



Agenda Date: 1/27/16

Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF THE PETITION OF NEW JERSEY)	ORDER DENYING MOTIONS
NATURAL GAS COMPANY FOR APPROVAL AND)	FOR RECONSIDERATION
AUTHORIZATION TO CONSTRUCT AND OPERATE)	AND CONSOLIDATION
THE SOUTHERN RELIABILITY LINK PURSUANT TO)	
<u>N.J.A.C. 14:7-1.4</u>)	DOCKET NO. GE15040402

Parties of Record:

John G. Valeri Jr., Esq., Chiesa, Shahinian & Giantomasi, P.C., on behalf of New Jersey Natural Gas Company

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND AND PROCEDURAL HISTORY:

On April 2, 2015, as amended on June 5, 2015, New Jersey Natural Gas Company ("Petitioner or "NJNG"), a New Jersey public utility engaged in the business of purchasing, distributing, transporting, and selling natural gas to approximately five-hundred and ten thousand (510,000) customers within its service areas in Monmouth and Ocean Counties, and parts of Morris, Middlesex and Burlington Counties, filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.A.C. 14:7-1.4 ("Pipeline Safety Proceeding"). Petitioner seeks authorization and approval from the Board to construct and operate approximately thirty (30) miles of thirty (30) inch natural gas transmission pipeline ("Pipeline" or "Project") with an alignment that runs through the Township of Chesterfield ("Chesterfield") and Township of North Hanover ("North Hanover") in Burlington County, Township of Upper Freehold ("Upper Freehold") in Monmouth County, and Township of Plumsted ("Plumsted"), Township of Jackson ("Jackson") and Township of Manchester ("Manchester") in Ocean County. NJNG anticipates initiating construction of the Pipeline by the third quarter of 2016 and completing construction in 2017. The Pipeline will be designed for the use of in-line inspection equipment to assess the pipe's integrity and will be certified to a maximum allowable operating pressure ("MAOP") of seven-hundred and twenty-two (722) pounds per square inch gauge ("psig").

The Company simultaneously filed a second petition with the Board pursuant to N.J.S.A. 40:55D-19 of the New Jersey Municipal Land Use Law ("MLUL") and N.J.S.A. 48:9-25.4. I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4, Docket No. GO15040403 ("MLUL Proceeding"). The Board retained that matter for hearing and designated Commissioner Dianne Solomon as the Presiding Officer.

Pursuant to N.J.A.C. 14:7-1.4, Board approval is required prior to the construction or operation of a natural gas Pipeline that is intended to be operated in excess of two-hundred and fifty (250) psig and is located within 100 feet of any building intended for human occupancy, and further requires that the Pipeline satisfy the requirements of 49 C.F.R. 192 and N.J.A.C. 14:7 et seq. The proposed Pipeline alignment includes one hundred forty-four (144) structures intended for human occupancy within one hundred (100) feet of the Pipeline, of which one hundred thirty-two (132) are residential and twelve (12) are commercial. The closest buildings include two (2) residential structures, both of which will be thirty (30) feet from the proposed 30-inch Pipeline. Petitioner has stated that the Project is deemed necessary to provide adequate supply and reliability to the southern portion of its service territory in Ocean, Burlington and Monmouth Counties by creating a redundant major feed.

An open house was held by NJNG on June 11, 2015 at the Upper Elementary School in North Hanover, for any parties or other members of the public to learn about the Project and review proposed routing. Representatives of the affected communities and parties herein, among others, attended the NJNG open house, such as Ocean County, Burlington County, Plumsted Township, North Hanover, Manchester, Chesterfield, and the Pinelands Preservation Alliance, as well as a representative of the Joint Base. Thereafter, on July 28, 2015, two (2) public hearings were held in Manchester, New Jersey. A third public hearing was held on August 26, 2015 in Mount Laurel, New Jersey. Commissioner Dianne Solomon presided over the hearings.¹ Board Staff, Rate Counsel, and counsel for Petitioner made comments at the hearings. The hearings were well attended by the Public, who expressed comments both for and against Petition. In addition, the Board received over 1000 written comments about this Petition.

