

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

<b>In the Matter of the Merger of South</b>	)	
<b>Jersey Industries, Inc. and Boardwalk</b>	)	<b>Docket No. GM22040270</b>
<b>Merger Sub, Inc.</b>	)	

**REQUEST FOR INTERLOCUTORY APPEAL OF ENVIRONMENTAL DEFENSE  
FUND AND INTERLOCUTORY APPEAL  
FROM  
JULY 14, 2022 ORDER DENYING EXTENSION REQUEST**

Pursuant to N.J.A.C. § 1:1-14.10, Environmental Defense Fund (“EDF”) respectfully requests that the New Jersey Board of Public Utilities (“Board” or “BPU”) consider and grant an interlocutory appeal by EDF from the July 14, 2022 Order of the Presiding Commissioner denying EDF’s request for a one-week extension to file a motion to intervene (“Order”) (Attachment A). The Order inaccurately characterized EDF’s extension request, and incorrectly concluded that EDF had failed to satisfy the legal requirements for its extension request to be granted. The Board should overturn the Order and grant EDF’s request for a one-week extension to seek intervention.<sup>1</sup>

**BACKGROUND**

1. 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, the “Joint Petitioners”), filed a Certified Joint Petition with the Board, proposing a change of control of ETG and SJG by a proposed merger of SJI and Merger

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<sup>1</sup> EDF also would welcome Commissioner Holden reconsidering the Order but files this interlocutory appeal to meet the time requirements of N.J.A.C. § 1:1-14.10 and to pursue relief as soon as possible to avoid any delays.

Sub, which is a wholly-owned subsidiary of Boardwalk, which is in turn a wholly-owned, indirect subsidiary of IIF US 2 (the “Proposed Transaction”).<sup>2</sup>

2. On June 8, 2022, the Board issued an order directing any entity seeking to intervene or participate in this matter to file the appropriate application with the Board by July 8, 2022; and designating Commissioner Holden as the Presiding Commissioner in this proceeding.<sup>3</sup>

3. On July 8, 2022, EDF filed a letter request seeking a one-week extension of the deadline to file for intervention in this docket, to the following Friday, July 15, 2022 (“Request”) (Attachment B).<sup>4</sup> Three others filed motions to intervene or participate on July 8, 2022.<sup>5</sup>

4. On July 14, 2022, Presiding Commissioner Holden issued the Order denying EDF’s extension request. No additional developments have occurred in the docket, and a procedural schedule for this matter has not yet been established.

5. On July 15, 2022, concurrent with the filing of this Interlocutory Appeal, EDF filed a motion to intervene in this proceeding (Attachment C).

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<sup>2</sup> See *In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.*, NJ BPU Docket No. GM22040270, Certified Joint Petition (Apr. 25, 2022) (“Merger Petition”).

<sup>3</sup> *In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.*, NJ BPU Docket No. GM22040270, Order Designating Commissioner, Setting Manner of Service and Bar Date (June 8, 2022).

<sup>4</sup> *In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.*, NJ BPU Docket No. GM22040270, EDF Request of One Week Extension to File Intervention (July 8, 2022) (“EDF Request”).

<sup>5</sup> *In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.*, NJ BPU Docket No. GM22040270, Motion to Intervene by Laborers-Employers Cooperation and Education Trust (July 8, 2022); Motion to Intervene Of New Jersey Large Energy Users Coalition (July 8, 2022); PSE&G Motion to Participate (July 8, 2022).

## STANDARD AND PRECEDENT

6. Interlocutory appeal may be granted in the interest of justice or for good cause shown. *In re Implementation of L. 2018, C.16 Regarding the Establishment of a Zero Emission Certificate Program for Eligible Nuclear Power Plants and Application for Zero Emission Certificates*, NJ BPU Docket Nos. E018080899, E018121338, E018121339, E018121337, 2019 N.J. PUC LEXIS 97, Order (Apr. 18, 2019).

7. The BPU has held that good cause existed for interlocutory review where there was a likelihood that the decision in the case would have an impact upon the status of the parties, the presentation of evidence, the decisional process, and/or the outcome of the case. *In re Middlesex Water Co.*, NJ BPU Docket No. WR17101049; OAL Docket No. PUC 16144-17, Order Granting Interlocutory Review (Jan. 31, 2018) (“*Middlesex*”).

