



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

DIVISION OF ENERGY

IN THE MATTER OF THE PETITION OF NEW )  
JERSEY NATURAL GAS COMPANY FOR THE )  
ANNUAL REVIEW AND REVISION OF ITS )  
SOCIETAL BENEFITS CLAUSE ("SBC") )  
FACTORS AND THE WEATHER )  
NORMALIZATION CLAUSE ("WNC") FACTOR )  
FOR THE 2004-2005 WINTER PERIOD )

ORDER ADOPTING  
FINAL STIPULATION  
ON RESERVED ISSUES  
DOCKET NO. GR05100846

IN THE MATTER OF THE PETITION OF )  
NEW JERSEY NATURAL GAS COMPANY )  
FOR THE ANNUAL REVIEW AND REVISION )  
OF ITS SOCIETAL BENEFITS CLAUSE )  
("SBC") FACTORS FOR CALENDAR YEAR )  
2007 )

DOCKET NO. GR06100746

IN THE MATTER OF THE PETITION OF )  
NEW JERSEY NATURAL GAS COMPANY )  
FOR THE ANNUAL REVIEW AND REVISION )  
OF ITS WEATHER NORMALIZATION CLAUSE )  
("WNC") FACTOR FOR THE 2005-2006 WINTER )  
PERIOD )

DOCKET NO. GR06100747

(SERVICE LIST ATTACHED)

**BY THE BOARD**

Background

A Board Order dated October 5, 2004, in New Jersey Natural Gas Company's ("NJNG" or "Company") then pending Societal Benefits Clause ("SBC") filing in Docket No. GR03060425, initially reserved for future resolution, and Board consideration, the mass tort, insurance and other MGP-related issues that are resolved by the September 19, 2007 Final Stipulation

Concerning Previously Reserved Mass Tort, Insurance and Other Manufactured Gas Plant (“MGP”)-Related Issues (“Litigation Stipulation”) which is addressed by this Board Order.

On September 30, 2005, in Docket No. GR05100846, New Jersey Natural Gas Company filed a petition with the Board for the approval of proposed changes in its SBC factors (“2005 SBC filing”). The Company then made a filing with the Board seeking approval of proposed SBC factors for the calendar year 2007 (“the 2006 SBC filing”) on October 25, 2006. Additionally, on November 10, 2006, the Company made its annual Weather Normalization Clause (“WNC”) filing in Docket No. GR06100747 for the 2005-2006 winter period (“the 2005-2006 WNC filing”). Subsequently, on January 24, 2007, a Letter of Amendment (“Amended Filing”) to NJNG’s original filings in Docket Nos. GR06100746 and GR06100747, the 2006 SBC filings, was filed with the Board.

On March 9, 2007, in NJNG’s currently pending 2005 SBC filing, Docket No. GR05100846, the parties to the proceeding executed a Stipulation (“March 9, 2007 Stipulation”). Subsequently, on March 12, 2007, in NJNG’s currently pending 2006 SBC and WNC filings, Docket Nos. GR06100746 and GR06100747, these same parties executed a stipulation (“March 12, 2007 Stipulation”). The March 9, 2007 Stipulation and the March 12, 2007 Stipulation did not address the previously reserved mass tort, insurance and other MGP-related issues that are resolved by the attached Litigation Stipulation. At its July 27, 2007 agenda meeting the Board rejected both the March 9 and March 12, 2007 Stipulations.

NJNG, Board Staff and Rate Counsel renegotiated the terms of the previously rejected March 9, 2007 Stipulation and the March 12, 2007 Stipulation by entering into, and filing, a revised agreement to establish new SBC and WNC rates for the Company (“the SBC/WNC Stipulation”). The SBC/WNC Stipulation will be considered separately and is not part of this Order.

The Parties also entered into the attached Litigation Stipulation, also known as the Final Stipulation Concerning Previously-Reserved Mass Tort, Insurance, and Other MGP-Related Issues, dated September 19, 2007, which will not impact the Company’s rates at present but will impact NJNG’s future RAC rates.