In addition to members of the public, movants Burlington County and Chesterfield participated in the hearings. Michael Hlubik, Richard Locascio, and Alex Robotin, members of the Chesterfield Township Committee, spoke in opposition to the Project at the public hearings. Councilman Robotin stated that Chesterfield objects to the route proposed in the petition because it runs through the center of the Township. He stated that all of Chesterfield's emergency responders are located on Route 528 and the Project is going to pose a safety hazard because it will run underneath some resident's kitchen windows. Chesterfield proposed that the pipeline run through an alternate route through farmland and along route 68 that already includes electric lines.

Councilman Hlubik presented a petition that was signed by residents of Chesterfield and advocated for an alternative route. He stated that the alternative route would consist of the Pipeline traversing County Route 68. He stated that the alternate route was supported by the affected Counties and municipalities, had fewer structures and would provide additional access in case of an emergency. Although the alternate route runs through farmland, he indicated that the route has existing electric lines. He requested on behalf of Chesterfield that the Pipeline be constructed along this safer route, which would through farmland and Route 68.

Councilman Locascio stated that there is a more reasonable, safer route that would create jobs and serve the residents of Ocean and Monmouth Counties, yet it would not compromise the

¹ All public hearings in this matter were held jointly with public hearings in the MLUL Proceeding.

safety of the residents that live in Chesterfield, North Hanover and the other affected municipalities. Councilman Locascio also expressed concern that Chesterfield's police department, fire department, ambulance corps and public works are all located on County Route 528. He further expressed concern with the ability of first responders to respond timely to daily emergency situations if County Route 528 is under construction during the installation of the Project.

The Mayor of Chesterfield, Jeremy Liedtka, further expressed concerns about the safety and quality of life of the residents along the proposed route compared to an alternate route. Mayor Liedtka also expressed concerns with regard to the economic impact on local businesses during construction of the Pipeline.

Joseph Brickley, Burlington County Engineer, made a presentation stating that the Pipeline would create significant impact on County roads, cause safety concerns, and impact traffic safety during the Pipeline's construction. Mr. Brickley recommended that the Company implement an alternate route for the Pipeline.

On June 29, 2015 and June 30, 2015, The Burlington County Board of Chosen Freeholders ("Burlington County"), North Hanover and Chesterfield, (collectively "Government Entities") filed motions to intervene in the MLUL Proceeding. Plumsted filed a motion to participate, and the PPA filed a motion to intervene or, in the alternative, to participate in the MLUL Proceeding. By Order dated July 21, 2015, Commissioner Solomon granted the motions to intervene or participate that were filed by Burlington County, North Hanover, Chesterfield and Plumsted, and granted PPA participant status in the MLUL Proceeding. I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4, Docket No. GO15040403 (Commissioner Order dated July 21, 2015).

On June 29, 2015 and June 30, 2015, motions to intervene or participate were also filed by the Government Entities in this Pipeline Safety Proceeding. Plumsted filed a motion to participate, and the PPA filed a motion to intervene or, in the alternative, participate. NJNG opposed the motions to intervene or participate on the grounds that Pipeline Safety Proceedings filed pursuant to N.J.A.C. 14:7-1.4 are deemed uncontested by the Board.

By Order dated August 19, 2015, the Board denied all motions to intervene or participate and determined this matter to be an "uncontested" case and, as a result, the Government Entities were not entitled to intervene. The Board reasoned that the Government Entities could not prevail with their motions to intervene since they did not have a statutory or constitutional right to a hearing in a Pipeline Safety Proceeding, and that this statutory or constitutional right to a hearing is required pursuant to the definition of a contested case in N.J.A.C. 1:1-21. The Board also stated that the Government Entities would have sufficient opportunity to raise their concerns as interveners and participants in the MLUL Proceeding and during the public hearings in the Pipeline Safety Proceeding.

A technical conference was held by NJNG on September 2, 2015, at its offices in Wall, New Jersey. Thereafter, on September 3, 2015, Rate Counsel filed a Motion for Reconsideration of the August 19 Order and for Consolidation of this matter and the MLUL Proceeding. On September 3, 2015, Burlington County filed correspondence with the Board indicating that it joined in Rate Counsel's Motion to Reconsider and Consolidate. On September 14, 2015, Chesterfield filed a Cross Motion for Reconsideration and Consolidation.