### **THE ORDER DENYING EDF’S EXTENSION REQUEST SHOULD BE OVERTURNED AND EDF’S EXTENSION REQUEST SHOULD BE GRANTED**

8. EDF’s request for a one-week extension of the deadline to submit a motion to intervene in this proceeding was reasonable and timely. The Order denying EDF’s request for an extension should be overturned, and the Presiding Commissioner should fairly consider the intervention motion filed by EDF on July 15, 2022.

9. The Order finds that EDF submitted its extension request on July 8, 2022, at 4:35pm, which EDF does not dispute. The Order then incorrectly finds that that EDF filed its extension request “after the close of business.”<sup>6</sup> BPU rules provide that that the “offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.” N.J.A.C. § 14:1-1.4. The Board has not issued a public notice indicating a different

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<sup>6</sup> Order at 2, 3.

closing time. And the Board recently confirmed that the time-of-day filing deadline on a due date is 5:00pm, in an issuance on July 8, 2022 in Docket No. QO20100630. (Attachment D). Thus, the Board’s rules and other recent issuances indicate that the Board is open for filing until 5:00pm and there is no basis to find that a filing at 4:35pm is “after the close of business.” The Board should find that EDF filed the extension request on July 8, 2022 during business hours of the Board, pursuant to the Board rules.

10. The Order inaccurately characterizes EDF’s extension request as a request only for “time to think about filing a motion.”<sup>7</sup> EDF sought to be transparent, candid, and respectful in its extension request. EDF explained that it wanted to “carefully assess the proceeding,” which “will significantly impact two of New Jersey’s local gas distribution companies,” and sought an extension of the deadline to move for intervention.<sup>8</sup> EDF sought an additional week to complete its careful assessment of the proceeding and to complete and file its motion to intervene. EDF respectfully submits that the finding in the Order that EDF asked for “time to think about filing a motion” does not accurately describe the basis stated in the extension request.

11. EDF did not seek to create any confusion or delay. The request for a one-week extension of the intervention deadline does not delay the proceeding, since no procedural schedule has been established. And EDF’s inclusion in this proceeding does not create confusion. EDF further notes that it has been involved in more than ten BPU cases in recent years and made dozens of filings and that this is the first time it has requested additional time for a filing. It has consistently made filings on time.

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<sup>7</sup> Order at 2 (emphasis in original).

<sup>8</sup> EDF Request at 1.

12. There is good cause for the Board to accept and grant this Interlocutory Appeal. There is “a likelihood that this decision will have an impact upon the status of the parties, the presentation of evidence, the decisional process, and/or the outcome of the case.” *Middlesex* at 5. Accepting and granting this Interlocutory Appeal will ensure that EDF has an opportunity to seek intervenor status and demonstrate that its intervention in the SJI merger proceeding will contribute to the development of a complete record. No other entity has sought intervention in this proceeding to address environmental concerns. In the matter at hand, the Board must consider whether the Proposed Transaction meets the statutory standard, N.J.S.A. § 48:2-51.1; and “that positive benefits will flow to customers and the State of New Jersey” as a result of the merger, N.J.A.C. § 14:1-5.14(c). Consideration must be given to “the impact of the acquisition on . . . the provision of safe and adequate utility service at just and reasonable rates,” N.J.S.A. § 48:2-51.1.a, with “safe and adequate service” defined to include furnishing service “in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State,” N.J.S.A. § 48:2-23.

13. EDF brings scientific and technical expertise regarding environmental issues to this proceeding, which will contribute to the development of a comprehensive record, consistent with the *Middlesex* standard. EDF’s contribution to this proceeding is discussed further in the motion to intervene filed concurrently in this proceeding, see Attachment C.<sup>9</sup>

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<sup>9</sup> See Motion To Intervene and Request for Leave of Environmental Defense Fund, filed July 15, 2022 (contemporaneously with this filing). The motion includes a request for leave to file out of time.

## **CONCLUSION**

14. The Board should accept and grant this interlocutory appeal, overturn the Order denying EDF's request for a one-week extension, and grant the request for a one-week extension.

