RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-14-_____

TITLE: Resolution Authorizing the Executive Director to Enter into a Memorandum of Agreement with the Board of Public Utilities Regarding Construction of Approximately 15 miles of a 22-Mile, 24-Inch Natural Gas Pipeline in the State Designated Pinelands Area.

Commissioner _____ moves and Commissioner _____ seconds the motion that:

WHEREAS, the Pinelands Commission (Commission) is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act (the Act), N.J.S.A. 13:18A-1, et seq., and charged with the implementation of the Act and the Pinelands "Comprehensive Management Plan" (the "CMP"), N.J.A.C. 7:50; and

WHEREAS, The Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978; and

WHEREAS, Section 6 of the Pinelands Protection Act authorizes the Commission to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission to carry out any power expressly given in this Act; and

WHEREAS, N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into intergovernmental memoranda of agreement with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of the Pinelands CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards; and

WHEREAS, the Board of Public Utilities (the "BPU") is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994; and

WHEREAS, the BL England plant is located within the boundaries of the Pinelands National Reserve, but outside of the State-designated Pinelands Area; and

WHEREAS, to provide the natural gas pipeline required to repower the BL England Plant, a new natural gas pipeline needs to be constructed to the BL England Plant; and

WHEREAS, the proposed natural gas pipeline also provides supply feeder redundancy to address the vulnerability of the entire southernmost portion of South Jersey Gas' service territory, which is currently served by a single feed supply; and

WHEREAS, the totality of this new natural gas pipeline is proposed to be constructed within the Pinelands (approximately 15 miles within the State designated Pinelands Area and approximately 7 miles solely within the Pinelands National Reserve); and

WHEREAS, with regard to the portion of the pipeline to be constructed in the Pinelands Area, approximately 15-miles is proposed to be constructed beneath existing paved portions and/or disturbed shoulders of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557), NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue; and

WHEREAS, approximately 10.2 miles of the proposed pipeline would be located within a Forest Area, 2 miles within a Rural Development Area and 2.8 miles in a Pinelands Village; and

WHEREAS, the Pinelands CMP at N.J.A.C. 7:50-2.11 defines a natural gas pipeline as "public service infrastructure"; and

WHEREAS, the Pinelands CMP at N.J.A.C. 7:50-5.23(b)12 only permits the development of public service infrastructure in a Forest Area if such infrastructure is intended to primarily serve only the needs of the Pinelands; and

WHEREAS, given that the proposed pipeline is intended to serve customers located both inside and outside of the Pinelands, the project does not primarily serve only the needs of the Pinelands. As a result, the proposed pipeline is not fully consistent with the permitted use standards for a Forest Area; and

WHEREAS, as a result implementation of the proposed development project requires deviation from the Forest Area land use standards at N.J.A.C. 7:50-5.23(b)12 of the Pinelands CMP; and

WHEREAS, the MOA with the BPU contains measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the land use and environmental standards contained within the Pinelands CMP; and

WHEREAS, The MOA includes measures that are intended to afford, at a minimum, an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the land use and environmental standards of the Pinelands CMP; and

WHEREAS, specifically, pursuant to the terms of this MOA, a subsequent Order issued by the BPU and a subsequent MOA between the BPU and SJG, the public utility proposing to construct the proposed natural gas pipeline, SJG will be required to contribute eight million dollars ($8,000,000.00) towards Pinelands Area land acquisition and education; and

WHEREAS, seven million two hundred and fifty thousand dollars ($7,250,000.00) would be placed into the Pinelands Conservation Fund – Land Acquisition account to fund the acquisition of land located adjacent to the site of the proposed pipeline project located in a Forest Area. If all of the targeted lands have not been acquired after three years from the execution of this MOA by the last signatory, then any remaining funds also may be used for acquisition of Forest Area lands in the southern forested portion of the Pinelands Area, i.e. south of the Atlantic City Expressway; and

WHEREAS, seven hundred and fifty thousand dollars ($750,000) will be used to fund and support education and research projects. A total of $250,000 would be used to complete the federally supported conversion of the Commission's headquarters into a Pinelands Visitor Center; and

WHEREAS, the remaining $500,000 would be used to fund a series of projects that would raise awareness about the Pinelands, including initiatives such as improving and expanding its existing education programs and initiatives; advancing, supporting and improving the Pine Barrens Byway, a 122-mile trail that traverses existing roadways in portions of 16 municipalities in the southern Pinelands region (the proposed gas pipeline traverses a portion of the Byway) and to fund other improvements for use by the public, such as the creation of bike trails along the Byway and scenic pull-off areas, as well as the creation and dissemination of interpretive materials; and

WHEREAS, the MOA contains environmental provisions, include provisions designed to ensure that all activities involving the construction of the proposed pipeline are conducted in accordance with the requirements of the Pinelands CMP. These include, but are not limited to, the installation of both silt and orange plastic fencing to demarcate and control access within the limits of the area of disturbance and retention of two independent consultants, independent biologist and engineer, who will be approved by and report to the Pinelands Commission staff at all times when construction activities are undertaken proximate to suitable threatened and endangered species habitat and during all drilling activities. These independent experts will ensure that construction activities are confined to the boundaries of the areas of disturbance as specified in the plans that were reviewed and approved by Commission staff; and

WHEREAS, Paragraph III.A.9 of the MOA requires submission of a formal application to the Commission if there is any material addition to, deviation from or modification to the proposed development project; and

WHEREAS, Paragraph III.B.4 of the MOA authorizes the Commission staff to issue a work suspension letter at any time there is an indication of any potential violations of the CMP and further requires that the BPU will direct the public utility to refrain from conducting any activities on the project; and

WHEREAS, the Executive Director conducted a public hearing to receive testimony regarding a proposed intergovernmental memorandum of agreement to authorize the implementation of the proposed development project on December 9, 2013 at the Galloway Township Municipal Building, 300 Jimmie Leeds Road, Galloway Township, New Jersey; and

WHEREAS, the public was afforded an additional opportunity to provide public comment at the Commission's regular monthly meeting on December 13, 2013; and

WHEREAS, the Commission also accept written comment from the public until close of business on December 13, 2013; and

WHEREAS, the Commission received over 9.5 hours of oral testimony and over 2,100 written comments regarding the proposed MOA; and

WHEREAS, the Executive Director in the report entitled "Report on a Proposed Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey Board of Public Utilities Regarding Construction of a Proposed Approximately 15 miles of a 22-mile 24-inch Natural Gas Pipeline in the State Designated Pinelands Area," dated January 5, 2014, concluded that a variation from the Forest Area land use standards at N.J.A.C. 7:50-5.23(b)12 of the Pinelands CMP that would be permitted under the MOA as accompanied by measures, as discussed above, that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through a strict application of the standards of the Pinelands CMP; and

WHEREAS, the Pinelands Commission, based upon the Executive Director's January 6, 2014 report, finds that the MOA, dated January 6, 2014, attached hereto, satisfies the standards of N.J.A.C. 7:50-4.52(c) which authorizes the Commission to enter into such agreements; and

WHEREAS, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that the Pinelands Commission agrees to enter into the Memorandum of Agreement with the Board of Public Utilities Regarding Construction of Approximately 15 miles of a 22-Mile, 24-Inch Natural Gas Pipeline in the State Designated Pinelands Area and hereby authorizes the Executive Director to execute the attached agreement.

Record of Commission Votes

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun					Ficcaglia					Prickett				
Avery					Galletta					Quinn				
Brown					Jackson					Rohan Green				
DiBello					Lloyd					Witt				
Earlen					McGlinchey					Lohbauer				

Adopted at a meeting of the Pinelands Commission Date: _____

_____ _____

Nancy Wittenberg
Executive Director

Mark S. Lohbauer
Chairman

State of New Jersey
THE PINELANDS COMMISSION
PO BOX 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

Chris Christie
Governor

Kim Guadagno
Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

January 3, 2014

REPORT ON A PROPOSED MEMORANDUM OF AGREEMENT BETWEEN THE NEW JERSEY PINELANDS COMMISSION AND THE NEW JERSEY BOARD OF PUBLIC UTILITIES REGARDING CONSTRUCTION OF A PROPOSED APPROXIMATELY 15 MILES OF A 22-MILE, 24-INCH NATURAL GAS PIPELINE IN THE STATE DESIGNATED PINELANDS AREA

FINDINGS OF FACT

The Memorandum of Agreement (MOA) is proposed to permit the construction of 15 miles of an approximately 22-mile, 24-inch high pressure natural gas pipeline from just outside Millville in Maurice River Township to Beesley's Point in Upper Township. The totality of the proposed natural gas pipeline is being constructed within the Pinelands (approximately 15 miles within the State designated Pinelands Area and approximately 7 miles solely within the Pinelands National Reserve.) As discussed below, the proposed natural gas pipeline is intended to provide the gas required to repower the BLE electrical generation plant, as well as providing supply feeder redundancy to address the vulnerability of the entire southernmost portion of South Jersey Gas' (SJG's) service territory, which is currently served by a single feed supply.

In order to comply with air quality standards, the New Jersey Department of Environmental Protection ("NJDEP") ordered RC Cape May Holdings, LLC ("RC Cape May"), the owner of the B.L. England electric generation plant ("BLE Plant or Plant") at Beesely's Point, Upper Township, Cape May County, either to cease operations on its remaining Unit 2 (156 MW coal-fired unit), or to repower this unit with natural gas combustion turbine technology to significantly reduce air pollution from the BLE Plant. In the event RC Cape May shuts down Unit 2, the NJDEP order permits the company to operate Units 3 (155 MW oil-fired unit). , ¶¶23&24 (May 18, 2012 Amended Administrative Consent Order between NJDEP and RC Cape May Holdings, LLC)(2012 AACO). The BLE Plant is located within the boundaries of the Pinelands National Reserve, but outside of the State-designated Pinelands Area. The BLE Plant is owned and operated by RC Cape May Holdings, LLC and is located within SGJ's service area. SJG is a public utility subject to the regulatory and supervisory authority of Board of Public Utilities (BPU).

To provide the natural gas required to repower the BLE Plant, SJG determined that it would need to construct a new natural gas pipeline to the Plant. Additionally, the need for this new natural gas pipeline provided SJG with the opportunity to address the vulnerability of the entire southernmost portion of its service territory, from the Cape May Gate Station south, which is currently only served by a single-feed supply. SJG, subsequently, submitted three petitions to the BPU for its approval to construct an approximately 22-mile, 24-inch natural gas transmission pipeline with a maximum allowable operating pressure of 700 psig, including a petition pursuant to N.J.S.A. 40:55D-19. This provision authorizes the BPU to issue an Order that any zoning, site plan review or other municipal land use ordinances or

regulations promulgated by the affected municipalities and counties shall not apply to development proposed by a public utility for installation in more than one municipality for the furnishing of service; provided it determines that the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

The proposed gas pipeline would traverse through portions of both the State-designated Pinelands Area (the "Pinelands Area") and the Pinelands National Reserve (the "PNR") (referred to together herein as the "Pinelands"). With regard to the portion in the Pinelands Area, SJG proposes to construct approximately 15-miles of pipeline beneath existing paved portions and/or disturbed shoulders of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557), NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue. Approximately 10.2 miles of the proposed pipeline would be located within a Forest Area, 2 miles within a Rural Development Area and 2.8 miles in a Pinelands Village. Additionally, approximately 7 miles of the pipeline would traverse through the federally-designated PNR to the BLE Plant. The project also includes an interconnect station located on a 10,000 square foot wooded parcel (Blk. 358, Lots 11-14) in Upper Township, Cape May County. The applicant proposes to clear the parcel and surface approximately 7,900 square feet of the parcel with crushed stone. The interconnect station, which includes above and below ground piping, will be located on the proposed crushed stone surface. The interconnect station will be surrounded by a six foot wide grass berm and a security fence.

In addition to providing gas to the BLE Plant, the portion of the proposed natural gas transmission line to be located within a Forest Area significantly enhances the reliability of SJG's natural gas service system in the southern and eastern portions of its service area (Cape May and Atlantic Counties, respectively.) Currently, SJG services its customers located in Cape May County via an existing 16-inch feeder line. Moreover, an existing 20-inch gas supply pipeline is the major feeder line to the eastern and southern parts of SJG's service territory. Given the current lack of an alternate supply line, a failure in either of these existing pipelines, especially during the cold weather months, could subject up to 140,000 of SJG's existing customers to long-term gas outages, thereby placing the safety and welfare of these customers at risk. The proposed gas pipeline is expected to greatly enhance the reliability of the eastern and southern portions of SJG's service territory by providing an alternative route for gas to be supplied to Atlantic and Cape May Counties. The proposed pipeline would also improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby potentially reducing the need for additional pipe installations in the future, many of which would likely be located within the Pinelands Area.

The Pinelands Commission staff reviewed the application materials submitted for the proposed pipeline, including, but not limited to, wetlands and wetland buffer delineations, threatened and endangered plant and animal species information, cultural resource information, stormwater calculations, etc. Staff also conducted field investigations of the site of the proposed pipeline to confirm the wetlands and wetland delineations, observe soil borings, etc. Based on its robust review of the application, Commission staff determined that the construction of the proposed pipeline was consistent with the development standards, Subchapter 6, of the Pinelands Comprehensive Management Plan (CMP) and, therefore, that the proposed development would not impact the environmental resources of the Pinelands. Additionally, given that the proposed pipeline itself would be constructed in existing paved and disturbed road rights-of-way, staff also determined that the construction of the proposed pipeline would not give rise to new fragmentation of the Forest Area. However, given that the proposed pipeline was intended to serve customers located both inside (BLE Plant) and outside (customers in the non-Pinelands portions of Cape May and Atlantic Counties) of the Pinelands, staff determined that the proposed pipeline development was not consistent with the Forest Area land use standards (Subchapter 5) of the Pinelands CMP.

The Pinelands CMP defines a natural gas pipeline as "public service infrastructure." N.J.A.C. 7:50-2.11. Although the development of public service infrastructure is a permitted use in a Rural Development Area and a Pinelands Village (N.J.A.C. 7:50-5.26 & 5.27), it is only permitted in a Forest Area if it is intended to primarily serve only the needs of the Pinelands. See N.J.A.C. 7:50-5.23(b)12. Given that the proposed pipeline is intended to serve customers located both inside and outside of the Pinelands, the project does not primarily serve only the needs of the Pinelands. As a result, the proposed pipeline is not fully consistent with the permitted use standards for a Forest Area.

This MOA is proposed in accordance with the provision in the Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) which authorizes the Commission to enter into intergovernmental memoranda of agreement which authorize specified development activities that may not be fully consistent with the land use and/or development standards of the Pinelands CMP, specifically N.J.A.C. 7:50-5 and 6. In order to enter into such an MOA, it must be demonstrated, and the Commission must find, that any proposed development that is not fully consistent with the standards of the Pinelands CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the Pinelands CMP's standards.

As discussed above, the construction of the proposed natural gas pipeline is consistent with the development standards, Subchapter 6, of the CMP. However, the intent behind the Forest Management Area use standards is to ensure the long-term integrity of the Pinelands environment by establishing standards governing the character, location and magnitude of development and use of land in this area, while encouraging appropriate patterns of compatible development. N.J.S.A. 13:18A-9.b. and N.J.A.C. 7:50-5.21. As a result, one potential concern associated with the construction of the proposed pipeline in a Forest Area is that it would create more pressure on the impacted municipalities and the Commission to change the land use and development intensities currently permitted in the Forest Area through which the pipeline would traverse. This, in turn, would provide for increased development (secondary impacts).

The MOA includes measures that are intended to afford, at a minimum, an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the land use and environmental standards of the Pinelands CMP. Specifically, pursuant to the terms of this MOA, a subsequent Order issued by the BPU and a subsequent MOA between the BPU and SJG, the public utility proposing to construct the proposed natural gas pipeline, SJG will be required to contribute eight million dollars ($8,000,000.00) towards Pinelands Area land acquisition and education. Seven million two hundred and fifty thousand dollars ($7,250,000.00) would be placed into the Pinelands Conservation Fund – Land Acquisition account to fund the acquisition of land located adjacent to the site of the proposed pipeline project located in a Forest Area. If all of the targeted lands have not been acquired after three years from the execution of this MOA by the last signatory, then any remaining funds also may be used for acquisition of Forest Area lands in the southern forested portion of the Pinelands Area, i.e. south of the Atlantic City Expressway. SJG is also required to deed restrict that portion of the pipeline within the Forest Area to prohibit any service connections and thereby avoid increased development (secondary impacts). The remaining seven hundred and fifty thousand dollars ($750,000) will be used to fund and support education, outreach and research projects. A total of $250,000 would be used to complete the federally supported conversion of the Commission's headquarters into a Pinelands Visitor Center, and the remaining $500,000 would be used to fund a series of projects that would raise awareness about the Pinelands, including initiatives such as improving and expanding its existing education programs and initiatives; advancing, supporting and improving the Pine Barrens Byway, a 122-mile trail that traverses existing roadways in portions of 16 municipalities in the southern Pinelands region (the proposed gas pipeline traverses a portion of the Byway) and to fund other improvements for

use by the public, such as the creation of bike trails along the Byway and scenic pull-off areas, as well as the creation and dissemination of interpretive materials.

