

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PennEast Pipeline Company, LLC

| Docket No. CP15-558-000

**COMMENTS OF THE NEW JERSEY DIVISION OF
RATE COUNSEL**

This proceeding concerns a request by PennEast Pipeline Company, LLC (“PennEast”) for Commission authorization to construct and operate a 118.8-mile greenfield pipeline. If constructed as proposed, PennEast’s pipeline will have a significant impact on New Jersey consumers. The proposed pipeline’s route consists of 115.1 miles of new 36-inch-diameter pipeline extending from Luzerne County, Pennsylvania to Mercer County, New Jersey; the 2.1-mile Hellertown Lateral consisting of 24-inch-diameter pipe in Northampton County, Pennsylvania; the 0.1-mile Gilbert Lateral consisting of 12-inch-diameter pipe in Hunterdon County, New Jersey; and the 1.5-mile Lambertville Lateral consisting of 36-inch-diameter pipe in Hunterdon County, New Jersey (the “Project”). The Project’s price tag is estimated to be \$1.13 billion.

In response to the Commission’s July 22, 2016 Notice,¹ intervenor New Jersey Division of Rate Counsel (“NJ Rate Counsel”) respectfully submits its comments on the “Draft Environmental Impact Statement for the Proposed PennEast Pipeline Project.”² As explained herein and in the accompanying affidavit of David E. Dismukes, Ph.D. (“Dismukes Affidavit”), the record does not support Commission authorization of the

¹ *PennEast Pipeline*, Notice of Availability of the Draft Environmental Impact Statement for the Proposed PennEast Pipeline Project (July 22, 2016), eLibrary No. 20160722-4010.

² *PennEast Pipeline*, Draft Environmental Impact Statement for the PennEast Pipeline Project (July 22, 2016), eLibrary No. 20160722-4001 (“DEIS”).

Project. PennEast has failed to demonstrate that the Project is in fact “needed,” and the DEIS gives overly short shrift to the “no action” alternative. Moreover, the terms under which the Project has been proposed are unduly generous to PennEast and unfair to consumers.

I. COMMUNICATIONS AND CORRESPONDENCE

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II. COMMENTS

- A. *The DEIS analysis of the no action alternative is deficient because it fails to include a sufficient examination of whether the Project is necessary to fulfill a legitimate need.*

Section 1502.14(d) of the regulations implementing the National Environmental Policy Act, 40 C.F.R. § 1502.14(d), requires the Commission to evaluate “the alternative of no action.” In its current form, the Project DEIS is deficient in that it fails to give fair consideration to the no action alternative. The DEIS does not evaluate fully whether the Mid-Atlantic region in fact needs the proposed additional pipeline capacity. Instead, in analyzing the no-action alternative, the DEIS accepts at face value PennEast’s assertion

that additional pipeline capacity into the Mid-Atlantic is necessary, thereby failing to examine whether PennEast has in fact demonstrated that need.

The DEIS rejects the potential no action alternative because while doing so would obviously avoid the Project's short- and long-term environmental impacts, "the objectives of the Project would not be met." DEIS at 3-3. The DEIS describes the Project as a "response to market demands and interest from shippers that require transportation capacity to accommodate increased demand and greater reliability of natural gas in the region," intended to "provide a long-term solution to bring the lowest cost natural gas available . . . to homes and businesses in Pennsylvania, New Jersey, and surrounding states." *Id.* In short, and as explained in the DEIS, the no action alternative is not preferable because it will not satisfy "the objectives of the Project, provide an equivalent supply of energy, or meet the demands of the Project shippers." *Id.* at ES-15 and 5-18; *see also PennEast Pipeline Co., Application of PennEast for Certificates of Public Convenience and Necessity and Related Authorizations* at 4 (Sept. 24, 2015), eLibrary No. 20150925-5028 ("Application"). More specifically, the DEIS asserts that "[i]f PennEast's proposed facilities are not constructed, the Project shippers may need to obtain an equivalent supply of natural gas from new or existing pipeline systems." DEIS at 3-3. This determination misses the mark because PennEast has not demonstrated that the purported "increased demand [for] . . . natural gas in the region" in fact exists. *Id.*

PennEast bases its claim of need on "precedent agreements with seven foundation shippers and twelve total shippers, which together combine for a commitment of firm capacity of 990,000 dekatherms per day ('Dth/d')," approximately 90% of the Project's total capacity. *Application* at 2, 10-11. Although the Commission views "long-term firm

capacity as important evidence of market demand,”³ NEPA requires FERC to examine more “rigorously” the need for a proposed project before rejecting potential alternatives, including no action.⁴ In this case, approximately 610,000 Dth/d of the 990,000 Dth/d of capacity has been contracted by affiliates of the Project owners. Application at 10. PennEast is a joint venture owned by Spectra Energy Partners, LP together with subsidiaries of AGL Resources Inc., New Jersey Resources, South Jersey Industries, UGI Energy Services, LLC, and Public Service Enterprise Group (“PSEG”). *Id.* at 7-8. Of the twelve shippers that have subscribed to Project capacity, five of them are affiliates of companies that collectively own PennEast. Specifically, Pivotal Utility Holdings, Inc. (D/B/A Elizabethtown Gas), a subsidiary of AGL Resources, Inc., has contracted for 100,000 Dth/d. New Jersey Resources is the parent company of New Jersey Natural Gas Company, which has contracted with PennEast for 180,000 Dth/d of firm transportation capacity. Similarly, South Jersey Industries subsidiary South Jersey Gas Company has contracted with PennEast for firm capacity of 105,000 Dth/d. UGI Energy Services, LLC, the parent of PennEast stakeholder UGI PennEast LLC, has contracted for firm capacity 100,000 Dth/d. And PSEG Power LLC, a member of the PSEG corporate family, has likewise contracted for 125,000 Dth/d. *Id.* Thus, two-thirds of the demand for the pipeline exists because the Project’s stakeholders have said it is needed. This self-dealing undermines the assertion of need that the DEIS relies upon to dismiss the no action alternative.

