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Attachment ACC-1 - List of Prior Testimonies

Attachment ACC-2 – Commitments Recommended by Rate Counsel

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 A. My name is Andrea C. Crane, and my business address is 2805 East Oakland Park
4 Boulevard, #401, Ft. Lauderdale, FL 33306.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am President of the Columbia Group, Inc., a financial consulting firm that specializes in
7 utility regulation. In this capacity, I analyze rate filings, prepare expert testimony, and
8 undertake various studies relating to utility rates and regulatory policy. I joined The
9 Columbia Group, Inc. (“Columbia Group”) in January 1989. I became President of the
10 firm in 2008.

11 **Q. Please summarize your professional experience in the utility industry.**

12 A. Prior to my association with the Columbia Group, Inc., I held the position of Economic
13 Policy and Analysis Staff Manager for GTE Service Corporation, from December 1987
14 to January 1989. From June 1982 to September 1987, I was employed by various Bell
15 Atlantic (now Verizon) subsidiaries. While employed at Bell Atlantic, I held assignments
16 in the Product Management, Treasury, and Regulatory Departments.

17 **Q. Have you previously testified in regulatory proceedings?**

18 A. Yes, since joining the Columbia Group, Inc., I have testified in over 400 regulatory
19 proceedings in the states of Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii,
20 Kansas, Kentucky, Maryland, New Jersey, New Mexico, New York, Oklahoma,
21 Pennsylvania, Rhode Island, South Carolina, Vermont, Washington, West Virginia and

1 the District of Columbia. These proceedings involved gas, electric, water, wastewater,
2 telephone, solid waste, cable television, and navigation utilities. A list of dockets in
3 which I have filed testimony over the past five years is included in Attachment ACC-1.

4 **Q. Have you previously participated in other proceedings involving utility mergers and**
5 **acquisitions?**

6 A. Yes, I have filed testimony and participated in numerous proceedings involving utility
7 mergers and acquisitions, including proceedings involving: Delmarva Power and Light
8 Company and the Atlantic City Electric Company; Potomac Electric Power Company
9 and Baltimore Gas and Electric Company; Conectiv Power Delivery and PEPCO
10 Holdings, Inc. (“PHI”); Exelon Corporation and PHI; Orange and Rockland Utilities and
11 Consolidated Edison; New Century Energies, Inc. and the Northern States Power
12 Company; New England Electric System and Eastern Utility Associates; Consolidated
13 Edison and Northeast Utilities, Inc.; Texas-New Mexico Power Company (“TNMP”) and
14 Public Service Company of New Mexico (“PNM”); PNM Resources, Inc. (“PNMR”) and
15 Avangrid, Inc., New Mexico Gas Company (“NMGC”) and TECO Energy, Inc.; Midwest
16 Energy, Inc. and Westar Energy, Inc. (“Westar”), and Westar and Great Plains Energy,
17 Inc. I also filed testimony in Docket 16-KCPE-593-ACQ regarding the proposed
18 acquisition of Westar Energy, Inc. by PNMR, an acquisition that was rejected by the
19 Kansas Corporation Commission. I assisted the New Mexico Attorney General in its
20 review of the acquisition of EL Paso Electric Company (“EPE”) by Infrastructure
21 Investment Fund (“IIF”), but that case was resolved prior to testimony being filed. In
22 addition, I have participated in cases involving the sale of Atlantic City Electric

1 Company's B.L. England Generating Station, TNMP's acquisition by S.W. Acquisition,
2 L.P., and the sale of PNM's gas assets to Continental Energy Systems, Inc., the
3 transaction that resulted in the formation of NMGC.

4 **Q. What is your educational background?**

5 A. I received a Master of Business Administration degree, with a concentration in Finance,
6 from Temple University in Philadelphia, Pennsylvania. My undergraduate degree is a
7 B.A. in Chemistry from Temple University.

8
9 **II. PURPOSE OF TESTIMONY**

10 **Q. What is the purpose of your testimony?**

11 A. On April 25, 2022, IIF US Holding 2 LP ("IIF US 2"), NJ Boardwalk Holdings LLC
12 ("Boardwalk"), Boardwalk Merger Sub, Inc. ("Merger Sub"), South Jersey Industries,
13 Inc. ("SJI"), SJI Utilities, Inc. ("SJIU"), Elizabethtown Gas Company ("ETG"), and
14 South Jersey Gas Company ("SJG") (collectively "Joint Petitioners") filed a Joint
15 Petition with the New Jersey Board of Public Utilities ("BPU" or "Board") for approval
16 of an indirect change of control of ETG and SJG, two regulated New Jersey natural gas
17 utilities. Specifically, the Joint Petitioners are seeking BPU approval for a merger
18 ("Merger", "proposed transaction") of SJI, the ultimate parent company of ETG and SJG,
19 with and into Merger Sub, with SJI remaining as the surviving entity. Merger Sub is a
20 wholly-owned subsidiary of Boardwalk, which in turn is a wholly-owned, indirect
21 subsidiary of IIF US 2. IIF US 2 is one of two master partnerships that comprise IIF, an
22 equity fund managed by J. P Morgan's Infrastructure Investment Group ("IIG").

1 The Columbia Group, Inc. was engaged by the New Jersey Division of Rate
2 Counsel (“Rate Counsel”) to review the Petition, to evaluate the impact on New Jersey
3 ratepayers, and to develop recommendations to the BPU. I am providing testimony on
4 Rate Counsel’s overall recommendations and on the financial conditions that the BPU
5 should impose if the proposed transaction is approved. Testimony is also being
6 submitted on behalf of Rate Counsel by Susan Baldwin on customer service issues; by
7 Maximilian Chang on issues relating to labor, benefits, and the New Jersey Energy
8 Master Plan; and by John Rosenkranz on certain affiliated interest and gas supply issues.

9 **Q. Please explain how your testimony is organized.**

10 A. Section III of my testimony contains a summary of my conclusions and recommendations
11 relating to the proposed transaction. In Section IV of my testimony, I summarize the
12 proposed transaction. In Section V, I outline the merger commitments proposed by the
13 Joint Petitioners. In Section VI, I evaluate the proposed merger benefits and potential
14 risks of the proposed transaction. In Section VII, I discuss additional merger
15 commitments that should be adopted if the Merger is approved. I provide a brief
16 summary of my recommendations in Section VIII.

17
18 **III. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

19 **Q. What are your conclusions and recommendations regarding the proposed merger of**
20 **SJI and Merger Sub?**

21 A. I have serious concerns regarding the proposed Merger of SJI and Merger Sub. The
22 proposed Merger offers few, if any, tangible positive benefits to ratepayers but it does

1 pose several serious risks which adversely impact ratepayers. At the present time, SJI is
2 a publicly-traded company and its focus is largely directed to the activities of its two
3 regulated utilities – ETG and SJG. However, if the proposed Merger is approved, then
4 SJI, and its utilities, will be owned by a private equity fund that has extensive holdings
5 and a broader scope. In addition, the private equity fund is managed by IIG, a dedicated
6 arm of JP Morgan established solely to manage the investment fund. Accordingly, there
7 is a danger that the New Jersey utilities will become small fish in a much larger pond
8 than is the case today. In addition, the merger commitments proposed by the Joint
9 Petitioners are largely directed to maintaining the status quo. Moreover, the proposed
10 structure will not provide the transparency and financial benefits of a publicly traded and
11 registered entity. Thus, these commitments are focused on prevention of ratepayer
12 adverse impacts rather than on incremental ratepayer positive benefits. Although there
13 are some additional safeguards that would mitigate the potential harm to ratepayers, the
14 underlying risks of the proposed transaction cannot be eliminated, primarily due to the
15 underlying complex ownership and governance structure inherent in the transaction. For
16 these reasons, I recommend that the BPU reject the proposed merger, as discussed in
17 more detail below.

1 **Q. If, notwithstanding Rate Counsel’s recommendation that the Merger be rejected by**
2 **the BPU, the Board determines that Merger Sub - and ultimately, IIF US 2 - should**
3 **be authorized to acquire SJI, what additional conditions does Rate Counsel**
4 **recommend be included in any Merger approval?**

5 A. If, in spite of Rate Counsel’s recommendation, the Board approves the Merger, then the
6 Board should adopt several additional commitments and provisions to enhance the
7 benefits of the Merger to ratepayers, and to strengthen Board oversight over Boardwalk,
8 IIF US 2, and IIG. These include:

9 1. The Joint Petitioners’ proposed rate credit of \$15 million, or
10 approximately \$20.83 per customer, is insufficient given the overall transaction value of
11 the merger and the benefits to shareholders and SJI management. In order to increase
12 benefits to ratepayers, I recommend that rate credits be increased to \$125.00 per
13 customer, or approximately \$90 million, and that such credits be allocated to ETG and
14 SJG ratepayers on a per customer basis.

15 2. Since ETG recently completed a base rate case and SJG has a current base
16 rate case being litigated, the utilities should agree not to file another base rate case for
17 rates effective within three years of the effective date of the two base rate cases.

18 3. Charitable and Community Support funding is inadequate. The Joint
19 Petitioners should fund community support contributions of \$1 million annually for each
20 of the next five years, approximately split equally between ETG and SJG. In addition,
21 the Joint Petitioners should commit to annual contributions to NJ SHARES of at least
22 \$500,000 annually for each of the next five years.

1 4. The Board should impose restrictions on charges to ETG and SJG from
2 IIF US 2 or other subsidiaries or affiliates of IIF US 2, as well as from IIG.

3 5. The Board should retain jurisdiction over all costs charged to ratepayers,
4 including costs that may be allocated from an affiliated entity. The Joint Petitioners
5 should agree that they will not oppose such jurisdiction on the basis of federal preemption
6 or preemption by another state.

7 6. The Joint Petitioners should commit that there will be no diminution of
8 customer service or service reliability.

9 7. Ratepayers of ETG and SJG should be held harmless from higher
10 financing costs associated with debt refinancings or replacements that are required
11 pursuant to the merger.

12 8. ETG and SJG should be prohibited from paying dividends if one or more
13 of the utility’s credit ratings by Nationally Recognized Statistical Rating Organizations
14 (“NRSROs”) fall below investment-grade.

15 9. Dividends from ETG, SJG, and SJI should be limited to no more than
16 100% of net income.

17 10. ETG, SJG, and SJI should be required to maintain an equity ratio of at
18 least 45%, and the Board should have the ability to utilize a hypothetical capital structure
19 in setting utility rates.

20 11. There should be additional restrictions on SJI Board membership.

21 12. The BPU should impose certain reporting requirements relating to IIF US
22 2 and to the utilities being acquired.

1 13. In addition to these recommendations, the Board should also adopt the
2 recommendations of Rate Counsel witnesses Susan Baldwin, Maximilian Chang, and
3 John Rosenkranz.

4 The specific Merger commitments recommended by Rate Counsel are provided in
5 Attachment ACC-2, along with the initials of the sponsoring Rate Counsel witness for
6 each recommended commitment.

7
8 **IV. OUTLINE OF THE PROPOSED TRANSACTION**

9 **Q. Please provide a brief description of each of the Joint Petitioners in this proceeding.**

10 A. IIF US 2 is one of two master partnerships that together form IIF, a private investment
11 vehicle managed by JP Morgan Investment Management, Inc. The other master
12 partnership, IIF Int'l Holding L.P., holds the foreign assets acquired by IIF, and is not a
13 Joint Petitioner in this case.

14 There were several entities established under IIF US 2 in order to effectuate the
15 transaction. These include IIF Boardwalk Holdings LP, Boardwalk Topco LLC, NJ
16 Boardwalk, and Boardwalk Merger Sub, Inc. ("Merger Sub"). The only IIF entities
17 included as Joint Petitioners in this case are IIF US 2, Boardwalk and Merger Sub.

