**BEFORE THE STATE OF NEW JERSEY**
**BOARD OF PUBLIC UTILITIES**

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| **IN THE MATTER OF THE RATE UNBUNDLING** | **)** | **BPU Docket Nos.** |
| **FILINGS BY GAS PUBLIC UTILITIES** | **)** | **GX99030121** |
| **PURSUANT TO SECTION 10, SUBSECTION A** | **)** | **GO99030122** |
| **OF THE ELECTRIC DISCOUNT AND** | **)** | **GO99030123** |
| **ENERGY COMPETITION ACT OF 1999** | **)** | **GO99030124** |
| | **)** | **GO99030125** |
| **ELIZABETHTOWN GAS COMPANY** | **)** | |
| **NEW JERSEY NATURAL GAS COMPANY** | **)** | |
| **PUBLIC SERVICE ELECTRIC & GAS COMPANY** | **)** | |
| **SOUTH JERSEY GAS COMPANY** | **)** | |

# INITIAL BRIEF OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

## COMPANY SPECIFIC RECOMMENDATIONS - NEW JERSEY NATURAL GAS COMPANY


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## I. INTRODUCTION

New Jersey Natural Gas Company ("New Jersey Natural" or the "Company") has been vigorous in implementing natural gas pilot programs in New Jersey. While the Company has been out front on the road to a competitive marketplace, the filing nevertheless contains some proposals which would impede the development of a fully competitive market for New Jersey Natural's customers. The unacceptable elements of the proposal are listed below:

1) New Jersey Natural should be required to unbundle its BGSS based on embedded, not avoided, cost rates pursuant to the Board's Order of Clarification. The company is proposing "full margin" rates, which do not reflect all gas supply costs.

2) New Jersey Natural should be prohibited from offering any gas supply service other than Basic Gas Supply Service ("BGSS"). The Company has proposed to offer an indefinite number of competitive sales options under the umbrella of BGSS, a clear violation of the Act. One of the proposed options is a "Fixed Price Option" ("FPO"), pursuant to which customers could purchase gas supply from New Jersey Natural at a fixed price for a stated duration. However, because of its monopolistic utility status, New Jersey Natural could price the FPO at rates which exclude indirect costs, whereas the TPSs must include indirect costs as well as a profit margin in order to continue to provide service. The FPO proposal is anti-competitive and should not be approved.

3) New Jersey Natural should be prohibited from charging switching fees to small commercial customers for changing to another service classification or another marketer affiliation. The company has proposed fees ranging from $10 to $13.50, depending upon the kind of transfer and the customer's method of billing.

4) New Jersey Natural should make its tariffs clear and understandable, separating each element of the service and stating the cost of each element.

New Jersey Natural's unbundling proposal will be discussed in further detail below.

In 1997 New Jersey Natural entered into an agreement with Board Staff, the Ratepayer

Advocate and a number of intervenor-marketers to modify and extend its pilot residential unbundling program. *IMO Petition of New Jersey Natural Gas Company for an Annual Review and Revision of its Levelized Gas Adjustment (LGA) Clause Factor et al.,* Docket Nos. GR97070542, GR97070543, GR97070544, GR970700545, GR97100735, GT96070524, GC97040275, and an undocketed matter (Order Adopting Final Stipulation and Initial Decision dated September 14, 1998) (the "Global Settlement"). The Global Settlement addressed many issues relating to the introduction of full retail competition in New Jersey Natural's service territory, and provided for a 1.6 cent per therm incentive to promote competition. *Order*, p. 6, par. 6; T903:L11 - T905:L6. This incentive will be discussed further in Section II.B below.

However, the Global Settlement, while forward looking at the time, does not control the Board's consideration of the issues to be addressed in this proceeding. In its Order approving the Global Settlement, the Board recognized the potential impact of the energy restructuring legislation which at that time was under consideration, and made the Global Settlement subject to the terms of the legislation:

> We . . . note that a number of natural gas policy issues addressed in this Stipulation or impacted by its terms . . . may be impacted by electric restructuring legislation which is expected to be taken up by the New Jersey Legislature later this year. . . . We . . . put the Parties on notice of our intent to closely monitor developments with respect to electric restructuring legislation and to delay implementation of full natural gas residential choice for NJNG customers beyond January 1, 1999 if circumstances warrant. . . .
> The Board will monitor the workings of the Stipulation and reserves the right on its own motion, with notice to the Parties and opportunity to be heard, to reopen, reconsider or modify its decision hereinabove, should circumstances so warrant. [*Global Order,* pp. 17-18.]

Company witness Kevin Moss has acknowledged that the Board may modify or take additional action on any issue addressed in the Global Settlement:

Q. Is it the Company's position in light of the passage of the Energy Competition Act that the Global Settlement precludes the Board from taking any further action on any of these issues ?

A. Absolutely not. The Board has authority to review and examine and look at all of the issues. . . .

Q. . . . you wouldn't deny the Board's authority to look at those issues, would you?

A. No. [T898:L11 to T899:L4].

The Act has created a new paradigm to create choice and to develop competition in the utility industry. Those terms of the Global Settlement which do not conform to the Act or Board policy relating thereto, such as the Fixed Price Option and margin-sharing formula (discussed below), must be conformed to the new legislation. *RA-69*, p. 4.

## II. <u>ISSUES</u>

### A. Basic Gas Supply Service ("BGSS")

### 1. Nature of BGSS Service

As discussed in Section IV.A of the Ratepayer Advocate's brief, the traditional LGAC mechanism, designed to enable GDCs to recover their gas supply costs, can be an impediment to competition in the new marketplace by failing to provide realistic market-based price signals. T2005:L20 to T2006:L22; *RA-63*, pp. 9-10; *RA-64*, p. 9. Pursuant to the existing methodology, over- and under-recoveries incurred by the GDCs in one year are recovered in the following year's LGAC factor. *RA-64*, p. 9. However, in a competitive market over- and under-recoveries carried over to the next recovery period may well distort price signals, constraining suppliers from entering the market and customers from trying new suppliers. *RA-64*, p. 10. The Ratepayer

Advocate recommends that, in order to minimize cost imbalances and to encourage competition, LGACs be phased out and GDCs institute a monthly gas cost adjustment mechanism designed to eliminate or at least to minimize over- and under-recoveries.

