



Agenda Date: 09/11/15  
Agenda Item: IIB

**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/)

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL )  
UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN )  
GAS FOR APPROVAL TO REVISE ITS BASE RATES )  
TO RECOVER THE COSTS OF THE )  
ELIZABETHTOWN NATURAL GAS DISTRIBUTION )  
UTILITY REINFORCEMENT EFFORT PROGRAM AND )  
RELATED TARIFF REVISIONS ) DOCKET NO. GR15060656

**Parties of Record:**

**Mary Patricia Keefe, Vice President, Regulatory Affairs, Pivotal Utility Holdings, Inc.**  
**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**  
**Steven S. Goldenberg, Esq., Fox Rothschild, LLP on behalf New Jersey Large Energy Users Coalition**

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

On or about September 3, 2013, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown Gas" or "Company") filed a petition for approval of the Elizabethtown Natural Gas Distribution Utility Reinforcement Effort ("ENDURE") program with authority to (1) invest approximately \$15.0 million in the Company's natural gas infrastructure and related facilities and communication planning over a one (1) year period commencing on January 1, 2014 and ending December 31, 2014, to harden and protect the Company's infrastructure against damage from future major storm events and to assist the Company in developing a more robust capability to effectively communicate with customers and public officials during and after weather-related emergencies;<sup>2</sup> and (2) utilize deferred accounting for the cost of the program in the same manner approved by the Board by Order dated August 21, 2013<sup>3</sup>.

Elizabethtown represented that the natural gas infrastructure projects included in the proposed ENDURE program, as reflected in the petition, would be incremental to its projected normal

<sup>1</sup> Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

<sup>2</sup> The proposed expenditures consist of approximately \$14.9 million for infrastructure replacements and enhancements and \$100,000 for a consultant to assist the Company in developing enhanced communication capabilities.

<sup>3</sup> In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas for Approval of an Accelerated Infrastructure Replacement ("AIR") Program and an Associated Cost Recovery Mechanism, BPU Docket No. GO12070693, August 21, 2013.

capital expenditures and would not duplicate any of the projects that have been or will be undertaken by the Company in connection with its Utility Infrastructure Enhancement ("UIE") and Accelerated Infrastructure Replacement ("AIR") programs. The proposed natural gas infrastructure projects contained in the petition included:

- (1) The replacement of approximately six-hundred (600) associated meter sets located in and around a designated Federal Emergency Management Agency ("FEMA") flood zone along with the replacement and upgrading to elevated pressure of twelve (12) miles of low pressure ("LP") cast iron main and associated facilities at a projected cost of approximately \$9.2 million;
- (2) The hardening and elevation of the building located at the Erie Street property in Elizabeth along with related work at a projected cost of \$5.4 million; and
- (3) The hardening and elevation of certain gate station facilities to protect the Supervisory Control and Data Acquisition ("SCADA") system equipment located at these sites at a projected cost of \$275,000.

Following the review of discovery, the parties met to discuss the issues in the ENDURE matter. As a result, on June 18, 2014, the Company, Rate Counsel, and Board Staff executed a stipulation of settlement ("Stipulation") which was approved by the Board by Order dated July 23, 2014 ("July 23, 2014 Order").

The July 23, 2014 Order directed the Company to make a filing with the Board on or about June 1, 2015, requesting authorization to make an adjustment to base distribution rates ("ENDURE Revenue Adjustment") to enable it to recover the costs associated with the ENDURE program in an amount up to \$14.9 million plus an associated Allowance for Funds Used During Construction. The Stipulation, as approved by the July 23, 2015 Order, further provided that the base rate adjustment resulting from the ENDURE Revenue Adjustment filing will have a proposed effective date of November 1, 2015, and will be based on actual data through April 30, 2015 and projected data from May 1, 2015 through August 31, 2015. On June 3, 2015, the Company filed the instant petition requesting authority to roll into and recover through base rates the costs associated with the ENDURE program.

On August 5, 2015, Steven S. Goldenberg, Esq. of Fox Rothschild, LLP, on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"), filed a motion to participate in this matter pursuant to N.J.A.C. 1:1-16.6. The motion represents that (1) NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities including Elizabethtown and to participate or intervene in regulatory and rate proceedings as needed to represent the interests of its members; (2) its members purchase natural gas service from Elizabethtown and, as large end-use customers on the Elizabethtown system, its members will be directly and immediately affected by affected by the revenue adjustment sought by Elizabethtown in this proceeding; (3) it has a unique perspective and insight regarding the potential impact of the relief that will be sought by Elizabethtown in this proceeding. Additionally, NJLEUC represents that its motion is timely and will not delay or otherwise disrupt the prosecution of this proceeding; fundamental fairness and due process considerations require it be afforded an opportunity to fully participate in this proceeding, as the outcome will have an impact on the reliability and cost of natural gas distribution service received from Elizabethtown by its members; it was granted participant status in the underlying ENDURE proceeding, as well as intervener status in Elizabethtown rate proceedings; and its interests in this matter are unique from and not adequately represented by any other party.