In September 2000, the Company purchased a 20-year cost containment insurance policy, and 20-year Environmental Response Compensation and Liability Insurance Policy (the “Kemper Policies”) from Kemper Indemnity Insurance Company (“Kemper”) to insure NJNG against claims, and in connection with costs incurred, at the Company’s former Manufactured Gas Plant sites located in Long Branch and Toms River, New Jersey.

In July 2003, a number of civil complaints were filed against the Company in connection with the operation and remediation of the Company’s former manufactured gas plant site located in Long Branch, New Jersey. These complaints were designated collectively as the Long Branch Mass Tort Litigation.<sup>1</sup>

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<sup>1</sup>*In re Long Branch Manufactured Gas Plant Litigation, Superior Court of New Jersey, Law Division, Bergen County, Mass Tort Code No. 268, Docket No. BER-L-5847-04 MT.*

On October 5, 2004, in Docket No. GR03060425 *et al*, the Board allowed any legal costs associated with the Long Branch Mass Tort Litigation and related issues to be reserved by the parties to the case, the Company, the Division of the Ratepayer Advocate (now known as the Division of Rate Counsel) and Board Staff ("the Parties") for future consideration.

In October 2004, the Company filed suit against Kemper seeking a declaration from the court, as well as damages, arising from Kemper's breach of its contractual obligations under the Kemper Policies to defend and indemnify the Company against applicable claims, including claims asserted in the Long Branch Mass Tort Litigation.

In November 2005, the Long Branch Mass Tort Litigation was settled.<sup>2</sup>

On April 13, 2006, in Docket No. GR04121565, the Board allowed the Parties to continue to reserve all legal costs and litigation expenses associated with the Long Branch Mass Tort Litigation for future consideration. Additionally, the Board directed that all such expenditures be deferred for future recovery in a separate RAC sub-account.

On January 24, 2007, the Company entered into a settlement agreement with Kemper pursuant to which the Company received a settlement payment of \$12.8 million (the "Kemper Insurance Settlement").<sup>3</sup>

Public hearings were conducted in Freehold, New Jersey on December 20, 2006 and February 22, 2007. No members of the public appeared.

#### LITIGATION STIPULATION PROVISIONS

The key provisions of the Litigation Final Stipulation are as follows:

- (1) The Company would reduce the deferred balance associated with its remediation expenditures by \$4 million, which reduction would be reflected and included in the Company's next annual RAC filing (the "2007 RAC Filing"). The Parties have agreed that \$4 million is the allocable portion of the costs NJNG incurred to litigate and settle the Long Branch Mass Tort Litigation that is reasonably reflective of and attributable to personal injury claims and, therefore, is not recoverable under the Company's RAC clause.<sup>4</sup>
- (2) The costs associated with litigating and settling the Long Branch Mass Tort Litigation, which

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<sup>2</sup>A number of *Pro Se* cases were also filed during and after the Long Branch Mass Tort Litigation (the *Pro Se* Litigation). The claims asserted in these cases mirror those made in the Long Branch Mass Tort Litigation.

<sup>3</sup>In addition, in July 2007, the Company filed a civil suit against the insurance broker that was involved in securing the Kemper Policies for NJNG (New Jersey Natural Gas Company v. Willis Group Holdings, Ltd., et al., United States District Court, District of New Jersey, Civil Action No. 3:07-CV-3108, in which suit the Company is seeking compensatory and punitive damages based on claims relating to the broker's role in obtaining and negotiating the Kemper Policies, and claims alleging conflicts of interest and negligence (the "NJNG-Willis Complaint").

<sup>4</sup>The Company's RAC clause excludes personal injury claims.

are currently recorded on NJNG's balance sheet in a separate sub-account within the RAC deferred account, in accordance with the Board Order in Docket No. GR04121565, cited above, would be included for recovery in the 2007 RAC Filing (net of the reduction in the Company's deferred balance associated with its remediation expenditures, indicated in Provision 1) and combined with the Company's other remediation expenditures for ratemaking purposes as part of the 2007 RAC Filing. The *Pro Se* litigation, referenced in Footnote 2, has been resolved, therefore requiring no further adjustment to the Company's RAC process.

