



Agenda Date: 9/21/11

Agenda Item: 2S

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton NJ 08625-0350  
[www.nj.gov/bpu](http://www.nj.gov/bpu)

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL )  
HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS TO )  
1) REVISE ITS WEATHER NORMALIZATION CLAUSE )  
RATE; 2) REVISE ITS SOCIETAL BENEFITS CHARGE )  
RATE; AND 3) REVISE ITS ON-SYSTEM MARGIN )  
SHARING CREDIT RATE )

) DECISION AND ORDER  
) APPROVING STIPULATION AND  
) ADOPTING INITIAL DECISION  
) DOCKET NOS. GR07080645,  
) GR08090836, GR09080651

**Parties of Record:**

**Kenneth T. Maloney, Esq.**, Cullen and Dykman LLP, on behalf of Elizabethtown Gas Company  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

The Stipulation of Settlement in this Board Order is intended to resolve the issues relating to the three dockets identified above. Their procedural history is set forth below.

On August 29, 2006, Elizabethtown Gas Company ("the Company" or "Elizabethtown") filed a petition with the Board in Docket No. GR06080621<sup>1</sup> to revise its Weather Normalization Clause ("WNC") rate, its On-System Margin Sharing Credit ("OSMC") rate, and two components of its Societal Benefits Charge ("SBC") rate, namely, its Clean Energy Program ("CEP") rate and its Remediation Adjustment Clause ("RAC") rate.

The CEP was created as a result of the Electric Discount and Energy Competition Act in an effort to promote both energy efficiency and renewable energy programs. The \$0.0158 after-tax per therm rate was set to recover \$9.205 million in program costs.

<sup>1</sup> In the Matter of the Petition of Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas Company to Revise its 1) Weather Normalization Clause Rate; 2) Societal Benefits Charge Rate; 3) Transportation Initiation Clause Rate; and 4) On System Margin Sharing Credit, and to Make Changes in its Gas Tariffs Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, Docket No. GR06080621

The RAC allows the Company to adjust its rates to recover environmental remediation costs associated with its six former manufactured gas plant sites.

[In GR06080621 the RAC was also used to zero-out the remaining balances of two discontinued SBC components, namely, the Energy Education Clause ("EEC") and Interim Universal Service Fund ("USF-I").]<sup>2</sup> The combined impact of these adjustments translated to a credit to ratepayers of \$1.161 million, at an after-tax per therm rate of (\$0.0020).

The WNC normalizes the financial impact of weather conditions on both the Company and its weather-sensitive ratepayers. Variances in actual degree days from normal for each day are measured and accumulated over the calendar month for each month in the Winter Period (October through May). The resulting cumulative degree day variance determines the adjustment to customers' bills in the following Winter Period. Excess margin resulting from a colder than normal Winter Period is returned to ratepayers, while a short-fall from normal margin resulting from a warmer than normal Winter Period is recoverable by the Company. The \$0.0065 rate was established to recover \$2.084 million in margin deficiencies.

The OSMC provides for 80% of the margins generated from certain non-firm sales and transportation services to be credited to firm customers. The OSMC, as ordered in a prior Docket, was also used to zero-out the remaining balance of the discontinued over-recovered Transportation Initiation Charge ("TIC"). The adjusted OSMC of (\$5.449 million) translated to an after-tax per therm rate of (\$0.0172).

Representatives of the Company, Board Staff, and the Division of Rate Counsel ("Rate Counsel"), (collectively, "the Parties") reached a stipulation of settlement on May 5, 2008.

In their Stipulation, the Parties agreed that in future proceedings Staff and Rate Counsel had the right to investigate whether the Company had incurred or recovered any Natural Resource Damages ("NRD") related costs during the RAC recovery years commencing July 1, 2004. In addition, the Parties reserved the right to argue the recoverability through the RAC of 1) certain Rate Counsel-identified charges pertaining to the RAC recovery period July 1, 2004 through June 30, 2006, and possible adjustments stemming from a Staff audit of charges covering the period October 1, 1987 through June 30, 2006.

On May 7, 2008 Administrative Law Judge ("ALJ") Braswell approved the Stipulation, finding that it was entered into voluntarily, fully disposed of all issues in controversy, and was consistent with the law. In its Order dated July 30, 2008, the Board approved the following rates which are still in effect.

Current Rates - GR06080621			
Rate Category	\$ Per Therm	Rate Category	\$ Per Therm
SBC/CEP	\$0.0158	WNC	\$0.0065
SBC/RAC	(\$0.0020)	OSMC	(\$0.0172)

<sup>2</sup> The two other SBC components, the Permanent Universal Service Fund and the Lifeline rate, have charges set under separate Board Orders on a state-wide basis.

Docket No. GR07080645

On August 29, 2007, Elizabethtown filed its annual petition to be effective October 1, 2007 through September 30, 2008, in support of the following rates:

Proposed Rates - GR07080645			
Rate Category	\$ Per Therm	Rate Category	\$ Per Therm
SBC/CEP	\$0.0189	WNC	\$0.0155
SBC/RAC	(\$0.0051)	OSMC	(\$0.0208)

The revised CEP rate was based on projected program recoveries of approximately \$10.997 million. The RAC rate reflected recovery year charges of \$704,000, more than offset by prior years' over-recoveries (\$2.205 million), proceeds from the sale of the Butler Street site (\$391,000), the deposit received from the New Jersey Department of Transportation for the South Street land condemnation (\$158,000), and the elimination of USF-I and EEC balances (\$930,000).

The WNC rate reflected a margin deficiency of \$4.901 million planned to be recovered during the winter season, October 1, 2007 through May 31, 2008. This deficiency was traced to the combination of a 5% warmer than normal winter period ending May 31, 2007 (\$2.817 million) and the carry-over of the margin deficiency at May 31, 2006 of \$2.084 million.

The OSMC rate reflected program credits owed to ratepayers (\$5.675 million) and the over-recovered TIC balance at October 31, 2006 (\$804,000) closed out through the OSMC per the Order dated September 14, 2006 approving the Stipulation in Docket Nos. GR03100812<sup>3</sup> and GR04080871.

