STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

I/M/O Verified Petition of **The College of New Jersey** for Relief from a Penalty Assessed by Public Service Electric & Gas Company	Docket No. GC18111234

VERIFIED AMENDED PETITION

Pursuant to N.J.A.C. 14:1-4.7, The College of New Jersey ("TCNJ" or the "Petitioner") hereby amends its petition to the Board of Public Utilities ("Board") in order to provide additional details related to its claim for relief from a penalty assessed by Public Service Electric and Gas ("PSE&G") regarding the consumption of natural gas during a period of interruption in January 2018. These additional details further support TCNJ's claim that the penalty assessed by PSE&G is at odds with the statutory requirement that all rates charged by utilities such as PSE&G be just and reasonable.

There is no dispute that TCNJ had properly maintained and tested the back-up fuel oil system and successfully switched to fuel oil in advance of the PSE&G interruption start time, approximately 30 minutes into the interruption a mechanical failure shut down the fuel oil system. Left with no choice, TCNJ properly declared an emergency and notified PSE&G that TCNJ needed to go back on natural gas in order to protect the health and wellbeing of the campus community.

The penalty is in place to ensure that interruptible customers maintain and test their alternative fuel supplies in accordance with the terms of this program. TCNJ complied with this maintenance and testing requirement, and certified its compliance with this requirement in its annual affidavit to PSE&G. Despite complying with the intent of the program, a mechanical

failure beyond TCNJ's ability to predict or control occurred and prevented continuation of the interruption. As part of its declaration of an emergency, TCNJ immediately contracted for repairs to the failed fuel oil system. The nature of the failure was such that this emergency contractor was unable to make repairs in time for TCNJ to resume compliance with the PSE&G interruption.

Following the PSE&G interruption event, PSE&G calculated the penalty at approximately $2.4 million. In order to provide context, this amount is greater than the annual amount spent on natural gas by TCNJ under this rate and is greater than one-third of TCNJ's annual cost for all utilities. In short, the penalty does not compensate for damages or costs incurred by PSE&G. Because the penalty is calculated using a multiplier from the peak spot price, the magnitude of the penalty was both unforeseeable and unreasonable. Imposing the penalty on TCNJ is unjust and unreasonable, because the intent of the penalty is to incentivize behavior that TCNJ fully complied with, through its testing, maintenance and certification of the alternative fuel systems, its making every effort to restore its ability to participate in the PSE&G interruption, and its declaration of emergency and immediate communication with PSE&G.

In support of this Amended Petition, TCNJ provides the following information:

I. DESCRIPTION OF THE PETITIONER AND RESPONDENT

1. TCNJ is a highly selective institution that is consistently recognized as one of the top comprehensive public colleges in the nation. Founded in 1855 as the New Jersey State Normal School, TCNJ maintains the fifth highest four-year graduation rate among all public colleges and universities. It is ranked by Money as one of the top 15 public colleges "most likely to pay off financially," and U.S. News & World Report rates it the No. 1 public institution among regional universities in the north. TCNJ enrolls approximately 7,400 students including approximately 6,790 undergraduates and 610 graduate students. At a time of constrained monetary support from

the State and the increasingly limited ability of families to pay for a college education, TCNJ strives to provide high-quality higher education at an affordable price.

2. PSE&G is New Jersey's oldest and largest regulated gas and electric delivery utility, serving nearly three-quarters of the state's population. PSE&G is a subsidiary of Public Service Enterprise Group Incorporated (PSEG), a diversified energy company. PSEG also owns PSEG Power, a company that competes in energy markets through five main subsidiaries: PSEG Nuclear, PSEG Fossil, PSEG Energy Resources & Trade, PSEG Power Ventures and PSEG Energy Solutions.

