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September 13, 2018

VIA FEDERAL EXPRESS AND EMAIL
The Honorable Aida Camacho-Welch
Secretary, New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Re: I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs
BPU Docket No. GO17121241

Dear Secretary Camacho-Welch:

This firm represents the Retail Energy Supply Association ("RESA") in the above-captioned matter. Enclosed for filing please find the original and ten (10) copies of the following:

1. RESA's Reply Brief in response to the Comment Letter filed by the New Jersey Utilities Association;
2. Certification of Orlando Magnani; and
3. Certification of Service.

Copies are being provided to the service list by electronic mail or regular mail.

Respectfully submitted,

Murray E. Bevan

Enclosures

cc: Enclosed Service List

I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs
BPU Docket No. GO17121241

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs	)	**REPLY BRIEF** Docket No. GO17121241

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This is a reply to the comment letter (the "Comment Letter") filed by the New Jersey Utilities Association ("NJUA") in response to the Retail Energy Supply Association[1] ("RESA" or "Petitioner") Amended Verified Petition (the "Petition") in the captioned matter.[2] RESA writes to reply to the Comment Letter.[3] The New Jersey gas distribution companies ("GDCs") and their unregulated affiliates currently control substantial interstate pipeline capacity which is paid for by New Jersey

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

[2] While NJUA replied to RESA's Amended Petition, RESA believes the GDCs are necessary parties to participate in the requested proceeding.

[3] Although NJUA filed this comment letter RESA considers the gas utilities (GDCs or LDCs) to be necessary parties to any proceeding the Board would institute.

ratepayers. In order to more efficiently and transparently transfer the benefits of this interstate pipeline capacity to New Jersey ratepayers, RESA reiterates its request for the Board to open a proceeding to create an updated, functioning, gas capacity release program in all of the GDC territories in New Jersey.[4] RESA firmly believes that a well-functioning gas capacity release program will benefit both shopping and non-shopping gas customers in New Jersey. The Comment Letter frankly further buttresses RESA's argument and RESA again asserts that a proceeding should be opened to investigate gas capacity release in New Jersey.

NJUA's letter opens with the observation that "RESA appears to believe that there exists surplus capacity, when in fact the LDCs do not have excess natural gas capacity to release to TPSs while still being able to reliably meet their respective BGSS design day loads." (Comment Letter, pp 1-2, footnote omitted).[5] This statement highlights the crux of the issue at hand – the Board, as well as RESA, and TPSs in general – do not have a clear understanding of the specific gas capacity purchased by the GDCs and how it is used to serve customers, how much capacity the GDCs actually hold and whether or not any underutilized capacity exists that could be more effectively used through a capacity release mechanism. For example, currently the firm small transportation programs in the State do not require that third party suppliers ("TPSs") balance against weather impacts. Rather, these programs require TPSs to deliver a flat weather normalized volume each month which suggests that the GDCs are holding assets on behalf of transportation service in order to manage these swings on their systems. RESA believes that a proceeding that investigates existing capacity arrangements and improves these

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[4] RESA notes that in the ongoing PSE&G rate case, <u>I/M/O the Petition of Public Service Electric and Gas Company for Approval of An Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 16 Electric and B.P.U.N.J. No. 16 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21, and N.J.S.A. 48:2-21.1 and for Other Appropriate Relief</u>, Docket Nos. ER18010029 and GR18010030, the Division of Rate Counsel sent correspondence, dated September 5, 2018 to the Honorable Gail M. Cookson, advising the judge that the present matter would "review the BGSS practices of all the natural gas utilities."

[5] RESA refers to the gas distribution companies as "GDCs" throughout the Amended Petition and this reply, however, NJUA refers to them as "LDCs" in their Comment Letter.

arrangements will yield enhancements in market design which will justify undertaking the RESA requested proceeding.

In other functioning competitive markets, certain gas utilities contract for capacity in the event a TPS is unable to meet its obligation to serve its customers or where some other scenario arises where a large group of shopping customers are transferred back to the gas utility for default supply service. A well designed capacity release program allows such capacity to be utilized, rather than sitting idle, until it is actually needed for such fail safe purpose.

The NJUA letter states that the RESA proposal would "require the LDCs to secure incremental natural gas capacity to serve the TPS customer load at current market prices and release capacity on a monthly basis to the TPSs at the weighted average cost of all the natural gas capacity." That misunderstanding of capacity release highlights the need for a proceeding on the subject. This statement suggests the GDCs are to enter into additional capacity contracts on behalf of TPSs and their customers and that while the GDC will secure that capacity at market prices, the TPSs will pay lower than market price for that capacity. However, that is simply not how capacity release works.

