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Dear Nancy & Stacy:

Enclosed are our comments on the MOA language. Please call if you have any questions.

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**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NEW JERSEY PINELANDS COMMISSION AND THE NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

**I. PURPOSE**

This Memorandum of Agreement (“MOA”) is entered into between the New Jersey Pinelands Commission (the “Commission”) and the New Jersey Board of Public Utilities (the “BPU”). The Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with the implementation of the Act and the Pinelands “Comprehensive Management Plan” (the “CMP”), N.J.A.C. 7:50. The Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978. The BPU is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994.

In order to comply with air quality standards, the New Jersey Department of Environmental Protection (“NJDEP”) ordered the B.L. England electrical generation plant at Beesleys Point, Upper Township, Cape May County (“BLE plant”) either to cease operations or to repower its existing coal-and oil-fired boilers with natural gas combustion turbine technology to dramatically reduce air pollution from the BLE Plant. The BLE plant is located within the boundaries of the Pinelands National Reserve, but outside of the State-designated Pinelands Area. The BLE plant is owned and operated by RC Cape May Holdings, LLC and is located within the service area granted to South Jersey Gas (SJG) by the BPU.

To provide the natural gas required to repower the BLE Plant, SJG determined that it would need to construct a new natural gas pipeline to the Plant. Additionally, the need for this new natural gas pipeline provided SJG with the opportunity to address the vulnerability of the entire southernmost portion of its service territory, from the Cape May Gate Station south, which is currently only served by a single feed supply. SJG, subsequently, submitted a petition to the BPU for its approval to construct an approximately 22-mile, 24-inch natural gas transmission pipeline with a maximum allowable operating pressure of 700 psig. Additionally, SJG also submitted a petition to the BPU seeking a determination and Order pursuant to N.J.S.A. 40:55D-19 that any zoning, site plan review or other municipal land use ordinances or regulations promulgated by the affected municipalities and counties shall not apply to the siting of or construction and operation of the proposed gas pipeline.

The proposed gas pipeline would traverse through portions of both the State-designated Pinelands Area (the “Pinelands Area”) and the Pinelands National Reserve (the “PNR”) (referred to together herein as the “Pinelands”). With regard to the portion in the Pinelands Area, SJG proposes to construct approximately 15-miles of pipeline beneath existing paved portions and/or disturbed shoulders of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557),

NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue. Approximately 10.2 miles of the proposed pipeline would be located within a Forest Area, 2 miles within Rural Development Area and 2.8 Miles in Pinelands Village. Additionally, approximately 7 miles of the pipeline would is-traverse through the federally-designated PNR to the BLE plant.

In addition to providing gas to the BLE plant, the portion of the proposed natural gas transmission line to be located within a Forest Area significantly enhances the reliability of SJG's natural gas service system in the southern and eastern portions of its service area (Cape May and Atlantic Counties, respectively.) Currently, SJG services its customers located in Cape May County via an existing 16-inch feeder line. Moreover, an existing 20-inch gas supply pipeline is the major feeder line to the eastern and southern parts of SJG's service territory. Given the current lack of an alternate supply line, a failure in either of these existing pipelines, especially during the cold weather months, could subject up to 140,000 of SJG's existing customers to long term gas outages, thereby placing the safety and welfare of these customers at risk. The proposed gas pipeline is expected to greatly enhance the reliability of the eastern and southern portions of SJG's service territory by providing an alternative route for gas to be supplied to Atlantic and Cape May Counties. The proposed pipeline would also improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby potentially reducing the need for reinforcement pipe installations in the future, many of which would likely be located within the Pinelands Area.

The Pinelands CMP defines a natural gas pipeline as "public service infrastructure." Although the development of public service infrastructure is a permitted use in a Rural Development Area and a Pinelands Village, it is only permitted in a Forest Area if it is intended to primarily serve only the needs of the Pinelands. See N.J.A.C. 7:50-5.23(b)12. Given that the proposed pipeline is intended to serve customers located both inside and outside of the Pinelands, it is evident that the project does not primarily serve only the needs of the Pinelands. As a result, the proposed pipeline is not fully consistent with the permitted use standards for a Forest Area. This MOA is intended to authorize the construction of the portions of the proposed gas pipeline within a Forest Area in accordance with N.J.A.C. 7:50-4.52(c)2. No other deviations of the CMP standards are required, because the proposed gas line is consistent with the development standards set forth in Subchapter 6 of the CMP. Additionally, because the remainder of the proposed gas pipeline will be constructed within a Rural Development Area and a Pinelands Village and is consistent with the permitted use standards for those management areas, this MOA, in accordance with N.J.A.C. 7:50-4.81(b) also authorizes the BPU to move forward with a decision on SJG's petition for a determination and Order pursuant to N.J.S.A. 40:55D-19. With regard to the remaining 7 mile segment of the pipeline located ~~of~~ outside of state-designated Pinelands Area, within the federally-designated PNR, this segment is located outside of the Commission's area of jurisdiction and, therefore, is not covered by this MOA.

## II. BACKGROUND

### A. The Proposed Route

As discussed above, SJG is proposing to construct an approximately 22 mile, 24-inch natural gas

pipeline. The portion of the pipeline within the Pinelands Area will originate in Maurice River, Cumberland County, just outside Millville, at the intersection of Union Road (CR 671) and NJ Route 49 at the location of an existing pipeline. It will then travel along Route 49 through Estell Manor, Atlantic County, into Upper Township, Cape May County. The proposed route avoids the Village of Tuckahoe, by following Cedar Avenue to the intersection of Mill Road (CR 557), turning east to the intersection of Mt. Pleasant-Tuckahoe Road (CR 664) and then travelling south to the intersection with Marshall Avenue, where an interconnection facility is proposed. The proposed route then follows NJ Route 50 to the intersection with Tuckahoe Road (CR662), where it continues east out of the Pinelands Area into the PNR.

Thus, an approximately 15 mile segment of the pipeline will be constructed in the Pinelands Area, 10.2 miles of which will traverse through a Forest Area, 2 miles will traverse through a Rural Development Area and the remaining 2.8 miles will traverse through a Pinelands Village. The totality of this 15-mile segment, however, will be constructed within existing road rights-of-way ("ROW") beneath the existing paved portions and/or disturbed (grassed) shoulders of the above delineated roads. Specifically, approximately 15% of the proposed pipeline will be constructed within the existing paved travel lanes, 19% within the paved road shoulders, 55% within existing grass shoulders and 11% using Horizontal Directional Drilling (HDD). Given that the totality of the proposed pipeline project will be constructed in existing paved and disturbed road rights-of-way there will be no new fragmentation of the forest area.

#### B. Alternate Routes Considered

In addition to the proposed route, SJG considered two alternate routes. Identification of alternative routes, however, was limited given the location of existing natural gas transmission infrastructure in relation to SJG's service territory. There are no transmission lines plant located to the south or ~~west-east~~ with the necessary volume and pressure to supply the repowering of the BLE. As a result, SJG was limited to transmission infrastructure located to the west.

1. Route B – This route would have approached the BLE plant from the west and north. This proposed route was approximately 10.5 miles in length and located entirely within the PNR. However, this route would not have addressed the need for a redundant supply line for the southernmost portion of SJG's territory. This line would have been constructed off of the existing 20" supply line that currently serves SJG's customers located in Cape May and Atlantic Counties. Additionally, there were potentially significant environmental impacts associated with this line. Specifically, this route required an approximately 7,000 linear foot HDD crossing of the Great Egg Harbor. Such a crossing lies at the technological limits of HDD. Although possible, a HDD under the Great Egg Harbor estuary, because of the complexity of the drill, involving multiple curves, and the drill's length, had a concomitant risk of a drilling fluid breakout, which could impact benthic invertebrates, aquatic plants and fish. This route also would have impacted approximately 5.2 acres of estuarine wetlands for pipe staging as well as significantly impacts to wetland buffers. Lastly, this route also has significant impacts to the community because of major disruption to homes along School House Road in Egg Harbor Township and the need to temporarily relocate a dozen or more residents at Jefferson Landing on the Great Egg Harbor Bay. In light of the above, SJG rejected this route.

2. Route C – This route would have approached the BLE plant from the west and south through an approximately 29 mile long abandoned railroad right of way that had revegetated and was now heavily forested. Use of this proposed route would have required extensive clearing of Pinelands coniferous forest that was habitat to the following species: Northern Pinesnake, Barred Owl, Cope’s Grey tree frog, Black crowned night heron, Swamp pink and Frosted elfin. Additionally, there would also have been almost 2 acres of wetlands impacted and the most encroachment into wetland buffers of any of the alternatives evaluated. This route was rejected by SJG for these reasons.

C. Review of Potential Impacts of the Proposed Pipeline Project on the Resources of the Pinelands

The proposed route is also not expected to have any impacts on the environmental resources of the Pinelands. The proposed route was reviewed by the Commission’s regulatory review staff to determine its compliance with the development standards of the Pinelands CMP. As a result of that review, Commission staff determined that the proposed gas pipeline was consistent with all of applicable development standards (Subchapter 6) of the Pinelands CMP.

1. Threatened or Endangered Plants or Animals: With regard to threatened or endangered plants or animals, SJG submitted three Threatened and Endangered Species Habitat Suitability Assessment and Survey Reports prepared by Trident Environmental Consultants for the proposed gas pipeline route, the site of the proposed interconnection station and the site of all proposed storage/staging areas, respectively. These reports addressed the following species: Stiff tick trefoil, Elliptical rushfoil, American Mistletoe, Pine Barrens Boneset, Silvery Aster, Climbing fern, Red-headed woodpecker, Barred Owl and Cope’s Gray tree frog. Based on its review of these reports, staff concluded that the construction of the proposed gas pipeline would not impact threatened or endangered plants or animal species or habitat critical for the survival of a local population of threatened or endangered animal species.

2. Historic, Archaeological and Cultural Resources: SJG also retained Richard Grubb and Associates, Inc. to conduct a Phase IA Archeological Survey and Historic Architectural Screening and Phase IB-II Cultural Resource Survey for the proposed pipeline. As discussed in these reports, the survey encompassed the project corridor, HDD and jack & bore work areas and proposed storage/staging areas. Stage IB archeological field work was conducted along the roadside adjacent to the linear portions of the project and within seven storage areas with high sensitivity for archaeological resources as assessed in the Stage IA archaeological survey. Approximately 27,000 linear feet of the proposed pipeline corridor was tested. Additionally, approximately 9.4 acres, high sensitivity portions of proposed staging areas 5, 6, 7, 10, 11 and 14 and the site of the proposed interconnection station, were included within the stage IB testing. Ultimately, two storage areas (areas 7 and 10) were redesigned to avoid areas where archeological resources were found on these sites. With regard to the other site at which archeological resources were found, the Burley site, only a portion of which is located in the project area, is bisected by Route 49 and extends further to the southwest of the NJ Route 49 right-of-way, the survey supported the determination that the portion of this site in the project

area was not considered eligible for Pinelands designation. Moreover, given that construction work in this area is restricted to the placement of the natural gas pipeline within the shoulder of NJ Route 49, the survey results found that significant archaeological resources would not be impacted by the proposed pipeline construction. The Commission's staff archeologist concurred with these conclusions.

3. Wetlands and Wetland Buffers: Wetlands were flagged in the field along the entire route of the proposed pipeline. The flagged limits of wetlands were confirmed in the field by Commission staff. Additionally, the proposed project was designed to avoid potential impacts to wetlands by utilizing existing road rights of way and trenchless technology (jack & bore and HDD) to cross under wetlands and waterways. As a result, there will be no impacts to wetlands as a result of construction of the proposed pipeline. Moreover, with regard to wetland buffers, because the proposed pipeline will be constructed in paved and previously disturbed road rights of way, any impacts would involve, at most, temporary disturbances given such disturbances would be restored to their prior condition.

4. Stormwater Management: Stormwater management plans and calculations were submitted to the staff for its review. Based on such review, staff determined that the proposed gas pipeline project was consistent with the stormwater standards of the Pinelands CMP.

#### D. Need for the Proposed Natural Gas Pipeline

According to the PJM Interconnection, LLC (PJM) 2011 Regional Transmission Expansion Plan (RTEP), which annually assesses transmission facilities in New Jersey for compliance with North American Electric Reliability Corporation (NERC) reliability criteria violations, a number of factors continue to impact reliability in New Jersey. PJM 2011 *Regional Transmission Expansion Plan*, Book 5, Section 8, p. 143-144. Load growth, power exports to New York City and Long Island, deactivation/retirement of generation resources, sluggish development of new generating facilities, and continued reliance on transmission to meet load deliverability requirements all contribute to existing reliability criteria violations in New Jersey. *Id.* There is a critical need to expand natural gas electric generation within New Jersey, particularly with the impending retirement of the Oyster Creek Nuclear Generation Facility and with ongoing reliability criteria violations in the coastal area. See 2011 *New Jersey Energy Master Plan ("EMP")* at 76; *Long-Term Capacity Payment Agreement Pilot Program to Promote Construction of Qualified Electric Generation Facilities*, P.L. 2011, c.9 (finding that New Jersey is experiencing an electric power capacity deficit and high power prices that may result in the loss of jobs and investment due to the necessity for the upgrade of the transmission system to the west of New Jersey to ensure a reliable supply of electricity and capacity from generators located outside of New Jersey and as a result of a lack of new, efficient electric generation facilities, New Jersey has become more reliant on out-of-state coal-fired power plants). Following the retirement of the Oyster Creek facility in 2019, the BL England Facility will be the only remaining baseload electrical generation plant along the New Jersey coast. However, absent construction of the proposed natural gas pipeline to repower the BLE plant, the NJDEP consent order requires the plant to shut-down. As discussed below, shut down of the BLE plant is likely

to require the construction of new electrical transmission lines in the Pinelands Area to account for lost generation.