Respectfully submitted,

**ROTHFELDER STERN, L.L.C.**  
**COUNSEL FOR ENVIRONMENTAL DEFENSE FUND**



Dated: July 15, 2022

By: Martin C. Rothfelder, Esq.  
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**ATTACHMENT A**

***In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.,***  
**NJ BPU Docket No. GM22040270,**  
**Order on Motion Requesting Extension of Time**  
**(July 14, 2022)**



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE MERGER OF SOUTH	)	ORDER ON MOTION
JERSEY INDUSTRIES, INC. AND BOARDWALK	)	REQUESTING EXTENSION
MERGER SUB, INC.	)	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").<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

#### **EDF's MOTION FOR AN EXTENSION OF TIME TO FILE FOR INTERVENTION<sup>4</sup>**

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

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<sup>2</sup> 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").

<sup>3</sup> Id.

<sup>4</sup> 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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## **ATTACHMENT B**

**EDF Request of One Week Extension to File Intervention  
filed in NJ BPU Docket No. GM22040270  
July 8, 2022**

# ROTHFELDER STERN, L.L.C.

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**Please reply to Trenton**

July 8, 2022

***Via Electronic Mail***

Commissioner Mary-Anna Holden & Secretary Carmen Diaz  
Board of Public Utilities  
44 South Clinton Avenue  
Trenton, NJ 08625

RE: Docket No. GM22040270, *In the Matter of The Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.* – **EDF Request of One Week Extension to File Intervention**

Dear Commissioner Mary-Anna Holden and Secretary Diaz:

Our office represents Environmental Defense Fund (EDF) in this matter. Please accept this letter request for an extension of the July 8, 2022 deadline to file for intervention in this docket to July 15, 2022. This deadline was set in the Board's Order in this docket dated June 8, 2022 and effective June 15, 2022.

Due to the holiday week and the other press of business, EDF was unable to complete its process of considering this intervention by July 8.

This docket is an important one, as it will significantly impact two of New Jersey's local gas distribution companies. EDF is carefully assessing this proceeding and, if EDF deems it appropriate, it will seek intervention by July 15. It is possible that EDF will choose not to intervene.

We suggest this one-week extension will not materially impact the schedule or any other aspect of this proceeding and respectfully request that we receive this modest extension.

Sincerely,



Martin C. Rothfelder

CC: Service List on BPU 6/8/22 Order via e-mail

**ATTACHMENT C**

***In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.,***  
**NJ BPU Docket No. GM22040270,**  
**Motion to Intervene and Request for Leave of EDF**  
**(July 15, 2022)**

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

<b>In the Matter of the Merger of South</b>	)	
<b>Jersey Industries, Inc. and Boardwalk</b>	)	<b>Docket No. GM22040270</b>
<b>Merger Sub, Inc.</b>	)	

**MOTION TO INTERVENE AND REQUEST FOR LEAVE  
OF  
ENVIRONMENTAL DEFENSE FUND**

Pursuant to N.J.A.C. 1:1-16.3(a), Environmental Defense Fund (“EDF”) respectfully submits to the New Jersey Board of Public Utilities (“Board” or “BPU”) this motion to intervene in the above-captioned proceeding, with the attached supporting verification. EDF also requests leave to file one week after the July 8, 2022 filing deadline. In support thereof, EDF states:

**BACKGROUND FACTS**

1. EDF is a nonprofit membership organization with headquarters in New York. whose mission is to preserve the natural systems on which all life depends.<sup>1</sup> EDF has over 105,000 members in New Jersey, including members in the service territories of South Jersey Gas Company and Elizabethtown Gas Company. Guided by science and economics, EDF seeks practical and lasting solutions to resolve the most serious environmental problems—including addressing the urgent climate crisis. EDF uses the power of markets to achieve beneficial environmental outcomes and, consistent with its organizational purpose, is engaged in activities to facilitate cost-effective and efficient energy market designs and regulatory frameworks that encourage investment to modernize and decarbonize energy systems.

2. The petitioners herein, IIF US Holding 2 LP (“IIF US 2”), NJ Boardwalk Holdings LLC (“Boardwalk”), Boardwalk Merger Sub, Inc. (“Merger Sub”), South Jersey

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<sup>1</sup> EDF is a New York corporation and its full name is Environmental Defense Fund, Incorporated.