Docket No. GR08090836

On September 26, 2008, Elizabethtown filed its annual petition covering the period November 1, 2008 through September 30, 2009, in support of the following rates:

Proposed Rates - GR08090836			
Rate Category	\$ Per Therm	Rate Category	\$ Per Therm
SBC/CEP	\$0.0253	WNC	\$0.0269
SBC/RAC	(\$0.0081)	OSMC	(\$0.0292)

<sup>3</sup> In the Matter of the Petition of NUI Utilities, Inc., d/b/a/ Elizabethtown Gas Company to Revise its Societal Benefits Charge ("SBC") Rate, Weather Normalization Clause ("WNC") Rate, Transportation Initiation Clause ("TIC") Rate, and On-System Margin Sharing Credit ("OSMC"), Final Order in Docket Nos. GR03100812 and GR04080871

The proposed CEP rate of \$0.0253 was designed to recover \$13.385 million in program costs, comprised of \$2.490 million that was under-recovered at September 30, 2008, and \$10.895 million in funding for the program year ending September 30, 2009.

The RAC credit of (\$0.0081) reflected recovery-year charges of \$855,000, more than offset by prior years' over-recoveries (\$3.515 million), proceeds from the South Street land condemnation (\$262,000), and the elimination of the projected USF-I balance (\$1.407 million).

A WNC rate of \$0.0269 was proposed for the winter period 10/01/08 through 05/31/09 in order for the Company to recoup \$7.670 million in under-recoveries, with \$2.768 million relating to a 4.8% warmer than normal winter period ending 05/31/08, and recovery deficiencies traced to earlier dockets (\$4.902 million).

The OSMC credit was proposed at (\$0.0292), reflecting \$7.779 million in margins to be shared with firm sales and transportation customers.

Docket No. GR09080651

On July 31, 2009, Elizabethtown filed its annual petition in support of the following selected rates for the year ending September 30, 2010, in support of the following rates:

Proposed Rates - GR09080651			
Rate Category	\$ Per Therm	Rate Category	\$ Per Therm
SBC/CEP	\$0.0304	WNC	\$0.0153
SBC/RAC	(\$0.0040)	OSMC	(\$0.0273)

The CEP rate of \$0.0304 was based on actual program costs through June 30, 2009 and projected costs through June 30, 2010, and was designed to recover \$16.210 million in net program costs. The RAC credit rate of (\$0.0040) was based on over-recovered remediation costs through June 30, 2009 of \$2.131 million.

The WNC rate of \$0.0153 per therm reflected the actual results for the 2008 through 2009 winter period and prior period deficiency balances associated with the 2006–2007 and 2007–2008 winter periods. The prior period revenue deficiency balances were partially offset by the normalization adjustment relating to the 2008-2009 winter period which was 93 degree days (2.0%) colder than normal. The proposed rate was designed to recover \$4.300 million tied to cumulative degree day differences at June 30, 2009.

The OSMC rate of (\$0.0273) was designed to credit \$7.397 million to firm sales and transportation customers for their share (80%) of actual and projected margins attributable to non-firm sales and transportation customers.

The Docket was transferred to the Office of Administrative Law ("OAL") for hearing as a contested case and assigned to Administrative Law Judge ("ALJ") Richard McGill.

Public hearings concerning the 2007 and 2008 Petitions were held in Rahway and Flemington on July 6, 2009 and August 5, 2009, respectively. Public hearings regarding the 2009 Petition were held on December 29, 2009 in Rahway and Flemington. No one from the public appeared.

The Parties conducted discovery and reached a Stipulation of Settlement on August 2, 2011. On August 31, 2011 ALJ McGill approved the Stipulation and found that it was entered into voluntarily, fully disposed of all issues in controversy and was consistent with the law.

#### **THE PROPOSED STIPULATION**<sup>4</sup>

- 1) A Board Order approving this Stipulation will become effective upon the service of said Board Order, or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.
- 2) The following rates, as filed in Docket No. GR09080651, are to be established as of the effective date of the Board Order in this matter, and remain in effect until changed by Order of the Board:
- 3) The Proposed Rates translate to a net annual revenue increase of \$5.6 million (v. current rates) as follows:

Annual Rev. Change v. Current Rates [GR06080621] <sup>5</sup>			
Rate Category	\$ Millions	Rate Category	\$ Millions
SBC/CEP	\$6.4	WNC	\$2.8
SBC/RAC	(\$0.9)	OSMC	(\$2.7)

- 4) All future annual RAC filings will be submitted on or about July 30, and separately from other SBC-component and OSMC and WNC filings.
- 5) The Company's first annual RAC petition following Board approval of the Stipulation will reflect a credit (a disallowance) of \$175,000.
- 6) In subsequent RAC dockets, the Company will be limited to seeking 75% of the costs incurred for third-party consultants to reassess forecasts and cost estimates of the Company's remediation liabilities. The Company is permitted to seek recovery of the remaining 25% through base rate filings.
- 7) All future annual RAC findings will include the information called-for in the "Minimum Filing Requirements" attached as Appendix A.

<sup>4</sup> Although summarized in this Order, the detailed terms of the stipulation control, subject to the findings and conclusions of this Order.

<sup>5</sup> Discrepancies between anticipated net recoveries to be generated by the Board-approved rates in GR06080621 approved July 30, 2008 vs. the Stipulation, signed August 2, 2011, are traced to updated sales forecasts.

8) Elizabethtown is required to defer 50% of Company-incurred costs to pursue third party claims, and may seek to recover the other half in the year they are incurred. Recoveries are to be applied initially to any deferred claim balance, with any remainder credited in the year recovered, as reflected in the tariff sheet attached as Appendix B.

9) Beginning with the RAC recovery year commencing July 1, 2011, Natural Resource Damages ("NRD") incurred by the Company are to be deferred with carrying costs, pending a decision by the Board as to whether such costs are recoverable through the RAC.

