



Agenda Date: 01/19/11

Agenda Item: 2M

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

DIVISION OF ENERGY AND  
OFFICE OF CLEAN ENERGY

**DECISION AND ORDER ADOPTING**  
**STIPULATION**

IN THE MATTER OF THE PETITION OF )  
PIVOTAL UTILITY HOLDINGS, INC. d/b/a )  
ELIZABETHTOWN GAS TO REVISE ITS )  
REGIONAL GREENHOUSE GAS INITIATIVE ) DOCKET NO. GO10070446  
RIDER RATE )  
)

IN THE MATTER OF THE PETITION OF )  
PIVOTAL UTILITY HOLDINGS, INC. d/b/a )  
ELIZABETHTOWN GAS FOR AUTHORITY TO )  
EXTEND THE TERM OF ENERGY )  
EFFICIENCY PROGRAMS WITH CERTAIN )  
MODIFICATIONS AND APPROVAL OF )  
ASSOCIATED COST RECOVERY MECHANISM ) DOCKET NO. GO10100735  
AND DEFERRAL ACCOUNTING TREATMENT )  
)

Deborah Franco, Esq., Cullen and Dykman LLP, Garden City, NY, for the Petitioner

Mary Patricia Keefe, Esq., Elizabethtown Gas Company, Berkeley Heights, NJ, for the Petitioner

Paul Flanagan, Esq., Deputy Rate Counsel, Felicia Thomas-Friel, Esq., Deputy Rate Counsel, Kurt Lewandowski, Esq., Assistant Deputy Rate Counsel, New Jersey Division of Rate Counsel (Stefanie A. Brand, Esq., Director)

Kerri Kirschbaum, Esq., Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

By Order dated August 3, 2009 in Docket Nos. EO09010056 and GO09010060 ("August 3 Order"), the New Jersey Board of Public Utilities ("Board") approved a Stipulation of the parties establishing six (6) enhanced energy efficiency programs ("EE Programs") for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company ("ETG" or "Company") to be implemented for

a 17-month period ending December 2010. The total program expenditures approved by the Board was \$14,673,100, consisting of program investments of \$13,353,100 and operating and maintenance ("O&M") expenses of \$1,320,000. The costs for the six EE Programs are recovered through the implementation of the Regional Greenhouse Gas Initiative ("RGGI") Rider rate, which was initially set at \$0.0081 per therm and assessed to all of the Company's service classification customers. The EE Programs comprise the following:

1. Whole House Energy Efficiency Program
2. Residential Expanded Gas Heating Ventilation and Air Conditioning ("HVAC") and Gas Hot Water Heater Incentive Program
3. Small Commercial Customer Energy Efficiency Program
4. Large Commercial Customer Energy Efficiency Program
5. Combined Heat and Power Program
6. Gas Cooling Program

In accordance with the August 3 Order, on July 1, 2010, ETG filed a petition in Docket No. GO10070446 to reconcile EE Program costs and recoveries for the period commencing August 3, 2009 through June 30, 2010, and to recover the projected EE Program related revenue requirements for the period October 1, 2010 through September 30, 2011 via the RGGI Rider surcharge ("2010 RGGI Rider True-Up"). The 2010 RGGI Rider True-Up filing proposes a decrease in the Company's RGGI Rider rate from \$0.0081 per therm to \$0.0007 per therm, inclusive of all taxes.

On October 4, 2010, the Board received ETG's petition in Docket No. GO10100735 requesting that the Board extend the term of the Company's six EE Programs for a three-year period commencing on January 1, 2011 and ending on December 31, 2013 under terms and conditions substantially similar to those approved in August 3 Order with certain limited modifications ("October 1 Petition"). The October 1 Petition requested authority to recover all EE Program costs incurred during the extension period through the RGGI Rider surcharge, to include these costs for recovery in its next annual RGGI Rider true-up filing and, to the extent necessary, to utilize deferred accounting for all costs related to the EE Programs until the filing of the Company's next annual RGGI Rider True-Up. Based on the subsequent financial data submitted by the Company, it was estimated that ETG would incur total Program expenditures of \$2,895,935 by the end of December 2010 (actual data from August 2009 through November 2010 and estimate in December 2010).

On November 3, 2010, Board Staff issued a letter informing the Company that its October 1 Petition was administratively complete and indicating that the Board's 180-day review period would commence on October 4, 2010. Thus, the 180-day review period ends on April 2, 2011.

