



Agenda Date: 02/10/2012  
Agenda Item: 2A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

DIVISION OF ENERGY &  
OFFICE OF CLEAN ENERGY

IN THE MATTER OF THE PETITION OF SOUTH ) ORDER  
JERSEY GAS COMPANY FOR APPROVAL TO )  
MODIFY ONE OF ITS BOARD-APPROVED ENERGY )  
EFFICIENCY PROGRAMS ) DOCKET NO. GO11100651

(NOTIFICATION LIST ATTACHED)

Parties of Record:

**Ira G. Megdal, Esq.**, (Cozen O'Connor, attorneys) for South Jersey Gas Company  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

**BACKGROUND**

On January 23, 2009, South Jersey Gas Company ("SJG" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") in Docket Numbers EO09010059 and GO09010057 seeking approval to develop and implement a number of energy efficiency programs ("EEPs") that were to be made available to SJG customers over a two-year period to promote energy efficiency and conservation while stimulating the State's economy. At the same time, the Company sought Board approval for an associated cost recovery mechanism. According to the Company, the EEPs were designed to complement and supplement the then existing offerings of the New Jersey Clean Energy Program ("CEP") and the Company's Conservation Incentive Program ("CIP") in an attempt to encourage higher levels of participation in SJG's service territory. In that petition, the Company asserted that its filing was consistent with the focus of N.J.S.A. 26:2C-45 ("RGGI Legislation"), the then existing New Jersey Energy Master Plan and economic stimulus goals, as the EEPs proposed were geared toward encouraging customers to reduce their overall energy usage. The Company stated that the EEPs would also have the beneficial effect of creating additional jobs in the energy efficiency market.

In an Order dated July 24, 2009<sup>1</sup> (the "July Order"), the Board approved the EEPs for SJG and the recovery of costs incurred by adopting the terms of the stipulation entered into among the Company, Board Staff and the New Jersey Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties").<sup>2</sup> In the stipulation, the Parties agreed that the Company could seek modifications to the EE Program by providing:

"a description of its proposed modifications, the rationale for its proposed modifications, and a narrative and schedules showing the effect of its proposed modifications on the costs and benefits of the affected programs. The Company shall present the proposed modifications to the Board for approval if no objections to the proposed modifications are received within forty-five (45) days after that filing. The Company will also report on these modifications in its Annual Filing and the monthly reporting describes above." [Stipulation at Paragraph 31.]

Pursuant to discussions held with the Staff of the Board's Office of Clean Energy, SJG filed a letter petition dated July 29, 2010 ("July 29 Letter Petition"), requesting certain modifications to its EEP budgets and programs. As part of that request, the Company proposed to modify the eligibility requirements for its Combined Heat and Power ("CHP") program. Under the current program, only customers receiving grants from the CEP are eligible for SJG's CHP program. According to the July 29 Letter Petition, as a result of CHP incentives being cut from the NJCEP program, the Company proposed to offer its maximum incentive to any applicant that had qualified for a grant or rebate either directly from any State agency or as a result of any solicitation approved by an agent of the State. No modifications to the SJG CHP program budget were proposed.

On November 18, 2010, SJG filed another letter petition in Docket No. GO09010059 ("November 18 Petition") with the Board seeking modification of the July Order. On January 19, 2011, in Docket No. GO10110861<sup>3</sup>, the Board approved a stipulation of the Parties agreeing to 1) an extension of one year to allow SJG to carryover individual program under-spending until December 31, 2011; 2) an extension of one year to allow SJG's monthly program investment and incremental operating and maintenance costs associated with the EEPs to continue until April 30, 2012; and 3) the reallocation of money within the EEP budget as proposed in the November 18 Petition.

### **The Current Filing**

On October 19, 2011, the Company filed the instant petition reiterating the request made in the July 29 Letter Petition. According to the petition, because CEP currently lacks a stand-alone CHP program, SJG believes that its current CHP program is rendered meaningless unless

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<sup>1</sup> I/M/O the Matter of Energy Efficiency Programs and Associated Cost Recovery Mechanisms and I/M/O the Petition of SJG for Approval of Energy Efficiency Program ("EEP") with an Associated Energy Tracker ("EET") Pursuant to N.J.S.A. 48:3-98.1; and to Modify Rate Schedule EGS-LV, BPU Docket Nos. EO09010056 and GO09010059. Order dated July 24, 2009.