PUBLIC HEARING

Pursuant to N.J.A.C. 7:50-4.52(c)3, a public hearing to receive testimony concerning the MOA was duly advertised and noticed. The hearing was held by Executive Director Nancy Wittenberg on December 9, 2013 at 5:00 p.m. at the Galloway Township Municipal Building, 300 East Jimmie Leeds Road, Galloway, New Jersey. Approximately 180 people attended the public hearing, of which 100 people provided testimony (certain individuals commented more than once.) The hearing commenced at approximately 5:00 p.m.

At the outset of the hearing, Executive Director Wittenberg indicated that following the hearing and close of the public comment period a draft staff recommendation report would be prepared concerning the proposed MOA, which would include the relevant points raised during the hearing and in written comments, and an analysis of such points for the Commission's review. Ms. Wittenberg indicated that the draft staff recommendation report would be considered by a committee of the Commission first and then by the full Commission. Ms. Wittenberg also advised the public that the comment period would remain open through the Commission's December 13, 2013 regular meeting, and that additional oral testimony could be presented at that meeting and that written comments could be submitted until close of business, 5:00 p.m., on that date. The December 9 hearing was then opened for testimony. Initially, testimony was limited to three minutes per speaker in order to provide an opportunity for the large number of people present who wished to speak to do so. However, once everyone had had an opportunity to testify, Ms. Wittenberg offered anyone who wished to a second opportunity to speak and accommodated the majority who requested to do so.

The hearing concluded at approximately 11:00 p.m. A transcript of the testimony received during the hearing is posted on the Commission's website at www.nj.gov/pinelands. An additional approximately 3 ¾ hours of public testimony was taken at the Commission's regular meeting on December 13, 2013. A transcript of the testimony received on that date is also posted on the Commission's website.

Written comments were accepted until Close of Business on December 13, 2013. Written comments were submitted by approximately 2,100 commenters regarding the MOA. Copies of these written comments are also posted on the Commission's website.

EXECUTIVE DIRECTOR'S ANALYSIS OF THE COMMENTS

As is evident from the oral testimony offered at the hearing and the Commission's regular meeting and the written comments received by the Commission, commenters cited a variety of reasons for supporting or for opposing the proposed MOA. Some of these comments (such as employment opportunities, fracking, exportation of Liquefied Natural Gas, etc.) are not directly germane to the Pinelands CMP and the Commission's decision on the proposed MOA.

The Commission received letters of support from individuals and private and public organizations. Form letters supporting the project were received from 471 individuals. These form letters addressed the need for energy reliability for the residents and businesses in the southeastern portions of the state. They expressed the opinion that the project would not negatively impact the environment or the Pinelands specifically. An additional 28 unique letters of support were received. There was also a petition of support signed by residents of Upper Township. The individual letters addressed a range of topics including, but no limited to, improved air quality, economic development, job creation,

environmental protection, overall energy reliability, and prevention of service disruptions due to storms. With regard to suggested secondary impacts or the pressure for more development once this pipeline is installed, commenters noted that the certified zoning ordinances of the towns will prevent such secondary impacts and growth. With regard to the use of renewables, it was noted that renewables are good but they must be backed up by conventional power. The planned closure of the Oyster Creek Nuclear Power Plant was raised by many commenters noting that this further supports the need to keep the BLE Plant operating. Several comments were submitted regarding the positive economic impacts of the project, including alleviating costly out-of-state energy purchasing, increase in states tax revenues and lower energy costs. Commenters noted that there is a critical need for energy in the southern part of New Jersey. Consistency with the Pinelands Comprehensive Management Plan and State Energy Master Plan was noted. Many commenters expressed support based on the resulting improvements in air quality for the area.

The Commission received letters of opposition from numerous individuals as well as from national, state and local environmental and energy related advocacy groups. In addition to individual letters and testimony at the two formal public sessions, there were both form letters and petitions submitted. There were 4 different form letters totaling 1,368 letters and seven unique petitions. An additional 315 letters were received opposing the project. Issues raised in opposition include legal concerns with the MOA, the project does not comply with the Comprehensive Management Plan, there is no need for the energy supplied by the BLE Plant, there is no need for service redundancy in the southern part of the state, there are better alternate routes, this MOA.if approved. will lead to more pipelines in the Pinelands, groundwater impacts, forest fragmentation, species habitat impacts, the project is inconsistent with the goals of the Pinelands Protection Act and the CMP, fracking impacts, lack of air quality improvement, inadequate equivalent level of protection, export of Liquid Natural Gas, fire safety and explosion.

Many commenters also provided formal input at the Public Hearing held on December 9, 2013 and at the Commission meeting on December 13, 2013.

A number of points have been raised which bear upon the Commission's decision in this matter. These generally relate to the environmental impacts of the project, consistency of the project and the proposed MOA with the requirements and objectives of the Pinelands CMP and the Pinelands Protection Act, and the precedent set by the MOA.

To more fully inform the Commission's decision making process, the Executive Director has focused the following analysis on those points that raise potential issues regarding overall protection of the Pinelands and the adequacy or legality of the proposed MOA.

A. Consistency of the Proposed MOA with the Requirements and Objectives of the Pinelands Comprehensive Management Plan and the Pinelands Protection Act.

Comments: Several different concerns were expressed regarding the consistency of the proposed MOA with the requirements and objectives of the Pinelands CMP and the Pinelands Protection Act. Specifically, a number of commenters questioned the legality of entering into an MOA with the BPU given that BPU is a regulatory agency and not actually constructing the pipeline. It was their position that the Pinelands CMP only permitted the Commission to enter into an MOA in accordance with N.J.A.C. 7:50-4.52(c)2 with a public entity who is actually constructing the project. Commenters also noted that past MOAs, in particular the MOA with BPU for the installation of a 230Kv electric transmission line by Conectiv, should not be considered precedent for this proposed MOA. Additionally, commenters were concerned that this MOA would set a dangerous precedent and open the floodgates to more MOAs for infrastructure projects. They also stated that the proposed MOA was not consistent with

the Commission's mission to protect, preserve and enhance the resources of the Pinelands, as stated at N.J.S.A. 13:18A-9.a. of the Pinelands Protection Act and that the proposed project is inconsistent with the land use standards for the Forest Area set forth at N.J.A.C. 7:50-5.23 (b)12 of the Pinelands CMP. Commenters also stated that the MOA provisions of the Pinelands CMP should not be considered an alternate means of compliance with the goals and objectives of the Pinelands CMP, but rather constituted a waiver of such standards. Additionally, commenters questioned the appropriateness of the MOA because of a lack of compelling public need for the project. One commenter stated that the MOA was *ultra vires*, because it considered the State's Energy Master Plan as basis for the MOA and because an alleged lack of standards as to what constituted an "equivalent level of protection" rendered the Commission's decision arbitrary, capricious and unreasonable. Ultimately, many commenters indicated a preference for the Commission to consider the proposed natural gas pipeline project under a Waiver of Strict Compliance for a compelling public need, rather than authorizing execution of the proposed MOA.

Analysis: The Pinelands CMP at N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into a memorandum of agreement "with any agency of the Federal, State or local government which authorizes such agency to carry out specified development activities that may not be fully consistent with the provisions of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands that would be provided through strict application of the standards of this plan."

1. Execution of this MOA is Consistent with the Requirements of N.J.A.C. 7:50-4.52(c)2

The commenters challenge the Commission's use of the MOA for the current project, because, although the proposed MOA is being executed with another State entity, the BPU, the project ultimately will be constructed, operated and maintained by SJG, a public utility. This position rests on an interpretation of the regulatory language of N.J.A.C. 7:50-4.52(c)2 as requiring the actual construction authorized pursuant to the MOA to be performed by the governmental entity that is the signatory to the MOA. The express terms of N.J.A.C. 7:50-4.52(c)2, however, only require that the executing agency "carry out" specified development activities. The term "carry out" is subject to many meanings including "to accomplish, to bring about, effectuate, etc". Nowhere in the plain language of this regulatory provision does it state that the State agency must actually perform construction of the project itself.

The within MOA is between the Commission and the BPU. As discussed below, BPU is the entity that the State Legislature created to exercise extensive regulatory authority over public utilities. In the present case, the BPU is exercising its extensive regulatory authority over SJG, the public utility constructing the pipeline, and will continue to regulate distribution of gas through and safety of the pipeline once construction is completed. No other regulated public utility is authorized to provide gas service to the BLE Plant or within the seven southernmost counties serviced by SJG.

The BPU, which was created by the Legislature in 1911, has "general supervision and regulation of and jurisdiction and control over all public utilities…so far as may be necessary for the purposes of carrying out the provisions of this Title" (Title 48). N.J.S.A. 48:2-13. This includes supervision and regulation of a public utility's property, property rights, equipment, facilities and franchise. Id. "Regulation and control over public utilities is justified because it is beneficial to the State and its citizens (In the Matter of the Petition of South Jersey Gas Company, 116 N.J. 251, 258 (1989), citing Junction Water Co. v. Riddle, 108 N.J.Eq. 523, 528 (Ch.1931)) and is necessary to insure 'uniformly safe, proper, and adequate service by utilities throughout the State.' Id.,(quoting County of Bergen v. Department of Pub. Utils. of N.J., 117 N.J.Super. 304,312 (App.Div.1971). The BPU's authority over utilities extends

beyond its express statutory powers and includes incidental powers that the agency needs to fulfill its statutory mandated duties. A. A. Mastrangelo, Inc. v. Comm'r of Dept. of Envl. Prot., 90 N.J. 666, 683-84 (1982). This sweeping grant of power is "intended to delegate the widest range of regulatory power over utilities to the Board." Twp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969).

The BPU's jurisdiction over public utilities, such as SJG, is extremely broad. For example, public utility rates may not be changed without Board approval (N.J.S.A. 48:2-21; N.J.A.C. 14:1-5.12); a public utility may be ordered to provide safe, adequate and proper service (N.J.S.A. 48:2-23); a public utility must get BPU approval to construct certain major pipelines, such as this one (N.J.S.A. 48:10-2 et seq; N.J.A.C. 14:7-1.4); etc. Additionally, the BPU may require a public utility to "establish, construct, maintain and operate any reasonable extension of its existing facilities. N.J.S.A. 48:2-27.

Under Title 48, the BPU is charged with approving all utility franchises granted after May 1, 1911. N.J.S.A. 48:2-14. By definition, "a franchise is a privilege of a public nature conferred by government on an individual or corporation to do that 'which does not belong to the citizens of the country generally by common right'." In re Petition of South Lakewood Water Co., 61 N.J. 230, 238 (1972). "In the case of public utilities, it means permission to operate a business, peculiarly of a public nature and generally monopolistic." Ibid. "The power to grant the [franchise] right is an inherent incident of sovereignty and resides in the legislature. A grant of a franchise is a legislative act." Id. At 238-239. The statutory definition of the term "public utility" is set forth at N.J.S.A. 48:2-13. "Once an entity is found to fit within the definition of "public utility," it is subject to the Board's regulatory scheme, which is extensive and detailed." In the Matter of the Petition of South Jersey Gas Company, supra. at 258. The BPU has the authority to grant franchises and privileges to any public utility, if it "determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest." Id.

The BPU granted SJG a franchise for SJG to provide natural gas service within a service territory consisting of the southernmost seven counties in New Jersey. Within its service area, the company provides essential gas service to approximately 360,000 homeowners and business customers and operates approximately 6,200 miles of pipeline throughout its service territory. To that end, the BPU regulates and controls most of SJG's operations including, but not limited to its service quality, customer service and billing practices, safety, construction specifications, accounting, financing and auditing. See N.J.S.A. 48:2-13 et seq., N.J.S.A. 48:3-1 et seq., N.J.S.A. 48:9-5 et seq.

In sum, the BPU has been vested by the Legislature with the general supervision and regulation of, and jurisdiction and control over all public utilities. N.J.S.A. 48:2-13. The courts of this state have held that this grant of power by the Legislature to the BPU is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally to ensure the provision of safe, adequate and proper public utility service to New Jersey's residences and businesses, including the provision of safe and reliable natural gas for heating homes and business. Id. It is the only agency of the State charged with this responsibility and is the only agency vested with specific expertise to carry out this mission. Moreover, by statute, public utilities are subject to the general supervision, regulation, jurisdiction, and control of the BPU. Ibid. BPU's authority covers the public utility's "property, property rights, equipment, facilities and franchises[.]" Ibid.

In this capacity, the BPU issued an Order dated June 21, 2013 to SJG, finding that construction of the proposed pipeline was "reasonable and in compliance with all relevant Federal and State requirements" and approving the request of SJG to construct the proposed pipeline. This Order was issued in response to the petition filed by SJG with the Board requesting approval and authorization to construct and

operate 21.6 miles of 24-inch natural gas pipeline through Maurice River Township, City of Estell and Upper Township.

Thus, this pipeline would not be constructed but for BPU exercising its regulatory authority to approve the project. It is the nature of the relationship articulated above and the extensive general supervisory and regulatory authority afforded the BPU by statute over public utilities granted such franchise rights that render the proposed development eligible for the MOA provision set forth at N.J.A.C. 7:50-4.52(c)2. As discussed above, through its franchise, the public utility is afforded the right to operate a business that is "peculiarly public in nature", i.e. to provide natural gas services to the public. In fact, absent the grant of its franchise rights, SJG would not be permitted to provide such essential public services. Moreover, once constructed, the proposed pipeline will be maintained and operated in accordance with BPU's continued regulatory oversight. Therefore, use of the MOA provision for the proposed project is consistent with the terms of N.J.A.C. 7:50-4.52, because the project is being carried out subject to the BPU's approval and regulatory oversight. In fact, absent such approval and oversight, it would be impossible for SJG to effectuate the project at all.

2. The Fact that BPU is a Regulatory Agency, Not a Development Agency is Irrelevant and there is Ample Precedent Supporting the Execution of this MOA with the BPU

The fact that BPU is a regulatory agency, not a development agency, does not prohibit use of the MOA provision at N.J.A.C. 7:50-4.52(c)2. First, such an interpretation renders this MOA provision superfluous and redundant with regard to development by State agencies. In 1994, when the Commission adopted N.J.A.C. 7:50-4.52(c)2, the CMP already contained a provision that authorized development undertaken by State agencies themselves. This provision authorizes any agency of the State of New Jersey to submit a plan of its existing land uses, resource management and development activities within the Pinelands for the Commission's review and approval. N.J.A.C. 7:50-4.52(e) (emphasis added.) This provision also authorizes the use of alternative or additional techniques, not strictly in compliance with the requirements of N.J.A.C. 7:50-5 and 6 provided such alternatives are consistent with the goals and objectives of the CMP. Id. Thus, this provision authorizes the Commission to approve a State agency's plan for development activities conducted by that agency, including authorizing deviations from strict application of the land use and development standards of the CMP provided such plan included alternative measures that achieve the same goals, i.e. that are equivalent to the protections that would be provide if there were no deviation. There was no need for the Commission to adopt another provision, N.J.A.C. 7:50-4.52(c)2, in 1994 to serve the same regulatory purposes. Consequently, N.J.A.C. 7:50-4.52(c)2 is intended to do more than authorize development activities conducted by state agencies themselves.

Second, an interpretation precluding a regulatory agency from executing a MOA under N.J.A.C.7:50-4.52(c)2 is inconsistent with established Commission interpretation of and long standing precedent involving this MOA provision. Since 1988, the Commission has entered into at least three MOAs that have involved regulatory entities and seven MOAs that have involved private development on private or public lands. Specifically, in 1988, the Commission entered into an MOA with the New Jersey Highway Authority to authorize the construction of telecommunications cables within the right-of-way of the Garden State Parkway. This MOA which was executed between the Pinelands Commission and another state entity, the New Jersey Highway Authority, and like the present MOA, involved the installation of public service infrastructure that was installed, owned and operated by the public utility, i.e. the private communications company. Similarly, in 1998, the Commission entered into an MOA with the New Jersey Department of Environmental Protection (NJDEP), Woodland Township and the New Jersey Conservation Foundation. As in the present case, one of the signatories to the MOA was a state regulatory agency. However, the purpose of the MOA was to permit a private, non-profit organization to

operate an off-road vehicle park on private lands located in the Preservation Area District and owned by the New Jersey Conservation Foundation, another private, non-profit organization. Thus, as is the case with this MOA, the 1998 MOA was intended to authorize a use that was not permitted in the designated management area, in that case intensive recreation in the Preservation Area District, to effectuate a public purpose, i.e. the elimination of illegal off-road vehicle use and subsequent restoration of the parcel. In 1999, the Commission entered into an MOA with the Ocean County Utilities Authority to permit the application of a sludge derived product, Oceangro pelletized fertilizer, on public and private properties located in the Pinelands. Oceangro is considered a waste derived material, the application of which is prohibited on lands located Pinelands, in accordance with N.J.A.C. 7:50-6.79, in the absence of the MOA. In 2000, the Commission entered into a MOA with the NJDEP, United Environmental Services, Inc. and Southern Ocean Landfill, Inc., to permit a private landfill owner and the private entity undertaking closure of the landfill to accept and use broken glass and construction and demolition (C&D) debris to grade and cover the landfill in order to facilitate its closure. Again, as in the present case, although NJDEP provided regulatory oversight of the project, the construction activities themselves, i.e. application of the broken glass and C&D debris on the landfill, grading and other closure activities were be undertaken by a private entity pursuant to NJDEP's regulatory oversight. In 2004, the Commission entered into an MOA with the South Jersey Transportation Authority to authorize development at the Atlantic City Airport that was not completely consistent with the development standards, Subchapter 6, of the Pinelands CMP. At that time, South Jersey Transportation Authority owned and operated the airport. However, a number of the projects authorized by the MOA would have been owned and operated by private, for-profit entities, e.g. a hotel/conference center and the auxiliary development area for aviation related light industry. In 2004, the Commission entered in an MOA with the BPU to authorize the construction of a 230kV electric transmission line, 33 miles of which, was to be constructed within the Pinelands Area, including 17.5 miles within the Preservation Area District and Forest Area (the "Conectiv MOA"). As in the present case, the actual construction of the proposed transmission line was constructed by the public utility. Lastly, in 2006, the Commission entered into an MOA with Stafford Township to permit closure of its sanitary landfill despite such closure activities being inconsistent with two of the development standards set forth in Subchapter 6. As with the other MOAs discussed above, although a governmental entity was the signatory to the MOA, the actual development activities were undertaken by the Township's designated redeveloper, a private, for-profit entity.