1. BL England Plant

The BLE plant was one of New Jersey's first power plants. It was built on the Great Egg Harbor Bay in 1963. The plant is comprised of three energy generating units, two of which are coal fired units and one of which is an oil fired unit. In January 2006, the NJDEP and Conectiv (AC Electric, Conectiv Atlantic Generation, LLC, Conectiv and Pepco Holdings), prior owners of the BLE plant, entered into an Administrative Consent Order to resolve existing air quality standard violations at the plant. Following the purchase of BLE plant by RC Cape May Holdings, LLC, NJDEP entered into an Amended Administrative Consent Order (AACO), on October 31, 2006, pursuant to which RC Cape May agreed to either repower the BLE plant or to meet the air quality performance standards. On January 13, 2010, the parties agreed to a revised timeline by which RC Cape May would either repower the BLE plant or meet the performance standards. Subsequently, RC Cape May decided to repower the plant and requested a revised timeline from DEP. This resulted in execution of another AACO on May 18, 2012.

i. The 2012 AACO

Pursuant to the terms of the 2012 AACO, operation of Unit 1 was required to cease as of September 20, 2013, unless the BLE plant met certain performance standards defined in the AACO. Irrespective of this, the AACO requires the complete shutdown of Unit 1 by May 1, 2014. The AACO permits limited use of Unit 2 through May 15, 2015. However, use of Unit 2 is limited to no more than 4,300 hours per year from May 1<sup>st</sup> through April 30<sup>th</sup>. In addition, NOx emission reductions are mandated for Units 1 and 2. The AACO further orders the repowering of the BLE plant by May 1, 2016, with notification of the NJDEP by December 31, 2013 as to whether the BLE plant will be repowered. If the BLE plant will not be repowered, then Unit 2 must be shut down by May 1, 2014. If repowering of the BLE plant will occur, Unit 2 is permitted to continue to operate until at May 1, 2015 at which time operation of Unit 2 must cease until the repowering is completed. Finally, the AACO provides that if after December 31, 2013, RC Cape May determines that it is unable to complete the repowering of the BLE plant, it must notify NJDEP of that determination by May 1, 2014, and immediately shut down Unit 2. The AACO permits continued operation of Unit 3, the oil-fired boiler, regardless.

ii. Repowering of the BLE Plant

RC Cape May Holding, LLC proposes to permanently shut down coal-fired boiler Unit 1. In addition, RC Cape May intends to replace coal-fired boiler Unit 2 with a natural gas-fired Combined Cycle Combustion Turbine system. RC Cape May also intends to convert the residual oil boiler into a natural gas boiler. An air quality permit was issued by the NJDEP for this repowering project on April 30, 2013.

iii. Need for the BLE Plant

The State's *EMP* expresses a firm goal of promoting a diverse portfolio of new, clean, cost-effective in-state electric generation to ensure a reliable supply of energy and capacity at reasonable rates while advocating for policies that help control electricity costs, maintain system reliability, and adhere to environmental objectives. The proposed natural gas pipeline and the repowering of the BLE plant directly serve these goals. Additionally, the *EMP* specifically acknowledges the challenge of finding baseload generation to replace Oyster Creek and targets the expansion of natural gas-fired power generation as a less carbon-intensive fossil fuel that also comes with significant air quality benefits, including reduced emissions of sulfur dioxide, fine particulates, volatile organic compounds, and greenhouse gases. To further this goal, the *EMP* directs State agencies to accelerate the decommissioning of older, less efficient coal- and oil-fired electrical generation plants and to rely more upon natural gas for electricity generation, and to promote the expansion of pipelines to supply natural gas. As discussed below, the repowered BLE plant is expected to supply the majority of its electricity to the Pinelands Area and to provide reliable baseload power generation. The continued operation of the BLE plant is critical to ensuring adequate electric supply to Pinelands Region, New Jersey coastal areas and helps the State directly to achieve the goals of the *EMP*.

Additionally, New Jersey is located within the heart of the Mid-Atlantic Critical Congestion Area, one of only two such areas in the United States designated by the U.S. Department of Energy (DOE) due to severely inadequate transmission capacity that threatens the reliability of the electrical grid. In 2006 and again in 2009, the DOE, as directed by the Energy Policy Act of 2005, determined that it is critically important to remedy existing congestion problems in New Jersey because the current and projected effects of the congestion are severe. New Jersey—a state located at the extreme eastern edge of the PJM territory—suffers from limited imports of electricity from the West and South, causing most of the state to face electricity congestion. The state's transmission constraints are made worse by the retirement of several old, inefficient power plants, which has reduced local generation and degraded reliability. *See* U.S. Department of Energy, *National Electric Transmission Congestion Study* (2006 & 2009). The repowering of the BLE plant must be considered against this backdrop.

#### 1) POWERGEM Reports

SJG provided the Commission staff with two reports prepared by POWERGEM, LLC (Power Grid Engineering & Markets) that discussed the anticipated benefit of the repowering of the BLE plant to the Pinelands Area. The initial analysis, which was prepared on May 29, 2012, utilized the PJM 2016 RTEP summer peak flow load model to determine the total load required for the Pinelands Area. This was determined to be 930MW. The analysis then looked at the amount of generation located proximate to the Pinelands Area, both before and after the shutdown of Oyster Creek. POWERGEM determined that, prior to Oyster Creek's retirement, there was 1485 MW of generation proximate to the Pinelands Area, which consisted of the Oyster Creek nuclear facility (615 MW), the repowered BLE plant (570 MW) and several smaller combustion turbines (300 MW). Assuming that the local generation all contributed equally to the Pinelands Area load, POWERGEM found that 38% (570/1485) of the energy generated by the BLE plant would be distributed to address electricity needs (load) in the Pinelands Area. Following closure of Oyster Creek in 2019, and again assuming equal distribution from all generation sources, POWERGEM

found that the BLE plant would supply 65% (570/870) of the energy needed within the Pinelands Area. The report also discussed a prior PJM study that had indicated that the retirement of the Oyster Creek Nuclear facility would result in the need for at least \$100 million in new transmission or transmission upgrades and expressed the likelihood that most, if not all, of the new/upgraded transmission would be either within or proximate to the Pinelands Area. It was POWERGEM's opinion that the repowering of the BLE plant would help alleviate some of those potential transmission additions in the Pinelands Area.

SJG submitted an updated analysis from POWERGEM date October 11, 2013. The reason for this update was to take into account retirements of smaller combustion turbines that were scheduled to occur and which would have a direct impact on the prior study results. Additional studies were also performed to determine whether there would be any overloaded circuits proximate to the Pinelands Area due to the retirement of these combustion turbines in conjunction with the retirement of the Oyster Creek nuclear facility and under the scenario where the BLE plant did not repower. For this analysis, POWERGEM used the PJM 2018 RTEP<sup>1</sup> summer peak flow model that had recently become publicly available. POWERGEM determined the total load within the Pinelands area for the 2018 summer peak flow load would be approximately 933 MW. Under the updated model, and prior to Oyster Creek retiring, the total generation proximate to the Pinelands Area was found to be 1277 MW, consisting of Oyster Creek (615 MW), the repowered BLE plant (570 MW), and several smaller combustion turbines (92 MW). Again assuming that local generation contributed equally to the load within the Pinelands Area, POWERGEM found that the BLE plant would contribute to 45% (570/1277) of the load within the Pinelands Area. After the shutdown of Oyster Creek, POWERGEM found that the BLE plant's contribution to load in the Pinelands Areas would increase to 86% (570/662).

POWERGEM also completed a study using the PJM 2018 RTEP model to determine if there would be any overloaded circuits proximate to the Pinelands Area after the smaller combustion turbines and Oyster Creek shut down. The study was conducted under two scenarios, with and without the repowering of the BLE plant. This study confirmed that the repowering of the BLE plant is even more critical to the power generation needs of the Pinelands region than first appeared as a result of the additional retirements of the smaller combustion turbines. Specifically, POWERGEM found that based upon PJM's own models the retirement of the BLE plant would negatively impact eight transmission circuits located proximate to the Pinelands Area (Union-Corson 138 kV, Corson-Middle Tap 138 kV, Cumberland to Union 138 kV, Lewis-Minotola 138 kV, Kewis-Dorothy 138 kV, Minotola-Landis 13 kV, Corson-Dennis 138 kV and Dorothy-Deepwater 138 kV). Overloaded circuits are considered transmission violations by the PJM and, therefore, require a solution to avoid the consequences of overloads, including potential blackouts. Additionally, POWERGEM found that the continued retirement of smaller combustion turbines would likely exacerbate the need for transmission upgrades. Significantly, the POWERGEM study found that none of these circuits would be overloaded if the BLE plant was repowered.

<sup>1</sup> The PJM 2018 RTEP model included the proposed West Deptford, Woodbridge, Old Bridge and Deepwater natural gas generation projects.

2) *BPU (Need assistance of BPU's DAsG as to BPU's determination of need for the project.*

Moreover, during his presentation to the Commission's Policy and Implementation Committee, Jerome May, Director, Division of Energy within the BPU, indicated that closure of the BLE plant would not be in the best interests of the State of New Jersey. Mr. May also indicated that in the absence of the BLE plant, the PJM would need to seek an equivalent level of energy and capacity to meet its stringent reliability requirements. Moreover, given that PJM has ~~not~~no authority with regard to construction of power plants, Director May stated that PJM would likely order the addition of high tension electrical transmission lines in the Pinelands Area so that the power could come from the west or south.

2. Reliability of SJG's System

There also is a critical need to improve the reliability of natural gas service to the eastern and southern portions of SJG's service territory. SJG serves approximately 61,000<sup>2</sup> natural gas customers (meters) in Cape May County, 3,300 of which are located in the Pinelands, via an existing 16-inch feeder line. This line is vulnerable to a single-contingency failure. Additionally, a significant portion of SJG's system also is vulnerable to a single contingency failure of SJG's existing 20-inch pipeline from Union Road Station to Estell Manor Station, the primary major supply line to the eastern and southern parts of the SJG service territory. Up to 142,000 customers located east and south of the Union Road Station, 28,700 of which are located in the Pinelands Area, could be vulnerable to a gas outage if this gas supply line is disrupted. SJG reliability modeling shows that if this line were disrupted at even 30 degrees F, approximately 61,000 customers initially would lose gas service, with the number quickly growing to 120,000 customers when supply from SJG's McKee City LNG facility is exhausted. The construction of the proposed pipeline will enhance greatly the reliability of the eastern and southern portions of SJG's service territory by enabling an alternative route for gas to be supplied to the coastal areas of Atlantic and Cape May County, which no longer would be subject to single contingency failures. The Project also will improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby potentially reducing the need for reinforcement pipe installations in the future, many of which would likely be located within the Pinelands Area.

E. BPU Jurisdiction and Process

1. BPU's Jurisdiction

<sup>2</sup> These are gas meters, not individuals. Each meter represents a single facility (single family home, business, hospital, nursing home, etc.) and many more individuals would be affected by a disruption of gas service than suggested by the number of meters.

In New Jersey, it is the exclusive responsibility of the BPU to ensure that residents of the State enjoy safe, adequate and proper public utility service, including safe and reliable natural gas for heating homes and businesses. N.J.S.A. 48:2-13. The BPU is the only agency in the State of New Jersey charged with this responsibility and is the only agency vested with specific expertise to carry out this mission. The BPU fulfills this statutory responsibility by supervising and pervasively controlling the State's various public utilities, which are granted franchise rights to provide these essential services to the public. Essentially, the BPU implements its mandate to ensure safe and reliable service to the public only through its franchisees—the State's public utilities. As discussed below, the Board's authority over public utilities is pervasive. The Board had broad authority to supervise, regulate, and assert jurisdiction and control over public utilities and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of Title 48 of the New Jersey Statutes. N.J.S.A. 48:2-13. Moreover, the BPU's authority over utilities extends beyond its express statutory powers and includes incidental powers that the agency needs to fulfill its statutory mandated duties. *A. A. Mastrangelo, Inc. v. Comm'r of Dept. of Envl. Prot.*, 90 N.J. 666, 683-84 (1982). This sweeping grant of power is "intended to delegate the widest range of regulatory power over utilities to the Board." *Twp. of Deptford v. Woodbury Terrace Sewerage Corp.*, 54 N.J. 418, 424 (1969). For example, the BPU is empowered to direct utilities to furnish safe, adequate and proper service to their customers. N.J.S.A. 48:2-13. Upon finding that a public utility has failed to do so, the BPU may fire company employees and even direct that control of the company be entrusted to a custodial receiver. See *In I/M/O Allegations of Berkeley Water Company's General Dereliction of Duty to Provide Safe, Adequate and Proper Service*, BPU Docket No. 7811-1515 and 797-637, OAL Docket No. 2587-79.