<sup>2</sup> While the Natural Resources Defense Council and the New Jersey Large Energy Users Coalition were intervenors in the original filing, neither signed the stipulation approved by the July 24 Order.

<sup>3</sup> I/M/O the Petition of SJG for Approval of Energy Efficiency Program ("EEP") with Energy Tracker ("EET") Pursuant to N.J.S.A. 48:3-98.1; and to Modify Rate Schedule EGS-LV, BPU Docket No. GO10110861. Order dated January 19, 2011.

eligibility is no longer restricted to customers receiving grants from CEP. According to SJG, its proposed, amended CHP program is designed to supplement incentives for CHP being offered by any state agencies of New Jersey. SJG states that these agencies offer these incentives because CHP results in reduced energy consumption and carbon emissions by lowering dependence upon the electric grid system. SJG states that other agencies of this State have determined that CHP is consistent with the new Energy Master Plan("EMP")<sup>4</sup>, and, for example, the Economic Development Authority provides grants for CHP. SJG believes that similar grants from the CEP may not be available to CHP customers given current funding of the CEP, and the Company's existing plan only allows for grants to customers receiving CEP grants. SJG therefore believes that its proposal would make its CHP grant program consistent with current realities.

### **Joint Position**

After engaging in discovery and settlement discussions, on January 27, 2012, the Company and Staff (collectively, "Signatory Parties") executed a joint position ("Joint Position"). Below are the salient terms of the Joint Position<sup>5</sup>.

11. The Signatory Parties stipulate and agree that it is both reasonable and in the public interest for the Board to authorize SJG to modify its CHP program to allow customers that have received grants from any New Jersey state agency to participate in the Company's CHP program. Thus, the Company's program will not be limited to customers who have received CHP incentive grants from only CEP.
12. The specific new language will be as follows:

SJG will offer eligible customers and developers a direct incentive which will supplement the offerings of any New Jersey state agency up to \$1.00 per watt to be capped at \$1,000,000. This effort will supplement incentives offered by the state in an effort to foster program participation and to achieve the goals of the current New Jersey Energy Master Plan ("EMP") of achieving 1500 MW of Distributed Generation ("DG") power by the year 2020.

If a non-residential customer installs, or commits to install a combined heat and power system approved by the Board, or an efficient distributed generation power plant, the incentive could be capped at \$1,000,000, and would receive an offset as described above. These incentives would be matched with incentives available from any NJ state agency.
13. The CHP program will be limited to those customers that have already received funding for CHP facilities through the Economic Development Authority to date.
14. This modification of the CHP program will effectively reduce and limit the program's budget to \$2,016,592.

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<sup>4</sup> The 2011 Energy Master Plan was released by Governor Chris Christie on 12/6/2011 and is available at [www.state.nj.us/emp/doc](http://www.state.nj.us/emp/doc).

<sup>5</sup> Although described in this Order, should there be any conflict between this summary and the Joint Position, the terms of the Joint Position control, subject to the findings and conclusions contained in this Order.

15. SJG's CHP program will be closed to new participants. SJG reserves the right to file a petition requesting approval of a new CHP program that will subject to review and approval by the Board.
16. Effective with an Order approving the Joint Position, the modified CHP program attached to the Joint Position as Exhibit B will be in effect.
17. As part of its next annual true up petition, all costs related to the Company's CHP program will be reviewed for prudence.

On January 27, 2012, Rate Counsel submitted a letter to the Board indicating that Rate Counsel would not be a party to the Joint Position, but does not oppose it. Rate Counsel believes the CHP programs should be consistent across the gas utilities, and it would be premature to agree to one company's modifications to the CHP program until the Office of Clean Energy's CHP and Fuel Cells Working Group completes its work.

### **DISCUSSION AND FINDING**

The Board has reviewed the record in this matter, including the petition, the Joint Position, and Rate Counsel's comments. The July Order, which previously approved the CHP program, allows the Company to request approval for modifications of a program or programs from the Board.