The above discussion provides ample support for the Commission's use of the MOA provision in the given matter. The Commission has entered into a number of MOAs with governmental entities to authorize meritorious public purpose projects that were carried out by entities other than the governmental signatory, including private, for-profit entities. The keystone of the MOA provision is not whether the governmental entity itself is undertaking the development activities, but whether such development activities are being carried out in conjunction with the governmental entity and being advanced to serve a public purpose. As evidenced by the discussion above, this has been the Commission's interpretation of N.J.A.C. 7:50-4.52(c)2 since its adoption in 1994 and such interpretation is entitled to substantial deference. (Courts "give considerable weight to a state agency's interpretation of a statutory scheme that the legislature has entrusted to the agency to administer." In re Election Law Enforcement Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (In Re Advisory Op.). "We do so because 'a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.'" U.S. Bank, N.A. v. Hough, 210 N.J. 187, 200, 42 A.3d 870 (2012) (quoting In re Advisory Op., supra, 201 N.J. at 262).) See also Reilly v. AAA Mid-Atlantic Ins. Co. of New Jersey, 194 N.J. 474, 485, 946 A.2d 564 (2008), Moreover, regulations promulgated by an agency in furtherance of a statutory scheme it is charged with enforcing are presumed to be valid. The Court will defer to an agency's interpretation of both a statute and

implementing regulation, within the sphere of the agency's authority, unless the interpretation is "plainly unreasonable. Ibid.; See also In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004).)

3. An MOA is not a Waiver of the Requirements of the Pinelands CMP, but Rather an Alternative Means of Achieving Compliance with Its Goals and Policies

There also appears to be a fundamental misunderstanding among the public that commented regarding the nature of the MOA provision set forth at N.J.A.C. 7:50-4.52(c)2. Specifically, these commenters disagree that compliance with the requirements of the Pinelands CMP is achieved through execution of this MOA. The commenters view this MOA more akin to a waiver of the regulations and argue that it is intended to provide an end run around the regulations. This understanding, however, is not consistent with the plain language of the regulation. As noted above, N.J.A.C. 7:50-4.52(c)2 only authorizes the Commission to enter into a MOA for development that is not fully consistent with the provisions of the land use and development standards, Subchapters 5 and 6 of the CMP, provided such development includes measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through strict application of this Plan.

In order to effectuate the goals of the Pinelands Protection Act, i.e. ensure the long term integrity of the Pinelands environment, while accommodating regional growth influences, the CMP sets forth minimum standards governing the character, location and magnitude of development and use in the Pinelands. N.J.A.C. 7:50-5.21. Likewise, the CMP establishes minimum standards governing development and land use in the Pinelands. N.J.A.C. 7:50, Subchapter 6. For example, these site specific development standards include wetlands and wetland buffer standards (N.J.A.C. 7:50-6.1-6.14), threatened and endangered plant and wildlife standards (N.J.A.C. 7:50-6.27 & 6.33), historic, archaeological, and cultural preservation standards (N.J.A.C. 7:50-6.151-6.157), etc. All of the standards of Subchapters 5 and 6 are intended to be implemented by the administration of municipal and county master plans and land use ordinances that are reviewed and certified by the Pinelands Commission in accordance with N.J.A.C. 7:50-3. Id. These standards are minimum standards and the Pinelands CMP permits a municipality, county, State or Federal agency to adopt more restrictive regulations, provided that such regulations are compatible with the goals and objectives of the Plan. Id. Similarly, N.J.A.C. 7:50-3.1(d) provides the flexibility with regard to preparation of local master plans and ordinances.

As discussed in the MOA, the MOA provisions at N.J.A.C. 7:50-4.52(c)2 are akin to the flexibility provisions of the CMP set forth at N.J.A.C. 7:50-3.1(d). ("[I]t is the policy of this Plan to allow municipalities the greatest of flexibility and discretion in the preparation of local plans and ordinances so long as the plans and ordinances do not conflict with the ultimate objectives and minimum requirements of this plan." Contrary to the assertion of one commenter, this is not the first time this interpretation is being articulated. In fact, this interpretation was raised in the Notice of Adoption for the rule proposal in which N.J.A.C. 7:50-4.52(c)2 was proposed. In response to comments concerning this provision, the Commission staff responded "The addition of N.J.A.C. 7:50-4.52(c)2 merely authorizes intergovernmental agreements which serve to implement the goals and policies of the Comprehensive Management Plan. These comprehensive agreements, similar to municipal ordinances, must accomplish at least an equivalent level of protection as that afforded by strict application of the Comprehensive Management Plan's land use and development standards.) Thus, it is clear that interpretation of the MOA provision as waiving compliance with the requirements of the Pinelands CMP is erroneous. As noted above, and articulated by the Commission staff is 1994, the MOA provision achieves compliance with the goals and policies of the CMP through the measures included that afford an equivalent level of protection for the resources of the Pinelands.

4. A Compelling Public Need is not Required for Execution of an MOA

A number of commenters indicated that the Commission should not enter into the proposed MOA, because there was no compelling public need for the proposed pipeline project. Commenters also noted that the alleged need for the project was not credible because the proposed route did not have to be constructed, the alleged need did not justify violating the Forest Area land use standards of the CMP, the proposed route was being advanced because it was the cheapest route for the public utility and the need for supply redundancy was a post-hoc justification that does not meet the needs of the Pinelands.

The existence of a compelling public need is not required in order for the Commission to enter into an MOA pursuant to N.J.A.C. 7:50-4.52(c)2. In fact, one of the reasons for the Commission's adoption of this provision was to provide another mechanism to authorize meritorious public purpose projects that did not qualify for a compelling public need waiver. (Stokes memo, dated January 16, 2007, page 3).
In entering into a MOA, the Commission is also not required to find that the need for the proposed project is of such a character so as to override the importance of the protection of the Pinelands. These comments suggest an incorrect blending of the standards associated with issuance of a compelling public need waiver at N.J.A.C. 7:50-4.64 and the standard for an MOA that authorizes development that is not fully consistent with strict application of the land use or development standards of the Pinelands CMP at N.J.A.C. 7:50-4.52(c)2. As discussed above, in order to enter into an MOA, the Commission must find that any variations from the standards of the Pinelands CMP are accompanied by measures that, at a minimum, will afford an equivalent level of protection for the resources of the Pinelands as would be provided if there were no deviation.

Moreover, the BPU determined that there is a need for the proposed pipeline project. BPU staff reviewed engineering analyses and sworn testimony from qualified experts that established that the eastern and southern portion of SJG's natural gas system is highly vulnerable to a single-contingency failure of the single 20" pipeline from Union Road Station to Estell Manor, the only major feed into the eastern and southern portions of SJG's service territory. (Letter Tricia Caliguire, Chief Counsel, BPU dated December 12, 2013, page 3.) BPU found that approximately 142,000 customers located east and south of the Union Road Station were vulnerable to a gas outage if this pipeline was interrupted. Ibid. 28,700 of these customers are located in the Pinelands Area. By Order dated June 21, 2013, the BPU approved the SJG's request to construct the proposed pipeline and, in doing so, determined that construction of the pipeline will increase the reliability of natural gas service by interconnecting with an existing transmission line in Upper Township, and will provide service to the BLE Plant. Id. at 4. There is also no evidence to support that redundancy was a post-hoc justification. The need for supply redundancy was discussed in detail in the October 2012 Black & Veatch report submitted to BPU. The BPU has also found that there is a need for the repowering of the BLE Plant to ensure an adequate supply of electricity in the Southern New Jersey Region, and specifically in the Pinelands. Ibid.

5. The Proposed MOA is not Inconsistent with the Commission's Mission

A number of commenters stated that the Commission's consideration of the proposed MOA is inconsistent with its mission as articulated in the Pinelands Protection Act. These commenters, however, only quote a portion of the goals of the Pinelands CMP as stated at N.J.S.A. 13:18A-9.

Although it is true that the Pinelands Protection Act at N.J.S.A. 13:18-9.a. establishes the goal for the Pinelands CMP with respect to the entire Pinelands Area to "protect, preserve and enhance the significant value of the resource thereof…," these are not the only goals established by the Act. Rather, the Act sets forth additional goals for the Protection Area and Preservation Area. With regard to the Protection Area, i.e all lands within the Pinelands Area located outside of the Preservation Area District, the Act requires the Commission to "[e]ncourage appropriate patterns of compatible residential,

commercial and industrial development, in or adjacent to areas already utilized for such purposes, in order to accommodate regional growth influences in an orderly way while protecting the pinelands environment from the individual and cumulative adverse impacts thereof." N.J.S.A. 13:18A-9.b.(5). The Act also required the Commission in developing the Pinelands CMP to "[r]ecognize existing economic activities within the area and provide for the protection and enhancement of such activities such as farming, forestry, proprietary recreational facilities, and those indigenous industries and commercial and residential developments which are consistent with such purpose and provisions." N.J.S.A. 13:18A-8.d(3) (emphasis added).

The Commission's Mission Statement reflects all of these goals and provides "The Mission of the New Jersey Pinelands Commission is to preserve, protect, and enhance the natural and cultural resources of the Pinelands National Reserve, and to encourage compatible economic and other human activities consistent with that purpose" (emphasis added). In fact, 13% of the Pinelands (not including the developed portions of the Military and Federal Areas) is targeted for medium to higher intensity residential and non-residential development and needs to be served by public infrastructure, including natural gas.

Commenters have expressed concern about the impacts of the proposed project on the Pinelands Area's designation as a Biosphere Reserve. This fear, however, is unfounded. Biosphere Reserves are designated by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) as landscapes and seascapes of particular importance for developing and testing approaches to protect biodiversity while improving human livelihoods. (emphasis added). The Commission's mission and legislative charge are completely consistent with UNESCO's designation. Simply put, the Commission's charge is not only to "preserve, protect, and enhance", but to also make the Pinelands Area a living, working environment that serves both its natural ecosystems and its human ecosystems as well.

6. It is Precisely Because the Proposed Pipeline is Not Fully Consistent with the Forest Area Standard that the MOA is Being Considered

There seems to be a misunderstanding as to the relevance of the Forest Area land use standard at N.J.A.C. 7:50-4.52(c)2 in the Pinelands CMP to the Commission's authority to enter into the proposed MOA. Many commenters stated that the proposed MOA is not authorized by the Pinelands CMP, because the proposed pipeline is not intended to primarily serve only the needs of the Pinelands. First, although it is correct that the Pinelands CMP only permits the development of public service infrastructure within a Forest Area if such infrastructure is "intended to primarily serve only the needs of the Pinelands" (N.J.A.C. 7:50-5.23(b)12, that standard has no bearing on whether the Commission's execution of a MOA for the proposed pipeline project is authorized. In fact, if the project were consistent with the Forest Area land use standard, no MOA would be required. There also seems to be a misunderstanding as to the area encompassed by the term "Pinelands" in that regulation. Contrary to what many believe, public service infrastructure is permitted to be constructed in the Forest Area if such infrastructure is intended to primarily serve only the needs of the Pinelands generally, this includes both the state designated Pinelands Area and the Pinelands National Reserve. As noted above in the Findings of Fact, the BLE Plant is located within the Pinelands National Reserve. As a result, the construction of a pipeline in a Forest Area to serve the BLE Plant only, would have been consistent with Forest Area land use standards of the CMP. It is because the proposed pipeline was also intended to serve customers within SGJ's service area in Cape May and Atlantic Counties, the majority of which do not reside within the Pinelands, that Commission staff made the determination that the proposed pipeline was not fully consistent with N.J.A.C. 7:50-5.23(b)12 and consideration of this MOA became necessary.

7. Execution of this MOA Will Not Result in a Deluge of MOA Requests Nor Obliterate the

Protections Afforded the Pinelands by the CMP

Another concern raised by some commenters was that the Commission's execution of this MOA will set a dangerous precedent that would hobble the Commission's ability to deny future pipeline applications proposed in other ecologically sensitive management area designations of the Pinelands. Other commenters expressed concerns that execution of this MOA would open the flood gates and result in the death of the Pinelands CMP as a result of 1,000s of MOAs. The Commission staff does not agree.

First, this concern seems to be premised on the misunderstanding that execution of an MOA constitutes a waiver of the standards of the Pinelands CMP. As discussed above, that is simply not the case. Rather than waiving the standards as would occur through issuance of a Waiver of Strict Compliance (See N.J.A.C. 7:50-4.61 and 4.62), N.J.A.C. 7:50-4.52(c)2 merely authorizes intergovernmental agreements that serve to implement the goals and policies of the Pinelands CMP. *Arguendo*, even if the commenters were correct that this MOA would result in Commission's consideration of other MOAs, which is pure speculation, such an outcome would not undermine the Pinelands CMP.I In order to enter into such an MOA, the Commission must find that it includes measures that, at a minimum, will afford an equivalent level of protection for the resources of the Pinelands as would be provided through strict application of the standards; i.e. that the project includes measures that serve to implement the goals and policies of the Pinelands CMP.

Second, the Commission's execution of any MOA is purely discretionary. Each MOA will need to be evaluated on its own merits in order to determine whether it includes measures that will provide a level of protection of the resources of the Pinelands that is equivalent to what would be provided if there were no deviation. It is simply not possible to speculate as to the factual circumstances that may arise in which another MOA for public infrastructure or other development will be requested and the measures that will be included as part of such request to afford an equivalent level of protection for the resources of the Pinelands. However, this issue is essentially of no consequence given the regulatory pre-requisite that all proposed MOAs include measures that serve to implement the goals and policies of the Pinelands CMP.

Third, the history of the Commission's use of N.J.A.C. 7:50-4.52(c)2 does not support this dire outcome. Since the Commission's adoption of this regulatory provision in 1994, almost 20 years ago, the Commission has entered into approximately 18 MOAs that permit compliance with the CMP through alternate means. That translates into less than 1 MOA per year. By means of comparison, the Commission staff processed approximately 355 private and approximately 80 public development applications in 2013 alone. Clearly, there has not been a deluge of MOA applications in the last 20 years and there is nothing but speculation without basis to indicate that this will change in the future.

8. The Commission's Execution of This MOA is Not Arbitrary, Capricious, Ultra Vires or An Abuse of The Commission's Discretion

One commenter raised issues concerning the authority of the Commission to consider the following issues as part of its decision on the proposed MOA: 1) the State's Energy Master Plan, 2) the need for public service infrastructure to provide gas reliability to Cape May County and other areas located outside of the Pinelands, and 3) the repowering of the BLE Plant, which the commenter erroneously believed was located outside of the boundaries of the Pinelands.

Although need is not a regulatory factor that the Commission must consider when contemplating entering into an MOA pursuant to N.J.A.C. 7:50-4.52(c)2, in the present context, the need for the proposed pipeline project has bearing on the Commission's decision for a number reasons. First, the

continued need for the BLE Plant to provide an adequate supply of electricity for the Southern New Jersey region is significant given the potential impact to the Pinelands as a result of future transmission line upgrades and new transmission line rights of way that the EMP indicates will be necessary when Oyster Creek Nuclear Generation Facility retires in 2019. Second, as discussed in the POWERGEM reports, some, if not most of the energy generated by the BLE Plant will be needed for the Pinelands Area. Third, given that the BLE Plant is located within the Pinelands PNR, not only is it appropriate for the Commission to consider the repowering of the BLE Plant, but as discussed above, absent the need for the redundancy line, construction of a pipeline solely to repower the BLE Plant would have been consistent with the Forest Area land use standards at N.J.A.C. 7:50-5.23(b)12, given the pipeline would primarily only serve the needs of a Pinelands business. (See N.J.A.C. 7:50-2.11 that defines the term "Pinelands" to mean the Pinelands National Reserve and the Pinelands Area.) Finally, it is also appropriate for the Commission to consider the need for public service infrastructure to provide reliability to Cape May and Atlantic Counties, given that there are more than 25,000 Pinelands residents who are customers of SJG that will benefit from the proposed pipeline. The issue has never been that there will be no benefit to the Pinelands, but rather the proposed pipeline project is not intended to primarily serve only the needs of the Pinelands. N.J.A.C. 7:50-5.23(b)12.

