



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE MERGER OF SOUTH
JERSEY INDUSTRIES, INC. AND BOARDWALK
MERGER SUB, INC.

) ORDER ON MOTION
) REQUESTING EXTENSION
) OF TIME
)
) DOCKET NO. GM22040270
)

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Colleen A. Foley, Saul Ewing Arnstein & Lehr, IIF US Holding 2 LP, NJ Boardwalk Holdings LLC, and Boardwalk Merger Sub, Inc.
Kenneth T. Maloney, Esq., Cullen and Dykman, South Jersey Industries, Inc., SJI Utilities, Inc., South Jersey Gas, and Elizabethtown Gas
Deborah M. Franco, VP/Rates, Regulatory & Sustainability, SJI Utilities on behalf of South Jersey Industries, Inc., SJI Utilities, Inc., South Jersey Gas, and Elizabethtown Gas

BY COMMISSIONER MARY-ANNA HOLDEN

BACKGROUND

On April 25, 2022, IIF US Holding 2 LP ("IIF US 2"), NJ Boardwalk Holdings LLC ("Boardwalk"), Boardwalk Merger Sub, Inc. ("Merger Sub"), South Jersey Industries, Inc. ("SJI"), SJI Utilities, Inc. ("SJIU"), Elizabethtown Gas Company ("ETG"), and South Jersey Gas Company ("SJG") (collectively, "Joint Petitioners"), filed a petition with the New Jersey Board of Public Utilities ("Board") seeking authority for approval of an indirect change of control of ETG and SJG ("Joint Petition"). The proposed transaction would be effectuated by a merger of SJI and Merger Sub, a wholly-owned subsidiary of Boardwalk, which is in turn a wholly-owned, indirect subsidiary of IIF US 2 ("Proposed Transaction").¹

¹ See Joint Petition at pp. 1-2.

ETG serves approximately 306,000 customers in all or portions of Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren counties. SJG serves approximately 413,000 customers in all or portions of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties. Both gas utilities are wholly owned subsidiaries of SJIU, which in turn is a wholly owned subsidiary of SJI.

According to the Joint Petition, the Infrastructure Investments Fund ("IIF") is a private investment vehicle managing retirement funds of more than 60 million families with a \$20 billion net asset value and gross asset value of approximately \$40 billion mainly invested in critical infrastructure assets. IIF consists of two (2) master partnerships, IIF US 2, the proposed owner in the instant petition, and IIF Int'l Holding L.P., both advised by J.P. Morgan Investment Management Inc. IIF's 18 controlled portfolio companies are located primarily in the United States, Europe, and Australia, and include six utility companies with 10,000 employees serving more than 10 million customers.

On June 8, 2022, the Board retained the Joint Petition for hearing pursuant to N.J.S.A. 48:2-32, designating me as the Presiding Officer authorized to rule on all motions that arise during the pendency of these proceedings as well as to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.² Further, the Board directed that any entity seeking to intervene or participate in this matter file the appropriate application with the Board by July 8, 2022, and any party wishing to file a motion for admission of counsel, *pro hac vice*, should do so concurrently with any motion to intervene or participate.³

EDF's MOTION FOR AN EXTENSION OF TIME TO FILE FOR INTERVENTION⁴

On July 8, 2022, after the close of business, specifically 4:35 p.m., Counsel for the Environmental Defense Fund ("EDF") filed a motion requesting an extension of the deadline to file for intervention, thereby moving the deadline from July 8, 2022 to July 15, 2022. See June 2022 Order. EDF stated that, "[d]ue to the holiday week and the other press of business, EDF was unable to complete its process of considering this intervention by July 8" (emphasis added). As such, EDF's request was for additional time to evaluate the prudence of filing a motion to intervene. EDF was not seeking additional time to file a motion, but rather, was seeking additional time to consider filing a motion. As specifically stated in the correspondence, "[it] is possible that EDF will choose not to intervene." EDF concluded its motion by claiming that, "this one-week extension will not materially impact the schedule or any other aspect of this proceeding."

DISCUSSION AND FINDINGS

By its own writing, EDF is not requesting an extension of time to file a motion. Instead, EDF is requesting an extension of time to think about filing a motion. EDF acknowledged that, even if its motion is granted, "[i]t is [still] possible that EDF will choose not to intervene."

As such, EDF is seeking a decision regarding a potential interest in intervening; something that

² In re the Merger of South Jersey Industries Inc. and Boardwalk Merger Sub, Inc., Order Designating Commissioner, Setting Manner of Service and Bar Date, BPU Docket No. GM22040270, June 8, 2022 ("June 2022 Order").

³ Id.

⁴ Notwithstanding that this was filed as a letter and not a motion, counsel for EDF represented that it was their "intent" to file a motion, and as such, and for the purposes of a clean and concise record, this request will be treated as a formal motion.

may or may not occur in the future. Additionally, EDF was afforded a month to make this determination and file the appropriate motion, if any, with the Board. Instead, EDF remained silent until after the close of business, on the day all motions were due, to request an extension to "consider" filing a motion. Under the Rules governing motion practice, a decision maker must consider the prospect for confusion and delay resulting from inclusion of a party in a matter. See N.J.A.C. 1:1-16.3(a).

Finally, should EDF argue that the deadlines provided in the June 2022 Order can be modified pursuant to N.J.A.C. 1:1-16.2(a), which states motions can be filed at any time during a proceeding, please note that provision is limited to the ability of parties to file after a proceeding has begun; it does not bear upon the merits of the filing or upon the Board or Presiding Officer's rulings regarding the procedural schedule.

Therefore, after careful review of the individual facts, circumstances, and law, I **HEREBY FIND** that EDF failed to satisfy the legal requirements necessary to grant its motion. Accordingly, I **HEREBY DENY** EDF's motion.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 7/14/22


MARY-ANNA HOLDEN
COMMISSIONER

IN THE MATTER OF THE MERGER OF SOUTH JERSEY INDUSTRIES, INC. AND BOARDWALK
MERGER SUB, INC.

DOCKET NO. GM22040270

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