Industries, Inc. (“SJI”), SJI Utilities, Inc. (“SJIU”), Elizabethtown Gas Company (“ETG”), and South Jersey Gas Company (“SJG”) (collectively, the “Joint Petitioners”), propose a change of control of ETG and SJG by a proposed merger of SJI and Merger Sub, which is a wholly-owned subsidiary of Boardwalk, which is in turn a wholly-owned, indirect subsidiary of IIF US 2 (the “Proposed Transaction”).<sup>2</sup>

### COMMUNICATIONS

3. Correspondence concerning this Petition and proceeding should be sent to:

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<sup>2</sup> See *In the Matter of the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc.*, NJ BPU Docket No. GM22040270, Certified Joint Petition (Apr. 25, 2022) (“Merger Petition”).

### **STANDARD FOR INTERVENTION**

4. N.J.A.C. 1:1-16.1 provides that “any person or entity not initially a party, . . . who will be substantially, specifically and directly affected by the outcome” of a case may move to intervene. N.J.A.C. 1:1-16.3(a) further requires that the decision-maker consider:

- the nature and extent of the moving party’s interest in the outcome of the case;
- whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
- the prospect for confusion and delay arising from inclusion of the party; and
- other appropriate matters.

### **EDF MEETS OR EXCEEDS THE REQUIREMENTS FOR INTERVENTION**

5. EDF has a clear interest in the outcome of this case. Its interest is distinct from other parties in the case, and its participation will add measurably and constructively to the scope of the case.

6. EDF has developed comprehensive expertise regarding the need to align the business model of gas utilities, and the policy frameworks that facilitate those business models, with climate objectives. Achieving a stable climate future will require a dramatic reduction in fossil fuel use across all sectors, including decarbonization of natural gas distribution systems. EDF has published reports explaining how utility regulators can align decision making regarding gas utility operations, rates, and infrastructure with climate goals to drive reductions in greenhouse gas emissions; and explaining how to proactively address the risk that some gas utility assets will no longer be “used and useful” as gas use declines in buildings.<sup>3</sup> EDF seeks to

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<sup>3</sup> Natalie Karas et al., *Aligning Gas Regulation and Climate Goals: A Road Map for State Regulators*, Environmental Defense Fund (Jan. 2021), <https://blogs.edf.org/energyexchange/files/2021/01/Aligning-Gas-Regulation-and-Climate-Goals.pdf>; Andy Bilich et al., *Managing the Transition: Proactive Solutions for Stranded*

ensure that gas utilities are acting in alignment with the need for rapid, enduring reductions in greenhouse gas emissions; that gas utility customers are not harmed by harmful rate impacts resulting from stranded assets and other developments; and that decarbonization is achieved in an equitable, transparent manner that does not negatively impact overburdened and environmental justice communities.

7. Across the country, including in New Jersey, EDF advocates that gas utility investments and operations must be consistent with climate targets established by state and local governments and utilities themselves, and that careful regulatory oversight is needed to ensure the shift to decarbonization is underway. In New Jersey, EDF presented recommendations regarding the need for decarbonization of gas distribution utilities during the development of the Energy Master Plan,<sup>4</sup> and EDF has engaged productively before the Board in matters regarding gas capacity and gas planning. In reaction to comments and an analysis of available pipeline capacity submitted by EDF and allies,<sup>5</sup> the Board initiated an inquiry into whether “the current and future natural gas supply and infrastructure will continue to meet New Jersey’s demands, as well as how evolving environmental concerns may drive changes in the way natural gas is transported and used in New Jersey.”<sup>6</sup> EDF and allies subsequently presented a detailed analysis recommending that the Board implement an updated gas planning review process that aligns

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*Gas Asset Risk in California*, Environmental Defense Fund (2019), [https://www.edf.org/sites/default/files/documents/Managing\\_the\\_Transition\\_new.pdf](https://www.edf.org/sites/default/files/documents/Managing_the_Transition_new.pdf).

<sup>4</sup> See Comments of Environmental Defense Fund re: Energy Master Plan: Policy Vision to 2050 (Sept. 13, 2019).

<sup>5</sup> *In the Matter of the Exploration of Gas Capacity and Related Issues*, NJ BPU Docket No. GO19070846, Comment of Environmental Defense Fund and New Jersey Conservation Foundation (Oct. 22, 2019).

