



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL)
HOLDINGS, INC., D/B/A ELIZABETHTOWN GAS, FOR) DECISION AND ORDER
APPROVAL OF A FRANCHISE IN THE BOROUGH OF)
OGDENSBURG, SUSSEX COUNTY, NEW JERSEY) DOCKET NO. GE11030164

Mary Patricia Keefe, Esq., Berkeley Heights, New Jersey, on behalf of Petitioner,
Pivotal Holdings, Inc., d/b/a Elizabethtown Gas

James w. Glassen, Esq., Assistant Deputy Rate Counsel, Newark, New Jersey, on behalf of the
Division of Rate Counsel

BY THE BOARD:

Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas (ETG or Company), a regulated utility subject to the jurisdiction of the Board of Public Utilities (Board), is a corporation duly organized under the laws of the State of New Jersey engaged in the business of transmission and distribution of natural and mixed gas to approximately 274,000 customers within its service territory located principally in Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren Counties.

As many of the municipalities in the north-west section of the State have smaller populations and buildings that tend to be more spread out with most homes heated by propane gas or number two heating oil, ETG, over a period of approximately 10 years, has surveyed a number of municipalities in Hunterdon and Sussex Counties, including the Borough of Ogdensburg (Borough) for interest in the extension of the Company's distribution system to provide gas service. Toward that end, ETG recently installed six miles of 8-inch high pressure gas pipeline between the Townships of Franklin and Sparta. The new pipe provides increased pressures in the winter, and greater system reliability for the approximately 5,000 customers in this part of the Company's service territory. According to ETG, while residents of the Borough do not currently receive natural gas service, a number of residents had expressed an interest in securing such service. This interest led to meetings between ETG and the Mayor and Council, and an application by the Company to the Borough on December 7, 2010, for the grant of a municipal consent to provide gas service. The ETG witness stated that the Borough has a population of about 2,800 people living in approximately 950 housing units, as well as an

elementary school and several municipal buildings. The Borough has indicated to the Company that it would like to convert to gas service to satisfy the heating and hot water needs of the Borough facilities.

On February 14, 2011, the Mayor and Council of the Borough adopted Ordinance No. 1-11 which granted to ETG a municipal consent to utilize the Borough's public rights-of-way to construct, maintain and operate those facilities necessary for the provision of natural and mixed gas service within the Borough for a term of fifty (50) years. A copy of the Ordinance is attached hereto and designated as Schedule "A." By letter dated March 8, 2011, the Company accepted and agreed to the terms and conditions of the franchise subject to the approval of this Board. A copy of the Company's acceptance letter is attached hereto and designated as Schedule "B".

On March 29, 2011, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, ETG filed a petition requesting that this Board give its approval to the consent adopted by the Borough. As required by law, and after submission of responses to Staff discovery requests and after notice, a hearing in this matter was held on June 2, 2011, before Carol Artale, Esq., the Board's duly appointed Hearing Examiner. Appearances were made on behalf of the Company, the Division of Rate Counsel (Rate Counsel) and Board Staff. No other party participated in the hearing or filed any written submission with the Board related to this proceeding.

At hearing, the Company relied on its petition and exhibits filed with the Board and presented the testimony of Gary J. Marmo, its manager, Sales and Marketing. Mr. Marmo testified generally with regard to the benefits of the Company's reinforcement project and ETG's efforts related to the marketing of service within the Borough. He indicated that it was the intent of the Company, assuming Board approval of the pending petition, to install the necessary mains and service connections in conformance with the Company's main and extension policy, Board rules, and the terms of the Ordinance granted by the Borough in order to provide gas service to Borough residents prior to the upcoming heating season. No opposition to the granting of the relief requested by the Company was placed on the record.

After a full review of the entire record, the Board HEREBY FINDS that the municipal consent, which is the subject of this matter, is necessary and proper for the public convenience and properly conserves the public interest, and that the Company has the necessary experience, financial capability, capacity and facilities as well as the ability to install the appropriate infrastructure to allow it to provide safe, adequate and proper service in the Borough as well as to continue to provide adequate and appropriate service to its existing customers. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14, HEREBY APPROVES the consent granted to ETG by the Borough of Ogdensberg for the provision of gas service in the Borough as sought in the Company's petition at rates set out in the Company's current tariff which has been approved by and is on file with the Board. Said rates shall remain in effect until otherwise approved by the Board.