II. DESIGNATED CONTACTS

3. Questions, correspondence or other communications concerning this Petition should be directed to:

Michael Canavan
Vice President and General Counsel
The College of New Jersey
PO Box 7718
Ewing, NJ 08628-0718
609-771-2426 (tel)
canavanm@tcnj.edu

James H. Laskey
Norris McLaughlin, P.A.
400 Crossing Blvd, 8th Floor
Bridgewater, New Jersey 08807-5933
908-252-4221 (tel)
908-722-0755 (fax)
jlaskey@norris-law.com

III. BACKGROUND

4. TCNJ owns, maintains and operates an on-campus cogeneration plant (the "Cogen") that supplies electricity and steam for heating throughout its campus. The Cogen produces approximately 42,500 pounds of steam per hour.

5. The Cogen receives service from PSE&G under a tariff known as Basic Gas Supply Service – Cogeneration Interruptible, or CIG. The CIG tariff requires customers, upon advance notice of not less than 8 hours, to discontinue natural gas use.

6. Consistent with this requirement, TCNJ maintains a fuel oil backup for the Cogen. It tests and maintains this system and has had no failures to comply with PSE&G interruption notices in over 20 years. As recently as December 31, 2017, it interrupted its use of gas and relied on oil, complying with the full 27 hours of the PSE&G interruption.

7. Until a recent redesign described in more detail below, the oil back-up system utilized a large outdoor storage tank for oil, and a smaller day tank located inside the Cogen facility. The day tank was equipped with a float device that would trigger a fill command when the day tank was getting low. At that point, a pump would transfer oil from the large storage tank until a second float device at the top of the day tank would trigger a stop command. A full day tank would provide approximately 30 minutes of operation and in conjunction with the refillable large storage tank the system could run for at least 7 days as required under the terms of the CIG tariff.

8. Paragraph (n) of the CIG tariff also provides for an optional service described in the tariff as Extended Gas Services, and also occasionally referred to as "CEG." The rate for this service, which is described as being offered at PSE&G's option, is tied to PSE&G's highest cost of gas. However, if PSE&G does not make CEG available, but the customer still does not interrupt, the CIG tariff calls for a penalty rate of ***ten times*** the ***highest*** price of the daily ranges for delivery in various zones, as published in a publication known as "Gas Daily."

9. On January 4, 2018, TCNJ received a notice to switch over to oil effective the following morning. It was told without explanation that CEG would not be available.

10. TCNJ switched to its oil backup on January 5, 2018, prior to the published PSE&G interruption time. The system worked as designed on its alternate fuel source until approximately 30 minutes into the PSE&G declared interruption. The root cause of the failure was later

determined to be a failure of the day tank float device system. Despite having a full and ready large storage tank, the float device system failure prevented fuel oil from being delivered to the day tank and therefore prevented the Cogen from being able to be run on its alternate fuel supply.

11. The Cogen provides steam to the campus which is used for heating. The extreme cold that was the reason for the PSE&G interruption order also caused great risk to the campus community absent that steam heating. Faced with an uncertain penalty and a certain risk to the health and wellbeing of its campus community, and completely in good faith and in keeping with best practices TCNJ declared an emergency, properly informed PSE&G of the nature of the emergency and switched the Cogen back to its natural gas fuel source. Upon information and belief, this decision did not cause any other customer of PSE&G to lose gas service. Despite the cold weather, PSE&G was able to procure additional gas, and presumably did so at or below the highest price reported by the Gas Daily publication.

12. Under the relevant New Jersey procurement statute, N.J.S.A. 18A:64-57, TCNJ declared an emergency which allowed the immediate contracting of repair services so that TCNJ could resume participation in the PSE&G interruption. The responding contractor, who specializes in these types of mechanical systems, was unable to restore the system to full operation until after the PSE&G interruption had ended, despite TCNJ paying emergency contractor rates totaling over $20,000 for this service.