The BPU has granted SJG a right to provide natural gas service within the southernmost seven counties in New Jersey. The company provides essential gas service to approximately 360,000 homeowners and business customers and operates approximately 6,200 miles of pipeline throughout its service territory. The privilege conferred to SJG to provide an essential service comes with an obligation to make sure that the service is safe and reliable and that all customers requesting service receive it subject to certain qualifications. All public utilities in the state, including SJG, are subject to the BPU's jurisdiction, including its control over their property, equipment and facilities. N.J.S.A. 48:2-13. The BPU regulates and controls most of SJG's operations including, but not limited to its service quality, customer service and billing practices, safety, construction specifications, accounting, financing and auditing.

The BPU's jurisdiction over SJG is extremely pervasive. Indeed, there are very few actions of any significance which SJG may undertake without BPU approval. For example: SJG's rates may not be changed without Board approval (N.J.S.A. 48:2-21; N.J.A.C. 14:1-5.12); SJG may be ordered to provide safe, adequate and proper service (N.J.S.A. 48:2-23); SJG may not terminate customers, except in accordance with BPU regulations (N.J.S.A. 48:2-24; N.J.A.C. 14:3-3A.1 et seq.); SJG must get BPU approval to construct certain major pipelines, such as this one (N.J.S.A. 48:10-2 et seq; N.J.A.C. 14:7-1.4); SJG may not issue stocks, bonds or other evidence of indebtedness without Board approval (N.J.S.A. 48:3-9; N.J.A.C. 14:1-5.9); SJG may not mortgage its properties without Board approval (N.J.S.A. 48:3-7; N.J.A.C. 14:1-5.9); SJG may not abandon service without BPU approval (N.J.S.A. 48:2-24; N.J.A.C. 14:3-3A.1 et seq.); SJG

may not close a customer service office without Board approval (N.J.A.C. 14:3-5.1); and SJG may not provide service in a new location without Board approval. (N.J.S.A. 48:2-27; N.J.A.C. 14:3-8.1 et seq.). There is an entire Subchapter of the New Jersey Administrative Code related to construction and installation of gas facilities (N.J.A.C. 14:6-1.1 et seq.). There is also an entire Chapter of Title 48 of the New Jersey Statutes Annotated related to gas companies. (N.J.S.A. 48:9-1 et seq.)

## 2. BPU Process

Pursuant to N.J.S.A. 48:2-13, South Jersey did not wait until it was ordered by the Board to take action to address its obligation to provide safe and reliable natural gas service. Rather, it took affirmative steps to ensure that it is able to provide such service to its customers, now and into the future. In furtherance of this objective, SJG has filed a number of petitions with the Board regarding the proposed pipeline.

In its first petition, South Jersey sought BPU's approval of the Standard Gas Service Agreement (the "Agreement") entered into between South Jersey and R.C. Cape May Holdings. I/M/O South Jersey Gas Co. and RC Cape May Holdings, LLC, Docket No. GO13010052 (Order April 29, 2013). By way of Order dated April 29, 2013, the Board exercised its jurisdiction over SJG and authorized the negotiated rate. The Board found, *inter alia*, that the rates were based on cost of service and the value of service considerations required by SJG's tariff.

In its second petition, South Jersey sought approval to construct the proposed pipeline. I/M/O South Jersey Gas Co. for Authorization to Construct a 24-inch Pipeline, Docket No. GO13030202 (Order June 21, 2013). By way of Order dated June 21, 2013, the Board found, based upon the presentation of evidence and consideration of public testimony at a public hearing, that construction of the proposed pipeline was reasonable and in compliance with all relevant Federal and State requirements. The Board went on to exercise its jurisdiction approving SJG's request to construct the pipeline subject to, *inter alia*, any future Memorandum of Understanding between the Board and the Pinelands Commission.

Recently, SJG filed a petition with the BPU pursuant to N.J.S.A. 40:55D-19 requesting a determination from the BPU that its proposed construction of the proposed natural gas pipeline was reasonably necessary for the service, convenience or welfare of the public. This provision of the Municipal Land Use Law authorizes the BPU to order that zoning, site plan review and all other municipal land use ordinances or regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service. In order to issue such an order, BPU, upon petition and after a hearing, must decide that the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public. N.J.S.A. 40:55D-19. The phrase "for the service, convenience or welfare of the public" is not limited to the local group benefited by the zoning ordinance, but rather refers to the whole "public" served by the utility. In re Public Service Electric & Gas Co., 35 N.J. 358, 376-377 (1961). Moreover, the standard of reasonableness does not require that the proposed use be absolute or indispensable, only that it is reasonably necessary for the public

service, convenience or welfare. Id. It is the BPU's obligation to weigh all interests and factors in light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom. Id.

#### F. Basis for the MOA

The Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of the CMP, specifically the land use and environmental standards set forth at N.J.A.C. 7:50-5 and 6. The agency must demonstrate, and the Commission must find, that any proposed development that is not fully consistent with the standards of the CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards. Id.

The BPU has jurisdiction over all services necessary for the transmission and distribution of electricity and gas, including, but not limited to safety and reliability. N.J.S.A. 48:2-13.d. The Board also has jurisdiction over the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State. Id. Thus, as discussed above, BPU has exclusive responsibility to ensure that residents of the State enjoy safe, adequate and proper public utility service, including safe and reliable natural gas for heating homes and businesses. Id. BPU essentially implements this mandate through the public utilities to which it grants privileges to provide public services, such as gas service. (See N.J.S.A. 48:2-13.a.)<sup>3</sup>

In this capacity, the BPU has issued an Order to the SJG finding that construction of the proposed pipeline is reasonable and in compliance with all relevant Federal and State requirements. Implicit in this Order is BPU's understanding that the proposed natural gas pipeline is necessary for the safe and reliable provision of gas service by SJG in its service area. Additionally, this implicit understanding will be made explicit at the time BPU acts on SJG's petition pursuant to N.J.S.A. 40:55D-19, which requires the BPU to find that the development in question is reasonably necessary for the service, convenience or welfare of the public. Id.

Given that BPU is implementing its mandate to assure all services necessary for the transmission and distribution of electricity and gas, including the reliability of the transmission system and grid for these services through SJG, the construction of the proposed natural gas pipeline is specified development that is being carried out under the jurisdiction of the BPU. Additionally, because SJG, as a public utility, is subject to the jurisdiction of the BPU, as part of this MOA, BPU is agreeing to require SJG to undertake certain measures, discussed below, that will afford, at a minimum, equivalent levels of protection to the resources of the Pinelands.

<sup>3</sup> N.J.S.A. 48:2-13 provides "[t]he term 'public utility' shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns that now or hereafter may own, operate, manage or control within this State any ..., pipeline, gas, electricity distribution, ... system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof."

1. Measures Proposed to Afford an Equivalent Level of Protection of Pinelands Resources

As discussed above, the proposed natural gas pipeline project is consist with all applicable standards of the Pinelands CMP, with the exception of the permitted use standards for a Forest Area, N.J.A.C. 7:50-5.23.b.12.

In order to provide an equivalent level of protection for the resources of the Pinelands, pursuant to the terms of this MOA, a subsequent Order issued by the BPU and an MOA between the BPU and SJG, the public utility proposing to construct the proposed natural gas pipeline, SJG will be required to ~~place contribute~~ seven million ~~(\$7,250,000.00) two seven hundred and fifty thousand dollars (\$7,750,000.00) toward Pinelands land acquisition, and education. Seven million dollars (\$7,000,000.00) will be placed~~ into an escrow account to fund the acquisition of land located adjacent to the site of the proposed pipeline project located in a Forest Area. If after three years from execution of this MOA by the last signatory, all of the targeted lands have not been acquired, then all remaining escrow funds and all interest will be placed into the Pinelands Conservation Fund for acquisition of lands in the southern forested portion of the Pinelands Area, i.e. south of the Atlantic City Express.

Although there are no direct environmental impacts associated with the proposed natural gas pipeline, the intent behind the Forest Management Area use standards is to ensure the long term integrity of the Pinelands environment by establishing standards governing the character, location and magnitude of development and use of land in this area, while encouraging appropriate patterns of compatible development. N.J.S.A. 13:18A-9.b. and N.J.A.C. 7:50-5.21. As a result one potential concern associated with the construction of the proposed pipeline in a Forest Area is that it would result in pressure being exerted on the impacted municipalities and the Commission, to change the land use and development intensities currently permitted within the Forest, through which the pipeline traverses, to provide for increased development (secondary impacts).

The acquisition of land along the site of the proposed pipeline within the Forest Area should prevent these secondary impacts from coming to fruition. In addition, given that there are two large areas of State lands (Belleplain State Forest and Peaslee Wildlife Management) in the vicinity of pipeline project site, acquisition of land adjacent to the pipeline would also add additional public open space to these important State holdings. Moreover, expanding the scope of the lands to be acquired after three years to encompass the totality of the southern forest secures two important benefits to the Pinelands Area. First, it ensures that an equivalent level of protection is provided to offset the development of the proposed pipeline in a timely fashion. Second, it will address the potential for additional pipeline projects cutting through the Pinelands Forest Areas, by providing additional funds that can used for the permanent preservation of lands located in Pinelands Forest Areas.

SJG will also be required to contribute two hundred ~~(\$250,000.00) and fifty thousand dollars (\$250,000.00)~~ to finance the construction of a pinelands education center within the Richard J.

Sullivan center at the Pinelands Commission's offices. The proposed natural gas pipeline has generated significant interest in the Pinelands and its resources. The pinelands education center will advance the mission of educating the public as to the importance of this very special region.

SJG will also be required to contribute five hundred (~~\$500,000~~)-thousand dollars (\$500,000.00) to the Commission to fund grants to non-governmental entities or educational institutions for projects involving protection or enhancement of the resources of the Pinelands Area. The funds will permit the Commission to provide funding for research projects that, for example, evaluate the impact of infrastructure or other development on the resources of the Pinelands Area. Through these funds, the Commission will be able to support research projects that will help inform its policy decisions in the future.

In addition to the monetary measures discussed above, one of the most significant benefits afforded by the construction of the proposed pipeline is the repowering of the BLE plant from coal to natural gas. Specifically, the conversion of BLE plant to natural gas will yield both air quality and water quality benefits ~~substantial~~. Substantial reductions in air emissions, ~~which have long~~ has been a need of the Pinelands.

The NJDEP first identified the need for reduction in the air emissions generated at the BLE plant in its 1980 *Air Quality Assessment of the New Jersey Pinelands*, in which the plant was identified as a source of air pollution within the Pinelands. Converting the BLE plant to natural gas will dramatically reduce a host of air pollutants, including sulfur dioxide which produces acid rain, nitrogen oxides which produce smog, carbon dioxide which contributes to climate change, and mercury which bioaccumulates in Pinelands fish. Natural gas produces less than ten (10) percent of the criteria air pollutants and hazardous air pollutants produced by coal. The NJDEP, at the Commission staff's request, undertook an air quality modeling analysis to assess the air quality benefits of repowering the BLE plant on the Pinelands Area. Based on that analysis, NJDEP concluded that up to a 40.9% to 41.4% reduction in the maximum existing background 1-hour and 3-hour sulfur dioxide concentrations would occur as a result of the repowering. NJDEP also predicted reductions in the existing background levels of 1-hour nitrogen dioxide (NO<sub>2</sub>) concentrations and 2-hour fine particulate (PM<sub>2.5</sub>) in the Pinelands. These reductions in air pollutant emissions and air pollution concentrations over the Pinelands Area are expected to provide the following environmental benefits: 1) least potential for acute and chronic damage to plants due to reduced SO<sub>2</sub> concentrations; 2) less acid rain formation due to reduced SO<sub>2</sub> and NO<sub>x</sub> emissions, benefitting plants, lakes, fish and wildlife; 3) reduced ozone damage to plants and vegetation due to lower ozone concentrations as a result of a reduction in NO<sub>x</sub>, an ozone precursor; 4) improved visibility over the Pinelands Area and 5) a 94% reduction in allowable mercury emissions that will benefit fish and animals that eat fish, as well as the overall environment.

The repowering of the BLE plant will also reduce water quality impacts on the Pinelands. Currently, the BLE plant withdraws substantial amounts of water each day from the Great Egg Harbor estuary to use as cooling water. The plant also discharges pollutants to the Great Egg Harbor estuary, pursuant to a permit, through several outfalls. The repowering of the BLE plant will reduce water withdrawals and water pollution discharges by approximately forty-four (44)

percent, respectively. Additionally, the repowering project will eliminate the coal pile and its associated stormwater runoff, along with the use of lime, gypsum, slag and sorbent, all of which can be harmful to aquatic life.

