Final Report - - Executive Summary
Phase One of an
Audit of the Affiliated Transactions Between
New Jersey Natural Gas Company and
New Jersey Resources Corporation
and its Affiliates and a Management Audit of
New Jersey Natural Gas Company
Docket No. GA22020074

Public Version: Confidential Materials are Redacted

Presented to:

Board of Public Utilities
State of New Jersey

Presented by:

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Executive Summary

A. Introduction

This report summarizes the first, *Audit of the Affiliated Transactions Between New Jersey Natural Gas Company and New Jersey Resources Corporation and its Affiliates,* phase of an Audit of the Affiliated Transactions and a Management Audit of New Jersey Natural Gas Company that The Liberty Consulting Group, conducted on behalf of the New Jersey Board of Public Utilities. We performed this audit in two phases:

- Phase One: A focused series of topics that address utility natural gas supply procurement and management, the impact of the relationship between the utility and affiliates that operate in this area, the allocation of costs to all affiliated entities, the reports prepared by the utility and submitted to the state of New Jersey and federal authorities, and the Company's compliance with affiliate standards that enforce the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 *et seq*. This report describes the results of our examination of the scope encompassed by these topics
- Phase Two: Subsequent examination and evaluation of functions as part of a comprehensive management audit of New Jersey Natural Gas. An accompanying report describes the results of our examination of topics within that scope.

We appreciate the opportunity to be of service for the New Jersey Board of Public Utilities, we thank the strong support from its Staff across the completion of our work.

B. Chapter II: Procurement and Purchasing

Our examination of the gas-supply function began with a review of organization, staffing, and controls. We found organization and staffing generally satisfactory, but recommended that the function develop more specific goals and objectives. However, gas supply for NJNG continues to operate without sufficient independence from the interests of affiliates. To address that problem, we recommend elevating the head of NJNG's gas-supply function to the executive level, reporting to the head of NJNG Sr. Vice President and COO, and engaging the separate NJNG board of directors more substantially in oversight of NJNG gas supply. We found controls on gas-supply transactions appropriate, but implementation of them lacking rigor. We also found a lack of sufficiently regular and focused Internal Audit examination of gas-supply transactions and relationships, primarily concerning the utility's conduct of its relationships with affiliate NJRES.

We reviewed requirements forecasting and supply planning. We found Design-Day forecasting and normal-weather forecasting consistent with prevailing industry practice, but criteria for guiding Design-Day Forecasts and specifications for the Design-Weather increments to its Winter and Summer capacity requirements too stringent. NJNG should use more-normal design criteria for supply planning going forward. The Company's specifications for its Design-Day Sendout Forecast and its Design-Day capacity requirements produce an extremely high reserve margin. NJNG should update its analysis of its exposure to pipeline outages, reflect the changes in its own supply-capacity portfolio, and then adjust its reserve margin accordingly. Those adjustments to peak-day and annual requirements forecasts should then form the basis for developing a plan to bring NJNG's supply-capacity portfolio into closer alignment with its customers' requirements.

We reviewed NJNG's management of its gas transportation and peaking assets. We found utilization of NJNG's peak-day and annual capacity to serve on-system customers declining over the Audit Period, reflecting excess capacity and warranting Company review of utilization of each asset in its next BGSS proceeding.

Cost recovery in secondary markets suggests a value of NJNG's gas-supply assets well in excess of their costs. This positive difference makes effective NJNG use of markets an important source of offsetting costs recovered from customers. Affiliate NJRES has remained a prime beneficiary of these assets. NJNG needs to address the ways in which it favors its affiliate in conducting its gas-supply operations, and make appropriate adjustments. The Company's Affiliate Standards Compliance Plans have addressed NJNG's relationships only with its retail affiliates, but NJRES operates at wholesale. Development of an Affiliate Standards Compliance Plan that addresses the relationship between NJNG and NJRES is in order.

We reviewed the Company's approach to commodity purchasing and price-risk management. We found objectives for gas purchasing clear and aligned appropriately with the interests of customers. However, strategies for purchasing and price-risk management can experience adverse effects through operation of the Storage Incentive Program. We recommended that the Company obtain the outside expert review of its Hedging and Storage Incentive Programs recommended by the previous audit of this type, but not undertaken. Moreover, the Storage Incentive Program consistently displays positive margins. Pending the more complete Hedging and Storage Incentive Program review, we recommended that the Company report to the New Jersey Board of Public Utilities ("BPU") on the commodity cost in the Benchmark Cost calculation that forms part of the incentive program.

We found NJNG's mix of commodity suppliers increasingly concentrated on one supplier. Patterns in purchases from that supplier raise questions regarding its relationship with affiliate NJRES. NJNG should demonstrate that the terms of supply from that supplier are fully competitive.

Finally, we reviewed the Company's approaches to gas measurement and balancing. NJNG's metering and testing programs conform to industry standards. Its sampling procedures for meter testing follow those set by the BPU in Docket No. GO18101190. As a general matter, NJNG requires daily-metered customers to balance monthly, and a summer-month true-up process brings monthly-metered customers closer to a zero balance. Third-party suppliers must deliver only daily-average quantities for their monthly-metered customers.

Our *Procurement and Purchasing* recommendations include:

1. **Develop specific goals and objectives for the utility's gas-supply function.**

2. **Elevate the NJNG gas supply position to the executive level, with reporting directly to the NJNG Sr. Vice President and COO and engage the separate NJNG board more substantially in oversight of NJNG gas supply.**

3. **Require adherence to procedures that place controls on transactions between NJNG and affiliates.**

4. **End with visibility to employees the disingenuous "cost" argument with respect asymmetric pricing's application to transfers of NJNG's transportation and storage assets to NJRES and establish controls that ensure no advantage accrues to NJRES through the use of "biddable" offers.**

5. **Regularly examine policies, practices, transactions, and arrangements that pose risk to the accuracy and prudence of NJNG gas supply costs and controls to ensure fully arm's-length transactions and relationships with affiliates.**

6. **Apply more-normal design criteria for supply planning going forward.**

7. **Update the analysis of NJNG's exposure to pipeline outages to reflect the changes in its supply-capacity portfolio and in its own transmission, distribution and peaking facilities.**

8. **Develop a plan for bringing NJNG's supply-capacity portfolio closer to its customers' requirements.**

9. **Review all supply assets in the next BGSS proceeding.**

10. **Address the ways in which NJNG favors its affiliates in conducting its gas-supply operations, and make appropriate adjustments.**

11. **Develop an Affiliate Standards Compliance Plan that addresses the relationships between NJNG and NJRES.**

12. **Secure a review of the Hedging and Storage Incentive Programs by outside experts.**

13. **Pending the more complete review of the Hedging Program and the Storage Incentive Program, report to the BPU on the commodity cost in the Benchmark Cost calculation.**

14. **Demonstrate that the terms of supply provided by NJNG's largest supplier are fully competitive.**

C. Chapter III: Cost Allocations

We examined the process that guides the allocation of costs to NJNG from NJR and NJR Service Company ("NJRSC"), and from NJNG to other affiliates. We examined and compared the Cost Allocation Manual ("CAM"), which describes and defines the methods of allocation among affiliates, and the Service Agreements that define the services offered between NJNG and each of its affiliates. We reviewed the allocation factors used and the resulting flow of costs among entities affiliated with NJNG. We also examined the control environment related to proper allocation of costs, and the coverage of the Internal Audit program with respect to cost allocation and affiliate transactions. We also examined time reporting procedures and employee training and communication related to cost allocation and affiliate transactions.

We found the CAM and Service Agreements generally adequate, but containing between them significant inconsistencies not updated since their inception. We did find one CAM update, which missed several changes it should have included. The allocation process appropriately prioritizes direct charging and cost causative allocation over general allocation, but configuration of the NJR's Oracle-based enterprise resource planning system ("ERP") precluded the verification of direct allocation data. We found amounts allocated to NJNG reasonable and with adequate explanations of year-to-year variances. NJR entities employ an adequate time reporting mechanism, but without sufficient training and communication emphasizing the importance of proper time reporting and cost assignment and allocation to the appropriate entities. The configuration of the ERP does not allow for identification of gross allocations among affiliates. The net allocations that management provided can mask large gross allocations in opposite directions; *i.e.*, a small net amount may be comprised of two very large offsetting amounts. The service company has not complied with some New Jersey Administrative Code ("N.J.A.C.") and New Jersey Board of Public Utilities ("Board" or "BPU") requirements, likely, in part, due to the lack of adequate review procedures, controls, and internal audit examinations.

Our *Cost Allocations* recommendations include:

1. **Conduct a thorough review of the CAM and each of the Service Agreements to ensure that they are up-to-date, and institute an annual review of both to reflect necessary changes.**

2. **Obtain current appraisals to demonstrate that the rent charged in the building leases are based on fair market value**

3. **Change the ERP configuration to allow for the production of a monthly summary of transactions for each transaction path.**

4. **Conduct the required studies under N.J.A.C. 14:4-4.5.**

5. **Consider a modification to the ERP to allow the capture of the amount of costs allocated using the Directly Assignable method.**

6. **Revise employee onboarding materials and code of conduct annual training to include a section on proper time reporting and the importance of accurate cost allocation.**

7. **Add and regularly test additional controls to ensure that costs allocated to and from NJNG are appropriate.**

8. **Establish a regular cadence of regulatory compliance audits to be added as mandatory audits in addition to audits defined by the risk rating process.**

9. **Institute a review process that ensures that allocations from NJRSC to NJNG are accurate and agree with reports of such allocations to the BPU in compliance reports and rate case exhibits.**

10. **Provide a means to document allocation factor calculations.**

D. Chapter IV: Market Conditions

We examined changing numbers of customers and loads served by Third Party Suppliers (“TPSs”) at NJNG, across New Jersey, and in surrounding states. That review demonstrated that TPSs serve high percentages of NJNG residential, and industrial customers when compared with New Jersey’s other local natural gas distribution company (“LDC”). However, New Jersey rates of TPS residential customer penetration are low when compared with rates in surrounding states. A general lack of rate competitiveness appears to comprise the primary driver of limited TPS success in attracting residential customers in New Jersey. TPS residential customer penetration rates in New Jersey have been well below those of New York, Maryland, and Pennsylvania for a decade, with rates in those states falling, as they have in New Jersey, over this period. The disparity between New Jersey and other states is much less significant, but still exists for larger customers, with NJNG again showing high percentages when compared with its state peers. Commercial and Industrial deliveries by TPSs have remained generally stable in New Jersey, as they have in neighboring states.

There remain a substantial number of TPSs in New Jersey, but there has been some significant consolidation through acquisitions among them. We did not find significant issues with the process by which TPSs enroll new NJNG customers or with the billing options that NJNG provides them. However, NJNG lacks the manual that other LDCs, and NJNG itself until some time ago, made available to TPSs. NJNG provides a suitable organization for managing enrollment and the Company’s relationships with TPSs. No NJNG affiliate has operated as a TPS serving retail customers in New Jersey since 2018.

We found, as the prior audit of this type did, a number of improvement needs related to the NJNG website’s treatment of supplier choice. The subject continues to lack prominence and visibility, not all links function, and updating of supplier lists does not appear to occur sufficiently frequently. The NJNG website also lacks a feature permitting customers to compare offers.

The low level of TPS penetration, particularly for residential customers, is not unique to NJNG, which actually performs competitively with its state peers. An apparently large price advantage for NJNG, as opposed to failures on its part to enable competitive choice, makes the competitive landscape very challenging for TPSs seeking to serve residential customers. Structural reasons (*e.g.*, ownership and control of capacity resources) may or may not contribute to these conditions, but, given the commonality of the issue across the state, it would take a statewide review to identify and address them. We made a number of recommendations that will aid in supporting customer choice, but not at levels that can make a notable difference in whom customers are choosing to provide their supply.

Our *Market Conditions* recommendations include:

1. **Consolidate supplier choice information and give it greater website prominence.**

2. **Enhance the information NJNG makes available to current and potential TPSs.**

3. **Evaluate the inclusion of a bill calculator option.**

4. **If it has not already done so as part of its recently-filed rate case, management should comply with the intent of the July 12, 2023 Board Order required that that NJNG "evaluate the need to create a separate tariff for large electric generators and include testimony addressing this issue in its next base rate case petition" by preparing a report for the BPU on these matters after seeking BPU approval of the areas the report should include.**

E. Chapter V: Other Reporting

We examined the content, process, procedures, and controls for financial and non-financial reporting to the New Jersey Board of Public Utilities ("BPU"). This examination revealed a number of weaknesses and report accuracy issues. No policies or procedures guide report preparation. A review of selected required reports found errors and missing reports or transmittal documents. We found sufficient key accounting controls but only weak operational controls. We also discovered a significant failure caused by a lack of careful review procedures. The PUHCA report, which provides the BPU with information about allocations from the parent and service company did not provide key required information required by the New Jersey Administrative Code and included an erroneous statement explaining the reasons for missing information. We recommended a focused effort on improving controls over reporting and introducing engagement by senior NJNG leadership in BPU reports that NJR personnel take the lead in preparing.

We also examined the processes and controls applicable to NJR's addressing of "Sustainability" -- the nomenclature it uses to address, among other things, what are traditionally termed Environmental, Social and Governance reporting activities. Essentially all NJR operations, NJNG included, have implications for the environmental and the other Sustainability issues that have gained increased attention and focus in recent years. We found that NJR has taken an industry-forward approach to embodying Sustainability in its mission, values, objectives, and operations. NJR has for multiple years been recognized as a Sustainability leader among business entities.

NJR has adopted and employed now for several years a comprehensive and robust Sustainability reporting and disclosure framework. NJR has provided a strong source of senior executive leadership and has assigned a team dedicated to the aspects of Sustainability that require day-to-day performance. NJR has considered a broad and appropriate array of reporting standards, recognizing that there is no single authoritative source for such standards.

NJR has used capable outside support in advancing its Sustainability concepts, initiatives, and its embodiment of them into day-to-day operations. It has made good use of outside support as well in ensuring that its reporting of results and circumstances. That reporting has increasingly become a key element in providing the transparency that has become a principal attribute of demonstrating Sustainability. It has expended moderate amounts for that support and for the two-person staff it dedicates to Sustainability.

For the future, however, uncertainties surrounding pending U.S. Securities and Exchange Commission requirements and movement by internationally recognized sources creating pressure to adopt so-called Scope 3 environmental reporting produce a need for conceptual planning that it is time for NJR to perform. Scope 3 emissions result from assets that a reporting organization does not own or control, but that arise as part of its value chain. NJNG supplies natural gas whose consumption by a range of different customer types produces emissions. How reporting or support for customer reporting may evolve is at present unclear.

We also examined the use of green bonds to finance projects with recognized positive environmental attributes. NJNG has not used them and NJR has not done so since 2020 and has no plans for their future use at present. The costs of the green bonds NJR did issue some years ago came at no cost premium above those of non-green financing alternatives.

Our *Other Reporting* recommendations include:

1. **Strengthen controls and training regarding the creation, filing, and retention of reports filed with the NJBPU and train preparers.**

2. **Adopt a succinct plan outlining the steps, resources, and costs required to respond to a range of potentially required methods for accommodating Scope 3 reporting.**

F. Chapter VI: EDECA

The New Jersey Board of Public Utilities ("BPU") adopted affiliate standards ("the Standards") that enforce the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 *et seq*. ("the Act" or "EDECA").

NJNG's Compliance Plan (the "Plan") generally follows the outline, order, and structure of the Standards, a typical approach that other New Jersey electric and natural gas utilities employ. Consistent use of this approach allows for the production of a Plan that provides a logical order for incorporating coverage of the many provisions of the Standards, management's interpretation of them, and its description of the manner in which ensuring compliance will occur. However, not all provisions of the Standards receive direct coverage and discussion of some does not follow the same ordered and logical fashion outlined by the Standards. Management should revise the Plan to ensure comprehensive inclusion of all provisions and in a way that orders them logically. The Plan also requires additional revisions to address key, required information that NJNG has omitted; *e.g.*, mandated business address, phone number, and brief descriptions of the business of each affiliate. Plans after 2019 stopped including that information.

The structure and content of the Plan remained largely the same over the 2014 through 2023 period, but removal of an exhibit in the 2021 versions produced a number of inaccurate references to key policies, procedures, and other guidance. The gap occurred because management did not update several Plan sections to account for that removal, creating incorrect exhibit referencing and inapt guidance to employees on specific standards provisions. Moreover, other exhibit corrections need to occur to address issues such as dated and no longer relevant website references and issues with certain service agreements. Annual Plan filing timeline compliance has also proven inconsistent, with filings outside of a 12-month period. In addition, NJNG President's certification included in one Plan was not updated from the prior year's version.

Management tasks various groups and individuals with Plan preparation and responsibility for ensuring Standards compliance. The wide scope of the Standards clearly require contributions from multiple company departments to ensure a sound compliance environment and effective compliance. The Plan does not identify those Company, officers, individuals, or departments that have oversight and responsibility for each section and sub-section of the Standards. Subsequent Plan versions should include such identification in order to task these work groups and key personnel with clearly-defined compliance responsibility. Strengthening accountability for avoiding the large number of issues observed in prior audits of this type and in this one will also result from clearer designation of responsibilities. Management should also assign overall responsibility for ensuring compliance with the Standards to a senior executive to whom it assigns performance requirements related to that responsibility.

Management stopped performing internal audits addressing topics relevant to the Standards in 2019, despite their continued observations about circumstances requiring remediation. Circumstances warrant reinstitution and expansion of regular internal auditing promptly. Employee training on the Standards and compliance also warrants improvement so that more and deeper training occurs on a set cycle and to a better-defined list of employees who must receive it.

The Plan also lacks a clear and ambiguous listing of each NJR affiliate that the Company classifies as an RCBS (using the Standards defined term) or a "Retail Affiliate" (the Company's term). That gap and conflicts internal to the Plan and with other Company documentation identifying affiliates that constitute RCBSs creates ambiguity inconsistent with establishing and maintaining an effective compliance environment. Recognition that an operation comprises an RCBS triggers various portions of the Standards and prohibitions not applicable to other types of affiliates. Even more troubling, several NJR affiliates make product or service offerings that are "competitive" and require classification as RCBSs. For example, affiliate Commercial Realty & Resources Corporation ("CR&R") has been found in audits of this type since 2007 to be an RCBS. In addition, the last audit of this type, from about a decade ago, found NJR Clean Energy Venture ("NJRCEV") product and service offerings competitive and recommended RCBS classification and treatment. NJR continues to deem neither an RCBS nor a Retail Affiliate, while at the same time enhanced Standards training did classify NJRCEV as a Retail Affiliate. The recent move of NJR Energy Services ("NJRES") NJRCEV also should makes it, as an operating arm of NJRCEV, subject to important RCBS-related measures applicable to NJRCEV.

NJNG clearly requires a renewed, reinvigorated, and holistic effort to create a sufficient compliance environment and bring its Plan, approach, and methods for ensuring compliance with the Standards to sufficient levels. However, we did, with exceptions, find compliance with a range of other provisions of the Standards, but not without material exception, for example:

- Section 14:4-3.3 prohibiting forms of preference or discrimination: we found communications free of RCBS preference, but with some pages and posts lacking required disclaimers or at less than Company-required font sizes
- Section 14:4-3.3 services offered to affiliates but not to competitors of affiliates: we found no evidence of tying utility service to an affiliate or of marketing or business development assistance to NJNG utility service or of any assignment of customers; however, the use of a common customer inquiry center for NJNG and NJRHS has included employee incentives for securing new or expanded NJHRS contracts and extended payment plans not applicable to NJHRS competitors, both of which the last two audits of this type found out of compliance with the Standards

- Section 14:4-3.3 tariffed services pricing provisions: we observed no instances of inappropriate discounting of tariff rates or other waivers of fees, but management has failed to maintain documentation to allow a verification that prior year compliance occurred
- Section 14:4-3.3 energy and capacity sale provisions: the *Procurement and Purchasing* Chapter of this report makes a number of conclusions and recommendations that are consistent with the administrative review of the Standards this chapter addresses
- Section 14:4-3.4 information disclosure standards: we found adequate procedures addressing potential disclosure of customer information to affiliates, but failure to archive previous versions of these lists precludes verification of prior compliance
- Section 14:4-3.5 separation standards: we found required separation of corporate entities and books and records, which conform to accounting requirements, and which management made fully available space sharing and information system access: we found compliance with requirements, but placing NJRES under NJRCEV requires efforts to ensure the joint office space use and joint systems use of these two affiliates occur in compliance with the Standards
- Section 14:4-3.5 joint product offerings with affiliates: we found none involving NJNG during the audit period, but Standards-allowable customer inquiry, fleet services, billing and remittance processing, and credit and collections services for NJNG and NJRHS, a retail affiliate, were not listed in the Company's website posting, which would make clear to competitors their entitlement to the same services; we found an appropriate basis for the allocation of the full costs for these joint products to NJNG and NJRHS, but management does not maintain records that permit a verification that appropriate payment by NJRHS occurred.
- Section 14:4-3.5 limiting employee and officer sharing; we found no instances of prohibited employee sharing but in each year of our audit period, we did find prohibited officer sharing, resulting largely, but not entirely from NJR's failure to recognize some RCBSs as such
- Section 14:4-3.5 employee transfers: internal records of employee transfers do not match annual BPU reporting, and we observed an employee transfer from NJNG to an RCBS (inappropriately not designated as such by the Company) and back in a period of less than one year
- Section 14:4-3.6 provisions regarding competitive services from NJNG to an RCBS: we found no such NJNG offerings
- Section 14:4-3.7 provisions for annual plan filings: we found that some filings did not occur within the 12-month period and some failed to provide required information about affiliates
- Section 14:4-3.8 dispute resolution provisions: procedures call for the use of a log to track complaints and ensure appropriate attention - - some previous Internal Audits and the last audit of this type found lack of maintenance of such a log; we found that management has since created a log for such complaints and assigned appropriate responsibility for maintaining it
- Section 14:4-3.9 Standards provisions for violations and penalties: we found appropriate addressing of these provisions in the Plan.

Our *EDECA* recommendations include:

1. Revise the Compliance Plan to (a) include in Sections III through IX (and their sub-parts) an identification of where coverage of each specific provision of the Standards (at the individual level) occurs, (b) eliminate inaccurate exhibit references, (c) address service agreement issues, and (d) update website references.

2. Assign clear responsibility for Compliance Plan content, oversight, execution, and enforcement responsibility for each Standards section and address such matters explicitly in the Plan.

3. Assign a senior executive overall responsibility for ensuring compliance with the Standards and make that responsibility part of their annual performance requirements.

4. Reinstitute internal audits of affiliates Standards topics not less than once-every-two years.

5. Conduct enhanced and more regular business unit reviews of compliance with Sections 14:4-3.3: Nondiscrimination, 14:4-3.4: Information Disclosure, and 14:4-3.5: Separation of the Standards under the direction of the executive tasked with ensuring compliance and using the recommended assignment of responsibilities added to the next version of the Plan.

6. Enhance the separate, Standards-focused training materials and establish a cycle and roster of positions that must receive such training (*e.g.*, those management tasks with ensuring plan compliance or those that operate in management or supervisory roles in Company departments whose operations are most subject to the Standards).

7. Specifically identify in the Compliance Plan each affiliate and describe clearly the reasons for declaring each to comprise or not to comprise an RCBS; conform all company documentation, training, and other communications to those declarations.

8. Treat CR&R, NJRHS, NJR Plumbing Services, NJRCEV, NJR Retail, and NJR Retail Holdings Corporation as Retail Affiliates or RCBS.

9. Treat Phoenix Fuel Management as a Retail Affiliate or RCBS should it make product and service offerings in New Jersey and include a statement in the Plan that it would qualify as such should it make such offerings in New Jersey.

10. Treat NJRES as a Retail Affiliate or RCBS under the Standards and file promptly an action plan with the BPU within 30 days outlining management's plans for ensuring compliance with the Standards.

11. Institute measures to ensure that: (a) all affiliate advertisements include the required disclaimer and (b) all affiliate website and advertisement disclaimer use complies with Company policy regarding the appropriate font size.

12. Institute measures to ensure that all affiliate social media pages and their posts include the required disclaimer.

13. Cease providing extended bill payment options to joint NJNG-NJRHS customers.

14. Update the Compliance Plan to include direct discussion of the Section 14:4-3.5(b) of the Standards in the Section addressing preferential treatment and services provided by NJNG.

15. Ensure the maintenance of records suitable to verify that NJNG charged all affiliates appropriate tariff rates.

16. Limit employee participation in incentives associated with NJRHS customer enrollment to individuals who do not and cannot handle NJNG customer inquiries.

17. Update the Compliance Plan to include direct discussion of Sections 14:4-3.3(q), (r), or (s) of the Standards.

18. Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards.

19. Provide a more complete and balanced notice of the availability to others of joint services offerings made to NJRHS at present and adjust it as necessary should further affiliate services be offered.

20. Perform annually a demonstration that for each joint purchase that occurs on behalf of NJNG and an RCBS fair and accurate apportionment of direct and indirect procurement costs as required by Section 14:4-3.5(h) of the Standards occurred and include it in the Compliance Plan.

21. Institute measures to secure that Compliance Plans include updates to all annual certifications provided by Company officers.

22. Update the Compliance Plan to include direct discussion of Section 14:4-3.5(m) of the Standards.

23. Rectify the simultaneous service as officers and directors of both NJNG and RCBSs that cause violations of Section 14:4-3.5(q) of the Standards and undertake measures to prevent recurrence.

24. Institute measures for ensuring (a) the maintenance of accurate employee transfer logs, (b) accurate and timely reporting to the BPU under Section 14:4-3.5(r) of the Standards, and (c) required postings of all employee transfers within three days.

25. Take measures sufficient to ensure that employee transfers not compliant with Section 14:4-3.5(r) of the Standards do not occur.

26. Institute measures to ensure compliance with Company procedures designed to protect information when employees transfer from NJNG to other affiliates and ensure complete and accurate completion of all required forms.

27. **Update the Compliance Plan to include direct discussion of Section 14:4-3.6(i) and (m) of the Standards.**

28. **Update the Compliance Plan to include all required information as prescribed by Section 14:4-3.7 of the Standards for each NJR affiliate.**

29. **Institute measures to secure timely filing of Compliance Plans within the required time period.**

30. **Update the Compliance Plan to correct the incorrect reference to Exhibit N in Section VIII's discussion of Section 14:4-3.8 of the Standards.**

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Phase One Report
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Chapter I: Introduction

A. Background

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- Phase Two: Subsequent examination and evaluation of functions as part of a comprehensive management audit of New Jersey Natural Gas. An accompanying report describes the results of our examination of topics within that scope.

We have performed six previous management audits of this type for the New Jersey Board of Public Utilities, most recently at Jersey Central Power & Light Company and FirstEnergy. Previous audits included Atlantic City Electric, South Jersey Gas, a previous audit of New Jersey Natural Gas, and two at Elizabethtown Gas.

B. Structure of This Report

This report combines the chapters that describe the findings, conclusions, and recommendations that we have reached in the areas comprising Phase One of our engagement. This report's structure employs the following outline:

- Chapter I: Introduction
- Chapter II: *Procurement and Purchasing* (which includes our examination of the Request for Proposal's affiliate relations scope as it pertained to the overall New Jersey Resources structure and New Jersey Natural Gas' relationships and transactions with its affiliates).
- Chapter III: *Cost Allocations*
- Chapter IV: *Market Conditions*
- Chapter V: *Other Reporting*
- Chapter VI: *EDECA.*

The accompanying Phase Two report addresses the *Management Audit* topics of this audit's scope.

Chapter II: Procurement and Purchasing
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Chapter II: Procurement and Purchasing

A. Background - - Organization, Staffing, and Controls

We examined the organization, staffing, and operational controls systems, considering the needs of NJNG and the overall corporate structure that supports meeting them. We examined organization structure consistency with established gas procurement goals and objectives, control over points of contact with other involved or supporting corporate departments, experience levels, internal performance measurement systems comprehensiveness and use, consistency of approval processes with commitment magnitude and risk, policy and procedure scope and depth, and document creation, management, and maintenance.

B. Findings - - Organization, Staffing, and Controls

1. Organization

Gas planning, purchasing operations management, and marketing do not operate under a clear and comprehensive statement of goals and objectives, with management instead referring us to a set of company-wide Key Performance Indicators ("KPIs").[1] The only Gas Supply KPI we observed calls for management of gas costs and BGSS rates to ensure that fiscal year over/under recovery balance falls within a [redacted] million range.[2]

An Energy Services group headed by a Managing Director, Gas Supply directs NJNG's gas supply activities. This group has responsibility for planning and procuring gas supply for NJNG's system-supply customers, for gas pipeline and storage capacity, and for Design Day planning. Working with Gas Control, it performs nominations and scheduling of gas supply. In collaboration with Customer Service, it helps manage relationships with and deliveries to third-party suppliers ("TPSs"), ensuring that all customers taking delivery on NJNG's distribution system receive service in accordance with NJNG's Tariff.[3]

Energy Services, identified as unit 2000 in NJNG's organization charts, reports to the Senior Vice President for Regulatory Affairs, who also has responsibility for Regulatory Affairs and Environmental groups.[4] Regulatory Affairs manages regulatory filings and other matters before the BPU, develops regulatory strategy, and consults with senior leadership on state regulatory matters. Environmental manages remediation of former manufactured-gas plants ("MGPs").

Gas Control reports to the Vice President for Energy Delivery.[5] Gas Control has responsibility for monitoring, directing and controlling the transportation of gas from the citygates to distribution points on NJNG's transmission and distribution systems. Pressure, Measurement, Transmission has responsibility for the operation and maintenance of NJNG's transmission system, metering and regulator stations, electrical and telemetry equipment, and liquefied natural gas ("LNG") facilities. The *Distribution and Operations Management* Chapter of the accompanying Phase Two report addresses a number of their operations responsibilities. This chapter considers their roles that affect gas supply.

Customer Service, which reports through a separate executive, works with TPSs, using three Supplier Relations Consultants supported by a Supervisor, Credit and Collections and several Revenue Support Clerks.[6]

The last audit of this type, completed about a decade ago, recommended a change in Gas Supply reporting to increase its organizational visibility and executive attention. Gas supply commitments commonly reach a level more than twice as large as NJNG's non-fuel operating budgets. Management did raise the level of the head of gas supply from director to managing director, but did not follow the recommendation of creating for gas supply a vice presidential position reporting to NJNG's COO.[7] Eight other management level positions report directly to NJNG's Senior Vice President, Regulatory Affairs.[8] These reports include three regulatory affairs positions -- a regulatory affairs counsel, a director of revenue requirements, and a rates and tariff director. They also include positions with responsibility for sustainability, business development, environmental services (two separate positions), and regulatory and external affairs.

2. *Staffing*

Four positions report directly to the Managing Director Gas Supply: the Lead Energy Analyst, the Head Trader, the Manager of Transportation (to whom three Energy Analysts report), and the Manager, Energy Systems and Regulatory (to whom a Rate and Regulatory Analyst reports).[9] NJNG's Managing Director, Gas Supply has served in this position for nine years, progressing through the Gas Supply organization for about six years earlier. Before joining NJNG, the Managing Director spent four years with NJRES and had earlier experience in gas settlements and risk analysis at an energy company.[10]

The Head Trader has been with NJR for almost 29 years, a portion with affiliate NJRES before returning to the utility in late 2016. The Lead Energy Analyst has been with NJR for more than 15 years, some of it at NJRES. The Rate and Regulatory Analyst has been with NJNG for over 15 years, most recently working with TPSs serving customers behind NJNG's citygates. Two of the Energy Analysts joined NJR in late 2018.[11] The Manager and two Supervisors for Gas Control have more than 15 years of experience with NJNG. One of the Supervisors spent 10 years with NJRES.

a. Position Descriptions

Most position descriptions bear June 2019 dates and address:

- Basic Function of the position
- Direct Reports
- Major Responsibilities/Essential Functions
- Physical Demands/Requirements
- Position Requirements
    - Education Requirements
    - Year(s) of Experience
    - Position Specifications.

Incumbents sign the document, as does each one's immediate supervisor.[12]

b. Training

The Company conducts Trader Code of Conduct and U.S. Federal Energy Regulatory Commission ("FERC") Standards of Conduct training for both NJNG and NJRES personnel involved in the trading and scheduling functions. NJNG and NJRES personnel also use all available information and training resources from the Electronic Bulletin Boards of each of their pipeline transportation and storage providers. They also attend training and informational sessions offered by the pipeline and storage operators.[13]

NJNG also conducts in-house training for new gas traders and schedulers. Schedulers undergo cross-training on multiple pipelines to support coverage during the day and over weekends. Senior personnel work with newer personnel to provide the benefit of experience on particular pipeline systems.[14]

NJNG also operates a Gas Controller Training Program that provides:

- Six months of on-the-job training with a dedicated qualified Controller
- Completion of training modules from Enbridge, the parent of Texas Eastern Transmission ("Tetco") which has operated as NJNG's principal pipeline supplier
- Completion of NJNG's Gas Control Operating Conditions and Abnormal Scenarios test
- Completion of the Northeast Gas Association's Controlling and Monitoring Gas Pressures and Flows tests (administered by NJNG's Training Department).[15]

c. Performance Assessment

Energy Services group personnel operate under annual performance assessments. No documented policies or procedures detail specific performance goals or objectives for guiding these assessments; instead they assess performance under a general standard expressed as "reliably and cost effectively serving customers."[16] The Managing Director, Gas Supply reports that performance goals can include items such as BGSS incentive programs targets, not incurring penalties on interstate pipelines, completing tasks in a timely and accurate manner, and maintaining relationships internally and externally with key stakeholders.[17] Individual staff members do not have specific performance targets; rather, their personal goals emphasize each one's role in meeting the group's goals.[18]

3. Controls

a. Policies

NJNG incorporates many gas supply policies in its gas-supply planning process, which operates under stated goals that include:

- Reliable citygate deliveries
- A cost-efficient resource portfolio
- Stable, predictable prices for customers
- Flexibility to respond to variations in demand across operating areas
- Pipeline and supply basin diversity.

These goals and design planning standards and assessments of customer requirements frame the Company's supply planning process.[19]

Risk management and credit policies form important elements of NJNG's policy framework for commodity and capacity contracting and for wholesale gas trading.[20] Risk Management Committees, one for NJNG and one for affiliates, develop, implement, and enforce an NJR Risk Management Policy composed of three parts:

- Part 1: General Policy applicable to all Business Units and products
- Part 2: NJNG and NJRES Wholesale Energy Policy
- Part 3: Addendums for all products other than wholesale natural gas, including:
  - NJRCEV – Electricity and related renewable energy
  - Foreign currency transactions
  - NJNG Third-Party Supplier Program
  - Phoenix Fuel Management Company (an NJR subsidiary that provides gas-supply service to customers behind other LDCs' citygates).

Part 1: The General Policy addresses matters that include:

- Composition of the Risk Management Committees
- Statements of their roles and responsibilities
- The "Three Office" structure:
  - Front Office: execution and recording
  - Middle Office: maintaining controls and assessing compliance
  - Back Office: settlements and accounting
- Restrictions on affiliate transactions with NJNG
- New business approval process
- Trader approval criteria and limits.

Part 2: The Wholesale Energy Policy provides:

- An overview of NJRES's and NJNG's energy business activities
- Controls and risk parameters, including
  - Approved instruments and products, physical and financial
  - Delegations of authority
- An overview of NJRES's wholesale natural gas business activities, which include
  - Commodity trading
  - Transportation and storage contracts
- An overview of NJNG's wholesale natural gas trading activities and incentive programs
- Business risks for NJRES and NJNG across a range of areas that include financial, market, liquidity, operational, legal, tax, and credit risks.

Part 3: The Addenda covers NJNG's exposure to risks, primarily financial and operational, associated with allowing TPSs to serve customers on NJNG's distribution system.

Exhibit 7 to the Risk Management Policy document lists procedure and guideline documents that support the Policy but do not require direct Committee approval. Those documents include:

- An NJR Code of Conduct
- A Wholesale Natural Gas Code of Conduct
- Contract Procedures for Wholesale Transactions
- Counterparty Change Request Form

- Credit Policy for NJRES and NJNG Wholesale Natural Gas
- Deal Approval Form NJRES
- Deal Approval Form NJNG
- End-User Exception Resolution
- Instant Message and Phone Recording Procedures – Transportation and Exchange
- Instant Message and Phone Recording Procedures – Wholesale Traders
- NJNG Incentive Programs subject to BPU review and approval
- Records Retention Policy
- Risk Management Committee Policy
- Tariff Rate Schedule Approval Form.

b. Approval Authorities

An NJR approval-authorities matrix details expenditure commitment levels that personnel of varying levels can authorize. Deal Approval Forms depict approval authority limits for NJNG natural gas commodity, transportation, storage, asset-management, capacity-release, and other agreements or transactions. Manager and officer signatures on those forms signify compliance with those limits and other requirements a proposed deal implicates.

NJNG's separate board of directors assists its NJR counterpart board in overseeing the utility's financial integrity, credit quality, risk management, and overall operations. NJNG Board responsibilities include reviewing significant transactions between NJNG and affiliates and reviewing and assessing with NJNG management material risks related to operations, including gas delivery and infrastructure risks. NJNG's Board has the power to retain any advisor, consultant, or legal counsel that it needs to assist it in discharging its responsibilities.[21]

c. Procedures

A series of NJNG procedures guide gas-supply operations, providing for:[22]

- Monthly and daily NJNG Gas Supply staff meetings with Gas Control to determine maximum and minimum requirements for each of the five pipelines where NJNG has citygate stations
- Storage injection and withdrawal plans for each season to assure attainment of desired inventory levels while operating within the daily and monthly parameters in storage contracts
- Monthly purchases by NJNG traders based on anticipated weather, storage plans, and anticipated or possible pipeline restrictions
- Daily NJNG schedulers and traders interaction to produce consensus on dispatch of storages, purchases, and/or sales in the most economic and reliable manner
- Nominations and scheduling.

Authorized traders must enter all natural gas deals into the Gas Management System ("GMS"), NJNG's computerized deal-capture system. Each trader has specific deal volume and term limits. GMS user access restrictions correspond to each user's assigned role. NJNG reviews user access.[23] GMS operates through interfaces with supporting software products that include the Aligne Risk Management System, NJR's customer information system, NJR's accounting systems, and CME's Direct futures trading platform.[24] These interfaces include the Intercontinental Exchange (ICE) trading platform through which many of the utility's commodity purchase and sale transactions occur.

The system assigns to each short- or long-term trade a unique deal number. The trade system exports deal information to the valuation system (Aligne) for accounting and reporting purposes. NJNG's Confirmations Department confirms physical trades daily. A Broker Reconciliation Daily Process confirms financial deals.[25]

Three distinct images of the software handle NJNG, NJRES and Phoenix operations. They share the same source structure, but function independently.

d. Risk Management

The separate NJR Risk Management Committees (utility and non-utility) operate under authorization from the NJR board's audit committee to develop, implement, and enforce risk-management procedures for the two NJR business areas.

NJNG's Risk Management Committee meets monthly.[26] Each meeting's agenda focuses primarily on the status of the current year's hedging program, including the Storage Incentive Program. Credit exposure to TPSs also comprises a regular agenda item. Each meeting also considers an addendum that reports two types of potential transactions with affiliates. Those reports address consistency of previous-quarter transactions with policies. The addendum also considers any possible violations of trader limits on purchase or sale quantity or transaction duration. More experienced traders have larger limits. The violations report identifies transactions that exceed one or both of those limits for each trader. The Managing Director follows up with the trader(s) involved as necessary.[27]

e. Transaction Documentation

NJNG requires Deal Approval Forms for all commodity and capacity transactions of one month or longer. The cover sheet for those forms shows deal parameters, such as price and duration, and includes a brief statement of the reason for the transaction. The cover sheet also contains spaces for approvals from other departments, such as Legal, Risk Management and Transportation & Exchange, and for officer approvals that generally escalate as commitment magnitudes rise. Attachments to the Cover sheet provide explanations of the reasons for deals of longer than one month. The attachments include rationales for pricing.

Transactions with NJRES have required approval by NJR CEO's. Officers of both NJNG and NJRES sign special Deal Approval Forms before they go to the CEO. Until early 2023, the Company's code of conduct applicable to wholesale gas transactions[28] contained the following provision:[29]

> *No Trading Representative acting on behalf of New Jersey Natural Gas Company may enter into any transaction to directly purchase or sell natural gas,* ***transportation, storage*** *or related products or services from or to an affiliate of New Jersey Natural Gas Company without the express prior written consent of the Company's Chief Executive Officer. Consent to any such transaction shall … not be given if he determines that at the time the request for consent is made … (ii) the*

> *sale of the product or service by New Jersey Natural Gas Company would be at a price less than the higher of its cost or the market price.* (emphasis added.)

NJNG released two tranches of 80,000 decatherms ("Dth")/day of Texas Eastern pipeline capacity to NJRES from early 2010, one through April 1, 2018, and another through October 31, 2021, under a series of asset-management agreements ("AMAs").[30] Each has begun on the day after its predecessor ended. The Company has stated that, despite similar contracts and volumes released in each AMA, it has executed each under its own terms and conditions."[31] Some of the released capacity extended from the Louisiana and Texas Access Areas of Tetco to its Market Areas in the Midwest -- Market Area 2 (M2) -- and Northeast -- Market Area 3 (M3). NJNG made one of the original releases permanent as of effective April 1, 2018. The other release of 80,000 Dth/day continued, however, using capacity remaining under the same two contracts until allowed to expire at the end of October 2021.

The documentation supporting these agreements shows that calculation of the value of the pipeline capacity used a method then and still widely used within NJNG and NJRES.[32] That method sets the price of the release to NJRES at [redacted]. No documentation indicates the cost of the capacity to NJNG - - a required consideration. The Deal Approval Forms included the required CEO and other officer signatures.

After allowing the second AMA to expire, NJNG has occasionally released Access Area-to-M1 capacity on the same contracts for month-long terms; *e.g.*, in September and October of 2022. NJNG used a different valuation method for these short-term releases. NJNG Gas Supply personnel reviewed the pipeline's electronic bulletin board ("EBB") to assess market prices for capacity and then posted potential releases as biddable on the EBB.

Posting pipeline capacity for release on a pipeline's EBB requires specification of a Minimum Acceptable Rate that the capacity holder will accept for the capacity being offered. We examined a number of cases where NJNG accepted a bid from NJRES the required Deal Approval Form evidenced all required approvals and showed NJNG's cost for the capacity. However, we did not find evidence of consideration of that cost in setting the Minimum Acceptable Rate when posting the capacity.[33]

Management stated that it treated the cost of pipeline capacity in regions outside the primary path from which NJNG supplied its citygate as zero.[34] However, it has provided information showing that NJNG's actual costs associated with released segments exceeded zero, and that offers accepted from NJRES fell below those actual costs.[35] There have been cases where NJNG has made pre-arranged agreements with affiliate NJRES to ship gas using capacity released by NJNG. In such cases, FERC capacity release rules require posting of the capacity release to permit competing offers by others and for the pre-arranged shipper to increase its offer to match the best offer made by another party after posting. In a number of cases, NJRES offers matched or slightly exceeded NJNG's actual costs. Pre-arranged deals with an affiliate that include this offer-matching option are inconsistent with NJNG's obligations to maximize value and to avoid preferences to an affiliate. For example, NJRES secures a potentially valuable opportunity if NJNG has given no third party an opportunity to make a pre-arranged shipping arrangement involving an NJNG capacity release at potentially below market or NJNG costs knowing that it can later match a better offer from a third party.

NJNG has made other term capacity releases to NJRES under AMAs through which NJRES makes decisions about NJNG assets. For example, NJNG has had since 2010 an AMA under which NJRES manages NJNG pipeline capacity on the Eastern Gas Transmission and Storage ("EGTS"), Tennessee Gas Pipeline ("TGP"), and Tetco systems, and storage capacity in the Stagecoach Storage facility. This AMA also included some Transcontinental Gas Pipe Line ("Transco") capacity in certain years.[36] These assets primarily serve NJNG's Northern service territory.[37]

The early Deal Approval Forms for this agreement refer to [redacted] for the transportation capacity releases, but refer to [redacted] for the storage capacity. NJRES for a number of years has [redacted] yearly under the AMA. NJNG instead uses [redacted] each month for the term of the agreement. The value of all the assets undergoes recalculation every year as the agreement is to expire. The recalculation then sets the rate paid [redacted] for coming year. Management has stated the rates [redacted] consider and evaluate the market values of the assets but do not require those rates to cover fully NJNG's costs for the assets.[38]

Capacity releases that have occurred under recent AMAs that give NJRES powers to manage NJNG's capacity on Columbia Gas Transmission ("TCO") have occurred at rates exceeding NJNG's cost.[39] We found the requisite signatures on the associated Deal Approval Forms, but the narrative supporting each of the deals makes no mention of NJNG's costs for the capacity.

NJNG capacity releases to NJRES extend beyond those made under AMAs with NJRES. For example, NJNG made releases of some of its capacity on the TCO system in 2018, 2019, and 2020.[40] One such release came at a rate above NJNG's cost, but the others were below.[41] Again, none of the associated Deal Approval Forms addressed NJNG's costs for the capacity, but did include all required signatures.

Code of conduct review occurs annually, with changes requiring approval by the Audit Committee of NJR's board.[42] The January 2023 Code version eliminated transportation and storage from the requirement that transactions occur at the higher of cost or market. The new policy also eliminated references to gas transportation and storage in two other places and made other changes, the most significant of which eliminated the section of the earlier version entitled "Policies Prohibiting the Dissemination of Non-Public Transmission Function Information."[43]

In explaining the elimination of natural gas transportation and storage from the policy, the Company said that the requirement for a Code comes from FERC's Policy Statement on Natural Gas and Electric Price Indices, which primarily addresses reporting of natural gas or electricity transactions to price-index developers (See Docket No. PL03-3-000, issued July 24, 2003). In 2023, NJNG edited its policy "to more closely align its scope with the scope of the FERC requirement."[44] Management noted that purchase and sale of transportation and storage between NJNG and NJNG's midstream pipeline and storage provider affiliates is governed by their respective FERC tariffs and the FERC Standards of Conduct, rather than by FERC's Policy Statement on Natural Gas and Electric Price Indices.

f. Documentation

NJNG retains Deal Approval Forms indefinitely and makes them accessible for rate-case support and audit.[45] Personnel record daily gas-supply-related activity in GMS, which is designed for tracking and reporting gas-supply transactions. GMS records daily gas purchases, sales, storage injection and withdrawal activity, and all transport nominations. Each transaction receives a unique deal number, with accompanying records also retained indefinitely.[46]

The prior audit of this type, completed about ten years ago, found documentation supporting procurement decisions insufficient for confirming that the decisions proved the best among available alternatives. NJNG did not provide during the course of that audit policies, procedures, or guidelines addressing the types of analyses required to support capacity-related gas-supply decisions.[47] Management has made strides in documenting analysis guidance. NJNG responses to interrogatories in BGSS cases provide some justification for renewing existing pipeline and storage capacity contracts. NJNG has developed an Incremental Transportation Evaluation Form to address acquisition of additional capacity. Those forms typically discuss portfolio objectives and provide some information on available alternatives or report that none exist. The forms also present Gas Supply's evaluation of the value of the additional capacity. Rarely, however, do they present an analytical case demonstrating need for the capacity.[48]

g. Internal Audit

NJR's Internal Audit Department ("IAD"), which reports to NJR's Audit Committee, oversees the internal-audit function within NJR. IAD reviewed aspects of NJNG's gas-supply function regularly through the end of fiscal year 2018. Since that time, however, IAD has, with respect to gas transactions, reviewed only trade-data reporting by NJNG and NJRES, with IAD audit planning finding since that time that utility gas-supply activities did not present major sources of risk.[49]

4. NJNG Purchasing Independence

The prior audit of this type found concerns regarding combined supervision of certain NJNG and NJRES service aspects, failure of NJNG employees to charge NJRES for services provided to the affiliate, physical proximity of NJNG's and NJRES's traders, and NJRES personnel access to NJNG data files.

The Risk Management Committees for the two affiliates have now been separated,[50] and access to GMS data now operates under more substantial controls.[51] NJNG's Managing Director, Gas Supply believes that the two companies have different business aspects, such as operating models and cost structures, making their businesses distinct.[52]

We do not see those distinctions as precluding opportunities for NJNG's conduct of its gas-supply function to provide opportunities for NJRES. For example, NJNG had two AMAs with NJRES for 80,000 Dth/day of capacity on the Tetco pipeline system from early 2010. One extended through April 1, 2018, and one remained through most of 2021. NJNG never put the arrangements out for bid, but renewed or extended them regularly for one or two years at a time. This example shows a case of complementary business interests that in fact produced arrangements presumably of value. Another AMA in existence with NJRES now in excess of 10 years for pipeline and storage capacity involving Stagecoach Storage shows another operating, business, and structural connection of the businesses. Another commonality exists with respect to capacity releases from NJNG to NJRES, including some at prices beneath the cost of the capacity to NJNG.

Moreover, as the Gas Supply Planning and Forecasting section of this chapter describes, NJNG's pipeline and storage capacity portfolio considerably exceeds typical capacity requirements. For stated supply-security concerns, however, NJNG reportedly does not offer to anyone other than NJRES releases of any capacity that serves NJNG's citygates.[53] Management offered an historical execution, under which NJNG made capacity releases from 2012 through 2017. These releases were associated with providing delivery capability to a single NJNG natural gas supplier.[54] The NJNG Head Trader and Lead Energy Analyst have worked for NJRES in the past, making clear that career paths are not distinct. NJNG's and NJRES's traders also all sit in the same room, separated only by a small partition.

Limits on NJR's credit exposure to counterparties for both physical and financial trading are applied to the sum of NJNG's and NJRES's exposures. Consequently, if any counterparty was offering exceptionally good terms for a physical or financial product but NJRES had a large exposure to it, NJNG could not trade with that one. NJNG's Managing Director – Gas Supply reports that this practice has not yet limited NJNG's access to any counterparty.[55]

NJNG has made permanent releases of capacity to NJRES, with NJRES subsequently releasing capacity covered by such releases to third parties. Transactions of this type should raise sufficient concern about the value added by an affiliate who resells in the market what it has acquired from NJNG to engender review by internal audit.[56]

C. Conclusions - - Organization, Staffing, and Controls

1. The Gas Supply function does not operate under sufficiently specific goals and objectives.
(See Recommendation #1)

Management cited only Company KPIs as providing goals and objectives for groups involved in gas planning, purchasing, operations, management, and marketing. The only Gas Supply KPI calls for managing gas costs and BGSS rates to ensure a year-end balance within [redacted] million. Gas Supply performance management relies on qualitative group goals, with annual performance assessments for each staff member reflecting only that member's contribution in attainment of those goals.

Given the very large contribution of gas supply costs to customer rates, and the importance of transactional activities and decisions (measurable in substantial part through dollars to which personnel commit in reasonably transparent markets), it is typical to find a reasonably broad range of supply goals, objectives, and targets at natural gas distribution companies. Adding to the value of measurability at NJNG is the significant interaction between it and affiliates. It is also customary to find in the industry clear, direct, and substantial ties to performance management and assessment, and in turn to base compensation and incentive award programs and individual decisions on performance.

2. We found reasonably clear and sufficient coordination among departments involved in gas-supply activities.

NJNG does not produce marketing plans *per se*. Gas Supply gets a forecast from Accounting, by customer class, for use in contracting for supply and for BGSS filings. Marketing together with Engineering plays a lead role in assessing the capability of the system to deliver to new customers. NJNG operates a distribution system comparatively well connected to pipeline supplies; Engineering would inform Gas Supply of supply needed for delivery to particular gate stations if necessary.

Gas Supply in Energy Services and Gas Control in Energy Delivery work together on operational planning and day-to-day operations. They conduct an annual planning meeting to review supply developments and any potential operational issues, then meet monthly and daily to implement their plans. Gas Supply has responsibility for nominations and scheduling, and Gas Control operates pipeline connections.[57]

3. NJNG continues to operate without sufficient independence from the interests of affiliates. (*See Recommendation #2)*

Elevating the most senior Gas Supply position from director to managing director after the preceding audit of this type has given the function more prominence. However, as noted in the preceding audit of this type, reporting of that position remains a concern. That executive and the prior incumbent have also had responsibility for Regulatory Affairs, and a background in key aspects of the gas supply function. However, circumstances continue to evidence a lack of NJNG gas supply operational independence from affiliate considerations.

A number of aspects support independent operation of NJNG's gas supply function. Outward signs and symbols suggest independence for the utility's gas-supply function. These factors include separate staffs, procurement processes, and risk management committees. Documented limits on the ability of NJNG to transact with affiliates exist, supported by a code of conduct specific to such transacting. Limits exist to prevent affiliate access to NJNG's system for tracking transactions and the data underlying them.

However, in practice, actions continue to demonstrate, as they did in the prior two audits of this type (the first of them as far back as 1999) a lack of fully sufficient independence. Asset management agreements have been revised or extended routinely each year on grounds that third parties cannot be relied upon to perform as required under peak NJNG conditions. Other natural gas asset holders have not found that reason sufficient, relying on third-party experts to manage assets. It is not without irony that NJRES itself has acted for others as an asset manager. It describes its asset management services as follows:[58]

> *Whatever your needs, NJR Energy Services (NJRES) can meet them. From storage fill programs to transportation optimization, NJRES provides individual options or full-requirements services to manage your asset portfolio. Our customized approach to portfolio management helps you lower your ultimate cost while balancing energy needs.*

> …
> *NJRES' extensive experience in the physical market ensures you receive the greatest value for your assets while maintaining the ability to deliver to your customers.*
> …
> *Whether you're an LDC, an electric generator or large industrial let NJRES customize solutions for your natural gas needs.*

To summarize, NJRES holds itself out as a reliable source of third-party asset management to companies like NJNG, which, in turn, does not consider third parties as reliable in providing asset management service. As explained later in this chapter, we also found uniquely stringent design criteria for NJNG's peak-day capacity portfolio, which has given to NJRES a significant asset pool to manage.

4. We found gas-supply staffing sufficient and well qualified.

Staffing numbers appear sufficient for their tasks, and we found no gaps in areas they address or how they address them. Staff is well trained, and most have substantial relevant NJR experience, gained at NJRES and NJNG. We also found Gas Control appropriately staffed with experienced and well-trained personnel.

5. NJNG has defined approval processes for gas-supply transactions appropriately, but has not implemented them with rigor. *(See Recommendation #3)*

NJNG's traders undertake day-to-day gas-supply transactions, with management assigning that responsibility to the correct group and under sufficient and well controlled authority. Deal Approval Forms have appropriately designed uses, defined review and approval authorities, and sufficiently broad content and required details. The forms specify expenditure-level authority limits and identify the required levels of authority who must sign them. The forms provide for entry of deal parameters and narrative explanations of reasons for deals, where required.

Despite their overall sound design and detail capture, however, use of the forms has not captured sufficient information relevant to deals between NJNG and affiliates; *e.g.*, NJRES. Officer signatures typically found on Deal Approval Forms that lack relevant information undercut confidence in the application of the approval process for deals that involve affiliates.

6. NJNG practice has not produced rigorous application of the applicable cost versus market pricing requirement. *(See Recommendation #4)*

NJR's Code of Conduct Governing Wholesale Natural Gas Buying and Selling and the Reporting of Trade Data for Index Development Purposes requires written CEO approval of transactions involving direct purchases or sales of natural gas, transportation, storage or related products or services from or to an NJNG affiliate. That approval requires a determination by the CEO that transaction pricing exceeds the higher of its cost or the market price.[59] Asymmetric pricing rules find fairly common industry use, as a means for preventing cross-subsidization of affiliates in ways that can inflate utility customer costs. Deal Approval Forms specific to transactions between NJNG and NJRES control the process for securing the required determinations and approvals.

Many transactions over the past decade or so transferred pipeline and storage capacity from NJNG to NJRES. The asymmetric pricing provision covered such transactions. The Deal Approval Forms for these transactions that we examined had the required signatures, but did not provide or assess NJNG costs for the assets transferred. NJNG's Managing Director – Gas Supply confirmed that deciding whether to enter the transactions did not consider costs of the assets to NJNG.[60]

Management proffered a disingenuous argument in support of its assertion that NJNG's costs were zero in these transactions. That argument was:[61]

> *… When releasing capacity or a segment of capacity that is outside of the peak period and/or segment outside the primary supply path … the cost of the capacity is appropriately considered to be zero, because NJNG incurs year-round costs in order to reliably serve customers on a peak day.*

The ***value*** to NJNG and in turn to customers may depend on how and when assets have greater and lesser value, but the ***cost*** paid to produce that value is a different matter and one determinable through a common-sense approach, which is clear and simply determinable. The pipeline charges NJNG for the capacity it has purchased every month. Those costs have exceeded zero in each month during which NJNG has released capacity, with costs determinable by reference to statements of what NJNG paid the involved pipeline operator.[62]

7. Internal Audit does not engage with sufficient regularity and detail in examining NJNG gas-supply transactions and relationships. *(See Recommendation #5)*

Internal Audit reviewed aspects of NJNG's gas-supply function regularly through the end of fiscal year 2018. Elimination of regular reviews by that group, since largely outsourced, did not result from an effective consideration of risk. Gas supply costs comprise an especially large component of Company revenues. NJR also permits substantial interaction between NJNG gas supply activities and its affiliate's operation in gas markets; the Risk Management Policy addresses requirements for those interactions that require approval. Those interactions have suffered significant control lapses. Not only are gas costs substantial, but cross-subsidization potential raises considerable reputational risk for NJNG and for NJR. The circumstances make regularly recurring examination by Internal Audit of NJNG gas costs and the risks underlying them necessary, and similar examination of the effectiveness of controls over affiliate interactions that can affect those costs a matter of first-order audit priority.

January 2023 changes to the Code eliminated the asymmetric pricing rule for gas transportation and storage capacity. Citing alignment with the purposes of a FERC rule as the reason for the changes is unpersuasive. The Code does address reporting of transaction information to price index developers, but it also covers other matters involving wholesale energy markets:

- Compliance with applicable laws and regulations
- Accurate accounting and financial records
- Compliance with antitrust laws, fair competitive practices, and prohibition of manipulative and disruptive conduct
- Affiliate sales and purchases
- Confidential information
- Conflicts of interest.

The asymmetric-pricing rule appears in the affiliate sales and purchases section of the policies governing buying and selling of natural gas in wholesale markets.

NJR's Code versions through 2022 included natural gas transportation and storage. We did not find sound their exclusion from the 2023 version. Why cross-subsidization protection for commodity transactions should suddenly no longer apply to transportation and storage, particularly on grounds of reporting to price index developers, is not clear. The simple issue is whether the same cross-subsidization issues do or do not apply.

8. **Policies and procedures applicable to gas procurement are generally well-developed and consistent with prevailing industry practice, but management has not implemented them in a manner reflecting decisions that optimize the use of NJNG's portfolio from its own perspective.** *(See Recommendations #2, #3, #4, and #5)*

With relatively few exceptions, NJNG's policies and procedures for the gas-supply function are consistent with what we would expect to find at a natural gas distribution utility of NJNG's size and market position. Codes of conduct, approval authorities, risk-management policy, and so forth are what they should be, even if administration of and compliance with them is not.

D. Recommendations - - Organization, Staffing, and Controls

1. **Develop specific goals and objectives for the utility's gas-supply function.** *(See Conclusion #1)*

Two specific changes can enhance the performance of NJNG's gas-supply function. First, NJNG can improve its capacity portfolio by better utilizing available supply-requirements forecasts. Second, more aggressive market participation can improve capacity-cost recoveries. NJNG's gas-supply personnel in Energy Services provide the necessary expertise in these areas. We found them well qualified for what they do. They are also well aware of the market environment in which they operate. Accordingly, they are capable of identifying elements of the utility's gas-supply position that could be improved. We recommend that they be allowed to identify particular goals and objectives for NJNG's gas-supply function, and then be encouraged to pursue them. Specific goals for individual staff members should form part of this effort.

2. **Elevate the NJNG gas supply position to the executive level, with reporting directly to the NJNG Sr. Vice President and COO and engage the separate NJNG board more substantially in oversight of NJNG gas supply.** *(See Conclusions #3 and #8)*

The interests of affiliates continue to overly influence NJNG gas supply planning and transacting. Elevating the head of gas supply to an executive position reporting directly to NJNG's head of Energy Delivery will provide more visibility at the top NJNG executive level. Moreover, the vice president of gas supply that we envision should report at each NJNG board meeting on how utility gas supply planning, operating, and transacting optimize performance from the NJNG-only perspective. The regular reports from this executive should provide sufficient detail to support a conclusion that these gas-supply functions operated independently of the interests of affiliates, and that the other measures recommended in this chapter are being fully and objectively executed. Reports of the results of the regular gas-supply audits recommended here should be provided to independent-member-only sessions of the NJNG board. The NJNG board should be called upon specifically to report to the NJR board its clear opinions on these matters.

3. **Require adherence to procedures that place controls on transactions between NJNG and affiliates.** *(See Conclusions #5 and #8)*

None of the Deal Approval Forms we reviewed regarding transactions between NJNG and NJRES contained information regarding the cost to NJNG of the assets being transferred to NJRES. Nevertheless, all those forms contained the requisite approvals from NJNG's and NJRES's managers and officers. NJNG and NJR need to restore rigor to the process. Concerning the individual transactions involved, lack of rigor introduces even more substantial risk. Establishing and maintaining a culture of compliance, particularly important for transactions with affiliates, requires consistent and faithful executive compliance to set at the top a tone that decisions rigorously and consistently executed in accord with clear and communicated requirements are the standard to which leaders hold themselves and that they expect of others.

4. **End with visibility to employees the disingenuous "cost" argument with respect asymmetric pricing's application to transfers of NJNG's transportation and storage assets to NJRES and establish controls that ensure no advantage accrues to NJRES through the use of "biddable" offers.** *(See Conclusions #6 and #8)*

NJNG transportation and storage assets have a clearly determinable "above zero" cost. The use of a patently disingenuous reason for concluding otherwise has violated Code requirements in the past. Regardless of actual intent by senior leadership, semantic "gymnastics" of this type also set a poor tone at the top with respect to leadership's personal commitment to ethical performance at the highest levels and its concomitant expectation that others will do the same. The *Ethics & Compliance* Chapter of the accompanying Phase Two report explains that importance of setting and maintaining that tone.

NJNG has held much of its pipeline and storage capacity under contract for long periods of time. Such legacy capacity has a tendency often to be at costs lower than newer capacity coming to market. Transferring such capacity from NJNG to a market-facing affiliate, such as NJRES, at less than cost, subsidizes such an affiliate at NJNG customer expense.

5. **Regularly examine policies, practices, transactions, and arrangements that pose risk to the accuracy and prudence of NJNG gas supply costs and controls to ensure fully arm's-length transactions and relationships with affiliates.** *(See Conclusions #7 and #8)*

The example concerning application of the asymmetric-pricing rule to transactions between NJNG and NJRES suggests that when someone notices that such a rule might inhibit transferring a benefit from the utility to an unregulated affiliate, Management changes the rule. In our view, this example raises serious questions about the parent company's commitment to the financial integrity of the utility.

We note also that NJR's Internal Auditors, through the close of audit field work, no longer reviewed NJNG's gas-supply function, reasoning that it presents insufficient risk to the Company to warrant review. While NJNG's conduct of that function may present little risk to NJR's shareholders, it presents considerable risk to NJNG's ratepayers.[i]

NJNG has a separately authorized Board of Directors with the authority to "retain any advisor, consultant or legal counsel" to assist it in performing its duties.[63] We recommend that NJNG's Board engage auditors to examine the financial integrity of the utility, primarily concerning the utility's conduct of its relationships with NJRES.

E. Background - - Gas Supply Planning and Forecasting

We examined gas supply planning and forecasting programs, activities, objectives, and integration with Corporate plans. This examination included weather data handling and analysis. It reviewed the assumptions, variables, and probabilities used in capacity planning and considered the evaluations made of peak-period performance. We sought to confirm the needed correlation between the capacity portfolio and the load duration curve.

F. Findings - - Gas Supply Planning and Forecasting

1. Gas Supply Planning[64]

NJNG gas supply planning focused on the peak day at the time of the preceding audit of this type, adding two more focuses since that time:[65]

- Diversifying supply-basin access, particularly with the emergence of the Appalachian Region as a major source of gas supplies
- Reducing reliance on the Tetco system, which has continued to experience peak-period supply interruptions.

NJNG now conducts its gas-supply planning pursuant to portfolio goals:

- Reliability: Recognize that NJNG receives most of its gas supplies at its citygate interconnections with interstate pipelines, making NJNG's reliability dependent on pipeline reliability
- Cost: Minimize portfolio cost consistently with the need to maintain reliability and meet other objectives
- Price Stability: Provide predictable prices for customers and reduce exposure to market spikes
- Flexibility: Respond daily to variations in demand, including across operating areas, and adjust the portfolio to market or demand changes
- Diversity: Use multiple pipelines to reduce risks associated with pipeline service disruptions and changes in the market value of pipeline segments; and use different supply basins and trading points to ensure access to the most favorable pricing.

NJNG's supply-planning process begins with establishment of design-planning standards and an assessment of customer requirements through demand forecasting and portfolio analysis. Management next reviews the existing supply portfolio with respect to overall goals, and forecasts

[i] Management comments on a draft of this report cited the performance of a gas supply audit after we completed field work for this audit.

resource requirements to identify any resource needs. Then it evaluates resource alternatives and potential portfolio strategies and develops action plans.

Design-day weather, including temperature and wind conditions, serves as the primary design criterion for NJNG's capacity portfolio. That criterion assumes a once-in-90-years occurrence of a peak wind-adjusted heating degree-day ("HDD"), based on statistical analyses of actual weather in the Company's Central and Northern service territories. The results underlie a forecast of Design-Day capacity requirements for the upcoming heating season. Management also forecasts Design-Day requirements for an additional nine years using a long-term econometric model.

Recognizing that NJNG has been experiencing unplanned outages and *force majeure* events during the heating season, management adds a loss-of-resource reserve requirement in planning for its peak-day resource requirements. This reserve requirement seeks to produce a 99-percent certainty that capacity will not fall short in meeting demand under 1-in-90 weather conditions.

Management proceeds to evaluate alternative resource options if comparing forecast resource requirements to resources owned or under contract reveals a deficiency. This evaluation identifies potential options, including renewing or restructuring existing resources, as well as potential pipeline, storage, citygate, and on-system resources. Management actively monitors gas-supply and capacity markets to identify possible resources and strategies that have the potential to meet resource needs cost-effectively.

Identified resource options and opportunities change over time. Emergence since the beginning of the Shale Era (about 2008) of West Virginia, Ohio, and Pennsylvania as gas-supply regions provides the most prominent example. Several of NJNG's principal pipeline-capacity contracts extend into the Gulf Coast Supply Region; however, its current supplies now come almost entirely from the Northeast Region. In view of these changes, planning personnel monitor market developments continuously through regular market involvement and a network of industry contacts.

Policy has called for hedging of about 75 percent of the next winter's projected sendout for BGSS customers, and about 25 percent of the succeeding year's sendout. The Storage Incentive Program addresses hedging execution. Under that program, NJNG uses natural gas futures contracts to fix the price of the gas it will purchase. Management then buys the physical commodity in monthly and daily purchases when ready to inject gas into storage. NJNG uses futures contracts to hedge the price. The Gas Supply group usually buys those contracts during the year preceding the beginning of the storage injection season.[66]

Management makes a few longer-term purchases in particular situations. They have included: [67]

- A [redacted] agreement with a particular supplier to serve an individual customer's specific requirements
- A [redacted] agreement that included certain asset-management services, subsequently extended for another [redacted]
- A [redacted] supply agreement with a third supplier tied to the [redacted] (later terminated with project abandonment).

2. *Forecasting*

a. The Peak Day Forecast

NJNG has for some time used peak-day forecasts prepared by Marquette Energy Analytics ("MEA"). Widely used in the distribution segment of the natural gas industry, MEA specializes in energy-demand modeling, forecasting, and analytics.[68] MEA forecasts use historical demand and weather data relevant to the service territory. MEA prepares for NJNG separate forecasts for the Northern and Central Divisions. MEA Design-Day studies employ proprietary techniques to estimate Design-Day demand for the immediate past winter, then use trends in demand discovered through its analytical techniques to forecast Design-Day demand for the next winter. MEA uses other proprietary techniques to extend the forecast of Design-Day demand over the following nine winters. Forecast Design-Day demand excludes electricity-generation demand and demand from interruptible customers - - categories expected either to be off of system supply or to have made special arrangements to be served on a Design Day.[69]

NJNG furnishes the Design-Day weather conditions for this work. A wind-adjusted temperature corresponding to that expected once in 90 years serves as the principal criterion for establishing those conditions. The next table summarizes weather conditions corresponding to that criterion:[70]

Design Day Weather Conditions

Wind-Adjusted Value	Division	
	Central	Northern
Temperature	Minus 5.9ºF	Minus 8.3ºF
Heating Degree-Days ("HDDW")	70.9	73.3

MEA's forecasting technique produces a probability distribution of expected demand for the specified weather conditions. MEA reports Design-Day demand in two ways:

- The Standard *Design Day Forecast* reflects the middle of the probability distribution indicating a 50-percent probability that actual demand will fall either above or below the forecast
- The *99-percent Confidence Forecast* provides the results of an upward adjustment of Design-Day demand by 2.5 standard deviations, indicating a 99-percent probability that demand will not exceed the forecast.[71]

MEA reports Design-Day demand to NJNG both ways. NJNG justifies using the higher forecast by noting the high-priority nature of its load.[72]

b. Annual Forecasts

The annual Tariff Sales Forecast covers BGSS customers and the gas required to operate the various sales and delivery services that NJNG provides. The Tariff Sales Forecasts rely on NJNG's current actual accounting records of customers and their usage, adjusted to reflect Marketing's forecast of customer growth. Customer growth includes monthly additions and conversions by residential, commercial, and large-customer groups. The historical trends and anticipated conditions that underlie the Tariff Sales Forecast include:

- Residential new construction that assumes moderate annual homebuilding increases, with adjustments for current economic conditions, such as interest rates, inflation, home prices, and housing inventory
- Residential conversions that accounts for potential community conversion projects
- Commercial markets estimated on the basis of current economic conditions and historic trends
- GSL/GSS annual switching forecasted by Regulatory Affairs.

The forecast for current customers considers:

- Actual numbers of monthly customers, adjusted for monthly changes
- Associated weighted-average actual base-load and heat-load usage by customer class for residential and small commercial customers, typically during the annual budget process
- Individual base-load and heat-load usage for large commercial and industrial customers
- Base-load and heat-load factors for each other customer class based on historical usage, updated to account for any recent customer usage patterns
- Degree-days for use in the forecast based on 20 years of historical weather.

3. Weather Data Handling and Analysis

MEA accesses weather data from WeatherBank/AccuWeather and the U. S. National Oceanic and Atmospheric Administration ("NOAA") when preparing the Design-Day Demand Forecasts. MEA uses an optimally-weighted combination of weather stations to model the service territory and minimize error in modeling sendout. MEA uses data back to 1950 from five weather stations, shown in the next table, in and near NJNG's service territories.

Weather Station Weights[73]

Weather Station	Service Area	
	Central	North
Belmar/Farmingdale	49.33%	
Newark	19.15%	29.31%
Atlantic City	20.31%	
Andover		22.49%
Caldwell	11.21%	48.20%
Total	**100%**	**100%**

The annual Tariff Sales Forecast relies on normal-weather HDDs, developed using the 20-year average of the average of the Newark, Philadelphia and Atlantic City HDDs from NOAA.[74]

NJNG's BGSS workpapers provide Design-Weather information from the same source for the rest of the year. Work for the 2014-2015 through 2018-2019 forecasting periods relied on monthly Design-Weather HDDs based on the 1977-1978 cold peak pattern for each month. Separate data drove work for the Northern and Central Divisions. Work for the 2019-2020 and 2020-2021 periods relied on monthly Design-Weather HDDs based on a once-in-30-years probability of occurrence, again separated for the Northern and Central Divisions. The data for 2021-2022 retained the once-in-30-years probability but consolidated the two divisions into one set of monthly values. For 2022-2023, MEA prepared for NJNG a seasonal design increment based on a once-in-

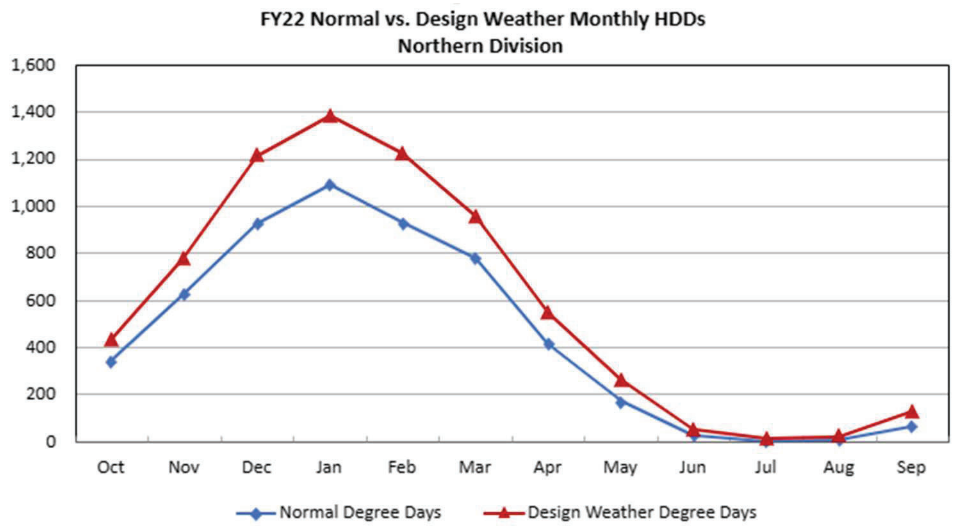
90 years scenario.[75] The following table shows how the annual HDD totals compare under the four approaches.

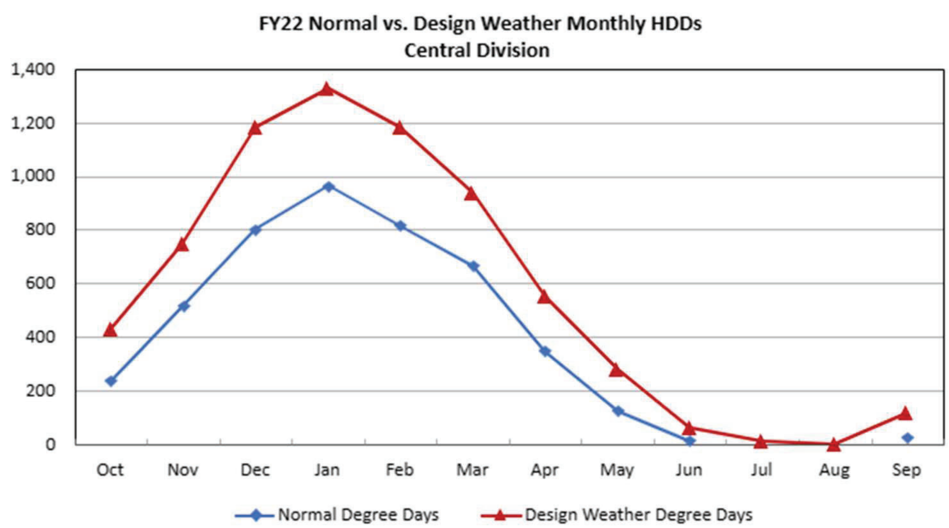
Totals of Monthly Design-Weather HDDs[76]

Forecast Period	Service Territory	
	Central	North
2014-2015 through 2018-2019	5,624	6,553
2019-2020 and 2020-2021	6,825	6,991
2021-2022	6,492	
2022-2023	based on 1-in-90 years scenario	

The following charts provide comparisons between 2021-2022 (Fiscal Year 2022, or FY22) Normal and Design Weather HDDs for NJNG's two service territories.[77]

Normal vs. Design Weather Monthly HDDs





4. *Requirements Forecasting Methods*

a. Design Day

MEA starts its forecast process, which relies on criteria provided by NJNG, by validating the data necessary for the analysis. That data includes historical demand data for each service territory and weather data relevant to each.[78] Weighting the weather data seeks best to represent the service territories' demand. MEA then "detrends" historical sendout data to ensure forecasts based on data reflecting the current customer-base characteristics. MEA detrends through an ensemble of regression models, each considering different factors that affect demand. MEA first calculates an estimate of Design-Day demand for the past winter, then forecasts it to the next winter using historical trends uncovered by the regression models. MEA uses additional econometric techniques to forecast Design-Day demand out over the next nine winters.