In its Motion for Reconsideration, Rate Counsel sought clarification whether the Board's determination that this matter is "uncontested" would prevent Rate Counsel from performing its statutory mandate as a party in such matters. Additionally, Rate Counsel sought to clarify if it would be able to obtain appropriate due process before the Board to resolve any outstanding factual or legal issues.

Subsequent to discovery and substantive discussions of the issues, on December 29, 2015, NJNG and Rate Counsel executed a stipulation of settlement ("Stipulation"). In light of the execution of the Stipulation, by correspondence dated December 30, 2015, Rate Counsel advised the Board that it was withdrawing its Motion for Reconsideration and Consolidation. The Motion for Reconsideration and Consolidation filed by Burlington County and Cross Motion for Reconsideration and Consolidation filed by Chesterfield, however, remain pending for resolution by the Board.

PENDING MOTIONS:

Burlington County

The County adopted the arguments stated by Rate Counsel² and requested the Board grant the motion for Reconsideration and Consolidation and enter an Order granting Burlington County's motion to intervene.

In its Motion, Rate Counsel sought reconsideration of the Board's Order finding that the Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7 is uncontested. Rate Counsel argued that to the exchange of discovery demonstrates a factual issue as to whether the company is in compliance with the federal regulations or whether the company has minimized the number of habitable dwellings within 100 feet of the Pipeline. Rate Counsel also asked that the Pipeline Safety and MLUL Proceedings be consolidated and argued that the separation of the two cases is inefficient and leads to confusion regarding which issues are to be decided in each case and what discovery may be used in each case. Rate Counsel additionally argued that the Board's determination that the Government Entities were not entitled to intervention was based on a misreading of legislative history.

To support its argument for consolidation, Rate Counsel argued that NJNG's two (2) petitions concern the same pipeline and same route, are proceeding simultaneously before the Board, and it creates confusion and unnecessary additional procedures to have them proceed separately. Rate Counsel argued that the procedural process in these matters is unusual. Rate Counsel asserted that to avoid confusion about which issues are to be addressed in which proceeding and in the interest of promoting judicial economy, the matters should be consolidated.

Chesterfield:

Chesterfield seeks reconsideration of the August 19, 2015 Board Order and consolidation of the MLUL and Pipeline Safety Proceedings. In its Motion, Chesterfield argues that (1) the Board's decision to deny Chesterfield's Motion to Intervene was based on the misinterpretation of N.J.S.A. 48:2-32.2(a); (2) the Board's choice to apply the regulatory authority, N.J.A.C. 14:7-1.4, instead of the statutory authority, N.J.S.A. 48:2-32.2(a) and (b), was erroneous; (3) due process

² As Rate Counsel has withdrawn its motion, the Board will only consider those portions of Rate Counsel's motion which are relevant to Burlington County. The Board further describes the comments as if separately made by Burlington County.

requires the Board to permit the exchange of discovery and creation of a record upon which the Board will ultimately rely in rendering its final decision; and (4) since companion cases in the MLUL and Pipeline Safety Proceedings involve the same “controversy,” the petitions should be consolidated for reasons of efficiency and fairness.

To support its first argument, Chesterfield asserts that the plain language of N.J.S.A. 48:2-32.2(a) provides Chesterfield with a statutory right to intervene. Chesterfield contends that the Board’s reliance on the legislative history of N.J.S.A. 48:2-32.2(a) instead of its plain language was erroneous. Chesterfield argues that the plain language of the statute required no interpretation.

To support its second argument, Chesterfield states administrative law does not allow regulations to trump statutes. The Board’s denial based upon intervenor or participant status in the companion MLUL Proceeding is based on regulatory authority, N.J.A.C. 14:7-1.4. Instead, the Board should rely on N.J.S.A. 48:2-32.2(a) and (b), which allows Government Entities to intervene in a proceeding revolving around pipeline safety measures.

To support its third argument, Chesterfield alleges that it may be adversely impacted or bound by any final decision without the opportunity to present its position fully in all proceedings regarding the construction and installation of the Project. Chesterfield states that there are factual discrepancies that remain to be resolved, contravening procedural due process if Chesterfield is not permitted to intervene.