In evaluating a proposed settlement, the Board must review the record, balance the interests of the ratepayers and the shareholders, and determine whether the settlement represents a reasonable disposition of the issues that will enable the Company to provide its customers in this State with safe, adequate and proper service at just and reasonable rates. In re Petition of Pub. Serv. Elec. & Gas, 304 N.J. Super. 247 (App. Div.), cert. denied, 152 N.J. 12 (1997). The Board is cognizant of the fact that the proposed stipulation is non-unanimous. Nonetheless, it is well-established that the Board may consider and rely upon non-unanimous stipulations as fact-finding tools so long as the Board independently examines the existing record and expressly finds that the stipulated rates rates and programs satisfy the statutory standards. (Id. at 270.)

We continue to believe that, in complex and technical cases such as this one, the adversary parties themselves are often in the best position to work out the framework of a reasonable resolution of the issues. The Board recognizes that the Signatory Parties worked diligently to negotiate a compromise that attempts to meet the needs of as many stakeholders as possible. The Board further recognizes that the Joint Position represents a balanced solution considering the issues that were addressed during the proceeding. Therefore, based on the Board's review and consideration of the record in this proceeding including the Joint Position and Rate Counsel comments, as well as the petition and testimony, the Board **HEREBY FINDS** that with the Joint Position is reasonable, in the public interest, and in accordance with the law.

The information and documentation provided by SJG indicates that the CHP program would be rendered useless if the modification requested is not granted. SJG has also demonstrated that other State agencies or approved agents of the State, by offering rebates, grants, or incentives, could make the CHP program attractive again for qualifying customers. As noted in the EMP, the State is committed to developing 1,500 MW of new DG and CHP resources.<sup>6</sup> The State has

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<sup>6</sup> EMP at 5.

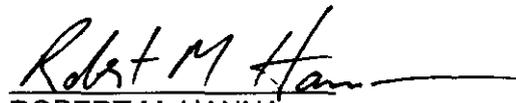
determined that the high capital cost of developing cogeneration and CHP facilities, combined with the difficulty of raising capital in the current economy is a continuing challenge, and that implementation of these projects would require support from State incentives.<sup>7</sup> The SJG CHP program will help satisfy the 1,500 MW goal while providing necessary capital to aid in development of these projects. The Board also notes that the proposed changes will not increase the existing EET rate or modify the rate proposed in the Company's 2011 EET Annual True-up.

Therefore, after review of the stipulation and exhibits, **HEREBY APPROVES** the attached Joint Position in its entirety, incorporating its terms and conditions as if fully set forth herein. In accordance with N.J.S.A. 48:2-40, this Board Order will become effective upon service.

The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

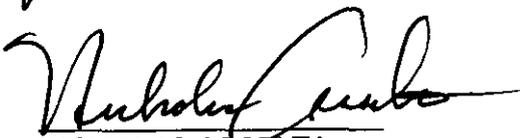
DATED: 2/10/12

BOARD OF PUBLIC UTILITIES  
BY:

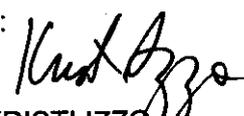
  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

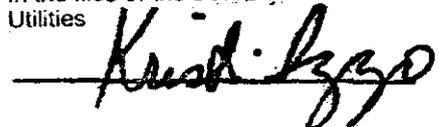
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



<sup>7</sup> EMP at 85.

In the Matter of the Petition of South Jersey Gas Company for Approval to Modify One of its Board-Approved Energy Efficiency Programs

BPU Docket No. GO11100651

**Notification List**

<b>BOARD OF PUBLIC UTILITIES</b>		
Jerome May Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350	Ken Sheehan, Chief Counsel Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350	Michael Winka Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350
Stacy Peterson Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350	Rachel Boylan Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350	Kristi Izzo, Secretary Board of Public Utilities 44 S. Clinton Avenue, 9 <sup>th</sup> Fl. P.O. Box 350 Trenton, NJ 08625-0350
<b>DIVISION OF RATE COUNSEL</b>		
Stefanie A. Brand, Esq. Division of Rate Counsel 31 Clinton Street, 11 <sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101	Paul Flanagan, Esq. Division of Rate Counsel 31 Clinton Street, 11 <sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101	Felicia Thomas-Friel, Esq. Division of Rate Counsel 31 Clinton Street, 11 <sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101
Henry Ogden, Esq. Division of Rate Counsel 31 Clinton Street, 11 <sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101	Christine Juarez, Esq. Division of Rate Counsel 31 Clinton Street, 11 <sup>th</sup> Floor P.O. Box 46005 Newark, NJ 07101	
<b>DEPARTMENT OF LAW &amp; PUBLIC SAFETY</b>		
Caroline Vachier, DAG Division of Law 124 Halsey Street, 5 <sup>th</sup> Floor P.O. Box 45029 Newark, NJ 07101	Babette Tenzer, DAG Division of Law 124 Halsey Street, 5 <sup>th</sup> Floor P.O. Box 45029 Newark, NJ 07101	Alex Moreau, DAG Division of Law 124 Halsey Street, 5 <sup>th</sup> Floor P.O. Box 45029 Newark, NJ 07101