18 The other Joint Petitioners are SJI, SJIU, ETG, and SJG. SJI is a publicly-traded,
19 energy holding company that has two primary subsidiaries: SJIU and SJI Energy
20 Enterprises, Inc. ("SJIEE"). SJIU holds ETG and SJG, the natural gas operations
21 regulated by the BPU. SJIEE holds the non-utility operations, which include clean

1 energy development and decarbonization through production of renewable energy and
2 various energy management activities.

3 ETG is a regulated company engaged in the transmission, distribution,
4 transportation and sale of natural gas to approximately 306,000 customers in all or
5 portions of Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren Counties.

6 SJG is a regulated company engaged in the transmission, distribution, transportation and
7 sale of natural gas to approximately 413,000 customers in all or portions of Atlantic,
8 Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

9 **Q. Please provide a description of the proposed Merger transaction.**

10 A. On February 23, 2022, SJI entered into an Agreement and Plan of Merger (“Merger
11 Agreement”) with Boardwalk and Merger Sub, whereby Boardwalk would acquire all of
12 the common stock of SJI for \$36.00 per share, and SJI would be merged into Merger Sub,
13 with SJI as the surviving entity. The transaction would be financed by IIF US 2, which is
14 identified as the “Sponsor” in the Merger Agreement, through a separate Equity
15 Commitment Agreement with Boardwalk. The value of the equity (“equity value”) of the
16 equity being acquired is approximately \$4.2 billion and the total enterprise value, which
17 includes short and long-term debt of SJI, is approximately \$8.1 billion.¹ The purchase
18 price represents a premium of approximately \$2 billion, or 46.3% relative to the 30-day
19 average market price of SJI’s common stock prior to announcement of the Merger.

20 Following the announcement, Standard and Poors (“S&P”) put the SJI entities on

1 Issuer Comment, “South Jersey Gas Company, Announced Acquisition by Infrastructure Investments Fund has No Immediate Impact,” p. 1 (February 25, 2022) (copy provided as Exhibit EL-7 to Lapson Direct Testimony).

1 negative CreditWatch due to uncertainty regarding leverage under the future
2 organizational structure, which it indicated could lead to weaker consolidated financial
3 measures.²

4 **Q. What approvals are the Joint Petitioners seeking in this case?**

5 A. The Joint Petitioners are seeking the following approvals and authorizations:

- 6 1. Approval of the proposed Merger and any other approvals as the BPU may deem
7 necessary in order for the Merger to be lawfully consummated;
- 8 2. A finding that the requirements of N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14(c) and,
9 as necessary, N.J.S.A. 48:3-10, are met;
- 10 3. Retention of the matter for direct hearing by the BPU, with a decision rendered by
11 December 7, 2022;
- 12 4. Such other relief as may be reasonable and necessary.

13 **Q. What criteria does the BPU use in evaluating a merger petition?**

14 A. I am not an attorney, but I have been advised by Rate Counsel that there are two main
15 statutory requirements. N.J.S.A. 48:2-51.1, which requires BPU approval for the transfer
16 of public utility ownership, provides:

17 In considering a request for approval of an acquisition of control, the
18 board shall evaluate the impact of the acquisition on competition, on the
19 rates of ratepayers affected by the acquisition of control, on the employees
20 of the affected public utility or utilities, and on the provision of safe and
21 adequate utility service at just and reasonable rates.

2 Petition, Exhibit EL-6, page 1.

1 In addition, N.J.A.C. 14:1-5.14(c) requires:

2 The Board shall not approve a merger, consolidation, acquisition and/or
3 change in control unless it is satisfied that positive benefits will flow to
4 customers and the State of New Jersey and, at a minimum, that there are
5 no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.
6

7 **Q. Are you familiar with New Jersey’s Public Utility Holding Company (“PUHC”)**
8 **regulations?**

9 A. Yes, I am. While I am not an attorney and therefore cannot offer a legal interpretation of
10 the PUHC regulations, these standards address issues that I frequently address in utility
11 rate proceedings, such as reporting requirements, access to financial information, service
12 agreements and cost allocation, and other issues that arise when a public utility is part of
13 a holding company structure, or is otherwise part of a complex system of organizational
14 entities.³

15 **Q. How is a public utility holding company defined, as that term is used in the PUHC**
16 **regulations?**

17 A. The PUHC regulations utilize the definition of public utility holding company that is
18 defined in N.J.A.C. 14:4-3.2, as follows:

19 “Public utility holding company” or “PUHC” means:

20 1. Any company that, directly or indirectly, owns, controls, or holds with power to
21 vote, 10 percent or more of the outstanding voting securities of an electric public
22 utility or a gas public utility or of a company that is a public utility holding
23 company by virtue of this definition, unless the Federal Energy Regulatory
24 Commission (FERC), or its successor, by order, declares such company not to be
25 a public utility holding company under Title XII, Subtitle F of the Energy Policy

3 N.J.A.C. 14:4-4.1 et seq.

1 Act of 2005 (known as the Public Utility Holding Company Act of 2005), Pub. L.
2 No. 109-58, §§ 1261-77, 42 U.S.C. §§15801 et seq. (2005) or its successor; or

- 3
4 2. Any person that the FERC, or its successor, determines, after notice and
5 opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant
6 to an arrangement of understanding with one or more other persons, such a
7 controlling influence over the management or policies of an electric public utility
8 or a gas public utility or public utility holding company as to make it necessary or
9 appropriate in the public interest or for the protection of investors or consumers
10 that such person be subject to the obligations, duties, and liabilities imposed in the
11 Public Utility Holding Company Act of 2005 or its successor.
12

13 **Q. Will the proposed transaction eliminate any oversight currently provided to SJG**
14 **and ETG ratepayers by the PUHC regulations?**

- 15 A. It is my understanding that the proposed transaction will not reduce any oversight that is
16 currently provided by the PUHC regulations. I believe that all requirements that are
17 currently imposed on SJG and ETG, as well as on SJUI and SJI, will continue to apply if
18 the proposed transaction is approved.

19 In addition, given the fact that 100% of SJG and ETG will be owned by IIF US 2,
20 the requirements of the PUHC regulations may apply to additional entities. In fact,
21 concerns raised by complex corporate organizational structures, such as that proposed in
22 this case, is one of the main reasons for the types of requirements imposed by the PUHC
23 regulations and similar standards elsewhere. Therefore, I recommend that the Board
24 examine whether the requirements of the PUHC regulations apply to other entities in the
25 proposed corporate structure, from Boardwalk, up to and including IIF US 2. In any case,
26 the PUHC regulations provide a good framework for reference when structuring the
27 regulatory oversight needed for a complex ownership structure, such as that proposed by
28 the Petitioners.

1 **Q. Has the FERC been asked to rule on the affiliation between JP Morgan and the IIF**
2 **entities?**

3 A. Yes. It is my understanding that Public Citizen has requested that the FERC examine
4 affiliation issues as they pertain to JP Morgan and IIF entities.⁴ As noted above, if the
5 FERC were to find that JP Morgan or any of its divisions is subject to certain obligations,
6 duties, and liabilities imposed by the federal Public Utility Holding Company Act of
7 2005, or is otherwise an affiliate of IIF, that will also be relevant to the instant case.

8 **Q. Did the Joint Petitioners include various merger commitments in the petition?**

9 A. Yes, Exhibit C of the Joint Petition includes a series of merger commitments that are
10 directed to providing benefits to New Jersey ratepayers. However, as described in more
11 detail below, many of these commitments are to maintain the status quo, and do not
12 represent an incremental positive benefit to ratepayers. In addition, there are aspects of
13 this transaction that could have a material adverse impact on ratepayers, on the BPU's
14 authority, and even on the ability of ETG and SJG to manage their business in the best
15 interest of their customers.

16 **Q. How does the acquisition of a utility by an equity fund, such as IIF, differ from an**
17 **acquisition by a publicly-traded company?**

18 A. The primary differences involve governance and transparency. A publicly-traded
19 company typically has many thousands of diverse shareholders who are responsible for
20 electing the Board of Directors, which has overall corporate governance and oversight

⁴ See Mankato Energy Center LLC, Mankato Energy Center II, LLC, FERC Docket No. EL21-36.

1 over the utility. In addition, a publicly-traded company must comply with extensive
2 reporting requirements, such as U.S. Securities and Exchange Commission (“SEC”)
3 requirements. Moreover, these reporting requirements generally involve public
4 documents that are widely available to the general public. Furthermore, shares of publicly
5 traded companies are traded on a major stock exchange, with share trading prices
6 publicly reported.

7 Alternatively, the acquisition of a utility by IIF involves a complex series of both
8 general and limited partnerships, as well as numerous limited liability companies. This
9 organizational structure can make it difficult to identify the ultimate decision maker,
10 especially if the equity fund designates a third party, such as IIG, to make important
11 investment and governance decisions. In addition, since IIF and IIG are private entities,
12 they have limited reporting requirements and the reports that are produced are generally
13 not available to the public. This confidentiality of these reports could be related to
14 policies wholly unrelated to utility regulation, and therefore, while unfamiliar to the
15 Board and other regulators, can limit regulatory oversight of regulated public utilities.
16 SJI’s acquisition by IIF will also eliminate various public reporting requirements for SJI
17 and its utilities, such as SEC filings. Therefore, it will be more difficult for regulators to
18 obtain information about both the regulated utilities and the ultimate owner of ETG and
19 SJG.

1 **V. MERGER COMMITMENTS PROPOSED BY JOINT PETITIONERS**

2 **Q. Please describe the regulatory commitments proposed by the Joint Petitioners in**
3 **order to facilitate approval of the merger.**

4 A. In order to facilitate approval, the Joint Petitioners proposed 37 commitments addressing
5 Rates, Employees and Corporate Governance, Impact on Service, Charitable and
6 Community Support, Competition, Continued Regulatory Compliance, and Ring-
7 Fencing.

8 **Q. Please describe the commitments regarding Rates proposed by the Joint Petitioners.**

9 A. The Joint Petitioners are proposing to provide one-time credits to ratepayers totaling \$15
10 million within 90 days of the closing. It appears from the response to Rate Counsel's
11 discovery request RCR-A-51 that the Joint Petitioners intend to allocate this credit on a
12 per customer basis, which would result in a credit of approximately \$20.83 per residential
13 customer. In addition, the Joint Petitioners are not proposing to recover either the
14 acquisition premium or any transaction costs from ratepayers. The Joint Petitioners
15 propose to define transaction costs as (a) consultant, investment banker, legal and
16 regulatory support fees (internal as well as external), and printing and similar expenses in
17 each case paid to advance or consummate the Merger, and (b) severance, retention or
18 change-in-control payments made to employees of the Joint Petitioners related to the
19 Merger. The Joint Petitioners also agree to exclude any equity associated with goodwill
20 in the capital structures used by ETG and SJG for ratemaking purposes. Finally, the Joint
21 Petitioners agree to flow through any savings resulting from the Merger to utility
22 customers in a future base rate case. However, savings resulting from the Merger are not

1 expected to be material.

2 **Q. Please describe the commitments regarding Employees and Corporate Governance**
3 **proposed by the Joint Petitioners.**

4 A. The Joint Petitioners have committed to maintaining the current workforce and current
5 compensation and benefit levels for a period of at least five years. They have also agreed
6 to honor all existing collective bargaining agreements and to meet the utilities' pension
7 obligations. The Joint Petitioners have also agreed to maintain the utilities' local core
8 management teams for a period of five years.

9 **Q. Please describe the commitments regarding the Impact on Service proposed by the**
10 **Joint Petitioners.**

11 A. The Joint Petitioners have agreed to maintain the SJI, ETG, and SJG headquarters in New
12 Jersey, to maintain customer service facilities for a period of three years⁵, and to provide
13 the utilities with the resources necessary "to invest in capital and infrastructure projects to
14 help ensure" the continuation of safe, adequate, and proper utility service.

15 **Q. Please describe the commitments proposed by the Joint Petitioners regarding**
16 **Charitable and Community Support.**

17 A. The Joint Petitioners have agreed to maintain the utility's current level of community
18 support for a period of five years. In addition, Boardwalk agreed to commit to make a
19 \$200,000 annual contribution, for five years, to LIHEAP or NJ SHARES to assist low-
20 income customers.

