Agenda Date: 7/24/24
Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

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

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
James H. Laskey, Esq., Norris McLaughlin, P.A., Counsel for The College of New Jersey
Matthew M. Weissman, Esq., General State Regulatory Counsel, Public Service Electric and Gas Company

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") considers a petition, amended petition, and motion for summary disposition filed by The College of New Jersey ("TCNJ") seeking relief from a $2,359,532 penalty ("Penalty Amount") assessed by Public Service Electric and Gas Company ("PSE&G" or "Company") for the consumption of natural gas during a period of interruption. The Board also considers TCNJ's motion to supplement the record and the cross motions for summary disposition filed by the New Jersey Division of Rate Counsel ("Rate Counsel") seeking enforcement of the Penalty Amount, and PSE&G seeking enforcement of the Penalty Amount, with interest.

I. BACKGROUND AND PROCEDURAL HISTORY

TCNJ is a public college with a 289-acre residential campus in Ewing, New Jersey. TCNJ owns and operates an on-campus cogeneration plant ("Cogen") that supplies electricity and steam for heating throughout its campus.[1] The Cogen receives service from PSE&G under a "grandfathered" tariff known as Cogeneration Interruptible ("CIG") Service.[2] Customers taking

[1] Stipulated Facts and Exhibits ("SFE"), were jointly filed by TCNJ, PSE&G and Rate Counsel with the Board on September 6, 2023 and are attached hereto as "Exhibit A.". The Background and Procedural History recited herein are supported by the SFE.

[2] B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheet Nos. 107-111.

Basic Gas Supply Service ("BGSS") from PSE&G under the CIG option ("BGSS-CIG") are charged at a rate substantially discounted compared to both PSE&G's Large Volume Service ("LVG") rate and PSE&G's Non-Firm Transportation Gas Service ("TSG-NF") rate. TCNJ has received service under Rate Schedule CIG since 1995.

CIG Special Provision (b) requires customers to discontinue their use of gas upon advance notice of eight (8) hours or more by PSE&G. CIG Special Provision (c) mandates that if the customer fails to discontinue the use of gas after proper notification, the customer's Commodity Charge is $1.89 per therm, excluding Sales and Use Tax ("SUT"), for a maximum of one (1) hour's maximum requirement per day of interruption. Use of this amount is limited to a use rate per hour not greater than five percent (5%) of a customer's maximum hourly requirement. Any usage during the interruption above this amount is charged at a penalty rate of the greater of: 1) ten (10) times the highest price of the daily ranges for delivery in Transco Zone 6, New York, or Texas Eastern Zone M-3 which are published in Gas Daily on the table "Daily Price Survey," and 2) the maximum penalty charge for unauthorized daily overruns as provided for in the Federal Energy Regulatory Commission ("FERC")-approved gas tariffs of the interstate pipelines which deliver gas into New Jersey.

CIG also provides an optional service, Extended Gas Service ("CEG"), under Special Provision (n) at PSE&G's highest cost of gas during the applicable period. Customers are notified of the availability and price of CEG at least eight (8) hours prior to the availability of this service, and at least eight (8) hours prior to any change in the price of this service, and customers have two (2) hours to notify PSE&G of their acceptance. Any gas used during an interruption when CEG is not available or when a customer does not accept this service is subject to the penalty provided in Special Provision (c).

In addition to the Cogen, steam to the campus is provided by two (2) boilers that receive service on a separate meter under PSE&G's Rate Schedule TSG-NF.[3] Under Special Provision (a) of the TSG-NF tariff, customers must annually certify that they will suspend operations during an interruption, or that they have an alternative fuel source that can be legally used at the customer's facilities. In addition, customers using specified alternate fuels, including No. 2 Fuel Oil, are required to certify that they have, and will maintain, the availability of at least seven (7) days of alternative fuel available, either on-site or through additional firm contractual supply. TCNJ maintains an alternate fuel backup system using No. 2 Fuel Oil. As of the 2017-18 winter season, a full day tank would provide approximately 30 minutes of operation, and in conjunction with the refillable large storage tank system, could run for at least seven (7) days. The day tank mechanism was installed at the initiation of the Cogen.

On January 2, 2018, a technician advised TCNJ of a "bad switch" associated with the oil day tank serving the Cogen. Snow was forecasted for January 4, 2018 and cold temperatures for January 5 and 6, 2018. On January 3, 2018, PSE&G notified TCNJ that gas service under the CIG rate would be interrupted effective 10:00 am on January 4, 2018, and that Extended Gas Service was available at $16.46 per dekatherm if TCNJ responded within two (2) hours. The notification further provided that any consumption of natural gas during that period would be subject to a severe penalty.

On January 4, 2018, the Cogen was operating on CEG. Beginning at 10:40 am, the Cogen was switched to fuel oil and operated on oil for approximately thirty (30) minutes. However, a

[3] B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheets Nos. 99-103.

mechanical failure shut down TCNJ's backup fuel oil system. Thereafter, the Cogen was operated using CEG until January 5, 2018 at 10:00 a.m. On January 5, 2018 at 1:09 pm TCNJ notified PSE&G of its equipment malfunction and that it needed to run the Cogen on natural gas.

The interruption period in question in this matter began at 10:00 am on January 4, 2018, and ended at 10:00 am on January 8, 2018. TCNJ operated the Cogen when CEG was available during the interruption period. TCNJ also operated the Cogen when CEG was not available during the period of interruption, from 10:00 am January 5, 2018, to 10:00 am January 7, 2018. After revising initial calculations, in June 2018, PSE&G assessed TCNJ the Penalty Amount for this consumption of natural gas during the period of interruption when CEG was not available. PSE&G calculated the Penalty Amount as follows: 1) usage in the amount of one (1) hour's maximum requirement for each of the two (2) days of the interruption was charged at $1.89 per therm, and; 2) the remaining usage was charged based upon the penalty rate specified in Special Provision (c) of the CIG Tariff, which was $175 per therm usage on the gas day beginning at 10 am on January 5, 2018 and $65 per therm for usage on the gas day beginning at 10 am on January 6, 2018.[4]

On November 9, 2018, TCNJ filed a petition with the Board seeking relief from the Penalty Amount assessed by PSE&G for the consumption of natural gas during the period of interruption ("Petition"). On February 7, 2019, PSE&G filed an answer to the Petition.

On February 17, 2023, the Board retained the matter for hearing pursuant to N.J.S.A. 48:2-32, and designated former President Joseph L. Fiordaliso as Presiding Officer authorized to establish and modify schedules and decide all motions during the pendency of the proceedings subject to ratification by the Board.[5] Pursuant to the February 2023 Order, the Board also granted PSE&G intervener status, and directed other entities seeking to intervene or participate to file the appropriate application with the Board, along with any motions for admission of counsel *pro hac vice*, on or before February 27, 2023. No additional motions were filed.

On March 10, 2023, TCNJ filed an amended petition providing additional details related to its claim ("Amended Petition"), and on April 19, 2023, PSE&G filed an answer to the Amended Petition.

On June 27, 2023, former Presiding Officer President Fiordaliso issued a Prehearing Order adopting a procedural schedule and directed PSE&G, TCNJ, Rate Counsel and Board Staff ("Staff") (collectively, "Parties") to comply with the terms contained therein.[6] The Prehearing Order established September 7, 2023 as the deadline to file cross motions, with responses to cross motions due September 28, 2023, and reply briefs due October 18, 2023. On August 31, 2023, counsel for TCNJ submitted a request, supported by the Parties, for a one-week extension of each of the aforementioned deadlines; cross motions due on or before September 14, 2023, responses to cross motions due on or before October 5, 2023, and reply briefs due on or before October 25, 2023.

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[4] See Stipulated Facts and Exhibits ("SFE") at ¶ 38.

[5] In re the Verified Petition of the College of New Jersey for Relief From a Penalty Assessed by Public Service Electric and Gas, Co., Decision and Order on Motion to Intervene and Designation of a Presiding Commissioner, Docket No. GC18111234, Order dated February 17, 2023 ("February 2023 Order").

[6] In re the Verified Petition of the College of New Jersey for Relief From a Penalty Assessed by Public Service Electric and Gas and Company, Prehearing Order, Docket No. GC18111234, Order dated June 27, 2023 ("Prehearing Order").

On September 6, 2023, by Rate Counsel's letter, the SFE executed by TCNJ, PSE&G and Rate Counsel, were jointly filed by TCNJ, PSEG and Rate Counsel with the Board.

On September 14, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Motions for Summary Disposition pursuant to N.J.A.C. 1:1-12.5, and N.J.A.C. 14:1-8.1. On October 5, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Responses to the Motions for Summary Disposition.

On October 5, 2023, TCNJ also filed a motion to supplement the record ("Motion to Supplement") seeking admission of a certification detailing the hardship to TCNJ if required to pay the Penalty Amount. On October 16, 2023, PSE&G and Rate Counsel, separately, filed letter briefs in opposition to the Motion to Supplement. On October 23, 2023, TCNJ filed a reply brief in further support of its Motion to Supplement.

On October 25, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Reply Briefs in further support of their Motions for Summary Disposition. Details as to the various motions, responses, and reply briefs appear in Section II of this order below.

By Order dated October 25, 2023, the Board designated President Christine Guhl-Sadovy as the Presiding Officer, replacing President Fiordaliso, and authorized President Guhl-Sadovy to establish and modify schedules and decide all motions during the pendency of these proceedings subject to ratification by the Board.[7] Pursuant to the October 2023 Order, the Board also granted TCNJ's request for an extension of time, and modified the procedural schedule.

II. <u>THE MOTIONS</u>

TCNJ, PSE&G, and Rate Counsel filed motions, responses, reply briefs, supplemental motions, oppositions, and replies. The following is a summary of each.

