



Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF)
ELIZABETHTOWN GAS COMPANY TO)
IMPLEMENT AN INFASTRUCTURE)
INVESTMENT PROGRAM ("IIP") AND)
ASSOCIATED RECOVERY MECHANISM)
PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C.)
14:3-2A) DOCKET NO. GR18101197

BY COMMISSIONER UPENDRA J. CHIVUKULA:

BACKGROUND

On October 29, 2018, Elizabethtown Gas Company¹ ("Elizabethtown" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") seeking approval for its Infrastructure Investment Program ("IIP" or "Program"),² including an associated cost recovery mechanism pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-2A.1 et seq. ("II&R Rules")³ and any other provision deemed applicable by the Board.

Elizabethtown is seeking a five-year, \$518 million program to be implemented from 2019 through 2023. Of this amount, Elizabethtown proposes to recover \$466 million under the IIP Rider F with the remaining amount of \$52 million (10% of total IIP), allocated as base spend to

¹ In an Order dated June 22, 2018 issued in BPU Docket No. GM17121309, the Board approved, inter alia, the acquisition of Elizabethtown Gas, then a utility operating division of Pivotal Utility Holdings, Inc., by ETG Acquisition Corp., a wholly owned subsidiary of South Jersey Industries, Inc. The acquisition was consummated on July 1, 2018 and ETG Acquisition Corp. was renamed "Elizabethtown Gas Company." In re the Acquisition of Elizabethtown Gas, a Division of Pivotal Utility Holdings, Inc. by ETG Acquisition Corp., a Subsidiary of South Jersey Industries, Inc. and Related Transactions, BPU Docket No. GM17121309 (June 22, 2018).

² Elizabethtown proposes cost recovery through a separate clause of ETG's tariff, Rider F, which will recover revenue requirements associated with the IIP based on actual plant-in service for six-month periods. Elizabethtown anticipates that each year, a filing will be made on February 1 and August 1 to recover revenue requirements for plant based in-services. The first rate adjustment filing will not occur until August 1, 2020 based on actual plant in-service through June 30, 2020.

³ On December 19, 2017, the Board adopted new rules for utility "Infrastructure Investment and Recovery" to encourage utilities to implement infrastructure investments ("II&R Rules"). The II&R rules are codified at N.J.A.C. 14:3-2A.1 et seq. and became effective on January 16, 2018.

be recovered in a subsequent base rate case filing in accordance with N.J.A.C. 14:3-2A.

Elizabethtown's proposed Program includes six infrastructure projects. The proposed projects would:

- 1) Replace and retire approximately 364 miles of vintage, at risk mains and associated customer services;
- 2) Upgrade the legacy low-pressure system located primarily in the eastern portion of the service territory to elevated pressure;
- 3) Relocate approximately 44,000 inside meters sets to outside;
- 4) Install approximately 38,600 excess flow valves on the upgraded system;
- 5) Retire approximately 100 district regulators that will no longer be needed once the existing low pressure system is upgraded; and
- 6) Convert five existing master meter systems to individual meters.

By Order dated December 18, 2018 ("December 2018 Order"), the Board retained this matter for hearing and, pursuant to N.J.S.A. 48:2-32, designated me as the presiding officer authorized to rule on all motions that arose during the pendency of these proceedings, and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the December 2018 Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by January 8, 2018.

To aid in the setting of an appropriate schedule, Board Staff requested that the New Jersey Division of Rate Counsel ("Rate Counsel") and the Company circulate proposed procedural schedules. Following the exchange of several proposed procedural schedules, the Company and Rate Counsel agreed to a procedural schedule, which was forwarded to Board Staff on February 15, 2019.

Motions

New Jersey Large Energy User Coalition ("NJLEUC") Motion to Intervene and for Admission Pro Hac Vice

By motion dated January 4, 2019, NJLEUC, an association whose members include large volume natural gas customers serviced by Elizabethtown, moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities, including Elizabethtown. Members of NJLEUC are large volume purchasers of natural gas distribution service from Elizabethtown and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to Elizabethtown's IIP Program are unique and substantially different from those of any other party seeking intervention, and as large end-use customers of Elizabethtown its members will be directly affected by the proposed multi-billion-dollar infrastructure upgrades, NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric and gas customers of the significant rate relief sought by Elizabethtown in this proceeding.

