



Agenda Date: 1/25/23
Agenda Item: 2F

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE MERGER OF SOUTH)
JERSEY INDUSTRIES, INC. AND BOARDWALK)
MERGER SUB, INC.)
)
) DOCKET NO. GM22040270

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Colleen A. Foley, Esq., Saul Ewing Arnstein & Lehr, for IIF US Holding 2 LP, NJ Boardwalk Holdings LLC, and Boardwalk Merger Sub, Inc.
Kenneth T. Maloney, Esq., Cullen and Dykman, for South Jersey Industries, Inc., SJI Utilities, Inc., South Jersey Gas, and Elizabethtown Gas
Deborah M. Franco, Esq., VP/Rates, Regulatory & Sustainability, SJI Utilities on behalf of South Jersey Industries, Inc., SJI Utilities, Inc., South Jersey Gas, and Elizabethtown Gas
Martin C. Rothfelder, Esq., Environmental Defense Fund
Steven S. Goldenberg, Esq., New Jersey Large Energy Users Coalition

BY THE BOARD:

On April 25, 2022, IIF US Holding 2 LP ("IIF US 2"), NJ Boardwalk Holdings LLC ("Boardwalk"), Boardwalk Merger Sub, Inc. ("Merger Sub"), South Jersey Industries, Inc. ("SJI"), SJI Utilities, Inc. ("SJIU"), Elizabethtown Gas Company ("ETG"), and South Jersey Gas Company ("SJG") (collectively, "Joint Petitioners") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval of an indirect change of control of ETG and SJG ("Joint Petition"). The transaction would consist of a merger of SJI and Merger Sub, a wholly owned subsidiary of Boardwalk, which is in turn a wholly owned, indirect subsidiary of IIF US 2, a private equity fund managed by JP Morgan ("Proposed Transaction" or "Merger").¹

By this Decision and Order, the Board considers a Stipulation of Settlement ("Stipulation") entered into by the Joint Petitioners, the New Jersey Division of Rate Counsel ("Rate Counsel"), Board Staff ("Staff"), the New Jersey Large Energy Users Coalition ("NJLEUC"), and the Environmental Defense Fund ("EDF"), (collectively, "Parties") related to the Joint Petition.

¹ See Joint Petition at pp. 1-2.

BACKGROUND AND PROCEDURAL HISTORY

ETG serves approximately 306,000 customers in all or portions of Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren counties. SJG serves approximately 43,000 customers in all or portions of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties. Both gas utilities are wholly owned subsidiaries of SJIU, which in turn is a wholly owned subsidiary of SJI.

On February 23, 2022, SJI entered into an Agreement and Plan of Merger by and among SJI, Boardwalk, and Merger Sub ("Merger Agreement"). Pursuant to the Merger Agreement, Merger Sub would merge with and into SJI, with SJI continuing as the surviving corporation, and become a wholly owned subsidiary of Boardwalk. Boardwalk and Merger Sub are indirect, wholly owned subsidiaries of IIF US 2. Pursuant to the Merger Agreement, before the Merger's effective date, shares of SJI's common stock would be cancelled and converted into the right to receive \$36.00 in cash per share, without interest. SJI's common stock would be delisted from the New York Stock Exchange ("NYSE") and deregistered under the Securities Exchange Act of 1934, as amended. As a result of the Merger, Boardwalk would own all of the outstanding common equity in SJI. SJI's Board of Directors unanimously approved the Merger Agreement, and recommended that the shareholders of record vote in favor of the Merger. Shareholders approved the Merger on May 10, 2022. According to the Joint Petitioners, the day-to-day operations of SJI, SJIU, ETG, and SJG would remain unchanged following the completion of the Merger.

On June 8, 2022, the Board retained the Joint Petition for hearing pursuant to N.J.S.A. 48:2-32 and designated Commissioner Mary-Anna Holden as Presiding Commissioner ("Commissioner Holden") authorized to rule on all motions that arose during the pendency of the proceedings, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.² The Board also directed all entities seeking to intervene or participate to file the appropriate application with the Board on or before July 8, 2022, and any party wishing to file for admission of counsel pro hac vice should do so concurrently.³

² In re the Merger of South Jersey Industries Inc. and Boardwalk Merger Sub, Inc., Order Designating Commissioner, Setting Manner of Service and Bar Date, BPU Docket No. GM22040270, June 8, 2022 ("June 2022 Order").

³ Id.

On July 8, 2022, counsel for EDF filed correspondence requesting a "One Week Extension to File Intervention."⁴ On July 14, 2022, Commissioner Holden denied EDF's request, and on July 15, 2022, EDF filed a Motion for Reconsideration and a Motion to Intervene. On August 10, 2022, Commissioner Holden granted EDF's Motion for Reconsideration and EDF's Motion to Intervene.⁵ Also on August 10, 2022, Commissioner Holden granted intervenor status to NJLEUC, and participant status to Atlantic City Electric Company ("ACE"), Public Service Electric and Gas Company ("PSE&G"), and the New Jersey Laborers Employers Cooperation and Education Trust ("NJLECET").⁶

On August 12, 2022, Commissioner Holden held a Prehearing Conference, and on August 17, 2022, Commissioner Holden issued a Prehearing Order with Procedural Schedule ("August 17 Procedural Schedule").⁷ Following proper notice, on September 29, 2022, two (2) public hearings were held virtually.⁸ One (1) member of the public spoke and subsequently submitted written comments in favor of approval, conditioned upon the new private owner providing regular financial reporting.

Throughout this proceeding, the Parties issued several rounds of discovery and participated in a series of settlement conferences. On October 18, 2022, the Joint Petitioners requested to amend the August 17 Procedural Schedule to allow for further settlement negotiations. Notwithstanding EDF's objection, on October 24, 2022, Commissioner Holden issued a Modified Procedural Schedule which superseded the August 17 Procedural Schedule. ("October 2022 Modified Procedural Schedule").⁹ On November 29, 2022, via a request of the Parties, Commissioner Holden issued a Second Modified Procedural Schedule which superseded the October 2022 Modified Procedural Schedule ("Second Modified Procedural Schedule").¹⁰

On December 2, 2022, Rate Counsel submitted testimony of witnesses Andrea C. Crane, Maximilian Chang, Susan Baldwin and John Rosenkranz. EDF submitted testimony of witnesses David Hill and Tianyi Sun. NJLEUC did not file testimony.