New Jersey Natural has implemented a monthly gas cost adjustment mechanism the purpose of which is to stabilize rates and minimize over- and under-recoveries. *IMO Petition of New Jersey Natural Gas Company for Annual Review and Adjustment of Its Levelized Gas Cost Adjustment Clause et al.*, Docket No. GR98101014 (Order issued July 13, 1999), p. 5. Pursuant to this mechanism the Company is allowed to adjust the price of gas supply within monthly caps or within an annual cap during the November through April time period. T924:L7-9; *RA-75*, pp. 11-12. The monthly adjustment mechanism was approved in July, 1999, and was implemented effective November 1, 1999. T924:L15-16; *July 13, 1999 Order*, p. 5.

In addition, for several years New Jersey Natural has utilized financial instruments to hedge its prices in order to increase price stability and to protect customers from unexpected sharp increases in gas commodity prices. *IMO New Jersey Natural Gas Company Annual Review and Adjustment of its Levelized Gas Adjustment Clause, et al.* , Docket Nos. GR94070333 (Order dated December 31, 1994); GR95070551 (Order dated November 22, 1995); GR96070551 (Order dated December 4, 1996); GR97070542 (Order dated September 14, 1998); and GR98101014 (Order dated June 18, 1999), which allowed New Jersey Natural to continue its hedging program through December 31, 2001. *RA-75*, p. 12. New Jersey Natural's hedging strategy tends to stabilize gas costs. At this point the strategy conforms to the Ratepayer Advocate's generic recommendation. As the competitive market evolves, a move to a more market-based mechanism may be appropriate.

### 2. Single vs. Multiple Basic Gas Supply Service

In addition to Basic Gas Supply Service ("BGSS"), a non-competitive regulated service offered solely by the GDCs, New Jersey Natural has proposed to offer a Fixed Price Option ("FPO") to BGSS customers. *Act*, Sec. 3; T921:L10 to T922:L7. However, the Act specifically prohibits a regulated gas utility like New Jersey Natural from offering competitive services such as the Fixed Price Options tariff and other proposed pricing options. *Act*, Sec. 10. The company asserts that it should be permitted to offer, with Board approval, an indefinite number of "enhanced pricing options" to its sales customers in response to competitive options by TPSs. T924:L18-T925:L22. Since New Jersey Natural is currently using hedge positions to stabilize its gas commodity costs and prices, one questions the need for alternate service options other than to compete with TPSs.

The Company admits that the FPO is designed to be flexible in order to compete with TPSs:

> Q. Isn't it correct that the FPO ... is a service that could be so flexible it can be altered to compete with a third-party supplier service?
>
> A. Yes, it could. . . .
>
> Q. Isn't it the Company's position BGS could be designed in the future to mirror what third-party suppliers are providing in the market at the time?
>
> A. BGS services could be designed... to meet what customers are asking for in our service territory. [T991:L17 toT992:L23]

Fixed price offerings are a pricing tool upon which TPSs rely in order to compete with incumbent gas utilities. *Id.; RA-68*, p. 12. Although it is desirable to foster choice in the provision of competitive gas supply service, GDCs maintain a distinct advantage over TPSs in offering such services under the current regulatory structure. *Id.* New Jersey Natural prices its FPO gas at the Company's pass-through cost while TPSs must add indirect costs and a profit margin to their rates. *Id.*; T2005:L20 to T2006:L11. Although New Jersey Natural's FPO tariff permits the Company to add a profit margin to the tariff rate, this is completely within the company's discretion. *Fourth Revised Tariff Sheet No. 32,* par. 8. The Company is unlikely to do so if it can compete with TPS offerings at a lower price than the TPSs can set. Since New Jersey Natural recovers its overheads and profits in its base rates, it is likely that the price set by the company would be too low to allow competition by TPSs, who must recover overheads and profits through their gas supply rates. A utility with this advantage should not be permitted to offer multiple pricing options that would compete "head to head" with TPSs.

Furthermore, as explained in the generic portion of this brief, if New Jersey Natural's gas supply options were permitted to proliferate, regulatory oversight of cost allocations would be so complex that meaningful regulatory oversight to prevent cross-subsidization would become virtually impossible. *RA-63,* pp. 20-21. In short, if New Jersey is to achieve the goal of the Act, a competitive marketplace, we must scrutinize each utility's proposal with care to determine if they achieve those goals or maintain the characteristics of the monopoly marketplace.

The Company contends that it is legally entitled to offer this FPO to its BGSS customers pursuant to Section 10.b(3) of the Act. *NJ-1,* p. 14. Section 10.b(3) states in pertinent part that, "A public utility that has offered a competitive service since prior to June 1, 1993 or a competitive service that was approved prior to the effective date of this Act is not required to obtain Board approval pursuant to subsection d. of this section...." The statute further provides that "a gas supply service offered by a gas public utility under a tariff approved by the board as of the effective date of this act shall qualify for the provision of basic supply service." *Act*, Sec. 10.r. The Board approved New Jersey Natural's Fixed Price Option tariff in 1997, subject to the parties' rights to litigate this specific issue. *RA-23*, pp. 4-5. The parties have not had the opportunity to exercise this right until the present proceeding. T935:L6-9. The Company has never offered that option to its customers. T938:L8-11. Consequently, the FPO is not a "gas supply service offered" as of the effective date of the Act. *RA-75*, p. 3.