5 Except for SJG's Pleasantville walk-in payment center, the closure of which was approved by the Board in BPU Docket No. GO21101159.

1 **Q. Please describe the commitments proposed by the Joint Petitioners regarding**
2 **Competition.**

3 A. The Joint Petitioners have agreed to “comply with applicable New Jersey and federal
4 affiliate standards, including those relating to retail access and choice.”

5 **Q. Please describe the commitments regarding Continued Regulatory Compliance**
6 **proposed by the Joint Petitioners.**

7 A. Boardwalk has committed that SJI and ETG will continue to comply with all applicable
8 continuing obligations arising from prior transactions, including commitments made
9 when SJI acquired ETG.

10 **Q. Please describe the Ring-Fencing commitments proposed by the Joint Petitioners.**

11 A. The Joint Petitioners have proposed a number of ring-fencing provisions that are
12 designed to shield the utility operations from the risks of IIF US 2 and its other affiliates.
13 These include prohibitions on debt or credit guarantees, prohibitions on the pledging of
14 utility assets, restrictions on intercompany lending, and maintenance of investment-grade
15 credit ratings. These provisions also address the composition of SJI’s Board of Directors
16 after the Merger, certain restrictions on senior management, various bankruptcy
17 protections, commitments to maintain separate books and records of account, and a
18 prohibition of cross-default provisions.

1 **Q. Are the proposed commitments adequate to ensure that the proposed Merger is in**
2 **the public interest?**

3 A. No, they are not. As discussed below, and in the testimonies of other Rate Counsel
4 witnesses, the proposed Merger commitments are woefully inadequate to protect New
5 Jersey ratepayers. In general, these commitments maintain the status quo in specific
6 areas, but provide little or no incremental benefit to ratepayers or the provision of
7 regulated utility service. Moreover, these commitments do not adequately protect the
8 ratepayers of ETG and SJG from the negative consequences of the proposed transaction.
9 Accordingly, Rate Counsel recommends that the BPU deny the proposed Merger.

10 However, if the Merger is approved, additional conditions should be imposed by
11 the BPU. I will address some of these additional conditions in my testimony, including
12 conditions relating to Rates, Impact on Service, Charitable and Community Support, Ring
13 Fencing, and Additional Governance Provisions. Additional recommended Merger
14 commitments regarding Impact on Service and Customer Service are discussed by Susan
15 Baldwin. Maximilian Chang addresses Merger commitments relating to Employees and
16 Corporate Governance and the Energy Master Plan. John Rosenkranz addresses Merger
17 commitments regarding Competition. The Merger commitments recommended by Rate
18 Counsel are shown in Attachment ACC-2, including those commitments proposed in the
19 Joint Petition that are being accepted by Rate Counsel and that are not otherwise
20 discussed in our testimonies. In order to achieve a higher level of positive benefits and
21 reduce the Merger's adverse impacts, Rate Counsel's recommended Merger
22 commitments augment or supplement the measures already required by the Board's

1 regulations addressing Public Utility Holding Companies, at N.J.A.C. 14:4-4.1 through
2 N.J.A.C. 14:4- 4.7.

3
4 **VI. ANALYSIS OF THE TRANSACTION**

5 **Q. What are the specific benefits of the merger outlined in the Joint Petition?**

6 A. In addition to the “hold harmless” provisions discussed on pages 7-10 of the Joint
7 Petition, the Joint Petitioners also list “positive benefits for ETG’s and SJG’s customers
8 and the State of New Jersey” on page 11. These purported benefits are:

- 9
- 10 • Maintenance of various headquarters in New Jersey for as long as Boardwalk
owns SJI;
 - 11 • One-time customer rate credits totaling \$15 million, to be paid within 90 days of
12 closing;
 - 13 • Charitable contributions totaling over \$2 million over five years;
 - 14 • Contributions to LIHEAP or NJ SHARES totaling \$1 million over five years;
 - 15 • No material involuntary Merger-related workforce reductions or changes to
16 wages, benefits, and other terms and conditions of employment for five years; and
 - 17 • Comprehensive ring-fencing and governance provisions providing an additional
18 level of protection for utility operations.

1 **Q. Do the Merger commitments proposed by the Joint Petitioners provide significant**
2 **incremental benefits to the ratepayers of ETG and SJG?**

3 A. No, they do not. The Merger transaction provides very few “benefits” to New Jersey
4 ratepayers. The \$15 million in rate credits, which equates to approximately \$20.83 per
5 residential customer, pales in comparison to the premium of approximately \$2 billion that
6 will be enjoyed by the shareholders of SJI if the Merger is approved. In addition, not
7 only does the resulting equity value of approximately \$4.2 billion represent a significant
8 premium over the outstanding consolidated equity of SJI, but it also represents a
9 significant premium relative to the equity of approximately \$2.2 billion that ETG and
10 SJG requested in their 2021 and 2022 rate cases.⁶

11 In addition to SJI’s public shareholders, certain officers and executives will also
12 benefit from the Merger, mostly through the immediate vesting of restricted stock and
13 performance shares previously awarded in compensation. According to the Proxy
14 Statement provided in Exhibit G to the Joint Petition, SJI CEO Mr. Renna will receive
15 \$7.2 million from the immediate vesting of various restricted and performance shares,
16 and other Named Executive Officers (“NEOs”) will also receive substantial payouts.
17 These benefits to NEOs are in addition to other change-in-control payments that may be
18 applicable in certain situations.

⁶ Based on the filed rate base claims and equity percentages.

1 **Q. In addition to the rate credits, aren't there other benefits of the proposed Merger,**
2 **such as charitable and community support, being offered by the Joint Petitioners?**

3 A. The only immediately identifiable additional "benefit" is the commitment to LIHEAP or
4 NJ SHARES funding in the amount of \$200,000 annually for five years. The
5 commitment to provide a total of \$421,000 in charitable and other community support is
6 simply an agreement to maintain the current funding levels of ETG and SJG, and not an
7 incremental positive benefit of the proposed Merger.

8 In addition, virtually all other Merger commitments are designed to prevent
9 certain specific harm to ratepayers, rather than to provide incremental positive benefits.
10 For example, the Joint Petitioners agree not to seek recovery of the acquisition premium
11 or transaction costs from ratepayers, but these costs would not be incurred except for the
12 Merger. While the Joint Petitioners have stated that any net savings realized by ETG and
13 SJG will be flowed through to utility customers in the next base rate case, that would be
14 the normal practice for reflecting cost savings. Moreover, the proposed Merger is not
15 expected to result in significant cost savings, since there are no operational synergy
16 savings expected from the transaction.

17 Many of the provisions regarding employee commitments, location of the
18 headquarters, and customer service commitments will simply maintain the status quo.
19 Similarly, the Joint Petitioners' commitments regarding compliance with applicable prior
20 BPU Orders and compliance with applicable state and federal requirements do not
21 provide a net benefit, as such compliance is already required by SJI and its regulated
22 affiliates. In addition, any new owner would be required to comply with prior BPU

1 Orders and with all federal and state requirements, just as they would be required to
2 comply with all existing collective bargaining agreements. Therefore, these provisions
3 provide no additional benefit to ratepayers.

4 **Q. Do the Ring-Fencing commitments contained in Exhibit C to the Joint Petition**
5 **provide an incremental net benefit to ratepayers?**

6 A. No, they do not. Many of these ring-fencing provisions are required due to the complex
7 organizational structure that is proposed by the Joint Petitioners. It is the risk posed by
8 this structure, and the potential risk posed by affiliates and subsidiaries of IIF US 2, that
9 necessitate these ring-fencing provisions and restrictions. Therefore, such provisions
10 should not be considered a net benefit to utility customers, but merely attempts to prevent
11 undue harm to ratepayers if the Merger is approved.

12 **Q. What is your most significant concern regarding the proposed transaction?**

13 A. One very significant concern is with the complex structure of the IIF organization and
14 how best to ensure that the interests of utility ratepayers will be front and foremost in
15 decisions made by IIF and its subsidiaries and affiliates. The complex structure is in
16 contrast to the more transparent structure of other utility companies that currently operate
17 in New Jersey. In addition, while IIG is not legally either an affiliate or subsidiary of IIF,
18 IIG and JP Morgan have a strong connection to IIF and will have a direct role in many
19 important decisions impacting ETG and SJG.

1 **Q. What is JP Morgan’s relationship to IIF?**

2 A. Through the discovery process in this matter, it has been very difficult to get complete
3 information about the relationship between JP Morgan and IIF, but it appears that JP
4 Morgan was instrumental in the formation of IIF. In fact, several equity research firms
5 refer to “JP Morgan’s Infrastructure Investment Fund” in their literature.⁷ In addition,
6 “JP Morgan IIF CNG Investments LLC”, a subsidiary of IIF US 2, was a shareholder of
7 Colorado Natural Gas per the response to Rate Counsel’s discovery request RCR-A-81.
8 The General Partners of each of the two master partnerships comprising IIF, (IIF US 2
9 and IIF Int’l Holding L.P.) hold a “non-economic interest” in the partnership (i.e. are
10 compensated by salaries with no interest in the partnerships’ profits), and the initial
11 General Partners were appointed by the initial limited partners.⁸ Investment decisions
12 and all other operations of IIF are directed by IIG, an arm of JP Morgan. While the Joint
13 Petitioners have attempted to minimize the role of JP Morgan and IIG, the available
14 information suggests that there is a very close relationship between JP Morgan and IIF.
15 Moreover, several important decisions directly affecting the New Jersey utilities will be
16 made by IIG if the Merger is approved, such as whether to infuse additional capital into
17 the utility.

7 For example see Maxim Group Report provided in response to RCR-A-24.5.

8 Information concerning the initial formation of IIF, including the identities and professional backgrounds of the initial limited partners, was provided in the Joint Petitioners’ September 21, 2022 Confidential Supplemental Response to Informal Discovery Request IFR-1..

1 **Q. Please comment on potential risks associated with the proposed transaction.**

2 A. Another very significant risk is the loss of local control. The current Board of SJI is
3 elected by its shareholders. Because of the number of shareholders, any particular
4 shareholder has limited ability to influence the Board. There are activist investors from
5 time to time that do exert greater influence on the Board than other shareholders.
6 However, the Board of a publicly-traded company may be less likely to be unduly
7 influenced by others and more likely to act in the best interests of the company on whose
8 Board they sit. If the Merger is approved, SJI will have a single shareholder, which is
9 wholly controlled by IIF US 2. A board elected by a single shareholder that is, in turn,
10 wholly controlled by members of a closely held private entity, is more likely to act in the
11 interests of the private entity. This is particularly troubling in this case, given the
12 relationship among JP Morgan, IIG, and IIF US 2.

13 In addition, if the Merger is approved, there will be multiple organizational levels
14 between SJI and IIF US 2, including limited partnerships and limited liability companies.
15 This organizational structure hinders transparency, which is especially critical for a
16 regulated public utility. The Merger will also eliminate numerous public reporting
17 requirements, for both the utilities and for SJI. As discussed in the response to S-ECON-
18 42, much of the information that is currently reported in SEC 10-Q and 10-K filings will
19 no longer be required, and the information that will be filed with banks holding the
20 companies' debt will not necessarily be made public. IIF would not be required to file
21 any financial data for entities above SJI in the IIF ownership structure, and any financial
22 data that is voluntarily provided is likely to be designated confidential and strictly

1 controlled.

2 Another potential risk involves the availability of capital. Investors in IIF will not
3 directly invest in SJI, but instead will commit funds to two master partnerships, that will
4 in turn allocate capital. Moreover, decisions regarding capital allocation are largely made
5 by IIG's Investment Committee ("IC"), who must recommend an equity investment in
6 Boardwalk. There is no guarantee that capital will be available at any given time, or that
7 IIG will choose to allocate it to Boardwalk. While there is also the potential for a
8 publicly-traded company such as SJI to require additional capital, a publicly-traded
9 company has a much greater ability to access capital markets directly than an entity
10 owned by an equity fund such as IIF.