On December 28, 2022, Commissioner Holden received correspondence from the Joint Petitioners requesting a suspension of the Second Modified Procedural Schedule, and setting January 6, 2023 as a date certain to file an agreed-to fully executed stipulation. The Parties agreed that if terms of a stipulation were not agreed-to by January 6, 2023, the Parties would file comments regarding their respective positions for the Board's consideration. On January 5, 2023,

⁴ Notwithstanding that EDF filed a letter and not a motion, counsel for EDF represented that it was their "intent" to file a motion, and as such, and for the purposes of a clean and concise record, this request was treated as a formal motion.

⁵ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Decision on EDF Motion for Reconsideration and Motion to Intervene, BPU Docket No. GM22040270, August 10, 2022.

⁶ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order on Motions to Intervene and Participate, BPU Docket No. GM22040270, August 10, 2022.

⁷ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Prehearing Order with Procedural Schedule, BPU Docket No. GM22040270, August 17, 2022.

⁸ The public hearings were held virtually due to the COVID-19 pandemic.

⁹ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order Modifying Procedural Schedule, BPU Docket No. GM22040270, October 24, 2022.

¹⁰ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order Setting Procedural Schedule, BPU Docket No. GM22040270, November 29, 2022.

Commissioner Holden issued an Order granting the Joint Petitioner's request, with modifications, the details of which are provided therein.¹¹

THE STIPULATION

Following extensive discovery and settlement discussions, the Parties executed the Stipulation, the terms of which provide, in pertinent part, as follows:¹²

B. Impact on Rates

1. The Joint Petitioners will provide a financial benefit of \$75 million to ETG and SJG customers distributed as follows:
 - i. Within 30 days of the completion of the Merger, SJG and ETG will collectively write-off 100 percent of the total COVID deferrals outstanding as of such date inclusive of all cost categories, including customer arrearages. These deferrals are currently estimated to total \$6.1 million for SJG and \$8.8 million for ETG as of November 30, 2022. The costs written-off will not be recovered from customers. Write-offs related to these 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.
 - ii. After the closing of the Merger, SJI will cause ETG and SJG to issue rate credits to all customers in an amount equal to the difference between \$75 million and the amount of COVID deferrals written off in accordance with Section 1.i. of the Stipulation (the "Credit Amount"). The Credit Amount will be split into two annual installments and will be structured as credits against the customer's monthly bills. The first half of the Credit Amount will be provided within 90 days of the closing of the Merger. The final half of the Credit Amount will be provided during the month of the first anniversary of the payment of the first half of the Credit Amount. The rate credits will be funded by shareholders, not customers, and will be issued on a per customer basis to customers of all rate classes.
2. The Parties agree that ETG and SJG will not file another base rate case for new rates effective prior to two (2) years from the effective date of the Board's Orders in the 2022 rate cases for each Company.
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 (a) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar

¹¹ In re the Merger of South Jersey Industries, Inc. and Boardwalk Merger Sub, Inc., Order Further Modifying Procedural Schedule, BPU Docket No. GM22040270, January 5, 2023.

¹² Although summarized in this Order, the detailed terms of the Stipulation control, subject to the findings and conclusions of the Order. Paragraphs are numbered to coincide with the Stipulation.

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. Any such costs will be considered "transaction costs".

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, any common equity balance reflected in the determination of allowance for funds used during construction (AFUDC), cost of capital, operating expenses, or any other ratemaking component in future ETG or SJG proceedings.
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.
6. No time and expenses, third party costs, fees, expenses, or costs of the transition (collectively, "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, ETG, and/or SJG into the holdings of IIF or its subsidiaries.
7. SJIU, ETG and SJG will not be allocated any costs from Boardwalk or any other subsidiary or affiliate of IIF. In addition, SJIU, ETG and SJG agree not to engage Infrastructure Investment Group ("IIG") in any transaction in which the fees of IIG under such arrangement would be charged, directly or indirectly, to customers. SJI may allocate costs from Boardwalk or any other subsidiary or affiliate of IIF to ETG, SJG or SJIU, subject to Board approval of an acceptable affiliate services agreement.
8. For ratemaking purposes, the Board will retain jurisdiction over all costs allocated to ETG or SJG by affiliates. Neither ETG nor SJG will challenge the Board's authority to determine the appropriate affiliate cost allocations reflected in New Jersey utility rates.
9. Any savings realized by ETG and SJG by virtue of the Merger will be tracked beginning with the merger closing until the first rate case for each company. Savings will be flowed through to utility customers in a future base rate case, net of any costs to achieve such savings.

C. Impact on Employees and Corporate Governance.

10. For a period of five (5) years following the closing of the Merger, as a result of the Merger, SJI will not implement any involuntary workforce reductions or decreases to wages, benefits and other terms and conditions of employment in effect prior to the closing of the Merger. This commitment shall not prohibit work force reductions for positions that are obsolete or no longer required. The Company will make a good faith effort to offer training and new assignments to employees and reassign them to other areas of the Company to avoid such reductions.

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.
12. SJI will ensure that ETG's and SJG's pension obligations to employees will be satisfied.
13. SJI will maintain SJIU's, ETG's and SJG's respective local core management teams for a period of at least five (5) years following the closing of the Merger subject to a Board order finding in any other relevant proceeding.
14. Each of SJI's, ETG's and SJG's CEO and senior management will continue to have day- to-day control over operations.
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.
16. SJI shall honor all existing ETG and SJG's pension benefits so long as IIF retains ownership of SJI, provided that this commitment shall not preclude IIF or SJI from: (a) making future changes to SJG and ETG's current defined benefit plan if 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.
17. For the period of five (5) years after consummation of the Merger, SJG and ETG will continue to provide the Board with an updated employee count (by position and function, including exempt and non-exempt employees) in annual filings to the Board to facilitate the Board's ability to ensure that SJG and ETG maintains an adequate workforce to continue to provide safe and reliable service.