<sup>6</sup> *In the Matter of the Exploration of Gas Capacity and Related Issues*, NJ BPU Docket No. GO19070846, Order Soliciting Independent Consultant at page 4 (May 5, 2020).

with the state's clean energy and climate objectives.<sup>7</sup> And EDF and allies have thoughtfully engaged in reviewing the Analysis of Natural Gas Capacity to Serve New Jersey Firm Customers report prepared by London Economics International for the Board.<sup>8</sup>

8. In addition, EDF has engaged in a focused set of scientific, technical, and policy-oriented projects to develop, demonstrate, and foster commercialization of advanced leak detection technology and data analytics methods for use by local gas distribution utilities. In collaboration with Google Earth Outreach, Colorado State University, and various natural gas utilities, EDF managed a project that uses Google Street View cars equipped with methane concentration analyzers to identify and quantify methane leaks from distribution pipelines.<sup>9</sup> The project demonstrated the benefits of state-of-the-art technological solutions, created pathways for the integration of leak quantification and advanced leak detection technology into utility operations, and helped commercialize tools to assist utilities in planning and implementing leak abatement and leak-prone pipe replacement projects.

9. The Board has granted EDF intervention in previous gas utility infrastructure proceedings: the Elizabethtown "SMART" infrastructure proceeding,<sup>10</sup> the Public Service

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<sup>7</sup> *In the Matter of Natural Gas Commodity and Delivery Capacities in the State of New Jersey – Investigation of the Current and Mid-Term Future Supply and Demand*, NJ BPU Docket No. GO20010033 & *In the Matter of the Exploration of Gas Capacity and Related Issues*, NJ BPU Docket No. GO19070846, Comments of Environmental Defense Fund and New Jersey Conservation Foundation (May 13, 2021).

<sup>8</sup> See NJ BPU Docket Nos. GO20010033 & GO19070846, Comments of Environmental Defense Fund, New Jersey Conservation Foundation, & Columbia Law School's Sabin Center for Climate Change Law (Feb. 8, 2022).

<sup>9</sup> Further information is available at: <https://www.edf.org/climate/methanemaps>.

<sup>10</sup> *In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas for Approval of a Safety, Modernization and Reliability Program and Associated Cost Recovery Mechanism*, Docket No. GR15091090, (February 18, 2016).

Electric and Gas Company (“PSE&G”) Energy Strong proceeding,<sup>11</sup> the Gas System Modernization (“GSMP”) proceeding,<sup>12</sup> the PSE&G GSMP II proceeding,<sup>13</sup> an ETG Infrastructure Investment Program proceeding,<sup>14</sup> and the recently concluded SJG Infrastructure Investment Program proceeding.<sup>15</sup>

10. EDF actively participated in the above-referenced proceedings. It filed testimony, propounded discovery, and participated in settlements. The approved settlements contain provisions proposed by EDF that were not part of the initial utility filings or plans. EDF’s interventions and active participation have made positive contributions in these proceedings for the benefit of its members and the public. In the PSE&G GSMP case, the Board acknowledged EDF’s participation and beneficial contribution in a press release noting that “data on methane

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<sup>11</sup> *In the Matter of Public Service Electric and Gas Company for Approval of The Energy Strong Program*, Docket Nos. EO13020155 and GO13020156, Order Approving Stipulation of Settlement (May 21, 2014).

<sup>12</sup> *In the Matter of Public Service Electric and Gas Company for Approval of a Gas System Modernization Program and Associated Cost Recovery Mechanism*, Docket No. GR15030272, Order (July 2, 2015).

<sup>13</sup> *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Next Phase of The Gas System Modernization Program and Associated Cost Recovery Mechanism (“GSMP II”)*, Docket No. GR17070776, Decision and Order Approving Stipulation (May 22, 2018).

<sup>14</sup> *In the Matter of the Petition of Elizabethtown Gas Company to Implement an Infrastructure Investment Program (“IIP”) and Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A*, Docket No. GR18101197, Final Decision and Order Approving Stipulation (June 12, 2019).

<sup>15</sup> *In the Matter of the Petition of South Jersey Gas Company to Implement an Infrastructure Investment Program (“IIP”) and Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A*, Docket No. GR20110726, Decision and Order Approving Stipulation of Settlement (June 8, 2022).

emissions from the Environmental Defense Fund (EDF) will be used” to “ensure that work is prioritized.”<sup>16</sup>

11. In this proceeding, the Joint Petitioners must show that the Proposed Transaction is in the public interest, meets the statutory standard at N.J.S.A. § 48:2-51.1, and “that positive benefits will flow to customers and the State of New Jersey” as a result of the merger, N.J.A.C. § 14:1-5.14(c). Among other requirements, consideration must be given to “the impact of the acquisition on . . . the provision of safe and adequate utility service at just and reasonable rates.” N.J.S.A. § 48:2-51.1.a. This standard requires the consideration of environmental issues because the statutory definition of “safe and adequate service” includes the “furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State.” N.J.S.A. § 48:2-23.

