



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**CUSTOMER ASSISTANCE**

GREENWICH TOWNSHIP BD. OF EDUCATION,	)	ORDER ADOPTING INITIAL DECISION
Petitioner	)	SETTLEMENT
v.	)	
ELIZABETHTOWN GAS COMPANY,	)	BPU DOCKET NO. GC06100735U
Respondent	)	OAL DOCKET NO. PUC 11787-06N

(SERVICE LIST ATTACHED)

BY THE BOARD:

On October 19, 2006, the Greenwich Township Board of Education (Petitioner) filed a petition with the Board of Public Utilities (Board) regarding a billing dispute related to gas service provided by Elizabethtown Gas Company (Respondent).

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law (OAL) for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was initially assigned to Administrative Law Judge (ALJ) Walter M. Braswell and subsequently transferred to ALJ Gail M. Cookson.

While this matter was pending at OAL, the parties engaged in negotiations and entered into and executed a Settlement Agreement and Mutual Release (Settlement Agreement) that was submitted to the ALJ. By Initial Decision issued on December 29, 2008, and submitted to the Board on January 5, 2009, to which the Agreement was attached and made part thereof, ALJ Cookson found that the Settlement Agreement was voluntary, that its terms fully disposed of all issues in controversy and that it met the requirements of N.J.A.C. 1:1-19.1.

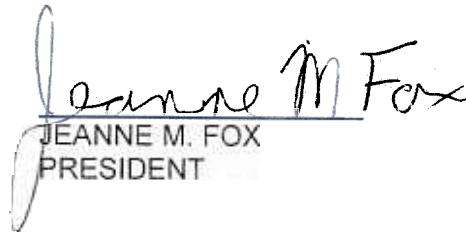
After review and consideration of the Initial Decision and the Settlement Agreement, which are attached hereto and made a part hereof, the Board HEREBY FINDS that, by the terms of the Settlement Agreement, the parties have resolved all outstanding contested issues.

Accordingly, the Board HEREBY ADOPTS the Initial Decision and the Settlement Agreement and Mutual Release in their entirety and, as a result, upon compliance with the terms of the Settlement Agreement, the petition in this matter shall be deemed DISMISSED with prejudice.

DATED:

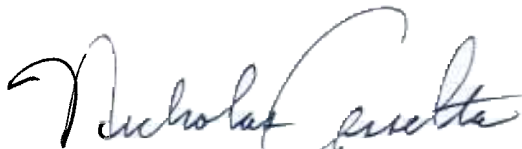
2/11/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

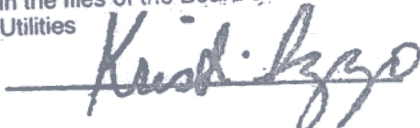
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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



**GREENWICH TOWNSHIP BOARD OF EDUCATION**

**v.**

**ELIZABETHTOWN GAS COMPANY**

**BPU DOCKET NO. GC06100735U  
OAL DOCKET NO. PUC 11787-06N**

**SERVICE LIST**

Sidney A. Sayovitz, Esq.  
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Hardin, Kundla, McKeon & Poletto  
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P.O. Box 730  
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Eric Hartsfield, Director  
Julie Ford-Williams  
Division of Customer Assistance  
Board of Public Utilities  
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Newark, New Jersey 07102

Cynthia Holland, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07102

GC061007354

CALS  
RESLOW  
RPA  
PASKO, A  
FORA-WILLIAMS  
(2)



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

**INITIAL DECISION**  
**SETTLEMENT**

OAL DKT. NO. PUC 1787-06  
AGENCY DKT. NO. GC061007354

RECEIVED  
CASE MAN/SEB/12/11  
2009 JAN 06  
PM 1:44  
BOARD OF PEST UTILITIES  
NEW JERSEY

**GREENWICH TWP. BD. OF EDUCATION,**

Petitioner,

v.

**ELIZABETHTOWN GAS COMPANY,**

Respondent.

Sidney A. Sayovitz, Esq., for petitioner Greenwich Township Board of Education  
(Schenck, Price, Smith & King, attorneys)

Mark S. Kundla, Esq. for respondent Elizabethtown Gas Company (Hardin,  
Kundla, McKeon & Poletto, attorneys)

Record Closed December 23, 2008

Decided: December 29, 2008

**BEFORE GAIL M. COOKSON, ALJ**

On December 19, 2006, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Over the course of many months, several settlement conferences were held with the parties and the Honorable Walter Braswell, A.L.J. Due to his extensive involvement, the matter was transferred to me for hearing. A hearing was scheduled for September 24, 2008, at which time it was reported that significant progress toward an amicable resolution had been reached. On that basis, the hearing was

adjourned. The parties subsequently submitted a fully executed settlement document which is attached hereto and made part hereof. I have reviewed the record and terms of the Settlement Agreement and **FIND**:

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

I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and therefore, it is **ORDERED** that the matter be deemed dismissed with prejudice and that these proceedings be and are hereby concluded.

