



Agenda Date: 12/17/09

Agenda Item: 21

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

ENERGY

IN THE MATTER OF THE PETITION OF)	DECISION AND ORDER
PIVOTAL UTILITY HOLDINGS, INC. d/b/a)	
ELIZABETHTOWN GAS TO REVISE ITS)	
INFRASTRUCTURE ENHANCEMENT)	BPU DOCKET NO. GR09110925
RATE)	

Kenneth T. Maloney and Deborah M. Franco (Cullen and Dykman LLP), Attorneys for the 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, Felicia Thomas-Friel, Deputy Public Advocates; Henry M. Ogden and Sarah H. Steindel, Assistant Deputy Public Advocates, Division of Rate Counsel (Ronald K. Chen, Public Advocate, Stefanie A. Brand, Director)

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Anne Milgram, Attorney General of New Jersey)

(SERVICE LIST ATTACHED)

BY THE BOARD:

On November 12, 2009, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company ("Elizabethtown," or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") requesting approval for an increase in its Utility Infrastructure Enhancement ("UIE") Rider rate, effective as of January 1, 2010. By this Decision and Order, the Board considers a stipulation ("Stipulation") entered into by Elizabethtown, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), and Board Staff, ("Staff") (collectively, the "Parties"), requesting Board approval of the increase in the UIE Rider rate on a provisional basis, subject to refund with interest as applicable to over collections as set forth in the April 28, 2009 Infrastructure Order ("April Order")¹

¹ I/M/O the Proceeding for Infrastructure Investment and a Cost Recovery Mechanism for All Gas and Electric Utilities and I/M/O the Petition of Pivotal Utility Holdings, Inc. d/b/a/ Elizabethtown Gas for Approval of a Capital Economic Stimulus Infrastructure Investment Program and an Associated Cost Recovery Mechanism pursuant to N.J.S.A. 48:2-21 and 48:21.1

BACKGROUND AND PROCEDURAL HISTORY

On October 16, 2008, in response to the worldwide economic downturn and seeking to mitigate its effects on New Jersey, Governor Corzine announced plans to provide immediate assistance for New Jersey residents and long term economic growth options through an "Economic Stimulus Plan". Governor Corzine called on the Board and the State's public utilities to aid in that plan by implementing the policy changes to be proposed in the State's about to be released Energy Master Plan ("EMP").

Elizabethtown filed a petition on January 20, 2009, requesting that the Board approve its Utility Infrastructure Enhancement Program ("Infrastructure Program") and Cost Recovery Rider, pursuant to N.J.S.A. 48:2-21.1 et seq. and simultaneously approve the recovery of costs for projects included within its proposed Infrastructure Program through the implementation of gas Capital Adjustment Mechanisms and an associated UIE Rider surcharge. Subsequent to discovery and public hearings, the Company, Board Staff and Rate Counsel executed and submitted to the Board for consideration a stipulation dated April 13, 2009 ("April 13 Stipulation"), specifying the agreed-upon capital projects, their attendant costs and revenue requirements, applicable rate recovery mechanisms, anticipated job creation and Company reporting and rate filing requirements.

By the April Order, the Board adopted the April 13 Stipulation in its entirety, setting in motion four specific infrastructure investment projects, totaling \$60.4 million, which are designed to create 65 additional jobs while enhancing the provision of safe, adequate and proper service in the Elizabethtown service territory through capital investment in the Company's distribution system. The April Order requires that the Company file an annual petition ("Annual Filing") to adjust its UIE Rider rate on January 1 of each year.

ELIZABETHTOWN'S ANNUAL FILING

Elizabethtown states that its November 12, 2009, Annual Filing contains the information specified in the minimum filing requirements ("MFRs") of Appendix D to the April 13 Stipulation as subsequently adopted by the Board in its April Order.

The rate proposed for the UIE rate for the period January 1, 2010 through December 31, 2010, is designed to recover approximately \$4.2 million in revenues, inclusive of taxes, on an annual basis. When compared to the Company's existing Board approved UIE rate, the total net revenue impact on the Company's gas customers resulting from the Annual Filing would be a \$3.5 million increase in the UIE Rider surcharge. A typical residential gas customer consuming 100 therms of gas during a winter heating month would realize an increase in the monthly bill of \$0.79 or approximately 0.6% per month.

Elizabethtown has provided public notice of the proposed increases, and has scheduled public hearings in its service territory. Two Public hearings will be held on Tuesday, December 29, 2009, one in Flemington and the other in Rahway, New Jersey.