The commenter next argues that because the Commission has unfettered discretion in drafting, reviewing and determining whether the proposed project includes measures that afford an equivalent level of protection that the draft MOA is arbitrary, capricious and a violation of administrative rulemaking.

The Commenter's statements are inaccurate. Although the Commission's decision to enter into an MOA is completely discretionary, it is not unfettered. The Pinelands CMP at N.J.A.C. 7:50-4.52(c)2 only authorizes the Commission to enter into a MOA provided the "Commission finds that variation from the standards of this Plan is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through strict application of the standards of this Plan." As stated in the Notice of Adoption, 26 N.J.R. 4795, 4797, '[t]he test will be whether the measure that are king [sic] proposed in an agreement will provide a level of protection of the resources of the Pinelands that is equivalent to what would be provided if there were no deviation." The Commission expressly noted that "[g]iven the wide variety of possible cases, the Commission believes it would be impossible to antiapate [sic] the appropriate tests for each of these in advance." Id. As a result, the Commission indicated that "[i]n executing any memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c)2, the Commission will specifically describe how it reached the conclusion that an 'equivalent level of protection' is king [sic] ensured." Id. Given that the rule was proposed and adopted in accordance with the rulemaking procedures required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rule does contain a standard which governs the Commission's exercise of discretion in deciding whether to enter into a MOA, any action on behalf of the Commission to enter into a MOA in accordance with the requirements of N.J.A.C. 7:50-4.52(c)2 would not be arbitrary, capricious, unreasonable or *ultra vires.*

B. The Proposed MOA includes Measures That Afford an Equivalent Level of Protection for the Resources of the Pinelands

Comments: Several commenters questioned whether the measures included in the proposed MOA afford an equivalent level of protection for the resources of the Pinelands. These commenters felt the measures fell short for a number of reasons. Specifically, the Commenters disagreed with the staff's interpretation of the equivalent protection standard set forth at N.J.A.C. 7:50-4.52(c)2. One Commenter argued that the MOA was fatally defective because it failed to require the acquisition of any lands, let alone specific lands located adjacent to the right-of-way of the proposed pipeline. This commenter also

stated that, in his view, the amount of funding being provided was insufficient to ensure protection of the 2,000-3,000 acres identified for acquisition by the Commission and would only serve to buy a fraction of the forest area affected by the introduction of this major infrastructure. Additionally, this commenter stated his belief that the measures proposed in the MOA to provide an equivalent level of protection for the resources of the Pinelands failed to address the specific resources which the Forest Area designation and its protective regulations were intended to preserve. This commenter stated that, because the land acquisition provisions in the MOA were so meager and yet so permissive in terms of how and where the money would be spent on land acquisition, that there was no basis to believe that the lands acquired would protect the forested and wetland habitats that enforcing the Forest Areas of the CMP would. This commenter also provided an analysis purporting to demonstrate why the acquisition of small parcels would do little to prevent edge degradation and eventual loss of habitat value if adjacent unpreserved lands are developed. Another commenter stated that the lands in the vicinity of the right-of-way of the proposed pipeline do not require protection given the significant development restrictions to which they are already subject as a result of the existing standards of the Pinelands CMP. One commenter stated that there is no nexus between the monies that would be provided for education and outreach based programs and initiatives and, therefore, cannot be considered as part of the measures provided to afford an equivalent level of protection.

Analysis: The Commission staff disagrees that the measures provided in the MOA do not afford an equivalent level of protection for the resources of the Pinelands. The comments received on this point seem to be premised on at least two fundamental misperceptions, 1) that construction of the proposed pipeline will result in significant impacts to the resources of the Forest Area; including edge effects, forest fragmentation and loss of habitat and 2) that a determination of "equivalent protection" requires the Commission to compare the protections that are afforded the resources of the Pinelands through implementation of the measures included in the MOA against the protections afforded the resources through strict application of the Forest Area land use standards if the MOA were denied; i.e. as if nothing were constructed.

1. <u>The Commission Used the Correct Standard When Evaluating the Measures Proposed and Determining that Such Measures Afford an Equivalent Level of Protection for the Resources of the Pinelands</u>

The proposed pipeline project is primarily being constructed within existing paved roadway, paved shoulder and previously disturbed shoulder. As a result, and as confirmed by Commission staff, there are no adverse impacts to the resources of the Pinelands associated with the proposed natural gas pipeline. The proposed project is fully consistent with the development standards, Subchapter 5, of the Pinelands CMP. The only regulation to which the project is not fully compliant is the Forest Area Land Use standards at <u>N.J.A.C.</u> 7:50-5.23(b)12. Moreover, this standard does not prohibit the development of public service infrastructure, such as the proposed natural gas pipeline, in a Forest Area. Rather, it limits that infrastructure that can be constructed in a Forest Area to those projects "intended to primarily serve only the needs of the Pinelands." Although not strictly compliant with this standard, the project does comply in part. The proposed pipeline is intended to serve a business located within the Pinelands, the BLE Plant. In addition, the pipeline will also provide redundant service to the approximately 142,000 SJG customers located east and south of the Union Road Station, 28,700 of which are located in the Pinelands Area. It is evident that the proposed project will serve the needs of the Pinelands. That level of service, however, was not sufficient to constitute intent to primarily serve only the needs of the Pinelands.

Given that the proposed natural gas pipeline is fully consistent with the development standards of the Pinelands CMP, the staff looked to the intent behind the Forest Area land use standards when

determining the measures required to afford an equivalent level of protection for the resources of the Pinelands. The Forest Area land use standards are intended to ensure the long-term integrity of the Pinelands environment by establishing standards governing the character, location and magnitude of development and land use in this area, while encouraging appropriate patterns of compatible development. N.J.S.A. 13:18A-9.b. and N.J.A.C. 7:50-5.21. As a result, staff looked at the potential for the proposed pipeline to create more pressure on the impacted municipalities and the Commission to change the land use and development intensities currently permitted in the Forest Area through which the pipeline would traverse; i.e. secondary impacts.

In applying this test, the Commission looked at two distinct types of impacts associated with the proposed development to assess equivalent protection. The commenters who have stated that the Commission used the wrong test, a worst case development test, in assessing the equivalent level of protection, appear to be misreading and blending these two distinct types of impacts. In assessing the environmental impacts associated with the project, the staff first looked at whether the actual on-site impacts associated with the proposed pipeline were equivalent to the impacts associated with those uses currently permitted in the Forest Area. The commenters' interpretation of the equivalent protection standard seems to ignore that some development, including development of public service infrastructure, residential dwelling units and institutional uses, are permitted in the Forest Area. Their interpretation seems to boil down to a misconception that if a proposed use is not expressly permitted by the Pinelands CMP, then it cannot be built. Such an interpretation renders the MOA provision superfluous.

Given that development is permitted in the Forest Area, staff looked at the types of development permitted, the environmental impacts associated with such development and how the impacts associated with the proposed pipeline would compare. For example, the Forest Area use standards permit the development of communication cables, a type of public service infrastructure, in the Forest Area even if such development is not intended to primarily serve the needs of the Forest Area provided that they are installed within existing developed rights of way and underground or are attached to road bridges, where available, for the purpose of crossing water bodies or wetlands. The construction of natural gas pipelines installed in a similar manner would be expected to have a similar impact. In contrast, the Forest Area land use standards also permit the construction of residential dwelling units (homes). The proposed pipeline, which is fully consistent with the development standards, Subchapter 6, of the Pinelands CMP, would be far less damaging to the Forest Area then the roughly 150 homes (along with the ancillary roads, wastewater treatment, water supply, etc.) that would be permitted to be developed on the 3,000 vacant acres present along the route. Thus, the actual on-site impacts for the proposed pipeline are no greater than, and actually less than, those of other permitted uses in the Forest Area, as the commenters advocate, and therefore, pass the equivalent level of protection tests. Arguably, the impacts associated with the proposed pipeline project would require no measures other than prudent construction site management (see Environmental Conditions #1-28).

The Commission, however, went beyond an analysis of actual on-site impacts and also examined the potential for secondary off-site impacts. The concern here is whether this MOA could facilitate future development of more resource intensive projects in the area. The Commission has past experience where pressure was applied to alter the management area provisions in order to facilitate development, these include: (1) Seneca High School siting in an Agricultural Production Area; (2) a proposal for an electrical generation plant in the Forest Area where a transmission line intersected with an existing natural gas pipeline; and (3) a highway interchange that could prompt intense development in an area where sewer was not permitted. It is easy to imagine more such instances, especially as land becomes scarce in New Jersey and in the Pinelands. Permanent protection forecloses much of this possibility and focuses development where it belongs, i.e., the developed rights of way. The concern that the pipeline could provide an impetus for secondary development is addressed by several provisions of the MOA

requiring contribution of $7,250,000.00 dollars to the Pinelands Conservation Fund for the permanent protection of vacant land located adjacent to the right-of-way of the proposed pipeline. The permanent protection of land, is consistent with past practice and ensures more than an equivalent level of protection by eliminating any high intensity secondary development that might be proposed in the future as a result of the construction of the proposed pipeline. Second, a restrictive covenant is required to be imposed on the pipeline that will prohibit service connections.

One commenter stated that the Commission used the wrong standard for determining "equivalent protection", because it looked at development impacts associated with land uses currently permitted by the Forest Area land use standard instead of taking into consideration the additional development that will occur, because of Commission continuing to waive this standard in the area affected by the construction of the proposed pipeline. This statement seems to be premised on a misperception that the Commission routinely exercises its jurisdiction under the MOA provision at N.J.A.C.7:50-4.52(c)2 to authorize uses that are not permitted in the Forest Area. This is simply not the case. Since 2002, the Commission has issued over 750 public development approvals. In that same time period, there have been only 8 MOAs executed by the Commission that have authorized development that is not fully consistent with the requirements of the Pinelands CMP (around 0.1% of the public development approvals issued in this time period). Clearly, the Commission does not routinely entertain use of the MOA provision to authorize development. Rather, as mandated at N.J.A.C. 7:50-5.1(a) "[n]o development shall be carried out by any person unless that development conforms to the minimum requirements and standards of this Plan." There are rare situations, however, were flexibility is needed to permit authorization of development that serves a meritorious public purpose but is not fully consistent with strict application of the Pinelands CMP standards. In those rare situations, the Pinelands CMP authorizes execution of an intergovernmental agreement that includes alternative measures to implement the goals and policies of the Pinelands CMP as would occur through strict application of the express regulatory provisions. The MOA provision is a relief valve to protect the Pinelands from unsupportable denials of important public projects.

2. The Land Acquisition Provisions of the MOA will Result in the Permanent Protection of between 2,000 to 3,000 Acres of Forest Area Lands

There seems to be confusion as to how the measures provided in the MOA will result in permanent land protection and thus, provide for an equivalent level of protection for the resources of the Pinelands. Numerous comments were submitted regarding whether any land, in fact, would be permanently protected, given that the MOA does not mandate acquisition. As stated in the MOA, the monies for land acquisition would be placed in the Commission's Conservation Fund. The land acquisition program that the Commission has conducted using Pinelands Conservation Funds (PCF) has been very successful. In fact, the program has resulted in the acquisition and permanent preservation of 7,032.5 acres of land in the Pinelands Area. There is no basis for the commenter to presume that the monies will not be used for the acquisition of the lands identified in the MOA. The fact that the list of properties to be acquired has not been publicly disclosed cannot be construed as anything more than the Commission, as permitted by law, seeking to maintain the confidentiality of information involving the purchase of real property with public funds. As discussed in the MOA, the monies placed in the PCF will be used to fund the acquisition of lands located adjacent to the site of the proposed pipeline in the Forest Area. At the end of three years following execution of the MOA, the area of acquisition will be broadened to include Forest Area lands located in the Southern Forest, i.e. south of the Atlantic City Expressway. These lands would include tracts in the Tuckahoe River watershed and Manumuskin River watershed.

One commenter stated that no land acquisition would, in fact, occur, because PCF funds are intended to be leveraged against other land acquisition funds, are limited to up to 1/3 of the purchase price and

governmental sources of land acquisition funds have dried up. Although in most cases the PCF fund requires a match of over 2/3 of the cost of acquisition from other sources that is not always the case. For example, monies were placed in the PCF pursuant to the Garden State Parkway Widening MOA for the acquisition of certain identified undersized lots. Acquisition of those lots was funded at 100%. The Commission will need to decide how it will allocate the PCF funds for acquisition of the lands identified in the MOA. The $7,250.000 dollars being contributed for such acquisition is sufficient to fund acquisition of 100% of these lots without matching funds. Additionally, efforts are being advanced to obtain new governmental sources of funding for permanent land protection. If those efforts are successful, perhaps there would be other funds available to assist in the acquisition and protection of even more land.

Another commenter stated that the post-three year target area is too broad (vacant land in Forest Area south of the Atlantic City Expressway) and the amount of money being contributed is woefully inadequate. The Commission does not intend that all vacant land in the Forest Area would be acquired. Instead, as discussed in the MOA, vacant land located adjacent to the proposed pipeline would be sought first. The proposed $7,250.000 contribution is sufficient to permit acquisition of these lands. If the Commission's efforts are unsuccessful, it would then expand the area of acquisition to include Forest Area lands located in the Southern Forest. No proposed acquisition area in the history of the Pinelands has been 100% acquired. Therefore, a fallback is necessary. The latter is broad and appropriately so. It would permit the Commission to seek to acquire lands within the watersheds in which the pipeline is being constructed, the Tuckahoe River watershed and Manumuskin River watershed. And has been the case with the current PCF acquisition program, once the acquisition area is broadened, potential acquisition projects not adjacent to the area of the proposed pipeline would permit the Commission to seek unique projects with maximum preservation impact, similar to the Lenape Farms project which one commenter cited. Key tracts in the Tuckahoe River watershed and Manumuskin River watershed could be especially important to preclude future "cross-country" infrastructure ventures. Thus, the goal, once the acquisition area was broadened, would be to secure key large tracts of land running North and South to focus any future use along existing rights of way rather than cutting though pristine, undeveloped lands in the Pinelands.

One commenter stated that the amount of funding being provided was insufficient to ensure protection of more than a fraction of the forest area affected by the introduction of this major infrastructure. Moreover, the commenter stated that there was no basis to believe that the lands acquired would protect the forested and wetland habitats as would occur if the Commission enforced the Forest Areas land use standards of the CMP. The commenter's analysis focused on the number and size of the parcels located within 1 mile to 10 miles of the proposed route and included land histograms to support his comment that acquisition of a number of small parcels will not protect the resources of the Forest Area. The commenter's position seems to be premised on a misperception that the proposed pipeline project will result in significant impacts to the resources of the Forest Area, which, as discussed above, is not the case.

Moreover, the commenter seems to believe that the Commission intends to purchase random small parcels. First, in order to prevent secondary impacts, the focus of land protection efforts, in the first three years, will be vacant land located adjacent to the pipeline, not within 1 mile or ten miles. It is the acreage in these parcels that is important. The Commission will seek larger parcels to gain the most from the land to be protected (precluding future hook-ups, linear infrastructure adjacent to the proposed pipeline and other linear infrastructure seeking to go cross country). Histograms focused on developed land are not useful in future acquisition unless they are very large and could be subdivided. The parcels adjacent to the route that are developed are small.

The commenter's concern that the Commission will use the acquisition funds to purchase many small parcels is not consistent with the Commission's past acquisition practices and the lands that it has been willing to accept for permanent preservation pursuant to other MOAs. The Commission has routinely sought large tracts of land, adjacent to existing publicly preserved lands. In the present case, both Belleplain State Forest and Peaslee Wildlife Management Area are proximate to the area that the Commission has identified for land acquisition. The acquisition and permanent preservation of lots, even small lots, adjacent to large tracts of Forest Area lands already subject to permanent protection increases the value of both lands. The Commission has no intention of acquiring small parcels, because they would do little to stop large development of inappropriately sited linear infrastructure and, as the commenter notes, waste time and money. By focusing on larger parcels (which even the commenter notes include 24 parcels over 500 acres within 1 mile), the land acquisition contribution included in the MOA will result in the acquisition of approximately 2,000-3,000 acres of land and preclude large scale development. In addition, the larger parcels are excellent additions to protected lands per the Commission's science staff.

One commenter included information in his comments that the size, shape and location of parcels limit the ecological value of such parcels. The Commission staff disagrees. All Forest Area land is important and almost all Forest Area land reflects the highest ecological integrity in the Environmental Integrity Assessment analysis done by the Commission in 2008. Furthermore, the commenter neglects the fact that large tracts of nearby Forest Area land are already in permanent protection and that many of the targeted parcels are adjacent to such tracts and will clearly add to their value. Finally, to the extent that larger tracts are identified for acquisition, even if they are currently isolated from contiguous protected lands, they still would have great ecological value by themselves and will undoubtedly be connected in the future.