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 (45) 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

December 29, 2008  
DATE

  
GAIL M. COOKSON, ALJ

Date Received at Agency: 1-5-09

  
Mailed to Parties:

DATE  
pb

OFFICE OF ADMINISTRATIVE LAW

**HARDIN, KUNDLA, MCKEON & POLETT**

**COUNSELLORS AT LAW**

**A PROFESSIONAL CORPORATION**

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**FAX (973) 912-9212**

**Mark S. Kundla**  
**mkundla@hknpp.com**

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**Member of N.J. and N.Y. Bars**

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**(610) 433-8400**  
**FAX (610) 423-0300**

**DATE:** December 23, 2008

Honorable Gail Cookson, A.L.J.  
Office of Administrative Law  
FAX No. 973-648-6124

Sidney A. Sayovitz, Esq.  
Schenck, Price, Smith & King, LLP  
FAX No. 973-540-7300

**FROM:** Mark S. Kundla, Esq./Debbie

**Greenwich Township Board of Education v. Elizabethtown**  
**Gas Company**  
Docket No. GC061007354  
File No.: 454.33580

**\*\*\*\*\* TRANSMITTING 8 PAGES (INCLUSIVE) \*\*\*\*\***

**MESSAGE:** Please see the attached Settlement Agreement and Mutual Release, relative to the above.

**Original of transmittal will not follow.      X**

**Original of transmittal will follow:**

Via: Regular Mail  
Via: Federal Express  
Via: Hand Delivery  
Other:

**IF ALL PAGES TRANSMITTED ARE NOT RECEIVED**  
**OR ARE RECEIVED AND ILLEGIBLE, PLEASE CALL**  
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**Extension 2285**

**HARDIN, KUNDLA, MCKEON & POLETTA**

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**FAX (610) 433-0300**

**December 23, 2008**

**VIA FAX # (973) 648-6124**

**The Honorable Gail Cookson, A.L.J.**  
**Office of Administrative Law**  
**33 Washington Street**  
**Newark, NJ 07102**

**RE: Greenwich Township Board of Education v**  
**Elizabethtown Gas Company**  
**Docket No.: GC061007354**  
**Our File No. 454.33580**

**Dear Judge Cookson**

**For your review and approval, we enclose a fully executed copy of the Settlement Agreement and Mutual Release entered into between the parties in the above matter.**

**Thank you for your attention to the enclosed**

**Respectfully submitted,**

  
**Mark S. Kundla**

**MSK:tad**

**Enclosures**

**cc: Sidney A. Sayovitz, Esq. (w/encs.)**  
**Schenck, Price, Smith & King, LLP**

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this \_\_\_\_\_ day of November, 2008, by and between:

"Petitioner"                      Greenwich Board of Education

and

"Respondents"                      Pivotal Utilities Holdings, Inc., d/b/a Elizabethtown Gas, NUI Corporation, AGL Resources Inc., and their respective parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective officers, directors, agents, employees, stockholders and representatives, improperly pleaded as Elizabethtown Gas

(Collectively referred to as the "Parties")

**Recitals:**

A.        Petitioner filed a Petition for a Hearing (the "Lawsuit") against Pivotal Utilities Holdings, Inc., d/b/a Elizabethtown Gas, NUI Corporation, and AGL Resources Inc., improperly pleaded as Elizabethtown Gas ("Respondents"), with the Board of Public Utilities ("BPU") on or about October 19, 2008. Respondents filed an Answer to the Petition on or about November 20, 2008 and the BPU transferred the contested matter to the Office of Administrative Law in Newark, New Jersey under Docket No. GC08100735U. The Petition arose from an invoice Petitioner received from Respondent on September 21, 2005 in the amount of \$61,785.63. In the Petition, Petitioner disputed this amount and alleged it owed no additional monies to Respondents, pursuant to N.J.A.C. 14:3-4.7(c), effective during this time period. Respondents sought to recover the sum of \$61,785.63 from Petitioner arising from a meter that allegedly failed to register gas consumption from September 23, 2003 through April 11, 2005 at Petitioner's place of business located at Dori Place in Stewartville, New Jersey monies.