A. <u>Motions for Summary Disposition</u>

On September 14, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Motions for Summary Disposition pursuant to N.J.A.C. 1:1-12.5, and N.J.A.C. 14:1-8.1.[8] All of the Motions for Summary Disposition relied upon the SFE.

a. <u>TCNJ</u>

TCNJ filed a Motion for Summary Disposition seeking a determination that the Penalty Amount is not just and reasonable, and therefore, at odds with the statutory requirement that all utility rates be just and reasonable. According to TCNJ, the Board determines whether any rate, including the penalty set forth in a tariff, is just and reasonable under the Public Utility Act, N.J.S.A. 48:3-1. TCNJ argued that the Board may waive a penalty for good cause, citing the NJAWC Waiver Order in which the Board waived tariff violation penalties for Princeton

[7] <u>In re the Verified Petition of the College of New Jersey for Relief From a Penalty Assessed by Public Service Electric and Gas Company</u>, Decision and Order on Motion to Intervene and Designation of a Presiding Commissioner, Docket No. GC18111234, Order dated October 25, 2023 ("October 2023 Order").

[8] N.J.A.C. 1:1-12.5 (b) provides that a summary decision sought may be rendered if, "there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 14:1-8.1 provides the procedures for contested cases.

University and Rutgers University resulting from unforeseen fluctuations in water usage as a result of the COVID-19 pandemic.[9]

TCNJ further argued that the tariff is akin to a contract between itself and PSE&G, and the Penalty Amount is similar to a stipulated damages provision therein. According to TCNJ, the tariff provision is unreasonable in several respects. First, TCNJ argued that the actual damages are not difficult to measure. Second, TCNJ asserted that the tariff provision is tied to a price that is published in Gas Daily, a private publication, which prevents the Board from verifying the accuracy of Gas Daily's reported results and therefore, is inconsistent with the Board's plenary authority to audit the books and records of a public utility, N.J.S.A. 48:2-16.1. Third, TCNJ argued that the price is not published until the interruption is over. Therefore, TCNJ claimed that it had no idea what the penalty might be when it decided to continue to use gas during the interruption. Fourth, TCNJ argued that the "ten-times-the-highest-price" penalty rate is unreasonably excessive relative to the damages suffered by PSE&G. TCNJ further argued that this formula is impermissibly punitive because it "uses the highest published price from two different zones, without any consideration for whether those highest prices were within the realm of reasonableness or were simply outliers." TCNJ pointed to penalty tariffs from Delaware, New York, and Pennsylvania which it argued are less harsh.

TCNJ contended that the reasonableness of this penalty should be addressed in light of TCNJ's status as a not-for-profit institution of higher education and a "component unit of the State of New Jersey," which acted reasonably under the circumstances, and had a record of complying with interruption directives. TCNJ also took issue with a provision of the tariff which provides that interruption will not occur unless all TSG-NF customers receiving Basic Gas Supply Service – Interruptible ("BGSS-I") default service have already been interrupted. According to TCNJ, there is no record of whether such TSG-NF plus BGSS-I customers exist, and so, this provision is "meaningless in terms of providing comfort to CIG customers."

Finally, TCNJ argued that strict application of the penalty in this case is inequitable because TCNJ is not at fault. TCNJ cited principles of tort law, claiming that strict liability, or liability without fault, should only be imposed in cases concerning an abnormally dangerous activity, or a compelling policy reason supporting the imposition of strict liability. TCNJ argued that it faced an emergency that it was not able to predict, and in good faith made the best decision it could under the circumstances. TCNJ acknowledged that such service is offered at PSE&G's discretion, but argued that PSE&G did not provided sufficient information to determine whether its decision to interrupt contravened its statutory obligation to offer safe, adequate, and proper service at just and reasonable rates. TCNJ stated that it hired specialty consultants and contractors who extensively explored the possible causes for the system failure. TCNJ determined that making repairs to the existing system would be insufficient to avoid a reoccurrence of the backup

[9] See In re the Request by New Jersey American Water Company or a Temporary Waiver of Optional Industrial Wholesale Tariff Condition, Rate Schedule F, Due to Impact of COVID on Water Consumption, Docket No. WT21101160, Order dated January 12, 2022 ("NJAWC Waiver Order").

system failure. Accordingly, TCNJ redesigned the backup system. TCNJ explained that this was not a situation where a customer signed up for an interruptible rate and kept its fingers crossed that an interruption would not be called.

b. PSE&G

PSE&G filed a Motion for Summary Disposition, arguing that the Board should dismiss TCNJ's petition and impose the Penalty Amount as calculated according to PSE&G's tariff, plus appropriate interest. According to PSE&G's CIG tariff, interruptible customers are required to discontinue gas use upon notice by PSE&G. The Board previously directed all New Jersey gas distribution companies ("GDCs") to modify their tariffs in order to include a penalty provision aimed at interruptible customers who fail to interrupt service when requested to do so.[10] In line with this directive, PSE&G's tariff specifies the method for calculating the penalty for failure to discontinue service upon notice. PSE&G argued that enforcement of such a penalty is appropriate because TCNJ benefits from the discounted CIG rate and failed to interrupt service for required time period. PSE&G further argued that it correctly calculated the Penalty Amount according to its tariff for the time TCNJ failed to interrupt service. PSE&G additionally argued that this penalty is subject to "reasonable interest," dating back to the penalty due and owing date of June 7, 2018. According to PSE&G, TCNJ's failure to interrupt service was avoidable. PSE&G cited to an evaluation conducted by TCNJ's insurer claiming that the failure to interrupt was partially caused by TCNJ's maintenance practices. Finally, PSE&G stated that it has already returned the Penalty Amount to its BGSS customers and the supplier who supplied service to TCNJ during the interruption period. PSE&G suggested that if TCNJ is not required to pay the penalty, customers will see an increase in their bills as the credit to BGSS customers for the penalty would need to be reversed.

c. Rate Counsel

Rate Counsel filed a Motion for Summary Disposition arguing that the Board should dismiss TCNJ's petition and impose the Penalty Amount as calculated according to PSE&G's tariff. Rate Counsel argued that TCNJ is not entitled to waive the penalty because TCNJ does not meet the criteria for a waiver. Rate Counsel cited N.J.A.C. 14:1-1.2(b) which provides that the Board may grant a waiver "if full compliance with the rule(s) would adversely affect the ratepayers of a utility" and if the entity seeking the waiver can provide "a full statement setting forth the type and degree of hardship or inconvenience that would result" without a waiver.[11]

Rate Counsel contended that such a waiver would undermine the purpose of

[10] In re the Matter of the Board's Review of Energy and Home Heating Oil Markets, BPU Docket No. GO00020088, dated October 2, 2000 ("2000 Penalty Order").

[11] While Rate Counsel referred to N.J.S.A., it is clear that Rate Counsel's intent was to reference N.J.A.C. as the quotes are from Title 14 of the New Jersey Administrative Code. In responding to Rate Counsel, other parties also incorrectly used the N.J.S.A. reference.

PSE&G's penalty provision. According to Rate Counsel, the purpose of this required penalty was to strongly deter interruptible customers from unauthorized use of gas during an interruption. Rate Counsel argued that a waiver of the penalty would defeat the purpose of the penalty and therefore undermine the provision. Rate Counsel opined that such a waiver would introduce unnecessary flexibility into the penalty requirements. Rate Counsel differentiated this request from standard waiver requests. Rate Counsel also distinguished this matter from the NJAWC Waiver Order. Rate Counsel pointed out that, in the NJAWC Waiver Order, the Board granted a waiver from a tariff provision when the effective penalty would have, absent a waiver, resulted from a temporary drop in usage by customers as a result of compliance with Executive Orders.

Rate Counsel contended that the factual record lacks evidence that TCNJ would not be able to pay the Penalty Amount. Rate Counsel argued that TCNJ benefits from the resources of the State and has not shown hardship.

Finally, Rate Counsel argued that the penalty is not unjust or unreasonable because it was mandated by the Board. It also argued that TCNJ's failure to interrupt put lives at risk because those customers who paid for firm service could have experienced hardship if PSE&G had not been able to secure enough gas.

B. <u>Responses to Motions for Summary Disposition</u>

On October 5, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Responses to the Motions for Summary Disposition.

a. <u>TCNJ</u>

TCNJ argued that the Board should deny both PSE&G's and Rate Counsel's Motions. TCNJ argued that it is entitled to a waiver of the penalty because the penalty is unreasonable, particularly when considering public policy. According to TCNJ, the penalty is unreasonable because the method used to calculate the Penalty Amount is based upon a price published in a private publication, rather than the exact amount and price of the gas actually used by TCNJ. As such, TCNJ asserted that it did not know what the precise consequences of failing to interrupt gas usage would have been. TCNJ additionally argued that the method used for calculating the Penalty Amount is akin to that of an unreasonable liquidated damages provision. TCNJ asserted that the penalty is "grossly excessive" particularly as assessed against a "not-for-profit institution of higher education" with a record of generally complying with interruption requirements. TCNJ argued that by setting the penalty at ten (10) times the highest reported rate, the Board is automatically guaranteeing a windfall to PSE&G and its BGSS-I suppliers, which include PSEG Energy Resources & Trade.

TCNJ argued that a waiver would not undermine the purpose of PSE&G's penalty provision because it would be narrowly tailored to these specific circumstances and would not likely create precedent for future bad faith actors to rely on.

TCNJ contended that it would suffer "immense" financial hardship if it were forced to pay the Penalty Amount. In support of this, TCNJ argued that the impact of COVID and subsequent inflation have contributed to budgetary reductions. TCNJ additionally argued that the State only provides a fraction of TCNJ's funding, and most of its operating budget has already been accounted for.

TCNJ also argued that the Penalty Amount is disproportionate to the harm caused by its failure to interrupt. TCNJ contended that it made the decision to continue using gas service in good faith during emergency circumstances and that PSE&G nor its customers suffered any real harm as a result.

In response to PSEG's Motion, TCNJ indicated it did not dispute that TCNJ bears "at least some responsibility" for its failure to interrupt service, but argued the issue before the Board was what would constitute a just and reasonable consequence under the circumstances. TCNJ also asserted that PSE&G's decision to return the Penalty Amount to its BGSS customers was PSE&G's own error and that it should have waited to do so until after resolution of TCNJ's challenge of the penalty. TCNJ argued that it should not be responsible for PSE&G's "unilateral decision" to return the Penalty Amount to customers and that summary judgment should not be granted on such grounds.

