

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE VERIFIED)
PETITION OF THE COLLEGE OF)
NEW JERSEY FOR RELIEF FROM A) DOCKET NO. GC18111234
PENALTY ASSESSED BY PUBLIC)
SERVICE ELECTRIC & GAS)
COMPANY)

MOTION FOR CLARIFICATION OR,
IN THE ALTERNATIVE, RECONSIDERATION

The College of New Jersey (“TCNJ” or “Petitioner”), hereby moves for clarification or, in the alternative, reconsideration pursuant to N.J.A.C. 14:17-9.6, of the Board’s July 24, 2024 Decision resolving the competing motions filed by Petitioner The College of New Jersey (“TCNJ”), Public Service Electric and Gas (“PSE&G”), and the Division of Rate Counsel (“Rate Counsel”) seeking summary disposition of this matter (the “July 2024 Decision”).

In this Motion, TCNJ asks the Board to clarify or, in the alternative, reconsider the portion of the July 2024 Decision in which it ordered that TCNJ must: “[a]nnually certify[y] to PSE&G, with a copy to Staff, that it will . . . have and will maintain the availability of at least seven (7) days of fuel.” See July 2024 Decision, page 17.

In support of this Motion, TCNJ relies on the brief included herewith, as well as Exhibit A to the July 2024 Decision.

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BRIEF OF THE COLLEGE OF NEW JERSEY IN SUPPORT OF
MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE,
RECONSIDERATION

James H. Laskey, Esq.
Anthony D’Elia, Esq.
Norris McLaughlin, PA
400 Crossing Blvd, 8th Floor
Bridgewater, New Jersey 08807

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TABLE OF CONTENTS

INTRODUCTION 1

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 2

LEGAL ARGUMENT 5

I. TCNJ RESPECTFULLY REQUESTS THAT THE BOARD CLARIFY THE
JULY 2024 DECISION’S LANGUAGE CONCERNING THE REQUIREMENT THAT
TCNJ MAINTAIN AVAILABILITY OF AT LEAST SEVEN DAYS OF FUEL..... 5

II. ALTERNATIVELY, IF THE BOARD INTENDED TO ORDER THE
CONSTRUCTION OF ADDITIONAL FUEL TANKS ON TCNJ’S CAMPUS, TCNJ
RESPECTFULLY REQUESTS THAT THE BOARD RECONSIDER THE JULY 2024
DECISION’S LANGUAGE CONCERNING THE REQUIREMENT THAT TCNJ
MAINTAIN AVAILABILITY OFAT LEAST SEVEN DAYS OF FUEL. 6

CONCLUSION..... 9

TABLE OF AUTHORITIES

	<u>Page</u>
<u>STATE CASES</u>	
<u>For Approval Of Its Clean Energy Future-Energy Cloud (“CEF-EC”) On A Regulated Basis,</u> Docket No. EO18101115, Order on Motion for Reconsideration (June 5, 2020)	6
<u>Cummings v. Bahr,</u> 295 N.J. Super. 374, 384 (App. Div. 1996)	7
<u>D’Atria v. D’Atria,</u> 242 N.J. Super. 392, 401 (Ch. Div.1990)	6, 7
<u>In the Matter of the Implementation of L. 2012, c. 24, the Solar Act of 2012,</u> Docket No. EO12090832 (July 19, 2013) at 5.....	7
<u>In the Matter of Michael Manis and Manis Lighting, LLC – New Jersey Clean Energy Program Renewable Energy Incentive Program,</u> Docket No. QS14040316 (April 15, 2015)	7
<u>Lawson v. Dewar,</u> 468 N.J. Super. 128 (App. Div. 2021)	7
<u>RULES</u>	
Rule 4:42:2.....	7
<u>REGULATIONS</u>	
N.J.A.C. 14:1-8.6(a)(1).....	6
<u>N.J.A.C. 14:17-9.6</u>	6

INTRODUCTION

This matter arises out of the Petition brought before the Honorable Board of Public Utilities (the “Board”) by The College of New Jersey (hereinafter “TCNJ” or “Petitioner”), seeking a ruling by the Board that a penalty assessed by Public Service Electric and Gas (“PSE&G”) of approximately \$2.4 million related to the consumption of natural gas by TCNJ during a period of interruption in January 2018 is at odds with the statutory requirement that all rates charged by utilities such as PSE&G be just and reasonable.

