



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH)
JERSEY GAS COMPANY TO IMPLEMENT AN)
INFRASTRUCTURE INVESTMENT PROGRAM)
("IIP") AND ASSOCIATED RECOVERY MECHANISM)
PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-)
2A) DOCKET NO. GR20110726

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Deborah M. Franco, Esq., SJI Utilities, on behalf of South Jersey Gas Company
Martin C. Rothfelder, Esq., Rothfelder Stern, L.L.C., on behalf of the Environmental Defense Fund

BY COMMISSIONER DIANNE SOLOMON:

BACKGROUND

On November 19, 2020, South Jersey Gas Company ("SJG" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") seeking approval of its proposed Infrastructure Investment Program ("IIP" or "Program"), including an associated cost recovery mechanism pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A.1 et seq. ("II&R Rules") ("Petition").

According to SJG, the proposed IIP is a five (5)-year program designed to modernize and enhance the safety and reliability of its gas distribution system by replacing its vintage, at-risk facilities, including the replacement of 825 miles of vintage, at-risk, coated steel main installed prior to the 49 CFR 192 code adoption (pre-code), and vintage plastic mains in SJG's distribution system, and the installation of 43,500 excess flow valves on new service lines. The projected total expenditures associated with the proposed IIP total approximately \$742.5 million, excluding Allowance for Funds Used During Construction ("AFUDC"), and the cost of an independent IIP monitor ("Monitor"), which SJG proposed to recover under a proposed IIP Rider over the five (5)-year IIP.

In accordance with the II&R Rules, the Company proposed two (2) annual baseline capital spending level amounts over the IIP period. SJG indicated that it will commit to capital expenditures on projects similar to those proposed in the IIP equal to an average of \$14.85 million per year, or a total of \$74.25 million from June 2021 through May 2026, which is equal to 10

percent of the total program budget. These capital expenditures will consist of investments in projects similar to the IIP projects, and will be made in the normal course of business and will be recovered in future base rate proceedings. The Company also proposed annual baseline capital spending levels equal to an average annual amount of \$86.9 million per IIP year, or \$434.5 million over the five (5)-year IIP investment period beginning on the effective date of the IIP. The proposed annual baseline capital spending level amount was established using a five (5)-year historical average of base capital expenditures adjusted to exclude certain unique or non-recurring capital expenditures not appropriate to include in the baseline. Consistent with N.J.A.C. 14:3-2A.3(a), the annual baseline spending levels will only be recovered via base rates.

SJG proposed to recover costs of the IIP through a proposed Rider “B” to its tariff which, as proposed, would permit recovery of revenue requirements associated with the IIP based upon actual plant in-service for six (6)-month periods pursuant to N.J.A.C. 14:3-2A.6(a). SJG proposed to make semi-annual rate adjustment filings during the five (5)-year Program, with rate adjustments effective approximately 60 days after each filing. The Company proposed to file semi-annually when eligible in-service amounts exceed 10 percent (10%) of the total proposed program spending. SJG estimated that the first rate adjustment filing would occur January 1, 2022 based upon actual plant in-service through November 30, 2021 with a rate effective date of March 1, 2022. Therefore, there would be no rate adjustment or customer bill impacts from the Program until March 1, 2022.

SJG proposed that the costs to be included in rates would include depreciation expenses providing for the recovery of the invested capital over its useful book life, and a return on the net investment, which would be calculated as the gross investment, plus AFUDC and Monitor expenses, less the depreciation expense and deferred income taxes. The proposed return on the net investment would be calculated utilizing the Weighted Average Cost of Capital (“WACC”) approved in the Company’s most recent base rate case (Docket No. GR20030243), 6.9 percent (6.418 percent after-tax), which is based on a return on equity of 9.60 percent and an equity component of 54 percent. As proposed, any change in the WACC authorized by the Board in a subsequent base rate case will be reflected in the subsequent monthly revenue requirement calculations.

Based upon the proposed Program spending, SJG estimated that the rate increase to the average residential heating customer using 100-therms in a month will be approximately \$2.26, or 1.6%, at the time of the first base rate adjustment on March 1, 2022.

By Order dated January 7, 2021, the Board determined that the Petition should be retained by the Board for hearing, and pursuant to N.J.S.A. 48:2-32, designated myself, Commissioner Dianne Solomon, as the Presiding Commissioner with authority to rule on all motions that arise during the pendency of these proceedings, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.¹ Further, the Board directed that any entity seeking to intervene or participate file the appropriate application with the Board by January 27, 2021, and any party wishing to file a motion for admission of counsel, *pro hac vice*, was requested to do so concurrently with any motion to intervene or participate.²

¹ In re the Petition of South Jersey Gas Company to Implement an Infrastructure Investment Program (IIP) and Associated Recovery Mechanism Pursuant to NJSA 48:2-21 and NJAC 14:3-2A, Order Designating a Commissioner, Setting A Bar Date and Manner of Service, BPU Docket No. GR20110726, Order dated January 7, 2021.