TCNJ additionally argued that it should not be required to pay interest on the Penalty Amount, as it is a state government entity. TCNJ cited to N.J.S.A. 48:3-2.3 and N.J.A.C. 14:3-7.1(e) which both provide that "A late payment charge shall not be approved for a rate schedule applicable to a…government entity." TCNJ additionally cited to PSE&G's tariff, which provides that "Service to a body politic will not be subject to a late payment charge." TCNJ asserted that such prohibitions of a late payment charge are applicable under these circumstances due to TCNJ's "self-evident" status as a state government entity. In supporting this claim, TCNJ cited to the three (3) factor test used by the Third Circuit to determine whether a public college or university qualifies as an arm of the state for Eleventh Amendment purposes, as articulated in Maliandi v. Montclair State University, 845 F.3d 77 (3d Cir. 2016). TCNJ also argued that, pursuant to N.J.S.A. 59:13-8, pre-judgment interest does not accrue with regards to claims against public entities. As such, TCNJ contended that it is exempt from paying interest on the Penalty Amount.

Finally, TCNJ argued that summary judgment should be denied because genuine issues of material fact have been raised by the motions filed by PSE&G and Rate Counsel. In particular, TCNJ contended that the motions raise questions regarding whether TCNJ acted in bad faith.

b. PSE&G

PSE&G argued that contract law is inapplicable to situations where an administrative agency established a penalty for the purposes of dissuading breaches that could seriously impact public health. PSE&G explained that the purpose of a high penalty is to ensure the stability and reliability of the natural gas system. PSE&G argued that TCNJ's reliance on principles of contract law is misplaced because the tariff provisions at issue in this matter do not amount to a contract between two (2) parties but were instead imposed by an administrative agency as a result of a broad stakeholder proceeding. According to PSE&G, this penalty amounts to less than the total savings TCNJ would receive in two (2) years of being on the interruptible rate. PSE&G stated that there is no evidence in the record that TCNJ would be harmed by having to pay the full penalty or that PSE&G's residential customers are more capable of absorbing the loss than is TCNJ. PSE&G distinguished the NJAWC Waiver Order cited by TCNJ in which the Board waived tariff penalties for Princeton University and Rutgers University because in that case, the imposition of such penalties would have led to a result not contemplated by the Board, and contrary to the intent of the tariff, penalizing the Universities for unforeseen fluctuations in water usage resulting from the COVID-19 pandemic. According to PSE&G, the present case is distinguishable because TCNJ is being penalized for actions contemplated by the Board when it established this tariff.

Next, PSE&G argued that the issue of strict liability is not relevant because TCNJ has not established that it was without fault. PSE&G disputed TCNJ's claims that it faced an unpredictable emergency and acted reasonably under the circumstances. According to PSE&G, the extreme cold in early January which precipitated this interruption was easily predictable. Moreover, PSE&G argued that by at least mid-2016 TCNJ was on notice that its Cogen unit's controls, fuel system, and starter system needed upgrades, and that TCNJ's failure to perform these upgrades was not reasonable. PSE&G points to the $88,000 TCNJ spent to investigate the causes of the system failure and redesign its backup system as evidence that this failure could have been avoided with a relatively small amount of investment and that TCNJ acted unreasonably in failing to undertake these preventative steps prior to January 2018.

Finally, PSE&G argued that this is not the proper forum to challenge the reasonableness of the tariff generally. PSE&G argued that because this is not an industry-wide proceeding, the Board should not consider the basis on which the penalty is calculated or the comparison to similar tariff provisions from other states.

c. <u>Rate Counsel</u>

Rate Counsel's response provided that two (2) arguments made by TCNJ are unsupported and inconsistent with the record.

Specifically, Rate Counsel challenged TCNJ's argument that Special Provision (g) of Rate Schedule CIG of PSE&G's tariff provides that service "will not be interrupted unless service to the TSG-NF customers receiving BGSS-I default service has already interrupted," is "meaningless in terms of providing comfort to CIG customers" because the record does not disclose whether there are any customers taking TSG-NF plus BGSS-I service. Rate Counsel argued that TCNJ's obligation to interrupt when called upon to do so is not dependent on whether there are any TSG-NF plus BGSS-I customers and whether TCNJ is aware of them. Additionally, Rate Counsel claimed that the record does in fact disclose the existence of sixteen (16) TSG-NF customers receiving BGSS-I service during the 2017-2018 heating season.

Additionally, Rate Counsel challenged TCNJ's argument that PSE&G failed to explain why it interrupted CEG service, and as such, PSE&G may have abused its statutory authority. Rate Counsel argued that this was irrelevant, and regardless, the SFE provide that service was interrupted due to gas supply constraints resulting from the forecasted weather.

Rate Counsel reiterated that TCNJ's estimated annual savings under the current interruptible tariff is significantly more than the costs spent repairing its oil fuel backup system. Rate Counsel suggested that if the Board waives all or part of the penalty to TCNJ, it should reevaluate whether the interruptible CIG tariff is appropriate for TCNJ going forward.

C. Motion to Supplement

On October 5, 2023, TCNJ filed its Motion to Supplement, and on October 16, 2023, PSE&G and Rate Counsel separately filed letter briefs in opposition to TCNJ's Motion to Supplement. On October 23, 2023, TCNJ filed a reply brief in further support of its Motion to Supplement.

a. TCNJ

TCNJ requested to submit a certification of Richard Schweigert, TCNJ's Interim Treasurer, detailing the financial hardship to TCNJ if required to pay the Penalty Amount. TCNJ claimed it would be forced to raise tuition or cut certain scholarships and/or programs. TCNJ argued that it is necessary to supplement the record in order to respond to arguments made by Rate Counsel in its September 14, 2023 Motion for Summary Decision that TCNJ had failed to demonstrate financial hardship.

b. Rate Counsel

Rate Counsel argued that TCNJ's failure to demonstrate hardship is not a new issue. Rate Counsel pointed to several instances in these proceedings in which it claims the issue of TCNJ's ability to pay had previously been raised including: TCNJ's November 9, 2018 Verified Petition; TCNJ's March 10, 2023 Amended Petition; PSE&G's April 19, 2023 Answer to TCNJ's Amended Petition; and the "Issues to be Resolved" section of the June 27, 2023 Prehearing Order.

Rate Counsel further argued that permitting this certification to become part of the record would unduly prejudice the other parties because they would not have the opportunity to conduct discovery on important information not contained in the certification such as the size of TCNJ's budget and the deficit that is said to have occurred in the most recent fiscal year, the details of items TCNJ is considering cutting, and efforts made by TCNJ to secure additional State funding or to set aside funds to pay the penalty. Rate Counsel noted that the parties agreed to submit this matter to the Board based on SFE in lieu of pre-filed testimony and evidentiary hearings, and that all of the information contained in this certification was known at the time the SFE were being negotiated.

Finally, Rate Counsel argued the certification is of little relevance because it details TCNJ's current financial position, rather than its financial position in 2018, when the penalty was initially assessed. Rate Counsel stated that TCNJ's knowledge of the penalty amount, determined in February 2018, predates the COVID-19 pandemic and inflationary pressures which TCNJ claims created its financial hardship.

c. PSE&G

Like Rate Counsel, PSE&G asserted that TCNJ's financial hardship is not a new issue. PSE&G argued that in seeking to waive this penalty, TCNJ was required to submit a statement detailing the type and degree of hardship or inconvenience it would face and to provide supporting documentation. According to PSE&G, TCNJ raised this issue in both the Petition and Amended Petition when it explained that the penalty amount represented an additional cost of $300 to each and every TCNJ student's family. PSE&G stated that in its April 19, 2023 answer to the Amended Petition, it challenged TCNJ's financial hardship claims as lacking adequate support. Finally, PSE&G claimed that the assertions made in the Schweigert certification, even if taken at face value, fail to establish that TCNJ would face significant hardship.

d. TCNJ's Reply

On October 23, 2023, TCNJ filed a reply brief in further support of its Supplemental Motion. According to TCNJ, neither Rate Counsel nor PSE&G focused any time or attention challenging TCNJ's hardship argument between the pleadings stage and the dispositive motion stage, leading TCNJ to believe that they had dropped their objections to TCNJ's hardship argument. TCNJ argued that introducing this certification would not prejudice the other parties because they were aware, from at least the time the Amended Petition was filed, that TCNJ intended to make a hardship argument and because additional discovery is unnecessary as this certification is only a short statement from someone with firsthand knowledge of TCNJ's financial situation. TCNJ rejected Rate Counsel's assertion that the Board should focus on TCNJ's financial situation in 2018, when the penalty was assessed, as opposed to its current financial position. According to TCNJ this makes little sense, as the hardship would be a result of paying the penalty which has yet to occur. Finally, TCNJ challenged PSE&G's argument that the certification fails to establish significant financial hardship and points to statements in the certification that demonstrate TCNJ is already facing a severe financial burden which this penalty will add to.

D. Reply Briefs

On October 25, 2023, TCNJ, PSE&G, and Rate Counsel separately filed Reply Briefs in further support of their Motions for Summary Disposition.

a. TCNJ

TCNJ disputed Rate Counsel's claim that the weather forecast was enough to put TCNJ on notice that CEG service would be denied. TCNJ also claimed that its inability to interrupt did not adversely impact the rest of PSE&G's customers and that if there was a true risk that any of these customers could have lost service, PSE&G could simply have cut off the supply to TCNJ itself.

According to TCNJ, PSE&G tacitly allowed TCNJ to use gas knowing that PSE&G would receive a windfall from the penalty while also avoiding any potential liability that would have resulted from cutting off the gas supply to TCNJ. TCNJ noted that it had complied with all gas interruption notices in the past decades.

