



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH)
JERSEY GAS COMPANY FOR APPROVAL OF A)
STANDARD GAS SERVICE AGREEMENT (EGS-LV))
AND A STANDARD GAS SERVICE)
AGREEMENT (EGS-LV) ADDENDUM; AND TO)
MODIFY RATE SCHEDULE EGS-LV)

ORDER

DOCKET NO. GR10090691

(SERVICE LIST ATTACHED)

APPEARANCES:

Ira G. Megdal, Esq. (Cozen O'Connor), on behalf of South Jersey Gas Company

Felicia Thomas-Friel, Esq., Deputy Rate Counsel, **Henry Ogden, Esq.** and **Kurt Lewandowski, Esq.**, Assistant Deputy Rate Counsels, Division of Rate Counsel (**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel)

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (**Paula T. Dow**, Attorney General of New Jersey)

BY THE BOARD:

On September 24, 2010, South Jersey Gas Company ("SJG" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") requesting that the Board issue an Order approving a Standard Gas Service Agreement- Electric Generation Service- Large Volume ("EGS-LV") ("Agreement") and a Standard Gas Service Agreement (EGS-LV) Addendum entered into between SJG and ACB Energy Partners, LLC ("ACB") ("ACB Agreement"). The Company further requests that the Board issue an Order providing that the service volumes set forth in the Agreement may be modified by the mutual consent of SJG and ACB without further approval of the Board, and that the petition and ACB Agreement be treated as "Confidential". By this Decision and Order, the Board considers a Stipulation of Settlement ("Settlement") entered into by SJG, the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff ("Staff") (collectively, the "Parties") requesting that the Board approve the ACB Agreement with the modifications agreed to by the Parties.

BACKGROUND

Pursuant to its Rate Schedule EGS-LV, SJG provides firm and limited firm sales and/or transportation service to commercial and industrial electric generation facilities, prime movers, and all engine-driven equipment (whether or not used for electric generation) with a firm daily

contract demand of 200 Mcf per day or more. Special Provision (e) of Rate Schedule EGS-LV provides that SJG may offer a D-1 Demand Charge and a C-3 Commodity Charge on a negotiated basis. According to the special provision, the D-1 charge, taken in combination with the Limited Firm C-3 charge, if applicable, may not be lower than an amount sufficient to generate a reasonable return on capital investments made by the Company and recover all of the marginal and embedded costs, including depreciation, to provide service under Rate Schedule EGS-LV. Any such offer made by the Company must be based upon cost of service and value of service considerations including such factors as: (1) proximity of customer to the Company's transmission lines; (2) whether the customer will utilize the Company's interstate pipeline capacity; (3) whether the customer will provide its own gas supply; and (4) other pertinent factors. In addition, Special Provision (e) requires that the negotiated percentages and resultant rates shall be set forth in the Standard Gas Service Agreement (EGS-LV) and filed with the Board within thirty (30) days of execution, for approval.

ACB is a limited liability company formed in New Jersey, and is in the business of designing, building, owning and operating a combined heating, cooling, and power production ("CHP") facility located at 1077 Absecon Blvd, in Atlantic City, New Jersey. ACB is a wholly owned subsidiary of Energenic, LLC located at 5429 Harding Highway, Mays Landing, New Jersey. Energenic was formed in 2007 with Marina Energy, LLC ("Marina Energy") and DCO Energy LLC as equal owners. Marina Energy is a wholly owned subsidiary of South Jersey Industries. Thus, ACB is an affiliate of SJG. As part of its proposed project development, ACB will install its new Marina Thermal Facility ("MTF") CHP equipment within the enclosures outside Marina Energy's existing MTF. ACB also intends to upgrade the existing MTF control system. It is the intent of ACB to sell all electricity and thermal energy it produces to Marina Energy, also an affiliate of SJG, in order to satisfy the loads of the end user, the Borgata Hotel Casino & Spa.

