



McNees
Wallace & Nurick LLC

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CASE MANAGEMENT
2019 AUG 29 11:05
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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FORWARD
CASE MANAGEMENT
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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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August 28, 2019

VIA UPS

Ms. Aida Camacho-Welch, Secretary
Office of the Secretary
Board of Public Utilities
44 S. Clinton Ave., 9th Floor
Trenton, NJ 08625

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

RE: In the Matter of The Petition Of Soundview Paper Company, LLC to Modify the Electric and Natural Gas Societal Benefits Charge Due to Changed Circumstances; Docket Nos. ER19070812/GR19070813

Dear Secretary Camacho:

Enclosed for filing, please find the Agreement of Non-Disclosure of Information Claimed to be Confidential, which has been circulated and signed by the parties, and is being submitted by Soundview Paper Company, LLC on behalf of the parties in the above-referenced proceeding.

We are enclosing an additional copy of this filing. Please date-stamp our copy and return it to us in the enclosed, postage-paid envelope.

Other parties in this proceeding will receive electronic service of the enclosed document.

Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Kenneth R. Stark (NJ Bar I.D.: 003832012)

Counsel to Soundview Paper Company, LLC
Enclosures

c: Service List (via Email)

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SERVICE LIST

In the Matter of The Petition Of Soundview Paper Company, LLC to Modify the Electric and Natural Gas Societal Benefits Charge Due to Changed Circumstances

BPU Docket No. _____

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

IN THE MATTER OF THE PETITION OF SOUNDVIEW PAPER COMPANY, LLC TO MODIFY THE ELECTRIC AND NATURAL GAS SOCIETAL BENEFITS CHARGE DUE TO CHANGED CIRCUMSTANCES	: PETITION : : BPU DOCKET NOS. ER19070812 / : GR19070813 :
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**AGREEMENT OF NON-DISCLOSURE
OF
INFORMATION CLAIMED TO BE CONFIDENTIAL**

It is hereby AGREED, as of the date(s) so indicated below, by and among Marcal Manufacturing, LCC d/b/a Soundview Paper Company, LLC (“Soundview” or “Petitioner”), the Staff of the New Jersey Board of Public Utilities (“Board Staff”), Public Service Electric & Gas (“PSE&G”), and the Division of the Rate Counsel (“Rate Counsel”) (collectively, the “Parties”), who have agreed to execute this Agreement of Non-Disclosure of Information Claimed to be Confidential (“Agreement”), and to be bound thereby that:

WHEREAS, in connection with the above-captioned proceeding before the Board of Public Utilities (the “Board”), Soundview and/or another party (“Producing Party”) may be requested or required to provide petitions, pre-filed testimony, other documents, analyses and/or other data or information regarding the subject matter of this proceeding that the Producing Party may claim constitutes or contains confidential, proprietary or trade secret information, or which otherwise may be claimed by the Producing Party to be of a market-sensitive, competitive, confidential or proprietary nature (hereinafter sometimes referred to as “Confidential Information” or “Information Claimed to be Confidential”); and

WHEREAS, the Parties wish to enter into this Agreement to facilitate the exchange of information while recognizing that under Board regulations at N.J.A.C. 14:1-12 et

seq., a request for confidential treatment shall be submitted to the Custodian who is to rule on requests made pursuant to the Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq., unless such information is to be kept confidential pursuant to court or administrative order (including, but not limited to, an Order by an Administrative Law Judge sealing the record or a portion thereof pursuant to N.J.A.C. 1:1-14.1, and the parties acknowledge that an Order by an Administrative Law Judge to seal the record is subject to modification by the Board), and also recognizing that a request may be made to designate any such purportedly confidential information as public through the course of this administrative proceeding; and

WHEREAS, the Parties acknowledge that unfiled discovery materials are not subject to public access under OPRA; and

WHEREAS, the Parties acknowledge that, despite each Party’s best efforts to conduct a thorough pre-production review of all documents and electronically stored information (“ESI”), some work product material and/or privileged material (“protected material”) may be inadvertently disclosed to another Party during the course of this proceeding; and

WHEREAS, the undersigned Parties desire to establish a mechanism to avoid waiver of privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent disclosure of protected material;

NOW, THEREFORE, the Parties hereto, intending to be legally bound thereby, DO HEREBY AGREE as follows:

1. The inadvertent disclosure of any document or ESI which is subject to a legitimate claim that the document or ESI should have been withheld from disclosure as protected material shall not waive any privilege or other applicable protective doctrine for that document or ESI or for the subject matter of the inadvertently disclosed document or ESI if the

Producing Party, upon becoming aware of the disclosure, promptly requests its return and takes reasonable precautions to avoid such inadvertent disclosure.