3. The $7,250,000 Contribution is Based on Sound Principles, Including, But Not Limited to Actual Appraisal Based Pinelands Conservation Fund Acquisitions of Forest Area Properties

Several commenters argued that there was no basis for the $7,250,000 land acquisition contribution. The Commission staff disagrees. The Commission determined the acquisition amount based upon the amount of acreage that needed to be protected (i.e. the amount of private vacant land located along the area of the proposed pipeline in the Forest Area, which equaled approximately 2,000 to 3,000 acres) and looked at four different approaches to estimate cost (1) Building Lot Approach, 2) PCF Forest Area Acquisition Approach, 3) PDC Price Approach and 4) Recent Sale Inquiry.) More specifically, each of these approaches considered the following: 1) Building Lots Approach: The current zoning of +/- 20 acres per house would permit the construction of around 100-150 homes in this area. Building lots sell for approximately $100,000/lot, yields estimate of $10,000,000-$15,000,000**;** (2) Pinelands Conservation Fund Forest Area Purchases Approach: The weighted average price of Forest Area lands actually purchased using PCF funds is $4766/ac., yields estimate of $9,500,000 - $14,300,000: (3) Pinelands Development Credit Prices Approach: A ten year average of PDC prices (including recession years) is around $3600/ac., yields estimate of $7,200,000- $10,800,000: and (4) Recent Inquiry: Offer to sell 900 ac. in the City of Estell Manor for $3000/acre. Estimate: $6,000,000 - $9.000.000. These approaches were discussed with the members of the Policy and Implementation Committee at its December 4, 2013 meeting where there was a large number of the public present.

As can be seen by the above, two of the estimates show that at least 2,000 acres could be acquired for around $7.0 million or less (assuming larger parcels and low transaction costs). Although no commenter supplied specific information on land acquisition costs, one did note the price for a large acquisition in another county eight miles away and closer to Atlantic City (arguable a higher market value).

Significantly, the cost associated with that acquisition was consistent with the above costs. Thus, as evidenced by the above, the $7,250,000 land acquisition will likely result in between 2,000-3,000 acres of land being permanently protected, especially if the larger parcels are purchased. Clearly, the equivalent level of protection goal is met.

4. There is Ample Nexus Between the Proposed Pipeline Project and the Monies that Will be Contributed for Education and Outreach Based Programs and Initiatives

One commenter stated that there is no nexus between the monies that would be provided for education and outreach based programs and initiatives. Therefore, according to this commenter these measures cannot be included in the determination of whether the MOA affords an equivalent level of protection.

The goal of this funding is to enhance public knowledge of the Pinelands, its resources, and their protection through public education, access, connections, signage and experiencing the Pinelands directly through hiking, boating, etc. It became apparent during the multiple public meetings that there is a need to enhance the Commission's efforts in these areas. For example: What is an aquifer? How does it work? What are relevant risks? How best can it be protected? What is a working biosphere? How can both people and ecosystems co-exist?

In many ways, the long-term success of the Pinelands Protection Program hinges on the public's appreciation of the region and its resources. Since its creation in 1979, the Commission has recognized that the more people know about the Pinelands, the more they will value and seek to protect the region. To that end, the Commission has undertaken numerous education and outreach projects, with the support of the federal government.

The proposed Memorandum of Agreement (MOA) includes $750,000 to fund and support education, outreach and research projects. A total of $250,000 would be used toward the conversion of the Commission's headquarters into a Pinelands Visitor Center, and the remaining $500,000 would be used to fund a series of projects that would raise awareness about the Pinelands.

The Commission has made major strides in educating the public about the Pinelands through its programs and cooperative projects. However, one major piece of the Pinelands Interpretive Plan remains unrealized: the establishment of a designated Pinelands Visitor Center in the Pinelands National Reserve.

The Commission worked with the NPS to design Pinelands exhibits that would transform the Richard J. Sullivan Center for Environmental Policy and Education (RJS Center), the Commission's headquarters, into a visitor's center. Such a center will finally provide the public with a high-quality destination befitting the country's First National Reserve.

The proposed MOA also includes a total $500,000 for education and research projects. The Commission would use the funds to, for example:

- Improve and expand its existing education programs and initiatives, including the annual Pinelands Short Course, the Pinelands-themed World Water Monitoring Day Challenge and the Pinelands Research Series. The Commission would use funds to create and carry out education programs in areas covered under the MOA, including organizing a Pinelands-themed World Water Monitoring Day Challenge and other offerings at Belleplain State Forest.

- Further advance, support and improve the Pine Barrens Byway, a 122-mile trail that traverses existing roadways in portions of 16 municipalities in the southern Pinelands region (including Estell Manor City, Maurice River Township and Upper Township).

- The creation of bike trails along the Byway and scenic pull-off areas, as well as the creation and dissemination of interpretive materials such as brochures.

These types of projects will expand the Pinelands Commission's capacity to raise awareness and appreciation of these resources, empowering the public with the knowledge that will, in turn, strengthen support for preserving this region.

C. The Proposed MOA is Consistent with the Development Standards, Subchapter 6, of the Pinelands CMP and Will Not Result in Adverse Environmental Impacts to the Pinelands Area

1. Generally

One comment stated that the Commission's review of the proposed pipeline project generally ignored the impacts of pipeline construction and maintenance. The Commission's review did not ignore such impacts. The Commission's review included a comprehensive assessment of all applicable environmental standards in the Pinelands CMP including Wetlands Protection Standards (N.J.A.C. 7:50-6.6), Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.27 and 6.33), Stormwater Management Standards (N.J.A.C. 7:50-6.84(a)6), Fire hazard mitigation standards (N.J.A.C. 7:50 – 6.124) and Cultural Resource Survey requirements (N.J.A.C. 7:50-6.151).

Wetland locations were verified by Commission staff and it was determined that the project was consistent with all wetlands standards. Three separate Threatened and Endangered Species reports were submitted, reviewed and determined to be consistent with the CMP. No threatened or endangered plant or animal species or suitable threatened and endangered animal habitats were found in the proposed development areas. Commission staff conducted independent field investigations and based on that field work concurred with the findings in the submitted reports (Threatened and Endangered Species Habitat Suitability Assessment and Survey Reports prepared by Trident Environmental Consultants). Staff confirmed that because so much of the route is currently paved, mowed and cleared the only areas where there was potential habitat were the proposed staging areas and the interconnect station, and staff concurred with the findings of Trident Environmental Consultants on those areas. Stormwater management plans and calculations were submitted, reviewed and determined to be consistent with the CMP. The applicable standards regarding Fire Hazard Mitigation address the potential for fire hazard risk associated with above ground development proposed for human use, thus the review focused on the Interconnect Station and the Remote Operating Valve Station. Both of these facilities are located on crushed stone surfaces with grassed perimeters and meet the standards in the CMP. With regard to cultural resources, the applicant submitted a preliminary and follow up cultural resource inventory, including research and field work. Visual reconnaissance, shovel tests and excavations were performed along the route and at the staging areas. Two areas were found to have historic and prehistoric resources. These proposed staging areas were reconfigured to avoid impacts to the resources.

Further, the project was also reviewed by the NJDEP, which issued air quality control and various other environmental permits. The following NJDEP regulatory programs reviewed this project: Division of Land Use Regulation, Division of Air Quality, Division of Water Quality, the State Historic Preservation Office and the Natural and Historic Resources Program. The NJDEP also facilitated the

review conducted by the Army Corps of Engineers which included federal reviews done by the United States Department of the Interior/National Parks Service and the U.S. Fish and Wildlife Service.

A comment was submitted stating that the Commission's review assumed no errors or accidents would occur. The Commission review did address the potential for errors or accidents both during construction and after. Each of the 28 Environmental Conditions of the MOA were included to address possible errors, misunderstandings or accidents that could occur during construction. A commenter noted that the use of silt fencing to protect against accidental disturbance of habitat by work extending beyond the approved work area was inadequate as such fencing has been shown to fail in other applications. In this instance in addition to requiring 2 physical fence barriers, Environmental Condition 21 requires the continuous presence of onsite personnel to ensure that the fences provide the intended protections (Condition 21).

Specific construction related impacts considered were those related to faulty stormwater management or leaks from the HDD (horizontal directional drilling) under wetlands and water bodies. The CMP requirements ensure that stormwater is properly managed and will not escape the construction site. Neither will stormwater impact the Kirkwood-Cohansey aquifer, or nearby wetlands given the stormwater must be contained on site. HDD impacts are discussed in detail below.)

Construction equipment, in general, can experience minor leakage of vehicle fluids, as can passing vehicular traffic, but this will be minimal. Reports of oily sheens being present at pipe construction sites elsewhere have been ascribed to natural iron presence and natural iron-loving bacteria that produce such sheens.

Further, the Commission coordinated its review with the BPU and has relied on the BPU Programs responsible for pipeline safety and implementation of the State regulations regarding Gas Service and Pipelines implemented by the BPU when evaluating issues relating to construction, safety and emergency response.

2. Forest fragmentation

Comments were received regarding environmental risks associated with the construction and maintenance of the project. The Commission staff review and the resulting MOA considered and addressed the potential impact of the construction and maintenance of the pipeline. One concern raised was that the project will result in forest fragmentation. All proposed construction activities in the Forest Area will be limited to the area that includes the road, paved shoulder and mowed vegetated shoulder. As this area is previously disturbed and will not be widened, there will be no forest fragmentation. The only trees impacted are the 13 trees identified as safety hazards by the New Jersey Department of Transportation; which requested that these trees be cut down to eliminate the risk of vehicular collisions.

The project also includes a proposed interconnect station. This 10,000 square foot wooded parcel (Blk. 358, Lots 11-14) is located in Upper Township, Cape May County. The applicant proposes to clear the parcel and lay-down crushed stone over approximately 7,900 square feet of the parcel. The interconnect station, which includes above and below ground piping, will be located on the proposed crushed stone surface. The interconnect station will be surrounded by a six foot wide grass berm and a security fence. Environmental impacts from this development were reviewed and were found to comply with all applicable standards in the Pinelands CMP. There was no impact to the forest area identified.

The project also includes staging areas that are located within the road, paved and vegetated shoulder areas. No trees will be cut down in these areas.

To ensure that construction activities do not go beyond the area of the road and paved and mowed grassed shoulder, specific conditions have been included in the MOA. Specifically, General Condition 5 of the Environmental Conditions requires that the limits of the area of disturbance be marked, and access controlled, by the installation of both silt fence and orange plastic fencing. Typically only one physical barrier is required. Further, Environmental Conditions 21 and 28 require that there will be both an independent biologist and engineer on site, who report to the Commission, at all times when construction activities are undertaken proximate to suitable threatened and endangered species habitat and during all drilling activities. These independent experts will ensure that construction activities are confined to the boundaries of the areas of disturbance as specified in the plans that were reviewed and approved by Commission staff. The MOA further provides that the Executive Director has the authority to shut down construction activities should there be any violations from the terms of the MOA or any potential for negative environmental impact.

3. Maintenance impacts

The proposed pipeline will be located primarily within cleared and maintained right-of-ways of Routes 49 & 50, which will significantly reduce the potential impacts of ongoing maintenance during the life of the pipeline. NJDOT will continue to maintain this area by mowing the roadside grass as has been their practice for many years. Environmental Condition 4 prohibits the use of herbicides in any portion of the ROW. Maintenance of the interconnect station located in Tuckahoe will not have adverse environmental impacts since the ground at this site will be stoned and fenced. The routine surface inspections of the pipeline will not require clearing or disturbance and, therefore, will not have significant environmental impacts. Routine internal inspections of the pipeline also will not have environmental impact. Internal inspections will be conducted using a "smart pig" (a computerized pipeline inspection gauge) that will be inserted into the pipeline at the pigging station outside of Pinelands to the west of Union Road. The smart pig will travel the length of the pipeline collecting detailed data on the pipe and it will be retrieved outside the Pinelands at a proposed station on the BLE Plant property. This internal inspection will occur entirely within the pipeline itself which will be beneath the ground. If inspections of the pipeline identify the need for pipeline repairs at some point in the future, it is anticipated that the repair work will be done utilizing the same level of environmental protections as have been incorporated into the design for the construction of the pipeline.

4. Edge Effect

Comments were submitted regarding the impacts of clearing additional forest at the outside limits of the approved work area stating that edge effects resulting from such disturbance will be impact an area extending 300 feet into the interior forest. This project is not impacting undisturbed areas including the forest edge; there will be no tree clearing or impact to the forest canopy. Based on these limitations resulting in a lack of impact to the forest, there will be no edge effect.

5. Invasive species

Comments were raised regarding soil disturbance that would result in the introduction of invasive species. The potential for introduction of invasive species as a result of the pipeline construction was addressed as part of the application review. The Environmental Conditions of the MOA include several requirements to address this issue. Condition 1 requires that any area disturbed as a result of construction activities be graded and seeded with native Pinelands grass species as specified in the plans

which were reviewed and approved by Commission staff. Environmental Condition 2 further requires that only native Pinelands species shall be used for re-vegetation purposes. Environmental Condition 3 requires that all soils excavated as part of the pipeline installation will be stockpiled and reused. Only soil removed from the trenches constructed for the pipe installation or native soils are permitted for backfilling. Environmental Condition 3 also requires that any soils that are found to be unsuitable for use as backfill must be removed and disposed of outside the Pinelands. Environmental Condition 7 further addresses this issue by precluding the disposal of any construction debris of excess fill in the Pinelands Area without prior Commission approval. These conditions address the potential for introduction of invasive species.

6. Hydrology/Groundwater

A commenter expressed concern that the installation of the new pipeline could impact the hydrology of the region. The basis for this concern was that the pipeline and gravel surrounding it would create a new conduit for water that would prevent recharging of aquifers and degrade the quantity and quality of drinking water. The proposed project will not impact groundwater. The potential for a buried utility line to drain or redirect ground water assumes that the backfill material is more porous than the surrounding soil which, without mitigative measures, could impact on groundwater flow close to the surface. To ensure no such impacts, the proposed gas pipeline project will use existing soil to backfill the pipe trench. By using the existing soil for backfill, the porosity of the material in the trench will not be significantly different than the surrounding soil. This construction technique will not result in a diversion of groundwater flow, will not decrease the quantity of water recharging the groundwater aquifer or the river ecosystems and will not degrade the water quality.

7. Surface water

A comment regarding the impacts on surface water quality due to an increase in suspended solids as a result of erosion was submitted. The proposed project will have no impact on surface water quality. To ensure no such impacts would occur, specific attention was paid to this issue and the project was designed to include protective measures that would be in place to reduce the potential for erosion and increased suspended solids entering the waterways due to erosion. Although the pipeline project will cross 16 waterways, the potential for water quality impacts associated with erosion are greatly reduced since all of these crossings will be accomplished by horizontal directional drilling or jack & bore. These construction techniques eliminate the greater potential for water quality impacts associated with open cut crossings of waterways.

In addition, the project must comply with County Soil Conservation District standards, which includes review of the construction plans by those districts. These standards (N.J.A.C. 2:90 et. al) address all aspects of soil erosion. The approval will require that the construction process will be overseen by SJG inspectors, an environmental inspector and County Soil Conservation District inspectors to insure that the soil conservation measures required by the standards are installed and remain effective until the construction area is stabilized to the satisfaction of Soil Conservation Districts**.**

8. Aquifer Impacts

Numerous commenters expressed concerns about pipeline impacts during operation on the Kirkwood - Cohansey aquifer. The pipeline will only transport natural gas, not gasoline, fuel oil, other petroleum products (e.g., benzene), Bentonite slurry, or any other solid or liquid material. Furthermore, natural gas in the pipeline is in a gaseous phase and is not water soluble under the pipeline conditions. While water can temporarily carry some dissolved gas, when methane comes in contact with air, the methane quickly

escapes from the water into the atmosphere. Natural gas is lighter than air and, if leaked, will rise through the soil column and dissipate in the air. As the pipeline will not be located in the aquifer but instead will be above it, in the unlikely event of a leak the natural gas would not be in contact with the aquifer, but would rise and dissipate in the atmosphere. Therefore, any leak (highly problematic in itself) would not be dissolved in, absorbed, or mix with the water or the water bearing soils. This stands in stark contrast to pipelines bearing liquids which can easily impact aquifers as the liquids drain downward towards the aquifer. For this reason, there will be no impact to the aquifer from on-going operations of the pipeline even in the unlikely event of a gas leak.

9. Horizontal Directional Drilling

Concerns were raised regarding the use of Horizontal Directional Drilling and the potential impacts on groundwater, surface water, and wetlands. The NJDEP requires HDD beneath any wetlands or stream crossings to avoid adverse land use impacts. This is the preferred method of installing pipe. It was noted by one commenter that there are occasional break-outs of Bentonite slurry from HDD usage. For this reason, potential leakage of the lubricating clay slurry made up of Bentonite clay and water will be constantly monitored by various means (e.g., pressure and visual monitoring, including an independent expert approved the Commission as required by Environmental Condition 28) and be stopped if any leakages occur before they become significant. Environmental Condition 24 requires the public utility provide the Commission with a Horizontal Directional Drilling Break Out Mitigation Contingency Plan to be used of all HDDs conducted. Further, Environmental Condition 25 requires implementation of measures such as silt fences, hay bales or, inflatable berms to prevent the discharge of bentonite to wetlands, streams or any other water body or beyond the immediate confines of the drill site. It should be noted that 3 of the 4 HDD sites are under culverts, not actual streams or wetlands. The pipeline will be some distance below these culverts, and as such, any breakout would not easily impact wetlands or the water body. Any such leak would most likely to be located near the HDD entry and exit points. Such points will be staffed and surrounded by physical barriers to prevent the overland movement of any such breakout. One commenter noted that such breakouts "do not generate major sediment discharges". Finally, as was noted above, there will be a Commission approved independent monitor on site during all phases of HDD and other drilling activities to ensure all such activities are conducted in accordance with all approved plans. With the contractor's and the Commission's independent monitoring and the limited HDD near water bodies or wetlands, the potential for Bentonite impacts have been addressed.