MEA's work for the 2022-2023 Design-Day study employed NJNG's daily actual citygate volumes, excluding electricity-generation volumes, back to 2007 and for the Central and North service territories separately. At colder winter temperatures, any interruptible demand is excluded.

NJNG's service territories do not have centrally-located weather stations; therefore, MEA uses an optimally-weighted combination of weather stations to represent each of the two service territories. For NJNG, MEA uses data back to 1950 from the five weather stations in and near the Company's service territories. MEA calculates Wind-Adjusted Heating Degree-Days and uses those for its analyses and forecasts to reflect the impacts of wind on customer demand.

b. Reserve Margin

Reserve Margin equals the difference between Design-Day supply capacity and Design-Day Demand. In considering its Reserve Margin, NJNG makes an adjustment for the recent history of unplanned outages on the facilities of two of its principal pipeline suppliers.

NJNG collected unplanned outage data as reported by its interstate natural gas transmission operators over a nine-year period. The Company calculated the probability and the amount of potential supply loss on a Design Day based on quantitative analysis of those outages. Based on outage notices from the operators, NJNG's consultant examined the likelihood and severity of an unplanned failure on any given day, resulting in a partial or complete supply cut due to each operator's physical failures. The consultant focused on the most significant failures in terms of likelihood and severity. [79]

NJNG set as a guiding principle that it should have sufficient reserve capacity in its supply portfolio to serve all its firm customers with 99-percent certainty in case of a single failure on a Design Day. Using that principle, the consultant found the controlling failure scenario to be impairment of Tetco supply. As a result, the Company adds an amount equal to 40.9 percent of its contracted Tetco supply in computing its Design-Day requirements for gas-supply capacity.

c. Annual Requirements Forecasts

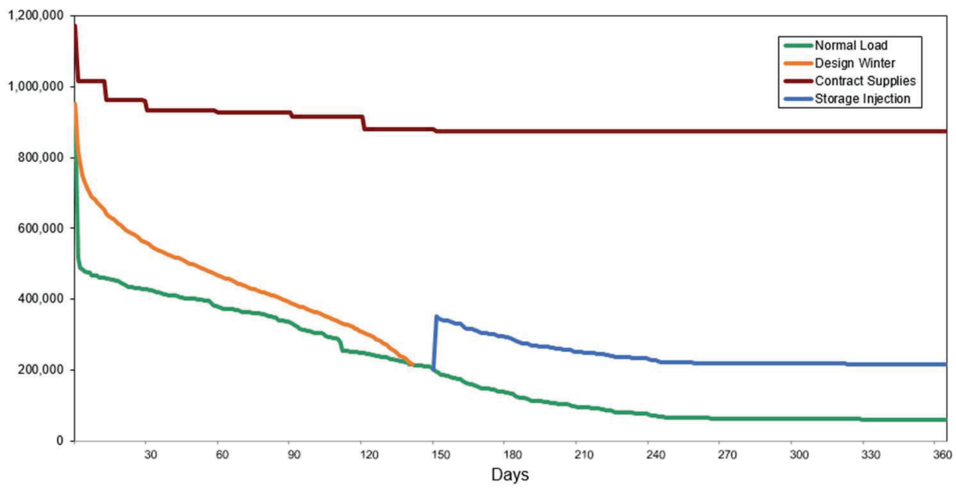
The Tariff Sales Forecast of annual requirements uses normal weather, defined as the 20-year average of the average of the Newark, Philadelphia, and Atlantic City HDDs from NOAA.[80] MEA prepares the Design Weather Increments for Winter and Summer Requirements that appear in Workpaper No. 7 of the Company's BGSS filings.[81] MEA has all the weather data, and each year's analysis for the Design Day produces detailed characteristics for NJNG's load. MEA therefore needs only the weather-conditions criterion from NJNG to calculate the Design Weather Increments.

5. Supply Capacity Portfolio

NJNG assembles a supply-capacity portfolio using the above-described processes to meet its requirements. It begins each year with a set of pipeline and storage contracts carried over from previous years. New contracts are added as they are entered. The Company adds estimates of supplies provided by TPSs, and peaking supplies from its on-system LNG facilities and its physical call-option contracts with NJRES, to determine available supplies. The workpapers for each year's BGSS filing present lists of supply resources and summaries of requirements for supply for the current year and for the succeeding nine years.[82]

The following chart compares NJNG's FY 2023 capacity portfolio (contract supplies and storage injections and withdrawals) in Dth, relative to Normal and Design-Weather conditions.[83]

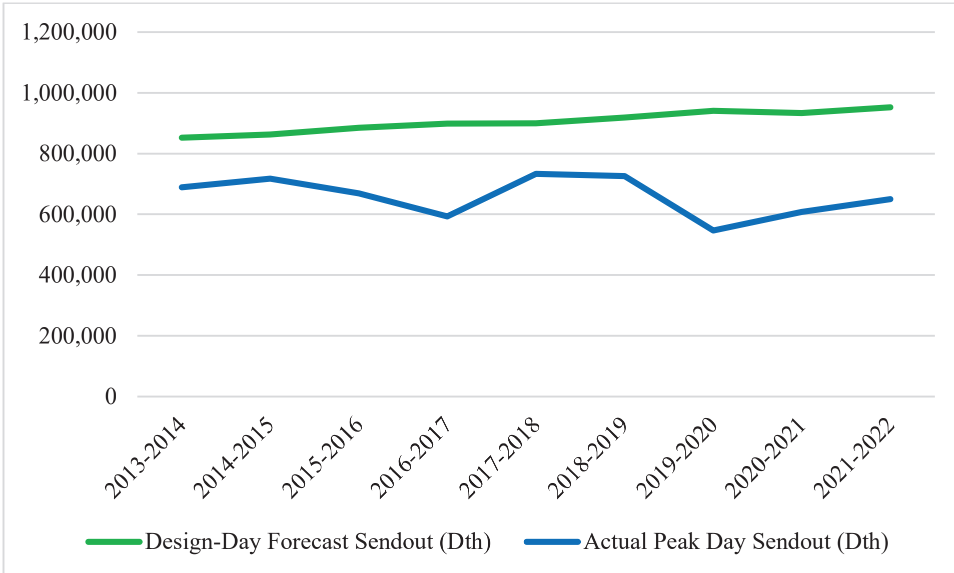
Daily Requirements and Available Capacity – Design Winter



6. Actual versus Projected Performance

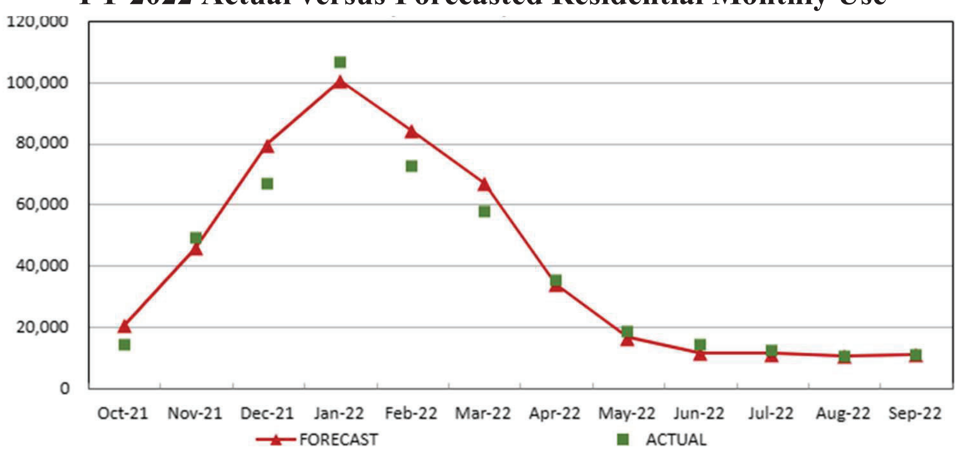
The following chart compares yearly Design-Day Forecasts with actual peak-day sendouts.[84]

Design-Day Forecast and Peak-Day Sendout

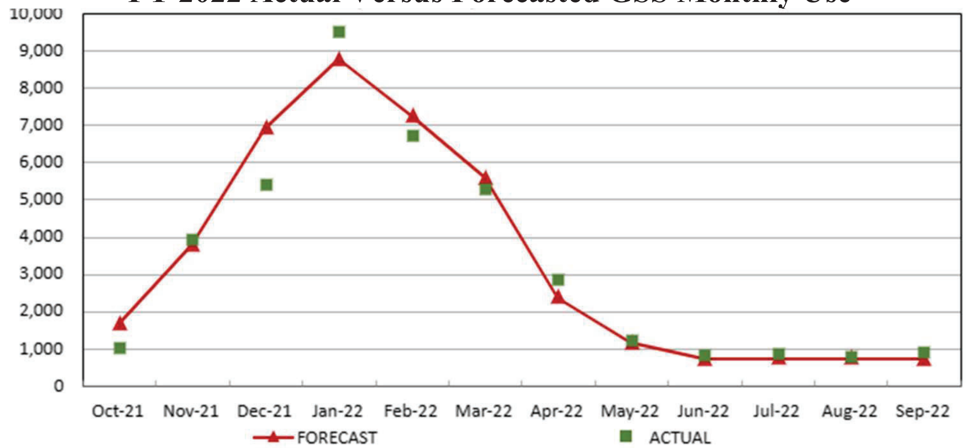


The following charts compare actual sales in fiscal year 2022 with forecasts in thousands of therms.[85]

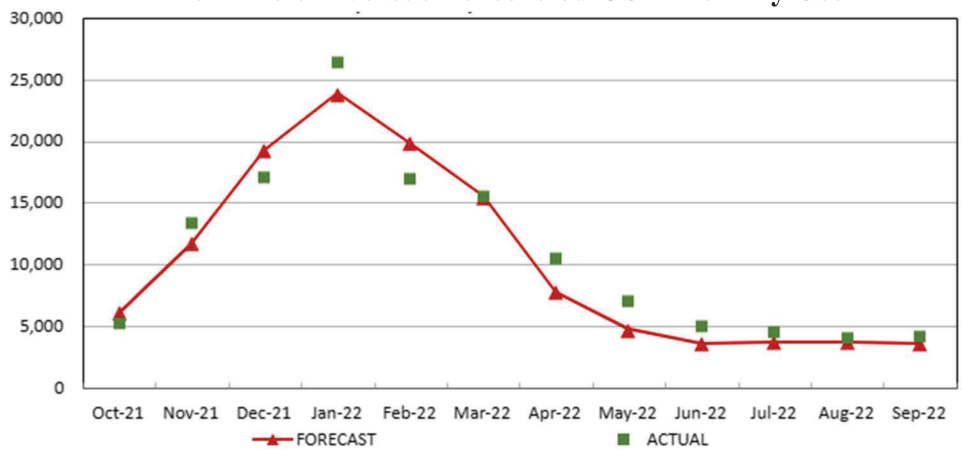
FY 2022 Actual versus Forecasted Residential Monthly Use



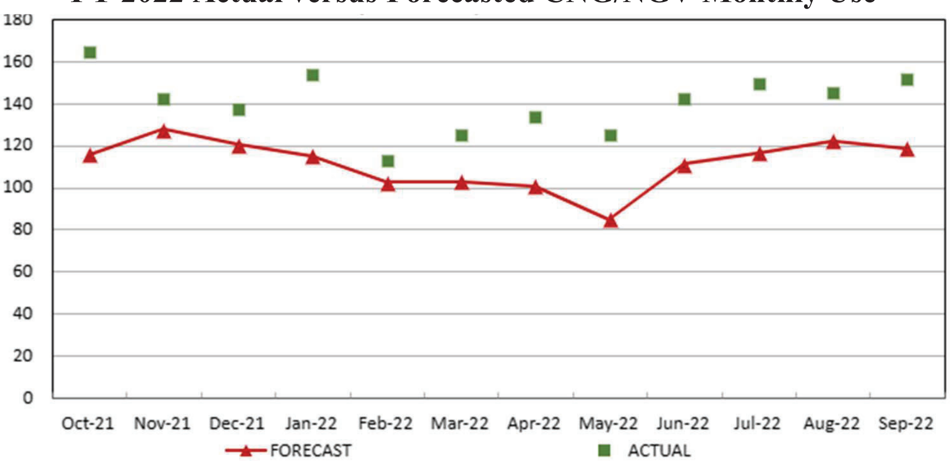
FY 2022 Actual Versus Forecasted GSS Monthly Use



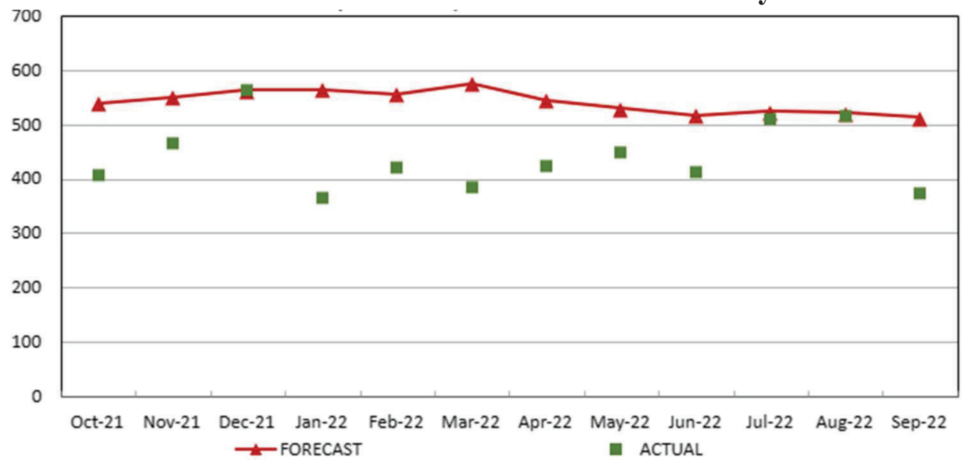
FY 2022 Actual versus Forecasted GSL Monthly Use



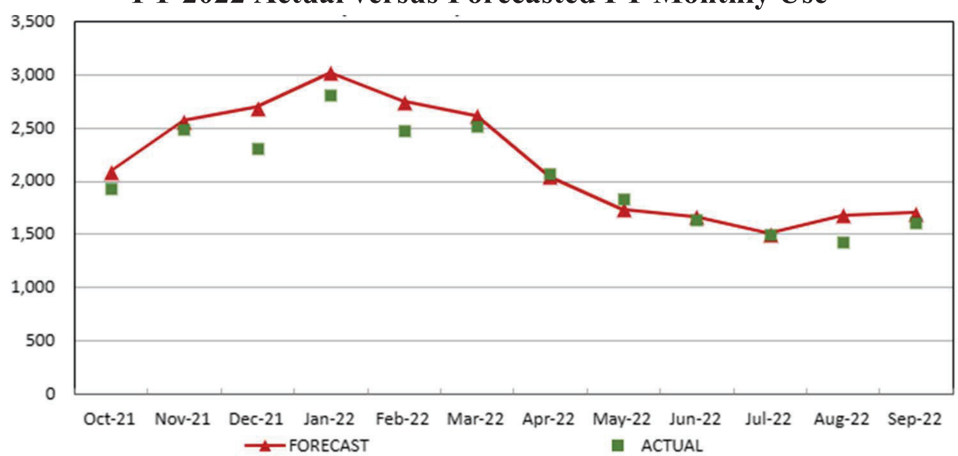
FY 2022 Actual versus Forecasted CNG/NGV Monthly Use



FY 2022 Actual versus Forecasted DG Monthly Use



FY 2022 Actual versus Forecasted FT Monthly Use



Management does not track at a detailed level gas-supply portfolio resource-utilization variances. Actual recovery balances in its BGSS filings and workpapers offer its best assessment of forecasted-versus-realized results.[86] NJNG has, however, focused on the increasing number of pipeline service interruptions and *force majeure* events of the last few years, particularly on Tetco and Tennessee Gas Pipeline ("TGP") systems. Between January 1, 2014 and the end of the first quarter of 2023 NJNG experienced nine occasions during which supply from Tetco was reduced to some degree for more than 10 days, and eight occasions during which deliveries via the TGP system were reduced for more than 10 days. Transco also experienced reductions in available supplies for more than 10 days in November 2014 and in June 2015, but has not been impaired for more than a day since that last extended outage.[87]

Most of the outages that occurred during the November through March heating season lasted four days or less. One TPG outage that began on December 6, 2022 lasted 17 days. Almost none of the occasions produced a complete outage. NJNG reported that the most serious Tetco outage, which began after the heating season (on April 29) involved loss of [redacted] percent of supply for two days, followed by average reductions of [redacted] percent over the next nine days.

The most significant service interruption occurred in April 2016. NJNG experienced a more-than-[redacted] -percent reduction in its Tetco supply in the first two days of the outage, then an average of [redacted] percent reduction of supply from firm capacity over the next nine days. In the wake of this event, the BPU and the other New Jersey gas distribution companies conducted exercises to explore the consequences of such events.[88]

NJNG has responded by reducing its reliance on the Tetco system from over 90 percent to 50 percent, with significant actions including:

- Adding 180,000 Dth/day of Transco capacity with its Garden State Expansion project in the fall of 2017
- Placed the Southern Reliability Link project into service in August 2021
- Contracting for 223,000 Dth/day on Transco's Regional Energy Access project (130,000 Dth/day available on an interim basis in 2021, full contract quantity anticipated in late 2024)
- Adding capacity on the Adelphia Gateway Pipeline ("Adelphia") from a new interconnect with Transco for added protection against reduced supply from Tetco.

NJNG has also added two asset management agreements involving Transco capacity: (a) 50,000 Dth/day from J. Aron & Company, and (b) 27,000 Dth/day from Morgan Stanley Capital Group.[89] Those agreements began operating on November 1, 2021.

7. *Recent Capacity and Supply Focuses*

Moving gas supply sourcing to the Northeast Supply Region has formed a cornerstone of supply efforts designed to take advantage of market conditions and mitigate risks. Those efforts have succeeded recently in securing supply for on-system customers without any traditional Gulf Coast Supply Region gas. The Gas Supply group hosts a winter planning meeting before each year's heating season begins, for the purpose of reviewing requirements forecasts, supply options, and anticipated supply issues.[90] NJNG's Gas Supply team subsequently holds monthly supply operations setup meetings, daily morning planning meetings, and afternoon recap meetings with Gas Control to discuss operational strategies.[91] Gas Supply personnel also work daily in the regional market, buying and selling gas off-system as opportunities present themselves, and releasing available capacity when possible.

Reliability concerns with its traditional pipeline suppliers, and the emergence of attractive sources of nearby supply to which NJNG has had limited access, have comprised principal supply planning focuses. Management has sought to address these issues by adding connections to sources in its region. Parent-company support has included sponsoring new pipeline projects and acquiring and converting an idle oil pipeline to gas. NJNG also added liquefaction capability to the Howell LNG facility, permitting its refill during favorable market conditions.

State efforts to promote transitioning from fossil-fuel-based heating have introduced a new NJNG supply planning element, adding to the utility's long-standing conservation programs. Management is seeking to incorporate consideration of this transition into load forecasts.

G. Conclusions - - Gas Supply Planning and Forecasting

9. NJNG employs sound Design-Day forecasting practices and Accounting's normal-weather load forecast process employs prevailing industry practice.

NJNG secures key support from MEA, which specializes in energy demand modeling, forecasting, and analytics, and has provided those services to more than 40 gas distribution companies accounting for some 20 percent of U.S. gas consumption.[92] Our experience with MEA's work in reviews at other companies and what we observed in its efforts for NJNG demonstrate best industry practice. See, however, the next conclusion's discussion of the design-weather conditions and confidence-level specifications that NJNG sets for MEA's work.

NJNG's annual requirements forecasting for normal weather, prepared internally as part of its BGSS process, reflects prevailing industry practices. They focus on use per customer, developed for each class of customers from billing records, times the numbers of customers in each class.

10. NJNG applies too stringent a set of criteria for guiding its Design-Day Forecast. *(See Recommendation #6)*

NJNG's use of unduly conservative peak-day design criteria produces an unnecessarily high Design Day Sendout Forecast. Beginning from a 1-in-90-years criterion, NJNG asks that MEA adjust the resulting Design-Day Forecast upward to provide 99-percent confidence that the forecast peak-day demand will not be exceeded. With each of the two already independently more stringent than typical, combining the two further compounds the extreme results produced. We have found a 1-in-30-years criterion more common in peak-day supply planning. MEA does plot 1-in-30-years weather conditions for NJNG.[93] MEA notes that on only two days since 1950 have conditions exceeded the once-in-30-years standard, most recently on January 17, 1982.[94] The requirement for 99-percent confidence that the forecast will not be exceeded is also extreme. The average value of the probability distribution for peak-day weather conditions – 50-percent confidence – is more typical in our experience.

These two elements combine to produce a Design-Day Sendout Forecast well above what typical forecasting criteria would produce. Adding supply resources to meet those requirements imposes significant avoidable costs.

11. NJNG's specifications for its Design-Day Sendout Forecast and its Design-Day Capacity Requirements produce an extremely high reserve margin. *(See Recommendation #7)*

Incorporating the Tetco capacity deration into the Company's estimate of its supply-capacity requirements for fiscal 2023 yielded Design Day Capacity Requirements of 1,182,138 Dth. Once-in-90-years weather and 99-percent confidence in not exceeding the forecast yielded a Design Day Sendout Forecast of 951,615 Dth.[95] Comparing those two estimates yields a reserve margin of 230,523 Dth, or 24.2 percent. Less conservative demand-side assumptions would make the reserve margin even higher by reducing the Design-Day Demand Forecast.

The previous audit of this type reported an NJNG reserve margin for 2013 of 7.4 percent, reportedly "above the industry practice of reserve margins of three to five percent."[96] Our experience indicates about five percent, with some as high as ten percent, but only for high-priority customer segments, not the entire firm load.[97]

NJNG has justified the exceptionally high reserve margin by citing its experience with unplanned outages on its principal pipeline suppliers' systems. It would not prove reasonable to plan on the basis that outages will end; however, the Company has taken a number of steps to reduce its customers' exposure to those outages. NJNG should update its analysis of that exposure and present the results to its customers and the BPU in its next BGSS proceeding.

12. NJNG's specifications for the Design-Weather increments to its Winter and Summer capacity requirements are also too stringent. *(See Recommendations #6 and #8)*

MEA now computes for NJNG Design-Weather increments using the once-in-90-years weather criterion. A more common specification for that criterion is also once in 30 years. Use of the less-stringent criterion would likely reduce NJNG's requirement for off-peak gas-supply resources, such as storage.

13. NJR has effectively accommodated the utility's gas-supply initiatives.

State support for reducing natural gas use adds complexity to gas-supply planning in New Jersey. Since 2014, key NJNG supply-planning initiatives have included the:

- Added liquefaction capability to the Howell LNG facility
- Placement into service its Southern Reliability Link project to reduce dependence on Tetco
- Contracted additional capacity on multiple Transco projects.

NJR actions that have supported those initiatives include:

- Joined other area LDCs and pipeline partners to sponsor the PennEast Pipeline project, even though it ultimately was abandoned
- Acquired and placed Adelphia into service.

We conclude that the parent actively considers the utility's gas-supply needs appropriately in its corporate planning.

H. Recommendations - - Gas Supply Planning and Forecasting

6. Apply more-normal design criteria for supply planning going forward. *(See Conclusions #10 and #12)*

NJNG should have MEA compute Design-Day demand with once-in-30-years weather, rather than once in 90 years, and at the 50-percent confidence level, rather than 99 percent. NJNG should also have MEA compute the Seasonal Increments to Accounting's Tariff Sales Forecast with once-in-30-years weather, rather than once in 90 years. The results of these revisions should be used for gas-supply planning going forward, absent demonstration of a clear need for greater conservatism in light of all the changes that NJNG has made to its supply portfolio. Any such demonstration should be transparent to stakeholders and the BPU and supported by substantial analysis.

7. Update the analysis of NJNG's exposure to pipeline outages to reflect the changes in its supply-capacity portfolio and in its own transmission, distribution and peaking facilities. *(See Conclusion #11)*

Planning should not assume that unplanned outages on Tetco and TGP will stop completely. However, the outage data provided suggests that outages since 2019 have not lasted as long as earlier ones. The outage data provided reports that the most significant event was an April 2016 Tetco outage resulting in an over 80-percent reduction of firm capacity that was curtailed for the first two days, followed by an average of 54-percent reduction of firm capacity that was curtailed over the succeeding nine days. After that event, the Company engaged with the other New Jersey gas distribution companies (local distribution companies, or LDCs) and the state's preparedness and response communities to better understand the impact of such an event.[98]

NJNG has taken a number of steps to reduce its dependence on Tetco. Those steps have resulted in a shift in sourcing for its Central Division from over 90 percent from Tetco down to 49 percent, with the other 51 percent from Transco.[99] NJNG has also increased its contracted capacity on EGTS and has added liquefaction capacity at the Howell LNG plant. The Company reports that, with its new Southern Reliability Link, which went into service in 2021, and completion of Transco's Regional Energy Access Project, expected in late 2024, its dependence on Tetco will have been reduced to the point that a loss of 80 percent of Tetco supply at a temperature of 20 degrees Fahrenheit would result in no interruption of supply to NJNG customers.

8. Develop a plan for bringing NJNG's supply-capacity portfolio closer to its customers' requirements. *(See Conclusions #10, #11, and #12)*

NJNG should revise its analysis of its customers' exposure to pipeline outages. The results of that revision should be presented to its customers and the BPU in its next BGSS proceeding, as those results will directly affect the Design Day Gas Requirements and Supply schedule in its BGSS workpapers. We expect that using more-normal criteria for computing the Company's Design-Day Demand Forecast and the Design Weather Increments to its Winter and Summer Requirements will result in reductions to its Design Day Sendout Forecast and its Total Design Requirements.[ii] We also expect that updating the Company's analysis of its customers' exposure to potential loss of supply on a Design Day to reflect the changes to its supply-capacity portfolio and its on-system facilities will reduce the reserve margin to be used in computing its Design Day Capacity Requirements.[iii]

We expect that those demand-side and supply-side adjustments will show that NJNG's supply-capacity portfolio considerably exceeds its customers' requirements. If so, the Company should develop a plan to address that excess. The next section of this chapter presents a process for selecting supply assets for elimination.

Given the locations of the assets and the current structure of the US gas market, the best strategy may not be simply de-contracting. It could be that some of the assets would bring more than their cost to NJNG if offered into secondary markets. NJNG should let go of excess assets that do not yield more than their cost in secondary markets, and offer into secondary markets those that would yield more than they cost.

[ii] These parameters appear in Workpaper #7 associated with the Company's BGSS filings. For FY 2023, see pages 74 and 75 of Attachment 2-S to the response to our Data Request No. I-0078-S.
[iii] *Ibid.*, at page 75

In 2014, the BPU began requiring that NJNG provide documentation for its evaluation of capacity portfolio changes, extensions of existing contract durations, and releases of capacity to affiliates. The BPU requires availability of that documentation upon request to interested parties in the Company's BGSS proceedings who have signed confidentiality agreements.[100] We recommend that the Company present the results of the portfolio analyses described above and a plan to address any capacity excesses in its next BGSS proceeding.

I. Background - - Management of Transportation and Peaking Assets

NJNG has amassed a substantial asset portfolio to give it access to pipeline capacity, storage, peaking facilities, and peaking capability. As described above, Management designs this portfolio to meet peak requirements, which makes substantial portions of that capacity potentially available for use by others at other times of the year. We examined how NJNG provides for the management of this capacity, which it accomplishes in major part by relying on affiliates. We reviewed the relationship between capacity contracts and service reliability and quality objectives. We considered the degree to which NJNG has succeeded in creating a network of transportation and peaking capability providers consistent with ensuring supply reliability consistent with market conditions. We addressed whether NJNG provides for management of the assets in a way that optimizes performance and economy for on-system customers. We examined the consistency between asset and asset-management performance and supply plans and supply asset specifications. We also sought to determine the degree to which NJNG has identified underutilized assets carefully and then aggressively marketed available capability to optimize costs, but, critically, without risk to supply reliability and continuity.

J. Findings - - Management of Transportation and Peaking Assets

NJNG's gas-supply operations begin with the Winter Planning Meeting described earlier. The Gas Supply group leads this meeting, which occurs prior to the beginning of each heating season. Personnel from Operations Services, the group to which Gas Control reports, and from Regulatory Affairs also attend.[101] Meeting participants review various forecasts regarding customer requirements, distribution system conditions, and expectations regarding gas supply sources.[102] Their planning efforts also produce a storage injection and withdrawal plan, coordinated with overall supply operations planning and structured to conform to daily and monthly contract parameters. Management monitors and adjusts the plan as needed based on market conditions.[103] As the year progresses, monthly supply operations set-up meetings, daily morning planning meetings, and afternoon recap meetings with Gas Control address market developments and operational strategies to ensure flexibility to respond as circumstances require. [104] In particular, the five pipelines on which NJNG has citygate stations serve as primary focuses of these efforts.[105]

These plans guide NJNG's Gas Supply Traders in securing supplies based on anticipated weather, storage plans and known and possible pipeline restrictions. NJNG's Gas Supply team analyzes factors that include weather conditions, system limitations and requirements, market prices, storage status, pipeline constraints, market opportunities and other demand/supply issues daily. NJNG's Schedulers and Traders make natural gas purchases, sales, and dispatches from storage designed to meet loads reliably and optimize the use of the Company's gas-supply assets.[106]

NJNG releases portions of its substantial pipeline and storage capacity under multi-month (typically one-year) AMAs. Monthly setup meetings identify any additional capacity that can be made available for release on pipeline EBBs. Gas Supply personnel post capacity on the EBBs when a potential market may exist for portions of NJNG's resources not needed for the following month based on factors like those described above.[107]

NJNG also offers volumes for off-system natural gas commodity sales when weather forecasts and on-system requirements allow. NJNG's Schedulers monitor current and potential pipeline restrictions and inform the Traders of any delivery concerns that might impact a potential off-system sale.[108]

1. *NJNG's Pipeline and Storage Services*

Tetco has provided the primary source of gas transportation for NJNG's Central service territory, which also has smaller connections to Transco at its northern end. The Northern service territory has been served by TGP, TCO, Tetco, and Algonquin Gas Transmission ("AGT").

The Company's supply-asset portfolio started with the pipeline and storage assets assigned to it in the pipeline-unbundling process that took place in the 1990s. A Capacity Reduction and Portfolio Enhancement Program followed, resulting in elimination of some assets, conversion of some from transportation to storage, and adjustment of others to make the contracted services better suited to the Company's needs. By late 2002, however, NJNG began adding delivery capacity on the TGP and Tetco systems to accommodate increased loads resulting from addition of new customers in both the Northern and Central Divisions.[109] By 2014, growth in Design Day requirements had reached about 11,000 Dth/day each year.[110] More recently, as described earlier, NJNG has sought to reduce reliance on Tetco and to diversify its sources of gas supply.

A number of changes in NJNG's transportation and storage asset portfolio have resulted from these efforts:

- Elimination of some small transportation contracts on Iroquois, Tetco, TGP, and then Dominion Transmission System (now Eastern Gas Transmission and Storage Company ("EGTS")) through implementation of NJNG's Conservation Incentive Program[111]
- Permanent release of 40,000 Dth/day of capacity under each of two Tetco contracts on April 1, 2018[112]
- Securing of future delivery capability from new links through Transco's New Jersey Lateral, which delivers to NJNG's Southern Reliability Link; Tetco and Transco are accessible on this path with completion of parent NJR's 2017 purchase and subsequent conversion of a pipeline that had served electricity generation resources in eastern Pennsylvania
- Acquisition of some released capacity on EGTS to maximize storage-injection capabilities.[113]

Securing access to nearby, low-cost Marcellus gas supplies to replace higher-cost Transco Zone 6 Non-New-York-priced supplies comprises a current focus.[114]

NJNG's BGSS filings have included an exhibit reporting changes in transportation and storage contracts.[115] As noted earlier, in 2014 the BPU began requiring that NJNG provide documentation for its evaluation of capacity portfolio changes, extensions of existing contract durations, and releases of capacity to affiliates. The BPU requires documentation of such decisions and its availability upon request to interested parties in the Company's BGSS proceedings who have signed confidentiality agreements.[116]

NJNG employs a deal evaluation form intended for such documentation. The information NJNG has provided:

- Identifies the pricing basis as tariff- or negotiation-driven
- Reports three years of annual utilization rates for pipeline-capacity contracts
- Reports winter-period utilization rates for contracts used more heavily in winter (NJNG requires service under some contracts primarily for winter months to secure access to some storage assets)
- Sometimes has reported discussions between Engineering and Gas Control personnel regarding the need for supply at key delivery points, the availability of alternatives, and computation of market value under a standard NJNG calculation process when alternatives to a change proposed by NJNG are found available.

Documentation we reviewed for FY2022 provides an example.[117] That documentation includes Evaluation Forms for several additional transportation and storage assets, listed below with brief summaries of the reasons for their addition:

- Precedent agreement for 130,000 Dth/day of transportation capacity on the Adelphia Gateway Pipeline ("Adelphia"), to provide for upstream transportation from Marcellus Shale producing areas to NJNG's contracted capacity on the Transco system
- Contract with Dominion (now EGTS) for additional storage capacity and winter-only transportation service, to increase ability to manage NJNG's weather-sensitive load
- Asset Management Agreement with J. Aron & Company, including a permanent release to NJNG of Transco pipeline capacity, in pursuit of NJNG's portfolio objectives to reduce dependence on Tetco and provide access to an attractive supply basin
- Asset Management Agreement with Morgan Stanley Capital Group, including a permanent release to NJNG of Transco pipeline capacity, in pursuit of NJNG's portfolio objectives to reduce dependence on Tetco and provide access to an attractive supply basin
- Contract with Transco for 130,000 Dth/day of Zone 6 to Zone 6 transportation capacity from Adelphia to NJNG's Chesterfield citygate (entry point into NJNG's Southern Reliability Link) until Transco's Regional Energy Access project enters service
- Incremental peak-day capacity on Transco's Regional Energy Access project from Leidy to NJNG's Chesterfield and Morgan citygates, to eliminate peak-day shortfalls projected over the next ten years, provide access to attractive Appalachian Basin pricing, and reduce dependence on Tetco.

The documentation for these additions includes information such as the following:

- Discussions of options to meet portfolio requirements and reasons for the preferred option choice
- Other reasons for the addition, including the recommended term
- Maps of the addition, showing how additional capacity reaches NJNG's distribution system
- Calculations of the value of the addition relative to its cost for the next few years.

2. *Peaking Facilities and Contracts*

NJNG's Central Division benefits from strategically located peaking facilities, whose combined 170,000 Dth sendout capacity amounts to 18 percent of the January 2023 Design Day sendout forecast.[118] Howell, the larger facility, sits near the center of the Division's most densely populated area. Stafford, the other, is located at the Division's southern end. NJNG added liquefaction capability to Howell in the spring of 2016. The addition has enhanced the facility's benefits in providing peak-supply shaving and pressure support during periods of high demand, pipeline curtailments, and scheduled inspection and maintenance activities.

FERC rules for AMAs have required asset managers to have a delivery obligation of up to 100 percent of the daily contract demand of each transportation contract released to it.[119] NJNG's AMAs with NJRES incorporate this requirement with call options. The call options provide supply and delivery certainty if NJNG requires the asset manager to meet that delivery obligation.[120] NJNG also had call options with local gas producers for the winters of 2018/2019, 2019/2020 and 2020/2021, to further assure peak-period for NJNG's Northern Division.[121] The Tetco system provides the primary source for serving NJNG's Northern Division.

3. *Peak Period Forecast Performance*

NJNG contracted with Pattern Recognition Technologies ("PRT") for day-ahead through year-ahead forecasting, following the preceding audit of this type 10 years ago. PRT provides hourly performance analysis of the load-forecasting model over the past 10, 30, and 60 days. A "Next Day Forecasts Made at 8:00 a.m. of the Preceding Day" option down-loads the record of the next-Gas-Day forecasts made at 8 a.m. Central Prevailing Time on the Gas Day before the Forecast Day. Daily load and temperature errors are calculated and displayed.[122]

The following table shows the PRT day-ahead forecast at the forecasted temperature and actual firm sendout experience. This forecast would have been used for the gas-supply planning process for that Gas Day when making supply and trading decisions.

Comparison of Forecast and Actual Sendout

(partially confidential table)

Date	Actual HDD	Actual Send out	Forecast	Variance
Central Division				
[redacted]	[redacted]	562,303	[redacted]	[redacted]
[redacted]	[redacted]	531,450	[redacted]	[redacted]
[redacted]	[redacted]	541,225	[redacted]	[redacted]
[redacted]	[redacted]	524,009	[redacted]	[redacted]
[redacted]	[redacted]	506,292	[redacted]	[redacted]
[redacted]	[redacted]	460,288	[redacted]	[redacted]
[redacted]	[redacted]	453,459	[redacted]	[redacted]
[redacted]	[redacted]	430,108	[redacted]	[redacted]
[redacted]	[redacted]	605,939	[redacted]	[redacted]
[redacted]	[redacted]	574,714	[redacted]	[redacted]
Northern Division				
[redacted]	[redacted]	112,030	[redacted]	[redacted]
[redacted]	[redacted]	114,952	[redacted]	[redacted]
[redacted]	[redacted]	109,183	[redacted]	[redacted]
[redacted]	[redacted]	108,311	[redacted]	[redacted]
[redacted]	[redacted]	101,875	[redacted]	[redacted]
[redacted]	[redacted]	94,294	[redacted]	[redacted]
[redacted]	[redacted]	93,239	[redacted]	[redacted]
[redacted]	[redacted]	89,663	[redacted]	[redacted]
[redacted]	[redacted]	120,269	[redacted]	[redacted]
[redacted]	[redacted]	115,540	[redacted]	[redacted]

4. *Portfolio Performance*

The following charts show how the portfolio has performed historically. All of the data for the charts is taken from the Company's BGSS filings including their workpapers.

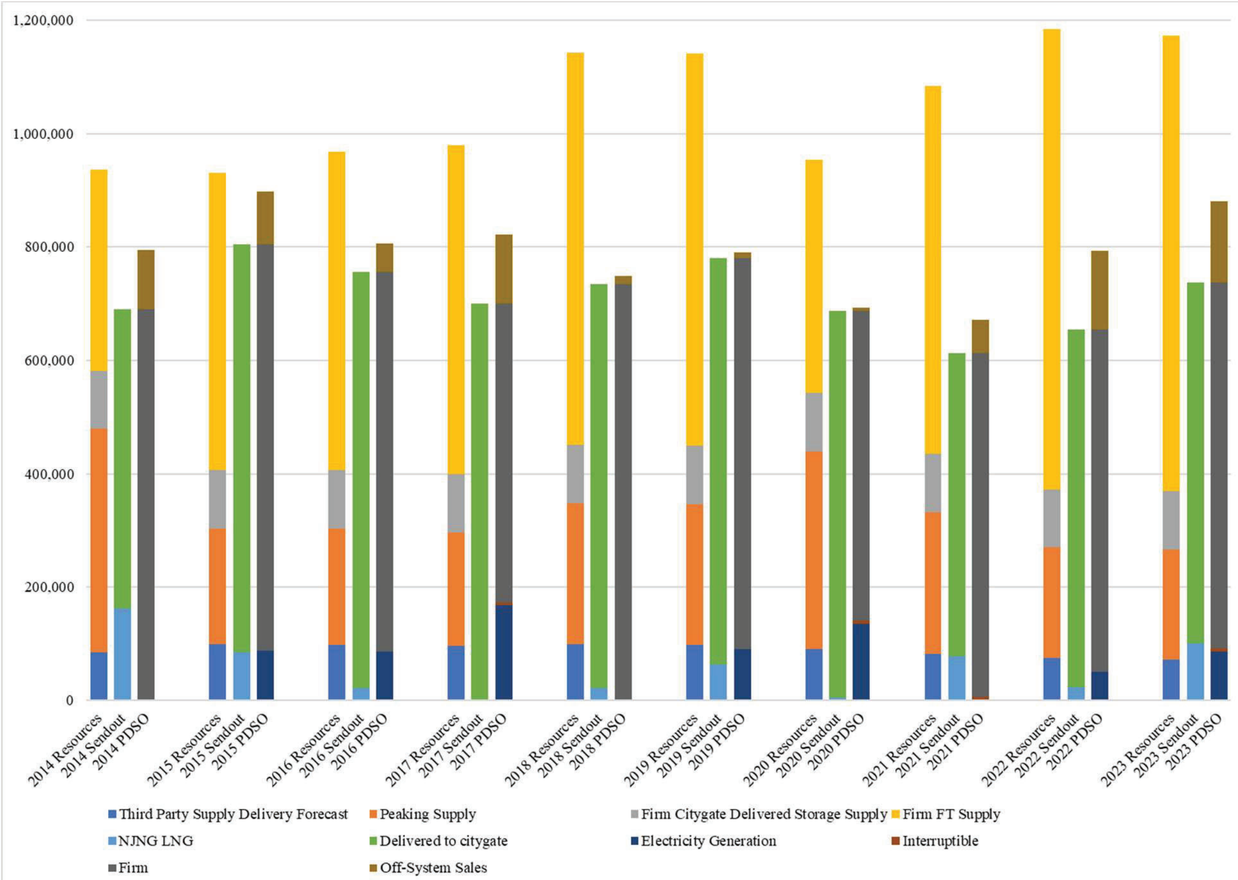
a. Peak Day Performance

The first chart examines peak-day performance. Each cluster's bar on the left shows available peak-day resources, listed in the following order:

- TPS delivery forecast
- Peaking supply
- Firm citygate delivered storage supply
- Firm FT (pipeline) supply.

The middle bar shows actual sources of peak-day supplies. BGSS filing data does not distinguish among the various supplies delivered to citygates, making deliveries from pipeline supply, TPSs, and deliveries from storage show on a combined basis. Only regasified LNG shows individually. The third bar in each cluster shows the on-system customer classes served on the peak day; *i.e.*, firm, including TPS, interruptible, and electricity generation.

Peak Day Resources and Usage



The chart shows a high level of unused capacity available even on the day with the highest sendout (733,997 Dth on January 6, 2018) across the lengthy period we examined. Weather data recorded for that day measured 55 HDDs. Design-Day conditions assume harsher, 70.9 Wind-Adjusted Heating Degree-Days ("HDDW") for the Central Division and 73.3 HDDW for the Northern Division.

Off-system commodity sales and capacity releases come from contracted supply capacity not required to serve on-system loads. NJNG makes off-system sales on high-demand days when it has available capacity and supply. NJNG usually makes capacity releases on a recallable basis, providing for return of released capacity to NJNG when required to serve on-system customers. NJNG capacity, however, has proven sufficient to avoid the need for such capacity recalls.

b. Annual Performance

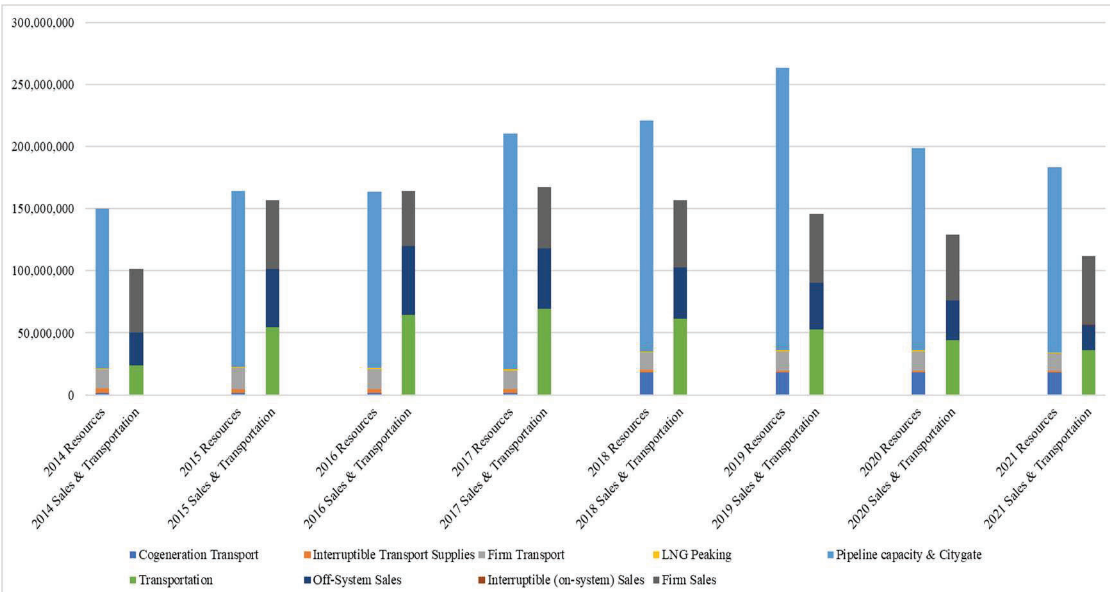
The next chart examines annual performance. The bar on the left shows each year's available supplies, including:

- Supplies available to cogeneration users
- Interruptible TPS supplies
- Firm supplies from TPSs delivering to customers on NJNG's distribution system
- LNG peaking supplies

- Pipeline capacity and citygate supplies, including the net amount available from storage injections and withdrawals.

The bar on the right shows actual sales and transportation volumes, including firm and interruptible on-system sales, off-system sales, and volumes transported to TPS customers. NJNG can also make capacity releases, which can include more than one segment of some pipeline contracts at the same time. Such combinations make reliance on total volume of capacity released unsound in assessing resource utilization. Capacity releases produce revenue shared with NJNG customers, as discussed later in this chapter.

Annual Supply Resources and Uses



5. Secondary Markets

The previous charts make clear the considerable capacity that NJNG has consistently had available to place in secondary markets. Management has used capacity markets in two ways:

- AMAs with affiliate NJRES[123]
- A secondary-market program of off-system sales and shorter-term capacity releases conducted by NJNG's Gas Supply personnel.

Different pipelines serve the Northern Division's much smaller customer numbers versus the much larger customer numbers of the Central Division. Service to the Northern Division comes primarily from TGP, with support from TCO and AGT facilities. The Northern Division also has a subsidiary connection to Tetco. NJNG has found it efficient to put some of its TGP and Stagecoach Storage capacity, along with some of its EGTS and Tetco capacity, into an AMA with NJRES,[124] relying on NJRES to operate a portion of its portfolio. This AMA has been in place since December 2009[125]and has continued through regular annual renewals through the present. The complexity of payment provisions under this AMA made it impracticable to determine whether those payments cover NJNG's costs for the assets. In response to our inquiry, the Company stated

> *NJNG does not require the rate paid by NJRES for each asset released to NJRES under an asset management agreement or capacity release to cover the cost of that*

asset to NJNG. The market value of the asset at the time of the agreement is required to be evaluated for any asset-management or capacity release[126]

NJNG also had two groups of AMAs with NJRES, each covering 80,000 Dth/day of capacity on Tetco.[127] Both groups involved: (a) varying proportions of NJNG's "long-line" capacity extending from Tetco's Access Areas in the Gulf Coast to the utility's citygates, and (b) some "market area" capacity extending from Tetco's Market Zone 2 (M2) to its Market Zone 3 (M3), which includes NJNG's citygates. One of these groups concluded on April 1, 2018, with the permanent release of the 80,000 Dth/day it had covered, half on one of NJNG's long-line contracts, and half on a Market-Area one. The last of the other AMAs expired on October 31, 2021, but its capacity remained with NJNG. The prices NJRES paid under these AMAs provided substantial secondary-market revenues. They appear to have more than covered the costs of the capacity to NJNG, although they declined in the later years of the AMAs. The following table shows the costs of the capacity to NJNG and the rates paid by NJRES.[128]

NJNG/NJRES Tetco Asset Management Agreements Summary

(confidential cost and price information)

ID*	Release Dates	Tetco Contract #	Quantity	NJNG Cost	NJRES Price
			Dth/day	$/Dth/day	
AA	4-1-2014 to 10-31-2014	800506	12,000	[redacted]	[redacted]
	4-1-2014 to 10-31-2014	910508	20,000	[redacted]	[redacted]
	4-1-2014 to 10-31-2014	910593	10,559	[redacted]	[redacted]
	4-1-2014 to 10-31-2014	910610	37,441	[redacted]	[redacted]
	11-1-2014 to 3-31-2016	910240	30,000	[redacted]	[redacted]
	11-1-2014 to 3-31-2016	910230	50,000	[redacted]	[redacted]
Y	4-1-2016 to 3-31-2018	910230	40,000	[redacted]	[redacted]
	4-1-2016 to 10-31-2016	910240	30,000	[redacted]	[redacted]
	11-1-2016 to 3-31-2018	910240	40,000	[redacted]	[redacted]
	4-1-2016 to 10-31-2016	910508	10,000	[redacted]	[redacted]
Z	4-1-2018 to 10-31-2020	910230	40,000	[redacted]	[redacted]
		910240	40,000	[redacted]	[redacted]
AF	11-1-2014 to 10-31-2015	910230	50,000	[redacted]	[redacted]
		910240	29,790	[redacted]	[redacted]
		910593	210	[redacted]	[redacted]
AE	11-1-2015 to 10-31-2016	910230	50,000	[redacted]	[redacted]
		910240	29,790	[redacted]	[redacted]
		910593	210	[redacted]	[redacted]
I	11-15-2016 to 10-31-2017	910230	20,000	[redacted]	[redacted]
J	11-1-2017 to 10-31-2019	910230	60,000	[redacted]	[redacted]
		910240	19,790	[redacted]	[redacted]
		910593	210	[redacted]	[redacted]
L	11-1-2019 to 10-31-2021	910230	60,000	[redacted]	[redacted]
		910240	19,790	[redacted]	[redacted]
		910593	210	[redacted]	[redacted]

NJNG also made capacity releases to NJRES under AMAs for a TCO contract (Contract No. 161129). NJNG placed capacity under this contract into an AMA for January and February of 2018, then again for the winter of 2018-2019 (November 1, 2018 – March 31, 2019), and again for the winter of 2020-2021 (November 1, 2020 - March 31, 2021). NJNG does not require that payments from NJRES to NJNG at least cover NJNG's costs from the pipeline and storage providers; however, it appears that payments by NJRES for this one did exceed those costs.

a. Volumes

The following graph shows very large yearly volumes of off-system sales, which actually exceeded on-system sales in fiscal 2016.[129] Capacity can be released on multiple segments of the same pipeline contract at the same time, so data on the volumes of capacity releases is not useful.

On-System and Off-System Sales
(confidential graph)

[redacted]

The numbers of capacity-release and off-system sales transactions show a particularly high level of activity. The next chart, for example, shows numbers of transactions ("deals") by calendar years when the release or sale occurred, rather than when arranged.[130]

Numbers of Capacity Release and Off-System Sales Transactions
(confidential graph)

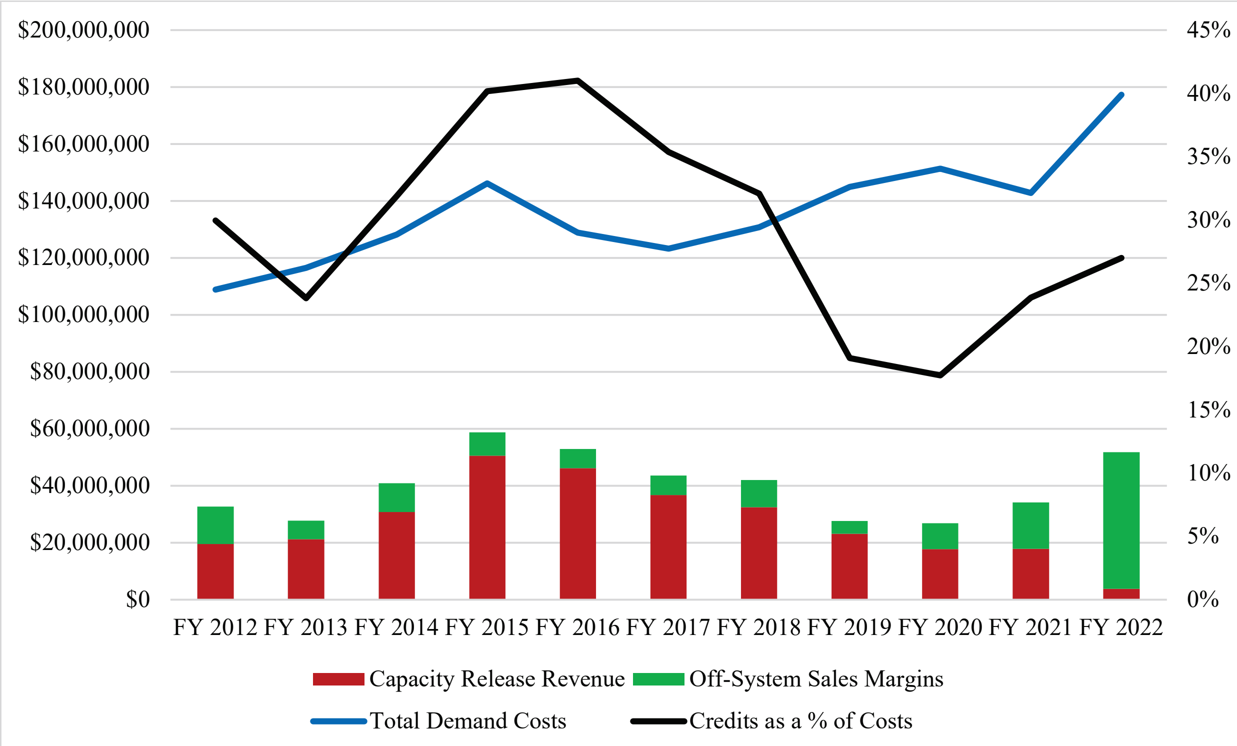
[redacted]

Large-scale capacity releases and off-system sales programs require significant personnel resources. Each transaction involves multiple steps. An NJNG Trader negotiates each, and staff analysts follow with entry of various nominations to effectuate it, and volume and pricing information to account for it. Off-system sales transactions averaged [redacted] per day in 2016 and grew to almost [redacted] per day by 2022, assuming 250 workdays per year. Effectuating capacity releases over over this period required many of the same steps, although their frequency was lower.

b. Revenues

Capacity releases and off-system sales have produced significant revenues. Of the revenues produced, 85 percent offsets customer costs, with NJNG retaining the remainder. The next chart shows customer credits as a percent of total demand (capacity) costs. BGSS workpapers show the customer share reaching 40 percent of total demand costs in fiscal 2015 and 2016.[131] Capacity releases in this chart include those under AMAs with NJRES. The decline in capacity-release revenues from fiscal 2018 to 2019 coincides with the permanent release to NJRES of 80,000 Dth/day of Tetco capacity after the winter of 2017-2018. The large increase in off-system sales margins relative to capacity-release revenues in FY2022 coincides with the expiration of the other long-standing release involving another 80,000 Dth/day of Tetco capacity.

Customer Shares of Capacity Release and Off-System Sales Revenue



6. *Supply-Related Relationships with Affiliates*

NJNG has gas-supply-related relationships with three affiliates. First, NJR Midstream co-owns Steckman Ridge, a 12 Bcf storage facility in Bedford County, Pennsylvania, with Enbridge, Inc. (also the operator). A long-standing relationship provides NJNG with firm natural gas storage service ("FSS"). The current NJNG FSS agreement with Steckman Ridge covers 3,000,000 Dth (about 3 Bcf) and extends to 2025, after which it renews annually. Steckman Ridge receives gas from, and re-delivers gas into, the Tetco pipeline, which operates under another Enbridge subsidiary.

The second supply-related relationship with an affiliate arises under Firm ("FTS") and Interruptible Transportation Service ("ITS") agreements with Adelphia, which recently completed conversion of a former oil-products and natural gas pipeline that NJR acquired. NJNG contracted for 130,000 Dth/day of transportation service from a new connection to Transco's Lower Mud Run gate station to a new connection to Transco at Marcus Hook, Pennsylvania.

Third, NJNG has had four sets of AMAs with NJRES, three that were put in place in late 2009/early 2010, and the fourth in recent years. The three sets were described at the beginning of the previous section of this chapter. NJNG has also done prearranged, biddable and non-biddable, recallable capacity-release transactions with NJRES. NJNG has also had physically delivered call options from NJRES at particular locations on the Iroquois, Tetco, TGP, and Transco pipeline systems.[132] Most of those were part of AMAs.

NJNG has base contracts for sale and purchase of natural gas with both Adelphia and NJRES.[133] Sales or purchases of gas between NJNG and NJRES require prior approval using Deal Approval Forms. Adelphia provides gas transportation service but not gas supply; thus, these contracts appear to facilitate balancing.

We examined how relationships with affiliates affect management of NJNG's capacity portfolio by:

- Reviewing NJNG's contracts, agreements and transactions with its affiliates for compliance with FERC requirements
- Evaluating practices controlling release of pipeline and storage assets to affiliates for regulatory compliance
- Evaluating scheduling and trading operations for regulatory compliance
- Determining whether internal transaction controls mitigate risks of trading irregularities, market price manipulation, false price information, or unfair cost to NJNG
- Evaluating internal controls and information flow between NJNG and affiliates.

a. Regulatory Requirements

FERC rules apply to AMAs, capacity releases, and affiliate relationships. FERC Orders 712, 712-A and 712-B provide regulations that govern the AMAs and capacity releases. NJRES's standard AMA agreement, which it uses for its AMAs with NJNG, prescribes compliance with those regulations. We found no reason to believe that the conduct of those agreements did not comply with those regulations.

NJNG releases capacity to NJRES under the AMAs this chapter describes. NJRES provides supply to NJNG under those agreements if called on to do so, and at prices specified in the agreements. NJNG's capacity releases not made under the AMAs typically have shorter terms, and the recipient has no obligation to provide supply to NJNG. After reviewing its requirements forecasts and available supplies, NJNG offers capacity not needed for the following month on the respective pipeline EBBs. NJNG has most often posted its releases as "biddable" and "recallable."[134]

NJNG's Risk Management Policy calls for a Deal Approval Form for each AMA and accepted capacity release. That form provides an explanation of all deal terms. A manager must sign each Deal Approval Form to confirm its compliance with FERC regulations and guidelines. Our review of copies of the Deal Approval Forms for all AMAs and capacity releases found them generally consistent with FERC's policies and regulations.[135]

FERC's affiliate-relations requirements apply to Adelphia, prohibiting the pipeline from providing information to "affiliates that engage in marketing functions." The requirements include both NJNG and NJRES.[136] Under those regulations, Adelphia must:

- Treat all customers in a fair and impartial manner
- Not give undue preference to any customer
- Process all similar requests for transmission in the same manner and within the same time period.

Adelphia operates under its FERC Standards of Conduct Policy and Procedures. Management distributes these compliance procedures annually to all transmission function employees, marketing function employees, officers, board of directors members, supervisory employees, and any other employees or contractors that might become privy to non-public transmission-function information. The listed groups of persons also receive and certify completion of annual policy training.[137]

The FERC has a policy on natural gas and electric price indices, and the Commodity Futures Trading Commission (CFTC) has regulations prohibiting false reporting of market or price information. NJR's Internal Audit Division ("IA") reviews bi-annually NJNG's and NJRES's performance under these regulations. The Company provided copies of the audit reports for reporting years 2014 through 2022.[138] IA occasionally found opportunities for enhancement of reporting but in all years found compliance with applicable regulations.

b. Internal Controls

NJR has several systems of controls designed to assure the integrity of NJNG's gas-supply operations, as well as the lowest possible costs and maximum benefit to NJNG's customers. Primary among those is the NJR code of conduct applicable to wholesale gas transactions. The formal name of this policy is *Code of Conduct of New Jersey Resources Corporation Governing Wholesale Natural Gas Buying and Selling and the Reporting of Trade Data for Index Development Purposes*.[139] The Organization, Staffing, and Controls section of this chapter describes it. The Code includes provisions that address:

- General Policies
- Policies Governing the Buying and Selling of Natural Gas in Wholesale Markets, including
  - Accounting & Financial Records
  - Antitrust Laws, Fair Competitive Practices, and Prohibition of Manipulative and Disruptive Conduct
  - Affiliate Sales and Purchases
  - Confidential Information
  - Conflicts of Interest
  - Securities Fraud and Insider Trading
- Technology Policy
- Policies Governing the Reporting of Trade Data to Index Developers, including
  - Confidentiality
  - Separation from Trading Function
  - Data Reported
  - Error Resolution
  - Data Retention
  - Audit.[140]

The Code is administered under the supervision of NJR's Chief Compliance Officer, who is Senior Vice President and General Counsel of NJR. Questions about the Company's reporting of price information may be addressed directly to NJR's Middle Office, which is part of NJR Service Corporation.

NJR uses its deal-approval process to administer various limits on gas-supply-related transactions. Those limits include ones on affiliate transactions, term or total value, risk management and legal requirements.[141] Deal Approval Forms guide the execution of the process, specifying approval limits printed on them, along with the names of the individuals whose approvals are required for each deal. Day-to-day gas-purchase transactions do not require Deal Approval Forms, but almost all other transactions do. Entry of transactions into the GMS requires completed Deal Approval Forms. A Middle Office group charged with validating GMS entries has responsibility for ensuring valid entry.

The GMS system manages and tracks volume and price details of all gas-supply capacity contracts, commodity purchase and sale transactions, and transportation and storage nominations. Three distinct images of the software serve different NJR subsidiaries (NJNG, NJRES and Phoenix Fuel Management). NJR has created interfaces with its supporting software products, including the Aligne Risk Management System, the customer information system, accounting systems, and the ICE and CME Direct trading platforms, for use in administering its various controls.

The GMS modules include: [142]

- Support: static data including rates for pipeline and storage services
- Contracts: terms, fixed and variable charges
- Deals: individual trade data
- Transportation: pipeline nominations
- Dispatch: citygate meter readings
- Financial Reporting: month-end financial journal entries
- Credit: counterparty credit status
- EBB Nominations Management: tracking nominations to NJNG from TPSs.

Internal controls include a Risk Management Policy and a Credit Policy for NJNG and NJRES wholesale natural gas transactions. Risk Management Committees, one for NJNG and another for NJRES, administer the policies. They meet monthly.

A Senior Risk Analyst prepares several monthly reports, including the following for NJNG:

- Counterparty Deal Compare Report: Identifies each entity's trade activity and compares it to other affiliates' trade activity, looking for instances where there might be a third party acting as middleman to get around NJR's prohibition against buy/sell transactions between affiliates ("sleeve" transactions)
- Paper With Affiliates: Lists financial transactions where one NJR subsidiary transacts directly with another
- Physical With Affiliates: Lists physical transactions where one NJR subsidiary transacts directly with another
- Releases to Affiliates: Lists storage or transportation capacity releases where one NJR subsidiary transacts directly with another
- Storage and Transportation Capacity Transactions: Lists storage and transportation contracts where one NJR subsidiary transacts directly with another.

The Senior Risk Analyst researches any unusual items, then sends the results to the Middle Office Manager for review. Upon approval by the Middle Office Manager, the reports are distributed to the business unit heads and the Risk Management Committee for discussion at the next meeting.[143]

The code of conduct specific to wholesale gas trading applies to officers, employees, and agents directly or indirectly involved in such activities. Annual training for involved employees and agents applies here as well.[144] The Organization, Staffing and Controls section of this chapter discusses an element of NJR's code of conduct applicable specifically to wholesale gas transactions. We found occasional instances of CEO approval of transactions that do not appear to comport with the requirement that affiliate transactions price at the higher of cost or market price. That chapter section also described the 2023 deletion of natural gas transportation and storage (including capacity releases) from that requirement.

As discussed previously, NJNG has released pipeline and some storage capacity to NJRES under AMAs since 2010. It has also released some capacity to NJRES outside of AMAs. We discuss below concerns about the lack of controls to ensure competitive practices designed to secure for NJNG full value from such releases. As noted earlier, NJNG does employ a method for calculating what it deems to be the value of assets at the time of release, but that valuation has never been tested against the market.

c. Scheduling and Trading Practices

Natural gas trading and scheduling are conducted pursuant to conventions and practices that have been worked out among market participants and regulatory authorities over many years. Many of these conventions and practices are incorporated into the North American Energy Standards Board ("NAESB") standard form contract, which NJNG uses.

The NAESB contract, and the trading and scheduling practices it incorporates, comply with all applicable Federal and State regulations. We did not find any evidence of disputes with regulatory authorities or counterparties regarding the contract or its incorporated trading and scheduling practices.

d. Information Flow Between NJNG and Affiliates

NJNG's primary business is serving its on-system customers with natural gas sales, transportation and balancing. NJRES's business is supply portfolio management and wholesale energy supply. While the majority of their respective customers and businesses might be in other locations and at different levels (*i.e.*, wholesale versus retail), there is significant overlap between the two at the wholesale level in the Northeast natural gas Market. Because they are sometimes selling the same thing – natural gas at wholesale – to the same customers, they are competitors to some degree. Because that market is so large, however, it would be difficult to find a specific instance where one of the two met the other in a head-to-head competition. We believe that both can do as much business as their respective staffs, gas-supply resources, and financial strength will allow.

NJNG has about 35,000,000 Dth of mid-Atlantic storage under contract.[145] NJRES has about 26,600,000 Dth of storage owned or under contract, a significant share of which serves the Northeast Market.[146] NJNG's peak-day supply capacity is about 1,200,000 Dth,[147] much of which is available for release or off-system sales on all but a few days each winter. NJRES has 510,000 Dth/day of firm transportation capacity owned or under contract[148] but is usually looking for more.[149]

Counterparties for wholesale sales and purchases in the Northeast Market are largely the same for the two affiliates. NJR's Middle Office maintains the gas purchase and sale contracts for both and monitors the credit exposure of each to each counterparty. While both affiliates may have exposure to the same counterparty at the same time, NJNG's Managing Director – Gas Supply reports that trading with any particular counterparty has not yet been restricted due to the affiliate's exposure to the same one.[150]

Both affiliates buy and sell much of their short-term gas on ICE. Transactions on that exchange are opaque with respect to the identity of the offering party until a buyer is ready to transact. We have noted that NJR prohibits the two affiliates from transacting with each other in the absence of prior approval using Deal Approval Forms. NJR's Middle Office installs that restriction on each trader's access to ICE. But for that restriction, the two affiliates are looking at the same offers from the same counterparties when they go onto ICE at the same time.

Both affiliates' traders and schedulers conduct business in the same room,[151] albeit on different sides of the room. The room – the "trading floor" – is equipped with market-monitoring screens which are accessible to all. Information is not so much shared as it is available to all.

Intelligence about the markets that both companies serve is shared. Each affiliate has a morning meeting every trading day, to share intelligence and strategy about that day's market activities. One of the very few restrictions on the flow of information between the two affiliates is that NJNG's traders have access to NJRES's morning meetings, but NJRES's do not have access to NJNG's. In years past, some NJNG Gas Supply personnel who maintained common counterparty data, and five NJRES employees, had access to both NJNG and NJRES sensitive information.[152] The eight GMS modules provide information that includes:[153]

- Contract terms and demand charges
- Deal data for individual trades
- Interstate pipeline nominations
- City Gate Readings
- Month end financial journal entries
- Counterparty credit status)
- EBB nominations to NJNG from retail suppliers
- Support tables containing static data, such as rates.

Management has addressed the lack of limits on shared access by restricting access by each company's employees to their own company's data except for the support tables.[154]

Finally, each of the two affiliates' traders and schedulers has a deep understanding of the other one's business. NJNG's Managing Director – Gas Supply and Head Trader both worked at NJRES before coming to NJNG. Several of the other individuals in both companies have at least some experience working for the other one. NJNG's Managing Director - Gas Supply brought to NJNG an asset-valuation methodology that has been in use at NJRES since she was there. Thus, both companies value natural gas transportation and storage assets in the same way.

K. Conclusions - - Managing Transportation and Peaking Assets

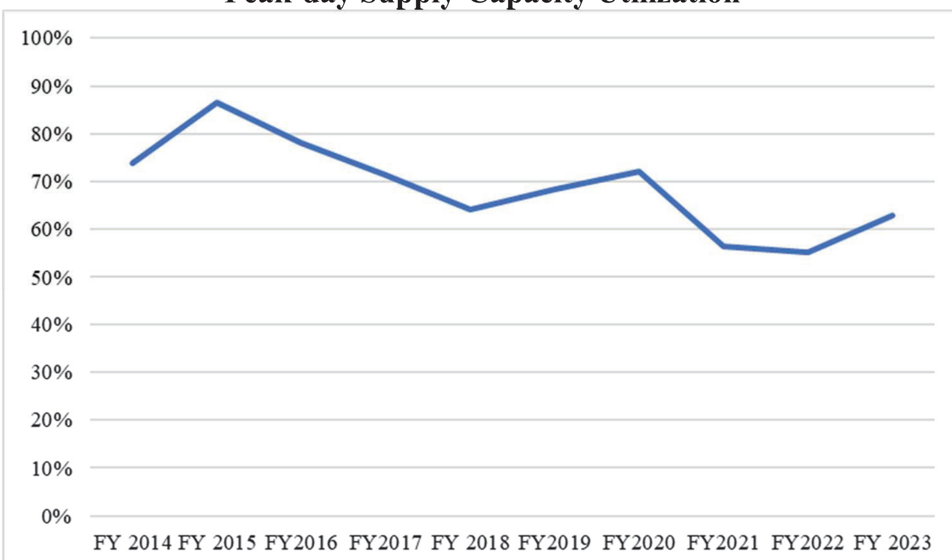
14. A significant mismatch exists between NJNG's capacity resources and its supply needs. As the last of the new supply-capacity assets come into service, NJNG should review the portfolio for redundancy. *(See Recommendations #9 and #10)*

NJNG's Design Day supply resources considerably exceed its Design Day requirements; they have done so for a long time. Diversification of supply by making connections with Northeast supply sources is sound, but that diversity increases the need for questioning capacity redundancy and excess, even after NJNG has derated its Tetco capacity as described in the previous section of this chapter. NJNG's secondary-market activity (off-system sales and capacity releases) brings considerable revenue to offset the costs of retaining the capacity but does not cover all of its costs.

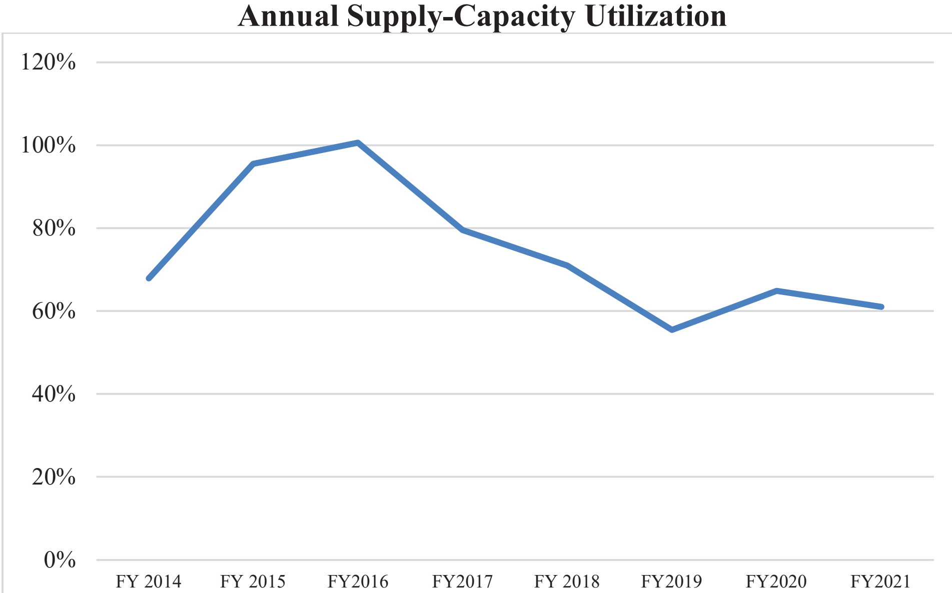
15. Comparing peak-day and annual sendout to on-system customers with NJNG's contracted capacity shows excess capacity. *(See Recommendation #9)*

The following charts show the emergence of the excess. Utilization of peak-day supply capacity to deliver to on-system customers declined from a high of 86 percent on February 15, 2015, to 59 percent on January 29, 2022. Utilization of annual supply capacity for on-system sales and transportation declined from 101 percent in FY2015 to 55 percent in FY2019.

Peak-day Supply-Capacity Utilization



Annual Supply-Capacity Utilization



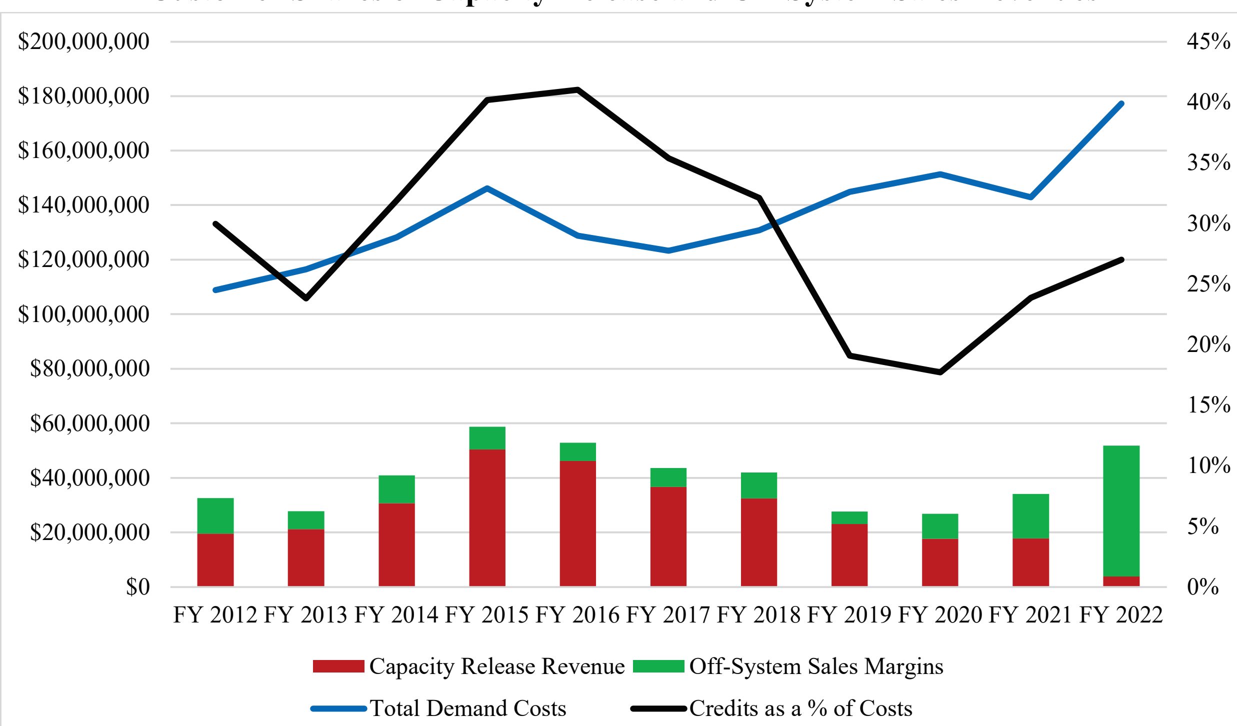
NJNG capacity costs go into the BGSS mechanism for recovery from customers. The Company's principal risk is the possibility of cost disallowance, which experience shows is generally remote. Conversely, owning a piece of capacity provides opportunities to make an off-system sale for which the Company shares in the margin or to release it to a counterparty, for which the Company also shares in any revenue generated. NJNG's use of particularly severe design criteria for its gas-supply portfolio tends to add to the capacity subject to such use and mechanisms.

16. NJNG's cost recovery through secondary-market transactions indicates that the costs of the Company's gas-supply assets have been below their value.

The following chart shows NJNG's customers' shares of capacity-release and off-system sales revenues. We find this data remarkable. NJNG's customers' shares of those revenues range from 17.7 percent of total demand costs to 41.0 percent, averaging 29.3 percent over the 11-year period presented in the chart. Typical values for effective secondary-market performance in our experience is a range of 10 to 30 percent of demand costs for total revenues – not just the customers' share – with an average closer to 20 percent.

A major factor in this performance, in our view, is that NJNG has had access to legacy-priced assets in a capacity-constrained market. As a result, the value of those assets in secondary-market transactions has exceeded their costs. Regarding the influence of excess capacity, notice how secondary-market revenues dropped after NJNG permanently released 80,000 Dth/day of Tetco capacity on April 1, 2018. Off-system sales revenues increased, both in absolute terms and relative to capacity-release revenues, after the second 80,000 Dth/day AMA with NJRES expired on October 1, 2021. NJNG retained that capacity, rather than releasing it. The following chart shows that retention of that capacity has been accompanied by significant increases in off-system sales revenue.