10) Upon the Board's approval of this Stipulation and the Stipulation pending Board approval in Audit A-2888, all issues relating to: (a.) RAC-recoverable costs for the years ending June 30, 2005 and June 30, 2006 and (b.) the recovery of costs from "LTM Environmental LLC" and "Lillian Morisi", a former employee familiar with the Company's RAC, for all years ending June 30, 2009, are finally resolved and no longer subject to audit.

11) All other RAC-related costs and issues for the years ending June 30, 2007, June 30, 2008 and June 30, 2009 are resolved for purposes of these proceedings but remain subject to audit by the Board. All costs and issues concerning the WNC, OSMC, and non-RAC components of the SBC are also resolved for these periods subject to audit by the Board.

#### **DISCUSSION AND FINDINGS**

The Board has reviewed the attached Initial Decision and Stipulation of the Parties in their entirety And HEREBY FINDS them to be reasonable and in the public interest. Accordingly, the Board HEREBY ADOPTS the Initial Decision and Stipulation as a final resolution in these proceedings and HEREBY ORDERS that, upon being properly served to the Parties of Record, the following after-tax per therm rates are as follows:


Rate Category	\$ Per Therm	Rate Category	\$ Per Therm
SBC/CEP	\$0.0304	WNC	\$0.0153
SBC/RAC	(\$0.0040)	OSMC	(\$0.0273)

The Board HEREBY FINDS that the tariff sheets, submitted as Appendix B to the Stipulation, conform to the terms and conditions of this Order.

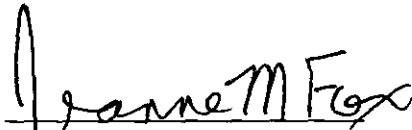
The Board FURTHER ORDERS that the Company's expenditures shall be subject to audit by the Board except for those RAC-related exclusions identified in the Stipulation, referenced as Item 10 above.

DATED: 9/22/11

BOARD OF PUBLIC UTILITIES  
BY:



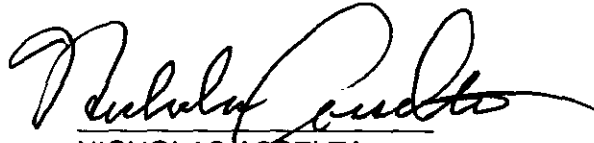
LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



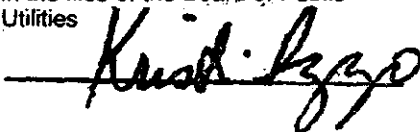
JOSEPH L. FIORDALISO  
COMMISSIONER



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



In the Matter of the Petition of Pivotal Utility Holdings, Inc.  
d/b/a Elizabethtown Gas Company to Revise its:  
Weather Normalization Clause Rate, Societal Benefits Clause Rate,  
and On-System Margin Sharing Credit Rate  
GR07080645, GR08090836 and GR09080651

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**  
**SETTLEMENT**

**IN THE MATTER OF THE PETITION OF  
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS TO (1)  
REVISE ITS WEATHER NORMALIZATION  
CLAUSE RATE; (2) REVISE ITS  
SOCIETAL BENEFITS CHARGE RATE;  
AND (3) REVISE ITS ON-SYSTEM  
MARGIN SHARING CREDIT.**

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OAL DKT. NO. PUC 1688-09  
BPU DKT. NO. GR07080645

**IN THE MATTER OF THE PETITION OF  
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS TO (1)  
REVISE ITS WEATHER NORMALIZATION  
CLAUSE RATE; (2) REVISE ITS  
SOCIETAL BENEFITS CHARGE RATE;  
AND (3) REVISE ITS ON-SYSTEM  
MARGIN SHARING CREDIT.**

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OAL DKT. NO. PUC 1689-09  
BPU DKT. NO. GR08090836

**IN THE MATTER OF THE PETITION OF  
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS TO (1)  
REVISE ITS WEATHER NORMALIZATION**

OAL DKT. NO. PUC 11615-09  
BPU DKT. NO. GR09080651

**CLAUSE RATE; (2) REVISE ITS  
SOCIETAL BENEFITS CHARGE RATE;  
AND (3) REVISE ITS ON-SYSTEM  
MARGIN SHARING CREDIT.**

**(CONSOLIDATED)**

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**Kenneth T. Maloney, Esq., and Deborah M. Franco, Esq.,** for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (Cullen and Dykman, attorneys)

**Mary Patricia Keefe, Esq.,** for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Alex Moreau, Deputy Attorney General,** for the Staff of the Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey, attorney)

**Paul Flanagan, Litigation Manager, Division of Rate Counsel, Felicia Thomas-Friel, Managing Attorney – Gas, Division of Rate Counsel, Sarah H. Steindel, Esq., Henry M. Ogden, Esq., and Judith B. Appel, Esq.,** Assistant Deputy Rate Counsels, Division of Rate Counsel (Stefanie A. Brand, Director, Division of Rate Counsel)

Record Closed: August 24, 2011

Decided: August 31, 2011

**BEFORE RICHARD MCGILL, ALJ:**

This consolidated proceeding involves three petitions by Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas to: (1) revise its Weather Normalization Clause ("WNC") rate; (2) revise its Societal Benefits Charge ("SBC") rate; and (3) revise its On-System Margin Sharing Credit ("OSMC"). The revisions to the SBC rate pertain to the Remediation Adjustment Clause ("RAC") and the New Jersey Clean Energy Program ("CEP").

The annual filings for 2007 and 2008 were transmitted to the Office of Administrative Law on February 9, 2009, for determination as contested cases. Duly noticed public hearings were held in Rahway, New Jersey, on July 6, 2009, and in Flemington, New Jersey, on August 5, 2009.

The annual filing for 2009 was transmitted to the Office of Administrative Law on October 7, 2009, for determination as a contested case. Public hearings in regard to the 2009 filing were held on December 29, 2009, in Flemington and Rahway, New Jersey. By Order dated April 13, 2010, the petition for 2009 was consolidated with the annual filings for 2007 and 2008.