D. Impact on Service.

18. SJI, ETG and SJG will maintain their headquarters in New Jersey for so long as Boardwalk owns SJI.
19. ETG and SJG will maintain their existing call centers, field service centers, and walk-in payment centers for at least three (3) years following the closing 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.
20. 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.
21. SJI will end the license agreement with HomeServe when it expires in 2026. SJG will not allow the license agreement to automatically renew. SJI will provide notification to HomeServe that it will not renew the license within 30 days of the closing of the Merger to ensure that HomeServe has sufficient time to stop using the logo.

22. SJI will confirm that no unaffiliated companies, other than HomeServe, use the SJI logo or any version of the SJI logo and SJI will not allow any new licenses of its logo or any versions of its logo for unaffiliated companies.

E. Charitable and Community Support.

23. Boardwalk and SJI will commit that ETG and SJG will provide community support contributions of at least \$500,000 annually each for a period of at least five (5) years following the closing of the Merger. Community support projects may include charitable, educational, community support and economic development efforts. These amounts will be not recovered from customers.
24. Boardwalk will commit to make, or to cause to be made, an annual contribution in the amount of \$500,000 to NJ SHARES (not earmarked for ETG or SJG customers) for a period of at least five (5) 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 customers. ETG and SJG will otherwise continue their participation in government administered programs such as USF and Comfort Partners and continue to recover associated costs through rates.

F. Impact on Competition.

25. Boardwalk and SJI will comply with applicable New Jersey and federal affiliate relations standards, including those relating to retail access and customer choice. SJG and ETG will refrain from granting any undue preference to any affiliate of IIF and comply with the affiliate standards in N.J.A.C. 14:4-3.5 when dealing with all affiliates of IIF as this term is defined in the Stipulation under Ring-Fencing Commitments including entities that are not designated as a "related competitive business segment."
26. SJG and ETG will not contract for service from a new natural gas transportation or storage project owned by an affiliate, or any entity in which an affiliate has an ownership interest, without prior approval from the Board.
27. SJG and ETG will publicly post on a quarterly basis detailed information required by BGSS Minimum Filing Requirement ("MFR") number 13 for all affiliate gas supply transactions. The information will be maintained on the website for a period of one year from the posting.
28. The Joint Petitioners agree to 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.

G. Continued Regulatory Compliance.

29. 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.

H. **Ring-Fencing Commitments.**

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 SJIU, ETG and SJG. As used in the Stipulation, 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, SJIU, SJI, IIF US Holding 2 and/or any of their successors or assigns directly or indirectly owns ETG and SJG:

30. **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.
31. **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.
32. **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 SJIU. 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 SJIU. SJIU 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 SJIU. SJI, Boardwalk, and IIF will not represent to the public or to their creditors that SJIU, SJG, or ETG has any liability for the obligations of SJI, Boardwalk, and IIF, or any other affiliate of IIF, excluding SJIU, SJG, and ETG.
33. **No Pledging of Utility Assets/Stock.** Neither Boardwalk nor any other affiliate of IIF, excluding ETG and SJIU, will pledge ETG's assets, revenues, or shares. Neither Boardwalk nor any other affiliate of IIF, excluding SJG and SJIU, will pledge SJG's assets, revenues, or shares. Neither Boardwalk nor any other affiliate of IIF, excluding SJG, ETG, and SJIU, will pledge SJIU's assets, revenues, or shares.
34. **No Transaction Related Debt at ETG, SJG or SJIU.** None of SJIU, SJG or ETG will incur, guaranty, or pledge assets for any new incremental debt related to the Merger.
35. **Refinancings or Debt Replacements.** ETG's and SJG's current rates reflect the cost of first mortgage bonds and senior notes that contain "change-in-control" provisions that allow the bond and note investors to sell (put) their bonds and notes back to the respective issuer at the face amount of the debt in connection with the Transaction. The Parties acknowledge that (a) to the extent ETG and/or SJG incurs increased interest expense as a result of issuing new debt (referred to as the "Refinanced Debt") solely to replace any first mortgage bonds and senior notes that are redeemed by ETG and/or SJG as a result of an investor exercising a put

in connection with the Transaction (referred to as the "CIC Debt") and (b) such increased interest costs are included in the base rates set in future base rate cases, then ETG and/or SJG, as applicable will provide customers with a rate credit (referred to as the "CIC Rate Credit") in future base rate cases for the remaining tenor of the CIC Debt on the following terms and conditions:

(i) Within 30 days of the expiration of the put window in connection with the Transaction, the Petitioners will identify all tranches (or portions of tranches if less than 100% of a tranche is redeemed) of ETG and SJG debt that were redeemed, including the interest rate, maturity date, and future principal balance and interest expense (referred to as the "CIC Debt Interest Expense") by year for the remaining tenor of each such tranche. This information will be reflected in a tracking spreadsheet to identify the quantum of debt that will be subject to this provision and create the baseline for comparison to the Refinanced Debt terms. Appendix 1 of the Stipulation is an illustrative tracking spreadsheet that SJI will maintain and provide in each base rate case for so long as this provision is in force. On January 15th of each calendar year after the closing of the Transaction, ETG and SJG will provide annual reports to BPU Staff and Rate Counsel containing the terms of all Refinanced Debt outstanding as of December 31st of the preceding calendar year including interest rate, maturity date, and future principal balance and interest expense.

(ii) Commencing with the first ETG and SJG base rate cases following the closing of the Transaction, ETG or SJG, as applicable, will identify the total annual interest expense for the Refinanced Debt for the test year period (referred to as the "Refinanced Debt Interest Expense"). The Refinanced Debt Interest Expense will be input into the tracking spreadsheet for comparison to the CIC Debt Interest Expense for the test year period. In the event the Refinanced Debt Interest Expense is greater than the CIC Debt Interest Expense, then a CIC Rate Credit will be calculated using the following formula:

CIC Rate Credit = Refinanced Debt Interest Expense _(Test YearX) – **CIC Debt Interest Expense** _(Test YearX)

Any positive amount from the above formula for SJG and/or ETG respectively will be refunded to customers of the respective utility through an adjustment to customer rates (referred to as the "CIC Rate Credit Adjustment").

