



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

AUDITS

IN THE MATTER OF THE FOCUSED AUDIT OF)
ELIZABETHTOWN GAS COMPANY, NUI)
UTILITIES, INC. AND NUI CORPORATION)

ORDER

DOCKET NO. GA03030213

BY THE BOARD¹:

At its March 20, 2003 agenda meeting, the Board of Public Utilities (“Board”) directed the initiation of a focused audit of Elizabethtown Gas Company (“Elizabethtown Gas”), a local gas distribution utility company (“utility”) included as a division of NUI Utilities, Inc. (“NUI Utilities”). The Board also initiated the focused audit to include NUI Utilities and its parent holding company, NUI Corporation (“NUI”), and all of its subsidiaries (collectively, all of the foregoing are at times referred to herein as “the company.”) The Board initiated the focused audit because credit downgrades of the senior unsecured debt of NUI and NUI Utilities, as well as concerns raised during a competitive services audit of Elizabethtown Gas in Docket No. GA02020099, substantiated the need for an in-depth review of the financial practices of the company and its affiliates. Subsequent to that action, Moody’s Investors Services downgraded NUI and NUI Utilities for the fourth time on May 7, 2003 and for the fifth time on October 10, 2003. The resulting Moody’s ratings, for both NUI and NUI Utilities, described the firms’ rated senior unsecured debt as “speculative grade,” also referred to as “below investment grade.”

As a result of the negative impact on the company arising from recent credit downgrades and adverse business conditions, NUI announced the sale of the company on September 26, 2003. On a going-forward basis, the Board is concerned with protecting Elizabethtown Gas, to the fullest extent possible, from any adverse effects caused by the financial situations of NUI and NUI Utilities. While the Board recognizes management’s authority to conduct its business affairs, it finds that in light of the above-referenced financial circumstances, the measures ordered below constitute an appropriate and necessary exercise of the Board’s authority under N.J.S.A. 48:2-1 et seq. Specifically, the Board’s authority in these circumstances is justified in order to ensure the utility has sufficient credit and financial resources available to purchase gas for its customers in the immediate future, to continue to make adequate investments, and to make sufficient operating and maintenance expenditures. The measures set forth below are necessary to ensure that customers continue to receive safe, adequate and proper service, and

¹ Commissioner Connie O. Hughes did not participate in this matter.

to provide sufficient insight into ongoing company operations to satisfy this Board that such service continues, despite ongoing financial concerns and NUI's efforts to position the company for sale. Moreover, to underscore the unusual circumstances here presented, on October 17, 2003, the Board of Public Utilities met in closed session with selected members of NUI's Special Committee of the NIU Board of Directors. This Order memorializes the Board's directives enunciated pursuant to that meeting.

Accordingly, the Board FINDS that it should order the measures set forth below in order to ensure the provision of safe, adequate and proper service to Elizabethtown Gas' customers at just and reasonable rates pending the sale of NUI and its subsidiaries, which, we note, will be subject to Board approval pursuant to N.J.S.A. 48:2-51.1 and such other provisions of N.J.S.A. 48:2-1 et seq. as may be applicable, or pending further order of the Board upon review of the focused audit, the competitive services audit, or as the Board may otherwise determine.

For the foregoing reasons, the Board HEREBY ORDERS:

1. NUI shall comply with the letter of October 10, 2003, from the Board's Secretary setting forth the Board's requirement that information be provided to the Board, concerning NUI's compensation packages. This information shall include, but not be limited to, insurance, deferred compensation, change in control agreements, retention bonuses and the impact if any, on the pension fund.
2. NUI shall insulate and protect Elizabethtown Gas utility employees and the affiliated companies during this transition period leading up to the sale of NUI, so that the utility can continue to function effectively. NUI shall provide, prior to instituting any job eliminations, except those positions that are being eliminated for cause, a detailed plan specifying all employee positions it plans to replace or eliminate in Elizabethtown Gas Company and in the affiliate companies providing services to Elizabethtown Gas utility. This plan shall include employee titles, responsibilities, and an explanation showing why replacement or elimination of the position is necessary and appropriate and its impact on the costs and quality of providing utility service.
3. NUI shall provide assurances that immediate and short-term liquidity needs of Elizabethtown Gas are finalized as soon as possible. NUI shall complete the successful development of an effective and accurate cash flow forecast immediately and provide to Board Staff or its designated representative, on a continuing basis, immediate access to the results of that model in order to verify the adequacy of resources to meet utility needs. NUI shall make available to Board Staff, or its designated representative, advance notice of any financing agreements, whether directly involving Elizabethtown Gas or not, in order to assure that the company does not impose any inappropriate constraints on utility financing and that the proceeds of any further financing appropriately consider utility needs, which include, but are not limited to, the repayment of inter-company receivables.
4. NUI shall provide the Board all information requested by it or its Staff, or its designated representative, including, but not limited to, direct contact with all outside pension benefits and funding advisors, in order to assess the sufficiency of pension and other post-retirement benefits plan funding before and after consideration of the effects of executive and management severance agreements made to date and to be made in the future, prior to the NUI sale.

5. NUI shall keep Board Staff, or its designated representative, informed on a continuing and immediate basis of the progress and results, including but not limited to, a copy of any interim and final report of the audit now being conducted by Price Waterhouse Coopers of transactions involving gas purchases.
6. NUI shall immediately amend its engagement agreement with FTI Consulting to make clear that FTI's role is solely to improve NUI's liquidity position and to assist in formulation of an effective cash flow model and to support efforts to secure financing, not to restructure, downsize or operate Elizabethtown Gas. NUI shall provide a copy of the agreement and any amendments to the Board.
7. The process for selling NUI shall be transparent, independent and timely. NUI shall provide the Board, Board staff, or its designated representatives, with detailed descriptions of the selection criteria and full justification for the selection of the investment-banking firm that will act as lead financial advisor on this sale.
8. Upon selection of an investment-banking firm to broker the sale, NUI shall advise the investment-banking firm that the Board believes that a utility corporate structure, which provides the maximum financial and credit insulation for the utility, is in the public interest. This preference shall be reflected in the review of all proposals to purchase NUI.
9. NUI shall present to this Board, within ten days of the date of this order, a detailed plan and schedule for preparing the company for sale, for operating it pending sale, and for conducting sale activities. NUI shall provide the Board with any amendments to same as they are entered into. NUI shall work with Board Staff, or its designated representatives, to identify the sale process activities that require monitoring and commit to cooperating with Staff and other Board representatives to assure that such monitoring takes place on a timely and effective basis.
10. Financial reporting and cash flow management shall be reliable and comply with all industry, regulatory and professional standards. Additionally, the company shall continue to implement cash segregation procedures. NUI remains subject to and shall comply with the Board's Order Authorizing Formation of a Holding Company, Docket No. GM00010067, dated February 20, 2001.
11. NUI and NUI Utilities shall not adopt the recommendations or advice of any of their consultants or advisors proposing any action affecting Elizabethtown Gas without full prior review by the Board Staff or its designated representatives.
12. NUI shall provide timely sharing of information with the Board, its Staff or its designated representatives on all corporate actions taken until the sale of NUI is completed.

13. NUI shall provide full disclosure to the Board of the circumstances leading to the amount of inter-company balances and a plan for full reimbursement of Elizabethtown's share of those balances in the event of a sale of NUI as currently planned, and in the event of a material delay in such a sale.

DATED: 10/30/03

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY