



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.

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ORDER SETTING
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.” On July 14, 2022, I denied EDF’s request, and EDF filed a Motion for Reconsideration and a Motion to Intervene. On August 10, 2022, I granted both EDF Motions, and via a separate order, I 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”).⁴

On August 17, 2022, I issued a Prehearing Order with Procedural Schedule (“August 17 Procedural Schedule”).⁵ 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 provided a proposed schedule for my consideration, and represented that Board Staff, the New Jersey Division of Rate Counsel, and NJLEUC had no objection thereto. On October 19, 2022, I received correspondence from EDF arguing that the Joint Petitioners’ proposed schedule was prejudicial because the Joint Petitioners failed to identify a benefit to extending the deadline to file testimony, and EDF’s counsel was not available on the evidentiary hearing dates. On October 20, 2022, the Joint Petitioners responded, arguing that, “it is a waste of time and limited resources . . . to litigate a matter if a settlement can be achieved.” The Joint Petitioners further explained that the filing of testimony would divert resources from settlement negotiations because such testimony is a “triggering event” for litigation.

On October 24, 2022, I issued an Order Modifying the Procedural Schedule where I ordered that the Modified Procedural Schedule, attached to the Order, superseded the August 17 Procedural Schedule and was controlling as of October 24, 2022 (“October 2022 Modified Procedural Schedule”).⁶

JOINT PETITIONERS’ REQUEST TO ADOPT A REVISED PROCEDURAL SCHEDULE

On November 9, 2022, I received correspondence from the Joint Petitioners seeking adoption of a second proposed revised procedural schedule to allow further time for settlement discussions. The Joint Petitioners represented that, absent an objection from EDF regarding the date to file testimony, all parties consented to the Joint Petitioners’ request. Concurrently, I received correspondence from EDF supporting additional time for settlement discussions but objecting to

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

³ Id.

⁴ 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; 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.

⁵ 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.

⁶ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order Modifying Procedural Schedule, BPU Docket No. GM22040270, October 24, 2022.

a delay in filing testimony, arguing it is “unwarranted, unsupported, and counterproductive.”

DISCUSSION AND FINDINGS

I reviewed, in detail, my prior Orders in this matter, the October 2022 Modified Procedural Schedule, Joint Petitioners' November 9, 2022 correspondence, Joint Petitioners' second proposed revised procedural schedule, and EDF's November 9, 2022 correspondence. To allow further settlement negotiations and to ensure an equitable determination of the issues, I **HEREBY GRANT** the Joint Petitioners' request, and I **HEREBY ORDER** that the Second Modified Procedural Schedule, attached hereto as Exhibit A, supersedes the October 2022 Modified Procedural Schedule. I **FURTHER ORDER** that the Second 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: 11/29/2022



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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EXHBIT A: SECOND MODIFIED PROCEDURAL SCHEDULE

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

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	December 2, 2022
Discovery on Rate Counsel/Intervener Testimony	December 12, 2022
Responses to Discovery on Rate Counsel/Intervener Testimony	January 11, 2023
Joint Petitioners' Rebuttal Testimony	January 20, 2023
Discovery on Rebuttal Testimony	February 3, 2023
Responses to Discovery on Rebuttal Testimony	February 21, 2023
Evidentiary Hearings with oral surrebuttal++	TBD by Commissioner
Initial and Reply Briefs	TBD by Commissioner

+ 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.

++ Subject to Commissioner's Availability