### III. AGREEMENTS

#### A. The BPU agrees that:

1. It will issue an Order to the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above incorporating the requirements of Paragraphs III.A.1 through \_\_\_ of this MOA and the Environmental Conditions set forth in Attachment B.
2. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to construct the project in accordance with the list of documents set forth in Attachment A attached hereto and made a part hereof.
3. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to satisfy all of the obligations of this MOA and the Pinelands CMP, unless a deviation therefrom is expressly authorized by this agreement.
4. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing construction of the project. No part of this MOA is intended to release the public utility from its responsibility to obtain all other required local, State and/or Federal approvals.
5. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to comply with all of the environmental conditions set forth in Attachment B, attached hereto and made a part hereof, and the terms of this agreement.
6. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to provide notice to the Pinelands Commission staff seven (7) days prior to commencing any clearing or construction activities for the project.

7. It will require the public utility to deed restrict the entire right of way for the proposed pipeline located in the Pinelands designated Forest Area against any future connections of any kind, including interconnections proposed by the utility.
8. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II to prohibit the future conversion of this pipeline from transmission of natural gas to oil.
9. Any deviation from or modification to the proposed natural gas pipeline project as delineated in Paragraph II.        above and the documents listed in Attachment A will require formal application to the Pinelands Commission in accordance with the Pinelands CMP and no clearing or construction activities regarding such deviation may occur until an application has been completed and the Pinelands Commission has approved the ~~project~~ deviation or modification.
10. It agrees that the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. above shall ~~provide the following:~~ pay a total of seven million seven hundred and fifty thousand dollars (\$7,750,000.00). This set-aside amount will be dedicated by the Pinelands Commission as outlined below:
  - ~~a. Seven million (\$7,250,000.00) two hundred and fifty thousand dollars to the Pinelands Commission to be placed~~ a. Seven million seven hundred and fifty thousand dollars (\$7,750,000.00) to be placed and managed by the Commission in an interest bearing escrow account to fund the acquisition and permanent preservation of the lands set forth in Attachment C for a period of three (3) years following execution of this agreement by the last signatory. At the end of that three (3) year period, all funds remaining in that escrow account and any and all interest accrued to that account shall be transferred to the Pinelands Conservation Fund – Land Acquisition Account to be utilized for the acquisition of land in the southern forested portions of the Pinelands Area; i.e. forested lands south of the Atlantic City Expressway. These funds may be paid in installments over six months as follows:
    - (1) ~~The first payment of \$2,416,666.00-2,333,333.00~~ shall be paid within thirty (30) days of the date of execution by the last signatory of this MOA; and

(2) A payment of ~~\$2,416,667.00~~ 2,333,333.00 shall be paid to the Pinelands Commission within three months and then again within six months of the date of execution of this MOA by the last signatory;

b. ~~A contribution of Two hundred and fifty thousand dollars (\$250,000-dollars shall be paid.)~~ to the Pinelands Conservation Fund to finance the construction of a pinelands education center in the Richard J. Sullivan Center at the Pinelands Commission's offices in New Lisbon, New Jersey; and

c. ~~A contribution of Five hundred thousand dollars (\$500,000- shall be made to the Pinelands Commission.)~~ to fund grants to non-governmental entities or educational institutions for projects involving protection or enhancement of the resources of the Pinelands Area; priority shall be given to projects that involve the southern forested portions of the Pinelands Areas.

~~11. It will require the public utility to provide the Pinelands Commission with copies of all BPU or other regulatory agency required monitoring reports for the newly constructed pipeline, for a time period commencing upon the first day of operation of the pipeline and continuing in perpetuity. Such reports shall be submitted quarterly unless a more frequent submittal is required by BPU or other regulatory agency. Additionally, it will require the public utility to address any issues identified by such monitoring expeditiously. (Question: is there a form of third party certification that could be included here?)~~

~~12. In accordance with the requirements of N.J.S.A. 13:18A-10.e. and N.J.A.C. 7:50-4.81, the BPU agrees that it will not consider a petition, which, either directly or indirectly, involves development activities to be conducted within the Pinelands Area, complete for decision or issue an Order for such a petition or project unless it receives a Certificate of Filing or resolution of approval of development issued by the Pinelands Commission prior to any Board action.~~

11. ~~????~~

B. The Pinelands Commission agrees that:

**Comment [j1]:** THERE ARE NO QUARTERLY/MONTHLY REPORTS THAT ARE SPECIFIC TO ANY PARTICULAR PIPELINE OR THAT WOULD INCLUDE INFORMATION SPECIFIC TO THIS PIPELINE. PIPELINE PRESSURES ARE MONITORED CONTINUOUSLY BUT NO REPORT IS GENERATED; LEAK SURVEYS ARE CONDUCTED ANNUALLY AS REQUIRED BY LAW; THERE ARE MONTHLY VISUAL INSPECTIONS;

1. Based on its review of the documents listed in Attachment A, the provisions of the Pinelands CMP and the terms of this MOA, including the Environmental Conditions delineated in Attachment B, and with the exception of the standard for which a deviation is being granted pursuant to this MOA, the project as proposed is consistent with the minimum requirements of the Pinelands CMP. The proposed natural gas pipeline project as delineated in Paragraph II. above is deemed approved and no further action by the Commission, or its staff, shall be required regarding the proposed natural gas pipeline project unless there is a deviation from or modification to the proposed natural gas pipeline project as discussed in Paragraph III.A.7 above.

~~2. It will consider possible amendments of N.J.A.C. 7:50-4.52(e)2 to clarify the following:~~

~~a. The criteria by which the Commission evaluates a request for a Memorandum of Agreement;~~

~~b. To clarify the Commission's consistent application of the deviation MOA provision to approve public purpose projects that are undertaken either publicly or as part of a public-private undertaking; and~~

~~c. To clarify that there be a nexus between the proposed offsetting measures and the potential impacts of the proposed development on the resources of the Pinelands Area.~~

~~3. It will consider possible amendments to the CMP regarding the construction of public service infrastructure within the Forest Area to ensure that future infrastructure projects involving public utilities are only permitted if:~~

~~a. the route selected interests in land for the proposed infrastructure is the route with the least impacts to the Pinelands resources and environment;~~

~~b. the infrastructure is installed underground, within existing developed rights of way; and~~

~~c. the proposed infrastructure is primarily intended to serve existing or future needs of the residents of the Pinelands Area only.~~

~~4. It agrees to use the contribution made by the public utility in accordance with Paragraph III.A.8 above, as follows: 1) \$7,250,000 million for land acquisition as delineated in Paragraph III.A.8.a; 2) \$250,000 to construct a pinelands education center at its offices in New Lisbon, New Jersey and 3) \$500,000 to fund grants for non-governmental entities and educational institutions for projects that involve enhancement or protection of the resources of the Pinelands, other than acquisition of land.~~

**IV. EFFECTIVE DATE AND DURATION**

1. In accordance with N.J.S.A. 13:18A-5(h), this MOA shall take effect following the conclusion of the Governor's review period and/or approval of the Pinelands Commission meeting minutes authorizing entry of this MOA and then upon approval and signature by the authorized representative of both parties.
2. This MOA shall remain in effect for five (5) years from its effective date unless one of the following occurs:
  - i. It is amended by written consent of both parties; or
  - ii. Both parties mutually agree, in writing, to otherwise terminate this agreement.

**V. SIGNATURES**

NEW JERSEY PINELANDS COMMISSION

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Nancy Wittenberg, Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kristen Heinzerling, Deputy Attorney General  
State of New Jersey

NEW JERSEY BOARD OF PUBLIC UTILITIES

Date: \_\_\_\_\_

By: \_\_\_\_\_  
          , Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
          , Deputy Attorney General  
          State of New Jersey

DRAFT

## ATTACHMENT B

**Environmental Conditions (November 18, 2013)****General Conditions**

1. Any areas disturbed as a result of construction activities shall be graded to natural conditions and seeded ~~with native Pinelands~~ the grass species specified on the plans and agreed to by the Pinelands Commission staff.
2. Only native Pinelands species as specified on the plans shall be used for ~~revegetation~~ re-vegetation purposes.
3. All soils excavated to construct the trenches for installation of the natural gas pipeline shall be removed and stockpiled and then used to backfill the trenches where appropriate. The topsoil shall be re-used but if soil unsuitable for backfill is encountered it will be removed to a suitable location and suitable soil will be used to backfill the trench.
4. The use of herbicides for future vegetation management purposes shall be prohibited in any portion of the ROW.
5. The limits of the proposed area of disturbance as depicted on the plans submitted to the Commission and delineated in Attachment A shall be marked in the field using silt fence and orange plastic ski-construction fencing.
6. All vegetation removed during construction shall be lawfully disposed of outside of the Pinelands Area, unless the Executive Director approves the disposition of vegetative material on sites within the Pinelands Area. Such approval must be obtained from the Executive Director prior to the disposition of any vegetative material on sites within the Pinelands Area.
7. No construction debris or excess fill shall be disposed of in the Pinelands Area without the prior approval of the Pinelands Commission's Executive Director.
8. No off-site storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials) for the project, beyond those previously reviewed by the Pinelands Commission staff and included within the documents set forth in Attachment A, shall be located within the Pinelands Area unless approved by the Pinelands Commission Executive Director prior to their use.
9. The Pinelands Commission staff shall be permitted to inspect construction activities to ensure compliance with the conditions set forth in this agreement.

10. Any ~~minor~~ modifications to the proposed construction plans for the proposed natural gas pipeline as identified in Attachment A involving development activities that will occur within the Pinelands Area shall be submitted to the Pinelands Commission's Executive Director for review and approval prior to commencing any development activities in such areas, including, but not limited to site preparation.
11. At least one independent biologist, engaged by the public utility and approved by the Pinelands Commission, qualified in the identification of threatened and endangered plants and animals and their habitats, as delineated at N.J.A.C. 7:50-6.27 and 6.33, shall be present during such times and locations where clearing and/or construction activities are being undertaken. The biologist(s) shall ensure that clearing and/or construction techniques being utilized do not adversely impact any habitat critical to the survival of any threatened and/or endangered species of animals or plants and that any such plants and animals discovered during construction are protected. Additionally, the biologist shall ensure that all threatened and endangered species BMPs identified in the plans delineated in Attachment A are being followed at all times during construction.

~~Need to add language here regarding how we would address down river impacts that could result from the worst case scenario from the HDD.~~

The biologist shall work in conjunction with the independent engineer to minimize the down river impacts that may result from a break out during the HDD process. This shall include monitoring of the waterway crossing for any signs of breakout to ensure prompt response.

Cultural Resources (if the public utility is ok with not including storage areas 7 and 10 we can eliminate parts of this section)

12. All recommendations set forth in the Cultural Resource Survey report shall be implemented. *(Need to reference actual report.)*
13. In the proposed storage areas ~~where adjacent to potential~~ cultural resources were found *(need to get lot and block information from cultural resource report)*, silt fencing and orange plastic ~~ski~~ construction fencing shall be installed at the limit of disturbance.
14. If proposed storage areas 7 and 10, are to be utilized at any point during the construction, the public utility shall have a qualified archeologist present during ~~at all times when activities are occurring at these storage areas,~~ initial site preparation in order to ensure that the areas where cultural resources were discovered are not disturbed and ~~that if new to observe site preparation for archeological artifacts or resources of potential significance are discovered, they are treat appropriately within the project area.~~

15. In accordance with N.J.A.C. 7:50-6.158(b), if, at any time after construction of the project has commenced, archeological artifacts or resources of potential significance are discovered within the project area, the public utility will immediately cease construction activities, notify the Pinelands Commission, and contact its cultural resource consultant to determine the appropriate treatment for such artifacts or resources. Treatment shall include, if possible, shifting of the proposed pipeline route away from the site of the artifacts or resources and any other steps suggested by the cultural resource consultant to protect the archeological artifacts or resources of potential significance.

### Wetlands

16. Disposal of ~~excavated dirt soil, vegetation, piping or any other materials~~ shall not be permitted ~~in wetlands or wetlands buffers during construction nor shall any temporary~~. Temporary stockpiling of piping or other materials shall not be permitted in wetlands or within 300 feet of wetlands unless shown on the approved plans.
17. Appropriate soil conservation measures, such as installation of hay bales silt fencing, shall be taken during construction to ~~preclude sedimentation-sediment~~ from entering wetlands.
18. ~~No activities shall occur in wetlands or~~. No activities other than the temporary work shown on the approved plans shall occur in wetland buffers.
19. Should any wetlands be disturbed accidentally during construction such area shall be graded to natural conditions and ~~seeded re-vegetated with suitable native Pinelands grass-species suitable for wetland areas.~~
20. ~~No storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials for the project) shall be located within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to utilization of such areas.~~
21. No culverts or fill may be placed or deposited into wetlands or areas within 300 feet of wetlands to create access roads, temporary or otherwise, for the construction of the new pipeline.
22. ~~No Any refueling shall occur that is required during construction within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to the initiation of any refueling activities must include secondary containment during the refueling operation.~~

**Comment [PJF2]:** We don't understand the need for this since the PC required that we include the sites in our plans and have reviewed them all. PC could refer to the approved plans since this review has already occurred.