STIPULATION FOR PROVISIONAL RATES

Because the Company's Annual Filing will not be updated with actual revenues and expenses for 2009 until after the proposed effective date of January 1, 2010, and additional time is necessary to complete the review of the proposed rates, the Parties entered into a stipulation for

provisional UIE Rider rates to be implemented on January 1, 2010 subject to refund with interest as defined in the April Order.

The Stipulation provides the following²:

- A. The Company's UIE Rider rate shall be provisionally increased from \$0.0037 per therm to \$0.0116 per therm, inclusive of all taxes, which equates to a provisional increase in the Company's pre-tax revenues of approximately \$2.8 million annually. This rate change is on a provisional basis, subject to refund with interest on net over and under-recoveries, in accordance with the April 28, 2009 Order. The Parties shall have an opportunity for full review of the provisional rate as a contested case, if necessary, and that rate shall be subject to final approval by the Board.
- B. A prudence review in Phase II of the Company's base rate proceeding in BPU Docket No. GR09030195 ("2009 Base Rate Case") will be conducted to the extent required by, and in accordance with the terms of the April 28, 2009 Order and the Board's Order to be issued in the 2009 Base Rate Case.
- C. The provisional UIE Rider rate of \$0.0116 per therm, inclusive of all taxes, shall be effective as of January 1, 2010, or as soon as possible upon the issuance of a Board order approving this Provisional Stipulation, whichever date is later but not prior to the conclusion of the public hearings concerning the November 12 Petition.

DISCUSSION AND FINDING

The Board has carefully reviewed the record to date in this proceeding and the attached Stipulation. The Board **FINDS** that, subject to the terms and conditions set forth below, the Stipulation is reasonable, in the public interest, and in accordance with the law. Accordingly, the Board **HEREBY ADOPTS** the Stipulation as its own, as if fully set forth herein. The Board **HEREBY APPROVES**, on a provisional basis, subject to refund with interest on any net over-recovered balance, as set forth in the April Order, the UIE Rider rate set forth in UIE Schedule TK-1 of the Annual Filing and referenced in the Stipulation as Appendix A. The provisional UIE Rider rate will increase the monthly bill of a typical residential customer using 100 therms by \$0.79, from \$124.00 to \$124.79, an increase of 0.6%.

The UIE Rider rate shall become effective as of January 1, 2010 or the day after the last public hearing, whichever is later.


²Although described in this Order, should there be any conflict between this summary and the Stipulation of the Parties, the terms of the Stipulation shall control, subject to the findings and conclusions contained in this Order.

The Board **HEREBY ORDERS** Elizabethtown Gas to file revised tariff sheets conforming to the terms of the Stipulation within five (5) days of the date of this Order.

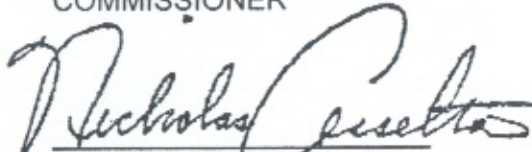
DATED: 12/22/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

DISSENT OF COMMISSIONER ELIZABETH RANDALL

At its December 17, 2009 Agenda Meeting, the Board was presented with requests to increase, on a provisional basis, the various capital infrastructure cost recovery charges for four of the electric and gas utilities whose Infrastructure Investment programs were approved in April 2009.³

These Orders provisionally approve increases in Public Service Electric and Gas Company's Capital Adjustment Charges ("CAC"); South Jersey Gas Company's Capital Investment Recovery Tracker ("CIRT"); Elizabethtown Gas Company's Utility Infrastructure Enhancement ("UIE") Rider rate; and Atlantic City Electric Company's Infrastructure Investment Surcharge ("IIS"), each for the period January 1, 2010 through December 31, 2010 and each effective as of January 1, 2010.

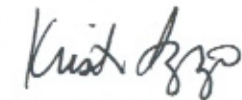
Having been opposed to the accelerated infrastructure programs at their inception, I oppose these requests for increases in rates that result from the Board's April 2009 approval of these programs.

From the outset, I have felt that it is not appropriate during a time of national economic recession to increase customers' gas and electric bills. While the rationale behind these programs is to create jobs, I believe that the usual and customary schedule of capital improvements sufficiently insures the safe and reliable delivery of gas and electricity services.



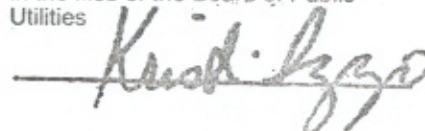
ELIZABETH RANDALL
COMMISSIONER

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



³ The remaining company whose plan was approved on April 28, 2009, New Jersey Natural Gas Company, did not make a filing at this time as its increases will be considered within the context of its base rate case.

