



State of New Jersey  
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STEFANIE A. BRAND  
*Director*

June 11, 2020

**Via Electronic Mail**

Honorable Aida Camacho-Welch, Secretary

**NJ Board of Public Utilities**

44 South Clinton Avenue, 9<sup>th</sup> Floor

P.O. Box 350

Trenton, NJ 08625-0350

**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 of Confidential Information  
BPU Docket No. GO20010091**

Dear Secretary Camacho-Welch:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-referenced matter. Copies of Rate Counsel's comments are being provided to all parties on the service list by electronic mail only. Please acknowledge receipt of these comments.

**RATE COUNSEL'S COMMENTS**

In the above-referenced Petition, New Jersey Natural Gas Company ("NJNG") is seeking approval of a First Amendment to its Service Agreement for Service Classification FT ("Service Agreement") with Essential Power OPP, LLC ("Essential Power"). Petition, p. 1. Essential Power, as successor in interest to Ocean Peaking Power, LLC ("OPP"), operates an electric generation facility in Lakewood, New Jersey. Petition, p. 1. The Service Agreement was approved by the Board in an Order dated June 20, 2003. Petition, Exh. A. The Service Agreement provides for an Operational Balancing Account ("OBA") for variances between

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Essential Power's actual deliveries of gas supplies to NJNG's distribution system, and its actual gas take on any given gas day. Petition, p. 3-4. More frequent Operational Flow Orders ("OFOs") from Texas Eastern Transmission have limited NJNG's tolerance for over-and under-deliveries of gas. Therefore, NJNG and Essential Power negotiated the First Amendment to changes the parameters of the OBA. Petition, p. 4. The Petition states that the First Amendment will benefit ratepayers by reducing NJNG's risk of incurring an OFO penalty for over- and under-delivery. Petition p. 5.

Rate Counsel has reviewed the Service Agreement, the First Amendment, and NJNG's responses to Rate Counsel's and Staff's discovery in this matter and concurs with NJNG that the First Amendment is in the best interests of NJNG's ratepayers. Rate Counsel therefore has no objection to the Board's approval of the First Amendment.

Rate Counsel wishes to note, however, that until this time, the Service Agreement has not been amended since it was approved by the Board in 2003. In view of the many developments that have occurred in the natural gas industry and the substantial rate increase that have been implemented for the Company's other ratepayers since 2003, the rates being charged to Essential Power may be outdated. The Service Agreement includes an "evergreen" clause that continues the agreement in effect for successive one-year term, unless terminated by either party upon giving notice by a prescribed period prior to the expiration of the current term. Petition, Exhibit B (redacted public version), Article II. Under this provision, NJNG can give the required notice prior to the expiration of the current term and negotiate a modified or new agreement if the rates or other terms and conditions have become unreasonable. In correspondence dated March 1, 2013, NJNG advised the Board that it intended to re-negotiate the Service Agreement in the coming year. Response to RCR-1, Attachment p. 2. However, the only amendment to date has

been the First Amendment, which does not change the rates under the Service Agreement.

Response to RCR-2.

If the rates or other terms and conditions need to be updated, NJNG can exercise its right to terminate the agreement at the end of the current term in order to open negotiations with Essential Power. The Company should be directed to file a petition to initiate a review by the Board of the prudence of the Service Agreement, or any modified or new agreement, following the expiration of the current term.

### **CONCLUSION**

For the reasons explained above (1) Rate Counsel does not object to approval of the First Amendment to the Service Agreement and (2) the Company should be directed to file a petition with the Board for review of the prudence of the Service Agreement, or any modified or new agreement, following the expiration of the current term.

Very truly yours,

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

By: /s/ Sarah H. Steindel  
Sarah H. Steindel, Esq.  
Assistant Deputy Rate Counsel

SHS  
c: Service List

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  
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