



Agenda Date: 6/29/16  
Agenda Item: 2E

**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/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE MERGER OF THE )  
SOUTHERN COMPANY AND AGL RESOURCES, INC )  
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 )  
 ) DOCKET NO. GM15101196

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Joseph Accardo, Jr., Esq., Deputy General Counsel**, Public Service Electric and Gas Company  
**Steven Goldenberg, Esq.**, New Jersey Large Energy Users Coalition  
**Kenneth T. Maloney, Esq.**, Attorney for Joint Petitioners AGL Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas  
**Stephen B. Genzer, Esq.**, Attorney for Joint Petitioners, The Southern Company and AMS Corp.

**BY THE BOARD:**

By this Decision and Order, the New Jersey Board of Public Utilities ("Board") considers a stipulation executed by Southern Company ("Southern Company"), AGL Resources Inc. ("AGL Resources"), AMS Corp. and Pivotal Utility Holdings, Inc. ("Pivotal") d/b/a Elizabethtown Gas ("Elizabethtown") (collectively, the "Joint Petitioners"), the New Jersey Division of Rate Counsel ("Rate Counsel"), New Jersey Large Energy Users Coalition ("NJLEUC") and Board Staff ("Staff") (collectively, "Parties"), which resolves the above-captioned matter.

**BACKGROUND**

On or about October 16, 2015, the Joint Petitioners filed a Joint Petition for approval by the Board pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c), and related statutes and regulations, for a change of control of Elizabethtown to be effectuated by the merger of AGL Resources with AMS Corp., a wholly-owned subsidiary of Southern Company (the "Merger"). Headquartered in Union County, NJ, Elizabethtown provides service to approximately 282,000 customers and owns approximately 3,200 miles of distribution pipeline and 22 miles of transmission pipeline.

The Merger will result in Southern Company becoming the parent of Elizabethtown and ten other regulated utilities serving over nine million customers in nine states, including New Jersey, Alabama, Florida, Georgia, Illinois, Maryland, Mississippi, Tennessee, and Virginia. The Joint Petition asserts that the Merger will support a strong credit profile, and continue to provide Elizabethtown with the ability to invest in necessary capital and infrastructure to ensure the provision of safe, adequate and proper service to its New Jersey customers at just and reasonable rates. Joint Petitioners argued that Elizabethtown's customers, and the State of New Jersey, will realize substantial tangible benefits from the Merger as a result of the Joint Petitioners' commitments to modify Elizabethtown's current Asset Management Agreement with Sequent Energy Management L.P. to provide an additional \$6 million of credits to customers and to more than double Elizabethtown's current level of community support to \$500,000 annually. The Joint Petitioners also stated that they are making a number of significant commitments to employees and the State of New Jersey.

### **THE PROPOSED TRANSACTION**

Southern Company will acquire AGL Resources through a reverse triangular merger. Specifically, AGL Resources will merge with AMS Corp., with AGL Resources remaining as the surviving entity. AMS Corp. will cease to exist, and AGL Resources will become a direct, wholly-owned subsidiary of Southern Company. Elizabethtown will remain an indirect, wholly-owned subsidiary of AGL Resources, with Southern Company as its ultimate parent. The transaction's enterprise value is approximately \$12 billion. Under the terms of the Merger Agreement, Southern Company has agreed to pay \$66 for each share of common stock of AGL Resources issued and outstanding on the closing date of the Merger – approximately 120,000,000 shares – for an aggregate purchase price of approximately \$8 billion in cash. To finance this purchase, Southern Company plans to issue approximately \$3 billion in new Southern Company equity between now and the end of 2019 and to issue approximately \$5 billion in new debt at the Southern Company level. Neither AGL Resources nor Elizabethtown will issue debt or equity in connection with, or to fund, the Merger. Following the closing of the Merger, AGL Resources will no longer be a publicly traded company. In addition, Southern Company will assume the debt of AGL Resources at closing.

### **PROCEDURAL HISTORY**

By Order dated December 16, 2015 the Board retained this matter for hearing, and designated Commissioner Dianne Solomon as the Presiding Officer with the authority to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, subject to Board ratification. Additionally, the December 16, 2015 Order set January 29, 2016 as the deadline for the filing of motions to intervene or participate in this matter.

By Order dated January 29, 2016, Presiding Commissioner Solomon executed a Prehearing Order establishing the Prehearing Schedule in this matter.

Timely Motions to Intervene were made by NJLEUC on January 5, 2016 and PSE&G on January 27, 2016. NJLEUC also made a Motion for Admission *Pro Hac Vice* on behalf of Paul Forshay. By correspondence dated February 8, 2016, the Joint Petitioners indicated they would not oppose NJLEUC's Motion to Intervene to the extent NJLEUC disclosed its members who are customers of Elizabethtown. By correspondence dated February 17, 2016, NJLEUC identified three members that it stated were customers of Elizabethtown.

By Order dated February 29, 2016, the Motions to Intervene of NJLEUC and PSE&G and the Motion for Admission *Pro Hac Vice* were granted by Commissioner Solomon.

After proper public notice, two public hearings were held in Flemington, New Jersey on February 22, 2016 at 4:30 P.M. and 5:30 P.M. and on February 24, 2016 in Union, New Jersey at 4:30 P.M. and 5:30 P.M. Commissioner Solomon presided over both public hearings. One member of the public appeared at the public hearing in Flemington. No members of the public appeared at the hearing in Union.

The Joint Petition was supported by the Direct Testimony of three witnesses: Art P. Beattie and Mark S. Lantrip of Southern Company and Henry (Hank) P. Linginfelter of AGL Resources. On March 11, 2016, Rate Counsel submitted the Direct Testimony of six witnesses: Maximilian Chang, David E. Dismukes, Matthew I. Kahal, Dante Mugrace, David E. Peterson and John A. Rosenkranz. On April 8, 2016, the Joint Petitioners submitted the Rebuttal Testimony of seven witnesses: Messrs. Beattie, Lantrip and Linginfelter and Timothy S. Sherwood, Michael Morley, Robert B. Hevert and Joseph P. Kalt.

Extensive discovery was conducted and a number of settlement discussions were held. Joint Petitioners, Board Staff, Rate Counsel, and NJLEUC (collectively, the "Signatory Parties") have come to an agreement executed on May 5, 2016 concerning all of the factual and legal issues arising in this matter which is the subject of this Order. By letter dated May 5, 2016, PSE&G informed the Board that it had no objection to the Stipulation.

#### **STATUTORY STANDARD OF REVIEW AND POSITIVE BENEFITS TEST**

During the discovery process and the development of the Stipulation of Settlement, Staff utilized the principles embedded in the "positive benefits" standard of review articulated in other merger cases (e.g., RWE/AWW IPO, SBC Communications, Inc., and AT&T Corporation, AT&T and BellSouth Corporation, etc.). Per N.J.A.C. 14:1-5.14(c), positive benefits must result from the transaction in order for the Board to approve a merger.

The Joint Petition was filed pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 describes various specific issues to be evaluated by the Board when considering a request to acquire or seek to acquire control of a public utility, directly or indirectly. In particular, this statute requires the Board to consider the effect of the proposed acquisition on: (1) competition; (2) the rates of ratepayers affected by the acquisition of control; (3) the employees of the affected public utility; and (4) the provision of safe and adequate utility service at just and reasonable rates. Specifically, N.J.S.A. 48:2-51.1 provides that:

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the

affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

Staff reviewed the specific impact areas identified in N.J.S.A. 48:2-51.1 to structure the analysis, namely the impact of the merger on rates, employees, service quality and competition, as well as positive benefits associated with the transaction.

## **THE STIPULATION**

The Parties reviewed the Petition, responses to discovery and have conducted discussions in an effort to reach a proposed settlement of all issues. The Parties have agreed to reasonably, fully and finally resolve all factual and legal issues in this matter by way of the Stipulation.<sup>1</sup> The terms of the stipulation are set forth below:

### **The Stipulated Record**

For the sole purpose of providing the Board with a record supporting the Stipulation, the Signatory Parties stipulated into the record the Direct and Rebuttal Testimony, but they did not stipulate to the relevance or materiality of the testimonies, nor did they stipulate to the assertions or arguments made therein. Thus, the stipulated record is as follows:

1. The Direct Testimony filed on behalf of Joint Petitioners, dated October 13, 2015, of Messrs. Beattie, Lantrip, and Linginfelter;
2. The Direct Testimony filed on behalf of Rate Counsel, dated March 11, 2016, of Messrs. Chang, Dismukes, Kahal, Mugrace, Peterson and Rosenkranz; and
3. The Rebuttal Testimony filed on behalf of the Joint Petitioners, dated April 8, 2016, of Messrs. Beattie, Lantrip, Linginfelter, Sherwood, Morley, Hevert and Kalt.

### **Elizabethtown's Rates**

1. After consummation of the Merger, Southern Company will enable Elizabethtown to provide direct rate credits to all its customers totaling \$17.5 million. The Signatory Parties recommend that the Board determine that these rate credits should be distributed as direct per customer credits to all of Elizabethtown's current customers served under Service Classifications RDS, SGS, GDS, LVD, EGF, GIS, CSI, IS, CS, FTS and ITS within sixty (60) days of the closing of the Merger. The Signatory Parties agree that the credits should be allocated among Elizabethtown's customer classes based on the base rate revenues reflected in the rates that resulted from Elizabethtown's most recent base rate proceeding, in BPU Docket No. GR09030195;
2. Elizabethtown will file its next base rate case no later than September 1, 2016 (hereinafter "the 2016 Rate Case") in accordance with the Board's Order in Docket No. GO12070693;

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<sup>1</sup> Although described in this Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

3. Elizabethtown will file a further base rate case (hereinafter "the 2020 Rate Case") no later than three years after the completion of the 2016 Rate Case;
4. Any net savings realized by Elizabethtown through the Merger integration process will be flowed through to Elizabethtown's customers through the normal base rate case process;
5. In future rate proceedings, to ensure that Elizabethtown's customers will only pay costs to achieve to the extent that there are offsetting synergy savings, Elizabethtown will net the total costs incurred to achieve synergy savings against the resulting total synergy savings, and may recover those costs to achieve only up to the amount of the total synergy savings generated. As part of its 2020 Rate Case filing, Elizabethtown will file a comprehensive study identifying the Merger costs to achieve incurred by Elizabethtown and any Merger savings realized by Elizabethtown as a result of the Merger;
6. Elizabethtown will not seek recovery in rates of (a) any acquisition premium associated with the Merger, (b) any costs associated with goodwill arising from the Merger, (c) any severance and retention payments associated with executive change of control agreements and any financing or transaction costs incurred in connection with the Merger. For purposes of this Stipulation, transaction costs are defined as (a) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar expenses, (b) change in control payments, (c) costs associated with the shareholder meetings and a proxy statement related to the Merger approved by AGL Resources' shareholders, (d) costs associated with the imposition of conditions or approval of settlement terms in merger proceedings in other state jurisdictions, and (e) any financing costs related to the rate credit to be provided to Elizabethtown's customers under Section 3.A(i) of this Stipulation;
7. In its 2016 and 2020 Rate Cases, Elizabethtown will impute AGL Resources' capital structure (exclusive of goodwill associated with the Merger) for ratemaking purposes and will provide Southern Company's then-consolidated capital structure as well as the stand-alone capital structure of AGL Resources (exclusive of goodwill). Staff, Rate Counsel and all other parties to the rate case retain all rights to challenge the reasonableness of the use of any capital structure submitted by Elizabethtown for ratemaking purposes in any future proceedings and to propose alternatives to any capital structure submitted by Elizabethtown;
8. Elizabethtown will not include any common equity or debt associated with goodwill (including Merger-related goodwill on AGL Resources' balance sheet) in Elizabethtown's ratemaking capital structure;
9. Elizabethtown will not be permitted to recover in its Board-authorized rate of return on equity a risk premium pertaining to the business and financial risks associated with Southern Company's regulated or unregulated generation supply operations;
10. For a period of five (5) years following the establishment of a baseline level of costs in the 2016 Rate Case as discussed more fully below, the amount of costs assessed to Elizabethtown for services provided by an affiliate shall be no greater than it would have been had the Merger not occurred, regardless of whether such services are

provided directly or indirectly by Southern Company Services, Inc. ("SCS"), AGL Services Company, Inc. ("AGSC") or any other Southern Company affiliate. Elizabethtown will propose an annual level of allocated AGSC costs that will serve as a baseline for the five-year commitment in Elizabethtown's 2016 Rate Case;

11. In the 2016 Rate Case, Elizabethtown shall use the lower of the baseline level of allocated AGSC costs or its actual normalized allocated affiliate costs for ratemaking purposes. Notwithstanding this condition, the parties to the 2016 Rate Case retain all of their rights to challenge Elizabethtown's proposed baseline level of costs and the level of service company costs to be reflected in Elizabethtown's rates and to propose alternatives to the baseline level of costs proposed by Elizabethtown; and
12. In any other rate proceeding commenced during the five-year commitment period following the establishment of the baseline level of allocated AGSC costs in the 2016 Rate Case, Elizabethtown will have the burden to demonstrate that its service company costs are no higher than they would have been in the absence of the Merger for the services for which Elizabethtown may seek cost recovery in such future rate proceedings. The baseline level of allocated AGSC costs established in the 2016 Rate Case will not be treated as a hard cap on Elizabethtown's recoverable service company costs but will be reviewed as evidence of whether Elizabethtown has met the burden established in this Stipulation. The parties to such future rate proceedings shall have full rights to challenge any service company costs allocated to Elizabethtown.

### **Employees**

1. For the first five (5) years following the closing of the Merger, Southern Company, SCS, AGL Resources, AGSC and Elizabethtown, together, will maintain a minimum of 300 employees in New Jersey supporting Elizabethtown's operations. This number shall include management and compliance, field operations, corporate support, regulatory support, call center and other customer service positions. Elizabethtown will submit an annual report to Board Staff and Rate Counsel setting forth the number of employees by position and function with a baseline report to be filed within sixty (60) days of Merger closing and updates on the annual anniversary of that date;
2. Any additional employees necessary due to the implementation of any future infrastructure enhancement program will be in addition to the 300 employee minimum and will not be used to offset any non-attrition/retirement related fluctuations in the employment level required to be retained in New Jersey as set forth in this Stipulation;
3. Southern Company will honor all of AGL Resources and Elizabethtown's existing collective bargaining agreements in effect at the time of the closing of the Merger;
4. Southern Company will assume AGL Resources' obligations or cause AGL Resources to continue to meet its obligations to Elizabethtown's employees and retirees with respect to pension benefits; and
5. AGL Resources and Elizabethtown shall continue to maintain core management teams in place following the completion of the Merger for five (5) years that are fully capable of managing Elizabethtown's field operations, compliance, corporate support, regulatory support, call center and other customer service functions. Management positions responsible for ensuring the safe and reliable operation of Elizabethtown will

remain in New Jersey and New Jersey management shall maintain authority to make decisions on how best to serve Elizabethtown's operational needs while continuing to report to AGL Resources' Distribution Operations. Elizabethtown will provide an annual report to the Board identifying all changes in core management personnel for the first five (5) years following the Merger with a baseline report to be filed within 60 days of Merger closing with annual updates due on the anniversary of that date.

### **Service**

1. Elizabethtown's operations centers, call centers, walk-in payment centers and headquarters will be maintained for at least five (5) years following the Merger. Any future relocation of walk-in payment centers, the call center or headquarters must be approved in advance by the Board. Future relocations of operations centers within the service territory will not require Board approval but will require sixty (60) days advance notice to the Board Secretary. Relocation of operations centers outside the service territory will require prior Board approval;
2. Southern Company will provide Elizabethtown with the resources necessary to invest in capital and infrastructure projects to help ensure that Elizabethtown may continue to provide safe, reliable and adequate utility service;
3. Elizabethtown will conduct a root cause analysis to determine the cause of longer leak response times on nights and weekends and provide the results of that analysis to the Board, Staff and Rate Counsel within ninety (90) days of the Merger, along with a proposed plan to improve that metric;
4. Elizabethtown will conduct an analysis of the reasons for the level of customer complaints to the Board per year and will, within six months of closing of the Merger, develop and submit a proposed plan to improve its customer service processes where appropriate. This plan will be submitted to the Board, Staff and Rate Counsel; and
5. Elizabethtown will maintain its current level of community support contributions of \$190,000 per year for a period of five (5) years following the closing of the Merger. Community support projects could include charitable, workforce development and economic development efforts.