B.        The Parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which are, or might have been, the subject matter of the Petition, upon the terms and conditions set forth below.

C.        The merits of Petitioner's claims are in dispute and have not been adjudicated, and Respondents admit no liability or wrongdoing but have reasons to desire amicable resolution of the matter, including the avoidance of additional costs and disruption caused by continuing to litigate this matter.

D.        The Parties have agreed to terminate the litigation and settle all claims between them upon the terms and conditions set forth in this Agreement.

**AGREEMENT**

The Parties agree as follows:

**1.0        Mutual Release and Discharge**

1.1        In consideration of the payments set forth in Section 2 below and other consideration provided for in this Agreement, the Parties, their successors and assigns hereby completely and unconditionally waive, release and forever discharge each other from any and all past, present or future claims, liability, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses, and compensation of any nature whatsoever,



whether based on a tort, contract or other theory of recovery, which the Parties now have or which may hereafter accrue or otherwise be acquired, on account of, arise out of or may in any way grow out of, or which are the subject of the Lawsuit (and all related pleadings), including without limitation, any and all known or unknown claims relating to Petitioner's account (account no. ~~99999999~~9-001) with Respondent or any future claims of Petitioner's representatives, which have resulted or may result from the alleged acts of the Respondents. The Parties specifically and irrevocably release and discharge each other, their agents, employees and servants, directors, current and former trustees, administrators, employees and agents, whether in their official or individual capacities, from any and all obligations, claims, demands, judgments or causes of action of any kind whatsoever in tort, contract, by statute or any other basis for compensatory, punitive or other damages, expenses, reimbursements or costs of any kind, including but not limited to attorney's fees, suit costs, interest and every federal state and local law claim which the Parties have or may have, whether statutory or common law. This release is intended to be full and unconditional and the Parties acknowledge and agree that this release forever extinguishes, without exception, every known and unknown, past, present and future claims, rights and demands that the Parties may have against each other.

1.2 This release and discharge shall also apply to Respondents' past, present and future officers, directors, stockholders, attorneys, attorneys-in-fact, agents, servants, representatives, employees, subsidiaries, affiliates, member companies, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release and discharge, on the part of the Petitioner, shall be a fully binding and a complete settlement among the Petitioner, the Respondents, Respondent's past, present and future officers, directors, stockholders, attorneys, attorneys-in-fact, agents, servants, representatives, employees, subsidiaries, affiliates, member companies, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter, be affiliated and their assigns and successors.

1.4 The Parties acknowledge and agree that the release and discharge set forth above is a general release. The Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Parties' respective decision to enter into this Settlement Agreement.

1.5. This Agreement and settlement do not constitute an admission by the Parties of any violation of any federal, state or local law, regulation or local requirement, contractual obligation or any duty whatsoever whether based in statute, regulation, common law or otherwise. The Parties expressly deny that any liability or any such violation has occurred to any other person, entity or authority.

In consideration of the release set forth above, the Petitioner agrees to pay Respondent the sums outlined in Section 2 below:

## 2.0 Payments

2.1. For and in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree to settle their dispute for the sum of \$48,339.23. This figure represents a twenty-five percent (25%) good faith reduction of the disputed amount (i.e., \$61,786.83) and is contingent upon full compliance with the payment terms noted under Section 2.2 of this Agreement. It is understood and agreed to by the Parties that this settlement is a compromise of a disputed claim, and the payments are not to be

construed as an admission of liability on the part of the Respondents, by whom liability is expressly denied.

2.2 Respondents have agreed to permit Petitioner to make the following payments on the dates specified below:

- a. \$5,000.00 to be paid within thirty (30) days after final decision of the New Jersey Board of Public Utilities approving the within settlement;
- b. \$30,000.00 to be paid on July 1, 2009; and
- c. \$11,339.23 to be paid on July 1, 2010.

The above represents the "Deferred Payment Plan."

2.3 All payments shall be made payable to "Elizabethtown Gas" and forwarded to the following individual, unless notified by the Respondent, in writing, that payments should be directed elsewhere:

Gina O'Donnell, Supervisor, Energy Assistance Administration  
Billing Services  
300 Connell Drive, Suite 3000  
Berkeley Heights, NJ 07922

### 3.0 Payee's Rights to Payments

3.1. Petitioner acknowledges that the Deferred Payment Plan can be accelerated by Petitioner, but cannot be further deferred, increased or decreased by the Respondent.