If we are to accept at face value the GDCs' response in the NJUA Comment Letter that no surplus capacity exists within any of the GDCs, it raises new, serious concerns about whether the necessary capacity to reliably serve New Jersey customers is appropriately aligned with the capacity that is secured by these GDCs. The NJUA response raises reliability concerns that RESA believes support the need for a proceeding to investigate the gas capacity market and whether a capacity release program could improve the functioning of New Jersey's competitive gas marketplace.

The NJUA Comment Letter also incorrectly draws a connection between the New York market's robust gas capacity release programs, and the controversial PSC staff analysis in the ongoing investigations by the New York Public Service Commission ("PSC") into commodity costs charged by retail electric and gas suppliers. The Board should not draw the erroneous conclusion that the NYPSC investigation is related to gas capacity release or the capacity release program offered by any New York utility. While the record in that case is voluminous, RESA asserts that gas capacity release programs are not at issue as part of that proceeding or investigation, and it is a spurious move on the part of NJUA to draw such a parallel.[6] RESA of course invites NJUA to review the record in that matter and show where gas capacity release is tied to the PSC's investigation of the retail markets.

RESA responds to the remaining assertions in the unverified Comment Letter as follows:

Response to Comments on Amended Petition at ¶ 9

The Comment Letter responds to RESA's assertion that gas capacity is fully subscribed by the GDCs by stating, without citation, that there are a wide variety of shippers included in the index of customers of interstate pipelines serving New Jersey. The salient point is that limited incremental capacity, beyond that which is subscribed to primarily by the GDCs (or their affiliates) and to a much lesser extent by other pipeline shippers, currently hinders New Jersey's competitive gas market. Opening an investigation would provide the Board with the opportunity to make changes that potentially could improve current capacity dynamics.

The Comment Letter also disputes RESA's statement regarding the potential for TPS customers to pay duplicative costs. TPSs must secure transportation to deliver gas to their customers, and consequently include the costs for that transportation in their charges to customers. Therefore, if any transportation costs are also incorporated into GDC distribution rates, then shopping customers are paying transportation costs, at least a portion of them, in duplicate. If there

[6] The PSC is investigating the retail markets in New York under Case Nos. 15-M-0127, 98-M-1343, and 12-M-0476.

was complete transparency into the unbundling of all utility capacity costs, stakeholders could ascertain whether or not the potential for duplicate costs is a reality. This is an issue the Board should address in order to encourage a well-functioning competitive marketplace.

Response to Comments on Amended Petition at ¶ 10 & ¶ 11

RESA notes that the load figures shared in the Comment Letter purportedly relate to switching statistics available in March. RESA has attached the Board's most recently available gas switching statistics from July 2018. (Exhibit A). The majority of volume – 77.34% of commercial and industrial ("C&I") load – is served by TPSs, with about one-fifth of C&I accounts having switched to a TPS. Less than 5% of residential load is served by TPSs with about the same percentage of residential accounts having switched. In total, only 5.67% of gas *accounts* have switched to competitive service and, while TPS's serve 48.6% of the total gas *load*, the amount of switching in the State is relatively low compared to other states. While NJUA is of the belief that a 24.52% statewide total of load switched is a large number, according to EIA New Jersey ranks 33rd among states for overall load switching to competitive suppliers, and 15 of the states that are lower don't even allow residential shopping.[7] It should be obvious to even a casual observer that something is not working in New Jersey's stagnant gas retail market, or at minimum that it is not working as well as it could. RESA believes the Board should welcome opening a docket to investigate how to further the State's goal of supporting the continued development of a competitive retail gas market.

RESA assumes that the GDCs are complying with all FERC regulations, including those regarding capacity release, and to claim credit for doing what is required of New Jersey's GDCs is an irrelevant argument. RESA does not allege that the GDCs are not in compliance with existing federal,

[7] *See* https://www.eia.gov/naturalgas/ngqs/#?year1=2013&year2=2016&company=Name.

or even state requirements. Moreover, RESA did not file a petition asking the GDCs to comply with federal regulations – RESA filed a petition asking the Board to open a proceeding and create a gas capacity release program.