12. EDF and its members have a direct and substantial interest in the issues raised in this proceeding and will be directly affected by the outcome. The management, investments, and operations of ETG and SJG have the potential to contribute to, or detract from, the achievement of New Jersey’s climate objectives. The Joint Petitioners assert this merger will render SJI — and thus its subsidiaries ETG and SJG—“well positioned to continue to serve its customers and communities, while executing on its initiatives in support of New Jersey’s Energy Master Plan.”<sup>17</sup> The Joint Petitioners further assert that ETG and SJG “will have efficient, cost-effective access to additional resources to continue to invest in distribution system modernization while maintaining high standards of customer service, safety, and reliability.”<sup>18</sup>

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<sup>16</sup> BPU News Release, *Board Approves PSE&G’s Natural Gas Main Replacement Program to Improve Reliability and Reduce Methane Emissions*, November 16, 2015.

<sup>17</sup> Merger Petition at 2.

<sup>18</sup> *Id.*

Further exploration of these issues in the proceeding at hand is essential for the Board to determine whether the Proposed Transaction is in the public interest, and whether “positive benefits will flow” to customers and the State of New Jersey, N.J.A.C. § 14:1-5.14(c).

13. EDF will not be adequately represented by any other party, and EDF’s participation in this matter will bring expertise regarding gas utility decarbonization pathways that will add measurably and constructively to the scope of the case. As with the other BPU proceedings discussed above, EDF will bring environmental, technical, and economic perspectives and expertise to this proceeding that will assist the Board in developing a full and complete record. There will be no confusion arising from inclusion of EDF in this proceeding, and its intervention will not cause undue delay in this case. EDF submitted a reasonable and timely request for an additional one week to seek intervention in this proceeding, and EDF abides by that proposed extension in this motion to intervene.

14. Based on the foregoing facts and reasons, EDF satisfies the requirements of N.J.A.C. 1:1-16.1 and meets or exceeds the requirements of N.J.A.C.1:1-16.3(a). Thus, its intervention should be granted.

#### **REQUEST FOR LEAVE TO FILE THIS MOTION ONE WEEK OUT OF TIME**

15. In an Order dated June 8, 2022 and effective June 15, 2022, the Board set a deadline of July 8, 2022 for filing motions to intervene in this docket. On July 8, 2022, EDF filed a request for a one-week extension of this deadline to July 15, 2022. On July 14, 2022,

Commissioner Holden issued an order denying EDF's request for an extension of time to file a motion to intervene.<sup>19</sup>

16. EDF respectfully requests leave to file this motion one week after the filing deadline. Due to the July 4 holiday week and other press of business, EDF was unable to complete its process of reviewing the case and preparing a motion for intervention by July 8. EDF respectfully submits that the one-week delay in filing will not materially impact the schedule or any other aspect of this proceeding.

### **CONCLUSION**

Wherefore, EDF respectfully requests that the Board grant EDF leave to file this intervention motion out of time and grant EDF's motion to intervene in this proceeding.

Respectfully submitted,

**ROTHFELDER STERN, L.L.C.  
COUNSEL FOR ENVIRONMENTAL DEFENSE  
FUND**



Dated: July 15, 2022

By: Martin C. Rothfelder, Esq.  
Rothfelder Stern, L.L.C.  
407 Greenwood Avenue, #301  
Trenton, NJ 08609  
(609) 394-1000

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<sup>19</sup> Concurrent with this filing, EDF has also filed an interlocutory appeal of the July 14 Order denying its request for a one-week extension to move for intervention. EDF has filed this motion and the interlocutory appeal matter immediately to avoid delay.