- (3) Upon Board approval of the attached Litigation Stipulation, the Company would be permitted to eliminate the separate sub-account established in Docket No. GR04121565 from its balance sheet.
- (4) The litigation costs associated with the Kemper litigation would be included for rate recovery in NJNG's 2007 RAC filing. The settlement proceeds of \$12.8 million received in January 2007 as a result of, and in connection with, the Kemper Insurance Settlement have been credited to the Company's deferred RAC balance.
- (5) If, and to the extent, the NJNG-Willis Complaint referenced in Footnote 3, is resolved either through a judgment in NJNG's favor and subsequent payment of damages to NJNG, or by way of a payment to NJNG in settlement of its asserted claims, the Company would be entitled to retain the first \$500,000 of any such damages payment or settlement proceeds, net of attorney's fees and litigation expenses, and would thereafter reflect any remaining payment amount or net proceeds as a credit to the Company's deferred RAC balance for the RAC Year in which such payments or proceeds are received.

#### DISCUSSION AND FINDINGS

The Board, having reviewed the Litigation Stipulation in this proceeding, HEREBY FINDS the Stipulation to be reasonable, in the public interest, and in accordance with the law. Accordingly, the Board HEREBY ADOPTS the attached Litigation Stipulation in its entirety and HEREBY INCORPORATES the terms and conditions as though set forth herein.

The Company is HEREBY DIRECTED to reduce its deferred balance associated with the Company's remediation expenditures by \$4 million, which reduction shall be reflected and included in the Company's next annual RAC filing to be made with the Board.

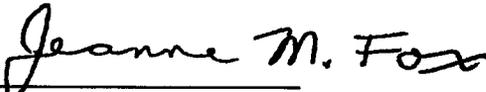
The Company is HEREBY DIRECTED to eliminate the separate sub-account established in Docket No. GR04121565 on April 13, 2006

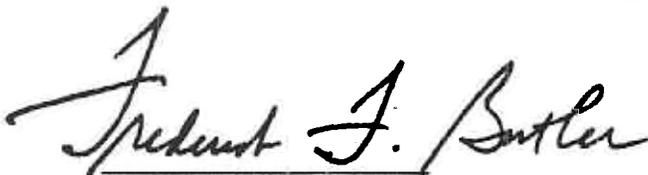
If, and to the extent, the NJNG-Willis Complaint is resolved, the Company shall reflect any amount over \$500,000 of any associated damages payment or settlement proceeds, net of attorney's fees and litigation expenses, as a credit to the Company's deferred RAC balance for the RAC Year in which such payments or proceeds are received.

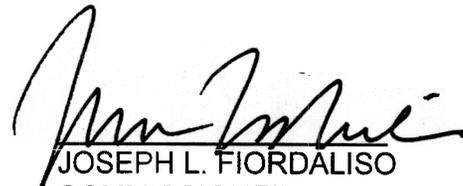
Petitioner's SBC costs shall remain subject to ongoing audit by the Board. This Decision and Order shall not preclude, nor prohibit, the Board from taking any actions determined to be appropriate as a result of any such audit. Nothing herein shall limit the Board from taking any such actions.

DATED: 10/3/07

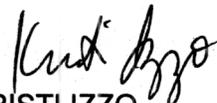
BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

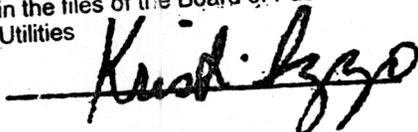
  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



In the Matter of the Petition of New Jersey Natural Gas  
Company for the Annual Review and Revision of its  
Societal Benefits Clause Factors and  
Weather Normalization Clause Factors  
Docket No. GR05100846

In the Matter of the Petition of New Jersey Natural Gas  
Company for the Annual Review and Revision of its  
Societal Benefits Clause Factors  
Docket No. GR06100746

In the Matter of the Petition of New Jersey Natural Gas  
Company for the Annual Review and Revision of its  
Weather Normalization Clause Factors  
Docket No. GR06100747

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**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