It is the intention of the Parties that the base rates for ETG and SJG will reflect the actual cost and balance of the Refinanced Debt for the test year. To the extent that the actual cost and balance of any Refinanced Debt is not included in base rates, then the CIC Rate Credit will be adjusted to exclude any such disallowed debt and the associated costs.

(iii) All Parties acknowledge the Petitioners are not obligated to issue Refinanced Debt with like tenors to the CIC Debt and may manage the refinancing of the CIC Debt to the best of their ability to mitigate interest rate exposure and expense.

(iv) The Parties further acknowledge they will (a) use reasonable efforts to adjust the CIC Rate Credit, to the extent required, to avoid negative impact on the credit quality of SJG and ETG, and (b) ensure the terms of the Stipulation are implemented consistently and in their entirety for the remaining tenor of the CIC Debt.

(v) The Parties acknowledge that Petitioners should have the opportunity to mitigate the impact to ETG, SJG and shareholders if such mitigation actions do not create an adverse impact to customers. The Parties further acknowledge that ETG and SJG will retain all applicable tax benefits associated with incremental Refinanced Debt Interest Expense relative to the CIC Debt Interest Expense.

36. Intercompany Lending. Neither ETG nor SJG shall lend money to SJIU, SJI, Boardwalk, IIF or any other affiliate of IIF. SJIU may lend money to ETG and SJG.
37. Money Pool. If SJIU establishes a money pool, the only participants in such money pool shall be SJG, ETG, and SJIU.
38. Credit Ratings. ETG, SJG, SJIU, 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, SJIU, 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.
39. ETG Credit Ratings and Dividends. ETG shall pay dividends only if its senior unsecured debt is rated investment grade (i.e., at or above BBB- by Standard and Poor's or Fitch or Baa3 by Moody's) at the time of such dividend payment by any NRSRO engaged on behalf, and at the sole discretion, of ETG. For the avoidance of doubt, dividend payments will not be precluded by a below investment grade rating rendered by an NRSRO that has not been engaged on behalf of ETG.
40. SJG Credit Ratings and Dividends. SJG shall pay dividends only if its senior unsecured debt is rated investment grade (i.e., at or above BBB- by Standard and Poor's or Fitch or Baa3 by Moody's) at the time of such dividend payment by any NRSRO engaged on behalf, and at the sole discretion, of SJG. For the avoidance of doubt, dividend payments will not be precluded by a below investment grade rating rendered by an NRSRO that has not been engaged on behalf of SJG.
41. Dividends from ETG, SJG, and SJIU will be limited to no more than 100 percent of net income.
42. ETG, SJG, and SJIU will maintain an equity ratio of at least 48 percent. If the Board should authorize a hypothetical capital structure that contains a common equity ratio of less than 48 percent, then SJG and ETG may maintain such lower ratemaking equity ratio until a different equity ratio is authorized.
43. SJIU Permitted Indebtedness. SJIU shall only incur debt to fund intercompany loans with ETG and SJG, for the benefit of ETG and SJG.

44. Financial Covenants or Rating Agency Triggers. No debt or credit agreements of SJG, ETG, and SJIU shall include any financial covenants or rating-agency triggers related to SJI, Boardwalk, IIF or any affiliate of IIF, excluding ETG, SJG and SJIU.
45. Board Composition. Within 30 days of the closing of the Merger and thereafter except as otherwise provided in the Stipulation, SJI's board of directors will be comprised of 10 directors, of which:
- i. One will be SJI's CEO, who will not serve as a board member or in an executive capacity for any IIF affiliate, excluding SJI and its subsidiaries, during their tenure as 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 those seven NYSE independent directors:
 - (i) at least two will reside in New Jersey;
 - (ii) all will be independent from JP Morgan, including JP Morgan's Infrastructure Investment Group ("IIG"). Independent directors will have no material financial relationship within the past 10 years with JP 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;
 - (iii) In respect of the SJI Board of Directors constituted within 30 days of the closing of the Merger, at least four of the independent directors will also be independent from IIF US Holding 2 and its affiliates at the time of such director's initial appointment, including having had no material financial relationship with IIF US Holding 2 and its affiliates within the past ten years. At least three independent directors, plus the SJI CEO, will not serve on the board of directors for an affiliate of IIF, excluding SJI and its subsidiaries, while a member of the SJI Board of Directors;
 - (iv) Within 60 days of closing, and on January 15th of each subsequent calendar year, SJI will provide Staff and Rate Counsel with a list and brief bios of members of the members of the Board of Directors for ETG, SJG, SJIU, SJI and IIF US Holding 2. In addition, Rate Counsel and Staff will be notified within 15 days of any changes to the Board of Directors of SJI, SJIU, ETG, SJG or IIF US Holding 2.
46. Voluntary Bankruptcy. The SJI board of directors may not place ETG, SJG, or SJIU in voluntary bankruptcy unless it has received the consent of at least four of the seven independent directors.
47. 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 SJIU, a bankruptcy court would not consolidate the assets and liabilities of ETG, SJG, or SJIU with any such entity.

48. Modification of Ring-Fence. The Joint Petitioners agree to 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 also agree not to proceed with any modification or termination of these ring-fencing and corporate governance provisions without first obtaining BPU approval in a written order.
49. 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, SJIU's President and other senior management who directly report to SJIU's President will hold no positions with Boardwalk, IIF or any affiliate of IIF, excluding SJI and its subsidiaries.
50. 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, including but not limited to statements of income, balance sheets, cash flows, and retained earnings. All such records will be maintained in accordance with the Uniform System of Accounts or as otherwise prescribed by N.J.S.A. 48:2-16 and such books, accounts and financial statements shall be maintained in the State of New Jersey. SJG and ETG will not commingle funds with one another nor with SJIU, SJI, Boardwalk, IIF or any affiliate of IIF, except pursuant to a BPU-approved money pool along with SJIU. Boardwalk is not required to, and does not, prepare financial statements. Staff and Rate Counsel will be provided with copies of Boardwalk's financial statements only to the extent that such financial statements have been prepared by Boardwalk.
51. Reporting.
 - i. SJI and Subsidiary Reporting. SJI, ETG and SJG shall provide Staff and Rate Counsel with copies of their unaudited quarterly financial statements, copies of their audited annual financial statements, and continue to file and provide the Staff the BPU's Annual Report using the FERC Form 2 format in accordance with N.J.A.C. 14:3-6.3(a) and Statements of Gross Intrastate Revenues pursuant to 48:2-62. SJI shall provide Staff and Rate Counsel audited annual consolidated financial statements and notes to financial statements using the SEC 10K format. In addition, SJI shall provide Staff and Rate Counsel consolidated quarterly financial statements and notes to financial statements using the SEC 10Q format and consolidated significant event report in a format similar to the SEC 8K format. The revised SEC 8K format shall be provided to Board Staff for its review and approval. SJI, SJIU, ETG and SJG shall continue to seek Board approval of service