### Threatened or Endangered Species

23. The Pinelands Commission shall be notified immediately if any threatened and/or

endangered species of plants or animals or habitat critical to their survival are discovered during construction. All clearing or construction activities in the vicinity of such species or critical habitat shall immediately cease pending direction from the Pinelands Commission Executive Director. During that time, the public utility shall authorize the biologist(s) retained in compliance with Paragraph 11 above to take all possible steps to ensure that such species or critical habitats are protected.

#### **Horizontal Directional Drilling**

24. The public utility shall provide the Pinelands Commission's Executive Director with a copy of the Horizontal Directional Drilling (HDD) Break Out Mitigation Contingency Plan proposed to be utilized for all HDDs to be conducted during construction of the pipeline. No HDD activities shall occur until the Executive Director has approved such plan.
25. Appropriate measures, such as installation of ~~silt fence~~, hay bales, inflatable berm, etc. shall be taken during HDDs to prevent the discharge of bentonite to wetlands, streams or any other water body or beyond the immediate confines of the drill site ~~should a break out occur~~.
26. The public utility shall have employees trained in HDD on the site to monitor drill hole pressures and to walk the area in which the HDD is being conducted to identify any potential break outs of bentonite. Additionally, such employees shall be responsible for immediate implementation of the Mitigation Contingency Plan should a break out occur.

Should a bentonite break out occur, the public utility shall immediately cease HDD activities and contain the area of the break out to the smallest feasible area. Additionally, the public utility shall within 24 hours notify the Pinelands Commission's Executive Director of the location of the break and advise as to the response actions being taken to address the break out in accordance with the approved Mitigation Contingency Plan.

27. The public utility shall engage an independent general-engineer, approved by the Commission to be on site during all phases of HDD and other drilling activities to ensure all such activities are conducted in accordance with all approved plans. ~~(need to add language regarding requirements for this individual)~~ The engineer shall be a registered professional engineer and have proven experience in the installation of large diameter pipelines using the HDD method.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NEW JERSEY PINELANDS COMMISSION AND THE NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

**I. PURPOSE**

This Memorandum of Agreement ("MOA") is entered into between the New Jersey Pinelands Commission (the "Commission") and the New Jersey Board of Public Utilities (the "BPU"). The Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with the implementation of the Act and the Pinelands "Comprehensive Management Plan" (the "CMP"), N.J.A.C. 7:50. The Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978. The BPU is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994.

In order to comply with air quality standards, the New Jersey Department of Environmental Protection ("NJDEP") ordered the B.L. England electrical generation plant at Beesleys Point, Upper Township, Cape May County ("BLE plant") either to cease operations or to repower its existing coal-and oil-fired boilers with natural gas combustion turbine technology to dramatically reduce air pollution from the BLE Plant. The BLE plant is located within the boundaries of the Pinelands National Reserve, but outside of the State-designated Pinelands Area. The BLE plant is owned and operated by RC Cape May Holdings, LLC and is located within the service area granted to South Jersey Gas (SJG) by the BPU.

To provide the natural gas required to repower the BLE Plant, SJG determined that it would need to construct a new natural gas pipeline to the Plant. Additionally, the need for this new natural gas pipeline provided SJG with the opportunity to address the vulnerability of the entire southernmost portion of its service territory, from the Cape May Gate Station south, which is currently only served by a single feed supply. SJG, subsequently, submitted a petition to the BPU for its approval to construct an approximately 22-mile, 24-inch natural gas transmission pipeline with a maximum allowable operating pressure of 700 psig. Additionally, SJG also submitted a petition to the BPU seeking a determination and Order pursuant to N.J.S.A. 40:55D-19 that any zoning, site plan review or other municipal land use ordinances or regulations promulgated by the affected municipalities and counties shall not apply to the siting of or construction and operation of the proposed gas pipeline.

The proposed gas pipeline would traverse through portions of both the State-designated Pinelands Area (the "Pinelands Area") and the Pinelands National Reserve (the "PNR") (referred to together herein as the "Pinelands"). With regard to the portion in the Pinelands Area, SJG proposes to construct approximately 15-miles of pipeline beneath existing paved portions and/or disturbed shoulders of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557), NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue. Approximately 10.2 miles of the proposed pipeline would be located within a Forest Area, 2 miles within Rural

Development Area and 2.8 Miles in Pinelands Village. Additionally, approximately 7 miles of the pipeline would traverse through the federally-designated PNR to the BLE plant.

In addition to providing gas to the BLE plant, the portion of the proposed natural gas transmission line to be located within a Forest Area significantly enhances the reliability of SJG's natural gas service system in the southern and eastern portions of its service area (Cape May and Atlantic Counties, respectively.) Currently, SJG services its customers located in Cape May County via an existing 16-inch feeder line. Moreover, an existing 20-inch gas supply pipeline is the major feeder line to the eastern and southern parts of SJG's service territory. Given the current lack of an alternate supply line, a failure in either of these existing pipelines, especially during the cold weather months, could subject up to 140,000 of SJG's existing customers to long term gas outages, thereby placing the safety and welfare of these customers at risk. The proposed gas pipeline is expected to greatly enhance the reliability of the eastern and southern portions of SJG's service territory by providing an alternative route for gas to be supplied to Atlantic and Cape May Counties. The proposed pipeline would also improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby potentially reducing the need for reinforcement pipe installations in the future, many of which would likely be located within the Pinelands Area.

The Pinelands CMP defines a natural gas pipeline as "public service infrastructure." Although the development of public service infrastructure is a permitted use in a Rural Development Area and a Pinelands Village, it is only permitted in a Forest Area if it is intended to primarily serve only the needs of the Pinelands. See N.J.A.C. 7:50-5.23(b)12. Given that the proposed pipeline is intended to serve customers located both inside and outside of the Pinelands, it is evident that the project does not primarily serve only the needs of the Pinelands. As a result, the proposed pipeline is not fully consistent with the permitted use standards for a Forest Area. This MOA is intended to authorize the construction of the portions of the proposed gas pipeline within a Forest Area in accordance with N.J.A.C. 7:50-4.52(c)2. No other deviations of the CMP standards are required, because the proposed gas line is consistent with the development standards set forth in Subchapter 6 of the CMP. Additionally, because the remainder of the proposed gas pipeline will be constructed within a Rural Development Area and a Pinelands Village and is consistent with the permitted use standards for those management areas, this MOA, in accordance with N.J.A.C. 7:50-4.81(b) also authorizes the BPU to move forward with a decision on SJG's petition for a determination and Order pursuant to N.J.S.A. 40:55D-19. With regard to the remaining 7-mile segment of the pipeline located outside of state-designated Pinelands Area, within the federally-designated PNR, this segment is located outside of the Commission's area of jurisdiction and, therefore, is not covered by this MOA.

## II. BACKGROUND

### A. The Proposed Route

As discussed above, SJG is proposing to construct an approximately 22 mile, 24-inch natural gas pipeline. The portion of the pipeline within the Pinelands Area will originate in Maurice River, Cumberland County, just outside Millville, at the intersection of Union Road (CR 671) and NJ Route 49 at the location of an existing pipeline. It will then travel along Route 49 through Estell Manor, Atlantic County, into Upper Township, Cape May County. The proposed route avoids

the Village of Tuckahoe, by following Cedar Avenue to the intersection of Mill Road (CR 557), turning east to the intersection of Mt. Pleasant-Tuckahoe Road (CR 664) and then travelling south to the intersection with Marshall Avenue, where an interconnection facility is proposed. The proposed route then follows NJ Route 50 to the intersection with Tuckahoe Road (CR662), where it continues east out of the Pinelands Area into the PNR.

Thus, an approximately 15 mile segment of the pipeline will be constructed in the Pinelands Area, 10.2 miles of which will traverse through a Forest Area, 2 miles will traverse through a Rural Development Area and the remaining 2.8 miles will traverse through a Pinelands Village. The totality of this 15-mile segment, however, will be constructed within existing road rights-of-way ("ROW") beneath the existing paved portions and/or disturbed (grassed) shoulders of the above delineated roads. Specifically, approximately 15% of the proposed pipeline will be constructed within the existing paved travel lanes, 19% within the paved road shoulders, 55% within existing grass shoulders and 11% using Horizontal Directional Drilling (HDD). Given that the totality of the proposed pipeline project will be constructed in existing paved and disturbed road rights-of-way there will be no new fragmentation of the forest area.

#### B. Alternate Routes Considered

In addition to the proposed route, SJG considered two alternate routes. Identification of alternative routes, however, was limited given the location of existing natural gas transmission infrastructure in relation to SJG's service territory. There are no transmission lines plant located to the south or east with the necessary volume and pressure to supply the repowering of the BLE. As a result, SJG was limited to transmission infrastructure located to the west.

1. Route B – This route would have approached the BLE plant from the west and north. This proposed route was approximately 10.5 miles in length and located entirely within the PNR. However, this route would not have addressed the need for a redundant supply line for the southernmost portion of SJG's territory. This line would have been constructed off of the existing 20" supply line that currently serves SJG's customers located in Cape May and Atlantic Counties. Additionally, there were potentially significant environmental impacts associated with this line. Specifically, this route required an approximately 7,000 linear foot HDD crossing of the Great Egg Harbor. Such a crossing lies at the technological limits of HDD. Although possible, a HDD under the Great Egg Harbor estuary, because of the complexity of the drill, involving multiple curves, and the drill's length, had a concomitant risk of a drilling fluid breakout, which could impact benthic invertebrates, aquatic plants and fish. This route also would have impacted approximately 5.2 acres of estuarine wetlands for pipe staging as well as significantly impacts to wetland buffers. Lastly, this route also has significant impacts to the community because of major disruption to homes along School House Road in Egg Harbor Township and the need to temporarily relocate a dozen or more residents at Jefferson Landing on the Great Egg Harbor Bay. In light of the above, SJG rejected this route.

2. Route C – This route would have approached the BLE plant from the west and south through an approximately 29 mile long abandoned railroad right of way that had revegetated and was now heavily forested. Use of this proposed route would have required extensive clearing of Pinelands coniferous forest that was habitat to the following species:

Northern Pinesnake, Barred Owl, Cope's Grey tree frog, Black crowned night heron, Swamp pink and Frosted elfin. Additionally, there would also have been almost 2 acres of wetlands impacted and the most encroachment into wetland buffers of any of the alternatives evaluated. This route was rejected by S/JG for these reasons.

C. Review of Potential Impacts of the Proposed Pipeline Project on the Resources of the Pinelands

The proposed route is also not expected to have any impacts on the environmental resources of the Pinelands. The proposed route was reviewed by the Commission's regulatory review staff to determine its compliance with the development standards of the Pinelands CMP. As a result of that review, Commission staff determined that the proposed gas pipeline was consistent with all of applicable development standards (Subchapter 6) of the Pinelands CMP.

1. Threatened or Endangered Plants or Animals: With regard to threatened or endangered plants or animals, S/JG submitted three Threatened and Endangered Species Habitat Suitability Assessment and Survey Reports prepared by Trident Environmental Consultants for the proposed gas pipeline route, the site of the proposed interconnection station and the site of all proposed storage/staging areas, respectively. These reports addressed the following species: Stiff tick trefoil, Elliptical rushfoil, American Mistletoe, Pine Barrens Boneset, Silvery Aster, Climbing fern, Red-headed woodpecker, Barred Owl and Cope's Gray tree frog. Based on its review of these reports, staff concluded that the construction of the proposed gas pipeline would not impact threatened or endangered plants or animal species or habitat critical for the survival of a local population of threatened or endangered animal species.

2. Historic, Archaeological and Cultural Resources: S/JG also retained Richard Grubb and Associates, Inc. to conduct a Phase IA Archeological Survey and Historic Architectural Screening and Phase IB-II Cultural Resource Survey for the proposed pipeline. As discussed in these reports, the survey encompassed the project corridor, HDD and jack & bore work areas and proposed storage/staging areas. Stage IB archeological field work was conducted along the roadside adjacent to the linear portions of the project and within seven storage areas with high sensitivity for archaeological resources as assessed in the Stage IA archaeological survey. Approximately 27,000 linear feet of the proposed pipeline corridor was tested. Additionally, approximately 9.4 acres, high sensitivity portions of proposed staging areas 5, 6, 7, 10, 11 and 14 and the site of the proposed interconnection station, were included within the stage IB testing. Ultimately, two storage areas (areas 7 and 10) were redesigned to avoid areas where archeological resources were found on these sites. With regard to the other site at which archeological resources were found, the Burley site, only a portion of which is located in the project area, is bisected by Route 49 and extends further to the southwest of the NJ Route 49 right-of-way, the survey supported the determination that the portion of this site in the project area was not considered eligible for Pinelands designation. Moreover, given that construction work in this area is restricted to the placement of the natural gas pipeline within the shoulder of NJ Route 49, the survey results found that significant archaeological resources would not be impacted by the proposed pipeline construction. The Commission's staff archeologist concurred with these conclusions.

3. Wetlands and Wetland Buffers: Wetlands were flagged in the field along the entire route of the proposed pipeline. The flagged limits of wetlands were confirmed in the field by Commission staff. Additionally, the proposed project was designed to avoid potential impacts to wetlands by utilizing existing road rights of way and trenchless technology (jack & bore and HDD) to cross under wetlands and waterways. As a result, there will be no impacts to wetlands as a result of construction of the proposed pipeline. Moreover, with regard to wetland buffers, because the proposed pipeline will be constructed in paved and previously disturbed road rights of way, any impacts would involve, at most, temporary disturbances given such disturbances would be restored to their prior condition.

