



**STATE OF NEW JERSEY**

**Board of Public Utilities**

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DIVISION OF ENERGY

IN THE MATTER OF THE PETITION OF SOUTH )  
JERSEY GAS COMPANY FOR AUTHORITY TO )  
IMPLEMENT A CONSERVATION AND USAGE )  
ADJUSTMENT )

DECISION AND ORDER  
APPROVING STIPULATION

DOCKET NO. GR05121019

IN THE MATTER OF THE PETITION OF NEW )  
JERSEY NATURAL GAS COMPANY FOR THE )  
IMPLEMENTATION OF A CONSERVATION AND )  
USAGE ADJUSTMENT )

DOCKET NO. GR05121020

(SERVICE LIST ATTACHED)

BY THE BOARD:<sup>1</sup>

On December 5, 2005, New Jersey Natural Gas Company ("NJNG" or "Company") and South Jersey Gas Company ("SJG" or "Company")(collectively, "Companies") each filed a petition with the Board of Public Utilities ("Board") requesting approval of the implementation of a Conservation and Usage Adjustment ("CUA") Clause within its tariff on a five-year pilot program basis. As described by the petitions, the CUA's primary purpose was to separate the Companies' margin recoveries from throughput and to adjust margin recoveries for variances in customer usage, enabling the Companies to aggressively promote conservation and energy efficiency by their customers. The Companies' petitions were accompanied by the testimony of Daniel P. Yardley, Principal, Yardley Associates, in support of the proposal. Additionally, the NJNG filing included the testimonies of Laurence M. Downes, Chairman and Chief Executive Officer, New Jersey Resources ("NJR"), and Thomas J. Massaro, Vice President, Corporate Strategy and Business Intelligence, NJR Service Company. The SJG filing included the testimonies of Edward Graham, Chairman, President and Chief Executive Officer, South Jersey Industries and President and CEO of SJG, and Bonnie Bornstein, Vice President, Customer Services, SJG. Various exhibits also were submitted with the testimonies.

The proposed CUA mechanisms would separate margin recoveries from throughput by modifying the existing Weather Normalization Clause ("WNC"), Rider D to the tariff for NJNG, and the Temperature Adjustment Clause ("TAC"), Rider F for SJG (sometimes referred to collectively as "Weather Clauses"). As currently structured, these BPU-approved clauses are mechanisms that collect or credit margins based on customer usage changes attributable to variances between actual and normal weather and are complementary to the base rates. The proposed CUA tariffs

<sup>1</sup> Commissioner Christine V. Bator recused herself on this matter due to a potential conflict of interest.

would normalize the Companies' margin recoveries for variances in weather as well as other factors affecting usage, including customer conservation. For NJNG, the operation of the CUA as proposed is similar to its WNC. The proposed baseline usage was calculated by class based on historic consumption and was stated on a per-customer basis. For SJG, the operation of the CUA as proposed is similar to its TAC. SJG's proposed baseline customer usage levels are equivalent to the average monthly use per customer established in its base rate proceeding, completed in July 2004 (Docket No. GR03080683). The proposed baseline usage was calculated by class based on historic consumption and was stated on a per-customer basis. The proposals provided for an annual calculation by each Company of the changes in customer usage compared with the baseline established for each customer class. This calculation would reflect changes attributable to weather and non-weather drivers, including customer conservation. The margin impact associated with changes in aggregate usage compared to the baseline would then be calculated and included in the modified Rider D for NJNG and Rider F for SJG. The changes would be calculated monthly using booked sales and customer count data, and then aggregated for the year. The resulting impact would be collected from or credited to customers over a subsequent annual period.

The Companies asserted that through the implementation of the CUA, the current incentive for the Companies to increase throughput from existing customers in order to enhance the opportunity to earn their rates of return utilized to set rates would be eliminated. Instead, the Companies maintained that through the CUA, their interests would be more appropriately aligned with those of their customers since any customer savings through conservation would not have a negative impact on the Companies' financial performances. The Companies claimed that the promotion of additional initiatives that capitalize on various channels for reaching customers available to the utilities would be encouraged through the implementation of the CUA tariff. Therefore, an integral aspect of the CUA proposals would be the utilities' aggressive promotion of customer-specific programs to encourage both conservation and energy efficiency. According to the Companies, their proposed CUA would be consistent with the State's Clean Energy Program ("CEP") but would offer targeted and personalized messages to consumers not otherwise offered by the CEP, and the CUA would thereby reinforce and enhance CEP initiatives and messages. An additional aspect of the proposed CUA programs involved a major alteration of business processes in each Company since the focus would no longer be towards increasing burner tips. To support the promotion of such programs, each Company would institute internal training and programs to educate their employees on the Companies' revamped focus.