### **Affiliate Relationships**

1. Elizabethtown and its affiliates including, but not limited to, the Pivotal family, will comply with all New Jersey and federal statutes and regulations and Board orders applicable to Elizabethtown regarding affiliate transactions;
2. For informational purposes, Elizabethtown shall submit to the Board, Staff and Rate Counsel, copies of any service agreement between SCS and AGSC or the SCS Cost Allocation Manual, along with examples of expected allocations, within thirty (30) days after such agreement becomes applicable to any costs allocated to Elizabethtown. Elizabethtown shall further submit to the Board, Staff and Rate Counsel notice of any changes to any service agreement between SCS and AGSC or the SCS Cost Allocation Manual, along with examples of expected allocations, within thirty (30) days of any such modifications;

3. For the remaining term of the current asset management agreement (“AMA”) between Sequent Energy Management L.P. (“Sequent”) and Elizabethtown, which expires March 31, 2019, AGL Resources will continue to conduct an annual internal audit that examines whether Sequent is treating Elizabethtown in a non-discriminatory manner in relation to all other Sequent asset management arrangements. For the remaining term of the AMA and beginning with the audit conducted for the contract year beginning April 1, 2016, one focus of the audit will be an examination of whether Sequent’s transactions with Southern Company affiliates under the AMA, if any, have been appropriately priced in a manner consistent with the terms of the AMA. To the extent that an individual counterparty may be identified in a direct transaction, AGL Resources will provide a description of each affiliate transaction with a Southern Company affiliate that takes place under the AMA. Each year, Elizabethtown will submit a copy of the completed annual audit to Staff and Rate Counsel on a confidential basis;
4. Elizabethtown will submit a filing describing in detail and documenting its plans for providing gas supply and capacity management services following the expiration of its current AMA with Sequent no later than October 1, 2017. Staff, Rate Counsel and all other parties retain all rights to take any position with respect to the proposal made by Elizabethtown in such filing;
5. If during the term of the current Elizabethtown/Sequent AMA, Sequent enters into any contracts to provide asset management services to any Southern Company affiliate that provides electric generation service, AGL Resources will provide to Staff and Rate Counsel, on a confidential basis, quarterly reports of Sequent’s asset management activities on behalf of any Southern Company affiliate similar to the quarterly reports provided by Elizabethtown concerning its AMA with Sequent;
6. In the event that Southern Company or any of its affiliates purchases or constructs a natural gas-fired generation plant within the PJM regional transmission organization after the closing of the Merger, Southern Company will provide the Board, Staff and Rate Counsel with a quarterly report containing transportation and delivery information for each such plant. Elizabethtown will not charge distribution rates, or offer terms and conditions of service, to a Southern Company-affiliated generating plant constructed within PJM that are not made available on a non-discriminatory basis to similarly situated non-affiliated generators that are customers of Elizabethtown.

### **Ring Fencing and Financial Protections**

1. Following the closing of the Merger, AGL Resources will have a separate board of outside directors for a minimum of five (5) years, and Elizabethtown will maintain its corporate name and form. Elizabethtown will continue to be a division of Pivotal and Elizabethtown and Pivotal will continue to provide separately audited financial statements to the Board;
2. AGL Resources and Elizabethtown will not issue debt or equity in connection with the Merger;
3. AGL Resources will be a first tier subsidiary of Southern Company. Further, AGL Resources will continue to serve as the capital supply source for long-term and short-term debt and equity for Elizabethtown post-merger;

4. In the event that any of the three major credit rating agencies downgrade the corporate or issuer credit ratings or the senior unsecured debt rating for the long-term public debt securities issued by Southern Company, AGL Resources, AGL Capital Corporation or Pivotal, Elizabethtown will provide the Board, Staff and Rate Counsel with a copy of the ratings letter and related explanatory note within fifteen (15) days of receipt of notice of such downgrade;
5. Within one year of the closing of the Merger, Southern Company, AGL Resources and Elizabethtown will conduct an analysis of their operational and financial risks to determine the adequacy of their ring fencing measures. This analysis will be conducted in the same manner required by the Maryland Public Service Commission in its order approving the Merger. See Attachment A. This analysis will be submitted to the Board, Staff and Rate Counsel along with recommendations for correcting any deficiencies identified in the analysis;
6. If AGL Resources' senior unsecured debt rating falls below investment grade (below BBB- by Standard and Poor's or Fitch or Baa3 by Moody's), then AGL Resources shall cease paying dividends to Southern Company until such time as an investment grade rating is restored; and
7. Southern Company and AGLR will make available to the Board any public disclosures of material information that they are required to make pursuant to the SEC's FD Regulation.

## **DISCUSSION AND FINDINGS**

The Board, having reviewed the Petition, the Stipulation and the entire record, **FINDS** that the proposed acquisition by Southern Company of AGL Resources, PHI and Elizabethtown Gas Company satisfies N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c). and provides a net benefit to Elizabethtown customers and to New Jersey.

- A. **Competition:** The change in control will not adversely impact competition in New Jersey because Elizabethtown will continue to operate in its current franchise territory under the same market condition which currently exists subject to the continuing jurisdiction of the Board. The Antitrust Division of the U.S. Department of Justice has completed its review of the transaction and closed its investigation without imposing conditions requiring mitigation. In addition, AGL Resources will continue to conduct an internal audit that examines whether Sequent is treating Elizabethtown in a non-discriminatory manner in relation to other Sequent asset management agreements.
- B. **Customer Rates:** The Transaction will have a positive impact on rates as customers will receive \$17.5 million in direct rate credits, will be shielded from any pass-through of acquisition premiums, transactions costs or goodwill, and will receive protections in future rate case so that costs to achieve savings may not exceed allocated merger savings in rates. The Stipulation also provides protections with regard to the calculation of Service Company charges so that costs to Elizabethtown customers in 2016 and 2020 post-merger rate cases will not exceed Service Company charges had the merger not occurred.
- C. **Employees:** Southern Company, SCS, AGL Resources, AGSC and Elizabethtown together have committed to maintaining a minimum of 300 employees (the approximate

number of current employees) in New Jersey for five years following merger closing and Elizabethtown will submit reports to the Board annually detailing the number of employees by position and function. Employees in support of any future infrastructure enhancement programs will be in addition to the 300 employee commitment and Elizabethtown will maintain core management teams now in place for five years post-merger. Southern Company will honor all collective bargaining agreements, continue to meet obligations to employees and retirees and maintain a management team in New Jersey.

- D. Provision of Safe and Adequate Service: Elizabethtown will continue to provide safe, adequate and reliable, high-quality service and fulfill all of its obligations under New Jersey law, subject to the continued jurisdiction of the Board. Additionally, management positions responsible for ensuring the safe and reliable operation of Elizabethtown will remain in New Jersey and will maintain authority to make appropriate operational decisions. Elizabethtown's operations, call and walk-in payment centers and headquarters will be maintained for at least five years post-merger. Specifically, Elizabethtown's core management teams will stay in place for at least five years, which are fully capable of managing Elizabethtown's field operations, compliance, regulatory support and other customer service obligations. Southern Company will provide Elizabethtown with the resources necessary to invest in capital and infrastructure projects and Elizabethtown will take actions to remedy certain long leak-response times in parts of its territory as well as taking action to reduce the level of customer complaints.

With regard to positive net benefit, the \$17.5 million dollar direct rate credit and the employment commitments that extend five years constitute a net positive benefit for Elizabethtown ratepayers and New Jersey. Ratepayers will receive \$17.5 million in synergy savings via a credit to bills which is a real financial benefit to ratepayers which would not occur absent the merger. Southern Company agreed to maintain employment at levels specified in the stipulation and committed to maintain core management to assure continued maintenance of safe, adequate and proper service. Southern Company agreed that Staff would become an "interested party" for SEC disclosure purposes which assure that Staff would be informed concurrently with the SEC, investment professionals, etc. about material events so that appropriate and timely action can be taken. Further, the stipulation contains various ring-fencing and other measures including restrictions on dividend payments to assure the continuing financial integrity of the utility.

The Board **HEREBY APPROVES** the proposed acquisition of AGL Resources and Elizabethtown by Southern Company. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting Elizabethtown.

3. Within thirty (30) days of the date of the closing of this transaction, the Joint Petitioners shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses of the sale.
4. Consummation of the proposed Merger must take place no later than December 31, 2016 unless otherwise extended by the Board.

The Board **HEREBY RATIFIES** the decisions of Commissioner Solomon rendered during the proceedings for the reasons stated in her Orders.

The Order shall be effective on June 29, 2016.

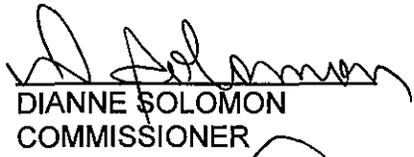
DATED: 6/29/16

BOARD OF PUBLIC UTILITIES  
BY:

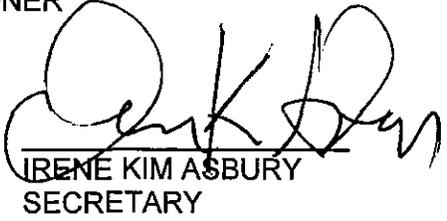
  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

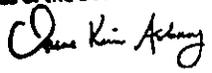
  
MARY ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
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 MERGER OF THE SOUTHERN COMPANY AND  
AGL RESOURCES, INC. - DOCKET NO. GM15101196

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BOARD OF PUBLIC UTILITIES  
MAIL ROOM

**Re: In The Matter Of The Merger Of The Southern Company And  
AGL Resources, Inc.  
BPU Docket No. GM15101196**

Dear Secretary Asbury:

Enclosed for filing in the above proceeding are an original and ten copies of a Stipulation of Settlement executed by representatives of The Southern Company, AGL Resources Inc., Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, the Staff of the New Jersey Board of Public Utilities, the New Jersey Division of Rate Counsel and the New Jersey Large Energy Users Coalition (together, the "Signatory Parties"). It is our understanding that the Stipulation is not opposed by any party to this proceeding. The Stipulation resolves all issues in this proceeding.

The Signatory Parties respectfully request that the Board consider and approve the Stipulation at its regularly scheduled public agenda meeting on Wednesday, June 29, 2016.

Please contact the undersigned if you have questions or require further information. Thank you.

Respectfully submitted,

*/s/ Deborah M. Franco*

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cc: Service List ✓

*Case mgmt*

**IN THE MATTER OF THE MERGER OF  
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BPU Docket No. GM15101196  
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BPU Docket No. GM15101196

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**THE SOUTHERN COMPANY AND AGL** :  
**RESOURCES INC.** : **STIPULATION OF SETTLEMENT**  
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**APPEARANCES:**

Stephen B. Genzer, Esq., Colleen A. Foley, Esq. and Courtney L. Schultz, Esq., Saul Ewing LLP, on behalf of The Southern Company

Mary Patricia Keefe, Esq., Vice President on behalf of AGL Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

Kenneth T. Maloney, Esq. and Deborah M. Franco, Esq., Cullen and Dykman LLP, on behalf of AGL Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

Alex Moreau, Deputy Attorney General and Patricia Krogman, Deputy Attorney General (Robert Lougy, Acting Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Stefanie A. Brand, Esq., Director, Brian Lipman, Esq., Litigation Manager, Felicia Thomas-Friel, Managing Attorney – Gas, Sarah H. Steindel, Esq., Assistant Deputy Rate Counsel, Henry M. Ogden, Esq., Assistant Deputy Rate Counsel, Kurt Lewandowski, Esq., Assistant Deputy Rate Counsel, Christine Juarez, Esq., Assistant Deputy Rate Counsel and Maura Caroselli, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel

Steven Goldenberg, Esq., Fox Rothschild, on behalf of Intervenor, the New Jersey Large Energy Users Coalition

Joseph F. Accardo, Jr., Esq., Martin Rothfelder, Esq. and Samuel Wolfe, Esq. on behalf of Intervenor, Public Service Electric and Gas Company

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

The parties to this proceeding are as follows: The Southern Company (“Southern Company”), AGL Resources Inc. (“AGL Resources”), AMS Corp. (“Merger Sub”), and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (“Elizabethtown”) (collectively, the “Joint

Petitioners”); the Division of Rate Counsel (“Rate Counsel”); the Staff of the New Jersey Board of Public Utilities (“Board Staff” or “Staff”); and Intervenors, New Jersey Large Energy Users Coalition (“NJLEUC”) and Public Service Electric and Gas Company (“PSE&G”). The New Jersey Board of Public Utilities shall be referred to in this Stipulation of Settlement (the “Stipulation”) as the “Board” or “BPU.”

### **PROCEDURAL HISTORY**

On October 16, 2015, the Joint Petitioners initiated this proceeding with the filing of a Verified Joint Petition to obtain the approval of the Board pursuant to *N.J.S.A.* 48:2-51.1 and related statutes and regulations for a change of control of Elizabethtown to be effectuated by the merger of AGL Resources with Merger Sub, a wholly owned subsidiary of Southern Company (the “Merger”).

By Order dated December 16, 2015, the Board retained this matter for hearing, designated Commissioner Dianne Solomon to act as presiding officer, and required that motions to intervene or participate be filed by January 29, 2016. On January 29, 2016, Commissioner Solomon issued a Pre-Hearing Order setting a procedural schedule for this matter.

Timely Motions to Intervene were made by NJLEUC on January 5, 2016 and PSE&G on January 27, 2016. NJLEUC also made a Motion for Admission *Pro Hac Vice* on behalf of Paul Forshay. By correspondence dated February 8, 2016, the Joint Petitioners indicated they would not oppose NJLEUC’s Motion to Intervene to the extent NJLEUC disclosed its members who are customers of Elizabethtown. By correspondence dated February 17, 2016, NJLEUC identified three members that it stated were customers of Elizabethtown. On February 29, 2016, the Motions to Intervene of NJLEUC and

PSE&G and the Motion for Admission *Pro Hac Vice* were granted by Commissioner Solomon.

After proper public notice, two public hearings were held in Flemington, New Jersey on February 22, 2016 at 4:30 P.M. and 5:30 P.M. and on February 24, 2016 in Union, New Jersey at 4:30 P.M. and 5:30 P.M. Commissioner Solomon presided over both public hearings. One member of the public appeared at the public hearing in Flemington. No members of the public appeared at the hearing in Union.

The Joint Petition was supported by the Direct Testimony of three witnesses: Art P. Beattie and Mark S. Lantrip of Southern Company and Henry (Hank) P. Linginfelter of AGL Resources. On March 11, 2016, Rate Counsel submitted the Direct Testimony of six witnesses: Maximilian Chang, David E. Dismukes, Matthew I. Kahal, Dante Mugrace, David E. Peterson and John A. Rosenkranz. On April 8, 2016, the Joint Petitioners submitted the Rebuttal Testimony of seven witnesses: Messrs. Beattie, Lantrip and Linginfelter and Timothy S. Sherwood, Michael Morley, Robert B. Hevert and Joseph P. Kalt. The Direct and Rebuttal Testimony is included in the administrative record of this proceeding. For the sole purpose of providing the Board with a record supporting the Stipulation, the Signatory Parties stipulate into the record the Direct and Rebuttal Testimony, but they do not stipulate to the relevance or materiality of the testimonies, nor do they stipulate to the assertions or arguments made therein. Thus, the stipulated record is as follows:

- The Direct Testimony filed on behalf of Joint Petitioners, dated October 13, 2015, of: Messrs. Beattie, Lantrip, and Linginfelter;
- The Direct Testimony filed on behalf of Rate Counsel, dated March 11, 2016, of Messrs. Chang, Dismukes, Kahal, Mugrace, Peterson and Rosenkranz; and

- The Rebuttal Testimony filed on behalf of the Joint Petitioners, dated April 8, 2016, of Messrs. Beattie, Lantrip, Linginfelter, Sherwood, Morley, Hevert and Kalt.