9. T&E Comments

Comments were received questioning the findings of the Commission with regard to potential impacts to threatened and endangered species. The CMP at N.J.A.C. 7:50 -6.33 requires that no development shall be carried out unless it is designed to avoid reversible adverse impacts on habitats that are critical to the survival of any local populations of the threatened or endangered (T&E) animal species designated by the Department of Environmental Protection pursuant to N.J.S.A 23:2A-1 et. seq. At N.J.A.C. 7:50-6.27 (a), the CMP states that no development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations designed by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C. 7:5C -5.1 as well as a list of plants, which are found and declared to be threatened and endangered plants of the Pinelands.

Comments were submitted questioning the three separate Threatened and Endangered Species reports that were submitted, reviewed and determined to be consistent with the CMP. Commission review of these reports confirmed that no threatened or endangered plant or animal species or suitable threatened and endangered animal habitats were found in the proposed development areas.

Comments questioned the reliance on suitable habitat versus critical habitat. With respect to animals, the Pinelands CMP (N.J.A.C. 7:50-6.33) requires that no development shall be carried out unless it is designed to avoid irreversible adverse impact on habitat critical to the survival of a local population of CMP designated T&E animal species. This CMP T&E animal species protection language authorizes the Commission to protect habitat critical to the survival of a local population of a CMP designated T&E animal species. This CMP language does not authorize the Commission to protect potential habitat or suitable habitat for T&E animal species.

With respect to plants, the CMP (N.J.A.C. 7:50-6.27) requires that no development shall be carried out unless it is designed to avoid irreversible adverse impact on the survival of any local population of CMP designated T&E plants. This CMP T&E plant species protection language authorizes the Commission to protect that area necessary to avoid irreversible adverse impact on the survival of any local population of CMP designated T&E plants. This CMP language does not authorize the Commission to protect potential habitat or suitable habitat for T& E plants.

In summary, the regulations contained in the CMP do not authorize the Commission to protect T&E plants or potential habitat or suitable habitat for T&E animals. The Commission's regulations do authorize the Commission to ensure that no development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitat critical to the survival of a local population of CMP designated T&E animal species and that no development shall be carried out unless it is designed to avoid irreversible adverse impacts on the survival of any local population of CMP designated T&E plants.

For this application, it has been demonstrated that the proposed development will not result in an irreversible adverse impact on habitat critical to the survival of a local population of CMP designated T&E animal species or an irreversible adverse impact on the survival of any local population of CMP designated T&E plants.

The project is being constructed under the road, the paved shoulder and the mowed shoulder. The comments assume that the impacts will occur during construction and that there will be accidental encroachments into the areas identified as habitat near the construction areas. The Environmental Conditions of the MOA include several requirements that will protect against the occurrence of such incidents. These include Condition 5 which requires the delineation of the proposed limits of the areas of disturbance and the construction of two fence barriers. Environmental Condition 21 requires that an independent biologist, approved by the Pinelands Commission, qualified in the identification of threatened and endangered plants and animals and their habitats be present during such times and locations where clearing and/or construction activities are being undertaken proximate to habitat identified as suitable for threatened and endangered animal species. The biologist will be on site to ensure that clearing and/or construction techniques used do no adversely impact any habitat critical to the survival of any threatened and/or endangered species of animals and that any such plants and animals discovered during construction are protected. The continuous integrity of the two barrier fences will also be ensured by the on-site biologist.

Further, Environmental Condition 23 requires that the Pinelands Commission be notified immediately if any threatened and/or endangered species of plants or animals or habitat critical to the survival of such animals are discovered during construction. Should this occur, all activities in the vicinity of such species or habitat shall immediately cease and the biologist is to take all possible actions to ensure that such species or critical habitat are protected.

Comments were raised regarding potential impacts to a particular area of wetlands along the Manumuskin River, downstream from the western origin of the proposed pipeline where the commenter states there is a population of a state endangered and federally threatened species, Sensitive Joint-vetch. Commission staff review did not include this species as part of the scope of species to be investigated as the population is located quite a distance from any pipeline related construction. The pipeline route near the point where the Manumksin crosses route 49 (Cumberland pond outfall) is going under the road, not the water and the population in question is greater than two miles downstream from the outfall. There is no construction planned near the Cumberland Pond outfall. The pipeline is being installed using HDD in this area and the nearest surface construction is over 1000 feet away from the outfall east and west adjacent to Route 49.

10. Air Quality and the need for the BLE Plant and the Proposed Pipeline

Comments were received regarding the air quality benefits to be provided by the repowering the BLE Plant. Commenters noted that there would be more pollution from the repowered BLE Plant than the existing facility because the existing facility is a "peaker plant" and the repowered facility will operate as a "base load" plant. Electric generating units can be characterized by different range terms of actual annual capacity. These range terms are only used generally. For instance, PJM Interconnection LLC, New Jersey's Regional Transmission Organization managing the interstate power market, does not contain these terms in its definitions and acronyms section of their operating manuals. However, power plant engineers typically will refer to units by the names "peaker," "intermediate load unit," and "base load unit." The ranges for these terms are typically: peaker, operating at less than 10% annual capacity; intermediate load unit, operating from 10% to 75% annual capacity; and base load unit, operating at over 75% annual capacity. In New Jersey, nuclear power units are typically categorized as base load units, while other units are most often intermediate load units and peakers.

The BLE plant has operated as an intermediate load plant while on coal and oil, and is expected to continue to operate as an intermediate load plant after conversion to gas. From 2000 – 2007 each of the coal fired units operated from 7 to 10 months each year. Hours of operation decreased from 2008 to 2012 due to the imposition of the Administrative Consent Order issued by the Department of Environmental Protection coupled with the economic downturn.

Future actual annual and daily operation will depend on electric demand. In this region of New Jersey, the electric demand is highest during the summer and substantially lower during other seasons because of the higher summer population at the shore. Hence, we can expect to continue to see BLE Plant units operate at near 100% during some summer days and substantially less during the other seasons of the year.

The Department of Environmental Protection has provided the Pinelands Commission with an air quality modeling analysis conducted to assess the Pinelands Area air quality benefit of the repowering of the BLE Plant. The modeling shows that the proposed repowering will very significantly reduce both actual and allowable air pollutant emissions at the BLE Plant. As a result of these emissions reductions, significant air quality benefits were predicted by computer modeling for both the Allowable Emissions Scenario and the Actual Emissions Scenario. Based on the actual emissions reduction, the following benefits over the Pinelands Area were predicted: Up to 40.9% reduction in the maximum existing background 1-hour sulfur dioxide (SO_2) concentrations; Up to 41.4% reduction in the maximum existing background 3-hour sulfur dioxide (SO_2) concentrations. Reductions in the existing background levels of 1-hour nitrogen dioxide (NO_2) concentrations and 24-hour fine particulate ($PM_{2.5}$) in the Pinelands were also predicted.

The crux of this comment is whether or not potentially increased hours of operation of the new gas fired power plant would cause higher annual emissions despite the major reductions in the hourly emission rates. That is not the case. Even at maximum allowable annual operation of the gas units (which would not be achieved in practice), the air pollutant emissions from the gas fired repowered BLE Plant would be considerably less than the past actual emissions when burning coal and oil. When actual past and future actual emissions are compared, the actual emission reductions are expected to be much greater. According the Department of Environmental Protection the reduction in emissions and air pollution concentrations over the Pinelands Area will result in environmental benefits such as: less potential for acute and chronic damages to plants due to lower SO_2 concentrations; reduced SO_2 and NOx (nitrogen oxides) emissions will result in less acid rain formation, a benefit to plants, lakes, fish, and wildlife; reduced emissions of NO_x, an ozone precursor, will result in lower ozone concentrations in the Pinelands and reduced ozone damage to plants and vegetation; reduced SO_2, NO_x, and $PM_{2.5}$ emissions will improve visibility over the Pinelands Area; and a 94% reduction in allowable mercury emissions will benefit fish and animals that eat the fish, including humans. The reduction of air quality impacts specifically associated with the BLE Plant long has been a goal of the Commission. In 1980, the Department of Environmental Protection assessed existing air quality in the Pinelands area with the purpose of gaining an understanding of the possible degradation of air quality and of aiding the Commission in the preparation of the CMP. (NJDEP, *Air Quality Assessment of the New Jersey Pinelands*, (Jan. 1980) The study specifically identified the BL England facility as a source of air pollution within the Pinelands:

> The B.L. England Power Plant at Beesley's Point in Upper Township, Cape May County is located right on the Pinelands nation Reserve boundary. This large plant is responsible for most of the TSP [total suspended particulates] and SO2 [sulfur dioxide] point source emissions in Cape May County. In Table 6.1 the B.L. England Plant is included among the point sources located in the Pinelands. If it were not included in the Pineland totals, point sources in the Pinelands would only be responsible for about 11% of the TSP emissions and less than one percent of the SO2 emissions in southern New Jersey. (DEP, *Air Quality Assessment of the New Jersey Pinelands*, p. 28).

11. Radon and benzene

Comments were raised regarding the presence of benzene and radon in natural gas and the potential for environmental and health impacts. The commenters were referring to "shale gas pipes" which are associated with the fracking process used to extract gas from the earth. The proposed pipeline being considered would be a natural gas transmission line. It is not associated with the fracking process. One commenter referenced a benzene leak from a pipeline in Germany. Research of this issue found the pipeline in question was not a natural gas transmission pipeline but was a pipeline associated with a fracking operation.

The composition of natural gas varies depending upon the region and the geologic formation from which it is extracted. Natural gas from the Marcellus Shale region enters the interstate transmission systems and is mixed with natural gas from conventional production areas, with generally no ability to trace the source of the methane molecules. All natural gas product that is fed into the mainline gas transportation system in the United States must meet specific quality standards and generally requires pretreatment. Natural gas produced at the wellhead in most cases contains contaminants and natural gas liquids, which must be removed before the gas can be safely delivered to the high-pressure, long-distance pipelines that transport the product to the consuming public. See U.S. Energy Information Administration, Natural Gas Processing: The Crucial Link Between Natural Gas Production and Its Transportation to Market. The treatment process removes contaminants such as benzene and radon.

12. Ultra-fine Particles

Comments were submitted regarding the emissions from the burning of natural gas produced by hydraulic fracking. Specifically the issue of increased ultra-fine particles was raised.

Before extracted natural gas can be received and transported by the major interstate transmission systems, the natural gas must meet minimum quality standards. Different sources of natural gas will have different compositions or qualities. The Federal Energy Regulatory Commission (FERC) through an approved Tariff issued to each gas Company regulates gas content. Parameters included in the Tariffs include: heating value; absence of objectionable odors, solids, liquids, that could impact merchantability; hydrogen sulfide; total sulfur; odorant; and water vapor. Factors that influence the composition of the raw natural gas extracted from producing wells are the type, depth, and location of the underground deposit and the geology of the area. Natural gas production from the deep water Gulf of Mexico and conventional natural gas sources of the Rocky Mountain region typically must be processed to meet pipeline-quality specifications. The natural gas produced from the eastern portion of the Marcellus Shale is of high enough quality that it requires little or no treatment for injection into transmission pipelines.

Fine and ultra-fine particles are formed from combustion processes where gases from combustion of fuels convert to particles. Such is the case with the gases sulfur dioxide and nitrogen oxides, which form fine particles of sulfates and nitrates in the air after being released from combustion processes. Since natural gas has almost no sulfur, it emits almost no sulfur dioxide, and therefore sulfate particle generation is negligible compared to coal and heavy oil combustion. Also, the BLE Plant repowering would result in substantially lower nitrogen oxide emissions than coal combustion, and thus, would result in less fine nitrate particles being formed.

There is ongoing research into the generation of ultra-fine particles from natural gas combustion. The current literature indicates a need for more study. NJDEP has indicated that the repowered BLE Plant will incorporate Best Available Control Technology (BACT) to minimize emissions. The Commission staff will continue to coordinate with the NJDEP on this issue.

13. Methane leaks/fugitive emissions

Comments were submitted dealing with fugitive emissions form the pipeline. One comment noted that methane leaks along the right-of way (ROW), ROW buffer, access roads and the surrounding landscape could occur at rates of up to 4%. This figure is not correct. The pipeline will not have a significant impact on air quality along the right-of-way, ROW buffer, access roads, or surrounding landscape. The study referenced by the commenter in support of the statement, *Methane and the greenhouse-gas footprint of natural gas from shale formations*, by Howarth *et.al*., Climatic Change (2011) 106:679-690, primarily focuses on methane emissions from shale production, which is not relevant to the SJG gas pipeline. However, the study concludes that a "conservative estimate" of leakage of gas during transmission, storage, and distribution is between 1.4% and 3.6%. and acknowledges that "lost and unaccounted for gas" is another way to estimate leakage system-wide. In SJG's "Annual Report for Calendar Year 2012 Gas Distribution System", submitted to the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, the company's percent of unaccounted for gas for year ending June 30th was just 0.8%. Moreover, this is a system wide statistic of all pipe in SJG's transmission and distribution systems, including pipe installed from the early 1900's through 2012. The Company is in the process of replacing its aging infrastructure that is more prone to corrosion and

leakage; this includes cast iron pipe installed with bell and spigot joints in the early part of the 20th century, and bare and unprotected steel pipe installed in the middle part of the 20th century.

Modern transmission pipelines such as the one proposed by SJG experience minimal fugitive losses of methane. The latest data from the U.S. Environmental Protection Agency finds that fugitive emissions from natural gas transmission pipelines (including compressor stations) comprises just 0.3 percent of all fugitive emissions from natural gas transmission.[1] This means that fugitive emissions from natural gas transmission pipelines, excluding compressor stations, comprise just 0.006 - 0.015 percent of all fugitive losses from transmission pipelines, which themselves are a fraction of all transmission and distribution losses. Of note, the proposed pipeline will have no compressor station facilities (the primary source of fugitive pipeline losses) and only three connections, one at its source in Maurice River Township; another at the interconnect with the one-way feed to Cape May pipeline in Tuckahoe; and a third at the BLE Plant in Beesely's Point. The state-of-the-art pipeline is designed and will be constructed to be virtually leak free. The pipeline will be constructed to the highest industry standards, including a polyethylene coating and state-of-the-art cathodic protection systems to protect it from corrosion. The pipeline will be patrolled on a monthly basis, to assure no activities in the vicinity of the pipeline occur that could compromise the integrity of the pipeline.

A comment was submitted regarding the potential health and fire safety impacts of ethyl mercaptan. The use of mercaptan odorant in the pipeline gas also is not a health impact or fire safety issue. Pipeline safety regulations of the N.J. Board of Public Utilities (N.J.A.C. §14:7-1.16) and the U.S. Department of Transportation (49 C.F.R. §192.625) require all natural gas distribution companies to inject an odor compound into their natural gas as a safety measure to warn of gas leaks so they can be repaired quickly. Olfactory detection of natural gas is essential because natural gas has virtually no odor when it comes from the production areas. Mercaptan injection rates are in the order of 20 parts per million. The odorant is absorbed by the natural gas and has no effect on its properties for burning. It is harmlessly burned up with the gas. In the event of a gas leak, this concentration becomes much lower as it mixes with air and does not pose a risk.

The DEP publishes the State's greenhouse gas (GHG) emissions inventory, which is available on the DEP's website. As estimated in the latest inventory, dated November 2012 (for 2009), emissions from the State's entire natural gas transmission and distribution (T&D) sector amount to 2.5 million metric tons, or 2.2% of total statewide emissions. This estimate is calculated using U.S. Environmental Protection Agency (EPA) projections and approved methods outlined in the "New Jersey Greenhouse Gas Inventory and Reference Case Protections 1990-2020" report, dated November 2008 (see Appendix E).

14. Alternative Routes

There were numerous comments regarding the proposed route for the pipeline. Commenters stated that there were alternative routes that would not require a MOA, or that were located outside of the Pinelands. The selected route, as well as numerous alternatives, were evaluated by SJG, NJDEP, NJBPU and the Commission. NJDEP determined that the only way to bring natural gas to the BLE Plant was by pipeline. NJDEP worked with the applicant to minimize, to the greatest extent practicable, any adverse impact. NJDEP reviewed alternate routes and assessed which route had the least amount of land use and ecological impacts while adhering to the agency's Linear Line policy to maintain lines within existing rights of way to minimize disturbance. NJDEP noted that the entire pipeline route is intended to avoid

[1] U.S. EPA, *United States Greenhouse Gas Inventory 2013, Annex 3.5 Methodology for Estimated CH4 Emissions from Natural Gas Systems, Table A-126: 2011 Data and CH4 Emissions (Mg) for Natural Gas Transmission*.

almost all environment impacts by following existing, developed Rights of Way. NJBPU also considered alternative pipeline routes before approving the propose route. Commission staff again reviewed the proposed routes as well as numerous other options.