3.2 Petitioner may submit electronic payments on the payment due dates as provided under 2.2 of this Agreement. However, any supplemental costs associated with the use of electronic transfers will be borne by the Petitioner and is not the responsibility of the Respondents.

### 4.0 Breach of Agreement

4.1 If payment is not received by Respondent when due, Respondent's counsel shall give written notice by facsimile and certified mail to Petitioner's counsel. Petitioner shall have two (2) days to cure the default. In the event a default by Petitioner is not cured within the time specified, Respondent may then make an application to the Clerk of the Court, on notice to counsel for Petitioner, for the entry of a judgment in the amount sought of \$61,785.63, plus costs and attorney's fees, less the amount of any payments received.

### 5.0 Compliance

5.1 The Parties shall comply with the terms of this Settlement Agreement within thirty (30) days of the final decision in this matter issued by the Board of Public Utilities.

### 6.0 Representation of Comprehension of Document

6.1 In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to the Parties by their

respective attorneys; and the terms of this Settlement Agreement are fully understood and voluntarily accepted by the Parties.

#### **7.0 Warranty of Capacity to Execute Agreement**

7.1 The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that the Parties have the sole right and exclusive authority to execute this Settlement Agreement and the right and exclusive authority to receive the sums specified in it; and that neither Party has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

#### **8.0 No Claims Permitted/Covenant Not to Sue**

8.1 Petitioner forever waives every right to file or bring against Respondents any charge or Petition on their own behalf and/or to participate as a complainant, charging party in any charge or Petition which may be made by another person or organization on their behalf, with respect to any and all claims which were or may have been set forth in the above-referenced action before any federal, state, or local court or administrative agency against the Respondents. Such actions include, but shall not be limited to any class-action lawsuits brought where Petitioner may be potential class members, subrogation lawsuits, or any kind of regulatory enforcement actions where Petitioner may be entitled to compensation for damages which could have been asserted in this claim. Should any such charge or Petition be filed, Petitioner agrees that they will not accept any relief or recovery therefrom. Petitioner confirms that no such charge, Petition, or action exists in any forum or form other than the Lawsuit (which is being dismissed with prejudice). Except as prohibited by law, in the event that any such charge, Petition or action is filed by or on behalf of Petitioner, it shall be dismissed with prejudice upon presentation of this Agreement and Respondents reserve the right to pursue any remedy and damages they may have resulting from any breach of this section of the Agreement as permitted by law.

#### **9.0 Non-Disparagement Clause**

9.1 The Board of Trustees of the Greenwich Board of Education and their attorney, Sidney A. Sayovitz, agree not to make any disparaging or derogatory comments to the media, whether true, false, or mere opinion, about the Respondents, or Respondent's present and former parents, subsidiaries, directors, officers, employees, agents, attorneys, and beneficiaries, and their successors and assigns, concerning the events and circumstances giving rise to the Petition; the investigation of those events and circumstances by the Respondent; and this Agreement.

#### **10.0 Taxes**

10.1 The Parties acknowledge and agree that they are solely and exclusively responsible to satisfy any and all tax obligations, including applicable state, federal and local taxes that may be required by law to be paid from the proceeds of the settlement provided for in this Agreement. Respondents shall not assume any tax liability on behalf of the Petitioner.

#### **11.0 Attorneys Fees and Costs**

11.1 The Parties agree that they will bear their own costs and attorney's fees which have been incurred in connection with their claims, the Lawsuit and this Agreement, that no amounts other than the payment to be made pursuant to Section 2 of this Agreement shall be sought or owed to Respondents or their attorneys.

**12.0 Entire Agreement**

12.1 This Agreement contains the sole and entire agreement between the Parties hereto and fully supersedes any and all prior agreements and understanding pertaining to the subject matter hereof. The Parties represent that prior to executing this Agreement, they consulted with an attorney, obtained the advice of counsel of their choice and that they have not relied upon any representation or statement not set forth in this Agreement. No other promises shall be binding unless in writing, signed by the Parties hereto and expressly stated to be an amendment to this Agreement.

**13.0 Severability**

13.1 Petitioner agrees that if any court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

**14.0 Governing Law**

14.1 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

**15.0 Additional Documents**

15.1 All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

**16.0 Entire Agreement and Successors in Interest**

16.1 This Settlement Agreement contains the entire agreement between the Petitioner and the Respondents with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, successors and assigns of each.

**17.0 No Assignments**

17.1 No party to this Agreement may assign any of its benefits or delegate any of its duties thereunder without the express written consent of all other Parties evidenced by a duly authorized and executed written agreement.

