

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

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

**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.¹ 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

¹ 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”).²

COMMUNICATIONS

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

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² 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.³ EDF seeks to

³ 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,⁴ 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,⁵ 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.”⁶ EDF and allies subsequently presented a detailed analysis recommending that the Board implement an updated gas planning review process that aligns

Gas Asset Risk in California, Environmental Defense Fund (2019), https://www.edf.org/sites/default/files/documents/Managing_the_Transition_new.pdf.

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

⁵ *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).

⁶ *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.⁷ 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.⁸

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.⁹ 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,¹⁰ the Public Service

⁷ *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).

⁸ 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).

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

¹⁰ *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,¹¹ the Gas System Modernization (“GSMP”) proceeding,¹² the PSE&G GSMP II proceeding,¹³ an ETG Infrastructure Investment Program proceeding,¹⁴ and the recently concluded SJG Infrastructure Investment Program proceeding.¹⁵

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

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *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).

¹⁵ *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.”¹⁶

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.”¹⁷ 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.”¹⁸

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

¹⁷ Merger Petition at 2.

¹⁸ *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.¹⁹

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.
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¹⁹ 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.

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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