³ *Id.* at 10 citing *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,744 (1999), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified in* 90 FERC ¶ 61,128, *further clarified in* 92 FERC ¶ 61,094 (2000)

⁴ *See* 40 C.F.R. § 1502.14(a) (requiring an agency preparing an environmental impact statement to “[r]igorously explore and objectively evaluate all reasonable alternatives”).

Given that two-thirds of the capacity under precedent agreements is with affiliates of the owners, the DEIS should have included an independent analysis of the need for the capacity the proposed Project will provide. NJ Rate Counsel asserts that such an independent analysis would have revealed that the forecasted supply and demand requirements for New Jersey and Pennsylvania local gas distribution companies (“LDCs”) can be met through existing supply arrangements. The table below provides peak day requirement—i.e., the highest 24-hour usage of natural gas during a year—and total supply projections for three New Jersey LDCs and three Pennsylvania LDCs, as reported to the New Jersey Board of Public Utilities (“NJ BPU”) and the Pennsylvania Public Utility Commission, respectively.

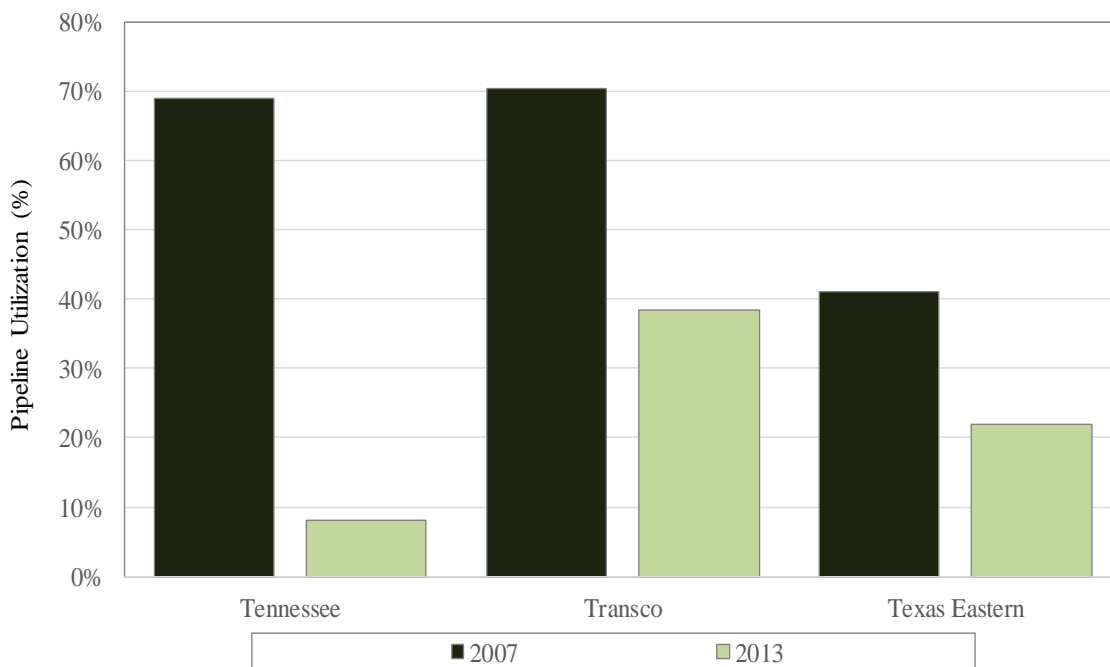
	PSE&G			South Jersey Gas			Elizabethtown Gas		
	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)
2015 - 2016	3,075,400	3,072,400	100%	n.a.	n.a.	n.a.	189,820	397,820	210%
2016 - 2017	3,089,600	3,074,500	100%	512,891	554,755	108%	285,070	402,610	141%
2017 - 2018	3,113,200	3,075,900	99%	520,555	564,755	108%	288,440	423,890	147%
2018 - 2019	3,141,000	3,078,500	98%	528,351	564,755	107%	n.a.	n.a.	n.a.
2019 - 2020	3,181,100	3,079,900	97%	536,280	564,755	105%	n.a.	n.a.	n.a.

	UGI Utilities			UGI Penn			PECO		
	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)
2015 - 2016	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
2016 - 2017	827,320	812,343	98%	208,303	208,303	100%	802,834	720,017	90%
2017 - 2018	844,804	828,120	98%	209,752	209,187	100%	n.a.	n.a.	n.a.
2018 - 2019	862,288	843,288	98%	211,201	209,957	99%	n.a.	n.a.	n.a.
2019 - 2020	879,772	858,456	98%	212,650	210,727	99%	n.a.	n.a.	n.a.