**18.0 No Waiver of Breach**

18.1 No breach of any provision hereof can be waived unless done so expressly and in writing. Express waiver of any one breach shall not be deemed a waiver of any other breach of same or of any other provision hereof.

**19.0 Authorship**

19.1 Each of the Parties and its counsel have reviewed and revised this Agreement, and the normal rule of construction, providing that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement. This Agreement represents the joint drafting efforts of all Parties.

**20. Dismissal**

20.1 Upon compliance of the terms of this Settlement Agreement, Petitioner's Lawsuit shall be deemed dismissed with prejudice.

**21.0 Effectiveness**

21.1 The terms and conditions of this Agreement shall become binding and effective upon each Party only upon execution by the Petitioner. It is understood, however, that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement.

**21.2 BY SIGNING THIS RELEASE, PETITIONER REPRESENTS:**

- a. THEY HAVE READ IT;
- b. THEY UNDERSTAND IT AND KNOW THAT THEY ARE GIVING UP IMPORTANT RIGHTS AND THAT THEY ARE GIVING UP SUCH RIGHTS OR CLAIMS TO RESOLVE AN OUTSTANDING DISPUTED DEBT;
- c. THEY AGREE TO ABIDE BY ALL OF THE OBLIGATIONS IN THIS RELEASE;
- d. THEIR ATTORNEY NEGOTIATED THIS AGREEMENT WITH THEIR FULL KNOWLEDGE, CONSENT AND AUTHORIZATION;
- e. THEY HAVE BEEN ADVISED TO CONSULT WITH THEIR ATTORNEY PRIOR TO EXECUTING THIS RELEASE AND HAVE IN FACT DONE SO;
- f. THEY HAVE SIGNED THE RELEASE KNOWINGLY AND VOLUNTARILY.

**PETITIONER, BOARD OF EDUCATION OF  
THE TOWNSHIP OF GREENWICH**

By: Denise M. Valle  
Print Name  
Board President  
Print Title  
Denise M. Valle  
Signature

WITNESS: Annette Edmondson

**RESPONDENT, PIVOTAL UTILITIES HOLDINGS,  
INC., d/b/a ELIZABETHTOWN GAS, NUI CORPORATION,  
AGL RESOURCES, INC.**

By: DONALD F. CARTER  
Print Name  
Vice President and General Manager  
Print Title  
Donald F. Carter  
Signature

WITNESS: James James

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**ATTORNEYS AT LAW**

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**December 18, 2008**

**Office of Administrative Law Judge Cookson**

**PHONE: 973-648-6018**

**973-648-6124**

**FROM Sidney A. Sayovitz**

**15628-8**

**Greenwich Township Board of Education v.  
Elizabethtown Gas Company**

**PLEASE CONTACT Joyce ON EXT. 7405 IF THERE IS A PROBLEM WITH THIS TRANSMISSION**

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE USE OF THE PERSON NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION OR AN ATTORNEY'S WORK PRODUCT, WHICH IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU HAVE RECEIVED THIS MESSAGE IN ERROR AND ANY REVIEW, DISTRIBUTION OR COPYING OF IT BY YOU IS PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE MESSAGE TO US BY MAIL. THANK YOU.

# SCHENCK, PRICE, SMITH & KING, LLP

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305 BROADWAY, SUITE 900  
NEW YORK, NY 10007  
TELEPHONE: (212) 822-1494

- Founded 1912 -

December 18, 2008

**Via Facsimile (973-912-9212) and Federal Express**

Toni A. DeGennaro, Esq.

Hardin, Kundla, McKeon & Poletto

673 Morris Avenue

P.O. Box 730

Springfield, New Jersey 07081-0730

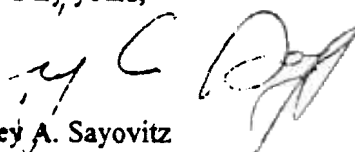
**RE: Greenwich Township Board of Education v.  
Elizabethtown Gas Company  
File 454.33580**

Dear Toni

Enclosed please find three (3) settlement agreements which have been executed on behalf of the Greenwich Board of Education. Kindly have your client sign these originals. I would appreciate it if you could file an executed set with the judge and return one to me for my records.

Thank you.

Very truly, yours,

  
Sidney A. Sayovitz

SAS:jmh

Enc.