TPSs may be able to secure gas capacity on *new* natural gas interstate transmission projects when they occur, however, based on the experience of RESA members the challenge is securing gas capacity on *existing* gas transmission lines as many, if not all, points are fully subscribed, or nearly so. This statement buries the lead and ignores the reality that gas capacity in New Jersey is constrained and lacks liquidity. RESA urges the Board to open a docket to investigate what steps could be taken to improve existing market dynamics and ensure gas capacity release is fully vetted as an option for TPSs to secure capacity on all existing gas transmission lines to New Jersey. Limiting TPSs ability to secure gas capacity to only new projects ensures that TPSs will not effectively grow their market share and limits TPSs' ability to serve customers in a competitive fashion.

Response to Comments on Amended Petition at ¶ 12 & ¶ 13

RESA is, emphatically, not seeking any subsidy. A well-functioning competitive gas market typically releases capacity to suppliers who then purchase capacity on behalf of their customers, usually at maximum rates on the pipeline thereby removing a financial obligation from utilities for any underutilized capacity held in order to assure reliability on their systems. Rather than utilities, and ultimately ratepayers, incurring the financial cost of the capacity, when it is released to TPSs the TPS assumes the financial obligation of that capacity, with the exception that the GDC must be able to recall that capacity to assure reliability. NJUA jumps to the conclusion that capacity would be released at a weighted-average cost of capacity, and while this approach is used by some New York utilities, it is atypical of capacity release programs elsewhere. Opening a proceeding would allow the Board to design a program which works for New Jersey gas customers and certainly one that avoids massive subsidization which the GDCs fear. A properly designed capacity release program does not have to be detrimental to BGSS customers. If that was the case, why would utility commissions across the country approve such programs? While capacity is released currently on electronic bulletin boards ("EBB"), cited by some as an avenue to obtain gas capacity, existing releases are generally short-term and inconsistent, making them of limited use for serving customers for one-year periods or longer. The current capacity releases available in New Jersey on the EBB's are no substitute for a robust capacity release program where *all* of the participants know the rules, and a long-term process remains in place for the assignment of the capacity thereby allowing suppliers to meaningfully participate.

In addition, the Comment Letter doubles down on only using *new* gas capacity transmission, not *existing* gas capacity transmission. If existing gas transmission is not fully subscribed, as the unverified Comment Letter asserts, why do the GDCs take issue with TPSs purchasing the unused capacity and the creation of a structured gas capacity release program? Why limit TPSs to new transmission only?

Response to Comments on Amended Petition at ¶ 14

It is abundantly clear from the Comment Letter that the GDCs do not want to alter the current lucrative system of no-bid contracts with the GDCs' affiliates. The Comment Letter does not attempt to justify, nor does it even acknowledge, the non-competitive nature of the gas capacity enjoyed by New Jersey's gas utilities and their affiliates. In fact, RESA notes that it is not even clear if capacity is part of the GDCs' no-bid supply contracts with their respective affiliates. In this regard it is worth noting that the largest gas utility in the state, Public Service Electric and Gas Company ("PSE&G") itself owns no gas pipeline capacity. Rather, for its gas supply, PSE&G relies on a sole source gas supply contract which it periodically awards to its affiliate on a "no-bid" arrangement. There is no explanation for why the GDCs could not better optimize costs to customers if no-bid contracts were no longer utilized.

Response to Comments on Amended Petition at ¶ 15

RESA is frankly baffled at the assertions in this portion of the Comment Letter. NJUA apparently has designed a capacity release mechanism that is unique in the industry and one that is inconsistent with the many capacity release programs that RESA members participate in elsewhere. RESA's position, for TPSs to pay for their own capacity and ensure that all participants in the market are paying their fair share of costs, is not remotely inconsistent. What is perplexing to RESA is that this position is somehow construed as a negative. If a gas capacity release program is designed appropriately, then BGSS customers won't pay increased costs, as TPSs will have access to capacity on all of the pipelines and will directly pay for the cost of that capacity to the pipeline. While it may be difficult to imagine a fair, balanced, functioning gas market with capacity release, RESA assures the Board that many other states have been able to design programs to the benefit of default and shopping customers alike.