NJLEUC also argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the reliability and cost of gas distribution service received from Elizabethtown by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC points out that it has been granted intervenor status in the recent merger⁴, regulatory, infrastructure and rate proceedings involving Elizabethtown, including AGL, Southern Company and South Jersey Industries merger proceedings, the Company's Utility Infrastructure Enhancement, Elizabethtown Natural Gas Distribution Reinforcement Effort, accelerated infrastructure replacement programs, and several base rate cases.

NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers. NJLEUC further states that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

By motion dated January 4, 2019, NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia and has had significant experience representing the interests of large end-use customers, and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing large end-use customers before Federal Energy Regulatory Commission and the Board. He states that he was previously admitted to represent NJLEUC pro hac vice in the AGL, Southern Company and South Jersey Industries merger⁵ proceedings, the Utility Infrastructure Enhancement, Elizabethtown Natural Gas Distribution Reinforcement Effort, accelerated infrastructure replacement programs and numerous base rate proceedings. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

On January 17, 2019, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

By letter dated January 9, 2019, Elizabethtown indicated that it does not oppose the granting of Intervenor status to NJLEUC.

Environmental Defense Fund ("EDF") Motion to Intervene

By motion dated December 21, 2018, the Environmental Defense Fund ("EDF") moved to intervene in this proceeding. According to its motion, EDF is a national non-profit membership

⁴ In its moving papers NJLEUC refers to the South Jersey Industries acquisition of Elizabethtown Gas as a merger when in fact it was an acquisition. See In re the Acquisition of Elizabethtown Gas, a Division of Pivotal Utility Holdings, Inc. by ETG Acquisition Corp., a Subsidiary of South Jersey Industries, Inc. and Related Transactions Order, BPU Docket No. GM17121309 (June 22, 2018).

⁵ See footnote 4 above.

organization, with 11,000 members in New Jersey, which links science, economics and law to create solutions to urgent environmental problems. EDF represents that it is using newly developed technology to find and quantify methane leaks in gas mains. EDF states that it is pursuing initiatives in multiple states affecting numerous natural gas distribution utilities to ensure investments by utilities to repair and replace leak-prone gas infrastructure are cost effective to customers and environmentally efficacious.

EDF argues that it has extensive expertise and experience in presenting evaluative frameworks and project solutions to increase the cost effectiveness, cost efficiency, environmental, consumer, grid, and market benefits of gas system plans and projects.

EDF also claims that it also has extensive expertise with regard to new and emerging technologies to find and quantify sub-surface methane leaks from natural gas mains and techniques for reducing leakage rates in natural gas distribution systems.

EDF states that it and its members will be substantially, specifically and directly affected by the outcome of this matter because the Elizabethtown IIP program goes to the heart of EDF's mission with regard to the natural gas distribution system. EDF further argues that the outcome of the case is likely to impact the provision of utility service and the functioning of the market as it relates to safety, economic, and environmental welfare.

EDF argues that its experience will add substantive value to this proceeding by bringing a unique expertise and experience in employing practical, market-based solutions to cost-efficiency minimize the loss of natural gas from distribution pipelines. EDF's work with utilities throughout the country including methane surveying and mapping in New Jersey, makes it particularly well qualified to evaluate the proposed investments in Elizabethtown's distribution system and propose ways to optimize these investments. EDF plans to review and comment on comments, proposals, and other information brought throughout the course of this proceeding to the extent that customer, safety, cost, and environmental implications of the petition are raised.

EDF points out that it has been granted intervention status in other gas utility infrastructure proceedings including the Elizabethtown Safety, Modernization and Reliability infrastructure proceeding, the Public Service Gas & Electric Company ("PSE&G") Gas System Modernization ("GSMP") proceeding, and the PSE&G GSMP II proceeding. In addition to the above, EDF points out that its participation was acknowledged by the Board in a press release nothing that "data on methane emissions from the EDF will be used" to "ensure that work is prioritized."

Finally, EDF argues that its intervention will not cause confusion or result in undue delay because it will work with other parties to ensure that it avoids duplicating efforts being made by other parties.