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into this 28 day of November, 2008, by and between:

"Petitioner"                      **Greenwich Board of Education**

and

"Respondents"                      **Pivotal Utilities Holdings, Inc., d/b/a Elizabethtown Gas, NUI Corporation, AGL Resources Inc., and their respective parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective officers, directors, agents, employees, stockholders and representatives, improperly pleaded as Elizabethtown Gas**

(Collectively referred to as the "Parties")

### **Recitals:**

A.        Petitioner filed a Petition for a Hearing (the "Lawsuit") against Pivotal Utilities Holdings, Inc., d/b/a Elizabethtown Gas, NUI Corporation, and AGL Resources Inc., improperly pleaded as Elizabethtown Gas ("Respondents"), with the Board of Public Utilities ("BPU") on or about October 19, 2006. Respondents filed an Answer to the Petition on or about November 20, 2006 and the BPU transferred the contested matter to the Office of Administrative Law in Newark, New Jersey under Docket No. GC06100735U. The Petition arose from an invoice Petitioner received from Respondent on September 21, 2005 in the amount of \$61,785.63. In the Petition, Petitioner disputed this amount and alleged it owed no additional monies to Respondents, pursuant to N.J.A.C. 14:3-4.7(c), effective during this time period. Respondents sought to recover the sum of \$61,785.63 from Petitioner arising from a meter that allegedly failed to register gas consumption from September 23, 2003 through April 11, 2005 at Petitioner's place of business located at Dori Place in Stewartville, New Jersey monies.

B.        The Parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which are, or might have been, the subject matter of the Petition, upon the terms and conditions set forth below.

C.        The merits of Petitioner's claims are in dispute and have not been adjudicated, and Respondents admit no liability or wrongdoing but have reasons to desire amicable resolution of the matter, including the avoidance of additional costs and disruption caused by continuing to litigate this matter.

D.        The Parties have agreed to terminate the litigation and settle all claims between them upon the terms and conditions set forth in this Agreement.

### **AGREEMENT**

The Parties agree as follows:

#### **1.0      Mutual Release and Discharge**

1.1      In consideration of the payments set forth in Section 2 below and other consideration provided for in this Agreement, the Parties, their successors and assigns hereby completely and unconditionally waive, release and forever discharge each other from any and all past, present or future claims, liability, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses, and compensation of any nature whatsoever.



whether based on a tort, contract or other theory of recovery, which the Parties now have or which may hereafter accrue or otherwise be acquired, on account of, arise out of or may in any way grow out of, or which are the subject of the Lawsuit (and all related pleadings), including without limitation, any and all known or unknown claims relating to Petitioner's account (account no. [REDACTED]9-001) with Respondent or any future claims of Petitioner's representatives, which have resulted or may result from the alleged acts of the Respondents. The Parties specifically and irrevocably release and discharge each other, their agents, employees and servants, directors, current and former trustees, administrators, employees and agents, whether in their official or individual capacities, from any and all obligations, claims, demands, judgments or causes of action of any kind whatsoever in tort, contract, by statute or any other basis for compensatory, punitive or other damages, expenses, reimbursements or costs of any kind, including but not limited to attorney's fees, suit costs, interest and every federal state and local law claim which the Parties have or may have, whether statutory or common law. This release is intended to be full and unconditional and the Parties acknowledge and agree that this release forever extinguishes, without exception, every known and unknown, past, present and future claims, rights and demands that the Parties may have against each other.

1.2 This release and discharge shall also apply to Respondents' past, present and future officers, directors, stockholders, attorneys, attorneys-in-fact, agents, servants, representatives, employees, subsidiaries, affiliates, member companies, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 This release and discharge, on the part of the Petitioner, shall be a fully binding and a complete settlement among the Petitioner, the Respondents, Respondent's past, present and future officers, directors, stockholders, attorneys, attorneys-in-fact, agents, servants, representatives, employees, subsidiaries, affiliates, member companies, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter, be affiliated and their assigns and successors.

1.4 The Parties acknowledge and agree that the release and discharge set forth above is a general release. The Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Parties' respective decision to enter into this Settlement Agreement.

1.5. This Agreement and settlement do not constitute an admission by the Parties of any violation of any federal, state or local law, regulation or local requirement, contractual obligation or any duty whatsoever whether based in statute, regulation, common law or otherwise. The Parties expressly deny that any liability or any such violation has occurred to any other person, entity or authority.