LDC Forecast Peak Day Requirement and Total Natural Gas Supply

As Dr. Dismukes explains, these LDCs’ own projections suggest peak day requirements will remain relatively stable through 2020—and indicate that there is no imminent need for significant amounts of additional capacity. Dismukes Aff. ¶¶ 10-12. Further, the displacement of Gulf Coast supplies by emerging natural gas production from the

Marcellus Shale and the Utica Shale at traditional market area receipt points has left long-haul pipelines, including those that serve New Jersey LDCs, with underutilized upstream capacity. Dismukes Aff. ¶¶ 13. Specifically, Tennessee Gas Pipeline (“Tennessee”), Transcontinental Gas Pipeline (“Transco”), and Texas Eastern Transmission (“Texas Eastern”), all of which serve New Jersey LDCs, have seen significant drops in capacity utilization since 2007, as demonstrated in the table below. *Id.*



Average Annual Utilization of Natural Gas Transportation Pipelines⁵

In addition to the glut of underutilized capacity on existing gas transmission systems into the Mid-Atlantic, New Jersey LDC Public Service Electric & Gas Company (“PSE&G”) reports that it has *turned back* 145,000 Dth/d of firm transportation capacity in the past

⁵ Denny Young, Black & Veatch, *Has Emerging Natural Gas Shale Production Affected Financial Performances of Interstate Pipelines?* (2013), <http://bv.com/energy-strategies-report/august-2013-issue/has-emerging-natural-gas-shale-production-affected-financial-performances-of-interstate-pipelines>.

year.⁶ Several New Jersey LDCs also report sufficient access to production from the Marcellus Shale.⁷ For example, in its most recent annual review and revision of its basic gas supply service, New Jersey Natural Gas Company reported that “[t]he majority of the market area assets of the Company are positioned to take advantage of the natural gas produced in the Marcellus Shale.”⁸ As Dr. Dismukes makes clear, the data suggest that that the market does not demand additional transportation capacity or, more specifically, additional access to the Marcellus Shale.

This significant evidence notwithstanding, the DEIS accepts at face value PennEast’s assertion of need for the Project, and relies on that assertion almost exclusively in dismissing the no action alternative. Specifically, the DEIS suggests that

[i]f PennEast’s proposed facilities are not constructed, the Project shippers may need to obtain an equivalent supply of natural gas from new or existing pipeline systems. In response, PennEast or another natural gas transmission company would likely develop a new project or projects to provide the volume of natural gas contracted through the Project’s binding precedent agreements with the Project shippers. Alternatively, customers of the Project shippers could seek to use alternative fuel or renewable energy sources, which could require new facilities. In either case, construction of new pipelines or other energy infrastructure would result in environmental impacts that could be equal to or greater than those of the Project.

⁶ PSE&G, Initial Filing Motion, Supporting Testimony, and Tariff Modifications at Item 18, § 3, *In the Matter of Pub. Serv. Elec. & Gas Co.’s 2016/2017 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge*, Docket No. GR16060486 (N.J. Bd. Pub. Utils. Jun. 1, 2016).

⁷ *Id.* (“The ability of the Company to buy more economical gas supplies in the Marcellus region has provided the ability to turn back [] capacity at the expiration of [its] pipeline contracts,” with “both Trunkline and Panhandle.”); *see also* Pre-filed Direct Testimony and Exhibits of Jayana S. Shah at 6:10-11, attached to N.J. Natural Gas Co., Petition, *In the Matter of the Petition of N.J. Natural Gas Co. for the Annual Review & Revision of Its Basic Gas Supply Serv. (BGSS) & Conservation Incentive Program (CIP) Rates for F/Y 2017*, Docket No. GR16060482 (N.J. Bd. Pub. Utils. Jun. 1, 2016) (“The Company’s transport and storage assets are positioned to flow supply from Marcellus Shale.”).

⁸ *Id.* at 6:17-19.

DEIS at 3-3. For these reasons, the DEIS states that “the No Action Alternative would not be preferable to or provide a significant environmental advantage over the Project.”

Id. But the “need” that the Project purports to fill, which has been asserted by affiliates of the Project owners, is contrary to the utilization data presented above. Those data show that the forecasted demands of the LDCs that PennEast is designed to supply are already being met by existing gas supply arrangements and available transportation capacity. For these reasons, NJ Rate Counsel asks that the Commission not accept the findings of the DEIS, and urges that the Commission take a much closer look at the fundamental question of whether the capacity of the Project is, in fact, “needed.”

B. PennEast’s requested rate of return is excessive.

As described above, PennEast’s justification of the Project’s “need” consists of precedent agreements with affiliates of the Project owners—notwithstanding that those same affiliates appear to have sufficient capacity to meet demand through at least 2020. NJ Rate Counsel is concerned that the DEIS does not address that the “need” for the Project appears to be driven more by the search for higher returns on investment than any actual deficiency in gas supply or pipeline capacity to transport it. Even if there were in fact a demonstrated need for the transportation capacity PennEast proposes to offer, a reasonable, compensatory rate should be sufficient to bring that capacity to market. By contrast, and as explained below, PennEast is requesting rates calculated using a substantially above-market return on equity (“ROE”) of 14%, an equally above-market and unsupported 6.00% cost of debt, and a 60% equity-heavy capital structure. Application at 32. But the pursuit of rich financial incentives does not constitute a showing of “need” and is insufficient to justify the Project.

1. The potential to obtain a high award of a rate of return is creating the “need” for the PennEast Project.

As the Commission is well aware from its consideration in the last few years of both pipeline rate cases and a large number of Federal Power Act complaints, ROEs have been trending down significantly as a reflection of capital market realities. The Commission has been presented with applications of its Discounted Cash Flow (“DCF”) methodology that support ROEs in the 8% range.⁹ In this financial environment, the opportunity to receive a Commission-regulated return of 14% is tantamount to winning the lottery. NJ Rate Counsel is concerned that this opportunity may be a key motivating factor behind the Project.