TCNJ also took issue with many of the points raised in PSE&G's opposition. First, while TCNJ agreed the intended purpose of this tariff was to penalize customers who fail to interrupt, it argued that this purpose itself renders the penalty provision unjust and unreasonable. Second, TCNJ argued that the Board did not contemplate an unforeseen catastrophic equipment failure when designing this tariff and so the Board should waive this penalty just as it did in the NJAWC Waiver Order. Third, TCNJ maintained that it was blameless and the failure to interrupt was out of its control, and that TCNJ's "spotless" interruption record prior to January 2018 is evidence that TCNJ did not fail to maintain its system. Finally, TCNJ disputed PSE&G's argument that this is not the proper forum to challenge the tariff. TCNJ clarified that it is not requesting a complete eradication of the CIG penalty, but instead, that the Penalty Amount is unjust and unreasonable.

b. <u>PSE&G</u>

PSE&G argued that TCNJ's admission of "at least some responsibility" in TCNJ's response to Rate Counsel and PSE&G's motions renders TCNJ's arguments regarding strict liability irrelevant. Additionally, PSE&G argued that the prohibitions against a late payment charge do not apply to imposition of reasonable interest. PSE&G asserted that, given TCNJ's admission of liability, it should not be permitted to avoid more than six (6) years' worth of interest, as an equitable matter. According to PSE&G, allowing TCNJ to avoid paying interest would be inconsistent with the intent of the prohibitive statute, "which is to shield public entities from interest payments where those entities can defend those claims in good faith."

PSE&G also contended that the monetary impact on PSE&G of a failure to interrupt is irrelevant to determining whether the Penalty Amount is unreasonable. PSE&G argued that the purpose of the penalty is to ensure customer compliance with interruptible service tariffs. Therefore, the fact that the amount of the penalty for failing to interrupt is material to TCNJ is precisely the point of the provision. Additionally, PSE&G argued that regardless of resolution of the challenge, its customers would bear the expense of TCNJ's failure to interrupt without payment of the penalty.

PSE&G argued that TCNJ's suggestion that the penalty is a liquidated damage provision of a contract is incorrect and unsupported by law. According to PSE&G, the penalty provision is not intended to compensate PSE&G for actual damages suffered, rather its purpose is to "incent behavior consistent with the public good."

Finally, PSE&G argued that there are no disputed material facts and that further litigation regarding the issues would be a waste of resources.

c. Rate Counsel

Rate Counsel argued that the Penalty Amount is just and reasonable because TCNJ made a deliberate economic decision to continue using gas in violation of the tariff. In failing to interrupt, Rate Counsel explained that TCNJ received the value of firm gas service absent the cost. As such, the Penalty Amount is a proportional consequence for TCNJ's failure to interrupt. Rate Counsel also argued that the Payment Amount would not amount to a windfall for PSE&G's BGSS customers because the Penalty Amount serves to compensate those customers for TCNJ's failure to interrupt.

Rate Counsel contended that TCNJ is not entitled to waiver of the Penalty Amount because a waiver would undermine the purpose of the provision. Rate Counsel argued that TCNJ's lack of malice is irrelevant for determining whether to enforce the penalty, and the certification of Richard Schweigert provides insufficient evidence of an unreasonable hardship.

Finally, Rate Counsel argued that the Board should prohibit TCNJ from providing additional evidentiary support for its position, as TCNJ had the opportunity to do so at an earlier time. The parties agreed to the Stipulated Facts which have been submitted to the Board, and there is no reason to extend the proceedings further at this point.

III. DISCUSSIONS AND FINDINGS

The Board carefully reviewed PSE&G's CIG, CEG, TSG-NF interruptible tariff provisions, and considered the voluminous record in this matter, including, but not limited to, the Petition, the Answer, the Amended Petition, the Answer to the Amended Petition, the Motions for Summary Disposition, the Responses to the Motions for Summary Disposition, the Replies to the Motions for Summary Disposition, the Motion to Supplement, the Oppositions to the Motion to Supplement, the Reply to the Opposition to the Motion to Supplement, and the SFE, and the Board **HEREBY FINDS** as follows:

To grant a motion for summary decision, N.J.A.C. 1:1-12.5(b) requires the Board to find "no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." See Angus v. Bd. of Educ. of Borough of Metuchen, 475 N.J. Super. 362, 367 (App. Div. 2023)(quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995); Contini v. Bd. of Educ. of Newark, 286 N.J. Super 106, 121, (App. Div. 1995), certif. den., 145 N.J. 372 (1996)). With regard to the first requirement, no genuine issue as to any material fact, TCNJ, Rate Counsel and PSE&G agreed to the material facts as evidenced by the memorialized SFE each of them executed and filed with the Board for consideration. See Exhibit A. Each of TCNJ, Rate Counsel and PSE&G submitted a Motion for Summary Disposition on the explicit premise that there are no material facts in dispute and that the facts and evidence set forth in the SFE are an adequate record upon which this matter can and should be resolved as a matter of law. Given these representations, and having independently considered the facts in the record, notwithstanding TCNJ's subsequent claims to the contrary, the Board **HEREBY FINDS** that there are no genuine issues as to any material facts in this matter. N.J.A.C. 1:1-12.5(b). The Board **HEREBY FINDS** the facts to be those stipulated to in the SFE and incorporates the SFE herein by reference as if set forth in full.

In determining which party, if any, is entitled to prevail as a matter of law, the Board is guided by relevant legal authority. A public utility's filed tariff is not a mere contract, it has the force of law. In re Application of Saddle River, 71 N.J. 14, 29 (1976); Essex County Welfare Board v. New Jersey Bill Telephone Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974). The Board has authority over utility tariffs pursuant to its authority under N.J.S.A. 48:2-13. The Board's rules, and, by extension, utility tariffs subject to modification under the Board's rules, effectuate Board policy to provide for a safe and reliable utility system.[12] The interpretation of a tariff is uniquely within the Board's expertise as the agency charged with regulating utility tariffs. See Muise v. GPU, Inc., 332 N.J. Super. 140, 159 (App. Div. 2000).

Each utility must operate in accordance with its tariff at all times, "unless specifically authorized in writing by the Board to do otherwise."[13] Pursuant to N.J.A.C. 14:1-1.2, the Board may relax or waive its rules for good cause shown. The Board is to grant waivers of specific sections of its rules "in accordance with the general purposes and intent of its rules… if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public …."[14] An entity seeking a waiver is required to provide "[t]he reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required;" and to provide supporting documentation.[15]

The disputed legal issue here is if the Board should apply or waive Special Provision (c) of PSE&G's CIG tariff, which provides, in pertinent part as follows:

> If customer does not discontinue the use of gas after notification pursuant to Special Provision (b), the Commodity Charge shall be $1.89 ($2.02 including SUT) per therm for an amount not to exceed one hour's maximum requirement per day of interruption. Use of this amount shall be limited to a use rate per hour not greater than 5% of customer's maximum hourly requirement.
>
> The charge for all additional gas used shall be ten times the highest price of the daily ranges for delivery in Transco Zone 6, New York, or Texas Eastern Zone M-3 which are published in *Gas Daily* on the table "Daily Price Survey." This rate shall not be lower than the maximum penalty charge for unauthorized daily overruns as provided for in the FERC-approved gas tariffs of the interstate pipelines which deliver gas into New Jersey.
>
> [SFE at J-1.]

There is no apparent dispute about the meaning of this provision. The moving parties differ in that, PSE&G and Rate Counsel contend Special Provision (c) should be applied as written, whereas TCNJ seeks a partial or complete waiver of its application.

The penalty provisions in PSE&G's CIG tariff were mandated by the Board pursuant to the 2000

[12] See e.g., N.J.A.C. 14:1-5.11 and 5.12

[13] N.J.A.C. 14:3-1.3.

[14] N.J.A.C. 14:1-1.2(b)(1).

[15] N.J.A.C. 14:1-1.2(b)(2).

Penalty Order. As detailed above, the interruptible tariff penalty provisions, including Special Provision (c), were required by the Board in an effort to maintain the integrity of the natural gas systems and protect them from failures by interruptible customers who failed to interrupt during periods of high demand.[16] The Board is cognizant that the interruption of service is consistent with the tariff and applicable law. Interruptible customers, like TCNJ, derive the benefit of a lower tariff rate in exchange for agreeing to accept interruption of utility service during periods of peak demand. Interruptible customers provide an important load balancing benefit to the utilities and their firm customers, and it is essential that the interruptible customers take the necessary measures to be in a position to uphold their agreement and interrupt usage when called upon to do so consistent with the utility's tariff.

Here, it is undisputed that TCNJ failed to interrupt and was subject to a penalty pursuant to Special Provision (c).[17] It is also undisputed that TCNJ had no written emergency procedures or plans to address inadequate steam capacity and no records of maintenance or inspection of the Cogen or the day tank mechanism in the year preceding the January 2018 interruption at issue in this matter.[18] It is further undisputed that there were numerous steps TCNJ reasonably should have taken to ensure it was in a position to interrupt service when required by the tariff, and thereby avoid the penalty under Special Provision (c), but failed to do so.[19] In its briefs, TCNJ even acknowledged "some" responsibility for the failure to interrupt. Failing to take actions consistent with preparedness for an interruption is conduct that the 2000 Penalty Order, and the resultant provisions in PSE&G's CIG tariff, including Special Provision (c), were intended to prevent and address.

Consistent with the above, the Board **HEREBY FINDS** that PSE&G's interruption of service to TCNJ, and its decision not to offer CEG to TCNJ during a portion of the interruption period, was consistent with the tariff and applicable statutes and regulations. The Board **FURTHER FINDS** that good cause does not exist for granting the waiver sought by TCNJ and that determining otherwise would undermine the effectiveness of the penalty provisions statewide, rendering the waiver unfair and discriminatory to interruptible customers who paid the penalty or switched to a firm rate, and to firm customers who pay a premium to have gas available 365 days a year. In other words, granting the waiver is not appropriate because it would run counter to the "general purposes and intent" of the Board's rules.