In consideration of the release set forth above, the Petitioner agrees to pay Respondent the sums outlined in Section 2 below:

## **2.0 Payments**

2.1. For and in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree to settle their dispute for the sum of \$46,339.23. This figure represents a twenty-five percent (25%) good faith reduction of the disputed amount (i.e., \$61,785.63) and is contingent upon full compliance with the payment terms noted under Section 2.2 of this Agreement. It is understood and agreed to by the Parties that this settlement is a compromise of a disputed claim, and the payments are not to be

construed as an admission of liability on the part of the Respondents, by whom liability is expressly denied.

2.2 Respondents have agreed to permit Petitioner to make the following payments on the dates specified below:

- a. \$5,000.00 to be paid within thirty (30) days after final decision of the New Jersey Board of Public Utilities approving the within settlement;
- b. \$30,000.00 to be paid on July 1, 2009; and
- c. \$11,339.23 to be paid on July 1, 2010.

The above represents the "Deferred Payment Plan."

2.3 All payments shall be made payable to "Elizabethtown Gas" and forwarded to the following individual, unless notified by the Respondent, in writing, that payments should be directed elsewhere:

Gina O'Donnell, Supervisor, Energy Assistance Administration  
Billing Services  
300 Connell Drive, Suite 3000  
Berkley Heights, NJ 07922

### **3.0 Payee's Rights to Payments**

3.1. Petitioner acknowledges that the Deferred Payment Plan can be accelerated by Petitioner, but cannot be further deferred, increased or decreased by the Respondent.

3.2 Petitioner may submit electronic payments on the payment due dates as provided under 2.2 of this Agreement. However, any supplemental costs associated with the use of electronic transfers will be borne by the Petitioner and is not the responsibility of the Respondents.

### **4.0 Breach of Agreement**

4.1 If payment is not received by Respondent when due, Respondent's counsel shall give written notice by facsimile and certified mail to Petitioner's counsel. Petitioner shall have two (2) days to cure the default. In the event a default by Petitioner is not cured within the time specified, Respondent may then make an application to the Clerk of the Court, on notice to counsel for Petitioner, for the entry of a judgment in the amount sought of \$61,785.63, plus costs and attorney's fees, less the amount of any payments received.

### **5.0 Compliance**

5.1 The Parties shall comply with the terms of this Settlement Agreement within thirty (30) days of the final decision in this matter issued by the Board of Public Utilities.

### **6.0 Representation of Comprehension of Document**

6.1 In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to the Parties by their

respective attorneys; and the terms of this Settlement Agreement are fully understood and voluntarily accepted by the Parties.

#### **7.0 Warranty of Capacity to Execute Agreement**

7.1 The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that the Parties have the sole right and exclusive authority to execute this Settlement Agreement and the right and exclusive authority to receive the sums specified in it; and that neither Party has sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

#### **8.0 No Claims Permitted/Covenant Not to Sue**

8.1 Petitioner forever waives every right to file or bring against Respondents any charge or Petition on their own behalf and/or to participate as a complainant, charging party in any charge or Petition which may be made by another person or organization on their behalf, with respect to any and all claims which were or may have been set forth in the above-referenced action before any federal, state, or local court or administrative agency against the Respondents. Such actions include, but shall not be limited to any class-action lawsuits brought where Petitioner may be potential class members, subrogation lawsuits, or any kind of regulatory enforcement actions where Petitioner may be entitled to compensation for damages which could have been asserted in this claim. Should any such charge or Petition be filed, Petitioner agrees that they will not accept any relief or recovery therefrom. Petitioner confirms that no such charge, Petition, or action exists in any forum or form other than the Lawsuit (which is being dismissed with prejudice). Except as prohibited by law, in the event that any such charge, Petition or action is filed by or on behalf of Petitioner, it shall be dismissed with prejudice upon presentation of this Agreement and Respondents reserve the right to pursue any remedy and damages they may have resulting from any breach of this section of the Agreement as permitted by law.

#### **9.0 Non-Disparagement Clause**

9.1 The Board of Trustees of the Greenwich Board of Education and their attorney, Sidney A. Sayovitz, agree not to make any disparaging or derogatory comments to the media, whether true, false, or mere opinion, about the Respondents, or Respondent's present and former parents, subsidiaries, directors, officers, employees, agents, attorneys, and beneficiaries, and their successors and assigns, concerning the events and circumstances giving rise to the Petition; the investigation of those events and circumstances by the Respondent; and this Agreement.

#### **10.0 Taxes**

10.1 The Parties acknowledge and agree that they are solely and exclusively responsible to satisfy any and all tax obligations, including applicable state, federal and local taxes that may be required by law to be paid from the proceeds of the settlement provided for in this Agreement. Respondents shall not assume any tax liability on behalf of the Petitioner.