As noted above, PennEast is 90% owned by affiliates of LDCs in Pennsylvania and New Jersey. Application at 10-11. Moreover, New Jersey Natural Gas, South Jersey Gas, and Pivotal Utility Holdings, Inc. (D/B/A Elizabethtown Gas) have signed precedent agreements for 385,000 Dth/d, or nearly 40%, of the subscribed capacity. Application at 10. At present, the NJ BPU has authorized New Jersey Natural Gas, South Jersey Gas, and Elizabethtown Gas to earn returns on common equity of up to 9.75%,¹⁰ 9.75%,¹¹ and

⁹ See, e.g., *Sw. Power Pool, Inc.*, Prepared Direct and Answering Testimony of Commission Trial Staff Witness Sophia Z. Luo, Ex. S-8, Docket No. ER16-204-001 (Aug. 2, 2016), eLibrary No. 20160802-5114 (recommending an ROE of 8.36%, which was the median of a zone of reasonableness of 6.51% to 9.50% for a six-month study period ending June 30, 2016 using a proxy group for a utility with an S&P credit rating of “A” and Moody’s credit rating of Baa1).

¹⁰ *In the Matter of Petition of New Jersey Natural Gas Co. for Approval of an Increase in Gas Base Rates and for Changes in its Tariff for Gas Serv., Approval of Safe Program Extensions, and Approval of Safe Extension and NJ Rise Rate Recovery Mechanisms Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and for Changes to Depreciation Rates for Gas Property Pursuant to N.J.S.A. 48:2-18* at 17, 22, line 30, Docket No. GR15111304 (N.J. Bd. Pub. Utils. Aug. 17, 2016).

¹¹ *In the Matter of the Petition of S. Jersey Gas Co. For Approval of Increased Base Tariff Rates and Charges for Gas Serv. and Other Tariff Revisions*, Decision and Order Approving Stipulations at 4, Docket No. GR13111137 (N.J. Bd. Pub. Utils. Sept. 30, 2014).

11.3%,¹² respectively. However, if these New Jersey LDCs buy transport on PennEast under Commission-regulated rates that provide a 14% ROE, New Jersey retail customers will pay that 14% return, not the return authorized by New Jersey regulators.

And the establishment by New Jersey regulators of rates of return in the 9-10% range is far from out-of-step with national trends; their rulings are consistent with both state commission decisions elsewhere and actual conditions in the capital markets. The table below provides data collected by Regulatory Research Associates that summarizes state regulator decisions establishing ROE and capital structure for gas utilities.

Average State Commission-Approved Rates of Return for Gas Utilities		
<u>Year</u>	<u>ROE</u>	<u>Equity Ratio</u>
2012	9.94%	51.13%
2013	9.68	50.60
2014	9.78	51.11
2015	9.60	49.93
2016	9.45	50.42

Source: Regulatory Research Associates, *Major Rate Case Decisions, January-June 2016*, July 15, 2016 at 5. (Note: 2016 figures are derived from year-to-date data through June 2016.)

Notably, the data show that, over the last five years, state regulators have consistently approved ROEs of less than 10% for natural gas utilities. If FERC uses a 14% ROE, however, to establish transportation rates, state regulators must permit LDCs to recover those costs. When a pipeline is owned by an affiliate of an LDC, and that affiliate is permitted by the Commission to recover an ROE above that approved by the state

¹² *In the Matter of the Petition of Pivotal Util. Holdings, Inc. d/b/a Elizabethtown Gas for Approval of Increased Based Tariff Rates and Charges for Gas Servs. and Other Tariff Revisions*, Decision and Order Approving Stipulation and Adopting Initial Decision at 3, Docket No. GR09030195 (N.J. Bd. Pub. Utils. Dec. 17, 2009).

regulator, the end result is that the parent of the affiliates receives the substantially higher return awarded by the Commission—the state commission decision notwithstanding.

2. The Commission should not reflexively award the Project a 14% ROE simply because other pipelines have been awarded 14% ROEs.

PennEast has provided no evidence or analysis that links the high ROE it seeks with the need to obtain investor capital to build the pipeline. To the contrary, the Project lacks the hallmarks that would justify assessing its risk as “extraordinary” as compared to other greenfield projects. Specifically, PennEast boasts that approximately 90% of the Project’s transportation capacity has been subscribed.¹³ The majority of the subscribed capacity consists of LDCs in New Jersey, Pennsylvania, and New York—meaning that it is subscribed by entities who are all but guaranteed to pay their bills. Moreover, even the non-LDC subscribers—predominantly electric power generators—have strong credit. Thus, there would seem to be little or no risk of either unsubscribed capacity or customer default.

PennEast’s capital structure is conservative. As can be seen from the utility data compiled by Regulatory Research Associates in the table above, regulated gas utilities have consistently been required to maintain an equity ratio around 50% equity. In contrast, PennEast proposes to maintain an equity-heavy capital structure of 60% equity.¹⁴ By comparison, the Commission has also awarded a 14% ROE in connection with proposed capital structures that included up to 75% debt,¹⁵ but PennEast’s proposed

¹³ Application at 10.

¹⁴ *Id.* at 32.

¹⁵ *Cross Bay Pipeline Co.*, 97 FERC ¶ 61,165, at 61,757-758 (2001), *vacated on other grounds*, 98 FERC ¶ 61,080 (2002) (“Cross Bay”) (awarding a 14% ROE with a 25% equity and 75% debt).