New Jersey Natural also claims that it should be permitted to offer the FPO because a Company-commissioned customer survey indicated that New Jersey Natural's customers want it. T939:L16-19. However, as noted above, the Act prohibits GDCs from offering competitive service, which, despite Mr. Moss's claim to the contrary, is what the FPO actually is. Additionally, Mr. Moss knew little about the conduct of the survey or the assumptions on which it was based. T940:L2-22; T943:L14-21; T940:L-2 to T948:L5. This particular survey has no scientific basis nor statistical significance and should be given no weight.

**As discussed above, regulated utilities should not be permitted to offer alternate BGSS options because of their anti-competitive effect upon the market.** If New Jersey Resources, New Jersey Natural's corporate parent, wishes to offer competitive sales services, its unregulated subsidiary, New Jersey Natural Energy, can offer them. Indeed, the affiliate is the largest TPS in New Jersey Natural's service territory at this time.

### 3. Terms and conditions of BGSS Service

New Jersey Natural's residential choice program provides for open enrollment with no initial switching fees. *Fifth Revised Tariff Sheet No. 107*. This proposal is in accord with the

Ratepayer Advocate's generic recommendations, discussed above, and the requirements of the Act. *Act, Sec.* 36(a)(5). The initial filing also proposes transfer fees for residential customers who switch TPSs or services such as moving from transportation back to sales. *Service Classification-RT, Fourth Revised Tariff Sheet No. 108,* par. 10; *RA-68,* p. 20. These fees range from $10.00 to $13.50, depending upon the type of change and the customer's form of billing. *Tariff Sheet No. 108, Par. 10.* However, the Act prohibits the imposition of such fees on residential customers and therefore this proposal must be rejected. *Act, Sec. 36(a)(5).*

For commercial customers, the company proposes a switching fee under the FT, CTB and SCR transportation services. *Tariff Sheet Nos. 69,* Par. 14*; 82,* Par.13*;* and *106,* Par. 10. The fee ranges from $10 to $13.50, depending on the type of change requested and the customer's method of billing, and would apply whenever a commercial customer switches from one TPS to another or from one service to another, such as from sales to transportation, transportation to sales or from FT to CTB service. *Id.* Despite the small amount proposed, the fee is anti-competitive and could be a deterrent for many customers, particularly small customers. *RA-68,* p. 12. (A possible definition for "small commercial customers" appears in the company's SCR tariff as those customers using less than 500 Dekatherms per year. *New Jersey Natural Service Classification SCR-Small Commercial Rebundled Service, Fourth Revised Tariff Sheet No. 103.)* Although the Act does not specifically prohibit a switching fee for small commercial customers, the usage characteristics of many in this class are similar to those of residential customers. *RA-63,* pp. 25-26; T1996:L21 to T1997:L5; *RA-69,* p. 3. A switching fee, even a small fee, would increase these customers' rates and may deter them from utilizing their opportunity to choose. Commercial customers with small profit margins are particularly unlikely to take advantage of this opportunity. These customers will see only small savings which can be erased by a switching fee.

**Switching fees should be eliminated for small commercial customers. *RA-68*, p. 12; *RA-69*, p. 3. They are barriers to the creation of a competitive natural gas marketplace.**

### B. BGSS Rates/ Shopping Credits

#### 1. Proposed rate unbundling methodology

The Ratepayer Advocate proposes to provide an incentive to consumers and TPSs to jump-start competition in the gas marketplace. This incentive will provide a vibrant marketplace that will benefit all consumers, including BGSS consumers, by driving gas commodity costs down. The concept of shopping credits is the method chosen by the Legislature and the Board to encourage competition for the electric industry and should be equally applicable to gas. *N.J.S.A.* 48:3-52(b). Customers need a price to compare so they can see the savings if they switch to a TPS. In order to see sufficient levels of savings and to encourage switching, it may be necessary provide incentives to switch to new suppliers and to obtain rate reductions. As supported by Mr. Rohrbach in his direct and surrebuttal testimonies, the Ratepayer Advocate believes that appropriate levels of shopping credits are an indispensable component to ensure the success of New Jersey's restructuring programs and to establish competition in the natural gas energy marketplace. *RA-77*, p. 4, *RA-78*, p. 2.

New Jersey Natural's tariff currently contains a competitive incentive in its PGCA rates; however, this may not be a sufficient incentive to encourage people to shop for gas supply. Therefore, the Ratepayer Advocate proposes for New Jersey Natural a shopping credit which includes all appropriate gas costs, New Jersey Natural's existing PGCA incentive and an additional 15% incentive for customers to shop.

In order to develop a proper shopping credit, it is necessary first to reflect all gas supply costs in the BGSS rate. The Ratepayer Advocate's proposed shopping credit includes New Jersey Natural's gas costs adjusted to exclude sales and use taxes. *RA-78*, p. 11. Gas costs currently embedded in distribution rates should be reallocated to supply and added to the BGSS gas supply cost along with the PGCA incentive. Finally, an incentive of 15% of total margin sharing revenues from all sources should be added for a total shopping credit. In the alternative, Ratepayer Advocate witness James Rothschild proposes that a shopping credit be created by transferring the revenue requirement associated with a one percent (100 basis point) return on equity from the GDC's distribution rates to its gas supply rates. RA-*77*, p. 5. Mr. Rothschild reasoned that 100 basis points is conservative in that interest rates have dropped by more than 150 basis points since the Company's last base rate case. *RA-77, p. 6.*

GDCs' proposed BGSS rates are based on direct gas costs ("avoided costs") which omit indirect costs ("embedded costs") such as overhead, on-system production and storage costs, as well as profit margins. T1088:L19-25. Many embedded costs are in base rates or are collected from customers through non-gas cost monopoly rates. *Id.* As New Jersey Natural witness Daniel Yardley admitted:

> There are additional costs that could be characterized as embedded. Therefore, I would expect under an embedded cost analysis that the costs of the billing would be higher than under a variable cost basis or an avoided cost basis. [T1089:L7-12]

Third Party Suppliers, who must include indirect costs and profits in their rates in order to stay in business, cannot compete against rates that do not fully reflect all costs. T232:L15-18;

T1125:L25, T1127:L12. **The first step in creating a competitive market, therefore, is to include in the BGSS all gas supply related costs which are currently bundled and embedded in distribution rates.**

In its June 25, 1999 Order of Clarification the Board required GDCs to identify all gas supply and potentially supply-related costs which are included in transportation rates. *Order of Clarification*, p. 3. These costs include gas commodity service, upstream transportation, storage, peak shaving and balancing as well as administrative and other indirect costs. *RA-72*, p. 4. **New Jersey Natural's filings did not comply with the Board's directive. *RA-69*, p. 5.**

Ratepayer Advocate witness Jerome Mierzwa has testified that New Jersey Natural made "preliminary" but "incomplete" efforts to comply with the Order of Clarification. *Id*. New Jersey Natural witness Daniel Yardley included in his avoided cost analysis certain embedded costs, such as overhead relating to salaries and labor-related costs. T1091:L19 to T1092:L12; *NJ-3*, DPY-1. He included $13,710 in embedded overhead costs and $186,000 of general fringe-related overhead. *NJ-3*, DPY-1, p.1, lines 6 and 8; T1091:L19-25; *RA-79*, Tr. Req. 1092. Although Mr. Yardley has identified some gas costs in his testimony, he admitted that

> Further analysis is required to determine whether certain general and administrative costs are properly allocated to the gas supply function. For example, certain outside service costs may be more appropriately considered associated with the gas supply function [than with distribution], and general and administrative costs may decline as a GDC's merchant function declines." [ *NJ-3*, p. 8]

Moreover, Mr. Mierzwa notes that Mr Yardley inappropriately included in costs allocable to transportation service costs associated with automated meter reading. *RA-69*, p. 5. "While such costs are not properly allocated to the gas supply function, neither are they currently allocable to residential and small commercial customers who do not as yet utilize automated meter reading equipment." *Id.*

In order for competition to work, all gas supply costs, including direct (avoided), and indirect (embedded) costs, must be identified, accurately quantified and properly allocated to the gas supply function. It is only at that point that fair competition can begin. Since the Company did not provide fully unbundled rates as required by the Act and Board Orders in this proceeding, the actual calculation of the shopping credit was difficult. Ratepayer Advocate witness Mr. Rohrbach needed to supplement the information provided by the Company with assumptions and calculations prepared by Shell witness, Richard Hornby. *RA-78*, p. 10. However, New Jersey Natural's failure to provide relevant information, which prevented the calculation of an exact shopping credit, should not bar the Board from adopting the *concept* of a shopping credit. Once the Board adopts the concept of a shopping credit as a necessary means to stimulate gas competition in New Jersey, the Board should determine the appropriate shopping credits for all classes of customers, using the most current numbers available.[1]

In his cross-examination Mr. Moss admitted that "price is a factor" when people shop. T909:L17. Merely reallocating gas supply costs may not create an adequate shopping credit to encourage customers to shop for an alternate supplier. *RA-77*, p. 2. Other incentives may be necessary. The signatories to the Global Settlement anticipated this possibility and included an

[1]For New Jersey Natural, allocation of all its gas supply costs to BGSS rates points to another issue. This may conflict with Section 10.r of the Act because the utility may have gas contracts priced above current market conditions. Mr. Miller cautioned that BGSS rates may reflect prices consistent with current market conditions and that prices that New Jersey Natural may be paying under contracts entered into ten years ago may not be consistent with current market conditions. T:2838:L12-24. The Ratepayer Advocate is not suggesting any adjustment to reflect this at this time, but recommends that in this proceeding the Board should adopt shopping credits based on current contract prices -- although it may at some future time revisit the shopping credit if these contracts are renegotiated.

incentive for competition in the terms of the Settlement. One of the outstanding issues in the Global Settlement was the treatment of a $34.9 million gas cost under-recovery**.** The parties agreed to establish a Purchased Gas Cost Adjustment ("PGCA") surcharge to collect the under-recovery and to provide an incentive for customers to migrate to transportation. *Global Order*, p. 5, par. 6; *Global Stipulation*, par. N; T902:L14 to T905:L6. The incentive created a 1.6 cent per therm differential between firm sales and firm transportation , which was to encourage customers to choose alternate suppliers. T958:L18-24.

As noted by Mr. Rohrbach, this differential, as well as the reallocation of gas supply costs from the transportation rate to the sales function, may not create a shopping credit sufficient to create a viable competitive market. *RA-78*, p. 3. The Board has the authority to require an additional incentive if the existing incentive is insufficient. T913:L20 to T914:L5. Consequently**,** as discussed in the generic shopping credit portion of this brief and Mr. Rohrbach's direct and surrebuttal testimonies**,** New Jersey Natural's existing incentives must be augmented by a shopping credit of 15% of margin revenues from off-system sales and capacity releases. *RA-77*, p.4; *RA-78*, p. 10.

As discussed above the Ratepayer Advocate has also proposed an alternate method for calculating the shopping credit based on witness James A. Rothschild's testimony. Mr. Rothschild's proposed shopping credit is created by transferring the revenue requirement associated with a one percent (100 basis point) return on equity from the GDC's distribution rates to its gas supply rates. RA-*77*, pp. 5-6.