Prior to hearing, the parties filed a Stipulation which resolves all issues in this proceeding. With respect to rates, the parties agreed as follows: (1) the WNC rate will be \$0.0153 per therm; (2) the RAC rate will be (\$0.0040) per therm; (3) the CEP rate will be \$0.0304 per therm; and (4) the OSMC rate will be (\$0.0273) per therm. For a residential heating customer using 1,200 therms, the annual increase will be \$12.74 or 0.9 percent. The revisions will produce a \$5.6 million increase in annual revenues. The parties have also agreed to various provisions related to future SBC and RAC filings.

Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 17:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the parties comply with the terms of the settlement, and it is **FURTHER ORDERED** that the proceedings in this matter be concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Aug. 31, 2011  
DATE

Richard McGill  
RICHARD MCGILL, ALJ

Date Received at Agency:

September 1, 2011

Date Mailed to Parties:  
jb

September 1, 2011

Spencer Sanders  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

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

-----X  
**In The Matter Of The Petition Of Pivotal Utility :**  
**Holdings, Inc. d/b/a Elizabethtown Gas To :**  
**(1)Revise its Weather Normalization Clause :** **BPU Docket No. GR07080645**  
**Rate; (2) Revise its Societal Benefits Charge :** **OAL Docket No. PUC 1688-2009-N**  
**Rate; and (3) Revise its On-System Margin :**  
**Sharing Credit :**

-----X  
**In The Matter Of The Petition Of Pivotal Utility :**  
**Holdings, Inc. d/b/a Elizabethtown Gas To :**  
**(1) Revise Its Weather Normalization Clause :** **BPU Docket No. GR08090836**  
**Rate; (2) Revise Its Societal Benefits Charge :** **OAL Docket No. PUC 1689-2009-N**  
**Rate; and (3) Revise its On-System Margin :**  
**Sharing Credit :**

-----X  
**In The Matter Of The Petition Of Pivotal Utility :**  
**Holdings, Inc. d/b/a Elizabethtown Gas To :**  
**(1) Revise Its Weather Normalization Clause :** **BPU Docket No. GR09080651**  
**Rate; (2) Revise Its Societal Benefits Charge :** **OAL Docket No. PUC 11615-2009-N**  
**Rate; and (3) Revise its On-System Margin :**  
**Sharing Credit :**

**STIPULATION**

**APPEARANCES:**

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Petitioner, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas  
**Mary Patricia Keefe**, Vice President for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Paul Flanagan**, Litigation Manager, Division of Rate Counsel, **Felicia Thomas-Friel**,  
Managing Attorney – Gas, Division of Rate Counsel, **Sarah H. Steindel, Esq., Henry M.**  
**Ogden, Esq., and Judith B. Appel, Esq.**, Assistant Deputy Rate Counsels, Division of Rate  
Counsel (Stefanie A. Brand, Director, Division of Rate Counsel)

**Alex Moreau**, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities  
(Paula T. Dow, Attorney General of New Jersey)

**To: Honorable Richard McGill**  
**Administrative Law Judge**

## BACKGROUND

### Docket No. GR07080645

1. On August 29, 2007, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company") filed a petition ("2007 Petition") in BPU Docket No. GR07080645 to revise its: (1) Weather Normalization Clause ("WNC") rate, (2) Remediation Adjustment Clause ("RAC") and the New Jersey Clean Energy Program ("CEP") rate components of the Societal Benefits Charge ("SBC") rate, and (3) On-System Margin Sharing Credit ("OSMC") to be effective October 1, 2007. The 2007 Petition proposed a WNC rate of \$0.0155 per therm, a RAC rate of (\$0.0051) per therm, a CEP rate of \$0.0189 per therm and an OSMC credit of (\$0.0208) per therm. The WNC was designed to recover a net WNC deficiency balance of \$4,901,318. The RAC rate was designed to provide a refund to customers of \$2,979,472 resulting from the prior year's over-recovery of RAC-related costs and the application of other associated credits. The RAC also included a proposed credit to reflect the appropriate sharing of the net proceeds associated with the sale of the Butler Street property in June 2007 and the ongoing condemnation of a portion of the South Street property.<sup>1</sup> The CEP rate was designed to recover \$10,996,911 in CEP-related costs, inclusive of the prior period under-recovery balances. The OSMC was designed to provide a credit to applicable customers of \$6,478,551. The Petition did not propose to adjust the Universal Service Fund ("USF") and Lifeline rate components of the SBC.

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<sup>1</sup> The Board approved the sale of the Butler Street property by Order dated March 22, 2007 ("March 22 Order") in Docket No. GM06100732. The March 22 Order directed the parties to that proceeding to address the issue of the appropriate rate treatment of the net proceeds in the Company's 2007 SBC filing.

**Docket No. GR08090836**

2. On September 26, 2008, Elizabethtown filed a petition ("2008 Petition") in BPU Docket No. GR08090836 to revise its: (1) WNC, (2) RAC and CEP rate components of the SBC, and (3) OSMC to be effective November 1, 2008. The 2008 Petition proposed a WNC rate of \$0.0269 per therm, a RAC rate of (\$0.0081) per therm, a CEP rate of \$0.0253 per therm and an OSMC of (\$0.0292) per therm. The WNC rate was designed to recover a net WNC deficiency balance of \$7,669,882. The RAC component was designed to refund a credit of \$4,329,262 in costs resulting from the prior and current year's accumulated over-collected balances. The RAC also included a credit to reflect the final amount due from the condemnation of a portion of the South Street property. The CEP rate was designed to recover \$13,385,259 in CEP-related costs, inclusive of the prior year's under-recovery balance. The OSMC was designed to provide a credit to applicable customers of \$7,779,116. The Petition did not propose to adjust the USF and Lifeline rate components of the SBC.