Extensive discovery was conducted and a number of settlement discussions were held. Joint Petitioners, Board Staff, Rate Counsel, and NJLEUC (collectively, the “Signatory Parties”) have come to an agreement on all of the factual and legal issues arising in this matter.

### **Stipulated Matters**

Based upon the foregoing, the Signatory Parties hereto agree and stipulate as follows:

1. The statutory and regulatory criteria for approval of petitions involving acquisitions of control and transfer of controlling stock ownership of a New Jersey public utility as set forth in *N.J.S.A.* 48:2-51.1 and *N.J.A.C.* 14:1-5.14(c) and any related statutes and regulations have been satisfied. More particularly, the agreement and conditions set forth herein support findings and conclusions by the Board that (i) the Merger will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of Elizabethtown or on the provision of safe and adequate service at just and reasonable rates; and (ii) that consummation of the Merger, consistent with the conditions set forth in this Stipulation, is in the public interest, and will result in positive benefits to customers and the State of New Jersey.
2. The Joint Petitioners should be authorized to take those actions necessary for the Merger to be lawfully consummated in accordance with the terms of the August 23, 2015 Agreement and Plan of Merger (“Merger Agreement”) entered into by and among Southern Company, Merger Sub and AGL Resources which was attached to the Joint Petition as Exhibit B. Specifically, as reflected in the Merger Agreement, AGL Resources will merge with Merger Sub, with AGL Resources remaining as the surviving entity. Merger Sub will cease to exist

and AGL Resources will become a direct, wholly owned subsidiary of Southern Company. Pivotal Utility Holdings, Inc., including its division Elizabethtown, will remain an indirect, wholly owned subsidiary of AGL Resources, with Southern Company as its ultimate parent.

3. The approvals granted in accordance with this Stipulation shall be subject to the following conditions:

A. Elizabethtown's Rates

(i) After consummation of the Merger, Southern Company will enable Elizabethtown to provide direct rate credits to all its customers totaling \$17.5 million. The Signatory Parties recommend that the Board determine that these rate credits should be distributed as direct per customer credits to all of Elizabethtown's current customers served under Service Classifications RDS, SGS, GDS, LVD, EGF, GIS, CSI, IS, CS, FTS and ITS within sixty (60) days of the closing of the Merger. The Signatory Parties agree that the credits should be allocated among Elizabethtown's customer classes based on the base rate revenues reflected in the rates that resulted from Elizabethtown's most recent base rate proceeding, in BPU Docket No. GR09030195;

(ii) Elizabethtown will file its next base rate case no later than September 1, 2016 (hereinafter "the 2016 Rate Case") in accordance with the Board's Order in Docket No. GO12070693;

(iii) Elizabethtown will file a further base rate case (hereinafter "the 2020 Rate Case") no later than three years after the completion of the 2016 Rate Case;

(iv) Any net savings realized by Elizabethtown through the Merger integration process will be flowed through to Elizabethtown's customers through the normal base rate case process;

(v) In future rate proceedings, to ensure that Elizabethtown's customers will only pay costs to achieve to the extent that there are offsetting synergy savings, Elizabethtown will net the total costs incurred to achieve synergy savings against the resulting total synergy savings, and may recover those costs to achieve only up to the amount of the total synergy savings generated. As part of its 2020 Rate Case filing, Elizabethtown will file a comprehensive study identifying the Merger costs to achieve incurred by Elizabethtown and any Merger savings realized by Elizabethtown as a result of the Merger;

(vi) Elizabethtown will not seek recovery in rates of (a) any acquisition premium associated with the Merger, (b) any costs associated with goodwill arising from the Merger, (c) any severance and retention payments associated with executive change of control agreements and any financing or transaction costs incurred in connection with the Merger. For purposes of this Stipulation, transaction costs are defined as (a) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar expenses, (b) change in control payments, and (c) costs associated with the shareholder meetings and a proxy statement related to the Merger approved by AGL Resources' shareholders, (d) costs associated with the imposition of conditions or approval of settlement terms in merger proceedings in other state jurisdictions, and (e) any financing costs related to the rate credit to be provided to Elizabethtown's customers under Section 3.A(i) of this Stipulation;

(vii) In its 2016 and 2020 Rate Cases, Elizabethtown will impute AGL Resources' capital structure (exclusive of goodwill associated with the Merger) for ratemaking purposes and will provide Southern Company's then-consolidated capital structure as well as the stand-alone capital structure of AGL Resources (exclusive of goodwill). Staff, Rate Counsel and

all other parties to the rate case retain all rights to challenge the reasonableness of the use of any capital structure submitted by Elizabethtown for ratemaking purposes in any future proceedings and to propose alternatives to any capital structure submitted by Elizabethtown.

(viii) Elizabethtown will not include any common equity or debt associated with goodwill (including Merger-related goodwill on AGL Resources' balance sheet) in Elizabethtown's ratemaking capital structure;

(ix) Elizabethtown will not be permitted to recover in its Board-authorized rate of return on equity a risk premium pertaining to the business and financial risks associated with Southern Company's regulated or unregulated generation supply operations;

(x) For a period of five (5) years following the establishment of a baseline level of costs in the 2016 Rate Case as discussed more fully below, the amount of costs assessed to Elizabethtown for services provided by an affiliate shall be no greater than it would have been had the Merger not occurred, regardless of whether such services are provided directly or indirectly by Southern Company Services, Inc. ("SCS"), AGL Services Company, Inc. ("AGSC") or any other Southern Company affiliate. Elizabethtown will propose an annual level of allocated AGSC costs that will serve as a baseline for the five-year commitment in Elizabethtown's 2016 Rate Case;

In the 2016 Rate Case, Elizabethtown shall use the lower of the baseline level of allocated AGSC costs or its actual normalized allocated affiliate costs for ratemaking purposes. Notwithstanding this condition, the parties to the 2016 Rate Case retain all of their rights to challenge Elizabethtown's proposed baseline level of costs and the level of service company costs to be reflected in Elizabethtown's rates and to propose alternatives to the baseline level of costs proposed by Elizabethtown; and

In any other rate proceeding commenced during the five-year commitment period following the establishment of the baseline level of allocated AGSC costs in the 2016 Rate Case, Elizabethtown will have the burden to demonstrate that its service company costs are no higher than they would have been in the absence of the Merger for the services for which Elizabethtown may seek cost recovery in such future rate proceedings. The baseline level of allocated AGSC costs established in the 2016 Rate Case will not be treated as a hard cap on Elizabethtown's recoverable service company costs but will be reviewed as evidence of whether Elizabethtown has met the burden established in this Stipulation. The parties to such future rate proceedings shall have full rights to challenge any service company costs allocated to Elizabethtown.

B. Employees

(i) For the first five (5) years following the closing of the Merger, Southern Company, SCS, AGL Resources, AGSC and Elizabethtown, together, will maintain a minimum of 300 employees in New Jersey supporting Elizabethtown's operations. This number shall include management and compliance, field operations, corporate support, regulatory support, call center and other customer service positions. Elizabethtown will submit an annual report to Board Staff and Rate Counsel setting forth the number of employees by position and function with a baseline report to be filed within 60 days of Merger closing and updates on the annual anniversary of that date;

(ii) Any additional employees necessary due to the implementation of any future infrastructure enhancement program will be in addition to the 300 employee minimum and will not be used to offset any non-attrition/retirement related fluctuations in the employment level required to be retained in New Jersey as set forth in this Stipulation;

(iii) Southern Company will honor all of AGL Resources and Elizabethtown's existing collective bargaining agreements in effect at the time of the closing of the Merger;

(iv) Southern Company will assume AGL Resources' obligations or cause AGL Resources to continue to meet its obligations to Elizabethtown's employees and retirees with respect to pension benefits; and

(v) AGL Resources and Elizabethtown shall continue to maintain core management teams in place following the completion of the Merger for five (5) years that are fully capable of managing Elizabethtown's field operations, compliance, corporate support, regulatory support, call center and other customer service functions. Management positions responsible for ensuring the safe and reliable operation of Elizabethtown will remain in New Jersey and New Jersey management shall maintain authority to make decisions on how best to serve Elizabethtown's operational needs while continuing to report to AGL Resources' Distribution Operations. Elizabethtown will provide an annual report to the Board identifying all changes in core management personnel for the first five (5) years following the Merger with a baseline report to be filed within 60 days of Merger closing with annual updates due on the anniversary of that date.

C. Service

(i) Elizabethtown's operations centers, call centers, walk-in payment centers and headquarters will be maintained for at least five (5) years following the Merger. Any future relocation of walk-in payment centers, the call center or headquarters must be approved in advance by the Board. Future relocations of operations centers within the service territory will not require Board approval but will require sixty (60) days advance notice to the BPU

Board Secretary. Relocation of operations centers outside the service territory will require prior Board approval;

(ii) Southern Company will provide Elizabethtown with the resources necessary to invest in capital and infrastructure projects to help ensure that Elizabethtown may continue to provide safe, reliable and adequate utility service;

(iii) Elizabethtown will conduct a root cause analysis to determine the cause of longer leak response times on nights and weekends and provide the results of that analysis to the Board, Staff and Rate Counsel within ninety (90) days of the Merger, along with a proposed plan to improve that metric;

(iv) Elizabethtown will conduct an analysis of the reasons for the level of customer complaints to the Board per year and will, within six months of closing of the Merger, develop and submit a proposed plan to improve its customer service processes where appropriate. This plan will be submitted to the Board, Staff and Rate Counsel; and

(v) Elizabethtown will maintain its current level of community support contributions of \$190,000 per year for a period of five (5) years following the closing of the Merger. Community support projects could include charitable, workforce development and economic development efforts.

D. Affiliate Relationships

(i) Elizabethtown and its affiliates including, but not limited to, the Pivotal Utility Holdings, Inc. (“Pivotal”) family, will comply with all New Jersey and federal statutes and regulations and Board orders applicable to Elizabethtown regarding affiliate transactions;

(ii) For informational purposes, Elizabethtown shall submit to the Board, Staff and Rate Counsel, copies of any service agreement between SCS and AGSC or the SCS

Cost Allocation Manual, along with examples of expected allocations, within thirty (30) days after such agreement becomes applicable to any costs allocated to Elizabethtown. Elizabethtown shall further submit to the Board, Staff and Rate Counsel notice of any changes to any service agreement between SCS and AGSC or the SCS Cost Allocation Manual, along with examples of expected allocations, within thirty (30) days of any such modifications;

(iii) For the remaining term of the current asset management agreement (“AMA”) between Sequent Energy Management L.P. (“Sequent”) and Elizabethtown, which expires March 31, 2019, AGL Resources will continue to conduct an annual internal audit that examines whether Sequent is treating Elizabethtown in a non-discriminatory manner in relation to all other Sequent asset management arrangements. For the remaining term of the AMA and beginning with the audit conducted for the contract year beginning April 1, 2016, one focus of the audit will be an examination of whether Sequent’s transactions with Southern Company affiliates under the AMA, if any, have been appropriately priced in a manner consistent with the terms of the AMA. To the extent that an individual counterparty may be identified in a direct transaction, AGL Resources will provide a description of each affiliate transaction with a Southern Company affiliate that takes place under the AMA. Each year, Elizabethtown will submit a copy of the completed annual audit to Staff and Rate Counsel on a confidential basis;

(iv) Elizabethtown will submit a filing describing in detail and documenting its plans for providing gas supply and capacity management services following the expiration of its current AMA with Sequent no later than October 1, 2017. Staff, Rate Counsel and all other parties retain all rights to take any position with respect to the proposal made by Elizabethtown in such filing;

(v) If during the term of the current Elizabethtown/Sequent AMA, Sequent enters into any contracts to provide asset management services to any Southern Company affiliate that provides electric generation service, AGL Resources will provide to Staff and Rate Counsel, on a confidential basis, quarterly reports of Sequent's asset management activities on behalf of any Southern Company affiliate similar to the quarterly reports provided by Elizabethtown concerning its AMA with Sequent;

(vi) In the event that Southern Company or any of its affiliates purchases or constructs a natural gas-fired generation plant within the PJM regional transmission organization after the closing of the Merger, Southern Company will provide the Board, Staff and Rate Counsel with a quarterly report containing transportation and delivery information for each such plant. Elizabethtown will not charge distribution rates, or offer terms and conditions of service, to a Southern Company-affiliated generating plant constructed within PJM that are not made available on a non-discriminatory basis to similarly situated non-affiliated generators that are customers of Elizabethtown.

E. Ring Fencing and Financial Protections

(i) Following the closing of the Merger, AGL Resources will have a separate board of outside directors for a minimum of five (5) years, and Elizabethtown will maintain its corporate name and form. Elizabethtown will continue to be a division of Pivotal Utility Holdings, Inc. and Elizabethtown and Pivotal will continue to provide separately audited financial statements to the Board;

(ii) AGL Resources and Elizabethtown will not issue debt or equity in connection with the Merger;

(iii) AGL Resources will be a first tier subsidiary of Southern Company. Further AGL Resources will continue to serve as the capital supply source for long-term and short-term debt and equity for Elizabethtown post-merger ;

(iv) In the event that any of the three major credit rating agencies downgrade the corporate or issuer credit ratings or the senior unsecured debt rating for the long-term public debt securities issued by Southern Company, AGL Resources, AGL Capital Corporation or Pivotal, Elizabethtown will provide the Board, Staff and Rate Counsel with a copy of the ratings letter and related explanatory note within fifteen (15) days of receipt of notice of such downgrade;

(v) Within one year of the closing of the Merger, Southern Company, AGL Resources and Elizabethtown will conduct an analysis of their operational and financial risks to determine the adequacy of their ring fencing measures. This analysis will be conducted in the same manner required by the Maryland Public Service Commission in its order approving the Merger. *See* Attachment A. This analysis will be submitted to the Board, Staff and Rate Counsel along with recommendations for correcting any deficiencies identified in the analysis;

(vi) If AGL Resources' senior unsecured debt rating falls below investment grade (below BBB- by Standard and Poor's or Fitch or Baa3 by Moody's) then AGL Resources shall cease paying dividends to Southern Company until such time as an investment grade rating is restored; and

(vii) Southern Company and AGLR will make available to the Board any public disclosures of material information that they are required to make pursuant to the SEC's FD Regulation.

4. Each Signatory Party shall use its best efforts to ensure that this Stipulation shall be submitted to the Board for approval as soon as possible after it is filed.

5. This Stipulation represents the entirety of the agreement among the Signatory Parties. This Stipulation includes proposals and conditions above and beyond the terms contained in the Joint Petition. Notwithstanding statements made in the Joint Petition, testimony, discovery materials or any information provided by the Joint Petitioners, only those commitments stated in this Stipulation shall apply.

6. The Signatory Parties shall support approval of the Merger upon the terms set forth in this Stipulation in any proceedings before the Board regarding approval of the Merger. The Signatory Parties shall defend this Stipulation in the event of opposition to approval of the Merger from non-signatory parties before the Board.

7. Notwithstanding anything to the contrary set forth herein, upon the occurrence of any of the following events this Stipulation shall terminate, and shall be deemed null and void and of no force or effect;

(a) If the Board fails to adopt a Final Order approving the Merger and this Stipulation or issues a decision disapproving this Stipulation; or

(b) If for any reason the Merger is not consummated; or

(c) If the Board issues a written order approving this Stipulation subject to any condition or modification of the terms set forth herein which a Signatory Party, in its discretion, finds unacceptable. Such Signatory Party shall serve notice of unacceptability on the Signatory Parties within three (3) business days following receipt of such Board order. Absent such notification, the Signatory Parties shall be deemed to have waived their respective

rights to object to the acceptability of such conditions or modifications contained in the Board order, which shall thereupon become binding on all Signatory Parties; or

(d) If, pursuant to the operation of the terms of Section 7(c) of this Stipulation, Southern Company declines to accept any modification of, or addition to, terms and conditions ordered by the Board.