**The bottom line is that the only state where a vibrant retail competitive marketplace has been achieved is in Pennsylvania where a shopping credit has been instituted. In**

**contrast, the state of California has no shopping credit or "price to compare," and a competitive market has not developed.**

### 2. Lost Revenue Recovery Proposals

New Jersey Natural has not proposed to recover lost revenues in the instant proceeding because it does not foresee any lost revenues. *NJ-1*, p. 37. Mr. Moss has stated unequivocally that "NJNG's rate unbundling will have no impact on total revenues." *Id.*, p. 35. "The Company does not contemplate lost revenues resulting from further migration on its system." *NJ-1*, p. 37. New Jersey Natural is experiencing system growth at approximately 3% per year. T1062:L9-10. Consequently, any revenues which might be lost due to consumer migration will be offset by new revenues resulting from growth. *Id.* The Company has asserted that it wished to extend customer choice to all its customers "only if remaining customers are not adversely affected by further migration to firm transportation service." *NJ-1*, p. 36. "Shifting of lost revenues to remaining customers, which may be captive, would be an undesirable outcome and one that would not be acceptable to the Company." *Id.*

However, New Jersey Natural has in place a methodology by which the issue of lost revenues can be addressed. Pursuant to the Global Settlement and the approving Order, New Jersey Natural may file a cost mitigation proposal "if NJNG's annual sales forecast falls below 30 Bcf following implementation of Full Customer Choice. . . ." *Global Settlement*, p. 14, par. 13a. T902:L20 to T903:L2**.** The Company's firm sales load is currently about 45Bcf annually, with an additional 15 Bcf in transportation load. It does not foresee any need in the near future to file a mitigation proposal pursuant to the Global Settlement. T995:L9-25; T1069:L7-12;

T1071:L9-16. The Ratepayer Advocate recommends, however, that, pursuant to the modification provision in the Global Order, the Board should strike this provision as incompatible with the Act. If the Company wishes to recover lost revenues, it should file a base rate case wherein a complete review can be conducted.

## C. Unbundling of Gas Supply Service

### 1. Gas supply services to be unbundled

As discussed above, gas supply services include a number of components, such as gas commodity service, upstream transportation, storage, peak shaving and balancing. *RA-74,* p. 4. The Ratepayer Advocate recommends that, in order to facilitate competition for balancing and other components of gas supply service, GDCs be required to offer two balancing services for the benefit of transportation customers. They should be required to offer a monthly requirements service as of January 1, 2000 and a daily requirements service in time for the 2000-01 winter heating season. New Jersey Natural currently offers a monthly requirements service in which the TPS provides to the GDC the average monthly gas supply for each customer. *Global Settlement,* p. 14, par. 13e.

The Company also proposes a new daily requirements service which would introduce competition for balancing for smaller customers. The proposed balancing service, currently before the Board in Docket No. 9700707054442, is referred to by the Company as a Temperature Sensitive Delivery ("TSD") Service . This service would require suppliers of customers without telemetering equipment (such as residential and small commercial customers) to deliver to the city gate the total of each customer's anticipated daily gas requirements. The TPS would adjust deliveries to match expected daily variations in usage, based on forecasted weather. New Jersey Natural would continue to provide balancing for differentials in usage based on differences in forecasted and actual weather or other unexpected cause for additional use of gas. *RA-68*, pp. 7-8. In order that the Company might offer daily requirements service in time for the 2000-01 winter heating season, the Ratepayer Advocate recommends that the Board act on the pending TSD petition on an expedited basis, and that the TSD balancing service be implemented by October 1, 2000. *Id*., p. 8.

**New Jersey Natural has not adequately unbundled its gas supply and ancillary services. The Company should be ordered to file unbundled elements of service. Further proceedings to set proper rates will thereafter be necessary.** The Company has not unbundled other sales services, both firm and non-firm. *RA-68*, p. 13. Ratepayer Advocate witness Mr. Mierzwa suggests that New Jersey Natural's Firm Cogeneration Tariff should not be unbundled for existing customers. *Id.* He notes that these customers have been able to choose between sales and distribution under their current tariff and that change to the rate schedule would require review, and possible changes, to existing contracts. *Id.* **The Ratepayer Advocate recommends, however, that, given the new competitive environment, this tariff should be unbundled and, if necessary, modified for <u>new</u> customers who may wish to take service under this rate schedule. *Id.***

The rates for New Jersey Natural's remaining firm gas service classes, Firm Cogeneration ("FC"), Cooling, Air-Conditioning and Pool Heating ("CAC") and Economic Development ("ED"), have not been unbundled, nor have the rates for its non-firm gas sales classes, Natural Gas Vehicle ("NGV"), Interruptible Sales Service ("IS"), Interruptible Cogeneration ("IC") and

Incremental Gas Service (“IGS”). *Id*., p. 13. These tariffs need to be reviewed in the context of the new competitive environment. *Id.,* p. 14.

**2. Format of Tariffs**

As discussed in Mr. Miller’s testimony, tariffs must have separate, clearly stated rates for gas supply and distribution and should give customers the necessary information to choose to buy their gas suppliers from an alternate supplier. *RA-72*, pp. 7, 9. New Jersey Natural has partially unbundled its charges for BGSS, distribution service and balancing service under its Residential and General Service firm sales service classes. However, its tariffs do not clearly state the unbundled rates for those services and therefore must be revised. It is difficult for a reader to determine which charges would no longer apply to a customer switching to a TPS for gas supply. Additionally, it is not clear to a reader that the customer would receive a 1.6 cent incentive by shopping. *RA-68,* p. 13. The Company’s own witness, Mr. Moss, admitted that the Company’s tariffs were confusing:

> Q. Would you agree that the average consumer might have some difficulty figuring out [the various charges] from the Company’s tariff?
>
> A. I would agree with that since I also have [trouble with it].... [T959:L23-T960:L3].

