



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 MODIFYING
) PROCEDURAL SCHEDULE
)
) DOCKET NO. GM22040270

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Colleen A. Foley, Esq., 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, Esq., 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:

BACKGROUND AND 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

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 modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.² The Board directed all

¹ See Joint Petition at pp. 1-2.

² In re the Merger of South Jersey Industries Inc. and Boardwalk Merger Sub, Inc., Order Designating

entities seeking to intervene or participate to file the appropriate application with the Board on or before July 8, 2022, and any party wishing to file for admission of counsel *pro hac vice* should do so concurrently.³

On July 8, 2022, the Environmental Defense Fund (“EDF”) filed correspondence requesting a “One Week Extension to File Intervention.”⁴ On July 14, 2022, I denied EDF’s Motion, and the following day, EDF filed a Motion for Reconsideration and a Motion to Intervene.⁵ On August 10, 2022, I granted both EDF motions.⁶ Concurrently, I also granted intervenor status to the New Jersey Large Energy Users Coalition (“NJLEUC”), and participant status to Atlantic City Electric Company (“ACE”), Public Service Electric and Gas Company (“PSE&G”), and the New Jersey Laborers-Employers Cooperation and Education Trust (“NJLECET”).⁷

On August 17, 2022, I issued a Prehearing Order with Procedural Schedule attached as Exhibit A (“August 17 Procedural Schedule”).⁸ On October 18, 2022, I received correspondence from the Joint Petitioners seeking to amend the August 17 Procedural Schedule to allow for further settlement negotiations. The Joint Petitioners attached a proposed schedule for my consideration, and represented that Board Staff, the New Jersey Division of Rate Counsel, and NJLEUC had no objection to the submitted schedule (“Joint Petitioners Proposed Schedule”). The Joint Petitioners further represented that EDF’s counsel was not available on the proposed evidentiary hearing dates, and EDF had yet to confirm its witness’s availability.

On October 19, 2022, I received correspondence from EDF explaining that while it was “open to discussing a new procedural schedule,” the Joint Petitioners’ Proposed Schedule “is not well supported, is prejudicial, and should be rejected.” EDF argued that the Joint Petitioners do not identify any benefit to extending the timeline for filing testimony, and the filing of testimony will not preclude continued settlement negotiations. Additionally, EDF reiterated that its counsel is not available on February 13-15, 2023, and scheduling evidentiary hearings on those dates is prejudicial to EDF.

On October 20, 2022, the Joint Petitioners submitted a response to EDF’s October 19, 2022

Commissioner, Setting Manner of Service and Bar Date, BPU Docket No. GM22040270, June 8, 2022 (“June 2022 Order”).

³ Id.

⁴ Although EDF filed a letter and not a motion, for the purposes of a clean and concise record, this request was treated as a formal motion.

⁵ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order on Motion Requesting Extension of Time, BPU Docket No. GM22040270, July 14, 2022; see N.J.A.C. 1:1-16.3(a). Notwithstanding this was a Motion for Interlocutory Appeal, EDF noted it “also would welcome Commissioner Holden reconsidering the Order.” As such, I treated this as a Motion for Reconsideration. See EDF’s Motion for Reconsideration at p. 1, FN. 1.

⁶ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Decision on EDF Motion for Reconsideration and Motion to Intervene, BPU Docket No. GM22040270, August 10, 2022 (“EDF Order”).

⁷ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order on Motions to Intervene and Participate, BPU Docket No. GM22040270, August 10, 2022.

⁸ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Prehearing Order with Procedural Schedule, BPU Docket No. GM22040270, August 17, 2022.

correspondence, arguing that, "EDF seeks to waste limited administrative resources." The Joint Petitioners explained that, "it is a waste of time and limited resources . . . to litigate a matter if settlement can be achieved." The Joint Petitioners further explained that the filing of testimony would divert resources from settlement negotiations because as such testimony is a "triggering event" for litigation.

DISCUSSION AND FINDINGS

I reviewed, in detail, the Joint Petitioners' October 18, 2022 correspondence, the Joint Petitioners' Proposed Schedule, EDF's October 19, 2022 correspondence, and the Joint Petitioners October 20, 2022 correspondence. To allow further settlement negotiations and to ensure an equitable determination of the issues, I **HEREBY MODIFY** the Joint Petitioners' Proposed Schedule, and I **HEREBY ORDER** that the Modified Procedural Schedule, a copy of which is affixed to this Order, supersedes the August 17 Procedural Schedule. I **FURTHER ORDER** that the attached Modified Procedural Schedule is controlling as of the date of this Order.

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: 10/24/2022



MARY-ANNA HOLDEN
COMMISSIONER

MODIFIED PROCEDURAL SCHEDULE

**In the Matter of the Merger of South Jersey Industries, Inc.
and Boardwalk Merger Sub, Inc.
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Motions to Intervene/Participate	July 8, 2022
First Round Discovery Requests+	July 20, 2022
First Round Discovery Answers	August 3, 2022
Pre-Hearing Conference with Presiding Commissioner Holden	August 12, 2022
Second Round Discovery Requests	August 12, 2022
Second Round Discovery Answers	August 26, 2022
Discovery/Settlement Conference(s)	Week of August 29, 2022
Settlement Conference(s)	September 12, 14 (pm), 29 (pm), October 3 (am), and October 7(pm) (if needed)
Public Hearings	September 29 (4:30 pm and 5:30 pm)
Rate Counsel/Intervener Testimony	November 10, 2022
Discovery on Rate Counsel/Intervener Testimony	November 18, 2022
Responses to Discovery on Rate Counsel/Intervener Testimony	December 5, 2022
Joint Petitioners' Rebuttal Testimony	December 21, 2022
Discovery on Rebuttal Testimony	January 6, 2023
Responses to Discovery on Rebuttal Testimony	January 13, 2023
Evidentiary Hearings with oral surrebuttal	TBD by Commissioner
Initial and Reply Briefs	TBD by Commissioner after evidentiary hearings

+ Joint Petitioners agree that discovery is ongoing and will be responded to on a rolling basis, and Joint Petitioners will endeavor to answer all discovery within fifteen days of service or earlier, if possible and in accordance with N.J.A.C. 1:1-10.

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