



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

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

) ORDER ON MOTIONS TO
) INTERVENE AND
) PARTICIPATE

) 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
Martin C. Rothfelder, Esq., Environmental Defense Fund
Steven S. Goldenberg, Esq., New Jersey Large Energy Users Coalition

BY COMMISSIONER MARY-ANNA HOLDEN

I. BACKGROUND AND APPLICABLE PROCEDURAL HISTORY

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 SJL.

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, and designated myself as the Presiding Commissioner 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

II. THE MOTIONS⁴

Motions to Intervene

New Jersey Large Energy Users Coalition

On June 28, 2022, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene.

According to its Motion, NJLEUC is an association whose members include large volume customers served by SJL. NJLEUC claimed it will be substantially, specifically, and directly affected because this proceeding will affect the cost and quality of natural gas service to its members. NJLEUC explained that its members' status as large end-use customers on the SJL system would provide a unique perspective and promote an informed and balanced presentation of the issues. NJLEUC further explained that this unique status of its members means NJLEUC's interests are substantially different from, and not adequately represented by, any other party. NJLEUC provided that its motion is timely, and inclusion in this matter will not delay or otherwise disrupt the proceeding. NJLEUC also agreed to work cooperatively with the other parties in the interest of administrative efficiency and economy.

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 I granted Intervenor status to the Environmental Defense Fund ("EDF") in a separate order on today's date. As such, this Order will not address EDF's Motion, but rather, all remaining Motions to Intervene and/or Participate.

New Jersey Laborers-Employers Cooperation and Education Trust

On July 8, 2022, the New Jersey Laborers-Employers Cooperation and Education Trust ("NJLECET") filed a Motion to Intervene.

According to its Motion, NJLECET is a nonprofit labor management fund representing over 25,000 laborers in New Jersey, and its membership is comprised of local unions engaged in the construction and heavy highway construction industries. NJLECET's management is comprised of representatives from labor and the Associated Construction Contractors of New Jersey, who work for New Jersey's utilities, including SJJ Utilities, Inc. and South Jersey Gas Company.

NJLECET argued that it could evaluate and comment upon this proceeding because its membership has extensive experience with New Jersey large-scale construction and the surrounding political and regulatory environment. NJLECET explained it could offer insight regarding the costs and feasibility of planned infrastructure projects, construction industry best practices for project continuity, economic impacts of infrastructure investment, and the impact of the current financing environment and amortized costs on long-term construction projects. NJLECET argued it would measurably and constructively advance this proceeding because its members, being experienced workers and employers in the construction industry, bring a unique perspective on the potential impact of the proceeding on New Jersey's Energy Master Plan. NJLECET also argued it could provide input on the impact of borrowing costs, and the interest rate environment on large-scale construction projects because it performs cost/benefit analysis related to large-scale construction projects. NJLECET argued its interests are unique from, and not adequately represented by, any other party to this proceeding, and that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLECET and its members. NJLECET argued its entry as "intervenor and/or as participant" would measurably and constructively advance this proceeding. NJLECET stated its intervention would not cause any delay because filed its Motion prior to any proceedings in this matter.

Motions to Participate

Atlantic City Electric Company

On July 7, 2022, Atlantic City Electric Company ("ACE") filed a Motion to Participate.

According to its Motion, ACE is a New Jersey electric public utility with approximately 560,000 customers. ACE argued it has a significant interest in this proceeding because its service territory overlaps SJG in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem counties. As ACE and SJG share certain services and programs for their customers, the results of this proceeding can significantly influence future ACE proceedings. ACE agreed to contribute to the development of a complete record for the proceeding without causing any delay or confusion.

Public Service Electric and Gas Company

On July 8, 2022, Public Service Electric and Gas Company ("PSE&G") filed a Motion to Participate.

According to its Motion, PSE&G is an electric and gas public utility with a service area consisting of a 2,600-square-mile diagonal corridor across the state from Bergen to Gloucester counties

servicing over 1.7 million gas and 2.1 million electric customers. PSE&G argued it has a significant interest in this proceeding as a gas distribution utility that is part of a holding company structure. PSE&G explained that this proceeding raises issues including money pools, ring fencing, tax, and other policy matters that could affect PSE&G's future operations. PSE&G agreed to abide by the schedule, and that its participation would not cause undue delay or confusion.