Customer Shares of Capacity-Release and Off-System Sales Revenues



Two recent capacity additions by NJNG provide an indication of the current value of pipeline capacity in the Northeast Market Region. In late September 2020, NJNG negotiated two AMAs with trading companies holding capacity on Transco's Leidy Line. In both cases, the arrangements start as an AMA, with NJNG managing the capacity held by the trading company, with the capacity then permanently released to NJNG. Both contracts began on November 1, 2021. For one of them, permanent release began on November 1, 2023; the contract goes to [redacted]. For the other, the permanent release begins on [redacted], and the contract extends to [redacted]. In both cases, the [redacted] of the capacity to NJNG is [redacted].[155]

17. NJNG's location has been another factor in its secondary-market outperformance.

Due to the distance between the locations of storage facilities and NJNG's service territories, NJNG employs a Design-Day resource mix unusual for its latitude. NJNG's 2023 BGSS filing notes a 73/9/18 mix of year-round, seasonal, and peaking capacity, as opposed to the equal thirds more typical for its latitude.[156] When combined with the extreme criteria for identifying Design-Day requirements, this mix produces a very large supply of year-round supply capacity available for capacity releases and off-system sales. NJNG makes some of the resulting capacity-release and off-system sales transactions directly, but has placed NJRES in a very favorable position for a large portion of them.

18. NJRES has been, and continues to be, a prime beneficiary of NJNG's excess assets. *(See Recommendation #10)*

Since early 2010, NJNG has had AMAs with NJRES for: (a) pipeline and storage capacity that it uses to serve NJNG's Northern service territory, and (b) two sets of AMAs, each covering 80,000 Dth/day of NJNG's Tetco pipeline capacity. Pricing for all these AMAs initially employed a valuation methodology developed and still used by NJRES, with later renewals or renegotiations to produce updated valuations as each expired. None has ever been offered to third parties through competitive bidding, as NJNG has argued that only the affiliate could be relied on to deliver supplies for NJNG's customers under peak-demand conditions.

As noted above, on April 1, 2018, NJNG released permanently to NJRES one of the 80,000 Dth/day asset packages [redacted]. NJNG retained a call option on the released capacity through [redacted]. The narrative in the Deal Approval Form noted that, even if a 180,000 Dth/day capacity addition on Transco was delayed through the expiration of the call option (more than [redacted] years), NJNG would still have an unusually-high reserve margin without the call option.[157] Those assets were subsequently re-released by NJRES to an unaffiliated third party, as part of a package of assets that has brought considerable profits to NJRES, and will continue to do so for some years into the future. Any other permanent releases have only gone to NJRES, also [redacted]. However, NJNG's very long supply portfolio has not required it to employ that option at a material level.

As also noted above, NJNG recently entered into two AMAs with non-affiliates involving capacity on a different pipeline (Transco) that will serve different citygates on NJNG's transmission system. Those agreements include permanent releases of the capacity to NJNG after a few years. The two

AMAs total 77,000 Dth/day. The larger of the two involves payments to the original capacity holder of $[redacted] million per year over the [redacted]-year life of the agreement, in addition to tariff-based transportation fees to the pipeline. The other involves an [redacted] in addition to a [redacted] for the pipeline capacity.[158]

Transco's peak-period reliability record has been better than Tetco's, and the new Transco capacity delivers from the heart of the Appalachian producing region, so there is some justification for paying a premium for the new capacity. As explained earlier in this chapter, NJNG released to NJRES without requiring monetary compensation 80,000 Dth/day of Tetco capacity, beginning in April of 2018. NJRES re-released the Tetco capacity it had received in return for substantial payments by a third party. The ability of NJRES to secure substantial revenue from an asset that it acquired at no monetary from NJNG cost demonstrates why it is critical for a utility like NJNG to keep its affiliates at arm's length. The circumstances call into question whether NJNG could have made similarly compensatory market use of the capacity it released to NJRES.

19. NJRES also has a favored position for shorter-term capacity releases. *(See Recommendation #10)*

As NJRES traders are quite familiar with NJNG's pipeline-capacity assets, have access to the same pipeline EBBs, etc., and are sitting in the same room with NJNG's traders, they are well aware of any possible releases. NJNG sometimes agrees with NJRES in advance, and posts releases as "prearranged, biddable" at an agreed rate.[159] In that event, third parties are made aware of NJRES's interest, but NJRES can match any higher offer. Other times NJNG and NJRES agree that a release will be posted as "non-prearranged, biddable", so third parties are not necessarily made aware of NJRES's interest. In those cases, NJRES will submit an agreed initial bid when the bid period opens.[160]

These shorter-term releases are always made "recallable". By posting its capacity for release on a "recallable" basis NJNG diminishes its value. A market participant interested in the capacity understanding that NJNG can take it back, likely at times of high market value, will certainly be discouraged from offering prices that reflect the added value it would gain at those premium times. However, NJNG and NJRES market-facing personnel work from the same room and their staffs include many who have switched employment between the two. They possess knowledge about NJNG's system demands, needs, and resource interactions involved in meeting them. They have, relative to their competitors who may want access to the same NJNG capacity, superior knowledge about the circumstances that may generate an NJNG recall, and, more importantly, the chances that recall will happen. Moreover, given that a subject-to-recall release diminishes value, it is critical that controls exist to ensure that NJNG does not overuse it; *i.e.*, fail to make offers not subject to recall in a way that can further advantage NJRES. We also addressed earlier in this chapter another advantage that an NJNG affiliate gains through its ability to match third-party offers for proposed releases posted under FERC rules.

20. NJNG's management of its gas-supply assets has generally complied with regulatory requirements, but management of its relationship with NJRES has been disappointing. *(See Recommendation #11)*

Our review of NJNG's compliance with applicable regulatory requirements regarding management of its gas-supply assets suggests that compliance is a value. We note that compliance has been a principal focus of NJR's Internal Audit reviews.

NJR's Corporation Code of Conduct[161] has a section on Affiliate Standards, which refers to Affiliate Rules designed to promote vigorous and fair competition. That section also refers to an Affiliate Standards Compliance Plan. That plan focuses on EDECA compliance; we find nothing that addresses the relationship between NJNG and NJRES.

21. NJNG's work with its traditional suppliers has permitted the Company to retain the cost benefits of legacy capacity while mitigating associated reliability risks.

Reliability issues with Tetco and TGP remain. Rather than allowing its capacity with them to lapse, however, NJNG has found a number of adjustments useful in retaining access to their favorable cost structure. These measures are among those for which BGSS workpapers provide transparency to customers. Such measures include:

- Focusing on retaining the highest priority for service on critical segments when addressing renewals
- Adding call options when planning to use their capacity during peak periods
- Diversifying NJNG's peak-day capacity portfolio
- Adding to its own system – particularly the Southern Reliability Link – to reduce its vulnerability to supply interruptions.

22. NJNG's willingness to employ non-traditional arrangements in meeting portfolio objectives provides flexibility that extends its range of potentially effective alternatives.

NJNG has demonstrated a willingness to pursue such arrangements, benefitted by the expertise and experience its gas-supply staff offer. A number of examples demonstrate the ability of that experience to craft ways of using assets in combinations that produce economy and reliability. An NJNG commodity supplier sought assurance of access to markets in the capacity-constrained Northeast. NJNG made some of its pipeline capacity available to that supplier under an AMA in return for a supplier commitment of the supply. In two other cases noted above, marketing companies held capacity on the Transco system that NJNG sought. NJNG entered AMAs with both of them, offering permanent capacity assignment to NJNG after several years.

L. Recommendations - - Management of Transportation and Peaking Assets

9. Review all supply assets in the next BGSS proceeding. *(See Conclusions #14 and #15)*

We noted earlier that the Company's BGSS filings include an exhibit reporting changes in transportation and storage contracts, and that the BPU requires documentation of the Company's evaluation of capacity portfolio changes, extensions of contract durations, and releases of capacity to affiliates. We recommend that, for the next BGSS filing only, this exhibit and the required documentation be extended to include <u>all</u> of NJNG's owned and contracted gas-supply assets.

NJNG currently reviews the utilization of each contracted supply asset as it comes up for renewal. These reviews are documented, and copies of the documentation have been provided in response to discovery requests in the Company's BGSS proceedings. Utilization includes use in secondary-market transactions, as well as in service to NJNG's on-system markets. We recommend that the analysis extend to all components of the portfolio, not just the ones that are new or up for renewal.

For the purpose of this analysis, utilization of each asset would be composed of two parameters:

- Utilization rate for serving on-system customers, the parameter used in the current exhibit
- Cost recovery through capacity releases and off-system sales relative to the total cost of the asset.

For NJNG's peaking resources, including its LNG facilities, call options and any other owned or contracted peaking resources, report utilization both as a proportion of peak-day sendout and as a proportion of peak-period supply capability.

Cost recovery in secondary-market transactions is easily identified. Use to serve on-system markets is also easy to identify, but assessing an asset's value in those uses might be harder, especially for assets that are required for peak-period reliability but are used relatively infrequently. NJNG's Energy Services staff should devise a way to address this question.

A fair concern about relying on short duration (*e.g.*; one year) utilization data to decide which supply assets could be eliminated is that the results for each asset could be different under different load conditions. To address this concern, the Company should repeat this analysis under a range of load conditions.

The BPU has required the Company to provide documentation for its supply portfolio evaluations since 2014. Thus, we assume that the same kind of utilization data – utilization for on-system customers and secondary-market revenues for each asset – is available at least that far back. The years since then provide a suitable range of weather and load conditions for a proper analysis. The Company should pick a high-load year and a low-load year and repeat the utilization review for each owned and contracted asset. It should be apparent that assets with low utilization under all three load conditions – high, low and most-recent – would be prime candidates for elimination.

The BGSS process provides a transparent way of sharing this information with the BPU and the Company's customers. The Company should explain why it should keep any assets with low utilization and low cost recovery, or present a plan for their disposition.

10. Address the ways in which NJNG favors its affiliates in conducting its gas-supply operations, and make appropriate adjustments. *(See Conclusions #18 and #19)*

AMAs: Expiration of the big Tetco AMAs left at the time only the one serving NJNG's Northern Division, and a smaller one for capacity on TCO. Evaluation of value using a model brought over from NJRES and adding a margin does not substitute for a real-time market. Extensions to NJRES under such circumstances also lacks sufficient control to ensure arm's-length dealing with affiliates. In addition to competitive solicitation, NJNG also should undertake regular, objective, and critical examination of how pooling of assets can enhance value. Such pooling should take specific account of the less extreme Design Day criteria that NJNG should consider adopting, in order to ensure that, without compromising the ability to serve under normal and extreme conditions, NJNG maximizes customer-cost offsets. Those offsets have been notably strong, but the issue is whether they are as strong as they could be under the circumstances that create inherent market value and without providing NJRES the advantages it has had for many years. In comments on a draft of this report, management stated that, as of April 1, 2024, no AMAs between NJRES and NJNG remained.

Management's view that arrangements with non-affiliates would increase the risk of asset unavailability runs into a number of facts that argue otherwise. First, AMAs with NJRES do not address only assets or circumstances that involve contingencies critical to maintaining service continuity. For those that do, NJNG can retain management for itself, as it already does for material portions of its portfolio. In fact, results after NJNG Gas Supply retook from NJRES responsibility for a major Tetco release after its expiration show a resulting increase in secondary-market revenues. Second, as noted earlier in this chapter, NJRES, which operates as an unaffiliated asset manager in the marketplace, takes a markedly different view, emphasizing that customers like NJNG can count on it in such circumstances. Arrangements with third-party entities certainly require diligence in selection and management, but responsible firms like NJRES have established too broad and strong a track record to permit entry level dismissal of them as options.

There have been permanent capacity releases in the period addressed in this audit, but not for some time. Should any more be considered, NJNG should open them to competitions that seek to secure awards to the highest qualified offeror.

Capacity Releases: The simplest solution to the problem of favoritism toward NJRES in capacity releases is not to allow it to bid. We suspect that any third party who might bid on released capacity is well aware of the relationship between NJNG and NJRES. The only way to change that perception is to inform market participants that NJRES is not allowed to bid on capacity releases.

There are now several counterparties that consistently contract for certain pipeline segments that are under contract to NJNG. We suspect that those counterparties have discovered through trial and error that NJRES is not interested in those segments. Any parties that have access to a pipeline's EBB can see what segments are routinely offered for release, and who routinely bids for them. If counterparties know that NJRES is not allowed to bid on capacity under contract to NJNG, it seems to us likely that there will be broader interest among them in bidding for capacity that NJNG posts for release.

If NJRES continues to be allowed to bid, it should be required to pay at least what each asset costs NJNG.

11. Develop an Affiliate Standards Compliance Plan that addresses the relationships between NJNG and NJRES. *(See Conclusion #20)*

The Code refers to internal guidelines and procedures entitled "Fair Competition Guidelines". The Company must review the relationships between NJNG and NJRES with respect to those guidelines, and develop any further guidance necessary to clarify what is expected. The employees of both affiliates must then receive whatever training is necessary to inform them regarding the parent company's expectations regarding their dealings with each other.

M. Background - - Commodity Purchasing and Pricing

This section describes our review of NJNG's strategy for gas procurement, including programs and measures to address management of commodity price risk. NJNG has conducted gas-cost hedging activities for many years, primarily through its Storage Incentive Program. Hedging activities for both NJNG and NJRES have long been controlled with Risk Management Committees, though there have been some changes to these Committees in the past decade. Our review examined the sufficiency of purchasing and price-risk management objectives, and the use of liquid and transparent markets. With respect to managing procurement we examined the process for pre-qualifying suppliers and the sufficiency of their numbers. We also reviewed the controls over the hedging program.

N. Findings - - Commodity Purchasing and Pricing

1. Approach to Commodity Purchasing

NJNG does not issue requests for proposals for commodity supply. Rather, the Company actively participates in daily and monthly commodity markets at accessible market hubs. The Company believes that favorable commodity pricing is captured more efficiently by transacting directly with suppliers based on market conditions at the time of the transaction. [162]

NJNG's active engagement on the ICE allows it to obtain market intelligence and maintain awareness of conditions affecting price, volatility, and performance. Management develops and maintains relationships with key market participants, allowing it to negotiate for price, term, and flexibility. NJNG buys almost all of its commodity through that exchange. NJNG selects receipt locations on the basis of delivered prices to its citygates. Those locations comprise eligible receipt points on the pipelines that deliver to NJNG's citygates using pipeline capacity owned by or under contract to NJNG.

NJNG's on-system markets are highly seasonal, ranging from about [redacted] to as much as [redacted] on the peak day.[163] Commodity supply planning for those markets occurs primarily in the context of the Storage Incentive Program. The Company uses natural gas futures contracts under that program to fix the price of the gas that it will purchase for injection into storage, then buys the physical commodity in monthly and daily purchases when ready to take delivery. NJNG uses the Base Contract for Sale and Purchase of Natural Gas published by NAESB to govern relationships with its gas suppliers. Transaction Confirmations cover each individual transaction. Some of the Company's older contracts use the Gas Industry Standards Board ("GISB") form.

A review of the Company's transaction records indicates that most seasonal and monthly purchases occur in the non-winter months, with switches to primarily daily purchases in winter. The seasonal and monthly purchases serve primarily to support injection into storage. Switching to daily purchases in winter allows daily choices between purchases and withdrawals from storage, depending on relative pricing.

The gas supplies for NJNG's substantial off-system sales come from purchases made at the time of and specifically for each sale. NJNG does not use supply bought for on-system customers, or storage gas bought for on-system customers, for off-system sales.[164]

NJNG has for supply transactions with a term of one month or greater typically paid prices calculated with respect to either the *Inside FERC Gas Market Report* ("IFERC") Index for the nearest market hub, or with respect to the NYMEX last-day settlement price for the month being priced. A few – perhaps 10 percent – had a fixed price.[165] Shorter-term transactions are generally agreed on ICE; examination of the Company's trading records reveals roughly one-half to two-thirds of transactions are priced with respect to relevant indexes, while the balance are fixed-price.[166]

NJNG uses the NAESB standard form contract for natural gas purchases and sales. NJNG has used this form contract with all of its recent trading counterparties, including NJRES. Any non-NAESB contracts with counterparties use forms that pre-date the NAESB one and have simply not been updated. NJRES uses the same form contract. The contracting practices for hedging are different, however.

2. *Maintaining a Robust Pool of Potential Suppliers*

NJNG has NAESB or GISB contracts with many suppliers. NJNG's Managing Director – Gas Supply estimates that the Company buys gas from [redacted] different suppliers in any given year.[167] The following table shows the top 10 suppliers, with quantities bought (in Dth) and amounts paid (in millions), for 2014 and for 2022.

Top Gas Suppliers to NJNG[168]
(confidential table)

[redacted]

[redacted]

NJNG's supply sourcing has become more concentrated over time as its relationship with [redacted] has grown. [redacted] is one of the largest producers in the Appalachian region, and has been willing to work with the NJR companies in a variety of gas-supply relationships. Affiliate NJRES has substantial gas-supply relationships with some of the same suppliers as NJNG, but also some different ones. The same supplier and quantities information for NJRES's suppliers is given in the following table.

Top Gas Suppliers to NJRES[169]

(confidential table)

[redacted]

Until recently NJRES bought larger quantities than NJNG, but over a larger geographic area. NJRES has a substantial presence in the Northeast Market region, but its principal supplier is not a major supplier to NJNG. By 2022, the quantities bought and amounts paid to the same suppliers by the two affiliates were not large enough to warrant concern over competition for access to those suppliers.

A Credit & Contracts group within NJR's Middle Office reviews each supplier's credit periodically, and sets limits on the parent company's total exposure to each one based on its assessment of each supplier's financial strength. The group warns each subsidiary when the Company's exposure to a supplier nears its limit. NJNG's Managing Director – Gas Supply reports that the utility has not experienced limits on its access to particular suppliers due to their exposure to other business units within NJR (particularly NJRES).[170]

3. Finding and Qualifying New Suppliers

NJNG's process for finding prospective suppliers begins with determining those active at the receipt points in the Company's pipeline contracts. NJNG consults the pipeline to identify those suppliers active at those receipt points, particularly when adding new contracts. Pipeline EBBs and ICE provide additional sources of this information.[171] Some suppliers contact NJNG directly. Such contacts in the Northeast Market Area have come largely from major gas producers with available supply but not the capacity to transport it. Delays in pipelines under development have placed some suppliers in a position of having more to sell than they can transport. Pending pipeline completion, NJNG may present an option for moving some of their supply.

NJNG's Gas Supply group fills out a form requesting the Credit & Contracts group to conduct an evaluation of suppliers of potential interest. Positive evaluations can then lead to entry of a NAESB contract with the new supplier. This process generally screens out suppliers who have shown reliability problems, which is fairly commonly known in advance.

The following table lists the number of new suppliers added historically.[172]

NJNG New Suppliers
(confidential table)

Year	Number	Year	Number
FY 2014	[redacted]	FY 2019	[redacted]
FY 2015	[redacted]	FY 2020	[redacted]
FY 2016	[redacted]	FY 2021	[redacted]
FY 2017	[redacted]	FY 2022	[redacted]
FY 2018	[redacted]		

4. Hedging Program

a. <u>Objectives and Instruments</u>

NJNG's Hedging Program objective consists of price stabilization for BGSS customers. The program aims to hedge, but not to fix, by November 1 of each year, the price of (a) 75 percent of normal periodic BGSS sales for the upcoming November-through-March winter period, and (b) 25 percent of sales for the following April-through-March period. Management bases the volume targets on the annual budget forecast issued in May or June of each year.[173]

NJNG and NJRES both hedge using financial contracts to lock in the values of future positions. NJNG uses natural gas futures contracts and other instruments to conduct its Storage Incentive Program. NJNG buys its instruments on a commodity exchange, such as the New York Mercantile Exchange (NYMEX), and holds them in an account with a clearing broker. Conducting its trading in this way requires posting collateral but does not require financial guarantees from the parent company.

NJRES conducts its hedging differently. It uses the International Swaps and Derivatives Association (ISDA) standard form contract to govern its relationships with its hedging counterparties. These relationships generally require that the parent company, NJR, guarantee NJRES's performance under the contracts. Margin amounts or collateral are required only when conditions negotiated into each ISDA's Credit Support Annex are violated. This rarely happens.

An important difference between the two approaches is in their respective costs. Posting of margin amounts or collateral involves the cost of the funds used for posting. NJNG stated that it has not recovered those costs through the BGSS mechanism.[174] Parental guarantees are cost-free unless their magnitude is so large that a letter of credit or some other tangible form of assurance is required.

NJNG accomplishes hedging by buying gas in the April-through-October period and injecting it into storage. The price of the gas in storage is set using natural gas futures contracts well before injection starts. The natural gas futures contracts are the subject of the Company's Storage Incentive Program ("SIP").[175]

The SIP uses the initial futures contracts to establish a Benchmark Cost for storage injections.[176] Management measures actual injection costs for the April-through-October injection season against the Benchmark, with savings relative to the Benchmark shared between NJNG's BGSS customers (80 percent) and the Company (20 percent). [177]

The actual costs of storage injections include commodity costs, transportation costs, and any gains and losses associated with trading Program-related financial hedges.[178] NJNG uses strategies that take advantage of the optionality inherent in storage operations and market opportunities to achieve a cost of storage injections lower than the Benchmark. The Benchmark is set for ratable injections, but physical injections can be done non-ratably in conjunction with strategies to lower costs. Those strategies include the following:

- Futures Spread: To the extent that shifting planned injections from one month to another would result in savings based on futures prices, NJNG could realize those savings by selling its futures contracts for the higher-price month and purchasing futures contracts for the lower-priced month. The physical injection schedule can be modified to match the new futures contracts.
- Accelerate Storage Injection: To the extent that the spot physical market for gas during any day in the summer is trading below a future summer-month price, NJNG can buy the lower-

priced spot physical gas for that day and sell the higher-priced summer futures contracts. Again, the physical injection schedule can be modified to match the new futures contracts.

- Defer Storage Injection: To the extent that the spot physical market for gas during any day in the summer is trading above a future summer-month price, NJNG can sell the higher-priced spot physical gas for that day, or use the gas planned for storage injection on that day for citygate requirements, and buy the lower-priced summer futures contracts. Again, the physical injection schedule can be modified to match the new futures contracts.
- Defer Storage Withdrawal: To the extent that the spot physical market for gas during any day in the winter season is trading below a future summer-month price, NJNG can buy the lower-priced spot physical gas for that day and sell the higher-priced summer futures contracts. The physical gas for that day would not be withdrawn from storage, and thus would not need to be replaced in the summer.

Prior to the start of each summer month, NJNG purchases physical volumes for that month based on the final futures position for that month. Rather than using ratable purchases, NJNG procures physical volumes to match the financially-hedged position for that month.

Determining the costs of the gas in storage requires settling the futures contracts. Financial-for-physical swaps accomplish that settling. NJNG buys both instruments on exchanges, through a futures-clearing merchant.

The Benchmark must be set by March 31 of the year in which storage fill is to begin. It can be set as early as November 1 of the previous year, or even earlier.[179] Purchasing NYMEX Henry Hub Futures contracts for the April through October period with ratable volumes for the seven months sets the Benchmark. Two factors influence the timing of setting the Benchmark:[180]

- The direction of the natural gas futures market
- The level of the commodity price in the current BGSS filing.

The following table shows when NJNG acquired the contracts for the Benchmark associated with the storage injection periods shown.[181]

Futures Contract Purchases for Storage Incentive Benchmark
(confidential table)

[redacted]

The preceding audit of this type made hedging-related recommendations some ten years ago. That Auditor noted that NJNG's hedging strategy, composed of buying specified quantities of gas for storage injection prior to the winter heating season, was developed arbitrarily, and had not been reviewed or changed since before our previous audit (completed in 2007). It observed that NJNG's hedging percentages – 75 percent of the upcoming winter's requirements for BGSS customers and 25 percent of the following year's requirements for those customers – were higher than it had seen at other gas utilities, and that the Company's strategy set minimum levels of hedging, whereas others focused on maximum levels.[182]

That Auditor also had some concerns about the conduct of the SIP.[183] It recommended that NJNG retain an outside firm

> *to conduct a comprehensive analysis of the current hedging strategy, SIP ... to assess their appropriateness and value to ratepayers in light of current and anticipated natural gas market conditions, the BGSS rate structure and other regulatory considerations, and NJNG's vision and strategy.*[184]

No such study was done. The Company itself has reviewed neither the hedging strategy nor the SIP since that report.

5. Policies and Procedures Governing Conduct of the Hedging Program

The Organization, Staffing and Controls section of this chapter describes NJR's Risk Management Policy more generally. That policy guides many aspects of NJNG's operations.[185] NJNG's Risk Management Committee, with operational support from NJR's Risk Office, has primary responsibility for administering these policies for the utility.

Part 2 of the Policy document is the Wholesale Energy Policy, which provides primary guidance for hedging. The Wholesale Energy Policy addresses approved instruments and products (physical and financial) and delegations of authority that govern the scope of trader authority to operate. It also provides an overview of NJNG's wholesale natural gas trading activities and incentive programs, and brief discussions of particular business risks that the utility faces.

A number of procedure/guideline documents support the Risk Management Policy. The ones pertinent to hedging include

- Confirmation Policy and Procedures
- Contract Procedures for Wholesale Transactions
- Credit Policy for NJRES and NJNG Wholesale Natural Gas
- IM (Instant Message) and Phone Recording Procedures – Traders
- NJNG Incentive Programs, including the Storage Incentive Program
- Risk Management Committee Policy.[186]

6. Controls Over the Hedging Program[187]

NJR's organizational structure generally conforms with standard industry definitions of front, middle and back offices. Each of these offices has different roles and responsibilities, and they report up through separate organizational chains of command:

- The front office executes risk-taking and risk-mitigation strategies. It reports through the head of each business unit.

- The middle office maintains the overall control environment and assesses compliance with the Risk Management Policy. It reports through the Chief Risk Officer.
- The back office administers the controls environment through reconciliations and financial reporting. It reports through the Chief Financial Officer.

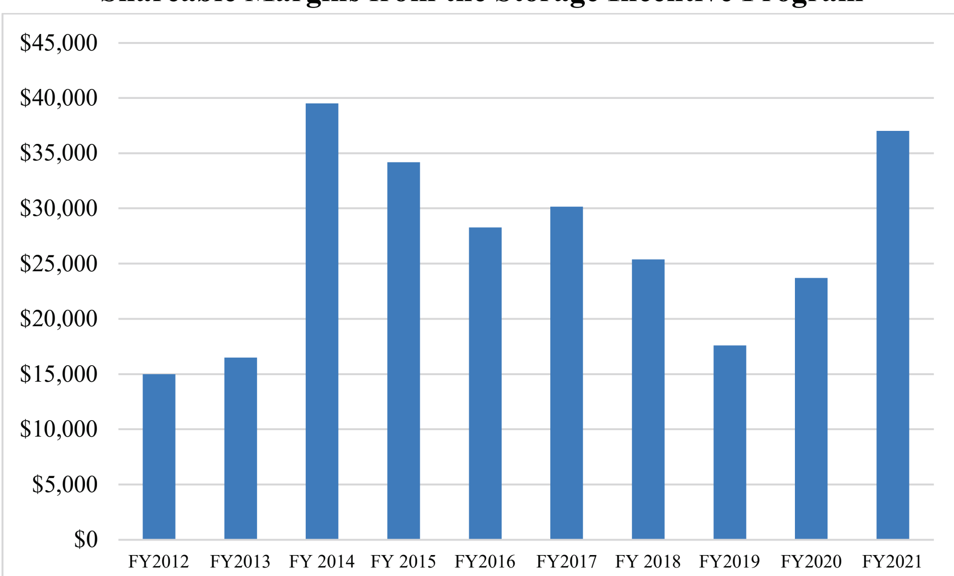
NJNG's traders, operating in a front-office function, enter transactions. They must review and acknowledge NJR's Risk Management Policy annually.[188] All hedging transactions require entry into the Company's GMS, which operates as described in this chapter's Organization, Staffing and Controls section.[189]

NJNG's Risk Management Committee meets monthly. The information package for each meeting includes reports on the Programs' progress since the last meeting.[190] Assessment of financial and market exposures, and plans for managing those exposures, are a principal focus of each meeting. The information package also include tests on affiliate transactions to ensure their compliance with Company policies. The Settlements Group distributes some other controls reports, such as a month-end price-comparison report that identifies any deals that are priced outside of the relevant index range, for follow-up as appropriate. RMC meeting minutes were discontinued in September 2019. In place of minutes, any decisions are tracked and documented for future reference.[191] NJNG also reports on the progress of the Storage Incentive Program in each BGSS filing. The workpapers for each BGSS filing provide details of physical and financial positions for each active hedging period.[192]

7. The Storage Incentive Program

Each BGSS filing displays the results of the Storage Incentive Program, including customers' and the Company's shares of the savings relative to the Benchmark. Hedging programs over time usually do not consistently produce hedged costs lower than what they would have been if unhedged. The Storage Incentive Program has, however, produced consistently positive margins.

Shareable Margins from the Storage Incentive Program



Reviewing Risk Management packages prepared for NJNG's Risk Management Committee meetings disclosed at least one possible reason for the consistency in the Storage Incentive Program's reported results. The Benchmark calculation includes the average price in the futures contracts acquired for each month, plus transportation and fuel costs that represent the cost of moving the gas from where bought and injecting it into storage. The transportation costs used for the calculation comprise a 50/50 blend of the commodity cost of Market Zone 2-to-Market Zone 2 (M2-to-M2) transportation on the Tetco system, and M2-to-M3 transportation on the same system.

The futures contract for natural gas settles at the Henry Hub in southern Louisiana, not in Tetco M2. Thus, the transportation cost appropriate for actually moving gas from the settlement location to storage in Pennsylvania would be the cost from southern Louisiana to a location in Pennsylvania. Apparently, the Benchmark calculation formerly used Tetco's ELA Access Area as the starting point for the transportation calculation. That starting point changed to the M2-to-M2 and M2-to-M3 costs in a settlement in a BGSS proceeding.[193]

NJNG does not buy gas for storage injection in southern Louisiana, but at its usual transaction points in the Northeast Market. The cost of gas at those points is generally lower than the cost of gas in southern Louisiana, and has been lower since well before the settlement that brought the new transportation costs. That the cost of the gas actually acquired for injection into storage is generally lower than the cost of gas in the futures contracts acquired for the Storage Incentive Program benefits calculations of Program results.

A second factor that may be benefiting the calculations arises from treatment of the costs of maintaining the necessary margin in the brokerage account that holds the futures contracts acquired for the Storage Incentive Program. Accounting for them as financing costs necessary for operating the Storage Incentive Program would decrease the margins that accrue to the Storage Incentive Program.

Changing the Benchmark calculation to reflect the actual costs of acquiring gas and moving it into storage, and including the margin costs incurred for holding the gas futures contracts that are the heart of the Storage Incentive Program, should reduce the margins calculated for the Program. Those two adjustments should lower the costs that are passed on to NJNG's BGSS customers due to operation of that mechanism.

O. Conclusions - - Commodity Purchasing and Pricing

23. NJNG's objectives for its gas purchasing are clear and align with the interests of its customers.

NJNG has structured its gas-procurement processes to produce reliable supplies for its system-supply customers at market-competitive prices. In this respect, the utility's objectives align with its customers' interests.

NJNG's commodity procurement focuses on deep and highly liquid markets. With its adjustments to its pipeline-capacity portfolio, NJNG now has access to more Northeast Market transaction points: supply pools, market hubs, etc. Purchasing on ICE allows NJNG's traders to buy from whichever of these points gives the best price delivered to NJNG's citygates at the time they are buying. For its few non-ICE purchases, NJNG's traders always check comparable trades on ICE before finalizing.

NJNG's supply sourcing has largely shifted to the nearby Appalachian producing region. The Company has retained some pipeline capacity linking its service territory to the traditional Gulf Coast producing region, in case the price differential between the two regions changes in ways that make the Gulf Coast supply points more attractive.

Modifications to NJNG's own transmission and distribution systems, and improvements to its LNG facilities, have expanded possibilities for upstream supply arrangements, and increased flexibility for day-to-day sourcing and dispatch.

Monthly-priced purchases are used primarily for storage fill. Purchasing largely shifts to daily during the heating season, to enable daily choices between redelivery of stored gas and spot-market purchases. Pricing is generally indexed unless it is fixed in ICE transactions, which reflect pricing at the time of each transaction. The relatively-few term purchases are either for a particular customer's requirements, or to enable a particularly favorable set of supply arrangements. Intra-day supply and pricing is generally to serve power-generation customers, some of whom bring their own supplies but fall back on the utility if they don't have enough to meet their requirements.

NJR's Middle Office maintains essential current information about current and prospective suppliers. The Credit & Contracts group evaluates potential counterparties, and then updates those evaluations as necessary.

NJNG does not use requests for proposals for gas supplies, but sees many offers of supply on ICE. NJNG prefers to work directly with suppliers in mostly short-term transactions. Fortunately, almost all of its gas purchasing can be done at highly liquid transaction points. Its ability to buy at a number of transaction points allows it to shop among the many offers presented at those points on ICE to find the ones that yield the best prices when delivered to NJNG's citygates.

24. NJNG's strategies for commodity purchasing and price-risk management may be adversely affected by its Storage Incentive Program. *(See Recommendation #12)*

Broadly speaking, the Company's strategies for purchasing and managing price risk are to fill storage over the months outside the heating season, and then to dispatch to its on-system markets from storage or spot markets depending on relative pricing. Gas for storage injection is usually bought on a monthly basis, priced with respect to published indexes for each purchase location. Day-to-day purchases are made at daily indexes or prices agreed through ICE transactions.

The Storage Incentive Program may be affecting pricing adversely. Under that Program, the Company is incented to obtain as much storage capacity as it can justify, and fill it as completely as possible before the heating season. Storage capacity under contract at the time of the last audit of this type was about 26 Bcf;[194] today the total is closer to 35 Bcf.[195] NJNG's Hedging Program calls for the price of 75 percent of the forthcoming winter's requirements to be hedged by November 1; in fact, that proportion has been approaching 90 percent in recent years.[196]

The consequences of these requirements probably vary from one year to the next, but one outcome seems clear: the Company's goal of price stability for its BGSS customers has been elusive. The 10 years of the current Audit Period plus the winter of 2022-2023 have witnessed seven mid-season rate adjustments, five down and two up.

This degree of mid-season adjustments calls into question for us the impact of the Storage Incentive Program on NJNG's commodity pricing. We repeat the previous auditor's recommendation for an outside review of NJNG's Hedging Program, including the SIP.

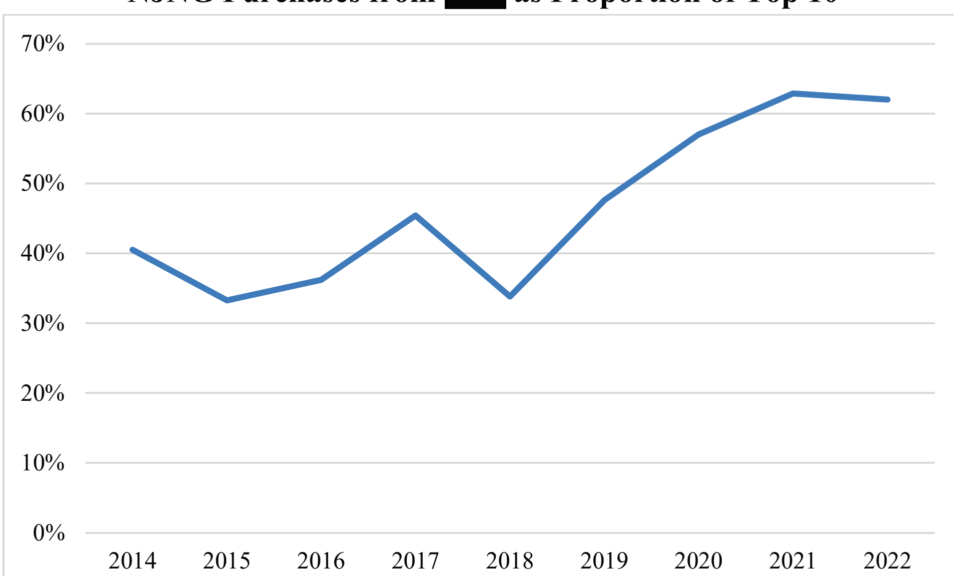
25. A factor not aligned with how NJNG executes the Storage Incentive Program underlies the program's consistent display of positive margins. *(See Recommendations #12 and #13)*

NJNG usually buys gas for storage injection at transaction points in the Northeast. Northeast gas prices are generally lower than those in the traditional gas-producing Gulf Coast region. Use of a price structurally lower than the price in the Benchmark Cost calculation serves to make margins essentially always positive.

26. NJNG's mix of suppliers is increasingly concentrated on one supplier. *(See Recommendation #14)*

The following chart shows the increasing concentration of NJNG's commodity purchases to [redacted]. [redacted] is the largest U.S. producer of natural gas, with all of its operations in the Appalachian Basin.[197] Purchases from [redacted] went from [redacted] percent of purchases from NJNG's top 10 suppliers between 2014 and 2018, then from [redacted] percent of supply from the top 10 in 2019 through 2022. In 2022, NJNG's purchases from [redacted] were more than [redacted] times the combined total of the next nine suppliers. Over the same period, the number of new suppliers added each year declined from [redacted] in 2014 to [redacted] in 2021 and [redacted] in 2022.

NJNG Purchases from [redacted] as Proportion of Top 10



Major purchases from a large and reliable supplier are not necessarily bad, but the level of concentration requires some kind of demonstration that the terms of the purchases are as good as

NJNG could get. We recommend that NJNG provide some such demonstration, such as through a request for proposals issued to all qualified suppliers.

27. Patterns in NJNG's and NJRES's purchases of gas from [redacted] question NJNG's AMAs with NJRES for Tetco capacity. *(See Recommendation #14)*

NJNG's purchase quantities from [redacted] and purchase proportions appear to increase with the end of each of the two longstanding sets of AMAs it had with NJRES for Tetco capacity. Conversely, NJRES's purchases from [redacted] declined when it lost each of the two AMAs:

- NJNG's purchases from [redacted] increased from [redacted] million Dth per year to [redacted] million Dth after the expiration and permanent release of the first 80,000 Dth/day of Tetco capacity (April 1, 2018). Those purchases increased to [redacted] million Dth per year after the expiration of the second AMA for 80,000 Dth/day Tetco capacity (November 1, 2021).
- NJRES purchased [redacted] million Dth from [redacted] in 2016 through 2018, then dropped to [redacted] million Dth in 2019 through 2021. [redacted] was NJRES's [redacted] supplier from 2016 through 2020, [redacted] supplier in 2021, then not even in its top 10 suppliers in 2022.

These patterns suggest to us that a major use of NJNG's Tetco capacity under the two sets of AMAs was to market [redacted] gas, including to NJNG. NJNG benefited from this arrangement through the capacity-release revenues it received under the AMAs; however, its secondary-market revenues went up when each of the two AMAs expired. How much more would NJNG's secondary-market revenues have been if it had not shared them with NJRES through two large AMAs?

As we saw in the comparisons in the first part of this chapter, NJRES paid NJNG under the AMAs about what the Tetco capacity cost. We recommend that NJRES pay NJNG for any difference between what it paid for the capacity and what the capacity cost NJNG. Such a payment would give NJNG at least the capacity-release revenues it would have received if the two AMAs had been conducted under the asymmetric-pricing rule that was in effect for transactions between the two affiliates until the change in the wholesale trading code of conduct that occurred in early 2023.

28. NJNG's controls over its trading and hedging activities are complete and effectively administered.

NJNG has long used the three-office structure, whereby personnel who enter the transactions are different from those who confirm the transactions, who, in turn, are different from those who settle the transactions. NJNG has risk-management reports built into its transaction-tracking software, so any questionable transactions are identified by the Risk Office as they occur. The Risk Management Committees for NJNG and NJRES meet monthly – though not together – so hedging program progress and any questionable transactions can be assessed promptly.

Each month's Risk Management Package is distributed to Committee members and staff prior to the meeting at which it will be considered, so any issues can be considered promptly. Risk Office staff are sufficiently trained and experienced to bring major issues to the attention of the responsible person almost in real-time.

NJNG's hedging instruments are the appropriate ones for the design of its Hedging Programs. NJNG's Hedging Programs focus on commodity price stabilization for the BGSS. It conducts those programs with the most liquid of hedging instruments, the natural gas futures contract. That contract can be bought and sold on all exchanges, giving it the widest possible opportunities for both purchase and sale. NJNG also uses financial-for-physical swaps, to avoid having to take physical delivery in an inconvenient location. Those instruments are also available through an exchange, with good liquidity in the last few days prior to settlement of the futures contracts. [198]

NJNG's policies and procedures governing its hedging programs reflect considerable experience with program risks. NJNG has been conducting gas-price hedging activities for many years. It has always had express risk-management policies and procedures, which are now highly developed. One of the exhibits attached to the Risk Management Policy is a history of revisions, of which there are several every year. The Policy states that:

> *The ... Risk Management Policy is intended to be a working document and will be reviewed and updated as needed to reflect the changing business environment encountered by the Business Units related to trading, positions, limits, wholesale credit risk, NJNG incentive programs and other topics specifically addressed by the Risk Management Committees.* NJR Risk Management Policy at page 6

Risk management is conducted under oversight from the NJR board of directors and its Audit Committee. The *Governance* Chapter of this report addresses the NJR and NJNG governance structure.

P. Recommendations - - Commodity Purchasing and Pricing

12. Secure a review of the Hedging and Storage Incentive Programs by outside experts. *(See Conclusions #24 and #25)*

NJNG's Hedging and Storage Incentive Programs have been evaluated at least twice since our previous audit. One review made several recommendations for design enhancements that might improve performance.[199] The previous audit of this type found NJNG's hedge levels considerably higher than those of other LDCs, and recommended that NJNG retain an outside firm:[200]

> *... to conduct a comprehensive analysis of the current hedging strategy, SIP, and FRM program to assess their appropriateness and value to ratepayers in light of current and anticipated natural gas market conditions, the BGSS rate structure and other regulatory considerations, and NJNG's vision and strategy.*

We understand that the Financial Risk Management (FRM) Program was eliminated after the NorthStar Audit, but that nothing else was changed after either of those reviews. We agree with NorthStar. It is not at all clear to us that NJNG's customers are the primary beneficiaries of the Hedging and Storage Incentive Programs. In fact, some elements of the Storage Incentive Program seem designed to produce shareable margins that might not accrue if the Program was designed better. We recommend that the Company engage outside experts to conduct an updated review of the Hedging and Storage Incentive Programs, especially the assumptions and calculations for setting the Benchmark Cost for the Storage Incentive Program and the treatment of margin costs incurred in maintaining NJNG's brokerage account for financial instruments used in operating that Program, then discuss the results of the review with its customers and the BPU.

13. Pending the more complete review of the Hedging Program and the Storage Incentive Program, report to the BPU on the commodity cost in the Benchmark Cost calculation. *(See Conclusion #25)*

The basis differential between the settlement location for the natural gas futures contracts and the locations where NJNG buys gas for injection into storage is now generally negative. This relationship seems at odds with the Benchmark Cost calculation in the BPU's 2015 Order on calculation of the Benchmark Cost for the Storage Incentive Program. Pending the more complete review of the Hedging and Storage Incentive Programs in the previous recommendation, NJNG should report to the BPU and its customers on a) what those commodity costs have actually been, and b) whether the Benchmark Cost calculation should be changed. NJNG should provide this report in its next BGSS proceeding.

14. Demonstrate that the terms of supply provided by NJNG's largest supplier are fully competitive. *(See Conclusions #26 and #27)*

[redacted] has been a favored supplier for the entire Audit Period, placing as NJNG's top supplier in every year. As part of the relationship, [redacted] has in some cases been willing to pay for transportation of the supply to NJNG's citygates under an AMA.

NJNG's Deal Approval Forms for the AMAs note that [redacted] was willing to do this particular arrangement because the take-away capacity was available immediately, rather than [redacted] having to wait for the approval and construction of a new pipeline.[201]

Lack of access to take-away capacity has been a common problem for many Appalachian-Basin producers for some time, which means that other major producers might offer the same or even better terms. NJNG must find a way to demonstrate that its relationship with [redacted] is fully competitive. Our suggestion is for NJNG to issue requests for proposals for supply after the current [redacted] contract expires as a way of testing the markets for the best possible terms.

Q. Background - - Measurement and Balancing

We examined processes and means for measuring measurement of gas entering and leaving the Company's transmission and distribution systems, and about ensuring that NJNG's customers in each class are charged fairly and accurately for the gas they use. These processes must address the fact that some of the gas entering and leaving the systems is bought by the Company for delivery to system-supply customers, but other gas is delivered by the Company to customers who buy their own. Moreover, a small amount of the gas entering the systems is either a) used to operate the systems, or b) escapes from the systems through leaks, or c) both. Inaccuracies occasionally occur due to accounting discrepancies. Accounting issues must be addressed and resolved as completely as possible, and the costs of Company-use and lost and unaccounted for gas ("LAUF") must be allocated fairly among the different classes of customers.

R. Findings - - Measurement and Balancing

1. Strategies and Programs for Minimizing LAUF

NJNG takes supply from relatively few gate stations, plus from its own LNG facilities. The Company's Pressure, Maintenance and Transmission personnel perform daily checks of meters on those facilities against counterpart readings on its Supervisory Control and Data Acquisition ("SCADA") system. Any discrepancy of two percent or more is investigated immediately. The Company calibrates pipeline meters periodically, but meter calibration comprises only the first step in the event of a discrepancy.

NJNG's LAUF calculation compares meter data to volumes billed by the Company. Meter readings at customer locations determine volumes billed. The calculation compares the sum of all meter readings for volumes into the system to the sum of volumes billed, on a rolling 12-month basis, in order to accommodate cycle billing for monthly-billed customers. Both volumes into the system and volumes billed are adjusted to exclude off-system sales and sales to electric power generators. Company-use gas, measured by about 50 meters reading gas consumed for various uses, is deducted from the volume going into the system. Volumes delivered by TPSs are reduced by two percent from the level received for their customers' accounts to account for fuel use and unaccounted-for gas.[202] The LAUF amount is the difference between the two sums. That amount compared to the sum of the volumes received into the system determines the LAUF percentage. That percentage in the Company's most recent report to the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration was 0.79 percent.[203]

a. Meter Sampling and Testing

In 2016, BPU Staff met with the four gas distribution companies operating in New Jersey to evaluate meter sampling processes and to review a uniform standard for that sampling. After multiple meetings to discuss updating the sampling techniques, the companies and the Staff agreed on a uniform set of sampling procedures, the American National Standards Institute (ANSI) Z1.4 Sampling Procedures and Tables for Inspection by Attributes. The BPU ordered the use of this standard for meter testing by 2019 in Docket No. GO18101190. NJNG uses that ANSI Z1.4 protocol to determine when to remove meters and test them. Residential meters are sample-tested quarterly. Larger meters are tested periodically.

All meters are tested in NJNG's meter shop. Meters must test within plus or minus two percent. If a group of meters falls outside the prescribed meter test limits, a selective number or all meters in that group are exchanged and tested. Exchanges are done at a rate of 25 percent for each of the four years following the determination that a particular group must be exchanged.[204]

2. *Approaches to Balancing*

NJNG seeks to match the gas consumed on its system each day with the gas delivered to its system on that day. It uses the Enverus PRT e-LoadForecast computer model to forecast daily requirements for all customers as precisely as possible.[205] NJNG gives each TPS a fixed daily amount to deliver for the following month by the 20th of the month prior for their monthly-metered customers, and each TPS purchases gas for delivery directly to the citygates.[206]

Broadly speaking, NJNG's monthly-metered customers are balanced in the summer months, and its daily-metered customers balance monthly. For the monthly-metered customers, NJNG gives their TPSs estimated requirements for each one's aggregated customers for each month. Each of the TPSs is then expected to deliver that amount, divided by the number of days in that month, on each day. To the extent that a TPS's total deliveries for the month do not match its customers' usage for the month, the difference is made up in the non-winter months. They are only subject to a penalty if they do not deliver this volume, and this applies each day of the year. Day-to-day differences between the quantity scheduled to be delivered and the actual amount delivered are not penalized for daily read customers. If a TPS's deliveries are out of balance by more than 30 percent of the amount to be transported in a month, it may be required to modify its deliveries for the following month.

NJNG expects each TPS to deliver enough for all of their daily read customers. Individual customer imbalances accumulate over a month for each TPS's customers, and then get "cashed out" at the TPS level. Charges to the TPS use the quantity of the cumulative imbalance times "the average weekly spot index price for New York citygate, as published by *Natural Gas Week's 'Major Market Prices*."[207] Larger imbalances are charged multiples of the indicated spot index price.[208]

NJNG operates to maintain system pressures throughout. In order to do so, it relies on various upstream and on-system resources, including interstate pipeline transportation and storage services, on-system peak-shaving resources, and line pack. The costs of these resources are recovered through charges for the various delivery services that the Company provides. For system-supply customers – RS and GSS service classes – those costs are included in the various supply-resource costs that go into the BGSS charge. TPS customers with monthly metering are charged a per-therm Balancing Charge that is included in their Delivery Charge. The Balancing Charge and Delivery Charge are re-computed in each BGSS filing.

S. Conclusions - - Measurement and Balancing

29. NJNG's metering and testing programs conform to industry standards.

The BPU conducted a proceeding which resulted in standardizing sampling procedures for gas meters in New Jersey. NJNG now follows those procedures in its testing programs. NJNG's frequency of testing and testing procedures are consistent with generally prevailing industry standards.

30. NJNG's approach to balancing for TPSs serving monthly-metered customers facilitates TPS participation in NJNG's market.

NJNG requires TPSs serving monthly-metered customers to provide only the daily-average amounts of supply each month for their aggregated monthly-metered customers. The Company monitors TPS performance by continuously checking its gate-station receipts against supplier nominations. Nomination data is sufficiently detailed that NJNG can isolate any shortage to a particular pipeline contract. From that information, the Company can work almost in real time to determine which TPS is short.

Being able to deliver an average daily volume each month facilitates TPS participation in NJNG's market. TPSs can estimate each month's requirements for the total of its monthly-billed customers, then arrange for those supplies before the month begins, without having to follow their day-to-day variation. This benefit helps them not only with managing the quantities to provide, but also broadens their purchase options to include monthly-priced supplies.

T. Recommendations - - Measurement and Balancing

We have no recommendations in the Measurement and Balancing area.

Chapter III: Cost Allocations
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Chapter III: Cost Allocations

A. Background

Several primary principles should guide proper charging of costs incurred at a service company or other entity that benefits multiple affiliates:

- Costs identifiable as specifically benefiting a single entity should get directly charged to that entity
- Residual costs should get assigned or allocated to the entities benefitting from the costs through methods that best reflect the causes of those costs
- General allocators, usually representative of the size of the entities should apply only as a last resort; *i.e.*, when specific cost causation cannot be reasonably measured
- Management should take particular care to ensure that cost allocation methods used prevent cross-subsidization by utility entities of affiliates
- Comprehensive, clear, approved, documented methods, usually in the form of a CAM and a Service Agreement between the service company and the entities it serves should govern transaction costing among affiliates
- Regular communication to and training of employees should emphasize the importance of accurate time reporting and adherence to processes that ensure cost allocation to the correct entities and avoidance of cross-subsidization among entities.

B. Findings

1. *Governing Documents*

a. <u>CAM Structure</u>

The CAM provides the primary source of governance and guidance for charging costs among affiliates. In most companies, CAMs focus on providing guidance for allocating costs incurred at the parent company and any service company that provides benefits across the various affiliated companies. NJR's CAM requires an additional element, because NJNG incurs costs on behalf of the other NJR affiliated companies, as well. The NJR CAM must therefore provide guidance on assignment and allocate of these NJNG costs as well.

NJR's CAM consists of fifteen sections. Section 7 (Description of Products and Services Provided To and From New Jersey Natural Gas and Each of Its Affiliates) provides most of the detailed guidance regarding cost allocation. The CAM's sections address a broad array of subjects.

<u>Section 1</u> (Introduction) defines the CAM's purpose, prescribing the manner for charging costs to NJNG and the non-utility affiliates. It also states as the prevailing premise of the cost allocation guidelines that allocation methods should not result in subsidization of non-utility services or products by regulated entities. The introduction also calls for flexibility in applying exceptions to produce outcomes "in the best interest of the utility, its ratepayers, and competition."

<u>Section 2</u> (Responsibility for Maintaining the CAM) rests day-to-day responsibility for maintaining the service company portion of the CAM and ensuring that service company accounting records reflect the policies and procedures described in the CAM under the Financial

Planning & Analysis ("FP&A") organization. Accountants assigned to individual affiliates have responsibility for the sections of the CAM related to those affiliates. The Corporate Controller and accounting department have overall responsibility for recording allocations in the general ledger.

Section 3 provides a list of definitions. It defines Cost Allocation as the methods or ratios used to apportion costs, identifying the origin of costs, as in the case of cost drivers, cost-causative linkage of an indirect nature, or other overall factors (also known as general allocators) as the basis for determining the correct ones.

Section 4 (Cost Allocation Principles) states the key rules to be followed in the assignment and allocation of costs among NJNG and its affiliates. The principles follow what we view as appropriate direction to direct assign costs where appropriate, and where direct assignment does not prove possible, to allocate costs based on the primary cost driver. Only where a primary cost driver is not evident should costs be spread using "relevant metrics."

Section 5 (Organizational Structure) lists the NJR affiliates that share affiliated costs.

Section 6 (Cost Apportionment Methodology) defines four categories for purposes of allocating the costs of products and services to NJNG and its affiliates.:

- Directly Assignable: costs directly incurred for the benefit of one affiliate
- Directly Attributable: costs that benefit more than one affiliate and which can be allocated based on direct measures of cost causation
- Indirectly Attributable: costs that benefit more than one affiliate, with allocation on general size related measures
- Unattributable: costs determined as not appropriate for apportionment and therefore not allocated.

Section 6 states that direct assignment of costs should comprise the majority of costs charged to NJNG, or its affiliates, with costs indirectly attributable to NJNG or its affiliates comprising the smallest category.

Section 7 (Description of Products and Services Provided To and From New Jersey Natural Gas and Each of Its Affiliates.) comprises the largest CAM section. It provides the most specific guidance related to cost allocation. Section 7 contains three subsections, one for each entity (NJNG, NJR, and NJR Service Company ("NJRSC"))incurring costs requiring assignment or allocation. Each subsection provides tables that further define the relevant information needed to understand how to assign and allocate costs. Three tables address NJNG. Table 7-1 identifies the services provided to affiliates from NJNG, Table 7-2 identifies the affiliates served by NJNG, and Table 7-3 provides the cost allocation methods for the various services. Two tables address NJR. Table 7-4 provides the cost allocation methods for each service provided, and Table 7-5 provides an additional breakdown of different allocation methods for different types of insurance. An NJRSC section similar in structure to the NJNG section sets forth three tables. Table 7-6 identifies the services provided by the service company, Table 7-7 identifies the affiliates served by the service company, and Table 7-8 provides the allocation methods for each of those services.

Section 8 (Time Reporting Procedures) requires all employees providing services to entities other than their payroll company to complete a time report that clearly indicates the assignment of time among affiliates. ***Section 9*** (Non-Labor Costs) simply indicates that non-labor costs are allocated in addition to labor costs. ***Section 10*** (Federal Income Tax Allocation) describes the methods for determining the NJR consolidated tax liability portion allocable to NJNG. The methods for doing so are similar to those generally used at other utilities that form part of a consolidated tax return.

Section 11 (Mid-Year Changes) provides for CAM review and modification to address any allocation pools based on historical usage statistics affected by mid-year organization changes. ***Section 12*** (Month End Close Process) describes steps in the monthly close process that ensure the proper allocation of costs to the correct entity. ***Section 13*** (Recording of Transactions and Intercompany Invoicing) describes the process for recording transactions and transfers of net funds between affiliates on a monthly basis.

Section 14 (Persons Who Should Be Familiar with this Manual) provides for making the CAM available to all holders of the NJNG Policy and Procedures Manuals and NJRSC Finance and Accounting employees. ***Section 15*** (Reporting) describes a monthly intercompany settlement report and describes how costs are reported in the Oracle ERP system.[209]

b. CAM Updating

Subsequent sections of this chapter address information in the Service Agreements and inconsistencies between the various Service Agreements and the CAM. In addition to those inconsistencies, we found a number of others between the CAM and other documentation or practices. As the next paragraphs summarizes, these inconsistencies reflect a failure to keep the CAM up to date.

Flexibility to Accommodate Exceptions: The CAM (at page 3) allows flexibility to accommodate exceptions to its provisions. We sought to determine who decides when to allow exceptions, how management implements them, and those that have occurred through the audit period we addressed. Management explained that the exception provision referred to flexibility to charge costs directly rather than to allocate them, and that no exceptions to the CAM have occurred since 2014.[210] With direct charging the preferred method, it should not comprise an exception at all. The explanation management provided indicates that the "flexibility" statement is unnecessary. Furthermore, it is inappropriate to provide allocation rules that have such "flexibility."

Use of Budgeted Costs: Page 10 of the CAM indicates the use of budgeted amounts in some instances. We sought to determine where management uses budgets and how it performs true ups to eventual actual amounts. Management further stated that it used budgets for allocations prior to the implementation of its now Oracle-based ERP and that it should have updated the CAM, but did not.[211]

Allocating Internal Auditing Costs: Page 19 (Table 7-8) of the CAM calls for allocation of Internal Auditing costs based on time sheet reporting. However, it appears that NJR has allocated Internal Auditing costs using the Modified Massachusetts Method ("MMM") following its outsourcing of Internal Auditing. This inconsistency indicates another required CAM update not made. [212]

Facility and IT Costs: Prior to Oracle ERP implementation, NJNG incurred Facilities and IT costs, then allocated them among other affiliates. Those costs became the responsibility of NJRSC after the move to Oracle. However, the CAM still reflects the prior arrangement at Table 7-7, despite the assertion that management updated the CAM at the time of Oracle implementation.[213]

Management advised that it updated the CAM in the fourth quarter of FY 2020, as a result of the implementation of the new Oracle ERP system.[214] When asked about the cycle for review of the CAM and Service Agreements for potential changes, management stated that it undertakes reviews upon significant changes to the NJR business or systems. Management cited the move to the new ERP as an example.[215]

Section 3.2 of the Service Agreements calls for periodic review of cost allocation methods. A request for documentation of such reviews since 2014 did not produce any, but management advised that it has undertaken cost allocation methods reassessments annually and following organization changes and technology improvements.[216] Section 11 of the CAM calls for review and modification of allocation pools in the event of significant mid-year organization changes. In response to a request for a list of such changes, management advised that it revised allocation statistics for Medium Trucks mid-year in 2020 upon NJR's acquisition of Adelphia Gateway LLC.[217] Acquisition of Adelphia and Leaf River produced no other adjustments to the CAM.[218]

c. Service Agreements

The Compliance Plan includes six service agreements, as required by the "Affiliate Relations, Fair Competition, and Accounting Standards and Related Reporting Requirements." We examined the service agreements contained in the December 23, 2021, Compliance Plan. Each agreement is between NJNG and one of its affiliates.

Five of the agreements detail services provided by NJNG to each of the other affiliates (New Jersey Resources Corporation ("NJR"), New Jersey Home Services Company ("NJRHS"), NJR Energy Services ("NJRES"), NJR Clean Energy Ventures ("NJRCEV"), and Commercial Realty & Resources Corp ("CRR").

Each agreement contains an Exhibit 1 identifying the services available, and an Exhibit 2 identifying the services actually selected by the receiving affiliate. The agreements with CRR, NJRES, and NJR also contain an Exhibit 3 that identifies services from those affiliates to NJNG. The CRR agreement indicates the potential for periodic charges for building management, building maintenance and related administrative support. The NJRES agreement indicates the potential for periodic charges to NJNG for credit, market intelligence, contracts, administrative support and occasional coverage for absences. The NJR agreement provides for general and administrative expenses incurred at the parent and allocated among affiliates. The agreement between NJNG and NJRHS also includes an Exhibit 3 covering services additional to those provided in Exhibit 1 that are available to NJRHS.

The sixth agreement addresses services provided from NJRSC.

Five of the agreements bear a date of March 4, 2008. The agreement between NJNG and NJRCEV had an original date of April 15, 2011, later updated on March 5, 2013.

The following tables describe the nature of the services provided between NJNG and its affiliates, as follows:[219]

- Services from NJNG to Affiliates
- Services from NJRSC to NJNG

A separate section compares the services provided and allocation methods used with those detailed in the CAM.

Services Provided from NJNG to Affiliates

Service Provided	NJR	NJRES	NJRHS	NJRCEV	CRR
Building Expense	X			X	
Vehicles & Transportation				X	
Inserter Room Expense			X	X	
Hardware/Software Maintenance	X	X	X	X	X
Application Development			X	X	
Communications Equipment	X	X	X	X	X
Marketing				X	
Energy Services		X			
Customer Inquiry			X		
Billing			X	X	
Remittance Processing			X	X	
Payroll Processing			X		
Transportation			X		
Credit and Collection			X		

Services Provided by NJRSC to NJNG

Accounting
Auditing
Communications
Communications, Website
Facilities
Human Resources
Information Technology
Legal
Office Services
Purchasing
Treasury

Each service agreement contained in the 2021 Compliance Plan bore dates from 2008, except for the 2013-updated agreement between NJNG and NJRCEV. We confirmed each as the most current in-force.[220] Section 3.2 of each service agreement calls for cost method reviews periodically.[221]

Management advised that service agreements undergo periodic Legal Department review to address cost allocation changes, additions of new entities using affiliate services, and new categories of expenses that required updates. There appears to be no established review period for the service agreements.[222]

The previous audit of this type noted plans for Regulatory Affairs to institute an annual review process of services among affiliates to ensure accuracy and CAM compliance before filing the Company's Annual Affiliate Compliance Plan with the and New Jersey Board of Public Utilities ("Board" or "BPU").[223] A request for documentation of that process and of the results of all reviews since implementation produced referral to the process for filing the Compliance Plan which identifies the General Counsel as responsible for review of service agreements. There is apparently no documentation of the results of the annual reviews involved.[224]

We found a number of instances in which known changes did not produce service agreement updates:

- Section 3.3 of each service agreement refers to the J.D. Edwards ERP, which management replaced with Oracle in 2020.
- Under our efforts to confirm that the service agreements in the 2021 Compliance Plan comprised the most recent versions, management identified two other agreements dated December 7, 2021, for "General Services" as requested from NJNG to Adelphia Gateway and Leaf River Energy Center, [225] noting their inadvertent omission from the 2021 or 2022 Compliance Plans[226]
- When we sought the basis for calculating a "pre-determined customer inquiry rate per call" under the NJNG/NJRHS service agreement, management indicated that the agreement described a J.D. Edwards era process discontinued in 2020 with the implementation of Oracle.[227]
- When we sought a description of the process for establishing pre-determined labor charges between NJNG and NJRSC, management indicated that Oracle implementation in 2020 replaced the process with another[228]
- When we sought an explanation of how and why management initially charged some labor costs based on pre-determined allocation for each individual, rather than timesheets, management again reported that the documentation addressed the process as applied before the Oracle ERM replaced the J.D. Edwards era process in 2020.[229]
- A request for a list of revisions to the Cost Allocation methods as called for in Section 3.2 of each of the service agreements produced a list of five changes made in July 2020, which predates the service agreements, which therefore did not reflect them.
- One of those five changes involved the move from time sheets to the MMM method for allocating Internal Audit costs (described earlier in this chapter); the CAM did not reflect that change.[230]

Other anomalies we observed included:

- Section 3.2 of each service agreement allows the service provider to modify the cost allocation methods set forth in the agreement[231]

- Section 2 of each of the service agreements bears no date, indicating development of services for agreement inclusion occurred under most service agreements in 2008, and have either never changed in 15 years, or have not been updated in the service agreements.[232]

New Jersey Administrative Code ("N.J.A.C.") Section 14:4-4.5(a) calls for BPU approval of the service agreement between NJNG and NJRSC. Management reports that approval as provided the Company's 2019 base rate case.[233] Section b of N.J.A.C. 14:4-4.5 requires an electric or gas public utility to notify the Board in writing of all modifications to any approved service agreement. Nominally, the failure to make any changes to the service agreements may moot the potential for violation, but it is also true that there should have been a number of modifications to the service agreements since 2019 approval.

d. Inconsistencies between the CAM and the Service Agreements

We also found a number of differences where there should be agreement between the CAM and the Service Agreements, with examples.

First, Table 7-1 of the CAM (Services Provided by NJNG to affiliates) lists eight services and the Service Agreements 15 combined, counting those identified in Exhibits 1 and 3. Seven of the services match, but the CAM includes as a service Performance Measurement/Support, which the Service Agreements do not include. The Service Agreements also list eight services not included in the CAM.[234] In explaining the differences, management listed only eight of the 15 services listed in the Service Agreements and indicated that it had updated six of them since execution of the Service Agreements.[235]

Second, Table 7-2 of the CAM (Affiliates Served by NJNG) does not match the Exhibit 2's from the Service Agreements. Vehicle and Transportation Services are only provided to NJRCEV per the Service Agreements, but the CAM lists NJRHS, NJR, and NJRSC as receiving those services. In addition, the CAM identifies Performance Measurement Support as a service provided to NJRHS, but the Service Agreement between NJNG and NJRHS does not.[236]

Third, CAM Table 7-3 (Cost Allocation Methodology) details different methods for allocating the costs of Vehicles and Transportation Services from NJNG to NJRHS, as compared to the methods for allocating those costs to other affiliates. However, Exhibit 2 to the Service Agreement between NJNG and NJRHS does not list Vehicle and Transportation Services as a service selected by NJRHS.[237]

Fourth, CAM Table 7-3 (Cost Allocation Methodology) lists Postage as a service, but neither the CAM list of services provided in Table 7-1 nor the services requested in the Service Agreement lists Postage.[238]

Fifth, the CAM lists six services provided to all affiliates by NJR Corporate, with different methods of allocation. By contrast, the Service Agreement simply lists one cost pool (General and Administrative Expenses) and indicates allocation based on timesheets and calendars.[239]

Sixth, the CAM lists 14 services provided by NJRSC, but the Service Agreements list only 11. The CAM lists Building Maintenance Services, Application Development, Hardware/Software Maintenance, and Credit & Risk, but the Service Agreements do not. Finally, the Service Agreements list Communications, Website, but the CAM does not.[240]

We inquired into the reasons for a lack of agreement between the CAM and Service Agreements in cases such as those just described. Management responded that it has updated the CAM as needed, which has created differences from Service Agreements approved in 2019.[241] With respect to the mismatch between the CAM and the Service Agreement between NJNG and NJRSC, management reports the CAM listing as up-to-date.[242]

Inconsistencies between the CAM and the Service Agreements have been an issue for an extended period. The prior audit of this type included a recommendation to ensure consistency between Service Agreements and the CAM.[243] The Company responded by advising the BPU that NJNG Regulatory Affairs would annually review services provided among affiliates "to ensure accuracy and compliance with the CAM prior to the Company's Annual Affiliate Compliance Plan being filed with the Board of Public Utilities."[244] Clearly, this has not been done.

e. Leases

Our request for lease agreements between NJNG and affiliates identified thirteen leases, which included five reportedly active building leases between NJNG and NJR, NJCEV, NJRSC, NJRES, and Adelphia Gateway.[245] Our request for confirmation that no more NJNG leases with affiliates existed produced an identification of twelve additional leases, most involving similar building leases with other affiliates or modifications to them. Management reported in comments on a draft of this report that no NJNG leases remain active with affiliate CR&R[246]

Our review of the originally provided leases showed three of them structured similarly, with 16-year terms, a fixed rent schedule per year, and an obligation of the lessee to pay shares of operating expenses and taxes, based on shares of occupied square footage.[247] Management reported lease pricing on the basis of fair market value, in consideration of the space occupied by affiliate lessee. Management reported the use of assessments of comparable properties to provide an average cost for application to the leased location.[248] However, management could not locate any of those assessments, citing retirement of the Manager-Property and Facilities and the timing of when other tenant(s) occupied the building.[249]

2. *Affiliate Transactions*

a. Transaction Paths

We sought to understand and quantify the nature of transactions between NJNG and its affiliates. Identifying the dollar amounts flowing among affiliates comprised an important first step. Management could provide for each path amounts flowing between two individual entities a summary of net amounts from 2014 through 2021, but not the gross amounts flowing in both directions. [250] This information did not make it possible to determine either what costs flowed from NJNG to each affiliate or the costs that flowed from each individual affiliate to NJNG. Management advised that NJR's accounting systems compile all intercompany debits and credits into a net settlement charge between each affiliate (*i.e.*, for each transaction path) and do not maintain information at this transaction path level. However, the sample general ledger activity detail provided showed individual transactions, some debits and some credits, summed to a single net debit or credit for the month.[251] In other words, NJR does separately capture each transaction, but without summarization to support direct capture of baseline information about charges among affiliates. We asked management to reconcile NJRSC to NJNG allocation data provided in response to a data request with content from the PUHCA report to the BPU, discussed in more detail in this report's *Other Reporting* Chapter.[252] We asked for a reconciliation of allocations to NJNG from NJRSC as provided in response to a data request to the allocation shown in the PUHCA report for 2020. Management provided conflicting responses, first noting that the information provided in the PUHCA report captured the gross allocation from NJRSC to NJNG, while the response to the data request had netted out approximately $2.2 million of allocations going the other way on this transaction path; *i.e.*, from NJNG to NJRSC.[253] Subsequently, the Company corrected the response to state that the amounts provided in the response were also gross amounts.[254] Apart from the uncertainty the responses created about management familiarity with information reported to the BPU, the difference in amounts between the response to the data request and that provided to the BPU in the PUHCA report remained unreconciled. Moreover, that management can isolate gross data for the PUHCA report and for responding to our data request call into question why it cannot generally show separately the amounts flowing in each direction for each transaction path between individual entities. That capture has significance both for how NJR controls the flows between entities and for how outside reviewers can verify the adequacy of those controls. The inability to begin reviewing costs with an understanding of what transaction path involved the largest dollar flows and how magnitudes change over time imposes a significant barrier.

Combining the flows in each direction to produce a small net flow is unhelpful and misleading. Fully understanding the size and nature of transactions among affiliates takes gross transaction data (*i.e.*, amounts flowing in each direction, without netting them) While nominally accurate, a net amount renders non-transparent the nature of the transactions, their size, and trends over time. A small net transaction amount can result, for example, from very large amounts flowing in opposite directions. Without the gross transaction amounts, we did not secure the baseline information needed to assess properly the true size, nature, and trends in transactions between NJNG and its affiliates.

We thus turned to a review of net data to identify possible anomalies for further examination, using an annual summary of the previously provided monthly net data for 2014 – 2023.[255] The data presented, for the most part, expected patterns. Overall, as between NJR and NJRSC, net charges to NJNG consistently prevailed, given the central services provided to the utility by the service company. Most other transaction paths showed net amounts flowing in the other direction, from NJNG to the other affiliates. These amounts largely reflect services provided by NJNG to affiliates.[256]

We selected for further examination two patterns that differed from expectations. Net charges from NJR to NJNG increased significantly from $16.8 million in 2020 to $43.2 million in 2021, and then to $63.7 million in 2022. Management attributed the increase primarily to increased IT costs associated with the development of Project NEXT, which included the new ERP, and which other chapters of this report and the accompanying Phase Two report address. The second pattern of interest concerned the size and direction of net charges between NJNG and NJRHS. For the six years occurring since 2014 net billing from NJNG to its home services affiliate ran as high as $23.2 million, but three years show the opposite direction, when net costs to NJNG from NJRHS reached as high as $2.6 million. Management explained the variation as resulting from changes in allocation sources during the audit period. Prior to Oracle ERP implementation, NJNG housed NJR's Facilities and IT organizations, making them providers of services associated with those groups. Movement of those groups to NJRSC after Oracle ERP implementation made NJNG now a recipient of services in the areas involved.[257]

We also examined the Accounts Payable and Accounts Receivable monthly balances on a test basis. Comparing them to the net monthly data management provided found them in agreement.[258] We also inquired into asset transfers involving NJNG during the audit period. Management reported that none occurred during the audit period.[259]

b. Shared Assets/ Facilities

The Company has reported that NJR has no jointly used or jointly owned assets[260] and that no buildings owned by any NJR affiliates produce charges or allocated costs to NJNG.[261] However, NJRSC does employ assets whose costs it assigns and allocates to NJNG and other affiliates.[262]

NJRSC held as of December 31, 2022 a reasonably moderate $989,564 in physical assets on its books. These assets consisted largely of furniture and fixtures and software costs. The in-service dates and accumulated depreciation ($956,354) as of December 31, 2022 that management provided shows most of these assets in service for many years. Management reported that it considers the costs of NJRSC assets as non-labor costs, subject to allocation through indirect attribution under CAM Section 9." This section does provide generally for allocation of non-labor costs to affiliates but makes no reference to depreciation or carrying costs.[263] The modest amount of NJRSC assets make the absence of a direct reference to depreciation and carrying costs immaterial. However, it does reflect CAM failure to prescribe treatment of costs that NJNG ultimately bears.

c. Overheads and Other Costs

NJR places overhead costs in pools, allocating them according to factors defined in the CAM. Table 7-8 of the CAM describes allocation methods for service company departmental overheads. For example, the Company allocates overhead costs for vehicles per the total number of vehicles (defined in CAM Table 7-3 of the CAM). Table 7-4 of the CAM identifies the allocation methods for allocating NJR Corporate overheads.[264]

d. Affiliate Billing

The originating, or serving, entity, charges on its books costs directly charged and allocated to affiliates. The charged, or served, affiliate posts the payable to a corresponding specific affiliate intercompany account on its books. Net funds due between affiliates transfer monthly. Charges booked to the intercompany accounts receivable are billed to the respective subsidiaries at month-end.[265] Monthly, management issues an intercompany settlements file that contains a summary of intercompany charges between NJNG and its affiliates, distributing it across the organization, including to the Controller-Regulated, who represents NJNG interests.[266]

e. Service Company Least Cost Requirement

New Jersey Administrative Code section 14:4-4.5 (g) states: "An electric or gas public utility shall not purchase or contract for any product or service otherwise covered under a service agreement that the electric or gas public utility can provide for itself or can procure from another company on more advantageous terms." Section 14:4-4.5 (h) requires a review of purchases and contracts for compliance with section (g) every three years beginning April 6, 2009.[267] In effect, these provisions call for evidence that services obtained from the service company could not have been performed as well at a lower price either by NJNG itself, or through an alternate outside vendor. We sought studies comparing service company costs structure with those of NJNG self-service or provision through outsourcing services since 2014. The response did not answer that question, instead comparing the costs of providing Internal Audit and Tax services via outsourcing versus performing it within the service company.[268] Comparing in-house versus outsourced costs of a single service and without addressing NJNG self-service across so many years did not reflect a robust way of undertaking what N.J.A.C. Section 14:4-4.5(g) addresses. Management has confirmed that no other comparisons or analyses of alternate serving means and sources have occurred since 2014.[269] We asked for management's views on how its activities demonstrate compliance with N.J.A.C. Section 14:4-4.5. Management responded simply that it believes its current structure offers services at the best cost available.[270] We also asked about the review every three years required by section (h), and received a response limited to HVAC maintenance contracts that "do not rise to the level of requiring competitive solicitation."[271] This apparent review of one specific contract between NJRSC and an outside vendor did not relate to the issue of reviews of overall service company services required every three years.

3. *Allocation Process*

a. General Principles

Best allocation practice revolves around three principles applied in descending order of importance:

- Directly charging as much as possible
- Allocating as much of the remaining costs as possible under factors that relate them directly to what causes their incurrence
- Holding to a minimum the residual costs apportioned under general sized-based allocators.

b. NJR Processes

Section 6 of the CAM identifies four categories of costs for purposes of allocation:

- Directly Assignable: incurred for activities and services exclusively for the benefit of NJNG or an affiliate
- Directly Attributable: incurred for activities and services that benefit more than one affiliate and that can be allocated based on direct measures of cost causation
- Indirectly Attributable: incurred for activities or services that benefit more than one affiliate and that can be allocated based on general measures of cost causation

- Unattributable: incurred for activities or services that have been determined as not appropriate for apportionment; these costs relate primarily to activities such as corporate diversification, or philanthropic endeavors and, as such, are charged directly to NJR or NJRSC.

