



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

ENERGY

IN THE MATTER OF A PROCEEDING FOR
INFRASTRUCTURE INVESTMENT AND A
COST RECOVERY MECHANISM FOR ALL
GAS & ELECTRIC UTILITIES

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ORDER GRANTING
INTERVENTION AND
ADMISSION PRO HAC VICE

DOCKET NO. EO9010049

IN THE MATTER OF THE PETITION OF
PIVOTAL UTILITY HOLDINGS, INC. d/b/a
ELIZABETHTOWN GAS FOR APPROVAL OF A
UTILITY INFRASTRUCTURE ENHANCEMENT
COST RECOVERY RIDER

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DOCKET NO. GO09010053

(SERVICE LIST ATTACHED)

BY PRESIDENT JEANNNE M. FOX:

On January 20, 2009, Pivotal Utility Holdings, Inc. d/b/a/ Elizabethtown Gas Company ("Elizabethtown" or the "Company") submitted a petition for approval 1) to include in its tariff a Utility Infrastructure Enhancement Cost Recovery Rider ("Cost Recovery Rider") and 2) to establish an initial Cost Recovery Rider surcharge of \$0.0041 per therm, including taxes to be assessed to all of the Company's firm service classes. According to the petition, the proposed enhancement projects, all of which are outside of the scope of its projected normal capital expenditures, will significantly enhance the safety, reliability and integrity of the Company's distribution system. The Company estimates the total incremental capital investment over the two-year period the program would be in effect to be \$60.4 million. The Company estimates that the incremental projects will directly create approximately 70 additional jobs.

The Company estimates the proposed Cost Recovery Rider will result in a per therm surcharge of no more than \$0.0219 per therm during the course of the program. Annual revenue recoveries are estimated not to exceed \$8 million in any annual period. The impact of the initial proposed surcharge of \$0.0041 per therm on the typical residential heating customer would be

an increase of 0.2%. The Company proposes to revise the Cost Recovery Rider on April 1, 2010 and April 1, 2011 and would continue in effect until the Company's base rates are revised pursuant to its 2010 base rate case to be filed in the spring of 2009. The costs to be recovered under the Cost Recovery Rider will include return on and return of incremental investments and carrying costs on over or under recovery balances. The Company's current approved cost of capital initially will be used to calculate its revenue requirement.

By Order dated January 29, 2009, the Board determined that this matter should be retained by the Board for review and hearing, and, as authorized by N.J.S.A. 48:2-32, designated me as the presiding officer who is authorized to rule on all motions that arise during the proceeding and modify any schedule that may be set as necessary to secure just and expeditious determination of the issues

By letter dated February 11, 2009, Steven S. Goldenberg, Esq. filed a motion to intervene in this proceeding on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"). According to the motion, NJLEUC is an association of large volume customers which, among other things, monitors regulatory proceedings on behalf of its members, including those serviced by Elizabethtown. According to the motion, NJLEUC's members, as large end-use customers on the Elizabethtown system, will be directly and immediately affected by the infrastructure investments and associated rate relief requested by the petition. NJLEUC maintains that it has a unique perspective not otherwise represented, and its participation in this matter will constructively and measurably advance this proceeding as required by N.J.A.C. 1:1-16.3(a). NJLEUC also commits to working cooperatively with the other parties to this proceeding, to the extent possible.

Mr. Goldenberg has also moved pursuant to N.J.A.C. 1:1-5.2 and 1:21-2 for the admission *pro hac vice* of Paul F. Forshay, Esq. a member in good standing of the bar of the District of Columbia. Mr. Forshay filed an affidavit with the motion asserting that there is good cause for his admission since he has considerable experience representing marketers and large end users in proceedings before the Board and the Federal Energy Regulatory Commission, he has been requested by NJLEUC to appear in these proceedings, and that he is associated in this matter with Mr. Goldenberg who is New Jersey counsel of record. The affidavit also indicates that Mr. Forshay has satisfied all of the conditions for admission as set forth in R. 1:21-2(a), and that the fees required by R. 1:20-1(b) and 1:28-2 have been paid to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection.

No objections to the motions were received

FINDINGS and DISCUSSION

Pursuant to N.J.A.C. 1:1-16.3(a), to determine if a motion to intervene should be granted, the Board considers the nature and extent of the party's interest in the outcome of the investigation, and whether the party's interest is sufficiently different from that of other parties, whether inclusion will add constructively to the case; and whether intervention will confuse or delay the matter. Based on my review of the NJLEUC's motion to intervene and having received no objections after due notice to the parties, I HEREBY GRANT the motion provided that NJLEUC complies with the schedule previously adopted for this proceeding.

Based on review of the motion for admission *pro hac vice* of Mr. Forshay and the supporting affidavit, and no objections having been received, I FIND that Mr. Forshay has satisfied the

conditions for admission, and therefore, HEREBY GRANT the motion for admission to practice before the Board for this proceeding only, provided that Mr. Forshay shall:

- 1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- 2) submit proof of payment of the fees required by R.1:20-1(b) and 1:28-2;
- 3) 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 him that may arise out of his participation in this matter;
- 4) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- 5) have all pleadings, briefs and other papers filed with the Board signed by the 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 attorney admitted by this Order.

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

DATED: 2/25/09

BY:



JEANNE M. FOX
PRESIDENT

I/M/O PROCEEDING FOR INFRASTRUCTURE INVESTMENT AND A COST
RECOVERY MECHANISM FOR ALL GAS & ELECTRIC UTILITIES
BPU DOCKET NO. EO09010049

and

I/M/O INFRASTRUCTURE INVESTMENT AND A COST RECOVERY MECHANISM
FOR PIVOTAL UTILITY HOLDINGS, INC.
D/B/A ELIZABETHTOWN GAS COMPANY
BPU DOCKET NO. GO09010053

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