On January 7, 2019 Elizabethtown filed an opposition to EDF's motion to intervene. On January 14, 2019, EDF filed a reply to Elizabethtown's opposition to the motion to intervene. However, by letter dated January 22, 2019, Elizabethtown withdrew its opposition to EDF's motion and indicated that it does not oppose the granting of intervenor status to EDF.

Atlantic City Electric ("ACE") Motion to Participate

On January 8, 2019, ACE filed a motion to participate. ACE is a New Jersey electric public utility, primarily engaged in the purchase, transmission, distribution and sale of electric energy for approximately 553,000 customers in eight counties.

ACE is seeking participation status and contends that the Board's decision in the case will have a precedential effect and impact on other New Jersey electric utilities, not just Elizabethtown, therefore, ACE will be directly and specifically affected by the proceeding. Further, ACE believes that its interests are significant and the experience of its affiliates in other Pepco Holdings service territories will add constructively to this proceeding. ACE believes that substantive policy and procedural requirements set forth in this proceeding will impact other proceedings involving ACE.

ACE attests that it will coordinate its activities in this docket with other similar entities where appropriate, that it will abide by any schedule set for within this proceeding and that its participation would not cause any undue delay or confusion.

By letter dated January 9, 2019, Elizabethtown indicated that it does not oppose the granting of participant status to ACE.

Prehearing Order

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED

Through this proceeding, Elizabethtown seeks approval to implement and administer its \$518 million IIP proposal. Elizabethtown proposes to make semi-annual rate adjustment filings on February 1st and August 1st of year, during the five year period. Based upon the proposed program spending, the Company estimates that the rate increase for the average customer to be \$1.88 or 2.1%, at the time of the first base rate adjustment on October 1, 2020. The Company requests approval of the four subprogram categories: Low Pressure System Replacement and Upgrade, Small Diameter Elevated Pressure System Replacement, Large Diameter Elevated Pressure Cast Iron Replacement, and Master Meter Complexes.

Issues to be Resolved:

- 1) Is the IIP prudent, cost effective and cost efficient?
- 2) Is the IIP non-revenue producing, accelerated capital spending pursuant to the requirements of N.J.A.C. 14:3-2A.1 et. seq.?
- 3) Is the IIP necessary accelerated capital spend?
- 4) What is the appropriate base line capital spending level?
- 5) Is the eligible IIP spending above the baseline spending level and incremental in nature?
- 6) What is the appropriate cost of capital?
- 7) Is the proposed cost recovery mechanism reasonable and lawful?

2. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:**

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:

Pursuant to N.J.S.A. 48:2-32-.3, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in Elizabethtown's service territory on March 19, 2019 in Union, New Jersey at 4:30 p.m. and 5:30 p.m. and March 20, 2019 in Flemington, New Jersey at 5:00 p.m. and 6:00 p.m.

4. SCHEDULE OF HEARING DATES, TIME, AND PLACE:

Evidentiary hearings, with live rebuttal, will be held on July 17, 18 and 19, 2019 starting at 10:00 a.m. on each day at the New Jersey Board of Public Utilities, 44 South Clinton Avenue, Trenton, New Jersey in the first floor multipurpose room.

5. STIPULATIONS:

The Staff of the Board of Public Utilities, the Division of Rate Counsel, NJLEUC, EDF and Elizabethtown have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. SETTLEMENT:

Parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4, or as provided in Exhibit A.

9. **ORDER OF PROOFS:**

Elizabethtown has the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – Elizabethtown

Second – Rate Counsel

Third – NJLEUC

Fourth - EDF

Fifth - Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACTS AND EXPERT WITNESSES:**

Elizabethtown will present the following witnesses: Brian MacLean, Mike Scacifero and Thomas Kaufman. Additional witnesses may be identified by PSE&G as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following witnesses: David Dismukes, Robert Henkes and Edward McGee. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

NJLEUC and EDF's witnesses are to be determined.

Any party substituting witnesses shall identify such witnesses within five days of determining to replace a witness, and in no event later than five days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

NJLEUC has moved to intervene and for the admission pro hac vice of Paul F. Forshay, Esq. EDF has moved to intervene. ACE has moved to participate.