8. This Stipulation shall become effective and be binding on the Signatory Parties after the issuance of a Board Order approving this Stipulation or upon such date as the Board may specify. This Stipulation contains terms and conditions above and beyond the terms contained in the Joint Petition, each of which is 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, because the Signatory Parties expressly and jointly state that they would not have signed the Stipulation had any term been modified in any way. None of the Signatory Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter.

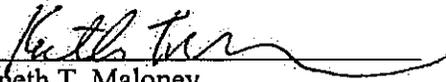
9. This Stipulation sets forth a compromise of divergent positions and shall not be regarded as precedent in any future case. Except as expressly provided herein no Signatory Party shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein.

10. This Stipulation may be executed in as many counterparts as there are Signatory Parties of this Stipulation, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**THE SOUTHERN COMPANY**

By: \_\_\_\_\_  
Stephen B. Genzer  
Saul Ewing LLP

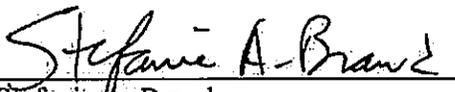
**AGL RESOURCES INC. AND  
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS**

By:   
Kenneth T. Maloney  
Cullen and Dykman LLP

**ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF  
NEW JERSEY  
Attorney for the Staff of the  
Board of Public Utilities**

By:   
Alex Moreau  
Deputy Attorney General

**STEFANIE BRAND  
DIRECTOR  
DIVISION OF RATE COUNSEL**

By:   
Stefanie A. Brand  
Rate Counsel

**NEW JERSEY LARGE ENERGY USERS  
COALITION**

By: \_\_\_\_\_  
Steven Goldenberg  
Fox Rothschild

**DATE: MAY 5, 2016**

**THE SOUTHERN COMPANY**

By:   
Stephen B. Genzer  
Saul Ewing LLP

**AGL RESOURCES INC. AND  
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS**

By: \_\_\_\_\_  
Kenneth T. Maloney  
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**ROBERT LOUGY  
ACTING ATTORNEY GENERAL OF  
NEW JERSEY**  
Attorney for the Staff of the  
Board of Public Utilities

By: \_\_\_\_\_  
Alex Moreau  
Deputy Attorney General

**STEFANIE BRAND  
DIRECTOR  
DIVISION OF RATE COUNSEL**

By: \_\_\_\_\_  
Stefanie A. Brand  
Rate Counsel

**NEW JERSEY LARGE ENERGY USERS  
COALITION**

By: \_\_\_\_\_  
Steven Goldenberg  
Fox Rothschild

**DATE:        MAY 5, 2016**

**THE SOUTHERN COMPANY**

By: \_\_\_\_\_  
Stephen B. Genzer  
Saul Ewing LLP

**ROBERT LOUGY**  
**ACTING ATTORNEY GENERAL OF**  
**NEW JERSEY**  
Attorney for the Staff of the  
Board of Public Utilities

By: \_\_\_\_\_  
Alex Moreau  
Deputy Attorney General

**NEW JERSEY LARGE ENERGY USERS**  
**COALITION**

By: \_\_\_\_\_  
Steven Goldenberg  
Fox Rothschild

**DATE: MAY 5, 2016**

**AGL RESOURCES INC. AND**  
**PIVOTAL UTILITY HOLDINGS, INC.**  
**D/B/A ELIZABETHTOWN GAS**

By: \_\_\_\_\_  
Kenneth T. Maloney  
Cullen and Dykman LLP

**STEFANIE BRAND**  
**DIRECTOR**  
**DIVISION OF RATE COUNSEL**

By: \_\_\_\_\_  
Stefanie A. Brand  
Rate Counsel

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE MERGER  
OF THE SOUTHERN COMPANY AND  
AGL RESOURCES INC.

\*  
\*  
\*  
\*

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

CASE NO. 9404

March 31, 2016

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

**Appearances:**

Carville B. Collins, Esquire; Mary Patricia Keefe, Esquire;  
and Erica L. McGill, Esquire, on behalf of AGL  
Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a  
Elkton Gas.

J. Joseph Curran, III, Esquire, and Christopher H.  
Demko, Esquire, on behalf of The Southern Company.

Ronald Herzfeld, Esquire, on behalf of the Maryland Office  
of People's Counsel.

Annette B. Garofalo, Esquire, and Peter A. Woolson,  
Esquire, on behalf of the Technical Staff of the Maryland  
Public Service Commission.

**Executive Summary**

On November 4, 2015, pursuant § 6-105 of the Public  
Utilities Article, *Annotated Code of Maryland*, The Southern Company  
("Southern Company"), AGL Resources Inc. ("AGL Resources"), and  
Pivotal Utility Holdings, Inc. d/b/a Elkton Gas ("Elkton Gas")  
(collectively, "Joint Applicants") filed an application  
("Application") to request authorization from the Maryland Public

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION

Service Commission ("Commission") for Southern Company to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas ("Acquisition") upon the consummation of a merger between Southern Company and AGL Resources ("Merger"). AGL Resources is the parent company of Pivotal Utility Holdings, Inc. ("Pivotal"), and Elkton Gas is a division of Pivotal. Upon the closing of the Merger, AGL Resources will become a subsidiary of Southern Company, and Southern Company will become the ultimate parent company of Elkton Gas.

The Maryland Office of People's Counsel ("OPC") and Technical Staff ("Staff") of the Commission are parties to the proceeding. Pursuant to the procedural schedule established in the proceeding, OPC and Staff each filed direct testimony. After the submission of this testimony, the Joint Applicants, OPC and Staff were able to negotiate a unanimous settlement agreement in the matter. On February 24, 2016, a Joint Petition for Adoption of Stipulation and Settlement Agreement ("Joint Petition") was submitted in the matter. Each party also submitted testimony in support of the Joint Petition. On March 1, 2016, an evidentiary hearing was held to admit all the pre-filed testimony, exhibits and attachment submitted in the matter, the Joint Petition, the Stipulation and Settlement Agreement ("Settlement Agreement") and to hear testimony in support of the Settlement Agreement.

As discussed below, I conclude that the terms and conditions of the Settlement Agreement are reasonable and are in the public interest, and thus will grant the Joint Petition and

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION

approve the Settlement Agreement. Subject to the terms and conditions set forth in the Settlement Agreement, as discussed herein, I find that the acquisition by Southern Company of the power to exercise substantial influence over Elkton Gas as the result of the merger between Southern Company and AGL Resources is consistent with the public interest, convenience and necessity, including benefits and no harm to consumers, and that the factors enumerated in Public Utilities Article, § 6-105(g) have been satisfied. Accordingly, subject to the conditions set forth in the Settlement Agreement, which are incorporated by reference into this Proposed Order, I hereby grant the Application and authorize the acquisition by Southern Company of the power to exercise substantial influence over the policies and actions of Elkton Gas upon the consummation of the Merger.

**Procedural History**

On November 4, 2015, the Joint Applicants filed the Application,<sup>1</sup> which included a number of exhibits, including the testimony of Art P. Beattie, Executive Vice President and Chief Financial Officer of Southern Company,<sup>2</sup> and Henry ("Hank") P. Linginfelter, Executive Vice President, Distribution Operations of AGL.<sup>3</sup>

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<sup>1</sup> Joint Appl. Exhibit ("Ex.") 4.

<sup>2</sup> Joint Appl. Ex. 5 ("Beatty Direct").

<sup>3</sup> Joint. Appl. Ex. 6 ("Linginfelter Direct").

STATE OF MARYLAND  
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On November 5, 2015, the Commission delegated the matter to the Public Utility Law Judge Division, and, pursuant to § 6-105(g)(6) of the Public Utilities Article, extended the 180-day period by which the Commission had to issue a final Order in the matter for an additional 45 days, or until June 15, 2016.

On January 29, 2016, OPC filed the direct testimony of Karl R. Pavlovic, Managing Director of and a Senior Consultant with PCMG and Associates LLC,<sup>4</sup> and Staff submitted the testimony of: Juan Carlos Alvarado, Director of the Telecommunications, Gas, and Water Division of the Commission,<sup>5</sup> Patricia M. Stinnette, Director of Accounting Investigations Division of the Commission,<sup>6</sup> and John J. Clementson, II, Assistant Chief Engineer of the Commission's Engineering Division.<sup>7</sup>

On February 10, 2016, a hearing for public comment was held in Elkton, Maryland. One Elkton Gas customer appeared and expressed his concern that he might experience a significant rate increase if the Merger were approved. No written public comments were received in the matter.

On February 19, 2016, the Joint Applicants filed an Errata to the Application and supporting documents.<sup>8</sup>

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<sup>4</sup> OPC Ex. 1A (Public Version) and 1C (Confidential Version) ("Pavlovic Direct").

<sup>5</sup> Staff Ex. 1 ("Alvarado Direct").

<sup>6</sup> Staff Ex. 2 ("Stinnette Direct").

<sup>7</sup> Staff Ex. 3 ("Clementson Direct").

<sup>8</sup> Joint Appl. Ex. 7.

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On February 24, 2016, the Joint Applicants filed a Joint Petition for Adoption of Stipulation and Settlement Agreement,<sup>9</sup> Stipulation and Settlement Agreement,<sup>10</sup> and Panel Testimony of Noel W. Black and Mary Patricia Keefe.<sup>11</sup> Also, on February 24, 2016, OPC submitted the Supplemental Direct Testimony of Karl R. Pavlovic<sup>12</sup> and Staff submitted Settlement Testimony of Juan Carlos Alvarado, Patricia M. Stinnette and John J. Clementson, II.<sup>13</sup>

On March 1, 2016, a hearing was held to admit the pre-filed testimony, exhibits and attachment and the Joint Petition into the record. The witnesses for the Joint Applicants and the witnesses for Staff, who filed testimony in support of the Settlement Agreement, appeared at the hearing to respond to questions of the Chief Public Utility Law Judge.<sup>14</sup>

**Summary of Application and Testimony of Joint Applicants**

Elkton Gas provides natural gas service to an approximate 64 square mile area in Cecil County, Maryland, and serves approximately 6,500 residential, commercial and industrial customers in this service territory<sup>15</sup> through some 102 miles of

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<sup>9</sup> Joint Appl. Ex. 9.

<sup>10</sup> Joint Appl. Ex. 8.

<sup>11</sup> Joint Appl. Ex. 10 ("Panel Testimony - Black and Keefe").

<sup>12</sup> OPC Ex. 2 ("Pavlovic Suppl.").

<sup>13</sup> Staff Ex. 4 ("Staff Settlement Testimony").

<sup>14</sup> Dr. Pavlovic was excused from attendance at the hearing as the Chief Law Judge had no questions for him.

<sup>15</sup> According to Joint Applicant witness Keefe, 550 of the 6,500 customers are commercial customers, two are large industrial customers, and the remainder of the customers are residential customers. Transcript at 16.

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service main.<sup>16</sup> Elkton Gas has seven full-time individuals and one part-time individual employed in Elkton, Maryland, where Elkton Gas has its headquarters.<sup>17</sup> Its Maryland workforce utility operations are supplemented/supported by AGL Resources' accounting, financial, legal, engineering, and rates and tariffing personnel through a service agreement with AGL Services Company.<sup>18</sup>

Southern Company, AMS Corp.,<sup>19</sup> and AGL Resources entered into an Agreement and Plan of Merger dated August 13, 2015 ("Merger Agreement").<sup>20</sup> Under the terms of the Merger Agreement, Southern Company will purchase the common stock of AGL at a price \$66 per share (or an aggregate purchase price of approximately \$8 billion).<sup>21</sup> Upon consummation of the Merger, AMS Corp. will merge into AGL Resources and AGL Resources then will become a wholly owned first tier corporate subsidiary of Southern Company.<sup>22</sup> After the Merger, AGL Resources will no longer be a publicly traded company.<sup>23</sup> To fund the Merger, Southern Company will issue approximately \$1.4 billion in new Southern Company equity between

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<sup>16</sup> Linginfelter Direct at 5.

<sup>17</sup> Linginfelter Direct at 5.

<sup>18</sup> Linginfelter Direct at 5, 14; Pavlovic Direct, Data Responses Referenced in the Direct Testimony of Karl R. Pavlovic, Joint Applicants' Response to Staff Data Request No. 2-23.

<sup>19</sup> Southern Company explained that AMS Corp. was formed solely for the purpose of acquiring AGL Resources in the Merger and will cease to exist as a separate entity upon completion of the Merger.

<sup>20</sup> Application, Exhibit 2.

<sup>21</sup> *Id.*; Beattie Direct at 12.

<sup>22</sup> Application at 4; Beattie Direct at 12.

<sup>23</sup> Application at 4.

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now and the end of 2016.<sup>24</sup> The remaining financing needs for the Merger and other Southern Company needs will be provided from an additional approximate \$8 billion debt issuance that will occur prior to the closing.<sup>25</sup>

Southern Company is an Atlanta-based public utility holding company currently providing electric utility service through four state-regulated operating companies in Alabama, Florida, Georgia, and Mississippi.<sup>26</sup> For the year ended December 31, 2014, approximately 94% of Southern Company's operating revenues were related to retail regulated utility operations.<sup>27</sup> Its state-regulated utilities serve more than 4.5 million customers throughout 120,000 square miles of regulated service territory.<sup>28</sup> Southern Company is one of only two utilities listed in Fortune's annual "World's Most Admired Electric and Gas Utility" rankings for each of the last five years.<sup>29</sup> Currently, Southern Company's operating subsidiaries have their own boards of outside directors and executive management teams responsible for each subsidiary's operations, including making key decisions, such as long-term resource planning.<sup>30</sup> Southern Company will apply its same organizational approach to AGL Resources and Elkton Gas.<sup>31</sup>

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<sup>24</sup> Application at 4, 13; Beattie Direct at 12 (as corrected by the Errata).

<sup>25</sup> Application at 4; Beattie Direct at 12 (as corrected by the Errata).

<sup>26</sup> Beattie Direct at 4.

<sup>27</sup> Beattie Direct at 5.

<sup>28</sup> Beattie Direct at 5.

<sup>29</sup> Beattie Direct at 5.

<sup>30</sup> Beattie Direct at 11.

<sup>31</sup> *Id.*



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Mr. Beatty characterized Southern Company as having a "strong financial position" which will benefit AGL Resources and Elkton Gas and thereby will inure to the benefit of customers.<sup>32</sup>

AGL Resources, the parent company of Elkton Gas, also has its headquarters in Atlanta.<sup>33</sup> Its principal business is the distribution of natural gas through regulated public utility operating companies in seven states: Maryland, Georgia, Tennessee, New Jersey (Elizabethtown Gas, which is also a division of Pivotal),<sup>34</sup> Florida (Florida City Gas, which is also a division of Pivotal),<sup>35</sup> Illinois, and Virginia.<sup>36</sup> AGL Resources serves approximately 4.5 million customers through over 80 miles of pipeline and 14 natural gas storage facilities through its regulated natural gas distribution utility subsidiaries.<sup>37</sup> AGL Resources acquired Elkton Gas in 2004.<sup>38</sup>

The Joint Applicants stated that they will comply with federal law in executing the Merger, and have filed or will file all filings and notifications required by the Hart-Scott-Rodino Act and have filed a preliminary Proxy Statement with the Securities Exchange Commission on September 11, 2015, pursuant to Section 14(a) of the Securities Exchange Act of 1934.<sup>39</sup>

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<sup>32</sup> Beattie Direct at 19.

<sup>33</sup> Application at 6.

<sup>34</sup> Application, Exhibit 3, AGL Resources - Corporate Organization Chart at 1.

<sup>35</sup> Id.

<sup>36</sup> Application at 6.

<sup>37</sup> Id.

<sup>38</sup> Linginfelter Direct at 6.

<sup>39</sup> Application at 13-14.