----- )  
IN THE MATTER OF THE PETITION OF )  
NEW JERSEY NATURAL GAS COMPANY )  
FOR THE ANNUAL REVIEW AND ) **BPU DOCKET NO. GR05100846**  
REVISION OF ITS SOCIETAL BENEFITS )  
CLAUSE ("SBC") FACTORS AND THE ) **PARTIAL STIPULATION**  
WEATHER NORMALIZATION CLAUSE )  
(WNC) FACTOR FOR THE 2004-2005 )  
WINTER PERIOD )

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IN THE MATTER OF THE PETITION OF )  
NEW JERSEY NATURAL GAS COMPANY ) **BPU DOCKET NO. GR06100746**  
FOR THE ANNUAL REVIEW AND )  
REVISION OF SOCIETAL BENEFITS ) **PARTIAL STIPULATION**  
CLAUSE (SBC) FACTORS FOR )  
CALENDAR YEAR 2007 )

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IN THE MATTER OF THE PETITION OF )  
NEW JERSEY NATURAL GAS COMPANY ) **BPU DOCKET NO. GR06100747**  
FOR THE ANNUAL REVIEW AND )  
REVISION OF THE WEATHER )  
NORMALIZATION CLAUSE (WNC) ) **PARTIAL STIPULATION**  
FACTOR FOR THE 2005-2006 )  
WINTER PERIOD )

**FINAL STIPULATION CONCERNING PREVIOUSLY-RESERVED MASS TORT,  
INSURANCE, AND OTHER MGP-RELATED ISSUES**

**APPEARANCES:**

**Tracey Thayer, Esq.**, New Jersey Natural Gas Company, and **Frederick W. Peters**,  
Law Offices of Frederick W. Peters, for the Petitioner, New Jersey Natural Gas Company

**Felicia Thomas-Friel**, Deputy Public Advocate, **Judith B. Appel, Esq.**, Assistant  
Deputy Public Advocate, **Henry M. Ogden, Esq.**, Assistant Deputy Public Advocate,  
Department of the Public Advocate, Division of Rate Counsel

**Babette Tenzer**, Deputy Attorney General, for the Staff of the New Jersey Board of  
Public Utilities (Anne Milgram, Attorney General of New Jersey)

## **TO: THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

### **Procedural Background**

This Final Stipulation Concerning Previously-Reserved Mass Tort, Insurance and Other MGP-Related Issues (“Final Stipulation on Reserved Issues”) memorializes an agreement and resolution of various remediation cost recovery issues that procedurally are part of New Jersey Natural Gas Company’s (“NJNG” or the “Company”) most recently filed Societal Benefits Clause (“SBC”) proceeding for calendar year 2007 in Docket Nos. GR06100746 and GR06100747. However, the issues addressed in and resolved by this Final Stipulation on Reserved Issues first arose in the Company’s SBC filing for calendar year 2003 and were reserved by the Parties for future resolution and deferred for consideration by the Board in its October 5, 2004 “Order Adopting Initial Decision and Stipulation” in Docket No. GR03060425 *et al.* The same issues subsequently were reserved for future resolution as part of stipulations filed in the Company’s next several SBC proceedings, including the Stipulation dated March 9, 2007 in Docket No. GR05100846, which was rejected by the Board on July 27, 2007, and in the Partial Stipulation in Docket Nos. GR06100746 and GR06100747 dated March 12, 2007 (the “Partial Stipulation”), which was also rejected by the Board.

2. The Partial Stipulation in Docket Nos. GR06100746 and GR06100747 was considered by the Board, but not approved, at the Board’s public meeting on July 27, 2007.<sup>1</sup> As

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<sup>1</sup> After publication of notice, a public hearing on the Company’s petitions in Docket Nos. GR06100746 and GR06100747 was held on December 20, 2006, in Freehold Borough, New Jersey. No members of the public appeared. On January 25, 2007, NJNG submitted an amended filing with the Board, modifying slightly the original requests such that the Company sought Board approval of a higher level of increase to the overall SBC and WNC rate based on an effective date later than that originally proposed. After publication of a revised notice, a second public hearing for this proceeding in light of the Amended Filing was held on February 22, 2007, in Freehold Borough, New Jersey. No members of the public appeared.

a result, the Company now intends to propose and establish new SBC factors through the negotiation and filing of a revised, separate and final stipulation in Docket Nos. GR06100746 and GR06100747. However, the instant document only sets forth the final resolution of Manufactured Gas Plant (“MGP”)-related issues specifically carried over from prior years. Another document finally resolving the remaining issues in Docket Nos. GR06100746 and GR0610074 is still pending.