The approvals granted hereinabove shall be subject to the following provisions:


1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by ETG.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board of the State in any future petition or in any proceedings with respect to rates, franchises,

services, financing, accounting, capitalization, depreciation, or in any other matters affecting ETG.

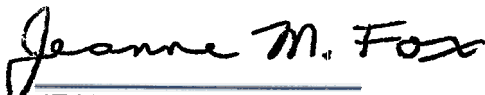
3. In an appropriate subsequent proceeding, ETG shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.
4. Approval of this municipal consent does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including but not limited to, cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.

DATED: 7/14/11

BOARD OF PUBLIC UTILITIES
BY:




LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

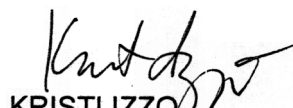


JOSEPH L. FIORDALISO
COMMISSIONER



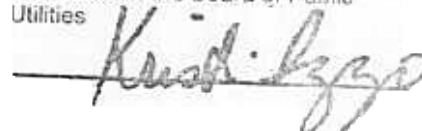
NICHOLAS ASSELTA
COMMISSIONER

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



**IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC., D/B/A
ELIZABETHTOWN GAS, FOR APPROVAL OF A FRANCHISE IN THE BOROUGH OF
OGDENSBURG, SUSSEX COUNTY, NEW JERSEY - BPU DOCKET NO. GE11030164**

SERVICE LIST

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Ricky John, PhD
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Schedule A

BOROUGH OF OGDENSBURG

ORDINANCE NO. 1-11

AN ORDINANCE OF THE BOROUGH OF OGDENSBURG GRANTING MUNICIPAL CONSENT TO PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS TO CONSTRUCT, MAINTAIN AND OPERATE A GAS LINE FOR THE DISTRIBUTION OF NATURAL AND MIXED GAS

WHEREAS, Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey and a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities, on December 7, 2010, filed a Petition with the Borough of Ogdensburg seeking Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption throughout the Borough of Ogdensburg.

WHEREAS, M. Richard Valenti, Esq., Kevin Lynott and Kim Verran, representatives of the Petitioner appeared before the Ogdensburg Borough Council on January 10, 2011 to present their general plans for extension of gas lines within the Borough as the need arose; and

WHEREAS, the Petitioner has provided public notice of such Petition through publication in the official newspaper of the Municipality, the New Jersey Herald, and by posting notice of such Petition pursuant to Statute.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Ogdensburg.

Section I. Grant of Municipal Consent.

Pursuant to N.J.S.A., 48:3-11, the Mayor and Borough Council of the Borough of Ogdensburg hereby grant to Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey (hereinafter "Elizabethtown") with principal offices located at 300 Connell Drive, Berkeley Heights, New Jersey 07922, its successors and assigns, a nonexclusive consent, right and privilege for the use, without impairment of, or obstruction to the public use, of the roads, streets, parks, avenues, ways, and other public places of the Borough of Ogdensburg to construct, lay, maintain, and operate for a period of fifty (50) years, the necessary mains, conductors, pipes and concomitant appurtenances for the purpose of conveying, storing, supplying and distributing natural and mixed gas for heat, power, light and other purposes for public and private use and consumption, along in, or under the following described service area: all the streets, avenues, alleys, parks, parkways, highways, or other public places within the Borough as they now exist or may be hereinafter be laid out by the municipal authorities of the said Borough or dedicated to said Borough.

Section II. Conditions on Grant of Municipal Consent.

The Municipal Consent granted herein is expressly conditioned upon the following:

- (a) the written acceptance of Elizabethtown of the terms and conditions of this municipal Consent Ordinance within thirty (30) days of its final adoption.
- (b) the New Jersey Board of Public Utilities (hereinafter "N.J.B.P.U.") approval of the Consent herein granted and the issuance of such other grants or approvals as determined by the N.J.B.P.U.
- (c) Elizabethtown shall satisfy all Statutory requirements of N.J.S.A. 48:13-1 et seq. regarding the proper organization and operation of a Public Utilities engaged in the distribution of natural and mixed gas, and shall remain subject to the jurisdiction of and comply with all Rules and Regulations of the United States Department of Transportation, Office of Pipeline Safety and the N.J.B.P.U. as well as the Ordinance of the Borough of Ogdensburg.
- (d) Elizabethtown shall construct and continuously maintain and operate their distribution line within the service area in a safe and efficient manner, and maintain such gas distribution lines in a state of good operation and repair and

including all streets, roads, and public rights-of-way within the Borough of Ogdensburg wherein its lines are located.