agreements, cost allocation manuals and associated changes. All transactions and affiliation relationships must be clearly set forth in the documents to ensure compliance with the Board Affiliate and Fair Competition Standards and to ensure there is no cross subsidization and appropriate allocations.

- ii. IIF Reporting. Within 60 business days of finalizing a quarterly NAV, IIF will provide quarterly Net Asset Value ("NAV") and liquidity information to Staff and Rate Counsel by electronic mail. Within 30 business days of release thereof to its investors, IIF will provide Rate Counsel and Staff with access to IIF's Annual, Quarterly and Sustainability Reports via a secure website. The Parties acknowledge that these materials may be highly confidential, and commercially sensitive and agree that: (A) receipt and review of these materials will at all times remain subject to the Open Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, if applicable, and rules and regulations of the Board pertaining to confidentiality. The Parties acknowledge that these materials will be provided in this docket pursuant to the Agreement of Non-Disclosure previously executed in this proceeding; (B) that these materials will be searchable but cannot be copied or reproduced without the express prior agreement of IIF, and (C) access to the secure website will be limited to Staff and Rate Counsel representatives preauthorized to have access by IIF. The Annual Report currently includes the Report of Independent Auditors and Financial Statements and Notes for the Fund Investor Vehicles and the Report of Independent Auditors and combined Financial Statements for the Holding Companies. The Annual Report currently includes statements of cash flow, assets and liabilities, and operations, and changes in net assets, and in particular for the combined financial statements for the holding companies a schedule of investments held. The Annual Report currently includes key portfolio company metrics such as discount rate, cost, fair value, return, yield and leverage.
 - iii. In the event confidential information is disclosed by Staff or Rate Counsel in violation of any foregoing, the Parties agree that this material will henceforth only be provided to the party that disclosed the confidential information on an *in camera* review basis.
52. Internal Controls. SJI, SJIU, ETG and SJG shall continue to establish and maintain internal accounting controls as defined by FERC and other federal agencies and the BPU.
 53. Cross-Default Provisions. None of ETG, SJG, and SJIU will include in any of their respective debt or credit agreements cross-default provisions relating to Boardwalk, IIF or any affiliate of IIF, excluding SJIU, ETG and SJG. None of ETG, SJG, SJIU, 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 SJIU, ETG and SJG. Under no circumstances will any debt of ETG, SJG, or SJIU 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 SJIU, ETG and SJG.

I. **Additional Provisions**

54. **Third Party Equity Issuances.** The general partner of IIF US 2 will have the power to decline to make provision for any equity issuances the SJI board of directors approves. In the event that IIF US 2 declines to provide equity for a project at ETG or SJG that (a) SJI management has recommended for approval to the SJI board on behalf of ETG or SJG, (b) the SJI board of directors has determined is in keeping with good utility practice, and (c) is approved by a majority of the SJI board of directors, SJI is authorized to issue non-voting, nonconvertible, preferred equity at then-prevailing market terms solely to secure the equity portion of such project at ETG or SJG. SJI must not sell a primary issuance of such preferred equity to IIF US 2, JP Morgan, or any of their respective affiliates.
55. IIF US Holdings 2 will maintain an indirect controlling ownership interest in SJI for at least 10 years post-closing, unless the BPU specifically determines otherwise.
56. The Joint Petitioners agree to abide by the commitments herein as long as SJI, SJIU, ETG and SJG are owned by IIF US Holding 2.
57. Other than Boardwalk Topco LLC, Boardwalk Parent LLC, and Boardwalk, none of which will have any operational functions other than those relating to holding 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.
58. The agreement shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to consolidated tax adjustments, auditing, rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioners.

J. **Energy Master Plan**

59. SJI shall continue to participate in the Board's efforts to develop statewide energy efficiency and demand response programs to meet the state's Energy Master Plan and Clean Energy Act goals. SJG and ETG agree to coordinate with the BPU and the other New Jersey utilities to deliver cost effective energy efficiency programs in accordance with the New Jersey Clean Energy Act. In the Company's next energy efficiency filing, anticipated to be filed in 2023 to take effect in July, 2024, the Company will consider how it can expand current offers and rebates to commercial and industrial customers. SJG and ETG to work collaboratively with NJLEUC to explore energy efficiency and demand response offerings beneficial to commercial and industrial customers.
60. SJG and ETG will provide the parties with the sustainability metrics reported in SJI's annual ESG report within two weeks of publication, along with a website link to such report. This data is consistent with the Edison Electric Institute/American Gas Association (EEI/AGA) ESG/Sustainability Template, a reporting template developed for use by gas and electric companies in providing the financial sector with comparable and consistent ESG data and information. A sample of this template is attached to the Stipulation as Appendix 2.

61. This provision is intentionally omitted by agreement of the parties.
62. Within 18 months of the closing of the Merger, SJG and ETG will submit to the Board proposals necessary to enable the Companies to incorporate Non-Pipes Alternatives ("NPAs") in their supply/demand planning.
63. The Joint Petitioners are open to further discussions concerning SJI to work collaboratively with NJLEUC to explore renewable natural gas-related projects.