**Docket No. GR09080651**

3. On July 31, 2009, Elizabethtown filed a petition ("2009 Petition") in BPU Docket No. GR09080651 to revise its: (1) WNC rate, (2) RAC and CEP rate components of the SBC, and (3) OSMC to be effective October 1, 2009. The 2009 Petition proposed a WNC rate of \$0.0153 per therm, a RAC rate of (\$0.0040) per therm, a CEP rate of \$0.0304 per therm and an OSMC of (\$0.0273) per therm. The WNC rate was designed to recover a net WNC deficiency balance of \$4,299,845. The RAC rate was designed to provide customers with a credit of \$2,130,998 for RAC-related costs associated with the prior and the current period overrecovery balances. The CEP rate was designed to recover \$16,209,887 in CEP-related costs, inclusive of prior period overrecovery

balances. The OSMC was designed to provide a credit to applicable customers of \$7,397,183. The Petition did not propose to adjust the USF and Lifeline rate components of the SBC.

4. The 2007, 2008 and 2009 Petitions were transmitted to the Office of Administrative Law. Duly noticed public hearings concerning the 2007 and 2008 Petitions were held in Rahway, New Jersey on July 6, 2009 and in Flemington, New Jersey on August 5, 2009. Public hearings concerning the 2009 Petition were held December 29, 2009 in Flemington and Rahway, New Jersey. Subsequently, the parties to these proceedings, Elizabethtown, Board Staff and the Division of Rate Counsel ("Rate Counsel") conducted discovery and held various discovery and settlement conferences. On April 11, 2011, Rate Counsel submitted the testimony of Richard W. LeLash to address issues concerning the Company's RAC rate and the Company submitted rebuttal testimony on May 9, 2011. Thereafter the parties met to discuss the matters at issue in these proceedings. As a result of these meetings, Board Staff, Rate Counsel and Elizabethtown (the "Stipulating Parties") have reached this Stipulation which is intended to resolve all issues associated with the 2007, 2008 and 2009 Petitions in the manner set forth below.

#### **STIPULATED MATTERS**

The Stipulating Parties hereby **STIPULATE AND AGREE** as follows:

##### **Effective Date**

5. The Effective Date of this Stipulation will coincide with the date on which a Board Order in these proceedings has been properly served on the parties of record or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.

##### **Effective Rates**

6. As of the Effective Date, Elizabethtown will make the following WNC, SBC components and OSMC rates as filed in 2009 Petition effective:



<b>WNC</b>	<b>\$0.0153 per therm</b>
<b>SBC - RAC</b>	<b>(\$0.0040) per therm</b>
<b>SBC - CEP</b>	<b>\$0.0304 per therm</b>
<b>OSMC</b>	<b>(\$0.0273) per therm</b>

The rates established herein shall remain in effect until changed by order of the Board.

7. The WNC rates have been computed for each applicable period using Degree Day Consumption Factors ("Factors") that were submitted with the Company's 2007, 2008 and 2009 Petitions. This Stipulation resolves all issues with respect to these proposed revised Factors. By Order dated July 30, 2008 in the Board's Docket No. GR06080621, the Company was permitted a one-time opportunity to continue the WNC rate established in that docket in effect as necessary to eliminate a WNC underrecovery balance. As of the effective date of this Stipulation, the Company will charge the WNC only in the winter months, October through May, as provided in the Company's tariff at Sheet No. 103 and will commence charging the \$0.0153 per therm WNC rate on the later of October 1, 2011 or the Effective Date of the Stipulation. The Company's tariff will be modified as reflected in Appendix B to reflect this agreement.

8. The current USF rate of \$0.0142 and Lifeline rate of \$0.0052 per therm approved by the Board in BPU Docket No. GR10060436 on October 20, 2010 are not affected by this Stipulation. Approval of this Stipulation will result in a total SBC rate of \$0.0458 per therm, inclusive of the RAC, CEP, USF and Lifeline rate components.

**Rate Impact**

9. The annual bill impact of the stipulated WNC, CEP, RAC and OSMC rates on a typical residential heating customer using 1,200 therms is an increase of \$12.74 or 0.9% as compared to the Company's currently effective rates. The proposed rates will increase Elizabethtown's annual revenues by approximately \$5.6 million based on the Company's most recent therm forecast which excludes wholesale generators from the SBC. A breakdown of these revenues at current billing

determinants calculated in accordance with N.J.S.A. 48:3-60.1 associated with the Long-Term Capacity Agreement Pilot Program (LCAPP) legislation, P.L. 2011, c. 9 signed into law on January 28, 2011 is as follows:

<b>Component Rates</b>	<b>Revenue At Current Rates</b>	<b>Revenue at Stipulated Rates</b>
CEP	\$7.1	\$13.5
RAC	(\$0.9)	(\$1.8)
OSMC	(\$4.6)	(\$7.3)
WNC	\$2.1	\$4.9
	<u>\$3.7</u>	<u>\$9.3</u>

**\* based on applicable annual terms**

**Future SBC/RAC Filings**

10. Commencing with the first annual RAC reconciliation petition following execution of this Stipulation, the Company will file all future annual RAC reconciliation petitions at approximately the same time, but separate from, the OSMC, WNC and the CEP reconciliation petitions on or about every July 30<sup>th</sup>.

11. The Company's first annual RAC reconciliation petition following Board approval of this Stipulation will include a credit to the RAC balance of \$175,000 to reflect the disallowance ("Disallowance) of RAC-related costs agreed to by the Stipulating Parties in this proceeding. The Disallowance is incremental to the \$183,536.33 disallowance agreed to in the Stipulation dated October 18, 2010 between the Company and the Board's Audit Staff which is pending Board approval in Audit A-2888. The Stipulating Parties' agreement to this Stipulation is contingent on the Board's prior or contemporaneous approval of the Stipulation between Staff and Elizabethtown in Audit A-2888 relating to the period October 1, 1987 and June 30, 2006.