3. Given the historical origin and genesis of the remediation cost recovery issues being resolved herein, and the procedural connection and relationship between the Company’s prior SBC proceedings and its most recent SBC proceeding, this Final Stipulation on Reserved Issues shall be specifically incorporated by reference in and attached to any revised, separate or final stipulation filed in resolution of the remaining SBC related issues in Docket Nos. GR06100746 and GR06100747.

4. The Reserved issues are as follows:

(a) Long Branch Mass Tort Litigation. The Long Branch Mass Tort Litigation refers to a number of civil complaints filed against the Company in July 2003 in connection with the operation and remediation of the Company’s former manufactured gas plant site in Long Branch, New Jersey.<sup>2</sup> The Long Branch Mass Tort Litigation was settled in November 2005<sup>3</sup>.

(b) The Kemper Insurance Settlement. In September 2000, the Company purchased a 20-year cost containment insurance policy, and a 20-year Environmental Response Compensation and Liability Insurance Policy (the “Kemper Policies”) from Kemper Indemnity

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<sup>2</sup> *In re Long Branch Manufactured Gas Plant Litigation*, Superior Court of New Jersey, Law Division, Bergen County, Mass Tort Code No. 268, Docket No. BER-L-5847-04 MT.

<sup>3</sup> A number of *Pro Se* cases were also filed during and after the Long Branch Mass Tort Litigation (the *Pro Se* Litigation). The claims asserted in these cases mirror those made in the Long Branch Mass Tort Litigation.

Insurance Company (“Kemper”) to insure NJNG against claims, and in connection with costs incurred, at the Company’s former MGP sites located in Long Branch and Toms River, New Jersey. In October 2004, the Company filed suit against Kemper seeking a declaration from the court, as well as damages, arising from Kemper’s breach of its contractual obligations under the Kemper Policies to defend and indemnify the Company against applicable claims, including claims asserted in the Long Branch Mass Tort Litigation. On January 24, 2007, the Company entered into a settlement agreement with Kemper pursuant to which the Company received a settlement payment of \$12.8 million (the “Kemper Insurance Settlement”).<sup>4</sup>

5. The Company’s Remediation Adjustment (“RA”) clause provides for the recovery of costs (net of insurance and other recoveries) incurred by NJNG for the clean-up of former MGP sites owned by NJNG, including costs relating to investigation, testing, land acquisition, if appropriate, remediation and/or litigation costs/expenses or other liabilities *excluding personal injury claims* and specifically relating to former MGP disposal sites, or sites to which material may have migrated, as a result of the earlier operation or decommissioning of gas manufacturing facilities.

#### **Final Stipulation on Reserved Issues**

6. Representatives of NJNG, the Staff of the Board (“Staff”) and the Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”) (collectively, the “Parties”), the only parties to these proceedings, have conducted extensive discovery and held numerous

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<sup>4</sup> In addition, in July 2007, the Company filed a civil suit against the insurance broker that was involved in securing the Kemper Policies for NJNG (*New Jersey Natural Gas Company v. Willis Group Holdings, Ltd., et al.*, United States District Court, District of New Jersey, Civil Action No. 3:07-CV-3108, in which suit the Company is seeking compensatory and punitive damages based on claims relating to the broker’s role in obtaining and negotiating the Kemper Policies, and claims alleging conflicts of interest and negligence (the “*NJNG-Willis Complaint*”).

meetings to discuss the Reserved Issues in this proceeding. As a result of the Parties' examination and discussion of the Reserved Issues, in recognition that the Company's RA clause excludes costs relating to personal injury claims, as noted in Paragraph 5 herein, and based upon and subject to the terms and conditions set forth herein, the Parties stipulate and agree as follows:

7. Effective as of the date of this Final Stipulation on Reserved Issues, the Company shall reduce the deferred balance associated with the Company's remediation expenditures by \$4 million, which reduction shall be reflected and included in the annual RA filing the Company is scheduled to make on or before September 30, 2007 (the "2007 RA Filing"). The Parties have agreed that \$4 million is the allocable portion of the costs NJNG incurred to litigate and settle the Long Branch Mass Tort Litigation that is reasonably reflective of and attributable to personal injury claims and, therefore, is not recoverable under the Company's RA clause.

