for the GDCs and their customers, GDCs typically contract for a mix of long-haul pipeline services from production and storage areas, and short-haul services to transport gas to the GDCs from locations where gas is purchased and sold within the market area. In New Jersey, GDCs hold older "legacy" gas transportation services from Gulf Coast producing areas in Texas and Louisiana, and more recent pipeline contracts from the Marcellus Shale gas producing areas in Pennsylvania. Common short-haul service receipt points include the interconnection between the Texas Eastern ("TETCO") and Algonquin pipelines at Lambertville, New Jersey and the Transco pipeline Station 210 pooling point in Mercer County, New Jersey. GDCs can purchase gas at these receipt points, and use short-haul services to transport the gas to a GDC city gate (i.e. a point where the GDC receives gas from an interstate pipeline). Since the gas is delivered to the receipt point using capacity controlled by the seller, the GDC avoids the fixed costs that would be required to acquire upstream capacity from the producing areas.

New Jersey GDCs also contract for firm winter peaking supplies that are delivered to the GDC city gate using pipeline capacity controlled by the seller. These delivered gas supplies have the advantage of being more flexible, since they are typically procured annually using a competitive request for proposals. See SJI Initial Comments at 4. GDCs can adjust the amount of firm peaking supply under contract each year to respond to changes in projected customer requirements.

The ability to contract for delivered gas in competitive wholesale markets means that expensive upstream capacity from the producing areas is not the only option for the New Jersey GDCs to ensure that they will have sufficient capacity. Supplies purchased for delivery at points in New Jersey, or at the GDCs' city gates, are additional options. The GDCs must balance the costs and benefits of each option. Supplies purchased in producing areas are typically less expensive, but the utilities must incur long-term fixed cost obligations to transport the gas to their city gates. Conversely, supplies purchased in the local market area typically are more expensive, but involve lower fixed costs.

Finally, New Jersey GDCs supplement pipeline-delivered gas with production from on-system peaking facilities. These facilities store liquefied natural gas or propane at sites within the GDC service territory for use on days with high gas consumption. These facilities also are used to maintain pressure on high-use days.

Rate Counsel Critique of GDCs' Comments

The comments filed on behalf of the GDCs mainly focus on only one of the available options for increasing capacity: new upstream pipeline capacity from outside New Jersey. They fail to consider other options that are available to ensure sufficient capacity in New Jersey without the need to build new upstream pipelines. An example of the GDCs' bias is demonstrated by SJI Utilities' characterization of the Board's objective in this proceeding. As described by the Board, the objective is to "explore whether sufficient capacity has been secured to serve all of New Jersey's firm natural gas customers ...." RESA Order at 5. SJI has added the words "upstream pipeline," stating that "the Board directed its Staff to initiate this stakeholder process to explore ... whether there is sufficient upstream pipeline capacity secured to meet New Jersey customer needs ...." SJI Initial Comments at 2 (emphasis added). SJI also asserts that "the only way to ensure that there will be sufficient capacity to meet the needs of both BGSS and TPS customers is to support new, incremental pipeline capacity projects...." SJI Initial Comments at 7 (emphasis added). PSE&G and NJNG also emphasize new pipeline capacity. PSE&G Initial Comments at 3-4; NJNG Initial Comments, response to question 1a.

As an initial matter, Rate Counsel notes the lack of documentation submitted in support of the GDCs' filings. At the October 1, 2019 stakeholder meeting in this matter, Rate Counsel and Staff emphasized the need for the underlying data or other source materials to support claims of an impending capacity shortfall. Tr., p. 13-14, 20, 42. Nevertheless, the GDCs have not submitted any internal analyses or other evidence that the costs and benefits of acquisitions of new upstream capacity have been evaluated against the costs and benefits of the alternatives mentioned above. Further, as noted in Rate Counsel initial comments, the owners of one proposed new project, the PennEast Pipeline, include affiliates or parent companies of the GDCs that would profit from the GDCs' subscriptions to the project. Rate Counsel Initial Comments at 9, note 3. Accordingly the Board should give limited weight to the GDCs' comments.

The Board should also give limited weight to the argument made on page 3 of PSE&G's initial comments that the moratoriums on connections of new customers in New York show a capacity deficiency in New Jersey. The moratoriums in New York are not evidence of a regional gas supply shortage that will spill over to New Jersey. They resulted from delivery constraints in Westchester County and Long Island that do not affect New Jersey. The January 2019 interruptions of gas deliveries in Rhode Island, also mentioned on page 3 of PSE&G's initial comments, were caused by local facility failures that affected a small number of customers. The interruptions were not the result of any issue that affects New Jersey. .