2. Except in the event that the receiving party or parties disputes the claim, any documents or ESI which the Producing Party deems to contain inadvertently disclosed protected material shall be, upon written request, promptly returned to the Producing Party or destroyed at the Producing Party's option. This includes all copies, electronic or otherwise, of any such documents or ESI. In the event that the Producing Party requests destruction, the receiving party shall provide written confirmation of compliance within thirty (30) days of such written request. In the event that the receiving party disputes the Producing Party's claim as to the protected nature of the inadvertently disclosed material, a single set of copies may be sequestered and retained by and under the control of the receiving party until such time as the Producing Party has received final determination of the issue by the Board of Public Utilities or an Administrative Law Judge provided that the Board has not modified or rejected an order by the Administrative Law Judge.

3. Any such protected material inadvertently disclosed by the Producing Party to the receiving party pursuant to this Agreement shall be and remain the property of the Producing Party.

4. Any Information Claimed to be Confidential that the Producing Party produces to any of the other Parties in connection with the above-captioned proceeding and pursuant to the terms of this Agreement shall be specifically identified and marked by the Producing Party as Confidential Information when provided hereunder. If only portions of a document are claimed to be confidential, the producing party shall specifically identify which portions of that document are claimed to be confidential. Additionally, any such Information

Claimed to be Confidential shall be provided in the form and manner prescribed by the Board's regulations at N.J.A.C. 14:1-12 et seq., unless such information is to be kept confidential pursuant to court or administrative order. However, nothing in this Agreement shall require the Producing Party to file a request with the Board's Custodian of Records for a confidentiality determination under N.J.A.C. 14:1-12 et seq. with respect to any Information Claimed to be Confidential that is provided in discovery and not filed with the Board.

5. With respect to documents identified and marked as Confidential Information, if the Producing Party's intention is that not all of the information contained therein should be given protected status, the Producing Party shall indicate which portions of such documents contain the Confidential Information in accordance with the Board's regulations at N.J.A.C. 14:1-12.2 and 12.3. Additionally, the Producing Party shall provide to all signatories of this Agreement full and complete copies of both the proposed public version and the proposed confidential version of any information for which confidential status is sought.

6. With respect to all Information Claimed to be Confidential, it is further agreed that:

(a) Access to the documents designated as Confidential Information, and to the information contained therein, shall be limited to the Party signatories to this Agreement and their identified attorneys, employees and consultants whose examination of the Information Claimed to be Confidential is required for the conduct of this particular proceeding.

(b) Recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to this Agreement to any person(s) other than their identified employees and any identified experts and consultants whom they may retain in connection with this proceeding, irrespective of whether any such expert is retained specially and

is not expected to testify, or is called to testify in this proceeding. All consultants or experts of any Party to this Agreement who are to receive copies of documents produced pursuant to this Agreement shall have previously executed a copy of the Acknowledgment of Agreement attached hereto as "Attachment 1," which executed Acknowledgment of Agreement shall be forthwith provided to counsel for the Producing Party, with copies to counsel for Board Staff and the Rate Counsel.

(c) No other disclosure of Information Claimed to be Confidential shall be made to any person or entity except with the express written consent of the Producing Party or their counsel, or upon further determination by the Custodian, or order of the Board, the Government Records Council or of any court of competent jurisdiction that may review these matters.

7. The undersigned Parties have executed this Agreement for the exchange of Information Claimed to be Confidential only to the extent that it does not contradict or in any way restrict any applicable Agency Custodian, the Government Records Council, an Administrative Law Judge of the State of New Jersey, the Board, or any court of competent jurisdiction from conducting appropriate analysis and making a determination as to the confidential nature of said information, where a request is made pursuant to OPRA, N.J.S.A. 47:1A-1 et seq. Absent a determination by any applicable Custodian, Government Records Council, an Administrative Law Judge, the Board, or any court of competent jurisdiction that a document(s) is to be made public, the treatment of the documents exchanged during the course of this proceeding and any subsequent appeals is to be governed by the terms of this Agreement.

8. In the absence of a decision by the Custodian, Government Records Council, an Administrative Law Judge, or any court of competent jurisdiction, the acceptance by

the undersigned Parties of information which the Producing Party has identified and marked as Confidential Information shall not serve to create a presumption that the material is in fact entitled to any special status in these or any other proceedings. Likewise, the affidavit(s) submitted pursuant to N.J.A.C. 14:1-12.8 shall not alone be presumed to constitute adequate proof that the Producing Party is entitled to a protective order for any of the information provided hereunder.