As such, the Board **HEREBY DISMISSES** the Petition and Amended Petition, **HEREBY DENIES** TCNJ's Motion for Summary Disposition, and **FURTHER DENIES** TCNJ's request to waive the Penalty Amount.

[16] 2000 Penalty Order at 2.

[17] SFE at ¶ 19-42.

[18] SFE at ¶ 43-46.

[19] SFE at ¶ 47-49.

With regard to the Penalty Amount, the Board **HEREBY FINDS** that the Penalty Amount is: 1) just and reasonable in accordance with N.J.S.A. 48:3-1; 2) calculated correctly in accordance with PSE&G's Board-approved tariff; and 3) not excessive given the savings TCNJ enjoyed, and continues to enjoy, from being on an interruptible tariff.[20] PSE&G requested that the Penalty Amount be subject to "reasonable interest" dating back to the penalty due and owing date of June 7, 2018. In response, TCNJ argued that it should not be required to pay interest on the Penalty Amount because it is a state government entity, citing, among other things, to PSE&G's tariff which provides that "[s]ervice to a body politic will not be subject to a late payment charge." The Board **HEREBY FINDS** that TCNJ qualifies as a state government entity, and as such, the Board **HEREBY DENIES** PSE&G's request to add interest to the Penalty Amount.

Consistent with the foregoing, the Board **HEREBY GRANTS** in part, and **HEREBY DENIES** in part, Rate Counsel's Motion for Summary Disposition. Additionally, consistent with the foregoing, the Board **HEREBY GRANTS** in part, and **HEREBY DENIES** in part, PSE&G's Motion for Summary Disposition.

With respect to TCNJ's Motion to Supplement, pursuant to its discretion under N.J.S.A. 52:14B-10(a), the Board **HEREBY GRANTS** the motion. The information offered by TCNJ in its motion should have been submitted to the Board earlier and consistent with the procedural schedule in this matter, and the late submission was not justified by any arguments appearing in Rate Counsel or PSE&G's moving papers, which were not new. Nonetheless, information pertaining to the "degree of hardship" claimed by TCNJ is relevant to the Board's determination of the appropriateness of waiver under the circumstances.[21] Accordingly, the Board has considered the Schweigert certification and determined that it does not establish that imposition of the Penalty Amount will cause a hardship or change the Board's determination that a waiver is not justified for the reasons set forth above.

With regard to payment, the Board **HEREBY ORDERS** TCNJ to pay PSE&G the full Penalty Amount. The Board, **HEREBY GRANTS** TCNJ the opportunity to pay the Penalty Amount in equal monthly payments over a five (5) year period with the first monthly installment due on or before September 1, 2024 and the remaining installments due on or before the first day of each subsequent month until the Penalty Amount is paid in full. Should TCNJ fail to make timely payments, the Board **HEREBY FINDS** that PSE&G may take any action permitted under the Company's tariff and governing law, including, but not limited to, transferring TCNJ to an appropriate alternative rate. Further, should TCNJ fail to make timely payments, the Board may consider revoking TCNJ's monthly payment plan.

Finally, the Board **FINDS** that remaining on the CIG tariff is conditioned upon TCNJ strictly complying with the CIG tariff's mandatory requirements, including, but not limited to, interrupting usage when called upon to do so.

Therefore, the Board **HEREBY ORDERS** as follows:

A. TCNJ shall pay the full Penalty Amount to PSE&G on a monthly basis over the five (5) year period beginning September 1, 2024, without interest;

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[20] It is undisputed that TCNJ's savings are estimated to be $1,011,636 on an annual basis, based on usage data for TCNJ and a comparison of the January 2018 rates for interruptible service under the CIG tariff versus the January 2018 rates for firm service under the LVG tariff. SFE at ¶ 4.

[21] See N.J.A.C. 14:1-1.2(b)(2)(ii).

B. If TCNJ fails to make timely payments, PSE&G is authorized to take any action permitted under the Company's tariff and governing law, including, but not limited to, transferring TCNJ to an appropriate alternative rate class; and

C. TCNJ may remain on the CIG tariff provided that:

   a. TCNJ makes timely payments of the Penalty Amount; and

   b. TCNJ annually certifies to PSE&G, with a copy to Staff, that it will suspend operations during an interruption event, or that it has an alternative fuel source that can be legally used at its facilities, and that it will have and will maintain the availability of at least seven (7) days of fuel.

The effective date of this Board Order is July 31, 2024.

DATED: July 24, 2024

BOARD OF PUBLIC UTILITIES
BY:

CHRISTINE GUHL-SADOVY
PRESIDENT

DR. ZENON CHRISTODOULOU
COMMISSIONER

MARIAN ABDOU
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

ATTEST:

SHERRI L. GOLDEN
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 VERIFIED PETITION OF THE COLLEGE OF NEW JERSEY FOR RELIEF FROM A PENALTY ASSESSED BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY

DOCKET NO. GC18111234

SERVICE LIST

THE COLLEGE OF NEW JERSEY
PO Box 7718
Ewing, NJ 08628-0718

Thomas Mahoney, VP and General Counsel
tmahoney@tcnj.edu

Michael Canavan, Deputy General Counsel
canavanm@tcnj.edu

NORRIS MCLAUGHLIN, P.A.

James H. Laskey
400 Crossing Blvd., 8th Floor
Bridgewater, New Jersey 08807-5933
jlaskey@norris-law.com

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
80 Park Plaza, T5
Newark, NJ 07102

Matthew M. Weissman, Esq.
matthew.weissman@pseg.com

Justin B. Incardone, Esq.
justin.incardone@pseg.com

Joseph Accardo, Esq.
joseph.accardojr@pseg.com

Bernard Smalls
bernard.smalls@pseg.com

DIVISION OF LAW
Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Terel Klein, DAG
terel.klein@law.njoag.gov

Matko Ilic, DAG
matko.ilic@law.njoag.gov

DIVISION OF RATE COUNSEL
Division of Rate Counsel
140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Maura Caroselli, Esq., Managing Attorney
mcaroselli@rpa.nj.gov

BOARD OF PUBLIC UTILITIES
44 South Clinton Avenue, 1st Floor
Trenton, NJ 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Jacqueline Galka
jacqueline.galka@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Heather Weisband, Esq., Senior Counsel
heather.weisband@bpu.nj.gov

Exhibit A

State of New Jersey

DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

September 6, 2023

Via Electronic Mail
Sherri L. Golden, Board Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the Verified Petition of The College of New Jersey for Relief from a Penalty Assessed by Public Service Electric & Gas Company
BPU Docket No. GC18111234

Dear Secretary Golden:

In accordance with the Prehearing Order issued by Board of Public Utilities ("Board") President Joseph L. Fiordaliso as Presiding Officer in this matter, please accept for filing the attached Stipulated Facts and Exhibit being submitted jointly on behalf of Petitioner The College of New Jersey ("TCNJ"), Respondent Public Service Electric and Gas Company, and the New Jersey Division of Rate Counsel ("Rate Counsel"). TCNJ, PSE&G and Rate Counsel were not able to reach agreement on the Stipulated Facts and Exhibits in time to submit it to the Board by the August 4, 2023 deadline set in the Prehearing Order, and respectfully request a short extension of the deadline until today. TCNJ, PSE&G and Rate Counsel have reserved their rights to amend the Stipulated Facts and Exhibits as necessary. Any amendments, and with electronic copies of the stipulated exhibits for inclusion in the evidentiary record, will be submitted prior to the conclusion of the briefing schedule. The Board's Staff has advised that it will not be a signatory party to the Stipulated Facts and Exhibits.

Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities ("BPU" or "Board") in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a

Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, this communication is being filed electronically with the Secretary of the Board and is being provided to each person on the service list by electronic mail only. No paper copies will follow.

Please acknowledge receipt of this filing. Thank you for your consideration and attention to this matter.

Very truly yours,

Brian O. Lipman, Esq.
Director, Division of Rate Counsel

By: /s/ Sarah H. Steindel
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

SHS
cc: Service List
Joseph L. Fiordaliso, BPU President

STATE OF NEW JERSEY
BEFORE THE BOARD OF PUBLIC UTILITIES

THE HONORABLE JOSEPH L. FIORDALISO, PRESIDENT

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

STIPULATED FACTS AND EXHIBITS

In accordance with the Prehearing Order issued in this matter, Petitioner The College of New Jersey ("TCNJ"), Respondent Public Service Electric & Gas Company ("PSE&G") and the New Jersey Division of Rate Counsel ("Rate Counsel"), hereby stipulate to the following facts, exhibits for inclusion in the evidentiary record, and other matters set forth below.

<u>Background</u>

1. The College of New Jersey ("TCNJ" or "Petitioner") is a public college with a 289-acre residential campus located in Ewing, New Jersey. TCNJ enrolls approximately 7,400 students, including 6,790 undergraduates and 610 graduate students.

2. Public Service Electric & Gas Company ("PSE&G" or "Company") is a combination electric and gas utility that provides gas distribution service to approximately 1.9 million customers in New Jersey, in addition to its electric services.

3. TCNJ owns and operates an on-campus cogeneration plant ("Cogen") that supplies electricity and steam for heating throughout its campus. The Cogen receives interruptible natural gas delivery and supply service as a "grandfathered" customer under PSE&G's Rate Schedule CIG – Cogeneration Interruptible Service, under PSE&G's Account No. 4200142104. Customers under this tariff must have continuously received service under this rate schedule of PSEG's former Rate Schedule CEG since January 8, 2002, or, alternatively, must have received a commitment from PSE&G before January 9, 2002. A copy of the CIG tariff in effect as of January 2018 is marked as EXHIBIT J-1. [Tariff Gas Service B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheet Nos. 107-111; attachment to RCR-PSEG-0002.] TCNJ has received service under Rate Schedule CIG or former Rate Schedule CEG since 1995.