New Jersey Natural cannot dispute the lack of clarity in its tariffs, nor the difficulty consumers will have in understanding them. The Company should be required to revise its tariffs in order to make them clear and understandable.

In accordance with Mr. Miller’s recommendations, New Jersey Natural’s tariffs should be set out on its website, because “most customers, especially smaller customers, do not have easy access to the utilities’ tariffs.” *RA-68*, p. 10. **Rates on customer bills should be clear and**

**easily understandable with *g*as supply and distribution stated separately, and the shopping credit should be easily ascertainable.**

## D. Capacity Assignment

### 1. Voluntary/Mandatory Assignment

As discussed above, the Ratepayer Advocate recommends that utilities offer voluntary assignment of capacity, but that TPSs not be required to accept such assignments. *RA-68*, p. 10. New Jersey Natural's proposal complies with this recommendation. *Id.*; *NJ-1*, pp. 14-15; T995-L9-15. New Jersey Natural has offered "capacity assigned with every firm customer to the third-party supplier. . ." While Mr. Moss states that "[they] have had very few marketers actually take that capacity," for the reasons explained by Messrs. Galligan and Mierzwa in their generic testimony, it is important that this option remain available. T1069:L7-12; *RA-68*, p. 9.

Given New Jersey Natural's growth, it is uncertain whether the Company will renew or restructure its interstate pipeline contracts or permit them to expire. The Company has already restructured a number of interstate pipeline contracts. T1061:L21-24. As of August 31, 1999, New Jersey Natural had restructured or "turned back" contracts totaling approximately $2.8 million since the Global Settlement became effective in October 1998. *RA-79*, Tr. Req. 1062. In the future when the Company does restructure or terminate an existing capacity arrangement, it should notify its TPSs and distribution customers of the proposed restructuring or expiration as soon as practical through an electric bulletin board announcement or other means, including its website, so that, if they wish, the TPSs can arrange for the purchase of some or all of any soon-to-be released capacity to serve New Jersey customers. *RA-68*, p. 10. Notification to the TPSs and customers should be well in advance of the Company's notification of termination to the pipeline. *Id*

Mr. Moss has stated that New Jersey Natural has no stranded costs at this time and is not proposing a collection mechanism or place marker for stranded costs. T1062:L5-17. Despite 33,000 residential customers and 4000 commercial customers having migrated to distribution, New Jersey Natural does not expect to have a problem with excess capacity. T1032:L20-22. The Company "is experiencing 3% growth in its service territory, which mitigates a substantial portion of potential unused capacity as does market utilization of NJNG balancing services." *NJ-1,* p. 14; T1062:L9-10.

Although New Jersey Natural does not propose to implement mandatory assignment at this time, the Global Settlement provides that if New Jersey Natural's forecasted sales drop below 30 Bcf, the Company may defer any stranded capacity costs and file a proposal to mitigate, which may include mandatory capacity assignment. *Global Settlement,* p. 14; *RA-68,* p. 9. New Jersey Natural's current firm sales total 45 Bcf. However, the Company does not see a need for mandatory assignment. Moreover, Mr. Moss acknowledges that a motion to mitigate stranded costs should not be made until all possible mitigation strategies have been exhausted nor should it be permitted. "If we had stranded costs and we came to the Board with a request for recovery of those [sic], they would have to be prudently incurred and mitigated to the fullest extent possible." T1063:L9-13; *RA-68,* p. 10. Pursuant to the Ratepayer Advocate's generic recommendations set forth above, if the Company should come before the Board with such a petition, it should set forth in that filing all actions taken in mitigation as well as data stating the actual amount of stranded costs for which recovery is being requested.

However, New Jersey Natural should not be permitted to defer stranded costs. *RA-68*, p. 9. The Company should be required to file a proposal with the Board as soon as it determines that, despite its efforts to mitigate, it expects to incur stranded costs. *Id.* It should be noted, however, that recovery of stranded costs by GDCs has not been contemplated by the Act.

**2. Existing Margin Sharing Mechanisms**

As discussed above, the Ratepayer Advocate recommends that the Board initiate a generic proceeding to review and to determine whether to modify or terminate margin sharing mechanisms. *RA-63*, p. 41. Margin sharing is a Board-approved incentive which was designed to encourage GDCs to shed excess supply and capacity, to maximize the revenues from these sales, and to discourage stockpiling. The incentive consists of a sharing of revenue margins from off-system sales and release of excess capacity between the GDCs' firm sales customers (the LGAC customers), who would otherwise be credited with all revenues from these sales, and the GDCs. NJ Natural's current margin sharing formulas were recently modified in the Global Settlement and approved by the Board in that proceeding. *Order*, p. 9, par. 9a-h. The formula is somewhat complex, but the basic sharing is 85% to the LGAC and 15% to the Company "through December 31, 2001 (the "Term")." Id.., p. 9. Since the Company still receives some margins from off-system sales and capacity releases, there still may be some incentive to stockpile.

**As discussed in Section IV.D.b.2 of this brief, margin sharing may be anti-competitive in the new competitive environment because it does not create a level playing field with TPSs. The Ratepayer Advocate recommends that the Board review its margin**

**sharing policy to determine whether to modify or terminate these mechanisms.**

## E. Societal Benefits Charge

### 1. Items recovered through SBC

As discussed above and in Mr. LeLash's testimony, the Act permits four types of costs to be recovered through the SBC: 1) social programs; 2) demand-side management ("DSM") programs; 3) Manufactured gas plant remediation costs ("MGP"); and 4) consumer education. *RA-68*, p. 20. In its filing, New Jersey Natural proposed an SBC charge of $0.002221 per therm, which reflects existing DSM and MGP factors of $0.0000 and $0.0021, respectively. *Id*. The Company did not include in its calculation the costs for its social programs nor for consumer education