Representatives of the Company, Staff, and the New Jersey Division of Rate Counsel ("Rate Counsel"), (collectively, the "Parties")<sup>1</sup>, have conducted discovery and engaged in discussions concerning the Company's October 1 Petition and 2010 RGGI Rider True-Up filing. However, the Parties did not reach a final resolution of the issues in the two petitions prior to the expiration date of the EE Programs. Thus, the Parties requested that the Board extend the EE Programs and grant additional time for further discussion towards a resolution of all issues. At its

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<sup>1</sup> While the Natural Resources Defense Council and the New Jersey Large Energy Users Coalition were intervenors in the original filing, neither signed the stipulation approved by the August 3 Order.

December 16, 2010 meeting, the Board authorized the Company to extend the term of the EE Programs to the first Board meeting in January 2011, and directed the Parties to continue their discussions with the anticipation that the issues will be resolved within a sufficient timeframe.

On January 12, 2011, the Parties entered into the attached Stipulation ("Stipulation")<sup>2</sup>.

### STIPULATION

The Parties have agreed to the following salient terms:

1. ETG is authorized to extend its EE Programs for a one year period ending on December 31, 2011. The EE Programs will continue under the same terms and conditions approved in the August 3 Order with no modifications other than those needed to conform to Board-approved New Jersey Clean Energy Program ("NJCEP") guidelines. The total EE program expenditures during the extension period is estimated at \$6.1 million.
2. ETG shall continue to recover through the RGGI Rider rate on a provisional basis, subject to reconciliation and refund, all EE Program costs, including, all reasonable and prudent program investments, such as rebates and customer financing costs and reasonable and prudent incremental O&M expense in accordance with the same terms and conditions as approved in the August 3 Order and all such costs incurred during the extension period will be reflected in the Company's next annual RGGI True-Up filing.
3. The Company's RGGI Rider rate shall be provisionally decreased from \$0.0081 per therm to \$0.0000, which will become effective upon the issuance of a Board order approving this Stipulation. The provisional RGGI Rider rate will decrease the monthly bill of a typical residential customer using 100 therms by \$0.81 from \$125.72 to \$124.91, a decrease of 0.6%. The 2010 RGGI Rider True-Up filing shall remain open for the purpose of reviewing the Company's EE Programs and finalizing the provisional RGGI Rider rate.
4. The Parties recognize the possibility of a Board proceeding to address the NJCEP transition process where the Board may issue an order or take some other action directing a termination of ETG's EE Programs. This recognition does not affect the legal rights of the Parties to pursue their then available legal remedies in any such proceeding or process and to take any position they deem appropriate at that time.
5. This proceeding shall remain open for the purpose of reviewing the balance of the Company's October 1 Petition. Within 60 days of the Board's approval of this Stipulation, the Company, if requested, will provide information to the Parties responsive to the Minimum Filing Requirements ("MFR") established by the Board's May 12, 2008 Order, Docket No. EO08030164, issued pursuant to N.J.S.A. 48:3-98.1(c) as it relates to the October 1 Petition to the extent such information was not previously provided. Within the 30 day period following the submission of such MFR information, the Parties will meet to develop a proposed procedural schedule which will work towards a resolution of the issues associated with proposed modifications to the Company's EE Programs.

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<sup>2</sup> Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusion in this Order.

DISCUSSION AND FINDINGS

The Board has carefully reviewed the record to date in these matters. Accordingly, the Board is satisfied and HEREBY FINDS that the Stipulation represents a fair and reasonable resolution of the issues and is in public interest. The Board HEREBY ADOPTS the attached Stipulation as its own, incorporating by reference its terms and conditions as if fully set forth herein. The Board HEREBY DIRECTS the Parties to comply with the terms and conditions incorporated within the Stipulation.

The Board recognizes that the Stipulation is responsive to and balances the respective needs of both the utility and its residential customers. The RGGI Rider rate change will decrease the average monthly bill of a typical residential customer using 100 therms by somewhat less than 1% while at the same time continuing to provide the benefits of the EE Programs.

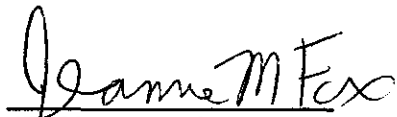
The Board HEREBY FURTHER DIRECTS the Company to file revised tariff sheets reflecting the terms and provisions of this Order within ten (10) days of the issuance of this Order. The provisional rate of \$0.0000 per therm authorized herein, which is subject to final review in the 2010 RGGI True-Up filing, shall be implemented for service rendered on and after the first day of the month following the date of this Board Order.

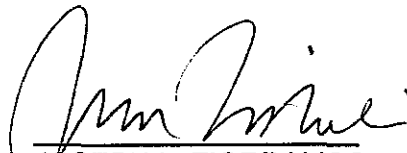
The Company's rates will remain subject to audit by the Board. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.

DATED: 1/19/11

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

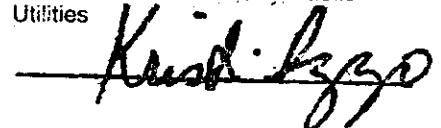
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

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



I/M/O THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A ELIZABETHTOWN GAS  
FOR AUTHORITY TO EXTEND THE TERM OF ENERGY EFFICIENCY PROGRAMS WITH  
CERTAIN MODIFICATIONS AND APPROVAL OF ASSOCIATED COST RECOVERY  
MECHANISMS AND DEFERRAL ACCOUNTING TREATMENT  
BPU DOCKET NO. GO10100735

I/M/O THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A ELIZABETHTOWN GAS  
TO REVISE ITS REGIONAL GREENHOUSE INITIATIVE RIDER RATE  
BPU DOCKET NO. GO10070446

SERVICE LIST

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January 13, 2011

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

Honorable Kristi Izzo, Secretary  
State of New Jersey  
Board of Public Utilities  
Two Gateway Center, Suite 801  
Newark, New Jersey 07102

**Re: In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a  
Elizabethtown Gas for Authority to Extend the Term of Energy Efficiency  
Programs with Certain Modifications and Approval of Associated  
Cost Recovery Mechanism and Deferral Accounting Treatment  
BPU Docket No. GO10100735**

**In the Matter of the Petition of Pivotal Utility Holdings, Inc. d/b/a  
Elizabethtown Gas to Revise its Regional Greenhouse  
Gas Initiative Rate  
BPU Docket No. GO10070446**

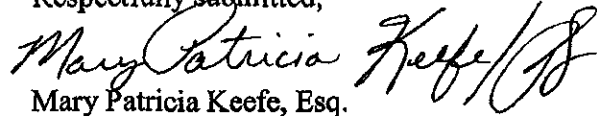
Dear Secretary Izzo:

Enclosed for filing are an original and ten copies of a Stipulation executed by representatives of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, Staff of the Board of Public Utilities ("Board") and the Division of Rate Counsel in the above-captioned matters. It is respectfully requested that the Stipulation be considered for approval at the Board's next regularly scheduled agenda meeting on January 19, 2011.

Honorable Kristi Izzo, Secretary  
January 13, 2011

Kindly acknowledge receipt and filing of the enclosures by date stamping the enclosed copy of this letter and returning it to us in the enclosed self-addressed and stamped envelope. Please contact the undersigned if you have any questions.

Respectfully submitted,



Mary Patricia Keefe, Esq.  
Vice President, Regulatory Affairs  
And Assistant Corporate Secretary

Enclosures

cc: Lee A. Solomon, President  
Nicholas V. Asselta, Commissioner  
Joseph L. Fiordaliso, Commissioner  
Jeanne M. Fox, Commissioner  
Elizabeth Randall, Commissioner  
Richard J. Jackson, Executive Director  
Jerome May, Director, Division of Energy  
Stefanie A. Brand, Director, Rate Counsel  
Service List (via electronic mail)



**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

-----X		<b>STIPULATIONS</b>
<b>In the Matter of the Petition of Pivotal</b>	:	
<b>Utility Holdings, Inc. d/b/a Elizabethtown</b>	:	
<b>Gas for Authority to Extend the Term of</b>	:	<b>EXTENSION OF TERM</b>
<b>Energy Efficiency Programs with Certain</b>	:	
<b>Modifications and Approval of Associated</b>	:	
<b>Cost Recovery Mechanism and Deferral</b>	:	
<b>Accounting Treatment</b>	:	<b>BPU Docket No. GO10100735</b>
-----X		
-----X		
<b>In the Matter of the Petition of Pivotal</b>	:	
<b>Utility Holdings, Inc. d/b/a Elizabethtown Gas</b>	:	<b>PROVISIONAL RATE</b>
<b>to Revise its Regional Greenhouse</b>	:	
<b>Gas Initiative Rate</b>	:	<b>BPU Docket No. GO10070446</b>
-----X		