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Additionally, they note that the Merger requires approval by the California Public Utilities Commission, Georgia Public Service Commission, Illinois Commerce Commission, the New Jersey Board of Public Utilities, and the Virginia State Corporation Commission, which approvals are being sought contemporaneously with that of the Commission's.<sup>40</sup> Further, the Joint Applicants assert that neither the Joint Applicants nor key personnel associated with the Joint Applicants have violated any state or federal statute regulating the activities of public service companies.<sup>41</sup>

According to Mr. Beattie, the Merger is "not synergies-driven and will not result in any significant reduction in jobs at AGL's operation companies."<sup>42</sup> He indicated that Elkton Gas would continue to operate similar or the same as it does today as an indirect subsidiary of AGL. He stressed that AGL would continue to use its more than 150 years of gas distribution operations experience for the benefit of Elkton Gas as it currently does. Further, he indicated that, should any synergy savings and efficiencies occur through the Merger integration process, Elkton Gas' portion of the net savings and efficiencies would be flowed through to Elkton Gas' customer through "the normal ratemaking process."<sup>43</sup>

Mr. Beattie presented an overview of Southern Company and its operational philosophies. He discussed how each of the factors set forth in § 6-105(g) was satisfied to demonstrate that

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<sup>40</sup> Application at 13, fn 5.

<sup>41</sup> Application at 14.

<sup>42</sup> Beattie Direct at 21.

<sup>43</sup> Beattie Direct at 21.

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the acquisition was in the public interest, convenience and necessity and resulted in benefits and no harm to the customer and no harm to the consumer. He also explained that the commitments that the Joint Applicants were making as conditions to the approval of the acquisition enhanced the benefits of the Merger and ensured the lack of harm to Elkton Gas' customers, to further show that the approval of the Acquisition is in the public interest, convenience and necessity.

Mr. Linginfelter, in his testimony, described the service territory and current operations of Elkton Gas, outlined the current and historical performance of Elkton Gas in provision of safe, reliable and affordable service to its customers, presented information to assist the Commission to evaluate the Merger under the criteria of Public Utilities Article § 6-105, and explained the positive benefits of the Merger and the lack of any adverse impact to Elkton Gas' rates, to Elkton Gas' provision of safe, adequate and affordable utility service, and to Elkton Gas' existing Maryland employees.

To further support their assertions that the Acquisition is in the public interest, convenience, and necessity with benefit and no harm to the customers, the Joint Applicants committed to certain actions or forbearance of action ("Application Commitments").<sup>44</sup> Specifically, the Joint Applicants committed:

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<sup>44</sup> Application, Exhibit 1.

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- To amend Elkton Gas' current Asset Management Agreement ("AMA") with Sequent Energy Management L.P. to provide an increase in the amount paid to Elkton Gas of \$50,000, and flow the amount through to customers, with the increased payment to be made as a one-time payment, and the entire amount of the increase flowed through to customers without regard to existing revenue sharing provisions of the AMA.
- To accelerate the rate of the assessment of Elkton Gas' entire network of Aldyl-A pipe. The Joint Applicants explained that of the 102 miles of pipe in Elkton Gas' distribution system, 73 miles is plastic pipe with 48.7 miles of the plastic pipe comprised of material known as Aldyl-A.
- To not seek a change in rates as a result of the Merger; and, in a future base rate case, that Elkton Gas will not seek recovery in its rates of (i) any acquisition premium associated with the Merger; (ii) the cost associated with goodwill arising from the Merger; or (iii) any transaction costs incurred in connection with the Merger.
- That AGL and Elkton Gas will not issue debt or equity in connection with or to fund the Merger.
- For a period of two years from the closing date of the Merger, that Elkton Gas would not be assessed costs for services provided by an affiliate any greater than it would have been if the Merger had not occurred, regardless of whether the service is provided directly or indirectly by Southern Company Services, Inc., AGL Resources Service Company, or any other Southern Company affiliate.
- Although no immediate net savings to Elkton Gas have been identified as a result of the Merger, to the extent any net savings and efficiencies are realized through the Merger integration process, such net savings and efficiencies will be

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flowed through to Elkton Gas customers in the normal ratemaking process.

- For at least the first three years following the closing of the Merger, to maintain current employment levels within the Maryland workforce supporting Elkton Gas' operations.
- To maintain Elkton Gas' headquarters in Elkton, Maryland and that Elkton Gas will retain its corporate name and form and will continue to be a division of Pivotal.
- That AGL Resources will continue to have a separate board of outside directors for a minimum of five years following the close of the Merger.
- To increase the supplier diversity performance of Elkton Gas by increasing its Diverse Spend Ratio ("DSR"), as that term is defined in the May 29, 2009 Elkton Gas Supplier Diversity Memorandum of Understanding, by a factor of 4 during the period 2015 through 2017, as measured against Elkton Gas' 2014 DSR.
- Southern Company committed to sustain Elkton Gas' current level of community investment for a period of at least five years following the closing of the Merger and will continue to target charitable, workforce development, and economic development efforts in the Elkton Gas service area benefitting Elkton Gas customers.

**OPC's Initial Position**

OPC witness Pavlovic explained that his testimony was not intended to address "every potential harm and public interest issue that could be raised under Section 6-105, rather only those issues that, based on the information provided to date, appear to

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be the most significant to Elkton's customers."<sup>45</sup> He expressed his concerns that (a) the potential of significant operation and cost synergies that will reduce Elkton Gas' costs, but would only be of benefit to the Elkton Gas customers if the tariff rates were revised to reflect these reduced costs;<sup>46</sup> (b) the lack of showing by the Joint Applicants that the increase in the amount paid to Elkton Gas pursuant to the AMA of \$50,000 is either appropriate or will result in just and reasonable rates;<sup>47</sup> (c) Elkton Gas may attempt to recover from the Elkton Gas customers the costs associated with the supplier diversity commitment, the community investment commitment, and the Merger transaction, including transition costs;<sup>48</sup> and (d) Elkton Gas needed to accelerate the remedy of any system knowledge deficiencies in addition to the accelerated assessment surveys of the Aldyl-A pipe.<sup>49</sup>

To address his concerns, he recommended that the Commission include as conditions to any approval of the acquisition the following conditions:

- Require Elkton Gas to file a base rate case with a 2018 test year;<sup>50</sup>
- Require the Joint Applicants demonstrate that the \$50,000 one-time payment represents an appropriate and reasonable allocation of merger benefits to Elkton

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<sup>45</sup> Pavlovic Direct at 4.

<sup>46</sup> Pavlovic Direct at 9.

<sup>47</sup> Pavlovic Direct at 11.

<sup>48</sup> Pavlovic Direct at 11-12.

<sup>49</sup> Pavlovic Direct at 13.

<sup>50</sup> Pavlovic Direct at 5, 14.

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Gas' customers or require a payment based on an appropriate and reasonable allocation of the merger's benefits to Elkton's customers;<sup>51</sup>

- Require a commitment by the Joint Applicants that Elkton Gas would not seek recovery from Elkton Gas' customers of the costs associated with (a) supplier diversity, (b) community investment, and (c) the merger transaction, including transition costs,<sup>52</sup> and
- Require the Joint Applicants to accelerate the remedy of any Elkton Gas system knowledge deficiencies in addition to the accelerated assessment surveys of the Aldyl-A pipe.<sup>53</sup>

**Staff's Initial Position**

Staff witness Alvarado's testimony addressed certain of the factors to be considered by the Commission pursuant to Public Utilities Article, § 6-105. He noted that the direct customer payment flowing from the Joint Applicant's one-time payment of \$50,000 to the Elkton Gas' customers would result in a payment "well short of customer credits approved by the Commission in past mergers."<sup>54</sup> He explained that Staff therefore recommended a higher one-time payment of \$52.15 per customer to reflect the ongoing nature of the increased payment to Elkton Gas under the AMA.<sup>55</sup>

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<sup>51</sup> Pavlovic Direct at 5-6, 14.

<sup>52</sup> Pavlovic Direct at 5, 13.

<sup>53</sup> Pavlovic Direct at 5, 13-14.

<sup>54</sup> Alvarado Direct at 9.

<sup>55</sup> Alvarado Direct at 9-10.

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Mr. Alvarado stated that Elkton's capital structure will not be impacted by the Merger because no debt or equity will be issued to finance the Merger by AGL or Elkton.<sup>56</sup> He described the current Elkton Gas capital structure as consisting of 49.59% equity and 50.41% debt, which he observed is consistent with the capital structure of most regulated utilities in Maryland.<sup>57</sup> He indicated, however, that both AGL Resources and Southern Company hold riskier, more leverage financial positions often associated with publicly traded corporations.<sup>58</sup> To avoid any temptation by AGL Resources or Southern Company to shift some of the risk they face to Elkton Gas, Staff recommended that the Commission direct Elkton Gas maintain a rolling 12-month average annual equity ratio of at least 48%.<sup>59</sup> Mr. Alvarado said that the condition would ensure that Elkton Gas did not become overly leveraged and assume too much risk.<sup>60</sup>

Staff also recommended that Elkton Gas file a base rate case with the Commission no later than four years after the close of the merger in order to review Elkton Gas' financial position and other issues identified in Staff's testimony in the matter,<sup>61</sup> such as any change in employment levels upon expiration of the three-year commitment made by the Joint Applicants. Mr. Alvarado also indicated that by requiring Elkton Gas to file a base rate case

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<sup>56</sup> Alvarado Direct at 11.

<sup>57</sup> *Id.*

<sup>58</sup> Alvarado Direct at 11-12.

<sup>59</sup> Alvarado Direct at 12.

<sup>60</sup> Alvarado Direct at 12.

<sup>61</sup> Alvarado Direct at 12.

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within four years of the closing of the merger, the Commission may assess whether the Joint Applicants have been able to identify savings or efficiencies that impact Elkton Gas' costs and ensure the reduction flows through to the Elkton Gas customers.<sup>62</sup>

While Staff commended the Joint Applicant for its commitment not to reduce Elkton Gas' community investment levels for five years after the Merger, Mr. Alvarado noted that Staff recommended that the Joint Applicants be directed by the Commission to increase the commitment from five years to ten years, consistent with previous Commission decisions.<sup>63</sup>

Mr. Alvarado stated that the Merger did not raise any cross-subsidies or affiliate issues,<sup>64</sup> and, with the directive for filing a base rate case within four years of the closing of the merger, the Commission will be able to determine whether any costs of services provided to Elkton Gas by the Joint Applicant and other affiliates are included in rate base.<sup>65</sup>

Mr. Alvarado stated that Staff did not oppose the commitment of the Joint Applicants to increase the DSR by a factor of 4, but would recommend that the condition be modified to require that the DSR remain at post-merger levels indefinitely, and encourage Elkton Gas to increase its DSR towards the 25% target over time.<sup>66</sup>

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<sup>62</sup> Alvarado Direct at 13.

<sup>63</sup> Alvarado Direct at 15.

<sup>64</sup> Alvarado Direct at 16

<sup>65</sup> Id.

<sup>66</sup> Alvarado Direct at 18.

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In addition to the base rate case to be filed in four years, Staff recommended an annual filing be made by Elkton Gas until it files its base rate case to update the Commission on the status of each commitment the Joint Applicants are making and any additional conditions recommended by Staff.<sup>67</sup>

Mr. Alvarado stated that the Merger will not result in harm to the customers provided Staff's recommendations are accepted by the Commission.<sup>68</sup> Further, if all of Staff's recommendations are accepted by the Commission, he said that Staff was satisfied that the Merger will result in net benefits to the public and the Merger is consistent with the public interest, convenience and necessity.<sup>69</sup>

Staff witness Stinnette discussed the ring fencing measures, in addition to those found in Mr. Alvarado's testimony, and code of conduct matters relevant to the Merger proceeding. Ms. Stinnette recommended that the Joint Applicants be directed to conduct an analysis of operational functional risk to determine the adequacy of existing and future ring fencing measures to be filed with the Commission no later than 90 days after the closing of the Merger, and annually with the information filing as recommended by Mr. Alvarado.<sup>70</sup> She also recommended that Southern Company be directed to commit that Elkton Gas and its affiliates will comply with the statutes and regulations applicable to Elkton Gas regard-

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<sup>67</sup> Alvarado Direct at 19.

<sup>68</sup> Alvarado Direct at 19.

<sup>69</sup> Alvarado Direct at 20.

<sup>70</sup> Stinnette Direct at 2, 5.

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ing affiliate transactions.<sup>71</sup> Further, she recommended that the Joint Applicants agree that the Commission may, after an investigation and a hearing, order Southern to divest its interest in Elkton Gas upon the filing of information that Southern Company or any of its affiliates had experienced certain financial conditions or ratings downgrades by any two of the three major rating agencies or Southern Company or AGL Resources have committed a pattern of violations of the Maryland public utility law and do not cure such violations after due notice.<sup>72</sup> Ms. Stinnette also recommended that Elkton Gas resume filing its ring fencing report as required by COMAR 20.40.02.08.<sup>73</sup>

Staff witness Clementson testified that, in the review of the Commission's Engineering Division's records regarding Elkton Gas' distribution system reliability and customer service, he did not find any pipeline safety-related issues in regard to either the distribution system or customer service.<sup>74</sup> The focus of Mr. Clementson's testimony was the commitment by the Joint Applicants to conduct an accelerated assessment survey of the Aldyl-A pipe in the Elkton Gas distribution system ("Infrastructure Enhancement") without recovering the costs of the assessment from the Elkton Gas customers.

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<sup>71</sup> Stinnette Direct at 2, 5.

<sup>72</sup> Stinnette Direct at 2-3, 5-6.

<sup>73</sup> Stinnette Direct at 5.

<sup>74</sup> Clementson Direct at 4-5.



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According to Mr. Clementson, the Aldyl-A<sup>75</sup> pipe installed in the Elkton Gas distribution system was used by many natural gas distribution operators from the 1970s through the late 1990s.<sup>76</sup> He explained that the Aldyl-A piping material manufactured up until 1983 has been shown to be susceptible to deterioration known as "brittle-like cracking."<sup>77</sup> He described the cracking as consisting of fractures formed by breakage or cracking of a material into discernible parts, from which no deformation or clean break can be identified.<sup>78</sup> Mr. Clementson stated that, in 1983, DuPont modified the resin used to produce the pipe to correct the issues associated with brittle-like cracking, and this type of cracking has not been seen in the modified material.<sup>79</sup>

Mr. Clementson therefore recommended approval of the commitment for the Infrastructure Enhancement.<sup>80</sup> He also recommended that the Joint Applicants be directed to file a copy of a completed accelerated assessment study (including any other deficiencies related to other piping material within Elkton Gas' distribution system that could lead to unsafe conditions that are discovered as a result of the assessment) with the Commission.<sup>81</sup> Finally, he recommended that the Joint Applicants be directed to

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<sup>75</sup> Aldyl-A was a material developed and manufactured by E.I. DuPont de Nemours and Company ("DuPont"). Clementson Direct at 3.

<sup>76</sup> Clementson Direct at 3.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Clementson Direct at 3.

<sup>80</sup> Clementson Direct at 2, 5.

<sup>81</sup> Clementson Direct at 2, 5.

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file a plan for remediating any of the deficiencies found with either the Aldyl-A and/or the other piping materials, as a result of the assessment.<sup>82</sup>

**Settlement Agreement**

According to the Joint Petition, after the conduct of discovery and filing of testimony by the parties, the parties engaged in extensive and comprehensive negotiations with respect to all aspects of the Joint Application, and were able to reach a unanimous settlement in the matter, of which the terms and conditions of the agreements are set forth in the Settlement Agreement.<sup>83</sup> As a result, the parties agreed that, subject to the terms and conditions contained in the Settlement Agreement, Southern Company should be authorized to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas pursuant to Public Utilities Article, § 6-105.<sup>84</sup> Many of the terms and conditions are similar or the same as the commitments offered by the Joint Applicants in the Application, and others either expand the offered commitments or are new commitments that appear to be based on the recommendations contained in the testimony filed by OPC and Staff.

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<sup>82</sup> Clementson Direct at 2, 5.

<sup>83</sup> Joint Petition at 3.