To support its fourth argument, Chesterfield asserts the entire controversy doctrine mandates that NJNG’s two (2) petitions regarding the Project should be joined in a single litigation. Chesterfield posits that this allows fairness to the parties and avoidance of confusion. Specifically, Chesterfield argues that it should have the opportunity to engage in discovery as to the issue of whether impact on habitable dwellings within one-hundred (100) feet of the Pipeline has been minimized.

NJNG Opposition to Burlington County’s Motion for Reconsideration and Consolidation

On December 30, 2015, NJNG filed a brief in opposition to Burlington County’s Motion for Reconsideration and Consolidation. NJNG argues that Burlington County cannot intervene in an uncontested case. Since the Board Order clearly sets forth how factual issues will be addressed, factual issues that arise will be considered by the Board and resolved.

NJNG also asserts that there are no factual questions in the Pipeline Safety proceeding pursuant to N.J.A.C. 14:7. Specifically, the statutory pipeline safety requirements do not present issues of fact, nor do the Board efforts to minimize habitable dwellings within one-hundred (100) feet of the Project alignment present issues of fact. Further, the Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7 does not limit Burlington County’s review of the Project. The issues raised by Burlington County relate to the proposed route and therefore can be properly raised by Burlington County in the MLUL Proceeding.

NJNG asserts that a request for reconsideration can be based only on the Board’s reliance on a clear error of fact or law. Burlington County has proposed alternative standards it hopes will be utilized in a future order, which does not address an error relied on by the Board in the Order denying intervention in the Pipeline Safety case.

NJNG argues that the Board’s reasons are adequately set forth in the Order. Accordingly, Burlington County’s concerns regarding the adequate development of a record to form the basis of a Board decision should be alleviated by the requirements Burlington County cites as

necessary to form the basis of an agency's decision. Any decision that is not supported by evidence and findings of fact will not survive judicial review. The Board furthermore explained in the Order that all comments and submissions made to the Board will become the record on which it bases its decision.

Since pipeline safety cases are not required to have evidentiary hearings, NJNG argues that Burlington County does not identify a particularized property interest that would be affected by Board approval of the Pipeline, and as such, there is no basis for requesting any hearing. Additionally, NJNG argues that Burlington County failed to state why an adjudicatory hearing would add value. The issues are technical in nature and do not require an assessment of credibility made in an adjudicatory hearing. NJNG further argues that requiring an adjudicatory hearing would add unnecessary time and cost to a proceeding that is purely technical.

NJNG's final argument against reconsideration is that the Board alone has the authority to determine if a matter is uncontested. Since there is no statutory provision in the Pipeline Safety Proceeding creating a right to an evidentiary hearing, the Board properly determined that the proceeding is uncontested and therefore intervention is not appropriate. The Board's Order properly determined the case to be uncontested, and therefore does not involve interveners.

NJNG argues that Burlington County's motion to consolidate should also be denied because a contested case cannot be consolidated with an uncontested case. Consolidation of these two (2) matters is improper because the parties in each matter are not identical. The Pipeline Safety Proceeding is uncontested and the Board invited the public, including government entities, to make public comments and make submissions to the Board, but they are not parties to the proceeding. In contrast, the MLUL Proceeding involves NJNG, Rate Counsel, Burlington County, North Hanover, and Chesterfield. Additionally, Plumsted and the Pinelands Preservation Alliance are participants.

NJNG also argues that the questions of fact and law are dissimilar, despite the assertion that both matters "concern the same pipeline with the same route." The Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7 addresses whether the Project is within 100 feet of a building intended for human occupancy and whether the Project will comply with the minimum safety requirements in 42 C.F.R. 192. By contrast, the MLUL Proceeding pursuant to N.J.S.A. 40:55D-19 addresses whether the project is reasonably necessary for the service, convenience, or welfare of the public. As part of that determination, a route alternatives analysis is conducted, involving potential impacts, protection of the built environment and the natural environment, and engineering considerations. The issues in the two (2) proceedings are distinct and weigh against consolidation.

NJNG argues that there are no common questions of fact or law that result in the saving of time, expense or duplication. There is no risk of incompatible results because the questions of law and fact in each matter are distinct. As such, the public hearings in both cases and the evidentiary hearings in the MLUL Proceeding will result in prompt and fair resolutions on those separate and distinct legal standards. NJNG further notes that Burlington County admits that separate proceedings are typical and have not previously caused confusion. The prior projects Burlington County cited in its motion were matters in which the Pipeline Safety and MLUL Proceedings proceeded separately. The process utilized by the Board is no more confusing than any of those previous cases, and that any confusion that could arise may be readily addressed in due course.

