

**BEFORE THE STATE OF NEW JERSEY**

**BOARD OF PUBLIC UTILITIES**

**OFFICE OF ADMINISTRATIVE LAW**

**I/M/O THE PETITION OF NEW JERSEY ]  
NATURAL GAS COMPANY FOR ]  
APPROVAL OF AN INCREASE IN ITS ]  
GAS RATES, DEPRECIATION RATES ]  
FOR GAS PROPERTY, AND FOR ]  
CHANGES IN THE TARIFF FOR GAS ]  
SERVICE, PURSUANT TO N.J.S.A. 48:2-18 ]  
AND 48:2-21 ]**

**BPU DKT. NO. GR07110889**

**OAL DKT. NO. PUCRL 12545-07**

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**SUPPLEMENTAL DIRECT TESTIMONY OF  
RICHARD W. LELASH  
ON BEHALF OF THE  
NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE  
DIVISION OF RATE COUNSEL**

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

2 A. My name is Richard W. LeLash, and my business address is 18 Seventy Acre Road,  
3 Redding, Connecticut.

4 Q. HAVE YOU PREVIOUSLY SUBMITTED DIRECT TESTIMONY IN THIS MATTER,  
5 AND IF SO, WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT  
6 TESTIMONY?

7 A. I have previously submitted direct testimony and am supplementing it, at this time, to  
8 address policy issues concerning tariff related changes proposed by the Company and  
9 certain considerations concerning the Company's interruptible service. As I stated in my  
10 Direct Testimony filed April 25, 2008:

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12 "As of the time this testimony was prepared, the Company had just  
13 made its 9+3 updated filing, and the discovery process on the  
14 update had not been completed. Additionally, certain issue areas  
15 in the case will be addressed in Rate Counsel's testimonies that are  
16 to be filed at later dates. Accordingly, I would like to reserve the  
17 right to amend or supplement this testimony concerning the  
18 Company's update and policy issues that will be subsequently filed  
19 by other Rate Counsel witnesses."  
20 LeLash, Direct Testimony, p. 5.

21

22 I now file my supplemental testimony.

23 Q. WOULD YOU BEGIN BY DISCUSSING YOUR TARIFF RELATED ISSUES?

24 A. In Mr. Yardley's updated (9+3) testimony at page 42, he references changes to Section  
25 7.5 of the Company's Standard Terms and Conditions that were made in the 9+3 update.  
26 He contends that his proposed tariff language "clarifies the existing tariff to further  
27 delineate circumstances that may limit the Company's liability, including for situations  
28 that arise from circumstances downstream of the Company's meter."

1 As an initial matter, Mr. Yardley’s proposed changes to Section 7.5 are not clarifications  
2 to the existing tariff. In Response RCR-RD-29<sup>1</sup>, he acknowledges that:

3 The purpose of the proposed revisions is to improve NJNG’s  
4 ability to defend against lawsuits alleging claims other than  
5 negligence, e.g., breach of contract and breach of warranty,  
6 pursuant to the “filed rate doctrine.”  
7 Response RCR-RD-29.

8  
9 Mr. Yardley, who does not claim to be a lawyer, then proceeds to provide interpretations  
10 and holdings by the U.S. Supreme Court concerning the filed rate doctrine and claims  
11 that his revisions “will preserve the role of the BPU in deciding reasonable rates for New  
12 Jersey Natural Gas”, based apparently on a second case he cites involving Western  
13 Union. *Ibid.*

14 Q. DID MR. YARDLEY ACKNOWLEDGE THAT HIS “CLARIFICATIONS” WERE  
15 BASED ON INPUT FROM NJNG’S COUNSEL?

16 A. Yes. In Response RCR-RD-30, Mr. Yardley stated that he relied on input from the  
17 Company’s counsel and apparently also on input from the Company’s general liability  
18 insurance carrier, AEGIS. Mr. Yardley also notes that AEGIS works with its insureds to  
19 assist them in limiting liability to negligence and actual damages. Response RCR-RD-30.

20 Q. WHAT ARE YOUR CONCERNS WITH THE MODIFICATION THAT HAS BEEN  
21 PROPOSED BY THE COMPANY WITH RESPECT TO ITS LIABILITY?

22 A. I am not a lawyer. Rate Counsel has advised me that the proposed modifications call for  
23 legal interpretations and legal conclusions. However, as a policy consideration, these

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<sup>1</sup> All Responses cited in this testimony are included herein as Attachment A.

1 proposed tariff modifications would be inappropriate even if the Company had couched  
2 them in other than legal terms.

3 Even the Company admits that changes to this tariff are a legal matter. For example,  
4 when the Company was asked to specifically explain the terms in the revised Section 7.5,  
5 the Company responded that “Petitioner is unable to respond in detail to the extent that  
6 the requests seek to adduce a legal conclusion.” Response RCR-RD-34.