60% equity capital structure is significantly less risky. Accordingly, the proposed capital structure does not justify PennEast's proposed 14% ROE.

Rather than justify its requested ROE through Project-specific substantive evidence, PennEast asserts that awarding the exorbitant ROE it seeks is simply a matter of "keeping up with the Joneses," noting that there are "[o]ther new greenfield pipelines with approved overall rates of return that equal the 14% return on equity that PennEast proposes here."¹⁶ NJ Rate Counsel acknowledges that the Commission has awarded generous 14% rates of return to other greenfield pipelines in recent years. But in and of itself that does not justify a reflexive award of that same ROE, as the extant circumstances and those surrounding the first award of a 14% ROE are substantially different.

The Commission began granting ROEs of 14% nearly two decades ago,¹⁷ though those ROEs were initially granted in connection with imputed capital structures consisting of as much as 75% debt and no less than 50% debt.¹⁸ In the period since the Commission's 1997 *Alliance* decision, capital markets have changed significantly. The years since have included, *inter alia*, the "Great Recession," and the proliferation of

¹⁶ Application at 33.

¹⁷ See e.g., *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, P 53 & n.54 (2009), *subsequent history omitted* (citing *Mid-Atlantic Express, LLC*, 126 FERC ¶ 61,019, P 31 (2009), *vacated on other grounds*, 145 FERC ¶ 61,113 (2013) (capital structure of 70% debt); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, P 27 (2008) ("the Commission has approved equity returns of up to 14 percent as long as the equity component of the capitalization is no more than 50 percent"); *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, PP 32-33 (2005), *vacated on other grounds*, 136 FERC ¶ 61,114 (2011) (reducing the proposed 70% equity capital structure to 50%)). The Commission's award of a 14% ROE, provided the equity structure is less than 50%, goes back even further. See e.g., *Cross Bay*, 97 FERC ¶ 61,165, at 61,757-758 (2001), *vacated on other grounds*, 98 FERC ¶ 61,080 (2002) (awarding a 14% ROE with a 25% equity and 75% debt); *Vector Pipeline L.P.*, 85 FERC ¶ 61,083 at 61,303 (1998), *subsequent history omitted* (awarding a 14.5% ROE); *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149, at 61,592 (1997), *subsequent history omitted* (proposing a 12% base ROE with incentives enabling a maximum of 14% ROE).

¹⁸ See *supra* note 17.

hydraulic fracturing to recover previously inaccessible natural gas from substantial domestic shale gas reserves. Rather than approving facilities to import liquefied natural gas (“LNG”), the Commission is now approving facilities used for LNG exports. Given these seismic shifts in the facts on the ground, it is irrational to assume that the same return that was required in 1997 is appropriate now. There is no basis for the Commission approving a 14% ROE simply because earlier pipelines have received that ROE.

Present capital markets require much lower returns and investors no longer require the same returns that they required twenty years ago. While the median result of the Commission’s Discounted Cash Flow analysis may not yield the appropriate ROE for a greenfield pipeline, it provides the measure of the return investors require. For example, although not a greenfield pipeline, the Commission recently ordered a new pipeline company to use the 10.55% ROE¹⁹ that the Commission determined to be the just and reasonable ROE in *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC 61,040, at P 642 (2013), *denying stay*, 145 FERC ¶ 63,107 (2013), *denying reconsideration*, 146 FERC ¶ 63,001 (2014), *reh’g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016). If a 10.55% ROE provides a sufficient return for a start-up pipeline company, a 14% ROE is not required for a pipeline that claims a 90% subscription rate, largely by LDCs whose affiliates own the pipeline. As such, it would be arbitrary and capricious for the Commission to approve a 14% ROE for PennEast simply because it has awarded other pipelines such a return.

¹⁹ *First ECA Midstream LLC*, 155 FERC ¶ 61,222, P 23 (2016).

3. PennEast should be limited to a 50% equity capital structure.

As noted above, the genesis of the Commission's award of 14% ROEs was in the context of capital structures that were heavily weighted with debt—as much as 75%.²⁰ The Commission reduced what it then deemed to be equity-heavy proposed capital structures to reflect that its prior approvals were for debt-heavy structures.²¹ If the Commission determines—notwithstanding the significant changes in the capital markets and the natural gas industry over the last twenty years—that the Project requires a 14% ROE, then the Commission must also limit PennEast's capital structure to 50% equity.

C. PennEast's proposed 6.0% cost of debt is unsupported and excessive because it substantially exceeds the current market.

PennEast has not supported its request for a 6.00% cost of debt, but points again to other pipelines filings that were certificated more than five years ago and involve different markets.²² PennEast offers no objective evidence as to what the cost of debt will be for the Project.

The Commission, however, knows what interest rates utility bond issuances command. Moody's reports that the monthly trend of long-term utility bond rates, whether for "A" rated or "Baa" rated, has been down during 2016. According to Moody's, "A" rated bonds have declined from 4.27% in January to 3.57% in July. Even if PennEast bonds are considered to be nearly junk and rated at "Baa", a highly unlikely scenario given its ownership by affiliates of regulated utilities and which regulated

²⁰ See *supra* note 17.

²¹ *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, at PP 32-33 (2005), *vacated on other grounds*, 136 FERC ¶ 61,114 (2011) (reducing a proposed 70% equity structure to 50%).