11 **Q. Are there also potential risks associated with recovery of goodwill?**

12 A. Yes, in addition to the risks relating to the ultimate organizational structure and the
13 connection to JP Morgan, the Board should also consider the financial risk resulting from
14 IIF US 2 attempting to earn a return on, and a return of, its investment in goodwill. A
15 reasonable investor would not invest \$2 billion in goodwill unless they expected to
16 recover this investment, along with a reasonable return. Since Boardwalk, and therefore
17 IIF US 2, will not be recovering this goodwill explicitly from ratepayers, the question
18 remains how will this goodwill be recovered?

19 There are several possible ways in which IIF US 2 can attempt to recover this
20 investment in goodwill. First, Rate Counsel has generally argued that the equity returns
21 being awarded in base rate case proceedings are too high and are not justified by general
22 economic conditions and current market rates. If the Board is awarding equity returns

1 that are significantly higher than IIF US 2's actual required cost of capital, then the
2 regulated utilities could in fact be used indirectly as a vehicle to recover goodwill.

3 Second, the utilities could be capitalized with excessive amounts of equity, which
4 would also unnecessarily inflate utility rates. Since equity capital is more expensive than
5 debt, utilities should maintain a capital structure that balances the need for sufficient
6 equity capital with the benefits resulting from the lower cost of debt. In fact, regulators
7 in another IIF utility, Colorado Natural Gas, Inc. ("CNG"), have raised concerns about
8 representations made by a parent holding company and attempts to inflate earnings
9 through the use of excessive equity levels.⁹ For this reason, it is important for the BPU
10 to retain the ability to utilize a hypothetical capital structure for ratemaking purposes, if a
11 hypothetical capital structure is more reasonable than the actual capital structure of the
12 utility.

13 Third, IIF US 2 might expect to recover this goodwill through the allocation of
14 high charges for affiliated services provided by affiliates and subsidiaries of SJI and/or its
15 utilities. The important point is that while we do not know how IIF US 2 plans to recover
16 the cost of its investment in goodwill, it is certainly reasonable to expect that IIF US 2,
17 and IIG - who apparently recommended this investment - do in fact have a plan to
18 recover these costs.

⁹ I/M/O Application Of Colorado Natural Gas, Inc. For An Order Authorizing a Stock Pledge and Debt Refinance Pursuant to Section 40-1-104 C.R.S. and Section 40-5-105 C.R.S., Colo. PUC Proceeding No. 22A-0153SG, Hearing Exhibit 200, Answer Testimony of Fiona Sigalla dated July 13, 2022, p. 36-40 (Corrected Public Version posted Aug. 3, 2022).

1 Finally, there may be an incentive to aggressively invest in the utilities in order to
2 inflate rate base and increase earnings. This is further aggravated if the investment
3 receives a clause type recovery, such as the Infrastructure Investment Program (“ IIP”),
4 where the risk is lower and the recovery more immediate. Therefore, the proposed
5 transaction poses two types of investment risk – the risk that insufficient capital will be
6 available to the utilities, as discussed later in this testimony, and the risk that too much
7 capital will be infused in an effort to enhance earnings and dividends.

8 **Q. Will the transaction increase the overall business risk of SJI?**

9 A. It could. Much of SJI’s business involves the provision of natural gas utility service that
10 is regulated by state and federal regulatory agencies. However, the proposed transaction
11 will transform SJI into part of a significantly larger enterprise that has a variety of
12 potentially more risky unregulated ventures. As noted by S&P Global Ratings, there is
13 “uncertainty around the company’s leverage under its future organizational structure,
14 which could lead it to maintain weaker consolidated financial measures.”¹⁰

15 While the Merger may provide new opportunities for SJI, it will also undoubtedly
16 increase certain business risks. The Joint Petitioners have proposed a series of ring-
17 fencing provisions and other requirements in an attempt to insulate ETG and SJG from
18 the risks associated with ownership by IIF US 2 and such provisions are very important.
19 However, these provisions will not completely insulate the utilities from the risks
20 resulting from affiliation with entities engaging in more risky enterprises, including

10 Petition, Exhibit EL-6, page 1.

1 foreign ownership.

2 **Q. Why do you believe that foreign ownership constitutes a risk in this case?**

3 A. While the Joint Petitioners have indicated that IIF is not an actual corporate entity, it is
4 my understanding that investors commit funds to IIF, which then allocates funds evenly
5 between IIF US 2 and IIF Int'l Holdings LP. Foreign ownership brings additional
6 challenges to the proposed transaction. Foreign ownership raises questions of foreign
7 control and governance, questions regarding the impacts of operating in locations that
8 may have very different business practices from those in the United States, questions
9 relating to legal jurisdiction, and significant currency risks. As stated on page 3 of the
10 Joint Petition, IIF US 2 has holdings in the United States, several European countries, and
11 Australia. This diversity means that IIF is dealing with a variety of governments,
12 business practices, and local issues in its varied ventures. It can be difficult to navigate
13 cultural and regulatory differences with foreign business entities, and it may be more
14 difficult to hold a foreign entity accountable for its actions. Issues such as these can
15 affect earnings, which in turn can affect the availability of capital.

16 **Q. Do you have concerns about the quality of service if the Merger is approved?**

17 A. Yes, I do. As discussed in the testimony of Susan Baldwin, Rate Counsel already has
18 concerns about the level of service reliability and customer service being provided by
19 ETG and SJG. The proposed Merger may put further pressure on service quality, for two
20 reasons.

21 First, SJI will no longer have the ability to determine when additional equity
22 capital should be obtained to fund infrastructure improvements and other capital projects.

1 Instead, as discussed in the response to Rate Counsel’s discovery request RCR-A-3:

2 Proposed equity investments are brought before the Investment Committee
3 (“IC”) of IIG and ultimately the IIF US 2 Board for all IIF US 2 portfolio
4 companies or IIF Int’l Board for all IIF Int’l portfolio companies. In order
5 for a proposed equity investment to be recommended by the IC to the IIF
6 US 2 Board or IIF Int’l Board, there must be a unanimous approval by the
7 members of the IC present and voting. The IC then recommends its
8 decision to the IIF US 2 Board or IIF Int’l Board for consideration. All
9 equity investments of IIF US 2 require an affirmative vote of a majority of
10 the IIF US 2 Board and all equity investments of IIF Int’l require an
11 affirmative vote of a majority of the IIF Int’l Board.

12
13 This provision poses several concerns regarding control. It is a JP Morgan-controlled
14 investment committee that will serve as a gatekeeper to capital for SJI and its regulated
15 natural gas utilities. Therefore, neither SJI nor its ultimate parent have independent
16 control over decisions regarding capital. This provision is even more troubling, given the
17 fact that there are no quality of service or customer service commitments being proposed
18 by the Joint Petitioners.

19 **Q. Have the Joint Petitioners proposed to improve service reliability or customer**
20 **service if the Merger is approved?**

21 A. No, they have not. The only quality of service-related commitment is that “Boardwalk
22 and SJI will provide ETG and SJG with the resources necessary to invest in capital and
23 infrastructure projects to help to ensure that ETG and SJG will continue to provide safe,
24 adequate and proper utility service.” Rate Counsel witness Susan Baldwin is addressing
25 issues relating to service reliability and customer service. However, the Joint Petition not
26 only fails to address improvements in service, it also fails to guarantee the maintenance
27 of even current service levels. The Merger commitment described above would apply to

1 Boardwalk and SJI, neither of which have the authority to make capital investment
2 decisions. As noted, it is JP Morgan's IC that is responsible for recommending additional
3 investment in an IIF US 2 entity. It is difficult to see how either Boardwalk or SJI can
4 commit to providing any resources to the utilities given the current proposed structure
5 and the role played by JP Morgan's IC. Moreover, the commitment goes on to state that
6 these entities will provide the resources "to help to ensure" that ETG and SJG will
7 continue to provide safe, adequate and proper utility service. It does not state that either
8 Boardwalk or SJI will commit to take whatever action is necessary to maintain current
9 service quality, let alone to improve service quality as recommended by Susan Baldwin.

10 **Q. Are there likely to be adverse impacts from the Merger?**

11 A. Yes, there are. Given the proposed change in ownership from a publicly-traded company
12 to one subsidiary of a complex private equity investment fund, the important role that
13 will be played by JP Morgan, and the billions of dollars in goodwill that will result from
14 the transaction, there are likely to be some adverse impacts from the Merger. For
15 example, one of the more identifiable impacts is the potential that certain bondholders
16 will elect to relinquish their bonds, requiring SJI and/or its utilities to refinance or replace
17 significant amounts of debt upon consummation of the Merger. It is my understanding
18 that the Joint Petitioners will not know how much of this debt will actually need to be
19 replaced until after the transaction occurs. However, to the extent that such debt is
20 refinanced at higher interest rates, then ratepayers would experience a higher cost of
21 capital in the next base rate cases filed by ETG and SJG. It is my understanding that the
22 Joint Petitioners are not proposing to hold ratepayers harmless for these increased costs.

1 **Q. Are the proposed Merger commitments sufficient to demonstrate that the Merger is**
2 **in the public interest?**

3 A. No, other than the \$15 million in rate credits and the \$1 million contribution to LIHEAP
4 or NJ SHARES, these commitments do not represent incremental positive benefits, but
5 instead simply provide certain protections against specific types of harm to ratepayers
6 resulting from the Merger. There is no reason to believe that the SJI, ETG, and SJG
7 headquarters will be moved, that the current level of charitable and community support
8 will be reduced, or that there will be reductions in employees or compensation levels in
9 the absence of the Merger. Similarly, the proposed ring-fencing and governance
10 provisions do not provide incremental benefits to utility customers. Rather, these
11 conditions are simply intended to provide some protection that SJI's regulated utility
12 revenues, assets, and other resources will not be used to support the other business
13 ventures of IIF, its subsidiaries, or affiliates. The modest rate credit and low-income fund
14 contributions proposed by the Joint Petitioners are not sufficient to overcome the
15 significant risks posed by this Merger, including a complex organizational structure, risks
16 associated with both domestic and foreign affiliates, and billions of dollars of non-
17 productive investment in goodwill.

18 **Q. Do you recommend that the Board approve the Merger?**

19 A. No, I do not. I have serious concerns about the proposed Merger. As discussed in my
20 testimony, the Merger provides minimal positive benefits to utility ratepayers, but has the
21 potential to significantly increase costs to ratepayers, to weaken SJI's control over the
22 utilities, and to increase risks associated with other IIF entities, all of which would result

1 in adverse impacts on ratepayers. In addition, JP Morgan, who is not a Joint Petitioner in
2 this case, will exercise considerable control over SJI and the New Jersey utilities if the
3 transaction is approved. Additional concerns are raised in the testimonies of Maximilian
4 Chang, Susan Baldwin, and John Rosenkranz. For all these reasons, I recommend that
5 the Board deny the proposed Merger.
6

7 **VII. RECOMMENDED MERGER COMMITMENTS**

8 **Q. If, in spite of Rate Counsel’s recommendation, the Board decides to approve the**
9 **proposed merger, what additional commitments do you recommend?**

10 A. If the Board determines that the proposed Merger is in the public interest, then I
11 recommend that it impose additional or revised commitments upon the Joint Petitioners,
12 in order to strengthen ratepayer protections and provide additional benefits to utility
13 customers. I am addressing various commitments in the areas of Rates, Impact on
14 Service, Charitable and Community Support, Ring-Fencing, and Additional Governance
15 Provisions. Maximilian Chang, Susan Baldwin, and John Rosenkranz are addressing
16 other proposed commitments recommended by Rate Counsel. Rate Counsel’s
17 Recommended Commitments are shown in Attachment ACC-2. Each commitment is
18 designated with the initials of the Rate Counsel witness(es) responsible for addressing
19 that particular commitment.

