



## State of New Jersey

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October 16, 2023

#### **Via Electronic Mail**

Sherri L. Golden, Board Secretary

#### **NJ Board of Public Utilities**

44 South Clinton Avenue, 1<sup>st</sup> Floor

P.O. Box 350

Trenton, NJ 08625-0350

**Re: In the Matter of the Verified Petition of the College of New Jersey for Relief  
From a Penalty Assessed by Public Service Electric and Gas Company  
BPU Docket No. GC18111234**

Dear Secretary Golden:

Please accept this letter as the Division of Rate Counsel's ("Rate Counsel") opposition to Petitioner The College of New Jersey's ("TCNJ" or the "College") Cross-Motion to Supplement the Record filed October 5, 2023. The Stipulation of Fact and Exhibits jointly submitted by Rate Counsel, Public Service Electric and Gas ("PSE&G"), and TCNJ on September 6, 2023, states:

"[t]hese stipulated facts are subject to amendment by the parties if necessary. Additional exhibits may be added, subject to the other parties' right to raise objections." Stipulation par. 51.

For the reasons discussed below, Rate Counsel objects to the Motion.

In its Motion, TCNJ seeks to amend the Stipulated Facts and Exhibits to add the Certification of Richard Schweigert, the interim Treasurer at the College. TCNJ argues that it needs to supplement the record in response to arguments made by Rate Counsel in its September 14, 2023 Brief in support of its Motion for Summary Decision filed September 14, 2023 that TCNJ had failed to demonstrate that payment of the penalty at issue in this proceeding would

create a hardship for the College. TCNJ argues that it needs to supplement the record at this late date, because “a hardship argument has never been raised by any party to these proceedings until now.” TCNJ Motion p. 2.

The Motion should be denied. TCNJ’s financial ability, or lack of same, to pay the penalty, has always been at issue since TCNJ’s original Petition was filed in 2018. Moreover, allowing TCNJ to supplement the record with new material that is not subject to discovery would unduly prejudice the other parties.

**I. TCNJ’s Failure to Demonstrate Hardship is Not a New Issue.**

Contrary to TCNJ’s arguments, the issue of whether or not payment of the penalty would create a hardship is not a new issue in this matter. In its Motion, TCNJ argues that “Rate Counsel for the first time advanced an argument that...a penalty would not ‘create a hardship’ ...[while failing to mention that] the record is devoid of such documentation because a hardship argument has never been raised by any party to these proceedings until now.” TCNJ Motion p. 2. This is simply unsupported by the record. In both its Verified Petition dated November 9, 2018 and its Amended Verified Petition dated March 10, 2023, TCNJ cited “constrained monetary support from the State” and “the increasingly limited ability of families to pay for a college education” as reasons to excuse it from paying the penalty. Petition, par. 1; Amended Petition, par. 1. In the Amended Petition, TCNJ refers to itself as a “not-for-profit” entity—clearly implying a lack of funds to pay the penalty. Amended Verified Petition, pars. 35, 40. The obvious intent of these allegations was to persuade the Board that payment of the penalty would create a financial hardship for the College. Additionally, the Conclusion section of both the originally filed Verified Petition and the Amended Verified Petition asked the Board

to “determine a fair payment plan for whatever assessment is ultimately arrived at,” a request which necessarily placed TCNJ’s financial circumstances at issue. See, N.J.A.C. 14:3-7.7.

If TCNJ failed to understand when it filed the original and amended petitions that it was placing its ability to pay at issue, then that misunderstanding was resolved when PSE&G pointed out in its filed its Answer to the Amended Verified Petition dated April 19, 2023, that “**TCNJ Has Failed To Establish That The College, Notwithstanding The Substantial Benefit It Has Received To Date And That It Continues To Receive Under The Grandfathered Rate, Would Face Hardship Were It Required To Abide By The Tariff.**” PSE&G Answer to Amended Petition, p. 7 (emphasis in original). TCNJ never asserted this statement was out of the scope of this proceeding.