²² Application at 32 & n. 21.

utilities have signed precedent agreements reserving substantially all of the pipeline’s capacity, Moody’s reports that “Baa” bonds have declined from 5.49% in January to 4.16% in July. The table below provides the monthly data.

Long-term Bond Yields in 2016				
Month	Moody’s Utility		U.S. Treasury	
	A	Baa	10-year	30-year
January	4.27%	5.49%	2.09%	2.86%
February	4.11	5.28	1.78	2.62
March	4.16	5.12	1.89	2.68
April	4.00	4.75	1.81	2.62
May	3.93	4.60	1.81	2.63
June	3.78	4.47	1.64	2.45
July	3.57	4.16	1.50	2.23

Source: Bd. of Governors of the Fed. Reserve Sys., *Selected Interest Rates (Daily)* – H.15, <https://www.federalreserve.gov/releases/h15/data.htm> (follow (1) “U.S. government securities,” (2) “Treasury constant maturities,” (3) “Nominal,” (4) “10-year” and select “Monthly” hyperlink; then repeat these steps but replace “10-year” with “30-year” in step (4) (last visited Sept. 9, 2016); Moody’s Bond Record, August 2016.

This table also illustrates the parallel decline in ten-year and thirty-year Treasury yields. Compared with this data, PennEast’s assertion of a debt cost of 6.00% is substantially above market.

In a more recent decision, the Commission has imputed a much more realistic debt rate. In the *First ECA Midstream* proceeding, the pipeline requested—and the Commission accepted—an imputed debt rate of 3%.²³ NJ Rate Counsel understands that this decision was issued after PennEast’s application was filed, but urges the Commission

²³ *First ECA Midstream LLC*, 155 FERC ¶ 61,222, PP 22-23.

not to ignore that PennEast's unsupported imputed cost of debt is double what the Commission has just accepted.

The Commission should recognize the reality of the financial market in which PennEast will issue its debt, and should impute a debt cost consistent with its recent precedent and consistent with actual debt market rates.

III. CONCLUSION

NJ Rate Counsel respectfully requests that the Commission take the forgoing comments and the accompanying Dismukes Affidavit into consideration in determining the actions that should be taken concerning PennEast's request for authorization to construct and operate the Project.

Respectfully submitted,

/s/ Scott H. Strauss

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September 12, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 12th day of September, 2016.

/s/ Amber L. Martin

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FEDERAL ENERGY REGULATORY COMMISSION

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Docket No. Docket No. CP15-558-000

AFFIDAVIT OF DAVID E. DISMUKES, PH.D.

I. Introduction

1. My name is David E. Dismukes. My business address is 5800 One Perkins Place Drive, Suite 5-F, Baton Rouge, Louisiana, 70808. I am a Consulting Economist with Acadian Consulting Group (“ACG”), a research and consulting firm that specializes in the analysis of regulatory, economic, financial, accounting, and public policy issues associated with energy and infrastructure industries. ACG is a Louisiana-registered partnership, formed in 1995, and is located in Baton Rouge, Louisiana.

2. I hold both M.S. and Ph.D. degrees in economics from Florida State University. Over the past twenty-eight years, I have been actively involved in research, government service, and consulting involving energy and infrastructure industries. My professional experience includes the examination of economic, statistical, and public policy issues in regulated and energy industries.

3. I have participated in over 300 regulatory proceedings in twenty-five states and have prepared expert witness testimony, reports, and affidavits in Arkansas, Arizona, Colorado, Delaware, Florida, Indiana, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, Ohio, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, the District of Columbia, and before the Federal Energy Regulatory Commission (“FERC”). I have also testified before the U.S. Congress and various state legislatures.

4. In addition to my consulting work, I serve as a Professor, Executive Director, and Director of Policy Analysis at the Center for Energy Studies, Louisiana State University (“LSU”). I am also a full Professor in the College of the Coast and the Environment where I serve on the faculty of the Department of Environmental Sciences and as the Director of the

Coastal Marine Institute. I am also an Adjunct Professor in the E.J. Ourso College of Business Administration and I am a full member of the LSU Graduate Faculty.

5. I have published over 200 articles, professional papers, reports, book chapters, books, and manuscripts on energy and infrastructure industries. My professional research experience includes the analysis of a wide range of issues related to regulated energy companies, particularly electric and natural gas utilities. This research includes the examination of resource planning issues, power and natural gas market restructuring, ratemaking and cost recovery issues, power plant efficiency, multi-area dispatch modeling issues, ratemaking and cost of service modeling, and the integration of environmental considerations on utility operations.

6. A copy of my academic vitae has been provided as Attachment 1 to this affidavit and includes a list of my professional employment positions, publications, technical reports, presentations, and expert reports, testimonies, and affidavits.

7. I have worked as an advisor or consultant to the New Jersey Division of Rate Counsel (“NJ Rate Counsel”) for over 10 years. My work has primarily been associated with advising NJ Rate Counsel on a variety of ratemaking, public policy, infrastructure, and energy market issues. I have specifically worked on a number of natural gas policy, ratemaking, natural gas infrastructure replacement and resiliency, and natural gas procurement issues associated with New Jersey’s investor-owned natural gas utilities.

8. I have reviewed the peak day requirements for three New Jersey Local Distribution Companies (“LDCs”): Public Service Electric & Gas Company (“PSE&G”); South Jersey Gas Company (“SJG”); and Elizabethtown Gas Company (“Elizabethtown”), as well as three Pennsylvania LDCs: UGI Utilities; UGI Central Penn Gas; and PECO.¹ These LDCs serve

¹ The relevant data for New Jersey’s fourth LDC, New Jersey Natural Gas, was unavailable and therefore not included in this analysis.

customers located in and around the PennEast facilities and, if the PennEast Pipeline is built, can be expected to be target customers of the Project.