4. CIG is an interruptible service offered at a rate that is substantially discounted compared to both the interruptible service that would otherwise be applicable to the Cogen, under PSE&G's Rate Schedule TSG-NF – Non-Firm Transportation Gas Service, or the firm service available under Rate Schedule LVG – Large Volume Service. The following table shows the estimated annual savings to TCNJ compared to Rate Schedules TSG-NF and LVG based on usage data for TCNJ and the tariff rates that were in effect as of January 2018:

Rate Class	Est'd Annual Cost of Gas Delivery + Supply	Variance to CIG
CIG	$2,723,243	
LVG	$3,734,879	$1,011,636 Higher
TSG-NF	$3,359,385	$636,142 Higher

[RCR-PSEG- INF-001-REVISED.]

The estimated savings based on current tariff rates is shown in the following table:

Rate Class	Est'd Annual Cost of Gas Delivery + Supply	Variance to CIG
CIG	$3,575,719	
LVG	$4,843,124	$1,267,406 Higher
TSG-NF	$4,417,413	$841,695 Higher

[RCR-PSEG-INF-001-REVISED.]

5. Under Special Provision (b) of Rate Schedule CIG, customers are required to discontinue their use of gas upon advance notice of eight hours or more, from any hour of any day given to the customer by PSE&G. Under Special Provision (c), if the customer does not discontinue the use of gas after proper notification, the customer's Commodity Charge is $1.89 per therm, excluding sales and use tax, for a maximum of one hour's maximum requirement per day of interruption. Use of this amount is limited to a use rate per hour not greater than 5% of customer's maximum hourly requirement. Any usage during the interruption above this amount is charged at a penalty rate of the greater of: (1) ten times the highest price of the daily ranges for delivery in Transco Zone 6, New York, or Texas Eastern Zone M-3 which are published in Gas Daily on the table "Daily Price Survey," and (2) the maximum penalty charge for unauthorized daily overruns as provided for in the FERC-approved gas tariffs of the interstate pipelines which deliver gas into New Jersey. TCNJ has inquired whether the prices reported in Gas Daily reflect prices actually paid by PSE&G. However, PSE&G has declined to provide this information.

6. Special Provision (n) of Rate Schedule CIG provides for a service known as Extended Gas Service which is supplied during interruptions, at PSE&G's option, at a price tied to

PSE&G's highest cost of gas during the applicable period. Extended Gas Service is limited to customers having an executed service agreement, which must be in place no later than November 15 of each year for service during the upcoming winter season. Customers are notified of the availability and price of Extended Gas Service at least eight hours prior to the availability of this service, and at least eight hours prior to any change in the price of this service, and customers have two hours to notify PSE&G of their acceptance. Any gas used during an interruption when Extended Gas Service is not available or when a customer does not accept this service is subject to the penalty provided in Special Provision (c).

7. On November 15, 2017 TCNJ submitted an application for Extended Gas Service for the 2017-2018 winter, which was accepted by PSE&G. A copy of the Application is marked as EXHIBIT J-2. [attachment to RCR-PSEG-0011.]

8. In addition to the Cogen, steam to the campus is provided by two boilers that receive service on a separate meter under PSE&G's Rate Schedule TSG-NF – Non-Firm Transportation Service, under Account No. 4200053705. A copy of Rate Schedule TSG-NF tariff in effect as of January 2018 is marked as EXHIBIT J-3. [Tariff Gas Service B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheets Nos. 99-103.]

9. Under Special Provision (a) of the TSG-NF tariff, customers using this service must certify annually either that they will suspend operations during an interruption, or that they have an alternative fuel source that can be legally used at the customer's facilities. In addition, customers using specified alternate fuels including No. 2 Fuel Oil, are required to certify further that they have, and will maintain the availability of at least seven days of alternative fuel available, either on-site or through additional firm contractual supply. TCNJ maintains an alternate fuel backup system using No. 2 Fuel Oil for the two boilers serviced under Rate Schedule TSG-NF. [RCR_PSEG-0012, attached TSGNF Affidavit 2017-18.]

10. While there is no alternative fuel requirement for CIG, TCNJ maintains fuel oil back-up system using No. 2 Fuel Oil for the Cogen. As of the 2017-18 winter season, fuel oil was provided to the Cogen using a small day tank located inside of the Cogen plant and a larger outdoor holding tank. The day tank was equipped with a float probe that would trigger a fill command when oil level in the day tank was low. At that point, a pump would transfer oil from the large storage tank until the second float probe at the top of the day tank would trigger a stop command. A full day tank would provide approximately 30 minutes of operation and in conjunction with the refillable large storage tank system, could run for at least 7 days. The day tank mechanism was installed at the initiation of the Cogen in 1995. [Verified Amended Petition, para 7, PSEG-TCNJ-2.]

11. From 1995 until the January 4-January 8, 2018 interruption that is the subject of this Petition, TCNJ had complied with every gas interruption notice from PSE&G, either by curtailing its use of gas or by using Extended Gas Service. The discovery responses provided by TCNJ do not include information on whether, prior to January of 2018, TCNJ used Extended Gas Service or not when required to interrupt gas service.

<u>December 31, 2017 to January 2, 2018 Interruption</u>

12. Service to customers served under Rate Schedules CIG and TSG-NF was interrupted from 10:00 am on December 31, 2017 through 10:00 am on January 2, 2018. TCNJ received informal and formal notice of this interruption at approximately 6:00 pm on December 29, 2017. TCNJ advised PSE&G that the interruption "would not work" and requested Extended Gas service. [PSEG-TCNJ-7, 7-5-17 to 1-3-18 Svc Log.]

13. Beginning at 5:45 a.m. on December 31, 2017 TCNJ operated the Cogen using the fuel oil backup system. The Cogen was operated on fuel oil until 8:45 a.m. on January 1, 2018, when the turbine tripped as the result of a flameout due to high fuel flow. TCNJ's plant operators attempted to re-light the turbine using fuel oil three times but were unable to do so due to low oil flow and low oil pressure. The Cogen was switched back to gas at 9:39 a.m. The Cogen was operated on gas, using Extended Gas Service for the remainder of the interruption. [RCR-TCNJ-0001 (Certification of Lori Winyard); PSEG-TCNJ-0007, Svc Logs July 5, 2017-January 3, 2018, p. 150.]

14. Given the circumstances on January 1, 2018 described in paragraph 13 above, the statement in paragraphs 7-8 of the certification of Ms. Lori Winyard that was produced by TCNJ during the discovery in the matter (RCR-TCNJ-0001) that "[p]rior to January 4, 2018, during my tenure at TCNJ, there was never any failure of the performance of the back-up system during prior interruptions noticed by PSE&G", was not correct. A copy of Ms. Winyard's certification is marked as EXHIBIT J-4.

15. Throughout the interruption the two boilers that are served under Rate Schedule TSG-NF, operated on fuel oil. TCNJ operated the Cogen using Extended Gas Service after the failure of the fuel oil delivery system because the boilers alone "won't do it." [PSEG-TCNJ-7, 7-5-17 to 1-3-18 Svc Log, p. 150.]

16. On January 1, 2018 between the hours of 2:00 p.m. and 10:00 p.m. the plant operators confirmed that the Cogen would not run on oil. At 2:00 pm, on January 1, 2018 the TCNJ's plant operator contacted Solar Turbines, the turbine manufacturer, and left a message with their service department. [PSEG-TCNJ-7, 7-5-17 to 1-3-18 Svc Log, p. 150.]

17. On January 2, 2018 at approximately 6:52 a.m. a technician from Solar Turbines advised TCNJ's operating personnel that there was a "bad switch" associated with the oil day tank serving the cogeneration unit. Later that day the Cogen was switched to fuel oil twice, and on both occasions turbine tripped off after approximately thirty minutes of operation. [PSEG-TCNJ-7, 7-5-17 to 1-3-18 Svc Log, p. 151.]

18. As of January 1 and January 2, 2018, snow was in the forecast for January 4, 2018 and very cold temperatures were forecasted for January 5 and 6, 2018. Specifically, the January 1, 2018 Trenton Times reported a forecast high of 15^0 F and a low of 1^0 F for Friday, January 5, and the January 2, 2018 Trenton Times reported a forecast high of 15^0 F and a low of 5^0 F for Friday, January 5 and a high of 15^0 F and a low of 3^0 F for Saturday, January 6. Copies of the weather forecasts appearing in the Trenton Times on January 1 through January 4, 2010 are marked as EXHIBIT J-5.

January 4, 2017 to January 8, 2018 Interruption

19. On January 3, 2018 at 12:15 pm, TCNJ received informal notification by email from PSE&G that there would be an interruption of service beginning on January 4, 2018. At 2:38 p.m. TCNJ was advised informally that the interruption would include service to the Cogen under rate schedule CIG.

20. On January 3, 2018 at approximately 2:00 pm, in light of the weather forecast for the following day, Pete McKenna, PSE&G's Supervisor, Gas System Operations ("GSOC"), transmitted to TCNJ by fax a document titled: CIG Sales Service – Interruption/ Restoration ("January 3 Notification"). The January 3 Notification that stated gas service under the CIG rate would be interrupted effective 10:00 am on January 4, 2018 and that Extended Gas Service ("CEG") would be available at that time at $16.46 per dekatherm. The January 3 Notification further stated: "If you elect to receive extended gas service, you have (2) hours to respond as to whether you will use this service. If you do not respond it is assumed you are declining the extended gas service." The January 3 Notification was signed Mr. Louis D'Addario of TCNJ and transmitted by fax to PSE&G at approximately 3:50 p.m. on January 3, 2018. A copy of the signed January 3 Notification is marked as EXHIBIT J-6. [RCR-PSEG-0001 College of NJ.CIG Interrupt 1-3.]

21. On January 3, 2018 at 4:57 p.m., PSE&G e-mailed an additional informal notice of the interruption to all TSGNF Supplied, TSGNF with PSE&G, CIG, CEG, and CSGI customers. The Notice further states: "Per PSE&G's gas tariff TSGNF, you MUST stop using gas and switch to your alternative fuel during the above time period or be **subject to severe penalty for any natural gas consumed during this period**." Copy of the e-mail as received by TCNJ is marked as EXHIBIT J-7. [RCR-TCNJ-1 – Responsive emails, p. 11.]