ACB and SJG entered in an agreement whereby SJG agreed to sell and deliver and ACB agreed to purchase and pay for gas service under Rate Schedule EGS-LV. The ACB project will utilize its own interstate pipeline capacity and gas supply.

SJG recognizes that this transaction is subject to the Board's Affiliate Relations Standards as promulgated in N.J.A.C. 14:4-3. More specifically, N.J.A.C. 14:4-3.3 (d) states that transactions between an electric and/or gas public utility and a related competitive business segment of its public utility holding company ("PUHC") shall be prohibited, except for the following:

1. Tariffed products and services;
2. The sale or purchase of goods, property, products or services made generally available by the electric and/or gas public utility, by the PUHC or a related competitive business segment of its PUHC to all market participants through an open, competitive bidding process; or
3. As provided for in N.J.A.C. 14:4-3.5(g) and (h), in (i) and (j) or 3.6 (a) through (f), provided the transactions specified in N.J.A.C. 14:4-3.6 comply with all other applicable rules.

SJG maintains that the ACB Agreement satisfies the above quoted standards.

ACB represents that this project will have the following material benefits:

- It will provide additional power generation in New Jersey;
- It will add distributed generation within the Atlantic City load center;
- It will promote construction jobs in Atlantic City;
- It will result in 2 full time licensed operating engineer positions;

- In construction, approximately 38 New Jersey subcontractors will be employed;
- It will inject additional money into the Atlantic County and greater New Jersey economy, and as a result generate more jobs within Atlantic County and greater New Jersey;
- Because the generating equipment to be installed is highly efficient, and will replace less efficiently produced power, the environment will be beneficially impacted by reducing critical air pollutants;
- The Borgata's electric, hot water and chilled water services will be more reliable.

SJG has requested that the petition and the ACB Agreement be treated as "Confidential". Specifically, the Company is treating all the costs to produce chilled and hot water, and the cost of electricity for ACB's customer, Marina, as confidential information. The Company also requests that the annual savings, on a per kwh basis or as a percentage, be treated as confidential as well as all negotiated rates under the ACB Agreement. SJG maintains that if its negotiated, reduced rates are disclosed to the public, SJG's competitors would be able to offer similar or lower rates to the Company's customers, and thereby unfairly compete with SJG. In addition, SJG claims that if future customers of SJG are made aware of the reduced or negotiated rates made available by SJG to ACB, those rates will become a "floor" to future customers.

STIPULATION

Discovery was propounded upon SJG, and responses were received by the Parties. In addition to the written discovery, the Parties held discovery conferences. On January 12, 2011, the Parties entered into a Stipulation of Settlement. Below are the salient terms of the Stipulation.¹

11. The Parties agree that this project is consistent with the New Jersey Energy Master Plan ("EMP") and qualifies for Special Provision (e) of the EGS-LV rate schedule.
12. The Parties agree that with respect to SJG's request for the Board to allow SJG and ACB through mutual consent to modify the service volumes under the ACB Agreement that any substantive modification that would result in changes to SJG's infrastructure will be brought to the Parties' attention and subject to Board approval.
13. The Parties agree that the ACB Agreement should be approved effective on the date of a Board order approving the Settlement.
14. The Parties agree that the pricing and quantity terms of the ACB Agreement will remain confidential for a period of two years following the date of a Board Order approving the Settlement.
15. The Parties consider the Settlement of this matter to bind the Parties hereto. However, due to the pending BPU proceeding addressing generic gas contracts (BPU Dkt Nos. GR10100761 and ER10100762), the Parties agree that this Settlement may be affected by the Board's decision in that matter.