On January 25, 2006, a motion to intervene was filed with the Board on behalf of Direct Energy Services, LLC. Subsequently, by way of letter dated July 5, 2006, the motion was withdrawn.

Two public hearings on the NJNG filing were held in Freehold Borough, New Jersey on July 13, 2006 in order for members of the public to present their views on the CUA proposal. Alexander Stern, BPU Legal Specialist, presided. No members of the public appeared. Similarly, two public hearings on the SJG filing were held in Voorhees, New Jersey on July 13, 2006 in order for members of the public to present their views on the CUA proposal. Edward Beslow, BPU Legal Specialist, presided. No members of the public appeared.

Representatives of NJNG, SJG, Board Staff and the Department of the Public Advocate, Division of Rate Counsel (formerly Division of the Ratepayer Advocate) ("Rate Counsel"), the only parties in these proceedings, met on several occasions to discuss the Companies' proposals. In response to requests from Board Staff and Rate Counsel, the Companies also provided additional information by way of discovery responses. As a result of the discussions and information exchanges, the parties reached agreement as set forth in the attached Stipulation of Settlement ("Stipulation") and a letter of clarification dated October 6, 2006 ("clarification letter"), also attached hereto. By the

clarification letter, the Companies addressed and all parties agreed to two points of clarification requested by Rate Counsel, and all parties agreed to the terms of the Stipulation.

As provided in the Stipulation, the parties agreed that, pursuant to N.J.S.A. 48:2-21.1 and pending the filing described in paragraph 33(d) of the Stipulation, the CUA will be modified and implemented on a three year pilot basis and will be referred to as the Conservation Incentive Program ("CIP") to more accurately reflect the intent and focus of the program. As described in further detail in the Stipulation and this Order, the CIP will be an incentive-based program that: requires the Companies to implement conservation programs to be funded by their shareholders and designed to aid customers in reducing their costs of natural gas and to reduce each utility's peak winter and design day system demand; requires the Companies to reduce gas supply related costs; and, commencing in the 2007-2008 CIP year, allows the Companies to recover from customers certain non-weather margin revenue losses limited to the level of gas supply cost savings achieved. Certain capacity related gas supply cost reductions will begin during the 2006-2007 Basic Gas Supply Service ("BGSS") rate year and will not be used to offset any margin revenue losses in the initial CIP year. BGSS customers will thereby receive an immediate benefit from the program beginning in the 2006-2007 BGSS rate year. The Stipulation, with the October 6, 2006 letter's clarifications, includes terms and conditions summarized as follows:

1. NJNG and SJG will implement incremental conservation programs designed to aid customers in reducing their costs of natural gas and to reduce each utility's peak winter and design day system demand. A complete description of the programs is attached to the Stipulation as Exhibits A and B for NJNG and SJG, respectively. The programs are not to replicate existing programs of the Office of Clean Energy and may be implemented prior to the effective date of the CIP tariffs. The Companies will assess the need to develop and implement future programs, if appropriate, that would deliver additional benefits to customers and further reduce energy costs in New Jersey. If NJNG and/or SJG determine that the introduction of a new program would be beneficial to the CIP program and customers, the Company will provide BPU Staff and Rate Counsel with relevant documentation regarding the proposal. By February 1, 2007, the Companies will provide the parties with analyses, to be funded with shareholder monies, of an inverted BGSS pricing structure and advanced metering and/or control equipment.
2. The Companies' shareholders will pay for the enhanced conservation programs. Each Company will provide quarterly reports to BPU Staff and Rate Counsel documenting expenditures for these programs. NJNG will provide \$2 million for program costs no later than 10 days from the date of Board approval of the Stipulation. SJG will provide \$400,000 for each year of the pilot program as costs are incurred, with any unexpended amount being carried over and added to the amount to be spent in the following year, and any carry-over balance remaining at the end of the program being credited to SJG's BGSS clause. Should costs of the CIP exceed the initial funding levels established in the Stipulation, NJNG and SJG will continue to fund 100 percent of such program costs. The Companies also agree that costs for any employees whose work is more than incidental to the CIP will be charged to the CIP program costs, and such costs will be treated "below the line" for ratemaking purposes.
3. NJNG will return to its customers, through the Societal Benefits Charge ("SBC"), an estimated \$4.9 million in the Market Development Fund ("MDF") in the month that the Board issues an Order approving the Stipulation. Additionally, NJNG will return to customers any remaining balance in the MDF through the SBC after giving effect to the monetary impact from the operation of the MDF through October 31, 2006 in November 2006 except for the balance to be determined in the pending request in Docket No. GR05100846. SJG will return to its customers through the BGSS Clause the full amount, estimated at \$4.1 million,

from the Transitional Energy Facilities Assessment ("TEFA") in the month that the Board issues an Order approving the Stipulation.