13. The interruption condition ended on the morning on January 8, 2018, having lasted for approximately 72 hours.

14. In February 2018, TCNJ asked for a determination of the penalty. PSE&G provided two prices reported in Gas Daily, one for Friday, January 5, 2018, and one for Monday, January 8, 2018. It asked TCNJ to accept at face value the calculations set forth, explaining that “Due to

copyright restrictions copies of the applicable 'Gas Daily's' are not available for distribution." This was the first time that TCNJ learned that the penalty could exceed $2.2 million.

15. PSE&G recomputed the penalty at least two more times. Its final determination, communicated in June 2018, was for $2,359,532.03. To understand the magnitude of this penalty, it exceeds TCNJ's entire CIG expense for all of 2017, and represents an approximately $300 additional cost to be borne by the families of each and every TCNJ student.

16. The price per therm under the various tariffs in effect as of January 2108 was as follows:

Service	Price Per Therm
CIG	$0.299159
CEG	$0.522597
Penalty Rate with multiplier	$120.706503
Penalty Rate as % of CIG Penalty Rate as % of CEG	40,349% 23,097%

17. PSE&G agreed to meet to discuss the matter, and advised that in the meantime TCNJ should not pay the penalty charges. TCNJ has continued to pay all current charges from PSE&G. See N.J.A.C. 14:3-7.6.

18. In March 2018, TCNJ's Major Customer Consultant advised TCNJ that he had obtained authorization for a 5-year pay-out. However, this offer was subsequently repudiated by PSE&G as not authorized.

19. TCNJ and PSE&G have had further discussions regarding a reasonable outcome, but such discussions have not led to any agreement.

IV GROUNDS FOR RELIEF

a. As a Matter of State Law, all PSE&G Rates Must Be Just and Reasonable

20. N.J.S.A. 48:3-1 prohibits all public utilities from imposing or exacting any rate or charge that is unjust and unreasonable. N.J.S.A. 48:3-3 also prohibits a public utility from withholding or refusing any service, which reasonably can be demanded or furnished.

21. What might be an unjust or unreasonable rate is initially the responsibility of the Board to determine, subject to normal judicial review procedures. N.J.S.A. 48:2-23; N.J.S.A. 48:2-43. The same is true for withholding of service.

22. The Board has the broadest possible scope of jurisdiction over public utilities, N.J.S.A. 48:2-13, including the power to investigate "any matter concerning any public utility" initiated on its own motion or by complaint. N.J.S.A. 48:2-18.

23. The fact that a particular rate is set forth in a tariff does not necessarily mean that such rate is automatically just and reasonable for all time. Facts and circumstances change, which can warrant reexamination of a rate previously thought to be just and reasonable.

24. The ability of the Board to approve a waiver of a penalty for good cause shown is illustrated by *I/M/O The Request By New Jersey American Water Company For A Temporary Waiver Of Optional Industrial Wholesale Tariff Condition, Rate Schedule F, Due To Impact Of Covid On Water Consumption,* Docket No. WT21101160 (Order January 12, 2022). In that case, Rutgers University and Princeton University were facing significant penalties due to a reduction in their respective water consumption as a result of the COVID-19 emergency. Without the waiver, the schools would have been facing an 82% increase in water rates. The Board agreed that the reasons for the tariff violation were beyond the reasonable control of the schools, and approved the waiver. Order at 3. Similar reasoning is applicable here.

b. As applied to TCNJ Under the Circumstances, the Existing PSE&G Tariff Is Unjust and Unreasonable.

25. By its terms, the tariff in question purports to be a strict liability penalty, with no consideration as to whether the PSE&G customer acted in good faith and reasonably, or in contrast with deliberate disregard for the requirements under the tariff, and with no consideration as to whether the amount charged bears any reasonable relationship to the damages suffered by PSE&G or its other customers. It is no different from the penalty clauses that New Jersey courts have considered for many years, and that have been denied enforcement when they bear no relationship to the damage that flows from a breach. Absent a specific contract, the tariff serves as the contract between the utility and its customers. *Application of Borough of Saddle River*, 71 N.J. 14 (1976); *Abel Holding Co., Inc. v. American Dist. Tel. Co.*, 138 N.J. Super. 137 (L.1975), *aff'd*, 147 N.J. Super. 263 (App. Div. 1977)