9. For natural gas LDCs, a peak day is the highest 24-hour usage of natural gas during a year, and (for LDCs located in the Northeast) typically occurs during the winter heating season. LDCs use peak day requirement projections for planning purposes to ensure that enough supply capacity is available to meet demand and maintain reliable service to firm customers on the coldest days of the year. Because LDCs must be able to maintain firm deliveries of natural gas to retail customers on even the coldest day of winter, even if that coldest day reaches historically low temperatures, the peak day requirement is necessarily very conservative.

10. I have analyzed the forecasted peak day requirements of PSE&G, SJG, Elizabethtown, UGI Utilities, UGI Central Penn Gas, and PECO through 2020. A forecast through 2020 may seem to be a short period given the time necessary to permit, construct, and place an interstate pipeline in service. However, the 2020 forecast is appropriate because it reflects a reasonable time period in which an LDC could identify and procure capacity resource needs and alternatives. The peak day forecasts I examined show that these LDCs have stable loads with little forecasted growth. At this time, there is no evidence to suggest that these LDCs will experience any sudden or dramatic changes in these usage trends beyond 2020.

11. I have also reviewed the means by which PSE&G, SJG, Elizabethtown, UGI Utilities, UGI Central Penn Gas, and PECO presently serve their peak day requirements. This information is included in a series of 2016 filings made by each of these LDCs before their respective state regulators.² Through a mix of firm capacity on existing interstate pipelines,

² See, *In the Matter of Pub. Serv. Elec. & Gas Co.'s 2016/2017 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge*, Docket No. GR16060486 (N.J. Bd. Pub. Utils.); *In The Matter of The Petition of S. Jersey Gas Co. to Revise the Level of its Basic Gas Supply Service ("BGSS") Charge and to Revise the Level of its Conservation Incentive*

seasonal storage and liquefied natural gas (“LNG”) supplies, each LDC has natural gas supply service that is at or nearly at 100 percent of that LDC’s peak day requirement through 2020. I have not seen any evidence at this point suggesting that a continuation of each of the LDCs existing natural gas supply resources will become a challenge after 2020.

12. In the table below, I summarize my analysis of the state regulatory filings by PSE&G, South Jersey Gas, Elizabethtown Gas, UGI Utilities, UGI Penn, and PECO:

	PSE&G			South Jersey Gas			Elizabethtown Gas		
	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)
2015 - 2016	3,075,400	3,072,400	100%	n.a.	n.a.	n.a.	189,820	397,820	210%
2016 - 2017	3,089,600	3,074,500	100%	512,891	554,755	108%	285,070	402,610	141%
2017 - 2018	3,113,200	3,075,900	99%	520,555	564,755	108%	288,440	423,890	147%
2018 - 2019	3,141,000	3,078,500	98%	528,351	564,755	107%	n.a.	n.a.	n.a.
2019 - 2020	3,181,100	3,079,900	97%	536,280	564,755	105%	n.a.	n.a.	n.a.
	UGI Utilities			UGI Penn			PECO		
	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)	Peak Day Requirement ----- (Dth)	Total Gas Supply -----	Percent of Total (%)
2015 - 2016	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
2016 - 2017	827,320	812,343	98%	208,303	208,303	100%	802,834	720,017	90%
2017 - 2018	844,804	828,120	98%	209,752	209,187	100%	n.a.	n.a.	n.a.
2018 - 2019	862,288	843,288	98%	211,201	209,957	99%	n.a.	n.a.	n.a.
2019 - 2020	879,772	858,456	98%	212,650	210,727	99%	n.a.	n.a.	n.a.

Table 1. LDC Forecast Peak Day Requirement and Total Natural Gas Supply

13. I have also prepared a chart based on information compiled by industry consultants showing the average annual utilization of existing interstate natural gas pipelines that have historically transported natural gas to New Jersey, including Tennessee Gas Pipeline (“Tennessee”), Transcontinental Gas Pipeline (“Transco”), and Texas Eastern Transmission

Program (“CIP”) Charges for the Year Ending Sept. 30, 2017, Docket No. GR16060483 (N.J. Bd. Pub. Utils.); In The Matter of The Petition Of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas To Review Its Periodic Basic Gas Supply Serv. Rate, Docket No. GR16060485 (N.J. Bd. Pub. Utils.); In Re: UGI Utilities, Inc. 1307(f) Annual Purchased Gas Cost Filing 2016, Docket No. R-2016-2543309 (Pa. Pub. Util. Comm’n); In Re: UGI Penn Gas, Inc. 1307(f) Annual Purchased Gas Cost Filing 2016, Docket No. R-2016-2543311 (Pa. Pub. Util. Comm’n); and In Re: PECO Purchased Gas Cost No. 33 Filing Effective Dec. 1, 2016, Docket No. R-2016-2545925 (Pa. Pub. Util. Comm’n).

System (“Texas Eastern”). Specifically, the data shown below are culled from a 2013 Black & Veatch publication entitled, “Has Emerging Natural Gas Shale Production Affected Financial Performances of Interstate Pipelines?”³ The data show that the annual average utilization rates of these pipelines has significantly declined over the past few years.