4. The Companies will make annual CIP filings, based upon seven months of actual data and five months of projected data, with a June 1 filing date, that will document actual results, perform the required CIP collection tests and propose the new CIP rate. Any variances from the annual filings will be trued up in the subsequent year. As part of the annual CIP filings, the Board may review any aspect of the Companies' programs, including, but not limited to, the sufficiency of program funding. The Board may take such actions as it determines to be necessary and appropriate.
5. The CIP Tariff Riders for NJNG and SJG are attached to the Stipulation as Exhibits C and D, respectively. The CIP tariffs include return-on-equity ("ROE") limitations on recoveries from customers for both the weather and non-weather related components. NJNG agrees to reduce the ROE cap utilized in the CIP tariff to 10.5 percent effective on October 1, 2006. Additionally, NJNG agrees that if the Company has not filed for a review of its base rates by October 1, 2008, other than the review in paragraph 33(d) of the Stipulation, the applicable ROE cap utilized in the CIP tariff will be reduced to 10.25 percent. SJG will maintain the ROE cap utilized in the CIP tariff of 10.0 percent. Recovery of the margin impact associated with non-weather related changes in customer usage also will be limited to the level of BGSS savings achieved pursuant to the terms set forth in Section IV of the Stipulation and discussed below.
6. The residential heating benchmark for NJNG shall be 1,113 therms on an annual basis. The residential heating benchmark for SJG shall be 914 therms on an annual basis. The benchmarks for the other customer groups will remain as proposed by the Companies and are reflected in Exhibits C and D attached to the Stipulation.
7. The CIP Tariffs will reflect a \$0.0000 rate for the period October 1, 2006 through September 30, 2007. The terms of the existing Weather Clauses for NJNG and SJG will be suspended as of October 1, 2006. Any credit or surcharge associated with the operation of the existing Weather Clauses up to and including the 2005-06 Winter will be applied to customer bills consistent with the terms of those clauses. Further, the provisions relating to over and under-recovery of prior period rate credits or charges will continue until such time as there is no remaining balance to be refunded or surcharged to customers.
8. The enhanced conservation programs and CIP adjustment tariffs will be implemented on a pilot program basis. Subject to the provisions of paragraphs 21 and 33(d) of the Stipulation, the pilot term will be three years beginning with the October 2006 billing cycle and ending with the September 2009 billing cycle.<sup>2</sup> Included in the pilot is a comprehensive review and evaluation process to determine the benefits to customers and the Companies during the initial term. The Board retains full authority to extend, modify or terminate the pilot program upon the end of the three year initial term. If a Board order relative to the continuation of the CIP is not issued by October 1, 2009, the pilot program will continue for up to one additional year or until the issuance of a Board order. Should no Board order be issued as of October 1, 2010, the pilot program will terminate subject to the conditions in paragraph 31 of the Stipulation.

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<sup>2</sup> Under the CIP tariffs, the margin impacts of changes in customer usage are reflected on customer bills as a credit or surcharge in the subsequent year. Therefore, the implementation of the CIP tariffs on a pilot basis will result in credits and/or surcharges established on an annual basis for the annual periods beginning October 1 of 2007, 2008 and 2009.