- (e) the construction, operation and maintenance of the gas distribution system within the rights-of-way of the Borough of Ogdensburg shall in no way place any obligation, financial or otherwise, or any liability of any kind, upon the Borough of Ogdensburg and no obligation is to attach for the construction, operation and maintenance of the said gas distribution system to the Borough.
- (f) any and all regulating pits and venting structures or like facilities shall not be located along the public rights-of-way comprising the Service Area.

Section III. Construction; Installation; Restoration.

- A. Construction. In each and every case in which road openings or excavation of any nature are required or made for the purposes aforesaid, Elizabethtown shall restore, all such public and private lands or facilities to as good a condition as existed at the commencement of the said work or such better condition, at its sole cost and expense. All such openings and installation and maintenance shall be undertaken in strict compliance with the standards imposed by the N.J.B.P.U., any other regulatory agency, and all applicable Borough Ordinances, with such work to be done in a careful, prudent and workmanlike manner, and within such time limitations as shall be best for the proper safeguard of the public.
- B. Relocation. If at any time during the period of this Municipal consent, the Borough of Ogdensburg finds it necessary to alter or change the grade of any street, road or other public right-of-way or area, Elizabethtown shall, upon reasonable notice by the Municipality, remove and relocate its distribution line and pipes at the expense of Elizabethtown.
- C. Restoration. In the event that Elizabethtown shall refuse or neglect, after ten (10) days notice in writing by the representative of the Borough, that is, the Borough Clerk or Borough Engineer, to restore any disturbed area at its cost and expense, and in compliance with all applicable Municipal Ordinances in effect at the time, to its pre-existing or better condition, any street, road, pavement, driveway or other reserves after having made an opening or excavation, the necessary work to accomplish such restoration may be done by the Borough of Ogdensburg, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Borough upon receiving notice thereof.
- D. Preconditions to Undertaking Construction. Elizabethtown shall give to the Borough of Ogdensburg, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Borough of Ogdensburg's Ordinance regulating the excavation and opening of streets, roads and highways, with the exception that such notice requirement shall be waived in the event of an emergent circumstance such that such emergency will affect public health or safety. As soon as practically possible after the occurrence of such emergent circumstance, Elizabethtown shall give prompt written notice to the Borough of any emergency opening or excavation that Elizabethtown shall undertake.

Section IV. Indemnification, Performance Bond, Liability.

- A. Indemnification. Elizabethtown, its successors and assigns, by the acceptance of the grants, rights and privileges conferred by this ordinance, shall at all times and does hereby and will indemnify and hold harmless, the Borough of Ogdensburg and all of its subsidiary agencies, officials and employees for any and all claims of whatsoever kind or nature arising from or relating to the construction, installation, maintenance, laying, repairing, inspecting, or altering of maintains conductors, pipes and appurtenances thereto, and any

other facilities, and including, but not by way of limitation, any damages, penalties, costs, attorney's fees and charges for personal injury, property damage or otherwise, based upon Elizabethtown's negligence or the negligence of its agents, servants, employees or independent contractors.

- B. Performance Bond. Prior to the commencement or any construction or installation under this Municipal Consent, Elizabethtown shall execute and deliver to the Clerk of the Borough and subject to prior review and approval by the Borough Attorney, a Bond in the amount of \$10,000.00 guaranteeing the faithful performance of all of its obligations and undertakings under this Ordinance, which Bond shall be enlarged or renewed from time to time as the Council may require.
- C. Liability Insurance. Elizabethtown agrees to maintain and keep in full force and effect, at its sole expense, and at all times during the terms and duration of this Municipal Consent, sufficient liability insurance naming the Borough of Ogdensburg as an additional insured party, and insuring and indemnifying the Borough against any loss by any such claim, suite, judgment, execution or as follows:
 - (a) Elizabethtown shall carry Workman's Compensation Insurance with Statutory limits.
 - (b) Elizabethtown shall at all times, maintain a Comprehensive General Liability Insurance Policy with a single limit amount of \$1,000,000.00 covering liability for any death, personal injury, property damage or other liability arising out of its construction and operation of the gas distribution systems herein and in addition, an excess liability (or "umbrella") policy in the amount of \$3,000,000.00.
 - (c) Elizabethtown shall furnish to the Borough of Ogdensburg a certified copy or Certificate of Insurance of each of the Policies as set forth herein.

Section V. Duration of Consent.