9. In the event that any Party seeks to use the Information Claimed to be Confidential in the course of any hearings or as part of the record of this proceeding, the Parties shall seek a determination by the trier of fact as to whether the portion of the record containing the Information Claimed to be Confidential should be placed under seal. Furthermore, if any Party wishes to challenge the Producing Party's designation of the material as Confidential Information, such Party shall provide reasonable notice to all other Parties of such challenge and the Producing Party may make a motion seeking a protective order. In the event of such challenge to the designation of material as Confidential Information, the Producing Party, as the provider of the Information Claimed to be Confidential, shall have the burden of proving that the material is entitled to protected status. However, all Parties shall continue to treat the material as Confidential Information in accordance with the terms of this Agreement, pending resolution of the dispute as to its status by the trier of fact.

10. Confidential Information that is placed on the record of this proceeding under seal pursuant to a protective order issued by the Board, an Administrative Law Judge, provided that the Board has not modified or rejected an order by the Administrative Law Judge, or any court of competent jurisdiction shall remain with the Board under seal after the conclusion of this proceeding. If such Confidential Information is provided to appellate courts for the

purposes of an appeal(s) from this proceeding, such information shall be provided, and shall continue to remain, under seal.

11. This Agreement shall not:

(a) Operate as an admission for any purpose that any documents or information produced pursuant to this Agreement are admissible or inadmissible in any proceeding;

(b) Prejudice in any way the right of the Parties, at any time, on notice given in accordance with the rules of the Board, to seek appropriate relief in the exercise of discretion by the Board for violations of any provision of this Agreement.

12. Within forty-five (45) days of the final Board Order resolving the above-referenced proceeding, all documents, materials and other information designated as "Confidential Information," regardless of format, shall be destroyed or returned to counsel for the Producing Party. In the event that such Board Order is appealed, the documents and materials designated as "Confidential Information" shall be returned to counsel for the Producing Party or destroyed within forty-five (45) days of the conclusion of the appeal.

Notwithstanding the above return requirement, Board Staff and the Rate Counsel may maintain in their files copies of all pleadings, briefs, transcripts, discovery and other documents, materials and information designated as "Confidential Information," regardless of format, exchanged or otherwise produced during these proceedings, provided that all such information and/or materials that contain Information Claimed to be Confidential shall remain subject to the terms of this Agreement. The Producing Party may request consultants who received Confidential Information who have not returned such material to counsel for the

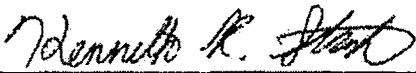
Producing Party as required above to certify in writing to counsel for the Producing Party that the terms of this Agreement have been met upon resolution of the proceeding.

13. The execution of this Agreement shall not prejudice the rights of any Party to seek relief from discovery under any applicable law providing relief from discovery.

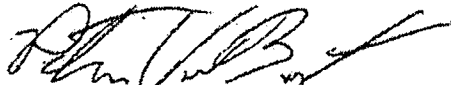
14. The Parties agree that one original of this Agreement shall be created for each of the signatory parties for the convenience of all. The signature pages of each original shall be executed by the recipient and transmitted to counsel of record for Soundview, who shall send a copy of the fully executed document to all counsel of record. The multiple signature pages shall be regarded as, and given the same effect as, a single page executed by all Parties.

IN WITNESS THEREOF, the undersigned Parties do HEREBY AGREE to the form and execution of this Agreement.

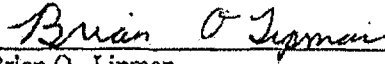
SOUNDVIEW PAPER COMPANY, LLC

By: 
Kenneth R. Stark
McNees Wallace and Nurick LLC
Counsel to Soundview Paper Company, LLC

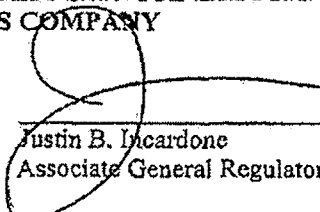
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**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY**

By: 
Justin B. Incardone
Associate General Regulatory Counsel

DATED: August 19, 2019

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

IN THE MATTER OF THE PETITION OF SOUNDVIEW PAPER COMPANY, LLC TO MODIFY THE ELECTRIC AND NATURAL GAS SOCIETAL BENEFITS CHARGE DUE TO CHANGED CIRCUMSTANCES	: PETITION : : BPU DOCKET NOS. ER19070812 / : GR19070813 :
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ACKNOWLEDGMENT OF AGREEMENT

The undersigned is an attorney, employee, consultant and/or expert witness for the Division of the Rate Counsel or an intervener who has received, or is expected to receive, Confidential Information provided by Soundview Paper Company, LLC or by another party ("Producing Party") which has been identified and marked by the Producing Party as "Confidential Information." The undersigned acknowledges receipt of the Agreement of Non-Disclosure of Information Claimed to be Confidential and agrees to be bound by the terms of the Agreement.

Dated: _____

By: _____

(Name, Title and Affiliation)