9. NJNG and SJG will undertake a comprehensive evaluation of the effectiveness of the initial two years of the pilot program, beginning no later than November 1, 2008 and including an assessment performed by an independent third-party. The evaluation will include, but not be limited to, an analysis of the Companies' average use per customer per degree day for each CIP group pre- and post-CIP implementation. The Companies will also endeavor to create a comparison of the change in the trend in average customer usage as compared to a peer group consisting of the customers of other New Jersey local distribution companies that did not implement a CIP-type mechanism during the same time period. The Companies agree to work with the parties to determine any other relevant measures. Costs for this independent evaluation will be paid for with shareholder monies. The results of the evaluation will be documented and submitted to the parties for review on or before January 15, 2009. Upon circulation of the evaluation, the parties agree to meet to discuss whether to extend, modify or terminate the pilot program. No later than April 1, 2009, NJNG and SJG will each file a proposal with the Board concerning the future disposition of the pilot program.
10. If the pilot program terminates, the Weather Clause of each Company will be reinstated as of the date of the CIP's termination, in the same form as existed immediately prior to the implementation of the CIP tariffs. Upon reinstatement, the Weather Clauses will reflect a rate of \$0.0000. Any credit or surcharge associated with the operation of the CIP tariffs for the final year of the pilot will be applied to customer bills in the subsequent year.
11. The parties agree that reductions in customer usage provide opportunities to reduce peak-related demand costs and to utilize lower cost commodity supplies. As such, additional BGSS savings resulting from reductions in customer usage, as described more fully in the Stipulation, will offset any recovery of non-weather related margins through the CIP tariffs and such verified savings will limit the level of non-weather CIP recoveries. For each year of the pilot program, the non-weather related CIP surcharge, if any, will be compared to the BGSS gas cost savings during the period that the surcharge would be in effect. Specifically, the impact of non-weather related changes in customer usage for the period October 1, 2006 through September 30, 2007 will be eligible for recovery if the BGSS savings to be realized for the period beginning October 1, 2007 is equal to or greater than the non-weather value of the CIP surcharge amount, and similar comparisons will be made for the pilot program's other years. The methodology employed to calculate the non-weather related CIP surcharge, if any, is delineated in paragraph 33(a) of the Stipulation. If the non-weather related CIP recovery is less than or equal to the level of available gas cost savings, the amount will be eligible for recovery through the CIP tariffs. Any portion of the non-weather CIP value that exceeds the available gas cost savings will not be recovered in the current period and will be deferred up to three years and subject to an eligibility test in the subsequent period. Deferred CIP surcharges may be recovered in a future period to the extent that available gas cost savings are available to offset the deferred amount. If the pilot is terminated after the initial period, any remaining deferred CIP surcharges will not be recovered. The value of any BGSS savings during one year in excess of the non-weather CIP value cannot be carried forward for use in future year calculations.
12. BGSS savings during the period prior to October 1, 2007 will not be reflected in the determination of CIP surcharge eligibility for the pilot program's initial year. Customers will receive the benefit of an additional year of BGSS gas cost savings.
13. NJNG and SJG will initiate contract restructurings and/or purchasing practices designed to benefit customers through lower BGSS costs. The resulting BGSS gas cost savings will be verified on an annual basis and be available to offset non-weather-related CIP surcharges. Categories of potential BGSS gas cost savings will include, but not be limited to: (i.)

reductions in the fixed capacity cost of citygate capacity effectuated through the release of capacity to an affiliate or non-affiliate and/or other means of reducing citygate capacity on a long-term basis, i.e. for periods of at least one-year; (ii.) fixed cost savings associated with avoided increases to citygate deliverability; and (iii.) reductions in the commodity cost of gas supply effectuated through purchasing strategies implemented as a result of reductions on peak day and winter demand.

14. The Companies will provide supporting documentation regarding the terms and merits of any future transactions that generate BGSS savings and that are to be considered for the savings calculation. Initial BGSS savings for the three year period beginning October 1, 2007 and ending September 30, 2010 are demonstrated in Exhibits E and F attached to the Stipulation for NJNG and SJG, respectively. Additional savings will only be counted within the BGSS savings calculation after consultation with and agreement by the BPU Staff and Rate Counsel about BGSS savings transactions pursuant to paragraph 33(c) of the Stipulation. The savings calculations and the eligibility of such savings for determining non-weather related CIP recovery will be further evaluated in the immediately succeeding BGSS proceeding for each Company and be subject to Board approval. Portfolio restructuring mandated by SJG's Global Settlement at Docket No. GR03080683 and SJG's Liberty Audit's recommendation GS-15 at Docket No. AX04040277 shall not be considered when determining BGSS savings. SJG intends to have a peak day study performed by a third party to begin within thirty (30) days of the October 6, 2006 letter of clarification, which will, among other things, evaluate the gas supply portfolio. Portfolio restructuring recommended as a result of this study will be used by SJG to propose guidelines for determining savings eligible for SJG CIP purposes and those guidelines will be included in its 2007 CIP filing for the consideration of the parties and BPU approval. SJG will submit a report to Rate Counsel and BPU Staff, including recommendations, at the conclusion of the study.
15. NJNG and SJG will each make filings by June 1, 2007 seeking final Board review and approval of its rates with the proposed CIP tariff and will include information as set forth in the Stipulation at paragraph 33(d) to allow the Board to determine if such rates are just and reasonable.
16. SJG will withdraw its proposal to seek approval of the capacity and portfolio enhancement mechanism, which it proposed in its 2005-2006 BGSS proceeding, Docket No. GR05060496 and reserved the right to pursue in the SJG Global Settlement, Docket No. GR03080683.