26. "For more than five centuries, courts have scrutinized contractual provisions that specify damages payable in the event of breach." Wasserman's Inc. v. Township of Middletown, 137 N.J. 238, 248 (1994) (citing Wassenaar v. Panos, 111 Wis. 2d 518 (1983)). "The validity of these 'stipulated damage clauses' has depended on a judicial assessment of the clauses as an unenforceable penalty or as an enforceable provision for 'liquidated damage.'" Wasserman's Inc., 137 N.J. at 248 (internal citation omitted). "A penalty is the sum a party agrees to pay in the event of a breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the threat of which is designed to prevent the breach. … The settled rule in this State is that such a contract is unlawful." Wasserman's Inc., 137 N.J. at 248-49 (quoting Westmount Country Club v. Kameny, 82 N.J. Super. 200, 205 (1964)).

27. ”Reasonableness” emerges as the standard for deciding the validity of stipulated damages clauses. Wasserman’s Inc., 137 N.J. at 249 (citing Wassenaar, supra, 331 N.W.2d at 361 (noting that “[t]he overall single test of validity is whether the clause is reasonable under the totality of circumstances”)). “Consistent with the principle of reasonableness, New Jersey courts have viewed enforceability of stipulated damages clauses as depending on whether the set amount ‘is a reasonable forecast of just compensation for the harm that is caused by the breach’ and whether that harm ‘is incapable or very difficult of accurate estimate.’” Wasserman’s Inc., 137 N.J. at 249 (quoting Westmount Country Club, supra, 82 N.J. Super. at 206; accord Monmouth Park Ass'n v. Wallis Iron Works, 55 N.J.L. 132, 140–41 (E. & A. 1892); Wood v. City of Ocean City, 85 N.J. Eq. 328, 330 (Ch.1915). Certainly the Board’s obligation to ensure “just and reasonable” rates is at least as compelling as the courts’ authority to set aside unreasonable penalties.

28. “Actual damages, moreover, reflect on the reasonableness of the parties' prediction of damages. ‘If the damages provided for in the contract are grossly disproportionate to the actual harm sustained, the courts usually conclude that the parties' original expectations were unreasonable.’” Wasserman’s Inc., 137 N.J. at 249 (quoting Wassenaar, supra, 331 N.W.2d at 364; citing 5A. Corbin on Contracts § 1063 (1951) (“It is to be observed that hindsight is frequently better than foresight, and that, in passing judgment upon the honesty and genuineness of the pre-estimate made by the parties, the court cannot help but be influenced by its knowledge of subsequent events.”)).

29. New Jersey courts consider a contract clause to be an enforceable liquidated damages provision, as opposed to an unenforceable penalty for breach, only if both the actual damages from a breach are difficult to measure and the stipulated amount of damages is “a

reasonable forecast of the provable injury resulting from [the] breach." Wasserman's, supra, 137 N.J. at 249. Such clauses are deemed "presumptively reasonable" and, therefore, enforceable. Id. at 252. "The amount fixed is unreasonable if it serves not as a pre-estimate of probable actual damages, but rather as 'punishment,' Westmount Country Club, supra, 82 N.J. Super. at 205, grossly disproportionate to the actual harm sustained." CSFB 2001-CP-4 Princeton Park Corporate Center, LLC v. SB Rental I, LLC, 410 N.J. Super. 114, 121 (App. Div. 2009).

30. Under the controlling case law, the existing tariff provision, at least as applied in the present case, is manifestly unreasonable in several respects. First, the actual damages from a breach in this case are decidedly **not** difficult to measure, as PSE&G knows exactly how much gas was used by Petitioner during the interruption period, and also knows how much PSE&G needed to pay to procure that gas (assuming that all gas procured for TCNJ's benefit was the highest price paid by PSE&G over the period in question). This means that the existing tariff provision does not even satisfy the first prong of the analysis, rendering it an unenforceable penalty from the beginning.