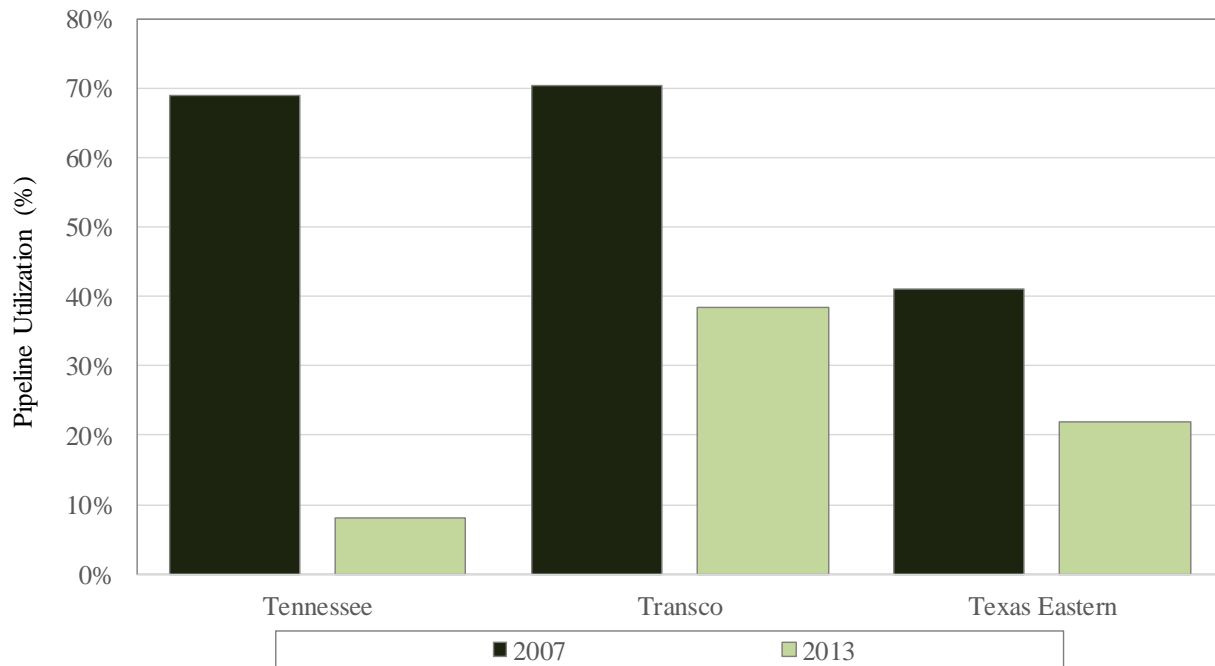


Figure 1. Average Annual Utilization of Natural Gas Transportation Pipelines

14. While Tennessee, Transco, and Texas Eastern have historically transported natural gas from the Gulf Coast region, each of these pipelines has interconnections with other pipelines that directly serve the shale gas regions that supply much of the natural gas used in the Mid-Atlantic region.

³ The publication is available at: Denny Yeung, Black & Veatch, *Has Emerging Natural Gas Shale Production Affected Financial Performances of Interstate Pipelines?* (2013) <http://bv.com/energy-strategies-report/august-2013-issue/has-emerging-natural-gas-shale-production-affected-financial-performances-of-interstate-pipelines>.

15. My review of state regulatory filings has also revealed that PSE&G has turned back 145,000 Dth/d of firm capacity in the past year.⁴ Not only is this firm capacity now available to other LDCs, but it also demonstrates that the region currently has adequate alternative means to obtain natural gas supply. In my experience, an LDC that is concerned about its ability to access gas supplies does not turn back such substantial capacity.

⁴ PSE&G, Initial Filing Motion, Supporting Testimony and Tariff Modifications at Item 18, §3, *In the Matter of Pub. Serv. Elec. & Gas Co.'s 2016/2017 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge*, Docket No. GR16060486 (N.J. Bd. Pub. Utils. June 1, 2016).

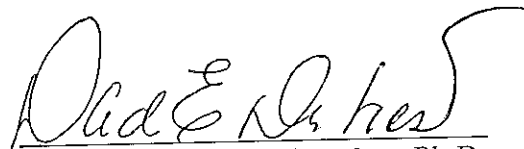
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PennEast Pipeline Company, LLC) Docket No. CP15-558-000
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State of Louisiana)
Parish of East Baton Rouge)
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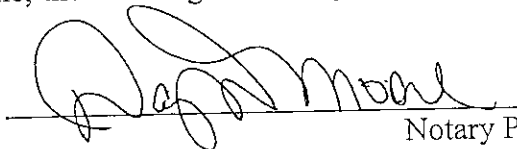
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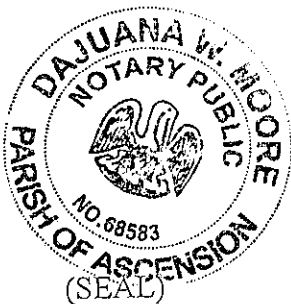
I, David E. Dismukes, being duly sworn, depose and state that the contents of the foregoing Affidavit on behalf of the New Jersey Division of Rate Counsel, are true, correct, accurate and complete, to the best of my knowledge, information and belief.

THIS DOCUMENT NOT
PREPARED BY
THE UNDERSIGNED NOTARY
ATTESTING TO SIGNATURES ONLY


David E. Dismukes, Ph.D.

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this 9th
day of September 2016.


Notary Public
Dajuana W. Moore, Notary Public No. 68583



17590 Perkins Rd. Ste A Baton Rouge
(Address of Notary) LA 70810

My Commission Expires:
"Commissioned for Life"