NJNG Opposition to Chesterfield's Cross Motion for Reconsideration and Consolidation

On December 30, 2015, NJNG filed a brief in opposition to Chesterfield's Cross Motion for Reconsideration and Consolidation. NJNG argues that Chesterfield's motion for reconsideration should be denied because it is time-barred. N.J.A.C. 14:1-8.6(a) states that a motion for reconsideration may be filed within in fifteen (15) days after the issuance of any final decision or order by the Board. Chesterfield filed its motion on September 14, 2015, twenty-six (26) days after the issuance of the August 19, 2015 Board Order. Therefore, NJNG argues that Chesterfield's motion should be summarily denied. NJNG further argues that reconsideration is not warranted because the Board's August 19, 2015 Order did not rely on errors of law or fact, therefore Chesterfield is does not meet the statutory standard for reconsideration.

NJNG asserts that Chesterfield incorrectly asserted it has a statutory right to intervene in the Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7 because N.J.S.A. 48:2-32.2(a) only applies to investigations by the Board. However, this proceeding is not an investigation. The Board's review of the amended petition does not constitute an investigation because that review does not involve the governmental acquisition of information.

NJNG states that the Board reasonably interpreted the statute in distinguishing contested matters from uncontested matters. N.J.S.A. 52:14b-2 defines a contested case as one in which the Constitution or statute requires an adjudicatory hearing. There is no constitutional clause or statutory provision that would create a right to an evidentiary hearing in the Pipeline Safety case. The statute on which Chesterfield relies, N.J.S.A. 48:2-32.2(a), does not create a right to an evidentiary hearing. Rather, it allows for municipalities to intervene in matters that require an adjudicatory hearing. Intervention, however, is necessarily limited to contested cases pursuant to N.J.A.C.1:1-16.1(a).

NJNG argues that Chesterfield's due process arguments are baseless because Chesterfield has not identified a particularized property interest that would be affected by Board approval of the Pipeline pursuant to N.J.A.C. 14:7-1.4. Chesterfield's motion to consolidate should also be denied for the same reasons set forth in NJNG's opposition to Burlington County's Motion for Consolidation. NJNG argues that all of the issues raised by Chesterfield relate exclusively to route selection, which is at issue in the MLUL Proceeding in which Chesterfield has intervened, and Chesterfield has not raised any factual issues in the Pipeline Safety Proceeding that could only be resolved if Chesterfield intervened.

Chesterfield Reply to NJNG's Opposition

Chesterfield argues that its motion for reconsideration and consolidation was timely filed. It asserts that since the August 19, 2015 Order had an effective date of August 29, 2015, and fifteen (15) days from that date is Sunday, September 13, 2015. Chesterfield's motion was filed on Monday, September 14, 2015, which Chesterfield considers sufficient because the Company still had ample time to respond.

Chesterfield asserts that the Board misinterpreted N.J.S.A.48:2-32.2 and misapplied N.J.A.C. 14:7-1.4. Chesterfield argues that N.J.S.A. 48:2-32.2 is the authority for granting intervenor status. Chesterfield claims that N.J.A.C. 14:7-1.4, the statute that the Board applied, is a proscriptive provision. Since the Company is requesting the Board's permission/approval to install its pipeline, the regulation inherently invokes the Board's discretion. Chesterfield asserts that the Board's interpretation of the regulation threatens the public interest, and that the Board must not rubber stamp a utility company's project without a meaningful review of evidence or investigation into a company's plans or claims.

Chesterfield re-asserts that the matter should be deemed contested and a record upon which the agency can exercise its discretion should be created. Chesterfield repeats that both matters should have been consolidated and examined together, with interested governmental entities permitted to intervene or participate in both matters.

DISCUSSION AND FINDINGS:

Reconsideration

Following extensive review of all arguments presented, the Board **FINDS** that nothing in Burlington County or Chesterfield's motions requires the Board to modify or otherwise reconsider its decision. A motion for reconsideration requires the moving party to allege "errors of law or fact" that were relied upon by the Board in rendering its decision. N.J.A.C. 14:1-8.6(a)(1). Generally, a party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Ibid. See, e.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious, or unreasonable. D'Atria, supra, 242 N.J. Super. at 401.