#### **11.0 Attorneys Fees and Costs**

11.1 The Parties agree that they will bear their own costs and attorney's fees which have been incurred in connection with their claims, the Lawsuit and this Agreement, that no amounts other than the payment to be made pursuant to Section 2 of this Agreement shall be sought or owed to Respondents or their attorneys.

## **Entire Agreement**

12.1 This Agreement contains the sole and entire agreement between the Parties hereto and fully supersedes any and all prior agreements and understanding pertaining to the subject matter hereof. The Parties represent that prior to executing this Agreement, they consulted with an attorney, obtained the advice of counsel of their choice and that they have not relied upon any representation or statement not set forth in this Agreement. No other promises shall be binding unless in writing, signed by the Parties hereto and expressly stated to be an amendment to this Agreement.

## **Severability**

13.1 Petitioner agrees that if any court declares any portion of this Agreement unenforceable, the remaining portions shall be fully enforceable.

## **14.0 Governing Law**

14.1 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

## **15.0 Additional Documents**

15.1 All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

## **16.0 Entire Agreement and Successors In Interest**

16.1 This Settlement Agreement contains the entire agreement between the Petitioner and the Respondents with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, successors and assigns of each.

## **17.0 No Assignments**

17.1 No party to this Agreement may assign any of its benefits or delegate any of its duties thereunder without the express written consent of all other Parties evidenced by a duly authorized and executed written agreement.

## **18.0 No Waiver of Breach**

18.1 No breach of any provision hereof can be waived unless done so expressly and in writing. Express waiver of any one breach shall not be deemed a waiver of any other breach of same or of any other provision hereof

## **19.0 Authorship**

19.1 Each of the Parties and its counsel have reviewed and revised this Agreement, and the normal rule of construction, providing that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement. This Agreement represents the joint drafting efforts of all Parties.

## **20. Dismissal**

20.1 Upon compliance of the terms of this Settlement Agreement, Petitioner's Lawsuit shall be deemed dismissed with prejudice.

**21.0 Effectiveness**

21.1 The terms and conditions of this Agreement shall become binding and effective upon each Party only upon execution by the Petitioner. It is understood, however, that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement.

**21.2 BY SIGNING THIS RELEASE, PETITIONER REPRESENTS:**

- a. THEY HAVE READ IT;
- b. THEY UNDERSTAND IT AND KNOW THAT THEY ARE GIVING UP IMPORTANT RIGHTS AND THAT THEY ARE GIVING UP SUCH RIGHTS OR CLAIMS TO RESOLVE AN OUTSTANDING DISPUTED DEBT;
- c. THEY AGREE TO ABIDE BY ALL OF THE OBLIGATIONS IN THIS RELEASE;
- d. THEIR ATTORNEY NEGOTIATED THIS AGREEMENT WITH THEIR FULL KNOWLEDGE, CONSENT AND AUTHORIZATION;
- e. THEY HAVE BEEN ADVISED TO CONSULT WITH THEIR ATTORNEY PRIOR TO EXECUTING THIS RELEASE AND HAVE IN FACT DONE SO;
- f. THEY HAVE SIGNED THE RELEASE KNOWINGLY AND VOLUNTARILY.

**PETITIONER, BOARD OF EDUCATION OF  
THE TOWNSHIP OF GREENWICH**

By: Denise M Valle  
Print Name  
Board President  
Print Title  
Denise M Valle  
Signature

WITNESS: Connie Edmond

**RESPONDENT, PIVOTAL UTILITIES HOLDINGS,  
INC., d/b/a ELIZABETHTOWN GAS, NUI CORPORATION,  
AGL RESOURCES, INC.**

By: \_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Print Title  
\_\_\_\_\_  
Signature

WITNESS: \_\_\_\_\_



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW  
33 Washington Street  
Newark, New Jersey 07102  
(973) 648-6008  
(973-648-6058)

Robert J. Giordano, ALJ &  
Manager of Organizational Development

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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

NORTH

Date DEC 31 2008

Re: Initial Decisions for Receipt

We are hereby forwarding to you the following decisions from the office of Administrative Law. **Receipt is acknowledged as of the next business day of the date indicated below.** Should a listed decision not be included in this batch, please call 973-648-6008.

OAL Docket No. PUC

Case Name

11787-06

Greenwich Twp. BDE  
(vs)

ELIZABETH TOWN GAS COMP.

Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Date: 1-5-09

Floyd King  
Board of Public Utilities