The Act requires that "The societal benefits charge shall be set to recover the same level of social program costs as is being collected in the bundled rates. . . ." *Act,* Sec. 3. This includes that portion of uncollectible costs associated with Board-approved programs to protect disadvantaged consumers. T975:L25-T976:L-5. New Jersey Natural has not quantified its social program costs, nor those for consumer education. Mr. Moss has testified that the Company maintains information on disadvantaged customers and should be able to determine the social program-related components of uncollectibles. The Company also maintains records regarding those customers eligible for the LIHEAP Program, the winter moratorium, the Lifeline Credit Program, the Gatekeeper program and the Gift of Warmth. T976:L6-T980:L15; *RA-33 to 40*. The programs can be identified, as can their participants. The costs of these social programs should be quantified and recovered in this SBC charge. New Jersey Natural asserts that the

Company is working on this data. T979:L15-16. The information should be produced immediately.

Regarding consumer education costs, New Jersey Natural estimates that its total costs for the next three years will be $1.1 million. *RA-79*; Tr. Req. 970. Its share of the statewide education campaign is approximately $800,000, and the Company plans to spend approximately $100,000 per year for the next three years for its local campaign. These costs represent expenses related to the customer brochures, speakers bureau presentations, website and bill inserts. *Id*. This breakdown of customer education costs, as set forth by the Company herein, is insufficient. The Company should be required to provide a further breakdown of costs into categories, so that a complete analysis may be made.

The Company is currently collecting a Transportation Education and Implementation Charge ("TEI"), approved by the Board in Docket No. GT96070524 (Order issued January 23, 1997). *RA-23*. This mechanism was designed to collect New Jersey Natural's consumer education costs. The first costs were passed through to customers in the 1998 LGAC Board Order, Docket No. GR98101014, issued July 7, 1999, p. 6. The Company's 1999 LGA filing includes some estimated transportation implementation costs but no projected education costs, "certainly not a go-forward basis for education costs." T973:L16-21. Mr. Moss has testified that no education costs have been booked into the TEI account since the Statewide Education Campaign began. T973:L9-12. No customer education costs are currently in base rates. T974:L11-18.

**New Jersey Natural has failed to provide a complete breakdown of social program and consumer costs to be included in the SBC. These costs must be properly identified and allocated and recovered in the SBC pursuant to the Act. *Act,* Sec. 12. Otherwise, they**

**should not be eligible for collection. *Id.***

### 2. Proposed two-way interest

New Jersey Natural has made no specific request for two-way interest. As stated in the generic portion of this brief, the Ratepayer Advocate opposes two-way interest for any program or component thereof for which two-way interest is not currently allowed. *RA-63,* p. 33.

Over-collections are refunded with interest. *Global Settlement Order,* p. 6, par. 1.a. Regarding RAC costs, the Act specifically requires that existing mechanisms be preserved. *Act,* Sec. 12.a(4). Pursuant to New Jersey Natural's RAC, the Company shares its MGP remediation costs by recovering those costs over a seven-year period without interest. *RA-63,* p. 33. This mechanism should be continued in the SBC.

### 3. Interest Rate

As discussed in the generic section of this brief, the Ratepayer Advocate recommends that, to the extent two-way interest is allowed, interest be collected at the short- or intermediate-term bond rate. New Jersey Natural projects no change in its interest rates. It is currently collecting interest at rate of return for its DSM costs pursuant to Board Order. T2184:L3-5. As noted in the generic section of this brief, the Board in the Public Service electric restructuring matter adopted an intermediate-term debt rate for all SBC components. Based on the Board's decision in the PSE&G electric case, the Board should reconsider the DSM interest rate. Authorized interest on other elements of New Jersey Natural's SBC, to the extent allowed, should be collected at a short- or intermediate-term debt rate. T2183:L17-21; T2184:L11-17.

### 4. Deferred Accounting

As noted above, New Jersey Natural is currently permitted to defer costs for the DSM, RAC and Consumer Education programs to the extent permitted by the Board. It should be required to obtain specific Board approval for deferred treatment of any additional items.

### 5. Mechanics of SBC

As discussed in the generic sections above, the SBC charge should be subject to annual reconciliation and true-up and logically should be included in the proceeding established for the annual BGSS reconciliation pursuant to Section 10.r of the Act. *RA-23,* p. 33.

### 6. Applicability of SBC

As discussed in the generic sections above, the SBC should be charged to all customers. Section 12.a of the Act provides that SBC charges "shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate." Any exemptions or special rates existing in the DSM or MGP clauses are superseded by the Act. *RA-68,* p. 21; T2108:L12-1 to T2111:L7-16; *NJEA-7*. New Jersey Natural should be directed to revise its SBC to apply this non-bypassable charge to all customers.

## F. Customer Account Services

### 1. Required Cost Data

In its Order of Clarification, the Board required the GDCs to submit unbundled cost data for metering, billing, and customer account services. *Order of Clarification,* p. 4. None of the gas utilities, including New Jersey Natural, has presented a study of its average embedded or fully allocated costs of metering, billing, and customer account services. *RA-75*, p. 4; *RA-68*, p. 14. Nothing has been filed regarding embedded costs, which information is essential to developing a proper analysis of these costs. *RA-75*, p. 5. The Company asserts that it plans to file information related to embedded billing costs shortly; however, it has not provided that information to date. *RA-68*, p. 14. The Board should order this filing before the start of retail competition.

### 2. Billing Credits

New Jersey Natural currently offers three billing options: 1) one bill - New Jersey Natural bills the customer for both its distribution charges and the TPS gas supply charges; 2) two bills - New Jersey Natural bills the customer for its distribution charges and the TPS bills for the supply costs; and 3) one bill - the TPS bills for both its supply charges and New Jersey Natural's distribution charges. T961:L4-25.