Administrative agencies have the inherent power to reopen or to modify and rehear prior decisions if such action is warranted. See In re Trantino Parole Application, 89 N.J. 347, 364 (1982). N.J.S.A. 48:2-40 provides that the Board may order a rehearing, and/or extend, revoke, or modify any order made by it. An administrative agency may invoke its inherent power to rehear a matter "to serve the ends of essential justice and the policy of the law." Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950). The Board does not find such action warranted in this case.

It is long established that the Board "will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law." In the Matter of the Implementation of L. 2012, c.24, the Solar Act of 2012, Docket No. EO12090832v, et al. (Order dated July 19, 2013) at 5; In the Matter of Michael Manis and Manis Lighting, LLC – New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316 (Order dated April 15, 2015) at 3. The Board may modify an Order if there is a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. The Board has reviewed the motion for reconsideration, the supporting documentation, and Staff's prior recommendation. Fundamentally, Chesterfield and Burlington County assert that the Board misinterpreted N.J.S.A. 48:2-32.2(a) in finding that the Governmental Entities did not have a right to intervene. They further assert that the Board should have deemed this matter a contested case. The Board has reviewed these arguments and notes that these issues were considered by the Board in its August 19, 2015 order. Burlington County and Chesterfield have not presented any new elements of fact or law that were not previously before the Board when it reached its decision in issuing in the August 19 Order.

To the contrary, movants reiterate the same arguments previously made when intervenor status in the Pipeline Safety Proceeding was originally sought. The Board further reiterates, that as stated in the Board's August 19, 2015 Order, these parties had the same rights to submit comments whether or not they were interveners in this case. Additionally, the movants are already interveners in the contested MLUL Proceeding.

Therefore, the Board **HEREBY DENIES** Burlington County's Motion for Reconsideration of its August 19 Order and Chesterfield's Cross Motion for Reconsideration of its August 19 Order.

Consolidation

Pursuant to N.J.A.C. 1:1-17.3, a motion for consolidation requires consideration of the following factors:

- (1) The identity of parties in each of the matters;
- (2) The nature of all the questions of fact and law respectively involved;
- (3) To the extent that common questions of fact and law are involved, the saving in time; expense, and duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
- (4) To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay, or undue prejudice to any party;
- (5) The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
- (6) Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

As the Board stated in its August 19, 2015 order, in this Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7, there is no statutory or constitutional requirement that the Board provide an adjudicatory hearing prior to making a final administrative agency determination concerning the Project. The rule only requires Board approval prior to the installation and/or operation of a pipeline in excess of two-hundred fifty (250) psig if the proposed pipeline alignment is planned to pass within one-hundred (100) feet of any building intended for human occupancy. There is no requirement that the Board conduct an evidentiary hearing. N.J.A.C. 14:7-1.4(a). Chesterfield claims the right to participate in the Pipeline Safety Proceeding, however, since there is no evidentiary hearing, there is nothing for Chesterfield to participate in, other than the public hearings. The Board's review of the Pipeline Safety Proceeding pursuant to N.J.A.C. 14:7 is narrow in scope, and the Board is only tasked with determining whether the Project is in conformity with state and federal natural gas pipeline regulations and ensuring that the number of habitable dwellings within one-hundred (100) feet of the Project is minimized. The Board is not tasked with making any findings of fact or a determination as to whether the Project is necessary.

Public hearings are held at which any and all interested parties are permitted to make comment on the proposed project, and the Board also accepts written comments on the proposed project. The Board considers all comments placed in the record before entering any Order in the Pipeline Safety case. The movants in this case have indeed participated in this public process and have made a record for the Board's consideration.

By contrast, the MLUL Proceeding permits the Board to consider additional factors with regard to the necessity of the Project. N.J.S.A. 40:55D-19 mandates that the Board find, after a hearing on notice to affected municipalities, that "the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public." In

determining whether the proposed utility project is reasonably necessary for the service, convenience or welfare of the public," case law directs the Board to look at the factors, such as:

1. The benefits to the whole public served by the utility and not the limited group that benefit from the local zoning ordinances;
2. The locations must be found to be "reasonably necessary" and so the Board must consider the community zoning plan, the physical characteristics of the site, and the surrounding neighborhoods; and
3. Alternative sites and their comparative advantages and disadvantages, including cost, must be considered.