1 **Q. What changes are you recommending relating to the Rates commitments proposed**
2 **by the Joint Petitioners?**

3 A. I am recommending several revisions or additions to the commitments proposed by the
4 Joint Petitioners. First, I recommend a rate credit of \$125 per customer, instead of the
5 \$20.83 proposed by the Joint Petitioners. As indicated earlier, the rate credit is the
6 primarily “benefit” of the Merger. A rate credit of \$20.83 is woefully inadequate, given
7 the risk posed by the acquisition of two New Jersey utilities by an equity investment fund
8 with a highly complex organizational structure. In addition, ratepayers deserve some
9 compensation for the customer service problems that are addressed in the testimony of
10 Susan Baldwin. Our recommended \$125 rate credit per customer will serve to
11 compensate ratepayers for both of these factors. A rate credit of \$125 will provide only
12 minimal benefit to ratepayers, given recent increases in base rates and commodity costs
13 for both ETG and SJG. However, it is an improvement over the \$20.83 per customer
14 credit proposed by the Joint Petitioners. In addition to increasing the size of the rate
15 credit, I also recommend that the Board order that the rate credit will be made on a per
16 customer basis and that shareholders, and not ratepayers, will pay for any such credit.

17 In addition to increasing the size of the proposed rate credit, I also recommend
18 that the Merger be conditioned upon a three-year stay-out for both ETG and SJG to file
19 their next base rate cases. Since ETG just completed a base rate case and since SJG is
20 currently litigating a base rate case, it is not unreasonable to require a three-year stay-out,
21 which would only impact base rates. The utilities would still have the ability to pass
22 through changes in gas costs and changes in other rider clauses during this period.

1 **Q. Please explain your recommended adjustments relating to transaction costs.**

2 A. The Joint Petitioners have agreed that they will not attempt to collect transaction costs
3 from regulated ratepayers, and have proposed a precise list of the costs they consider
4 “transaction costs.” I recommend that this section be revised to insert the language “but
5 are not limited to.” While I do not expect there will be additional types of transaction
6 costs incurred by the Joint Petitioners, the BPU should retain the flexibility to determine
7 whether a particular cost should be classified as a “transaction cost”, and excluded from
8 rates, in the event that another type of transaction cost is identified by a party in a future
9 case.

10 **Q. Please explain your recommended adjustment relating to acquisition premiums and**
11 **goodwill.**

12 A. The Joint Petitioners have indicated that they will not seek to recover the acquisition
13 premium or goodwill from New Jersey ratepayers. I have attempted to clarify this
14 commitment. While I understand that the acquisition premium and goodwill will not be
15 explicitly recovered from ratepayers, my proposed changes are intended to ensure that
16 ratepayers do not implicitly pay higher rates associated with the acquisition premium or
17 goodwill through higher allowance for funds used during construction (“AFUDC”) rates,
18 cost of capital, multi-variable allocation factors used to allocate costs, or any other
19 ratemaking component.

1 **Q. Please explain your recommendation regarding transition costs.**

2 A. In addition to transaction costs, many mergers also involve transition costs. These costs
3 are generally incurred after the merger is completed, and include rebranding costs,
4 information technology costs related to merging software systems, or any other costs
5 related to operational requirements resulting from the new ownership structure. At this
6 time, no transition costs have been identified and such costs are expected to be minimal.
7 Nevertheless, to the extent that such costs are incurred, they should be considered as costs
8 directly related to the transaction and they should not be passed on to regulated
9 ratepayers.

10 **Q. What additional provisions are you recommending regarding cost allocations?**

11 A. I am recommending that all IIF entities above SJI be prohibited from allocating costs to
12 SJUI, ETG, or SJG. In addition, I am recommending that IIG be prohibited from
13 allocating costs to these entities as well. I also recommend that SJUI, ETG, and SJG be
14 prohibited from engaging IIG to provide any services directly. Finally, I recommend that
15 the Board retain jurisdiction over all costs allocated to the regulated utilities and that
16 neither ETG nor SJG will claim preemption by federal or another state's jurisdiction.
17 These provisions will ensure that ratepayers do not subsidize, directly or indirectly, other
18 activities of IIF and IIG.

1 **Q. What revisions are you recommending to the Impact on Service commitments?**

2 A. While most of these provisions are being addressed by Susan Baldwin, I am concerned
3 that the commitment made by Boardwalk and SJI to provide capital resources to ETG and
4 SJG may not prove sufficient, since neither Boardwalk nor SJI will have independent
5 access to capital. Therefore, I recommend that IIF US 2 commit, along with Boardwalk
6 and SJI, that there will be no diminution of service quality or system reliability as long as
7 IIF, or an affiliate, owns SJI.

8 **Q. What modifications are you recommending to the provisions regarding Charitable
9 and Community Support?**

10 A. I am recommending that the amounts of Charitable and Community Support be
11 increased. I am recommending a commitment of \$1 million annually for five years in
12 community support contributions, to be allocated on an approximately equal basis
13 between ETG and SJG. In addition, I recommend a commitment to NJ SHARES of
14 \$500,000 annually for five years.¹¹ In both cases, I recommend the Board order that
15 these contributions will be funded by shareholders, not ratepayers.

16 **Q. Is Rate Counsel recommending any additional commitments relating to
17 Competition?**

18 A. Yes, Rate Counsel is recommending several commitments relating to Competition, which
19 are addressed by John Rosenkranz. In addition, I am recommending an additional
20 commitment to require the Joint Petitioners, including IIF US 2, to comply with all FERC

11 The Joint Petitioners proposed to make a contribution to either LIHEAP or NJSHARES, but it is my understanding that Boardwalk cannot make a direct contribution to LIHEAP.

1 regulations and orders that impact ownership issues, including IIF US 2's indirect
2 ownership of SJG and ETG.

3 **Q. Are you proposing any revisions to the Ring-Fencing commitments included in the**
4 **Joint Petition?**

5 A. Yes, I am proposing several additions and modifications, in order to strengthen the
6 protections afforded to regulated ratepayers. First, I recommend that Boardwalk Topco
7 LLC be identified as an entity that has no operational functions other than those related to
8 holding the equity interests in SJI. It is my understanding that the Joint Petitioners do not
9 expect Boardwalk Topco LLC to have any operational functions, and I recommend that
10 this understanding be formalized in the Merger commitments. I also recommend that
11 with the exceptions of Boardwalk Topco LLC, Boardwalk Parent LLC, and Boardwalk,
12 none of which have operational functions other than those relating to holding an interest
13 in SJG, that members of the consolidated income tax group that includes ETG and SJG
14 be limited to entities that are direct or indirect subsidiaries of SJI. This will avoid any
15 consolidated income tax issues relating to other IIF US 2 operations. Finally, I am
16 recommending that entities that are included in a consolidated income tax filing with
17 ETG and SJG be prohibited from owning foreign entities unless specific approval is
18 granted by the BPU. As discussed earlier in my testimony, foreign ownership carries
19 additional risks and adds an additional complexity to the corporate structure. IIF, through
20 its IIF Int'l Holdings master partnership, already owns several foreign entities. In order
21 to avoid tax complications, currency risk, and other issues, I recommend that entities

1 included in a consolidated tax filing with the New Jersey utilities be prohibited from
2 owning foreign entities unless they first obtain specific approval from the Board.

3 **Q. Are you proposing an additional commitment relating to debt replacements?**

4 A. Yes, I am proposing that customers of ETG and SJG be held harmless from higher
5 financing costs that are the result of debt refinancings or debt replacements directly
6 related to the Merger. As discussed in the response to Board Staff's discovery request S-
7 SJI-MERGER-14, SJI, SJG and ETG have approximately \$2.5 billion of first mortgage
8 bonds and senior notes outstanding that have provisions allowing the investors to sell
9 their debt back to the issuer at face value in the event of a change in control. The Joint
10 Petitioners intend to replace any debt that is sold back relating to this provision. There is
11 a process outlined for notifying bond and note holders of their options after the Merger is
12 completed, and a process is in place to redeem this debt if necessary based on the debt
13 holder's election.

14 It is possible that replacement of this debt will result in an increase to interest
15 rates. In addition, there are likely to be administrative and issuance costs associated with
16 this debt replacement. These costs will be a direct result of the Merger and should not be
17 borne by regulated ratepayers. Therefore, approval of the Merger should be contingent
18 upon a requirement that debt replacements will not result in incremental capital costs to
19 regulated ratepayers.

1 **Q. From a practical perspective, how could the Board guard against ratepayers paying**
2 **higher debt costs that are a direct result of the Merger?**

3 A. There are several ways in which the potential harm can be calculated and excluded from
4 prospective rates. One possibility is for the Company to calculate the incremental impact
5 on its annual cost of capital, and then to calculate this additional annual cost over the
6 average remaining life of the debt that is retired. The total amount could then be booked
7 to a regulatory liability, that would be returned to ratepayers over a reasonable
8 amortization period in each utility's next base rate case. Rate Counsel would be willing
9 to work with the parties on developing an efficient process that would protect ratepayers,
10 simplify prospective ratemaking, and minimize the administrative burden on all parties.

11 **Q. Please discuss the modifications that you are recommending relating to dividend**
12 **restrictions.**

13 A. As proposed by the Joint Petitioners, for a utility rated by more than one NRSRO, a
14 dividend restriction would not apply if only one NRSRO downgraded the utility to below
15 investment grade. Under the Joint Petitioners' proposal, it would take a downgrade by at
16 least two NRSROs before a dividend restriction would be imposed. I recommend that a
17 dividend restriction be imposed if any NRSRO downgrades the credit rating of ETG or
18 SJG below investment grade. My recommendation is more proactive than the Joint
19 Petitioners' proposal and provides better protection to ratepayers – and to the financial
20 integrity of the utilities.

21 In addition, I am recommending that ETG, SJG, and SJUI be prohibited from
22 paying more than 100% of their net income in dividends. This will help to ensure that

1 sufficient capital remains in the utilities and that the utilities are not used by IIF US 2 or
2 other entities as an unchecked source of capital.

3 **Q. Are you making any recommendations with regard to capital structure?**

4 A. Yes, I am recommending that ETG, SJG, and SJUI maintain an equity ratio of at least
5 45%. In addition, I am recommending that the BPU retain the authority to utilize a
6 hypothetical capital structure for ratemaking purposes, if the BPU finds that the actual
7 capital structure of either utility is unreasonable. These recommendations provide a
8 balance between the need to ensure that sufficient equity is retained within the utilities
9 and the need to ensure that utility rates are not excessive due to unreasonable levels of
10 equity.

11 **Q. What commitments did the Joint Petitioners make regarding composition of the SJI**
12 **Board of Directors?**

13 A. The Joint Petitioners proposed that within 30 days of the closing of the Merger, SJI's
14 Board of Directors will be comprised of ten directors, of which:

- 15 • One will be SJI's CEO
- 16 • Two will be shareholder representatives
- 17 • The remaining seven will be "independent directors", as that term is defined by
18 the New York Stock Exchange ("NYSE"). Of the seven independent directors, at
19 least two will reside in New Jersey.

20 **Q. What is the NYSE definition of independent director?**

21 A. The NYSE defines independent director as "board of directors affirmatively determines
22 that the director has no material relationship with the listed company (either directly or as

1 a partner, shareholder or officer of an organization that has a relationship with the
2 company).”¹²

3 **Q. Are you recommending any modifications to the provision regarding composition of**
4 **the SJI Board?**

5 A. Yes, I am. I am recommending that independent directors also be independent from IIF
6 US 2 and its subsidiaries and affiliates, as well as independent from JP Morgan, including
7 IIG. These provisions will help to prevent conflicts of interest that could arise if the same
8 independent director sat on the board of more than one IIF entity, or was otherwise
9 affiliated with IIG.