The CAM further states an expectation that the majority of costs charged to NJNG, or its affiliates will use direct assignment, and that costs indirectly attributable to NJNG or its affiliates will represent the smallest category of costs.[272] We could not verify that direct charging covers the expected majority of costs, given the coding that the ERP applies to costs ultimately charged to affiliates who did not initially incur them. Most of the CAM's cost allocation bases described deal with the Directly Attributable costs; *i.e.*, those allocated based on cost causation. ERP cost pools drive these allocations. Base inputs for populating those pools include timesheets, headcount, square footage, and IT hardware, for example. The Financial Planning and Analysis organization has responsibility for calculating the allocation factors, based on the inputs.[273]

Management considers costs of some organizations (*e.g.*, Internal Audit) as capable only of allocation as Indirectly Attributable. The MMM, a common method for addressing such cost types, provides the basis for allocating them. We found use of the MMM appropriately limited by comparison to costs treated as Directly Attributable. As expected, given the size of NJNG as compared to the other NJR affiliates, the utility absorbs approximately 68 percent of costs allocated using the MMM.[274]

Some costs at the parent level are unattributable (not allocated). Other categories consist of a hybrid of two methods.[275] For example, Corporate Planning & Strategy costs incurred at the parent level are allocated based upon time sheets, but NJNG is excluded from the allocation pool, allocating these costs only to non-utility affiliates.[276] In addition, costs incurred by Commercial Realty & Resources Corp. are not allocated to the other affiliates.[277]

4. Time Reporting

NJR addresses time reporting in its provided Payroll Policy and Procedure 900. This document focuses on reporting of time under overall categories, such as "on the job," vacation, and sickness, for example. It does not address how employees should report time spent working for an entity other than their own.[278] Another document, Administrative Policy and Procedure 93: Time Sheet Policy and Procedures, requires employees to accurately allocate time spent working for affiliates. It requires the use of at least monthly time reporting to account for all paid time spent working for their own affiliate and for other affiliates. [279] The procedure exempts from this positive time reporting those organizations that do not use time as a basis for assigning and allocating their costs. Examples of these organizations include Internal Audit, Facilities, Human Resources, and Information Technology.

PragamaCAD serves as the system for time reporting by utility field operations personnel and the NJR online time sheet system Time Watch by others.[280] These documents only require time reporting in cases of regular work for others, but management appears to require reporting of all time spent working for others, whether or not qualifying as "significant" or "on a regular basis" under the applicable procedures. Time Watch is an automated system that provides a more efficient process than manual time sheets.[281]

5. *Training and Communication*

We examined training materials and employee communications provided periodically to employees of the service company to guide them on cost charging and on allocation of indirect costs among affiliates. Management stated that NJRSC employees have familiarity with the Administrative Policy and Procedure 93 based on its posting on the Company's intranet.[282]. Management also reported that employee onboarding and annual code of conduct training that all employees undergo includes time reporting guidance. The 22-page, "New Employee Orientation" PowerPoint package provided at onboarding does not address cost allocation or time reporting.[283]. Annual code of conduct training also does not appear to address cost allocation or time reporting substantially. Three sentences from the 35-page Code of Conduct training PowerPoint package management provided address Affiliate Standards. The first sentence declares the Company commitment to strict compliance with Affiliate Rules. The second sentence notes that the Company has developed internal guidelines and procedures, but does not provide them. The third sentence states that compliance is mandatory.[284] Management also reported that, since 2015, employees have received half-day instructor training that addresses the importance of correctly assigning time to the correct affiliate.[285] Management did not provide materials specific to that training, but cited its provision during onboarding and that it includes a review of the Code of Conduct and Affiliate Standards.[286] As noted, documentation associated with onboarding and code of conduct training appear not to address allocations and time reporting substantively.

6. *Internal Control/Audits*

a. Controls

We addressed SOX and other controls in place to ensure proper time reporting, appropriate allocation of service company costs to benefiting entities, and appropriate accounting of other affiliate transactions. Management provided a number of general statements addressing the following:[287]

- NJRSC Accounting ensures that all employees in departments where time forms the basis of allocation enter their time monthly
- ERP allocation rules are monitored monthly
- Allocations must comply with the Service Agreements and the CAM
- Direct charging, rather than the allocation process, addresses costs that benefit only a single entity (including NJNG) or that benefit only the non-utility business operations
- Annual code of conduct training addresses Affiliate Standards.

These statements describe sound intent, but do not provide sufficient explanation of how they become realized by specific actions and affected by specific controls. Moreover, as described in the *Training and Communications* section, above, the Affiliate Standards section of the Code of Conduct does not evidence substantial treatment of the proper reporting of time or its importance in ensuring no cross subsidization among affiliates.

Our request for all SOX controls related to the assignment or allocation of NJRSC costs to NJNG and affiliates produced from management control GL-24 (Allocation Rules). Control GL-24 provides for a monthly review of allocation rules by the FP&A team.[288] The FP&A team also reviews a report of changes to the allocation rules, examining the appropriateness of modifications.[289] Examining the cited "report[s] of changes to the allocation rules" showed them to consist of automated reports identifying changed, new, and deleted rules, but without discussion of reasons for changes.[290]

b. Internal Audits

Our review of audits conducted by the Internal Audit department since 2014 revealed the conduct of annual reviews of Affiliate Transactions from 2014 through 2017, and an audit of Cost Allocations in 2018. No audits of either of these two areas has occurred since 2018.[291] This report's *Controls, SOX, Internal Audit, and NYSE Filing Requirements* Chapter reported that the 2024 audit plan included an examination of Cost Allocations, but that has proven inaccurate.[292] Internal Auditing has not examined since at least 2014 compliance with the Time Sheet Policy (Administrative Policy and Procedure 93) or the accuracy or propriety of employee time reporting.[293]

7. Allocations to and from NJNG

We examined the available data for the audit period for NJRSC, the NJR parent and NJNG allocations. Regarding allocations to NJNG from NJRSC and NJR, we asked for total amounts allocated to affiliates, the portion allocated to NJNG, and the portion allocated via direct charge, cost causative allocations, and MMM. We also sought to examine the amounts retained at parent NJR (*i.e.*, not allocated out to subsidiaries). For NJNG, we simply asked for the amount allocated. NJR and NJRSC reported no amounts via direct charging; as explained earlier, the Company books amounts billed directly to affiliates directly on the books of the entity receiving the charge. The next table summarizes NJRSC allocations in millions of dollars.[294]

NJRSC Allocations

(confidential table)

[redacted]

The 2018 increase resulted from higher Pension and Other Post employment Benefits expense, due to actuarial losses, increased expense associated with a voluntary early retirement program, and increased accounting consulting expenses. The increase beginning in 2020 and continuing through 2022 resulted primarily from moving the Facilities and IT organizations from NJNG to NJRSC in 2020. Allocations using MMM began in 2020 with an overall NJR shift to MMM as the basis for allocating corporate functions that benefit all NJR business operations. MMM began to be applied to the organizational audits and SOX compliance portions of Internal Audit operations. NJNG's share of total NJRSC allocations remained fairly stable through 2020, ranging between 69 and 76 percent. NJNG's share has fallen since, reaching 55 percent in 2022, given growth in NJR's CEV business and the acquisition of Leaf River/Adelphia.[295]

We described in the preceding "Transaction Path" section of this chapter the mismatch between 2020 NJRSC to NJNG allocations provided in response to our requests and those reported in the PUHCA report for 2020 and the lack of Company reconciliation of the two values.[296] In comparing data from another year we tested (2016) we did find matching amounts.[297]

We also attempted to reconcile the differing amounts from the following two sources:

- The preceding table's "NJNG Portion" row (taken from information provided in response to our audit requests)
- The "Total Allocations to NJR Affiliates" test-period financial exhibits filed with the last three general rate case filings.

Management first described the NJNG Portion amounts as net of transactions from NJNG to NJRSC and the rate case exhibits as gross allocations.[298] After correcting its description of the former as net versus gross amounts, management then described them as calendar-year based and the rate case filing information for 2018-2020 as fiscal-year based. Management added that the 2018 rate case exhibit amounts did not include a general ledger account associated with Service Company allocations for purchasing expenses." Management reported that reconciling the differences would take significant time.[299]

However, the rate case amounts came from filed exhibits that identify the values as calendar-year based.[300] The table below shows in millions of dollars the differences between allocations provided to us and those provided to the BPU in the last three rate cases.[301]

Unreconciled NJRSC to NJNG Allocations

(confidential table)

[redacted]

The amount of costs allocated from NJRSC to NJNG provided in the 2020 PUHCA report, referred to earlier in this chapter offer yet another value, $38.9 million.[302] The timing of rate cases makes comparative data unavailable for 2015, 2021, and 2022.[303] With two explanations seemingly incorrect, with the differences still unreconciled, and with the size of the discrepancy large in some years, examination to ensure the accuracy of financially and rate case reported amounts is in order.

The previous tables addressed allocations from the service company. The next table shows allocations from parent NJR to NJNG, again in millions of dollars.[304]

NJR to NJNG Allocations

(confidential table)

[redacted]

Parent costs subject to allocation consist primarily of executive compensation and board of directors costs. Fluctuations in Executive Leadership incentive pay have proven the main drivers of NJR costs allocated to affiliates. The percentage portion of the total allocations allocated to NJNG has remained relatively constant, dropping somewhat with the acquisition of Adelphia and Leaf River and the growth in the CEV business. The move to MMM drove a small increase, although, as expected, it largely changed the basis for allocation rather than the amounts allocated in total. NJR had historically allocated executive compensation and board costs using time recording. Concluding that executives spend a significant portion of time engaged in activities related to all of subsidiaries, the Company decided to move the allocation basis to MMM starting in 2021. The small retained cost amounts relate primarily to income taxes.[305]

We examined charges from NJNG to other affiliates in total, and sought a breakdown of them by affiliate. The breakdown showed that the largest portion of what management originally classified as charges from NJNG to other affiliates actually consisted of allocations internal to NJNG; *e.g.*, from one NJNG organization to another. The next table summarizes, in millions of dollars the original response, which provided the amount of total allocations including those to other NJNG departments[306] and the second one, which identifies the amount of intra-NJNG allocations distinct from those costs allocated to other affiliates.[307] The drop off that began in 2020 reflects the movement of Facilities and IT resources from NJNG to NJRSC.[308]

Allocations From NJNG to Other Affiliates

(table is confidential)

[redacted]

8. *Review of Allocation Factors and Documentation of that process*

Management reports that it reviews for possible revision the majority of allocation factors annually, as it builds its financial plan through the year. The revision process relies on working with the "owners" of the factors to update the data that forms the basis of the allocations.[309] This process does not appear to operate under a set of documented procedures or controls.[310] Management also reported that "extensive review" with NJNG utility management and a budget review by senior leadership considers allocation factors.[311] No clear or documented process exists for performing or documenting reviews and approvals of factors used to allocate costs from other affiliates to NJNG. It appears that automatic posting of factors to the ERP is followed by a manually performed review process that does not require or produce documented approval."[312]

From 2014 through 2019, with allocation pools manually calculated, we found documentation of the supporting calculations still available. The ERP has performed the calculations thereafter, producing no calculation documentation. Management did, however, provide the metrics that drive the calculations.[313] Management advised that it is "not aware of" of any changes since 2014 to allocation methods or formulas producing a five percent or greater change. However, it did not provide documentation demonstrating the conduct of reviews of changes or their results.[314]

9. *BPU and FERC Cost Allocation Requirements*

NJRSC is not required to file a FERC Form 60 report with FERC.[315] We examined the documentation supporting that exemption and found it to be in order.[316] In the absence of a Form 60, the BPU requires an annual PUHCA report providing: [317]

- A comparative income statement and balance sheet for NJNG
- A schedule and analysis of billings to NJNG and all other subsidiaries from NJR and NJRSC
- Methods utilized to allocate costs from NJRSC and NJR
- Current year plan factors compared with previous year plan factors, and variances.
- Organization charts for NJNG, NJR and NJRSC.

NJRSC has filed the PUHCA report annually, as this report's *Other Reporting* Chapter describes. However, those reports have not included the allocation data, making NJRSC out of compliance with the PUHCA report requirements for the entire audit period. Management has advised that no requirement for BPU CAM approval exists.[318]

C. Conclusions

1. The NJR CAM is well-written and contains all the key appropriate information necessary to guide proper cost allocation.

The NJR CAM contains the information expected in a complete CAM, including a stated purpose, allocation principles, products and services provided to affiliates, allocation methods, time reporting guidance, affiliate billing process, and responsibility for maintenance. The NJR CAM details guidance for allocations from the service company and parent as well as for products and services provided to affiliates by NJNG.

2. CAM review and maintenance do not follow well-structured or well-documented processes and controls. *(See Recommendation #1)*

Management states that reassessment of cost allocation methods occurs annually, supplemented by additional reviews when organizational or technological changes occur. Management also states that CAM review occurs upon significant changes to the NJR business or systems. However, the Company has no documentation of such reviews, notable in that several significant changes, did not trigger a change to the CAM or documentation of periodic review to verify that the allocation methods in place and documented in the CAM remained appropriate, given normal year-to-year variations in the operations of the business.

3. **Service Agreements among the affiliates providing products and services to other affiliates exist and are logically structured.**

The basic structure of each of the service agreements among affiliates is the same, detailing the products and services available, those selected by the receiving affiliate, and the methods for charging costs for the services provided. Cost allocation methods are stated as complying with the CAM, as one would expect. In some instances, costs flow both ways between the affiliates. In those instances, the service agreements cover both directions.

4. **Service Agreements are out-of-date and inconsistent with the CAM.** *(See Recommendation #1)*

All but one of the Service Agreements was signed in 2008 and approved by the BPU in 2019. Language within each Service Agreement calls for periodic review of the cost allocation methods, but no documentation of any such review exists. The Company has not demonstrated an established review process and does not require or maintain documentation of any such reviews. We found multiple instances of known changes that did not result in agreement updates. We also found multiple inconsistencies between allocation methods in the Service Agreements and governing methods set forth in the CAM.

5. **The process to allocate costs should be governed by the CAM and not changed without a corresponding change to the CAM.** *(See Recommendation #1)*

Language in all the current Service Agreements allows the provider of the service to modify the agreed cost allocation methods. This violates the basic principle that the CAM governs the process of cost allocation.

6. **Leases between NJNG and its affiliates, mainly building leases, should become subject to clearly performed, documented, and maintained demonstrations of fair market value.** *(See Recommendation #2)*

Most Company lease payments use a fixed rent charge determined at the beginning of the lease for its duration. Management could not produce evidence to demonstrate steps to ensure that charges conformed to fair market value without subsidization from NJNG.

7. **The netting of transactions to and from affiliates is not consistent with good management practice or sufficiently supportive of external efforts to examine transaction paths across which assigned and allocated costs pass between individual affiliates.** *(See Recommendation #3)*

The dollar value of transactions from NJNG to other affiliates and from other affiliates to NJNG were not available. Management stated that its accounting systems compile all intercompany debits and credits into a net settlement charge between each affiliate, without maintaining data in a way to provide gross charges to and from NJNG and its affiliates. Net transaction totals provide some level of information regarding inter-affiliate charges but can mask the true nature of the transactions if a small net charge is the net of two very large gross charges in opposite directions. While our examination of the net charges between NJNG and its affiliates did not reveal any concerns, the potential masking of larger gross transactions could not be evaluated. Effective management of cost movement between affiliates also requires more transparency at the individual transaction path level.

8. No assets or facilities jointly owned by any NJR affiliates exist, except for a fairly nominal investment at the service company.

The balance of physical assets on the books of the service company amounts to less than $1 million, and it is nearly fully depreciated. Carrying costs allocated on the basis of this investment, while minor at present, are not covered by clear CAM guidance on the method of allocating them. No asset transfers between NJNG and its affiliates reportedly occurred during the audit period.

9. NJNG's treatment of overhead allocations and other costs and the affiliate billing process appear to be appropriate.

Our review of NJNG's treatment of overheads, dividends, income taxes and property taxes for assets not owned by NJNG, as well as the affiliate billing process revealed no concerns.

10. NJNG has not taken substantive efforts to meet the N.J.A.C. requirement to conduct studies every three years to justify the provision of services by the service company as compared to other alternatives. *(See Recommendation #4)*

N.J.A.C. Section 14:4-4.5 requires electric or gas public utilities to conduct a review of purchases and contracts for compliance every three years, beginning April 6, 2009. NJNG has not conducted the required studies at any time during the audit period.

11. The hierarchy of preferred allocation methods (Directly Assignable – Directly Attributable – Indirectly Attributable – Unattributable) is appropriate and clearly described in the CAM, however Directly Assignable costs are not measurable *(See Recommendation #5)*

The CAM provides the preferred hierarchy and states that the majority of costs will be charged using the Directly Assignable method, and Indirectly Attributable would be the smallest category of costs. The data validates the use of Directly Attributable more than Indirectly Attributable, but, because Directly Assignable costs are recorded directly on the receiving company's books, the amount of Directly Assignable costs cannot be verified.

12. Time reporting processes are generally adequate.

Employees report their time through multiple systems, depending on their home company and function. The methods differ, but the processes allow for employees to charge time spent working for an affiliate to that affiliate.

13. Employee training and communication to employees regarding the reasons for proper charging of employee time and the importance of proper cost allocation is minimal. *(See Recommendation #6)*

The Company represents that the importance of cost allocation is covered in new employee orientation and in the annual Code of Conduct training required for all employees. However, an examination of the materials used in training and available to employees makes no reference to cost allocation or proper time reporting.

14. Controls addressing the proper allocation of costs among NJR affiliates are not sufficient. *(See Recommendation #7)*

The overall NJR control environment appears to be well documented and tested, but controls governing the proper allocation of costs among NJR affiliates require significant strengthening. The identified controls consist largely of important, but simple statements lacking documentation or indication of testing, and a monthly review of allocation rules. Controls relating to allocation of costs within NJR are not important on an NJR basis but are critical on an NJNG basis.

15. There has been insufficient internal audit coverage of cost allocation, affiliate transactions and compliance with the time reporting policy. *(See Recommendation #8)*

Cost allocations or affiliate transactions were audited every year from 2014-2018, but not since. Compliance with time reporting policy was not audited at all during the audit period. It appears that regulatory compliance with the proper allocation of costs among NJR affiliates is not highly rated in the Company's risk rating process to determine audit coverage.

16. Allocation amounts from NJR to NJNG, from NJRSC to NJNG, and from NJNG to other affiliates appear to be reasonable for the audit period, with logical explanations for year-to-year variances.

The total picture of allocations to and from affiliates is limited by the inability to see direct charges, but the data for both the parent and service company allocations to NJNG, and the allocations from NJNG to other affiliates were consistent, with year-to-year differences adequately explained.

17. Allocations from NJRSC to NJNG as provided during discovery do not reconcile to Rate Case Exhibits for five out of six compared years, or to the PUHCA reports for one out of two compared years. *(See Recommendation #9)*

The Company provided inaccurate explanations for the differences in both cases, and the amounts remain unreconciled. The fact that the differences exist and that the explanations were inaccurate do not provide sufficient comfort regarding the level of review of allocations or compliance and rate case exhibits provided to the BPU.

18. Documentation of the allocation factor calculations is internal to the ERP, and not available for inspection since 2020. *(See Recommendation #10)*

Documentation of the allocation factors was available for 2014-2019, as the allocation factors were manually calculated. Since 2020, the ERP performs the calculations, making documentation of them not available. We were provided with the metrics that are input to Oracle but had no practicable way to test the factor calculations or make any comparisons from year to year.

19. FERC Form 60 is not required for NJRSC, but the BPU requires a PUHCA report instead, which has been filed annually.

The report has been filed annually, but without, as noted in this report's *Other Reporting* Chapter, the requested allocation data. In addition, as noted in Conclusion # 17, the amount of allocations provided in discovery does not match the amount in the PUHCA report for 2020.

D. Recommendations

1. **Conduct a thorough review of the CAM and each of the Service Agreements to ensure that they are up-to-date, and institute an annual review of both to reflect necessary changes.** *(See Conclusions #2, #4, & #5)*

An immediate review should include a verification that the Service Agreements are in compliance with the CAM. Annually, a detailed review should ensure that services requested by each affiliate have not changed, and that changes in the business affecting the nature of shared costs are examined to determine if the in-place method still makes sense. All annual reviews of both the Service Agreements and the CAM should be documented, and any changes made, reported to the BPU.

2. **Obtain current appraisals to demonstrate that the rent charged in the building leases are based on fair market value** *(See Conclusion #6)*

Rent charges are based on the fair market value of the property. Obtaining comparable appraisals and setting rent charges consistent with those appraisals will remove doubt regarding subsidization of affiliates by NJNG.

3. **Change the ERP configuration to allow for the production of a monthly summary of transactions for each transaction path.** *(See Conclusion #7)*

We note that each intercompany summary amount is created by individual transaction amounts that are netted monthly. A configuration change that would allow those individual transactions to be summarized into gross charges in opposite directions, prior to the netting for settlement purposes would provide management and external reviewers greater visibility into the detail behind the monthly net settlement.

4. **Conduct the required studies under N.J.A.C. 14:4-4.5.** *(See Conclusion #10)*

The N.J.A.C. requirement is intended to demonstrate that the utility is obtaining products and services from the service company at a price that is less than it could provide itself or obtain from an alternate provider. While we found no evidence that the service company costs were excessive, the required study provides documentation that the N.J.A.C. requirement is met.

5. **Consider a modification to the ERP to allow the capture of the amount of costs allocated using the Directly Assignable method.** *(See Conclusion #11)*

Without the ability to measure the costs allocated using the Directly Assignable method, the CAM stated expectation that the majority of costs charged to NJNG, or its affiliates will be based on the direct assignment of costs is not measurable. Having metrics to demonstrate that most costs are directly assigned would strengthen the documentation of properly designed cost allocation methods.

6. **Revise employee onboarding materials and code of conduct annual training to include a section on proper time reporting and the importance of accurate cost allocation.** *(See Conclusion #13)*

Appropriate charging of time and other metrics that accurately identify the affiliates that should be charged with the related cost is the cornerstone to accurate allocation of costs. Employees should be trained on why their input impacts cost allocation, and the resulting compliance with regulatory requirements.

7. **Add and regularly test additional controls to ensure that costs allocated to and from NJNG are appropriate.** *(See Conclusion #14)*

Controls that go beyond the NJR level should be implemented and tested to provide assurance that the costs included in the NJNG financial statements are properly reflective of costs allocated to and from NJNG and are compliant with proper cost allocation procedures and with Service Agreements and the CAM.

8. **Establish a regular cadence of regulatory compliance audits to be added as mandatory audits in addition to audits defined by the risk rating process.** *(See Conclusion #15)*

The risk rating process has not identified regulatory compliance as a subject requiring audit coverage, since the outsourcing of the internal audit department in 2019. Whether allocations are or are not material to overall NJR financial results, confidence in their accuracy and fairness have significant utility regulatory importance. Demonstration of appropriate cost allocations for NJNG and the other affiliates comprises a central aspect of NJNG's regulatory compliance and should undergo periodic evaluation. With so many inconsistencies, missing activities, and absence of documentation, periodic examination will also serve to bring much needed improvement to controls addressing cost assignment and allocation.

9. **Institute a review process that ensures that allocations from NJRSC to NJNG are accurate and agree with reports of such allocations to the BPU in compliance reports and rate case exhibits.** *(See Conclusion #17)*

Any inaccuracies in compliance reports or rate case exhibits cast doubt over the controls in place and the review process to ensure that such data, relied on by the BPU, is accurate.

10. **Provide a means to document allocation factor calculations.** *(See Conclusion #18)*

Without visibility to the allocation factors that are used to allocate costs, the ability to determine the reasonableness of such allocations is compromised, and N.J.A.C. requirements relating to the reporting of changes in the factors cannot be met.

Chapter IV: Market Conditions
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Chapter IV: Market Conditions

A. Background

Local natural gas distribution company ("LDC") transitions from providing only "bundled" (gas supply plus delivery service) gas service to providing a variety of supply and delivery services has been ongoing since the 1980s. NJNG transportation-only services had reached over 20 percent of throughput at the time of our previous audit (2006). The subsequent audit found that, by the end of the first quarter of 2013:

- Over 11 percent of eligible residential ("R") accounts had switched to third-party suppliers ("TPSs")
- Over 28 percent of eligible commercial and industrial ("C&I") accounts, representing over 80 percent of C&I volumes, had also switched.

The number of NJNG's R accounts switching was comparable to that of other major gas New Jersey LDCs, Elizabethtown Gas Company, Public Service Electric & Gas Company and South Jersey Gas Company. However, the number of C&I accounts switching was almost twice as high. The proportion of the C&I load switching was comparable to SJG (about 84 percent), but higher than ETG (about 65 percent) and PSE&G (about 34 percent).

That prior audit of this type also found:

- That NJNG customers had appropriate information on competitive supply options available
- That NJNG used appropriate processes to support TPSs without imposing barriers to the suppliers or customers seeking to switch between NJNG and authorized suppliers
- No instances of differing service levels or standards for NJNG customers versus TPS customers.[319]

The Request for Proposals for our examination requested:

- An examination and documentation of the level of customer activity in transferring to TPSs
- An examination of the competitiveness of the TPS market in NJNG's service territory
- A review of NJNG's compliance with the Board's Affiliates and Fair Competition Standards and New Jersey's Electric Discount and Energy Competition Act ("EDECA"), and
- Suggestions regarding how to improve TPS market competitiveness in NJNG's service territory.

Most of the largest LDCs customers migrated to transportation service rapidly. When retail competition became available to all, a surge of migration occurred for several years among smaller commercial and residential customers. That movement peaked about 2014, and the numbers of those customers taking transportation service, rather than bundled service, has declined fairly steadily since then. We proposed to explore the post-2013 experience employing three principal tasks:

- Customer Transfer Activity: Examine and document the level of customer activity in transferring from LDC supply to TPS supply, and movement among TPS suppliers, over the Audit Period
- Competitiveness of the TPS Market: Evaluate the field of TPSs over the Audit Period

- Opportunities to Improve the TPS Market's Competitiveness: Examine whether NJNG's responses to national and regional competitive conditions are supportive of competition in its service territory.

The *EDECA* Chapter of this report addresses NJNG's compliance with the Board's Affiliates and Fair Competition Standards and EDECA.

B. Findings

1. Customer Transfer Activity

a. NJNG Tariffed Service Offerings

NJNG provides the following tariffed services to residential, commercial, and industrial customers:[320]

- Firm Sales or Firm Transportation
  - Residential Service ("RS"): Traditional residential service, offered as either firm sales or firm transportation
  - General Service Small ("GSS"): Traditional commercial service for small-usage (<5,000 therms per year) customers, offered as either firm sales or firm transportation
  - General Service Large ("GSL"): Traditional commercial service for customers with larger annual usage (>5,000 therms per year), offered as either firm sales or firm transportation
  - Distributed Generation ("DG"): Firm service offered to residential customers ("DGR") and commercial customers ("DGC") that employ distributed generation, offered as either sales or transportation
  - Natural Gas Vehicles ("NGV"): For residential and commercial customers who request service for compressed natural gas re-fueling facilities (either customer-owned or NJNG-owned locations), offered as either firm sales or firm transportation
- Firm Transportation only
  - Firm Transportation ("FT"): Transportation-only service offered to any customer that meets its conditions. Rate includes a demand charge and daily metering
  - Electric Generation Service ("EGS"): Firm delivery service to large-use (≥ 10,000 therms per day) customers who use natural gas to generate electricity
- Interruptible Sales or Transportation
  - Interruptible Service ("IS"): For commercial and industrial customers with a minimum load requirement of at least 150 therms per hour and whose locations place them on portions of the NJNG system with sufficient distribution and supply facilities, offered as either sales or transportation
  - Incremental Gas Service ("IGS"): Available to IS customers on a limited-term basis when requested and when NJNG has the capability to deliver
- Other
  - Compressed Natural Gas ("CNG"): Service offered at three customer-specific locations and three locations open to the general public.

b. Non-Tariffed Services

Customers that request a discount based on their ability to bypass NJNG's transmission and distribution facilities require both NJNG and New Jersey Board of Public Utilities ("BPU") approval.[321] NJNG's Tariff summarizes the information each customer must provide for Company consideration of the request, including:

- Confirmation from the relevant interstate natural gas pipeline of the operational viability of the proposed interconnection
- Depictions of the customer's proposed bypass sufficient to demonstrate its route from the pipeline to the proposed interconnection location on NJNG's system, and the size of the connecting facilities
- Engineering estimates of interconnection costs
- Applicable Federal and State permits information concerning environmental and reliability requirements.

A review of the other New Jersey LDCs' Tariffs found them largely similar, but PSE&G's includes requests for a demonstration of customer creditworthiness and information on estimated annual usage, with supporting calculations.

NJNG had five negotiated-rate contracts with generators or co-generators during the 2014-through-2022 period. Four of the five govern arrangements in place for at least 20 years, with originally-approved agreements modified or extended over the years. The fifth agreement received BPU approval in December 2013, the month before the beginning of the current Audit Period. The following summarizes these agreements:

- Non-Firm Sales
  - Sayreville: NJNG provides interruptible gas supply to a generation facility that includes four combustion turbines under a contract negotiated in the early 1980s. Originally owned by Jersey Central Power & Light Company (JCP&L), GenOn Holdings, Inc. now owns these assets. NJNG's 2023 BGSS filing estimates sales to this facility at 68,000 therms in that year (October 2022 – September 2023).[322]
  - Forked River: JCP&L had two dual-fueled combustion turbines, placed into service in 1989, at its Forked River facility. The original agreement providing interruptible gas bore a date of February 1, 1990. In 2007, an indirect subsidiary of Maxim Power (USA), Inc. became the plant owner The parties have executed agreements for assignment and management changes. NJNG's 2023 BGSS filing estimates sales to this facility at 768,000 therms.[323]
- Transportation
  - Lakewood Cogeneration: This facility consists of two combustion turbines and a steam turbine, with combined production capacity of 236 MW. It entered service in 1991. It has been sold to different operators at least twice, but has had a BPU-approved service agreement the entire time. The most recent, June 2015extension agreement is runs until June 30, 2035. NJNG's 2023 BGSS filing estimates transportation volumes to this facility at 19,620,000 therms.[324]
  - Ocean Peaking Power: Located adjacent to the Lakewood Cogeneration facility, this OPP independent generator operates two 191.5 MW gas turbines. In place since October 28, 2002, with subsequent June 20, 2003 and September 9, 2020 amendments previously approved, the Board again found the existing rates reasonable. NJNG's 2023 BGSS filing estimates transportation volumes to this facility at 24,113,000 therms.[325]
- Red Oak Power, LLC: Red Oak has a tolling agreement with an 830 MW combined-cycle power plant located near the Sayreville Energy Center. Red Oak provides gas to the facility,

and then takes the power it generates. Originally served by PSE&G, the plant's owner switched to a transportation service from NJNG, with BPU approval in December 2013.[326] Key terms of the Gas Service Agreement include:

- NJNG provides FT service pursuant to the Standard Terms and Conditions and applicable Riders in NJNG's Tariff, but pursuant to Rates and Charges specified in the Gas Service Agreement between TAQA GEN-X, LLC, which operates the plant, and NJNG
- In lieu of NJNG's Standard Rates and Charges, TAQA pays monthly demand charges, operational balancing charges, other variable charges, and Pass-Through Charges specified in the Gas Service Agreement
- TAQA delivers to NJNG at its citygates a maximum daily quantity of 156,960 Dth, for redelivery to the delivery point
- NJNG will recover the actual cost of the Attachment Facilities through the monthly demand charge
- NJNG can interrupt service to TAQA when required to maintain service to firm customers.

The Gas Service Agreement provided for expiration on September 30, 2022, but contains an "evergreen" clause providing for annual renewal. NJNG's 2023 BGSS filing estimates the transportation volumes to this facility at 205,156,000 therms, accounting for 14.0 percent of NJNG's forecasted throughput of 1,466,667,000 therms in that year.[327]

c. Development, History, and Market Penetration of Transportation Services

The following tables and graphs summarize NJNG system throughput as follows: [328]

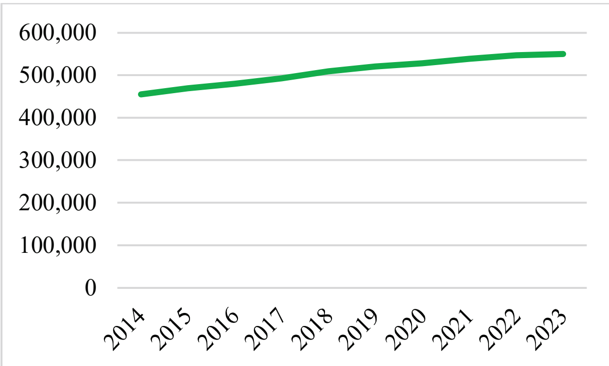
- Firm, which includes the service classes offered as either firm sales or firm transportation (RS, GSS, GSL, DG, NGV)
- Firm Transportation, which includes FT and Electric Generation Service (EGS)
- Interruptible, which includes interruptible service offered as sales or transportation (IS) and IGS.

The first table summarizes customer counts by type of service at the end of each year from 2014 through 2022, and at March 31, 2023. NJNG's Firm customer count grew by 21 percent across the period, and by 8 percent from 2018. Firm Transportation customer numbers declined 55 percent, with reductions continuing through the later years as well. Interruptible customers remained relatively flat.

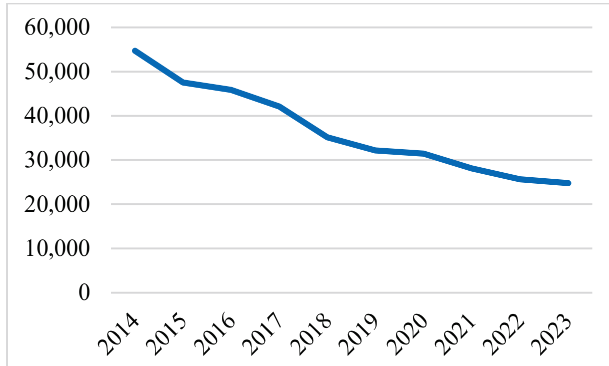
NJNG Customer Count by Type of Service

Class	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Period ∆	18-23 ∆
Firm Sales or Transportation	454,785	468,703	479,582	492,335	508,623	519,912	528,115	538,433	546,826	549,709	21%	8%
Firm Transportation	54,714	47,537	45,847	42,058	35,099	32,159	31,396	28,055	25,606	24,757	-55%	-29%
Interruptible Transportaton	33	35	34	30	32	32	31	31	31	31	-6%	-3%
Total	509,532	516,274	525,463	534,423	543,754	552,103	559,542	566,519	572,463	574,497	13%	6%

Firm Sales or Transportation



Firm Transportation

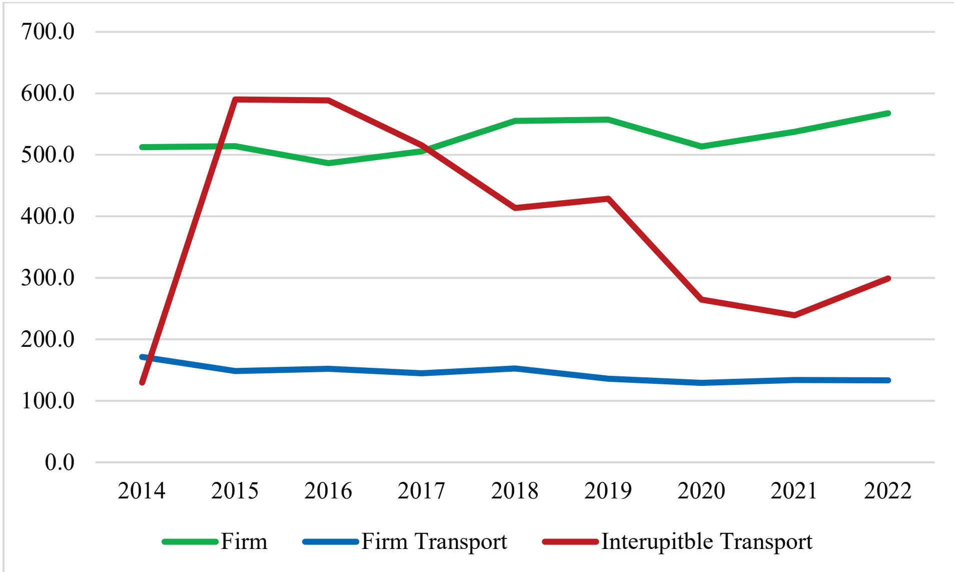


The data yields different observations when presented on a volume-delivered basis. The period and recent historical comparisons presented below use year-end 2022 values. End-of-March volume data does not permit useful comparisons to year-end values. Firm volumes increased during the period by 11 percent, or less than the 21 percent increase in customer numbers. Firm Transportation volumes declined across the period, but by significantly less than the decrease in the number of customers. Interruptible Transportation volumes declined to 2021, and then increased in 2022.

Total volumes delivered declined slowly over the period. NJNG's 19 percent reduction from 2019 to 2020 likely resulted primarily from COVID-19 circumstances.[329] Data reported by the U. S. Department of Energy's Energy Information Administration ("EIA") showed overall U.S. natural gas consumption declining by two percent from 2019 to 2020, with residential use falling by a larger, seven percent. The difference was attributable to the increased use of natural gas for electricity generation.[330]

NJNG Volumes Delivered by Class

(in millions of therms)

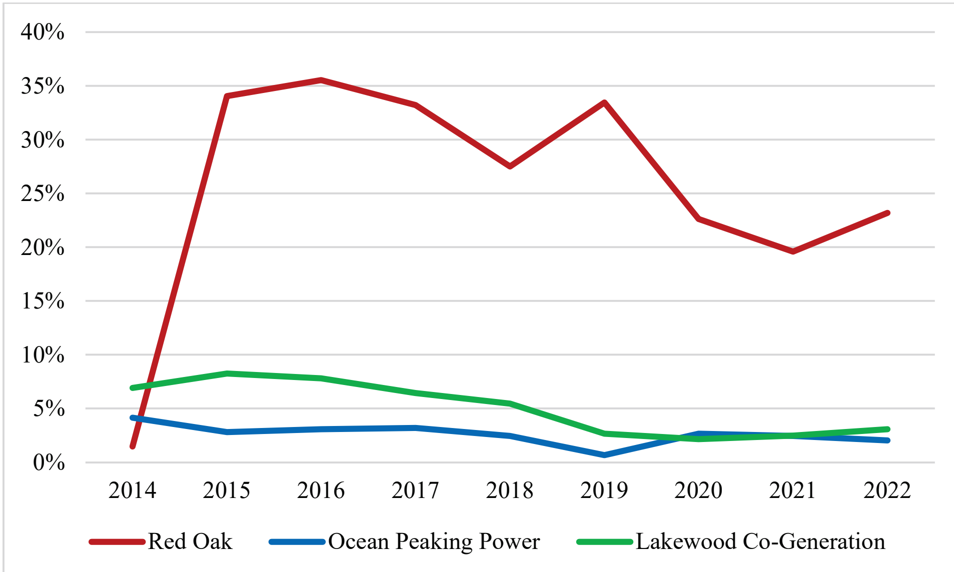


Class	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Period Δ	18-22 Δ
Firm Sales or Transportation	512.2	514.0	486.6	505.8	555.3	557.3	513.4	537.4	567.8	232.3	11%	12%
Firm Transportation	171.7	148.1	152.2	144.6	152.6	135.9	129.1	133.9	133.3	45.8	-22%	-8%
Interruptible Transportaton	130.1	590.4	588.4	515.4	413.5	428.7	264.7	239.1	299.0	30.1	130%	-42%
Total	814.0	1,252.5	1,227.2	1,165.8	1,121.3	1,122.0	907.2	910.3	1,000.0	308.2	23%	-14%

None of the New Jersey LDCs had customers enrolled in a Government Aggregation Program for natural gas service. NJNG did not serve any small customers through an aggregated transportation service offering.[331]

The TAQA/Red Oak negotiated-rate agreement substantially affected NJNG's delivered volumes, with deliveries to the plant averaging approximately [redacted] of total system throughput from 2015 through March 2023. None of the other arrangements summarized above represented more than three percent of total system deliveries over that period.[332]

Negotiated-Rate Agreement Volumes as % of Total Throughput



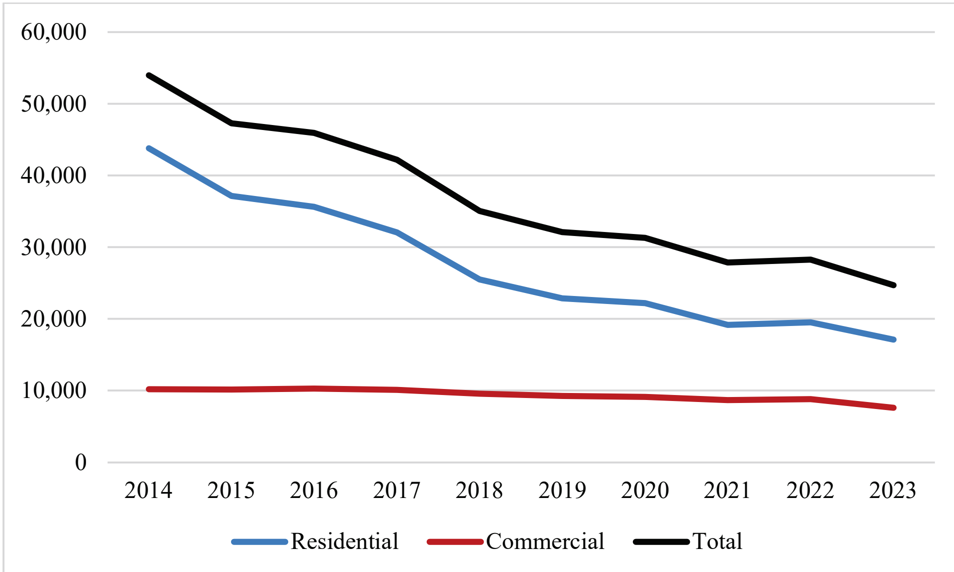
A July 12, 2023, BPU order directed NJNG to "evaluate the need to create a separate tariff for large electric generators and include testimony addressing the issue in its next base rate case petition."[333] The Company's 2024 rate application remained under review at the time of this report's preparation.

d. Customer Migration History

The following tables show numbers of NJNG customers served by natural gas marketers (Third Party Suppliers, or "TPSs"), and volumes delivered to those customers.[334] The tables exclude volumes delivered pursuant to the non-tariffed agreements summarized earlier in this report chapter. The period saw substantial declines in customer numbers overall (29,272 or 29 percent), driven mostly by a decrease of 26,719 (or 33 percent)in residential customers that chose a TPS. Commercial customers selecting TPS service declined by 2,553, or 20 percent. NJNG reports that it offered a competitive price, reducing customers' incentives to switch.[335]

This Section presents customer count information at year-end from 2014 through 2022, and at March-end 2023. Our review of the data shows no discernible difference in comparing partial year data to full year data. For volumes delivered, however the data shown below uses total-year 2014 through 2022 values, since the "through March" partial information includes only three months of values, rendering comparisons to the year-end totals less meaningful.

NJNG Customers Served by TPSs



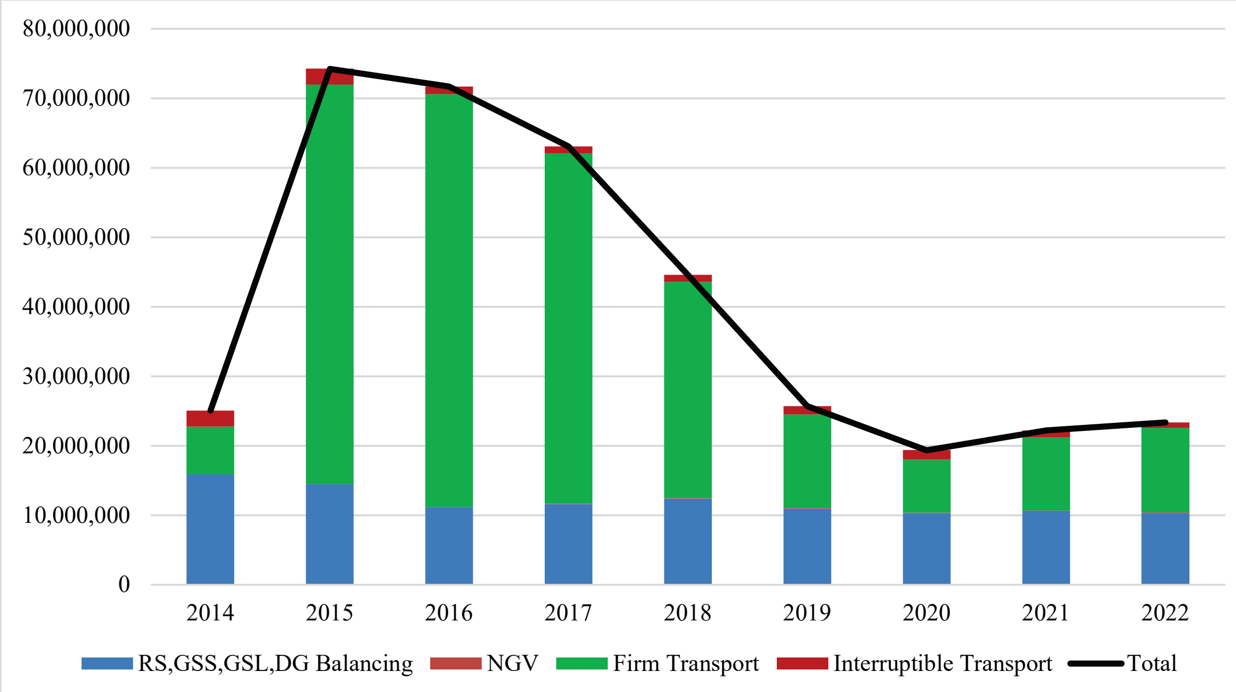
Class	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Period Δ	18-23 Δ
Residential	43,840	37,141	35,640	32,054	25,486	22,854	22,214	19,183	19,499	17,121	-61%	-33%
Commercial	10,170	10,156	10,307	10,123	9,562	9,251	9,108	8,663	8,787	7,617	-25%	-20%
Total	54,010	47,297	45,947	42,177	35,048	32,105	31,322	27,846	28,286	24,738	-54%	-29%

The review period also saw substantial declines in volumes delivered by TPSs in total and by class. TPS Sales customer volumes declined by 35 percent over the period. TPS Firm Transport deliveries increased substantially early in the period, followed by a dramatic fall after 2017. TPS Interruptible Transport levels fell by more than 50 percent in the early years of the period and did not recover.

NJNG Customer Volumes Delivered by TPSs

(millions of therms)

Class	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Period Δ	18-22 Δ
RS,GSS,GSL,DG Balancing	15.9	14.5	11.2	11.6	12.4	11.0	10.3	10.6	10.3	4.7	-35%	-17%
NGV	-	-	-	0.0	0.1	0.1	0.1	0.1	0.1	0.0	n/a	-15%
Firm Transport	6.8	57.5	59.4	50.5	31.1	13.4	7.6	10.5	12.2	3.4	78%	-61%
Interruptible Transport	2.3	2.3	1.1	1.0	1.0	1.2	1.4	1.0	0.8	0.1	-66%	-23%
Total	25.1	74.3	71.7	63.1	44.6	25.7	19.4	22.2	23.4	8.1	-7%	-48%



2. Competitiveness of the TPS Market

a. <u>Terms and Conditions</u>

A separate NJNG Tariff section sets requirements for TPSs:

- Conditions precedent include:
    - A service agreement with the Company
    - Written or electronic notification to the Company of the identity of the customers on whose behalf they are acting
    - The Initial Deposit, as specified above.
- Rates:
    - Basic Service: a monthly charge covering administration of nominations, balancing, customer inquiries, customer enrollment changes and security review
    - Billing Options:
        - Option 1: Utility Consolidated Billing
        - Option 2: Dual Billing
        - Option 3: Third Party Supplier Consolidated Billing.
- Delivery Requirements:
    - To a delivery meter designated by the Company
    - Best efforts to achieve a daily balance between its deliveries to a Company delivery meter and its aggregate customer requirements
        - Provisions for dealing with imbalances
        - Balancing specifications for monthly-metered customers
- Nomination specifications
- Other, special provisions:
    - Cashing out imbalances for different customer classes

- Special delivery requirements during periods of Operational Flow Orders
- The charge for Fuel Use and Unaccounted-For gas
- Any taxes, assessments or surcharges imposed on the Company in providing service to a TPS
- Any incremental expenses that the Company incurs in initiation and rendering service to a TPS
- Responsibilities of customers taking service from TPSs.

b. Changes to Terms and Conditions

Three rate cases brought changes during the Audit Period. The docket numbers, with Tariff modifications that affected the terms and conditions of transportation services, were are follows:

- Base Rate Case Docket No. GR15111305, effective October 1, 2016
  - Changes to the FT service classification:
    - Eliminate a load-factor distinction
    - Include a new provision allowing FT customers temporarily without a Marketer or Broker to receive BGSS service until they enroll with another Marketer
    - Allow for a decrease, if warranted by a change in how a customer uses gas service (*i.e.*, a change in equipment), to an FT customer's Maximum Daily Quantity
  - Changes to the DGC service classification:
    - Include monthly BGSS pricing as an option when a customer loses its Marketer
    - Delete language related to delivery volumes and balancing as these provisions are addressed elsewhere
    - Change the main and service extension language to be consistent with the Standard Terms and Conditions
  - Changes to the NGV service classification:
    - Delete the requirement that NJNG bills for both the customer and the Marketer
  - Changes to RS, GSS, GSL, and DGC Balancing
    - Replace Standby Service with an incremental credit requirement for Marketers who continue to fail to deliver their required volumes
    - Clarify that a Marketer's imbalance between aggregate deliveries and aggregate takes for these customers are carried into the next month, and the Company selects the time period to net any imbalances with the Marketer's required daily delivery volume
  - Changes to FT, DGC-FT, CNG, NGV and IS
    - Require Marketers to use their best efforts to achieve a balance between their deliveries and customer requirements on a daily basis to encourage a daily balance
    - Permit NJNG to require a Marketer whose account is out of balance by more than 30 percent to initiate corrective action to balance its account within the following five-day period
  - Changes to FT, DGC-FT and IS
    - Require Marketers to deliver at least the volume of gas their aggregated customers use on OFO and IS-DB days, plus a volume of unaccounted-for gas

- Clarify the treatment of imbalances from over-deliveries on OFO days and IS Daily Balancing days

- Base Rate Case Docket No. GR19030420, effective November 15, 2019
  - Change to Conditions Precedent
    - Clarify the deposit amount that a TPS is required to post in order to serve customers on the Company's system
  - Changes to FT, DGC-FT, CNG, NGV Commercial, and IS
    - Permit NJNG to reserve the right to reject nominations for deliveries in excess of the associated customers' usage to limit supplies delivered during pipeline OFO restrictions
    - Permit NJNG to reserve the right to cease new enrollments for a TPS in arrears, and to indicate that the Company may remove a TPS from NJNG's system if the TPS is in arrears
- Base Rate Case Docket No. GR21030680, effective December 1, 2021
  - Make changes to various services provided by TPSs to reflect the Southern Reliability Link interconnect with the Transcontinental Gas Pipe Line Company (Transco).

c. TPS Participants

We examined the number of TPSs active on the NJNG system now and historically, and the numbers of customers and amounts of load served by each. Management reported a total of 82 TPSs as eligible to provide service to NJNG customers at some point during the January 2014 through March 2023 period. Twenty-eight of those ceased offering service over that period, 17 in 2019, 6 in 2020, 2 in 2021, and 3 in 2023. Both the remaining and departed marketers have had long tenures in serving NJNG customers:[336]

- The 54 active as of March 2023 averaged nine years of service:
  - 2 have been registered since the late 1990s
  - 7 registered during the 2000 to 2009 period
  - 36 registered from the 2010 to 2018 period
  - 8 have joined since 2019
- Of the 28 that departed during the January 2014 through March 2023 period:
  - None had a tenure of less than one year (the lowest was 435 days)
  - As a group, they averaged eight years.

One of those inactive TPSs, NJR Retail Service Company, was an NJR affiliate. We discuss this firm's operation as a TPS in a later section of this chapter.

We learned that at least some of the changes in TPS numbers have resulted from consolidation among them. For example, Amerada Hess had a substantial business in 2014, selling it to Direct Energy, which NRG Energy, Inc. later acquired.[337] NRG has also acquired a number of other TPSs currently active in New Jersey:

- Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business: GSL-0176
- Energy Plus Natural Gas LLC: GSL-0100
- XOOM Energy New Jersey, LLC: GSL-0112
- Stream Energy New Jersey, LLC: GSL-0120
- Direct Energy Services, LLC: GSL-0088
- Direct Energy Business, LLC: GSL-0145

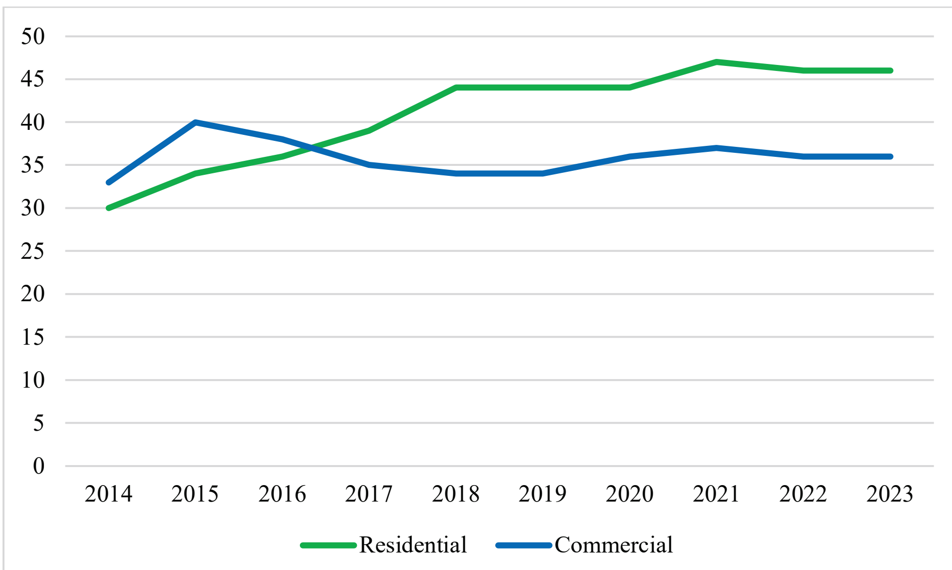
- Direct Energy Business Marketing, LLC: GSL-0128
- Gateway Energy Services Corporation: GSL-0146.

Many of these entities are also licensed to provide electricity supply to retail customers.[338]

Regarding the number of license holders that apparently left NJNG's market in 2019 and 2020, the Company explained that it made an effort during that period to update its files to reflect various consolidations and other departures. With consolidation so prevalent in the market, NJNG personnel believe that very few suppliers have actually departed.[339]

The following graph shows the number of TPSs with customers in NJNG's Residential and Commercial segments during January 2014 through March 2023. Due to the length of the Audit Period, the chart shows 2014-to-2022 year-end values and March 31, 2023 values.[340] While some monthly fluctuations occurred across the period, these "period-end" numbers present a reasonable proxy. The data provided by NJNG did not include information for industrial customers.

TPSs with Active NJNG Customers



The chart shows that the number of TPSs serving Residential customers increased, even as the total TPS deliveries to that customer class declined. The number of TPSs serving Commercial customers stayed about the same.

The following table summarizes annual and end-of-March for 2023 volumes for RS, GSS, GSL, DG Balancing customers across the January 2014 to 2023 period.[341] We grouped this table as follows:

- The top five TPSs in terms of volume delivered as of March 30, 2023 individually
- All other TPS firms together
- The annual total, inclusive of the amounts above.

For purposes of this chart, we combined two Constellation entities (Constellation Energy and Gas Choice) and two Direct Energy entities (Direct Energy Business Marketing and Direct Energy Services). No other combinations were made to reflect market participant consolidation.

NRG Energy, Inc., which owns the two Direct Energy entities, also owns six other TPSs that provide retail gas supply in New Jersey. Those entities deliver relatively small volumes to NJNG customers. Constellation may also own other TPSs, again likely to serve only small volumes.

RS, GSS, GSL, DG Balancing Delivery Summary (in therms)

(confidential TPS names)

TPS	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2023%
[redacted]	1,230,527	2,757,248	2,293,935	2,571,742	2,811,919	2,928,162	2,908,540	2,710,436	3,464,186	1,612,470	34.5%
	716,148	747,523	602,734	714,225	869,052	1,730,285	1,949,550	2,073,575	1,245,542	684,228	14.6%
	1,198,088	1,078,616	648,541	703,524	790,446	832,304	961,369	1,415,059	1,579,456	552,607	11.8%
	1,083,197	1,183,033	731,650	874,977	970,610	943,089	900,368	964,193	927,860	411,211	8.8%
	71,989	113,292	100,225	158,103	289,145	441,914	462,955	427,989	455,596	158,059	3.4%
	11,609,136	8,643,882	6,825,256	6,591,258	6,672,698	4,098,910	3,109,567	3,033,136	2,661,806	1,254,330	26.8%
Total	**15,909,085**	**14,523,594**	**11,202,341**	**11,613,829**	**12,403,870**	**10,974,664**	**10,292,349**	**10,624,388**	**10,334,446**	**4,672,905**	

Of the 52 TPSs (50 when making the two combinations described above), only five exceeded three percent of March-end 2023 quantities. Those five together accounted for 73 percent of all TPS load in those rate classes. Thirteen of the remaining TPSs contributed between 1.0 and 3.0 percent of load, and 32 contributed less than 1.0 percent. Overall, the quantities delivered by TPSs to these customer classes declined by16 percent in the past five years and by 35 percent since 2014.

A smaller number of TPSs (shown in the next table) provided supply to Firm Transportation customers during the period. Of the 26 firms that did so, just 10 served customers through March of 2023.

Firm Transportation Customer Delivery Summary (in therms)

(confidential TPS names)

TPS	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2023%
[redacted]	-	58,897	52,231	264,675	561,049	804,990	822,559	1,337,364	1,515,995	464,246	41.3%
	743,850	1,242,473	2,092,265	2,219,902	2,501,918	2,181,811	2,143,008	1,554,726	1,359,956	382,350	34.1%
	45,104	51,922	53,389	47,563	55,235	310,744	246,093	588,212	804,467	207,072	18.4%
	281,928	351,185	278,720	115,671	159,545	118,641	82,205	79,428	83,864	27,370	2.4%
	22,675	39,089	39,245	35,436	25,096	25,332	23,007	23,787	28,188	9,662	0.9%
	-	-	-	-	1,542	3,869	2,950	3,430	2,376	6,253	0.6%
					-	-	-	-	5,719	3,280	0.3%
	4,608,655	13,551,035	14,416,783	11,640,039	7,867,164	2,032,189	1,982,503	4,333,445	5,041,258	22,492	2.0%
Total	5,702,212	15,294,601	16,932,633	14,323,286	11,171,549	5,477,576	5,302,325	7,920,392	8,841,823	1,122,725	

An even smaller number of TPSs provided supply to NJNG's Interruptible Transportation Service customers during the period. Of the 12 firms that did so, data indicated that just five served customers through March of 2023.

Interruptible Transportation Customer Delivery Summary (in therms)

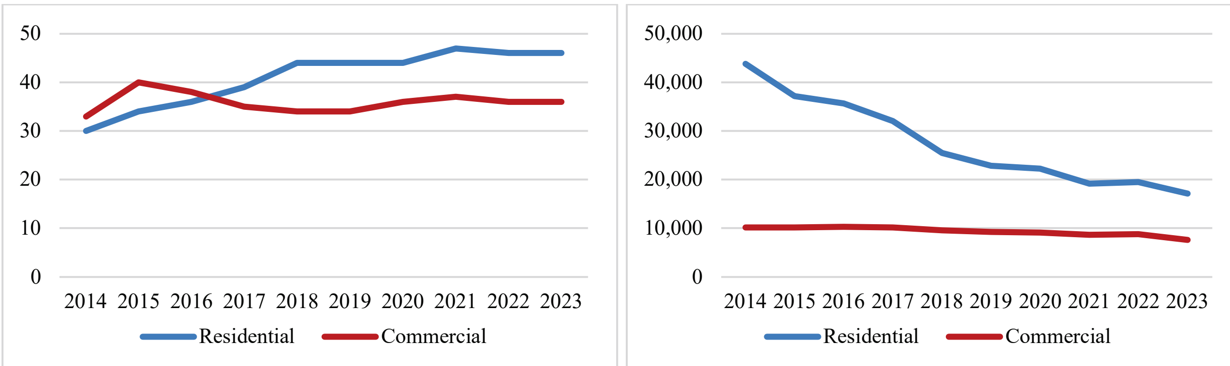
(confidential TPS names)

TPS	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
[redacted]	93,863	77,816	238,200	251,904	290,034	277,832	289,508	250,585	277,032	18,666
	1,629,676	2,037,732	684,743	402,267	389,070	502,475	624,804	473,768	222,098	55,550
	171,139	117,356	83,585	221,207	230,573	225,333	260,101	224,667	166,492	8,500
	60,136	-	122	4,394	65,979	180,083	182,840	66,566	122,440	6,500
	-	-	-	-	10,693	27,525	26,538	19,770	51	-
	366,356	38,534	96,908	72,545	41,336	-	400	-	-	-
Total	2,321,170	2,271,438	1,103,558	952,317	1,027,685	1,213,248	1,384,191	1,035,356	788,113	89,216

The following tables show the numbers of TPSs serving residential and commercial customers on NJNG's system by year and by customer numbers served. The numbers of suppliers have remained fairly consistent across the period, but the number of customers served has decreased dramatically.

NJNG TPS Activity Summary

TPSs Serving Customers | *TPS Customer Counts*



The number of residential customers choosing a TPS fell by 60 percent across the period, and by 33 percent since 2018. The number of commercial customers choosing a TPS fell by 25 percent across the period, and by 20 percent since 2018.

TPS Customer Count by Residential vs. Commercial

Class	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Period Δ	18-23 Δ
Residential	43,840	37,141	35,640	32,054	25,486	22,854	22,214	19,183	19,499	17,121	-61%	-33%
Commercial	10,170	10,156	10,307	10,123	9,562	9,251	9,108	8,663	8,787	7,617	-25%	-20%
Total	54,010	47,297	45,947	42,177	35,048	32,105	31,322	27,846	28,286	24,738	-54%	-29%

We reviewed the websites and the prices offered by several TPSs in order to compare the types of services offered and, where available, the "price to compare" versus NJNG's offering. The following table summarizes the price-to-compare information made available by NJNG with offerings of four TPSs that currently serve NJNG residential customers. NJNG "projects" the same rate through March 2025.

Residential Price to Compare and Competing Offer Summary

Price and Term	NJNG	Competing Offeror/Offer									
	Price to Compare	1.a	1.b	1.c	2.a	2.b	3.a	3.b	4.a	4.b	4.c
Price to Compare	$0.429	$0.559	$0.539	$0.499	$0.579	$0.619	$0.730	$0.940	$0.630	$0.610	$0.690
Term	*	12 mos.	18 mos.	9 mos.	12 mos.	24 mos.	12 mos.	24 mos.	6 mos.	12 mos.	24 mos.

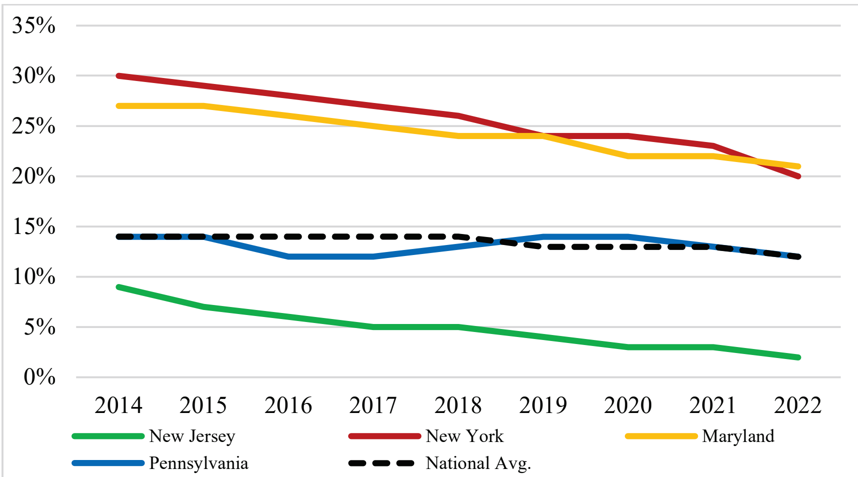
3. *Opportunities to Improve TPS Market Competitiveness*

We gathered data on migration by customer class (residential, commercial, industrial, where available) and compared it to that of others. Our first reviews used data reported by the EIA to compare state-level TPS volumes delivered. This analysis compares New Jersey results to neighboring states and to national averages. We then reviewed data for the New Jersey LDCs to see how NJNG compared with the others.

a. National and Regional Comparisons

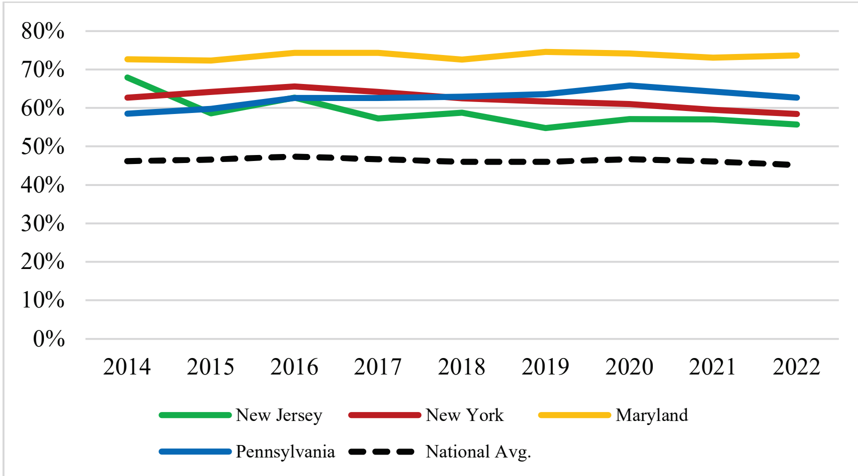
By 2022, 23 U.S. states plus the District of Columbia had allowed all natural gas customers to choose their own supplier, either their incumbent LDC or a TPS. EIA measures customer choice activity by reporting natural gas deliveries made by LDCs on behalf of other suppliers. This method includes natural gas "not owned by the company that delivers it to the consumer" and "quantities covered by long-term contracts and gas involved in short-term or spot market sales."[342] The following charts show the proportions of residential, commercial and industrial gas deliveries made by TPSs in New Jersey, neighboring states (New York, Maryland and Pennsylvania) and nationally.

EIA-Reported TPS Share of Residential Deliveries



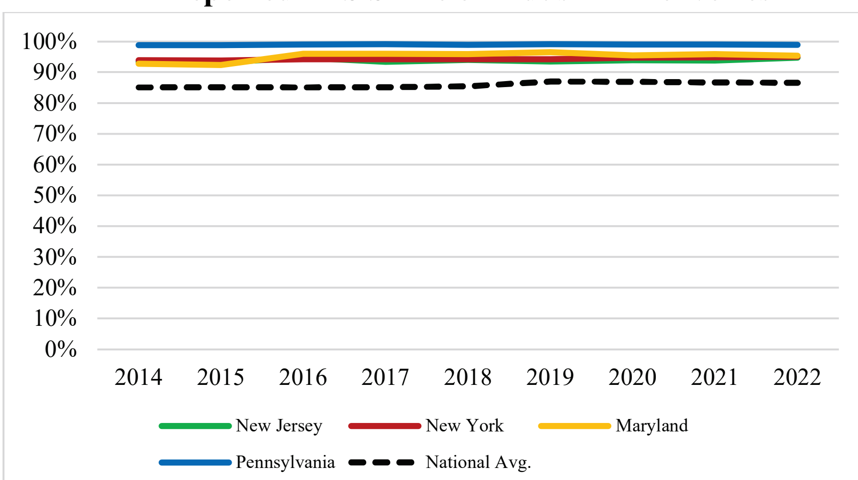
Category	State	2014	2015	2016	2017	2018	2019	2020	2021	2022	Period Δ
NJ	New Jersey	9%	7%	6%	5%	5%	4%	3%	3%	2%	-78%
Region	New York	30%	29%	28%	27%	26%	24%	24%	23%	20%	-33%
	Maryland	27%	27%	26%	25%	24%	24%	22%	22%	21%	-22%
	Pennsylvania	14%	14%	12%	12%	13%	14%	14%	13%	12%	-14%
National Avg.		14%	14%	14%	14%	14%	13%	13%	13%	12%	-14%

EIA-Reported TPS Share of Commercial Deliveries



Category	State	2014	2015	2016	2017	2018	2019	2020	2021	2022	Period Δ
NJ	New Jersey	68%	59%	63%	57%	59%	55%	57%	57%	56%	-18%
Region	New York	63%	64%	66%	64%	63%	62%	61%	60%	59%	-7%
	Maryland	73%	72%	74%	74%	73%	75%	74%	73%	74%	1%
	Pennsylvania	59%	60%	63%	63%	63%	64%	66%	64%	63%	7%
National Avg.		46%	47%	47%	47%	46%	46%	47%	46%	45%	-2%

EIA-Reported TPS Share of Industrial Deliveries



Category	State	2014	2015	2016	2017	2018	2019	2020	2021	2022	Period Δ
NJ	New Jersey	93%	93%	95%	93%	94%	94%	94%	94%	95%	1%
Region	New York	94%	94%	94%	94%	94%	94%	95%	95%	95%	1%
	Maryland	93%	92%	96%	96%	96%	97%	95%	96%	95%	3%
	Pennsylvania	99%	99%	99%	99%	99%	99%	99%	99%	99%	0%
National Avg.		85%	85%	85%	85%	86%	87%	87%	87%	87%	2%

These charts suggest the following observations regarding New Jersey TPS deliveries:

- Deliveries to Residential customers lagged the other states in the region and the national average. All declined over the period, with New Jersey’s decline the largest
- Deliveries to Commercial customers fell in line with the other states in the region, all of whose states exceeded the national average

- Deliveries to Industrial customers fell in line with the other states in the region, again with all of them higher than the national average.

b. State-Level Comparison and Selected Review

First, the following chart summarizes each New Jersey LDC's percentages of customers supplied by a TPS and the percentage of total deliveries those customers represent.[343] The green shading indicates the highest proportion in the category, while the red indicates the lowest. For June 2023, NJNG's proportion of Residential customer accounts supplied by a TPS matched SJG's for the highest value in the state. NJNG led the state in proportion of Commercial and Industrial accounts supplied by a TPS, and slightly bettered SJG for the highest level of total accounts served.

June 2023 New Jersey Customers Served by TPSs

Company/	Residential		Commercial & Industrial		Total	
State	% of Accts	% of Dth	% of Accts	% of Dth	% of Accts	% of Dth
NJNG	3.1%	2.6%	20.4%	71.7%	4.3%	28.9%
ETG	1.6%	1.2%	14.9%	84.8%	2.6%	60.4%
PSE&G	2.3%	2.0%	14.9%	59.8%	3.4%	29.5%
SJG	3.1%	2.7%	19.2%	85.2%	4.2%	63.0%
Statewide	**2.5%**	**2.1%**	**16.2%**	**71.2%**	**3.6%**	**39.0%**

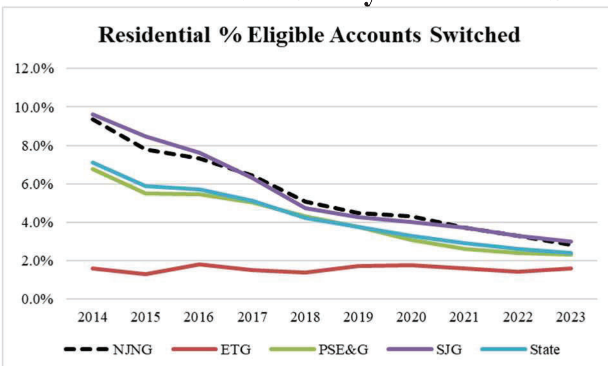
The following chart summarizes for New Jersey LDCs and those in three neighboring states the percentage of Residential accounts that have selected a TPS.[344] The four states do not report data as of the same points in time. The New Jersey and Maryland data uses a June 30, 2023 date, Pennsylvania a July 1, 2023 date, and New York a December 31, 2022 date. New Jersey's switching rate, measured by percentage of customer accounts, fell substantially below the rates of the three neighboring states, but exceeded the New Jersey State average.

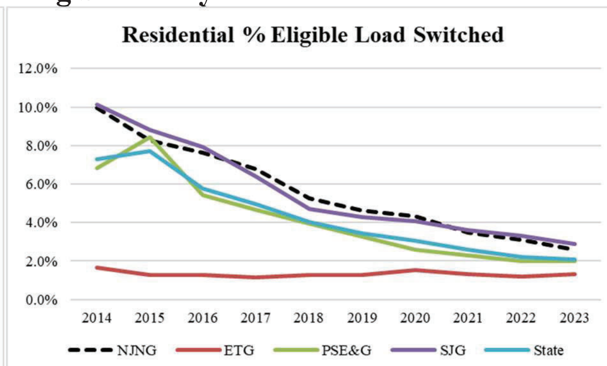
2023 Residential Accounts Served by TPSs

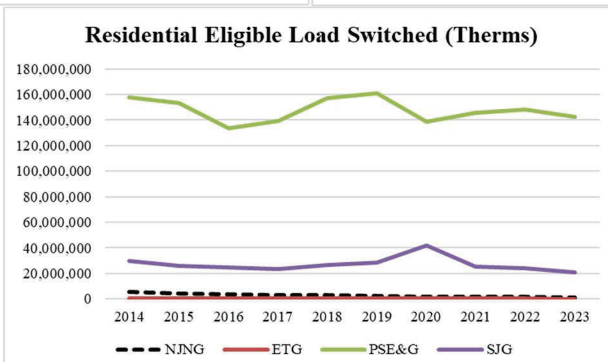
	Company/State	**% Switched**		**Company/State**	**% Switched**
NJ	**State**	**2.5%**	NY	**State**	**5.6%**
NJ	NJNG	3.1%	NY	CHG&E	10.4%
NJ	ETG	1.6%	NY	ConEd	6.1%
NJ	PSE&G	2.3%	NY	KeySpan L.I.	2.6%
NJ	SJG	3.1%	NY	KeySpan NY	6.0%
PA	**Company/State**	**% Switched**	NY	Nat'l Fuel Gas	5.5%
PA	**State**	**11.7%**	NY	NYSEG	5.2%
PA	Columbia	12.0%	NY	Nat'l Grid	5.6%
PA	Nat'l Fuel Gas	8.6%	NY	O&R	11.4%
PA	PECO	14.2%	NY	RG&E	4.6%
PA	Peoples NG	14.1%	MD	**Company/State**	**% Switched**
PA	Peoples Gas	0.6%	MD	**State**	**15.3%**
PA	PGW	6.8%	MD	BGE	16.0%
PA	UGI	13.2%	MD	Washington Gas	14.4%

The charts below show by customer class New Jersey LDCs trends over the past decade in percentages of accounts that have chosen a TPS, the percentage of eligible switching by eligible account numbers and eligible load. Again, NJNG has consistently remained at the state's highest levels when measured on a percentage basis. The much larger size of PSE&G make it dominant when measured by absolute customer numbers or load size.