PRELIMINARY STATEMENT

The Board’s July 2024 Decision contains the following language which TCNJ seeks to clarify: “TCNJ [shall] [a]nnually certify[y] to PSE&G, with a copy to Staff, that it will . . . have and will maintain the availability of at least seven (7) days of fuel.” See July 2024 Decision, page 17. TCNJ is more than willing and capable of contracting with outside fuel oil suppliers to ensure that a seven-day supply of fuel is available at all times through the use of agreements to timely refill the on-campus fuel oil tanks in the event of a prolonged interruption event. TCNJ represents that it can and will certify annually both that it will suspend operations during an interruption event or that it will have and maintain the availability of at least seven days of alternative fuel through additional firm contractual supply. Should the Board clarify that this is all the July 2024 Decision requires, then TCNJ has no further objection to the language of the July 2024 Decision.

In the alternative, if the Board intended to order TCNJ to maintain the availability of at least seven days of alternative fuel through on-site supply, TCNJ respectfully requests that the Board reconsider this aspect of the July 2024 Decision only. Here, the Board made the following errors of fact and law:

1. Special Provision (a) of the TSG-NF tariff does not require customers operating under that tariff to maintain seven days of alternative fuel through

on-site supply; rather, it requires that such customers maintain such alternative fuel through either on-site supply or through additional firm contractual supply, meaning the Board erred in ordering that TCNJ may only maintain its alternative fuel supply on site; and

2. The Board erred in finding that it would be possible for TCNJ to maintain seven days of alternative fuel through on-site supply, as same is impossible.

First, as noted above, Special Provision (a) of the TSG-NF tariff provides customers under that tariff with the option of annually certifying either that they will maintain alternative fuel through on-site supply or through additional firm contractual supply. It was therefore arbitrary and capricious for the Board to order TCNJ to go beyond what the tariff requires in terms of on-site fuel storage capacity. Second, TCNJ could not possibly maintain such a supply of on-site oil even if it being ordered to so was somehow not in contravention to the express language of the tariff.

For all of the foregoing reasons, and those contained in the papers filed herewith, TCNJ respectfully requests that the Board enter an order clarifying that the July 2024 Decision does not require TCNJ to maintain seven days' worth of fuel oil reserves on-site at all times or, in the alternative, reconsider its arbitrary and capricious decision to do so in the interests of justice.

STATEMENT OF FACTS

TCNJ is a public college with a 289-acre residential campus located in Ewing, New Jersey. TCNJ enrolls approximately 7,400 students, including 6,790 undergraduates and 610 graduate students. TCNJ owns and operates an on-campus cogeneration plant ("Cogen") that supplies electricity and steam for heating throughout its campus. The Cogen receives interruptible natural gas delivery and supply service as a "grandfathered" customer under PSE&G's Rate Schedule CIG – Cogeneration Interruptible Service, under PSE&G's Account No. 4200142104. Customers under this tariff must have continuously received service under this rate schedule of PSEG's former Rate Schedule CEG since January 8, 2002, or, alternatively, must have received a commitment from PSE&G before January 9, 2002. Under Special Provision (b) of Rate Schedule

CIG, customers are required to discontinue their use of gas upon advance notice of eight hours or more, from any hour of any day given to the customer by PSE&G. Under Special Provision (c), if the customer does not discontinue the use of gas after proper notification, they are subject to a penalty.