K. Additional Customer Service Commitments

64. SJI, Boardwalk and IIF commit to taking all reasonable steps to ensure that ETG and SJG will, by December 31, 2023, improve and then maintain the quality of customer service and system reliability to comply with all laws, regulations, standards and Orders adopted by the Board for as long as IIF, or an affiliated entity, owns SJI.
65. SJG will adopt ETG's threshold of answering 82% of calls within 30 seconds, as stated in Appendix 3.
66. SJG and ETG commit to submit to Board Staff and Rate Counsel a Call Center Customer Service Improvement Plan ("CCCSIP") developed in coordination with Board Staff and Rate Counsel on or before March 15, 2023, as directed by the Board for SJG in the Board's "Decision and Order Adopting Initial Decision and Stipulation" in SJG's most recently completed base rate proceeding in BPU Docket No. GR22040253. The CCCSIP shall at a minimum include the requested information outlined in Appendix 3 and Appendix 4 of the Stipulation. Each Company shall submit to Board Staff and Rate Counsel quarterly reports thereafter for one (1) year after two (2) quarters of consistent attainment of the benchmarks contained in Appendix 3 of the Stipulation regarding progress in meeting and improving call answering performance benchmarks (percentage of calls answered within 30 seconds and call abandonment rate). The reports will also include a narrative description of the efforts SJG and ETG are taking to improve these metrics and other narrative reports described in Appendix 4 of the Stipulation. In connection with the CCCSIP, SJG and ETG will 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.
67. SJG will 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. GR22040253. The quarterly customer service reports will 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. A complete list of such metrics and information is set forth in Appendix 3 to the Stipulation.

68. ETG will 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 will 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. A complete list of such metrics and informational reporting is set forth in Appendix 3 to the Stipulation.
69. SJG and ETG commit to offer deferred payment arrangements with 24-month terms through December 31, 2023.
70. SJG and ETG commit to submit to Board Staff and Rate Counsel within 90 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.
71. SJG will maintain its present financial threshold for residential disconnection, in place as of December 27, 2022, through December 31, 2023, that is applicable to customers with outstanding balances more than 60 days old. ETG will adopt the same threshold effective the date of the Proposed Transaction's consummation (or earlier). The financial threshold for residential disconnection is confidential and set forth in Appendix 5 of the Stipulation.

L. Environmental and Climate Issues

72. Within 9 months of the closing of the Merger, ETG and SJG will provide data concerning their costs of mains, services and other facilities incurred to extend service to new customers, as described in the Stipulation, for each of the last five calendar years (2018-2022). ETG and SJG will file this information publicly in the NJ BPU docket for this proceeding, GM22040270, with copies to the parties. All parties shall have the right to take any position concerning tariff provisions regarding service extensions.

The following information shall be provided by ETG and SJG for each of the last five calendar years:

- a. The number of new customer additions, broken out by residential and non-residential, as well as new construction and conversions of existing structures. To the extent data is available for conversions, ETG and SJG will identify the fuel displaced.
- b. The number of natural gas service lines and length of such lines installed for new customers and total cost thereof, broken down by residential and non-residential customers, as well as categorized between service extensions to new construction and service lines to existing facilities;
- c. The number of natural gas service mains and length of such lines installed for new customers and the total cost thereof, broken down by residential and non-

residential customers, as well as categorized between main extensions to new construction and existing facilities; and

- d. The number and cost of other facilities incurred to extend service to new customers, with explanation of the facilities.
 - e. If any of the above information is unable to be provided publicly due to confidentiality restrictions, the companies shall so indicate and shall provide such information pursuant to the BPU's procedures for handling confidential information. Moreover, to the extent state or federal law does not permit the disclosure of such information, the companies shall not be required to provide the information.
73. In any filing to establish a new Infrastructure Investment Program, ETG or SJG, as applicable, will include testimony explaining why the filing is consistent with the Energy Master Plan (EMP) and the New Jersey Global Warming Response Act.
74. Within 18 months of the closing of the Merger, SJG and ETG will submit to the Board a proposal to implement a Non-Pipes Alternatives (NPA) program.
- a. Under the proposal, for any identified gap between forecasted supply and demand - *i.e.*-an infrastructure or supply constraint – the utilities will assess alternate options in addition to traditional supply-side solutions. The utilities will develop a process for soliciting proposals to provide natural gas supply or demand relief. The NPAs to be considered include, but are not necessarily limited to, energy efficiency and demand response measures, compressed natural gas and liquefied natural gas, electrification, and geothermal facilities. The NPA proposal will identify and address operational, billing and customer service issues raised by the use of NPAs. The NPA proposal will also undertake an investigation of ways to prioritize potential NPAs in low income and environmental justice communities. Any proposed NPA involving utility ownership of non-gas infrastructure must receive specific Board approval prior to recovery of costs in gas distribution rates.
 - b. The utilities and Environmental Defense Fund agree to collaborate in good faith regarding the development of the NPA program proposal prior to submitting the proposal to the BPU. The utilities will meet with EDF at least two times and will share the proposal with EDF for comments before filing the proposal with the Board.
 - c. If the NPA program proposal is approved by the BPU, as the utilities implement the program, they will each issue annual reports detailing: (1) solicited proposals that were examined over the last two years where a proposal has been selected, detailing the selected proposal; (2) pending solicited proposals to be considered where a proposal has not yet been selected; and (3) anticipated upcoming solicited proposals. ETG and SJG will file their annual reports publicly in the NJ BPU docket for this proceeding, GM22040270, with copies to the parties. If any of the above information is unable to be provided publicly due to confidentiality restrictions, the companies shall so indicate and shall provide such information pursuant to the BPU's procedures for handling confidential information. Moreover, to the extent state or federal law does not

permit the disclosure of such information, the companies shall not be required to provide the information.