In the Global Settlement, New Jersey Natural offered to credit customers who receive supply bills from their TPS with the avoided costs of that service. T1085:L21 to T1086:L5. In calculating this proposed billing credit, Company witness Mr. Yardley used avoided costs in his analysis. T1088:L21-25. He admitted, however, that if he were to have performed an embedded cost analysis, the costs of billing would be higher than in his avoided cost analysis. T1089:L7-12.

**New Jersey Natural should be required to present a study of its average embedded or fully allocated costs of metering, billing and other customer account services in an**

**expeditious manner so that the Board may proceed with its determination regarding these services.**

## G. Other Recommendations

### 1. Universal Service Fund ("USF")

New Jersey Natural has not made a specific proposal regarding the USF, proposing only that the funding and the content of the USF be addressed by the Board. *RA-68*, p. 22. However, it is essential that the Company's universal service program be established as soon as possible, to assure that New Jersey's low-income consumers and other consumers with special needs share in the benefits of competition. As discussed in Section IV.G.2 of this brief, the Board should therefore set a specific timetable for the submission and consideration of the GDCs' universal service proposals, and their implementation.

### 2. Aggregation

New Jersey Natural has not submitted a proposal for aggregation. As discussed in Section IV.G.1 above, the Ratepayer Advocate has consistently expressed concern that residential and small commercial customers may not realize the benefits of competition because they do not have the large usage levels and load profiles that are attractive to third party suppliers. Smaller customers can benefit from aggregation programs, which make them more attractive to suppliers. The competitive residential natural gas marketplace will not emerge unless customers are aggregated through geography, organizations such as AARP or special needs groups such as low income ratepayers. Customer information is required for the success of these programs. New Jersey Natural should therefore be required to make aggregation data available to aggregators, marketers and consumers in a timely manner.

## CONCLUSION

For the foregoing reasons, the Ratepayer Advocate respectfully submits that the Board should order the following recommendations necessary to achieve the legislative goals of a competitive natural gas marketplace with benefits to all classes of consumers.

**BGSS Service**

1. New Jersey Natural should be prohibited from offering any gas supply service other than Basic Gas Supply Service ("BGSS"). The Board should modify its previous Order which authorized a Fixed Price Option ("FPO") tariff and forbid the Company from offering the FPO since such an alternative service will inhibit a fully competitive market.

2. Switching fees for residential and small commercial customers should be prohibited.

3. New Jersey Natural should continue to utilize financial instruments such as hedging to stabilize the costs of its gas sales supply.

**BGSS Rates/Shopping Credits**

4. The unbundling-related cost allocations recommended by Ratepayer Advocate witnesses Rohrbach and Miller should be adopted.

5. A viable shopping credit should be implemented through the reallocation of margin revenues or through the transfer of the revenue requirements associated with a 100 basis point reduction in the Company's rate of return.

6. The 1.6 cent per therm PGCA incentive should continue to be offered and should be included in the total shopping credit offered by New Jersey Natural.

7. The Board should strike the provision in the Global Settlement Order which permits New Jersey Natural to file a petition to recover lost revenues if its gas sales forecast drops below 30 Bcf. The Company should be permitted to file a petition for cost mitigation only in the context of a base rate case.

**Unbundling of Gas Supply Costs**

8. New Jersey Natural should continue to offer its monthly requirements service.

9. The Board should act on New Jersey Natural's pending petition to offer a daily requirements service ("Temperature Sensitive Delivery Service") expeditiously. This service should be implemented in time for the 2000-02 winter heating season.

10. New Jersey Natural offers certain firm and non-firm gas sales services which it has not proposed to unbundle in this proceeding. The Company should be required to review these tariffs in the context of the new competitive environment and to present a proposal addressing their future treatment, which should include unbundling.

11. New Jersey Natural should revise its tariffs to make them clear and understandable to customers.

**Capacity Assignment**

12. New Jersey Natural should continue to offer voluntary assignment of capacity, and should not be permitted to assign capacity to TPSs on a mandatory basis.

13. New Jersey Natural should be required to notify TPSs and distribution customers in advance of its restructuring or terminating an existing capacity arrangement with an interstate pipeline.

14 If New Jersey Natural should determine that it has stranded costs, it should be required to mitigate those costs to the fullest possible extent before applying to the Board to mitigate those costs.

15. The Board should initiate a generic proceeding to determine whether to modify or terminate GDC margin sharing mechanisms for off-system sales and capacity releases.

**Societal Benefits Charge ("SBC")**

16. New Jersey Natural should be required to identify and quantify all social programs, including the proper level of uncollectibles, which it seeks to recover in its SBC.

17. New Jersey Natural should be required to identify and quantify all consumer education costs which it seeks to recover in its SBC.

18 Interest on deferred balances, if specifically order by the Board, should be addressed on a component-by-component basis, with one-way interest preserved for items where the Board has not explicitly permitted two-way interest.

19. If the Board should permit collection of interest on deferred balances, the rate should be the short- or intermediate-term debt rate, not the Company's rate of return.

20. New Jersey Natural should be required to obtain Board approval prior to deferring any SBC component.

21. The SBC should be collected from all gas utility customers pursuant to the mandate of the Act.

**Customer Account Data**

22. New Jersey Natural should be required to provide complete cost data for its metering, billing and other customer account services as mandated by the Board.

**Other Recommendations**

23. New Jersey Natural should be required to make aggregation data available to aggregators, marketers and consumers in a timely manner.

24. New Jersey Natural should be required to submit a proposal, including programs and costs, related to a universal service fund to serve disadvantaged customers.

Respectfully submitted,

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Dated: November 16, 1999

COMPANY SPECIFIC RECOMMENDATIONS
NEW JERSEY NATURAL GAS COMPANY

TABLE OF CONTENTS

Page No.