As noted above, NJNG has submitted a report by Levitan in support of its comments, and, in addition, Levitan has submitted separate comments on its own behalf. While Rate Counsel has moved to strike Levitan's comments from the record of this proceeding, z Rate Counsel offers the following discussion of the deficiencies in Levitan's analysis, without waiving its argument that the report should not be considered in this case.

The Levitan Report, like the GDCs' comments, focuses on upstream capacity without an analysis of the alternatives. Levitan estimates that there is currently sufficient available capacity to meet the design day requirements of the BGSS and TPS customers served by New Jersey GDCs, but projects that there will be a design day shortfall of 127,000 dekatherms per day (Dth/day) by 2022-23. Levitan Report at 27. Levitan's analysis is based on restrictive assumptions about the pipeline capacity available to the New Jersey GDCs, failing to consider any capacity other than capacity that is contractually committed to the GDCs, producers and TPS for delivery in New Jersey.

A shipper holding a firm gas transportation contract essentially reserves pipeline capacity on a path between primary receipt points, i.e., points specified in the pipeline service agreement, and primary delivery points. Levitan defines "available capacity" to be interstate pipeline capacity for which the contracting party is a New Jersey GDC or third party (such as a gas marketer), and the primary delivery point is a GDC city gate or TPS customer's end use meter located in New Jersey.[2] This definition excludes pipeline contracts with a primary path that extends through New Jersey to another market, such as New York City. It also excludes pipeline capacity for which the primary delivery point is a pipeline interconnection or pooling point inside New Jersey, unless the capacity links up with another contract with primary delivery at a New Jersey meter. Levitan Report at 4. Levitan says that it excluded gas shipped on pipeline contracts that do not have primary delivery at a New Jersey GDC or end user meter because this gas would also be available to other market participants, so that its availability to meet New Jersey GDC requirements is not guaranteed. As stated in the report, "[c]competitive market phenomena render uncertain and therefore unsafe any anticipated reliance by New Jersey LDCs on third party capacity absent a confirmed supply arrangement." Levitan Report at 19.

As shown in Table 1, the Energy Information Administration estimates that interstate gas pipelines have the capacity to deliver 11.1 billion cubic feet per day ("Bcf/day") into New Jersey. Levitan assumes that less than half of this capacity, about 4.6 Bcf/day, is available to meet New Jersey GDC requirements. This includes 4.2 Bcf/day of GDC contracts and 0.4 Bcf/day of third party capacity. Levitan Report at 26.

[2] While this cannot be confirmed without access to Levitan's workpapers, Levitan appears to include capacity with non-GDC delivery points held by producers or third party suppliers, but exclude capacity held by electric generators and large industrial customers that connect directly with the interstate pipeline. Levitan Report, at 14.

Table 1: Natural Gas Pipeline Capacity into New Jersey, 2018

	Capacity
Transcontinental Gas Pipeline (Transco)	4.8 Bcf
Texas Eastern Gas Transmission (TETCO)	3.8 Bcf
Tennessee Gas Pipeline (TGP)	1.6 Bcf
Columbia Gas Transmission (CGT)	0.6 Bcf
Algonquin Gas Transmission (AGT)	0.3 Bcf
Total	11.1 Bcf

Source: https://www.eia.gov/naturalgas/data.php#pipelines

Levitan's approach to classifying pipeline capacity as either "available" or "unavailable" based on the primary delivery point in the transportation contract is not consistent with how interstate gas pipeline capacity is actually contracted and used. The pipelines' tariffs as approved by the Federal Energy Regulatory Commission ("FERC") typically allow shippers to receive and deliver gas at secondary points, i.e., points other than the primary receipt and delivery points. Firm transportation service from a primary receipt point to a primary delivery point has the highest priority when pipeline capacity is constrained, but firm transportation service to a secondary delivery point can still be reliable, particularly when the secondary point is within a path between a primary receipt point and primary delivery point

Levitan's exclusion of all capacity on pipelines that transport gas through New Jersey to downstream markets is inconsistent with present market conditions. Capacity limits on the pipelines transporting gas out of New Jersey mean that New Jersey markets face less competition from downstream markets than the Levitan analysis assumes. For example, Levitan assumes that none of the TETCO capacity associated with the New Jersey-New York Expansion project with a primary delivery point in New York is available, even though Levitan recognizes that there is not enough capacity on the Con Edison side of the meter to take all of this gas out of New Jersey. Levitan Report at 23. The comments filed on behalf of EDF and NJCF confirm this constraint, and find that the same situation exists with respect to pipeline capacity with primary delivery at Algonquin pipeline interconnection points. EDF/NJCF Initial Comments at 3-5.