10 **Q. Are you recommending any additional provisions in the Ring-Fencing section of the**
11 **Merger commitments?**

12 A. Yes, I am recommending two additional provisions under Ring-Fencing. First, I
13 recommend that IIF US 2 provide the BPU access to its books and records, as well as to
14 the books and records of subsidiaries and affiliates, to the extent that there are affiliate
15 transactions that may occur between Boardwalk, SJI, SJIU, ETG, or SJG and IIF US 2, or
16 its subsidiaries and affiliates. I am also recommending that the BPU require IIF to
17 provide IIF Annual and Quarterly Reports to the BPU and Rate Counsel, as well as
18 access to any documents that are identified in those Annual and Quarterly Reports
19 through electronic links. In addition, I recommend that SJI, SJIU, ETG and SJG provide
20 the BPU with both annual and quarterly financial reports, on both a consolidated and

12 NYSE Listed Company Manual Section 303A.02(a), Available at: https://nyse.wolterskluwer.cloud/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS_TAL_5667%23teid-70.

1 individual company basis. I also recommend that audited reports, on both a consolidated
2 and individual company basis, be provided at least annually by the SJI entities. SJI,
3 SJUI, ETG, and SJG should also notify the BPU and Rate Counsel of any significant
4 event of the type that would have been reported to the SEC prior to the Merger. The
5 Joint Petitioners should also continue to provide any currently-filed reports that were
6 previously ordered by the BPU.

7 **Q. In addition to the commitments regarding Rates, Impact on Service, Charitable and**
8 **Community Support, and Ring-Fencing Commitments, are there other**
9 **commitments that you recommend be imposed by the BPU?**

10 A. Yes, I am recommending two Additional Governance Provisions. First, I recommend
11 that IIF US 2 commit to holding its interest in SJI for a period of at least ten years, in
12 order to provide stability to the utilities. Since IIF is a perpetual life vehicle, it is my
13 understanding that IIF US 2 intends to hold SJI indefinitely, so it should not be difficult
14 for IIF US 2 to comply with this commitment. The Board should have the ability to
15 waive this requirement in the future if it finds that continued ownership is no longer in
16 the public interest.

17 In addition, to the extent that the BPU imposes additional commitments, I
18 recommend that approval of the Merger be contingent on the Board of IIF US 2 agreeing
19 to be bound by all such additional commitments, prior to the Merger being completed.
20 Since IIF US 2 is a Joint Petitioner in this case, and will be the ultimate parent entity
21 exercising control over SJI and its affiliates if the Merger is approved, it is imperative
22 that IIF US 2 affirmatively agree to any conditions that may be imposed by the BPU.

1 **VIII. SUMMARY**

2 **Q. Please provide a brief summary of your testimony.**

3 A. The Merger proposed by the Joint Petitioners provides negligible benefits to New Jersey
4 ratepayers while exposing two New Jersey utilities to increase risk and uncertainty. The
5 complex organizational structure of IIF, coupled with the significant role that JP Morgan
6 will play through IIG, raises serious concerns regarding transparency, ultimate control
7 over SJI, and other important issues. Accordingly, I do not believe that the transaction
8 as proposed is in the public interest and I recommend that the BPU deny the Merger. If,
9 however, the BPU decides to approve the Merger, such approval should be contingent
10 upon the Merger Commitments shown in Attachment ACC-2.

11 **Q. Do you have any additional comments regarding approval of the Merger?**

12 A. Yes, neither Rate Counsel nor its consultants have had sufficient opportunity to review
13 the SJG Management Audit Report, which was recently released by the BPU on October
14 12, 2022. The confidential material was not provided to Rate Counsel until October 14,
15 2022. Therefore, the recommendations contained in the testimony of Rate Counsel
16 witnesses may be supplemented based on the results of this review.

17 **Q. Does this conclude your testimony?**

18 A. Yes, at this time. However, I reserve the right to submit additional testimony regarding
19 that SJG Management Audit Report or on any other additional information that was not
20 available in sufficient time to be included in this testimony.

**ATTACHMENT ACC-1
LIST OF PRIOR TESTIMONIES**

<u>Company</u>	<u>Utility</u>	<u>State</u>	<u>Docket</u>	<u>Date</u>	<u>Topic</u>	<u>On Behalf Of</u>
South Jersey Industries, Inc. and Boardwalk Merger Sub	G	New Jersey	GM22040270	10/22	Transaction	Division of Rate Counsel
Southwestern Public Service Company	E	New Mexico	22-00178-UT	10/22	Grid Modernization Program	Office of Attorney General
Jemez Mountains Electric Cooperative	E	New Mexico	21-00318-UT	9/22	Revenue Requirement and Rate Design	Office of Attorney General
Avista Utilities	E/G	Washington	UE-220053/UG-220054	7/22	PBR Metrics and PIMs	Public Counsel Unit
Puget Sounds Energy	E/G	Washington	UE-220066/UG-220067	7/22	Revenue Requirements and PBR Proposal	Public Counsel Unit
New Mexico Gas Company	G	New Mexico	21-00267-UT	5/22	Testimony in Support of Stipulation	Office of Attorney General
Public Service Company of New Mexico	E	New Mexico	19-00018-UT	4/22	Securitization Issues Regarding San Juan	Office of Attorney General
El Paso Electric Company	E	New Mexico	21-00269-UT	4/22	Grid Modernization Program	Office of Attorney General
Empire District Electric Company	E	Kansas	21-EPDE-444-RTS	1/22	Abbreviated Rate Case	Citizens' Utility Ratepayer Board
Southwestern Public Service Company	E	New Mexico	21-00148-UT	10/21	Grid Modernization Program	Office of Attorney General
Black Hills/Kansas Gas Utility Company	G	Kansas	21-BHCG-418-RTS	9/21	Revenue Requirements	Citizens' Utility Ratepayer Board
Public Service Company of New Mexico	E	New Mexico	21-00083-UT	8/21	Decertification of 114 MW of Palo Verde	Office of Attorney General
Public Service Company of New Mexico	E	New Mexico	21-00017-UT	7/21	Abandonment of Four Corners Power Plant	Office of Attorney General
Evergny Kansas Metro Evergny Kansas Central	E	Kansas	21-EKME-320-TAR	6/21	Electric Vehicle Program	Citizens' Utility Ratepayer Board
Southwestern Public Service Company	E	New Mexico	20-00238-UT	5/21	Revenue Requirements	Office of Attorney General
Avista Utilities	E/G	Washington	UE-200900/UG-200901	4/21	Revenue Requirements	Public Counsel Unit
Public Service Company of New Mexico / Avangrid	E	New Mexico	20-00222-UT	4/21	Merger Transaction	Office of Attorney General
PSEG Nuclear and Exelon Generation Company	E	New Jersey	ER20080557-559	1/21	Nuclear Subsidies	Division of Rate Counsel
Utilities, Inc. of Florida	W/WW	Florida	20200139-WS	11/20	Revenue Requirements	Office of Public Counsel
El Paso Electric Company	E	New Mexico	20-00104-UT	10/20	Revenue Requirements	Office of Attorney General
Public Service Company of New Mexico	E	New Mexico	20-00121-UT	9/20	Regulatory Disincentive Mechanism	Office of Attorney General
Peoples Gas System	G	Florida	20200051-GU	9/20	Revenue Requirements	Office of Public Counsel
New Mexico Gas Company	G	New Mexico	19-00317-UT	7/20	Revenue Requirements	Office of Attorney General
El Paso Electric Company	E	New Mexico	19-00317-UT	4/20	CCN For Newman Unit 6	Office of Attorney General
Public Service Company of New Mexico	E	New Mexico	19-00195-UT	12/19	Replacement Resources for SJGS Units 1 and 4	Office of Attorney General
Southwestern Public Service Company	E	New Mexico	19-00170-UT	11/19	Revenue Requirements	Office of Attorney General
Atmos Energy Company	G	Kansas	19-ATMG-525-RTS	10/19	Revenue Requirements	Citizens' Utility Ratepayer Board

The Columbia Group, Inc., Testimonies of Andrea C. Crane

<u>Company</u>	<u>Utility</u>	<u>State</u>	<u>Docket</u>	<u>Date</u>	<u>Topic</u>	<u>On Behalf Of</u>
Public Service Company of New Mexico	E	New Mexico	19-00018-UT	10/19	Abandonment of SJGS and Stranded Cost Recovery	Office of Attorney General
Rockland Electric Company	E	New Jersey	ER19050552	10/19	Revenue Requirements	Division of Rate Counsel
Avista Corporation	E/G	Washington	UE-190334/UG-190335	10/19	Revenue Requirements	Public Counsel Unit
Westar Energy, Inc.	E	Kansas	19-WSEE-355-TAR	6/19	JEC Capacity Purchase	Citizens' Utility Ratepayer Board
Empire District Electric Company	E	Kansas	19-EPDE-223-RTS	5/19	Revenue Requirements	Citizens' Utility Ratepayer Board
Public Service Electric and Gas Co.	E/G	New Jersey	EO18060629/ G018060630	3/19	Energy Strong II Program	Division of Rate Counsel
Southwestern Public Service Company	E	New Mexico	18-00308-UT	2/19	Voluntary Renewable Energy Program	Office of Attorney General
Zero Emission Certificate Program (Various Applicants)	E	New Jersey	EO18080899	1/19	Zero Emission Certificates Subsidy	Division of Rate Counsel
Public Service Company of New Mexico	E	New Mexico	18-00043-UT	12/18	Removal of Energy Efficiency Disincentives	Office of Attorney General
Kansas Gas Service	G	Kansas	18-KGSG-560-RTS	10/18	Revenue Requirements	Citizens' Utility Ratepayer Board
New Mexico Gas Company	G	New Mexico	18-00038-UT	9/18	Testimony in Support of Stipulation	Office of Attorney General
Kansas City Power and Light Company	E	Kansas	18-KCPE-480-RTS	9/18	Revenue Requirements	Citizens' Utility Ratepayer Board
Public Service Electric and Gas Co.	E/G	New Jersey	ER18010029/ GR18010030	8/18	Revenue Requirements	Division of Rate Counsel
Westar Energy, Inc.	E	Kansas	18-WSEE-328-RTS	6/18	Revenue Requirements	Citizens' Utility Ratepayer Board
Southwestern Public Service Company	E	New Mexico	17-00255-UT	4/18	Revenue Requirements	Office of Attorney General
Empire District Electric Company	E	Kansas	18-EPDE-184-PRE	3/18	Approval of Wind Generation Facilities	Citizens' Utility Ratepayer Board
GPE/ Kansas City Power & Light Co., Westar Energy, Inc.	E	Kansas	18-KCPE-095-MER	1/18	Proposed Merger	Citizens' Utility Ratepayer Board
Public Service Electric and Gas Co.	E	New Jersey	GR17070776	1/18	Gas System Modernization Program	Division of Rate Counsel
Southwestern Public Service Company	E	New Mexico	17-00044-UT	10/17	Approval of Wind Generation Facilities	Office of Attorney General
Kansas Gas Service	G	Kansas	17-KGSG-455-ACT	9/17	MGP Remediation Costs	Citizens' Utility Ratepayer Board
Atlantic City Electric Company	E	New Jersey	ER17030308	8/17	Base Rate Case	Division of Rate Counsel
Public Service Company of New Mexico	E	New Mexico	16-00276-UT	6/17	Testimony in Support of Stipulation	Office of Attorney General
Westar Energy, Inc.	E	Kansas	17-WSEE-147-RTS	5/17	Abbreviated Rate Case	Citizens' Utility Ratepayer Board
Kansas City Power and Light Company	E	Kansas	17-KCPE-201-RTS	4/17	Abbreviated Rate Case	Citizens' Utility Ratepayer Board

**ATTACHMENT ACC-2
COMMITMENTS RECOMMENDED
BY RATE COUNSEL**

COMMITMENTS RECOMMENDED BY RATE COUNSEL

Please note that all capitalized terms used in this Attachment are defined in the Joint Petition, unless otherwise defined herein.

In addition to the Merger commitments outlined below, Rate Counsel reserves its right to recommend additional commitments after Rate Counsel has had an opportunity to fully review Board Staff's 2019 Management Audit of SJG.

Rates.