While there is no alternative fuel requirement for CIG, TCNJ maintains fuel oil back-up system using No. 2 Fuel Oil for the Cogen. As of the 2017-18 winter season, fuel oil was provided to the Cogen using a small day tank located inside of the Cogen plant and a larger outdoor holding tank. The day tank was equipped with a float probe that would trigger a fill command when oil level in the day tank was low. At that point, a pump would transfer oil from the large storage tank until the second float probe 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 system, could run for at least 7 days. The day tank mechanism was installed at the initiation of the Cogen in 1995.

On the morning of January 4, 2018, in light of the weather forecast for the following day and the recommendation of the Company's Gas Asset Strategy group, at approximately 9:20 am, Richard Spataro, a GSOC Supervisor for PSE&G, transmitted a fax notification that CEG would no longer be available effective January 5, 2018 at 10:00 am, and that the customer should be off gas entirely by 10:00 am on January 5. Unfortunately, TCNJ's backup system failed and, as a result, TCNJ was forced to continue using gas during the interruption event, as it was unable to use fuel oil. TCNJ requested that PSE&G waive the gas use penalty until the issue was resolved, which request was denied. TCNJ continued to operate the Cogen using penalty gas until January 7, 2018.

Following the January 2018 event, TCNJ redesigned the system to remove the day tank and to pump fuel oil directly from the large outdoor storage tank. This work was completed in December 2018. TCNJ has complied with all gas interruption notices from PSE&G subsequent to the January 2018 interruption event. TCNJ has used the fuel oil backup system on numerous occasions since the 2017-2018 winter season, including on three separate occasions since January 2022.

On November 13, 2018, TCNJ filed a petition challenging the penalty imposed by PSE&G as a result of TCNJ's failure to interrupt. On September 14, 2023, TCNJ, PSE&G, and Rate Counsel all submitted briefs in support of motions for summary disposition of this matter. On July 24, 2024, the Board issued its decision on the motions for summary disposition (the "July 2024 Decision"). In the July 2024 Decision, the Board determined that TCNJ must pay the full penalty amount to PSE&G in monthly installments over the next five years, without interest, with payments to begin in September 2024. **TCNJ is not seeking clarification or reconsideration with regard to this aspect of the Board's July 2024 Decision and intends to begin making payments pursuant to same in September, as ordered by the Board.** Rather, TCNJ seeks clarification solely with regard to the Board's requirement that, in order to remain on the CIG tariff, TCNJ must: "[a]nnually certify[y] to PSE&G, with a copy to Staff, that it will . . . have and will maintain the availability of at least seven (7) days of fuel." See July 2024 Decision, page 17. TCNJ presumes this to mean that it must be prepared to source a seven-day fuel supply in the event that such a supply is required, not that it is required to maintain such a backup fuel supply on TCNJ's campus at all times. In the event that the Board did intend to order TCNJ to maintain a seven-day backup fuel supply at all times on its campus, TCNJ respectfully requests that the Board

reconsider this aspect of its decision, as same would be manifestly unreasonable in light of the fact that it would be impossible for TCNJ to comply with same.

LEGAL ARGUMENT

I. TCNJ RESPECTFULLY REQUESTS THAT THE BOARD CLARIFY THE JULY 2024 DECISION'S LANGUAGE CONCERNING THE REQUIREMENT THAT TCNJ MAINTAIN AVAILABILITY OF AT LEAST SEVEN DAYS OF FUEL.

As noted above, the July 2024 Decision contains the following language which TCNJ seeks to clarify: “TCNJ [shall] [a]nnually certify[y] to PSE&G, with a copy to Staff, that it will . . . have and will maintain the availability of at least seven (7) days of fuel.” See July 2024 Decision, page 17. TCNJ is more than willing and capable of contracting with outside fuel oil suppliers to ensure that a seven-day supply of fuel is available at all times through the use of agreements to timely refill the on-campus fuel oil tanks in the event of a prolonged interruption event. In fact, as the stipulation entered into by the parties hereto prior to the motions for summary disposition makes clear:

Under Special Provision (a) of the TSG-NF tariff, customers using this service must certify annually either that they will suspend operations during an interruption, or that they have an alternative fuel source that can be legally used at the customer’s facilities. In addition, **customers using specified alternate fuels including No. 2 Fuel Oil, are required to certify that they have, and will maintain the availability of at least seven days of alternative fuel available, either on-site or through additional firm contractual supply.** TCNJ Maintains an alternate fuel backup system using No. 2 Fuel Oil for the two boilers serviced under Rate Schedule TSG-NF.