² Id.

MOTIONS TO INTERVENE AND PARTICIPATE

By the January 27, 2021 deadline, the following motions were filed in this matter:

1. Motion to Intervene on behalf of the Environmental Defense Fund (“EDF”); and
2. Motion to Participate on behalf of Public Service Electric and Gas Company (“PSE&G”).

EDF’s Motion to Intervene

EDF’s motion provided that over the past six (6) years, EDF engaged in a focused set of scientific, technical and policy-oriented projects to develop, demonstrate and foster commercialization of advanced leak detection technology and data analytics methods for gas distribution utilities. Additionally, EDF highlighted the benefits that advanced leak detection technology and data analytics could provide to utilities, particularly given significant improvements in technology. Therefore, EDF claims it has substantial expertise on these issues.

EDF explained that it was granted intervention and actively participated in other gas utility infrastructure proceedings, such as the Elizabethtown Gas Company “SMART” and IIP proceedings and the PSE&G Energy Strong, Gas System Modernization (“GSMP”), and GSMP II proceedings. EDF also explained that it is active in other states in efforts to reduce methane emissions from gas distribution system pipeline leaks. In addition, EDF completed a collaborative pilot project to quantify gas leaked from Consolidated Edison Company of New York’s non-hazardous type 3 leak backlog and develop a prioritization scheme for the repair of those leaks. EDF is also active on leak reduction efforts before public utility commissions in California, Illinois, Pennsylvania, and Washington, D.C, in addition to New York.

EDF argued it meets the standard for intervention as its members have a direct and substantial interest in the issues raised in this proceeding and will be directly affected by the outcome. As such, EDF explained that it will not be adequately represented by any other party. Additionally, EDF asserted that there will be no confusion or delay arising from inclusion of EDF in this proceeding because EDF has a history of working with the procedural schedules set in Board proceedings. As such, EDF claimed it satisfied the requirements of N.J.A.C. 1:1-16.1 and meets or exceeds the requirements of N.J.A.C. 1:1-16.3(a), and thus, its intervention should be granted.³

PSE&G’s Motion to Participate

According to PSE&G’s Motion, the issues that will be addressed in this proceeding and the relief provided will directly and specifically affect PSE&G as the Board’s decision in this proceeding will have precedential effect and impact not only on SJG and its customers, but also New Jersey’s other utilities, including PSE&G. PSE&G asserted that the service territories, customers, and the operations of PSE&G are distinct from those of other parties and participants in this case and therefore no other party or participant will represent the interests of PSE&G in this case.

³ On January 15, 2021, SJG drafted a response to EDF’s Motion to Intervene claiming that SJG did not oppose EDF’s motion provided that EDF’s involvement was limited to advanced leak detection and related issues. Via correspondence dated March 1, 2021, SJG withdrew its request to limit EDF’s involvement to advanced leak detection and related issues.

PSE&G explained it has a history of coordinating its activities in dockets at the Board with those of other utilities where appropriate. Therefore, PSE&G will coordinate its representation with other similarly-situated parties or participants. Due to PSE&G's experience in the gas industry, PSE&G claimed its participation in this proceeding is likely to add constructively to the proceeding. Finally, PSE&G stated that it will abide by the schedule set for this proceeding, to the extent one has been entered, and its participation will not cause undue delay or confusion.

SJG submitted letters indicating that it did not oppose the granting of intervener status to EDF or participant status to PSE&G.

DISCUSSION AND FINDINGS

Motions to Intervene and Participate

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

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

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

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

After consideration of EDF's Motion to Intervene, I am persuaded that EDF satisfied the legal requirements to warrant intervention. As such, I **HEREBY FIND** that EDF will be directly affected by the outcome of this proceeding, and I **FURTHER FIND**, pursuant to N.J.A.C. 1:1-16.3, that EDF has met the standards for intervention. Therefore, I **HEREBY GRANT** EDF's Motion for Intervention pursuant to the authority granted to me by the Board under the January 7, 2021 Order in this matter.