<sup>84</sup> *Id.*

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The Direct Customer Credits offered by the Joint Applicants has been increased to be a direct customer rate credit funded from a \$100,000 increase in the amount paid through Elkton Gas's AMA, payable over two years: the first credit to occur within 120 days of the closing of the Merger, and the second credit to occur within one year thereafter.<sup>85</sup> Additionally, the Joint Applicants have agreed to an additional direct customer rate credit to the customers, to occur within 120 days of the closing of the Merger, which will be funded as a result of savings associated with the avoidance of further regulatory litigation costs in the amount of \$100,000.<sup>86</sup>

**Assessment of Aldyl-A Pipe**

The Joint Applicants' commitment to conduct an accelerated assessment of Aldyl-A pipe at no cost to the Elkton Gas customers is included as a term and condition of the Settlement Agreement.<sup>87</sup> In addition, the Joint Applicants have agreed to provide, within 60 days of completion, a copy of the completed accelerated assessment study of the Aldyl-A piping within Elkton Gas' distribution system, which will also include any other deficiencies identified in the course of performing that assessment that relate to the other piping materials within Elkton Gas'

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<sup>85</sup> Settlement Agreement, Condition ("SA Cond.") 2.

<sup>86</sup> SA Cond. 3.

<sup>87</sup> SA Cond. 4.

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distribution system that could lead to unsafe conditions.<sup>88</sup> Further, within 60 days of completing the accelerated assessment, Elkton Gas will provide to the Commission a plan for remediating any of the deficiencies found with the Aldyl-A and/or any other piping materials discovered as a result of the assessment.<sup>89</sup> Finally, Elkton Gas agreed to continue to systematically remediate system knowledge deficiencies in accordance with established programs and procedures.<sup>90</sup>

**Rate Making Matters**

The Joint Applicants have agreed to file a base rate case within two years of the closing of the Merger.<sup>91</sup> In the interim, within 90 days of closing of the Merger, Elkton Gas agreed to file an annual financial report for the previous 12-month period, which shall include Elkton Gas' revenues and costs.<sup>92</sup> The report also shall contain a calculation of the earned return on rate base and return on equity for Elkton Gas.<sup>93</sup> Elkton Gas will thereafter file a financial report the next 12-month period within 60 days of the 12-month period end.<sup>94</sup>

Should the transition costs (costs incurred to achieve synergy savings of the Merger) exceed synergy savings during the

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<sup>88</sup> SA Cond. 13.

<sup>89</sup> SA Cond. 14.

<sup>90</sup> SA Cond. 15.

<sup>91</sup> SA Cond. 6.

<sup>92</sup> SA Cond. 5.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

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test year in Elkton Gas' next base rate case, the Joint Applicants have agreed to forgo cost recovery of the transition costs that exceed synergy savings.<sup>95</sup> Additionally, Elkton Gas agreed that it will not seek recovery in its rates of: (i) any acquisition premium associated with the Merger; (ii) any cost associated with good will arising from the Merger; or (iii) any transaction costs incurred in connection with the Merger.<sup>96</sup>

The Joint Applicants agreed that neither AGL Resources nor Elkton Gas will issue debt or equity in connection with, or to fund, the Merger.<sup>97</sup> Also, for a period of two years following the closing of the Merger, the amount of costs assessed to Elkton Gas for services provided by an affiliate shall be no greater than it would have been had the Merger not occurred, regardless of whether such services are provided directly or indirectly by Southern Company Services, Inc., AGL Services Company, or any other Southern Company affiliate.<sup>98</sup>

**Supplier Diversity Enhancements**

As initially offered as a commitment, the Joint Applicants agreed to increase the supplier diversity performance of Elkton Gas by increasing its DSR by a factor of 4 during the period 2015 through 2017, as measured against Elkton Gas' 2014 DSR.<sup>99</sup> In

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<sup>95</sup> SA Cond. 7.

<sup>96</sup> SA Cond. 8 (The definition of "acquisition costs" is set forth in SA Cond. 8).

<sup>97</sup> SA Cond. 9.

<sup>98</sup> SA Cond. 10.

<sup>99</sup> SA Cond. 11.

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addition, the Joint Applicants agreed to maintain the DSR at post-merger levels going forward, and continue to aim to increase Elkton Gas' DSR over time to 25%.<sup>100</sup>

**Community Investment Enhancements**

The Joint Applicants agreed to increase their commitment to sustain Elkton Gas' current levels of community investment from five years to ten years.<sup>101</sup> The Joint Applicants also agreed to maintain the commitment that Elkton Gas will not seek recovery in its rates of costs related to these community investment activities.<sup>102</sup>

**Financial Integrity and Ring Fencing Enhancements**

The Joint Applicants agreed that Elkton Gas will maintain a rolling 12-month average annual equity ratio of at least 48 percent.<sup>103</sup> They also agreed that, within 90 days of closing of the Merger and annually thereafter, Elkton Gas will resume filing a ring fencing report as required by COMAR 20.40.02.08.<sup>104</sup> In addition, Elkton Gas agreed to file a cost allocation manual pursuant to COMAR 20.40.02.07 within 90 days of closing.<sup>105</sup>

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<sup>100</sup> *Id.*

<sup>101</sup> SA Cond. 12.

<sup>102</sup> *Id.*

<sup>103</sup> SA Cond. 16.

<sup>104</sup> SA Cond. 17.

<sup>105</sup> *Id.*



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The Joint Applicants also agreed to conduct an analysis of their operational and financial risk to determine the adequacy of their existing ring fencing measures, using the ring fencing conditions as set forth in a matrix attached to the Settlement Agreement, excluding the first three ring fencing conditions contained in the matrix.<sup>106</sup>

Elkton Gas and its affiliates agreed to comply with the statutes and regulations applicable to Elkton Gas regarding affiliate transactions.<sup>107</sup>

Southern Company agreed to promptly report to the Commission any change by at least two of the three major credit rating agencies of the rating of the senior unsecured long-term public debt securities issued by Southern Company, AGL Resources, or Pivotal by providing the rating letter and related explanatory note.<sup>108</sup>

**Secure Maryland Employment**

As offered as a commitment in its Application, the Joint Applicants agreed, for at least three years following the closing of the Merger, to maintain current employment levels within the Maryland workforce supporting Elkton Gas' operations.<sup>109</sup>

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<sup>106</sup> SA Cond. 18.

<sup>107</sup> SA Cond. 19.

<sup>108</sup> SA Cond. 20.

<sup>109</sup> SA Cond. 21.

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION**Maintain Local Corporate Presence/Corporate Governance**

Additionally, as offered in its commitments in its Application, the Joint Applicants agreed to maintain Elkton Gas' headquarters in Elkton, Maryland<sup>110</sup> and to retain Elkton Gas' corporate name and form, and to continue its existence as a division of Pivotal.<sup>111</sup> Further, the Joint Applicants agreed that AGL Resources will continue to have a separate board of outside directors for a minimum of five years following the closing of the Merger.<sup>112</sup>

**Most Favored Nation Provision<sup>113</sup>**

The Joint Applicants agreed, within 60 days after the Merger closes, to file with the Commission a copy of the final Orders and/or Settlement Stipulations from the jurisdiction which they are seeking Merger approval following approval in each of the jurisdictions, along with an analysis indicating the total dollar amount of any direct customer credit approved in each jurisdiction and explaining the valuation of the direct customer credits awarded in that jurisdiction as compared to the value of the benefits provided for in paragraphs (2) and (3) of the Settlement Agreement (calculated in each case on a per-distribution customer basis.) The Joint Applicants further agreed that, to the extent, on a per-distribution customer basis, the direct customer credits provided

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<sup>110</sup> SA Cond. 22.

<sup>111</sup> SA Cond. 23.

<sup>112</sup> SA Cond. 24.

<sup>113</sup> SA Cond. 25.

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to customers in other jurisdictions are materially more beneficial in the aggregate than the terms included in the Settlement Agreement, then the Joint Applicants will be obligated to provide additional direct customer credits to Elkton Gas' customers equivalent to such shortfall calculated on a per-distribution customer basis.

**Further Conditions, Assertions, and Reservations**

Among the other conditions, assertions and reservations, the Parties agreed that the Settlement Agreement represents a compromise of divergent positions in order to end litigation, and shall not be regarded as precedent with respect to any future case.<sup>114</sup> They agreed that the Commission's acceptance of the Settlement Agreement may not be deemed or constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations that might be made by any of the Parties to the Settlement Agreement in the absence of settlement.<sup>115</sup> In the event the Commission does not accept and approve the Settlement Agreement in its entirety, the Settlement Agreement will be deemed withdrawn and void, and the agreement and any matters associated with its consideration by the Commission, may not be considered or argued to be a waiver of the rights that any Party has for a decision in the matter.<sup>116</sup>

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<sup>114</sup> SA Cond. 26D.

<sup>115</sup> SA Cond. 26E.

<sup>116</sup> SA Cond. 26G.

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Upon unconditional acceptance by the Commission of the Settlement Agreement without modification, the Parties agreed to waive their respective right to: (1) appeal a proposed order of the Public Utility Law Judge to the Commission; (2) seek rehearing of a Commission order; and (3) seek judicial review of a Commission order.<sup>117</sup>

**Consideration and Findings**

Under § 6-105(g)(5) of the Public Utilities Article, the Joint Applicants bear the burden of demonstrating that the Acquisition is consistent with the public interest, convenience and necessity, including benefits and no harm to consumers. Section 6-105(g)(2) provides guidance to the Commission on the factors that it must consider to assess whether the Acquisition is in the public interest, convenience and necessity, including benefits and no harm to the consumer. After its assessment, if the Commission finds the Acquisition is in the public interest, convenience and necessity, it may either approve the Acquisition with or without conditions. If it finds that the Acquisition is not in the public interest, convenience or necessity, it shall deny the Acquisition.

The evidence presented by the Joint Applicants suggests that the Merger will have little, if any impact, on the operations of Elkton Gas in the near future. The Joint Applicants, however, included certain commitments to enhance direct benefits to the

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<sup>117</sup> SA Cond. 26H.

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Elkton Gas customers and to ensure that no harm to the customers resulted from the Merger. Neither Staff's initial position nor OPC's initial position opposed the approval of the Acquisition as long as the Commission included certain additional conditions in its approval. As a result, the Joint Applicants, OPC and Staff were able to negotiate an agreement that appears to balance the interests of all the parties and resolves the issues raised by OPC and Staff.

Below I consider each of the factors set forth in Section 6-105(g)(2) and assess each, based on the evidence and any conditions sought to ensure benefits and no harm to the consumer, as well as the public interest.

**The Potential Impact of the Acquisition on Rates and Charges Paid by Customers and on the Services and Conditions of Operation of Elkton Gas**

In its case-in-chief, the Joint Applicants asserted that there would be no change in rates paid by the Maryland customers of Elkton Gas as a result of the Merger. Additionally, the Joint Applicants committed that Elkton Gas, in a future rate case, would not seek to recover in its base rates any acquisition premium, goodwill or transaction cost that arose as a result of the Merger. According to the Joint Applicants, neither AGL Resources nor Elkton Gas will issue debt or equity in connection with or to fund the Merger. The Joint Applicants also indicated that its plan for operating Elkton Gas would not result in any adverse changes to the service and conditions or operation of Elkton Gas. Further, the

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Joint Applicants pointed to the conduct of an accelerated assessment of the distribution system to determine the condition of the Aldyl-A pipe as a means to increase the safety and reliability of Elkton Gas' pipeline system.

Both OPC and Staff each initially recommended that the Commission condition its approval of the Acquisition with a requirement that Elkton Gas file a base rate case within three to four years after the closing of the Merger. The purpose of the filing, according to each of OPC and Staff, is to ensure that the Elkton customers receive any benefits of any reduction in costs in the event savings and efficiencies result from the Merger, even though currently none are forecasted, as well as to ensure that Elkton Gas does not include the acquisition costs in its rates. The Joint Applicants have agreed that Elkton Gas will file a base rate case within two years after the date the Merger closes.

The filing of a base rate case within two years of the Merger closing date may well result in a change in base rates, but I conclude any such change in rates will not be from the recovery of costs or expenses associated with the Merger. Indeed, after the Merger closing, there may be some synergy savings that are found in the first several years after the closing, which then can be flowed to the Elkton Gas customers sooner than later. Further, there is no evidence in the record that suggests that the current services and operations of Elkton Gas will be materially changed in its Maryland service territory as a result of the Merger. Additionally, the Joint Applicants have committed to an

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Infrastructure Enhancement, which should increase the safety and reliability of Elkton Gas' distribution system in Maryland.

Finally, the Joint Applicants have committed to providing direct customer credits that, in the first two years after the closing of the Merger, on an annual basis, reduce a customer's bill even though the rates remain unchanged. Consequently, the customers each receive a benefit as a result of the Merger without awaiting the flow through of any potential synergy savings or efficiencies that may be found after the closing.

Accordingly, I find that the existing rates or service and operation of Elkton Gas will not be adversely impacted by either the Acquisition or the Merger.

**The Potential Impact of the Acquisition on Continuing Investment Needs for the Maintenance of Utility Services, Plant and Related Infrastructure**

The Joint Applicants asserted that after the Merger, AGL Resources will continue to have adequate access to capital, providing Elkton Gas with the ability to invest in necessary capital and infrastructure projects to provide safe, reliable and affordable service to its customers.<sup>118</sup> According to Mr. Beatty and Mr. Linginfelter, AGL Resources' and Elkton Gas' core management will be retained.<sup>119</sup> Additionally, the Joint Applicants represented that the Merger was viewed by two of the major credit rating agencies as "having a stable or positive impact on the credit

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<sup>118</sup> Application at 15, 17; Linginfelter Direct at 12.

<sup>119</sup> Beattie Direct at 11, 18; Linginfelter Direct at 6, 7, 9.

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quality of AGL Resources since Southern Company has higher credit ratings than those of AGL Resources."<sup>120</sup> Further, the Joint Applicants committed to maintain AGL's board of outside directors for five years after the close of Merger. Neither Staff nor OPC suggested that there would be any adverse impact of the Acquisition/Merger on continuing investment needs for the maintenance of Elkton Gas' services, plant and related infrastructure.

Accordingly, I find that the Acquisition and the Merger will not adversely impact the continuing investment needs for the maintenance of Elkton Gas' services, plant and related infrastructure. As a result of the Merger, there may be a potential positive impact when and if Elkton Gas requires additional capital to invest in its infrastructure because its ultimate parent company after the Merger (Southern Company) is viewed as having greater financial strength than that of its current parent company, AGL Resources.

**The Proposed Capital Structure that will Result from the  
Acquisition Including Allocation of Earnings from Elkton  
Gas**

The Joint Applicants state that there will be no impact on Elkton Gas' capital structure, especially as there will be no change in the outstanding debt held by either AGL Resources or Elkton Gas as a result of the Merger. A term of the Settlement Agreement is that neither AGL Resources or Elkton Gas will issue any debt in connection with, or to fund, the Merger.

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<sup>120</sup> Beattie Direct at 19.

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Staff testified that the current capital structure of Elkton Gas consisted of 49.59% equity and 50.41% debt, which it said is consistent with most of the Maryland regulated utilities' capital structure.<sup>121</sup> Staff recommended that the Commission condition its approval with a requirement that Elkton Gas maintain a rolling 12-month average annual equity of at least 48%, to ensure that neither AGL Resources nor Southern Company attempts to shift some of its riskier, leveraged financial position onto Elkton Gas. The Joint Applicants committed to this condition in the Settlement Agreement.

Accordingly, subject to the terms of the Settlement Agreement relating to the capital structure of Elkton Gas, I find that no adverse change in the capital structure of Elkton Gas will occur due to the Acquisition or the Merger.

**The Potential Effects on Employment by Elkton Gas**

The Joint Applicants stated that Elkton Gas employs eight individuals in Maryland to manage the day-to-day operations of Elkton Gas in its Maryland service territory. The Joint Applicants committed to retaining the employment of these individuals for at least three years after the closing date of the Merger. The commitment is a term and condition of the Settlement Agreement. I therefore find no adverse effects will occur on employment by Elkton Gas in Maryland as a result of the Merger.