4. Stormwater Management: Stormwater management plans and calculations were submitted to the staff for its review. Based on such review, staff determined that the proposed gas pipeline project was consistent with the stormwater standards of the Pinelands CMP.

#### D. Need for the Proposed Natural Gas Pipeline

According to the PJM Interconnection, LLC (PJM) 2011 Regional Transmission Expansion Plan (RTEP), which annually assesses transmission facilities in New Jersey for compliance with North American Electric Reliability Corporation (NERC) reliability criteria violations, a number of factors continue to impact reliability in New Jersey. PJM *2011 Regional Transmission Expansion Plan*, Book 5, Section 8, p. 143-144. Load growth, power exports to New York City and Long Island, deactivation/retirement of generation resources, sluggish development of new generating facilities, and continued reliance on transmission to meet load deliverability requirements all contribute to existing reliability criteria violations in New Jersey. *Id.* There is a critical need to expand natural gas electric generation within New Jersey, particularly with the impending retirement of the Oyster Creek Nuclear Generation Facility and with ongoing reliability criteria violations in the coastal area. *See 2011 New Jersey Energy Master Plan ("EMP")* at 76; *Long-Term Capacity Payment Agreement Pilot Program to Promote Construction of Qualified Electric Generation Facilities*, P.L. 2011, c.9 (finding that New Jersey is experiencing an electric power capacity deficit and high power prices that may result in the loss of jobs and investment due to the necessity for the upgrade of the transmission system to the west of New Jersey to ensure a reliable supply of electricity and capacity from generators located outside of New Jersey and as a result of a lack of new, efficient electric generation facilities, New Jersey has become more reliant on out-of-state coal-fired power plants). Following the retirement of the Oyster Creek facility in 2019, the BL England Facility will be the only remaining baseload electrical generation plant along the New Jersey coast. However, absent construction of the proposed natural gas pipeline to repower the BLE plant, the NJDEP consent order requires the plant to shut-down. As discussed below, shut down of the BLE plant is likely to require the construction of new electrical transmission lines in the Pinelands Area to account for lost generation.

##### 1. BL England Plant

The BLE plant was one of New Jersey's first power plants. It was built on the Great Egg Harbor Bay in 1963. The plant is comprised of three energy generating units, two of which are coal fired

units and one of which is an oil fired unit. In January 2006, the NJDEP and Conectiv (AC Electric, Conectiv Atlantic Generation, LLC, Conectiv and Pepco Holdings), prior owners of the BLE plant, entered into an Administrative Consent Order to resolve existing air quality standard violations at the plant. Following the purchase of BLE plant by RC Cape May Holdings, LLC, NJDEP entered into an Amended Administrative Consent Order (AACO), on October 31, 2006, pursuant to which RC Cape May agreed to either repower the BLE plant to meet the air quality performance standards. On January 13, 2010, the parties agreed to a revised timeline by which RC Cape May would either repower the BLE plant or meet the performance standards. Subsequently, RC Cape May decided to repower the plant and requested a revised timeline from DEP. This resulted in execution of another AACO on May 18, 2012.

i. The 2012 AACO

Pursuant to the terms of the 2012 AACO, operation of Unit 1 was required to cease as of September 20, 2013, unless the BLE plant met certain performance standards defined in the AACO. Irrespective of this, the AACO requires the complete shutdown of Unit 1 by May 1, 2014. The AACO permits limited use of Unit 2 through May 15, 2015. However, use of Unit 2 is limited to no more than 4,300 hours per year from May 1<sup>st</sup> through April 30<sup>th</sup>. In addition, NOx emission reductions are mandated for Units 1 and 2. The AACO further orders the repowering of the BLE plant by May 1, 2016, with notification of the NJDEP by December 31, 2013 as to whether the BLE plant will be repowered. If the BLE plant will not be repowered, then Unit 2 must be shut down by May 1, 2014. If repowering of the BLE plant will occur, Unit 2 is permitted to continue to operate until at May 1, 2015 at which time operation of Unit 2 must cease until the repowering is completed. Finally, the AACO provides that if after December 31, 2013, RC Cape May determines that it is unable to complete the repowering of the BLE plant, it must notify NJDEP of that determination by May 1, 2014, and immediately shut down Unit 2. The AACO permits continued operation of Unit 3, the oil-fired boiler, regardless.

ii. Repowering of the BLE Plant

RC Cape May Holding, LLC proposes to permanently shut down coal-fired boiler Unit 1. In addition, RC Cape May intends to replace coal-fired boiler Unit 2 with a natural gas-fired Combined Cycle Combustion Turbine system. RC Cape May also intends to convert the residual oil boiler into a natural gas boiler. An air quality permit was issued by the NJDEP for this repowering project on April 30, 2013.

iii. Need for the BLE Plant

The State's *EMP* expresses a firm goal of promoting a diverse portfolio of new, clean, cost-effective in-state electric generation to ensure a reliable supply of energy and capacity at reasonable rates while advocating for policies that help control electricity costs, maintain system reliability, and adhere to environmental objectives. The proposed natural gas pipeline and the repowering of the BLE plant directly serve these goals. Additionally, the *EMP* specifically acknowledges the challenge of finding baseload generation to replace Oyster Creek and targets the expansion of natural gas-fired power generation as a less carbon-intensive fossil fuel that also comes with significant air quality benefits, including reduced emissions of sulfur dioxide, fine particulates, volatile organic compounds, and greenhouse gases. To further this goal, the *EMP*

directs State agencies to accelerate the decommissioning of older, less efficient coal- and oil-fired electrical generation plants and to rely more upon natural gas for electricity generation, and to promote the expansion of pipelines to supply natural gas. As discussed below, the repowered BLE plant is expected to supply the majority of its electricity to the Pinelands Area and to provide reliable baseload power generation. The continued operation of the BLE plant is critical to ensuring adequate electric supply to Pinelands Region, New Jersey coastal areas and helps the State directly to achieve the goals of the *EMP*.

Additionally, New Jersey is located within the heart of the Mid-Atlantic Critical Congestion Area, one of only two such areas in the United States designated by the U.S. Department of Energy (DOE) due to severely inadequate transmission capacity that threatens the reliability of the electrical grid. In 2006 and again in 2009, the DOE, as directed by the Energy Policy Act of 2005, determined that it is critically important to remedy existing congestion problems in New Jersey because the current and projected effects of the congestion are severe. New Jersey—a state located at the extreme eastern edge of the PJM territory—suffers from limited imports of electricity from the West and South, causing most of the state to face electricity congestion. The state's transmission constraints are made worse by the retirement of several old, inefficient power plants, which has reduced local generation and degraded reliability. *See* U.S. Department of Energy, *National Electric Transmission Congestion Study* (2006 & 2009). The repowering of the BLE plant must be considered against this backdrop.

#### 1) POWERGEM Reports

SJG provided the Commission staff with two reports prepared by POWERGEM, LLC (Power Grid Engineering & Markets) that discussed the anticipated benefit of the repowering of the BLE plant to the Pinelands Area. The initial analysis, which was prepared on May 29, 2012, utilized the PJM 2016 RTEP summer peak flow load model to determine the total load required for the Pinelands Area. This was determined to be 930MW. The analysis then looked at the amount of generation located proximate to the Pinelands Area, both before and after the shutdown of Oyster Creek. POWERGEM determined that, prior to Oyster Creek's retirement, there was 1485 MW of generation proximate to the Pinelands Area, which consisted of the Oyster Creek nuclear facility (615 MW), the repowered BLE plant (570 MW) and several smaller combustion turbines (300 MW). Assuming that the local generation all contributed equally to the Pinelands Area load, POWERGEM found that 38% (570/1485) of the energy generated by the BLE plant would be distributed to address electricity needs (load) in the Pinelands Area. Following closure of Oyster Creek in 2019, and again assuming equal distribution from all generation sources, POWERGEM found that the BLE plant would supply 65% (570/870) of the energy needed within the Pinelands Area. The report also discussed a prior PJM study that had indicated that the retirement of the Oyster Creek Nuclear facility would result in the need for at least \$100 million in new transmission or transmission upgrades and expressed the likelihood that most, if not all, of the new/upgraded transmission would be either within or proximate to the Pinelands Area. It was POWERGEM's opinion that the repowering of the BLE plant would help alleviate some of those potential transmission additions in the Pinelands Area.

SJG submitted an updated analysis from POWERGEM dated October 11, 2013. The reason for this update was to take into account retirements of smaller combustion turbines that were scheduled to occur and which would have a direct impact on the prior study results. Additional

studies were also performed to determine whether there would be any overloaded circuits proximate to the Pinelands Area due to the retirement of these combustion turbines in conjunction with the retirement of the Oyster Creek nuclear facility and under the scenario where the BLE plant did not repower. For this analysis, POWERGEM used the PJM 2018 RTEP<sup>1</sup> summer peak flow model that had recently become publicly available. POWERGEN determined the total load within the Pinelands area for the 2018 summer peak flow load would be approximately 933 MW. Under the updated model, and prior to Oyster Creek retiring, the total generation proximate to the Pinelands Area was found to be 1277 MW, consisting of Oyster Creek (615 MW), the repowered BLE plant (570 MW), and several smaller combustion turbines (92 MW). Again assuming that local generation contributed equally to the load within the Pinelands Area, POWERGEM found that the BLE plant would contribute to 45% (570/1277) of the load within the Pinelands Area. After the shutdown of Oyster Creek, POWERGEM found that the BLE plant's contribution to load in the Pinelands Areas would increase to 86% (570/662).

POWERGEM also completed a study using the PJM 2018 RTEP model to determine if there would be any overloaded circuits proximate to the Pinelands Area after the smaller combustion turbines and Oyster Creek shut down. The study was conducted under two scenarios, with and without the repowering of the BLE plant. This study confirmed that the repowering of the BLE plant is even more critical to the power generation needs of the Pinelands region than first appeared as a result of the additional retirements of the smaller combustion turbines. Specifically, POWERGEM found that based upon PJM's own models the retirement of the BLE plant would negatively impact eight transmission circuits located proximate to the Pinelands Area (Union-Corson 138 kV, Corson-Middle Tap 138 kV, Cumberland to Union 138 kV, Lewis-Minotola 138 kV, Kewis-Dorothy 138 kV, Minotola-Landis 13 kV, Corson-Dennis 138 kV and Dorothy-Deepwater 138 kV). Overloaded circuits are considered transmission violations by the PJM and, therefore, require a solution to avoid the consequences of overloads, including potential blackouts. Additionally, POWERGEM found that the continued retirement of smaller combustion turbines would likely exacerbate the need for transmission upgrades. Significantly, the POWERGEM study found that none of these circuits would be overloaded if the BLE plant was repowered.

2) *BPU (Need assistance of BPU's DAsG as to BPU's determination of need for the project.*

Moreover, during his presentation to the Commission's Policy and Implementation Committee, Jerome May, Director, Division of Energy within the BPU, indicated that closure of the BLE plant would not be in the best interests of the State of New Jersey. Mr. May also indicated that in the absence of the BLE plant, the PJM would need to seek an equivalent level of energy and capacity to meet its stringent reliability requirements. Moreover, given that PJM has no authority with regard to construction of power plants, Director May stated that PJM would likely order the addition of high tension electrical transmission lines in the Pinelands Area so that the power

<sup>1</sup> The PJM 2018 RTEP model included the proposed West Deptford, Woodbridge, Old Bridge and Deepwater natural gas generation projects.

could come from the west or south.

## 2. Reliability of SJG's System

There also is a critical need to improve the reliability of natural gas service to the eastern and southern portions of SJG's service territory. SJG serves approximately 61,000<sup>2</sup> natural gas customers (meters) in Cape May County, 3,300 of which are located in the Pinelands, via an existing 16-inch feeder line. This line is vulnerable to a single-contingency failure. Additionally, a significant portion of SJG's system also is vulnerable to a single contingency failure of SJG's existing 20-inch pipeline from Union Road Station to Estell Manor Station, the primary major supply line to the eastern and southern parts of the SJG service territory. Up to 142,000 customers located east and south of the Union Road Station, 28,700 of which are located in the Pinelands Area, could be vulnerable to a gas outage if this gas supply line is disrupted. SJG reliability modeling shows that if this line were disrupted at even 30 degrees F, approximately 61,000 customers initially would lose gas service, with the number quickly growing to 120,000 customers when supply from SJG's McKee City LNG facility is exhausted. The construction of the proposed pipeline will enhance greatly the reliability of the eastern and southern portions of SJG's service territory by enabling an alternative route for gas to be supplied to the coastal areas of Atlantic and Cape May County, which no longer would be subject to single contingency failures. The Project also will improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby potentially reducing the need for reinforcement pipe installations in the future, many of which would likely be located within the Pinelands Area.

### E. BPU Jurisdiction and Process

#### 1. BPU's Jurisdiction

In New Jersey, it is the exclusive responsibility of the BPU to ensure that residents of the State enjoy safe, adequate and proper public utility service, including safe and reliable natural gas for heating homes and businesses. N.J.S.A. 48:2-13. The BPU is the only agency in the State of New Jersey charged with this responsibility and is the only agency vested with specific expertise to carry out this mission. The BPU fulfills this statutory responsibility by supervising and pervasively controlling the State's various public utilities, which are granted franchise rights to provide these essential services to the public. Essentially, the BPU implements its mandate to ensure safe and reliable service to the public only through its franchisees—the State's public utilities. As discussed below, the Board's authority over public utilities is pervasive. The Board had broad authority to supervise, regulate, and assert jurisdiction and control over public utilities and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of Title 48 of the New Jersey Statutes. N.J.S.A. 48:2-13. Moreover, the BPU's authority over utilities extends beyond its express statutory powers and includes incidental powers that the agency needs to fulfill its statutory

<sup>2</sup> These are gas meters, not individuals. Each meter represents a single facility (single family home, business, hospital, nursing home, etc.) and many more individuals would be affected by a disruption of gas service than suggested by the number of meters.

mandated duties. *A. A. Mastrangelo, Inc. v. Comm'r of Dept. of Envl. Prot.*, 90 N.J. 666, 683-84 (1982). This sweeping grant of power is “intended to delegate the widest range of regulatory power over utilities to the Board.” *Twp. of Deptford v. Woodbury Terrace Sewerage Corp.*, 54 N.J. 418, 424 (1969). For example, the BPU is empowered to direct utilities to furnish safe, adequate and proper service to their customers. N.J.S.A. 48:2-13. Upon finding that a public utility has failed to do so, the BPU may even direct that control of the company be entrusted to a custodial receiver. *See In I/M/O Allegations of Berkeley Water Company's General Dereliction of Duty to Provide Safe, Adequate and Proper Service*, BPU Docket No. 7811-1515 and 797-637, OAL Docket No. 2587-79.

The BPU has granted SJG a right to provide natural gas service within the southernmost seven counties in New Jersey. The company provides essential gas service to approximately 360,000 homeowners and business customers and operates approximately 6,200 miles of pipeline throughout its service territory. The privilege conferred to SJG to provide an essential service comes with an obligation to make sure that the service is safe and reliable and that all customers requesting service receive it subject to certain qualifications. All public utilities in the state, including SJG, are subject to the BPU's jurisdiction, including its control over their property, equipment and facilities. N.J.S.A. 48:2-13. The BPU regulates and controls most of SJG's operations including, but not limited to its service quality, customer service and billing practices, safety, construction specifications, accounting, financing and auditing.

The BPU's jurisdiction over SJG is extremely pervasive. Indeed, there are very few actions of any significance which SJG may undertake without BPU approval. For example: SJG's rates may not be changed without Board approval (N.J.S.A. 48:2-21; N.J.A.C. 14:1-5.12); SJG may be ordered to provide safe, adequate and proper service (N.J.S.A. 48:2-23); SJG may not terminate customers, except in accordance with BPU regulations (N.J.S.A. 48:2-24; N.J.A.C. 14:3-3A.1 et seq.); SJG must get BPU approval to construct certain major pipelines, such as this one (N.J.S.A. 48:10-2 et seq; N.J.A.C. 14:7-1.4); SJG may not issue stocks, bonds or other evidence of indebtedness without Board approval (N.J.S.A. 48:3-9; N.J.A.C. 14:1-5.9); SJG may not mortgage its properties without Board approval (N.J.S.A. 48:3-7; N.J.A.C. 14:1-5.9); SJG may not abandon service without BPU approval (N.J.S.A. 48:2-24; N.J.A.C. 14:3-3A.1 et seq.); SJG may not close a customer service office without Board approval (N.J.A.C. 14:3-5.1); and SJG may not provide service in a new location without Board approval. (N.J.S.A. 48:2-27; N.J.A.C. 14:3-8.1 et seq.). There is an entire Subchapter of the New Jersey Administrative Code related to construction and installation of gas facilities (N.J.A.C. 14:6-1.1 et seq.). There is also an entire Chapter of Title 48 of the New Jersey Statutes Annotated related to gas companies. (N.J.S.A. 48:9-1 et seq.)

## 2. BPU Process

Pursuant to N.J.S.A. 48:2-13, South Jersey did not wait until it was ordered by the Board to take action to address its obligation to provide safe and reliable natural gas service. Rather, it took affirmative steps to ensure that it is able to provide such service to its customers, now and into the future. In furtherance of this objective, SJG has filed a number of petitions with the Board regarding the proposed pipeline.

In its first petition, South Jersey sought BPU's approval of the Standard Gas Service Agreement (the "Agreement") entered into between South Jersey and R.C. Cape May Holdings. I/M/O South Jersey Gas Co. and RC Cape May Holdings, LLC, Docket No. GO13010052 (Order April 29, 2013). By way of Order dated April 29, 2013, the Board exercised its jurisdiction over SJG and authorized the negotiated rate. The Board found, *inter alia*, that the rates were based on cost of service and the value of service considerations required by SJG's tariff.

In its second petition, South Jersey sought approval to construct the proposed pipeline. I/M/O South Jersey Gas Co. for Authorization to Construct a 24-inch Pipeline, Docket No. GO13030202 (Order June 21, 2013). By way of Order dated June 21, 2013, the Board found, based upon the presentation of evidence and consideration of public testimony at a public hearing, that construction of the proposed pipeline was reasonable and in compliance with all relevant Federal and State requirements. The Board went on to exercise its jurisdiction approving SJG's request to construct the pipeline subject to, *inter alia*, any future Memorandum of Understanding between the Board and the Pinelands Commission.

Recently, SJG filed a petition with the BPU pursuant to N.J.S.A. 40:55D-19 requesting a determination from the BPU that its proposed construction of the proposed natural gas pipeline was reasonably necessary for the service, convenience or welfare of the public. This provision of the Municipal Land Use Law authorizes the BPU to order that zoning, site plan review and all other municipal land use ordinances or regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service. In order to issue such an order, BPU, upon petition and after a hearing, must decide that the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public. N.J.S.A. 40:55D-19. The phrase "for the service, convenience or welfare of the public" is not limited to the local group benefited by the zoning ordinance, but rather refers to the whole "public" served by the utility. In re Public Service Electric & Gas Co., 35 N.J. 358, 376-377 (1961). Moreover, the standard of reasonableness does not require that the proposed use be absolute or indispensable, only that it is reasonably necessary for the public service, convenience or welfare. Id. It is the BPU's obligation to weigh all interests and factors in light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom. Id.

#### F. Basis for the MOA

The Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of the CMP, specifically the land use and environmental standards set forth at N.J.A.C. 7:50-5 and 6. The agency must demonstrate, and the Commission must find, that any proposed development that is not fully consistent with the standards of the CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards. Id.

The BPU has jurisdiction over all services necessary for the transmission and distribution of

electricity and gas, including, but not limited to safety and reliability. N.J.S.A. 48:2-13.d. The Board also has jurisdiction over the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State. Id. Thus, as discussed above, BPU has exclusive responsibility to ensure that residents of the State enjoy safe, adequate and proper public utility service, including safe and reliable natural gas for heating homes and businesses. Id. BPU essentially implements this mandate through the public utilities to which it grants privileges to provide public services, such as gas service. (See N.J.S.A. 48:2-13.a.)<sup>3</sup>

In this capacity, the BPU has issued an Order to the SJG finding that construction of the proposed pipeline is reasonable and in compliance with all relevant Federal and State requirements. Implicit in this Order is BPU's understanding that the proposed natural gas pipeline is necessary for the safe and reliable provision of gas service by SJG in its service area. Additionally, this implicit understanding will be made explicit at the time BPU acts on SJG's petition pursuant to N.J.S.A. 40:55D-19, which requires the BPU to find that the development in question is reasonably necessary for the service, convenience or welfare of the public. Id.

Given that BPU is implementing its mandate to assure all services necessary for the transmission and distribution of electricity and gas, including the reliability of the transmission system and grid for these services through SJG, the construction of the proposed natural gas pipeline is specified development that is being carried out under the jurisdiction of the BPU. Additionally, because SJG, as a public utility, is subject to the jurisdiction of the BPU, as part of this MOA, BPU is agreeing to require SJG to undertake certain measures, discussed below, that will afford, at a minimum, equivalent levels of protection to the resources of the Pinelands.

1. Measures Proposed to Afford an Equivalent Level of Protection of Pinelands Resources

As discussed above, the proposed natural gas pipeline project is consistent with all applicable standards of the Pinelands CMP, with the exception of the permitted use standards for a Forest Area, N.J.A.C. 7:50-5.23.b.12.

In order to provide an equivalent level of protection for the resources of the Pinelands, pursuant to the terms of this MOA, a subsequent Order issued by the BPU and an MOA between the BPU and SJG, the public utility proposing to construct the proposed natural gas pipeline, SJG will be required to contribute seven million seven hundred and fifty thousand dollars (\$7,750,000.00) toward Pinelands land acquisition, and education. Seven million dollars (\$7,000,000.00) will be placed into an escrow account to fund the acquisition of land located adjacent to the site of the proposed pipeline project located in a Forest Area. If after three years from execution of this MOA by the last signatory, all of the targeted lands have not been acquired, then all remaining escrow funds and all interest will be placed into the Pinelands Conservation Fund for acquisition of lands in the southern forested portion of the Pinelands Area, i.e. south of the Atlantic City Express.

<sup>3</sup> N.J.S.A. 48:2-13 provides "[t]he term 'public utility' shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns that now or hereafter may own, operate, manage or control within this State any . . . , pipeline, gas, electricity distribution, . . . system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof."

Although there are no direct environmental impacts associated with the proposed natural gas pipeline, the intent behind the Forest Management Area use standards is to ensure the long term integrity of the Pinelands environment by establishing standards governing the character, location and magnitude of development and use of land in this area, while encouraging appropriate patterns of compatible development. N.J.S.A. 13:18A-9.b. and N.J.A.C. 7:50-5.21. As a result one potential concern associated with the construction of the proposed pipeline in a Forest Area is that it would result in pressure being exerted on the impacted municipalities and the Commission, to change the land use and development intensities currently permitted within the Forest, through which the pipeline traverses, to provide for increased development (secondary impacts).

The acquisition of land along the site of the proposed pipeline within the Forest Area should prevent these secondary impacts from coming to fruition. In addition, given that there are two large areas of State lands (Belleplain State Forest and Peaslee Wildlife Management) in the vicinity of pipeline project site, acquisition of land adjacent to the pipeline would also add additional public open space to these important State holdings. Moreover, expanding the scope of the lands to be acquired after three years to encompass the totality of the southern forest secures two important benefits to the Pinelands Area. First, it ensures that an equivalent level of protection is provided to offset the development of the proposed pipeline in a timely fashion. Second, it will address the potential for additional pipeline projects cutting through the Pinelands Forest Areas, by providing additional funds that can be used for the permanent preservation of lands located in Pinelands Forest Areas.

SJG will also be required to contribute two hundred and fifty thousand dollars (\$250,000.00) to finance the construction of a pinelands education center within the Richard J. Sullivan center at the Pinelands Commission's offices. The proposed natural gas pipeline has generated significant interest in the Pinelands and its resources. The pinelands education center will advance the mission of educating the public as to the importance of this very special region.

SJG will also be required to contribute five hundred thousand dollars (\$500,000.00) to the Commission to fund grants to non-governmental entities or educational institutions for projects involving protection or enhancement of the resources of the Pinelands Area. The funds will permit the Commission to provide funding for research projects that, for example, evaluate the impact of infrastructure or other development on the resources of the Pinelands Area. Through these funds, the Commission will be able to support research projects that will help inform its policy decisions in the future.

In addition to the monetary measures discussed above, one of the most significant benefits afforded by the construction of the proposed pipeline is the repowering of the BLE plant from coal to natural gas. Specifically, the conversion of BLE plant to natural gas will yield both air quality and water quality benefits. Substantial reductions in air emissions, have long been a need of the Pinelands.

The NJDEP first identified the need for reduction in the air emissions generated at the BLE plant in its 1980 *Air Quality Assessment of the New Jersey Pinelands*, in which the plant was identified

as a source of air pollution within the Pinelands. Converting the BLE plant to natural gas will dramatically reduce a host of air pollutants, including sulfur dioxide which produces acid rain, nitrogen oxides which produce smog, carbon dioxide which contributes to climate change, and mercury which bioaccumulates in Pinelands fish. Natural gas produces less than ten (10) percent of the criteria air pollutants and hazardous air pollutants produced by coal. The NJDEP, at the Commission staff's request, undertook an air quality modeling analysis to assess the air quality benefits of repowering the BLE plant on the Pinelands Area. Based on that analysis, NJDEP concluded that up to a 40.9% to 41.4% reduction in the maximum existing background 1-hour and 3-hour sulfur dioxide concentrations would occur as a result of the repowering. NJDEP also predicted reductions in the existing background levels of 1-hour nitrogen dioxide (NO<sub>2</sub>) concentrations and 2-hour fine particulate (PM<sub>2.5</sub>) in the Pinelands. These reductions in air pollutant emissions and air pollution concentrations over the Pinelands Area are expected to provide the following environmental benefits: 1) least potential for acute and chronic damage to plants due to reduced SO<sub>2</sub> concentrations; 2) less acid rain formation due to reduced SO<sub>2</sub> and NO<sub>x</sub> emissions, benefitting plants, lakes, fish and wildlife; 3) reduced ozone damage to plants and vegetation due to lower ozone concentrations as a result of a reduction in NO<sub>x</sub>, an ozone precursor; 4) improved visibility over the Pinelands Area and 5) a 94% reduction in allowable mercury emissions that will benefit fish and animals that eat fish, as well as the overall environment.

The repowering of the BLE plant will also reduce water quality impacts on the Pinelands. Currently, the BLE plant withdraws substantial amounts of water each day from the Great Egg Harbor estuary to use as cooling water. The plant also discharges pollutants to the Great Egg Harbor estuary, pursuant to a permit, through several outfalls. The repowering of the BLE plant will reduce water withdrawals and water pollution discharges by approximately forty-four (44) percent, respectively. Additionally, the repowering project will eliminate the coal pile and its associated stormwater runoff, along with the use of lime, gypsum, slag and sorbent, all of which can be harmful to aquatic life.

### III. AGREEMENTS

#### A. The BPU agrees that:

1. It will issue an Order to the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. above incorporating the requirements of Paragraphs III.A.1 through \_\_\_ of this MOA and the Environmental Conditions set forth in Attachment B.
2. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to construct the project in accordance with the list of documents set forth in Attachment A attached hereto and made a part hereof.

3. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to satisfy all of the obligations of this MOA and the Pinelands CMP, unless a deviation therefrom is expressly authorized by this agreement.
4. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing construction of the project. No part of this MOA is intended to release the public utility from its responsibility to obtain all other required local, State and/or Federal approvals.
5. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to comply with all of the environmental conditions set forth in Attachment B, attached hereto and made a part hereof, and the terms of this agreement.
6. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above to provide notice to the Pinelands Commission staff seven (7) days prior to commencing any clearing or construction activities for the project.
7. It will require the public utility to deed restrict the entire right of way for the proposed pipeline located in the Pinelands designated Forest Area against any future connections of any kind, including interconnections proposed by the utility.
8. It will require the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II to prohibit the future conversion of this pipeline from transmission of natural gas to oil.
9. Any deviation from or modification to the proposed natural gas pipeline project as delineated in Paragraph II. \_\_\_ above and the documents listed in Attachment A will require formal application to the Pinelands Commission in accordance with the Pinelands CMP and no clearing or construction activities regarding such deviation may occur until an application has been completed and the Pinelands Commission has approved the deviation or modification.
10. It agrees that the public utility proposing to construct the proposed natural gas pipeline project delineated in Paragraph II. \_\_\_ above shall pay a total of seven million seven hundred and fifty thousand dollars (\$7,750,000.00). This set-aside amount will be dedicated by the Pinelands Commission as outlined below:

a. Seven million seven hundred and fifty thousand dollars (\$7,750,000.00) to be placed and managed by the Commission in an interest bearing escrow account to fund the acquisition and permanent preservation of the lands set forth in Attachment C for a period of three (3) years following execution of this agreement by the last signatory. At the end of that three (3) year period, all funds remaining in that escrow account and any and all interest accrued to that account shall be transferred to the Pinelands Conservation Fund – Land Acquisition Account to be utilized for the acquisition of land in the southern forested portions of the Pinelands Area; i.e. forested lands south of the Atlantic City Expressway. These funds may be paid in installments over six months as follows:

- (1) The first payment of \$2,333,333.00 shall be paid within thirty (30) days of the date of execution by the last signatory of this MOA; and
- (2) A payment of \$2,333,333.00 shall be paid to the Pinelands Commission within three months and then again within six months of the date of execution of this MOA by the last signatory;

b. Two hundred and fifty thousand dollars (\$250,000) to the Pinelands Conservation Fund to finance the construction of a pinelands education center in the Richard J. Sullivan Center at the Pinelands Commission’s offices in New Lisbon, New Jersey; and

c. Five hundred thousand dollars (\$500,000) to fund grants to non-governmental entities or educational institutions for projects involving protection or enhancement of the resources of the Pinelands Area; priority shall be given to projects that involve the southern forested portions of the Pinelands Areas.

11. [???

B. The Pinelands Commission agrees that:

**Comment [1]:** THERE ARE NO QUARTERLY/MONTHLY REPORTS THAT ARE SPECIFIC TO ANY PARTICULAR PIPELINE OR THAT WOULD INCLUDE INFORMATION SPECIFIC TO THIS PIPELINE. PIPELINE PRESSURES ARE MONITORED CONTINUOUSLY BUT NO REPORT IS GENERATED; LEAK SURVEYS ARE CONDUCTED ANNUALLY AS REQUIRED BY LAW; THERE ARE MONTHLY VISUAL INSPECTIONS;

1. Based on its review of the documents listed in Attachment A, the provisions of the Pinelands CMP and the terms of this MOA, including the Environmental Conditions delineated in Attachment B, and with the exception of the standard for which a deviation is being granted pursuant to this MOA, the project as proposed is consistent with the minimum requirements of the Pinelands CMP. The proposed natural gas pipeline project as delineated in Paragraph II. above is deemed approved and no further action by the Commission, or its staff, shall be required regarding the proposed natural gas pipeline project unless there is a deviation from or modification to the proposed natural gas pipeline project as discussed in Paragraph III.A.7 above.

**IV. EFFECTIVE DATE AND DURATION**

1. In accordance with N.J.S.A. 13:18A-5(h), this MOA shall take effect following the conclusion of the Governor's review period and/or approval of the Pinelands Commission meeting minutes authorizing entry of this MOA and then upon approval and signature by the authorized representative of both parties.
2. This MOA shall remain in effect for five (5) years from its effective date unless one of the following occurs:
  - i. It is amended by written consent of both parties; or
  - ii. Both parties mutually agree, in writing, to otherwise terminate this agreement.

**V. SIGNATURES**

**NEW JERSEY PINELANDS COMMISSION**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Nancy Wittenberg, Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Kristen Heinzerling, Deputy Attorney General  
State of New Jersey

NEW JERSEY BOARD OF PUBLIC UTILITIES

Date: \_\_\_\_\_

By: \_\_\_\_\_  
, Executive Director

Approved as to form by:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
, Deputy Attorney General  
State of New Jersey

## ATTACHMENT B

**Environmental Conditions (November 18, 2013)**General Conditions

1. Any areas disturbed as a result of construction activities shall be graded to natural conditions and seeded the grass species specified on the plans and agreed to by the Pinelands Commission staff.
2. Only native Pinelands species as specified on the plans shall be used for re-vegetation purposes.
3. All soils excavated to construct the trenches for installation of the natural gas pipeline shall be removed and stockpiled and then used to backfill the trenches where appropriate. The topsoil shall be re-used but if soil unsuitable for backfill is encountered it will be removed to a suitable location and suitable soil will be used to backfill the trench.
4. The use of herbicides for future vegetation management purposes shall be prohibited in any portion of the ROW.
5. The limits of the proposed area of disturbance as depicted on the plans submitted to the Commission and delineated in Attachment A shall be marked in the field using silt fence and orange plastic construction fencing.
6. All vegetation removed during construction shall be lawfully disposed of outside of the Pinelands Area, unless the Executive Director approves the disposition of vegetative material on sites within the Pinelands Area. Such approval must be obtained from the Executive Director prior to the disposition of any vegetative material on sites within the Pinelands Area.
7. No construction debris or excess fill shall be disposed of in the Pinelands Area without the prior approval of the Pinelands Commission's Executive Director.
8. No off-site storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials) for the project, beyond those previously reviewed by the Pinelands Commission staff and included within the documents set forth in Attachment A, shall be located within the Pinelands Area unless approved by the Pinelands Commission Executive Director prior to their use.
9. The Pinelands Commission staff shall be permitted to inspect construction activities to ensure compliance with the conditions set forth in this agreement.

10. Any modifications to the proposed construction plans for the proposed natural gas pipeline as identified in Attachment A involving development activities that will occur within the Pinelands Area shall be submitted to the Pinelands Commission's Executive Director for review and approval prior to commencing any development activities in such areas, including, but not limited to site preparation.
11. At least one independent biologist, engaged by the public utility and approved by the Pinelands Commission, qualified in the identification of threatened and endangered plants and animals and their habitats, as delineated at N.J.A.C. 7:50-6.27 and 6.33, shall be present during such times and locations where clearing and/or construction activities are being undertaken. The biologist(s) shall ensure that clearing and/or construction techniques being utilized do not adversely impact any habitat critical to the survival of any threatened and/or endangered species of animals or plants and that any such plants and animals discovered during construction are protected. Additionally, the biologist shall ensure that all threatened and endangered species BMPs identified in the plans delineated in Attachment A are being followed at all times during construction.

The biologist shall work in conjunction with the independent engineer to minimize the down river impacts that may result from a break out during the HDD process. This shall include monitoring of the waterway crossing for any signs of breakout to ensure prompt response.

12. All recommendations set forth in the Cultural Resource Survey report shall be implemented. (*Need to reference actual report.*)
13. In the proposed storage areas adjacent to potential cultural resources (*need to get lot and block information from cultural resource report*), silt fencing and orange plastic construction fencing shall be installed at the limit of disturbance.
14. If proposed storage areas 7 and 10 are to be utilized at any point during the construction, the public utility shall have a qualified archeologist present during initial site preparation in order to ensure that the areas where cultural resources were discovered are not disturbed and to observe site preparation for archeological artifacts or resources of potential significance within the project area.
15. In accordance with N.J.A.C. 7:50-6.158(b), if, at any time after construction of the project has commenced, archeological artifacts or resources of potential significance are discovered within the project area, the public utility will immediately cease construction activities, notify the Pinelands Commission, and contact its cultural resource consultant to determine the appropriate treatment for such artifacts or resources. Treatment shall include, if possible, shifting of the proposed pipeline route away from the site of the artifacts or resources and any other steps suggested by the cultural resource consultant to protect the archeological artifacts or resources of

potential significance.

**Wetlands**

- 16. Disposal of soil, vegetation piping or any other materials shall not be permitted in wetlands or wetlands buffers during construction. Temporary stockpiling of piping or other materials shall not be permitted in wetlands or within 300 feet of wetlands unless shown on the approved plans.
- 17. Appropriate soil conservation measures, such as installation of silt fencing, shall be taken during construction to preclude sediment from entering wetlands.
- 18. No activities shall occur in wetlands. No activities other than the temporary work shown on the approved plans shall occur in wetland buffers.
- 19. Should any wetlands be disturbed accidentally during construction such area shall be graded to natural conditions and re-vegetated with suitable native Pinelands species.
- 20. No storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials for the project) shall be located within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to utilization of such areas.
- 21. No culverts or fill may be placed or deposited into wetlands or areas within 300 feet of wetlands to create access roads, temporary or otherwise, for the construction of the new pipeline.
- 22. Any refueling that is required during construction within wetlands or areas within 300 feet of wetlands must include secondary containment during the refueling operation.

**Comment [PJF2]:** We don't understand the need for this since the PC required that we include the sites in our plans and have reviewed them all. PC could refer to the approved plans since this review has already occurred.

**Threatened or Endangered Species**

- 23. The Pinelands Commission shall be notified immediately if any threatened and/or endangered species of plants or animals or habitat critical to their survival are discovered during construction. All clearing or construction activities in the vicinity of such species or critical habitat shall immediately cease pending direction from the Pinelands Commission Executive Director. During that time, the public utility shall authorize the biologist(s) retained in compliance with Paragraph 11 above to take all possible steps to ensure that such species or critical habitats are protected.

**Horizontal Directional Drilling**

- 24. The public utility shall provide the Pinelands Commission's Executive Director with a copy of the Horizontal Directional Drilling (HDD) Break Out Mitigation Contingency Plan proposed to be utilized for all HDDs to be conducted during construction of the

pipeline. No HDD activities shall occur until the Executive Director has approved such plan.

25. Appropriate measures, such as installation of silt fence, hay bales, inflatable berm, etc. shall be taken during HDDs to prevent the discharge of bentonite to wetlands, streams or any other water body or beyond the immediate confines of the drill site.
26. The public utility shall have employees trained in HDD on the site to monitor drill hole pressures and to walk the area in which the HDD is being conducted to identify any potential break outs of bentonite. Additionally, such employees shall be responsible for immediate implementation of the Mitigation Contingency Plan should a break out occur.

Should a bentonite break out occur, the public utility shall immediately cease HDD activities and contain the area of the break out to the smallest feasible area. Additionally, the public utility shall within 24 hours notify the Pinelands Commission's Executive Director of the location of the break and advise as to the response actions being taken to address the break out in accordance with the approved Mitigation Contingency Plan.

The public utility shall engage an independent engineer, approved by the Commission to be on site during all phases of HDD and other drilling activities to ensure all such activities are conducted in accordance with all approved plans. The engineer shall be a registered professional engineer and have proven experience in the installation of large diameter pipelines using the HDD method.