**South Jersey Gas Company**

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Steven R. Cocchi, Esq.  
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Folsom, NJ 08037

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF : BPU DOCKET NO. GO11100651  
SOUTH JERSEY GAS COMPANY FOR :  
APPROVAL TO MODIFY ONE OF ITS : JOINT POSITION  
BOARD-APPROVED ENERGY EFFICIENCY :  
PROGRAMS :

**APPEARANCES:**

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

**Felicia Thomas-Friel, Esquire, Deputy Rate Counsel and Henry Ogden, Deputy Rate  
Counsel** on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") (**Stefanie A.  
Brand, Director**)

**Alex Moreau and Veronica Beke, Deputy Attorneys General**, on behalf of the Staff of  
the Board of Public Utilities ("Staff")(**Jeffrey S. Chiesa, Attorney General of New Jersey**)

**TO THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES:**

**I. PROCEDURAL HISTORY**

1. On January 23, 2009, South Jersey Gas Company ("South Jersey" or "Company") filed a Petition with the Board in Docket Numbers EO09010059 and GO09010057 seeking approval to develop and implement a number of energy efficiency programs ("EEPs") that were to be made available to South Jersey customers over a two-year period in order to promote energy efficiency and conservation while stimulating the state's economy. At the same time, the Company sought Board approval for an associated cost recovery rider mechanism.

2. In an Order dated July 24, 2009 (the "July Order"), the Board approved the EEPs for South Jersey and the recovery of costs incurred by adopting the terms of the stipulation entered into among South Jersey, Board Staff and the Division of Rate Counsel ("Rate Counsel").

3. In the Stipulation approved by the July 24, 2009 Order, the parties agreed that the individual EEPs could be modified with Board approval (Paragraph 31).

4. Pursuant to discussions held with the Staff of the Board's Office of Clean Energy, SJG filed a letter petition dated July 29, 2010 ("July 29 Letter Petition"), requesting certain modifications to its EEP budget and programs. As part of that request, the Company proposed to modify the eligibility requirements for its Combined Heat and Power ("CHP") program. Under the current program, only customers receiving grants from the New Jersey Clean Energy Program ("CEP") are eligible for SJG's CHP program. According to the July 29 Letter Petition, as a result of CHP incentives being cut from the CEP, the Company proposed to offer its maximum incentive to any applicant that had qualified for a grant or rebate either directly from any State agency or as a result of any solicitation approved by an agent of the State of NJ. No modifications to the SJG CHP budget were proposed. In light of the filing of this matter, SJG will be voluntarily withdrawing the July 29 Letter Petition's request to modify the eligibility requirements for the CHP program.

5. On October 19, 2011, South Jersey filed the Petition in this Docket Number reiterating the request made in the July 29 Letter Petition.

6. South Jersey states that its CHP program, as it currently stands, is rendered meaningless unless customers are no longer restricted to those receiving grants from CEP.

7. South Jersey proposes an amended CHP program that is designed to supplement incentives for CHP being offered by any state agencies of New Jersey. South Jersey states that these agencies offer these incentives because CHP results in reduced energy consumption and carbon emissions by lowering dependence upon the electric grid system.

13. The Signatory Parties acknowledge that the CHP program will be limited to those customers that have already received funding for CHP facilities through the Economic Development Authority to date.

14. The Signatory Parties further stipulate and agree that this modification of the CHP program will effectively reduce and limit the program's budget to \$2,016,592.

15. The Signatory Parties agree that South Jersey's CHP program will be closed to new participants. South Jersey reserves the right to file a petition requesting approval of a new CHP program that will be subject to review and approval by the Board.

16. The Signatory Parties further agree that the Board should issue an Order accepting this Joint Position as an appropriate modification to South Jersey's EEPs. Effective with such an Order, the modified CHP program attached hereto as Exhibit B will be in effect.