7 Q. WHAT OTHER TARIFF RELATED ISSUES DO YOU WISH TO DISCUSS?

8 A. In the Company’s proposed tariff there are diverse changes to its Standard Terms and  
9 Conditions. These changes are summarized in the Company’s Response S-NJNG-T-2.  
10 The Board has recently readopted, with amendments, N.J.A.C. 14:3 et seq., the regulation  
11 governing all utilities. 40 NJR 2481-2585 (May 19, 2008). In addition, several additional  
12 proposed amendments have been published for comment. *See* 40 NJR 2415-2418 (May  
13 19, 2008). The adoption of the rule followed a rulemaking proceeding in which it  
14 received extensive comments from interested parties, including New Jersey Natural and  
15 other utilities, energy marketers, Rate Counsel, and other consumer representatives. The  
16 Company’s proposed modifications to its Standard Terms and Conditions are not  
17 included either in the new rule or the proposed amendments.

18 Rate Counsel has advised me that these proposed tariff changes are legal matters and call  
19 for legal conclusions. Counsel has further advised me that these types of issues are more  
20 appropriately addressed in a Board administrative proceeding.

1 Q. YOU PREVIOUSLY STATED THAT YOUR SUPPLEMENTAL TESTIMONY  
2 WOULD DISCUSS INTERRUPTIBLE SERVICE. WHAT SPECIFIC ISSUE WILL  
3 YOU ADDRESS?

4 A. The Company has proposed to retain 100% of margins associated with Interruptible Sales  
5 (“IS”) customers that do not have alternate fuel capability. Response S-NJNG-T-2.

6 Q. WOULD YOU DESCRIBE THE COMPANY’S PROPOSED RATE TREATMENT  
7 FOR INTERRUPTIBLE MARGINS?

8 A. In discussing the Company’s proposal it should be noted that there was no discussion of  
9 this change in the Company’s filed direct testimony. In its discovery responses to  
10 S-NJNG-T-8 and S-NJNG-T-9 the Company provided limited details but did not explain  
11 the logic or the rationale for its proposal. An explanation for this change is warranted,  
12 given that Interruptible Sales and Transport margin sharing was terminated in November  
13 2007 in the Board’s Order in Docket No. GR06120871.

14 Q. WHAT ARE THE SPECIFIC MARGIN PROVISIONS THAT THE COMPANY HAS  
15 PROPOSED?

16 A. It has requested that 100% of margins associated with any IS customer that does not have  
17 alternative fuel equipment would be retained by the Company. Given that no current  
18 customers fall into this category, it is difficult to see why the Company is seeking a  
19 departure from the recently approved margin treatment. According to the Company, such  
20 margin retention “provides comparability with existing firm customers, who might elect  
21 to take service under an interruptible rate schedule at some point in the future without  
22 undertaking the capital investment of installing alternate fuel equipment”

1 Response S-NJNG-T-8. Quite frankly, it is unclear what “comparability” the Company is  
2 referencing. Unless it is anticipated that relatively significant numbers of customers will  
3 be migrating to IS without alternative fuel capabilities, there seems to be no need for the  
4 Company’s proposal.

5 Based on informal discussions with Company personnel, it appears that the Company’s  
6 proposal was intended to be somewhat different from what was filed in this case. In  
7 addition to being limited to IS customers not having dual fuel capabilities, it also is not  
8 intended to be an incentive related margin sharing program. Rather, it is intended to  
9 provide replacement revenues in the event current firm customers switch to interruptible  
10 service. Thus, the proposed margin retention would be offset by margins that are  
11 implicitly included in the current base rate determination but would be lost if customers  
12 switch to IS.

13 This margin maintenance concept was not adequately explained in the Company’s filing.  
14 Nor did the Company’s proposal specify that IS margin retention would apply only to  
15 existing customers that switch rather than to all incremental IS customers served. The  
16 Company’s proposal also did not specify that margin retentions for individual IS  
17 customers would end if that customer subsequently switched or returned to firm service.

18 Q. BASED ON THE FACTORS THAT YOU HAVE DISCUSSED, WHAT DO YOU  
19 RECOMMEND CONCERNING THE COMPANY’S IS MARGIN PROPOSAL?

20 A. I recommend that the Board reject the proposal. With no current IS customers and no  
21 evidence that there will be any prospective switching between firm and interruptible  
22 service in the near future, such a provision is currently unnecessary. If, in the future,

1           there is material switching from firm to interruptible service, the Company could then  
2           seek such a margin mechanism.

3           It is unclear that any facilitation of an IS option, assuming no dual fuel capability, is  
4           warranted or desirable. Accordingly, the Board should not address the issue at this time.

5           If and when there is material migration to IS, the Company can renew its proposal in a  
6           BGSS filing.

7    Q.    MR. LELASH, DOES THIS COMPLETE YOUR SUPPLEMENTAL DIRECT  
8           TESTIMONY IN THIS MATTER?

9    A.    Yes, it does.

## **APPENDIX**

### Referenced Data Requests

RCR-RD-29

RCR-RD-30

RCR-RD-34

S-NJNG-T-2

S-NJNG-T-8

S-NJNG-T-9