75. ETG and SJG will provide EDF copies of gas leak reports filed with government agencies subject to appropriate confidentiality restrictions.
76. Gas Leak Equity Analysis
 - a. By December 31, 2026, ETG will complete a gas leak equity analysis and develop a plan to address any identified disproportionate circumstances. By December 31, 2027, ETG will complete an updated version of this analysis and issue an updated version of the plan to address any identified disproportionate circumstances. The 2026 and 2027 analyses and plans will be filed publicly in the NJ BPU docket for this proceeding, GM22040270, with copies to the parties, and will include the following components:
 - i. ETG will report gas leak density (collected through advanced leak detection + surveys and other surveys) by census tracts and census blocks.
 - ii. ETG will analyze whether overburdened communities in its service territory as defined by the New Jersey Department of Environmental Protection are subject to greater leak density than surrounding communities and develop a plan and program to address any disproportionate circumstances.
 - iii. ETG will submit any such plans to the Parties for comment. Any disputes as to ETG's plans will be submitted to the Board for resolution.
 - b. By June 30, 2024, ETG will report gas leak density by census tracts and census blocks in the areas where cast iron facilities have been replaced and provide its plan for continuing with such replacement over the coming years.
 - c. Any costs associated with compliance with this provision will be capped at a maximum of \$300,000 per year, and ETG shall not be required to conduct any surveys or produce any reports that cause it to incur costs in excess of this cap.
77. With respect to the commitment in Paragraph 60 of the Stipulation, SJG and ETG will provide utility specific greenhouse gas emissions data (i.e., separate out each utility's data); define the term "partial" as it is used in the template with regard to Scope 3 emissions; and explain which emissions sources identified in the EEI-AGA ESG/Sustainability Metrics are included in any stated greenhouse gas emissions reduction goals identified in the ESG Annual Report.
78. To the extent directed by statute, or to the extent the Board determines by regulation or generally applicable order, that deployment of hydrogen or any particular type of deployment of hydrogen is not consistent with safe, reliable and adequate utility service at reasonable rates, including applicable environmental policies pursuant to *N.J.S.A. 48:2-23*, SJG and ETG will not pursue any such utility or customer-supported deployment of hydrogen. However, nothing herein will prevent any party from challenging the reasonableness or lawfulness of any such statute, regulation, or order.

79. To the extent directed by statute, or to the extent the Board determines by regulation or generally applicable order, that deployment of biomethane or any particular type of deployment of biomethane is not consistent with safe, reliable and adequate utility service at reasonable rates, including applicable environmental policies pursuant to N.J.S.A. 48:2-23, SJG and ETG will not pursue any such utility or customer-supported deployment of biomethane. However, nothing in the Stipulation will prevent any party from challenging the reasonableness or lawfulness of any such statute, regulation, or order. The term biomethane refers to methane (aka, natural gas) derived from sources other than fossils, such as livestock operations, landfills, and gasification of agricultural crop residue, yard and wood waste.
80. In any matter before the NJ BPU involving initial consideration or review of any SJG/ETG investment in or deployment of hydrogen or biomethane, SJG/ETG will comply with all regulations or rules adopted by the Board that require the Companies to provide information concerning such investments or deployments. Any party may contend, and any party may oppose such contention, that the following topics would be relevant for discovery and analysis in such a proceeding: analysis and quantification of the life-cycle greenhouse gas emissions associated with a hydrogen or biomethane investment or deployment; safety; community impacts, including overburdened communities; and data related thereto.

DISCUSSION AND FINDINGS

The Merger is the first time the Board considers a private investment vehicle acquiring two New Jersey energy utilities resulting in private ownership of the utilities, delisting of the utilities from the NYSE, and the elimination of the utilities' compliance with SEC reporting requirements. Therefore, at the onset, the Board notes that this Decision and Order is applicable solely to the facts pertaining to this matter, and is not applicable to, and does not constitute review or approval of, any subsequent mergers or corporate restructuring.

The Board may only grant the Joint Petitioners' request to approve the Merger if the terms of the Stipulation satisfy the legal requirements provided in N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14(c), N.J.S.A. 48:3-7, and N.J.S.A. 48:3-10.

N.J.S.A. 48:2-51.1(a) provides, in pertinent part, as follows:

...In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

The terms of the Stipulation address each of the above statutory requirements:

- **Competition:** The terms of the Stipulation confirm that the change in control will not adversely affect competition. According to the Stipulation, New Jersey and federal affiliate standards, including those relating to retail access and customer choice, will

remain in full force and effect. ETG and SJG already operate under the umbrella of a holding company, SJI, and customers will continue to have a choice to purchase their gas through a licensed third-party supplier. The Stipulation further provides that ETG and SJG will not grant undue preference to any IIF affiliate, and will not contract for new natural gas transportation or a storage project owned in whole or part by an affiliate without Board approval. ETG and SJG will also publicly post Basic Gas Supply Service Minimum Filing Requirements for all affiliate gas supply transactions.

- Customer Rates: According to the Stipulation, the Joint Petitioners will provide a \$75 million customer benefit; approximately \$15 million will pay outstanding ETG and SJG COVID deferrals, and the balance will be applied as direct rate credits structured in two (2) annual installments. Customers will be shielded from any pass-through of acquisition premiums, transactions costs, or goodwill. In addition, customers will be held harmless from any increased cost of debt resulting from the change in control through a cost of debt tracking mechanism and rate credit for any increase in the cost of debt directly resulting from or through the merger.
- Employees: The Stipulation provides that there will be no involuntary workforce reductions, or decrease in wages, benefits or terms and conditions of employment, for five (5) years following the closing, except for positions that become obsolete due to the Merger. For five (5) years, ETG and SJG will submit annual reports to the Board detailing the number of employees by position and function, and a description of the training and reassignment for any employees whose positions the Company deems obsolete or no longer required. SJI will maintain local core management teams for five (5) years following the closing. SJI will honor all collective bargaining agreements, and existing ETG and SJG pension benefits, so long as IIF retains ownership of SJI.
- Provision of Safe and Adequate Service: The Parties agree, pursuant to the Stipulation, that ETG and SJG will continue to provide safe, adequate and reliable service, and fulfill all of its obligations under New Jersey law, subject to the continued jurisdiction of the Board. SJI, ETG and SJG will maintain their headquarters in New Jersey for so long as Boardwalk owns SJI. Additionally, ETG and SJG will maintain their existing call centers, field service centers and walk-in payment centers for at least three (3) years post-Closing.¹³ SJI will provide ETG and SJG with the resources necessary to invest in capital and infrastructure projects to help ensure that ETG and SJG will continue to provide safe, adequate and proper utility service.
- Charitable and Community Support: Boardwalk and SJI commit that ETG and SJG each will provide at least \$500,000 annually for five (5) years post-merger. Projects may include charitable, educational, community support and economic development efforts. Boardwalk also will commit to make, or cause to make, annual contributions of at least \$500,000 to NJ SHARES for at least five (5) years post-merger. None of these dollars will be recovered from customers.

