



Agenda Date: 2/27/19

Agenda Item: 2L

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF JOHANNA)
FOODS, INC. FOR A REDUCTION OF THE SOCIETAL)
BENEFITS CHARGE)
)
)
)

ORDER DISMISSING PETITION

BPU DOCKET NO. GR18120003

Parties of Record:

Martin C. Rothfelder, Esq., Rothfelder Stern, LLC on behalf of Johanna Foods, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND

On February 9, 1999, the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-1 to 3-46, N.J.S.A. 48:3-49, 48:3-98 and N.J.S.A. 48:3-51, -57, -59, -60, -63, 65 and -66, was enacted. L. 1999, c. 23, § 66. Among other provisions, EDECA established the Societal Benefits Charge ("SBC") at N.J.S.A. 48:3-60. The SBC constitutes a per unit charge billed to ratepayers by an electric or gas public utility at a level determined by the New Jersey Board of Public Utilities ("Board" or "BPU") in accordance with N.J.S.A. 48:3-60. The total amount of the SBC paid by each commercial or industrial customer constitutes its SBC liability, and a portion of those remittances fund the New Jersey Clean Energy Program.

2010 Discount Contract Proceeding

In 2010, the Board conducted and completed a proceeding in which it examined the standards applicable to gas distribution rate discounts and associated terms and conditions.¹ In the Discount Contract Order, the Board noted that nothing in N.J.S.A. 48:3-60(a) shows a legislative

¹ In re a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions, Docket Nos. GR10100761 and ER10100762 (August 18, 2011) ("Discount Contract Order").

intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities.

SBC Credit Program

On January 17, 2012, the Legislature enacted N.J.S.A. 48:3-60.3, providing for a credit against the SBC and supplementing L. 1999, c. 23. L. 2007, c. 340 (the "Act"). Under the Act, on and after January 1 next following the date of enactment, commercial and industrial ratepayers are entitled to a credit against their annual SBC payment. The credit amount is based on investments in qualifying energy efficiency measures. N.J.S.A. 48:3-60.3(b). The amount of the credit to be allowed against the SBC in any calendar year for each ratepayer is to be determined by the Board. N.J.S.A. 48:3-60.3(c). While the credit may be used to offset the SBC liability of the ratepayer, the maximum amount of credit that may be applied in any year cannot exceed 100 percent of the ratepayer's SBC liability that would otherwise be due in each calendar year. N.J.S.A. 48:3-60.3(d). By Order² dated December 20, 2012, the Board ordered the commencement of the SBC Credit Program to implement the Act.

JOHANNA FOODS, INC. PETITION

On December 31, 2018, Johanna Foods, Inc. ("Johanna" or "Petitioner"), a corporation in the State of New Jersey, filed a petition with the Board pursuant to relevant New Jersey statutes and regulations requesting a 50 percent (50%) reduction in its SBC obligations for electric and gas service. Johanna requested the credit for a period of 20 years, commencing the first date of the month following the effective date of the order, for its production plant in Flemington, New Jersey.

The Petitioner submits that they operate in a highly competitive business and that increased energy costs impair its ability to sell its branded products and to compete for private label and co-packing customers. The Petitioner estimates that energy consumption represents 10 percent (10%) of its cost of goods. According to the petition, between January 2013 and September 2018, Johanna paid \$392,368 in gas SBC charges and \$2,153,089 in electric SBC charges. Johanna currently receives electric service from Jersey Central Power & Light Company ("JCP&L") and gas service from Elizabethtown Gas Company ("Elizabethtown").

Motions to Intervene

ETG

On January 11, 2019, Elizabethtown Gas Company ("Elizabethtown") filed a motion to intervene on the basis that Johanna is a gas distribution customer of Elizabethtown; Elizabethtown states that Johanna takes gas service pursuant to the Company's Large Volume Demand and Interruptible Transportation service classifications, paying the SBC in connection with the gas service it receives. Elizabethtown asserts that the Board's decision in this proceeding could have a substantial, specific and direct impact on Elizabethtown's operations and its customers in several respects, including an impact on Elizabethtown's revenues and potentially on the cost of service for other customers. In addition, Elizabethtown maintains that its interest in this

² In re the Implementation of A2528/S2344 (N.J.S.A. 48:3-60.3) and the SBC Credit Program, Docket No. EO12100940 (December 20, 2012).

particular proceeding is clearly different from that of any other party and its participation can add measurably and constructively to the proceeding.

JCP&L

On January 14, 2019 Jersey Central Power & Light Company ("JCP&L") filed a motion to intervene on the basis that the Board's decision in this proceeding could have a substantial, specific and direct impact on JCP&L's operations and customers in several respects, including an impact on JCP&L's revenues since Johanna is an electric distribution customer of JCP&L. Any reduction in Johanna's operations, JCP&L states, will affect its revenues and potentially the cost of service for other customers. JCP&L asserts that its interest in this particular proceeding is clearly different from that of any other party and that its participation can add measurably and constructively to the proceeding.