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<sup>121</sup> Alvarado Direct at 11.

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PUBLIC SERVICE COMMISSION**The Projected Allocation of any Savings to Elkton Gas  
that are Expected between Stockholders and Rate Payers**

The Joint Applicants have stressed that the resulting Merger is not likely to provide synergy savings to the Elkton Gas operations. Consequently, as no savings are expected, the Joint Applicants have no projection of allocation of any such savings, but agreed that if any savings or efficiencies were gained by the Merger, Elkton Gas' share of the savings would flow to its customers through the normal ratemaking process. In the Settlement Agreement, the Joint Applicants have committed that Elkton Gas will file a base rate case within two years of the date of the closing of the Merger. As explained by OPC and Staff, in the base rate case, the Commission will be able to consider whether any synergy savings and efficiencies have been achieved by the Merger which should be flowed to the Elkton Gas customers. Moreover, the Joint Applicants have agreed that to the extent any of the transition costs (those costs incurred to achieve the synergy savings) during the Elkton Gas test period in Elkton Gas' next base rate case exceed the synergy savings achieved, Elkton Gas will forgo cost recovery of the transition costs that exceed synergy savings. I find that this commitment is an additional benefit to Elkton Gas' customers and properly balances any savings to be achieved by the Merger between the Elkton Gas customers and the shareholders.

STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION**Issues of Reliability, Quality of Service, and Quality  
of Customer Service**

Staff testified that Elkton Gas does not have a history of issues either with safe, reliable service or quality of customer service. The Joint Applicants have identified a type of pipe material which has a potential of "brittle-like cracking" that may result in an unsafe condition to Elkton Gas' distribution system. They therefore committed to conducting an accelerated assessment survey at no cost to the Elkton Gas customers of the Aldyl-A pipe to determine its condition. Staff and OPC each recommended an additional condition to insure the Elkton Gas distribution system continued to have safe, reliable operations. The Settlement Agreement terms included both Staff's and OPC's additional condition recommendations. I therefore find that the Settlement Agreement addresses any concerns of any issue with reliability, safety and quality of service of the distribution pipeline as a result of the Merger.

Although the Joint Applicants agreed, for a period of three years, to maintain the employee level in Maryland associated with Elkton Gas' operations, I noted that the customer service call center that handles Elkton Gas customers' calls is located in Georgia and the customer service representatives are employed by AGL Resources. Currently, according to AGL Resources, it has four full-time AGL employees handling approximately 12,500 Elkton Gas

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customer calls annually.<sup>122</sup> Even though the Maryland employee level may not change for a period of three years, I questioned whether any decrease in the number of full-time customer service representatives handling Elkton Gas calls might occur even if the number of calls did not decrease. Ms. Keefe indicated that there was no expected change in the number of dedicated AGL Resources' employees who handle the Elkton Gas customer calls.<sup>123</sup> Accordingly, I find that the quality of customer service will not be adversely impacted due to the Merger.

**The Potential Impact of the Acquisition on Community Investment**

According to the Joint Applicants, Southern Company strongly encourages community investments by its operational companies. Mr. Beattie explained that Southern Company encourages each of its operating companies to establish economic development programs and hire personnel to administer the programs to create more jobs and a higher quality of life for individuals in each Southern Company service territory.<sup>124</sup> Additionally, he described the level of community involvement by Southern Company employees in 2014 as well as the charitable donations made by Southern Company or its subsidiaries to provide environmental, educational, and

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<sup>122</sup> Pavlovic Direct ("Confidential"), Data Responses Referenced in the Direct Testimony of Karl R. Pavlovic, Joint Applicants' Response to OPC Data Request NO. 1-10.

<sup>123</sup> March 1, 2016 Evidentiary Hearing Transcript ("Transcript") at 24.

<sup>124</sup> Beattie Direct at 7.

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cultural support to the communities served by the operating companies.<sup>125</sup>

The Joint Applicants initially committed to sustain the level of community investment currently made by Elkton Gas for a period of five years, which would continue to target charitable, workforce development and economic development in the Elkton Gas service territory. Staff concluded that maintaining the same level of investment for a period of five years was not sufficient to demonstrate a benefit to consumers, and recommended that the Joint Applicants commit to maintain Elkton Gas' level of community investment for ten years.

Under the Settlement Agreement, the Joint Applicants have increased their commitment to sustain Elkton Gas' level of community investment to ten years. Additionally, the commitment includes an agreement that Elkton Gas will not seek recovery of these investments through its rates. Consequently, although the level of the community investment may not increase by reason of the Merger, the level will not decrease. To the extent that Elkton Gas customers will not see the costs of the investments recovered in rates, I find the condition results in a benefit to the customers as well as to the community without any harm to the ratepayers. I find that there will be no adverse impact from the Acquisition or the Merger on continuing community investment by Elkton Gas for at least ten years.

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<sup>125</sup> Beattie Direct at 9.

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PUBLIC SERVICE COMMISSION**Affiliate and Cross-Subsidization Issues**

The Joint Applicants witnesses testified that there were no affiliate or cross-subsidization issues raised by the Merger. Staff, subject to the conditions it recommended, agreed that there would be no affiliate or cross-subsidization issues raised by the Merger. The Settlement Agreement includes the recommended conditions sought by Staff to ensure no affiliate or cross-subsidization issues occur as a result of the Merger. Consequently, I find the terms and conditions of the Settlement Agreement acceptable to prevent any affiliate and cross-subsidization issues occurring as a result of the Merger.

**The Use or Pledge of Utility Assets for the Benefit of an Affiliate**

According to the Joint Applicants, neither AGL Resources nor Elkton Gas will issue any debt or equity as part of, or to fund, the Merger. Mr. Linginfelter indicated that Elkton Gas would continue to issue debt as it previously did. The Settlement Agreement includes the Joint Applicants' agreement that AGL Resources and Elkton Gas will not issue any debt or equity as a part of or to fund the Merger. I find that the commitment prevents Elkton Gas from using or pledging its utility assets for the benefit of an affiliate in connection with or to fund the Merger.

**Jurisdictional and Choice of Law Issues**

The Joint Applicants committed that Elkton Gas and its affiliates will continue to comply with the Commission's codes of

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conduct regulations. I find no issues as to the Commission's continuing jurisdiction over Elkton Gas, or its jurisdiction over Elkton Gas and its affiliates in relationship to affiliate transactions. Neither Staff nor OPC raised a choice of law issue, and I find no issues related to choice of law.

**Whether it is Necessary to Revise the Commission's Ring Fencing and Code of Conduct Regulations in Light of the Acquisition**

Other than Elkton Gas resuming its submission of its ring fencing report and filing a cost allocation manual, Staff did not find it necessary to revise any of the Commission's ring fencing and code of conduct regulation prior to the closing of the Merger. As initially recommended by Staff, the Settlement Agreement includes a commitment by the Joint Applicant to conduct a risk assessment to determine if more stringent ring fencing measures should be implemented as a result of the Merger. Ms. Keefe testified that the Joint Applicants intend to complete the risk assessment within 90 days of the Merger closing date and file it with the Commission as recommended by Staff.<sup>126</sup> I conclude that it is not currently necessary to revise the Commission's ring fencing and code of conduct regulations as a result of the Merger, as long as Elkton Gas resumes its filing of its ring fencing report and submits a cost allocation manual within 90 days of the closing date of the Merger. Further, in the event that the risk assessment filed with the Commission reveals that additional ring fencing

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<sup>126</sup> Transcript at 23.

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measures may be needed, the Commission may address the need for these measures in a further proceeding.

**Other Issues Relevant to the Assessment of Acquisition  
in Relation to Public Interest, Convenience and  
Necessity****Supplier Diversity Goals**

In prior merger cases, the Commission has considered other public interest issues, such as the utility's adherence to the supplier diversity goals.<sup>127</sup> The Joint Applicants have committed to increase Elkton Gas' 2014 DSR by a factor of 4. Further, the Joint Applicants committed to maintaining the post-merger levels and to continue to strive to meet the Commission's target DSR goal of 25%. Southern Company, according to Mr. Beattie, has a robust supplier diversity program. Mr. Beattie testified that diverse business spending represented approximately 25% of Southern Company's total direct procurement expenditure in 2014.<sup>128</sup> He explained that Southern Company had formed a Supplier Diversity Council to coordinate business diversity efforts and share best practices across Southern Company's operating companies and business units.<sup>129</sup> According to Staff, Elkton Gas' DSR for 2014 was 4.42%.<sup>130</sup> Although under the commitment, Elkton Gas' DSR for

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<sup>127</sup> See Order No. 86990, *In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.*, Case No. 9361, Slip Opinion at 83 (May 15, 2015); see also *In the Matter of the Merger of Exelon Corporation and Constellation Energy Group Inc.*, Case No. 9271, 103 MD P.S.C. 22 at 70-71 and 79.

<sup>128</sup> Beattie Direct at 8.

<sup>129</sup> *Id.*

<sup>130</sup> Alvarado Direct at 18.

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2017 will be at or above 17%, which is still below the Commission's target goal of 25%, the commitment will result in the diversity spend increasing at an accelerated pace during the next several years.

Thus, upon the Merger closing, Elkton Gas' supplier diversity program may benefit from implementation of the best practices of Southern Company in encouraging supplier diversity spend with Elkton Gas. Further, Ms. Keefe testified that AGL Resources has amended its Master Service Agreement across its entire AGL footprint "to strongly encourage its prime contractors to be aware of and commit to the same level of commitment the Company has to increase diverse contracts, supplies and services."<sup>131</sup> I therefore find that the commitment to enhance and advance Elkton Gas' diverse supplier spend is consistent with the Commission's policy goals for diverse supplier spend by utilities in Maryland. Under the commitment, Elkton Gas' ability to meet the 25% target goal will be accelerated, which is beneficial to the community and public in general. Thus, I find this commitment benefits the public interest and is acceptable.

**Most Favored Nation Provision**

The Joint Applicants have committed to submit all orders and/or settlement agreement from each jurisdiction in which they are seeking Merger approval upon approval of the Merger. They also will include an analysis explaining the valuation of any direct

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<sup>131</sup> Transcript at 18.

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customer credits awarded in another jurisdiction as compared to the value of the direct customer credits in the Settlement Agreement. In the event the value of the Maryland direct customer credits is less beneficial than in another jurisdiction, the Joint Applicants agreed to provide additional customer credits to Elkton Gas' customers equivalent to such shortfall calculated on a per-distribution customer basis. This provision ensures that Elkton Gas' customers are treated similarly to its other affiliates' customers affected by the Merger. I find this condition is reasonable and will inure to the benefit of Elkton Gas' customers.

**Conclusion**

In review of the Joint Applicants' case-in-chief, I find that the Joint Applicants submitted information sufficient to meet the requirements of § 6-105(f) and has presented evidence to demonstrate that the Acquisition satisfies each of the factors enumerated in § 6-105(g)(2). In each of its initial case, neither Staff nor OPC opposed the Acquisition as long as the conditions recommended by its witness(es) to address Staff's and OPC's concerns were included in any approval of the Acquisition. After negotiations between the parties on the identified issues in dispute, the parties were able to resolve the disputes and arrive at an agreement that the factors listed in Public Utilities Article, §6-105(g) were satisfied as long as the terms and conditions agreed upon in the Settlement Agreement were accepted and approved by the Commission without modification. Each of the

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parties agreed, subject to the conditions, that the acquisition by Southern Company of the potential power to substantially influence the policies and actions of Elkton Gas was in the public interest, convenience and necessity, including benefits and no harm to the consumer.

The Commission has found that a unanimous settlement agreement is reasonable because it is submitted "by parties who normally have adverse interest."<sup>132</sup> My consideration of the terms and conditions of the Settlement Agreement confirms that they reflect a balance between the positions taken by the parties in the proceeding, and the terms and conditions provide a reasonable resolution of each disputed issue and eliminate any potential harm to consumers and ensure net benefits to the Elkton Gas customers as a result of the Acquisition and Merger. I therefore find the Settlement Agreement is reasonable and that the acceptance and approval of the Settlement Agreement without modification is in the public interest.

Subject to the conditions set forth in the Settlement Agreement and agreed to by the Joint Applicants, I find that the Joint Applicants have demonstrated that the approval of the acquisition has satisfied each of the factors listed in § 6-105(g)(3). I find that, subject to the conditions set forth in the Settlement Agreement, the Merger will result in direct benefits to the Elkton customers with no harm to the customers. Several of the commit-

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<sup>132</sup> See *Re Delmarva Power & Light Company*, 102 Md. P.S.C. 236, 240 (2011); *Re Potomac Electric Power Company*, 90 Md. P.S.C. 329, 339 (1999).

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ments also provide benefit to the public at large in the Elkton Gas service territory, and therefore the Merger will be in the public interest as well. Accordingly, I find that the acquisition is consistent with the public interest, convenience and necessity, including benefits and no harm to the consumers. Accordingly, I hereby grant the Application subject to the conditions in the Settlement Agreement and authorize Southern Company's acquisition of the potential power to substantially influence the policies and actions of Elkton Gas that will result upon the closing of the Merger.

Under the initial procedural schedule adopted in this matter,<sup>133</sup> the target date for the Proposed Order was May 2, 2016. In light of the settlement agreed upon by the parties and the elimination of a briefing schedule, the record in the proceeding closed earlier than initially expected and resulted in the Proposed Order ready to be issued approximately 30 days earlier than the original target. Also, in the initial procedural schedule, to allow the Commission adequate time to consider any appeals, the appeal period and process was compressed. As I have accepted the Settlement Agreement without modification and authorized the Acquisition, I do not expect an appeal to be taken of the Proposed Order. Nevertheless, I wish to afford the Commission adequate time to review the record in this matter, the terms and conditions of the Settlement Agreement, and my decisions in this Proposed Order.

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<sup>133</sup> See Public Utility Law Judge's Notice of Procedural Schedule issued on December 4, 2015 in this proceeding.

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Accordingly, I will not shorten the appeal period inasmuch as the Proposed Order, if no appeal is taken or the Commission does not initiate further proceedings on its on motion, will become a final Order of the Commission on May 3, 2016, one business day after the initial Proposed Order target issuance date.

IT IS THEREFORE, this 31st day of March in the year, Two Thousand Sixteen,

ORDERED: (1) That the Joint Petition for Approval of Stipulation and Settlement Agreement is hereby granted and the Stipulation and Settlement Agreement is hereby accepted and approved without modification.

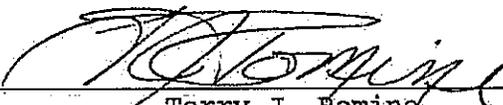
(2) That the application of The Southern Company, AGL Resources Inc., and Pivotal Holdings, Inc. d/b/a Elkton Gas for authority for The Southern Company to acquire the power to substantially influence the policies and actions of Elkton Gas as a result of a merger between The Southern Company and AGL Resources Inc. is hereby granted, subject to the conditions attached hereto as Attachment A and incorporated hereby into this Proposed Order.

(3) That all other motions or requests not specifically granted herein are denied.

(4) That this Proposed Order will become a final order of the Commission on May 3, 2016, unless before that date an appeal is noted with the Commission by any party to this proceeding as provided in § 3-113(d)(2) of the Public Utilities

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Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in § 3-114(c)(2) of the Public Utilities Article.

  
Terry J. Romine  
Chief Public Utility Law Judge  
Public Service Commission of Maryland

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND**

**IN THE MATTER OF THE** \*  
**MERGER OF THE** \*  
**SOUTHERN COMPANY AND** \* **Case No. 9404**  
**AGL RESOURCES INC.** \*  
\*  
\*

**STIPULATION AND SETTLEMENT AGREEMENT**

On November 3, 2015, The Southern Company (“Southern Company”), AGL Resources Inc. (“AGL Resources”), and Pivotal Utility Holdings, Inc. (“Pivotal”), d/b/a Elkton Gas (“Elkton Gas”) (collectively, the “Joint Applicants”) filed an application (“Joint Application”) with the Public Service Commission of Maryland (“Commission”) requesting authorization for Southern Company to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas, pursuant to § 6-105 of the Public Utilities Article (“PUA”). The Joint Applicants sought this authority as a result of an agreement between Southern Company and AGL Resources to combine (the “Merger”), whereby Southern Company will become the ultimate parent company of Elkton Gas, a public service company operating in Maryland and a wholly-owned subsidiary of AGL Resources.