1. After the closing of the Merger, SJI will cause ETG and SJG to issue a one-time rate credit to all customers of \$125 per customer, or approximately \$90 million, which includes compensation for on-going customer service issues. The rate credits will be structured as a one-time credit against the customer's monthly bill and will be provided within 90 days of the closing of the Merger. The rate credits will be funded by shareholders, not ratepayers, and will be issued on a per customer basis to customers of all rate classes. (ACC)
2. ETG and SJG will not file another base rate case for new rates that would be effective prior to three years from the effective date of the Board's Orders in the 2022 rate cases for each Company. (ACC)
3. No recovery in rates will be sought for (i) any acquisition premium associated with the Merger or any previous acquisition/merger, (ii) any costs associated with goodwill arising from the Merger or any previous acquisition, or (iii) any transaction costs incurred in connection with the Merger. For purposes of this commitment, transaction costs are defined as but are not limited to, (a) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar expenses in each case paid to advance or consummate the Merger, and (b) severance, retention or change-in-control payments made to employees of the Joint Petitioners related to the Merger. (ACC)
4. Neither ETG nor SJG will include any common equity associated with goodwill (including Merger-related goodwill on Boardwalk's or SJI's balance sheet or goodwill arising from prior transactions) in their ratemaking capital structures. Goodwill associated with the transaction will not be included in rates, rate base, allowance for funds used during construction (AFUDC), cost of capital, operating expenses, or any other ratemaking component in future ETG or SJG proceedings. (ACC)

5. Goodwill will not be included, directly or indirectly, in any allocation factor calculation that is used to allocate costs, including joint and common costs, to ETG or SJG. (ACC)
6. No labor costs, third-party costs, fees, expenses, or costs of the transition (transition costs) incurred by any party to the transaction (including IIF and its subsidiaries and affiliates) will be borne by the customers of ETG or SJG. Transition costs are those costs necessary to integrate SJI, SJUI, ETG, and/or SJG into the holdings of IIF or its subsidiaries. (ACC)
7. SJI, SJUI, ETG and SJG will not be allocated any costs from Boardwalk or any other subsidiary or affiliate of IIF. For purposes of this provision, J.P. Morgan's Infrastructure Investment Group (IIG) will be treated as an affiliate. In addition, SJI, SJUI, ETG and SJG agree not to engage IIG to provide any services that would be charged, directly or indirectly, to ratepayers. (ACC)
8. For ratemaking purposes, the Board will retain jurisdiction over all costs allocated to ETG or SJG ratepayers, including costs that may be allocated from an affiliated entity. Neither ETG or SJG will claim that the Board is preempted by federal or other state jurisdictions from determining the appropriate cost allocations reflected in New Jersey utility rates. (ACC)
9. Any net savings realized by ETG and SJG created by virtue of the Merger will be flowed through to utility customers in a future base rate case, net of any costs to achieve such savings. (ACC)

Employees and Corporate Governance.

10. For a period of five years following the closing of the Merger, as a result of the Merger, SJI will not implement any material involuntary workforce reductions or changes to wages, benefits and other terms and conditions of employment in effect prior to the closing of the Merger. (MC)
11. SJI will honor all of ETG's and SJG's existing collective bargaining agreements in effect at the time of the closing of the Merger. (MC)
12. SJI will ensure that ETG's and SJG's pension obligations to employees will be satisfied. (MC)
13. SJI will maintain SJUI's, ETG's and SJG's respective local core management teams for a period of at least five years following the closing of the Merger. (MC)
14. Each of SJI's, ETG's and SJG's CEO and senior management will continue to have day-to-day control over operations. (MC)

15. SJI's, ETG's and SJG's local management will remain the primary point of contact for all regulatory, operational, and community engagement matters. (MC)
16. SJI will honor all existing ETG and SJG pension benefits so long as IIF retains ownership of SJI. Further, that commitment shall not preclude IIF or SJI from: (a) making future changes to SJG and ETG's current defined benefit plan if it is commercially advantageous (including, but not limited to, cost effectiveness, administrative efficiency, etc.) so long as pension benefits are materially equivalent, or (b) making future changes negotiated between SJG and ETG as part of their collective bargaining agreement negotiations. (MC)
17. SJG and ETG will continue to provide the Board and Rate Counsel with an updated employee count (by exempt and non-exempt employees) in annual filings to the Board to facilitate the Board's ability to ensure that SJG and ETG maintain adequate workforces to allow them to continue to provide safe and reliable service. (MC)
18. For a period of five years after consummation of the Merger, SJI will provide employees subject to any involuntary workforce reduction program with a separation package on a most favored nation status to IIF's current portfolio of companies. If there are any involuntary workforce reductions during the five-year period, then IIF will provide the Board and Rate Counsel with a summary of separation packages across the IIF companies. (MC)

Impact on Service.

19. SJI, ETG and SJG will maintain their headquarters in New Jersey for so long as Boardwalk owns SJI. (SMB)
20. ETG and SJG will maintain their existing call centers, field service centers, and walk-in payment centers indefinitely following the closure of the Merger until and unless a filing is made with the Board and the Board approves the filing. Moreover, such a filing will not be made for at least three years following the closure of the Merger, with the exception of SJG's Pleasantville walk-in payment center, the closure of which was approved by Board Order, effective March 2, 2022, in BPU Docket No. GO21101159. (SMB)
21. Boardwalk and SJI will provide ETG and SJG with the resources necessary to invest in capital and infrastructure projects to help to ensure that ETG and SJG will continue to provide safe, adequate and proper utility service. (ACC, SMB)
22. SJI, Boardwalk and IIF US Holdings 2 will commit that there will be no diminution in current levels of quality of customer service or system reliability for as long as IIF, or an affiliated entity, owns SJI. (ACC, SMB)

23. Low-income programs – ETG and SJG will commit to maintaining their existing low-income customer assistance programs, unless otherwise authorized by the Board to discontinue such programs. (SB)

Charitable and Community Support.

24. Boardwalk and SJI will commit to community support contributions of at least \$1 million annually for a period of at least five years following the closing of the Merger. These amounts will be allocated on an approximately equal basis between ETG and SJG. Community support projects may include charitable, educational, community support and economic development efforts. These amounts will not be recovered from ratepayers. (ACC)
25. Boardwalk will commit to make, or to cause to be made, an annual contribution in the amount of \$500,000 to NJ SHARES for a period of at least five years following the closing of the Merger to assist New Jersey’s low-income customers with payment of their utility bills. These amounts will not be recovered from ratepayers. (ACC)

Competition.

26. Boardwalk and SJI will comply with applicable New Jersey and federal affiliate standards, including those relating to retail access and customer choice. SJG and ETG will comply with the affiliate standards in N.J.A.C. 14:4-3 when transacting with all affiliates of IIF as this term is defined below in commitment number 30, including entities that only operate in wholesale gas markets, and not just affiliates that serve retail customers in New Jersey. (JAR)
27. SJG and ETG will not contract for natural gas transportation or storage service from an affiliate, or any entity in which an affiliate has an ownership interest, without prior approval from the Board. (JAR)
28. SJG and ETG will publicly post detailed information required by BGSS Minimum Filing Requirement (“MFR”) number 13 for all affiliate gas supply transactions within 30 days of the transaction date, and retain this information on its website for a period of at least one year. (JAR)
29. The Joint Petitioners will comply with FERC regulations and orders in effect from time to time to the extent applicable to IIF’s indirect ownership of SJG and/or ETG. (ACC)

Continued Regulatory Compliance.

30. Following the closing of the Merger, Boardwalk will ensure that SJI and ETG continue to comply with all applicable continuing obligations arising from prior transactions, including the conditions imposed by the Board in connection with SJI's acquisition of ETG in *I/M/O the Acquisition of Elizabethtown Gas, a Division of Pivotal Utility Holdings, Inc. by ETG Acquisition Corp., a Subsidiary of South Jersey Industries, Inc. and Related Transactions*, BPU Docket No. GM17121309. (ACC)

Ring-Fencing Commitments.

31. In connection with the Merger Agreement by and among SJI, Boardwalk, and Merger Sub, IIF US Holding 2 has formed Boardwalk as a wholly-owned, indirect subsidiary and special-purpose entity to directly hold 100% of the common equity in SJI and indirectly hold the common equity in SJI's subsidiaries, including SJUI, ETG and SJG. As used herein the term 'affiliate of IIF' means any entity of which IIF directly or indirectly (i) owns 10% or more of the outstanding equity interests or (ii) has the power to direct the management and policies of, in each case, at the applicable time. For so long as Boardwalk indirectly owns ETG and SJG: (ACC)
32. Holding Company Existence. Boardwalk will be retained in the ownership chain between SJI and IIF. Boardwalk Topco LLC, Boardwalk Parent LLC and Boardwalk will have no operational functions other than those related to holding the equity interests in SJI. (ACC)
33. Income Tax Issues. Other than Boardwalk Topco LLC, Boardwalk Parent LLC and Boardwalk, which will have no operational functions other than those related to holding the equity interests in SJI, the members of the consolidated income tax group that includes ETG and SJG will be limited to entities that are direct or indirect subsidiaries of SJI. All members of the consolidated income tax group that includes ETG and SJG will be prohibited from owning foreign entities unless specific approval is granted by the BPU. (ACC)
34. SJUI Existence. SJUI will be retained in the ownership chain between SJI and SJG and ETG for so long as Boardwalk indirectly owns ETG and SJG. SJUI will directly own the equity interests in ETG and SJG. SJUI will be entitled to lend money to SJG and ETG. SJUI's business will be limited to owning the equity interests in ETG and SJG and performing related activities for the benefit of ETG and SJG. (ACC)
35. Corporate Separateness. ETG and SJG will each maintain their separateness in terms of their respective existence, franchises, obligations and privileges, including their names and logos. SJUI will also retain its separate existence. (ACC)

36. No Debt/Credit Guarantees. ETG will not provide a guarantee for the payment of the debt or credit instruments of Boardwalk, or any other affiliate of IIF, excluding ETG and SJUI. SJG will not provide a guarantee for the payment of the debt or credit instruments of Boardwalk, or any other affiliate of IIF, excluding SJG and SJUI. SJUI will not provide a guarantee for the payment of the debt or credit instruments of Boardwalk, or any other affiliate of IIF, excluding ETG, SJG, and SJUI. SJI, Boardwalk, and IIF will not represent to the public or to their creditors that SJUI, SJG, or ETG has any liability for the obligations of SJI, Boardwalk, and IIF, or any other affiliate of IIF, excluding SJUI, SJG, and ETG. (ACC)
37. No Pledging of Utility Assets/Stock. Neither Boardwalk nor any other affiliate of IIF, excluding ETG and SJUI, will pledge ETG's assets, revenues, or shares. Neither Boardwalk nor any other affiliate of IIF, excluding SJG and SJUI, will pledge SJG's assets, revenues, or shares. Neither Boardwalk nor any other affiliate of IIF, excluding SJG, ETG, and SJUI, will pledge SJUI's assets, revenues, or shares. (ACC)
38. No Transaction Related Debt at ETG, SJG or SJUI. None of SJUI, SJG or ETG will incur, guaranty, or pledge assets for any new incremental debt related to the Merger. (ACC)
39. Refinancings or Debt Replacements – Customers of ETG and SJG will be held harmless from higher financing costs associated with refinancing or replacement of debt that is required pursuant to the transaction. (ACC)
40. Intercompany Lending. Neither ETG nor SJG shall lend money to SJUI, SJI, Boardwalk, IIF or any other affiliate of IIF. SJUI may lend money to ETG and SJG. (ACC)
41. Money Pool. If SJUI establishes a money pool, the only participants in such money pool shall be SJG, ETG, and SJUI. (ACC)
42. Credit Ratings. ETG, SJG, SJUI, and SJI must take the actions necessary to ensure the existence of ETG's and SJG's individual credit and debt ratings, as applicable. ETG and SJG will be registered with at least one of the Nationally Recognized Statistical Rating Organizations ("NRSROs") registered with the Securities and Exchange Commission. ETG, SJG, SJUI, and SJI, as applicable, will use commercially reasonable efforts to have ETG's and SJG's credit ratings reflect the ring-fencing provisions adopted in this proceeding. (ACC)
43. ETG and SJG Credit Ratings and Dividends. If ETG's senior unsecured debt rating falls below investment grade (below BBB- by Standard and Poor's or Fitch or Baa3 by Moody's) by any NRSROs, then ETG shall cease paying dividends until such time as an investment grade rating is restored. If SJG's senior unsecured debt rating falls below investment grade (below BBB- by