[See, In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376-77 (1961).]

Not only does the MLUL mandate an evidentiary hearing in addition to public hearings, but it also requires the Board to weigh the aforementioned factors – a determination which involves issues of material fact and requires the presentation of evidence and cross-examination.³ As such, intervention in the contested MLUL proceeding is appropriate, and has been extended to the movants.

Procedurally, the cases differ as well. The Pipeline Safety Proceeding, including all motions, is heard by the Board. By contrast, the MLUL Proceeding proceeds differently in that a Commissioner is appointed by the Board to preside as the hearing officer over the petition and decide all motions, subject to ratification when the record is complete and comes before the Board for final resolution. The hearing officer presides over the evidentiary hearing which, along with comments received at the public hearing(s), makes up the record before the full Board in the MLUL Proceeding.

While these two (2) matters may concern the same pipeline and route, and are both proceeding before this Board, these matters emanate from distinct legal authority with distinct legal and procedural requirements. Furthermore, although both matters require public hearings, the legal standards and procedural requirements of these two (2) petitions diverge. As noted above and in the Board's prior Orders, these two (2) matters are substantively distinct, involving different issues of law and requiring the Board to make two (2) different legal conclusions. Therefore, if these matters were to be consolidated, these differences are such that there is a risk of causing confusion of the pertinent issues. N.J.A.C. 1:1-17.3(5). Due to these different legal standards, different legal findings and different proceedings with such petitions, the Board has historically entered separate Board Orders in Pipeline Safety and MLUL petitions. The Board has also historically entered those orders at separate times. Indeed, the Orders may be entered at very different stages of the proposed project. See, e.g., I/M/O the Petition of South Jersey Gas Company for Authorization to Construct a 24-inch Pipeline, Docket No. GO13030202 (Pipeline Safety Order dated June 18, 2013) and I/M/O the Petition of South Jersey Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, Docket No. GO13111049 (MLUL Order dated December 16, 2015). The Board does not find it advisable to dispose of all aspects in a single proceeding. N.J.A.C. 1:1-17.3(6). If consolidated, resolution of one petition may be delayed while the other petition remains pending. N.J.A.C. 1:1-17.3(5).

³ See I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4, Docket No. GO15040403 (Order dated July 21, 2015).

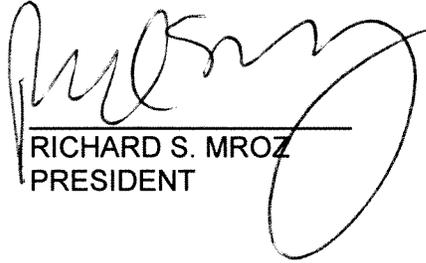
Considering all applicable facts, circumstances and legal standards for the MLUL Proceeding and the Pipeline Safety Proceeding, the Board **HEREBY FINDS** that the criteria for consolidation have not been met. Accordingly, the Board **HEREBY DENIES** the motions to consolidate the petitions in the MLUL and Pipeline Safety Proceedings.

The effective date of this Order is February 6, 2016.

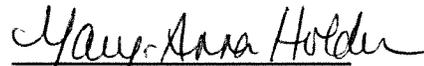
DATED:

Jan 28, 2016

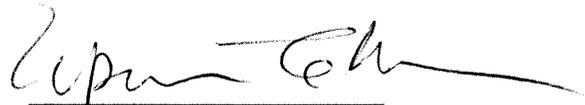
BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT

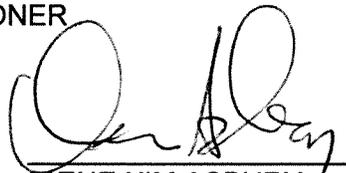

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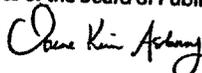

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COMMISSIONER

ATTEST:


IRENE KIM ASBURY
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
APPROVAL AND AUTHORIZATION TO CONSTRUCT AND OPERATE THE SOUTHERN
RELIABILITY LINK PURSUANT TO N.J.A.C. 14:7-1.4

BPU DOCKET NO. GE15040402

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