¹³ Excepting SJG's Pleasantville walk-in payment center which closure the Board approved by Order effective March 2, 2022 in BPU Docket No. GO21101159.

Next, the Board must also determine if the terms of the Stipulation satisfy the requirements of N.J.A.C. 14:1-5.14(c) which are, in pertinent part, as follows:

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

The terms of the Stipulation provide that positive net benefits will occur because of Merger. The \$75 million dollars provided to eliminate COVID-19 arrearages and to fund a direct rate credit, together with the employment commitments that extend five (5) years from the closing of the Merger, constitute a net positive benefit for ETG's and SJG's ratepayers and for New Jersey as a whole. Ratepayers will receive approximately \$60 million via a bill credit, which is a benefit that would not occur but for the Merger. SJI agreed to maintain employment at levels specified in the Stipulation and committed to maintain core management to ensure continued maintenance of safe, adequate and proper service. Further, the Stipulation contains various ring fencing and other measures including the establishment of a commercial paper program to ensure the continuing financial integrity of the utility.

Finally, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility or a wholly owned subsidiary thereof, is able to fulfill its pension obligations to any of its employees. According to the Stipulation, the pension obligations will remain intact. The Stipulation provides that SJI will honor all existing ETG and SJG's pension benefits so long as IIF retains ownership of SJI. This commitment does not preclude IIF or SJI from: a) making future changes to SJG and ETG's current defined benefit plan if 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 by SJG and ETG as part of their collective bargaining agreement negotiations.

Therefore, after careful consideration of the entire docket in this matter including, but not limited to, the Joint Petition, the applicable law, the Presiding Commissioner's Orders, and the Stipulation, the Board **HEREBY FINDS** as follows:

- The Stipulation satisfies the legal requirements provided in N.J.S.A. 48:2-51.1(a), and as such, the Merger will not adversely affect competition, rates, employees, or the provision of safe and adequate service at just and reasonable rates.
- The Stipulation satisfies the legal requirements provided in N.J.A.C. 14:1-5.14(c), and as such, the Merger will provide positive benefits to the customers of ETG and SJG, and the State of New Jersey.
- The Stipulation satisfies the legal requirements provided in N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, and as such, the Merger will allow all pension obligations to remain intact.

Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms as fully set forth herein, subject to the following conditions:

- This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such;

- This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting ETG or SJG;
- This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter owned by Joint Petitioners;
- Approval of this Merger does not constitute review or approval of any subsequent mergers or corporate restructuring; and
- Consummation of the Merger must take place no later than April 25, 2023, unless otherwise extended by the Board.

The Board **FURTHER FINDS** that the Stipulation provides a reporting regimen to counter the elimination of SEC and certain public reporting requirements, and to protect the interests of more than 700,000 ETG and SJG utility customers. Consistent therewith, the Board **HEREBY ORDERS** that during any Board initiated investigation or audit, IIF US 2 shall provide the Board, its Staff, and the Board's auditors, in a manner acceptable to the Board, its Staff, and the Board's auditors, access to the recommendations, opinions and/or advice from any entity, Board, Committee, or other party advising IIF US 2 in addition to IIF's US 2's books and records, which in the Board's opinion may have had a direct or indirect impact on SJI, SJIU, SJG and/or ETG or New Jersey, pursuant to the Board's statutory and regulatory authority as set forth in N.J.S.A. 48:2-12, N.J.S.A. 48:2-13, N.J.S.A. 48:2-16 et seq., N.J.S.A. 48:2-17, N.J.S.A. 48:2-19, N.J.A.C. 14:4-4.4, and any other relevant authority. The Board **FURTHER ORDERS** that all expenses or charges incurred regarding any Board investigation, audit or examination of books and records shall be paid by SJG, and/or ETG, and all books and records for Boardwalk, SJI, SJIU, SJG and ETG shall be kept in the State of New Jersey.

The Board **FURTHER ORDERS** that, within 10 days of receiving any federal or state notice of intent to initiate an audit or investigation, the Joint Petitioners shall notify the Board, in writing, whether the entity or entities that are the subject of the audit or investigation comprise: 1) SJG and/or ETG gas utilities; 2) IIF US 2 and/or its holdings, or 3) a party with which ETG and/or SJG has a material transactional relationship. The Board **FURTHER ORDERS** that the Joint Petitioners shall provide copies of any documents and/or reports resulting from such audit or investigation within 10 days of receiving the report or documents thereof highlighting the findings, conclusions and recommendations pursuant to N.J.A.C. 14:4-4.4 et seq.

The Board **HEREBY RATIFIES** the decisions of Commissioner Holden rendered during the proceedings for the reasons stated in her Orders.

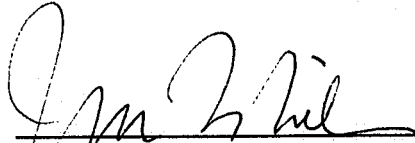
ETG's and SJG's costs remain subject to audit by the Board. This Decision and Order shall not preclude or prohibit the Board from taking any actions determined to be appropriate as a result of any such audit nor shall it preclude the Board from any action flowing from the recent SJG audit report.¹⁴

¹⁴ Sage Management Consultants, LLC *Management and Affiliate Audits of South Jersey Gas Company for the State of New Jersey Board of Public Utilities Final Report*, September 27, 2022 accepted by the Board on October 12, 2022 in Docket No. GA19091305.

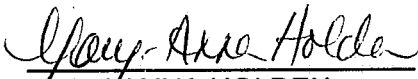
The Order shall be effective on January 25, 2023.

DATED: January 25, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT




MARYANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

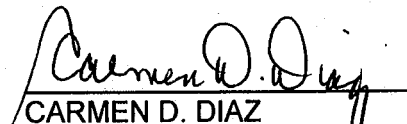


ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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

DOCKET NO. GM22040270

SERVICE LIST

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