On January 17, 2019 and January 18, 2019, respectively, Johanna filed letters stating that it did not object to the intervention of Elizabethtown or JCP&L.

STAKEHOLDER PROCEEDING

By Order dated December 18, 2018, the Board directed Staff to initiate a stakeholder proceeding to explore issues relating to the provision of discounted electric SBC rates. In a notice issued for a public meeting to be held on March 5, 2019 ("Notice"), Board Staff invited interested parties and members of the public to discuss the issues related to the SBC Credit Program and discounted SBC rates.

DISCUSSION

While, as noted by Johanna, the Board has granted similar requests for reduced SBC charges in the past, the Board has recognized that the issues involved need to be reviewed on a generic basis. The Board has initiated a stakeholder proceeding to explore these issues. As the results of this proceeding may impact Johanna's application, the Board **FINDS** that Johanna's petition should be and is **HEREBY DISMISSED** without prejudice. The Petitioner is invited to participate in the stakeholder proceeding and may refile its petition after the conclusion of the stakeholder proceeding, if conditions warrant.

The Board notes that it directed the initiation of this proceeding prior to Johanna's petition being filed.

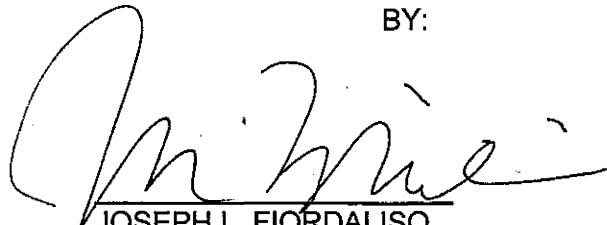
As the Board is dismissing the petition, it will not rule on the motions to intervene filed by JCP&L and Elizabethtown.

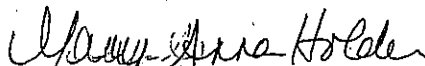
Accordingly, given the Board's findings above, the Board **HEREBY DIRECTS** Staff to close the instant proceeding in Docket No. GR18120003.

The effective date of this Order is March 9, 2019.


DATED: 2/27/19

BOARD OF PUBLIC UTILITIES
BY:

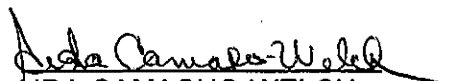

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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 JOHANNA FOODS, INC. FOR A REDUCTION OF
THE SOCIETAL BENEFITS CHARGE
DOCKET NO. GR18120003

SERVICE LIST

Jersey Central Power and Light Company

300 Madison Avenue
P.O. Box 1911
Morristown, NJ 07962-1911

Mark A. Mader
mamader@firstenergycorp.com

James E. O'Toole
jotoole@firstenergycorp.com

Lauren M. Lepkoski, Esq.
FirstEnergy Service Company
Legal Department
2800 Pottsville Pike
Reading, PA 19612-6001
llepkoski@firstenergycorp.com

Gregory Eisenstark, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, NJ 08901
geisenstark@windelsmarx.com

Elizabethtown Gas Company

520 Green Lane
Union, NJ 07083

Deborah M. Franco, Esq.
dfranco@sjindustries.com

Thomas Kaufmann
tkaufmann@sjindustries.com

Leonard J. Willey
lwilley@sjindustries.com

Susan Potanovich
spotanovich@sjindustries.com

Board of Public Utilities

Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch, Secretary
board.secretary@bpu.nj.gov

Division of Energy

Stacy Peterson, Director
stacy.peterson@bpu.nj.gov

Paul Lupo, Bureau Chief
paul.lupo@bpu.nj.gov

Stephan Luma
stephan.luma@bpu.nj.gov

Counsel's Office

Bethany Rocque-Romaine, Esq.
Deputy Chief Counsel
bethany.romaine@bpu.nj.gov

Rachel Boylan, Esq.
rachel.boylan@bpu.nj.gov

Department of Law & Public Safety

Division of Law
Post Office Box 45029
Newark, NJ 07101-45029

Alex Moreau
alex.moreau@law.njoag.gov

Renee Greenberg
renee.greenberg@law.njoag.gov

Caroline Vachier, DAG
caroline.vachier@law.njoag.gov

Carolyn McIntosh, DAG
carolyn.mcintosh@law.njoag.gov

Johanna Foods, Inc.

Steve Steigerwalt, Senior Vice President
Johanna Farms Road
Flemington, NJ 08822
steigerw@johannafoods.com

Martin C. Rothfelder, Esq.
Rothfelder Stern, L.L.C.
407 Greenwood Ave., #301
Trenton, NJ 08609
mrothfelder@rothfelderstern.com

New Jersey Division of Rate Counsel

Division of Rate Counsel
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie Brand, Director
sbrand@rpa.nj.gov

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

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

Sarah H. Steindel, Esq.
ssteinde@rpa.nj.gov

James Glassen
jglassen@rpa.nj.gov

Ami Morita, Esq.
amorita@rpa.nj.gov