Finally, the “Issues to Be Resolved included in the Prehearing Order issued June 27, 2023, to which TCNJ agreed, include: “Determine if there are grounds for a waiver of a Penalty.” As TCNJ appears to acknowledge at page 2 of its October 5, 2023 brief opposing Rate Counsel’s and PSE&G’s motions for summary disposition, this issue implicates the Board’s waiver rule, N.J.A.C. 14:1-1.2, which includes a requirement that the party seeking a waiver must provide a “full statement of the type and degree of hardship or inconvenience that would result” in the absence of waiver. N.J.A.C. 14:1-1.2(b)(2).

TCNJ is the party seeking relief from the Board, and thus the burden is on TCNJ to provide the necessary evidentiary support. Rate Counsel’s brief in support of its Motion for Summary Disposition merely pointed out the College’s failure to provide the necessary proofs. Rate Counsel Brief, p. 20. This not a valid reason to allow TCNJ’s eleventh-hour attempt to supplement the record.

## **II. Permitting the Certification to Become Part of the Record Would Unduly Prejudice the Other Parties.**

In his Certification, Mr. Schweigert makes number of statements about the College's financial condition in the wake of the COVID-19 pandemic. TCNJ cites bald assertions made in the Certification in support of its argument that assessment of the full penalty would create "immense" financial hardship for the College. TCNJ Brief opposing Rate Counsel and PSE&G Motions for Summary Disposition, p. 8 (citing Schweigert Certification). Allowing Mr. Schweigert's certification in the record at this late date will prejudice the other parties who would not have any opportunity to ask discovery as to the basis for Mr. Schwiebert's statements. The Certification includes several statements about TCNJ's current financial condition, but provides only selected information to support his conclusions. At this late date, the parties will have no opportunity for discovery on important information that is not stated in the Certification such as the size of the College's budget, the amount of the budget deficit that is stated to have occurred during the College's most recent fiscal year, the details of the items that TCNJ is considering cutting, and retaining, in the current fiscal year, details of the College's efforts to secure additional funding from the State Budget or other sources, and whether the College made any effort to set aside funds to pay the penalty between the time the penalty was assessed in early 2018 and the onset of the pandemic.

It is important to bear in mind that TCNJ agreed with Rate Counsel and Staff that this matter would be submitted to the Board based on stipulated facts and exhibits in lieu of pre-filed testimony and evidentiary hearings. The Prehearing Order reflecting this agreement was issued on June 27, 2023, and the parties spent the next two months completing discovery and negotiating the contents of the Stipulated Facts and Exhibits that were submitted in early September, 2023. While the parties did make provision for amending the stipulated facts and

adding exhibits, they also reserved the right to raise objections to any new materials proposed to be added to the record. TCNJ is proposing to add information which was known at the time the Stipulation of Facts in this matter was negotiated. Additionally, this Certification is essentially a piece of pre-filed testimony, with no time for PSE&G or Rate Counsel to conduct discovery within the agreed procedural schedule. This is contrary to the process contemplated in the Prehearing Order.

**III. The Certification is of Limited Relevance because it Details the College's Current Financial Position.**


The Certification is not relevant to a hardship waiver determination because it is narrowly focused on the College's current financial position instead of the College's financial position in 2018 when the penalty was initially assessed. The Certification relies on the financial implications of the COVID-19 pandemic and subsequent inflation in support of the hardship argument. Certification par. 2. The penalty at issue was assessed approximately 2.5 years prior to the events College claims depleted its reserves and thus created the claimed hardship. In fact, as of January 4, 2018, it was known to TCNJ that a penalty would be assessed for its failure to interrupt. Stipulation pars. 27, 31. The amount of the penalty was determined in February 2018. EXHIBIT J-11. This eleventh-hour Certification is insufficient in establishing a credible hardship argument since it does not address financial hardship at the relevant point in time when the penalty was expected to be paid and when ratepayers were credited for the penalty.

**Conclusion**

For the foregoing reasons, Petitioner TCNJ's Motion to Supplement the Record should be denied.

Respectfully submitted,

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The College of New Jersey for Relief  
from a Penalty Assessed by Public  
Service Electric & Gas Company  
BPU Docket No. GC18111234

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