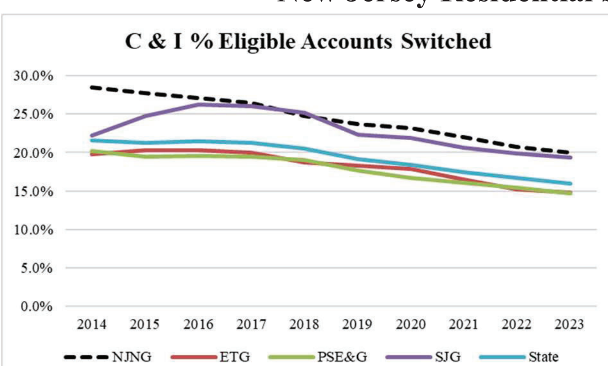
New Jersey Residential Switching Summary – Residential

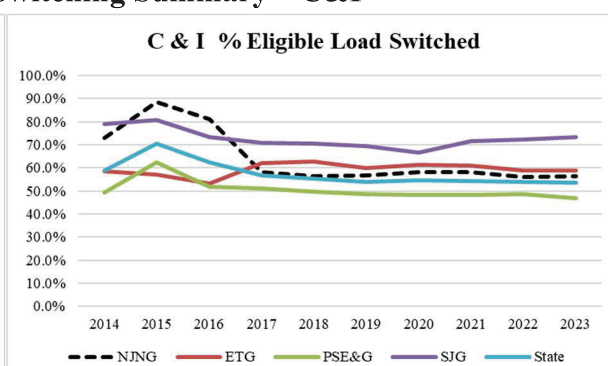


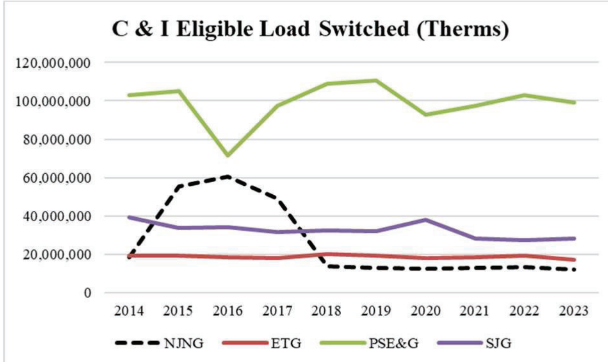




New Jersey Residential Switching Summary – C&I







c. NJNG's Management of the TPS and Customer Enrollment Process

All natural gas marketers who want to serve customers in New Jersey must complete a registration process with the BPU. The BPU website includes a "Become a Third Party Supplier" page that includes application forms and instructions that guide potential enrollees through the process.[345] The application provides for registration to serve multiple customer classes at each of the state's electric and natural gas utilities.

Each BPU-approved enrollee who wants to serve customers in NJNG's service territory must then seek NJNG's approval. NJNG's website provides the "Third-Party Supplier Agreement" form and a "General Terms and Conditions" document. When potential suppliers submit a completed Third-Party Supplier Agreement, NJNG evaluates the information provided and determines whether each new enrollee meets eligibility criteria and passes an NJNG review of creditworthiness. Those that successfully pass the BPU and NJNG approval requirements receive official notification of their addition to NJNG's approved-suppliers list and a copy of an executed agreement.[346] NJNG's website also includes an electronic bulletin board ("EBB") registration form, which grants TPSs access to the primary platform used to enroll new customers.

Approved TPSs register new customers for enrollment by submitting required customer account information. Management reports that it receives the majority of those requests through its EDI system.[347] The time required between submission of a request and authorization for commencement of service varies depending on the date of the request and where the switching customer falls on the Company's 20-day billing cycle. From 2014 through January 2018, NJNG processed each customer enrollment request received by the first of a month for the following month's cycle date. Billing cycles can cross months, meaning that a customer registration could have taken up to two months. A January 2018 change to the applicable regulations (N.J.A.C. 14:4-2.6(f)) moved the cutoff date for enrollment requests to the 10th of the month. After that change, all requests received by that date became effective when the next month's meter read occurred. Requests received after the 10th of the month became effective two months later.

Our prior examinations, including NJNG, of New Jersey LDCs for the BPU reviewed operating manuals, which provide an overview of the roles and responsibilities of the various parties (utility, TPS, customer). NJNG reported that no such manual exists today, despite its having used one previously.[348] Management instead directs TPSs to the "Information for Energy Suppliers" link on the NJNG website. The page accessed from the link includes an overview of the process to register as a TPS, includes the forms necessary to complete the process, and provides instructions on how to submit them. It also provides a link to the BPU website and notes the state licensing requirement. It includes an email address for questions regarding the enrollment process. In addition to the forms and instructions, the *Information for Energy Suppliers* page includes links to the Company's Tariff, a list of eligible TPSs, and links to documents that summarize NJNG's meter-reading and billing cycles. Additional links available on this page include a list of the areas served by NJNG, organized by county, and a *Frequently Asked Questions* page which focuses on TPS questions. The information available at this FAQ page summarizes:

- Billing options (utility consolidated, dual, and supplier consolidated)
- Interruptible Service transportation agreements
- Pipelines serving the NJNG system
- Gas nomination instructions (*i.e.*, EBB)
- Additional information on gas nominations for larger classes of service
- Instructions and requirements for obtaining customer usage history
- Enrollment requirements for different service classifications.

While helpful, the link provided for Supplier FAQs at the *Information for Energy Suppliers* page linked instead to a general "Contact Us" page (https://myaccount.njng.com/portal/contact-us-connect-me_template.aspx). We reviewed the Adobe version of the FAQ page as provided by management, and were able to locate its content on the NJNG website, albeit at a different web address: https://www.njng.com/faqs/energy-suppliers.aspx.

Our review of the supplier-choice and information-for-TPSs pages of the other New Jersey LDCs' websites found them somewhat similar in content. One key difference was the inclusion of a *Third Party Supplier Operating Manual* on South Jersey Gas Company's website, and a *TPS Gas Operating Manual* on PSE&G's website.

As noted above, TPSs can choose from three billing options:[349,350] Utility Consolidated Billing comprises the ***first*** option. It costs $0.75 per bill. Agreements between the TPS and NJNG govern the terms and conditions of this option. The TPS must provide NJNG the gas supply (commodity) charge, which NJNG then uses to calculate the bill (along with delivery and other charges) for submission by NJNG to the customer. NJNG purchases the receivable from the TPS and assumes responsibility for payment processing and collection. Pursuant to the agreement, NJNG also performs what it describes as "basic" customer inquiries, and produces monthly summaries of activities for each billing cycle. Under the ***second*** option. Dual Billing, NJNG bills customers only for the transportation portion of the bill and provides the TPS with the usage information necessary for its bill/ The ***third*** option, Third Party Consolidated Billing, provides a credit of $3.60 per customer per year. The TPS takes responsibility for billing its customer for usage and for delivery charges, and reimburses NJNG for that customer's transportation charges.

Regardless of which of the three options applies, NJNG charges each TPS a $65.00 per month administrative-services charge that the Company's Tariff describes as covering:

- Nominations
- Balancing
- Inquiry
- Customer Enrollment Changes

- Security Review.

NJNG assigns overall responsibility for management and execution of the TPS-enrollment process and relationship-management activity to its Supplier Relations Consultants ("SRCs") within the Gas Transportation group under NJNG's Customer Service department. NJNG reported year-end staffing of 2.75 full-time-equivalent employees from 2014 through 2018 and three thereafter. A Revenue Support Clerk provides part-time availability to address customer account-related issues. The SRCs report to a Customer Service department supervisor who has responsibility for the Transportation group. The SRCs enroll newly-added TPSs and manage relationships with them after enrollment, facilitate new-customer enrollment with existing TPSs, switch customers from one TPS to another, or from a TPS to default service, and resolve billing issues. Principal communications paths between the SRCs and other NJNG units include

- NJNG Gas Transportation group:
  - Email and telephone discussion to facilitate the customer enrollment process, and to review billing and administrative questions.
  - EDI exchanges of necessary information regarding the addition or removal of customers, changes in applicable rates, approved release of customer usage information, and other billing information
- NJNG Gas Supply group
  - Email, described as most frequently used, through which NJNG can alert designated individuals at each TPS as to operating restrictions and delivery issues, and other general information items
  - GMS, through which NJNG's Gas Supply personnel post messages to individual or all TPSs as appropriate
  - ICE Chat, reportedly used on occasion, to alert those TPSs that use the platform of pipeline supply issues using its embedded-chat function
  - Telephone, reported by management as the least-used communications path.

NJNG uses its EBB to manage and track planned and actual delivered volumes for customers that have chosen service from a TPS. NJNG requires each TPS to input delivery volumes by 3:00 p.m. each day. Those EBB inputs are then summarized in the GMS system for review by NJNG schedulers. The schedulers identify any variance in scheduled-versus-actual delivery volumes and notify the appropriate TPS via email. NJNG makes adjustment for these variances on the EBB and through pipeline data reporting.

No internally-produced policies and procedures govern interactions with either TPSs or customers who choose to receive supply from them.[351] Instead, management considers BPU regulations and NJNG's Tariff as the guidance that governs its interactions with TPSs and customers regarding supplier choice. The applicable regulations relate mainly to issues of market competitiveness and fair treatment of unaffiliated suppliers. The *EDECA* Chapter of this report addresses NJNG's compliance with the N.J.A.C. aspects of supplier-choice related activities.

We reviewed NJNG's Tariff and its treatment of TPSs and customers, principally the "SERVICE CLASSIFICATION – TPS THIRD PARTY SUPPLIER REQUIREMENTS" section. This Tariff section includes descriptions of the agreements and other requirements each TPS must follow, financial and other conditions therein, billing options available for the TPS and its customers, delivery requirements by customer classification, and other provisions, such as balancing and imbalance provisions, delivery shortfall and nomination provisions. Management also identified its *Do's and Don'ts for Supplier Relations Consultants* guidelines. The guidelines appear directed to the SRCs, but management indicated that they also govern Customer Service Representatives calls about billing issues. We reproduce the guidelines below.

NJNG's "Do's and Don'ts" for SRCs

New Jersey Natural Gas Company (NJNG) sells natural gas in a competitive environment. This means that NJNG's customers may choose to buy natural gas as a separate, distinct commodity from other suppliers. NJNG will continue to provide gas transportation services, including related energy services, and traditional bundled sales services, and will maintain and expand its distribution system. Since NJNG performs several functions in this competitive environment, we have to ensure that fair competition exists so that all suppliers have a fair chance to compete with NJNG. We cannot conduct ourselves in a way that favors NJNG or that discourages a customer from choosing someone else. Therefore, we have developed guidelines to ensure that calls regarding unbundled transportation services are handled in a consistent manner and in accordance with all legal requirements. When receiving such calls, please follow these guidelines:

1. **DO** handle requests received from suppliers in the order that they are received.
2. **DO** treat all non-public supplier information as confidential.
3. **DO** treat all suppliers the same in all aspects of our day-to-day business.
4. If you are unable to answer any supplier's question, please see your supervisor.

Should you have any questions concerning what you should say or do, please discuss the matter with your supervisor, or contact Janet Leppo at Ext. 8260.

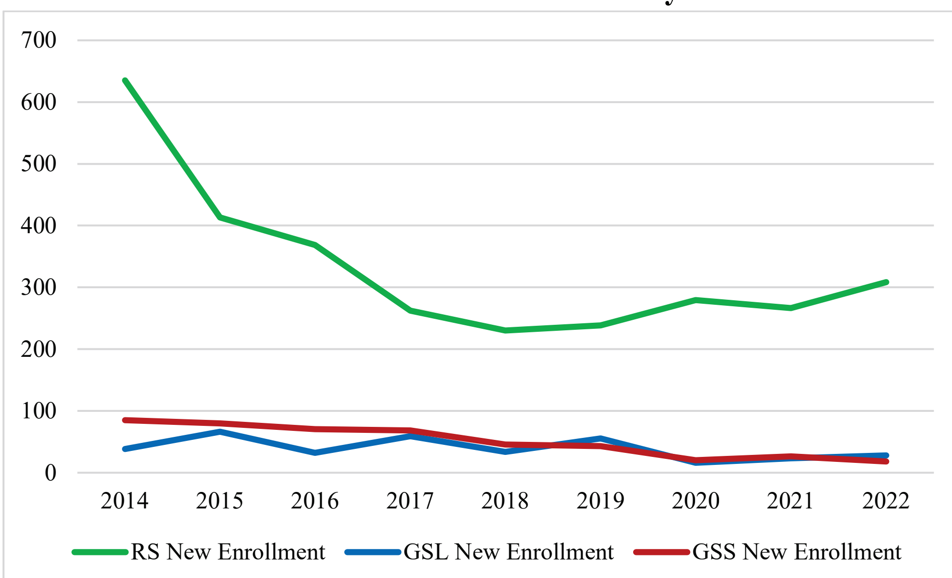
A number of New Jersey's Supplier Choice Program changes occurred over the current Audit Period, including a number that management considers most consequential:

- May 2017: Elimination of NJNG's requirement that TPSs provide rate class, maximum daily quantity, and highest monthly average daily usage information during the enrollment process
- May 2017: EDI changes to allow for aggregation programs and the identification of customers enrolled in such programs
- January 2018: the change (described above) to applicable BPU regulations that shortened the time to enroll with a new TPS, change an existing supplier-choice customer's TPS, or to switch a customer back to BGSS service
- November 2019: BPU-approved language in the ***PAYMENT*** section of the NJNG Tariff that permits the Company to remove a TPS from the system or stop that TPS from enrolling additional customers in the event of an arrearage.

We requested a list of all metrics management uses to measure and assess these activities, and all recorded results against those metrics. Management responded that it "does not possess the requested metrics for the specified audited period."[352] The Company instead directed us to the response to a separate request that sought information about how NJNG evaluates performance of its customer transfer activity and competitiveness of the TPS market.[353] That response cited the Gas Transportation group's monitoring of current or pending TPS enrollment of new customers, transfers of existing supplier-choice customers to another TPS, or the "switching back" to BGSS service of customers who previously elected to receive supply from a TPS.

The following charts show annual averages of monthly results.[354] Starting with new TPS customer enrollment by class, note that NJNG measures this figure as "pending" new enrollees. Thus, depending on the timing of the customer's next meter reading, there could be a two-month lag in actual enrollment, and a customer could show on this list for more than one month. 2014 saw, on average, 635 new customers enrolled per month. That level soon declined, producing a 2017-through-2021 average of 255. 2022 saw an increase to 305. Over the entire Audit Period (2014 through 2022), average monthly new enrollees declined by 51 percent, though the 2018-through-2022 period saw an increase of 18 percent due to 2022's higher value.

New TPS Customer Enrollment by Class

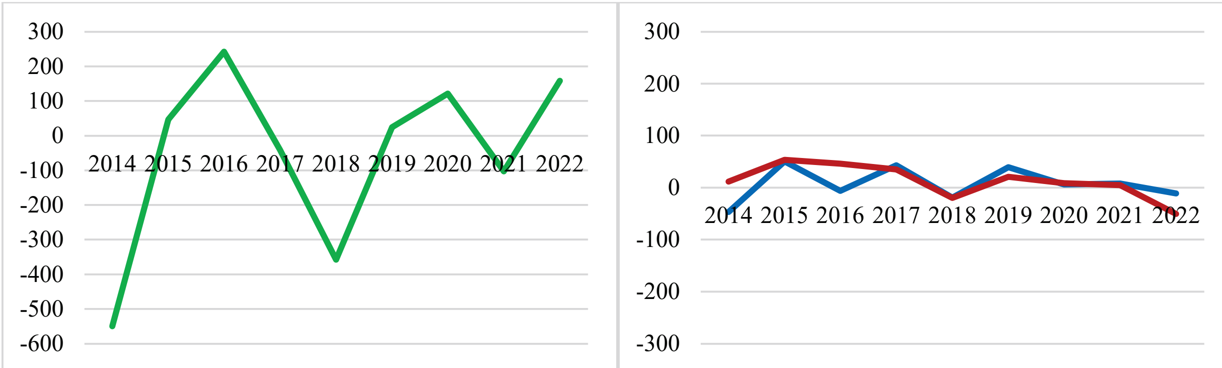


The following charts net against those new customer enrollments the numbers of customers who cancelled service from a TPS. We present the RS-customer results separately from the GSS and GSL net changes due to the differing scales of the values involved. Results for the RS customer class average 51 more terminations per month than new enrollments over the 2014-through-2022 period. The very sizable terminations in 2014 offset relatively large new enrollments. 2018 also saw relatively large terminations, but new enrollments were lower than the previous or succeeding years. Starting with 2019, all but one year saw average monthly new enrollments numbers that exceeded terminations.

GSS and GSL values saw much less variation when expressed on the same scale as the RS class.

TPS New Enrollments Minus Terminations

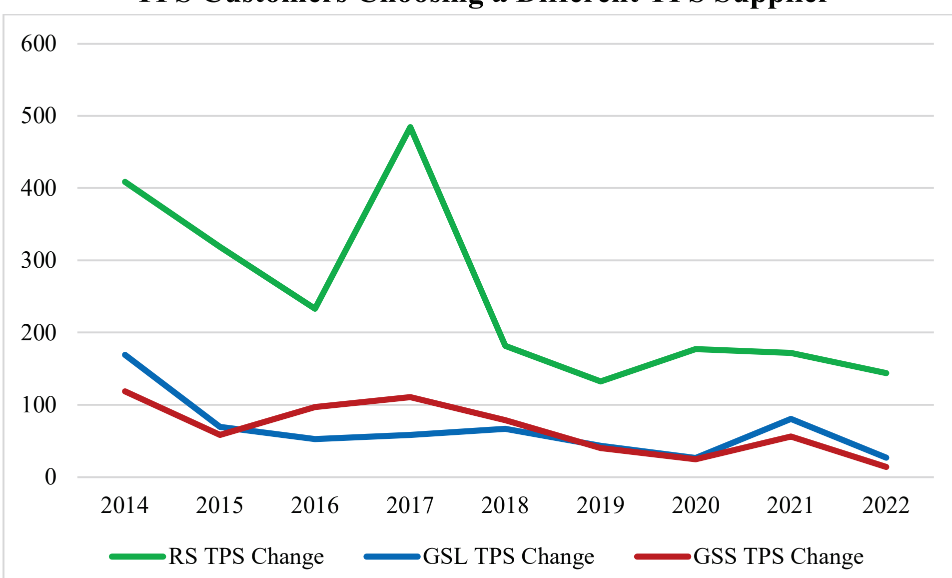
RS | *GSS and GSL*



Class	Item	2014	2015	2016	2017	2018	2019	2020	2021	2022	Period Δ	5-Yr. Δ
RS	New Enrollment	635	413	369	262	230	238	279	266	308	-51%	18%
	Terminations	(1,185)	(367)	(126)	(303)	(589)	(214)	(158)	(369)	(150)	-87%	-50%
	Total	**(549)**	**47**	**242**	**(41)**	**(358)**	**24**	**121**	**(103)**	**158**	**-129%**	**-486%**
GSL	New Enrollment	38	67	32	59	34	56	16	23	28	-28%	-53%
	Terminations	(85)	(16)	(39)	(16)	(53)	(16)	(10)	(15)	(39)	-55%	140%
	Total	**(47)**	**50**	**(6)**	**43**	**(19)**	**39**	**6**	**8**	**(11)**	**-77%**	**-125%**
GSS	New Enrollment	85	80	71	69	46	43	20	27	18	-79%	-74%
	Terminations	(73)	(26)	(24)	(34)	(66)	(22)	(12)	(22)	(68)	-7%	103%
	Total	**12**	**54**	**46**	**35**	**(20)**	**21**	**9**	**5**	**(50)**	**-520%**	**-243%**
Total	New Enrollment	759	560	471	390	310	337	316	316	354	-53%	-9%
	Terminations	(1,343)	(409)	(190)	(352)	(707)	(253)	(180)	(393)	(257)	-81%	-27%
	Total	**(584)**	**151**	**282**	**38**	**(397)**	**85**	**136**	**(77)**	**97**	**-117%**	**156%**

The following chart shows the monthly average number of customers switching to a different TPS. The trend in these numbers follows generally the overall trends of 1) fewer new customer enrollments and 2) customers "switching back" to NJNG.

TPS Customers Choosing a Different TPS Supplier



Management identified no issues related to its supplier-of-last-resort responsibility or to its ability to accommodate customers who switched back to NJNG after having chosen a TPS.[355]

d. NJNG's Communications with Customers Seeking Information About TPSs

Liberty requested links to NJNG, NJR, or affiliate websites used to provide customers with information about supplier choice, and copies of materials that the Company provides in response to inquiries about supplier choice.[356] Management identified five relevant links on NJNG's website:[iv]

- https://www.njng.com/my-home/energy-choice/index.aspx
- https://www.njng.com/my-home/energy-choice/supplier_list.aspx
- https://www.njng.com/my-home/energy-choice/faqs.aspx
- https://www.njng.com/my-home/energy-choice/protection.aspx
- https://www.njng.com/my-home/energy-choice/EnergyChoiceGuide2018.pdf

The cited links provided sufficient explanations of the matters addressed. The FAQ page, however, was blank. An included Energy Choice Guide provided a comprehensive summary as well. Management limited its response to current website information; it does not retain previous versions of this information.

NJNG last updated its list of authorized TPSs on September 20, 2023. The BPU site was last updated on May 17, 2023. NJNG's list included 49 marketers; the BPU list identified 55 as eligible to supply NJNG customers. A total of 37 appeared on both lists, 12 on NJNG's list only, and 17 on the BPU list only. As described in the EDECA Chapter of this report, the supplier list provided by NJNG was appropriately alphabetized.

The page with the list of suppliers provides links to the BPU's "shopping" page and indicates to visitors that they can find additional information there. It also links to the Division of Rate Counsel page. We tested each of the 49 provided links and found each one functional. The weblinks provided by NJNG provided information similar to that of the other New Jersey LDCs, but some indicated more-recent updates to their lists of eligible TPSs serving their customers.

NJNG's Call Center serves as an important point of contact between the Company and its customers currently enrolled with a TPS, or who contact the Company with enrollment questions. The Customer Service and EDECA Chapters of this report describe Liberty's review of the Call Center, and of the Company's guidance to Call Center employees regarding applicable NJNG and BPU policies regarding communications to customers on supplier-choice topics.

4. *NJNG-Affiliated TPS*

Data provided by NJNG indicated that an affiliate, NJR Retail Services Company, served as an active TPS from August 4, 2017 through June of 2018.[357] Further information we reviewed described this entity as a newly-formed NJR company later sold on February 2, 2018 to Direct Energy Business Marketing, LLC.[358] NJR has one active TPS affiliate, Phoenix Fuel Management Company, whose lines of business include supply of natural gas to large commercial, industrial, and electric generation customers.[359] While licensed in New Jersey, Phoenix Fuel Management Company, however, does not appear in the Company's provided list of TPSs and has had no customers or delivered volumes on NJNG's system.[360]

[iv] The EDECA Chapter of this report includes Liberty's evaluation of the Company's website material regarding the affiliate standards under New Jersey's Electric Discount and Energy Competition Act.

Management's data on marketers and their customers and delivered volumes included NJR Retail Services Company. This entity provided no residential or commercial service, and had just one Firm Transportation customer, to which it provided very small volumes. In each month, NJR Retail Services Company proved the smallest provider, with each year's deliveries representing just 0.1 percent of the total TPS-delivered FT volumes.

5. Follow-up On Issues Raised in Prior NJNG Management Audit

The previous audit of this type made recommendations for improvements in NJNG administration of supplier-choice activities. Regarding NJNG's website, the previous auditor recommended that the Company

- Place the supplier-choice information in a more "highly visible" location (Recommendation 24)
- Include on suppliers lists only those that are active (Recommendation 24)
- Make price-to-compare information more readily available (Recommendation 24)
- Include information and explanations as to the other non-supply charges choice customers would continue to receive from NJNG after switching to a TPS (Recommendation 24)
- Develop an on-line bill calculator that allows residential customers to input TPS offers and receive an estimated "typical" bill or one that incorporates a customer's past usage (Recommendation 24)
- Reinforce the need for Call Center representatives to remain neutral when responding to inquiries from customers seeking to switch their supplier from NJNG to a TPS. (Recommendation 25).

Liberty's audit field work examined the underlying issues and activities contained in those recommendations. The Conclusions and Recommendations sections of this chapter include our opinions. For each recommended action from the prior audit in this area, we sought from management both descriptions of all actions it undertook to respond to them, and all analyses or reports used by management that summarized or reported on those efforts.[361]

Management provided an Excel-templated matrix that may have been designed to track recommendation follow-up. The response stated, "These spreadsheets illustrate all pertinent information and resolution of each recommendation with Board Audit Staff. There was no final action taken by the Board of Public Utilities with respect to the NorthStar audit recommendations." For Recommendation 24, the "Utility Comments" section of the matrix stated, "The specified information from the recommendation is available on the Energy Choice web page. The Company regularly updates the Energy Choice information on its website."

The following table summarizes Liberty's review of these two recommendations in our audit field work.

Recommendation 24 Observations

Reccomendation and Support	Observed by Liberty	Liberty Comments
Improve the Energy Choice information on NJNG's website, and develop a process and schedule to review and update these pages at least quarterly. Specifically, the website should include: (Refers to Conclusion 3)	No	We found the website in generally good order, though the FAQ link was not functional. At least some aspects of the site are clearly not updated quarterly (the supplier list carred a date at least 8 months past the date last reviewed by Liberty).
• A link to the competitive supplier section of the website should be placed in a highly visible location on the home page, and made more visible on both the "My Home" and "My Business" subpages.	No	Supplier choice information does not have prominent placement on the website.
• The list of suppliers should include only active suppliers, or at least an indication of which suppliers are currently accepting new customers.	No	One supplier link indciated that no new customers were being accepted.
• The current BGSS rate for comparison with TPS offers should be readily available and kept up to date, for both residential and C&I customers.	Partial	We observed "Price to Compare" information for two Residential rate and Commercial rate classes, but not for other NJNG rate classifications.
• There should be a simple, user-friendly explanation of the charges that would continue to come from NJNG and a schedule of the current NJNG distribution, customer, and other fees and charges.	Partial	We observed the Customer Charge, Delivery charge, and "Price to Compare" information for two Residential rate and Commercial rate classes, but not for other NJNG rate classifications.

See the Customer Service and EDECA Chapters of this report for Liberty's review of call center operations and guidance to call center representatives regarding supplier choice.

C. Conclusions

1. After a period of decline, NJNG's service territory is attracting an increasing number of TPSs, even though they have not been competing with substantial success.

Large-scale data shows that NJNG's service territory has attracted an increasing number of TPSs serving Residential customers, and a relatively steady number serving Commercial ones. Monthly data shows new customers signing up with TPSs, and existing customers switching among TPSs, every month. These are signs of a competitive market.

Sector-by-sector customer numbers and delivery volumes, on the other hand, show TPS losses every year, most evidently in the Residential segment but also in Commercial. NJNG has added customers throughout the Audit Period; that TPS numbers of customers and delivery volumes have fallen suggests that they are not taking market share from NJNG.

2. Consolidation has proven a driving factor in the number of TPSs that have remained active in NJNG's service territory.

In a relatively mature market like New Jersey's market for retail natural gas, acquiring a competitor's business can be a cost-effective customer-acquisition strategy. That larger TPSs in New Jersey are acquiring smaller ones suggests that this strategy is at work.

Pleadings in BPU Docket No. GO23020100, filed in May 2023, show that NRG Energy, Inc. owns eight holders of gas licenses, as well as a number of retail electricity-supply licenses.[362] NJNG's Gas Transportation personnel are aware of other consolidation activity among TPSs that are active in NJNG's service territory.[363]

Note that the possibility of selling to a larger competitor offers smaller TPSs a reason to continue in business even as their customer numbers and sales volumes decline. Each such sale helps assure effective competition by the TPSs that remain.

3. Consolidation is also a factor in assuring effective competition in New Jersey's retail gas market.

As of the first quarter of 2023, TPSs owned by NRG Energy, Inc. accounted for at least 34 percent of NJNG's Tariff classes offering sales or transportation, and at least 11 percent of its Firm Transportation class. By that time, at least one other TPS had more than 10 percent of both of those classes. Others had greater-than-10-percent shares of one or the other of those two classes.

4. No circumstances unique to NJNG appear to constrain TPS participation in its service area.

NJNG has consistently shown high levels of retail customers and load served by TPSs in comparison with other state LDCs. Nevertheless, particularly with an inability to compete effectively on price on a large scale, TPS business levels in the NJNG service territory and even more so across the rest of the state are very low when compared with the level of competition that exists in neighboring states. We found no barriers uniquely imposed by NJNG, whose price to compare is simply much lower than what TPS participants can regularly or broadly offer.

With the competitive landscape across the state fundamentally similar it would appear to take a statewide review of underlying conditions and circumstance and their effects on competition to introduce substantial change. Certainly, for example, TPSs like the state's LDCs, need access to capacity to provide economical and reasonably assured service. The overall structure of capacity resources available, who controls them, and how they are being used may bear on the robustness of the state's competitive environment. In any event, it is clear that meaningful change, if it is feasible, must come from a statewide examination. We do make a number of recommendations that can marginally improve market awareness and functioning, but not to a level that can make significant movement in a level of competition in NJNG's territory that is strong compared with its state peers, but not so when compared to markets across the region.

The TPS share of Commercial and Industrial deliveries has been higher. New Jersey was initially in line with the neighboring states in its share of Commercial deliveries, with 68 percent versus 59 to 73 percent, but New Jersey's share fell to 56 percent, while the others increased slightly then were relatively constant. All four states remained steady above 90 percent of Industrial deliveries throughout the Period, but New Jersey's share was the lowest.

5. NJNG generally supports TPS activity in its service territory but could do more. *(Recommendation #2)*

The patterns of declining numbers of accounts using TPSs, and declining volumes delivered by TPSs, are common to all the New Jersey LDCs. NJNG has had the highest or next-highest proportions of accounts served by TPSs throughout the Audit Period.

We found NJNG's rules governing TPS activity to be fair, and its processes for supporting TPS supply operations to be constructive. NJNG's practice of allowing TPSs serving monthly-billed customers to deliver an average daily volume through each winter month facilitates TPS participation in a service territory that experiences significant day-to-day variation in requirements.

NJNG personnel involved with TPSs seemed generally supportive.[364] A representative of TPSs operating in New Jersey with whom we spoke complimented NJNG's treatment of them.

NJNG's supportive posture toward TPSs notwithstanding, a number of improvements can and should be made.

We reviewed the information that management made available to TPSs on its website. We requested a copy of the operating manual that NJNG provided to TPSs during the Audit Period; management reported that there was none. The website information for TPSs proved useful at an overall level, though the link provided at the *Information for Energy Suppliers* page links instead to a general "Contact Us" page. (Management should correct this.)

Our review of the supplier choice information and information for TPSs pages of the other New Jersey LDCs found them similar in content. A key difference was the inclusion of a "Third Party Supplier Operating Manual" on the SJG website, and a "TPS Gas Operating Manual" on the PSE&G website. NJNG previously used such a manual (available at: https://web.archive.org/web/20070209084106/http://www.njng.com/pdf/3rd%20party%20supplier%20Hand%20Book.pdf) as described in Volume One: Gas Supply in Chapter I-7 of 2007 audit that we conducted on behalf of the BPU. When asked to explain the discontinued use of the handbook, management cited the overall passage of time since the establishment of EDECA and information available to TPSs via other resources.[365]

Use of such a manual comprises good practice and provides a useful tool for marketers and for Company personnel to incorporate guidance and clear instructions that go beyond provision of sign-up forms, agreements, and terms-and-conditions documentation. The PSE&G manual, for example, includes clear and helpful delineations of roles and responsibilities of the customer, the utility, and the TPS. Also included, in addition to tariff information and various other resources, are consolidated explanations and tips for EDI and EBB use, detailed instructions for nomination and confirmation requirements, and information on how to request and receive relevant customer information. The former NJNG operations manual introduced itself with a message from the CEO stating his belief in the competitive energy market and the Company's commitment to improving service to TPSs, and a message that the Company "designed the supplier handbook with you in mind to make it easier for natural gas suppliers to conduct business with NJNG." Management last produced an update to the handbook in 2006.[366]

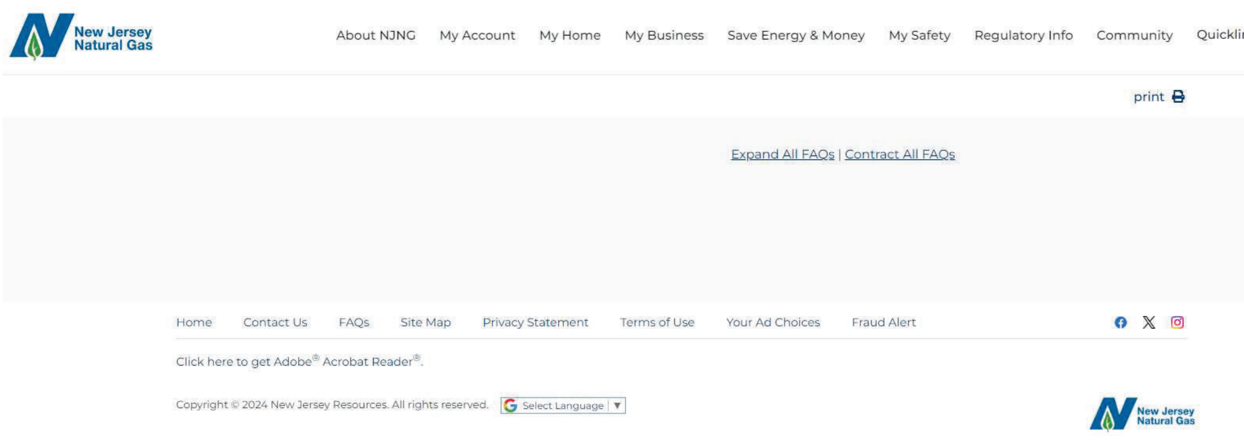
6. **While generally in line with the website material other New Jersey LDCs make available to customers regarding supplier choice, some informational improvements could be made.** *(See Recommendations #3 and #4)*

We reviewed the information that management makes available on its website related to natural gas supplier choice. We found the types of information provided generally consistent with those of PSE&G, SJG, and ETG. We found suitable information about the supplier-choice process, a link to available TPSs, appropriate links to the BPU website, and information about NJNG's "Price to Compare". We did, however, observe areas for improvement in promoting customer education and understanding:

- The supplier-choice page continues to lack the prominent location recommended by the previous audit of this type

- Second, when asked for available information for customers inquiring about natural gas supplier choice, management identified five NJNG's website links, with the one linking to an "FAQ" page resulting in a blank screen with "Expand All FAQs" and "Contract All FAQs" links that did not function. The following depicts the results at the FAQ link.

Results at https://www.njng.com/my-home/energy-choice/faqs.aspx



- Third, the supplier list noted updating on September 20, 2023, which we did not find sufficiently timely to ensure completeness and accuracy[367]
- Fourth, the relevant "Price to Compare" information was not suitably prominent, consolidated or clear, involving information presented across various pages and links
- Fifth, as the previous audit of this type found, the website still does not include a calculator that customers can use to evaluate offer competitiveness.

Our review of NJNG's website found that the "Compare Offers" page identified by the previous auditor no longer exists; therefore, no comparable offers or calculators were available. Management later confirmed its removal.[368] Some jurisdictions maintain a statewide website that provides such information, while others mandate that each utility site include it.

7. **Some NJNG customers take substantial delivered volumes at rates outside of those prescribed by its tariff; each such instance has been approved by the BPU, and the Company's recently-filed rate case should permit an appropriate forum for further discussion.** *(See Recommendation #4)*

Of the five such relationships, four represent long-established ones dating back to at least the early 2000s. The most recent of these agreements similarly predates this Audit Period. While each has been approved by the BPU, a July 12, 2023 Board Order required that that NJNG "evaluate the need to create a separate tariff for large electric generators and include testimony addressing this issue in its next base rate case petition."[369] With the Company's January 2024 rate application under review, it may provide opportunity for that review. From 2015 through 2022, deliveries under the [redacted] agreement averaged approximately [redacted] of total NJNG system throughput, levels that underscore the need for consideration of customer interests.

D. Recommendations

1. **Consolidate supplier choice information and give it greater website prominence.** *(See Conclusion #6)*

Information about supplier choice should begin with prominent placement on the NJNG home page. It should be accompanied by graphics that direct attention to the securing of information about customer choice and how to analyze and make decisions about suppliers. All links should function. There should be at least quarterly updates of TPS alternatives available.

Price to compare information should be highlighted, reachable with a minimum of required "clicks," and avoid the need for moving back and forth between links. All the website intends to offer about price to compare should be available in one location.

2. **Enhance the information NJNG makes available to current and potential TPSs.** *(See Conclusion #5)*

Use of a TPS operating manual by LDCs, including the one formerly used by NJNG, represents a best practice. The statements and commitments from NJNG's CEO that led off the previously-used NJNG one established an appropriate tone. We recommend consolidation of the various sources of information, summation of the roles and responsibilities of each party (customer, TPS, NJNG), identification, guidance, and instructions on the key electronic interfaces that support those activities in one document that NJNG makes available to TPSs and for use by its own employees.

NJNG should also enhance the information NJNG makes available to potential TPSs by correcting and improving the information on the NJNG website. Management should evaluate the material it makes available to TPSs on its website and ensure the links included function as intended. As part of re-instituting its TPS Operating Manual, determine what other information it should present on the website and how best to present it.

3. **Evaluate the inclusion of a bill calculator option.** *(See Conclusion #6)*

Inclusion of comparable offers and on-line bill calculators on the website would increase visibility and understanding of options, including pricing. However, where they exist, they are more typically the subject of common use by all of a jurisdiction's utility service providers. NJNG should make known to the BPU its views on the advantages and disadvantages of such an addition and propose what it views as an acceptable model should the BPU consider adoption of statewide inclusion of such an option.

4. **If it has not already done so as part of its recently-filed rate case, management should comply with the intent of the July 12, 2023 Board Order required that that NJNG "evaluate the need to create a separate tariff for large electric generators and include testimony addressing this issue in its next base rate case petition" by preparing a report for the BPU on these matters after seeking BPU approval of the areas the report should include.** *(See Conclusion #7)*

In the event that the Company's rate filing did not comply with the cited Order, management should expeditiously seek BPU approval of the topics a report on the matter should cover, and provide it to the BPU within 90 days.

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Chapter V: Other Reporting

A. Background

1. Other Regulatory Reports

We examined regulatory reporting not addressed elsewhere in this report. The *Accounting and Property Records* Chapter of the accompanying Phase Two report addresses reporting to the U.S. Securities and Exchange Commission ("SEC") (*e.g.*, Forms 10K and 10Q). NJR and NJNG are not required to file company financial statements or service company financial statements with Federal Energy Regulatory Commission ("FERC"). The reporting addressed in this chapter therefore covers 80 reports regularly filed with the BPU - - 21 annually, 21 quarterly, 12 monthly, 6 semi-annually, 1 bi-weekly and 19 as needed.[370]

We examined the internal controls addressing accuracy and timeliness of filings required in New Jersey and federal reports and sought to identify any penalties assessed in connection with requirements regarding such filings.

From the list of 80, we initially selected for detailed examination a sample of the following seven reports for calendar years 2016 and 2020:

- *BPU Annual Report*
- *Compliance Plan*
- *Employee Transfers*
- *Location of Offices*
- *PUHCA report*
- *Monthly Financial Report*
- *Utility Cyber Security Program Requirements*

Neither NJR nor NJNG must file either FERC Form 2 or FERC Form 60. However, the BPU Annual Report is designed to provide information similar to that contained in FERC Form 2, and the PUHCA report provides similar information as the FERC Form 60.

We examined the policies and procedures governing report preparation, internal controls governing financial reports, state and federal reporting requirements, data consistency among reports, timely and accurate reporting and report retention.

2. Sustainability

NJR categorizes what are generally viewed as Environmental, Social and Governance ("ESG") commitments, attributes, and initiatives under the category of "Sustainability." A common program applies to all NJR operations, including those of NJNG. A small, centrally staffed parent-level organization and a Sustainability Council provide day-to-day support and in turn governance of what NJR terms its "Sustainability journey." The Council includes a number of senior NJR executives and the senior executive of NJNG.

We reviewed Sustainability strategy, approach, and reporting framework employed by and on behalf of NJNG. We examined the resources engaged, management involvement, and senior leadership and board of director oversight. We examined means for and controls addressing data collection, risk and opportunity assessment and identification, external resources engaged, and responsiveness to current initiatives that may have substantial impacts. We also examined the costs incurred in addressing ESG matters, including those from outside resources.

Our examination of Sustainability included a review of processes and controls applicable to NJNG and NJR to Sustainability and to Environmental, Social and Governance ("ESG") reporting activities, including:

- Policies and controls for assuring reliable, complete, and accurate information collection
- Engagement of management in reporting and disclosure
- Internal Audit examination of reporting and disclosure
- Process for identifying ESG risks and opportunities
- Frameworks and standards employed
- Consideration of and preparation for increased disclosure requirements
- Use of third party assurance services for reporting and disclosure
- Third party assurance and other reporting and disclosure costs
- Financial statement reporting of and customer responsibility for reporting and disclosure costs.

We also examined prior and planned use of green bonds to determine their use by NJNG and the potential for impact on NJNG from those issued by the parent or affiliates. We also examined their rate levels in comparison to those expected from other debt financing instruments.

B. Findings

1. Other Regulatory Reports

a. Financial Reporting to the FERC

FERC Form 2 collects financial and operational information from natural gas companies subject to the jurisdiction of the U.S. Federal Energy Regulatory Commission. NJNG is not required to file FERC Form 2 reports because the filing requirements are limited to major natural gas companies, defined as natural gas companies whose combined gas transported or stored for a fee exceed fifty million dekatherms in each of three years. NJNG does not operate as a major interstate natural gas pipeline subject to FERC jurisdiction.[371] However, the BPU Annual Report selected for further review, is based on the FERC Form 2 and provides similar information to the BPU that FERC Form 2 provides.[372]

Annually required FERC Form 60 filings apply to centralized service companies. These forms collect financial information from centralized service companies subject to the regulation of FERC. NJR has received exemption from FERC with respect to Form 60 filings.[373]

N.J.A.C. 14:4A.4(j) provides that New Jersey electric and natural gas utilities exempt from filing a Form 60 must provide certain financial and organizational information to the BPU no later than May 1 of each year. This information is provided in the PUHCA report selected for further examination.[374]

b. Policy and Procedure Documentation

Our request for the policy and procedure documents governing the preparing and filing of reports to the BPU produced a response that specific requirements established by the BPU regarding each specific report governed preparation and filing; therefore a generic policy and procedure document did not exist.[375] However, BPU requirements addressing substantive report content and filing requirements do not purport to address the policies and procedures used to ensure the completeness and accuracy of the reports or for ensuring that they get filed timely. Management has also stated that no specific policies or procedures govern the preparation of the requested reports, except for the Utility Cyber Security Program Requirements report.[376]

c. PUHCA Report

PUHCA report requirements address allocation methodologies and inter-year comparisons of allocation factors. N.J. Administrative Code ("N.J.A.C.") Section 14:4-4.4(j) addresses filing requirements for gas or electric public utilities employing service agreements with a subsidiary of its holding company, but exempt from filing a Form 60 with FERC. This Code provision requires annual filings with the BPU by May 1 of each year including:[377]

- A comparative income statement and balance sheet for the serving subsidiary
- A schedule and analysis of billings to the public utility and all other subsidiaries
- Allocation methods
- Current year plan factors compared with previous year plan factors and variances.
- An organizational chart for the serving subsidiary.

The cover letter to the annual PUHCA report, which is intended to satisfy the Code's filing requirement states, "Please note that all charges are directly assigned to the respective affiliated company so there is neither an allocation methodology to be provided nor current or prior allocation factors to be compared."[378] However, the NJR and NJRS Service Agreements with NJNG and Cost Allocation Manual (addressed more fully in this report's *Cost Allocations* Chapter, address specifically the use of allocations).[379]

Management explained the contradiction by stating that the quoted language was accurate when the PUHCA report was initially required but the cover letter was inadvertently not updated.[380] Management acknowledged in subsequent data request responses that there was no time during the audit period during which the statement was in fact accurate, (*i.e.*, when no allocation methods or factors apportioned service company costs).[381] We then asked when the PUHCA report that contained the incorrect language was first filed. As of this report date, that request remains unanswered.

d. Document Accuracy and Retention

From the sample of reports requested, we found a number of missing documents and missing or inaccurate information in addition to the inaccurate cover letter and missing information in the PUHCA report described above. A request for Location of Offices reports produced all except for the 2014 version that management could not locate. The 2019 report letter was dated incorrectly.[382] Management could not locate the transmittal letter for the 2016 Employee Transfers report, and there was no indication that the report was actually filed. The transmittal letter for 2017 included lists of employees transferred in both 2016 and 2017, suggesting that the 2016 report may never have been filed.[383] The 2021 Annual Financial Report contained no signature.[384] The Monthly Financial Report for December 2015 was not available, with management noting that it did not begin keeping NJNG monthly financial electronically until June 2016.[385] Management could not locate the 2015 PUHCA report.[386]

Management has reported no communication from the BPU regarding timeliness of report filings, or any questions regarding any of the 80 reports noted in the Background section, from 2014 to date.[387] Similarly, management has reported no BPU penalties or fines associated with filing timeliness or content in any of the 80 reports at issue from 2014 to date.[388]

e. NJNG Involvement in Report Preparation

The NJNG Regulatory Affairs organization has had responsibility for preparation of three of the seven reports we selected for further evaluation - - Compliance Plan, PUHCA, and Utility Cyber Security Program Requirements. The NJNG Customer Service department has had responsibility for preparing the Location of Offices report. The other three reports are prepared a the NJR level. Accounting group personnel prepare the BPU Annual Report, and the Monthly Financial Report on behalf of NJNG. NJNG Regulatory Affairs personnel review the reports, but do not have the ability to verify the data involved.[389]

f. Internal Controls Governing Report Preparation

The lack of policy or procedure documentation raised questions about the sufficiency of internal controls over the non-financial reports addressed in this chapter. The Annual Report to the BPU includes a corporate officer certification signed by NJR's Senior Vice President and Chief Financial Officer. That certification states:[390]

> *I am responsible for establishing and maintaining internal accounting controls as defined by the FERC. I have designed such internal accounting controls to ensure that material information relating to the respondent and its subsidiaries, to the extent that the respondent has subsidiaries, is made known to me by others within those entities." Further, "I have evaluated the effectiveness of internal accounting controls as of a date within 90 days prior to the period in which this report (evaluation date).* [sic]

Management provided a list of 218 internal controls over financial reporting as applicable, noting further annual Form 10-K report documentation of the evaluation of the effectiveness of those internal accounting controls.[391] We examined the control environment, the Sarbanes-Oxley process, and the effectiveness of the Internal Audit function in the *Controls, SOX, Auditing, and Listing Requirements* Chapter of the accompanying Phase Two report.

g. Consistency of Financial Data Among Reports

We tested the consistency of financial data among the Annual Report to the NJBPU, the PUCHA report and the Monthly Financial Reports provided to the NJBPU. The Annual Report to the BPU uses a fiscal year ending September 30; the PUHCA report employs a calendar year basis. All the reports contain year-to-date information, which permitted the creation of comparable time periods, using the year-to-date data in the monthly reports.

2. Sustainability

a. Reporting and Disclosure Framework

NJR addresses ESG as part of its overall commitment to and plans and means for achieving what it terms "Sustainability."[392] NJR's fiscal 2023 Sustainability Report sets forth a number of commitments on behalf of itself and the business operations it carries out through subsidiaries and other ventures, including NJNG:[393]

- Playing a central role in building a cleaner, more sustainable future through support of greenhouse gas emissions reduction goals and a sustainability strategy supporting economy-wide decarbonization
- Lowering the companies' operations' carbon footprint while safely transporting natural gas
- Transparency in reporting against carbon emissions reduction goals
- Following all laws and regulatory requirements and mitigating impacts of operations on water resources
- Maintaining a culture that protects employee well-being, engagement, and sense of belonging
- Refining and refocusing efforts to meet social needs, focusing on:
    - Healthcare in underrepresented communities
    - Community presence in educating the public on personal, professional, and societal development
    - Environmental empowerment, education, and outreach
    - Working with organizations that provide affordable homeownership opportunities
    - Collaborating with organizations advocating for groups that include people of color, veterans, LGBTQ+, seniors, those with disabilities, and "more"
- Helping customers save energy and money through conservation and efficiency through programs and initiatives like Conserve to Preserve, SAVEGREEN, and The Sunlight Advantage.

NJNG offers Conserve to Preserve as a set of tools and resources that inform energy decisions to save energy and money and to protect the environment. A Conserve to Preserve Dashboard offers a brief instructional on saving energy with a free online home energy audit. A following Quick Home Energy Checkup+ seeks to identify means for reducing energy use and lower your bills, including no cost energy-efficiency measures. SAVEGREEN offers rebates, incentives, and no interest repayment to support equipment upgrades and whole-house solutions. NJNG affiliate NJR Clean Energy Ventures ("CEV") offers Sunlight Advantage as an alternative (including maintenance and repairs) to purchasing or financing customer solar installations, working in partnership with installation partners.

NJR has prepared corporate sustainability reports for more than a decade. Its 2022 Sustainability Report[394] provides a comprehensive statement of its values, goals, governance, programs, projects, and activities designed to promote Sustainability. The 2022 Sustainability Report provided a concise statement setting forth the following range of commitments, addressing the foundation of NJR's sustainability principles and providing a clear expression of how NJR defines the elements of Sustainability for all of its operations, including NJNG:

> *NJR is committed to a clean energy future and to being a leader in helping to achieve society's climate and emission reduction goals. We strive for corporate governance best practices that provide appropriate, independent oversight. And we seek to have a positive and lasting impact on people — promoting diversity, equity and inclusion and effective talent management in our workforce, best-in-class employee and customer safety and investing to lift up and improve outcomes in the communities in which we live, work and serve.*

The core elements of NJR's definition of and efforts to promote sustainability continued in 2023. The 2023 Sustainability Report cited the following major achievements of that year:

- NJRCEV's development of the largest capped landfill and floating solar array in North America
- NJNG: Highest single-year investment ($60 million) in energy-efficiency programs that reduce carbon emissions by reducing energy consumption
- NJR-wide: advancement of carbon capture technology and high efficiency gas heat pumps in NJR facilities
- NJR-wide: industry and academic research group partnerships (citing GTI Energy, Stanford University, Princeton University) and Our Nation's Energy Future (ONE Future) designed to support emissions reduction and innovation
- NJR charitable foundation: contribution of $560,000 to New Jersey Audubon to enhance Pinelands National Reserve coastal resiliency
- NJR-wide: Fifth consecutive year of recognition by Newsweek as one of America's Most Responsible Companies
- NJR Employees: a near doubling (to 4,000 hours) of volunteer service by employees.

An NJR Sustainability web site at the time of our audit field work set forth NJR's key priorities across the areas of ESG:[395]

- Environmental: providing safe and reliable customer service through "high-integrity, environmentally responsible" assets, support efforts to use energy more wisely in protecting the environment
- Social: employing best practices in human capital management, local community and nonprofit engagement, and safety standards
- Governance: focusing on responsible corporate governance, adherence to ethical business practices and principles, and meeting commitments to stakeholders.

Management provided a document that set forth a more detailed list of NJR's Sustainability Guiding Principles:[396]

- *Support and aid in the development of sound public policies and corporate strategies that address climate impacts and ensure reliable, affordable and clean energy for our customers.*
- *Embrace innovations across technologies and fuel types that deliver energy with improved environmental outcomes.*
- *Reduce greenhouse gas emissions from operated assets by prioritizing mitigation strategies and reduction targets.*
- *Increase transparency about sustainability progress through public reporting and stakeholder communication.*
- *Expand customer energy efficiency, conservation and environmental stewardship opportunities.*
- *Promote strong corporate governance practices that support the creation of long-term value for our stakeholders by encouraging accountability and thoughtful decision-making by our management and Board of Directors.*

- *Continually adopt and promote best practices in human capital management that complement a diverse and inclusive workforce.*
- *Maintain industry-best safety standards to protect the well-being of our employees, customers and the communities we serve.*
- *Utilize responsible sourcing strategies and monitor supplier sustainability efforts within NJR's supply chain.*

Engage with our local communities and nonprofits in the spirit of support and cooperation.

The 2022 Sustainability Report cites a number of programs and initiatives pursued through its entities other than NJNG, including:

- CEV's operation as the state's largest commercial solar owner-operator with a "robust pipeline" underway
- Participation in hydrogen demonstration as an "early mover."

Specific NJNG measures cited include:

- First New Jersey natural gas utility to eliminate all cast iron pipe and unprotected steel facilities, reducing greenhouse gas emissions while improving system safety and resiliency
- Large scale customer energy-efficiency program expenditures of over $284 million to date and a program authorizing energy efficiency investments of $259 million from 2021 through 2024
- The Howell Green Hydrogen Facility, which mixes hydrogen into the utility's distribution system through an electrolyzer powered by wind (and eventually solar as well) electricity supply since entering service in October 2021
- Infrastructure upgrades to provide an option for storage (after electrolytic conversion to hydrogen) of output from offshore wind electricity generation development at times of lower electricity system demands, and for transport and eventual separation of hydrogen with lower energy loss as compared with battery usage
- Exploration of methods for using wastewater discharge after treatment as a feedstock for producing green hydrogen
- Exploring means for turning emissions from co-generation, flaring and passive emission sources into a fuel source for end-use equipment through collection, refining, and transportation
- Customer rebates, financing options, and grants for equipment replacement and weatherization
- Use of high efficiency gas heat pumps at utility buildings and support for industry-led North American Gas Heat Pump Collaborative gas heat pump design, education, and introduction of units in North America
- Natural gas pipeline and storage project development by NJR's Storage and Transportation business ("S&T"), allowing displacement of other fuels by cleaner natural gas
- Examination by S&T of opportunities for reducing emissions related to its operations.

The 2022 Sustainability Report summarizes progress in meeting escalating emissions reduction goals over a period of more than ten years:

- Meeting the goal of reducing operational emissions by 20 percent from 2006 levels by 2020 - - met by fleet, facilities, and distribution system reductions

- Meeting the further goal of reducing those emissions by 50 percent from 2006 levels by 2030 - - met by adding solar installations at facilities, purchasing renewable electricity, our distribution system investments, purchase of RNG offsets for natural gas used at NJR facilities (including some at NJNG), use of compressed natural gas to fuel fleet vehicles
- Establishing a longer term goal in 2021 to achieve net-zero carbon emissions from New Jersey operations by 2050 (the state goal seeks an 80 percent reduction from 2006 levels)
- Establishing an interim expectation for a 60 percent reduction from 2006 levels by 2030 - - with efforts in 2022 focused on removal of leak prone system delivery facilities and with the remainder of this interim expectation resulting from increased low- and zero-emissions vehicles or fuels and investments in decarbonized fuels
- Participating in the ONE Future group of 50 plus natural gas companies across the industry value chain to identify and implement methane emissions reductions, operating under a voluntary goal, being met so far, to reduce them to one percent or less by 2025.

The 2022 Sustainability Report also addresses values, goals, and initiatives more generally applicable across NJR, including:

- Environmental issues of waste and water management, the Coastal Climate Initiative and wetlands preservation investments and association memberships
- Company foundations and giving and support for employee charitable giving, volunteerism, and community partnership
- Fostering an environment that values and promotes employee and supplier diversity, equity, inclusion, respect, and empowerment
- Talent acquisition and management programs and initiatives, including partnering with outside organizations
- Employee engagement and wellness programs and measures
- Employee and public safety and emergency response
- Service reliability, resiliency, affordability, and customer service
- Corporate governance, enterprise risk management, code of ethics, political contributions, reporting and transparency, cyber and information security.

b. Oversight and Management of Sustainability at NJR

The Nominating and Corporate Governance Committee of NJR's board of directors ("N/CG") has responsibility for overseeing Sustainability issues including evaluations of the risks associated with those issues. The Committee's oversight responsibilities extend to Sustainability initiatives, climate change strategies and Sustainability strategy integration into overall strategic planning. The N/CG charter gives the committee responsibility to:[397]

> *Oversee the Company's practices and reporting with respect to environmental stewardship, sustainability and corporate social responsibilities that are of significance to the Company and its stakeholders, and, if appropriate, make recommendations to the Board regarding, or take action with respect to, such matters.*

The Council is dedicated to ensuring the company's sustainability strategy is executed across the various business segments in a coordinated and effective manner. The Council meets at least every other month and provides a forum spanning all NJR businesses. This leadership structure supports the development and implementation of NJR's sustainability strategy.

An NJR Corporate Sustainability Council ("CSC") reporting to the NJR CEO has broad responsibility for assuring coordinated and effective Sustainability strategy execution at all business operations. Meeting at least every other month, this Council provides a forum for "education, dialogue, priority-setting and strategic decision-making among senior leaders." CSC members have responsibility for promoting sustainability through all levels of the organization, advising on policy, objectives, and issues, and for ensuring incorporation of sustainability into business planning. The CSC operates under a documented charter.[398]

The following NJR or subsidiary officers comprised NJR CSC membership at the time of our field work, with the chair and additional officer members as designated by the NJR CEO:

- NJR Chief Financial Officer
- NJR Chief Human Resources Officer
- NJR General Counsel
- NJR Vice President Corporate Strategy and External Affairs,
- NJR Vice President of Regulatory Affairs, Marketing and Energy Efficiency
- NJRHS & NJR Retail Senior Vice President
- NJNG Vice President.

The NJR CSC adopts sustainability guiding principles and a strategy to "improve environmental, social and corporate governance accountability and performance." Guidance under which the NJR CSC operates calls for applying a single framework for all NJR sustainability efforts, incorporating sustainability practices into commitments made to stakeholders, developing measurable goals and objectives, communicating initiatives and results to stakeholders, and ensuring business unit accountability for sustainability. NJR CSC guidance also calls for maintaining for employees a comfortable, inclusive work environment, fair evaluation, health and safety security, and full engagement at work. The charter contemplates an annual Corporate Sustainability Report.[399]

NJR considers all employees as contributors to Sustainability, seeking to establish a culture that promotes feedback, assessment, and continuous improvements. NJR established an Office of Sustainability in 2020 to take day-to-day responsibility for the principles that guide Sustainability goals and objectives. These responsibilities include implementing CSC recommendations, integrating Sustainability into work processes and practices, promoting employee engagement, and tracking and reporting Sustainability data.

The Office includes a Director, Strategic Initiatives and Sustainability and an analyst. The director operates in NJR's Strategy group, spending the vast majority of her time on sustainability matters. The analyst works essentially full time on sustainability matters. The NJR Office of Sustainability coordinates the activities related to Sustainability reporting and disclosure. Its personnel collect, vet, and prepare information for reporting.

External Reporting, another NJR organization with principal Sustainability responsibilities, operates under the direction of the NJR Corporate Controller. External Reporting has responsibility for ensuring the accuracy and completeness of sustainability data collections supporting specific disclosures (*e.g.*, carbon emissions). NJR transferred this responsibility to External Reporting following an audit by PwC (acting as internal NJR auditors). Recognizing the increasing visibility of sustainability disclosures and the complexity of underlying calculations, this audit produced clarification and enhancement in existing controls and the transfer of certain responsibilities to External Reporting. The External Reporting group consists of a Manager of External Reporting and a senior analyst.

The work of these two groups includes ensuring the quality and integrity of Sustainability information in the annual NJR Corporate Sustainability Report. Corporate Communications also provides support for these activities. The Office of Sustainability also works to engage the NJR business units substantially in identifying and providing information related to areas within the scope of what NJR defines as sustainability. The NJR CSC and the Board of Directors' Nominating and Corporate Governance Committee also review the content of the Sustainability Report, whose release the committee must improve.

Internal Audit undertook an examination of Sustainability metrics, in light of the SEC proposal to require disclosure of climate-related information in SEC disclosures. Internal Audit intended its examination to support management's identification of key risks, controls, data quality, and document retention in anticipation of SEC adoption of proposed requirements. The October 2022 report examined 33 primary controls, finding significant efforts already made to prepare for operation under the proposed SEC requirements, with action needed to enhance roughly half of them and to create a small number not yet in place.[400]

c. Reporting Standards

NJR reports against the Global Reporting Index ("GRI"), an Amsterdam-based, independent, non-profit, institution that has for more than two decades published global standards for sustainability reporting. The 2022 Sustainability Report provides measures against those standards or references to where another publicly available NJR document does so. The 2022 Sustainability Report also makes reference to where its content provides information recommended for disclosure by the Task Force for Climate-Related Financial Disclosures. The Financial Stability Board ("FSB") created the task force to identify information companies should disclose to support financial community assessment and pricing of climate change risks. The FSB, an international body, monitors and makes recommendations about the global financial system, coordinating with national financial authorities and international standard-setting bodies responsible for developing financial sector policies. The 2022 Sustainability Report also provides a cross reference to publicly available NJR documents that provide the information specified by the American Gas Association Gas Company ESG/Sustainability Reporting Template, much of it addressing NJNG company, system, and emissions data. The 2022 Sustainability Report cites two other sources used in identifying sustainability disclosures it contains: the Sustainability Accounting Standards Board and the Task Force on Climate-related Financial Disclosure ("TCFD"). The 2022 Sustainability Report addresses in detail the vast majority of the disclosures recommended by these groups

GRI describes it roots as lying in non-profit organizations CERES, the Tellus Institute, with involvement by the UN Environment Programme. GRI cites its 25 year history of development of "global best practice for how organizations communicate and demonstrate accountability for their impacts on the environment, economy and people." GRI reporting standards that the group describes as "the world's most widely used" address measures that include biodiversity tax, waste, emissions, diversity, equality, health, and safety.[401]

The American Gas Association ("AGA"), an association of gas industry participants, and the Edison Electric Institute ("EEI") have developed a voluntary reporting template to assist its members in providing to the financial sector "more uniform and consistent ESG/sustainability data and information."[402]

d. Sustainability Costs

Outside firm ERM (Environmental Resources Management), an internationally recognized consultancy, worked extensively with NJR through 2021 in a variety of engagements related to Sustainability matters. Work that ERM undertook with NJR in this period included reviews and assessments of the company's reporting and disclosure strategy, approach, processes, data, coverage, and gaps. The goals of ERM's work with NJR included streamlining data collection, improving data quality, increasing alignment with best practices, improving rankings, and enhancing reputation with stakeholders.[403] ERM's work with NJR in 2021 also included screening and measuring physical climate risks and identifying and analyzing scenarios under which climate risks, opportunities, and exposures may emerge and develop.

[redacted][404] Management has reported no substantial outside costs related to Sustainability subsequently. The NJR businesses continue to undertake activities designed to support decarbonization, but they are considered as involving now normal business activities. NJR does not separately report costs associated with Sustainability activities, accounting for them as a non-segregable part of operations and maintenance expense.[405]

e. Sustainability Assessments

NJR's Sustainability practices call for periodic Sustainability Assessments - - the last performed in connection with issuing the 2022 Sustainability Report. These assessments seek to set and align Sustainability goals through identification of Sustainability issues, consideration of Sustainability best practices and standards, benchmarking, securing of internal and external stakeholder feedback, and use of annual risk assessment. Topics reportedly addressed in the assessment process have included:[406]

- Climate change risks and opportunities
- Greenhouse gas emissions
- Diversity, equity, and inclusion
- Service affordability
- Public Safety and emergency response
- Service reliability
- Investment in infrastructure
- Clean energy technology
- Cyber and information security
- Public policy engagement.

f. Pending External Requirements

A number of frameworks and standards address Sustainability, but to date, companies like NJR do not operate under specific, enforceable requirements. However, a proposed rule the U.S. Securities and Exchange Commission ("SEC") released in March 2022 would mandate Form 10-K reporting of greenhouse gas emissions and strategies addressing reduction in climate risk. Postponed a number of times, a final rule remains pending, following more than 16,000 public comments. Many of those comments express concern about impacts on small businesses and availability of bank lending. One draft version also would impose extensive requirements for the disclosure of emissions, including so-called "Scope 3" emissions, which arise from a reporting entity's supply chain. No final completion date has been announced, but the SEC failed to achieve its expected release date sometime in 2023, with the latest agency expectations citing April 2024. The pending SEC disclosure rule has significant commonality with but does not go as far in Scope 3 reporting requirements as those already in place under the European Union's Corporate Sustainability Reporting Directive. As it has done in imposing state requirements unilaterally in many areas of commerce, California has also adopted Scope 3 reporting requirements.

Completion of the SEC rule would have significant implications for NJR operations at NJNG and other of its business operations. Not only would NJR have to address its own and its suppliers and vendors emissions, but its relationship as a supplier and vendor to others make its emissions potentially material to 10-K reporting by its customers.

The proposed rules thus remain under consideration in the face of significant debate. One source of that debate concerns the applicability of the U.S. Supreme Court's ruling in *West Virginia v. EPA*. There the court applied the "major questions" doctrine in requiring "clear congressional authorization" to support decisions with large economic and political significance in extraordinary cases considering the "history and breadth of the authority" asserted by the agency. Certain aspects of the SEC's proposed rule raise particularly significant issues for natural gas distribution companies.

Under the Congressional Review Act, both houses of the U.S. Congress voted to block a U.S. Department of Labor rule clarifying that those who manage retirement program investments can weigh ESG factors when making investment decisions. The Labor Department rule replaces the prior administration's rule considered as discouraging consideration of ESG factors, even where in the financial interests of the plan's beneficiaries. The Congress failed to override the President's veto of Congress's action. Legal challenges to the rule sit now before the U.S. Court of Appeals for the Fifth Circuit.

A recent announcement by the International Sustainability Standards Board ("ISSB") underscores the substantial uncertainty surrounding Sustainability. The ISSB had announced its expectation to issue sustainability and climate risk disclosure standards in the second quarter of 2023. The ISSB standards became effective January 1, 2024, but with substantial relief for the first annual reporting period, particularly with respect to disclosing Scope 3 emissions.

The IFRS Foundation, established as a not-for-profit, public interest organization to develop globally accepted accounting and sustainability disclosure standards, operates two standard-setting boards, the International Accounting Standards Board ("IASB") and ISSB. The IFRS founded the

ISSB in November 2021. The ISSB has explained its creation stating, "Sustainability factors are becoming a mainstream part of investment decision-making. There are increasing calls for companies to provide high-quality, globally comparable information on sustainability-related risks and opportunities, as indicated by feedback from many consultations with market participants." The ISSB cites "international political support" for its work to develop "Sustainability Disclosure Standards, including from the G7, G20, and a number of other international securities commissions, boards, finance ministers, and central bank governors.

g. Green Bonds

Green bonds operate financially as do other fixed income securities. Issuers use the funds they generate to fund activities that further sustainability. Some typical applications include energy efficiency, clean energy production, mass transit, windfarms, carbon reduction, and environmentally sustainable housing. NJNG has not employed them, but NJR has on two occasions, once in 2019 ($150 million) and again in 2020 ($120 million). NJR cites its use of green bonds as "highlighting NJR's commitment to sustainable business practices."[407]

NJR used the combined net proceeds to fund 17 solar projects (having a combined capacity of 123 megawatts) acquired or placed into service from fiscal year 2018 through 2020. Most of the projects were connected to the electrical grid, several employing net metering. Management reports that these projects produce total annual carbon dioxide reductions of 119,613 tons - - the equivalent of removing 24,333 cars from the road each year. Management reports no plans, including by NJNG, to issue further green bonds. Management also reports that the issuance of these bonds came with no price premium as compared with comparable, non-green issuances and without notable issuance concerns.

C. Conclusions

1. Other Regulatory Reports

1. NJNG and NJR are exempt from filing FERC forms 2 and 60, but our review of equivalent reports filed with the BPU found them sufficient in form and content.

We examined the documentation provided by the Company supporting the FERC exemptions and found them to be in order. The Annual Report to the BPU employs FERC Form 2 design and contains essentially the same information. The PUHCA report is intended to capture the key parent and service company information provided in the FERC Form 60.

2. Policy and Procedures for the preparation and filing of key reports to the NJBPU are substantially lacking. *(See Recommendation #1)*

We were unable to examine policy and procedure documents relating to the preparation of financial or other key reports, because none exist. Without such documentation, preparers do not have a road map to proper documentation and are only able to rely on their own prior experience or the review of past reports. The reports examined contain a significant number of process related errors. A reported "administrative oversight" resulted in an incorrect statement in the report cover letter, and the omission of key information required by the report.

3. The PUHCA report to the BPU does not contain key information required by N.J.A.C Section14:4-4.4(j). *(See Recommendation #1)*

The PUHCA report is a key report that is intended to provide the BPU with information about NJNG's parent and service company. This report is required in lieu of the FERC Form 60, because NJNG is exempt from filing FERC Form 60. Two key requirements of the N.J.A.C. call for the Company to provide the allocation methodologies utilized and a comparison of the current year's factors to the factors from the prior year.

The cover letter to the report contains language that states that all charges are directly assigned to the respective affiliated companies (including NJNG) so there are no allocation methodologies to be provided nor any allocation factors to compare. This is not true, as detailed in the *Cost Allocations* Chapter of this report.

When asked about the erroneous statement in the PUCHA report cover letter, the Company replied that the statement was true when the report was initially required and that the cover letter was inadvertently not updated.

Apart from the inaccurate cover letter, the bigger issue is that the data required by N.J.A.C. was not provided, because the Company falsely stated that it did not exist.

4. Numerous errors in examined documents suggest that improvements to the report review process are in order. *(See Recommendation #1)*

We observed a number of errors in the reports that we examined, most notably the issue of the incorrect cover letter and resulting failure to provide mandated information to the BPU, that should have been caught by an accurate procedure document or an effective review process. Conclusion #2 describes the lack of procedures, but in addition, errors that include lack of signatures, missing transmittal letters and incorrect dates suggest that little or no management review of the reports before filing them.

5. Numerous missing documents among the reports selected for review indicate that improvements can be made to document retention procedures. *(See Recommendation #1)*

Missing documents include the 2015 PUHCA report and the transmittal letter for the 2016 Employee Transfer report. In the case of the PUHCA report, this is an important compliance filing with the BPU that the Company could not locate. In the case of the Employee Transfer report, the examination of the subsequent year's report and transmittal that included both 2016 and 2017 suggests that the 2016 report was never filed.

6. There was no evidence of issues with the BPU related to timeliness of filings or any penalties levied against the Company for report deficiencies.

Despite the issues noted in the discussion of filing key reports with the BPU, the Company reported that there have been no communications from the BPU regarding timeliness or questions regarding any of the reports filed with them and that there have been no penalties or fines assessed to NJNG by the BPU regarding timeliness or deficiencies in any of the reports filed during the audit period.

7. Internal Controls governing Report Preparation appear to be in place, however operational controls governing the preparation of reports could be strengthened. *(See Recommendation #1)*

There are significant internal controls in place that govern financial reporting. The *SOX and Internal Audit* Chapter of this report summarizes our review of these controls.

However, given the lack of policies and procedures, as well as the number of errors and missing documents we observed, management should strengthen operational controls over the preparation, filing, and retention of reports to the BPU.

2. Sustainability

8. NJR has made a particularly notable commitment to scope, detail, measurement, and transparency of Sustainability disclosures.

NJR has adopted a comprehensive statement of sustainability commitments that it has expressed in regular annual reports clearly, along with very detailed descriptions of measures taken to meet those commitments and the results obtained. It has in recent years consistently received recognition for corporate responsibility. Its sustainability commitments and actions focus specifically on New Jersey needs and circumstances.

9. NJR has clearly assigned responsibility and accountability for sustainability information collection completion and accuracy and has made effective use of resources in assuring these two attributes.

A small, dedicated Staff of two have responsibility for tracking and reporting Sustainability data. An External Reporting group operating under the NJR corporate controller has recently been given responsibility for validating the accuracy and completeness of sustainability that NJR discloses. The engagement of External Reporting followed a review and recommendations by the outside firm that acts as internal NJR auditors. Separating the collection of data appropriately assigned to those with day-to-day Sustainability efforts from the validation role of External Reporting reflects sound attention to ensuring that data collected is complete and accurate. Similarly, the engagement of the internal auditors showed sound attention to ensuring proper controls over data disclosure.

10. The use of a Sustainability Council and a manager of Sustainability provides effective management and leadership of sustainability commitments, framework, standards, and reporting.

A group of senior NJR leaders, including the most senior NJNG executive provide overall direction and governance for Sustainability. NJR has also provided a small staff dedicated to day-to-day Sustainability engagement, embedment into daily work activities, and data tracking and reporting.

11. NJR employs substantial and recurring assessments of Sustainability.

The assessments are well structured and comprehensive, and include a review of goals, changing standards, and benchmarking. They include internal and external stakeholder input and employ annual risk assessment.

12. Outside resources have been used effectively and with reasonable economy in assisting NJR to develop a sustainability framework and assure sound methods for collecting complete and accurate information.

Dedicated internal resources have remained at modest levels, consisting of roughly two full-time equivalent personnel. NJR made effective use of an internationally recognized outside firm to assist in analyzing and revising its disclosure strategy, approach, processes, data and gaps. [redacted] Management reports that there have been no substantial consultant costs after those efforts. While NJR has not segregated Sustainability costs, they have remained at fairly moderate and reasonable levels.

13. Scope 3 reporting poses substantial uncertainties for NJR and for NJNG, warranting advancement of planning for means to address potential reporting requirements. *(See Recommendation #4)*

Uncertainty about Scope 3 reporting of emissions remains and, even if the SEC meets its current expectations for issuance of its pending rule, that uncertainty may continue for some time with court challenges apparently likely. However, apart from specifically applicable legal requirements, others, including some with strong international reputations, are moving ahead in areas that include Scope 3 reporting, adding pressure to adopt such reporting voluntarily.

Scope 3 reporting raises many questions about how companies like NJNG can and should engage in providing information about and to their customers about natural gas use contribution to their emissions. NJR's engagement with the joint AGA/EEI efforts will no doubt provide helpful assistance in preparing to meet a range of alternative means for providing required information. We credit NJR leadership with awareness of the potential impacts should SEC or other firm requirements eventuate or pressure for voluntary participation increase.[408] However, we believe that NJR would benefit from a more definitive plan for how it would have to act under a range of possible reporting requirements.

14. NJR has made limited use of green bonds in the past in the operation of its non-utility operations and has no current plans for further use of them.

NJNG has not employed green bonds, and NJR has used them on two occasions, at $150 million and $120 million, respectively, to fund solar projects with combined capacity of 123 megawatts and added through 2020. No plans by NJNG or affiliates exist for further use of green bonds. Management also reports that the issuance of these bonds came with no price premium to comparable, non-green issuances.

D. Recommendations

1. Other Regulatory Reports

1. Strengthen controls and training regarding the creation, filing, and retention of reports filed with the NJBPU and train preparers. *(See Conclusions #2, #3, #4, #5, and #7)*

NJR should create and apply procedures that outline the process of preparing, filing, and retaining reports to be filed with the NJBPU. The procedures should specifically list and describe the steps to be followed. The steps applicable to each report should be addressed specifically. Employees preparing the more complex reports, such as the Annual Report and the PUHCA report, should receive training on the purpose of the report, and the appropriate sources of data.

Appropriate correction should be made to prior reports. Allocation of costs from the parent and service company to regulated and unregulated subsidiaries comprise a core element in assuring no cross subsidization of affiliates by NJNG. Understanding allocation methods and factor variations provide a means for continuing to ensure that those methods and factors remain appropriate. Management should also determine and correct the process weaknesses that allowed PUHCA report filing with a significant misstatement in the cover letter, and the exclusion of data required by the report.

Management should also institute operational controls and create report review procedures to avoid errors and gaps in reports. The errors in the reports add to the PUHCA report issue to indicate weaknesses in report review processes, which management should strengthen through the creation of a stronger operational control foundation and a more stringent adherence to careful review procedures. More attention is also required to ensure that filed NJBPU reports are stored in a manner that ensures ready retrievability.

2. Sustainability

2. Adopt a succinct plan outlining the steps, resources, and costs required to respond to a range of potentially required methods for accommodating Scope 3 reporting. *(See Conclusion #13)*

With uncertainty surrounding the fate of pending SEC Scope 3 reporting requirements, detailed planning is premature. However, particularly with advancing efforts that may increase pressure for voluntary adoption, it is timely for NJR to assess the range of reporting support methods that may be in store (either through required or voluntary adoption) and what types of resources and costs may be required. By planning now at least at a fairly broad level for methods, analytics, and (most importantly) potentially needed outside resources, NJR can best prepare itself to respond efficiently and with the required dispatch should firm requirements emerge and to assess carefully the consequences of voluntary adoption of more extensive sustainability requirements, such as those that Scope 3 reporting would bring.

Chapter VI: EDECA
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Chapter VI: EDECA

A. Background

This chapter describes the results of our examination of compliance with the affiliate standards ("The Standards") that the BPU has adopted to enforce the New Jersey Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 *et seq*. ("The Act" or "EDECA"). We also performed a review of cost allocation and assignment, which form a principal focus of EDECA. The *Cost Allocations* Chapter of this report addresses our examination of the cost allocation and assignment requirements of the Standards and the governing documents and controls and procedures management has in place surrounding them.

The Standards contemplate five principal types of entities:

- Electric or gas public utilities
- Related competitive business segments of the electric or gas public utilities
- Public utility holding companies
- Related competitive business segments of the public utility holding companies
- Service companies.