22. Based on data available to PSE&G at approximately 7:30 am on January 4, 2018, the average forecast temperature for January 4, 2018 was 19.9 degrees, and the average forecast temperature for January 5, 2018 was 9.6 degrees. [RCR-PSEG-0003.]

23. On the morning of January 4, 2018, in light of the weather forecast for the following day and the recommendation of the Company's Gas Asset Strategy group, at approximately 9:20 am, Richard Spataro, a GSOC Supervisor for PSE&G, transmitted a fax notification that CEG would no longer be available effective January 5, 2018 at 10:00 am, and that the customer should be off gas entirely by 10:00 am on January 5. The fax was signed and returned by Neil Jones at TCNJ. A copy of the signed notification is marked as EXHIBIT J-8. [RCR-PSEG-0001, attachment TCNJ-CIG CEG.]

24. The Cogen was operated on gas using Extended Gas Service beginning at 10:00 a.m. on January 4, 2018.

25. On January 4, 2018 at 10:40 am the Cogen was switched to fuel oil to test the fuel oil backup system. The Cogen operated on oil for approximately 30 minutes, then tripped off due to low oil at 11:10 a.m. TCNJ's personnel were aware at that time that the day tank was not functioning properly. At 11:25 am, the Cogen turbine was switched back to gas. [TCNJ-PSEG-0001 Svc Logs, p.6.] Thereafter, the Cogen was operated using Extended Gas Service until January 5, 2018 at 10:00 a.m. [PSEG-TCNJ-7, 1-3-18 to 7-12-18 Svc Log, p. 1.]

26. TCNJ determined that the day tank mechanism failed because the day tank float probes, which are designed to sense when the tank requires refilling, did not function properly during the interruption period. Spare float probes were not available. Between the hours of 2:00 pm and 10:00 p.m. on January 4, 2028 it was determined that Liberty Mechanical Contractors, Inc., would come to service the oil tank for the turbine. However, TCNJ was not able to obtain emergency service from Liberty Mechanical during the interruption period due to the inclement weather. [PSEG-TCNJ-2, TCNJ-PSEG-0007, 1-3-18 to 7-12-18 Svc Logs, p.2; discovery conference; RCR-TCNJ-0001, Certification of Lori Winyard, par. 17-19.]

27. At 4:05 p.m. on January 4, 2018 Lori Winyard, TCNJ's Director of Energy and Central Utilities, informed Kathy Leverton, TCNJ's Associate Vice President of Facilities and Administrative Services, that the fuel oil back up system had failed and that the energy systems specialist was unable to repair it. Ms. Winyard further advised that Liberty Mechanical was expected the following morning to attempt to repair. Ms. Winyard reminded Ms. Leverton that TCNJ would be forced to pay a penalty to continue operating the Cogen on gas if the back-up system could not be repaired. Ms. Leverton replied "Ok keep me posted." [Certification of Lori Winyard, para 19-22.]

28. The day tank can be manually filled, but such a manual filing of the day tank would require continual monitoring of the oil level in the day tank by multiple staff who would be required to climb a ladder to view a sight gauge that is located near the ceiling of the building housing the turbine. This option was not used due to safety and the risk of an oil spill causing an environmental emergency. [PSEG-TCNJ-2(b).]

29. On January 5, 2018 at approximately 5:30 am, Ms. Winyard informed TCNJ Cogen plant operators that the contractor would come to service the day tank oil level control that morning. Between the hours of 6:00 am and 2:00 pm, TCNJ Cogen plant operators worked on the day tank. [PSEG-TCNJ-0002, attachment TCNJ-PSEG-0001 Svc Logs, 1-3-18 to 7-12-18, p.2-3.]

30. On January 5, 2018 at 10:26 am, Robert Foster, Key Customer Advisor/Major Account Consultant at PSE&G, sent an email reminder to customers to continue to operate alternative fuel until notified by PSE&G to resume normal operations and that if there is an issue with compliance to either contact Mr. Foster or his back-up Rich Pancoast. A copy of the e-mail, as received by TCNJ, is marked as EXHIBIT J-9. [RCR-TCNJ-1, responsive e-mails, p.13.]

31. On January 5, 2018 at 1:09 pm, Lori Winyard, Director of Facilities with TCNJ, informed Mr. Foster by e-mail that the Cogen plant back-up fuel system malfunctioned the previous evening and was unable to operate on fuel oil. Ms. Winyard stated that the boilers served under rate schedule TSG-NF were operating on fuel oil, but that the Cogen could not be taken offline since the campus's steam load exceeded the capacity of the boilers. Ms. Winyard requested that the Company waive the gas use penalty until the issue is resolved. The request for a waiver was denied. [TCNJ-PSEG-0015.] PSE&G maintains it did not have authority to waive the penalty. No other interruptible customer of PSE&G requested or was granted a waiver of penalties incurred during this interruption event.

32. The temperature on the afternoon of January 5, 2018 was 6 degrees and temperatures were forecasted to continue to fall. PSE&G claims that, based on the temperature forecast, its distribution system was in a critical emergency. [TCNJ-PSEG-15.]

33. PSE&G claims that on the evening of January 5, 2018, at approximately 9:00 pm, Mr. Foster called Ms. Winyard to check the status of the equipment repair and to advise Ms. Winyard that TCNJ was burning penalty gas at a cost of approximately $100,000 per hour. PSE&G further claims that Mr. Foster further explained that the publicly available gas tariff sets forth the applicable penalty and gas indices on which the penalty calculation is based, and that Ms. Winyard stated that TCNJ was still trying to make repairs but in the meantime had to keep the Cogen on natural gas. [RCR-PSEG-0001p. 2.] TCNJ asserts that it has no record of this telephone call nor of any communication by

PSE&G during the interruption period that provided an approximate cost of the penalty gas. [RCR-TCNJ-17.]

34. On February 19, 2018, Lori Winyard emailed Bob Foster asking for the time and date that neither CIG nor CEG were offered, the time and date that TCNJ began running penalty gas, and the time and date TCNJ ceased running penalty gas. On the same date, Bob Foster sent Lori Winyard a response email with the information she had requested. Thereafter, discussion about potential resolution via a 5-year payment plan took place intermittently for nearly two months, until on April 4, 2018 Lori Winyard again emailed Bob Foster, this time asking for the specific daily prices for the dates of 1/5/18-1/7/18, which of the delivery zones TCNJ falls into, the maximum penalty charged (per therm) for unauthorized daily overruns, and the broken out therms consumed for 1/5/18-1/7/18. Foster responded in full that "[t]here are only two Gas Daily sheets needed" and "it is the Transco Zone 6 NY, the highest price in the absolute column." On April 6, 2018, Winyard requested and received further revised estimates from Foster. [RCR-TCNJ-1 – Responsive e-mails.]

35. PSE&G maintains that it provided all of the information necessary to compute the penalty in accordance with the provisions of the CIG tariff. TCNJ did not request additional gas pricing information during the discovery phase of this proceeding. TCNJ was requested during discovery to state whether it disputed the methodology used by PSE&G to calculate the penalty, and if so, to provide an alternative calculation using that methodology. TCNJ's response stated that it had not computed an alternative to PSE&G's calculation. A copy of Rate Counsel's discovery request and TCNJ's response is marked as EXHIBIT J-10. [RCR-TCNJ-7.]

36. TCNJ continued to operate the Cogen using penalty gas until January 7, 2018. During the period when Extended Gas Service was not available, TCNJ did not undertake any measure to reduce its use of penalty gas based on its determination that to do so would risk pipes freezing. [RCR-TCNJ-INF-1.]

37. On January 6, 2018 at approximately 10:00 am, GSOC Supervisor Lawrence Annunziata informed TCNJ that Extended Gas Service would be available at $15.98 per dekatherm beginning at 10:00 am on January 7, 2018. [RCR-PSEG-0001 TCNJ.CIG Extend 1-7.] TCNJ used Extended Gas Service beginning January 7, 2018 at 10:00 a.m. and continuing through the conclusion of the interruption. [RCR-PSEG-0001, p. 2.]

<u>Penalty Amount and Accounting</u>

38. TCNJ operated the Cogen during the interruption when Extended Gas Service was not available for 48 hours or 2 "gas days" from January 5, 2018 at 10:00 am to January 7, 2018 at 10:00 am. The amount of the penalty, as calculated by PSE&G, was $2,359,532. Usage in the amount of one hour's maximum requirement for each of the two days of the

interruption was charged at rate of $1.89 per therm. The remaining usage was charged based on the penalty rate specified in Special Provision (c) of the CIG Tariff, which was $175 per therm for usage on the gas day beginning at 10 am on January 5, 2018 and $65 per them for usage on the gas day beginning at 10 am on January 6, 2018. The calculation is marked as EXHIBIT J-11. [RCR-PSEG-0006, RCR_PSEG_0006_TCNJ Penalty Calculation.]

39. Special Provision (c) of the CIG tariff allows the customer, at any time during the months of November through March, to request to change from interruptible to firm service. Under the tariff, in that event the customer will be switched to firm service, subject to the availability of supply and delivery capacity, retroactive to November 1. On April 6, 2018 TCNJ was advised in a meeting with representatives of PSE&G that it could switch to Rate Schedule LVG as of November 1, 2017 and then, after remaining on firm service for one year, switch to interruptible service under Rate Schedule TSG-NF. TCNJ was advised that, due to the requirement for continuous service under Rate Schedule CIG, TCNG would not be permitted to return to Rate Schedule CIG after one year of firm service. TCNJ did not elect to use this option. [RCR-PSEG-0001.]