**BACKGROUND**

On October 1, 2010, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or the "Company") filed a petition ("October 1 Petition") in BPU Docket No. GO10100735 requesting that the New Jersey Board of Public Utilities ("Board", "BPU") extend the term of the Company's six Energy Efficiency Programs ("EE Programs") for a three-year period commencing on January 1, 2011 and ending on December 31, 2013 under terms and conditions substantially similar to those approved in the Board's August 3, 2010 Order ("August 3 Order") in Docket Nos. EO09010056 and GO09010060 *et. al.*, with certain limited modifications. The October 1 Petition requested authority to recover all EE Program costs incurred during the extension period through the Regional Greenhouse Gas Initiative ("RGGI") Rider surcharge, the mechanism approved by the August 3 Order for recovery of EE Program costs, to include these costs

for recovery in its next annual RGGI Rider true-up filing and, to the extent necessary, to utilize deferred accounting for all costs related to the EE Programs until the filing of the Company's next annual RGGI Rider True-Up.

In accordance with the August 3 Order, on June 30, 2010, Elizabethtown filed a petition ("2010 RGGI Rider True-Up") in BPU Docket No. GO10070446 to reconcile EE Program costs and cost recoveries for the period commencing August 3, 2009 through June 30, 2010 and to recover the forecasted EE Program related revenue requirements for the period October 1, 2010 through September 30, 2011. This 2010 RGGI Rider True-Up filing which proposed a decrease in the Company's RGGI Rider rate from \$0.0081 per therm to \$0.0007 per therm, inclusive of all taxes, remains pending before the Board. The October 1 Petition did not propose to increase the Company's existing RGGI Rider rate at this time or to modify the rate proposed in the 2010 RGGI Rider True-Up.

On November 3, 2010, Board Staff issued a letter deeming Elizabethtown's October 1 Petition administratively complete pursuant to the provisions of the RGGI law and related Board orders, and also indicating that the Board's maximum 180-day review period would commence on October 4, 2010, the date the Board received the October 1 Petition. Representatives of Elizabethtown, the Board's Staff, and the Division of Rate Counsel ("Rate Counsel"), the only parties to this proceeding, have conducted discovery and engaged in discussions concerning the Company's October 1 Petition. As a result of these efforts, the Parties have reached this Stipulation.

Since the Parties were not able to reach a fair and reasonable resolution of all the issues, on December 16, 2010, the Board authorized the Company to extend the term of

the EE Programs to the first Board meeting in January 2011 and directed the Parties to continue their discussions.

### **STIPULATION**

Based upon and subject to the terms and conditions set forth herein, Board Staff, Rate Counsel, and Elizabethtown (hereinafter, collectively, the "Stipulating Parties") stipulate and agree as follows:

A. **Extension of EE Programs.** Elizabethtown is authorized to extend its EE Programs for a one year period commencing on January 1, 2011 and ending on December 31, 2011 ("Extension Period"). The EE Programs will continue under the same terms and conditions approved in the August 3 Order with no modification. However, modifications made to be consistent with any modifications to the Board-approved Clean Energy Programs Energy Efficiency Programs are permitted. Additionally, in order to be consistent with the energy efficiency programs administered by the Office of Clean Energy ("NJCEP"), the Stipulating Parties agree that the zero-percent financing incentive offered as part of Elizabethtown's "Whole House" Energy Efficiency Program will apply to the following Home Performance with Energy Star Tier 3 levels: (1) 20-25%; and (2) >25%). The projected cost of the extension of the EE programs for the one-year period proposed by the Company, commencing on January 1, 2011 and ending on December 31, 2011, amounts to \$6.1 million. The Stipulating Parties further agree that the EE Program costs incurred during the Extension Period will be subject to review, reconciliation and refund as set forth in paragraph B. below.

**B. Cost Recovery Mechanism.** Elizabethtown is authorized to continue to recover on a provisional basis, subject to review, reconciliation and refund, all categories of EE Program costs, including all reasonable and prudent program investments, such as rebates and customer financing costs, reasonable and prudent incremental O&M expenses in accordance with the same terms and conditions as approved in the August 3 Order. All such costs incurred during the extension period will be reflected in the Company's next annual RGGI Rider True-Up filing.