The Act organizes the principal components of the Standards we reviewed as follows:

- Non-Discrimination (Section 14:4-3.3)
- Information Disclosure (Section 14:4-3.4)
- Separation (Section 14:4-3.5)
- Utility Retail Competitive Business Segment Standards (Section 14:4-3.6)
- Regulatory Oversight (Section 14:4-3.7)
- Dispute Resolution (Section 14:4-3.8)
- Violations and Penalties (Section 14:4-3.9).

The application of these components depends on the types of relationships and transactions involved. For example, Sections 14:4-3.3, 14:4-3.4 and 14:4-3.5 apply to transactions between a utility and its public utility holding company ("PUHC") or a related competitive business segment ("RCBS") of its public utility holding company that is offering or providing retail services to customers in New Jersey. These three sections, however, do not apply to transactions between a utility and an RCBS under its own ownership. Conversely, the Section 14:4-3.6 standards do apply to transactions between a utility and its own RCBS; however, they do not apply to transactions between a utility and its public utility holding company or an RCBS of its public utility holding company. Nevertheless, substantial overlap exists among the standards set forth in Sections 14:4-3.3, 14:4-3.4, and 14:4-3.5. Similarly, overlap exists between them and the Section 14:4-3.6 standards.

Many Sections of the Standards have implications reviewed as part of our work examining NJNG or NJR management functions (*e.g.*, Customer Service, Accounting, Controls, Service Company Operations and Cost Allocations). For these areas, this chapter focuses on management's treatment of the Standards that apply to them and the Company's treatment of them in annual Compliance Plans, and provides references to the other chapters in the report where audit work (data reviews and analysis, interviews, for example) took place. Representative examples include:

- NJR-level internal controls, internal audit, compliance, and ethics, and how management applies these to NJNG: included in the *Ethics & Compliance Chapter of the accompanying Phase Two report and the Controls, SOX, Internal Auditing, and NYSE Listing Requirements, and Organization and Executive Management, and Governance* Chapters of the accompanying Phase Two report
- Cost allocation, transaction paths, and cost assignment issues, and key governing documents, such as the cost allocation manual: included in the *Cost Allocations* Chapter of this report
- Issues associated with books and records and chart of accounts requirements: included in the *Accounting and Property Records* Chapter of the accompanying Phase Two report
- Customer service performance and training: included in the *Customer Service* Chapter of the accompanying Phase Two report
- Finance issues: included in the *Finance and Cash Management* Chapter of the accompanying Phase Two report
- Independence and segregation of utility/non-utility planning: included in the *Organization and Executive Management*, *Governance*, and *Planning and Budgeting Chapters* of the accompanying Phase Two report
- Information technology protocols and management: included in the *Information Technology* Chapter of the accompanying Phase Two report.
- Affiliate energy transactions and relationships: included in the *Procurement and Purchasing* Chapter of this report.

The specific categories into which we divided the work addressed in this chapter comprise:

- *General Administration of the Standards*
- *NJR and NJNG Competitive Services*
- *Non-Discrimination Standards*
- *Information Disclosure Standards*
- *Separation Standards*
- *Utility RCBS Standards*
- *Regulatory Oversight*
- *Dispute Resolution*
- *Violations and Penalties*

B. General Administration of the Standards

1. Background

This section addresses management's general administration of compliance with the Standards. Sound administration requires a formal approach, a focus on training and communication, and the dedication of resources sufficient to create a proper environment for assuring compliance with the Standards.

2. Findings

a. <u>The NJNG Compliance Plan</u>

Four individuals have had responsibility for the preparation of annual Compliance Plans. These include the NJNG Senior Vice President ("SVP"), Regulatory and External Affairs, Marketing and Energy Efficiency, the NJNG Regulatory Affairs Counsel, a State and Regulatory Affairs Analyst, and a Regulatory and External Affairs Specialist.[409] The Company did not assign responsibility for ensuring compliance with the Act to any single individual, explaining that the Chief Compliance

Officer (NJR's General Counsel) and Regulatory Affairs department staff "monitor Affiliate Rules issues, provide guidance internally and ensure ongoing compliance."[410]

An NJNG Executive Vice President provided the certifications that the Standards required in the 2014 though 2017 Plans, and the NJNG President and CEO did so thereafter. Those certifications include:

- In a VERIFICATION, that they have read the contents of the Plan and have knowledge of its contents
- In Exhibit L to the Plan termed "Section 5(5) (b) Affidavit" by the Plan's Exhibit List but termed AFFIDAVIT N.J.AC. 14:4-3.5(j) in the exhibit itself:
  - A general statement in support of the Company's annual Compliance Plan
  - That, pursuant to Section 14:4-3.5(j) of the Standards, the Company's corporate support services (*e.g.*, its service company) will not violate portions of the Standards that include restrictions regarding information sharing and disclosure and the preferential treatment of affiliated and non-affiliated entities
  - That the Plan denotes how the corporate communications policies and website and information access policies prohibit inappropriate conduct under the Standards
  - That the Plan includes information ensuring appropriate and correct changes among affiliates, including the mechanisms for ensuring appropriate charging of employee time
  - That the Plan includes information appropriately accounting for Standards-imposed restrictions on employee transfers, asset transfers, and external complaints
  - That the Plan will remind all NJR employees annually during Code of Conduct training of the requirements and restrictions dictated by the Standards.

We found the annual NJNG Compliance Plans dated December 2014 through December 2023 largely similar, with differences noted below. The NJNG Plan follows the general outline and structure included in the Standards. The compliance plans of other New Jersey EDCs and LDCs do as well, applying a logical approach for organizing and presenting the many included topics and provisions and prohibitions of the Standards and the content required to address them.

The Plan consists of:[v]

- A cover letter, noting the filing of the Plan pursuant to the filing requirements mandated by Section 14:4-3.7 of the Standards
- A Service List
- A Cover Page
- Section I. INTRODUCTION, which introduces the Plan, describes the Company's commitment to comply with the Standards, and summarizes training provided to new and existing employees and the Company's assignment to the Chief Compliance Officer and other individuals the compliance roles described previously
- Section II. COMPANY ORGANIZATION, which discusses the service company and two NJNG's affiliates, NJR Home Services Company ("NJRHS") and NJR Clean Energy

[v] We provide these descriptions as summarizations that highlight the various components of the Plans as opposed to a comprehensive listing of each item

Ventures ("NJRCEV"), but no others, and references a list of all affiliates provided later in Exhibit A

- Sections addressing what we viewed as most critical to our examination and for which we sought to determine whether the current and predecessor Plans adequately and addressed the Standards and whether NJNG, NJR, and NJRSC, and its RCBSs complied with them:
  - Section III. NONDISCRIMINATION, addressing Standards section 14:4-3.3
  - Section IV. INFORMATION DISCLOSURE, addressing Standards section 14:4-3.4
  - Section V. SEPARATION, addressing Standards section 14:4-3.5
  - Section VI. COMPETITIVE PRODUCTS AND/OR SERVICES OFFERED BY A UTILITY OR AFFILIATE OF A UTILITY, addressing Standards section 14:4-3.6
  - Section VII. REGULATORY OVERSIGHT, addressing Standards section 14:4-3.7
  - Section VIII. DISPUTE RESOLUTION, addressing Standards section 14:4-3.8
  - Section IX. VIOLATIONS AND PENALTIES, addressing Standards section 14:4-3.9
- A Verification signed by the NJNG President and CEO (described above).

The plan contains a List of Exhibits, provided as Exhibit A through Exhibit Q. The first, Exhibit A, New Jersey Resources Corporation Corporate Structure, provides an alphabetical listing of each NJR affiliate that includes its name, the state in which it was incorporated, the date of its formation, its Tax Identification Number, its parent company, and a listing of its Board of Director membership and of each officer.

Exhibit B, Fair Competition Guidelines, material includes a Definitions section, a Statement of Policy and General Information section, and a Specific Guidelines Section that includes coverage of "Market-Sensitive or Confidential information," "Requests for Products or Services Offered by Retail Affiliates," "Requests for Gas Transportation Services Offered by NJNG," "Separation of Products and Services," "Dealings with Competitors," and "Accounting Issues." These coverages provide information relevant to the Standards' Nondiscrimination, Information Disclosure, and Separation provisions. This exhibit of the plan also notes that rules, procedures and guidelines cannot be expected to cover all possible situations, advising employees to contact their supervisor, NJNG Regulatory Affairs Department, or the General Counsel's Office (and provides phone numbers for each of the latter two) for any questions. The Definitions section of Appendix B states that "'Retail Affiliate(s)' means NJR Home Services Company and/or any other retail affiliate of NJNG as determined by the Legal Department in accordance with the Affiliate Rules."

Exhibit C, Do's and Don'ts for Customer Service Representatives, provides explanatory material about the competitive environment and communications limits when customers contact the Company about retail products and services, including how to and where to direct calls from energy suppliers, marketers, and brokers, and commercial and transportation customers. This material includes guidance about provisions against providing retail affiliate employees information learned or commenting on service quality or reliability. This material directs customer inquiries regarding TPS to the Company's Web site at www.njliving.com. This website name is no longer used. Exhibit C states that NJNG's Retail Affiliates, which includes NJR HS, sell appliance repair and installation services." NJR HS ("NJRHS") is affiliate NJR Home Services.

Exhibit D, Do's and Don'ts for First Responders and Utility Service Technicians, provides guidance similar to that provided in Exhibit C but geared towards utility service technicians and more guidance on appliance service issues likely to be encountered. NJRHS provides appliance services as well. Exhibit D repeats the statement that its retail affiliate which includes NJRHS, "sell appliance repair and installation products and services in a competitive environment." A footnote to this statement states that "'Retail Affiliate(s)' means NJR Home Services Company and/or any other retail affiliate of NJNG as determined by the Legal Department in accordance with the Affiliate Rules."

Exhibit E, Do's and Don'ts for Marketing Services, provides guidance similar in nature to that provided in Exhibit C but geared towards utility service technicians and focuses on appliance service issues likely for them to encounter and provisions against discussing NJRHS service offerings of that nature. Exhibit E states that, "The Retail Affiliates offer a variety of product and services in the competitive environment. NJNG's Retail Affiliate NJR Home Services Company (NJR HS) sells appliance repair and installation products and services." An accompanying footnote states that, "Retail Affiliate(s)" means NJRHS and other NJNG retail affiliates determined by the Legal Department in accordance with the Affiliate Rules.

Exhibit F, Do's and Don'ts for Supplier Relations Consultants, provides guidance material similar in nature to that provided in Exhibit C, but focused on gas transportation issues arising from supplier inquiries, reminders to handle requests in the order they were received, protect supplier information and treat non-public information as confidential, and ensure equitable treatment to all suppliers.

Exhibit G, Joint Purchasing Guidelines, provides guidance on the affiliate rules pertaining to joint purchasing, including the types of joint purchases allowed and prohibited. An Exhibit G footnote repeats the statement to the effect that "Retail Affiliate(s)" means NJRHS and any other NJNG retail affiliates of determined by the Legal Department.

Exhibit H, New Jersey Resources Corporation Code of Conduct, includes the NJNG Code of Conduct, whose contents the *Ethics & Compliance* Chapter of the accompanying Phase Two report discusses. The Code of Conduct includes discussion of the affiliate standards and FERC standards, and confidential information disclosure prohibitions, all elements of the Standards.

Exhibit I, Service Agreements, described in the *Cost Allocations* Chapter of this report, exhibited the most significant annual changes in the versions of the Plans we reviewed. The changes reflected the changing nature of such agreements. One of the agreements, between the NJRHS and NJNG, showed the affiliate's signature by an NJNG executive and the NJNG signature by the affiliate's president. Exhibit J, Shared Services Guidelines, consists of Financial Policy and Procedure 137, which covers topics that include NJNG subsidization of affiliate costs and the sharing of customer data.

Exhibit K, New Jersey Resources Corporation Time Sheet Policy and Procedure, consists of Administrative Policy and Procedure 93, which address the accurate recording and allocation of time for employees who perform work relating to multiple affiliates.

Exhibit L, Section 5(5) (b) Affidavit, provides certification from the NJNG President and CEO described above. Exhibit M, External Complaint Procedure, provides instructions on how to handle external complaints, appropriate handoffs, time requirements, reporting to BPU and Rate Counsel, and log maintenance. Exhibit N, Corporate Communications and Public Relations Policy and Corporate Identification and Advertising Guidelines, includes corporate communications and public relations rules about confidential information transfers, providing unfair advantages to retail affiliates, avoiding customer confusion about products and services offered by NJNG versus those offered by an affiliate, and joint marketing and advertising restrictions.

Exhibit O, Inter-company Transfer of New Jersey Natural Gas Company Employees, Human Resources Policy And Procedure 20, Intercompany Employee Transfer (last revised 11/3/21) Governs rules for transfer of employees between NJNG, NJR and any NJR retail affiliate. This policy states that:

> *"For purposes of this Human Resources Policy and Procedure 20 only, "Retail Affiliate" means any subsidiary of the Company that offers to provide or provides competitive services at a retail level. For purposes of this Human Resources Policy and Procedure 20 only, "Retail Affiliate" shall include: NJR Home Services Company; NJR Plumbing Services, Inc.; NJR Clean Energy Ventures Corporation; or any other subsidiary of the Company that may be determined by the Legal Department to be a retail affiliate of the Company in accordance with the New Jersey Board of Public Utilities' regulations concerning Affiliate Relations, N.J.A.C. 14:4-3.1 et seq."*

Exhibit, P Information Systems Access Guidelines, includes information system access rules addressing the prohibitions outlined in the Standards and how Company computer and information system usage must keep customer information confidential, limits on who can access it, and needs for public postings (energy and capacity transactions,), employee transfers, and new or changed affiliates. Exhibit P clearly indicates the various departments that have responsibility for making each of the public postings described. An Exhibit P footnote contains the oft-repeated statement including NJRHS and any other NJNG retail affiliate determined by the Legal Department to comprise a Retail Affiliate. Exhibit Q, Inter-company Asset Transfer Policy and Procedure, consists of Financial Procedure 130, Inter-company Asset Transfers. This procedure discusses standards applied to transfers of assets among affiliates, and Standards provisions regarding transfers, leases, rentals, licenses, and easements or other encumbrances of assets.

The Plan's structure and content have remained largely the same since 2014, with material from the Cover Letter through the List remaining nearly identical. Exhibit A, which includes the list of NJR affiliates and their officers and directors has undergone annual changes, and Exhibit I, which contains the list of Service Agreements and some asset management agreements in effect between NJNG and NJRES has also varied due to the creation of new affiliates and agreements involving them.

b. <u>Internal Audit Reviews of Standards Compliance</u>

We requested a list of all internal audits conducted during the EDECA audit period that addressed affiliate transactions or cost allocations relevant to NJNG or any other NJR entity. Management identified six such audits as responsive:[411]

- Fiscal Year 2014:
  - NJNG Affiliate Transactions
  - Affiliate Standards Compliance and Intercompany Cost Allocations

- Fiscal Year 2015: Wholesale Natural Gas Transactions
- Fiscal Year 2016: Wholesale Natural Gas Transactions
- Fiscal Year 2017: Wholesale Natural Gas Transactions
- Fiscal Year 2018: Affiliate Standards Compliance and Intercompany Cost Allocations.

The *Controls, SOX, Internal Audit, and NYSE Listing Requirements* Chapter of the accompanying Phase Two report includes our review of the Company's Internal Audit function, including management's decision to outsource the work of this function in 2019.

c. Training

Management provides onboarding training to all employees within 30 days of work start date. The materials for that training include a reference to the Affiliates Standards, but no other details or specifics.[412] All new employees undergo Code of Conduct training and all existing employees do as well.[413] Management monitored the receipt of Code of Conduct training through 2017 by requiring all employees to submit a signed completion acknowledgement form. Changes in 2018 saw that practice continue for bargaining unit field employees; however, employees in customer service and dispatch roles and all other non-bargaining unit employees received training virtually and had to achieve a test score that exceeded 80 percent and provide an e-signed form indicating acknowledgement of the training. The 80 percent score threshold and e-signature requirements expanded to include all employees since 2019.

NJNG also provides additional training that addresses the Standards to new employees. Management described this training as occurring "as requested" and not on a regular cycle or to a defined set of employees (other than certain new employees).

3. Conclusions

1. **NJNG prepared and filed Compliance Plans on an annual basis but with timing and certification anomalies.** *(See Conclusion #72 and Recommendation #21 and Conclusion #97 and Recommendation #29)*

Our review of each Plan in effect since 2014 disclosed the following annual filing and certification issues:

- Compliance with the timing requirements of Standards Section 14:4-3.7 (see section I of this chapter and Conclusion #97 and Recommendation #29)
- Issues with the annual certification provided by NJNG as part of its compliance with Standards Section 14:4-3.5(j) (see section G.10 of this chapter and Conclusion #72 and Recommendation #21).

2. **The NJNG Compliance Plan addresses most elements required by and presents them in an order that generally follows the outline of the Standards; however, it lacks treatment of specific provisions, covers some in a sequence that deviates from that outline, and includes inaccurate referencing to some exhibits.** *(See Recommendation #1)*

The Plan for the most part follows the outline, order, and numbering of the Standards. The Plan addresses most but not all elements of the Standards. The Standards clearly state that each Plan, "shall contain an accurate list of all affiliates of an electric and/or gas public utility, including the business name and address, name and business telephone number of at least one officer of each affiliate and a brief description of the business of each affiliate." The current Plan does not include Standards-mandated business address, phone number, and brief descriptions of the business of each affiliate, though prior versions did. (See Recommendation #29 in Section I of this chapter.)

The structure and content of NJNG's Compliance Plan have remained largely the same since at least 2014, apart from removal of the longstanding New Jersey Resources Corporation Employee Time Sheet exhibit in 2021. Sections III through VIII of the Plan include management's identification of relevant portions of the Standards and references to Exhibits that contain relevant policies and procedures and guidance for ensuring compliance with specific provisions. Management did not update the text of the Plan in several sections to account for the removal of the time sheet exhibit, which results in incorrect exhibit referencing and therefore inapt guidance to employees on the specific standards provisions that must be complied with and how to do so. Sections III through VII also include other reference issues and other matters that require management attention. These include:

- Section VI.3 of the Plan addresses Conditions for Offering Competitive Products and/or Services. It includes a reference to Exhibit L using the same language consistently across the Plans we reviewed. However this reference was not updated after the 2021 removal of the previous Exhibit L (New Jersey Resources Corporate Employee Time Sheet) and thus appears to be a holdover reference to the list of exhibits included in prior-year Plans.
- Section VI.4 of the Plan, in its discussion of asset transfers, leases, and rentals between affiliates, includes a reference to Exhibit R. However, with the removal of the Time Sheet noted above Plans since 2021 have only included Exhibits A through Q. Exhibit Q Intern-company Asset Transfer Policy (formerly included as Exhibit R) represents the correct reference.
- The Section VII.1 discussion of regulatory oversight and the annual plan filing requirements includes a reference to Exhibit Q, the Inter-company Asset Transfer Policy. NJNG did not update this reference after the 2021 removal of the Time Sheet noted above, thus the Exhibit P appears to be the correct reference here, as it includes discussion of the annual Plan updates.
- Section VII.2 of the Plan, in its discussion of new affiliate compliance plans and posting requirements, includes a reference to Exhibit O, the Inter-company Transfer of New Jersey Natural Gas Company Employees. NJNG did not update this reference after the 2021 removal of the Time Sheet noted above, thus the Exhibit N appears to be the correct reference here, as it includes discussion of the annual Plan updates.
- Section VIII of the Plan addresses dispute resolution and states that, "NJNG has an established dispute resolution and complaint procedure, including a telephone complaint hotline. (See Exhibit N attached hereto.)" As of the 2021 version of the Plan, management included that complaint procedure as Exhibit M.
- Exhibit C provides critical guidance to Customer Service representatives about central aspects of the Standards. Exhibit C includes guidance to employees to refer to the Company's website at www.njliving.com; that site however is no longer the NJNG website, and while it does auto-direct the correct website, www.njng.com.
- The Plan's list of exhibits includes Exhibit L Section 5(5) (b) Affidavit, but the actual exhibit included bears an AFFIDAVIT N.J.AC. 14:4-3.5(j) title more appropriately referencing the Standards provision that requires the Affidavit's inclusion in each Plan.

- Exhibit I Service Agreements includes an NJNG and NJRHS agreements, whose signing executives appear to have executed the agreement on each other's signature lines. The *Cost Allocations* Chapter of this report explains the service agreements found out of date or inconsistent with the Company's Cost Allocation Manual.

As subsequent sections of this chapter discuss, other elements of the Plan require management attention to ensure more complete coverage of the sub-sections of the Standards and to provide the type of summation and employee guidance necessary.

3. **Lack of consolidation of responsibility and accountability for taking ownership of and ensuring compliance with the Standards under a single, senior NJNG executive appears to have contributed to the significant numbers of Plan compliance issues we found.** *(See Recommendations #2 and #3)*

Management assigns both Plan preparation and responsibility for ensuring compliance with the Standards to representatives from various departments. Senior officers have roles in these activities, in particular NJNG's SVP, Regulatory and External Affairs, Marketing and Energy Efficiency for plan preparation and the NJR General Counsel, acting as Chief Compliance Officer, for ensuring compliance. The broad scope of the Standards and the number of NJNG affiliates warrant participation from various Company departments, with accounting, invoicing, human resources, information technology, legal, marketing, customer service representatives, and services technicians as some examples. Best practice, however, calls for assignment of responsibility and accountability to a senior executive for plans and activities for ensuring Standards compliance. A dedicated Chief Compliance Officer, as recommended in the *Ethics & Compliance* Chapter of the accompanying Phase Two report, would accomplish that result.

NJNG's Plan does not identify the officers or company departments that have oversight and responsibility for each section and sub-section of the Standards. Given the broad scope of the Standards, the Plan's silence on which groups have responsibility for ensuring compliance leaves this responsibility unclear and results in a document that makes compliance nebulous and unwieldy. The quality of the plan and its provisions, which encompass the many issues this chapter addresses, underscore the need for consolidating responsibility and accountability under a single executive.

4. **Management conducted a small number of internal audits of compliance with some requirements of the Standards but dropped them in 2019 despite compliance issues found in each of the past two Affiliates Standards Compliance and Intercompany Cost Allocations audits.** *(See Conclusion #6 and Recommendation #4 from the Controls, SOX, Internal Audit, and NYSE Listing Requirements Chapter of the accompanying Phase Two report)*

A small number of audits addressing components of NJNG and NJR and NJR affiliate relationships occurred from 2014 through 2019. The audits that did occur found issues warranting corrective management action. The Fiscal Year 2014 Affiliate Standards Compliance and Intercompany Cost Allocations audit found issues in management's tracking, logging, and monitoring of affiliate standards complaints, time reporting procedures, and service agreements. The Fiscal Year 2018 Affiliate Standards Compliance and Intercompany Cost Allocations audit found issues with management's training of employees on the Standards, compliance with employee transfer documentation completion, and complaint tracking and logging.

5. **Required annual Code of Conduct training of all employees touches upon Standards-related topics, but limits Standards-focused training to too small a group.** *(See Recommendation #5 and See Conclusion #13 and Recommendation #6 from the Cost Allocations Chapter of this report)*

The *Cost Allocations* Chapter of this report addresses the sufficiency of the annual Code of Conduct Training, which includes several subject areas that the Standards address. Management also offers separate, more Standards-focused training to certain new employees. That material references the Standards and provides summary-level discussion of key Standards topics and areas of concern. Unlike the annual Code of Conduct training, no set cycle exists for mandated training delivery nor does an identified list of employees who must receive it. The material included in that training suffices at the level appropriate for a new employee in general, but it does not reference the Compliance Plan nor does it include direct linkage to the Standards necessary for those employees that management tasks with enforcing Standards compliance.

4. Recommendations

1. **Revise the Compliance Plan to (a) include in Sections III through IX (and their sub-parts) an identification of where coverage of each specific provision of the Standards (at the individual level) occurs, (b) eliminate inaccurate exhibit references, (c) address service agreement issues, and (d) update website references.** *(See Conclusions #1 and #2)*

The Plan should comprise a key tool for ensuring Company compliance with the Standards. Its discussion of several important elements of the Standards refers employees to incorrect documentation, policies, and procedures outlining how to comply and providing specific guidance on how to ensure compliance. Some service agreements are out of date and another includes transparently incorrect executing signatures. We also observed an incorrect Plan website reference. Plan accuracy and the provision of clear and accurate guidance comprise necessary baseline elements to the creation of an appropriate and effective compliance environment. Management should perform a thorough review of the existing Plan, to ensure that it remedies each such item and incorporates the other recommended items in subsequent sections of this chapter. The next version of the Plan should clearly state which specific element(s) of the Standards its sections respond to, in order to ensure that all provisions receive coverage and employees understand all relevant provisions that their actions must comply with.

See Conclusion #1 and Recommendation #4 from the *Cost Allocations* Chapter of this report for additional discussions of service agreement findings from this audit.

2. **Assign clear responsibility for Compliance Plan content, oversight, execution, and enforcement responsibility for each Standards section and address such matters explicitly in the Plan.** *(See Conclusions #1 and #2)*

The Standards impose provisions that affect a wide variety of the functions and activities that support utility service in a holding company structure. The scope and breadth of product and service offerings of NJR affiliates further highlight the importance of a strong Plan and execution.

Diligent and effective compliance requires a variety of departments, resources, and governing documents. The Plan and its execution must comprise the Company's centralized means for ensuring full compliance. It cannot do so effectively without identifying which group management tasks with direct responsibility for specific sections of the Standards. There exists a clear need for establishment of those responsibilities in a manner that ensures compliance and also allows management a better method to hold those tasked with compliance responsibilities accountable for their effective and timely execution of those responsibilities.

3. **Assign a senior executive overall responsibility for ensuring compliance with the Standards and make that responsibility part of their annual performance requirements.** *(See Conclusion #3)*

Management assigns responsibility for ensuring compliance to a group of individuals. This group includes the NJR General Counsel acting as Chief Compliance Officer. However, the Plan does not give that officer clearly-stated overall responsibility and accountability for preparing and executing a plan under top executive leadership and board oversight. Moreover, as *& Compliance* Chapter of the accompanying report emphasizes, separation of the general counsel and compliance officer roles is in order. A dedicated chief compliance officer, which does not at present exist, would offer a sound option. A position combined with the role of general counsel does not offer a preferred alternative, given the importance of Standards compliance, the risks that operation in a corporate family with competing energy market interest presents, and the history of plan content and compliance, which have not proven strengths.

4. **Reinstitute internal audits of affiliates Standards topics not less than once-every-two years.** *(See Recommendation #4 and Conclusion 6 and Recommendation #4 from the Controls, SOX, Internal Audit, and NYSE Listing Requirements Chapter of the accompanying Phase Two report)*

Regular, and frequent internal auditing comprise necessary elements that should support self-testing of compliance for areas of concern. The cessation of such auditing of Standards-related topics must be addressed. The broad scope of the Standards, NJR's large, and in some instances inappropriately and inconsistently classified affiliates (see Section D of this chapter), and the history of agreements and interactions between energy market affiliates and NJNG call for significantly increased review by a group having the independence that Internal Audit has. The existence of issues found in the limited number of audits actually conducted, and the re-occurrence of related issues requiring attention are not necessary to justifying this recommendation, but underscore the importance of executing it.

5. **Conduct enhanced and more regular business unit reviews of compliance with Sections 14:4-3.3: Nondiscrimination, 14:4-3.4: Information Disclosure, and 14:4-3.5: Separation of the Standards under the direction of the executive tasked with ensuring compliance and using the recommended assignment of responsibilities added to the next version of the Plan.** *(See Conclusion #4)*

The executive to which NJNG assigns overall responsibility and accountability for Standards compliance should work with the groups and positions affected by and engaged in Plan compliance to identify areas of compliance warranting periodic testing. This exercise will aide those newly-assigned with compliance responsibility in understanding particular needs and develop ways to verify that the Company establishes the heightened visibility and accountability that a compliance environment consistent with best practices entails. Examples of such reviews include ensuring management delivery of all training to the required individuals pursuant to required timelines, ensuring complaint log tracking and maintenance, call center representatives compliance with provisions against favoring affiliates, ensuring that time reporting procedures and resulting calculations occur timely and accurately, and employee transfer documentation completion occur.

The Company ceased performing Internal Audits of these topics. Simply re-instituting them, however, does not go far enough in ensuring the existence of a robust compliance environment. Nor does leaving such efforts to audits of this type, those commissioned by the BPU. Management should engage more directly in regular and enhanced compliance testing and verification activities.

6. **Enhance the separate, Standards-focused training materials and establish a cycle and roster of positions that must receive such training (*e.g.*, those management tasks with ensuring plan compliance or those that operate in management or supervisory roles in Company departments whose operations are most subject to the Standards).** *(See Conclusion 5)*

Those that management tasks with ensuring Standards compliance moving forward (see Recommendations #2 and #3) and employees that have day-to-day responsibilities most affected by provisions of the Standards should receive more robust training than what management currently offers and on a defined cadence. Management should enhance existing training to ensure that it includes references to the specific portions of both the Standards and the Compliance Plan that have relevance for their compliance oversight and enforcement assignments and day-to-day work activities. Each such employee should undergo training when assigned such a role and should also undergo refresher training no less than every two years.

C. NJR and NJNG Competitive Services

1. Background

We sought to determine those affiliates management has designated and treated as RCBSs subject to the Standards. The Standards define an RCBS in the following ways:

- *"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.*
- *"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility.*
- *"Affiliate" means a "related competitive business segment of an electric public utility or a related competitive business segment of a gas public utility" or a "related competitive business segment of a public utility holding company" as defined in this section and in the Act.*

The "Scope" Section of the Standards explains that the offering of service by an RCBS to retail customers in New Jersey triggers the nondiscrimination, information disclosure, and separation provisions of the Standards:

> *(a) This subchapter shall apply as follows:*
>
> *1.N.J.A.C. 14:4-3.3 through 3.5 set forth standards of conduct applicable to transactions, between an electric public utility or gas public utility, including a related competitive business segment of an electric or gas public utility, and a related competitive business segment of the electric or gas public utility holding company providing or offering competitive services to retail customers in New Jersey or the public utility holding company itself providing or offering competitive services to retail customers in New Jersey*

We have conducted a significant number of EDECA audits for the BPU over a long period of time. Those examinations have disclosed wide variation in how holding companies determine which affiliates the Standards cover. The identification of covered affiliates comprises an important baseline element in assessing compliance. We examined how management here has made such decisions.

2. Findings

a. NJR Competitive Service Offerings

The following summarizes the list of NJR affiliates included in Exhibit A of the most recent version of the Plan.[414] Plans through 2019 in Exhibit A included a form of classification of some, but not all affiliates. For example, these plans classified NJNG as "Utility," NJR as "Parent Company," NJRCEV, NJRCEVII, and NJRCEVIII as "Non-Retail Affiliate," CR&R as "Non-Energy Affiliate." NJRHS, NJR Plumbing, and NJR Retail Holdings Corporation were each deemed a "Retail Affiliate." Subsequent versions of the Plan, however, discontinued those designations. The list below incorporates in bold the 2019 Plan's Exhibit A classification of affiliates:

- New Jersey Natural Gas Company **(Utility)**
- NJRCEV **(Non-Retail Affiliate)**
  - NJRCEV II **(Non-Retail Affiliate)**
    - Bernards Solar, LLC
    - NJRCEV III **(Non-Retail Affiliate)**
      - AR Solar LLC
      - CleanLight Energy, LLC
      - CP East Hampton Solar I, LLC
      - CP East Hampton Solar II, LLC
      - Greenville Road Solar, LLC
      - Howard Lane Solar, LLC
      - Kokomo Solar 1, LLC
      - NJ Oak Solar, LLC
      - Maybrook Solar, LLC
      - Canal Road Solar Partners, LLC

        - Canoe Brook Solar Partners, LLC
        - NHV Solar LLC
        - Spartan PV 1, LLC
  - NJRES **(Non-Retail Affiliate)**
- NJR Energy Investments Corporation **(Non-Retail Affiliate)**
  - NJR Midstream Holdings Corporation **(Non-Retail Affiliate)**
    - NJR Midstream Company **(Non-Retail Affiliate)**
      - Adelphia Gateway, LLC
      - Leaf River Energy Center LLC
        - LR Finance, LLC
    - NJR Storage Holdings Co. **(Non-Retail Affiliate)**
      - NJR Steckman Ridge Storage Company **(Non-Retail Affiliate)**
- NJR Retail Holdings Corporation **(Retail Affiliate)**
  - Commercial Realty & Resources Corporation ("CR&R") **(Non-Energy Affiliate)**
  - NJR Home Services Company ("NJRHS") **(Retail Affiliate)**
    - NJR Plumbing Services, Inc. **(Retail Affiliate)**
  - Phoenix Fuel Management Company
  - NJR Retail Company ("NJR Retail")
- Conserve To Preserve Foundation, INC.
- New Jersey Natural Gas Company Charity, INC.
- NJR Service Corporation ("NJRSC") **(Non-Retail Affiliate)**

We requested a description of the products and services offered by each NJR affiliate active during audit period.[415] Management's response did not include information for all entities, excluding, for example, CR&R. The Company discontinued as of 2020 Plan descriptions of each affiliate's business. The 2019 Plan described CR&R's business as one that, "[d]evelops and owns commercial office and mixed use commercial and industrial real estate projects in Monmouth and Ocean Counties in New Jersey." The preceding two audits of this type described CR&R's offerings similarly, as holding and developing commercial real estate.

A review of product and service offerings provided by management discloses the following competitive services offered by affiliates of NJNG during the period our audit examined:

- NJRCEV has developed, invested in, owned, and operated clean energy infrastructure projects throughout the Northeast, including residential solar arrays offered as part of a Sunlight Advantage program and larger arrays as part of a commercial solar program
- NJR Retail has offered kitchen and laundry appliance plans and cooking, refrigeration, and built-in microwave sales and installations to customers
- NJRHS has offered a variety of products and services including installation and maintenance and service contracts on HVAC equipment, water heaters, and backup generators, and service and repair contracts on electrical equipment. It has also offered solar purchases and leases, and performed electrical and plumbing work.
- NJR Retail Services, operated as a natural gas retail services provider from August 2017 to February 2018

- Phoenix Fuel Management Company has provided natural gas fuel management.

We asked management to identify each service offering of an affiliate it deemed competitive for purposes of the Standards during the period our audit examined.[416] Management identified NJRHS and its "service contracts as well as heating, central air conditioning, water heaters, standby generators, and solar products to residential homes and commercial customers throughout New Jersey." This identification excluded NJR Retail, which NJR established in April of 2021. The response omitted other affiliates that some versions of the Plan in existence over the audit period classified as a "Retail Affiliate":

- NJR Retail Holdings Corporation (the parent of NJRHS)
- NJR Plumbing Services (a subsidiary of NJRHS)
- NJR Retail Services Corporation (a retail energy provider – now defunct).

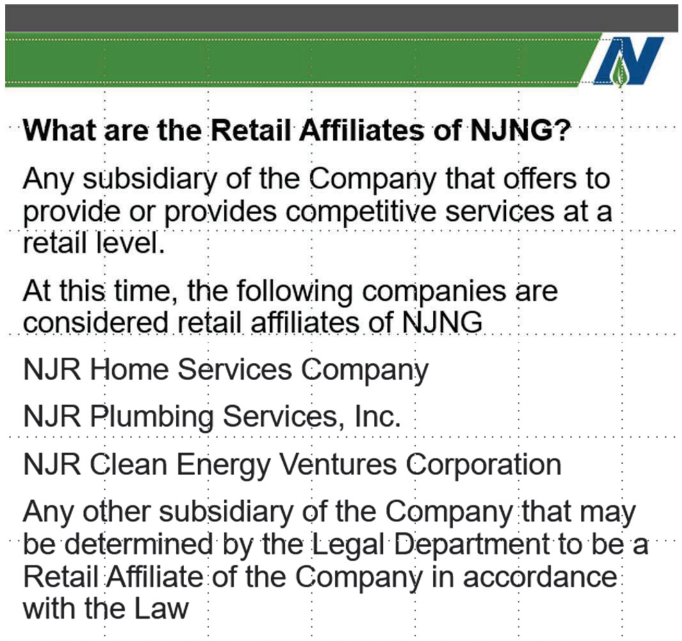
Each of the past two audits of this type recommended that management begin to recognize and treat CR&R as an RCBS for purposes of the Standards. The immediately preceding audit of this type made the same recommendation for NJRCEV, established in August of 2009. Management still has not classified CR&R and NJRCEV as RCBSs. Management has described CR&R as a real estate management entity and NJRCEV as a renewable electricity enterprise. Management has stated that determination of the status of these entities as RCBSs requires an order of the BPU and that it would participate in a forum initiated by the BPU to address RCBS status. [417]

Management thus has not offered its reasons why it has found it appropriate for these affiliates to operate outside the limitations of the Standards. NJNG's Compliance Plan does not define or use the term "Related Competitive Business Segment" or "RCBS," instead using the term "Retail Affiliate" in lieu of the Standards defined terms. Both the Plans *Introduction* section and its Exhibit *B*, *Fair Competition Guidelines*, define the term "Retail Affiliate" without any categorical description, instead by name, listing only by entity name or authority to name one, stating that, "'Retail Affiliate(s)' means NJR Home Services Company and/or any other retail affiliate of NJNG as determined by the Legal Department in accordance with the Affiliate Rules."

Thus, it is not even clear whether management does or does not recognize or subject to the requirements of the Standards any affiliates other than NJRHS. Plan Section II, *Organization*, states NJRS, then an internal NJNG RCBS, moved to another location within the NJR family of business operations in 2000. This portion of the Plan also states that, "On August 24, 2009, NJR Clean Energy Ventures ('NJRCEV') was established to provide commercial and residential alternative energy installations." Section II of the Plan makes no further reference to an RCBS or Retail Affiliate, and assigns no RCBS designation to NJRHS or to NJRCEV.

Other Company documentation provides inconsistent classifications of the RCBS status of affiliates. The affiliate standards training provided to new employees also identifies NJRCEV as a Retail Affiliate, as shown in the following depiction from the training materials provided.

NJNG Affiliates Standards Training Retail Affiliates Identification



The definitions section of Exhibit *O Intercompany Employee Transfer,* in its states that:

> *For purposes of this Human Resources Policy and Procedure 20 only, "Retail Affiliate" means any subsidiary of the Company that offers to provide or provides competitive services at a retail level. For purposes of this Human Resources Policy and Procedure 20 only, "Retail Affiliate" shall include: NJR Home Services Company* [NJRHS]*; NJR Plumbing Services, Inc.; NJR Clean Energy Ventures Corporation* [NJRCEV]*; or any other subsidiary of the Company that may be determined by the Legal Department to be a retail affiliate of the Company in accordance with the New Jersey Board of Public Utilities' regulations concerning Affiliate Relations, N.J.A.C. 14:4-3.1 et seq.*

b. <u>NJNG Competitive Service Offerings</u>

We reviewed the list of product and service offerings by NJNG, finding none of them to comprise competitive for purposes of the Standards.[418] The Plan notes the spinning out of NJNG's appliance service business into NJRHS more than 20 years ago pursuant to BPU approval in a December 6, 2000 Order. See Section H of this chapter which relates to compliance with internal RCBS provisions of the Standards.

3. *Conclusions*

6. The Compliance Plan fails to provide needed clarity on which affiliates management classifies as RCBSs. *(See Recommendation #7)*

Plans in effect from at least 2014 designated some affiliates as Retail Affiliates (management's term for the Standard's RCBS), but stopped doing so after 2019. The 2019 version of the plan labeled NJR Retail Holdings as a Retail Affiliate. Section II of the current Plan lists the 2000 movement of the competitive product and services offerings formerly made by NJNG to NJRHS and discuss the 2009 formation of NJRCEV. However, it classifies neither in this Section as an

RCBS. A response from management to a request that sought, "a list of every service management considered to be competitive under the Act" identified only the offerings of NJRHS. Moreover, a memorandum given to each new employee states that, "At the present time, NJR Home Services (NJRHS) is considered an affiliate that offers competitive service to customers and NJRHS, as well as NJNG are subject to the Standards."[419]

The 2019 version of the plan labeled NJR Retail Holdings as a Retail Affiliate. Current Plan Exhibits B, C, D, E, and O appear to list NJRHS as an RCBS, again assuming that NJNG and NJR fully equate the term "Retail Affiliate" with the Standards' "RCBS" term. Only Exhibits B and O do so for NJR Plumbing Services. Exhibit O alone does so for NJRCEV, noting, however, that this designation applies only for this Human Resources Policy and Procedure 20." The affiliate standards training provided by the Company to its employees identifies NJRHS, NJR Plumbing Services, and NJRCEV as Retail Affiliates.

7. **Multiple NJR Affiliates made product and service offerings that qualified as competitive and therefore require treatment as an RCBS pursuant to the Standards; management failed to classify some of these affiliates as an RCBS.** *(See Recommendation #8)*

The products and service offerings of the following NJR affiliates qualified as competitive during the audit period:

- NJRHS offers a variety of products and services including installation and maintenance and service contracts on HVAC equipment, water heaters, and backup generators, and service and repair contracts on electrical equipment. It also offers solar purchases and leases, and performs electrical and plumbing work.
- NJR Plumbing Services provides plumbing services for customers of NJRHS.
- NJRCEV develops, invests in, owns, and operates clean energy infrastructure projects throughout the Northeast, including residential solar arrays (offered as part of a Sunlight Advantage program) and large arrays as part of a commercial solar program.
- NJR Retail offers kitchen and laundry appliance plans and cooking, refrigeration, and built-in microwave sales and installations to customers.
- NJR Retail Services, operated as a natural gas retail services provider from August 2017 to February 2018
- Phoenix Fuel Management Company provides natural gas fuel management.

Portions of the current and previous Plans identified NJRHS as a Retail Affiliate, or RCBS. The plan in effect for the period that NJR Retail Services provided service to customers likewise identified it as one. Previous plans identified NJR Plumbing Services as a Retail Affiliate; however, the current Plan does not. The Plan identifies each of these entities as subsidiaries of NJR Retail Holdings Corporation.

No portion of any plan reviewed, nor any other material provided by management during the conduct of this audit, indicated that management has considered CR&R a Retail Affiliate subject to the RCBS portions of the Standards. Each of the two previous audits of this type found CR&R's offerings as competitive and recommended that management treat this affiliate as an RCBS. The Company stated that it has not done so. Management did not provide sufficient detail to support a conclusion that the Standards do not apply given the nature and operations of CR&R; *e.g.*, why real estate management does not qualify.

As the audit of this type whose report issued in 2007 found:

> *CR&R provides retail services to end-use customers. The Company's position that CR&R does not provide a retail competitive service to end-use customers and, therefore, is not an RCBS misconstrues the intent of EDECA and the Standards. The Standards have the clear intent of protecting third-party competitors against showing affiliates and subsidiaries forms of favoritism that arise from utility operations and relationships with customers. The effectiveness of the Standards in meeting this goal would substantially diminish under the Company's interpretation. It would make the application of the protections effective only where a holding company chose to make the same products and services available both through utility and non-utility affiliates. A holding company could make it lawful to use utility operations to favor or subsidize a non-utility affiliate simply by discontinuing or never initiating similar services through its utility. No language in the Standards supports such a distinction. That lack, and the fact that the Company's interpretation would allow facile frustration of the central purposes of the Standards, makes the Company's interpretation inappropriate.*

The reference to NJRCEV in Plan Exhibit O notwithstanding, it is not clear whether management actually does or does not consider NJRCEV a Retail Affiliate. This entity's ownership and operation of clean energy infrastructure projects qualify as competitive and therefore render it a RCBS for purposes of the Standards. The previous audit of this also found NJRCEV's operations to qualify it as an RCBS, recommending that management do so. Simply stating that NJRCEV operates as "a renewable electricity enterprise" does not meaningfully address its status as an RCBS. NJRCEV has been offering competitive services to end-use customers for 15 years and for 10 years since the previous audit of this type recommended that management classify it as an RCBS. Management should make its own declaration of the RCBS status of NJRCEV; offering to participate in BPU proceedings to make that determination avoids its responsibility for a clear declaration one way or the other.

8. The movement of reconstituted NJRES under NJRCEV calls for the application of the protections and limitations under the Standards. *(See Recommendation #10)*

The *Procurement and Purchasing* Chapter of this report provides and explains our findings, conclusions, and recommendations regarding the relationship between NJNG and NJRES. Those findings include a lack of sufficient independence of the NJNG Gas Supply function from this affiliate and its operations and interests. NJRES previously operated as a wholesale NJR affiliate not subject to the RCBS provisions of the Standards: each of the 2007 and 2014 audits of this type reached a similar conclusion.

The NJNG gas supply department and NJRES have shared work space and key work systems (the GMS in particular). NJRES now falls under an affiliate that both the previous audit of this type and this audit recommend requires treatment as an RCBS under the Standards. While the NJRES products and service offerings itself are not competitive, the fact that this entity now falls under an affiliate that does offer competitive services, we consider it necessary to also now treat NJRES itself as an RCBS for purposes of the Standards.

9. NJNG had no internal RCBS nor did it make available competitive internal offerings during the audit period.

We reviewed the list of product and service offerings made by NJNG during the audit period and did not consider any of them to qualify as competitive under the Standards.

4. Recommendations

7. Specifically identify in the Compliance Plan each affiliate and describe clearly the reasons for declaring each to comprise or not to comprise an RCBS; conform all company documentation, training, and other communications to those declarations. *(See Conclusion #6)*

No portion of the Plan includes an unambiguous and comprehensive listing of each such affiliate and, consequently, no description of why each does or does not comprise an RCBS. Certain exhibits included in the Plan and training materials provide inconsistent information about which affiliates comprise RCBSs. Management needs to update the Plan to include in Section II *Organization* a clear listing of the NJR affiliates that it considers a Retail Affiliate (*i.e.*, an RCBS) under the Standards. Effective Standards enforcement cannot occur if those with oversight responsibility and employees with job responsibilities that require diligent application of the Standards do not know to which affiliates the provisions of the Standards apply. Efforts should be made to ensure that all Company documentation, training materials, and other communications conform to a clear and complete Plan listing of RCBSs. Ambiguity is a clear impediment to ensuring effective Standards compliance.

8. Treat CR&R, NJRHS, NJR Plumbing Services, NJRCEV, NJR Retail, and NJR Retail Holdings Corporation as Retail Affiliates or RCBS. *(See Conclusion #7)*

Each of these NJR affiliates offer products and services that make them RCBs under the Standards. This audit comprises the third of this type to find that the offerings of CR&R qualify it as an RCBS. The Company has nevertheless not acted as though it is following two clear, preceding recommendations that it should. RCBS treatment should extend to enterprises under NJRCEV (*e.g.*, NJRCEV II and NJRCEV III) as well. This audit also comprises the second to find that the offerings of NJRCEV qualify it as an RCBS. As with CR&R, management has not decided to treat NJRCEV as such.

Management appears to consider each of NJRHS, NJR Plumbing Services, NJR Retail, and NJR Retail Holdings Corporation as a holding company RBCS for purposes of the Standards. However, the lack of a clear statement to this effect in the Plan, and conflicts in the Plan and its exhibits and in Company training materials designed to specifically address the Standards introduce uncertainty that management should remove.

9. Treat Phoenix Fuel Management as a Retail Affiliate or RCBS should it make product and service offerings in New Jersey and include a statement in the Plan that it would qualify as such should it make such offerings in New Jersey. *(See Conclusion #7)*

The Plan should acknowledge that Phoenix Fuel Management offers services that qualify as competitive under the Standards and that its lack of New Jersey customers represents the sole reason that management does not consider it a Retail Affiliate or RCBS under the Standards.

Management should commit to the Board that should Phoenix Fuel Management offer (*i.e.*, attempt to gain customers in New Jersey) that it will immediately classify it as a Retail Affiliate or RBCS, treat it as such, and update the Plan, each of its exhibits, and all other necessary corporate information (*i.e.*, affiliates training materials) to reflect this designation.

10. Treat NJRES as a Retail Affiliate or RCBS under the Standards and file promptly an action plan with the BPU within 30 days outlining management's plans for ensuring compliance with the Standards. *(See Conclusion #8)*

NJRES has operated for many years as a wholesale affiliate leaving much of its operations outside of the RCBS provisions of the Standards. The previous two audits of this type found similarly, and made no objection to the Company's classification of NJRES as something other than a Retail Affiliate. However, the June 2023 placement of NJRES as a subsidiary to NJRCEV created changed circumstances. The offerings of NJRCEV qualify it as a Retail Affiliate or RCBS under the Standards, and management must classify it as such and ensure compliance. The placement of NJRES under it presents an interesting challenge pursuant to the Standards. While the product and services offerings of NJRES may not themselves qualify as competitive, the fact that its officers now report through an entity that does so qualify means extra care must apply. A particularly significant provision of the Standards relevant here comes in Section 14:4-3.5(e) which provides that:

> *An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions permitted under this subsection or as follows…"*

The *Procurement and Purchasing* Chapter of this report raises several important questions about the relationship between NJRES and NJNG. The placement of NJRES under an RCBS introduced further questions that require resolution. The critical nature of this relationship and the appropriate rules which apply to them requires immediate remediation. Management should file a plan with the BPU no later than 30 days from the release of this report that outlines how it will create an environment that ensures compliance with the Standards.

D. Non-Discrimination Standards (Section 14:4-3.3)

Section 14:4-3.3 of the Standards applies to interactions between a utility and its affiliates, any RCBS of its holding company, or the holding company itself, if it offers or provides competitive services to retail customers in New Jersey. Separate standards, which Section G of this chapter addresses, apply to interactions between utilities and their internal RCBSs. Section 14:4-3.3 provisions do not apply to an RCBS internal to the utility itself, or to transactions between the utility and such an RCBS.

1. *Affiliate Preferences*

a. <u>Statement of Applicable Requirements</u>

Section 14:4-3.3 of the Standards provides that:

> *(a) An electric and/or gas public utility shall not unreasonably discriminate against any competitor in favor of its affiliate(s) or related competitive business segment.*

(b) An electric or gas public utility shall not represent that, as a result of the relationship with the electric and/or gas public utility or for any other reason, a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company will receive any different treatment by the electric and/or gas public utility than the treatment the electric and/or gas public utility provides to other, unaffiliated companies or their customers.

(c) An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.

b. Summary of Audit Activities

This standards set forth in Section 3.3(a) and several of the standards that follow address the issue of discrimination against competitors or in favor of affiliates. Those that follow Section 3.3(a) tend to apply to very specific cases. See for example the requirements of Section 3.3(e), which later sections of this report address. Subsections (b) and (c) set forth two more general rules. Specifically, these two subsections prohibit two particular forms of favoritism to affiliates:

- (b) Making representations that any RCBS of its holding company or that any customers of such an RCBS will be treated differently by the utility
- (c) Providing preferences to any RCBS of its holding company or RCBS customers with respect to terms, conditions, pricing, timing, or other aspects of utility services.

Our examination of discrimination under this subsection tested:

- Whether the paths used for regular customer communications include any direct or implied representations that selection of an RCBS would bring advantage to the customer in terms of utility service
- Whether NJNG's website makes any direct or implied representation that selection of an RCBS would bring a customer any utility service advantage
- Whether NJNG's Compliance Plan adequately addresses the requirements of this subsection.

We reviewed the regular channels used to communicate with customers through both electronic and physical document means in order to evaluate whether the substance of communications indicated evidence of prohibited discrimination. We also reviewed NJNG's Compliance Plans to determine standards of conduct imposed with respect to employee representations to customers. This review examined materials of NJR, NJNG, and other NJR affiliates.

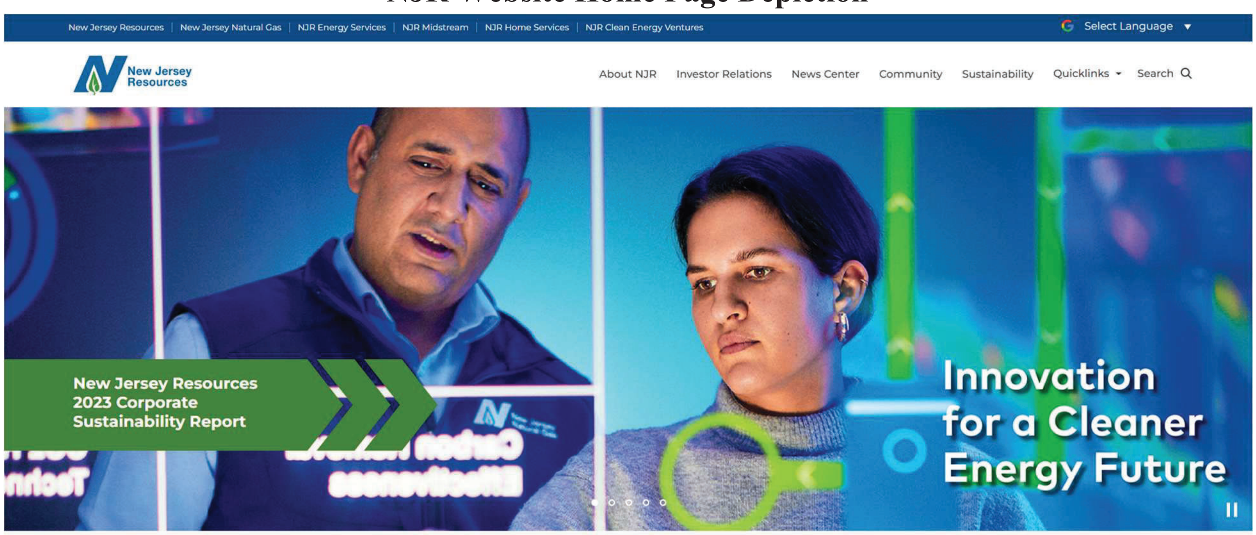
c. Findings

We requested a copy of all print, radio, and television advertisements run by NJR, NJNG, and all NJR affiliates.[420] Management provided a well-organized response that grouped responsive material by type, entity, and year, and included where available information about where and how ad placement occurred (*e.g.*, print, web, radio, mailer, etc.), and annual spend. We examined:

- Corporate Communications Material: Print, web, radio, and other advertisements for NJR affiliates that included Adelphia Gateway, NJNG, NJR, NJRCEV and material outlining Energy Assistance programs; social media posts and advertisements including Facebook, Instagram, LinkedIn, and Twitter
- Customer Service: Advertisements, postings, and mailings regarding bill payment options and energy assistance; all related to NJNG issues
- Marketing Services Conversion: NJNG communications to customers highlighting natural gas conversion programs and incentives
- NJR Retail Marketing: Advertisements and social media postings highlighting NJR retail product and service offerings
- NJR Sunlight Advantage: Advertisements for NJRCEV and its NJR Sunlight Advantage offerings
- NJRHS: Advertisements and social media postings highlighting NJRHS' product and service offerings.

We found NJR's website (www.njresources.com) typical of utility holding company sites, including those of other New Jersey EDC/LDC parent companies. The top portion of the website homepage provides links to: NJNG, NJRES, NJR Midstream, NJRHS, NJRCEV. It also includes standard types of information at links to "About NJR," "Investor Relations," "News Center," Community," Sustainability," "Quick Links," and "Search." The next illustration depicts the home page.

NJR Website Home Page Depiction



The home page image cycles through additional images that include a link to fraud protection, the coastal climate initiative, a link highlighting NJNG's achievement as the #1 natural gas utility in terms of customer service provided to residential customers at large, eastern LDCs, and a link recognizing the corporate responsibility recognition.

Links at the top of www.njresources.com include those to websites for some but not each NJR affiliate. No link to the NJR Retail is included. Both advertising materials and social media posts for this affiliate appear to identify its website homepage as njr.serviceplans.com, but that link did not function when we attempted to access it. The NJRHS and NJRCEV websites included a message consistent with those used by other New Jersey utility affiliates to address Section 14:4-3.3(b) of the Standards. The following images depict them. The disclaimers convey a message consistent with those used by other New Jersey utility affiliates.

NJRHS Webpage Disclaimer

NJR Home Services is not the same company as New Jersey Natural Gas, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products or services from NJR Home Services in order to continue receiving regulated services from New Jersey Natural Gas. All plumbing services will be subcontracted to NJR Plumbing Services, Inc., Edward B. Glashan, Licensed Master Plumber, Plumbing Lic. # 36B100969200. Electrical Contractor Bus. Permit #34EB01231200 NJ Home Improvement # 13VH00361500. 1415 Wyckoff Road, Wall, NJ.

NJRCEV Webpage Disclaimer

NJR Clean Energy Ventures is not the same company as New Jersey Natural Gas, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products and services from NJR Clean Energy Ventures in order to continue receiving regulated services from New Jersey Natural Gas.

We found no website for CR&R or Phoenix Fuel Management Company.

Later in this chapter we discuss other means of customer communications, including supplier choice inquiries, and bill and billing envelope communications.

NJNG has allowed its utility customers who choose to take product and services offerings from NJRHS the ability to pay bills in installments and to finance NJRHS-installed equipment.[421] Management reports that it did not make either option available to non-affiliated entities. Our review of the regulatory postings portion of the NJNG website did not find listings or descriptions for installment billing or for equipment installation financing. The previous audit of this type observed these offerings, concluded that they violated the nondiscrimination provisions of the Standards, and recommended that management cease offering them. The audit before that one included a similar recommendation.

Management offered conflicting responses for requests about the affiliates or affiliate customers for whom NJNG provide extended payment options. One response stated that "NJNG provided extended payment options to NJR Home Services that expired prior to the beginning of this audit period."[422] A response to another of our requests stated that "Extended payment options expired December 31, 2013."[423] A third response identified that such offerings to joint NJNG-NJRHS customers continue.[424]

The current and each prior version of the Compliance Plan we reviewed included a Section III.1, *Preferential Treatment Regarding Services Provided by an Electric and/or Gas Public Utility*, statement of management's policy "not to discriminate against any competitor in favor of any of its affiliates" and includes a reference to Exhibit B, the Company's "Fair Competition Guidelines." As described above, those guidelines include coverage of a number of core elements imposed by the Standards; however, neither it nor Section III.1 of the Plan include mention of the Standards prohibition at Section 14:4-3.3(b) against representation that an RCBS' relationship with NJNG can result in the provision of any different treatment by management to an RCBS or to a customer of an RCBS.

The broad language of this Section of the Standards means that several other elements of NJNG's Plan also have application to ensuring that prohibited discrimination does not occur. These elements include the Company's *Corporate Communications and Public Relations Guidelines and Corporate Identification and Advertising Guidelines* (Exhibit N) to the Plan. Discussion of preferential treatment occurs in this document. One of its sections, *Corporate Identification and Advertising*, describes the need to include where possible a disclosure of each Retail Affiliates "independent status" and that the discussion must "be in a font size no smaller than the smallest type on the document." Our review of the disclaimers included in the advertising materials for NJRHS and the websites of NJRHS and NJR Retail (described, and depicted previously) could not confirm that they complied with this provision of the Company's policy. The font size used appeared smaller than the smallest other fonts included.

d. Conclusions

10. NJNG and its affiliates, including its holding company RCBSs, did not for the portion of the EDECA audit period from which management provided materials, represent in print or television ads or in any other written customer communications that any RCBS or RCBS customers would receive any type of preferential treatment; however, some material reviewed did not include the required disclaimer. *(See Recommendation #11)*

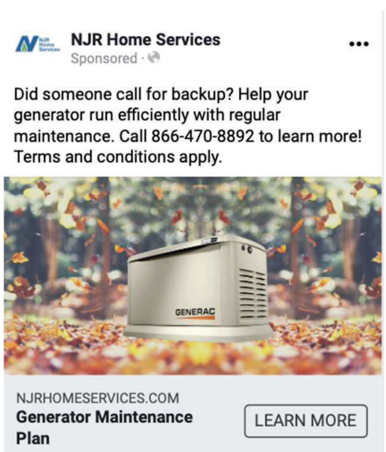
We reviewed all materials that management provided in its response to requests for print, television, and radio advertisements. We observed no instances of any prohibited favoritism toward or preference regarding an affiliated entity or such an entity's product and service offerings. Most material reviewed included a disclaimer consistent with the guidance in Section 14:4-3.3(b) of the Standards. An example that typified the disclaimer when used follows:

> *NJR Clean Energy Ventures ("NJRCEV") is not the same company as New Jersey Natural Gas ("NJNG"); NJRCEV is not regulated by the New Jersey Board of Public Utilities; and you do not have to buy products or services from NJRCEV in order to continue to receive quality regulated services from NJNG. NJHIC# 13VH09413000*

However, some material we reviewed did not include the required disclaimer; *e.g.*, two NJRCEV advertisements, NJRHS radio advertisements, and NJRHS Facebook, Instagram, and Twitter posts. The following depicts the NJRCEV advertisements and the NJRHS social media advertisements.

NJRCEV Advertisements Lacking Typical Disclaimer

NJRHS Social Media Advertisements Lacking Typical Disclaimer



We also reviewed other, more current content posted on the NJRHS Twitter (now known as "X"). Neither the page, nor any of its individual posts, appeared to include the disclaimer.

The NJRHS radio ads we reviewed also did not include the disclaimer, but the television ads that ran did. The latter showed the advertisement's audio and video content before closing with the following screen that included the disclaimer:

NJRHS Television Advertisement Disclaimer

We reviewed current versions of website pages for NJNG, NJR, and affiliates. We observed no inappropriate implication of preference and consistent use of the disclaimer.

11. **NJR, NJNG, and affiliates' websites have created no affirmative implication of preference, and websites for operations in New Jersey set forth an appropriate disclaimer; however, it appears that some disclaimers failed to comply with Company policy regarding minimum font sizing.** *(See Recommendation #11)*

Our review of Company websites observed no instances of preference. Each contained appropriate disclaimers sufficient overall and largely common to those included by other New Jersey utilities and affiliates that we have examined. A Company policy dictates that "publicly circulated materials" must include the following notice, and do so in a font size no smaller than the smallest type used:

> *[Retail Affiliate name] is not the same company as New Jersey Natural Gas Company, the utility, and is not regulated by the New Jersey Board of Public Utilities. You do not have to buy products or services from [Retail Affiliate name] in order to continue receiving regulated services from New Jersey Natural Gas.*

Our review of the disclaimers included on the NJRHS and NJRCEV websites appeared to show them in a font size smaller than the smallest other fonts included. We observed the same in NJRHS advertising material.[425]

12. Management has continued to make extended payment options available to joint NJNG-NJRHS customers for both service contract charges from NJRHS and equipment installed by NJRHS without announcing their availability to non-affiliated entities. *(See Recommendation #13)*

The provisions of Section 14:4-3.3(c) of the Standards states that:

> *(c) An electric or gas public utility shall not provide a related competitive business segment of its public utility holding company, or customers of a related competitive business segment of its public utility holding company, any preference (including, but not limited to, terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of products and/or services offered by the electric and/or gas public utility.*

As described elsewhere in this chapter, we found in this audit (as the prior two of its type did) that management has failed to classify certain NJR affiliates as an RCBS. However, NJRHS is not, and has never been an affiliate subject to such questions. Management has appropriately classified it as an RCBS since approval of its formation more than 20 years ago. Moreover, the past two audits of this type have found the same offerings made available to joint NJNG/NJRHS customers as violative of the Standards, recommending their cessation. The offerings of extended payment options clearly provide value uniquely to NJRHS, and therefore trigger the "preference" provisions of the Standards. Management itself states that it does not make these offerings available to non-affiliated entities.

13. NJNG's Compliance Plan adequately addresses Section 14:4-3.3 (a) and (c) of the Standards but does not address directly Section 14:4-3.3 (b). *(See Recommendation #14)*

Current and previous versions of the Plan appropriately address Section 14:4-3.3 (a) and (c) of the Standards in Section III.1 and Exhibit B, and state an intention to comply with them. However these portions of the Plan, which address preferential treatment elements of the Standards, do not address the Section 14:4-3.3(b), which prohibits NJNG from making representations to customers that an RCBS relationship with the Company makes preferential NJNG treatment of the RCBS or the RCBS's customers possible. As described below, a later portion of the Plan does address the prohibition on the implication of preferential treatment, but in a section addressing a different element of the Standards (Section III.10 *Business Development and Customer Relations*). The broad implications of the language of these provisions of the Standards also mean that many other elements of the Company's Plan have applicability here as well.

e. <u>Recommendations</u>

11. Institute measures to ensure that: (a) all affiliate advertisements include the required disclaimer and (b) all affiliate website and advertisement disclaimer use complies with Company policy regarding the appropriate font size. *(See Conclusion #10)*

These measures will better ensure that all advertisements made by or on behalf of NJR affiliates include the disclaimer we found typically present in most material we reviewed. Management should also ensure that each disclaimer used complies with its *Corporate Identification and*

Advertising policy, including its provision that publicly circulated materials" must utilize a font size no smaller than the smallest type used.

12. Institute measures to ensure that all affiliate social media pages and their posts include the required disclaimer. *(See Conclusion #10)*

NJR affiliates have engaged in advertisements and maintained accounts on various social media platforms. Our review of them found that management did not include the disclaimer that we found typically present in most material we reviewed. The Standards pre-date the social media platforms used by NJR affiliates. Nevertheless, these platforms represent common ways for companies to communicate with and advertise to potential and existing customers. The failure to require management to treat these pages and their posts in a manner similar to other customer communication paths leaves a major gap in meeting the purposes of the Standards. Management should use here the disclaimer typically used elsewhere.

13. Cease providing extended bill payment options to joint NJNG-NJRHS customers. *(See Conclusion #12)*

Management should cease its offering of extended payment options to joint NJNG/NJRHS customers for both service contract charges from NJRHS and equipment installed by NJRHS. Each of the previous two audits of this type recommended similarly. Compliance with Section 14:4-3.3(c) of the Standards do not permit offering such to an RCBS but not to other, non-affiliated entities. Extending the option to others who have relationships with NJNG customers may theoretically solve the non-compliance issue, but there appears no practicable way to do so.

14. Update the Compliance Plan to include direct discussion of the Section 14:4-3.5(b) of the Standards in the Section addressing preferential treatment and services provided by NJNG. *(See Recommendation #13)*

Revising the Plan would ensure distinct and direct acknowledgement of this portion of the Standards and its unique prohibitions and provide needed instruction to employees regarding compliance. It will do so in a manner that more closely aligns the Plan with the structure, content, and outline of the Standards.

2. Prohibited Transactions

a. Statement of Applicable Requirements

Section 14:4-3.3(d) of the Standards provides that:

> *Transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company shall be prohibited, except for the following…*

Subsection (d) then lists the following exceptions to the prohibition on transactions:

- Tariffed products or services
- Sales and purchases made generally available to all market participants through open and competitive bidding
- Joint purchases allowed by Sections 14:4-3.5(g) and (h)
- "Shared corporate support functions" allowed by Sections 14:4-3.5(i) and (j), which extend to the sharing of "joint corporate oversight, governance, support systems and personnel"

- Competitive products or services offered by an RCBS within the utility, as allowed by Sections 14:4-3.6(a) through (f).

The Standards do not include "corporate support" explicitly among its defined terms, but do define two related terms:

- *"Services that may not be shared" means those services which involve merchant functions, including, by way of example: hedging and financial derivatives and arbitrage services, gas and/or electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing.*
- *"Shared services" means administrative and support services that do not involve merchant functions, including by way of example: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.*

b. Summary of Audit Activities

The effect of this provision is to prohibit a utility and an RCBS of its holding company from engaging in any form of transaction not specifically authorized by the Standards. The first, second, and fifth exceptions have in common the fact that transactions generally available to all comers, whether affiliated or not, can occur to the extent governed by standard or uniform prices, terms, and conditions. The third and fourth exceptions recognize the right to use internal economies of scale or scope to provide an affiliate with services not made available to outsiders.

Our examinations under this Standards section focused on whether NJNG has, except for permitted common services for purchasing and corporate support, made non-tariffed transactions available to all market participants. We did not examine pricing questions here, but did under Sections 3.3(f) through (i) provisions, which cover discounts, charge waivers, and strict tariff enforcement in transactions between a utility and a holding company RCBS. We applied as our standard of review whether NJNG, apart from the allowed common purchasing and support service, made available to a holding company RCBS opportunities to purchase or sell goods or services not also made available to other market participants.

We sought to identify the flow of goods and services between NJNG and its affiliates in the portion of our work explained in the *Cost Allocations* and *Procurement and Purchasing* Chapters of this report. As part of this work, we examined the transaction information provided for compliance with the review standard set forth immediately above, incorporating inquiries into NJNG involvement in any audit period transactions other than those allowed.

c. Findings

The data gathering and field work description from the *Cost Allocations* and *Procurement and Purchasing* Chapters of this report describes our review of the transactions between NJNG and affiliates. We examined whether those transactions violated the requirements of this provision of the Standards.

The Section III.2 *Transactions* section of the current and each prior version of the Compliance Plan we reviewed stated management's policy to comply with each element included in Section 14:4-3.3(d) of the Standards.

d. Conclusions

14. We found no non-compliant transactions between NJNG and RCBSs during the audit period.

We found no evidence of prohibited and non-compliant transactions between NJNG and its affiliates, including those management did classify as RCBSs and those that it did not but should have so classified. The *Cost Allocations* Chapter of this report describes in detail our review of specific transaction types and their results. A separate chapter of this report addresses transactions between NJNG and NJRES (see the *Procurement and Purchasing* Chapter).

15. The Compliance Plan adequately addresses this section of the Standards.

We found that that Plan addresses this provision of the Standards comprehensively.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

3. Access to Information and Services

a. Statement of Applicable Requirements

Section 14:4-3.3(e) of the Standards provides that:

> *An electric and/or gas public utility shall provide access to utility information, services, and unused capacity or supply on a non-discriminatory basis to all market participants, including affiliated and non-affiliated companies…*

b. Summary of Audit Activities

This section's anti-discrimination provisions generally follow those set forth in Section 14:4-3.3(a). What makes this section different is its imposition of the following requirement regarding public posting of offerings made by a utility:

> *1. If an electric and/or gas public utility provides supply, capacity, services, or information to a related competitive business segment of its public utility holding company, it shall make the offering available, via a public posting, on a non-discriminatory basis to non-affiliated market participants, which include competitors serving the same market as the related competitive business segment of the electric and/or gas public utility's holding company.*

This standard, unlike the one set forth in preceding subsection (a), introduces the concept of utility provision of "information" as a possible source of preference or discrimination. We address our examination of utility performance in making information available in other sections of this chapter that address the sharing of information among affiliates; *e.g.*, 3.3(m), 3.4(a), 3.4(b), 3.4(d), 3.4(e), 3.5(e), 3.5(j), 3.5(s).

The relationship of this subsection with the preceding one led us to perform our audit work on the two provisions together. Relevant here, which the previous section of this report discusses in detail, is whether NJNG made a public posting of all offerings of services (if any) made available to a holding company RCBS.

c. Findings

The findings set forth for Section 14:4-3.3(b), (d), and (e) in the report sections that immediately precede and follow this one fully address those relevant here.

d. Conclusions

The conclusions set forth for Section 14:4-3.3(b), contained in the immediately preceding section of this chapter fully address those relevant here.

e. Recommendations

We have no separate recommendations regarding the requirements of this provision of the Standards.

4. Short-Term and Long-Term Sales of Surplus Energy or Capacity

a. Statement of Applicable Requirements

Section 14:4-3.3(f) of the Standards provides that:

> *An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a short term basis to its PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.*

Section 14:4-3.3(g) of the Standards provides that:

> *An electric and/or gas public utility selling or making an offer to sell surplus energy, kWh, and/or Dth, respectively, and/or capacity, kW or therms, respectively, on a long term basis to its PUHC or a related competitive business segment of its public utility holding company, shall make the offering available on a non-discriminatory basis to non-affiliated electric or gas marketers, via a public posting.*

b. Summary of Audit Activities

These portions of the Standards require that a utility offering to sell surplus energy or capacity to its PUHC or to an RCBS of its PUHC on a short-term basis (transactions of 31 days or less), must make the offering available to non-affiliated companies via a public posting. The sections addressing short- and long-term sales are similar; therefore, we examined both types through the same audit activities. We first sought information from NJNG about its sales of excess energy and capacity on short-term and on long-term bases. We also reviewed the Plan, specifically addressing any portions dealing with surplus energy and capacity. Our work examined whether:

- The Compliance Plan adequately addresses the requirements applicable to offerings made to an RCBS
- NJNG made a public posting of all offerings (if any) made available to a holding company RCBS.

c. Findings

Plan Section III.3 *Provision of Supply, Capacity, Services or Information* summarizes the applicable Standards and states that management will make any necessary postings should relevant transactions occur. This portion of the Plan also includes reference to Exhibit J *Shared Service Guidelines* and Exhibit P *Information Systems Access Guidelines* each of which include discussion of and guidance about information sharing. Plan Exhibit P acknowledges the posting requirements necessary in the event of a supply, capacity, service, or information offering by NJNG to NJR or an NJR RBCS. Plan Section III.4 *Surplus Energy and/or Capacity* states that NJNG will not "routinely" engage in the types of transactions that applicable Standards address. It does not include mention of the posting requirements referenced in the Standards.

The *Procurement and Purchasing* Chapter of this report addresses NJNG's gas supply function and various transactions, asset management agreements and capacity releases, between NJNG and NJRES. Those transactions occurred for the most part with NJRES operating as a wholesale affiliate of NJNG. However, its recent placement under NJRCEV make transactions as of the date of that movement subject to the posting requirements of the Standards.

d. Conclusions

16. The Compliance Plan adequately addresses Section 14:4-3.3(f) and (g) of the Standards

The Plan includes discussion of each provision of the Standards and includes exhibits that provide further guidance about the posting requirements they impose and which business units have responsibility for ensuring those posts occur. As discussed in Recommendation #12 above, the recent placement of NJRES under NJRCEV, and utility RCBS, mean that all provisions of the Standards should now apply to transactions between NJRES and NJNG.

17. Numerous transactions including capacity releases and asset management agreements occurred between NJNG and NJRES and other chapters of this report include recommended actions to ensure that no favoritism occurs. *(See the Procurement and Purchasing Chapter of this report)*

See the Procurement and Purchasing Chapter of this report.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

5. Discounts or Waivers of Fees or Charges

a. Statement of Applicable Requirements

Section 14:4-3.3(h) of the Standards provides that:

> *Except when made generally available by an electric and/or gas public utility through an open, competitive bidding process, an electric and/or gas public utility shall not offer a discount or waive all or part of any other charge or fee to a related competitive business segment of its public utility holding company, PUHC, or offer a discount or waiver for a transaction in which a related competitive business segment of its public utility holding*

company is involved unless the electric and/or gas public utility shall make such discount or waiver available on a non-discriminatory basis to other market participants.

1. *An electric and/or gas public utility shall not give its PUHC or a related competitive business segment of its public utility holding company involved in energy supply or marketing a preference with respect to tariff provisions that provide for discretionary waivers of fees, penalties, etc., unless offered to all others on a non-discriminatory basis.*

b. Summary of Audit Activities

This section prohibits a utility from offering a discount or waiver of any charge to or for the benefit of an RCBS of its holding company, unless it makes the same concessions to non-affiliated entities. We sought first to identify any instances during the audit period when NJNG may have offered a discount or waiver to an RCBS. Upon encountering any, we would then determine whether NJNG made the same concessions available to non-affiliates through an open process. As a first step, we formally asked whether NJNG provided any discounts, waivers, or the like to its holding company or to an RCBS of its holding company during the audit period.

In addition to the work summarized in this chapter, through the data gathering in our *Cost Allocations* field work we obtained substantial information about transactions between NJNG and its affiliates. We examined that information for evidence of any discount, waiver, rebate, or similar concession to or for an affiliate. We would examine any found for evidence of offering to non-affiliates.

Specifically, we sought to determine whether:
- The Plan adequately addresses obligations under this section
- In the event that there were any covered transactions, similar offerings were made to non-affiliates.

c. Findings

Section III.5 *Offering of Discounts and Discretionary Waivers* of the Plan notes the Company policy to not offer such discounts or waivers to retail affiliates. NJNG provided a statement that it did not waive charges or provide discounts to any affiliates during the audit period. The Company identified NJNG's provision of delivered natural gas services to NJRHS during the audit period as the only tariffed services provided to an NJR affiliate. We requested information for a sample of nine separate months (three in each of 2014, 2017, and 2022) throughout the period that would allow for a verification that all charges occurred pursuant to the appropriate tariff rate in effect at the time and that NJRHS made the necessary payments. Management could provide complete information for only the 2022 bills. We found the bills accurately calculated and the demonstration of payments acceptable.

d. Conclusions

18. There is no evidence that NJNG violated its policy not to offer discounts or waivers to tariffed services provided to affiliates; however, management could provide only limited documentation enabling independent verification. *(See Recommendation #15)*

NJNG provided tariffed services to one affiliate during the audit period, NJRHS. Management does not maintain copies of historical bills, leaving us unable to compare NJNG bills to NJRHS with payments received. The information management could provide allowed for a verification that NJNG did not provide a discount to its tariffed rates when providing service to NJRHS in 2022.