- A. Term. The Limited Municipal consent granted to Elizabethtown herein is for a period of fifty (50) years from the effective date of this Ordinance.
- B. Public Hearing. Immediately prior to the fifty (50) year expiration of this Consent, the Borough of Ogdensburg shall conduct public hearings regarding the performance of Elizabethtown with the terms of this Municipal Consent. The public hearing shall be duly advertised and shall provide any opportunity for all interested persons to participate.
- C. Extension. Upon the conclusion of the public hearings as set forth herein, the Borough of Ogdensburg shall consider such extension and such additional conditions as the record of the public hearings may warrant.
- D. Transferability. The right of Elizabethtown to transfer or assign any and all of its rights and obligations under this Municipal Consent Ordinance shall only be permitted upon Elizabethtown providing to the Borough thirty (30) days advance written notice of such intent to transfer, and specifying the name of the assignee and other pertinent data as may be required by the Borough. No transfer or assignment shall be made without the prior written consent of the Borough of Ogdensburg, which consent shall not be unreasonably withheld. Any notice or request for assignment must contain the written acknowledgement of the proposed assignee to be bound by all the terms and conditions of this Municipal Consent Ordinance and shall require the posting of a replacement Performance Bond and satisfaction of the liability insurance requirements prior to any written consent to transfer by the Ogdensburg Mayor and Borough Council.
- E. Notice of Proceedings. Elizabethtown shall give the Municipality timely

written notice of at least fifteen (15) days in advance of all proceedings initiated by Elizabethtown or the N.J.B.P.U. or other Regulatory Agency, when such proceedings may affect the commitments, this Municipal Consent or relationship between Elizabethtown and the Municipality, whether or not such notice is required by law. All submissions provided to such Regulatory Agency by Elizabethtown shall also be provided to the Borough of Ogdensburg.

Section VI. Severability.

If the provision of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or Competent jurisdiction, such Order or Judgment shall not effect or invalidate this remainder of any such article, section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.

Section VII. Effective Date.

This Municipal Consent Ordinance shall become effective upon adoption and publication according to law, and only upon written acceptance of this Municipal Consent by Elizabethtown, which written consent shall be filed with the Clerk of the Municipality within thirty (30) days of the date after which Elizabethtown receives notice of the passage of this Ordinance.

NOTICE

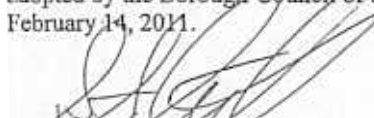
TAKE NOTICE that the above entitled ordinance was introduced at a regular meeting of the Governing Body of the Borough of Ogdensburg on January 10, 2011 and will be considered for final passage at a regular meeting of the Governing Body of the Borough of Ogdensburg to be held on February 14, 2011, at 7:00 p.m. in the Municipal Building, 14 Highland Avenue, Ogdensburg, New Jersey.

Phyllis Drouin, RMC
Borough Clerk

NOTICE

AN ORDINANCE OF THE BOROUGH OF OGDENSBURG GRANTING MUNICIPAL CONSENT TO PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS TO CONSTRUCT, MAINTAIN AND OPERATE A GAS LINE FOR THE DISTRIBUTION OF NATURAL AND MIXED GAS

NOTICE is hereby given that an ordinance entitled as above was passed on final reading and adopted by the Borough Council of the Borough of Ogdensburg at a regular meeting held on February 14, 2011.


Steven Ciasullo, Mayor

Phyllis Drouin, RMC
Borough Clerk

MORRIS, DOWNING & SHERRED, LLP

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*Also Member of NY Bar

March 8, 2011

Phyllis Drouin, Clerk
BOROUGH OF OGDENSBURG
14 Highland Avenue
Ogdensburg, NJ 07439

Re: Request for Municipal Consent - Elizabethtown Gas

Dear Ms. Drouin

In accordance with N.J.S.A. 48:3-16, I hereby notify you on behalf of Pivotal Utility Holdings, d/b/a Elizabethtown Gas that the Company accepts the terms of the Ordinance granting Elizabethtown Gas a municipal consent to provide natural gas service to the Borough of Ogdensburg, which was passed by the Mayor and Council at the February 14, 2011 meeting.

So that we can process the application with the BPU, kindly forward a certified copy of the Ordinance and Minutes of the meetings evidencing the first reading, second reading and passage of the Ordinance. In addition, kindly forward proof of publication of the Ordinance and posting of the Petition. Thank you.

Very truly,

MORRIS, DOWNING & SHERRED, LLP


M. Richard Valenti

MRV:nlc

cc: Mary Patricia Keefe, Vice President
Michael Garafalo, Esq.