**IN THE MATTER OF THE PETITION OF
PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS
TO REVISE ITS UTILITY INFRASTRUCTURE ENHANCEMENT RATE**

SERVICE LIST

Donald Carter
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922

Diane Rojek
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922

Jodi Gidley
AGL Resources
150 W. Main, Suite 1510
Norfolk, VA 23510

Nanik Aswani
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Victor Fortkiewicz
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Christine Lin
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Jackie O'Grady
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Judith Appel, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Shelly Massey, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Thomas Kaufmann
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922

Michael Scacifero
Elizabethtown Gas
520 Green Lane
Union, NJ 07083

Michael Morley
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309

Alice Bator
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Sheila Iannaccone
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Donna Luhn
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Michael Stonack
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Stefanie A. Brand, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Ami Morita, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Mary Patricia Keefe, Esq.
Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, NJ 07922

Scott Carter
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309

Elizabeth Wade, Esq.
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309

Mark Beyer
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Kristl Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Jerome May
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Robert Wojciak
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Paul Flanagan, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Felicia Thomas-Friel, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

**IN THE MATTER OF THE PETITION OF
PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS
TO REVISE ITS UTILITY INFRASTRUCTURE ENHANCEMENT RATE**

SERVICE LIST

Jessica Campbell, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Kerri Kirschbaum
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Jenique Jones
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Alex Moreau, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Anne Shatto
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Caroline Vachler
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Deborah Franco, Esq.
Cullen and Dykman
Garden City Center
100 Quentin Roosevelt Blvd.
Garden City, NY 11530

Kenneth T. Maloney, Esq.
Cullen and Dykman
1101 14th Street, NW, Suite 550
Washington, DC 20005

Steven S. Goldenberg
Fox Rothschild LLP
Princeton Pike Corporate Center
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311

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

In The Matter Of The Petition Of Pivotal)	STIPULATION FOR
Utility Holdings, Inc. d/b/a Elizabethtown Gas)	PROVISIONAL RATES
To Revise Its Utility Infrastructure)	
Enhancement Rate)	DOCKET NO. GR09110925

APPEARANCES:

Kenneth T. Maloney and Deborah M. Franco (Cullen and Dykman LLP), Attorneys for the 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, Felicia Thomas-Friel, Deputy Public Advocates; **Henry M. Ogden and Sarah H. Steindel**, Assistant Deputy Public Advocates, Division of Rate Counsel (**Ronald K. Chen**, Public Advocate, **Stefanie A. Brand**, Director)

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (**Anne Milgram**, Attorney General of New Jersey)

BACKGROUND

1. On November 12, 2009, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company"), filed a Petition ("November 12 Petition") with the New Jersey Board of Public Utilities ("Board" or "BPU") in Docket No. GO09010053 to increase its Utility Infrastructure Enhancement ("UIE") Rider rate from \$0.0037 per therm to \$0.0116 per therm, inclusive of all taxes, effective January 1, 2010. The November 12 Petition was made in compliance with the Board's April 28, 2009 Order ("April 28, 2009 Order") in Docket Nos. EO09010049 and GO09010053 *et al.*, which approved a Stipulation dated April 13, 2009 ("Stipulation") among Elizabethtown, Board Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), which provided for the establishment of the UIE Rider rate to enable Elizabethtown to recover the costs associated with the Capital Economic Stimulus Infrastructure Investment Program, known as the UIE Program, that was approved by the Board for Elizabethtown. Elizabethtown's UIE Program consists of certain accelerated

investments in various gas distribution infrastructure-related projects that are outside the scope of Elizabethtown's normal capital budget.

2. The November 12 Petition is currently under review by Board Staff and Rate Counsel, and discovery is ongoing. Duly noticed public hearings concerning the November 12 Petition have been scheduled for December 29, 2009 in Flemington and Rahway, New Jersey at 1:30 and 6:00 p.m., respectively.

3. The Company, Board Staff and Rate Counsel (collectively, the "Parties") have determined that because the Company's annual cost recovery filing will not be updated with actual revenues and expenses for 2009 until after the proposed effective date of January 1, 2010 and because additional time is needed to complete the review of the proposed rates, the Parties have agreed to the implementation of a provisional UIE Rider rate, subject to refund with interest as set forth below.