19. The Compliance Plan adequately addresses Section 14:4-3.3(h) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.5, this portion of the Standards and include a statement of the Company's policy to not offer the types of waivers and discounts at issue here to its affiliates.

e. Recommendations

15. Ensure the maintenance of records suitable to verify that NJNG charged all affiliates appropriate tariff rates. *(See Conclusion #18)*

Management should, at least between audits of this type, maintain copies (at least electronic) of each bill for NJNG tariffed services provided to any affiliate to allow for a comparison of those bills to tariff rates. The information maintained should permit verification that all billing occurred appropriately and that no price discounting occurred.

6. Documentation of Discount Bases

a. Statement of Applicable Requirements

Section 14:4-3.3(i) of the Standards provides that:

> *An electric and/or gas public utility shall document the cost differential underlying the discount to its PUHC or a related competitive business segment of its public utility holding company in the Affiliate Discount Report described in (q) through (s) below.*

b. Summary of Audit Activities

This section requires that NJNG document the basis for any discount offered to the holding company or an RCBS of its holding company. We first sought to determine those instances during the audit period when NJNG may have offered a covered discount or waiver. We planned next to determine whether NJNG accompanied any offered with a properly documented basis.

c. Findings

As explained in the preceding discussion under Section 14:4-3.3(h) NJNG reports that it did not offer discounts or waivers to RCBSs of its holding company, and the documentation for the limited period available, shows that to be the case. The absence of any such qualifying offerings by NJNG to an RCBS negated any reporting and documentation. Section III.5 *Offering of Discounts and Discretionary Waivers* of the Plan, also described above, notes that NJNG's lack of offerings that qualify under this portion of the Standards meant that it made no reports that document the cost differential made available to any affiliate in the Annual Discount Report described in Sections 14:4-3.3(h) and 14:4-3.3(q) though (s) of the Standards as none were required.

d. Conclusions

20. There is no evidence that NJNG provided offerings of discounts and waivers to affiliates that required a need for compliance with the documenting and reporting requirements of the Standards.

NJNG made no such discounts or waivers to an affiliate during the EDECA audit period; therefore, it had no obligation with respect to this provision of the Standards; however, the ability to verify that absence is limited to the period for which management could provide supporting documentation.

21. The Compliance Plan adequately addresses Section 14:4-3.3(h) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.5, this portion of the Standards and state management's understanding that its offering of a discount to an RCBS triggers documentation and reporting requirements.

e. Recommendations

See Recommendation #15.

7. Non-Discriminatory Tariff Enforcement

a. Statement of Applicable Requirements

Section 14:4-3.3(j) of the Standards provides that:

An electric and/or gas public utility shall apply tariff provision(s) on a non-discriminatory basis to its PUHC or related competitive business segments of its public utility holding company and to other market participants and their respective customers if the tariff provision allows for discretion in its application.

b. Summary of Audit Activities

This provision prohibits a public utility from discriminating in favor of its holding company or an RCBS of its holding company in the following two ways:

- Failing to enforce tariff requirements fully
- Giving an affiliate relatively greater benefit where a tariff may allow the exercise of latitude.

As a threshold matter, we sought to determine the nature and extent of tariff services provided by NJNG to affiliates during the EDECA audit period. We would then determine whether NJNG had engaged in any activity covered by the requirements imposed by this provision. If so, we would then identify and carry out any test activities considered appropriate in testing compliance with those requirements. We sought to determine whether:

- The Compliance Plan adequately addresses its obligations under this standard
- In the event of any covered transactions, whether NJNG made similar offerings to non-affiliates.

c. Findings

As described above in addressing Section 14:4-3.3(h) of the Standards, management reported that NJNG provided tariffed services to just one affiliate during the EDECA audit period. Section III.6 *Interpretation of Tariff Provisions* of the Plan addresses this portion of the Standards and notes that NJNG employs a policy of applying its tariff provisions to all market participants on a non-discriminatory basis.

d. Conclusions

22. NJNG demonstrated that it enforced the provisions of its tariff pursuant to Section 14:4-3.3(j) of the Standards for 2022 but could not do so for early periods for which we requested data. *(See Conclusion #18 and Recommendation #15)*

See Conclusion #18 and Recommendation #15.

23. The Compliance Plan adequately addresses Section 14:4-3.3(j) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.6, this provision of the Standards.

e. Recommendations

See Recommendation #15.

8. Strict Tariff Enforcement

a. Statement of Applicable Requirements

Section 14:4-3.3(k) of the Standards provides that:

An electric and/or gas public utility shall strictly enforce a tariff provision if the tariff provision does not allow discretion in its application.

b. Summary of Audit Activities

This provision corresponds to the previous standard set forth in Section 14:4-3.3(h). However, that previous standard applies to enforcement of tariff provisions that allow NJNG to exercise discretion, whereas this one applies to the enforcement of tariff provisions whose implementation does not allow utility discretion. Given the similarity in requirements, we conducted the same activities and applied the same performance standards as set forth above under our discussion of Section 14:4-3.3(h).

c. Findings

Section III.6 *Interpretation of Tariff Provisions* of the Plan addresses this portion of the Standards and notes that NJNG employs a policy of applying its tariff provisions to all market participants on a non-discriminatory basis.

d. Conclusions

24. The Compliance Plan adequately addresses Section 14:4-3.3(k) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.6, Section 14:4-3.3(k) of the Standards.

e. Recommendations

See Recommendation #15.

9. Processing Affiliate Service Requests

a. Statement of Applicable Requirements

Section 14:4-3.3(l) of the Standards provides that:

> *An electric and/or gas public utility shall process all requests for similar services provided by the electric and/or gas public utility on a non-discriminatory basis for its PUHC or a related competitive business segment of its public utility holding company and for all other market participants and their respective customers.*

b. Summary of Audit Activities

These provisions prohibit a public utility from discriminating in favor of its holding company by giving affiliates faster, cheaper, or technically superior service when they request new service, a change in existing service, or cessation of service. As a baseline matter, we sought to identify all service requests from affiliates during the audit period, intending next to determine whether NJNG engaged in any activity covered by the requirements imposed by this section of the Standards. We would then identify and carry out any test activities considered appropriate in determining compliance with those requirements. We sought to determine whether:

- The Compliance Plan adequately addresses obligations under this section of the standards
- Whether there is any indication that NJNG offered its holding company or any holding company RCBS a preference in responding to service requests.

c. Findings

We requested a list of all new or changed service requests that NJNG received from any holding company RBCS during the EDECA audit period. Management responded that no such new or changed requests occurred.

Section III.7 P*rocessing Requests for Electric and/or Gas Public Utility Services* of the Plan includes a statement from management that it will handle requests for services from NJNG on a non-discriminatory basis regardless of whether that request comes from NJR, an RCBS, or any non-affiliated entity or one of its customers.

d. Conclusions

25. We found no audit-period occasion that would create the potential for a violation of Section 14:4-3.3(l) of the Standards.

Management reported no requests for new or changed services from an RCBS during the period.

26. The Compliance Plan adequately addresses Section 14:4-3.3(l) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.7, this portion of the Standards and state that NJNG will process all requests for services from an affiliate or any other market participant on a non-discriminatory basis.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

10. Tying Arrangements

a. Statement of Applicable Requirements

Section 14:4-3.3(m) of the Standards provides that:

> *An electric and/or gas public utility shall not condition or otherwise tie the provision of any products and/or services provided by the electric and/or gas public utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any products and/or services provided by the electric and/or gas public utility to the taking of any products and/or services from its PUHC or a related competitive business segment of its public utility holding company.*

b. Summary of Audit Activities

This section prohibits a utility from tying the provision of goods or services, discounts, rebates or waivers to the taking of products or services from its PUHC RCBS. Our work here focused on verifying that:

- Regular customer communications did not directly or indirectly indicate that the availability of or the conditions associated with taking any utility service have any connection to the taking of service from an affiliate
- The Compliance Plan offers employees explicit instructions with respect to avoiding direct or implied statements that tying is necessary for securing utility services or advantageous with respect to the terms and conditions applicable to utility service.

We reviewed utility customer communications, including information provided to customers inquiring about Energy Choice,[426,427] utility bill inserts,[428] advertising, and NJR entity websites for any representation or implication with respect to tying the taking of goods or services from a PUHC RCBS to the provision of utility services. We also reviewed the Plan to ensure inclusion of the prohibition against tying utility products or services to the taking of products or services from an affiliate.

c. Findings

The discussion earlier in this chapter addressing Section 14:4-3.3(a) of the Standards describes our finding that NJNG did not represent in its customer communications (including web and advertising material we reviewed) an implication of preferential treatment for any NJR RCBS or the customers of any NJR RCBS. We address later (in Section F.14 of this chapter) related findings from our review of bill inserts, as subsequent portions of the Standards apply specific prohibitions to customer bills. These conclusions also apply to any conditions or tying of the provision of utility services or discounts to the taking of any products from a NJR RCBS.

Section III.8 *Tying of Products and/or Services Provided by an Electric and/or Gas Public Utility* of the Plan notes the Company's policy to tie neither (a) the provision of its products and services or (b) the availability of any discounts, rebates, or waivers of terms and conditions to the taking of products or services from its retail affiliates.

d. Conclusions

27. NJNG does not specify or imply in its customer communications, nor do it or any of its affiliates through their websites specify or imply, the tying of the provision of utility goods and services to the taking of products and services from an NJR RCBS; some affiliate advertisements however did not include that disclaimer to that effect. *(See Conclusion #10 and Recommendation #11)*

We reviewed various customer communication paths including print, TV, radio, and other advertisements, utility and affiliate web sites, and the policies and procedures management employs relevant to these matters. We observed no instances, either specific, or by implication, that would suggest an attempt by NJNG or an affiliate to tie its service to one another. Management's procedures adequately emphasized the need for fair treatment toward non-affiliated suppliers. We did however observe some affiliate advertisement material lacked the typically-used (by most NJR affiliates in most cases) disclaimer. Section E.1 and Conclusion #10 and Recommendation #1 address this disclaimer issue.

28. NJNG's Compliance Plan treats Section 14:4-3.3(m) of the Standards adequately.

Current and previous versions of the Plan appropriately address, in Section III.8, this portion of the Standards and notes that NJNG's will tie neither the provision of its services or discounts, rebates, nor waivers of terms and conditions to the taking of service from a retail affiliate.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

11. Customer Assignments

a. Statement of Applicable Requirements

Section 14:4-3.3(n) of the Standards provides that:

> *An electric and/or gas public utility shall not assign customers to which it currently provides products and/or services to any related competitive business segments of its public utility holding company, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors on a non-discriminatory basis.*

b. Summary of Audit Activities

This provision prohibits a public utility from discriminating in favor of RCBSs of its holding company if and when assigning customers. We addressed the following items in examining implementation of this provision:

- Adequacy of Plan information to employees in describing their obligations under this provision

- Whether any customer assignments took place during the EDECA audit period
- If so, the existence of clear and convincing evidence that no discrimination against competitors occurred in making such assignments.

We reviewed the Plans in effect during the EDECA audit period and sought to identify all cases where NJNG may have assigned customers to any party, affiliated or not. We would use this information to determine whether NJNG engaged in any activity covered by the requirements imposed by this section of the Standards. We would then identify and carry out any test activities considered appropriate in examining testing compliance with those requirements.

c. Findings

Section III.9 *Assignment of Customers* of the Plan notes that NJNG will make no assignment of any current customer to a retail affiliate (a) without making that assignment available to competitors on a non-discriminatory basis or (b) a BPU Order to make such an assignment.

Management reported that NJNG made no assignments of customers to any of its RBCSs during the EDECA audit period.[429]

d. Conclusions

29. The Compliance Plan adequately addresses Section 14:4-3.3(n) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.9, this portion of the Standards and state that NJNG will not make assignments of its customers to a retail affiliate without adhering to the prescribed provisions in the Standards or pursuant to a BPU Order to do so.

30. NJNG made no customer assignments to an RCBS during the audit period.

The lack of customer transfers from NJNG to an RBCS in the EDECA audit period negated a need for further inquiry to assess whether the transfer(s) complied with Section 14:4-3.3(n) of the Standards.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

12. Customer Enrollment, Marketing, and Business Development

a. Statement of Applicable Requirements

Section 14:4-3.3(o) of the Standards provides that:

> *Except as otherwise provided by these standards, an electric and/or gas public utility shall not provide any assistance, aid or services to its PUHC or related competitive business segment of the PUHC if related to customer enrollment, marketing, or business development unless offered to all competitors on a non-discriminatory basis.*

b. Summary of Audit Activities

The section lists the following examples of prohibited assistance by a public utility to its PUHC or to an RCBS of its PUHC:

- Providing leads
- Soliciting business
- Acquiring information on behalf of the PUHC or an RCBS of the PUHC
- Sharing market analysis reports or other types of proprietary reports
- Sharing customer usage or end-use equipment information
- Requesting authorization from its customer to pass on customer information exclusively
- Representing or implying that NJNG speaks on behalf of the RCBS or that the customer will receive preferential treatment as a consequence of conducting business with the RCBS
- Representing or implying that the RCBS speaks on behalf of the public utility.

These provisions prohibit a public utility from assisting its holding company or the RCBSs of its holding company in customer enrollment, marketing, and business development. We reviewed the Plan for adherence to these provisions. In addition, we reviewed business plans, training for customer-service representatives, information recipients, marketing materials, bill inserts, customer and competitor complaints, and information acquisition and dissemination. This review was to ensure that NJNG was not participating in any prohibited activity involving its holding company or holding company RCBSs.

We sought to determine whether:

- The Compliance Plan adequately addresses the requirements of this provision of the Standards
- There exist controls adequate for assuring compliance with the requirements of this provision
- NJNG scrupulously avoided conduct that provides assistance, support, or services that aid RCBSs, unless offered to other market participants.

c. Findings

As summarized in the *Planning and Budgeting* Chapter of the accompanying Phase Two report, we reviewed the relevant NJNG and NJR strategic and business plans for adherence to these provisions, and found that the plans complied with this provision of the Standards. We also reviewed the information provided during the planning process to ensure that competitively sensitive information such as market analysis, customer usage information, and end use information are not inappropriately shared.

Section E.10 above, which includes our findings regarding the tying prohibitions of the Standards and NJNG's compliance with them, discusses customer communications paths. Section III.10 *Business Development and Customer Relations* of the Plan includes language addressing the provisions of Standards Section 14:4-3.3(o) and each of its eight numbered sub-parts. For each relevant provision, the Plan states either that NJNG will not, or that its policy is to not, engage in any of the activities prohibited. Section III.10 of the Plan also references four Exhibits: B *Fair Competition Guidelines*, C *Do's and Don'ts for Customer Service Representatives*, E *Do's and Don'ts for Marketing Service Representatives*, and N *Corporate Communications and Public*

Relations Policy and Corporate Identification and Advertising Guidelines. Section C of this chapter summarizes these exhibits; each of those cited include coverage of at least one element of Standards Section 14:4-3.3(o) and its eight numbered sub-parts.

Management reported that no competitors made complaints during the EDECA audit period related to key elements of the Standards such as facilities, employees and resources, marketing information, and products or services.[430]

As explained in the *Customer Service* Chapter of the accompanying Phase Two report, the same call center handles inquiries from both NJNG and NJRHS customers. Dedicated lines exist for NJNG and NJRHS customer inquiries. Management reported that calls to the NJRHS-dedicated line can result in the achievement of a small commission ($5 per contract) earned by customer service representatives that initiate a new NJRHS contract with a customer or upsell an existing contact.[431]

d. Conclusions

31. The Compliance Plan adequately addresses Section 14:4-3.3(o) of the Standards.

Section III.10 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and states management's policy to comply or otherwise state that management will not undertake the prohibited activities. Section III.10 of the Plan also references four additional Plan exhibits, each of which contain information relevant to this portion of the Standards. Our review found those exhibits to have direct and meaningful discussion and specific guidance.

32. The joint call center use by NJNG and NJRHS and the offering of incentives to employees who enroll customers in new or expanded services violates Section 14:4-3.3(o) of the Standards. *(See Recommendation #17)*

The use of a common call center creates a scenario where Company personnel handle both utility and RCBS customer inquiries. Management has established different phone lines for NJNG and NJRHS calls, and management provides for incentives only for calls on the NJRHS line. However, some, but not all, call center representatives handle calls received on the utility line and the NJRHS line. While those that do handle NJRHS calls receive additional training, the use of the joint call center and some joint call center representatives stresses this provision of the Standards due to the offerings of incentives to employees who handle NJNG matters. Other New Jersey EDCs and LDCs maintain separate call centers for utility and affiliate inquires. Management here does not. This decision, and the offering of incentives to certain employees who handle both utility and RCBS customer inquiries, introduces an area of non-compliance with provisions against customer enrollment contained in this Section of the Standards.

Section G.15 of this chapter discusses our findings regarding other elements of the joint use of the call center as it pertains to compliance with the Standards.

e. Recommendations

16. Limit employee participation in incentives associated with NJRHS customer enrollment to individuals who do not and cannot handle NJNG customer inquiries. *(See Conclusion #32)*

Ensuring that only employees dedicated to NJRHS customer inquiries will place management in compliance with the customer enrollment prohibitions included in this portion of the Standards. So too would the cessation of use of a joint call center for both utility and non-utility matters.

13. Customer Advice or Assistance

a. Statement of Applicable Requirements

Section 14:4-3.3(p) of the Standards provides that:

> *Provided it is in compliance with these standards, and subject to the provisions of N.J.A.C. 14:4-3.4(g), an electric and/or gas public utility may offer or provide customers advice or assistance with regard to a related competitive business segment of its public utility holding company and/or other product and/or service providers upon the unsolicited request of the customer, so long as such advice or assistance is provided with regard to other competitors on a non-discriminatory basis.*

b. Summary of Audit Activities

These provisions assure equal treatment of all providers of goods and services offered by an RCBS of the PUHC and promote public awareness of the existence of alternative suppliers of utility-related products and services or of products and services of any related competitive business segment of its holding company. We sought to verify the following:

- That regular customer communications do not offer advice or assistance about any RCBS of its holding company
- That the Plan offers employees explicit instructions that: (a) limit them to providing such advice or assistance to cases where solicited by customers, and (b) instruct them that such advice must include other competitors on a non-discriminatory basis.

We reviewed NJNG's website, materials that it provides in response to customer inquiries about Energy Choice, and the Plan with regard to this provision of the Standards.

c. Findings

We examined customer call center interactions (see the *Customer Service* Chapter of the accompanying Phase Two report) and found no instances of advice or assistance offered regarding relevant customer inquiries. The findings set forth in Section F.3 of this chapter discuss the issues surrounding this provision of the Standards as they pertain to supplier choice and the *Market Conditions* Chapter of this report contains additional findings, conclusions, and recommendations regarding NJNG's compliance with the provisions of this portion of the Standards.

Other sections of this chapter provide additional, related findings:

- Section D.1 adressing14:4-3.3(a) through (c)
- Section D.10 addressing 14:4-3.3(m)

Section III.10 *Business Development and Customer Relations* of the Plan includes discussion of this provision of the standards jointly with Section 14:4-3.3(o) which we describe in the immediately-preceding section of this chapter.

d. Conclusions

33. The Compliance Plan adequately addresses Section 14:4-3.3(0) of the Standards.

Current and previous versions of the Plan appropriately address, in Section III.10, this portion of the Standards. We found the Plan and its included Exhibits sufficient.

34. We observed no occasions of NJNG non-compliance with Section 14:4-3.3(p) of the Standards.

Our examination of customer service and our examination of customer communications disclosed no examples of the types of advice or assistance contemplated by this provision of the Standards.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

14. Posting Discounts, Rebates, and Waivers, Information Retention for Discounts, Rebates, and Waivers, and Compliance with FERC Record Keeping Requirements

a. Statement of Applicable Requirements

Section 14:4-3.3(q) of the Standards provides that:

If a discount, rebate, or other waiver of any charge, penalty, or fee associated with products and/or services provided by an electric and/or gas public utility is offered to its PUHC or a related competitive business segment of its public utility holding company, the electric and/or gas public utility shall provide the following information within 24 hours of the time of the transaction, via a public posting:

1. *The name of its PUHC or related competitive business segment of its public utility holding company involved in the transaction;*
2. *The rate charged;*
3. *The maximum rate;*
4. *The time period for which the discount, rebate, or waiver applies;*
5. *The quantities involved in the transaction;*
6. *The delivery points involved in the transaction;*
7. *Any conditions or requirements applicable to the discount, rebate or waiver, and a documentation of the cost differential underlying the discount as required in (d) or (e) above; and*
8. *Procedures by which a non-affiliated entity may request a comparable offer.*

Section 14:4-3.3(r) of the Standards provides that:

An electric and/or gas public utility that provides its PUHC or a related competitive business segment of its public utility holding company a discounted rate, rebate, or other *waiver of a charge, penalty or fee associated with services offered by the electric and/or gas public utility shall maintain, in compliance with N.J.A.C. 14:4-5.2 or longer if required by another government agency, for each billing period, the following information:*

The standard goes on to recite seven categories of information that must be retained.

Section 14:4-3.3(s) of the Standards provides that:

All records maintained pursuant to the standards in (o) and (p) above shall also conform to FERC rules where applicable.

b. <u>Summary of Audit Activities</u>

The provisions of Section 14:4-3.3(q) of the Standards require that NJNG provide to non-affiliated entities the details of any discount, rebate, or other waiver of any charge provided to RCBSs of its PUHC through public posting. Such posting must include information on how a non-affiliate can request a comparable offer. We sought to determine:

- Whether the Plan offers employees explicit instructions that address compliance with this provision
- The posting of any discounts, rebates, or waivers offered as required.

These provisions of Section 14:4-3.3(r) require that NJNG maintain adequate documentation regarding details of any discount, rebate, or other waiver of any charge it provided to its PUHC or to RCBSs of its PUHC.

This provisions of Section 14:4-3.3(s) require the maintenance of records regarding discounts, waivers and rebates offered by a utility to its PUHC or to an RCBS of its PUHC conform to FERC rules.

c. <u>Findings</u>

As described in Section D.5 of this chapter our examination observed no NJNG provision of tariffed services at a discount to standard terms and no discounts, rebates or waivers of charges to affiliates during the EDECA audit period.

Our audit activities for these three Sections of the Standards proved largely the same. We requested copies of any posting required to comply with this section and examined the company's website for any relevant postings. We also reviewed the Plan to ensure that it included management's intended method of complying with these provisions of the Standards. We found no distinct Plan coverage of these Sections of the Standards. We observe that Section III.5 of the Plan does include discussion of some elements of these provisions.

d. <u>Conclusions</u>

35. We found no indication that NJNG offered discounts or waivers to any affiliate during the audit period to which Sections 14:4-3.3(q), (r), or (s) would apply.

As management made no such offers to an affiliate, no required data reporting and posting requirements applied during the EDECA audit period and management made none.

36. The Compliance Plan does not adequately address Section 14:4-3.3(q), (r), or (s) of the Standards.

Coverage of a related issue does occur in an earlier portion of the Plan. However, including each of these three elements in the Plan, the specific provisions that events triggering their requirement would invoke, and doing so in relation to the order in which the Standards include them (*i.e.*, not several sections above) would provide added clarity regarding this provision of the Standards.

f. Recommendations

17. Update the Compliance Plan to include direct discussion of Sections 14:4-3.3(q), (r), or (s) of the Standards. *(See Conclusion #36)*

This revision to the Plan would ensure distinct and direct acknowledgement of this portion of the Standards and its unique prohibitions and provide instruction to employees regarding compliance. It will do so in a manner that more closely aligns the Plan with the structure, content, and outline of the Standards.

E. Information Disclosure Standards (Section 14:4-3.4)

Section 14:4-3.4 of the Standards applies to interactions between a utility and an RCBS of its holding company or the holding company itself if it offers or provides competitive services to retail customers in New Jersey. These standards do not apply, however, to an internal RCBS within the utility itself or to transactions between the utility and such an RCBS. Separate standards, which Section G of this report addresses, apply to interactions between utilities and their internal RCBSs.

1. Providing Customer Proprietary Information

a. Statement of Applicable Requirements

Section 14:4-3.4(a) of the Standards provides that:

An electric and/or gas utility may provide individual proprietary information to its PUHC or a related competitive business segment of its public holding company only with the prior affirmative customer written consent or as otherwise authorized by the Board and only if it is provided to unaffiliated entities on a non-discriminatory basis with prior affirmative customer written consent, or as otherwise authorized by the Board.

b. Summary of Audit Activities

These provisions provide protection to customers and competitors by preventing affiliate use of information and data generated by the public utility. The holding company and its RCBSs could gain competitive advantage, for example, by:

- Inappropriately sharing customer specific information
- Using information gained through the operation of the utility system to gain competitive advantage in identifying market opportunities or problems
- Using non-public information provided to the public utility by unaffiliated suppliers to gain competitive advantage
- Inappropriately using or exclusively exchanging proprietary data to preclude unaffiliated suppliers from obtaining information available to the PUHC and its related competitive business segment.

We focused on the following aspect of administering this provision:

- NJNG should have adequate methods for controlling the release of customer information in accord with the standard
- The Compliance Plan should adequately address employee obligations under this standard.

Our initial review of customer proprietary information sought to determine if NJNG released customer proprietary information either to a holding company or RCBS during the EDECA audit period. We planned next to determine if all customer-proprietary information releases that did occur came after proper customer authorization or other approval by the BPU. We requested information regarding formal or informal complaints concerning the use or release of customer proprietary information during the EDECA audit period.

We also reviewed utility customer-service processes to ensure that adequate methods existed to control access and protect customer proprietary information from inappropriate disclosure or access. We reviewed training materials for customer service personnel and controls on access to customer information. We conducted this examination in conjunction with the work explained in the *Customer Service* Chapter of the accompanying Phase Two report.

c. Findings

Section IV.1 *Customer Information* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions, described them completely and accurately. Each included a statement that, "Customer proprietary information includes, but is not limited to, such items as the customer account number, usage history or payment information." All versions of the Plans reviewed included reference to Exhibit B *Fair Competition Guidelines*, which include in a *Definitions* section a defined term "Confidential Information." Subsequent sections address Company policies regarding the sharing of information and Company guidelines that include guidance as to the types of information sharing that can and cannot occur. Sections F.1, F.2, and G.5. of this chapter discuss controls applicable to requests by affiliates for access to customer information.

We requested an explanation of the types of information that management interpreted as subject to receipt of customer permission before release to an affiliated entity. Management's response included the following explanation, that such information includes:[432]

> *Information specific to a particular customer, which NJNG has acquired or developed in the course of providing public utility services, including but not limited to, a customer's name, address, telephone number, usage habits or history, peak demand and payment history is subject to the requirement that customer permission be obtained before its release to an affiliate.*

The Plan treatment of this section of the Standards cites its Exhibit B *Fair Competition Guidelines*, which includes a statement that:

> *Proprietary Customer Information includes but is not limited to such things as a customer service address, usage information, social security number or service history. Such information should not be left openly on our computers, desks or other surfaces in our work spaces. These safeguards help to ensure that Confidential Information is not handled in a*

way that inadvertently circumvents the procedures required of participants in a competitive environment.

Management indicated that it disclosed no customer proprietary information to affiliates and that it released customer proprietary information for only two purposes. The first purpose involved customer initiation of a process to enroll with a third party supplier ("TPS" or "marketer") in a process that the *Market Conditions* Chapter of this report describes in more detail. The second involved the SAVEGREEN energy efficiency programs discussed in the *Clean Energy* Chapter of the accompanying Phase Two report.

Management reported that it provided no non-proprietary customer information to an affiliate during the EDECA audit period and that it made no unauthorized releases of customer proprietary information to any entity.[433]

Both the Code of Conduct and the additional training to new employees that addresses the Standards, described in Section C of this report, include mention of the need to protect customer information.

d. Conclusions

37. The Compliance Plan adequately addresses Section 14:4-3.4(a) of the Standards.

Section IV.1 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and discusses the Standards' restrictions regarding the release of customer proprietary information. The section's discussion of the need for customer permission before making the types of releases permissible also includes reference to allowable means for making customer information available.

38. NJNG made no releases of customer proprietary information during the audit period to RCBSs; releases to non-affiliated entities did occur pursuant to supplier choice and energy efficiency enrollment for purposes consistent with allowable releases.

The only releases of customer proprietary information occurred pursuant to customer decisions to enroll in supplier choice offerings or energy efficiency offerings. These instances required customer permission before release. Separate chapters of this report discuss both of these matters; those chapters found that the Company has appropriate procedures for enrollment that comply with this Section of the Standards.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

2. *Providing Other Non-Public Information*

a. Statement of Applicable Requirements

Section 14:4-3.4(b) of the Standards provides that:

An electric and/or gas public utility shall make available non-customer specific non-public information acquired as a result of operating the public utility's distribution system, including information about an electric and/or gas public utility's natural gas or electricity *purchases, sales, or operations or about an electric and/or gas public utility's gas-related goods or services, electricity-related goods or services, to a related competitive business segment of its public utility holding company only if the electric and/or gas public utility makes such information available, via a public posting, to all other service providers on a non-discriminatory basis, and keeps the information open to public inspection.*

1. *An electric or gas public utility is permitted to exchange proprietary information on an exclusive basis with its PUHC or a related competitive business segment of its public utility holding company, provided it is necessary to exchange this information in the provision of the corporate support service permitted by N.J.A.C. 14.4-3.5(i) and (j).*
2. *The PUHC's or related competitive business segment's use of such proprietary information is limited to its use in conjunction with the permitted corporate support services, and is not permitted for any other use.*

b. Summary of Audit Activities

These provisions provide protection to competitors by preventing affiliate exploitation of information and data generated by the public utility. The PUHC and the related competitive business segments could gain competitive advantage, for example, by:

- Using information gathered through the operation of the utility system to identify market opportunities or barriers
- Inappropriately using or exchanging proprietary data to preclude unaffiliated suppliers from obtaining information available to the PUHC and its related competitive business segment.

The Plan should adequately address employee obligations under this standard. Moreover, any release of covered information should meet the posting and continuous availability requirements of the standard. We sought to determine if the holding company or a holding company RCBS received non-customer-specific information acquired by NJNG in the operation of its distribution system, and whether it was then made available to other service providers via a public posting. To the extent that non-specific customer information resides on a website readily accessible by competitors, we believe that NJNG would meet the requirements of the standard. We reviewed NJNG's planning processes to determine if any RCBS acquired non-specific information during the planning process, and reviewed management's practices concerning the use of non-specific customer information.

In examining exclusive exchange of proprietary information between NJNG and its holding company or a holding company RCBS necessary for corporate support services, we sought to identify whether such information had been exchanged. To the extent that such data are required for the provision of support service pursuant to and permitted by N.J.A.C. 14.4-3.5(i) and (j) it would meet the requirement.

c. Findings

Section IV.2 *Non-Customer Specific Non-Public Information* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions and the limited exception for allowable information releases. All versions of the Plans reviewed included reference to Exhibit P *Information System Access Guidelines*, which include discussion of customer information, acceptable manners for storing it, and the posting requirements included in the provisions of this portion of the Standards. Management reported that it was not aware of any releases of such information to any affiliated entity.[434]

d. Conclusions

39. The Compliance Plan addresses Section 14:4-3.4(b) of the Standards.

Section IV.2 of the current and previous versions of the Plan appropriately addresses this portion of the Standards, accurately interpreting the intent and describing the rules and provisions applicable included the limited circumstances where management may provide non-customer specific information of a non-public and non-proprietary nature. The Plan also soundly addresses sharing and posting requirements in effect, should it make such a provision to an affiliated entity.

40. NJNG made no releases of information covered by this provision of the Standards.

No releases to an affiliate occurred and therefore no required data reporting and posting requirements applied during.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

3. Providing Lists of Generation or Gas Service Providers

a. Statement of Applicable Requirements

Section 14:4-3.4(c) of the Standards provides that:

> *When an electric and/or gas public utility makes available a list of electric generation and/or gas service suppliers (suppliers), said list shall only contain those suppliers who are duly licensed by the Board and comply with the electric and/or gas public utility's Board-approved tariff to operate on its distribution system. Said list shall be maintained in alphabetical order, and not highlight or otherwise promote any particular supplier.*

b. Summary of Audit Activities

This provision limits utility-provided lists of competitive suppliers of electric generation and gas service to those licensed by the BPU, and it precludes any form of emphasis on a particular supplier on such lists. We focused on determining whether:

- Supplier lists contained all those licensed by the BPU and only those licensed
- Any emphasis existed by virtue of location, print, or other identifiable features drawing particular attention to any suppliers on the list
- The Plan adequately addresses the release requirements of this provision.

Sections 14:4-3.3(n), 14:4-3.4(c), 14:4-3.4(f), and 14:4-3.4(g) are related. We conducted the same activities in examining them.

c. Findings

Section IV.3 *Supplier Lists* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions, and addressed the need for each list provided to present suppliers in alphabetical order. All versions of the Plans reviewed included a reference to Exhibit P *Information System Access Guidelines*, which discusses this section of the Standards. We observed no instances of an NJNG supplier list that failed to comply with this provision. The lists reviewed appropriately alphabetized suppliers and did not in any way highlight any specific supplier. The *Market Conditions* Chapter of this report includes additional findings, conclusions, and recommendations regarding the supplier lists management made available.

d. <u>Conclusions</u>

41. The lists of suppliers provided to customers and NJNG's website complied with the Section 14:4-3.4(c) of the Standards.

NJNG's website includes information for customers that identifies licensed and active TPSs. The website complied with Section 14:4-3.4(c) of the Standards by listing suppliers in alphabetical order and not highlighting any individual entity. The *Market Conditions* Chapter of this report recommends improvements to this material but for reasons not related to compliance with the Standards. See Conclusions #5 and #6 and Recommendations #1 and #2 of the Market Conditions Chapter of this report.

42. Management does not maintain prior versions of the supplier lists posted to its website. *(See Recommendation #18)*

The supplier list reviewed complied with the provisions of the Standards but management's lack of maintenance of prior lists did not permit a verification that previous versions did as well.

43. The Compliance Plan adequately addresses the requirements of this provision of the Standards.

The Plan included discussion of this provision of the Standards and the need for listing suppliers in a manner that does not inappropriately highlight any particular entity.

e. <u>Recommendations</u>

18. Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards. *(See Conclusion #42)*

Management stated that it updates the supplier list as changes become necessary but does not maintain previous versions. The Company, between audits of this type, should ensure the maintenance of all versions of the supplier list it makes available so that its own internal business unit reviews, Internal Audits, and audits of this type can verify compliance with the Standards.

4. Soliciting or Providing Affiliates Information Concerning Unaffiliated Suppliers

a. <u>Statement of Applicable Requirements</u>

Section 14:4-3.4(d) of the Standards provides that:

> *An electric and/or gas public utility may provide non-public information and data which have been received from unaffiliated suppliers to its PUHC or a related competitive business segment of its public utility holding company or other non-affiliated entities only*

> *if the electric and/or gas public utility first obtains written affirmative authorization to do so from said unaffiliated supplier.*

Section 14:4-3.4(e) of the Standards provides that:

> *An electric and/or gas public utility shall not solicit the release of such information exclusively to its PUHC or a related competitive business of its public utility holding company in an effort to keep such information from other unaffiliated entities.*

b. Summary of Audit Activities

This provision provides protection to competitors by preventing exploitation of confidential non-public information and data provided by an unaffiliated supplier to NJNG. NJR and related competitive business segments could gain competitive advantage, for example, by:

- Using non-public information provided to the public utility by unaffiliated suppliers to improve the holding company and RCBS understanding of market conditions
- Restricting the use of non-public information provided by an unaffiliated supplier to only the PUHC or related competitive business segment.

We applied the following criteria in examining this provision of the Standards:

- Non-public information and data received from unaffiliated suppliers by the electric or gas public utility cannot be provided to either the holding company or a related RCBS absent non-affiliated supplier authorization for the public utility to release the information
- There should have been no provision of information received from unaffiliated suppliers absent written permission
- The NJNG Compliance Plan should adequately address the release requirements of this provision.

We first determined if non-affiliated information and data sharing occurred between NJNG with the holding company or any holding company RCBS. If information and data sharing did occur with the holding company or RCBS, then we would review the unaffiliated supplier's written authorization for release of the information. To the extent that a signed release was provided, we would then consider this provision met.

c. Findings

We requested each instance where NJNG provided non-public customer information it obtained from an unaffiliated supplier to either NJR or a NJR RCBS. Management reported that it had no knowledge of any such provision.[435]

Section IV.4 *Non-Public Supplier Information* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on the release of information.

d. Conclusions

44. We observed no instances where NJNG made provision or release of non-public information subject to Section 14:4-3.4(d) from any unaffiliated supplier to affiliates or where NJNG solicited the release of information exclusively to NJR or an RBCS as forbidden in Section 14:4-3.4(e).

Management reported no such instances of the types of data release included in the provisions of this portion of the Standards.

45. The Compliance Plan adequately addresses Sections 14:4-3.4(d) and (e) of the Standards.

Section IV.4 of the current and previous versions of the Plan appropriately addresses this portion of the Standards. It acknowledges that restrictions exist regarding provision of non-public information and data to an affiliate and requires that NJNG seek and receive the required authorization before doing so. The Plan also confirms that NJNG will not seek information from others for the purpose of sharing it with an RBCS.

e. Recommendations

We have no separate recommendations regarding these provisions of the Standards.

5. Highlighting Affiliates in Lists of Providers and Supplementing Information About Affiliated Providers

a. Statement of Applicable Requirements

Section 14:4-3.4(f) of the Standards provides that:

> *Except upon request by a customer or as authorized in (c) above or otherwise by the Board, an electric and/or gas public utility shall not provide its customers with any list of product and/or service providers, which highlights or otherwise identifies its PUHC or a related competitive business segment of its public utility holding company, regardless of whether such list also includes the names of unaffiliated entities.*

Section 14:4-3.4(g) of the Standards provides that:

> *If a customer requests information about any affiliated product and/or service provider, the electric and/or gas public utility may acknowledge that such affiliated product and/or service provider exists, but shall provide no additional information unless it provides a list of all providers of gas-related, electricity-related, or other utility-related products and/or services in business in its service territory, including the related competitive business segment of its public utility holding company.*
>
> *1. Any such list shall include all suppliers licensed by the Board.*
>
> *2. Where maintaining such list would be unduly burdensome due to the number of service providers, the electric and/or gas public utility shall not provide a list and may direct the customer to a generally available listing of service providers, for example, the Board, the telephone directory or Internet.*

b. Summary of Audit Activities

Sections 14:4-3.3(n), 14:4-3.4(c), 14:4-3.4(f), and 14:4-3.4(g) are related. We performed the same activities described in our discussion Section 14:4-3.3(n).

c. Findings

Section IV.5 *Product and/or Service Provider Information* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of the applicable restrictions, management's stated intention to comply with them, and discussion of allowable and nonallowable actions in response to customer requests for list of providers of products and services. The findings described under Section 14:4-3.3(n) apply here.

d. Conclusions

46. The Compliance Plan adequately addresses Sections 14:4-3.4(f) and (g)of the Standards.

Section IV.5 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and acknowledges that restrictions exist regarding the Company's provision of lists of product and service providers. It appropriately summarizes the provisions of the Standards, stating that any list provided may not highlight any NJR affiliate and that directing customers to publicly available lists (*e.g.*, website and phone directory) constitutes permissible response to customer requests. The conclusions described under Section 14:4-3.3(n) apply here.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

6. Record Keeping Concerning Transactions with Affiliates

a. Statement of Applicable Requirements

Section 14:4-3.4(h) of the Standards provides that:

> *An electric and/or gas public utility shall maintain complete and accurate records, documenting all tariffed and non-tariffed transactions with its PUHC and a related competitive business segment of its public utility holding company, including but not limited to, all waivers of tariffed or contract provisions.*

b. Summary of Audit Activities

These provisions require a utility to keep complete and accurate records of all transactions with its holding company and related RCBSs. We reviewed documentation for numerous transactions between the NJNG and its affiliates. In addition, we requested all contracts between the regulated and unregulated affiliates and reviewed the services provide pursuant to agreements in place. The criteria we applied in examining performance under this standard are set forth in the Chapter of this report that addresses *Cost Allocations*.

c. Findings

Section IV.6 *Record-Keeping* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions and the limited exception for allowable release. As described in Section D.5 of this chapter, a small number of tariffed transactions between NJNG and affiliates occurred during the audit period. Management could provide records of the total charges and payments for the tariffed provision of gas service by NJNG to NJRHS, but not all bills for such service across the period for which we requested a sample of them.

d. Conclusions

47. The Compliance Plan adequately addresses Section 14:4-3.4(h) of the Standards.

Current and previous versions of the Plan appropriately address, in Section IV.6, this portion of the Standards and acknowledge the requirement to maintain complete and accurate records of all transactions, both tariffed and non-tariffed, that occur between NJNG and a RCBS.

48. Management provided information that demonstrated the amount owed and the amount paid by NJRHS to NJNG for the provision of tariffed service but could not provide historical bill information that included all information. *(See Conclusion #17 and Recommendation #15)*

See Conclusion #18 and Recommendation #15.

e. Recommendations

See Recommendation #15 in Section D.5 of this chapter.

7. Record Retention Requirements for Transactions with Affiliates

a. Statement of Applicable Requirements

Section 14:4-3.4(i) of the Standards provides that:

> *An electric and/or gas public utility shall maintain such records in compliance with the time frame required by N.J.A.C. 14:5-5.2 or longer if another government agency so requires.*

b. Summary of Audit Activities

These provisions require maintenance of records of transactions between NJNG and its holding company or holding company RCBSs in accordance with the period specified in N.J.A.C. 14:5-6.2. This requirement includes by reference the National Association of Regulatory Utility Commissioners' ("NARUC") Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities. The broad scope of our audit and its two phases resulted in our review of a very large number of documents of the types included in the NARUC regulations. Management's responses to our requests for information were not limited by an inability to produce materials due to the age or vintage of the requested data.

c. Findings

The applicable NARUC regulations prescribe minimum category and sub-category retention requirements to documents under the following classifications:[436]

- Corporate and General
- Information Technology Management
- General Accounting Records
- Insurance
- Operations and Maintenance
- Personnel
- Plant and Depreciation
- Purchases and Stores
- Revenue Accounting and Collecting
- Tax
- Treasury
- "Other" reports

The "Other" reports include items such as regularly prepared financial, operating and statistical reports, budgets and forecasts, various types of corporate correspondence, records of predecessor companies, and reports to federal and state regulatory commissions. Minimum retention requirements ranged broadly, from destruction dates "at the company's option" through the entire life of the corporation.

The current and each prior version of the Compliance Plan we reviewed included in Section IV.6 *Record-Keeping* acknowledgment of this provision's requirements and that management will maintain records "pursuant to applicable regulations."

d. Conclusions

49. We found no indications of non-compliance with this provision of the Standards.

The Standards include by reference a broad and specific set of category-specific types of reports and records and associated retention periods. The scope of our audit activities comprised a broad range of topics, which included materials that fell into each of the categories the NARUC regulations contemplate. We did not encounter any instances of management's inability to provide data due to its failure to retain information in a way that violated this provision of the Standards.

However, as a number of other conclusions and recommendations included in this chapter indicate, management needs to ensure between audits of this type that it retains information useful in examining compliance with the Standards over the full audit period addressed.

50. The Compliance Plan adequately addresses Section 14:4-3.4(i) of the Standards.

Current and previous versions of the Plan appropriately address, in Section IV.6, this portion of the Standards and state management's intention to maintain accurate records in a manner that complies with all requirements.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards, but emphasize the need for retention between audits of this type of information useful in examining compliance with the Standards.

8. Inspection of Records

a. Statement of Applicable Requirements

Section 14:4-3.4(j) of the Standards provides that:

> *An electric and/or gas public utility shall make such records available for Board and/or Rate Counsel review upon 72 hours' notice, or at a time mutually agreeable to the electric and/or gas public utility and the Board and/or Rate Counsel.*

b. Summary of Audit Activities

These provisions require that transaction records be made available for BPU and the New Jersey Division of Rate Counsel review upon 72 hours' notice. We solicited input from the BPU about any difficulties in gaining access to such information. During conduct of the audit, we sought access to records and documents pertaining to transactions involving NJNG, its holding company, and affiliates (including, but not limited to, holding company RCBSs).

c. Findings

This provision requires NJNG to make transaction records available for BPU and Ratepayer Advocate review upon 72 hours' notice. We are not aware of any reported meaningful restrictions and limitations in dealings outside of this audit. During conduct of its audit, we continually sought access to records and documents pertaining to transactions involving NJNG, NJR, and affiliates. The current and each prior version of the Compliance Plan we reviewed included in Section IV.6 *Record-Keeping* acknowledgment of this provision's timing requirements that apply to the provision of data to the BPU and Rate Counsel.

d. Conclusions

51. We are aware of no BPU or Division of Rate Counsel Staff reported concerns regarding management's compliance with this provision of the Standards.

Discussions with BPU Staff identified no areas of concern with management's compliance with this provision of the Standards regarding information that continues to exist.

52. The Compliance Plan adequately addresses Section 14:4-3.4(j) of the Standards.

Current and previous versions of the Plan appropriately address, in Section IV.6, this portion of the Standards and include discussion of this provision of the Standards and stated that management will make books and records available pursuant to the timeline the Standards established.

e. Recommendations

We have no separate recommendations regarding this Section of the Standards.

9. Bid and Contract Records

a. Statement of Applicable Requirements

Section 14:4-3.4(k) of the Standards provides that:

> *An electric and/or gas public utility shall maintain a record of all contracts and related bids for the provision of work, products and/or services to and from the electric and/or gas public utility to and from the PUHC or related competitive business segments of its public utility holding company in compliance with N.J.A.C. 14:5-5.2 or longer if another government agency so requires.*

b. Summary of Audit Activities

This provision requires NJNG to maintain records of all contracts with the holding company and holding company RCBSs in accordance with N.J.A.C. 14:5-6.2. During audit data reviews, interviews, and other work sessions as well, we reviewed the available documentation for numerous transactions between NJNG and its affiliates.

c. Findings

The findings presented in our discussion of Section 14:4-3.4(h) and (i) apply here. The current and each prior version of the Compliance Plan we reviewed included in Section IV.7 *Maintenance of Affiliate Contracts and Related Bids* acknowledgment of this provision's record maintenance requirements and that it will do so pursuant to all applicable regulations. The Plan also includes reference to exhibits that contain company policies and procedures and other requirements that govern joint purchases, service agreements between affiliates, and the provision of shared services.

d. Conclusions

53. The Compliance Plan adequately addresses Section 14:4-3.4(k) of the Standards.

Current and previous versions of the Plan appropriately address, in Section IV.7, this portion of the Standards and include discussion of this provision of the Standards and state that management will maintain records of bid documentation and contracts for products or services between NJNG and affiliates. The conclusions presented in our discussion of Section 14:4-3.4(h) and (i) apply here.

e. Recommendations

We have no separate recommendations regarding this Section of the Standards.

F. Separation Standards (Section 14:4-3.5)

Section 14:4-3.5 of the Standards applies to interactions between a utility and an RCBS of its holding company or the holding company itself if it offers or provides competitive services to retail customers in New Jersey. These standards do not apply, however, to an RCBS within the utility itself and to transactions between the utility and such an RCBS. Separate standards, which Section G of this report addresses, apply to interactions between utilities and their internal RCBSs.

1. Separate Corporate Entities

a. Statement of Applicable Requirements

Section 14:4-3.5(a) of the Standards provides that:

> *An electric and/or gas public utility, its PUHC and related competitive business segments of its public utility holding company shall be separate corporate entities.*

b. Summary of Audit Activities

These provisions require that NJNG, NJR, and its RCBSs exist as separate corporate entities. We examined whether NJNG existed as a legal entity separate and distinct from its holding company and any RCBS of its holding company. We considered relevant filings with the Securities and Exchange Commission, organization charts, a variety of data requests and interview results to assess whether the required corporate separation existed between NJNG and any holding company or holding company RCBSs.

c. Findings

NJNG existed and operated as a distinct corporate entity during the EDECA audit period, as it has historically, and as it will most likely will in the future. Our examinations in several other audit tasks, including *Executive Management and Corporate Governance* and *Cost Allocations*, discuss our findings and conclusions regarding the sufficiency of management's organization structure, particularly as it pertains to NJNG-specific matters. The current and each prior version of the Compliance Plan we reviewed included in Section V.1 *Corporate Entities* acknowledgment of this provision of the Standards and state that NJNG, NJR, and each affiliate comprise separate corporate entities.

d. Conclusions

54. NJNG and NJR's structure and operations complied with Section 14:4-3.5(a) of the Standards during the audit period.

NJNG has existed as its own corporate entity before and during the EDECA audit period as did NJR and its affiliates.

55. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(a) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.1, this portion of the Standards and include a statement that each NJR company comprises a separate corporate entity.

e. Recommendations

We have no separate recommendations regarding the requirements of this provision.

2. Separate Books and Records

a. Statement of Applicable Requirements

Section 14:4-3.5(b) of the Standards provides that:

> *An electric and/or gas public utility and related competitive business segments of its public utility holding company shall keep separate books and records.*

b. Summary of Audit Activities

This provision requires that the holding company keep separate books and records for the utility and for its affiliates. We examined whether utility books and records remained fully separate and distinct from those of the holding company and any holding company RCBS.

c. Findings

The *Accounting and Property Records* Chapter of the accompanying Phase Two report found separate books and records for the required entities. The current and each prior version of the Compliance Plan we reviewed included in Section V.2 *Books and Records* acknowledgment of this provision's requirements and include a statement that it maintains separate books and records for NJNG, NJR, and all other affiliates.

d. Conclusions

56. Management maintains separate books and records for all NJR entities.

NJNG, NJR, and each affiliate have books and records kept separately by management. The *Accounting and Property Records* Chapter of the accompanying Phase Two report further addresses our review of accounting books and records.

57. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(b) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.2, this portion of the Standards and include a statement that management will maintain all books and records of NJNG and each affiliate separately.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

3. Conformity of Books and Records with USOA

a. Statement of Applicable Requirements

Section 14:4-3.5(c) of the Standards provides that:

> *Electric and/or gas public utilities' books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA), 18 CFR Part 101, as amended and supplemented, which is incorporated by reference herein.*

b. Summary of Audit Activities

This provision requires that the utility maintain books and records in accordance with Uniform System of Accounts ("USOA"). We did not undertake a full-scale examination of conformity with each USOA requirement. We found during our assessment of management and operations that the company generally complied with the USOA requirements. We address this issue most substantially in the *Accounting and Property Records* Chapter of the accompanying Phase Two report. Other chapters made use of a variety of accounting information, about which we found no indication of material failure in use of required accounting.

c. Findings

Our review of NJNG's chart of accounts found it consistent with USOA. The current and each prior version of the Compliance Plan we reviewed included in Section V.2 *Books and Records* acknowledgment of this provision's requirements to organize books and records in such a manner, and that management in fact maintains books and records for each entity in a manner that complies.

d. Conclusions

58. Management complied with the requirements of Section 14:4-3.5(c) during the audit period.

Our work in examining the *Accounting and Property Records* portion of this audit's scope found management's maintenance of books in records in accord with the USOA.

59. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(c) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.2, this portion of the Standards states that management will maintain all books and records of NJNG and each affiliate in accord with the USOA.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

4. Availability of Books and Records for Examination

a. Statement of Applicable Requirements

Section 14:4-3.5(d) of the Standards provides that:

> *The books and records of its PUHC or a related competitive business segment of an electric and/or gas public utility's holding company engaged in transactions, interactions and relations with the electric or gas public utility shall be open for examination by the Board.*

b. Summary of Audit Activities

This provision requires that the holding company provide access to its books and records and to those of its non-regulated RCBSs. During the conduct of its audit, we sought access to a broad array and a great depth of records and documents pertaining to the utility, utility holding company, and holding company RCBSs. We tested compliance with this provision of the Standards by assessing whether all requests for information necessary to verify compliance with the standards subject to this audit produced substantially complete responses.

c. Findings

Section V.2 *Books and Records* of the current and each prior version of the Compliance Plan we reviewed included a statement that management will make all books and records of NJNG, NJR, and each of its affiliates available for review by the BPU. During the course of audit field work management provided documentation and records regarding numerous NJNG transactions with NJR and its affiliates.

d. Conclusions

60. We encountered no issues of management non-compliance with the requirements of Section 14:4-3.5(c) during the audit period.

Management responded to many data and interview requests seeking information regarding various NJR affiliates; we encountered no instance of denial of access to any affiliates books and records.

61. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(c) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.2, this portion of the Standards and state that management will make the books and records of all NJR affiliates available for BPU review.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

5. *Sharing of Space, Services, and Equipment*

a. Statement of Applicable Requirements

Section 14:4-3.5(e) of the Standards provides that:

> *An electric and/or gas public utility shall not share office space, office equipment, services, and systems with a related competitive business segment of its public utility holding company, except to the extent appropriate to perform shared corporate support functions permitted under this subsection or as follows:*
>
> 1. *An electric and/or gas public utility may access the computer or information systems of a competitive related business segment of its PUHC or allow a related competitive business segment of its PUHC to access its computer or information systems, for purposes of the sharing of computer hardware and software systems and may share office space, office equipment, services and systems, provided adequate system protections are in place to prevent the accessing of information or data between the utility and its affiliate(s) which would be in violation of this subchapter.*
>   i. *Prevention of unauthorized access to computer and information systems must be specifically addressed as part of an electric and/or gas public utility's compliance plan submitted pursuant to N.J.A.C. 14:4-3.7(b).*

b. Summary of Audit Activities

These provisions allow a utility and an RCBS of its PUHC to share office space, office equipment, services and systems where required as part of providing permitted shared corporate support functions. In such cases, adequate system protections must exist to prevent access to data that would violate other provisions of the Standards, a number of them addressed in earlier sections of this chapter.

This provision effectively allows shared space, services, systems, and equipment, provided that security against data exchange proves adequate. Given the breadth of this exception, our examination of performance under this standard sought to determine whether, in cases where sharing has existed, adequate measures apply to prevent inappropriate information exchange. We requested information regarding the sharing of Information Technology services between NJNG, NJR, and NJR RCBSs.

c. Findings

Management reported that no NJNG and RCBS employees worked simultaneously in any Company office or workspace during the audit period. It noted that NJRHS employees work at their own facility and identified its location, but did not indicate where other NJR RBCS employees (for example those of NJR Retail and NJRCEV) work.[437] Employees of NJNG and NJRES did share common work locations and information systems (the GMS system which the *Procurement and Purchasing* Chapter of this report addresses).[438] As described in Section D of this chapter, NJRES operated as a wholesale affiliate of NJNG during the audit period but its June 2023 placement as a subsidiary of NJRCEV, an entity that this audit recommends management classify as an RBCS, warrants the classification of NJRES as an RCBS as well.

Management has in place policies and procures that address the identification and appropriate segregation of confidential information. Section G.18 of this chapter includes our findings regarding management's efforts to ensure that no disclosure of material occurs when employees transfer between NJR affiliates.

Section V.3 *Sharing of Plant, Facilities, Equipment or Costs* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on the sharing of office space, equipment, services, and systems with a Retail Affiliate other than for purposes of the provision of shared corporate support functions. The Plan also references the Shared Service Guidelines it includes in (Exhibit J) and Information Systems Access Guidelines (Exhibit P).

d. Conclusions

62. Management utilizes systems of access and controls over its applications and databases and its physical locations.

We found in place policies and procedures which appropriately identify the need to protect and maintain confidential information. See Section G.18 of this chapter for additional findings, conclusions, and recommendations regarding efforts to ensure the protection of such information.

63. The Plan adequately addresses this Section 14:4-3.5(e) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.3, this portion of the Standards and include a statement that management will employ protections to prevent unauthorized data access.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

6. Authorized Joint Products and Services

a. Statement of Applicable Requirements

Section 14:4-3.5(f) of the Standards provides that:

> *Subsection (e) above does not preclude an electric and/or gas public utility from offering a joint product and/or service, provided such joint product and/or service is authorized by the Board and is available to all non-affiliated product and/or service providers on the same terms and conditions, for example, joint billing services.*

b. Summary of Audit Activities

The purpose of this provision is to ensure that any joint products and or services offered by the utility are offered to non-affiliated providers on the same terms and conditions. We focused on determining, for any utility-offered products or services jointly with a holding company RCBS, whether they were offered to non-affiliated providers on the same basis. We reviewed the utility's tariffs to determine whether the company offered any competitive products and services. We also asked whether NJNG offered any competitive services, and gathered information on the product offerings of the RCBS who provide services at retail in New Jersey.

c. Findings

NJNG made no joint product offerings with any RCBS, but it did make joint services offerings with NJRHS. These included customer inquiry (*i.e.*, the call center), fleet services, billing and remittance processing, and credit and collections.[439] Management reported that it did not make these services available to any non-affiliated entities (*i.e.*, competitors or NJRHS). Management reported that, should such an entity choose to "opt for them." it would provide those services to the non-affiliated entities pursuant to the same conditions under which it provided them to NJRHS. We did however observe on the regulatory postings page of the NJNG website the following notification.[440]

> **VIII. Provision of Billing and Collection Services to Non-Affiliated Energy-related Service Providers**
>
> NJNG provides advertising, billing and collection services to its retail affiliate and that service may be provided to non-affiliated companies in the same line of business, subject to NJNG's determination that the necessary financial, operational and technical requirements have been met. Please contact the Senior Vice-President of Regulatory and External Affairs for NJNG at **732-938-1214** for additional information.

Section V.4 *Joint Products and Services* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision of the Standards, stating that management would offer all joint product and service offerings made by NJNG and an affiliate to non-affiliated entities pursuant to the same terms and conditions as those offered to an affiliate.

d. Conclusions

64. NJNG made no joint product offerings with an RCBS during the audit period but did make joint service offerings with NJRHS, an NJR RCBS. *(See Recommendation #19)*

NJNG made several joint service offerings with NJRHS. It made to non-affiliated entities no such offerings that would permit a comparison of terms and conditions to ensure compliance with Section 14:4-3.5(f) of the Standards. Management did provide a statement that should a non-affiliated entity "opt" for similar services, that the same terms and conditions that apply to NJRHS would apply to them.

While management reported that it did not make these offerings available to any non-affiliated entities, we did observe an NJNG website posting that disclosed them.

65. The Plan adequately addresses this Section 14:4-3.5(f) of the Standards; however, management's notice of the availability of joint services to others is incomplete. *(See Recommendation #19)*

Section V.4 of the current and previous versions of the Plan includes some mention of this provision of the Standards. Management's position that it did not make the NJNG/NJRHS joint services available to non-affiliated entities and its public posting of those joint services introduces confusion that requires resolution (which the immediately preceding conclusion addresses).

Moreover, the regulatory postings page of the NJNG website that provides notice of availability to others excludes a statement that such availability will be as required by the Standards; *i.e.*, "on the same terms and conditions." That omission is material. Other aspects of that notice are troublesome as well. First, subjecting availability to meeting "necessary financial, operational, and technical requirements" may suggest an ability to impose restrictions not applicable to an RCBS. Certainly, addressing such requirements is appropriate, should interest arise in using the services involved. However, citing them while ignoring the obligation to make available the same terms and conditions is unduly discouraging. Second, if a position-designated contact is offered, it should not be a regulatory, but a business one.

e. Recommendations

19. Provide a more complete and balanced notice of the availability to others of joint services offerings made to NJRHS at present and adjust it as necessary should further affiliate services be offered. *(See Conclusion #64)*

Add a clear and specific statement that services will be provided to others on the same terms and conditions as apply for RCBSs. Remove statements of conditions that may be required, saving negotiation of them until after expressions of interest. Limit such conditions proposed to those applicable to RCBSs receiving the services required. Do not advertise regulatory affairs management as the point of contact for those who may have interest in discussing such services. Update Section V.4 of the Plan to provide more clear and better guidance to employees tasked with compliance roles.

7. Joint Purchases

a. Statement of Applicable Requirements

Section 14:4-3.5(g) of the Standards provides that:

An electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company may make joint purchases of products and/or services, but not those associated with merchant functions.

b. Summary of Audit Activities

This provision of the standards confirms the general permissibility of joint purchases, which we address in the ensuing section of this chapter. However, the provision also imposes a strict prohibition against joint purchases that relate to the merchant function. We sought to verify that NJNG made no merchant-function related purchases jointly with a holding company or holding company RCBS. We requested copies of all joint purchasing agreements that included both NJNG and any affiliate. Our examination summarized in the *Supply Chain* Chapter of the accompanying Phase Two report also sought detailed information about how NJNG makes purchases and what transactions took place among it and affiliates during the EDECA audit period, regardless of whether the affiliates were RCBSs or not.

c. Findings

Section 14:4-3.2 of the Standards provides the following definitions relevant to Section 14:4-3.5(g):

"Joint purchases" means purchases made by a parent or holding company or affiliate thereof for use by one or more affiliates, the fully allocated costs of which are allocated to be paid proportionally by the affiliates, based upon utilization.

> *"Joint purchases allowed" means purchases not associated with merchant functions, examples of which would be joint purchases of office supplies and telephone services.*
>
> *"Joint purchases not allowed" means purchases associated with merchant functions, examples of which would be gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, system operations and marketing.*
>
> *"Merchant functions" means the marketing and/or the provision of electric generation service and/or gas supply service to wholesale or retail customers, as opposed to the marketing and/or provision of transmission and distribution services, by an electric and/or gas public utility.*

The joint purchases that management identified consisted of lock-box services to process mailed customer payments and credit, debit, and ACH payment processing for payments received through the website, IVR, and in-person/agent assisted. These joint purchases occurred pursuant to the customer inquiry, fleet services, billing and remittance processing, and credit and collections joint services described in Section G.6. We did not find any of them to qualify as "Joint purchases not allowed" or joint purchases associated with "Merchant functions" and defined by the Standards.[441]

Section V.5 *Joint Purchases* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on joint purchases related to the merchant function. This section also includes a reference to Exhibit G Joint Purchasing Guidelines, which includes a description of the types of joint purchases permitted by the Standards, the types forbidden, and the need to ensure appropriate affiliate payment of both procurement costs and the costs of the goods or services provided.

d. Conclusions

66. Joint purchases of the type envisioned by Section 14:4-3.5(g) of the Standards occurred but none associated with merchant functions.

Joint purchases that did occur related to joint services customer inquiry, fleet services, billing and remittance processing, and credit and collections joint services made on behalf of NJNG and NJRHS. No transactions occurred pursuant to the "merchant function" definition of the Standards.

67. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(g) of the Standards.

Section V.5 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and provides in Exhibit G appropriate guidance to employees that outlines the types of joint purchases allowed and forbidden, and the requirement to ensure that affiliates bear appropriate costs of all such purchases.

e. Recommendations

We have no separate recommendations regarding the this provision of the Standards.

8. *Pricing and Reporting of Joint Purchases*

a. Statement of Applicable Requirements

Section 14:4-3.5(h) of the Standards provides that:

> *The electric and/or gas public utility shall insure that all such joint purchases are priced, reported, and conducted in a manner that permits clear identification of the electric and/or gas public utility's portions and its PUHC or the related business segment's portion of such purchases, and that direct costs of the joint purchase(s) as well as the indirect purchasing costs are apportioned between the electric and/or gas public utility and the related competitive business segment of the public utility holding company in direct proportion to the relative amounts of the purchased products(s) and/or services(s) received and/or utilized, respectively, in accordance with these standards and other applicable Board allocation and reporting rules.*

b. Summary of Audit Activities

This provision seeks to ensure for all joint purchases proper record keeping, pricing, and assignment of direct and indirect costs between a utility and its RCBS. The provision's two principal requirements include the ability to segregate the utility portion of joint purchases and the allocation of both direct and indirect costs of purchases to the utility on the basis of its portion of the purchases. We focused on the following in examining performance under this standard:

- Whether recordkeeping and reporting of jointly made purchases provides for accurate identification and segregation of the utility portion of purchases made through common efforts
- Whether the costs that the utility pays for purchases made through common efforts are in strict proportion to the amounts purchased for its use.

c. Findings

See the findings in Section F.7. above regarding the qualifying joint purchases that occurred during the EDECA audit period. We reviewed information provided by management to assure that Standards-required identification of both NJNG's and NJRHS' portion of costs, including any indirect purchasing costs, were clearly identified and paid by NJNG and NJRHS. We selected a sample period for which we reviewed the total billed charges for purchases and the calculation used to determine the appropriate portions to allocate to NJNG and NJRHS.[442] That sample review demonstrated compliance with the process established by the Company's Code of Conduct. Intercompany payables settle monthly and do not separately identify each individual payment between affiliates. The *Cost Allocations* Chapter of this report discusses this process further (see specifically Conclusion #7 and Recommendation #3 from that Chapter). Management could not provide a demonstration of NJRHS' payment of its portion of the joint purchases, given the roll-up of transactions, that does not separately identify them.[443]

Section V.5 *Joint Purchases* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's requirement to provide "a clear identification and allocation of the direct product costs and indirect purchasing costs" and that management will comply with all affiliate and other BPU allocation and reporting rules when making joint purchases.

d. Conclusions

68. For joint purchases between NJNG and a Retail Affiliate, which occurred throughout the audit period, management employed a process that fairly and accurately apportioned the costs associated with the joint purchases between NJNG and the Retail Affiliate, but could not demonstrate the NJRHS payment of its assigned portion. *(See Recommendation #20)*

Management identified the existence of transactions that qualified as joint purchases pursuant to the Standards each of which occurred on behalf of NJNG and NJRHS. Those purchases occurred throughout the audit period, which covers a long span of time. We requested information that would allow us to verify that management fairly and accurately apportioned the procurement costs associated with the joint purchases that occurred on behalf of NJNG and NJRHS. The information provided proved sufficient in allowing us to determine that a fair and accurate apportionment of both direct and indirect procurement costs incurred. Management could not, however, provide a demonstration of NJRHS' payment of its share of the costs involved.

69. The Compliance Plan addresses the requirements of Section 14:4-3.5(h) of the Standards and joint purchases but does not include information about the joint purchases that occur and have occurred on a regular basis. *(See Recommendation #20)*

Section V.5 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and includes discussion of this portion of the Standards. The current Section V.5 version includes treatment of the need to ensure the identification of both direct and indirect costs associated with all joint purchases and a statement that management will comply with all applicable rules. As described in Conclusion #68 allowable joint purchases occurred throughout the audit period of a routine and regular nature. The Plan does not identify these specific joint purchases.

e. Recommendations

20. Perform annually a demonstration that for each joint purchase that occurs on behalf of NJNG and an RCBS fair and accurate apportionment of direct and indirect procurement costs as required by Section 14:4-3.5(h) of the Standards occurred and include it in the Compliance Plan. *(See Conclusion #68)*

The routine and continued existence of joint purchases conducted on behalf of NJNG and NJRHS over the long period of time that they occurred warrant attention to ensure compliance with Section 14:4-3.5(h) of the Standards. Management should identify each joint purchase in annual Plans and conduct, and include in each annual Plan, information suitable to demonstrate that for each such purchase it fairly and accurately apportioned both the direct and indirect procurement costs associated with it. This should apply to both long-standing and each new joint purchase that occurs. Should confidentiality or other concerns cause issues for inclusion in the Plan, include a mention of each annual demonstration performed and file each with the BPU. Information provided by management demonstrated the existence and use of an appropriate process for apportionment of joint purchases charges made on behalf of NJNG and NJRHS. However, it could not demonstrate that NJRHS paid its apportioned amount of them, citing limitations in its monthly settlement of intercompany payables data. Appropriate demonstration of monthly intercompany payables can occur regardless of the process for conducting them. Management should, at least between audits of this type, maintain copies (at least electronic) of payment for joint purchases between affiliates to allow for a comparison of those payments to management's allocation of the charges. The information maintained should permit verification that all payments occurred appropriately.

9. Shared Services

a. Statement of Applicable Requirements

Section 14.4-3.5(i) of the Standards provides that:

> *An electric and/or gas public utility, its public utility holding company and related competitive business segments, or separate business segments of the public utility holding company created solely to perform corporate support services may share joint corporate oversight, governance, support systems and personnel. Any shared support shall be priced, reported and conducted in accordance with N.J.A.C. 14:4-3.4 and this section, as well as other applicable Board pricing and reporting rules*

b. Summary of Audit Activities

The provision of and charging for common services falls among the topics addressed in the *Cost Allocations* Chapter of this report. We limited our discussion of this portion of the Standards in this chapter to the adequacy and appropriateness of NJNG's Compliance Plan.

c. Findings

The current and each prior version of the Compliance Plan we reviewed included in Section V.6 *Corporate Supp*ort acknowledgment of this Section of the Standards' provision regarding shared services functions and the pricing requirements for the provision of such services.

d. Conclusions

70. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(i) of the Standards. *(See Conclusion #10 and Recommendation #4 of the Cost Allocations Chapter of this report)*

Current and previous versions of the Plan appropriately address, in Section V.6, this portion of the Standards and the pricing requirements for the provision of shared services to multiple NJR affiliates. See also Conclusion #10 and Recommendation #4 of the *Cost Allocations* Chapter of this report

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

10. Protection of Confidential and Market Information

a. Statement of Applicable Requirements

Section 14:4-3.5(j) of the Standards provides that:

> *Such joint utilization shall not allow or provide a means for the transfer of confidential customer or market information from the electric and/or gas public utility to a related*

competitive business segment of its public utility holding company in violation of these standards, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of a related competitive business segment of the public utility holding company. In the compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (e), a senior corporate officer from the electric and/or gas public utility and public utility holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the electric and/or gas public utility follows the mandates of this subchapter, and to ensure the electric and/or gas public utility is not utilizing joint corporate support services as a conduit to circumvent this subchapter.

b. <u>Summary of Audit Activities</u>

This provision prohibits the utility from sharing confidential customer and market information with holding company related competitive business segments. The prohibition seeks to prevent opportunities for cross-subsidies, customer confusion, and unfair competitive advantage. Cross-subsidies and unfair market advantages could occur in ways such as the following, for example:

- Identification of new market opportunities
- Information concerning strategic direction of the company
- Acquiring market sensitive and related information
- Providing an opportunity for customer confusion between the identity of the utility and its PUHC or its RCBS.

In examining compliance, we focused on the following factors:

- Sufficiency of controls to protect competitively sensitive information regarding joint services
- Compliance Plan treatment of market sensitive information when providing joint services
- Conduct of joint planning in a manner that protects competitively sensitive information.

This provision addresses the transfer of both customer and market information. A number of other provisions in the Standards address the protection of customer information. We address the sufficiency of those protective efforts in connection with its discussion of those standards. Therefore, we focused on marketing, seeking to determine whether:

- Adequate steps prevent the transfer of protected information during planning and marketing activities
- Whether the Compliance Plan adequately addresses responsibilities imposed by this provision of the Standards.

Through the use of data requests and interviews, we reviewed and analyzed the planning process at NJNG and NJR as it relates to this provision of the Standards. We sought to determine whether competitive, sensitive information was shared during the planning cycle, and what controls were in place to ensure that competitive sensitive information generated at the utility was not used by affiliates.

As its initial step, we reviewed the Compliance Plan and its procedures for complying with the Standard. We attempted to identify opportunities in joint processes between NJNG and NJR or affiliates where inappropriate sharing of information could occur. We then reviewed and analyzed processes to ensure that adequate controls were in place to protect competitively sensitive information. To assess the controls, we reviewed the information flows, the granularity of the information, which personnel had access, and how the information was used. Because of the amount of data and its competitive sensitivity, we placed particular emphasis on the planning process at the utility and the PUHC.

c. Findings

We conducted the activities described in our examinations under other provisions (see, for example, Sections E.3, E.12, and G.5.), to address the issues relevant to this provision as well. The findings in those sections address our review standards for this portion of the Standards. We carried out elements of our work in this area in other portions of the audit, which we documented in the *Cost Allocations* Chapter of this report and the *Planning and Budgeting* Chapter of the accompanying Phase Two report. Our review of NJNG's strategic and business plans found them sufficiently separate from those of affiliated companies. No portion of our review identified any use of NJNG information by affiliates in their plans and found no indication of inappropriate commingling of information or analysis during the planning processes.

Section V.6 *Corporate Support* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this portion of the Standards. Section V.6 has also addressed the need to include the required certification by a senior officer that the provision of corporate support services cannot be used for the inappropriate disclosure or sharing of information between affiliates. The current version of the Plan includes in In Exhibit L what it terms "Section 5(5) (b) Affidavit" by the Plan's Exhibit List; the exhibit itself terms it instead AFFIDAVIT N.J.A.C. 14:4-3.5(j). This Exhibit includes:

- A general statement in support of the Company's annual Compliance Plan
- That, pursuant to Section 14:4-3.5(j) of the Standards (which we discuss in a subsequent section of this chapter) the Company's corporate support services (*e.g.*, its service company) will not violate portions of the Standards that include restrictions regarding information sharing and disclosure and the preferential treatment of affiliated and non-affiliated entities
- That the Plan denotes how the corporate communications policies and website and information access policies prohibit inappropriate conduct with respect to the Standards
- That the Plan includes information ensuring the appropriateness and correctness of changes between affiliates, including the mechanisms for ensuring appropriate charging of employee time
- That the Plan includes information that appropriately accounts for Standards-imposed restrictions on employee transfers, asset transfers, and external complaints
- That the Plan will remind all NJR employees annually during Code of Conduct training of the requirements and restrictions dictated by the Standards.

The following table summarizes the NJNG officer that provided the Plan's certification with respect to Section 14:4-3.5(j) of the Standards and the date included on each Plan's notarized affidavit.

Compliance Plan Certification Summary

Plan Year	NJNG Officer	Date
2014	EVP and COO	12/19/2014
2015	EVP and COO	12/19/2014
2016	EVP and COO*	12/21/2016
2017	EVP and COO*	12/8/2017
2018	President and COO	12/13/2018
2019	President and CEO	12/19/2019
2020	President and CEO	12/21/2020
2021	President and CEO	12/23/2021
2022	President and CEO	12/19/2022
2023	President and CEO	12/20/2023

** Denotes a change in individual providing the certification*

d. Conclusions

71. Our audit work observed no evidence that the Company's provision of allowable joint corporate oversight, governance, support systems, and personnel violated Section 14:4-3.5(j) of the Standards.

We observed no indication of a violation of this portion of the Standards in our review of materials provided by management during the course of our audit field work that led to the production of this and other chapters of this report. The Plan includes signatures from an NJNG officer whose seniority complied with the provision.

72. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(j), however, one Plan did not update the certification required by this portion of the Standards. *(See Conclusion #21)*

Section V.6 of the current and previous versions of the Plan appropriately addresses the requirements of this portion of the Standards and describes them accurately and completely. The Standards require verification from a senior officer that adequate procedures exist to ensure that the use of joint corporate services do not serve as a conduit to circumvent its provisions. The Plan versions we reviewed contained the required certification, however, the 2015 Plan contained an out of date affidavit, and used the same 2014-dated one that the previous Plan included.

e. Recommendations

21. Institute measures to secure that Compliance Plans include updates to all annual certifications provided by Company officers. *(See Conclusion #72)*

The Standards clearly identify the need for the provision by a senior officer that the provision of corporate support services will not permit any preferential treatment or unfair treatment for an affiliate or otherwise serve as a conduit for circumvention of the Separation requirements prescribed. The 2015 plan included the same affidavit to this effect that management included in the 2014 plan; no annual update occurred. NJNG should institute measures to ensure that future Compliance Plan filings do not repeat this error with respect to this or any other requirement.

11. Use of Utility Name and Logo

a. Statement of Applicable Requirements

Section 14.4-3.5(k) of the Standards provides that:

> *A related competitive business segment of a public utility holding company shall not trade upon, promote, or advertise its relationship with the electric and or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes, electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:*
>
> 1. *The PUHC or related competitive business segment of the public utility holding company "is not the same company as the electric and/or gas public utility";*
> 2. *The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and*
> 3. *"You do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility."*

b. Summary of Audit Activities

A holding company RCBS may not use its connection with the utility to promote itself, nor may it use the utility's name or logo in any form of communication, unless it clearly and conspicuously provides the required disclaimer. The disclaimer applies only to the use of the utility's name or logo in New Jersey.