31. Second, the existing tariff provision is tied to a price that is published in Gas Daily, a private publication that costs several thousand dollars per year and that is not available through usual library sources. Presumably, the publishers collect data in good faith, but there have been instances where third parties were found to have engaged in activities in an attempt to manipulate the index for their own good.[1] Preventing the Board from verifying the accuracy of the results

[1] *See, e.g.*, *BP America*, Inc., 156 FERC ¶ 61,031 (2016); *Direct Energy Services, Inc.*, 148 FERC ¶ 61,114 (2014). TCNJ is not alleging that any manipulation took place during the days in question. Rather, the point is that it has no way of verifying the accuracy of what was reported. However, the Board, with its broad investigatory powers, could undertake such an inquiry.

reported in Gas Daily is inconsistent with the Board's plenary authority to audit the books and records of a public utility, N.J.S.A. 48:2-16.1

32. Third, the price in question is not published until after the days of interruption have already passed, so when TCNJ reached the decision not to continue its interruption, it had no idea as to what the penalty might be.

33. Fourth, whatever the reasons might have been for selecting ***ten times*** the ***highest*** price as the penalty rate, those reasons do not withstand scrutiny under current legal requirements in New Jersey, which distinguish between reasonable liquidated damages provisions and unreasonable penalties that are grossly excessive relative to any reasonable measure of damages sustained by the non-breaching party. The latter have been consistently struck down as contrary to public policy.

34. Using a ten-times multiplier is strikingly punitive. The formula is even more harsh because it uses the highest published price from two different zones, without any consideration for whether those highest prices were within the realm of reasonableness, or simply outliers. Over the days in question, the range reported by Gas Daily for the two zones ran between $85.00 and $175.00 per MMBTU for Friday, and between $15.00 and $65.00 per MMBTU over the weekend. Despite this huge variation, and no indication of how many trades actually were at the highest level reported, the formula automatically latches on to the highest of all possible prices (rather than the actual price paid by the supplier in question) – and then multiplies that number by ten.

35. The grossly excessive penalty contained in the tariff is even harder to defend when it is assessed against a not-for-profit institution of higher education which is a component unit of the State of New Jersey, which had an unblemished record of complying with interruption

directives over a period of decades, and which did everything within its reasonable control to avoid the unfortunate circumstance.

36. Further, the penalty tariff is far above kinds of tariffs imposed by energy companies in other jurisdictions. In Delaware, for example, Chesapeake Utilities imposes a tariff of $5.00 per CCF in addition to the currently effective rate. See Rules and Regulations Governing the Distribution and Sale of Gas of Chesapeake Utilities Corporation In New Castle, Kent & Sussex Counties, Delaware, Third Revised Sheet 40.1, available at https://www.chpkgas.com/about-us/legal-notices-tariffs/. Chesapeake Utilities also provides customers with a process to by which they can obtain an emergency interruption waiver, something not provided by PSE&G here. Id.

37. In New York, Niagara Mohawk Power Corporation imposes a tariff charge of the greater of "$25.00 per dekatherm or 125% of the highest per dekatherm cost of gas purchased in the Company's gas supply portfolio during the calendar month of unauthorized usage". See Niagara Mohawk Power Corporation – Schedule For Gas Service Applicable In All Territory Served By This Corporation, Leaf 31, revision 8, available at https://ets.dps.ny.gov/ets_web/search/searchSubmissionID.cfm?sub_id=2778433

38. In Pennsylvania, Columbia Gas of Pennsylvania, Inc. imposes the following tariff: "On any day when the Customer has been given notice by the Company to interrupt, any quantity of gas taken in excess of the quantity specified to be made available on that day shall constitute unauthorized takes and shall be subject to a penalty charge of $2.79590 per therm. Payment of such penalty charge shall be in addition to the charges specified in this rate schedule." See Columbia Gas of Pennsylvania, Inc. – Rates and Rules For Furnishing Gas Service In The Territory As Described Herein, 7th Revised Page No. 123, available at https://www.columbiagaspa.com/our-company/about-us/regulatory-information.