**C. Provisional RGGI Rider Rate.** The Company's RGGI Rider rate shall be provisionally decreased from \$0.0081 per therm to \$0.0000 per therm. This rate change is on a provisional basis, subject to refund with interest on net over and under-recoveries in accordance with the August 3 Order. The provisional RGGI Rider rate of \$0.0000 per therm shall be effective upon the issuance of a Board order approving this Stipulation or as otherwise provided by such Board order. This provisional RGGI Rider rate will decrease the monthly bill of a typical residential customer using 100 therms by \$0.81 from \$125.72 to \$124.91, a decrease of 0.6%. Attached as Appendix A is a proposed updated tariff sheet reflecting the provisional RGGI Rider rate of \$0.0000. The provisional RGGI Rider rate and the underlying program costs will be subject to review for reasonableness and prudence, with an opportunity for discovery, comments and an evidentiary hearing, if necessary, prior to the issuance of a final Board Order. The 2010 RGGI Rider True-Up proceeding shall remain open for the purpose of reviewing the Company's EE Programs and finalizing the Company's provisional RGGI Rider rate.

**D. NJCEP Transition.** The Stipulating Parties recognize the possibility of a Board proceeding to address the NJCEP transition process where the Board may issue an

order or take some other action directing a termination of Elizabethtown's EE Programs. This recognition does not affect the legal rights of the Stipulating Parties to pursue their then available legal remedies in any such proceeding or process and to take any position they deem appropriate at that time.

**E. Further Review.** This proceeding shall remain open for the purpose of reviewing the balance of the Company's October 1 Petition.. Within 60 days of the Board's approval of this Stipulation, if requested, Elizabethtown will provide the Stipulating Parties with the information set forth in the Minimum Filing Requirements ("MFR") established by the Board's May 12, 2008 Order issued pursuant to *N.J.S.A. 48:3-98.1(c)* as it relates to the October 1 Petition, to the extent such information was not previously provided. Within the 30 day period following the submission of such MFR information, the Stipulating Parties will meet to develop a proposed procedural schedule towards a resolution of the issues associated with the modifications to the Company's EE Programs proposed in the October 1 Petition.

**F. Procedural Requirements.** Any future petition for an extension in the duration of and/or budget increase for the EE programs must be filed as a new petition in accordance with the provisions of the Board's RGGI Order dated May 12, 2008 (BPU Dkt. No. EO08030164) and the August 3 Order, including but not limited to the submittal of all MFRs, no later than 180 days prior to the expiration date of the Extension Period.

**G. Entirety Of Stipulation.** This Stipulation is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues

addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in its Order in this matter, then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.

H. **Binding Effect.** It is the intent of the Stipulating Parties that the provisions hereof be approved by the Board. The Stipulating Parties further agree that they consider this Stipulation to be binding on them for all purposes herein.

I. **General Reservation.** It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein, is intended to be binding only in this proceeding and only as to the matters specifically addressed herein.

WHEREFORE, the Stipulating Parties hereto do respectfully submit this Stipulation to the Board and request the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof as soon as possible on an expedited basis to allow Elizabethtown's EE Programs to continue without interruption.

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

**STEFANIE A. BRAND,  
DIRECTOR, DIVISION OF  
RATE COUNSEL**

By: *Mary Patricia Keefe*  
**Mary Patricia Keefe, Esq.  
Vice President, Regulatory  
Affairs and Assistant Corporate  
Secretary**

By: \_\_\_\_\_  
**Kurt S. Lewandowski, Esq.  
Assistant Deputy Rate Counsel**

Dated: 1/12/2011

Dated: \_\_\_\_\_

**PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board of Public Utilities**

By: \_\_\_\_\_  
**Kerri Kirschbaum,  
Deputy Attorney General**

Dated: \_\_\_\_\_

**WHEREFORE**, the Stipulating Parties hereto do respectfully submit this Stipulation to the Board and request the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof as soon as possible on an expedited basis to allow Elizabethtown's EE Programs to continue without interruption.

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

**STEFANIE A. BRAND,  
DIRECTOR, DIVISION OF  
RATE COUNSEL**


By: \_\_\_\_\_  
**Mary Patricia Keefe , Esq. .  
Vice President, Regulatory  
Affairs and Assistant Corporate  
Secretary**

By:  \_\_\_\_\_  
**Kurt S. Lewandowski, Esq.  
Assistant Deputy Rate Counsel**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board of Public Utilities**

  
By: \_\_\_\_\_  
**Kerri Kirschbaum,  
Deputy Attorney General**

Dated: \_\_\_\_\_