DISCUSSION AND FINDINGS

After reviewing the petition, and the ACB Agreement and the Stipulation, the Board is satisfied that the ACB Agreement will not have a financial impact on other ratepayers. The Board is also

¹ Although described in this Order, should there be any conflict between this summary and the Settlement, the terms of the Settlement control, subject to the findings and conclusions contained in this Order.

satisfied that the ACB Agreement meets the requirements of the previously Board approved tariff for EGS-LV. Therefore, the Board **HEREBY FINDS** that coupled with the other benefits that the Parties have agreed will result from this transaction including additional projected jobs, and given the expected sufficient and reasonable return on capital investments made by SJG along with recovery of marginal and embedded costs, this project qualifies for Special Provision (e) of SJG's EGS-LV tariff. Since the ACB Agreement was entered into pursuant to Special Provision (e) of the SJG tariff, it is a tariffed service and therefore permitted by the Board's Affiliate Relations Standards. Accordingly, the Board **HEREBY FINDS** that the ACB Agreement complies with the Board's Affiliate Relations Standards.

Based on the representations of the Company and the concurrence of Staff and Rate Counsel, the Board **HEREBY FINDS** that it is appropriate to treat the pricing and quantity information identified above as confidential for a period of two (2) years from the date of this Order as competitively sensitive information:


Accordingly, the Board **HEREBY APPROVES** the Settlement and the ACB Agreement as described above.


The Company's rates will remain subject to audit by the Board. This Decision and Order does not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.


DATED: 1/19/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

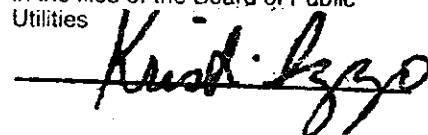

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:

KRISTI IZZO
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 PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL
OF A STANDARD GAS SERVICE AGREEMENT (EGS-LV) AND STANDARD GAS SERVICE
AGREEMENT (EGS-LV) ADDENDUM; AND TO MODIFY THE RATE SCHEDULE EGS-LV
Docket No. GR10090691
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF : BPU DOCKET NO. GR10090691
SOUTH JERSEY GAS COMPANY FOR :
APPROVAL OF A STANDARD GAS SERVICE :
AGREEMENT (EGS-LV) AND A STANDARD : STIPULATION
GAS SERVICE AGREEMENT (EGS-LV) :
ADDENDUM AND TO MODIFY RATE :
SCHEDULE EGS-LV; :

APPEARANCES:

Ira G. Megdal, Esquire (Cozen O'Connor, attorneys) for South Jersey Gas Company ("Petitioner")

Felicia Thomas-Friel, Deputy Rate Counsel, Henry Ogden, Assistant Deputy Rate Counsel, Kurt S. Lewandowski, Assistant Deputy Rate Counsel (Stefanie Brand, Director, Division of Rate Counsel)

Alex Moreau, Deputy Attorney General, on behalf of the Staff of the Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

1. On September 24, 2010, South Jersey Gas Company ("South Jersey", "Company" or "Petitioner") filed a "Public Copy" of a Petition with the New Jersey Board of Public Utilities ("Board") seeking approval of a Standard Gas Service Agreement ("Agreement") under Petitioner's Electrical Generation Service – Large Volume ("EGS-LV") Rate Schedule and a Standard Gas Service Agreement EGS-LV Addendum ("Addendum"), with its customer, ACB Energy Partners, LLC ("ACB"). Together the Standard Agreement and the Addendum will be referred to as the "Agreement". In addition, South Jersey filed an unredacted "Confidential Copy" with the Custodian of the Board. The Company further requested that the Board issue an

Order providing that the service volumes set forth in the Agreement may be modified by the mutual consent of SJG and ACB without further approval of the Board.

2. ACB is a limited liability company formed in New Jersey and is in the business of designing, building, owning and operating a combined heating, cooling and power production ("CHP") facility located at 1077 Absecon Boulevard in Atlantic City, New Jersey. ACB is an affiliate of South Jersey. The Agreement is attached to the Confidential Copy of this Stipulation, as Exhibit "A".

3. Pursuant to the Agreement, South Jersey agreed to sell and deliver and ACB agreed to purchase and pay for gas transportation service under South Jersey's Rate Schedule EGS-LV.