## **DISCUSSION AND FINDINGS**

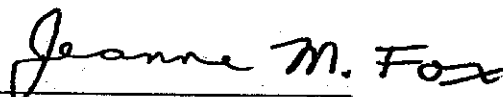
Having carefully reviewed the Stipulation and clarification letter of the parties in this proceeding, the Board **HEREBY FINDS** that the Stipulation as clarified is reasonable, in the public interest and in accordance with law. With the CIP and the possible recovery of non-weather-related margin losses, the utilities have represented that they will actively promote conservation and energy efficiency by their customers through programs funded by their shareholders. The programs are not to replicate existing CEP programs and are to include, among other things, customized customer communications and outreach built upon the utilities' relationships with their customers. While not replicating existing CEP programs, the CIP programs include initiatives which promote customers' use of CEP programs through consistent messaging with the CEP programs. At the same time, by limiting non-weather-related CIP recovery by gas supply cost reductions, in addition to an earnings cap, the CIP gives recognition to the nexus between reductions in long term usage and reductions in gas supply capacity requirements. By limiting any non-weather CIP recovery to offsetting gas supply cost reductions, the CIP does not just provide the utilities with a mechanism

for rate recovery but ensures that the CIP results in an appropriate, concomitant reduction in gas supply costs borne by customers. In this way, customers taking BGSS will not incur any overall net rate increases arising from non-weather related load losses. There also will be an immediate reduction in gas supply capacity related costs commencing in the 2006-2007 BGSS rate year while any recovery of non-weather related margin revenue losses will not commence until the 2007-2008 BGSS rate year. Furthermore, initial approval of the CIP on a three year pilot basis pending the further review provided by paragraph 33(d) of the Stipulation, will provide the Board and parties with an opportunity to further assess the impact, efficacy and merits of the CIP.

For the foregoing reasons, pending and subject to the filing seeking final Board review and approval of each Company's rates with the proposed CIP tariff, as set forth in the Stipulation at paragraph 33(d), the Board **FINDS** that implementation of the CIP reflects a reasonable balance of the interests of the various parties and should support current public policy concerning conservation and energy efficiency. Accordingly, the Board **HEREBY ADOPTS** the Stipulation, as clarified by the October 6, 2006 letter, in its entirety, incorporating the terms and conditions as if fully set forth at length herein. Pursuant to the terms of the Stipulation, the Board **HEREBY DIRECTS** that within 10 days of the date of this Order: NJNG and SJG shall file revised tariff pages; NJNG shall provide a letter from its authorized representative certifying that it has returned to its customers, through the SBC, the Market Development Fund monies as described in paragraph 18 of the Stipulation; and SJG shall provide a letter from its authorized representative certifying that it has returned to its customers, through the BGSS Clause, the monies from its Transitional Energy Facilities Assessment as described in paragraph 19 of the Stipulation.

DATED: 12/12/06

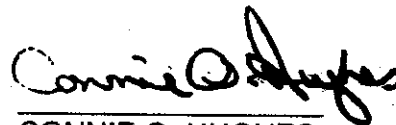
BOARD OF PUBLIC UTILITIES  
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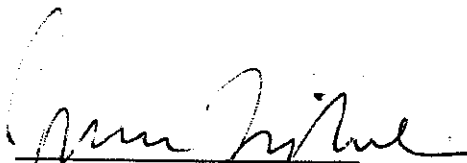
JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER

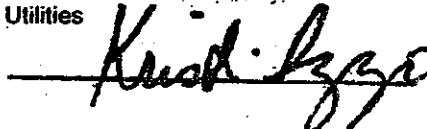


CONNIE O. HUGHES  
COMMISSIONER

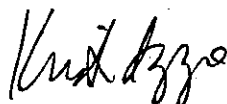


JOSEPH L. FIORDALISO  
COMMISSIONER

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



ATTEST:



KRISTI IZZO  
SECRETARY