Levitan's decision to exclude pipeline capacity with primary delivery points at pipeline interconnections and pooling points is also too restrictive. Gas producers and marketers often contract for pipeline capacity with delivery to a major pipeline interconnection or pooling point instead of individual GDC city gates, and use secondary delivery rights to deliver gas in the markets with the best price at any point in time. Much of the recent pipeline expansion capacity that delivers gas into New Jersey from the Marcellus Shale gas producing areas is held by gas producers and wholesale marketers. For example, as shown in Table 2 below, producers and marketers contracted for all of the capacity in the Transco Northeast Supply Link and Tennessee Northeast Upgrade expansions, and a portion of the service in the Transco Leidy Southeast expansion...

Table 2: Pipeline Expansion Projects Transporting Gas Into or Through New Jersey

Pipeline	Project	Expansion (Dth)	Receipt	Delivery	Start Date
Transco	Northeast Supply Link	250,000	Pennsylvania	Station 210, NYC	2013
Tennessee	Northeast Upgrade	650,000	Pennsylvania	Mahwah, NJ	2013
Transco	Leidy Southeast	525,000	Pennsylvania	Alabama	2016

Sources: Filings made in FERC Docket Nos. CP12-30, CP11-161, and CP13-551.

The importance of producer- and marketer-controlled capacity is noted in the initial comments filed in this matter on behalf of EDF and NJCF. As explained in the EDF/NJCF comments, "[t]he 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." EDF/NJCF Initial Comments at 2 (emphasis in original). Delivered gas sells at higher prices in

New Jersey and other downstream markets than in the producing areas. This gives producers an incentive to pay for capacity to transport the gas into New Jersey. The rise in producer push projects is an indication that producers and marketers are responding to this incentive...

Producer push projects from the Marcellus Shale region are an alternative to projects such as the proposed PennEast Pipeline. The PennEast Pipeline would not provide significant delivery capacity to the New Jersey GDCs' city gates. With the exception of one small connection with ETG, the PennEast Pipeline would not interconnect with any of the New Jersey GDCs' city gates. It would primarily transport gas from the Marcellus Shale producing area to interconnections with the TETCO, Algonquin, and Transco pipeline systems, and the GDCs would need to use other short-haul pipeline capacity to transport the gas from those points to their city gates.

Levitan's restrictive view of the capacity available to serve New Jersey consumers extends to the resources that are available to third party suppliers. For the 2018-19 design day, Levitan's estimate of available third party capacity is 412,000 Dth/day, which Levitan characterizes as "Third Party Firm Delivery Capacity." Levitan Report at 18, Figure 14. This is 234,000 Dth/day less than the 646,000 Dth/day total quantity of firm third party supply that New Jersey GDCs included in their design day capacity plans. Id. In its October 22, 2019 comment letter, Levitan acknowledges that "the New Jersey GDCs are already competing for and utilizing capacity that is also available to downstream markets." Levitan Initial Comments at 8. Thus, Levitan itself appears to recognize that it has excluded resources that the GDCs deem reliable enough to include in their design day capacity plans.

Finally, Levitan overstates the projected design day capacity shortfall by including demand growth over the five-year study period, but assuming no change in available pipeline capacity after January 1, 2019. Levitan excludes existing GDC commitments for new pipeline services that will expand capacity to New Jersey city gates. Table 3 below shows that more than 100,000 Dth/day of additional pipeline service is expected to come on line by the end of 2020.