12. Commencing with the RAC recovery year beginning July 1, 2011 and all future RAC recovery years thereafter, the Company will be permitted to seek to recover through the RAC 75% of the costs incurred from third party consultants to reassess forecasts and costs estimates of the Company's remediation liabilities. The Company will absorb the remaining 25% of such costs until such time as it files new base rates, at which time the Company will be permitted to seek prospective recovery of 25% of any reasonable costs associated with preparing such forecasts and cost estimates in base rates.

13. The Company will provide the information set forth in the Minimum Filing Requirements ("MFRs") attached hereto as Appendix A and made a part of this Stipulation, in all future annual RAC reconciliation petitions. At a minimum, the Company will provide hard copies of the future petitions and the MFRs to the Board, Rate Counsel and the consultant(s) designated by Rate Counsel.

**Accounting and Deferrals**

14. Under the RAC-related provisions of Elizabethtown's tariff, reflected in the attached tariff sheet, when the Company incurs costs to pursue third party claims, it is required to defer 50% of such costs in the aggregate and may seek to recover 50% of such costs in the year they are incurred. When the Company obtains a recovery from any third party as reflected in the tariff sheet attached as Appendix B, the Company is required first to apply the recovery to the then-existing balance of deferred third party claims costs and then to credit any remaining balance to the RAC in the year it is recovered. The Stipulating Parties agree that the Company will not be required to account for the costs of third party claims on a claim-by-claim basis. The Company's tariff will be modified as reflected in Appendix B to reflect this agreement.

15. Natural Resources Damages (“NRD”)-related costs, as defined below, that are incurred by the Company during all future RAC recovery years commencing July 1, 2011 will be deferred with carrying costs using the interest rate applicable to the RAC pending a decision by the Board as to whether such costs are recoverable through New Jersey utility RAC surcharges. NRD-related costs are defined as compensation to the State of New Jersey for injury to its natural resources, above and beyond costs incurred to investigate, contain or remediate former manufactured gas plant sites. “NRD-related costs” also include any administrative, legal or consulting costs incurred by the Company associated with NRD claims being investigated by the New Jersey Department of Environmental Protection (“NJDEP”), as well as any amounts paid by the Company to resolve such claims. The Stipulating Parties agree, in the interest of compromise and solely for the purpose of this Stipulation, that the Company is not required to reflect any deferrals of any costs incurred prior to June 30, 2009 as NRD-related costs. The Stipulating Parties specifically agree and understand that the Company shall have the burden of proving that any NRD-related costs incurred or deferred after the RAC year ending June 30, 2009 are properly recoverable through the RAC or such other rate mechanism as the Board should determine.

**All Issues Resolved**

16. Upon the Board’s approval of this Stipulation and the stipulation pending Board approval in Audit A-2888, (i) all issues related to RAC recoverable costs for the years ending June 30, 2005 and June 30, 2006 are finally resolved and no longer subject to audit by the Board, and (ii) all issues related to the recovery of costs from “LTM Environmental LLC”, an external consulting firm, and “Lillian T. Morisi”, a former employee familiar with the Company’s RAC, for all years ending June 30, 2009 are finally resolved and no longer subject to audit by the Board.

17. All other RAC-related costs and issues for the years ending June 30, 2007, June 30, 2008 and June 30, 2009 are resolved for purposes of these proceedings, but remain subject to audit by the Board. All costs and issues concerning the WNC, OSMC and non-RAC components of the SBC, including the CEP, are also resolved for these periods subject to audit by the Board.

**Further Provisions**

18. 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 Administrative Law Judge or the Board, then any Stipulating 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. In the event this Stipulation is not adopted in its entirety by the Board in its Order in this matter, then any Stipulating 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.

19. It is the intent of the Stipulating Parties that the provisions hereof be approved by the Board, as appropriate, as being in the public interest. The Stipulating Parties further agree that they consider this Stipulation to be binding on them for all purposes herein.

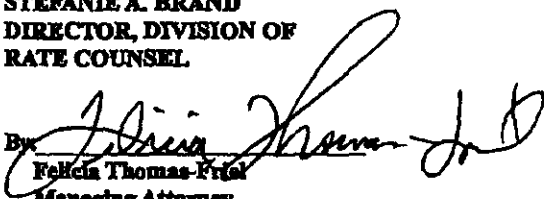
20. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein, is intended to be binding only in this proceeding and only as to the matters specifically addressed herein.

WHEREFORE, the Stipulating Parties hereto do respectfully submit this Stipulation to the Presiding Administrative Law Judge and request (1) the Administrative Law Judge to issue an initial decision approving the Stipulation; and (2) the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof.

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

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

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

By:   
**Felicia Thomas-Friel  
Managing Attorney**

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

By:   
**Alex Moreau, DAG**

Dated: August 2, 2011

# **Appendix A**

**APPENDIX A**  
**Elizabethtown Gas Company**  
**Proposed RAC Minimum Filing Requirements**  
**June 1, 2011**

- MFR-1        Please provide a vendor listing for the prior RAC period that contains information concerning vendor expenditures by MGP site, also showing a description of the services provided and the amount of each vendor invoice. The vendor list should include the monthly actual expenditures for the twelve month RAC period.
- MFR-2        Identify the three MGP sites with the highest level of expenditures during the prior RAC period. For each identified site, provide a copy of the latest work plan, remediation report, or major work product submitted to the NJDEP. The copies should include the narrative portion of the report or work plan but need not include the technical supporting workpapers, charts and tables.
- MFR-3        For each of the same three MGP sites, provide all correspondence between the Company and the NJDEP concerning submissions for the site, reply comments, and other major items which have a material impact on remediation activities and associated costs incurred by the Company. The correspondence should span the twelve months of the most recent RAC period.
- MFR-4        For each of the same three MGP sites, provide expense documentation for any contractor or supplier whose invoices for the RAC period exceed \$250,000 in aggregate. The expense documentation should include descriptions of services rendered, applicable invoices, and any tracking of invoiced charges vs. budgets. The expense detail need not include expense reports or time sheets, but it should include supporting documentation for any subcontractor and third party expenses totaling \$100,000 or more for the period.