See July 2024 Decision, Exhibit A at page 3, paragraph 9 (emphasis added).

In accordance with the parties’ stipulation, incorporated into the July 2024 Decision as Exhibit A, TCNJ represents that it can and will certify annually that it will suspend operations during an interruption event or that it will have and maintain the availability of at least seven days

of alternative fuel through additional firm contractual supply. Should the Board clarify that this is all the July 2024 Decision requires, then TCNJ has no further objection to the language of the July 2024 Decision.

II. ALTERNATIVELY, IF THE BOARD INTENDED TO ORDER THE CONSTRUCTION OF ADDITIONAL FUEL TANKS ON TCNJ'S CAMPUS, TCNJ RESPECTFULLY REQUESTS THAT THE BOARD RECONSIDER THE JULY 2024 DECISION'S LANGUAGE CONCERNING THE REQUIREMENT THAT TCNJ MAINTAIN AVAILABILITY OF AT LEAST SEVEN DAYS OF FUEL.

In the alternative, if the Board intended to order TCNJ to maintain the availability of at least seven days of alternative fuel through on-site supply, TCNJ respectfully requests that the Board reconsider this aspect of the July 2024 Decision only.

a. Motion for Reconsideration Standard.

Under N.J.A.C. 14:17-9.6, a party to a Board proceeding may make a motion for rehearing, reargument or reconsideration within 15 days following any final decision or order by the Board.

The motion

shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

See N.J.A.C. 14:17-9.6 (emphasis added).

“[A] party should not seek reconsideration merely based upon dissatisfaction with a decision.” See Moving Brief, page 2 (relying upon In the Matter of the Petition Of Public Service Electric And Gas company For Approval Of Its Clean Energy Future-Energy Cloud (“CEF-EC”) On A Regulated Basis, Docket No. EO18101115, Order on Motion for Reconsideration (June 5, 2020), at 7 (citing D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div.1990)). Pursuant to N.J.A.C. 14:1-8.6(a)(1), the party seeking reconsideration must allege “errors of law or fact” that

were relied upon by the Board in rendering its decision. Reconsideration is typically granted in those cases where: (1) “the decision is based upon ‘a palpably incorrect or irrational basis’ or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence.” See In re PSE&G at 7 (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)). “The moving party must show that the action was arbitrary, capricious, or unreasonable.” See In re PSE&G at 7 (citing D’Atria, 242 N.J. Super. at 401). “The Board ‘will not modify an order in the absence of a showing that the Board’s action constituted an injustice or that the Board failed to take notice of a significant element of fact or law.’” See In re PSE&G at 7-8 (citing In the Matter of the Implementation of L. 2012, c. 24, the Solar Act of 2012, Docket No. EO12090832 (July 19, 2013) at 5; In the Matter of Michael Manis and Manis Lighting, LLC – New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316 (April 15, 2015)).

The Appellate Division has urged decisionmakers:

not to view reconsideration motions as hostile gestures. To be sure, some are frivolous, vexatious or merely repetitious, and some constitute an unwarranted attempt to reverse matters previously decided solely because the prior judge is no longer available. But some reconsideration motions – **those that argue in good faith** a prior mistake, a change in circumstances, or **the court’s misappreciation of what was previously argued** – present the court with an opportunity to either reinforce and better explain why the prior order was appropriate or **correct a prior erroneous order**. Judges should view well-reasoned motions based on Rule 4:42-2 as an invitation to apply Cromwell’s rule: “**I beseech you ... think it possible you may be mistaken.**” The fair and efficient administration of justice is better served when reconsideration motions are viewed in that spirit and **not as nuisances to be swatted aside.**

Lawson v. Dewar, 468 N.J. Super. 128, 136 (App. Div. 2021) (emphasis added).