14. **SPECIAL MATTERS:**

None at this time.

DISCUSSION AND FINDINGS

Motions to Intervene or Participate

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
1. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
2. The prospect for confusion and delay arising from inclusion of the party; and
3. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant." N.J.A.C. 1:1-16.6(a) provides that "[a]ny person or entity with a significant interest in the outcome of a case may move for permission to participate."

In ruling on a motion to participate the trier of fact shall consider "whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion." N.J.A.C. 1:1-16.6 (b). Under N.J.A.C. 1:1- 16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005).

After consideration of the papers and given the lack of opposition, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the members of NJLEUC who represent large and identifiable customer groups of Elizabethtown will be directly affected by the outcome of this proceeding. I further **HEREBY FIND** that NJLEUC has met the standards for intervention as it is an interest in this proceeding. Accordingly, having received no objection to NJLEUC, I **HEREBY GRANT** the motion for intervention filed by NJLEUC pursuant to the authority granted to me by the Board

under the December 2018 Order.

I further **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.5, that the participation of ACE in this matter is likely to add constructively to the case without causing delay or confusion. Accordingly, I **HEREBY GRANT** the motion for participation of ACE, limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

With regard to the motion to intervene filed by EDF, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), that the participation of EDF, on the gas leak issues related to the IIP petition in this matter is likely to add constructively to the case without causing undue delay or confusion. Accordingly, after consideration of the papers and the lack of opposition, I **HEREBY GRANT** EDF's motion to intervene pursuant to the authority granted to me by the Board under the December 2018 Order.

Motion for Admission Pro Hac Vice

I have reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. I agree that this proceeding involves a complex field of law, and I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that he shall:

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

Procedural Schedule

I have reviewed the proposals for a preliminary schedule, after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the aforementioned as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

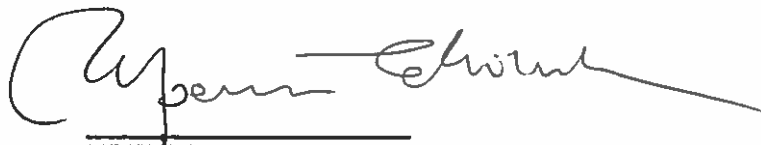
I have reviewed the proposals for a preliminary schedule, after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the aforementioned as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 3/18/2019

A handwritten signature in black ink, appearing to read "Upendra Chivukula", written in a cursive style.

UPENDRA J. CHIVUKULA
COMMISSIONER

IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY TO IMPLEMENT AN
INFASTRUCTURE INVESTMENT PROGRAM ("IIP") AND ASSOCIATED RECOVERY MECHANISM
PURSUANT N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-2A
DOCKET NO. GR 18101197

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EXHIBIT A

IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY TO IMPLEMENT
AN INFRASTRUCTURE INVESTMENT PROGRAM ("IIP") AND ASSOCIATED RECOVERY
MECHANISM PURSUANT TO N.J.S.A. 48:2-21 AND N.J.A.C. 14:3-2A
DOCKET NO. GR18101197

Procedural Schedule⁶

February 20, 2019	Second round discovery served
March 7, 2019	Responses to second round discovery
March 19 and 20, 2019	Public hearings in Union and Flemington, New Jersey, at 4:30 p.m. and 5:30 p.m. and 5:00 p.m. and 6:00 p.m., respectively
Week of March 25, 2019	Discovery conference/settlement conferences
April 18, 2019	Rate Counsel/Intervenor direct testimony
April 26, 2019	Discovery requests on Rate Counsel/Intervenor direct testimony
May 10, 2019	Responses to discovery requests on Rate Counsel/Intervenor direct testimony
May 28, 2019	Rebuttal testimony
June 7, 2019	Discovery requests on rebuttal testimony
June 17, 2019	Responses to discovery on rebuttal testimony discovery
Week of June 24, 2019	Settlement conferences
July 17-19, 2019	Evidentiary hearings, with live surrebuttal, subject to the Commissioner's availability
July 31, 2019	Initial briefs
August 13, 2019	Reply briefs

⁶ Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4, subject to the scheduled end dates. The aforementioned dates are subject to modification by the presiding Commissioner. The parties on the service list will be notified accordingly.