- MFR-5. For each of the same three MGP sites, provide a narrative description and organization chart for that site, showing the vendors and project control structure for the remediation effort. The response should show what entities supervise all significant contractors and subcontractors and which Company personnel are involved in site and remediation supervision and control.
- MFR-6. Provide a detailed narrative describing Company activities and any reimbursements related to insurance claims or potentially responsible parties' liabilities for all of the Company's MGP sites. The narrative, with supporting documentation, should cover the prior RAC period. In addition, the Company should provide a listing of all insurance reimbursements received from each insurance company through the end of the year covered by the filing, but need not disclose any insurance company's identity.
- MFR-7. Provide copies of any RAC audit reports or related materials prepared by the Board's Audit Staff, FERC, or the Company's internal or external auditors during the previous twelve months. To the degree applicable, please also provide any materials prepared in response to the audits or in compliance with any audit findings.
- MFR-8. Provide a narrative concerning all material events, whether related to NJDEP mandates or not, which could have an impact on the Company's ultimate MGP remediation liability, with claimed confidential information provided pursuant to a confidentiality agreement. The narrative should encompass all sites, whether or not active remediation efforts on the site are under way.
- MFR-9. Provide schedules and supporting workpapers and documents, which show the reconciliation of the prior period RAC expenditures and recoveries as well as the derivation of the deferred tax credit and the interest accrual on any unamortized balances.

- MFR-10. Provide the Company's bid evaluation studies, reports, workpapers or other material related to the two largest MGP remediation contracts awarded during the previous RAC period. The response should include the criteria utilized for bid evaluation and the comparisons between the terms and conditions offered by the competitive bidders.
- MFR-11. Provide documentation relating to the two largest supplemental contract amendments authorized by the Company during their previous RAC period. The response should provide the contractor's request for supplemental funding, the reasons cited for the request, and the Company's evaluation and action taken concerning the request.
- MFR-12. Provide documentation relating to any instances during the previous RAC period where the Company sought to modify, change, or eliminate the NJDEP site remediation requirements for any of its MGP sites. The response should provide copies of any such Company requests, the NJDEP responses, and the ultimate outcome concerning the requests.
- MFR-13. Provide a calculation of the carrying costs that the Company seeks to recover in its filing, including workpapers and supporting documentation.
- MFR-14. The Company currently provides a schedule that summarizes the expenditures incurred by major cost category by site on a quarterly basis. These data will be reported with its annual filing.
- MFR-15. For each of the Company's MGP sites, provide a schedule showing the status of the remediation effort and estimated dates for the completion of remaining milestones, along with a discussion of major remediation problems. The parties understand that the timeframes to complete the remediation efforts are subject to a great deal of uncertainty due to factors beyond the Company's control.

- MFR-16. Provide an update concerning the status of discussions with the NJDEP concerning its NRD initiative as well as any other NRD-related activities, with claimed confidential information provided pursuant to a confidentiality agreement. Such update will include information about NRD-related expenditures during the prior RAC period and related documentation, as well as total NRD-related expenses deferred to date.
- MFR-17. Provide information about unreasonable delays in remediation efforts caused by the inability to obtain requisite approvals, clearances or other rights from the NJDEP, local authorities or property owners, or other circumstances that are unduly impeding remediation efforts. The Company will address issues that are outside of the ordinary experience for these matters.
- MFR-18. Provide details concerning all remediation related charges to the Company from or through AGLR and its affiliates for the past RAC period. The response should show amounts by month, by entity, and should describe the nature of services provided.

# **Appendix B**

ELIZABETHTOWN GAS  
B. P. U. NO. 14 – GAS  
CANCELLING  
B. P. U. NO. 13 – GAS

REVISED SHEET NO. 103

RIDER "B"  
WEATHER NORMALIZATION CLAUSE ("WNC")

Applicable to all customers in service classifications RDS, SGS and GDS except for GDS customers during the months of October and May under Special Provision 2.

October 1, 2011 through May 31, 2012      \$0.0153 per therm

June 1, 2012 through September 30, 2012      \$0.000 per therm

In accordance with P.L. 1997, c. 162, the charges applicable under this Rider include provision for the New Jersey Sales and Use Tax, and when billed to customers exempt from this tax shall be reduced by the amount of such tax included therein. In the winter months, October through May, a weather normalization charge shall be applied to the rate quoted in this Tariff under the service classifications shown above, except as may be otherwise provided for in the individual service classification. The weather normalization charge applied in each winter period shall be based on the differences between actual and normal weather during the preceding winter period.

METHOD OF DETERMINING WEATHER NORMALIZATION CHARGE:

The weather normalization charge shall be determined as follows:

I. Definition of Terms as Used Herein

1. Degree Days (DD) - the difference between 65°F and the twenty-four point average temperature for the day, as determined from the records of the National Oceanic and Atmospheric Administration (NOAA) at its weather observation station located at Newark International Airport, when such average falls below 65°F. A day is defined as a period corresponding with the Company's gas sendout day of 10 am to 10 am. The eight temperature observations for a day shall be 10 am, 1 pm, 4 pm, 7 pm, 10 pm, 1 am, 4 am, and 7 am.

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Date of Issue:

Effective: Service Rendered  
on and after

Issued by: Jodi Gidley  
Sr. Vice President, Mid-Atlantic Operations  
300 Connell Drive, Suite 3000  
Berkeley Heights, New Jersey 07922

Filed Pursuant to Order of the Board of Public Utilities  
Dated in Docket No.

ELIZABETHTOWN GAS  
B. P. U. NO. 14 – GAS  
CANCELLING  
B. P. U. NO. 13 – GAS

REVISED SHEET NO. 108

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RIDER "C"

ON-SYSTEM MARGIN SHARING CREDIT ("OSMC")

Applicable to all Service Classifications that pay the BGSS of Rider A and RDS customers that receive gas supply from a TPS in accordance with the Board's Order in Docket No. GO99030122 .

The OSMC is subject to change to reflect the Company's actual recovery of such margins and shall be adjusted annually in its BGSS filing.