39. In effect, the Board has delegated its responsibility to set just and reasonable rates to a third party over which it has no ability to monitor and no ability to audit. Plus, by setting the penalty at ten times the highest reported rate, the Board is automatically guarantying a windfall to PSE&G and its BGSS-I suppliers, which include PSE&G Power. The penalty rate being assessed by PSE&G at present is also far outside the norm of other energy providers operating in this region of the country.

40. TCNJ is fully willing to make sure that PSE&G is made whole by TCNJ's failure to interrupt, but there is no sound public policy that would require TCNJ, a not-for-profit component unit of the State of New Jersey, to unjustly enrich others.

41. The CIG tariff also provides that interruption will not occur unless service to all TSG-NF customers receiving BGSS-I default service have already been interrupted. However, TCNJ is unaware as to whether there are actually any customers who take TSG-NF plus BGSS-I service. This tariff provision may thus be meaningless in terms of providing comfort to CIG customers.

c**. The Existing Tariff Is Being Applied In A Manifestly Unreasonable Manner.**

42. Additionally, even if the existing tariff is not an unenforceable penalty, which it is, the strict application of such a harsh penalty in this case, given the facts and circumstances surrounding the violation, is inequitable.

43. "'[Strict] liability without fault should not be imposed, whether that activity be classified as a nuisance or a trespass, absent intentional or hazardous activity requiring a higher standard of care or, as a result of some compelling policy reason.'" Ross v. Lowitz, 222 N.J. 494, 510-11 (2015) (quoting Burke v. Briggs, 239 N.J. Super. 269, 273 (App. Div. 1990)); see also Ruiz ex rel. Ruiz v. Kaprelian, 322 N.J. Super. 460, 472–73 (App. Div. 1999). This principle has been

applied in a variety of contexts. See Magrine v. Spector, 100 N.J. Super. 223, 224-25 (App. Div. 1968) ("The sole issue presented here is whether a dentist is strictly liable to a patient injured by a defective instrument used in the course of treatment. In our opinion, the imposition of liability on the defendant-dentist cannot be justified on the basis of any of the accepted policies which underlie the doctrine of strict liability as it is presently understood. Nor are we persuaded that that doctrine should be extended under the circumstances of this case so as to render the defendant-dentist liable without fault for a defect in a needle which he merely purchased and used."); Fischer v. Johns-Manville Corp., 103 N.J. 643, 652-53 (1986) ("Although strict liability in tort has sometimes been referred to as 'liability without fault,' the expression 'liability without moral blame' is more accurate. The 'moral blame' connotation given to fault in the criminal law has little application in the law of torts. 'There is a broader sense in which 'fault' means nothing more than a departure from a standard of conduct required of a person by society for the protection of his neighbors.'"); Housing Authority and Urban Redevelopment Agency of City of Atlantic City v. Spratley, 327 N.J. Super. 246, 253 (App. Div. 1999) ("We agree that strict liability without fault may be considered a draconian remedy. We have thus construed N.J.S.A. 2A:18–61.1(p), which authorizes summary eviction for drug offenses committed on the leased property, as requiring that the tenant have 'tolerate[d] the offender's occupancy of the premises knowing that such person has violated the [drug laws].'").

44. Even in cases involving the **release of toxic chemicals**, New Jersey courts do not treat strict liability as absolute in every situation. In order to prove a strict liability claim for release of toxic chemicals, an owner of property must establish the following: (i) the release of hazardous substances onto the property was an abnormally dangerous activity; (ii) the defendant used the hazardous substances found on the plaintiff's property; (iii) the activity caused harm to the plaintiff;

and (iv) the possibility that the harm arose from the fact that the activity was abnormally dangerous. See Restatement (2d) of Tort § 519 (1977). In the seminal case of State, Dept. of Environmental Protection v. Ventron Corp., 94 N.J. 473 (1983), the New Jersey Supreme Court held that a "landowner is strictly liable to others for harm caused by toxic wastes that are stored on his property and flow onto the property of others." 94 N.J. at 488. In the Ventron case, the Supreme Court adopted a case-by-case analysis for determining whether an activity is abnormally dangerous. 94 N.J. at 491–92.