STIPULATED MATTERS

The Parties hereby STIPULATE AND AGREE as follows:

A. The Company's UIE Rider rate shall be provisionally increased from \$0.0037 per therm to \$0.0116 per therm, inclusive of all taxes, which equates to a provisional increase in the Company's pre-tax revenues of approximately \$2.8 million annually. This rate change is on a provisional basis, subject to refund with interest on net over and under-recoveries in accordance with the April 28, 2009 Order. The Parties shall have an opportunity for full review of the provisional rate as a contested case, if necessary, and that rate shall be subject to final approval by the Board. A prudence review in Phase II of the Company's base rate proceeding in BPU Docket No. GR09030195 ("2009 Base Rate Case") will be conducted to the extent required by, and in accordance with, the terms of the April 28, 2009 Order and the Board's order to be issued in the 2009 Base Rate Case.

B. The provisional UIE Rider rate of \$0.0116 per therm, inclusive of all taxes, shall be effective as of January 1, 2010, or as soon as possible upon the issuance of a Board order approving this Provisional Stipulation, whichever date is later but not prior to the conclusion of the public hearings concerning the November 12 Petition.

C. The provisional UIE Rider rate will increase the monthly bill of a typical residential customer using 100 therms by \$0.79, from \$124.00 to \$124.79, an increase of 0.6%.

D. Attached as Appendix A is a proposed updated tariff sheet reflecting the provisional UIE Rider rate of \$0.0116 per therm, inclusive of all taxes.

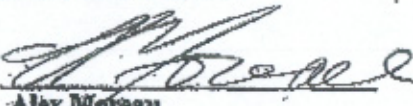
E. The Parties agree that this Provisional Stipulation contains mutually balanced and interdependent provisions and is intended to be accepted and approved in its entirety. In the event that any particular aspect of this Provisional Stipulation is not accepted and approved by the Board, this Provisional Stipulation shall be null and void, and the parties shall be placed in the same position that they were in immediately prior to execution.

F. This Provisional Stipulation has been made exclusively for the purposes of this proceeding and this Provisional Stipulation, in total or specific item, is in no way binding upon the Parties in any other proceeding, except to enforce the terms of this Provisional Stipulation.


ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey
Board of Public Utilities

PIVOTAL UTILITY HOLDINGS, INC.
d/b/a **ELIZABETHTOWN GAS**

By:

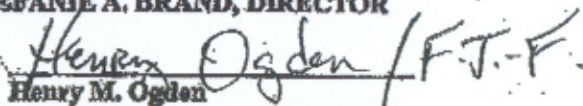

Alex Moreau
Deputy Attorney General

By:


Mary Patricia Kesfe
Vice President and Assistant
Corporate Secretary

DEPARTMENT OF THE PUBLIC ADVOCATE
RONALD K. CHEN, PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
STEFANIE A. BRAND, DIRECTOR

By:


Henry M. Ogden
Assistant Deputy Public Advocate

DATED: December 16, 2009

APPENDIX A

RIDER "F"

UTILITY INFRASTRUCTURE ENHANCEMENT ("UIE")

Applicable to all RDS, SGS, GDS, MFS, TC, LVD, IPF, EGF, GLS and FTS customers receiving service through the Company's distribution system. The UIE shall be collected on a per therm basis and shall remain in effect until changed by order of the NJBPU.

\$0.0116 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.

On October 16, 2008, the State proposed a comprehensive economic stimulus plan to address the economic crisis facing New Jersey. As part of this program the utilities of New Jersey have been encouraged to accelerate prudent and reasonable capital investment projects to support economic development and job growth within their respective service territories. Elizabethtown has identified infrastructure investments described below as projects that will enhance the reliability, safety and system integrity of Elizabethtown's distribution system while promoting energy efficiency and preservation of the environment. The UIE will enable the Company to recover the incremental revenue requirement associated with the accelerated capital investments with the following projects:

- (1) The replacement of 29 miles of elevated pressure ten to twelve-inch cast iron main in Union and Middlesex counties;
- (2) The replacement of 42 miles of low pressure four-inch cast iron main;
- (3) The construction of a pipeline interconnect between Franklin Township and Sparta Township to eliminate a current one-way feed that serves 4,500 customers;
- (4) The construction of a pipeline interconnect between Washington Township and the Town of Newton in order to eliminate the dependency of 7,500 customers on a single source of interstate natural gas pipeline supply.

The UIE will include costs associated with the replacement of connected services, meters and other appurtenant facilities that are upgraded by the Company when it replaces such mains as well as the relocation of meters to outside locations to better facilitate the reading and maintenance of meters. These costs will become recoverable when the project is deemed completed and operational and recorded on the Company's books as plant in service.

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.