Table 3: New Jersey GDC Pipeline Capacity Additions

Pipeline	Project	GDC	Quantity	Start Date	Status
TETCO	Lambertville East	PSE&G	30,000 Dth	Nov. 2019	In Service
TETCO	Lambertville East	Elizabethtown	30,000 Dth	Nov. 2019	In Service
Transco	Gateway Expansion	PSE&G	54,000 Dth	Nov. 2020	Certificated

Sources: I/M/O Public Service Electric and Gas Company's 2019/2020 Annual BGSS Commodity Charge Filing for its Residential Gas Customers under its Periodic Pricing Mechanism and for Changes in its Balancing Charge, BPU Dkt. No. GR19060699, Petition, MFR Item 18, and I/M/O the Petition of Elizabethtown Gas Company to Review its Basic Gas Supply Service Rate, BPU Dkt. No. 19050678, Petition, Exhibit P-2, p. 21.

This omission creates a misleading impression about the GDCs' needs for additional acquisitions of capacity.

In summary, the GDCs and Levitan have presented an incomplete view of the resources available to supply gas to New Jersey consumers. Their comments focus on one option, acquisition of new upstream capacity, while disregarding other resources that are available, and are actually being used, to bring gas to their city gates. The materials submitted on behalf of the GDCs do not warrant further action by the Board.

C. Any Further Proceedings Should be Conducted as "Contested Case" Proceedings.

If the Board does decide to conduct any further proceedings to consider the issues described above, those proceedings must be conducted as "contested case" proceedings in accordance with the provisions of the New Jersey Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 et seq. Such proceedings would involve substantial factual issues that would need to be resolved in evidentiary hearings with sworn testimony.

Since the TPSs have not come forward with a factual showing that would justify the relief they are requesting, it is not possible to specify the precise issues that would be in dispute.

However the issues that could be disputed include: the level of GDC resources available for a capacity release program, the amount and costs of additional resources that would have to be acquired to implement such a program, the value of any asserted benefits of the proposed program, and the proper allocation of costs and benefits.

Evaluation of the GDCs' purported need for additional interstate pipeline capacity likewise would involve potential disputed issues of fact. Again it is not possible to specify these precisely in the absence of an evidentiary showing by the GDCs. However, Rate Counsel would expect to vigorously dispute any suggestion by the GDCs that the only option for securing sufficient gas supplies in New Jersey is committing ratepayers to many years of fixed payments for new pipeline capacity. The availability of other resources, and the adequacy of the GDCs' analyses of the costs and benefits of all options, would likely be subjects of dispute.

Ratepayers'rights to have factual disputes resolved in "contested case" proceedings is protected under New Jersey law. Under the APA, a "contested case" as a proceeding:

> in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing ….

N.J.S.A. 52:14B-2(b). This definition applies to proceedings that may result in increased utility rates. As explained by the New Jersey Supreme Court, ratepayers' rights to reasonable rates are guaranteed by statue and under the New Jersey Constitution:

> The system of rate regulation and the fixing of rates thereunder are related to constitutional principles which no legislative or judicial body may overlook. For if the rate for the service supplied be unreasonably low it is confiscatory of the utility's right of property, and if unjustly and unreasonably high (bottomed as it is on the exercise of the police power of the state), it cannot be permitted to inflict extortionate and arbitrary charges upon the public.

In re Proposed Increased Intrastate Industrial Sand Rates, 66 N.J. 12, 23-24 (1974). Since utility rate increases affect the statutory and constitutional rights of ratepayers, proceedings that affect those rights must be conducted as contested cases..

As noted at page 5 of Rate Counsel's initial comments, the Board has already acknowledged that the relief sought by the TPSs would require BGSS customers to pay for a portfolio that includes newer, higher cost capacity. Rate Counsel Initial Comments at 5, RESA Order at 4-5. Further proceedings to consider the GDCs' proposed acquisitions of capacity also would involve potential rate increases, as the GDCs' BGSS customers would be required to pay the fixed charges under the GDCs' contract with the pipelines through the GDCs' BGSS clauses. Accordingly, ratepayers have the right to dispute the factual foundation for such relief in "contested case" proceedings.

CONCLUSION

For the reasons stated above, Rate Counsel recommends that the Board (1) decline to conduct further proceedings to changes to the current retail gas supply market structure and (2) decline to conduct further proceeding to consider the GDCs purported need to acquire additional pipeline capacity outside of the established BGSS review process. In the alternative, if the Board decides to engage in further consideration of these issues, the Board should convene "contested case" proceedings in which Rate Counsel and other stakeholders are afforded the right to discovery and evidentiary hearings on all relevant issues of fact, and the right to submit briefs on all factual and legal issues.

Respectfully submitted,

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