With regard to the Motion to Participate filed by PSE&G, I **HEREBY FIND** that pursuant to N.J.A.C. 1:1-16.6(b), PSE&G is likely to add constructively to the case without causing undue delay or confusion, and note that SJG does not object to granting participant status to PSE&G. Accordingly, I **HEREBY GRANT** the Motion to Participate filed on behalf of PSE&G limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

In addition, I reviewed the proposal for a preliminary schedule, which has been agreed to by Board Staff, the New Jersey Division of Rate Counsel (“Rate Counsel”), and the Company. I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

SJG's proposed IIP five (5)-year program is designed to modernize and enhance the safety and reliability of its gas distribution system by replacing its vintage, at-risk facilities, including the replacement of 825 miles of vintage, at-risk coated steel main installed prior to the 49 CFR 192 code adoption (pre-code), and vintage plastic mains in SJG's distribution system and the installation of 43,500 excess flow valves on new service lines. The projected total expenditures associated with the proposed IIP total approximately \$742.5 million, excluding Allowance for Funds Used During Construction ("AFUDC"), and the cost of an independent IIP monitor, which SJG proposed to recover under a proposed IIP Rider over the five (5)-year IIP.

SJG proposed to recover costs of the IIP through a proposed Rider "B" to its tariff which, as proposed, would permit recovery of revenue requirements associated with the IIP based upon actual plant in-service for six (6)-month periods pursuant to N.J.A.C. 14:3-2A.6(a). SJG estimated that the first rate adjustment filing would occur January 1, 2022 based upon actual plant in-service through November 30, 2021 with a rate effective date of March 1, 2022. Therefore, there would be no rate adjustment or customer bill impacts from the Program until March 1, 2022. Based upon the proposed Program spending, SJG estimated that the rate increase to the average residential heating customer using 100-therms in a month will be approximately \$2.26, or 1.6%, at the time of the first base rate adjustment on March 1, 2022.

Issues to be Resolved

- A. The cost effectiveness and cost efficiency of the activities and programs of the proposed IIP Program;
- B. Is the Program non-revenue producing, accelerated capital spending pursuant to the requirements of the II&R Rules;
- C. Is the IIP Program necessary accelerated capital spend;
- D. The reasonableness and lawfulness of the proposed IIP; and
- E. The appropriateness of the proposed cost recovery mechanism.

2. PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:

Counsel for SJG:

Deborah M. Franco, Esq.
VP/Rates, Regulatory and Sustainability
520 Green Lane
Union, NJ 07083
dfranco@sjindustries.com

Counsel for the New Jersey Board of Public Utilities and Staff

Department of Law and Public Safety
Division of Law, Public Utilities Section
R.J. Hughes Justice Complex, 7th Floor West
25 Market Street, P.O. Box 112
Trenton, N.J. 08625

Pamela Owen, DAG
pamela.owen@law.njoag.gov

Counsel to the Board of Public Utilities

Michael Beck, DAG
michael.beck@law.njoag.gov

Counsel to the Staff of the Board of Public Utilities

Brandon Simmons, DAG
Brandon.simmons@law.njoag.gov

Counsel for Division of Rate Counsel

Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, N.J. 08625

Stefanie Brand, Esq., Director
sbrand@rpa.nj.gov

Brian O. Lipman, Litigation Manager
blipman@rpa.nj.gov

Felicia Thomas-Friel, Esq.
ftthomas@rpa.nj.gov

Henry M. Ogden, Esq.
hogden@rpa.nj.gov

Maura Caroselli, Esq.
mcaroselli@rpa.nj.gov

Shelly Massey, Paralegal
smassey@rpa.nj.gov

Counsel for EDF

Martin C. Rothfelder, Esq.
Rothfelder Stern, L.L.C.
407 Greenwood Avenue, Unit #301
Trenton, NJ 08609
(609) 394-1000
mrothfelder@rothfelderstem.com

No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in SJG's service territory. The dates, times, and locations of the public hearings are to be determined.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

The dates, times, and locations of the evidentiary hearings are to be determined based upon the availability of the parties and myself.

5. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the New Jersey Division of Rate Counsel and SJG have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 and the attached Procedural Schedule agreed upon by the parties.

9. **ORDER OF PROOFS:**

SJG has the burden of proof. The hearings will be conducted by topic in the following order:

First – SJG

Second – Rate Counsel

Third – EDF

Fourth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

Unknown at this time. Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

All pending motions to intervene and/or participate have been addressed.