Based on a comprehensive review of options SJG presented 3 possible routes. Route A is 22 miles long and originates in Maurice River, Cumberland County, at the intersection of Union Road (CR 671) and NJ Route 49 at the location of an existing pipeline. It travels along Route 49 through the City of Estell Manor, Atlantic County, into Upper Township, Cape May County. The route follows Cedar Avenue to the intersection of Mill Road (CR 557), turning east to the intersection with Marshall Avenue (New York Avenue). The route then follows NJ Route 50 to the intersection with Tuckahoe Road (CR662), where it continues east out of the Pinelands Area into the PNR. This is the route that was selected and submitted to the Commission for review. SJG considered two other routes. Route B approaches the BLE Plant from the west and north. This route is approximately 10.5 miles in length and located entirely within the PNR and outside the Pinelands Area. Route C approaches the BLE Plant from the west and south through an approximately 29 mile long abandoned railroad right of way that had revegetated and is now heavily forested.

The Commission evaluated the routes considered by SJG as well as all other potential routes both in and outside the Pinelands. Of the SJG considered alternatives, Routes A, B, and C, which were reviewed by the NJDEP, NJBPU and the Pinelands Commission, Routes B and C were determined to be unacceptable due to associated environmental impacts and other concerns.

Commenters, in general, believed there must be other alternative routes beyond the three routes considered by SJG, but cited no viable alternatives and provided no evidence that these other unspecified alternatives would have less environmental impact or would meet the needs of the project.

Commenters stated that the goals of the project could be met with a route that is consistent with the CMP. One suggestion was to upgrade existing gas transmission lines to the size necessary for repowering the BLE Plant and providing redundancy in service to customers in Atlantic and Cape May counties. The use of existing lines would not achieve the goal of providing redundancy in service as this option still would leave only on pipeline supplying Cape May County. Further, these existing lines include sections that are located in Forest Area. The work to dig up and replace these lines would have no less environmental impact than the project currently under consideration.

One commenter suggested that infrastructure mapping be considered in examining alternatives. The commenter notes that infrastructure mapping of existing infrastructure is critical in determining a route that would have the least impacts possible. The Commission did exactly that, performing an exhaustive evaluation of alternatives from all directions. After excluding routes that travelled through undisturbed Forest Area, four alternate routes were identified including one that had been previously suggested by staff and the public. All four routes were tested against four pertinent criteria: the need to serve the BLE Plant, the need to provide service redundancy to residents of Cape May and Atlantic Counties, homeland security issues and environmental impacts. The analysis did not find an alternate route that met all of the necessary criteria. Further the routes located in the Pinelands all traversed Forest Area.

Commenters stated that the project should use a route outside of the Pinelands. Two routes outside the Pinelands were evaluated and found to have unacceptable environmental and security impacts. This includes Route C, an alternative presented by SJG that involves significant wetlands disturbance adjacent to the Great Egg Harbor Bay. This project would impact tidal marsh and tidal waterways, the temporary relocation of 28 households, and an 7,000 foot HDD under the Bay with multiple, complex and turns. The NJDEP met with SJ Gas and RC Cape May to review alternative routes and assess which

route had the least amount of land use and ecological impacts while adhering to the DEP's Linear Line Policy to maintain lines within existing rights of way to minimize disturbance. Based upon these analyses, NJ DEP discouraged SJG from pursuing this alternative. The other route outside the Pinelands was one several commenters endorsed. This route would use the existing Garden State Parkway (GSP) bridge, or a new bridge to be constructed just for the pipeline. Commission staff evaluated these routes and found that the use of the GSP Bridge is problematic from a security standpoint. Constructing a new bridge is problematic from an environmental standpoint (large wetlands impacts through coastal wetlands, e.g., a 1400 foot trench, and the need for support structures over 7000 feet of the river. This route was dismissed from consideration based on input from NJDEP, and BPU. NJDEP noted that had the applicant proposed a bridge, the application review would have required an alternative analysis demonstrating that the bridge was the only viable alternative and that disturbance to environmentally sensitive areas had been minimized. In reviewing the alternative analysis, the NJDEP would have steered the applicant toward selecting a pipeline route similar to the preferred alternative ultimately approved.

Comments were submitted stating that the route selected for the pipeline (Route A) was chosen because it was the least expensive and most convenient option. This is not. Comparative costs of the various pipeline route alternatives were assessed by SJG during preliminary planning for the project. Cost was a secondary factor in the decision-making process with the primary factors being reliability, environmental impact, community impact, and constructability. The selected route, Route A, was not the least-expensive alternative but was chosen because it had the least environmental and community impact. Construction of Route A is estimated to cost between $86 and $91 million. The cost for Route B was estimated at approximately $75 million but this route was rejected due to the significant environmental and community impacts and constructability concerns. The cost of Route C was not estimated once it became evident that it would result in significant environmental impacts due to the need to clear 6.5 miles of Pinelands forest area. However, given that Route C was approximately 9 miles longer than the preferred Route A, the estimated cost of Route C would be approximately $120 million (assuming a similar cost-per-mile). Thus cost was not a factor in route selection. With regard to convenience, the commenter goes on to note the multiple stream crossings and HDD operations associated with the chosen route contradicting the argument that it is the most convenient.

Comment was submitted supporting Route B as a better option noting it would impact fewer contaminated sites. SJG will hire a professional LSRP to address the 14 pre-identified potential contaminated sites. If found to be contaminated, they will be remediated in accordance with NJDEP regulations. Route B is also noted as a better option because it is located outside of the Pinelands. This is a short sighted view of the overall impacts of the project. Route B has significantly more environmental impacts than the proposed route.

One commenter worried that Alternative A, being longer than B, has the potential to disturb more sites of contaminated soils. SJG will hire a professional LSRP to address the 14 pre-identified potential sites. If found to be contaminated, they will be remediated in accordance with NJDEP regulations.

One commenter stated he did not believe it is the Commission's job to find a route for the pipeline or help private companies realize their preferred business plans. The commenter noted that the Commission's job is to protect the Pinelands. The role of the Commission is to implement the Pinelands CMP. In that role the Commission reviews development applications and municipal and county plans and ordinances and approves only those that are consistent with the Pinelands CMP. The Commission did not seek to find a route for the pipeline. The Commission staff investigated alternative routes in an effort to be sure that there was no better alternative. Based upon this investigation, the Commission staff concluded that there is no better alternative.

15. Other non-routing alternatives

Comments were submitted noting that rather than repowering the BLE Plant, other energy options should be evaluated including relying on other electrical generating facilities, the continued use of coal or the use renewables such as wind and solar. While energy planning is not typically part of a Commission application review this issue was addressed to respond to comment. The evaluation of energy supply options was limited by the need to address both goals of this project, the repowering of the BLE Plant and gas supply redundancy. The evaluation considered the two goals independently. How will electricity be provided? How will gas supply redundancy be achieved?

A comment was made suggesting that the BLE Plant remain a coal burning plant but with improved emissions thus making it "clean coal". Changing the energy source to "Clean coal" does not provide improved air quality benefits of the magnitude that will be achieved with natural gas. The use of coal is inconsistent with the AACO issued by the NJDEP. Further, the continued use of coal does not meet the need to provide natural gas service redundancy.

Comment included the suggestion that energy come from a new natural gas fired plant located elsewhere. There are several new plants planned for New Jersey located in West Deptford, Newark and Woodbridge. These plants are all owned by private investors who have opted to sell their capacity and energy into the northern New Jersey market. Similarly, RC Cape May made the decision to repurpose its facility to sell into the South Jersey market. Further, obtaining energy from these plants would not address the need for gas service redundancy.

Many commenters wanted the State to rely more on renewables, specifically off shore wind and solar, rather than on fossil fuels such a natural gas. Commenters claimed that energy needs could be met with renewables. BPU disagrees with these claims noting that while the Administration continues to work diligently to develop renewable resources, it recognizes that offshore wind and solar energy are intermittent resources that cannot be run continuously, because they are variable through the day and therefore are unable to fully replace base load resources. The 2011 State Energy Master Plan calls for increased use of renewables but stresses the need for transition steps first before the renewables goal can be met in the future.

Renewable sources such as wind and solar produce intermittent and variable power and natural gas combined cycle technology can accommodate this deficiency by supplying supplemental energy quickly, in order to keep the electric grid functioning properly. Absent the development of new, clean and more efficient power systems to balance the intermittent and variable power from renewable resources, the amount of renewable energy that can be properly accommodated by the grid is reduced.

The use of solar energy was evaluated and the CMP does allow limited development of solar installations in the Pinelands. However, solar energy still requires electric transmission infrastructure and an electrical generating plant to provide dispatchable electricity. The technology to store energy generated from solar panels to replace the energy production of the BLE is not yet available. Further, to generate the amount of energy equivalent to the BLE Plant would require 1400 - 1700 acres (570 megawatts @ 2.8 acres per 1000 megawatt-hours per year) of cleared land near existing adequately sized transmission. The land, transmission and the remaining need for a mechanism to distribute the electricity will be costly and will require significant land disturbance and will result in environmental impact. This option also does not meet the service redundancy need.

To meet energy needs from off shore wind power, similar to solar, would require an on-shore base line plant to provide a continuous, uninterrupted supply of electricity. In fact, one commenter noted that the BLE Plant site could be used to connect offshore wind projects to the grid. The plant itself would be necessary to allow for the continuous feed of electricity**.** Further, this alternative does not address the need for natural gas service redundancy.

16. "NO" Plant Scenario

Commenters noted that there would be more air quality benefit if the plant shut down. This however ignores the fact that Unit 3, the 155 MW peaking unit that fires No. 6 oil, is permitted to continue operating under the terms of the NJDEP order. These comments also ignore the fact that New Jersey needs the energy supplied by the BLE Plant. The BPU in approving this project recognized the need for both the repowering of the BLE Plant and the redundancy of supply to the eastern and southern portions of South Jersey Gas's service territory. With regard to BLE, the BPU references the goal of the 2011 Energy Master Plan to "promote a diverse portfolio of new, clean, in-state (electricity) generation to improve reliability and to lower costs, consistent with environmental and economic development objectives." BPU notes in its December 12, 2013 correspondence to the Pinelands Commission that the "Administration supports the construction of new combined cycle natural gas plants and continues to work toward replacement of the capacity that will be lost following the retirement of the Oyster Creek nuclear plant (in 2019). The BPU notes that the EMP states that replacing Oyster Creek is a particular challenge "Oyster Creek's geographic location has prevented significant transmission bottlenecks and overloads in the State and (unless) replaced by new comparable base load generation, at least $100 million in transmission upgrades will be required when Oyster Creek is retired, excluding new rights of way." The BPU further notes that the "the repowering of the BLE Plant (from coal and oil to natural gas) will help to ensure an adequate supply of electricity in the Southern New Jersey region, and specifically in the Pinelands Area".

17. Need for the energy

Commenters stated that there was no need for the power to be generated by the BLE Plant. Commenters noted that the most recent PJM load forecast showed decreases in power needs supporting the position that the power generated by the BLE Plant is not needed. The BPU has stated that "Contrary to some common misperceptions, there is no "glut" of energy in New Jersey. In fact, New Jersey is located within the heart of the Mid-Atlantic Critical Congestion Area, one of only two such areas so designated by the U.S. Department of Energy due to severely inadequate transmission capacity that threatens the reliability the electrical grid."

The BPU also disagrees with claims that PJM's most recent load forecast is proof that local demand for electricity will decrease, rather than continue to increase. The recently issued draft PJM 2014 Load Forecast does include downward revisions of the numbers for 2017-18 from what was expected at the beginning of this year, but this does not mean that the demand in 2017-18 is expected to be lower than demand is now. PJM still expects the peak summer and winter demands to grow over the next 10 years, just at lower rate than was previously projected.

The BPU's concerns regarding energy needs include the fact that New Jersey is located at the extreme eastern edge of the PJM territory. Transmission constraints limit the ability to import electricity, causing most of the State to face electricity congestion and some of the highest electricity prices in the entire mid-Atlantic area. The solution has often involved the strategy of higher voltage reinforcement of the interstate transmission lines, which raise land use and other environmental concerns. The pending retirement of several old, inefficient power plants will also reduce local generation and further degrade

reliability. The situation, BPU notes, will only be worsened by the closure of the Oyster Creek Nuclear Generating Facility in 2019, one of only two large electrical generating facilities in the eastern and southern portions of the State (the other being BLE).

These concerns have been validated by POWERGem, cited above. Specifically, POWERGem indicated that at least 200 MWs of peaking generation is scheduled to retire in May, 2015. Using the 2018 PJM RTEP model, POWERGem concluded that the need for energy and, more specifically, the continued operation of the BLE Plant would substantially increase. More importantly, if the repowering of the BLE plant could not be completed, POWERGem concludes, based upon this same PJM 2018 RTEP model, that eight (8) transmission circuits in proximity to the Pinelands area would be impacted. This impact is predicted to occur even with the construction of new generation in the state under the current Long-Term Capacity Payment Pilot Program. As has been recently seen in both the Pinelands and other areas of the State, PJM has required transmission upgrades to relieve congestion that results from overloaded circuits.

A commenter stressed that the Commission undertake a "Need for Project Analysis". While unfamiliar with the specific nomenclature, the Commission staff did in fact evaluate the need for the project. This evaluation included review of the 2011 Energy Master Plan, review of the Power Grid Engineering & Markets report "Benefit to the Pinelands Area of BL England Repowering" and the "Updated Analysis" and input from both the NJDEP and the NJBPU. Both agencies are authorized by statute to develop long term energy development objective and interim measures for achieving those objectives. The NJDEP stated that the "the Department has concluded that this project conforms with the Energy Master Plan and that this support is consist with vested authorities for ensuring the conservation of natural resources, the protection of the environment and prevention of pollution." The BPU provided detailed comment on this issue and as discussed in other sections of this report, has confirmed the need for the plant and for the redundancy of natural gas service.

18. NJPDES

Comments were received regarding the environmental impact of the BLE Plant on the Great Egg Harbor. Any impacts of the BLE Plant to the Great Egg Harbor as a result of discharges, or cooling water intake, are regulated by NJDEP pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. On June 17, 2013, NJDEP issued a New Jersey Pollutant Discharge System (NJPDES) Permit No. NJ0005444 (effective August 1, 2013) governing all impacts to surface water by the BLE Plant. Any impacts to the Great Egg Harbor from the BLE Plant were addressed during the NJPDES process.

19. Pipeline construction safety/Pipeline safety

Numerous comments were submitted regarding the safety of the pipeline. The federal government establishes minimum pipeline safety standards under the U.S. Code of Federal Regulations (CFR), Title 49. The Office Pipeline Safety (OPS) within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, (PHMSA) has overall regulatory responsibility for gas pipelines under its jurisdiction. Through certification by OPS, states inspect and enforce the pipeline safety regulations for intrastate gas pipeline operators. In New Jersey this work is performed by the Division of Reliability and Security within the Board of Public Utilities. The Division of Reliability and Security is responsible for implementing ongoing strategies for utility disaster preparedness, reliability and infrastructure security and is also responsible for the Pipeline Safety Program. The Pipeline Safety Program monitors and inspects intrastate gas pipelines for compliance with federal and state regulations. In 2013, staff performed 600-650; approximately 3 each business day.

New Jersey has Pipeline Safety Regulations at N.J.A.C. Title 14. These regulations at Chapter 7 address Construction, Operation and Maintenance of Transmission and Distribution Natural Gas Pipelines. Specific requirements address, but are not limited to, Proscribed areas, Quality control of field welding, Valve assessment and emergency closure plan, Installation of pipe, Damage prevention, Public outreach, Monthly inspection patrols and leak detection surveys, Review of operating and maintenance standards, Oversight of construction activity, Directional drilling operations, and Operator reporting requirements. In Chapter 3-Service, the regulations address, but are not limited to Liaison with public officials, Emergency personnel and Training.

BPU staff reviewed the proposal, including the project's design, construction plans and specifications, as well as the listing of structures with 100 feet of the pipeline and their distances from the proposed pipeline alignment. BPU Staff also conducted a full field inspection of the entire pipeline route and worked with South Jersey Gas on the pipeline alignment to mitigate the number of human occupied structures within 100 feet of the pipeline.

Commenters raised concerns about the need for resources and coordination for emergency response to any gas leak, explosion or fire. Beyond the above noted requirements in place to protect against such incidents, there are frameworks in place for response to such emergencies. New Jersey regulations implemented by the BPU require that each gas utility have available and equipped an adequate number of personnel to promptly handle gas emergencies on a 24-hour a day, seven days a week basis. These regulations further require that all such emergency personnel have adequate training in the proper procedures for handling gas emergencies, including but not limited to emergency shutdown procedures.

Further each gas utility is required to maintain liaison with emergency personnel of each municipality and county in its service area, as well as with BPU emergency coordinators.

BPU regulations require that operators of transmission pipelines maintain and file a valve assessment and emergency closure plan for each transmission pipeline. The plan is to assess each valve individually and describe how the operator will achieve rapid closure of valves in the event of an emergency. The valve assessment and emergency closure plan must include, but is not limited to, a map showing all valves, a training program for operating personnel to ensure they are qualified to implement the plans' emergency procedures. Emergency closure drills must be conducted at least once per calendar year.