17. As part of its next annual true up petition, all costs related to the Company's CHP program will be reviewed for prudence.

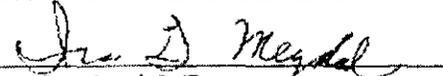
### **III. MISCELLANEOUS**

18. This Joint Position represents a mutual balancing of interests and, therefore, is intended to be accepted and approved in its entirety. In the event this Joint Position is not adopted in its entirety by the Board, then any party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Joint Position as though this Joint Position had not been signed.

19. It is specifically understood and agreed that this Joint Position represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, South Jersey and Staff shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein.

WHEREFORE, the Signatory Parties hereto do respectfully submit this Joint Position and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

SOUTH JERSEY GAS COMPANY

By:   
Ira G. Megdal, Esq.  
Cozen O'Connor

JEFFREY S. CHIESA  
ATTORNEY GENERAL OF THE  
STATE OF NEW JERSEY  
Attorney for the Staff of the  
New Jersey Board of Public Utilities

By:   
Alex Moreau  
Deputy Attorney General

8. South Jersey states that other agencies of this state have determined that CHP is consistent with the draft New Jersey Energy Master Plan, and, for example, the Economic Development Authority provides grants for CHP.

9. According to the Company, grants from the CEP may not be available to CHP customers given current funding of the CEP, and South Jersey's existing plan only allows for grants to customers receiving CEP grants. As a result, South Jersey believes its proposal would make its CHP grant program consistent with current realities.

10. Discovery has been propounded upon the Company and answered accordingly. The following agreement has been reached in resolution of this case.<sup>1</sup>

## II. STIPULATED TERMS

11. South Jersey and Board Staff (collectively, the "Signatory Parties") stipulate and agree that it is both reasonable and in the public interest for the Board to authorize South Jersey to modify its CHP program to allow customers that have received grants from any New Jersey state agency to participate in the Company's CHP program. Thus, the Company's program will not be limited to customers who have received CHP incentive grants from only CEP.

12. The specific new language will be as follows:

South Jersey will offer eligible customers and developers a direct incentive which will supplement the offerings of any NJ state agency up to \$1.00 per watt, to be capped at \$1,000,000. This effort will supplement incentives offered by the state in an effort to foster program participation and to achieve the goals of the Energy Master Plan of achieving 1500 MW of Distributed Generation ("DG") power by the year 2020.

If a non-residential customer installs, or commits to install a combined heat and power system approved by the Board, or an efficient distributed generation power plant, the incentive could be capped at \$1,000,000, and would receive an offset as described above. These incentives would be matched with incentives available from any NJ state agency.

*See Exhibit 2, a description of the proposed CHP program.*

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<sup>1</sup> Rate Counsel has submitted a separate letter concerning this matter dated January 27, 2012 to explain why they are not a signatory party.



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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

January 27, 2012

**Via Electronic Mail and U.S. Regular Mail**

Hon. Kristi Izzo, Secretary  
N.J. Board of Public Utilities  
44 South Clinton Avenue, 7<sup>th</sup> floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: In the Matter of the Petition of South Jersey Gas Company for Approval  
to Modify One of its Board-Approved Energy Efficiency Programs  
BPU Docket No.: GO11100651

Dear Secretary Izzo:

On October 19, 2011, South Jersey Gas Company filed a Petition to modify its Board-approved Combined Heat and Power Program ("CHP") to reflect its interpretation of market conditions associated with the Clean Energy Program. Board Staff and the Company have agreed upon the terms of a stipulation to resolve this matter. Please be advised that Rate Counsel will not be a party to this stipulation but does not oppose same, as it believes the CHP programs should be consistent across the gas utilities and it would be premature to agree to one company's modifications to the CHP program until the Office of Clean Energy's CHP and Fuel Cells Working Group completes its work.

Thank you very much in advance for your providing this information to the appropriate parties and placing this letter in the official file for this matter.

Respectfully submitted,

By:

Stefanie A. Brand  
Director, Division of Rate Counsel

HMO/sm  
c: Service List

**In the Matter of South Jersey Gas  
Company for Approval to Modify One  
of Its Board-Approved Energy  
Efficiency Programs**

**BPU Dkt. No. GO11100651**

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