Mr. Goldenberg also filed a motion for the admission *pro hac vice* of Paul F. Forshay, Esq. Mr. Goldenberg represented that (1) Mr. Forshay has an attorney client relationship with NJLEUC; (2) Mr. Forshay has significant experience representing the interests of large end-use customers; and (3) he is a specialist in the field of law involved in this proceeding. Mr. Forshay represented that: (1) he is duly admitted to the practice of law in the District of Columbia but not in the State of New Jersey; (2) no disciplinary proceedings are pending against him and no discipline has previously been imposed in any jurisdiction; (3) he is a specialist in the field of law involved in this proceeding and he has an attorney client relationship with NJLEUC; (4) he has paid fees required by R.1:2-1(b) and 1:28-2; and (5) he will comply with the New Jersey Court Rules, consent to and give notices to the Board and the Office of Administrative Law ("OAL") as required, and ensure that all papers filed with the Board and OAL bear the signature of the attorney of record admitted to practice law in New Jersey.

The Board did not receive any responses to NJLEUC's motion to participate or to the motion for admission *pro hac vice* during the ten (10) day response period provided by N.J.A.C. 1:1-12.2(b).

### **DISCUSSION AND FINDINGS:**

In ruling on a motion to participate, N.J.A.C. 1:1-16.6(b) requires that the decision-maker consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. This determination as to the nature and extent of participation is to be made on an individual basis. N.J.A.C. 1:1-16.6(c). N.J.A.C. 1:1-16.6(c) further provides that participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has 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 intervener's 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 re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (Order dated June 8, 2005).

As the members of NJLEUC who are customers of Elizabethtown will be directly affected by the outcome of this proceeding, the Board **HEREBY FINDS** that NJLEUC has met the standards for participation as it has an interest in this proceeding, and its participation in this proceeding is likely to add constructively to the case without causing undue delay or confusion. Accordingly, having received no objections, the Board **HEREBY GRANTS** the motion for participation of NJLEUC.

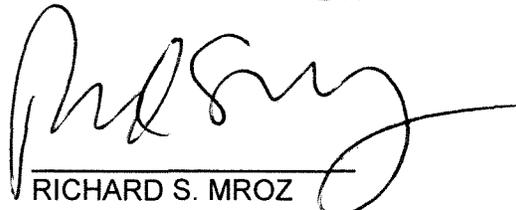
In light of this grant of participant status to NJLEUC, the Board has also reviewed the motion and the supporting affidavit of Steven S. Goldenberg, Esq. for admission *pro hac vice* of Paul F. Forshay, Esq., and no objections to it having been received after due notice to the parties, the Board **FINDS** that Mr. Forshay has satisfied the conditions for admission, has affirmed to the Board that he has made payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, is **HEREBY** admitted to practice before the Board *pro hac vice* in the above-captioned matter provided that he shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of the cause and the admitted attorney therein.

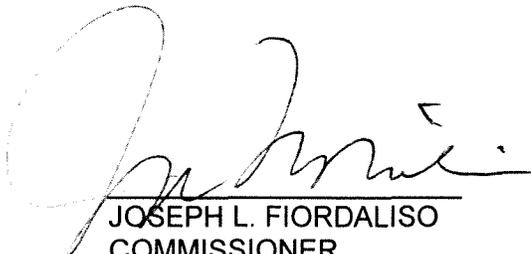
This Order shall be effective on September 21, 2015.

DATED: 9-11-15

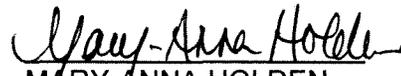
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BY:



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RICHARD S. MROZ  
PRESIDENT



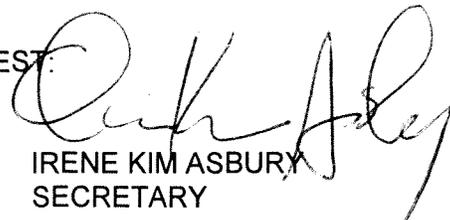
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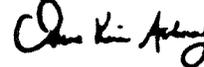


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DIANNE SOLOMON  
COMMISSIONER

ATTEST: 

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IRENE KIM ASBURY  
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 PIVOTAL UTILITY HOLDINGS, INC. d/b/a  
ELIZABETHTOWN GAS FOR APPROVAL TO REVISE ITS BASE RATES TO RECOVER THE  
COSTS OF THE ELIZABETHTOWN NATURAL GAS DISTRIBUTION UTILITY  
REINFORCEMENT EFFORT PROGRAM AND RELATED TARIFF REVISIONS

DOCKET NO. GR15060656

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