Standard and Poor's or Fitch or Baa3 by Moody's) by any NRSROs, then SJG shall cease paying dividends until such time as an investment grade rating is restored. (ACC)

44. Dividends. Dividends from ETG, SJG, and SJI will be limited to no more than 100% of net income. (ACC)
45. Equity Ratio. ETG, SJG, and SJI will maintain an equity ratio of at least 45%. For ratemaking purposes, the Board may authorize a capital structure that is different from the actual capital structures of ETG, SJG, or SJI, provided that the Board finds that a hypothetical capital structure is more reasonable than the actual capital structure. (ACC)
46. SJUI Permitted Indebtedness. SJUI shall only incur debt to fund intercompany loans with ETG and SJG, for the benefit of ETG and SJG. (ACC)
47. Financial Covenants or Rating Agency Triggers. No debt or credit agreements of SJG, ETG, and SJUI will include any financial covenants or rating-agency triggers related to SJI, Boardwalk, IIF or any affiliate of IIF, excluding ETG, SJG and SJUI. (ACC)
48. Board Composition. Within 30 days of the closing of the Merger and thereafter, SJI's board of directors will be comprised of 10 directors, of which:
 - i. One will be SJI's CEO;
 - ii. Two will be shareholder representatives; and
 - iii. The remaining seven will be "independent directors", as such term is defined by the New York Stock Exchange ("NYSE"). Of the seven NYSE independent directors, at least two will reside in New Jersey. Independent directors will also be independent from IIF US Holdings 2 and its subsidiaries and affiliated entities, and from J.P. Morgan, including J.P. Morgan's Infrastructure Investment Group (IIG). Independent directors will have no material financial relationship with IIF US Holdings 2 or its subsidiaries or affiliated entities within the past ten years. Independent directors will have no material financial relationship within the past ten years with J.P. Morgan, including IIG. A personal banking relationship of the type that is generally available to other similarly situated clients is not a material financial relationship. (ACC)
49. Voluntary Bankruptcy. The SJI board of directors will not place ETG, SJG, or SJUI in voluntary bankruptcy unless it has received the consent of at least four of the seven independent directors. (ACC)

50. Non-Consolidation Legal Opinion. Within 180 days following the closing of the Merger, Boardwalk will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of Boardwalk, IIF or any affiliate of IIF, excluding SJG, ETG, or SJUI, a bankruptcy court would not consolidate the assets and liabilities of ETG, SJG, or SJUI with any such entity. (ACC)
51. Modification of Ring-Fence. The Joint Petitioners will implement the ring-fencing and corporate governance measures set out in these commitments within 180 days of the closing of the Merger for the purpose of providing protections to customers. Joint Petitioners will not proceed with any modification or termination of these ring-fencing and corporate governance provisions without first obtaining BPU approval in a written order. (ACC)
52. Affiliate Relationships. Each of ETG, SJG, SJUI, Boardwalk, IIF and other affiliates of IIF will comply with applicable New Jersey and federal affiliate standards. (ACC)
53. Senior Management. Following the closing of the Merger, ETG's President and other senior management who directly report to ETG's President will hold no positions with Boardwalk, IIF or any affiliate of IIF, excluding SJI and its subsidiaries. Following the closing of the Merger, SJG's President and other senior management who directly report to SJG's President will hold no positions with Boardwalk, IIF or any affiliate of IIF, excluding SJI and its subsidiaries. Following the closing of the Merger, SJUI's President and other senior management who directly report to SJUI's President will hold no positions with Boardwalk, IIF or any affiliate of IIF, excluding SJI and its subsidiaries. (ACC)
54. Separate Books and Records. Boardwalk shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities. SJI and each of SJI's subsidiaries will maintain separate books, accounts and financial statements reflecting its separate assets and liabilities. SJG and ETG will not commingle funds with one another nor with SJUI, SJI, Boardwalk, IIF or any affiliate of IIF, except pursuant to a BPU-approved money pool along with SJUI. (ACC)
55. Access to Records. IIF US Holdings 2 will provide the Board access to its books and records, as well as those of its applicable subsidiaries and affiliates, as necessary to facilitate the Commission's audit or review of any affiliate transactions that may occur between Boardwalk, SJI, SJGU, ETG, or SJG and IIF US Holdings 2 or any of its subsidiaries or affiliates. (ACC)
56. Reporting Requirements. The following reports will be provided to BPU Staff and Rate Counsel:
 - a) IIF Annual Reports (as provided in response to S-ECON-38.1)
 - b) IIF Quarterly Reports

- c) Documents cited in IIF Annual Reports and Quarterly Reports
 - d) SJI, SJUI, ETG and SJG Audited Annual Financial Information (separate and consolidated)
 - e) SJI, SJUI, ETG and SJG Quarterly Financial Information (separate and consolidated)
 - f) Notification by SJI, SJUI, ETG and SJG of any significant event
 - g) Reports that are otherwise currently required by the BPU. (ACC)
57. Cross-Default Provisions. None of ETG, SJG, and SJUI will include in any of their respective debt or credit agreements cross-default provisions relating to Boardwalk, IIF or any affiliate of IIF, excluding SJUI, ETG and SJG. None of ETG, SJG, SJUI, and Boardwalk will include in any of their respective debt or credit agreements cross-default provisions relating to the securities of IIF or any affiliate of IIF, excluding SJUI, ETG and SJG. Under no circumstances will any debt of ETG, SJG, or SJUI become due and payable or otherwise be rendered in default because of any cross-default or similar provisions of any debt or other agreement of Boardwalk, IIF or any affiliate of IIF, excluding SJUI, ETG and SJG. (ACC)

Energy Master Plan.

58. SJI will actively participate in the Board's efforts to develop statewide energy efficiency programs to meet the state's Energy Master Plan goals. SJG and ETG agree to coordinate with the BPU and the other New Jersey natural gas and electric utilities to deliver cost-effective energy efficiency programs in accordance with the New Jersey Clean Energy Act. (MC)
59. SJI will provide the Board with a bill and rate impact study of meeting the Energy Master Plan goals and periodic updates of how meeting the state's Energy Master Plan goals will impact SJG's and ETG's customers. (MC)
60. SJI will provide the Board with an impairment analysis including, but not limited to the impacts of electrification, to quantify how meeting the Energy Master Plan goals would impact SJG and ETG, and a similar analysis will be undertaken to determine the impacts of reliability and service to ratepayers. (MC)

Customer Service Commitments.

61. Within 30 days of the completion of the transaction, SJG and ETG will waive all residential and commercial arrearages. The Companies commit to waive 100% of the most recent COVID arrearages reported in the quarterly reports filed pursuant to BPU Docket number AO20060471. Write-offs related to arrearages will be designated per specific individual customer accounts. A list of the customers who received an account credit as a result of the write-off will

be provided to the parties within 30 days of completion of the Merger. The resulting costs will not be recovered from ratepayers. (SMB)

62. Within 30 days of the completion of the transaction, SJG and ETG will reconnect all customers disconnected for non-payment since May 2022 at no charge to the customers, and will waive arrearages associated with these customers. The resulting costs will not be recovered from ratepayers. (SMB)
63. SJG will adopt the benchmark of answering 82% of calls within 30 seconds, which is parallel ETG's benchmark. (SMB)
64. SJG and ETG will submit a customer service improvement report within 30 days of the transaction's completion to Board Staff and Rate Counsel and quarterly thereafter for five years after they have achieved the Board-established call center benchmarks. These reports will detail progress in meeting and improving call answering performance benchmarks (percent answered within 30 seconds and call abandonment rate). The CSIP will also include a narrative description of the efforts SJG and ETG are taking to improve this metric. (SMB)
65. SJG should continue to submit quarterly reports to Rate Counsel and the Director of the Board's Division of Customer Assistance concerning SJG's performance in relation to certain customer service metrics which were included in SJG's last rate case stipulation approved in BPU Docket No. GR20030243 and additional and modified metrics regarding (1) Percentage of Calls Answered Within 30 Seconds, (2) Call Center Strike Reporting, if applicable, and (3) Disconnections, Financial Assistance and Deferred Payment Arrangements. The quarterly customer service reports should also contain a section that contains the number of residential customers: (i) in arrears; (ii) eligible for disconnection; (iii) in arrears and receiving assistance, (iv) assessed reconnection fee; and (v) waived reconnection fee. (SMB)
66. ETG should continue to submit quarterly reports to Rate Counsel and the Director of the Board's Division of Customer Assistance concerning ETG's performance in relation to certain customer service metrics which were included in ETG's last rate case stipulation approved in BPU Docket No. GR21121254. The quarterly customer service reports should also contain a section that shows the numbers of residential customers: (i) in arrears; (ii) eligible for disconnection; (iii) in arrears and receiving assistance, (iv) assessed reconnection fee; and (v) waived reconnection fee. (SMB)
67. SJG and ETG should commit to submit to Board Staff and Rate Counsel within 60 days of the transaction's consummation any additional recommendations the Companies may have for aligning the content and format of their quarterly customer service reports. (SMB)

68. If SJG becomes aware of a possible strike among its customer service representatives, it will expand its quarterly customer service improvement report to include information to parallel the strike-related information agreed to be provided by ETG. (SMB)
69. SJG and ETG will offer DPAs with 24-month terms and no down payment through December 31, 2023. (SMB)
70. SJG and ETG will waive any reconnection charges through December 31, 2024. (SMB)
71. SJG and ETG will submit reports to Board Staff and Rate Counsel on each Company's progress in and challenges encountered in preventing disconnections for non-payment, with the reports be submitted by December 31, 2022 and then again by December 31, 2023. The Companies will include in the reports any practices adopted as a result of sharing best practices with other IIF portfolio companies. (SMB)
72. SJG and ETG will adopt more lenient practices for disconnection for non-payment (such as by setting a larger threshold for amounts past due) through December 31, 2024, and within 30 days of the Board's Order in this proceeding, submit a filing to Board Staff and Rate Counsel describing ETG's and SJG's disconnection practices. (SMB)
73. SJG and ETG will include five additional numbers in their quarterly customer service improvement reports which show numbers of residential customers: (1) in arrears; (2) eligible for disconnection; (3) in arrears and receiving assistance, (4) assessed reconnection fee; and (5) waived reconnection fee. (SMB)
74. SJG will include a section in its customer service improvement report that is parallel to that in ETG's customer service improvement report "Part 5: "Disconnections, Financial Assistance, and Deferred Payment Arrangements (DPAs)." (SMB)
75. In connection with the Customer Service Improvement Reports (described below), the Board should direct SJG and ETG to describe (1) efforts taken and challenges encountered in preventing disconnections for non-payment; and (2) practices adopted as a result of sharing best practices with other IIF portfolio companies. (SMB)
76. SJG will fulfill any potential additional Board directives issued in SJG's base rate case in Docket No. GR22040253 regarding customer service. (SMB)

77. SJG and ETG will submit to Board Staff and Rate Counsel within 60 days of the transaction's consummation any additional recommendations the Companies may have for aligning the content and format of their quarterly customer service improvement reports. (SMB)

Additional Governance Provisions.

78. IIF US Holdings 2 will maintain a controlling ownership interest in SJI for at least 10 years post-closing, unless the BPU specifically determines otherwise. (ACC)
79. Merger approval will be conditional upon the Board of IIF US Holdings 2 agreeing to all merger commitments made in this proceeding, stating that they agree to abide by all such merger commitments as long as SJI, SJUA, ETG, and SJG are owned by any affiliate or subsidiary of IIF US Holdings 2, and consenting to the jurisdiction of the Board to enforce such commitments. (ACC)