8. The costs associated with litigating and settling the Long Branch Mass Tort Litigation, which are currently recorded on NJNG's balance sheet in a separate subaccount within the RA deferred account, in accordance with the Stipulation in Docket No. GR04121565, shall be included for recovery in the 2007 RA Filing (net of the reduction set forth in Paragraph 7) and combined with the Company's other remediation expenditures for ratemaking purposes as part of the 2007 RA Filing. Upon Board approval of this Stipulation, the Company shall be permitted to eliminate the separate subaccount established in Docket No. GR04121565 from its balance sheet. The settlement proceeds of \$12.8 million received in January 2007 as a result of and in connection with the Kemper Insurance Settlement have been credited to the RA deferred balance. The litigation costs associated with the Kemper litigation shall be included for recovery in the 2007 RA filing.

9. The *Pro Se* litigation, referenced in Paragraph 3(a), footnote 2, has been favorably resolved through dismissals of all pending claims, thus requiring no further adjustment to the Company's RA process.

10. If, and to the extent, the *NJNG-Willis Complaint* referenced in Paragraph 3(b), footnote 3, is resolved either through a judgment in NJNG's favor and subsequent payment of damages to NJNG, or by way of a payment to NJNG in settlement of its asserted claims, the Company shall be entitled to retain the first \$500,000 of any such damages payment or settlement proceeds, net of attorney's fees and litigation expenses, and shall thereafter reflect any remaining payment amount or net proceeds as a credit to the Company's deferred RA balance for the RA Year in which such payments or proceeds are received.

1 Subject to the foregoing, and upon Board approval of this Final Stipulation on Reserved Issues, all issues relating to, raised by or associated with the Company's litigating and settling the Long Branch Mass Tort Litigation, all issues relating to the *Pro Se* Litigation, and all issues relating to the Kemper Insurance Settlement, have been examined and shall be deemed fully resolved.

12. This Final Stipulation on Reserved Issues represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Final Stipulation on Reserved Issues is not accepted and approved in its entirety by the Board, any Party aggrieved thereby shall not be bound to proceed with this Final Stipulation on Reserved Issues and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Final Stipulation on Reserved Issues is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to

all issues addressed in this Final Stipulation on Reserved Issues as though this Final Stipulation on Reserved Issues had not been signed.

13. It is the intent of the Parties that the provisions hereof be approved by the Board as being in the public interest. The Parties further agree that they consider the Final Stipulation on Reserved Issues to be binding on them for all purposes herein.

14. It is specifically understood and agreed that this Final Stipulation on Reserved Issues represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, neither NJNG, Board Staff, nor Rate Counsel shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein.

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WHEREFORE, the Parties hereto do respectfully submit this Final Stipulation on Reserved issues and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

**NEW JERSEY NATURAL GAS  
 PETITIONER**

By:   
**TRACEY THAYER, ESQ.**  
 New Jersey Natural Gas Company

RONALD K. CHEN  
 PUBLIC ADVOCATE OF NEW JERSEY  
 DEPARTMENT OF THE PUBLIC ADVOCATE  
 DIVISION OF RATE COUNSEL  
 KIMBERLY HOLMES, ACTING DIRECTOR

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 DEPUTY PUBLIC ADVOCATE  
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**STAFF OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES  
 ANNE MILGRAM, ATTORNEY GENERAL OF NEW JERSEY**

By:   
**BABETTE TENZER,**  
 DEPUTY ATTORNEY GENERAL

Date: September 19, 2007