III. RESPONSES

On July 22, 2022, the Joint Petitioners and Rate Counsel filed responses to the Motions to Intervene and Participate.

Motions to Intervene

NJLEUC

Both the Joint Petitioners and Rate Counsel had no objection to NJLEUC's Motion to Intervene.

NJLECET

The Joint Petitioners had no objection to NJLECET's Motion to Intervene.

Rate Counsel objected to NJLECET's Motion to Intervene. Rate Counsel argued that NJLECET's interests are not legally protected under Title 48, and as such, NJLECET does not have a direct interest that would be affected by the outcome of the proceedings. However, Rate Counsel did not object to granting NJLECET participant status.

Motions to Participate

Both the Joint Petitioners and Rate Counsel had no objections to the Motions to Participate filed on behalf of ACE and PSE&G.

IV. DISCUSSION AND FINDINGS

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. 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;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, file a statement or brief, file exceptions, or all of these as determined by the trier of fact.

As the Board stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In the Matter of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

Motions to Intervene

NJLEUC

After consideration of NJLEUC's Motion to Intervene, and given the lack of any objections, I **HEREBY FIND** the members of NJLEUC, who represent large and identifiable customer groups serviced by SJG, will be directly and substantially affected by the outcome of this proceeding. I **FURTHER FIND**, pursuant to N.J.A.C. 1:1-16.3, that NJLEUC has met the standards for intervention as it has a significant interest in this proceeding, its interest is different from that of any other party, and it will add measurably and constructively to the proceeding without causing delay. I **HEREBY GRANT** NJLEUC's Motion to Intervene, pursuant to the authority granted to me by the Board under the June 8, 2022 Order.

NJLECET

After consideration of NJLECET's Motion to Intervene and Rate Counsel's opposition thereto, I believe that NJLECET failed to satisfy the requirements for intervention. N.J.A.C. 1:1-16.3(a) requires, in part, that I consider the nature and extent of NJLECET's interest in the outcome of this case. See N.J.A.C. 1:1-16.3(a)(1). NJLECET is a self-described labor management fund. NJLECET argued, in part, that it is positioned to evaluate and comment upon this proceeding because its membership has extensive experience with New Jersey large-scale construction. However, I agree with Rate Counsel that NJLECET's interests are not protected under Title 48. As such, I **HEREBY FIND** that the nature of NJLECET's limited interest does not rise to a level that warrants intervention, and thus, I **HEREBY DENY** NJLECET's Motion to Intervene pursuant to the authority granted to me by the Board under the June 8, 2022 Order.

However, I **HEREBY FIND** that NJLECET is likely to add constructively to the case without causing undue delay or confusion. As such, and in the alternative, I **HEREBY GRANT** participant status to NJLECET, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2), pursuant to the authority granted to me by the Board under the June 8, 2022 Order.

Motions to Participate

In reviewing motions to participate, I must consider whether the movant's interest is significant, and whether participation is likely to add constructively to the case without causing undue delay or confusion. See N.J.A.C. 1:1-16.6.

With regard to the Motions to Participate filed by ACE and PSE&G, after careful review of the individual facts and circumstances detailed in each motion, I **HEREBY FIND** that these entities' interest in this proceeding is sufficient to merit participation, and that such participation is likely to

add constructively to this matter without causing undue delay or confusion. Accordingly, and having received no objection, I **HEREBY GRANT** the Motions to Participate filed on behalf of ACE and PSE&G limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2), pursuant to the authority granted to me by the Board under the June 8, 2022 Order.

Summary of Intervenor and Participants

I **HEREBY FIND** that the following entities are **HEREBY GRANTED** Intervenor status in this matter: 1) EDF; and 2) NJLEUC.

I **FURTHER FIND** that the following entities are **HEREBY GRANTED** Participant status in this matter: 1) NJLECET; 2) ACE; and 3) PSE&G.

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: 8/10/2022

A handwritten signature in black ink, reading "Mary-Anna Holden". The signature is written in a cursive, flowing style.

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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