14. **SPECIAL MATTERS:**

None at this time.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: March 8, 2021

BY:



DIANNE SOLOMON
COMMISSIONER

In the Matter of the Petition of South Jersey Gas Company to Implement an Infrastructure Investment Program (IIP) and Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A

BPU Docket No. GR20110726

Procedural Schedule

Motions to Intervene/Participate	January 27, 2021
First Round Discovery Requests+	January 27, 2021
First Round Discovery Answered	February 18, 2021
Second Round of Discovery Requests	March 11, 2021
Responses due on Second Round of Discovery Requests	March 25, 2021
Discovery conference	Week of March 29, 2021
Third Round Discovery Requests	April 5, 2021
Third Round of Discovery Answered	April 19, 2021
Discovery/Settlement Conference	Week of April 19, 2021
Intervenor/respondent testimony due	May 7, 2021
Discovery requests on intervenor/respondent testimony	May 21, 2021
Responses to discovery on intervenor/respondent testimony	June 11, 2021
Rebuttal Testimony	June 25, 2021
Discovery requests on rebuttal testimony	July 2, 2021
Public hearings	TBD
Company responses to discovery on rebuttal testimony	July 13, 2021
Settlement conferences	June 29 or 30, 2021
Evidentiary hearings (with Oral Surrebutal)	Week of July 26, 2021
Initial and Reply briefs	TBD by Presiding Commissioner after hearings

+ Petitioner agrees that discovery is ongoing and will endeavor to answer all discovery within 15 days of service.

**IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY
TO IMPLEMENT AN INFRASTRUCTURE INVESTMENT PROGRAM (“IIP”)
AND ASSOCIATED RECOVERY MECHANISM
PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-2A**

BPU DOCKET NO. GR20110726

SERVICE LIST

<p><u>South Jersey Gas Company</u> Deborah M. Franco, Esq. VP/Rates, Regulatory and Sustainability 520 Green Lane Union, NJ 07083 dfranco@sjindustries.com</p> <p><u>Rate Counsel</u> 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Stefanie A. Brand, Esq., Director sbrand@rpa.nj.gov</p> <p>Brian O. Lipman, Esq., Litigation Manager blipman@rpa.nj.gov</p> <p>Felicia Thomas-Friel, Esq., Managing Attorney ftthomas@rpa.nj.gov</p> <p>Henry Ogden, Esq. hogden@rpa.nj.gov</p> <p>Maura Caroselli, Esq. mcaroselli@rpa.nj.gov</p> <p>Shelly Massey, Paralegal smassey@rpa.nj.gov</p> <p><u>Environmental Defense Fund</u> 1875 Connecticut Ave NW 17th Floor New York, NY 10010</p> <p>Ted Kelly, Esq. tekelly@edf.org</p> <p>Mary Barber mbarber@edf.org</p> <p>Martin C. Rothfelder, Esq. Rothfelder Stern, L.L.C. 407 Greenwood Avenue, Unit #301 Trenton, NJ 08609 mrothfelder@rothfelderstem.com</p>	<p><u>Board of Public Utilities</u> 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Secretary Board.secretary@bpu.nj.gov</p> <p>Paul E. Flanagan, Esq. Executive Director paul.flanagan@bpu.nj.gov</p> <p>Robert Brabston, Esq. Deputy Executive Director robert.brabston@bpu.nj.gov</p> <p>Christine Sadovy, Chief of Staff christine.sadovy@bpu.nj.gov</p> <p><u>Office of General Counsel</u> Abe Silverman, Esq., General Counsel abe.silverman@bpu.nj.gov</p> <p>Carol Artale, Esq., Deputy General Counsel carol.artale@bpu.nj.gov</p> <p>Heather Weisband, Esq., Senior Counsel heather.weisband@bpu.nj.gov</p> <p><u>Division of Energy</u></p> <p>Stacy Peterson, Director stacy.peterson@bpu.nj.gov</p> <p>Paul Lupo, Bureau Chief paul.lupo@bpu.nj.gov</p> <p>John Zarzycki john.zarzycki@bpu.nj.gov</p> <p><u>Division of Law</u> 25 Market Street Post Office Box 112 Trenton, NJ 08625</p> <p>Pamela Owen, DAG pamela.owen@law.njoag.gov</p>
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Public Service Electric and Gas Company

80 Park Plaza, T5
P.O. Box 570
Newark, NJ 07102

Matthew W. Weissman, Esq.
Managing Counsel – State Regulatory
matthew.weissman@pseg.com

Danielle Lopez, Esq
Associate Counsel—Regulatory
danielle.lopez@pseg.com

Bernard Smalls, Paralegal
bernard.smalls@pseg.com

Michele Falcao, Regulatory Case Supervisor
michele.falcao@pseg.com

Michael Beck, DAG
michael.beck@law.njoag.gov

Terel Klein, DAG
terel.klein@law.njoag.gov

Daren Eppley, DAG
daren.eppley@law.njoag.gov