45. Further, while a showing of intent is not necessarily required to impose strict liability, courts still consider whether such provisions are reasonable given "the nature of the subject matter regulated and that their enforcement does not deprive the [violator] of due process." Dare v. State on Behalf of Dept. of Law and Public Safety, Division of New Jersey Racing Commission, 159 N.J. Super. 533, 538-39 (App. Div. 1978). Indeed, the Appellate Division has on held that, where a strict liability provision deprives an alleged violator of due process, the provision is unreasonable. See Dare, 159 N.J. Super. at 538-39; see also 279 Club v. Newark Bd. of Alcoh. Bev. Cont., 73 N.J. Super. 15 (App. Div. 1962). An essential element of constitutional due process is "fundamental fairness". Johns-Manville, 103 N.J. at 488 (O'Hern, J., dissenting) (quoting In re Federal Skywalk Cases, 680 F.2d 1175, 1188 (8th Cir. 1982)).

46. As noted above, PSE&G denied without explanation the availability of CEG service during the period of interruption. Even though such service is offered at PSE&G's discretion, an abuse of that discretion would be inconsistent with PSE&G's statutory obligation to offer safe, adequate and proper service at just and reasonable rates. Whether PSE&G's decision to withhold CEG service was a reasonable exercise of its discretion is also something that is altogether proper for the Board to investigate.

47. TCNJ hired specialty consultants and contractors who extensively explored the possible causes for the system failure. Having ruled out all obvious causes and without a guarantee that the work of the specialty consultants and contractors could prevent a future occurrence, TCNJ decided to redesign the backup system at its own cost in order to remove the day tank and therefore pump directly from the large storage tank. The total cost of this upgrade is over $88,000.

48. In short, this was not a situation where a customer was trying to game the system by signing up for an interruptible rate and then keeping its fingers crossed that an interruption would not be called. TCNJ was fully aware of its obligations under the tariff, and successfully interrupted its use of gas many times over decades including less than one month prior to the interruption in question. The simple truth is that a component unit of the State faced an emergency that was not able to be predicted, and in good faith made the best decision it could under the circumstances. It did so without any way of knowing what the resulting penalty would be, but what it was assessed – after the fact – goes well beyond any reasonable expectation on the part of TCNJ.

V. CONCLUSION

WHEREFORE, TCNJ asks the Board:

(1) To investigate the circumstances leading up to the assessment of the penalty;

(2) To determine what a just and reasonable assessment might be for the gas that was used;

(3) To determine a fair payment plan for whatever assessment is ultimately arrived at; and

(4) To grant such other relief as may be just and reasonable.

Respectfully submitted,

James H. Laskey
Norris McLaughlin, P.A.
400 Crossing Blvd, 8th Floor
Bridgewater, NJ 08807-5933
jlaskey@norris-law.com

Counsel for Petitioner

Dated: March 10, 2023

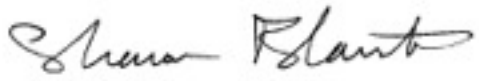
VERIFICATION

I, Sharon Blanton, verify the foregoing petition as follows:

I am Vice President for Operations at The College of New Jersey ("TCNJ") and am authorized to sign this verification on behalf of TCNJ.

I have read the foregoing petition and verify that the facts contained therein relating to TCNJ are true to the best of my knowledge, and the opinions contained therein relating to TCNJ are correct to the best of my belief.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Sharon Blanton, Vice President for Operations

Dated: March _10___, 2023