We examined the use of logos, trademarks and service marks, in order to determine whether any shared use of the utility name or logo has occurred, and, if so, whether the required disclaimer was prominently displayed. We reviewed utility and affiliate logos, trademarks and service marks and details of where the marks were used. We also reviewed the websites and Compliance Plan for adherence to this provision.

c. Findings

Section E.1 of this chapter summarizes our review of the websites of NJR, NJNG, and affiliates and includes our findings regarding the use of the disclaimer prescribed by the Standards. It also includes our findings regarding the advertising materials of NJR affiliates.

Section V.7 *Corporate Identification and Advertising* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's requirement for a "clear and conspicuous" disclosure that affirms the three key numbered items in this Section of the Standards. The Plan's Exhibit N Corporate Communications and Public Relations Policy and Corporate Identification and Advertising Guidelines includes a "Corporate Identification and Advertising" section expressing six numbered points responsive to this and subsequent sections of the Standards.

d. Conclusions

73. As explained in Conclusion #10 and #11 of this chapter audit field work disclosed instances of failure to include the necessary disclaimer required by the Standards and by Company policies. *(See Conclusions #10 and #11 and Recommendation #11)*

See Conclusions #10 and #11 and Recommendation #11.

74. The Compliance Plan adequately addresses Section 14.4-3.5(k) of the Standards.

The Plan acknowledges the existence of elements of the Standards that govern corporate identification and logo use in customer communication. The Plan's treatment of this provision includes an appropriate interpretation of the intent of the Standards and a statement that NJNG and its RBCSs will comply with them.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

12. Non-New Jersey Use of Utility Name and Logo

a. Statement of Applicable Requirements

Section 14.4-3.5(l) of the Standards provides that:

> *The requirement of the name and/or logo disclaimer set forth in (k) above is limited to the use of the name and/or logo in New Jersey.*

b. Summary of Audit Activities

This section of the standards does not establish an auditable conduct standard other than review of whether the Compliance Plan adequately addresses the provision.

c. Findings

Section V.7 *Corporate Identification and Advertising* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment that this provision of the Standards applies to materials used in New Jersey.

d. Conclusions

75. The Compliance Plan adequately addresses Section 14.4-3.5(l) of the Standards.

The Plan recognizes that the logo and disclaimer portions of the Standards established by its Section 14.4-3.5(k) apply only in New Jersey.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

13. Promising or Implying Preferred Treatment

a. Statement of Applicable Requirements

Section 14:4-3.5(m) of the Standards provides that:

> *An electric and/or gas public utility, through actions or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.*

b. Summary of Audit Activities

The requirements of this provision are similar to those of Sections 14:4-3.3(a) and (b). We performed for this provision the same activities described in our discussion of Sections 14:4-3.3(a) and (b).

c. Findings

The findings we made in relation to Sections 14:4-5.3(a) and (b) regarding affiliate preferences and communications with customers apply here.

Section V.7 *Corporate Identification and Advertising* of the Plan addresses several sections of the Standards jointly; *i.e.*, most of Sections 14:4-3.5(k) through (o). We did not observe direct treatment of or employee guidance addressing Section 14:4-3.5(m), however.

d. Conclusions

76. The Compliance Plan does not address directly Section 14:4-3.5(m) of the Standards or provide direct guidance regarding its provisions. *(See Recommendation #22)*

The Plan's joint treatment of several related Sections of the Standards in Section V.7 does not of itself present an issue. The treatment of other, related portions of the Standards indirectly informs Section 14:4-3.5(m). Nevertheless, the Plan should address Section 14:4-3.5(m) of the Standards directly.

e. Recommendations

22. Update the Compliance Plan to include direct discussion of Section 14:4-3.5(m) of the Standards. *(See Conclusion #76)*

Revising the Plan to address Section 14:4-3.5(m) explicitly, whether singly or in combination with treatment of related sections would ensure distinct and direct acknowledgement of this portion of the Standards and provide instruction to employees regarding compliance.

14. Use of Utility Advertising Space

a. Statement of Applicable Requirements

Section 14:4-3.5(n) of the Standards provides that:

> *An electric and/or gas public utility shall not offer or provide to its PUHC or a related competitive business segment of its public utility holding company advertising space in the*

electric and/or gas public utility's billing envelope(s) or any other form of electric and/or gas public utility's written communication to its customers unless it provides access to all other unaffiliated services providers on the same terms and conditions.

b. Summary of Audit Activities

These provisions prohibit joint marketing activities between the utility and an RCBS of its holding company. The utility may not promote the holding company RCBS through messaging contained in its billing envelope or in other written communication without offering competitors the same opportunity. We examined whether NJNG has provided space to an RCBS in any written communications to utility customers and, if so, whether it provided it similarly to others. We requested information about all joint marketing activities pertaining to compliance with these provisions of the Standards. We also requested a copy of all utility bill inserts. We also reviewed the Plan with regard to this section of the Standards.

c. Findings

Management provided a statement that it complies with the provisions of Section 14:4-3.5(n) of the Standards that impose restrictions on the offering of space in billing envelopes or other written communications to either NJR or any of its RCBS and that it made no such offerings.[444] We reviewed copies of all bill insert materials included in customer bills from 2014 through 2021. Section V.7 *Corporate Identification and Advertising* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions.

d. Conclusions

77. NJNG did not provide advertising space for NJR or any RCBSs in its billing envelope or in other customer communications during the audit period.

Our review of billing inserts disclosed no advertising or other promotions related to an RCBS.

78. The Compliance Plan adequately addresses the requirements of Section 14:4-3.5(n) of the Standards.

Section V.7 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and includes an adequate summary and interpretation of its implications.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

15. Joint Advertising or Marketing

a. Statement of Applicable Requirements

Section 14:4-3.5(o) of the Standards provides that:

An electric and/or gas public utility shall not participate in joint advertising or joint marketing activities with its PUHC or related competitive business segment of its public utility holding company which activities include, but are not limited to, joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals) to existing or potential customers.

1. *The prohibition in (o) above notwithstanding, at a customer's unsolicited request, an electric and/or gas public utility may participate, on a nondiscriminatory basis, in non-sales meetings with its PUHC or a related competitive business segment of its public utility holding company or any other market participant to discuss technical or operational subjects regarding the electric and/or gas public utility's provision of distribution service to the customer;*
2. *Except as otherwise provided for by these standards, an electric and/or gas public utility shall not participate in any joint business activity(ies) with its PUHC or a related competitive business segment of its public utility holding company which includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;*
3. *An electric and/or gas public utility shall not participate jointly with its PUHC or a related competitive business segment of the PUHC in trade shows, conferences, or other information or marketing events held in New Jersey; and*
4. *An electric and/or gas public utility shall not subsidize costs, fees, or payments with its PUHC or related competitive business segments of its public utility holding company associated with research and development activities or investment in advanced technology research.*

b. Summary of Audit Activities

These provisions prohibit joint marketing activities or the joint funding or support of research and development activities by a utility and an RCBS of its PUHC. Joint advertising or marketing activities between the utility and the PUHC RCBS, may include, to provide some examples:

- Joint sales calls
- Joint proposals or responses to RFPs
- Joint advertising, marketing, communications, or correspondence
- Joint participation in trade shows, conferences, or other information or marketing events held in New Jersey
- Joint business activities.

NJNG may at unsolicited customer request participate in non-sales meetings with its holding company RCBS in order to discuss technical or operational subjects regarding the provision of distribution services, provided it offers the same participation on a nondiscriminatory basis to competitors. The provision also prohibits NJNG subsidization of PUHC RCBS R&D costs, fees, or payments.

We applied the following review standards in examining performance under this provision:

- Except in the case of unsolicited customer requests, NJNG should not engage in any of the proscribed joint marketing and sales activities
- NJNG should not participate with its holding company or a holding company RCBS in joint funding of research and development activities in a manner that fails to assign a proper share of the costs to the holding company or holding company RCBS.

We requested information on all joint marketing, promotional, and advertising programs that benefited both regulated and competitive services. We asked about space sharing at trade shows, and requested information on practices and policies for utility participation in non-sales meetings with affiliates or non-affiliates. We have also reviewed the NJNG Plan for its procedures regarding this provision. We requested information on the amount of research and development and advanced technology expenditures by NJNG and the PUHC or a PUHC RCBS.

c. Findings

Section V.7 *Corporate Identification and Advertising* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on participation by NJNG and Retail Affiliates in covered joint activities. The Section also states that NJNG will not subsize costs of advanced technology research or other research and development activity in a manner that benefits any of its Retail Affiliates.

We requested a list of all trade shows, conventions, fairs and similar events, charitable events, promotional events, foundation events, sporting or other entertainment events attended commonly by NJNG and any affiliate. Management reported that no such joint participation occurred and cited its policy against doing so.[445] As described in Section E.1 of this chapter, we examined all print, radio, and television advertisements run by NJR, NJNG, and all NJR affiliates.

Management also provided a statement confirming that it did not engage in any Standard-prohibited subsidization of advanced technology research or other research and development activity.[446] In addition its statement in the Compliance Plan, NJNG indicated no instances of subsidization of research and development costs or advanced technology research.[447]

d. Conclusions

79. We observed no NJNG and NJR and RCBS engagement in any joint marketing or joint advertising activities prohibited by 14:4-3.5(o) of the Standards.

Management reported that no prohibited joint activity of the type envisioned by Section 14:4-3.5(o) of the Standards occurred. Our review of NJNG and affiliate advertisements (see Section E.1 of this chapter) found no instances of joint marketing or advertising.

80. We observed no evidence of NJNG funding or supporting any research and development or advanced technology efforts that benefited an RCBS.

Management reported that it maintains separate accounting records for each of its entities, including the regulated utilities and each affiliate.

81. The Compliance Plan adequately addresses the provisions included Section 14:4-3.5(o) of the Standards.

The Plan includes discussion of this portion of the Standards and includes an adequate summary and interpretation of its implications.

e. Recommendations

We have no separate recommendations regarding this provision of the standards.

16. Joint Employees

a. Statement of Applicable Requirements

Section 14:4-3.5(p) of the Standards provides that:

> *Except as permitted in (i) and (j) above, an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company which are engaged in offering merchant functions and/or electric related services or gas related services shall not employ the same employees or otherwise retain, with or without compensation, as employees, independent contractors, consultants, or otherwise.*
>
> 1. *Other than shared administration and overheads, employees of the competitive services business unit of the public utility holding company shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services.*

b. Summary of Audit Activities

We sought to determine whether:

- Any holding company RCBS employee was provided to the utility as an employee, consultant, or independent contractor for the performance of non-competitive utility or safety services
- Any sharing of employees or assets between the utility and a holding company RCBS engaged in the merchant function occurred during the EDECA audit period.

We requested and analyzed information from management identifying which, if any, employees of affiliates (other than a service company and the holding company) provide non-competitive utility or safety services.

c. Findings

Section V.8 *Employees* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on joint employees. Management reported that no NJNG employee engaged in any employee, independent contractor, consultant, or other role in a manner the violated this provision of the Standards.[448] No prohibited joint asset use occurred.[449]

d. Conclusions

82. Management reported no instances or sharing of employee or asset sharing prohibited covered by Section 14:4-3.5(p) of the Standards.

We found no instances of the types of employee and asset sharing governed by this provision.

83. The Compliance Plan adequately addresses Section 14:4-3.5(p) of the Standards.

Section V.8 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and includes an adequate summary and interpretation of its implications.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

17. Common Directors and Officers

a. Statement of Applicable Requirements

Section 14:4-3.5(q) of the Standards provides that:

An electric and/or gas public utility and the PUHC or related competitive business segments of its public utility holding company shall not have the same persons serving on the Board of Directors as corporate officers, except for the following circumstances:

1. *In instances when these standards are applicable to public utility holding companies, any board member or corporate officer may serve on the holding company and with either the electric and/or gas public utility or a related competitive business segment of the public utility holding company, but not both the electric and/or gas public utility holding company and a related competitive business segment of the public utility holding company.*
2. *Where the electric and/or gas public utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the related competitive business segments, the prohibition against any board member or corporate officer of the electric and/or gas public utility also serving as a board member or corporate officer of a related competitive business segment shall only apply to related competitive business segments operating within New Jersey.*
   i. *In the case of shared directors and officers, a corporate officer from the electric and/or gas public utility and holding company shall verify, subject to Board approval, in the electric and/or gas public utility's compliance plan required pursuant to N.J.A.C. 14:4-3.7(a) through (d), the adequacy of the specific mechanisms and procedures in place to ensure that the electric and/or gas public utility is not utilizing shared officers and directors in violation of the Act or this subchapter.*

b. Summary of Audit Activities

We requested a list of directors and officers for each NJR entity and an identification of each position change made during the EDECA audit period. We also reviewed the Compliance Plan.

c. Findings

Section V.8 *Employees* of the current and each prior version of the Compliance Plan we reviewed included acknowledgment of this provision's restrictions on common officers and directors and correctly notes that individuals can serve as an officer and director of NJR and NJNG but cannot so serve as an officer or director of NJNG and a Retail Affiliate.

We requested a list of each NJR entity's directors and officers, including name, title, and the date and nature of each change. Our review of this list found for each year of the audit period officers and directors who simultaneously served concurrently in a prohibited role for both NJNG and an RCBS.[450]

Common NJNG and RCBS Officers and Directors

2023						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Westhoven)	Director President and CEO	Director	Director President and CEO	Director President and CEO	Director President and CEO	Director President
2 (Reich)	SVP and G.C.	SVP and G.C.	SVP and G.C.	SVP and G.C.	SVP and G.C.	
3 (Mehta)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
4 (Sergott)	Treasurer		Treasurer	Treasurer	Treasurer	
2022						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Westhoven)	Director President and CEO	Director	Director President and CEO	Director President and CEO	Director President and CEO	Director President
2 (Reich)	SVP and G.C.	SVP and G.C.	SVP and G.C.	SVP and G.C.	SVP and G.C.	
3 (Mehta)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
4 (Sergott)	Treasurer		Treasurer	Treasurer	Treasurer	
2021						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Westhoven)	Director President and CEO	Director	Director President and CEO	Director President and CEO	Director President and CEO	Director President
2 (Washington)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	
3 (Bel)	VP, Treasurer		VP, Treasurer	VP, Treasurer	VP, Treasurer	
4 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
5 (Trice)	Director		Director			
6 (Evans)	Director					
2020						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director		Director			
2 (Westhoven)	President and CEO	President and CEO	President and CEO	Director President and CEO	Director President and CEO	Director President
3 (Washington)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	
4 (Bel)	VP, Treasurer		VP, Treasurer	VP, Treasurer	VP, Treasurer	
5 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
6 (Evans)	Director					
2019						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director and CEO	Director	Director President and CEO	Director and CEO	Director and CEO	Director and CEO
2 (Westhoven)	President and CEO	Director	President and CEO	Director President and CEO	Director President and CEO	Director President and CEO
3 (Washington)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	
4 (Bel)	VP, Treasurer		VP, Treasurer	VP, Treasurer	VP, Treasurer	
5 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
6 (Evans)	Director					
2018						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director and CEO	Director	Director President and CEO	Director President and CEO	Director President and CEO	Director President
2 (Westhoven)	EVP President CEO		Director President and CEO	Director President COO	Director President COO	
3 (Washington)	SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	Director SVP and G.C.	
4 (Kent)	Treasurer		Treasurer	Treasurer	Treasurer	
5 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
6 (Evans)	Director					

2017						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director President and CEO	Director	Director President and CEO	Director President and CEO	Director President and CEO	Director President
2 (Westhoven)	EVP COO		EVP COO	EVP COO	EVP COO	
3 (Washington)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	SVP and G.C.	SVP and G.C.	
4 (Kent)	Treasurer		Treasurer	Treasurer	Treasurer	
5 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	Corp. Sec.	
6 (Evans)	Director					
2016						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director President and CEO	Director	Director President and CEO	Director President and CEO	n/a	Director President
2 (Kent)	Treasurer		Treasurer	Treasurer	n/a	
3 (Reich)	Corp. Sec.		Corp. Sec.	Corp. Sec.	n/a	
4 (Evans)	Director				n/a	
2015						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director President and CEO	Director	Director CEO	Director CEO	n/a	Director President
2 (Dugan)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	SVP and G.C.	n/a	
3 (Figueroa)	Corp. Sec.	Corp. Sec.	Corp. Sec.	Corp. Sec.	n/a	
4 (Migliaccio)	VP, Treasurer		VP	VP	n/a	
2014						
Person	**NJNG**	**CRR**	**NJRCEV**	**NJRCEV II**	**NJRCEV III**	**NJR RHC**
1 (Downes)	Director President and CEO	Director	Director CEO	Director CEO	n/a	Director President and Treasurer
2 (Dugan)	SVP and G.C.	Director SVP and G.C.	SVP and G.C.	SVP and G.C.	n/a	
3 (Figueroa)	Corp. Sec.	Corp. Sec.	Corp. Sec.	Corp. Sec.	n/a	
4 (Migliaccio)	VP, Treasurer		VP, Treasurer	VP, Treasurer	n/a	

d. Conclusions

84. Multiple individuals served as a director or as an officer of both NJNG and an RBCS, placing the Company out of compliance with Section 14:4-3.5(q) of the Standards during each year of the audit period. *(See Recommendation #23)*

As few as four and as many as six individuals served simultaneously as an officer or director of both NJNG and an RBCS during a given year within the period from 2014 through 2023. This includes multiple RCBSs: NJR Retail Holdings Corporation (which prior Plans have identified as an RCBS), NJRCEV and subsidiaries (which the previous audit of this type found to be an RBCS and recommended such a classification), and CR&R (which both previous audits of this type found to be an RBCS and recommended such a).

The mid-2023 movement of NJRES and its placement under an RCBS (NJRCEV) now requires its classification as an RBCS as well. As individuals also served as officers of both NJNG and NJRES, this causes additional instances of non-compliance with this provision of the Standards.

85. The Compliance Plan adequately addresses Section 14:4-3.5(q) of the Standards.

Current and previous versions of the Plan appropriately address, in Section V.8, this portion of the Standards and include a statement that each NJR company comprises a separate corporate entity.

e. Recommendations

23. Rectify the simultaneous service as officers and directors of both NJNG and RCBSs that cause violations of Section 14:4-3.5(q) of the Standards and undertake measures to prevent recurrence. *(See Conclusion #84)*

Cessation of such common service to NJNG and RCBSs must occur to bring the Company into compliance with the Standards.

18. Employee Transfers

a. Statement of Applicable Requirements

Section 14:4-3.5(r) of the Standards provides that:

All employee transfers between an electric and/or gas public utility and its PUHC or related competitive business segments of its public utility holding company providing or offering competitive services to retail customers in New Jersey which are engaged in offering merchant functions and/or electric related services or gas related services shall be consistent with following provisions:

1. *The electric and/or gas public utility shall make a public posting of all employee transfers within three working days.*
2. *An electric and/or gas public utility shall track and report annually to the Board all employee transfers between the electric and/or gas public utility and such related competitive business segments of its public utility holding company.*
3. *Once an employee of an electric and/or gas public utility is transferred to such related competitive business segment of its public utility holding company, said employee may not return to the electric and/or gas public utility for a period of one year, unless the related competitive business segment of the public utility holding company to which the employee is transferred goes out of business or is acquired by a non-affiliated company during the one-year period.*
4. *In the event that an employee is returned to the electric and/or gas public utility, such employee cannot be transferred for employment by a related competitive business segment of the public utility holding company which is engaged in offering merchant functions and/or electric-related services or gas-related services for a period of one year.*

b. Summary of Audit Activities

This provision addresses potential competitive impacts on unaffiliated suppliers from utility employee movement from or to the PUHC or an RCBS. Should transfers occur, the provision makes such transfers visible. These limitations prevent a PUHC or RCBS from gaining competitive advantage through inappropriate transferring of employees to or from the public utility. Advantages could be gained, for example, in the following manners:

- Transfers of employees with special expertise or knowledge

- Joint use of employees with special expertise or knowledge
- Transfers of employees utilizing knowledge or transporting information gained at the utility for the benefit of the PUHC or related competitive business sector or vice versa.

We sought to determine if employee transfers from NJNG to a holding company or holding company RCBS occurred during the EDECA audit period. Such transfers require NJNG to publicly post them within three working days. Had such transfers occurred, we would then seek to determine if any transferring employee was provided proper instructions on the employee's use of retained information. We also determined if NJNG made any required annual filing of employee transfer information with the BPU.

In addition, we sought to verify whether any employee that did transfer from NJNG to the holding company or holding company RCBS and vice-versa met the one-year requirement on transferring back to the previously held job at the affected entity. As a part of this evaluation we would confirm whether any such employees were properly instructed on confidential, competitively-restricted information prior to and after the transfer.

c. Findings

A number of employee transfers both to and from NJNG occurred during the audit period. The following table summarizes information management provided on such transfers.[451]

Employee Transfer Summary

Transfer Path	2014	2015	2016	2017	2018	2019	2020	2021
From NJNG								
NJR Midstream Company						1		
NJR New Jersey Resources Corporation		2	1			3		1
NJR Clean Energy Ventures II	1	1						
NJR Energy Services Company	1		1		1			
NJR Home Services Company		1	1		1		1	2
NJR Service Corporation		2	2	2	3	2	2	3
To NJNG								
New Jersey Resources Corporation			1					
NJR Clean Energy Ventures II		1						
NJR Clean Energy Ventures III							1	1
NJR Energy Services Company	1	1	1					1
NJR Home Services Company	1	6	2		2	3		2
NJR Service Corporation		4	2	1	5	6	2	5

Transfers from NJNG to an RCBS and vice versa activate additional provisions of the Standards. Eight such transfers occurred during the EDECA audit period, as the previous table shows. The first additional provision requires management to make a public posting and do so within three business days. We identified a sample of employee transfers and asked management for documentation that demonstrates that it made the required public postings and did so within the required time period. Management provided appropriate demonstration that it made the required postings and did so within three days. Our review of the NJNG website found at its regulatory postings page a Transfer of Employees section that listed more recent transfers of employees both to and from NJNG.[452]

The second additional provision requires that NJNG make annual reports to the BPU addressing all such transfers. NJNG provided copies of each annual report reportedly including all transfers between NJR and any affiliated company. Our review of them disclosed discrepancies between management's internal tracking of employee transfers (summarized in the previous table) and the employee transfers reported in annual BPU filings.[453] The following table summarizes the employee transfers included in management records but not included in annual BPU reporting and those included in annual BPU reporting but not in management records.

Employee Transfer Discrepancies

Transfer Path	2014	2015	2016	2017	2018	2019	2020	2021
In Management Records but Not Annual Reports to BPU								
From NJNG	1	2	3	2	2	2	2	3
To NJNG	0	6	0	0	0	0	0	0
In Annual Reports to BPU but not Management Records								
From NJNG	2	0	5	2	0	0	1	0
To NJNG	0	0	0	0	0	0	0	0

The Company typically filed these annual reports with the BPU in January of the subsequent year. However the 2014 report bore a September 16, 2015 date and the 2015 report a December 16, 2016 date. The 2016 report appears not to have been filed until January 8, 2018, submitted under a joint cover letter with the 2017 report.[454]

The final two provisions of this Section of the Standards prohibit the transfer back, within one year, of any employee transferred to or from NJNG to an RCBS. Our review of the information provided from management records indicated no instances of employees transferred from NJNG to a RCBS transferred back to the NJNG within one year.[455] However, further review of the discrepancies between management records and annual reports to the BPU disclosed that an employee transferred from NJNG to NJRCEVII on October 5, 2015 and transferred back to NJNG on June 6, 2016, a period of 245 days from the first transfer.

Section V.8 *Employees* of the current and each prior version of the Compliance Plan we reviewed includes discussion of employee transfers between NJNG and a Retail Affiliate but does not mention the reporting requirements. Section V.8 includes a reference to Exhibit O, which cites the specific requirements in this portion of the Standards regarding the prohibition against subsequent transfers of employees within a defined period after a qualifying transfer.

Plan Exhibit P Information Systems Access Guidelines states that the Human Resources department has responsibility for the posting of each employee transfer of an employee from NJNG to NJR or to a Retail Affiliate within three business days of the transfer's effective date.

d. Conclusions

86. NJNG's annual reporting of employee transfers to the BPU under Section 14:4-3.5(r) of the Standards does not match the list of employee transfers provided from management

records; NJNG failed on at least one occasion to make the required report on an annual basis; management demonstrated that it made required postings and did so within the prescribed period. *(See Recommendation #24)*

We found several discrepancies between a log of employee transfers management provided and the reports filed with the BPU. Transfers included movement of employees from NJNG to an NJR RCBS.

No reporting of 2016 employee transfers to the BPU occurred until January 8, 2018, when NJNG included them in a cover letter that also included the 2017 transfer report. The NJNG website includes postings of recent employee transfers. Management demonstrated that it made required postings within the required three day period for earlier employee transfers that we selected on a sample basis.

87. One employee transferred from NJNG to an NJR RCBS and back to NJNG within one year, a violation of Section 14:4-3.5(r) of the Standards. *(See Recommendation #25)*

Section 14:4-3.5(r) of the Standards forbids any employee transferred from a utility to an RCBS from a transfer back to the utility within one year, unless the RCBS goes out of business or is sold to a non-affiliated entity. Our review of the information provided from management records observed no such instances. However, one of the transfers not included in those records, but identified in annual reporting to the BPU, disclosed an instance of an employee transfer from NJNG to NJRCEVII (an RCBS) and transferred back to NJNG in 245 days. As described earlier in this chapter, management provided conflicting information about its classification of NJRCEV as an RCBS, but its affiliates standards training material identifies it as such.

88. The Compliance Plan adequately addresses Section 14:4-3.5(r) of the Standards.

Section V.8 *Employees* of the current and each prior version of the Compliance Plan we reviewed includes discussion of employee transfers between NJNG and a Retail Affiliate, but no mention of the reporting requirements such transfers impose.

e. <u>Recommendations</u>

24. Institute measures for ensuring (a) the maintenance of accurate employee transfer logs, (b) accurate and timely reporting to the BPU under Section 14:4-3.5(r) of the Standards, and (c) required postings of all employee transfers within three days. *(See Conclusion #86)*

Management should institute measures to ensure that it accurately logs all employee transfers and accurately reports them to the BPU on a cycle that complies with the annual filing requirements of the Standards. As part of the process for doing so, management should identify the causes of the discrepancies in the information provided during the course of this audit and the required annual reports it made to the BPU pursuant to Section 14:4-3.5(r) of the Standards to ensure that any existing gaps in internal record keeping, in its processes and procedures for reporting to the BPU, or in both, that caused the provision of conflicting information are effectively remedied.

Management should also ensure accuracy and consistency between its internal employee transfer information, its annual reporting to the BPU, and the public postings it makes pursuant to Section 14:4-3.5(r) of the Standards. Management should between audits of this type maintain documentation that it made all required postings pursuant to this provision of the Standards and did so within the required timeline (three working days).

25. Take measures sufficient to ensure that employee transfers not compliant with Section 14:4-3.5(r) of the Standards do not occur. *(See Conclusion #87)*

Such measures will avoid the non-compliance instance that has occurred and the lack of transparency that reported information about it produced.

19. Use of Utility Information after Employment Transfers

a. Statement of Applicable Requirements

Section 14:4-3.5(s) of the Standards provides that:

> *Employees transferring from an electric and/or gas public utility to a related competitive business segment of the public utility holding company are expressly prohibited from using any information gained from the electric and/or gas public utility to the benefit of the related competitive business segment of the public utility holding company or to the detriment of other unaffiliated product and/or service providers.*
>
> 1. *Any electric and/or gas public utility employee hired by a related competitive business segment of the public utility holding company shall not remove or otherwise provide information to said affiliate which said related competitive business segment of the public utility holding company would otherwise be precluded from having pursuant to these standards.*
> 2. *An electric and/or gas public utility shall not make temporary or intermittent assignments, or rotations to related competitive business segments of its public utility holding company.*

b. Summary of Audit Activities

The first provision prohibits inappropriate use of utility information by transferred employees. The second prohibits rotations that would have the effect of making such information available without permanent transfer. As a threshold matter, we first sought to determine if employee transfers from the utility occurred during the EDECA audit period. We reviewed utility employment practices, and analyzed severance or exit procedures used when an employee transfers to an affiliate. We also inquired whether any public utility employees held temporary or intermittent jobs with the holding company or holding company RCBS. We reviewed the utility compliance plan and examined information concerning temporary assignments, transfers, and rotations.

c. Findings

Section V.8 *Employees* of the Plan, as described in Section G.18 above, includes discussion of employee transfers and the associated need to maintain the confidentiality of customer information. Section V.8 also makes reference to Exhibit O, which contains the policy regarding employee transfers. That policy includes discussion of customer information usage restrictions. Plan Exhibit B *Fair Competition Guidelines* states that, “employees transferring between NJNG and a Retail Affiliate must acknowledge these provisions by signing a form provided by Human Resources.” The most recent internal audit review of employee transfers forms, conducted in 2018, observed inaccurate completion of employee transfer forms reviewed. Management reported that changes in response to this finding and the recommended corrective action would be implemented by September 30 of that year. We identified a sample of employee transfers that occurred subsequent to that date and asked management for documentation that demonstrates the completion of those forms and the date upon which completion occurred. Management stated that it processed the transfer of these employees in an internal human resources system and that the completed forms were "not available."[456]

Management reports no temporary employment or assignment of any NJNG employee to an affiliate during the audit period.[457]

d. <u>Conclusions</u>

89. Management employes procedures and controls to address prohibited transfers of information that may arise from employee transfers; however, it did not always accurately complete required action pursuant to them. *(See Recommendation #26)*

The Company employes *Human Resources Policy and Procedure 20 - Inter-Company Employee Transfer* (Plan Exhibit O) to, among other things, guide efforts to ensure protection of information when employees transfer between NJNG and affiliates. The policy includes discussion of prohibitions against using information gained during service as an NJNG employee to benefit any affiliate. The policy dictates that, upon transfers, Human Resources must use the Employee Status Change Form to govern this protection. The policy calls for the Human Resources department to meet with employees selected for transfer to remind them of the information protection provisions of the Standards and management's guidance regarding them. The Code of Conduct and the Plan and its exhibits provide that guidance, which seeks to ensure Employee Status Change Form completion for each transfer, and to ensure appropriate hand off of this information to guide annual reporting on employee transfers to the BPU and public postings of transfers.

A Fiscal Year 2018 Internal Audit identified "inaccurately completed" forms. For a sample of employee transfers subsequent to planned September 30, 2019 corrective action in response to that finding, we requested copies of completed forms and a demonstration of the date on which management completed them. Management could not demonstrate completion of those forms for a sample of employee transfers occurring more recently.

90. The Compliance Plan adequately addresses Section 14:4-3.5(s) of the Standards.

Section V.8 of the current and previous versions of the Plan appropriately addresses this provision of the Standards and Exhibit O includes a relevant policy that establishes required actions to protect information in the event of an employee transfer.

e. <u>Recommendations</u>

26. Institute measures to ensure compliance with Company procedures designed to protect information when employees transfer from NJNG to other affiliates and ensure complete and accurate completion of all required forms. *(See Conclusion #89)*

Management's response to the 2019 audit finding inaccurate completion of required forms indicated planned corrective action implementation by September 30 of that year. Management was not able to demonstrate completion of those forms for the period after that date, citing its processing of employee transfers in an internal human resources system. Management should, at least between audits of this type, maintain copies (at least electronic) of each completed employee transfer form and the date on which it was completed. The information maintained should permit verification that all employee transfer form completion occurred and did so within the required period.

20. Service Transfers

a. Statement of Applicable Requirements

Section 14:4-3.5(t) of the Standards provides that:

All transfers of services not prohibited by these standards shall be subject to the following provisions:

1. *Transfers from the electric and/or gas public utility to a related competitive business segment of its public utility holding company of services produced, purchased or developed for sale on the open market by the electric and/or gas public utility will be priced at no less than the fair market value.*
2. *Transfers from a related competitive business segment of the public utility holding company to the electric and/or gas public utility of services produced, purchased or developed for sale on the open market by the related competitive business segment of the public utility holding company shall be priced at no more than fair market value.*
3. *Prices for services regulated by a state or Federal agency shall be deemed to be the fair market value.*
4. *Services produced, purchased or developed for sale on the open market by the electric and/or gas public utility shall be provided to related competitive business segments of its public utility holding company and unaffiliated company(ies) on a nondiscriminatory basis, except as otherwise required or permitted by these standards or applicable law.*
5. *Transfers of services not produced, purchased or developed for sale on the open market by the electric and/or gas public utility from the electric and/or gas public utility to related competitive business segments of its public utility holding company shall be priced at fully allocated cost.*
6. *Transfers of services not produced, purchased or developed for sale on the open market by a regulated competitive business segment of the public utility holding company from that related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be priced at the lower of fully allocated cost or fair market value.*

This provision sets the following pricing rules:

- For “open market” services the utility provides to an RCBS of the PUHC: no less than fair market value and their provision on a nondiscriminatory basis (regulated services price at fair market value)
- For “open market” services an RCBS of the PUHC provides to the utility: no more than fair market value (regulated services price at fair market value)
- For “Non-open” market services the utility provides to an RCBS of the PUHC: fully allocated cost

- For "Non-open" market services an RCBS of the PUHC provides to the utility: the lower of fully allocated cost or fair market value.

b. Summary of Audit Activities

The provision of and charging for common services falls among the topics addressed in the *Cost Allocations* Chapter of this report. We limited our discussion of this portion of the Standards in this chapter to the adequacy and appropriateness of NJNG's Compliance Plan.

c. Findings

The current and each prior version of the Compliance Plan we reviewed included in Section V.9 *Transfer of Services* include discussion of each of the six numbered items included in this portion of the Standards.

d. Conclusions

91. The Compliance Plan adequately addresses Section 14:4-3.5(t) of the Standards.

Section V.9 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and includes an adequate summary and interpretation of each of its sub-parts and their implications.

e. Recommendations

We have no separate recommendations regarding this provision of the Standards.

21. Utility Asset Transfers

a. Statement of Applicable Requirements

Section 14:4-3.5(u) of the Standards provide that:

> *All transfers, leases, rentals, licenses, easements or other encumbrances of utility assets to a PUHC or related competitive business segments of a PUHC not prohibited by these standards shall be subject to the following pricing provisions, consistent with all other applicable Board rules:*
>
> 1. *Transfers, leases, rentals, licenses, easements or other encumbrances of utility assets from the electric and/or gas public utility to a related competitive business segment of its public utility holding company shall be recorded at fair market value or book value as determined by the Board.*
> 2. *Transfers, leases, rentals, licenses, easements or other encumbrances of assets from a related competitive business segment of the public utility holding company to the electric and/or gas public utility shall be recorded at the lesser of book value or fair market value.*

This provision addresses the pricing of assets transferred between affiliates, and generally require asymmetric pricing:

- Transfers from the utility to a PUHC RCBS priced and recorded at fair market value or book value as determined by the BPU.

- Transfers from a PUHC RCBS to the utility priced at the *lesser* of book or fair market value.

b. Summary of Audit Activities

As described in the *Cost Allocations* Chapter of this report, management reported no asset transfers involving NJNG. That Chapter also discusses our review of leases between affiliates, and includes recommendations to address shortcomings that our audit field work identified.

c. Findings

Management also reported no audit period licenses, easements, or other encumbrances of utility assets and no transfers of intellectual property between NJNG and any affiliate.[458]

Section V.10 *Transfer, Lease or Rental of Utility Assets* of the current and each prior version of the Compliance Plan we reviewed includes in discussion of each of this portion of the Standards and the requirements and prohibitions it imposes.

d. Conclusions

92. Management reported no transfers, leases, rentals, licenses, easements or other encumbrances of utility assets and we observed no occasions of such transactions during our audit field work.

The lack of no transfers, leases, rentals, licenses, easements or other encumbrances of utility assets left no further action necessary to confirm compliance with this portion of the Standards.

93. The Compliance Plan adequately addresses Section 14:4-3.5(u) of the Standards.

Section V.10 of the current and previous versions of the Plan appropriately addresses this portion of the Standards and includes an adequate summary of the prohibitions that apply and the appropriate accounting treatment for any qualifying transfer or other activity.

e. Recommendations

We have no separate recommendations regarding the requirements of this provision of the Standards.

G. Utility RCBS Standards (Section 14:4-3.6)

Section 14:4-3.6 of the Standards applies to any competitive services offered by the utility or a related competitive business segment of the utility.

1. Statement of Applicable Requirements

Section 14:4-3.6 of the Standards provides that:

> *Competitive products and/or services offered by a utility or related competitive business segments of a utility…* [several pages of associated requirements and prohibitions follow]

2. *Findings*

As described in Section D of this chapter, NJNG ceased offering product and service offerings that qualified as competitive for purposes of the Standards in 2000.[459] The NJNG Compliance Plan nevertheless includes discussion of this portion of the Standards in Section VI *Competitive Products and/or Services Offered by a Utility or Affiliate of a Utility*. Section 14:4-3.6 of the Standards includes sub-parts (a) through (x). NJNG's Plan includes coverage of 21 of these 24 items. The items not treated include sub-parts (c), (i), and (m) which provide that:

> *(c) For a competitive product and/or service that has been offered by an electric and/or gas public utility prior to January 1, 1993 or that has been approved by the Board prior to February 9, 1999, the electric and/or gas public utility may continue offering such product or service, provided, however, that if the electric and/or gas public utility does not have a tariff for the service on file with the Board, the electric and/or gas public utility shall file with the Board by July 18, 2008, a tariff setting forth the pricing terms, and other terms and conditions of the product and/or service.*
>
> *(i) All electric and/or gas public utility employees who are directly involved in the provision of non-competitive services, as well as competitive services, or who are involved in the provision of more than one competitive service, shall maintain complete and accurate time logs to track and record the amount of time spent in the performance of each service. For those employees who travel to remote or customer locations in the provision of competitive services, time logs shall account for and allocate as time to the competitive service all time spent traveling to and from each competitive service job, as well as the time spent performing related diagnostics, repair and/or installation, and allocated share of downtime.*
>
> *(m) An electric and/or gas public utility employee engaged in providing non-competitive, regulated services shall not:*
>
> > *1. Solicit competitive services business on behalf of the public utility or its related competitive business segment, or provide business leads to the public utility's or its related competitive business segment's employees engaged in the offering of competitive services;*
> >
> > *2. Share market analysis reports or other type(s) of proprietary or non-publicly available reports, including, but not limited to, market, forecast, planning or strategic reports, with the public utility's employees involved in the offering of competitive products and/or services, or with employees of a related competitive business segment of the public utility, unless such information is made available on a non-discriminatory basis to all other service providers and the information is kept open to public inspection;*
> >
> > *3. Represent or imply that a customer will receive preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;*
> >
> > *4. Provide a customer preferential treatment as a consequence of obtaining competitive products and/or services from the public utility or its related competitive business segment as opposed to a non-affiliated service provider;*
> >
> > *5. Process any request for non-competitive services offered by the electric and/or gas public utility on a preferential or discriminatory basis for a customer taking competitive products and/or services from the public utility or its related competitive*

business segment, as opposed to taking such products and/or services from a non-affiliated provider;
6. Condition or otherwise tie the provision of any non-competitive services provided by the public utility, or the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any non-competitive products and/or services provided by the public utility to the taking of any competitive products and/or services from the public utility or its related competitive business segment; or
7. Assign customers to which the public utility currently provides products and/or services to its related competitive business segment, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

3. Conclusions

94. NJNG made no internal RCBS offerings during the audit period to which Section 14:4-3.6 of the Standards apply.

The Company long ago moved what had been internal competitive NJNG product and service offerings to affiliate NJRHS that it established under BPU approval. Therefore, this Section of the Standards has no current applicability to NJNG.

95. The Compliance Plan adequately addresses all but three of the 24 sub-sections included in Section 14:4-3.6 of the Standards. *(See Recommendation #27)*

Despite having no internal RCBS offerings, the current and prior versions of the Plan address nearly all of Section 14:4-3.6 of the Standards. Three items do not receive coverage. The first of these, Section 14:4-3.6(c) applies only to competitive offerings made by a utility prior to January 1, 1993 or received BPU approval prior to February 9, 1999. Such qualifying offerings moved to NJRHS in 2002, meaning any future qualifying NJNG offerings would not be subject to Section 14:4-3.6(c) of the Standards, because they would by definition constitute new offerings.

The two other portions of the Standards do however include provisions that could potentially have impact for NJNG should future internal RBCS offerings occur. These include Section 14:4-3.6(i) which imposes time capture requirements on utility employees that have direct involvement in the provision of both competitive and non-competitive services or who are involved in the provision of more than one competitive service. Also excluded, Section 14:4-3.6(m) includes prohibitions associated with the solicitation of competitive services, the sharing of market analyses and other non-public reports, and various other elements. Any future NJNG offer of internal products or services that qualify under the Standards would require compliance with both sub-sections 14:4-3.6(i) and 14:4-3.6(m).

4. Recommendations

27. Update the Compliance Plan to include direct discussion of Section 14:4-3.6(i) and (m) of the Standards. *(See Conclusion #95)*

With all other portions of Section 14:4-3.6 of the Standards adequately addressed by the Plan, NJNG should add coverage of Section 14:4-3.6(i) and (m). They do not apply to any current NJNG offerings, but the Plan should address how to treat them should they begin to apply in the future.

H. Regulatory Oversight (Section 14:4-3.7)

Section 14:4-3.7 of the Standards applies to the annual filing requirements for the Compliance Plan, its contents, and audits of compliance with the Plan.

1. *Statement of Applicable Requirements*

Section 14:4-3.7 of the Standards provides that:

(a) Each electric and/or gas public utility shall file its compliance plan with the Board and provide a copy of said plan to the Rate Counsel at least once in every 12-month period or upon changes to the plan, and thereafter, within 12 months of the revised plan.

(b) Said compliance plan shall demonstrate that there are adequate procedures in place to ensure compliance with this subchapter and shall include the electric and/or gas public utility's dispute resolution procedure pursuant to N.J.A.C.

14:4-3.8(a).

1. *Said compliance plan shall contain an accurate list of all affiliates of an electric and/or gas public utility, including the business name and address, name and business telephone number of at least one officer of each affiliate and a brief description of the business of each affiliate.*
    - i. *The information required by (b)l above shall be updated within five business days of any change(s) thereto, and a public posting of the information shall also be made within that time period.*

(c) Absent Board action to the contrary, the electric and/or gas public utility's compliance plan shall be in effect between its filing and the Board's decision.

(d) Upon the creation of a new affiliate that is covered by this subchapter, the electric and/or gas public utility shall immediately notify the Board, as well as make a public posting thereof.

(e) Every two years, or more often at the discretion of the Board, the electric and/or gas public utility shall have an audit prepared by an independent auditor, to be selected by the Board, which verifies that the electric and/or gas public utility is in compliance with this subchapter.

1. *The scope of the audit shall be established by the Board and shall take into consideration the electric and/or gas public utility's level of activity with its affiliates.*

(f) An audit performed by an independent auditor shall be at the electric and/or gas public utility's expense.

2. *Findings*

NJNG made required annual Compliance Plan filings. The following table summarizes the dates included in the cover letter of each annual plan reviewed.

Compliance Plan Filing Date

Plan Year	Date	Plan Year	Date
2014	12/23/2014	2019	12/20/2019
2015	1/21/2016	2020	12/21/2020
2016	12/23/2016	2021	12/23/2021

2017	12/20/2017	2022	12/27/2022
2018	12/27/2018	2023	12/20/2023

Section 14:4-3.7 of the Standards requires NJNG to "file its compliance plan with the Board and provide a copy of said plan to the Rate Counsel at least once in every 12-month period or upon changes to the plan, and thereafter, within 12 months of the revised plan." Durations between plans exceeded 365 days on three occasions. The Company filed the 2015 Plan 394 days after it filed the 2014 Plan. The durations between the 2020 and 2021 Plans and 2021 and 2022 Plans were shorter, at 367 days and 369 days, respectively.

Our review of the Plans in effect during the EDECA audit period found them reasonably complete and consistent with the intent of the Standards, but we did, as explained earlier in this chapter, recommend specific changes and additions.

Section VII *Regulatory Oversight* of the current and each prior version of the Compliance Plan we reviewed stated management's policy regarding compliance with each element of Section 14:4-7 of the Standards. This portion of the Plan also includes reference to Exhibit A *New Jersey Resources Corporation Corporate Structure*, which includes the mandated listing of all affiliates. The Plans reviewed included a list of all affiliates. We found missing from the list in Plans as of 2020, however, the Standards-mandated business address, phone number, and brief description of each affiliate.

3. *Conclusions*

96. The Compliance Plan does not adequately address certain specifics required by Section 14:4-3.7 of the Standards. *(See Recommendation #29)*

Plan Section VII *Regulatory Oversight* addresses this provision of the Standards, notes the requirements of annual filings, and includes a list of affiliates. The narrative description included provides appropriate coverage of each element of this provision and correctly interprets their intent. The Plan, however, fails to include required information about each affiliate. We found address and phone information and a description of each affiliate's business missing beginning with the 2020 Plan version. The Plan also includes a reference to Appendix O which does not appear to address any of this specific portion of the Standards.

97. NJNG did not file all Compliance Plans within the time requirements established by Section 14:4-3.7 of the Standards. *(See Recommendation #30)*

The Company filed its 2015 Compliance Plan 394 days after the provision of its predecessor. The 2021 and 2022 Plans exceeded their predecessors by 367 and 369 days, respectively."

4. *Recommendations*

28. Update the Compliance Plan to include all required information as prescribed by Section 14:4-3.7 of the Standards for each NJR affiliate. *(See Conclusion #97)*

The Standards require each Compliance Plan to include in its listing of each company's affiliate the business address, phone number of at least one officer, and a brief description of the business of each affiliate. Management should include each in the next version of its Plan. The Plan's existing Exhibit A provides a suitable place to house this information, should the Company maintain the existing structure for subsequent Compliance Plans.

29. Institute measures to secure timely filing of Compliance Plans within the required time period. *(See Conclusion #98)*

NJNG should ensure that future Compliance Plan filings comply with the prescribed 12-month requirement.

I. Dispute Resolution (Section 14:4-3.8)

1. Statement of Applicable Requirements

Section 14:4-3.8 of the Standards provides that:

(a) An electric and/or gas public utility shall establish and file annually with the Board a dispute resolution procedure, including the establishment of a telephone complaint hotline, to address complaints alleging violations of this subchapter.

1. The procedure shall be included in the electric and/or gas public utility's annual compliance plan.

(b) At a minimum, the procedure shall designate a person to conduct an investigation of the complaint and communicate the results of the investigation to the complainant in writing, within 30 days after the complaint is received, including a description of any action taken.

(c) An electric and/or gas public utility shall report any violation of this subchapter to the Board, with a copy provided to the Rate Council within five business days of becoming aware of any such violation(s).

(d) The electric and/or gas public utility shall maintain a log of all resolved and pending complaints. The log shall be subject to review by the Board and Rate Counsel and shall contain, at minimum, a summary of the complaint, the manner in which the complaint was resolved, or an explanation why the complaint remains pending.

2. Findings

Section VIII. *Dispute Resolution* of the current and prior versions of the Plan responds to the four items listed under this provision of the Standards and includes information responsive to what the Standards prescribe. This section of the Plan includes a reference to Exhibit N *Corporate Communications and Public Relations Policy and Corporate Identification and Advertising Guidelines*. That reference appears incorrect, as Exhibit M *External Complaint Procedure* to the Plan includes what the Company titles its Affiliate Rules External Complaint Procedure. Management has assigned to its Regulatory Affairs business unit with responsibility for maintenance of its complaint log. Management reported that no complaints occurred during the audit period, and the version of the log we reviewed included no entries.

3. Conclusions

98. The Compliance Plan adequately addresses this Section 14:4-3.8 of the Standards; however, it includes an incorrect reference to the Company's Corporate

Communications and Public Relations Policy and Corporate Identification and Advertising Guidelines. *(See Recommendation #31)*

Section VIII of the current and previous versions of the Plan appropriately addresses this provision of the Standards. However, the section includes a reference to Exhibit N as relevant to Section 14:4-3.8 of the Standards as it relates to complaint procedures. The Plan includes the Company complaint procedure in Exhibit M.

99. Management employed an appropriate process to track and log complaints received and capture the status and resolution of its investigation into each occurrence.

Internal Audit examinations from Fiscal Year 2014 and Fiscal Year 2018 found that management did not comply fully with complaint tracking and logging requirements. The second of these examinations recommended adherence to proper reporting guidelines regarding Affiliate Standards and maintenance of a log of written and verbal complaints made against NJNG or its Retail Affiliates.[460] The Company reported that that remediation occurred prior to the issuance of the Fiscal Year 2018 Internal Audit Report.[461] Management provided a copy of its complaint log that demonstrated that remediation.

4. Recommendations

30. Update the Compliance Plan to correct the incorrect reference to Exhibit N in Section VIII's discussion of Section 14:4-3.8 of the Standards. *(See Conclusion #99)*

The Compliance Plan should make reference to the appropriate exhibit or otherwise correctly refer to the Company's External Complaint Procedure.

J. Violations and Penalties (Section 14:4-3.9)

1. Statement of the Applicable Requirements

Section 14:4-3.9 of the Standards provides that:

(a) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-3.7(e) through (g) or by any other means, the Board determines that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8, which are not substantial violations as described in (b) below, the Board is authorized to impose a penalty of up to $ 10,000 for each such violation upon said electric and/or gas public utility.

(b) If, as a result of an audit conducted pursuant to N.J.A.C. 14:4-3.7(e) through (g) or by any other means, the Board determines, after providing the electric and/or gas public utility notice of a public hearing and an opportunity to be heard, that an electric and/or gas public utility has committed violations of N.J.A.C. 14:4-3.3, 3.4, 3.5, 3.7 or 3.8, which are substantial in nature so as to result in unfair competitive advantages for an electric or gas public utility, the Board is authorized to take some or all of the following actions

1. Impose a penalty of up to $ 10,000 for each such violation(s);

2. Order appropriate reimbursement to electric and/or gas public utility ratepayers, including interest;

3. For a first violation:

i. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings and form a related competitive business segment of the public utility to perform the competitive product and/or service offerings; or
ii. Order a violating electric and/or gas public utility to cease some or all competitive product and/or service offerings through a related competitive business segment of the public utility holding company; and/or
4. For a second violation:
i. Initiate a hearing to reconsider its approval of the formation of the public utility holding company.

2. Findings

Section IX. *Violations and Penalties* of the current and prior Plans includes a statement acknowledging awareness of the BPU's ability to take action as described in the Standards and that fiscal penalties for violations comprise a potential course of action.

3. Conclusions

100. The Compliance Plan adequately addresses this Section 14:4-3.9 of the Standards.

Current and previous versions of the Plan appropriately address, in Section IX, this provision of the Standards and include a statement acknowledging awareness of the BPU's ability to take action as described in the Standards and that fiscal penalties for violations are a potential course of action.

4. Recommendations

We have no separate recommendations regarding the requirements of this provision of the Standards.

End Notes

[1] Response to Data Request 64
[2] Response to Data Request 7
[3] Response to Data Request 787
[4] Attachment 1 to the response to Data Request 1269. The Senior Vice President for Regulatory Affairs' title and responsibilities were updated in October 2023.
[5] Response to Data Request 1285
[6] Response to Data Request 2-S, Attachment E-S
[7] Recommendation 26 at page 124 of the NorthStar report and Attachment F to response to Data Request No. 8
[8] Attachment 1 to the response to Data Request 1269
[9] Attachment 1 to the response to Data Request 1271
[10] Response to Data Request 78 Attachment 1-2 Pre-filed Direct Testimony NJNG Managing Director, Gas Supply pages 1-2
[11] Response to Data Request 66 and Data Request 1078
[12] Position descriptions for NJNG, NJRES, Adelphia, Leaf River Energy Center, and NJR Midstream were provided in response to Data Request 66
[13] Response to Data Request 67
[14] Attachments A and B to the response to Data Request 67
[15] Attachment C to the response to Data Request 67
[16] Response to Data Request 1272
[17] Interview 75
[18] Interview 75
[19] Response to Data Request 106
[20] Response to Data Request 123
[21] Attachment A to the response to Data Request 77
[22] Response to Data Request 131
[23] Response to Data Request 52
[24] Response to Data Request 136
[25] Response to Data Request 126
[26] Interview 75
[27] Interview 75
[28] Titled the "Code of Conduct of New Jersey Resources Corporation Governing Wholesale Natural Gas Buying and Selling and the Reporting of Trade Data for Index Development Purposes," dated April 20, 2022 and forming part of Exhibit 7 to the Risk Management Policy
[29] Response to Data Request 44, Attachment B
[30] The Deal Approval Forms for these AMAs, complete with supporting documentation, were provided in response to Data Request 43. The narrative associated with the Deal Approval Form for the 11/1/2019 – 10/31/2021 period reported that the capacity had been released to NJRES since 2010. See Attachment L to Data Request 43 at page 3
[31] Response to Data Request 1485
[32] Interview 55
[33] See Attachments BG-S, BK-S and BL-S to the response to Data Request 43
[34] Response to Data Request 1139
[35] Response to Data Request 1138
[36] The Deal Approval forms for these AMAs were provided in response to Data Request 43, Attachments O (2013-2014), P (2013-2014), Q (2014-2015), R (2015-2016), S (2015-2016), T (2016-2017), U (2017-2018), V (2018-2019).
[37] Interview 55
[38] Response to Data Request 1300
[39] The AMAs are Attachments K, M and N to the response to Data Request 43. The TCO rates are in the response to Data Request 1136.
[40] Response to Data Request 43, Attachments AP (summer 2020), AQ (August 2018), AR (December 2017), AS (May 2019)
[41] The TCO contract was provided in response to Data Request 1137.
[42] Response to Data Request 1139

[43] The 2022 version of this policy was provided as Attachment B to the response to Data Request 44. The 2023 version is Attachment C-S.
[44] Response to Data Request 1139
[45] The Deal Approval Forms for the new AMAs with were provided as part of a response to an interrogatory in a recent BGSS case. See the response to Data Request 824.
[46] Attachment D to the response to Data Request 85, and the response to Data Request 126
[47] NorthStar report at page 109
[48] Response to Data Request 824
[49] Response to Data Request 85-S and Interview 38
[50] Response to Data Request 72
[51] Response to Data Request 52, Data Request 126 and Data Request 127
[52] Interview 1
[53] Interviews with the Managing Director Gas Supply
[54] Response to Data Request 133
[55] Interview 1 and Interview 2
[56] Responses to Data Requests 1301 and 1357
[57] Responses to Data Request 0107 and 790
[58] https://www.njrenergyservices.com/energy-management-services/portfolio-management.aspx
[59] Reviewed April 20, 2022. Attachment B to the response to Data Request 44
[60] Interview 55
[61] Response to Data Request 1139(b) and Data Request 1300
[62] Response to Data Request 1138 and Data Request 135 Attachments A and C-S
[63] Response to Data Request 77 Attachment
[64] Response to Data Request 106
[65] See the Gas Supply Planning and Forecasting section of our 2007 report in BPU Docket No. GA05100909 and the 2014 NorthStar report at page 108
[66] This rule is generally reported in NJNG's Managing Director, Gas Supply pre-filed Direct Testimony in each year's BGSS proceeding. See, *e.g.*, the response to Data Request 78 Attachment I, at page 101
[67] Response to Data Request 116
[68] This section is largely taken from the response to Data Request 93
[69] Marquette report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827-S
[70] Marquette report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827-S, at page 9
[71] See the discussion of this criterion in the Marquette report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827-S, at page 5
[72] Response to Data Request 106, at pages 2-3
[73] Marquette report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827-S, chart at page 6
[74] Response to Data Request 98
[75] Response to Data Request 99-S
[76] Response to Data Request 99-S
[77] Response to Data Request 100
[78] Source: the Process & Methodology section of MEA's report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827
[79] Response to Data Request 103
[80] Response to Data Request 93
[81] The 2023 version of this workpaper is in Attachment 2-S to Data Request 78-S, at page 76
[82] See, *e.g.*, Attachment 2-S to the response to Data Request 78-S, at page 75
[83] Response to Data Request 104-S Attachment 1-S and Data Request 1293 Attachment 1
[84] Response to Data Request 102-S
[85] Response to Data Request 101 Attachment A
[86] Response to Data Request 108
[87] Response to Data Request 817
[88] Response to Data Request 817
[89] Response to Data Request 133
[90] Response to Data Request 107 and Data Request 794

91 See, *e.g.*, NJNG Managing Director, Gas Supply pre-filed Direct Testimony in the 2023 BGSS proceeding (Attachment 1-S to the response to Data Request 78-S, at pages 101-102)
92 See, *e.g.*, Attachment 1-S to the response to Data Request 827-S-Confidential, at page 5
93 Response to Data Request 827-S, Attachment 1-S (Report for 2022-2023, see Figure 3 at page 9)
94 Marquette report for 2022-2023, provided as Attachment 1-S to the response to Data Request 827-S, chart at page 9
95 See page 75 of Attachment 2-S to the Company's response to Data Request 78-S.
96 See page 103 of the NorthStar report
97 The 10-percent number is from Pacific Gas & Electric Company's presentation to a July 2020 Staff workshop for the California Public Utility Commission. It refers to PG&E's "Core" customer segment, which does not include Commercial and Industrial customers. See www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/natural-gas-and-oil-pipeline-regulation/long-term-gas-planning-rulemaking/r2001007-track/a-july72020Staffworkshop-slides.pdf.
98 Response to Data Request 817
99 Data Request 824 Confidential, Attachment 1 at page 67
100 Order dated July 23, 2014, in Docket No. GR13050425, cited in the Company's response to a discovery response in the FY2022 BGSS proceeding, provided here in response to Data Request 824 Attachment 1, at page 4
101 Response to Data Request 0794
102 Response to Data Request 107 provides a copy of the presentation for the 2021-2022 Winter Planning Meeting. See Attachment A
103 Response to Data Request 131
104 Page 10 of NJNG Managing Director, Gas Supply Pre-filed Direct Testimony in a BGSS proceeding. Example cited is from page 101 of Attachment 1-S to Data Request 78-S.
105 Response to Data Request 131
106 Page 10 of NJNG Managing Director, Gas Supply Pre-filed Direct Testimony in the Company's 2022-2023 BGSS proceeding. Page 101 of Attachment 1-S to Data Request 78-S. Also, response to Data Request 131
107 Response to Data Request 135-S
108 Response to Data Request 135-S
109 The Liberty Consulting Group, *Focused Audit of Affiliate Transactions and Management Audit of the New Jersey Natural Gas Company – Volume One: Gas Supply*, dated November 20, 2007, and filed in Docket No. GA05100909, at pages 28-29.
110 NorthStar Consulting Group, *Audit of Affiliated Transactions Between New Jersey Natural Gas Company and New Jersey Resource and Affiliates and a Comprehensive Management Audit of New Jersey Natural Gas Company*, filed in BPU Docket No. GA13010008 on June 26, 2014. See, *e.g.*, page 104
111 See, *e.g.*, the Company's 2022-2023 BGSS filing, Exhibit C, Schedule 6, page 3 of 5, provided as page 54 of Attachment 1-S to Data Request 0078-S.
112 Response to Data Request 1301
113 NJNG BGSS filing for 2022-2023, provided to Liberty as Attachment 1-S to Data Request 78-S, at page 101
114 NJNG Managing Director, Gas Supply Pre-filed Direct Testimony in the Company's 2022-2023 BGSS filing, provided as Attachment 1-S to Data Request 78-S, at pages 97-98
115 See, *e.g.*, Exhibit JSS-5 in the Company's 2022 filing, provided to us as pages 117-118 of Attachment 1-S to the Company's response to Data Request 78-S
116 Order dated July 23, 2014, in Docket No. GR13050425, cited in the Company's response to a discovery response in the FY2022 BGSS proceeding, provided to us in Attachment 1 to the Company's response to Data Request 0824
117 Confidential Attachment 1 to the response to Data Request 824
118 A table of Design Day Gas Requirements and Supply appears as a workpaper for the Company's BGSS filings. The FY2023 filing shows the combined sendout capacity as 170,000 Dth, and the Design Day Sendout Forecast as 951,615 Dth. See page 75 of Attachment 2-S to the response to Data Request 0078-S.
119 FERC Orders No. 712, 712-A, 712-B and Responses to Data Request 1086
120 Interview 62
121 See the response to Data Request 817 for the recent history of service interruptions
122 Response to Data Request 1292
123 Copies of the three AMAs were provided in response to Data Request 35
124 Response to Data Request 1297
125 Response to Data Request 35, Attachment DG

[126] Response to Data Request 1300
[127] Response to Data Request 43, Attachments AA, Y, Z (April 1 – March 31), AF, AE, I, J, L (November 1 – October 31)
[128] Cost data is from Confidential Attachment 1 to the response to Data Request 1134
[129] BGSS Workpapers for 2014 through 2023, Workpaper 5, Schedule 3, provided in response to Data Request 078
[130] Response to Data Request0135-S
[131] BGSS Workpaper 5, Schedules 2c, 4e, 4f
[132] These transactions are listed in the response to Data Request 124, copies of the agreements are provided in the responses to Data Request 35 and Data Request 43
[133] Both contracts provided in the response to Data Request 035; NJRES's contract is Attachment H
[134] Response to Data Request 135-S
[135] Response to Data Request 43 and 43-S
[136] 18 C.F.R. para 358
[137] Response to Data Request 44, Attachment A
[138] Response to Data Request 85-S, Attachments R through W and BB-S through DD-S
[139] Response to Data Request 44
[140] Attachment C-S to the response to Data Request 44-S
[141] A sample deal approval form was provided in response to Data Request 1268
[142] Response to Data Request 136
[143] Response to Data Request 1265
[144] All versions of the Code of Conduct were provided in response to Data Request 044
[145] Interview 62
[146] NJNG Kick-off Meeting presentation, at page 11
[147] Attachment 2-S to Data Request 78-S (workpapers for FY 2023 BGSS filing), at page 75
[148] NJNG Kick-off Meeting presentation, at page 11
[149] Interview 45
[150] Interview 1
[151] Response to Data Request 51
[152] See the NorthStar report at page 122
[153] Response to Data Request 136
[154] Response to Data Request 136
[155] Attachments D and E to the Company's response to Data Request 133
[156] *NJNG Design Day Gas Requirements and Supply (Dth)*, page 75 in Attachment 2-S to Data Request 078-S
[157] Attachment Z to the response to Data Request 043
[158] Attachments D and E to the Company's response to Data Request 133
[159] Example: Attachment BK-S to the Company's response to Data Request 43-S
[160] Example: Attachment BG-S to the Company's response to Data Request 43-S
[161] https://s26.q4cdn.com/222857764/files/doc_gpvernance/2024/Jun/njr-final-code-of-conduct-with-6-26-2024.pdf
[162] Response to Data Request 117; Interview 62; Data Request 121-S
[163] Attachment 2-S to the response to Data Request 78-S, at page 4 of Workpaper #4 (p. 18 of pdf) and FY2022 Design Day value from BGSS workpapers (NJNG Design Day Gas Requirements and Supply)
[164] Interview 75
[165] Confidential Attachment H to the response to Data Request 116
[166] Confidential Attachments A and 1-S to the response to Data Request 121-S
[167] Interview 75. NJNG's Managing Director, Gas Supply reported that they had to estimate the number of suppliers for NJR's SEC Form 10-K, which is how they know the number.
[168] Confidential Attachment 1 to the response to Data Request 1429
[169] Attachment 1 to the response to Data Request 1430
[170] Interview 1
[171] Interview 75
[172] Response to Data Request 1452
[173] Response to Data Request 128
[174] Response to Data Request 1489
[175] Response to Data Request 128
[176] Response to Data Request 129

[177] Sourced from the responses to Data Request 1097 and Data Request1098
[178] Attachment A to Data Request 128
[179] Response to Data Request 1088
[180] Interview 75
[181] Attachment 1 to the response to Data Request 1088
[182] NorthStar Report, at page 118
[183] NorthStar Report, at pages 118-119
[184] NorthStar Report, at page 126
[185] Provided as Attachment A to Data Request 123
[186] Exhibit 7 to NJR Risk Management Policy, which was provided as Attachment A to Data Request 0123, see page 39
[187] NJR Risk Management Policy, which was provided as Attachment A to Data Request 0123, see page 5
[188] Exhibit 5 to NJR Risk Management Policy, which was provided as Attachment A to Data Request 0123
[189] Responses to Data Request 126 and Data Request 136
[190] Response to Data Request 075
[191] Response to Data Request 1456
[192] See, *e.g.*, Attachment 2-S to the response to Data Request 078-S, at pages 55-58 and 69-72
[193] GR15030392. Order issued October 15, 2015
[194] NorthStar report
[195] Response to Data Request 111 and recent Risk Management Committee packages; see; *e. g.*, response to Data Request 75-S, Confidential Attachment AH-S at page 5
[196] Response to Data Request 75-S, Confidential Attachment AH-S at page 5
[197] *The American Oil & Gas Reporter*, August 2022 Editor's Choice
[198] The current Risk Management Policy was provided as the response to Data Request 123.
[199] Pace Global Energy Services and Vantage Consulting, Inc., "Analysis of the Gas Purchasing Practices and Hedging Strategies of the New Jersey Major Gas Distribution Companies". Final Report dated January 15, 2009.
[200] NorthStar Consulting Group, "Audit of Affiliated Transactions Between New Jersey Natural Gas Company and New Jersey Resources and Affiliates and a Comprehensive Management Audit of New Jersey Natural Gas Company", Docket No. GA13010008. Final Report dated June 26, 2014, at page 118
[201] Response to Data Request 116, Attachments B, C, D
[202] Special Provision 3 for Service Classification TPS in NJNG Tariff, provided as the response to Data Request 082-S, Attachment E-S, at Sheet 95, which appears as page 82 in the response
[203] PHMSA Annual Report for Calendar Year 2021, Gas Distribution System, provided to us as Attachment A-CY2021_Dist. To Data Request 83
[204] Response to Data Request 832
[205] Response to Data Request 97
[206] Mostly from the response to Data Request 0834, supplemented by the response to Data Request 87
[207] NJNG Tariff, Original Sheet No. 92
[208] Response to Data Request 0082-S, Attachment E-S, NJNG Tariff 3-1-23, Original Sheet No. 92
[209] Response to Data Request 11
[210] Response to Data Request 776
[211] Interview 5
[212] Response to Data Request 875
[213] Response to Data Request 12
[214] Response to Data Request 13
[215] Response to Data Request 863
[216] Response to Data Request 875
[217] Response to Data Request 785
[218] Interview 82-84
[219] Response to Data Request 154, Attachment H
[220] Response to Data Request 849
[221] Response to Data Request 154, Attachment H
[222] Response to Data Request 1214
[223] Finding V-13
[224] Response to Data Request 770

[225] Response to Data Request 849
[226] Response to Data Request 1213
[227] Response to Data Request 850
[228] Response to Data Request 851
[229] Response to Data Request 858
[230] Response to Data Request 851
[231] Response to Data Request 154, Attachment H
[232] Response to Data Request 154, Attachment H
[233] Response to Data Request 844
[234] Response to Data Request 11 and Data Request 154, Attachment H
[235] Response to Data Request 864
[236] Response to Data Request 11 and Data Request 154, Attachment H
[237] Response to Data Request 11 and Data Request 154, Attachment H
[238] Response to Data Request 11 and Data Request 154, Attachment H
[239] Response to Data Request 11 and Data Request 154, Attachment H
[240] Response to Data Request 11 and Data Request 154, Attachment H
[241] Response to Data Request 866
[242] Response to Data Request 867
[243] Recommendation V-13
[244] Response to Data Request 8
[245] Response to Data Request 36
[246] Response to Data Request 752
[247] Response to Data Request 36
[248] Response to Data Request 752
[249] Response to Data Request 871
[250] Response to Data Request 32 and Data Request 47
[251] Response to Data Request 742
[252] Response to Data Request780
[253] Response to Data Request 883
[254] Response to Data Request 1210
[255] Response to Data Request 882
[256] Response to Data Request 882
[257] Response to Data Request 1218
[258] Response to Data Request 38
[259] Response to Data Request 33
[260] Response to Data Request 225
[261] Response to Data Request 29
[262] Response to Data Request 24
[263] Response to Data Request 11, Attachment A
[264] Response to Data Request 749
[265] Response to Data Request 11, Attachment A
[266] Response to Data Request 41
[267] New Jersey Administrative Code
[268] Response to Data Request 15-S
[269] Response to Data Request 741
[270] Interview 8
[271] Response to Data Request 843
[272] Response to Data Request 11, Attachment A
[273] Interview 5
[274] Response to Data Request 781-S
[275] Interview 5
[276] Response to Data Request 778
[277] Response to Data Request 753
[278] Response to Data Request 14
[279] Response to Data Request 862

[280] Response to Data Request 22
[281] Response to Data Request 861
[282] Response to Data Request 744
[283] Response to Data Request 22
[284] Response to Data Request 747
[285] Interview 4
[286] Response to Data Request 1473
[287] Response to Data Request 26
[288] Response to Data Request 886
[289] Response to Data Request 886
[290] Response to Data Request 1219
[291] Response to Data Request 250-S
[292] May 13, 2024 Interview and Response to Data Request 1463
[293] Response to Data Request 861
[294] Response to Data Request 780
[295] Response to Data Request 876
[296] Response to Data Request 780
[297] Response to Data Request 883
[298] Response to Data Request 881
[299] Response to Data Request 1471
[300] Response to Data Request 232
[301] Response to Data Request 232 and Data Request 780
[302] Response to Data Request 883
[303] Response to Data Request 232
[304] Response to Data Request 781
[305] Response to Data Request 878
[306] Response to Data Request 782
[307] Response to Data Request 1472
[308] Response to Data Request 879
[309] Response to Data Request 17
[310] Response to Data Request 20
[311] Interview 5
[312] Response to Data Request 855 and Data Request 743
[313] Response to Data Request 854
[314] Response to Data Request 1474
[315] Response to Data Request 746
[316] Response to Data Request 890
[317] Casetext.com/regulation/New Jersey – administrative code
[318] Interview 82-84
[319] NorthStar Audit, pages 83-91
[320] Response to Data Request 087
[321] Response to Data Request 143
[322] Attachment 2-S to the response to Data Request 078, at page 41
[323] Attachment 2-S to the response to Data Request 078, at page 41
[324] Attachment 2-S to the response to Data Request 078, at page 41
[325] Attachment 2-S to the response to Data Request 078, at page 41
[326] Docket No. GO13010059, Order *In the Matter of the Petition of New Jersey Natural Gas Company for (1) Approval of a Gas Service Agreement Between TAQA GEN-X, LLC and New Jersey Natural Gas Company and (2) a Protective Order and Exemption from Public Disclosure of Confidential Information*, issued December 18, 2013
[327] Attachment 2-S to the response to Data Request 078, at page 41
[328] Supplemental Response to Data Request 089
[329] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9296220/#:~:text=Under%20the%20COVID%2D19%20pandemic,quality%20in%20metropolitan%20New%20Jersey
[330] https://www.eia.gov/naturalgas/annual/
[331] https://www.nj.gov/bpu/about/divisions/energy/switching.html and Response to Data Request 141
[332] Supplemental Response to Data Request 89

[333] BPU Order dated July 12, 2023 in Docket No. GW22050359
[334] Supplemental response to Data Request 140
[335] Interview 81, May 15, 2024
[336] Supplemental Response to Data Request 140, Attachment A
[337] Interview 81, May 15, 2024
[338] Comments filed on behalf of NRG Energy, Inc. in Docket No. GO23020100, *In the Matter of the Board's Review of Generic Basic Gas Supply Service ("BGSS") Structure and Procedures and Related Competition Issues*, March 23, 2023
[339] Interview 81, May 15, 2024
[340] Supplemental Response to Data Request 140, Attachment A
[341] Supplemental Response to Data Request 140, Attachment B
[342] https://www.eia.gov/energyexplained/natural-gas/customer-choice-programs.php
[343] https://www.nj.gov/bpu/about/divisions/energy/switching.html
[344] https://www.nj.gov/bpu/about/divisions/energy/switching.html,
[345] https://www.nj.gov/bpu/about/divisions/energy/thirdparty.html
[346] BPU website and NJNG website
[347] Response to Data Request 151
[348] Response to Data Request 144
[349] Response to Data Request 151
[350] NJNG Tariff
[351] Response to Data Request 146
[352] Response to Data Request 147
[353] Response to Data Request 148
[354] Response to Data Request 148
[355] Response to Data Request 149
[356] Response to Data Request 167 and Data Request 168
[357] Response to Data Request 140, Attachment A
[358] Response to Data Request 437 and Data Request 1446
[359] Response to Data Request 1447
[360] Supplemental Response to Data Request 140
[361] Response to Data Request 152 and 153
[362] Comments of NRG Energy, Inc. in Docket No. 23020100, *In the Matter of the Board's Review of Generic Basic Gas Supply Service ("BGSS") Structure and Procedures and Related Competition Issues*, filed May 15, 2023. See Footnote 1 on page 2
[363] Interview 81
[364] Interview 81
[365] Response to Data Request 1439
[366] Response to Data Request 1439
[367] Response to Data Request 1437
[368] Response to Data Request 1438
[369] Decision and Order in Docket No. GW22050359
[370] Response to Data Request 57
[371] Response to Data Request 1221
[372] Response to Data Request 887
[373] Response to Data Request 890
[374] Response to Data Request 764
[375] Response to Data Requests 57 and Data Request 58
[376] Response to Data Requests 765
[377] Casetext.com/regulation/New Jersey-administrative code
[378] Response to Data Request 764
[379] Response to Data Request 11
[380] Response to Data Request 890
[381] Response to Data Request 1233
[382] Response to Data Request 889
[383] Response to Data Request 764 and Data Request 888

[384] Response to Data Request 762
[385] Response to Data Request 762
[386] Response to Data Request 890
[387] Response to Data Request 767
[388] Response to Data Request 768
[389] Response to Data Requests 56, Data Request 761, and Data Request 766
[390] Response to Data Request 885
[391] Response to Data Request 885
[392] Interview 3
[393] https://www.njrsustainability.com/pdf/csr_2023_final.pdf
[394] https://www.njrsustainability.com/reports-and-resources/CSR_2022_FINAL.pdf
[395] www.njrsustainability.com
[396] Response to Data Request 59
[397] https://s26.q4cdn.com/222857764/files/doc_governance/2023/07/final-njr-ncgc-charter.pdf
[398] Response to Data Request 59 and Interview 3
[399] Response to Data Request 59
[400] Response to Data Request 60
[401] https://www.globalreporting.org/
[402] https://www.aga.org/research-policy/natural-gas-esg-sustainability/
[403] Response to Data Request 60
[404] Response to Data Request 61
[405] Interview 3
[406] Response to Data Request 59
[407] Response to Data Request 62
[408] Interview 34
[409] Response to Data Request 155
[410] Response to Data Request 155
[411] Response to Data Request 34
[412] Response to Data Request 22
[413] Response to Data Request
[414] Response to Data Request 1486
[415] Response to Data Request 158
[416] Response to Data Request 159
[417] Response to Data Request 8
[418] Response to Data Request 158
[419] Response to Data Request 185, Attachment A
[420] Response to Data Request 199
[421] Response to Data Request 217
[422] Response to Data Request 218
[423] Response to Data Request 8
[424] Response to Data Request 217
[425] Response to Data Request 199, see, for example, "2021 Total Comfort Print Ad"
[426] Response to Data Request 168
[427] https://www.njng.com/my-home/energy-choice/index.aspx
[428] Response to Data Request 172
[429] Response to Data Request 201
[430] Response to Data Request 169 and 182
[431] Response to Data Request 214
[432] Response to Data Request 193
[433] Response to Data Request 196 and Data Request 197
[434] Response to Data Request 196.
[435] Response to Data Request 198
[436] The National Association of Regulatory Utility Commissioners' 1985 "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities
[437] Response to Data Request 213

[438] Response to Data Request 51 and Data Request 52
[439] Response to Data Request 207
[440] https://www.njng.com/regulatory/postings.aspx
[441] Response to Data Request 184
[442] Response to Data Request 1490
[443] Response to Data Request 1490
[444] Response to Data Request 208
[445] Response to Data Request 203
[446] Response to Data Request 205
[447] Response to Data Request 205
[448] Response to Data Request 175, Data Request 177, and Data Request 178
[449] Response to Data Request 210
[450] Response to Data Request 171
[451] Response to Data Request 179
[452] https://www.njng.com/regulatory/postings.aspx
[453] Response to Data Request 179 and Data Request 888
[454] Response to Data Request 888
[455] Response to Data Request 179
[456] Response to Data Request 1492
[457] Response to Data Request 175
[458] Response to Data Request 192 and Data Request 212
[459] Response to Data Request 158
[460] Response to Data Request 23, Attachment F
[461] Response to Data Request 751