40. In accordance with PSE&G's Board-approved gas supply agreement with PSEG Energy Resources & Trade ("ER&T") 25% of the $2,359,532 penalty amount was paid to ER&T which supplied the gas burned by TCNJ, and 75% was flowed through to PSE&G's BGSS customers. In the event of a waiver or reduction in the penalty amount, these transactions would be reversed in whole or in part, thereby requiring all current PSE&G BGSS customers to pay an increase on their bills to essentially pay back to PSE&G the credit which they already received predicated on PSE&G receiving the full TCNJ penalty. [RCR-PSEG-0001; .STAFF-PSEG-INF-0002]

41. Information concerning penalties assessed against other customers of PSE&G during the two interruption periods referenced above is shown in the document marked as CONFIDENTIAL EXHIBIT J-12, which contains information subject to the Agreement of Non-Disclosure of Information Claimed to be Confidential executed by the parties in this matter. Other interruptible customers who failed to interrupt during the relevant periods either left the rate, including several customers whose penalty amounts were in the hundreds of thousands of dollars and as high as $1.15 million – or paid the penalty, including a customer who paid a penalty in excess of $600 thousand. [TCNJ-PSEG-0011 (Confidential).]

42. Despite TCNJ's failure to interrupt, no PSE&G customer for firm delivery actually lost service during the period in question. [TCNJ-PSEG-12.]

TCNJ Operating and Maintenance Practices

43. On September 21, 2016, FM Global, TCNJ's property insurer, visited TCNJ to conduct a "Boiler and Machinery Regular Risk Evaluation." The evaluation Report noted that "[p]ending co-generation projects designed to improve plant reliability and efficiency were discussed," including removal and replacement of the aging gas turbine and associated "upgrades to the operating controls, fuel system and starter system." A copy of the report is marked as EXHIBIT J-13. [TCNJ attachment TCNJ_RCR_1 Boiler & Machinery Evaluation 2016.pdf.]

44. As of January 2018, TCNJ's practice in the event of inadequate steam generation capacity was to engage steam boiler rental service to provide a temporary boiler to be used on TCNJ's campus. Based on TCNJ's experience, there are several suppliers of this service who are able to provide temporary boilers on its campus on short notice. TCNJ did not engage such service at any time between January 1, 2018 and January 7, 2018. [Discovery conference.]

45. As of January 2018, TCNJ had no formal written plans for freeze prevention and no formal written emergency operating procedures in the event of inadequate steam capacity. As of January 2018, TCNJ had no plans or protocols for reducing its steam usage to reduce its usage of penalty gas during an interruption. [RCR-TCNJ-21, discovery conference.]

46. Up to and including January 2018, TCNJ had no formal log of maintenance and testing recorded by the Cogen plant operators. TCNJ has no records that maintenance was performed on the day tank mechanism during the year preceding the January 4-January 8, 2018 interruption period. [RCR-TCNJ-11, PSEG-TCNJ-2(c)(iii) REVISED RESPONSE.]

47. On April 13, 2018, FM Global, TCNJ's property insurer, visited TCNJ as part of a loss investigation associated with the Cogen. FM Global identified the following negative loss factors: (1) the manufacturer recommended inspections and tests were not performed, (2) the manufacturer recommended spare parts for the level switch were not maintained, (3) there were no formal standard operating procedures ("SOPs") and emergency operating procedures ("EOPs") for the plant operators to follow, and (4) TCNJ lacked formal plans for freeze prevention. A copy of the report is marked as EXHIBIT J-14. TCNJ does not dispute these findings. [2018 FM Global Loss Report, p. 6.]

48. From approximately January 2018 to August 2018 TCNJ engaged consultants to explore the cause of the failure to the day tank mechanism and to attempt repairs. TCNJ determined that repairs would not be sufficient to prevent a future failure. Accordingly,

TCNJ decide to redesign the system to remove the day tank and pump fuel oil directly from the large outdoor storage tank. This work was completed in December 2018 at a cost of approximately $88,000. [Verified Amended Complaint par 47, Svc logs [1-3-18 – 7-12-18, 7-12-18 – 1-11-19.]

49. TCNJ has complied with all gas interruption notices from PSE&G subsequent to the January 2018 interruption event. The remaining gas interruption notices during the 2017-2018 winter season were complied with by using the Extended Gas Service that was available during those interruptions. Since the 2017-2018 winter There have been four interruptions of gas service to customers served under Rate Schedule CIG, two in January of 2022, one in December of 2022 and one in February of 2023. TCNJ's usage or discontinuance of gas during each of these four interruptions was as indicated in Exhibit J-15. [RCR-PSEG-INF-0003.] TCNJ stated in a response to an informal discovery request that its campus-wide freeze-up prevention program is a "work in progress." TCNJ presently has no contingency plans in the event the Cogen's fuel oil backup system should fail during an interruption event when Extended Gas Service is not available. TCNJ's response to the informal discovery request is marked as EXHIBIT J-16. [RCR-TCNJ-INF-1.]

Other Matters

50. The parties stipulate to the inclusion in the evidentiary record of the exhibits listed in the attached list of Stipulated Joint Exhibits.

51. These stipulated facts are subject to amendment by the parties if necessary. Additional exhibits may be added, subject to other parties' right to raise objections.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BY: Matthew Weissman

Matthew M. Weissman, Esq.
Managing Counsel, State Regulatory

DATED: August 31, 2023

THE COLLEGE OF NEW JERSEY

BY: /s/ James H. Laskey

James H. Laskey, Esq.
Norris McLaughlin, P.A.

DATED: September 6, 2023

NEW JERSEY DIVISION OF RATE COUNSEL
BRIAN O. LIPMAN, DIRECTOR

BY: /s/Sarah H. Steindel

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

DATED: August 31, 2023

In the Matter of the Verified Petition of the College of New Jersey for Relief from a Penalty Assessed by Public Service Electric & Gas Company
BPU Docket No. GC18111234

Stipulated Joint Exhibits

J- 1	PSE&G Tariff – Gas Service B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheet Nos. 107-111 (Rate Schedule CIG – Cogeneration Interruptible Service).
J- 2	TCNJ Application for Extended Gas Service – Winter 2017-2018 (Nov. 15, 2017)
J- 3	PSE&G Tariff – Gas Service B.P.U.N.J. No. 15 effective Jan 1, 2018, Sheet Nos. 99-103 (Rate Schedule TSG-NF – Non-Firm Transportation Service).
J- 4	Certification of Lori Winyard dated January 8, 2019,
J- 5	Weather forecasts from the <u>Trenton Times</u>, January 1, 2, 3 & 4.
J- 6	Faxed Notice from PSE&G to TCNJ – Gas Service Interrupted/Extended Gas Service Available effective January 4, 2018 at 10:00 am. (Jan. 3, 2018, 2:09 pm).
J- 7	Informal e-mailed notification from PSE&G to all Gas Rate TSGNF Supplied, TSGNF with PSE&G, CIG, CEG, and CSGI customers (Jan 4, 2018, 10:00 am)
J- 8	Faxed Notice from PSE&G to TCNJ – Extended Gas Service unavailable as of January 5, 2018 at 10:00 am (Jan. 4, 2018, 9:20 am.)
J- 9	Informal e-mailed reminder from PSE&G to continue operation on alternate fuel (Jan. 5, 2018, 10:26 am)
J- 10	TCNJ response to Rate Counsel Discovery Request RCR-TCNJ-7
J- 11	Excel file containing PSE&G's calculation of TCNJ penalty
J- 12	CONFIDENTIAL table of PSE&G's Interruptible Customers That Failed to Interrupt in January 2018
J- 13	FM Global Loss Report to TCNJ regarding Boiler and Machinery Regular Risk Evaluation" (2016)
J- 14	FM Global Loss Report to TCNJ regarding Loss Investigation – "Co-Gen Fuel Oil System Mis-Operation" (2018)
J- 15	PSE&G Response to informal discovery request RCR-PSEG-INF-3.
J- 16	TCNJ response to informal discovery request RCR-TCNJ-INF-1.
J- 17	TCNJ handwritten operating log for December 29, 2017 through January 8, 2018.

J- 18 PSE&G Response to RCR-PSEG-INF-2.

J- 19 TCNJ Initial Response to RCR-TCNJ-3

J- 20 TCNJ Updated Response to RCR-TCNJ-3

J- 21 TCNJ Initial Response to PSEG-TCNJ-2.

J- 22 TCNJ Updated Response to PSEG-TCNJ-2

J- 23 TCNJ Response to RCR-TCNJ-11.

J- 24 PSE&G Response to RCR-PSEG-6.

J- 25 PSE&G Response to RCR-PSEG-3 with CONFIDENTIAL and non-confidential attachments.

In the Matter of the Verified Petition of
The College of New Jersey for Relief
from a Penalty Assessed by Public
Service Electric & Gas Company
BPU Docket No. GC18111234

Sherri L. Golden
Board Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 1ST Floor
P.O. Box 350
Trenton, NJ 08625

Brian O. Lipman, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Maura Caroselli, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Sarah H. Steindel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Mamie W. Purnell, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Carlena Morrison, Paralegal
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Michael Beck
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Malike Cummings
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Jacqueline Galka
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Mike Kammer
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Stacy Peterson
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Heather Weisband
NJ Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Matko Ilic, DAG
NJ Dept. of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Terel Klein, DAG
NJ Dept. of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Steven Chaplar, DAG
NJ Dept. of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Joseph Accardo, Esq.
PSE&G Services Corporation
80 Park Plaza, T5G
P.O. Box 570
Newark, NJ 07102

Stacey Mickles, Esq.
PSE&G Services Corporation
80 Park Plaza, T5G
P.O. Box 570
Newark, NJ 07102

Matthew M. Weissman, Esq.
PSE&G Services Corporation
80 Park Plaza, T5G
P.O. Box 570
Newark, NJ 07102

Michael Canavan
Deputy General Counsel
The College of New Jersey
PO Box 7718
Ewing, NJ 08628-0718

James H. Laskey, Esq.
Norris McLaughlin, P.A.
400 Crossing Blvd., 8th Floor
Bridgewater, NJ 08807-5933

Anthony D’Elia, Esq.
Norris McLaughlin, P.A.
400 Crossing Blvd., 8th Floor
Bridgewater, NJ 08807-5933

Bernard Smalls
PSE&G Services Corporation
80 Park Plaza, T5G
P.O. Box 570
Newark, NJ 07102