



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL)
UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN)
GAS FOR APPROVAL OF AN ACCELERATED)
INFRASTRUCTURE REPLACEMENT PROGRAM and)
AN ASSOCIATED COST RECOVERY MECHANISM)
ORDER DESIGNATING
COMMISSIONER AND
GRANTING MOTIONS TO
INTERVENE OR PARTICIPATE

DOCKET NO. GO12070693

Parties of Record:

Mary Patricia Keefe, Esq., on behalf of Pivotal Utilities Holdings, Inc., d/b/a Elizabethtown Gas
Steven S. Goldenberg, Esq., Fox Rothchild, LLP, on behalf of New Jersey Large Energy Users
Coalition and Paul F. Forshay, Esq.
Martin C. Rothfelder, Esq., PSE&G Services Corporation on behalf of Public Services Electric
and Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On July 24, 2012, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or the "Company") filed a petition requesting that the New Jersey Board of Public Utilities ("Board") approve the Company's Accelerated Infrastructure Replacement ("AIR") Program to invest no more than \$135 million in the Company's natural gas infrastructure over a period commencing in November 2012 and ending August 31, 2017, and to enhance the safety, reliability and integrity of the Company's distribution system. The Company maintains that the projects included in the proposed AIR Program are incremental to the Company's projected normal capital expenditures and do not duplicate any of the projects previously undertaken in connection with the Company's Utility Infrastructure Enhancement or other accelerated infrastructure programs. The Company proposes that it be given authority to spend between \$20 million and \$30 million in any particular year on AIR projects but not more than \$135 million during the five year term of the program.

Elizabethtown also seeks authority, in accordance with N.J.S.A. 48:2-21.1 and N.J.S.A. 48:2-21, to implement a cost recovery mechanism to enable the Company to recover the costs associated with the proposed AIR Program in a timely manner. According to the Company, the proposed cost recovery mechanism is similar to that presently in place and approved by the Board to permit recovery of Elizabethtown's cost of other accelerated infrastructure investments.

On September 13, 2012 Martin C. Rothfelder, Esq., on behalf Public Service Electric and Gas Company ("PSE&G"), filed a motion to participate in this matter pursuant to N.J.A.C. 1:1-16.6. According to the motion (1) PSE&G is a public utility in the State of New Jersey engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to more than 2,100,000 residential, commercial and industrial customers located within the State of New Jersey; (2) it is also engaged in the purchase, distribution, and sale of natural gas to more than 1,800,000 customers within the State of New Jersey; (3) the Board's decision in this proceeding could have precedential effect and impact upon New Jersey's other utilities including PSE&G and its customers and (4) no other party or participant will represent the interest of PSE&G. On September 21, 2012 Elizabethtown filed a notice with the Board that it did not oppose the motion of PSE&G to participate.

On September 28, 2012 Steven S. Goldenberg, Esq. Fox Rothschild LLP, on behalf of New Jersey Large Energy Users Coalition, ("NJLEUC") filed a motion to intervene in this matter pursuant to N.J.A.C. 1:1-16.1. The motion represented that:(1) NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities including Elizabethtown and to participate or intervene in regulatory and rate proceedings as needed to represent the interests of its members; (2) its members purchase natural gas service from Elizabethtown and that as large end- use customers on the Elizabethtown system its members will be directly and immediately affected by the infrastructure investment proposals and associated rate relief sought by Elizabethtown in this proceeding; (3) its interests in this matter are unique from and not adequately represented by any other party and (4) that its motion is timely and will not delay or otherwise disrupt the prosecution of this proceeding.

Also, on September 28, 2012, Mr. Goldenberg filed a motion for the admission *pro hac vice* of Paul F. Forshay, Esq. Mr. Goldenberg represented that (1), Mr. Forshay has an attorney client relationship with NJLEUC; (2) Mr. Forshay has significant experience representing the interests of large end-use customers and (3) he is a specialist in the field of law involved in this proceeding. Mr. Forshay represented that: (1) he is duly admitted to practice of law in the District of Columbia but not in the State of New Jersey (2) no disciplinary proceedings are pending against him and no discipline has previously been imposed in any jurisdiction, (3) he is a specialist in the field of law involved in this proceeding and he has an attorney client relationship with NJLEUC; (4) he has complied with the requirement of the New Jersey Lawyers Fund for Client Protection and paid fees required by R.1:2-1(b) and 1:28-2, and (5) he will comply with, consent to, give notices to the OAL as required and all papers filed with the OAL will bear the signature of the attorney of record. By letter dated October 2, 2012, Elizabethtown indicated that it had no objections to NJLEUC's motion to intervene and to the motion for admission *pro hac vice*.

DISCUSSION AND FINDINGS

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;
2. 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;
3. the prospect for confusion and delay arising from inclusion of the party, and
4. 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," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. 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, Docket No. EM05020106 (Order dated June 8, 2005).

As the members of NJLEUC who are customers of Elizabethtown will be directly affected by the outcome of this proceeding, the Board **HEREBY FINDS** that NJLEUC has met the standards for intervention as it is an interest in this proceeding. Accordingly, having received no objections the Board **HEREBY GRANTS** the motion for intervention of NJLEUC.

As PSE&G has a significant interest in the outcome of the proceeding the Board **HEREBY FINDS** that PSE&G has met the standards for participation in this proceeding. Accordingly, having received no objections the Board **HEREBY GRANTS** the motion for participation of PSE&G.

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

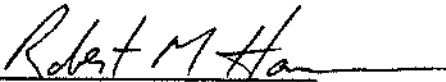
- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;

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

The Board **FURTHER FINDS** that this petition raises issues of fact and Board policy including the scope of the AIR Program, the manner of recovering the expenses thereof and the duration of the term of the program. Accordingly, the Board **HEREBY** retains this petition for review and hearing, and pursuant to N.J.S.A. 48:2-32, to develop a full record in this matter, **HEREBY APPOINTS** Commissioner Jeanne M. Fox as presiding officer with authority to rule on all motions that arise during the pendency of this proceeding and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

DATED: 5/29/13


BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

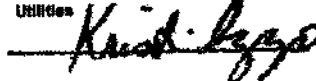

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY ANNA HOLDEN
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



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