As a result, of the foregoing, and the below, TCNJ respectfully requests that the Board reconsider the portion of the July 2024 Decision which requires TCNJ to maintain seven days of alternative fuel through on-site supply.

b. The July 2024 Decision’s Requirement That TCNJ Maintain An On-Site Seven-Day Alternative Fuel Supply Was Based On A Palpably Incorrect Or Irrational Basis.

Here, the Board made the following errors of fact and law:

1. Special Provision (a) of the TSG-NF tariff does not require customers operating under that tariff to maintain seven days of alternative fuel through on-site supply; rather, it requires that such customers maintain such alternative fuel through **either** on-site supply **or** through additional firm contractual supply, meaning the Board erred in ordering that TCNJ may only maintain its alternative fuel supply on site; and
2. The Board erred in finding that it would be possible for TCNJ to maintain seven days of alternative fuel through on-site supply, as same is impossible.

First, as noted above, Special Provision (a) of the TSG-NF tariff provides customers under that tariff with the option of annually certifying **either** that they will maintain alternative fuel through on-site supply **or** through additional firm contractual supply. It should also be emphasized that no party to this dispute advocated for TCNJ to be forced to maintain seven days’ worth of on-site fuel at any point in this action. As a result, the Board’s decision to unilaterally disregard the express terms of the tariff and require TCNJ to maintain 210,000 gallons of on-site No. 2 Fuel Oil at all times is arbitrary, capricious, and against the interests of justice.

Second, TCNJ could not possibly maintain such a supply of on-site oil even if it being ordered to so was somehow not in contravention to the express language of the tariff. In order to store enough on-site No. 2 Fuel Oil on its campus, TCN would need to construct an additional five (5) 30,000-gallon above-ground storage tanks in order to increase its on-site capacity by 150,000 gallons. See Certification of Shawn Cappellano-Sarver (“Cappellano-Sarver Cert.”), ¶ 4. It would not be practical, or even possible, for TCNJ to construct the additional tanks needed for the on-site storage of enough No. 2 Fuel Oil to last seven days on its campus. Id. at ¶ 5. The area of TCNJ’s campus on which any hypothetical new tanks would be built is a flood plain, meaning constructing additional tanks there would create a risk of serious environmental damage. Id. Additionally, the

alternate fuel system malfunction that caused TCNJ's failure to interrupt natural gas usage would not even be remedied by forcing TCNJ to maintain seven days' worth of fuel oil on-site, as the failure was caused by the pump system malfunctioning, not by any issues with TCNJ's current on-site fuel oil tanks or its ability to source additional fuel. Further, TCNJ has annually certified that, in the event of an interruption event lasting up to seven days, TCNJ would first use the 60,000 gallons of No. 2 Fuel Oil stored in TCNJ's on-site tanks and then, if needed, work with a contracted No. 2 Fuel Oil supplier to timely refill its on-site tanks. Id. at ¶ 6. TCNJ is therefore already prepared to comply with the tariff's requirements and the Board should therefore, in the interest of justice, reconsider its arbitrary and capricious decision to order TCNJ to go beyond what the tariff requires.

CONCLUSION

For all of the foregoing reasons, and those contained in the papers filed herewith, TCNJ respectfully requests that the Board enter an order clarifying that the July 2024 Decision does not require TCNJ to maintain seven days' worth of fuel oil reserves on-site at all times or, in the alternative, reconsider its arbitrary and capricious decision to do so in the interests of justice.

NORRIS, McLAUGHLIN, P.A.
Attorneys for Petitioner,
The College of New Jersey

Dated: August 14, 2024

By: /s/James H. Laskey
James H. Laskey, Esq.