Response to Comments on Amended Petition at ¶ 16

The comments in this section again reveal a general misunderstanding between the NJUA and how capacity release programs work elsewhere. In Georgia, for example, where utilities have exited the supply function, the local utility is the primary contractor for capacity to serve retail customers. In New Jersey, the intent of the RESA Amended Petition is not for the GDCs to become the sole procurers of all capacity contracts for all customers, both default and shopping. Rather, the goal of the RESA Amended Petition is to investigate how capacity is handled in New Jersey and to seek improvements that would allow the market to function better. Capacity release programs readily came to mind as RESA members have seen the tangible benefits from those programs in other states and believe it likely that New Jersey could likewise benefit from such a mechanism. However, RESA also recognizes each state is unique and encourages collaborative discussion, based on the facts of the New Jersey market, regarding a capacity release mechanism in order to develop the appropriate design for this State. After assessing actual New Jersey data, it may be that an appropriate New Jersey program design would be more limited than other states or perhaps unique in some fashion. However, based on current operational realities in New Jersey and on supplier experience elsewhere, RESA strongly believes the potential for improvements exists here and that it would be in the best interest of all customers to analyze and explore that opportunity. The NJUA comments raise concerns that suggest the Board should investigate the GDCs gas capacity obligations, as release of capacity (for which TPSs would compensate pipelines) should not result in driving costs up for default customers. That is certainly not the intent of RESA's Amended Petition, nor is it an outcome of well-designed gas capacity release programs.

RESA refers to the attached Certification of Orlando ("Randy") Magnani, which further explains the benefits of a capacity release program and outlines questions raised by the Comment Letter which should be addressed in a stakeholder proceeding.

Response to Comments on Amended Petition at ¶ 17

Under EDECA, the State adopted a policy of electric and gas competition specifically to increase customer choice and reduce costs for consumers. It is therefore perplexing that the NJUA Comment Letter asserts that a competitive market with more market participation will drive up costs for customers. The released capacity of the GDCs will reduce costs and ensure that the capacity follows the customer – a construct not unlike the electric market (wherein TPSs are responsible for purchasing capacity at an auction).

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Response to Comments on Amended Petition at ¶ 18

RESA reiterates that a gas capacity release program, where transportation and storage assets follow the customer, is a fair and efficient mechanism for all customers in New Jersey. It's a model that is used quite successfully in other jurisdictions. RESA understands that the GDCs utilize gas storage to manage their BGSS load. Herein lies the need for the requested proceeding, as the Board and RESA members do not know how much storage or capacity the GDCs purchase, how it is utilized and, without the requested proceeding, are unable to ensure that these costs are equitably managed in the most efficient manner.

Therefore, RESA urges the Board to dismiss the recommendations in the NJUA Comment Letter and reopen the 2003 BGSS Order to initiate a formal proceeding evaluate and create a workable mechanism for the use of gas capacity on behalf of TPS customers.

Respectfully submitted,

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Date: September 13, 2018

cc: Attached service list

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EXHIBIT A

NJ NATURAL GAS SWITCHING STATISTICS --JULY 2018							
Utility		***Residential***		***C&I Total***		***Total***	
		Accounts	**Load***	**Accounts**	**Load***	**Accounts**	**Load***
ETG	Switching	3,232	4,690	4,495	1,302,474	7,727	1,307,164
	GEA Participants	0	0	0	0	0	0
	Eligible	268,007	367,696	22,908	1,427,071	290,915	1,794,768
	% Switching	1.21%	1.28%	19.62%	91.27%	2.66%	72.83%
NJNG	Switching	26,957	61,584	9,740	561,606	36,697	623,190
	GEA Participants	0	0	0	0	0	0
	Eligible	500,404	1,092,774	37,498	851,466	537,902	1,944,240
	% Switching	5.39%	5.64%	25.97%	65.96%	6.82%	32.05%
PSE&G	Switching	73,177	138,308	31,555	2,279,291	104,732	2,417,599
	GEA Participants	0	0	0	0	0	0
	Eligible	1,686,244	3,085,638	165,230	3,272,841	1,851,474	6,358,479
	% Switching	4.34%	4.48%	19.10%	69.64%	5.66%	38.02%
SJG	Switching	18,195	24,103	6,671	1,830,773	24,866	1,854,876
	GEA Participants	0	0	0	0	0.00%	0.00%
	Eligible	361,331	493,780	25,675	2,172,784	387,006	2,666,564
	% Switching	5.04%	4.88%	25.98%	84.26%	6.43%	69.56%
STATE TOTAL	Switching	121,561	228,685	52,461	5,974,144	174,022	6,202,829
	GEA Participants	0	0	0	0	0.00%	0.00%
	Eligible	**2,815,986**	**5,039,889**	**251,311**	**7,724,162**	**3,067,297**	**12,764,051**
	% Switching	**4.32%**	**4.54%**	**20.87%**	**77.34%**	**5.67%**	**48.60%**

*In Dtherms

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs	)))))))	**CERTIFICATION** Docket No. GO17121241

I, Orlando (Randy) Magnani, hereby certify as follows:

1. I am submitting this Certification on behalf of the Retail Energy Supply Association ("RESA") to address why the New Jersey the Board of Public Utilities ("BPU") should establish a proceeding to determine whether it should approve a capacity release program for the New Jersey gas distribution companies ("GDCs").