4. ACB intends to sell to Marina Energy, LLC ("Marina Energy"), also an affiliate of Petitioner, all electricity and thermal energy that ACB produces in order to satisfy the loads of the end user, the Borgata Hotel, Casino and Spa in Atlantic City, New Jersey.

5. Discovery was propounded upon the Petitioner, and responses were served by the Petitioner. Attached to this Stipulation as Exhibit "B" is an organization chart demonstrating the affiliate relationships among Petitioner, ACB and Marina Energy. This organization chart was one of numerous documents provided to the parties in discovery in this proceeding.

6. In addition to the many written discovery responses, the parties also held discovery/settlement conferences.

7. ACB represents that its project will have the following material benefits:
- It will make a full SBC contribution at the SBC tariff rate;
 - It will provide additional power generation in New Jersey;
 - It will add distributed generation within the Atlantic City load center;

- It will promote construction jobs in Atlantic City;
- In construction, approximately 38 New Jersey subcontractors will be employed;
- It will result in 2 full time licensed operating engineering positions;
- It will inject additional money into the Atlantic County and the greater New Jersey economy, and as a result generate more jobs within Atlantic County and greater New Jersey;
- Because the generating equipment to be installed is highly efficient, and will replace less efficiently produced power, the environment will be beneficially impacted by reducing critical air pollutants;
- The Borgata's electric, hot water and chilled water services will be more reliable.

8. This transaction is subject to *N.J.A.C. 14:4-3.1, et seq*, Affiliate Relations.

Pursuant to *N.J.A.C. 14:4-3.3*, a transaction between a gas public utility and a related competitive business segment of its public utility holding company is permitted, if the transaction is pursuant to a tariffed service. The present agreement is made pursuant to Special Provision (e) of Petitioner's EGS-LV Rate Schedule.

9. Pursuant to Special Provision (e) of South Jersey's EGS-LV Rate Schedule, South Jersey may offer a D-1 demand charge and C-3 commodity charge on a negotiated basis so long as the D-1 charge taken in combination with the limited firm C-3 charge if applicable is not lower than an amount sufficient to generate a reasonable return on capital investments made by South Jersey and recovery of marginal and embedded costs, including depreciation, to provide service under Rate Schedule EGS-LV.

10. New Jersey as has called for 1,500 megawatts of CHP generation in the New Jersey Energy Master Plan ("NJEMP").

11. The parties agree that this project is consistent with the NJEMP and qualifies for Special Provision (e) of the EGS-LV rate schedule.

12. The parties agree that with respect to South Jersey's request for the Board to allow South Jersey and ACB through mutual consent to modify the service volumes under the Agreement that any substantive modification that would result in changes to South Jersey's infrastructure will be brought to the Parties' attention and subject to Board approval.

13. The parties agree that the Agreement should be approved effective on the date of a Board order approving this Stipulation.

14. The parties agree that the pricing and quantity terms of the Agreement will remain confidential for a period of two years following the date of a Board Order approving this Stipulation.

15. This Stipulation is being made in order to resolve the issues in the pending docket and to expedite the issuance of the order herein. The stipulated positions represent compromises by the parties to disputed issues in this case. This Stipulation is executed without prejudice to the positions of said parties and is not intended in any way to restrict them or have any effect in pending or future proceedings, in this or any other forum, except as expressly provided in this Stipulation.

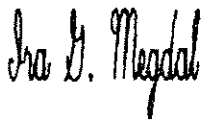
16. The undersigned parties consider the stipulation of this matter to bind the parties hereto. However, due to the pending BPU proceeding addressing generic gas contracts (BPU Dkt. Nos. GR10100761 and ER10100762), the undersigned parties agree that this Stipulation may be affected by the Board's decision in that matter.