(\$0.0273) per therm

In accordance with P.L. 1997, c. 162, the charges applicable under this Rider include provision for the New Jersey Sales and Use Tax, and when billed to customers exempt from this tax shall be reduced by the amount of such tax included therein.

Determination of the OSMC

On or about July 31 of each year, the Company shall file with the Board an OSMC rate filing based on the credits generated from on-system margin sharing during the previous OSMC year July 1 through June 30.

The OSMC shall be calculated by taking the current year's credits, plus the prior year's OSMC over or under recovery balance and dividing the resulting sum by the annual forecasted volumes for the service classifications set forth above. The resulting rate shall be adjusted for all applicable taxes and assessments.

---

Date of Issue:

Effective: Service Rendered  
on and after

Issued by: Jodi Gidley  
Sr. Vice President, Mid-Atlantic Operations  
300 Connell Drive, Suite 3000  
Berkeley Heights, New Jersey 07922

Filed Pursuant to Order of the Board of Public Utilities  
Dated in Docket No.

ELIZABETHTOWN GAS  
B. P. U. NO. 14 – GAS  
CANCELLING  
B. P. U. NO. 13 – GAS

REVISED SHEET NO. 109

RIDER "D"

SOCIETAL BENEFITS CHARGE ("SBC")

Applicable to all tariff Service Classifications except those Customers under special contracts that explicitly do not permit the Company to apply increased charges or assessments as filed and approved by the NJBPU and those customers exempted pursuant to the Long-Term Capacity Agreement Pilot Program ("LCAPP"), P.L. 2011, c.9.

The SBC is designed to recover the (1) cost of Comprehensive Resource Analysis Programs that were approved by the Board pursuant to its Comprehensive Resource Analysis regulations prior to April 30, 1997, (2) cost of Manufactured Gas Plant Remediation, and (3) cost of Consumer Education and any other new programs which the Board determines should be recovered through the Societal Benefits Charge.

<u>SBC Rate Components:</u>		<u>Per Therm</u>
I.	New Jersey Clean Energy Program ("CEP")	\$0.0304
II.	Remediation Adjustment Charge ("RAC")	(\$0.0040)
III.	<u>Universal Service Fund and Lifeline:</u>	
	1. Universal Service Fund ("USF")	\$0.0142
	2. Lifeline	\$0.0052
	<b>TOTAL</b>	<u>\$0.0458</u>

In accordance with P.L. 1997, c. 162, the charges applicable under this Rider include provision for the New Jersey Sales and Use Tax, and when billed to customers exempt from this tax shall be reduced by the amount of such tax included therein.

I. New Jersey Clean Energy Program Component ("CEP")

The Comprehensive Resource Analysis ("CRA") name was changed to the Clean Energy Program - CEP per Board Order dated January 22, 2003 in Docket No. EX99050347 *et.al*. The CEP is a mechanism that will (1) establish a rate to recover the costs of the Core and Standard Offer Programs in the Company's CEP Plan which was approved by the Board of Public Utilities ("BPU") in Docket No. GE92020104, and (2) compensate the Company for the revenue erosion resulting from conservation savings created by the Standard Offer Program. The annual recovery period for the CEP is from October 1 through September 30. The CEP recovers program costs and revenue erosion incurred during the previous CEP year ended June 30.

1. CEP program costs include the costs of core programs, standard offer payments and any administrative costs not recovered directly from standard offer providers.

Date of Issue:

Effective: Service Rendered  
on and after

Issued by: Jodi Gidley  
Sr. Vice President, Mid-Atlantic Operations  
300 Connell Drive, Suite 3000  
Berkeley Heights, New Jersey 07922

Filed Pursuant to Order of the Board of Public Utilities  
Dated in Docket No.  
ELIZABETHTOWN GAS

B. P. U. NO. 14 – GAS  
CANCELLING  
B. P. U. NO. 13 – GAS

ORIGINAL SHEET NO. 113

RIDER "D"  
SOCIETAL BENEFITS CHARGE ("SBC")  
(continued)

II. Remediation Adjustment Clause Component ("RAC")

A. Definition of Terms Used Herein (continued)

6. Third Party Claims - all claims brought by the Company against any entity, including insurance companies, from which recoveries may be received and will be charged through the RAC factor as follows:
- a. Fifty percent of the reasonable transaction costs and expenses in pursuing Third Party Claims shall be included as Remediation Costs and shall be recovered as part of the Remediation Adjustment Clause. The remaining 50% shall be deferred.
  - b. In the event that the Company is successful in obtaining a reimbursement from any Third Party, the Company shall be permitted to retain the deferred 50% as specified in 5a. The balance of the reimbursement, if any, shall be applied against the Remediation Costs starting in the year it is received and will be amortized over seven years.
  - c. The Company is not required to account for transaction costs and expenses in pursuing third party claims on a claim-by-claim basis.
7. Deferred Tax Benefit (DTB) - the unamortized portion of actual remediation costs multiplied by the Company's effective statutory federal and state income tax rate, and the Interest Rate.

$$DTB_{n,yr} = ARC_n * [(7-X)/7] * IR_{yr} * TR_{yr}$$

$DTB_{n,yr}$  = Deferred Tax Benefit in recovery year (yr) to be subtracted from one seventh the amount of the remediation costs incurred in remediation year (n).

$ARC_n$  = Actual Remediation Costs incurred in remediation year (n).

X = Number of years that the ARC incurred in year n have been subject to amortization (X = 1,2,3,4,5,6)

$IR_{yr}$  = Interest Rate

$TR_{yr}$  = Effective combined Federal and State income tax rate.

Date of Issue: December 17, 2009

Effective: Service Rendered  
on and after December 17, 2009

Issued by: Jodi Gidley  
Sr. Vice President, Mid-Atlantic Operations  
300 Connell Drive, Suite 3000  
Berkeley Heights, New Jersey 07922



Filed Pursuant to Order of the Board of Public Utilities  
Dated December 17, 2009 in Docket No. GR 09030195