2. I have over 48 years of experience in the natural gas industry with a large gas distribution company ("GDC"), a utility marketing affiliate, a consulting firm and a large marketing subsidiary of an oil and gas producer. On September 30, 2013, I retired from Hess Corporation and formed a consulting practice, Rand Energy Consultants, LLC. My resume is attached.

3. I have reviewed RESA's Amended Verified Petition to Reopen the Provision of Basic Gas Supply Service, dated March 5, 2018, as well as NJUA's "Comment Letter" offered on behalf of the GDCs dated on July 12, 2018.

4. New Jersey should implement a capacity release program because such a program has a number of advantages for all natural gas customers. Capacity release enhances reliability.

Capacity Release ensures that customers are treated fairly and are not penalized for shopping. It improves competition, which results in lower prices.

5. It's unclear how the GDCs in New Jersey meet the capacity needs of their customers. Do they acquire enough capacity to meet the needs of all their customers and then retain the extra capacity? Do they turn it over to an affiliate to trade in the wholesale market and make profits for shareholders? Do they not plan to meet the capacity needs of all their customers? These are all critical questions that the requested proceeding would address.

6. An advantage of capacity release is that all customers are treated equally, in that (in a well-designed capacity release program) they all pay the same average price for upstream capacity. The GDCs act as if there are two sets of customers on their system, GDC customers and TPS customers, but that isn't the case. All customers in the service territory are customers of the GDC; some are also customers of TPSs. The vast majority of these TPS customers were on the system when the GDC acquired their long-term capacity. The capacity was initially purchased to meet their needs but now GDCs would deprive these customers of that capacity if the customer chooses to purchase gas from a TPS. Any customer that switches to a TPS is no longer entitled to the capacity that was purchased to meet their needs.

7. The Comment Letter from NJUA presents additional questions that should be addressed in a proceeding. The letter states that there is no duplication of transportation costs to TPS customers because they don't pay for upstream transportation, they pay for balancing. That's exactly the point - RESA members do not know what is included in the balancing costs, nor is there an understanding that the current GDC practice is the most efficient way to provide the service. A capacity release program should release a full slice of the system including storage and peaking. There are examples of these programs among the GDCs in New York, Rhode Island,

Massachusetts, Pennsylvania, Ohio and other states. Only by releasing the proper assets to TPS customers, can we be certain that TPS customers pay the same average transportation costs as BGSS customers. Gas capacity, including upstream pipeline supply, storage and peaking was purchased for these customers and they should be entitled to it. They shouldn't lose that entitlement because they migrate to a TPS. The natural gas industry was built on rolled-in pricing. Customers aren't charged transportation based on what year they were added to the system and what capacity was being purchased at that time. New capacity is purchased and averaged into existing capacity, whether cheaper or more expensive. That's how the industry was built but the paradigm in New Jersey is distinct and any existing customer that wants to buy from a TPS is no longer entitled to capacity that was purchased for them and for which they paid a rolled-in price. They must now be served by capacity that may not be as reliable and will cost more. That's a powerful disincentive to migrate and can hardly be called fair competition. The Board needs to take a long hard look at this issue.

8. In RESA's Amended Verified Petition to Reopen the Provision of Basic Gas Supply Service, Exhibit C details a Proposed Capacity Assignment Plan that is similar to plans utilized in neighboring States. This plan is workable and will result in the benefits that I described above.

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

Orlando Magnani

Orlando Magnani

Dated: September 5, 2018

I/M/O the Verified Petition of the Retail Energy Supply Association to Reopen The Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., and Establish Gas Capacity Procurement Programs

BPU Docket No. GO17121241

CERTIFICATE OF SERVICE

I certify that on this 13th day of September, 2018, on behalf of the Retail Energy Supply Association ("RESA"), I caused ten (10) copies of the RESA's Reply Brief in response to the Comment Letter filed by the New Jersey Utilities Association to be served on the following individual electronically and via overnight delivery:

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I further certify that on the same date I caused one (1) copy of the above-mentioned document to be served on the following individuals electronically or via regular mail:

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