Six sectionalizing valves will be located at the beginning and the end of the project and at intervals of about 5 miles or less along the project. All of these sectionalizing valves will be remotely-operated from SJG's McKee City Facility except for the valve to be located about 5 miles east of the project origin at the intersection of Union Road and Rt. 49. This valve will be manually operated because it will be buried due to insufficient available space for an above-ground valve. As is standard with natural gas pipeline systems, some of other smaller valves at the beginning of the pipeline at Union Road (outside the Pinelands) and at the interconnect station at Rt. 50 will be manually-controlled.

20. PIR

Comment was received stating that the Commission needs to address the Potential Impact Radius (PIR) of the proposed pipeline route. The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) uses the PIR in its requirements to address potential consequences of inadvertent releases from pipelines. The PHMSA pipeline safety regulations (Title 49CFR Part 190-199) use the concept of "High Consequence Areas" (HCAs) to identify specific locales and areas where a release could have the most significant adverse consequences. For natural gas transmission pipelines the PHMSA established the PIR as the distance from a potential explosion at

which death, injury or significant property damage could occur. To determine a HCA the pipeline operator must calculate PIR for all points along the pipeline and then determine if it impacts a HCA. HCAs exist if there are 20 or more structures intended for human occupancy; buildings that would be hard to evacuate; or buildings and outside areas occupied by more than 20 persons.

According to information provided by SJG, there are sections along the proposed route that fit the definition of an HCA. The federal regulation that applies to HCAs is 49 CFR Part 192 "Transportation of Natural Gas and Other Gas by Pipeline: Minimum Federal Safety Standards", Sub Part O - Gas Transmission Pipeline Integrity Management, 192.901 through 192.949. PHMSA is responsible for administering these regulations on a Federal level and has delegated this responsibility to the NJBPU in New Jersey. Specifically, the HCA definition that is applied by SJG is set forth in 192.903, as the area within a potential impact circle containing (i) 20 or more buildings intended for human occupancy, ...; or (ii)An identified site. SJG has determined the PIR (Potential Impact Radius) to be 438 feet, according to the federal definitions. However, for additional safety, SJG rounded that number up to 500 feet. Thus, any point of the pipeline that has 20 or more buildings intended for human occupancy, or an identified site within a 500 foot radius, is considered as an HCA. As the proposed pipeline route, as approved by the NJBPU, traverses through the Village of Tuckahoe and areas approaching Marmora, there are limited sections that fit the Federal and SJG definitions of HCA. SJG has a Transmission Integrity Management Plan, approved by the NJBPU, which requires thorough inspection of the HCAs. In the case of the proposed subject pipeline, it will be inspected on a 7 year cycle with an internal inspection tool. This tool will be run through the full length of the pipeline (22 miles) to detect anomalies such as pipe wall loss, defects in welds, dents and any other indications that could potentially lead to failure of the pipeline.

Of note, that while SJG is only required to inspect the limited sections of pipeline that fit the definition of HCA, the entire pipeline will be inspected. Additional measures that SJG will incorporate and which exceed Federal requirements are: Monthly patrols (Fed requirements – 4 times per year); High Risk Excavation monitoring – SJG provides on-site oversight of 3rd party excavation activities near transmission lines. There are no regulations requiring this measure.

21. Fracking

Numerous commenters expressed concern about fracking and its impact on the environment. Fracking or hydraulic fracturing, is the process of extracting natural gas from shale rock layers. The application reviewed by the Commission was that for the installation of a natural gas pipeline. There are no hydraulic fracking operations.

22. Export of Liquefied Natural Gas

Comments regarding the possible future use of the pipeline for the export of Liquid Natural Gas (LNG) were raised by numerous commenters. There was no basis provided to support this claim.

23. Independent Experts

Comments were raised regarding the need for the Commission to hire independent experts to provide expertise with regard to the environmental impacts of the project, to address the need for the energy to be produced by the BLE Plant and to address pipeline safety. The Commission did review all materials submitted by the public which included individuals with PhDs, college professors, lawyers, physicians, engineers and educators. The Commission itself has a wealth of expertise and considers staff to be expert in Pinelands issues including but not limited to ecology, cultural resources, habitat, planning and

regulation. Commission staff routinely review all information submitted as part of development applications, including field verification. In instances where Commission staff identify areas where expertise is lacking the Commission engages outside services. In this instance no need for outside services was identified. With regard to energy issues the Commission relies on the expertise of the BPU, the state agency with exclusive authority to oversee and regulate public utilities, which in turn provide critical public services such as the supply of natural gas, electricity, and water. The law requires the BPU to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey. The Board addresses issues of consumer protection, energy reform, deregulation of energy and telecommunications services and the restructuring of utility rates to encourage energy conservation and competitive pricing in the industry. The Board also has responsibility for monitoring utility service and responding to consumer complaints.

24. Climate Change

Comments were submitted focused on the need for the Commission to address the broad issue of climate change with regard to this project. Comment suggested that the Commission consider the impacts of the project on the Pineland's greenhouse gas footprint. The Commission did investigate the potential for increases in fugitive methane emissions as part of this project and found that such emissions are associated with older pipelines and ancillary infrastructure. Newer construction materials are not prone to leaks. The NJDEP provided detail, noting that greenhouse gas emissions from natural gas transmission and distribution amount to 2.2% of total statewide emissions, thus NJDEP considers emissions from this sector small relative to total statewide releases. The NJDEP "considers this new pipeline to have a minimal impact on the state's GHG emissions". Commenters raised concerns about climate change impacts associated with the production of natural gas. The CMP does not contain any standards for regulating environmental impacts associated with the production of natural gas outside of the Pinelands area.

25. Sea Level Rise

Commenters raised concerns about climate change induced sea level rise and the potential for flooding at the site of the BLE Plant. The NJDEP addresses issues related to flooding. For projects proposed within or adjacent to a floodplain, the CAFRA regulations require that the project be consistent with the Flood Hazard Area Control Act regulations at N.J.A.C. 7:13. This project was found to be in compliance with both the CAFRA regulations and the Flood Hazard Area regulations.

D. EO 215 (Kean 1989) Is Inapplicable to the Proposed Pipeline Project

Comments: The Commission received a number of comments stating that since BPU is the "applicant" for the MOA, they must submit an EIS pursuant to Executive Order (E.O.) 215 to DEP.

Analysis: E.O. 215 does not apply to this project. Section 1 of the E.O. states that certain governmental bodies are subject to E.O. 215 for construction projects "directly initiated by departments, agencies, or authorities of the State…or if [aforementioned bodies] are granting at least 20 percent financial assistance" (emphasis added.) The within MOA is not subject to E.O. 215, because the BPU and the Pinelands Commission, have not initiated this project, nor are they providing any financial assistance. The Pinelands Commission is the government body with jurisdiction to review the proposed pipeline project, while the BPU is a necessary party to the MOA as the agency responsible for oversight of the State's public utilities and natural gas transmission infrastructure. Neither agency is directly initiating

this construction project; rather, both agencies are involved with the proposed pipeline project as a result of their regulatory duties. The entity initiating this construction project, as well as providing all capital expenditures, is SJG. As a private company, SJG is not subject to E.O. 215. In addition, because the repowering of the BLE Plant, including the construction of the fuel supply pipeline, triggered several DEP applications and regulatory reviews, the environmental impacts of this project, including the portions to be constructed solely within the PNR, were scrutinized and all DEP approvals were based on compliance with appropriate environmental rules, while also minimizing any impacts to the greatest extent practicable. This includes establishing a pipeline route that minimized, and virtually eliminated, all environmental impacts.

E. The Public Comment Process Was Conducted in Accordance with the Requirements of the Pinelands Comprehensive

Comments: A number of commenters stated that the public comment period provided for the proposed MOA was insufficient and that the comment period should have been extended. Commenters also stated that the Commission should have conducted another public hearing and complained about the size of the hearing location. Some commenters complained regarding their ability to access documents just prior to the public hearing. Others stated that the Commission should have rescheduled the public hearing because of an erroneous address for the municipal building was included in the notice. A number of commenters objected to the Commission's imposition of a three minute time limit on oral testimony at the hearing. One commenter stated that the Commission failed to comply with its adopted MOA policy.

Analysis: The Commission afforded the public ample opportunity to comment on this matter. The Commission has been discussing the proposed pipeline project for over six months and during that time the public has availed itself of the opportunity to comment on the project at every meeting of the Commission's Policy and Implementation Committee and monthly full Commission meetings, whether the matter was listed on the agenda or not. Moreover, the Commission has never adopted a policy concerning the MOA process. Although there is a document on the Commission's website that sets forth the MOA process as it existed in 2008, that document was never adopted by the Commission and is outdated. For example, there are numerous references in that document to process before the Public and Governmental Programs Committee. Moreover, given this document is essentially guidance, it is of no binding effect. More importantly, the administrative process followed by the Commission regarding the proposed MOA essentially complies with this guidance, but more importantly complies with the regulatory process set forth at N.J.A.C. 7:50-4.52(c)3 and N.J.A.C. 7:50-4.3.

Moreover, the public comment process afforded for the draft MOA itself thoroughly complied with the process established in the Pinelands CMP. N.J.A.C. 7:50-4.52(c)3 states that "[p]rior to the execution of any intergovernmental memorandum of agreement by the Commission, the Executive Director shall set the date, time and place of a public hearing for consideration of the agreement. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3.

With regard to notice, N.J.A.C. 7:50-4.3(b)2(7) provides "[i]f the public hearing involves an intergovernmental agreement pursuant to N.J.A.C. 7:50-4.52, by sending a copy of the notice, by mail, to the mayor of each Pinelands municipality and the freeholder director and county executive of each Pinelands county that may be directly affected by the memorandum of agreement under consideration. In addition, a copy of the notice shall be published in those official newspapers of the Pinelands Commission having general circulation in the area that may be directly affected by the memorandum of agreement." In addition to providing notice to the Township mayors and County Freeholders, newspaper notice was initially provided in the Press of Atlantic City on November 28, 2013 and posted on the Commission's website on November 27, 2013. Moreover, immediately after being notified that

the address for the Galloway Township Municipal Building was incorrect in the notice, the Commission immediately revised the notice posted on its website on December 4, 2013 to correct the address and published a revised notice in the Press of Atlantic City on December 7, 2013. In order to ensure that anyone who went to the incorrect address was directed to the proper hearing location, the Commission had a staff member wait at that location on the date of and an hour prior to the start of the hearing to direct people to the correct hearing location. Consequently, the notice provided for the hearing was more than adequate.

The Commission staff disagrees that the venue that it chose to conduct the public hearing was too small. The Commission selected a venue that had an occupancy limit of 200 people. Additionally, early on in the hearing, a commenter challenged that the number of people in the room exceeded capacity. The Galloway Township police officer who was present at the hearing conducted a head count and confirmed with the fire marshal that the room was not at capacity.
There was also ample opportunity provided for the public to comment on the MOA on the record. In addition to the public hearing, the Commission kept the comment period open through its December 13, 2013 meeting. This provided the public with an additional opportunity to provide oral comment on the proposed MOA. In fact, the public comment period did not close until close of business on December 13th. Moreover, although the Executive Director initially limited testimony at the hearing to three minutes in order to provide an opportunity for the large number of individuals who had attended an opportunity to testify, she subsequently continued the hearing for an additional hour after everyone had had an initial opportunity to speak to afford those commenters who wanted more time to present additional testimony. Moreover, placing a time limit on public comment is legally permissible. (See Galena v. Leone, 638 F.3d 186,199 (3rd Cir. 2011), "The government, however, may restrict the time, place and manner of speech, as long as those restrictions are reasonable and serve the purpose for which the government created the limited public forum." The statement that there was insufficient opportunity to comment on the proposed MOA is belied by the fact that the Commission received over 9.5 hours of oral testimony and over 2,100 written comments.

The Commission staff disagrees with the inference that it inappropriately denied access to documents contained within the file or that access was not provide timely. With regard to comments that the Commission denied a requester's Open Public Records Act (OPRA) requests, OPRA permits a governmental agency to deny access to records in certain circumstances. Specifically, an OPRA request may be denied if the request fails to identify documents with requisite specificity, seeks inter- or intra-agency advisory, consultative or deliberative materials, or the records are otherwise exempt pursuant to OPRA, N.J.S.A. 47:1A-1et seq. or "any other statute; resolution of either or both house of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation or order. N.J.S.A 47:1A-1 and 47:1A-1.1. (See also MAG Entertainment, LLC v. Division of Alcohol Beverage Control, 375 N.J.Super. 534, 546-549 (App.Div.2005), "OPRA operates to make identifiable government regards 'readily accessible for inspection, copying or examination'." Id. (quoting N.J.S.A. 47:1A-1). It is not intended to be a research tool to require government officials to identify and siphon useful information. Id. at 546). Consequently, government records that set forth intra-agency deliberations, or documents that would be confidential pursuant to other statutes, such as documents involving the purchase, lease or acquisition of real property (See N.J.S.A. 10:4-12.b(5)), are not subject to disclosure.

In any event, as discussed above, the Commission has been considering the proposed pipeline project for over 6 months, the public could have requested to come in and conduct a file review of the file at any time during this time period. Additionally, Commission staff was responsive to all OPRA and file review requests. For example, staff contacted one commenter, who indicated in his comments that it was

impossible to file an OPRA request and review the file to prepare for the public hearing but did, in fact, file to review the file on December 2, 2013, during the time between the November 27, 2013 release of the MOA and the December 9, 2013 public hearing, to set up a file review. That individual refused to review the file unless all documents which he had previously requested pursuant to OPRA and to which he was denied access on appropriate legal grounds were included in the file. Moreover, to the extent that a commenter sought the basis for the environmental offset, Commission staff made a presentation on the basis of the offset at the December 4, 2013 Policy and Implementation Committee. That presentation was subsequently posted on the Commission's website. In fact, the Commission posted the reports that it referenced in the draft MOA on its website, prior to the public hearing, on the public hearing page for the public's convenience.

CONCLUSION AND RECOMMENDATION

This MOA would permit the implementation of the proposed development consistent with the requirements of the Pinelands CMP. Commission staff review of the project determined that the project was consistent with all of the applicable Management Programs and Minimum Standards contained in Subchapter 6 including Wetlands Protection Standards (N.J.A.C. 7:50- 6.6), Threatened and Endangered Species Standards (N.J.A.C. 7:50-6.27 and 6.33), Stormwater Management Standards (N.J.A.C. 7:50-6.84(a)6), Fire hazard mitigation standards (N.J.A.C. 7:50 – 6.124) and Cultural Resource Survey requirements (N.J.A.C. 7:50-6.151). A portion of the project was found to be inconsistent with the Subchapter 5 Minimum Standards for Land Uses and Intensities, specifically the provision dealing with public infrastructure in a Forest Area. In this instance a portion of the proposed natural gas pipeline will be constructed in a Forest Area. Regardless of the specific location of the project; in this instance the route travels in a previously, permanently disturbed area, under a road and the adjacent paved and mowed grass shoulder. The CMP permits public service infrastructure in a Forest Area where it is intended to primarily serve only the needs of the Pinelands. The proposed project serves two purposes; the repowering of the BLE Plant from coal to natural gas and the provision of redundant natural gas supply to SJG customers in Atlantic and Cape May Counties. While the BLE Plant is located in the Pinelands, the majority of customers to benefit from the redundancy in gas supply are located outside the Pinelands. As such the project is not fully consistent with the land use standards of the Pinelands CMP. As this is a public project, the Pinelands CMP includes a provision allowing the Commission to enter into an intergovernmental agreement to authorize a project that is not fully consistent with the provisions of Subchapter 5 and 6 of the Pinelands CMP. This provision, however, requires that variation from the standards of the Pinelands CMP is accompanied by an equivalent level of protection of the resources of the Pinelands than would be provided through strict application of the standards of the Pinelands CMP.

To provide this equivalent level of protection from an inconsistency with a land use standard, the Commission staff has determined that there is a need to preclude future development that could occur as result of the natural gas pipeline being located in the Forest Area. Commission staff has identified all publicly owned vacant land proximate to the route of the pipeline in the Forest Area and the BPU has ordered SJG to make a contribution to the Pinelands Conservation Fund to finance the acquisition of these lands. The Commission staff has determined the approximate value of the land to be $7,250,000, based on historic purchase prices of lands acquired with Pinelands Conservation Funds, current sale value of land in the area, 10 year average Pinelands Development Credit sales and the estimated cost of for a residential building lot in the area. Once the land is purchased it will no longer be subject to the threat of future development. The MOA also prohibits service connections to the pipeline. Further, as a result of the widespread interest in this matter the Commission staff has recognized the need to enhance its mandate to educate the public about the Pinelands. As, such the BPU has also ordered SJG to provide $750,000 to be used to enhance educational programs including ,specifically, $250,000 for the

implementation of the Interpretive Center in the R.J. Sullivan building. This project has already been designed using funds provided by the National Parks Service. The remainder of the funds will be used to expand public education opportunities in the areas of the project, including expanded public access via bicycle lanes and foot trails, signage and informational materials.

Based on these measures staff has determined that the deviation from the Forest Area land use standard of the Pinelands CMP that is being permitted by this MOA is accompanied by measures that will, at a minimum, afford an equivalent level of protection for the resources of the Pinelands than would be provided through strict application of that land use standard.

As a result, the Executive Director recommends that the Commission approve the accompanying intergovernmental memorandum of agreement dated January __, 2014 and authorize her to execute it on the Commission's behalf.

Sincerely

_____
Nancy Wittenberg
Executive Director