Following the preliminary procedures in this case, which included extensive discovery and the filing of testimony by the Joint Applicants, the Commission Staff (“Staff”), and the Office of People’s Counsel (“OPC”) (collectively, the “Parties”), the Parties engaged in extensive and comprehensive negotiations with respect to all aspects of the issues raised in Case No. 9404. As a result of those negotiations, the Parties have reached unanimous agreement on a settlement of the Joint Application, the terms and conditions of which are set forth in the enumerated paragraphs below.

(1) The Parties conclude that Southern Company should be authorized to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas pursuant to PUA § 6-105, subject to each of the terms and conditions below.

**Direct Customer Credits<sup>1</sup>**

(2) The Joint Applicants will provide direct customer rate credits, funded from a \$100,000 increase in the amount paid through Elkton Gas's asset management agreement, to Elkton Gas customers, payable over a two-year period (\$50,000 of which will be credited to customers within 120 days of the closing of the Merger, and \$50,000 of which will be credited to customers within one year thereafter).<sup>2</sup>

**Regulatory Cost Avoidance Benefits**

(3) The Joint Applicants will provide an additional direct customer rate credit to Elkton Gas customers within 120 days of the closing of the Merger, provided from funds available as a result of savings associated with the avoidance of further regulatory litigation costs, in the amount of \$100,000.

**Direct Customer Benefits**

(4) The Joint Applicants will perform an accelerated assessment of all Aldyl-A pipe in the Elkton Gas system (estimated to cost \$50,000) at no cost to Elkton Gas customers.<sup>3</sup>

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<sup>1</sup> Direct Customer Credits and the Regulatory Cost Avoidance Benefits are subject to a most favored nations ("MFN") provision set forth below.

<sup>2</sup> The Joint Applicants will amend Elkton Gas' current asset management agreement with Sequent Energy Management L.P. ("AMA") to provide a \$100,000 increase in the amount paid to Elkton Gas, and flowed through to customers. This increased payment shall be flowed through to customers without regard to existing revenue sharing provisions of the AMA.

<sup>3</sup> The Elkton Gas distribution system consists of 102 miles of pipe, 73 miles of which is plastic pipe, of which 48.7 miles is comprised of a material known as Aldyl-A. This type of pipe is surveyed regularly along with all other types of pipe in the Elkton Gas distribution system, and to date, there has been no evidence of deterioration of this type of pipe. At a projected cost of \$50,000, the assessment will entail: (1) a thorough review of leak/break data on Aldyl-A pipe throughout the Elkton Gas distribution system, (2) a comparison of the period of installation against industry reports for similarly aged Aldyl-A pipe, and (3) a physical inspection

Rate Making Matters

(5) Within 90 days of closing of the Merger, Elkton Gas will file an annual financial report for the previous 12 month period, which shall include Elkton Gas's revenues and costs. The report will set forth a calculation of the earned return on rate base and return on equity for Elkton Gas. Elkton Gas will thereafter file a financial report for the next 12 month period within 60 days of that 12 month period end.

(6) The Joint Applicants will file a base rate case within two years of the closing of the Merger.

(7) In the event that transition costs (defined as costs incurred to achieve synergy savings related to the Merger) exceed synergy savings during the test year in Elkton Gas's next base rate case, the Joint Applicants will forgo cost recovery of the transition costs that exceed synergy savings.

(8) Elkton Gas will not seek recovery in its rates of: (i) any acquisition premium associated with the Merger, (ii) any cost associated with goodwill arising from the Merger, or (iii) any transaction cost incurred in connection with the Merger. For purposes of this commitment, transaction costs are defined as: (1) consultant, investment banker, legal, and regulatory support fees; (2) change-in-control payments; (3) costs associated with the shareholder meetings and a proxy statement related to the Merger approval by AGL Resources' shareholders, and (4) costs associated with the imposition of conditions or approval of settlement terms in Merger proceedings in other state jurisdictions.

(9) AGL Resources and Elkton Gas will not issue debt or equity in connection with, or to fund, the Merger.

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of Aldyl-A pipe by appropriate sampling throughout the service area. Elkton Gas will not seek deferral or recovery of these assessment costs from customers.

(10) For a period of two years following the closing of the Merger, the amount of costs assessed to Elkton Gas for services provided by an affiliate will be no greater than it would have been had the Merger not occurred, regardless of whether such services are provided directly or indirectly by Southern Company Services, Inc., AGL Services Company, or any other Southern Company affiliate.

**Supplier Diversity Enhancements**

(11) The Joint Applicants will increase the supplier diversity performance of Elkton Gas by increasing its Diverse Spend Ratio (“DSR”), as that term is defined in the May 29, 2009 Elkton Gas Supplier Diversity Memorandum of Understanding, by a factor of 4 during the period 2015 through 2017, as measured against Elkton Gas’s 2014 DSR. The increase to be implemented by the end of 2017 will be at least 4 times Elkton Gas’s 2014 DSR. The Joint Applicants will maintain the DSR at post-merger levels going forward, and continue to aim to increase Elkton Gas’ DSR over time to 25 percent.

**Community Investment Enhancements**

(12) Joint Applicants will sustain Elkton Gas’s current levels of community investment for at least ten (10) years following the closing of the Merger. Community investment activities will continue to target charitable, workforce development, and economic development efforts in the Elkton Gas service area benefitting Elkton Gas customers. Elkton Gas will not seek recovery in its rates of costs related to these community investment activities.

**Infrastructure Enhancements**

(13) Within 60 days of completion, Elkton Gas will provide to the Commission a copy of the completed accelerated assessment study of the Aldyl-A piping (described in paragraph (4) of this Stipulation and Settlement Agreement) within Elkton Gas’s distribution system. This study will also include any other deficiencies identified in the course of performing that

assessment that relate to the other piping materials within Elkton Gas's distribution system that could lead to unsafe conditions.

(14) Within 60 days of completing the accelerated assessment, Elkton Gas will provide to the Commission a plan for remediating any of the deficiencies found with the Aldyl-A and/or any other piping materials discovered as a result of the assessment.

(15) Elkton Gas will continue to systematically remediate system knowledge deficiencies in accordance with established programs and procedures.

Financial Integrity and Ring Fencing Enhancements

(16) Elkton Gas will maintain a rolling 12-month average annual equity ratio of at least 48 percent.

(17) Within 90 days of closing of the Merger and annually thereafter, Elkton Gas will resume filing a ring fencing report pursuant to the Code of Maryland Regulations ("COMAR") 20.40.02.08. In addition, within 90 days of closing of the Merger, Elkton Gas will file a cost allocation manual pursuant to COMAR 20.40.02.07.

(18) The Joint Applicants will conduct an analysis of their operational and financial risk to determine the adequacy of their existing ring fencing measures, using the ring fencing conditions set forth in the Table LM-20 matrix, excluding the first three (3) ring fencing conditions contained in that matrix. A copy of Table LM-20 matrix is attached hereto.

(19) Elkton Gas and its affiliates, including but not limited to the Pivotal Utility Holdings, Inc. family, will comply with the statutes and regulations applicable to Elkton Gas regarding affiliate transactions.

(20) Southern Company will promptly report to the Commission any change by at least two of the three major credit rating agencies of the rating of the senior unsecured long-term

public debt securities issued by Southern Company, AGL Resources, or Pivotal by providing the rating letter and related explanatory note.

**Secure Maryland Employment**

(21) For at least the first three years following the closing of the Merger, the Joint Applicants will maintain current employment levels within the Maryland workforce supporting Elkton Gas's operations.

**Maintain Local Corporate Presence**

(22) Elkton Gas will maintain its headquarters in Elkton, Maryland.

(23) Elkton Gas will retain its corporate name and form, and will continue to be a division of Pivotal Utility Holdings, Inc.

(24) AGL Resources will continue to have a separate board of outside directors for a minimum of five (5) years following the closing of the Merger.

**Most Favored Nation Provision**

(25) Within sixty (60) days after the Merger closes, the Joint Applicants will file with the Commission a copy of the final Orders and/or Settlement Stipulations from the other jurisdictions from which it is seeking Merger approval (the California Public Utilities Commission, Georgia Public Service Commission, Illinois Commerce Commission, the New Jersey Board of Public Utilities, and the Virginia State Corporation Commission) following approval in each of those jurisdictions, along with an analysis indicating the total dollar amount of any direct customer credit approved in each jurisdiction (including a calculation of that amount on a per distribution customer basis) and explaining the valuation of the direct customer credits awarded in that jurisdiction as compared to the value of the benefits provided for in

paragraphs (2) and (3) of this Stipulation and Settlement Agreement (calculated in each case on a per-distribution customer basis).

If, on a per-distribution customer basis, the direct customer credits provided to customers in other jurisdictions are materially more beneficial in the aggregate than the terms of the Maryland Settlement, including the direct customer credits specified in Paragraphs (2) and (3) above, then the Joint Applicants will be obligated to provide additional direct customer credits to Elkton Gas's customers equivalent to such shortfall calculated on a per-distribution customer basis.

**Further Conditions, Assertions and Reservations**

(26) The Parties further stipulate and agree that:

A. the Joint Application, along with all testimony of Staff, OPC, and the Joint Applicants filed in this proceeding, including any testimony proffered in support of this Stipulation and Settlement Agreement, shall be made a part of the record, except as set forth in paragraph G, below;

B. this Stipulation and Settlement Agreement is expressly conditioned upon the Commission's acceptance of all of its terms, without change or condition;

C. this Stipulation and Settlement Agreement constitutes a full settlement of the Joint Application and resolves all issues and adjustments raised by the Joint Application, contested and uncontested. This Stipulation and Settlement Agreement may only be modified by a further written agreement executed by all the parties to this Agreement;

D. this Stipulation and Settlement Agreement represents a compromise of divergent positions in order to end litigation, and shall not be regarded as precedent with respect to any future case. The Parties agree that the terms and conditions resulting from this

compromise and contained in this Stipulation and Settlement Agreement will result in Southern Company's acquisition of substantial influence over the policies and actions of Elkton Gas being consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers, in accordance with PUA § 6-105(g)(3)(i). The Parties further agree that the resolution of the issues herein, taken as a whole, is in the public interest, convenience and necessity;

E. acceptance by the Commission of this Stipulation and Settlement Agreement shall not be deemed nor shall it constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations that might be made by any of the Parties to the Stipulation and Settlement Agreement in the absence of settlement;

F. the discussions and negotiations which produced this Stipulation and Settlement Agreement have been conducted on the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise;

G. since this Stipulation and Settlement Agreement is conditioned upon Commission acceptance of its terms in their entirety, as aforesaid, the Stipulation and Settlement Agreement shall be submitted to the Commission on the condition that, in the event the Commission does not accept and approve it in its entirety, the Stipulation and Settlement Agreement shall be deemed withdrawn and void, and neither this Stipulation and Settlement Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Party has for a decision in this matter.

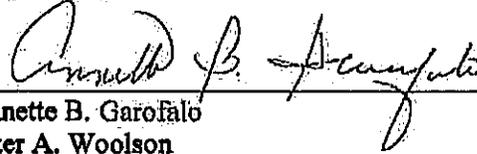
If the Commission does not unconditionally approve this Stipulation and Settlement Agreement without modification, the Parties shall retain all procedural and due process rights as fully as though this Stipulation and Settlement Agreement had not been presented for approval, and any memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussion and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever; and

H. if the Commission unconditionally accepts the specific terms of this Stipulation and Settlement Agreement without modification, the Parties waive their respective rights to: (1) appeal a proposed order of the Public Utility Law Judge to the Commission; (2) seek rehearing of a Commission order; and (3) seek judicial review of a Commission order. The Parties shall not take any action before the Commission or a Court in derogation of this Stipulation and Settlement Agreement.

I. The terms and conditions set forth in this Stipulation and Settlement Agreement shall only be binding on the Parties upon approval by the Commission and upon consummation of the Merger, which are express conditions precedent.

J. the Parties may execute this Stipulation and Settlement Agreement in separate counterparts, each of which, when so executed and delivered, shall constitute an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" or other formatted data file, such signature shall be treated as an original and create a valid and binding obligation of the executing party.

Respectfully submitted,



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**Annette B. Garofalo**  
**Peter A. Woolson**  
**Assistant Staff Counsel**  
**Staff of the Public Service Commission**

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**Ronald Herzfeld**  
**Assistant People's Counsel**  
**Maryland Office of People's Counsel**

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**J. Joseph Curran, III**  
**Venable LLP**  
**Counsel for The Southern Company**

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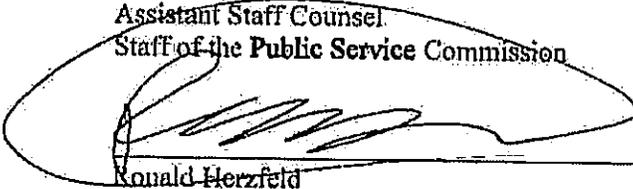
**Carville B. Collins**  
**DLA Piper LLP (US)**  
**Counsel for AGL Resources Inc. and Pivotal**  
**Utility Holdings, Inc., d/b/a Elkton Gas**

February 24, 2016

Respectfully submitted,

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Annetta B. Garofalo  
Peter A. Woolson  
Assistant Staff Counsel  
Staff of the Public Service Commission



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Ronald Herzfeld  
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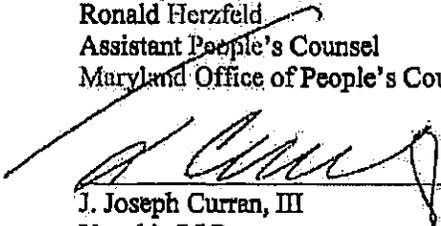
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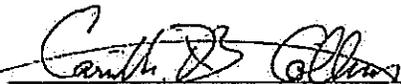
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Counsel for AGL Resources Inc. and Pivotal  
Utility Holdings, Inc., d/b/a Elkton Gas

February 24, 2016

Public Version  
Confidential Materials Redacted

1 Table LM-20

Ring-fencing Condition	Risk Category (derived from OCM score):		
	High Risk (OCM Score of $\geq 7$ )	Moderate Risk (OCM Score of $7 > x \geq 4$ )	Low Risk (OCM Score of $4 > x$ )
<b>Corporate Governance</b>			
Form a bankruptcy remote, special purpose entity (SPE) to hold the equity shares of the utility	X		
Obtain a non-conflict option	X		
Utility divestiture condition may be imposed by regulator under defined conditions	X		
Maintain its own board of directors	X	X	X
Board of directors must include at least one independent director	X	X	
Unanimous consent of board of directors required for major corporate restructurings	X		
Maintain officers whose responsibilities are dedicated solely to the utility	X	X	
Maintain own separate books and records	X	X	X
Provide PSC access to books and records upon request	X	X	X
Not commingle its assets with affiliates	X	X	
File its own tax returns	X	X	
Maintain own offices and headquarters	X	X	
Maintain arms-length relationship with affiliates	X	X	
<b>Financial Commitments</b>			
Restrict or eliminate utility participation in corporate money pools	X	X	
Utility shall not pay dividends if utility's equity ratio will fall below a defined percentage	X	X	
Defined equity ratio requirement	X	X	
Not pledge assets for the benefit of parent	X	X	
<b>Reporting Requirements</b>			
Provide PSC access to books and records upon request	X	X	X
Notify PSC of any change in parent or utility subsidiary credit rating	X	X	X
Provide PSC annual reporting of transactions with unregulated affiliates	X	X	X
Provide PSC annual reporting of ring-fencing conditions and compliance, including an OCM or equivalent analysis	X	X	X
<b>Other</b>			
Explicitly accept authority of PSC to order divestiture of utility if the PSC deems this action necessary and appropriate	X		

2 Source: Industry experience and judgment of the authors.