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

<b>In the Matter of the Merger of South</b>	)	
<b>Jersey Industries, Inc. and Boardwalk</b>	)	<b>Docket No. GM22040270</b>
<b>Merger Sub, Inc.</b>	)	

**VERIFICATION OF ERIN MURPHY**

I, Erin Murphy, of full and upon my oath, depose and say:

1. I am a Senior Attorney, Energy Markets & Utility Regulation, with Environmental Defense Fund, and I am authorized to make this statement on behalf of Environmental Defense Fund.
2. I have reviewed the attached Motion to Intervene and Request for Leave of Environmental Defense Fund and certify that the facts set forth therein with respect to the Environmental Defense Fund are true and accurate to the best of my knowledge and belief.

Date: July 15, 2022

  
Erin Murphy

## **ATTACHMENT D**

**NJ BPU Docket No. QO20100630,  
Clarifying Questions Set 2 (issued on behalf of the NJ BPU)  
(July 15, 2022)**

**Clarifying Questions Set 2**

New Jersey State Agreement Approach

Docket No. QO20100630

July 8, 2022

Prepared for

Jersey Central Power & Light Company

On behalf of The New Jersey Board of Public Utilities



**Responses are due by 5:00 pm EST on July 15, 2022**

**Instructions:**

The New Jersey Board of Public Utilities ("Board") staff ("Staff"), and its consultant The Brattle Group ("Brattle") have prepared the following questions to clarify your application submitted under the State Agreement Approach ("SAA"), Docket No. QO20100630.

All responses are due by **5:00 pm EST on July 15, 2022.**

Responses must be uploaded to the Board's e-filing system. See the Board's [e-filing website](#) for further instructions on e-filing. Please note, the Board's filing system can support 10 files of 100 MB each for each submittal session. If you need to submit additional files, you may then begin another submission session. If you experience difficulty uploading your documents, you may contact Andrea Hart, contact information below, to make alternative arrangements.

All responses will be made part of the Board's record and relied upon by the Board, Board Staff and Brattle in the Board's evaluation, and possible selection, of the SAA projects submitted under this docket.

**Confidentiality of Submitted Materials:**

All materials filed with the Board are public documents and are therefore subject to the good government sunshine laws of the State of New Jersey. However, the Board appreciates the confidential nature of some of the material that must be submitted with an Application and recognizes that New Jersey law allows Applicants to request protection of:

any information ... which in the person's or entity's opinion constitutes trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security, may assert a confidentiality claim by following the procedures set forth in this subchapter. N.J.A.C. 14-1-12.1(b).

To facilitate the review process, the Board will require all Project Sponsors to submit public (redacted) and confidential (unredacted) versions of their responses, per the Board's Rules of Practice and Procedure governing submission of confidential materials, N.J.A.C. 14-1-12.1, et seq., and the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA").

Each uploaded file must include "Public" or "Confidential" in the file name. File names must be identical except for including "Public" or "Confidential" at the end of the file name. The public versions of all documents must also be searchable PDF files, except where a different file type such as Excel is required.

For the confidential version of the responses, Project Sponsors must include a statement identifying each type of data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, and explaining the basis for the proposed redaction. Assertions that the entire response is exempt from public disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored by the Board unless appropriate.

The Board notes that it may elect to share confidential portions of the response materials with other New Jersey government entities, including, but not limited to, Rate Counsel and the Economic

Development Authority, during the evaluation period or post-award. Board Staff may also share the information to PJM.

Staff would like to share your Clarifying Questions responses with PJM; however, Staff wants to ensure all confidential information remains appropriately protected. As such, Staff will not share the responses, but requests that all bidders individually submit their Round 2 responses to *both* the Board (as described above) and PJM directly. The PJM OATT provisions cover treatment of confidential information of members that is provided to PJM by its members. To assure the protections of the OATT apply, please submit responses directly to PJM and mark as confidential per the Tariff provisions. T Any documents, data or other information submitted with a project proposal for which confidential treatment is requested must be submitted in writing and designated as confidential pursuant to the procedures adopted by PJM and include supporting justification. Any information received by PJM will be maintained as confidential under the PJM Operating Agreement, section 18.17.

**Please acknowledge receipt of these instructions.**

- JCP&L's first CQ response explains: "A gas insulated substation ("GIS") solution is under consideration for Smithburg substation to minimize environmental impact, although this may increase the estimated cost." (at 4) Please provide the amount of increased estimated cost for a GIS solution. Please compare the cost of the alternate GIS solution with the currently-proposed solution, and describe the incremental benefits of a GIS solution.