17. This Stipulation contains terms, each of which are interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the undersigned parties expressly and jointly state that they would not have signed the Stipulation had any term been modified in any respect. If any modification

is made to the terms of this Stipulation, the signatory parties each must be given the right to be placed in the position it was in before the Stipulation was entered into. It is essential that each undersigned party be given the option, before the implementation of any modifications to this Stipulation, either to modify its own position to accept the proposed changes, or to resume the proceeding as if no agreement had been reached. This proceeding would resume at the point where it was terminated which was before the commencement of hearings.

SOUTH JERSEY GAS COMPANY

PAULA T. DOW, ATTORNEY GENERAL OF
THE STATE OF NEW JERSEY
Attorney for the Staff of the Board of Public
Utilities



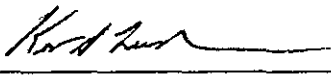
By: _____

By: _____

Ira G. Megdal, Esq.
Cozen O'Connor

Kerri Kirschbaum, Esq.
Deputy Attorney General

STEFANIE BRAND, DIRECTOR,
DIVISION OF RATE COUNSEL

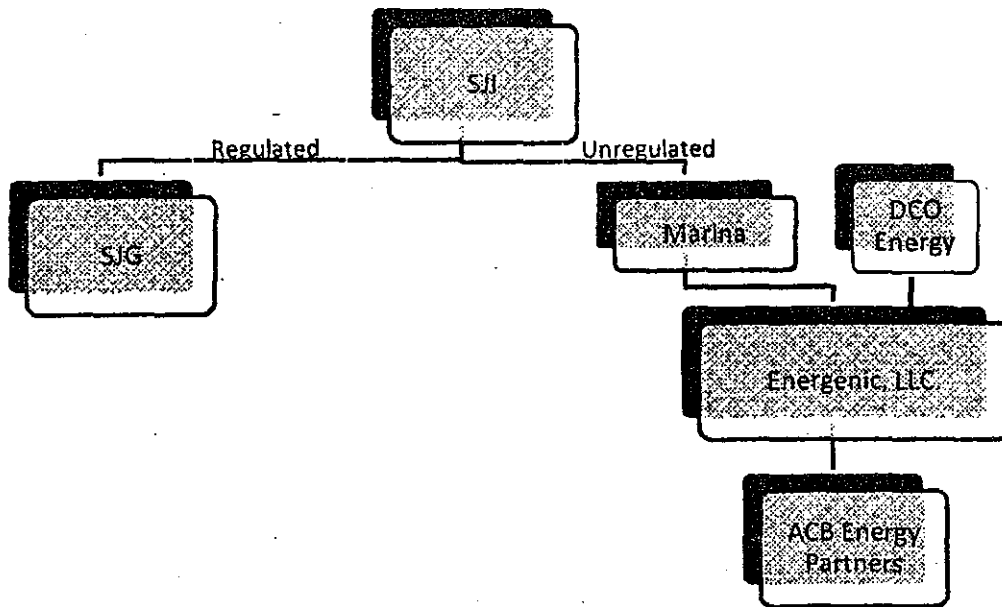
By:  _____

Kerri J. Lewandowski, Esq.
Asst Deputy Rate Counsel

DATED: January 12, 2011

EXHIBIT A CONFIDENTIAL.

EXHIBIT "B"



- ACB Energy Partners, LLC (ACB) is a limited liability company formed in New Jersey and is in the business of designing, building, owning and operating a combined heating, cooling and power production (CHP) facility located at 1077 Absecon Boulevard, in Atlantic City, NJ. ACB is a wholly owned subsidiary of Energenic, LLC located at 5429 Harding Highway, Mays Landing, NJ.
- Energenic, LLC. was formed in 2007 with Marina Energy and DCO Energy LLC as equal owners. Marina Energy is a wholly owned subsidiary of South Jersey Industries and specializes in the design, construction, and operation of moderate to large scale energy projects for the commercial, industrial and institutional markets.
- DCO Energy LLC., 5429 Harding Highway, Mays Landing, NJ is an independent energy development company specializing in the development, engineering, construction, start up, commissioning, operation, maintenance, as well as, ownership of energy projects.