



Agenda Date: 08/19/15
Agenda Item: 2I

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

DIVISION OF ENERGY AND
OFFICE OF CLEAN
ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL)	ORDER APPROVING
UTILITY HOLDINGS INC., D/B/A ELIZABETHTOWN)	STIPULATION
GAS FOR AUTHORITY TO EXTEND THE TERM OF)	
ENERGY EFFICIENCY PROGRAMS WITH CERTAIN)	
MODIFICATIONS AND APPROVAL OF ASSOCIATED)	DOCKET NO. GO12100946
COST RECOVERY MECHANISM)	
)	
AND)	
)	
IN THE MATTER OF THE PETITION OF PIVOTAL)	
UTILITY HOLDINGS INC., D/B/A ELIZABETHTOWN)	
GAS FOR AUTHORITY TO EXTEND THE TERM OF)	
ENERGY EFFICIENCY PROGRAMS WITH CERTAIN)	
MODIFICATIONS AND APPROVAL OF ASSOCIATED)	
COST RECOVERY MECHANISM)	DOCKET NO. GO15050504

Parties of Record:

Kenneth T. Maloney, Esq., Cullen and Dykman LLP, Attorneys for the Petitioner, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD: ¹

Background and Procedural History

On January 13, 2008, The Global Warming Response Act, L. 2007, c. 340, was signed into law ("Act") based on the New Jersey Legislature's findings that energy efficiency and conservation measures are essential elements of the State's energy future, and that greater reliance on energy efficiency and conservation will provide significant benefits to the citizens of New Jersey. The Legislature also found that public utility involvement and competition are essential to maximizing energy efficiency. N.J.S.A. 26:2C-45.

¹ Commissioner Upendra J. Chivukula recused himself due to a possible conflict of interest, and did not participate in the deliberations on this matter.

Pursuant to Section 13 of the Act, codified as N.J.S.A. 48:3-98.1, an electric or gas public utility may provide and invest in energy efficiency and conservation programs in its service territory on a regulated basis. Such investment may be eligible for rate treatment approved by the New Jersey Board of Public Utilities (“Board”), including a return on equity, or other incentives or rate mechanisms that decouple utility revenue from sales of electricity and gas. N.J.S.A. 48:3-98.1(b). Ratemaking treatment may include placing appropriate technology and program cost investments in the utility’s rate base or recovering the utility’s technology and program costs through another ratemaking methodology approved by the Board.

An electric or gas public utility seeking cost recovery for any energy efficiency and conservation programs pursuant to N.J.S.A. 48:3-98.1 must file a petition with the Board. N.J.S.A. 48:3-98.1 further requires that the Board decide cost recovery issues within one hundred eighty (180) days (“Review Period”). If the petition is deemed complete, the Review Period begins to run from the date the petition is filed. If the petition is not deemed complete, the Review Period commences from the date the petition is deemed complete.

By Order dated August 3, 2009 (“August 3, 2009 Order”), the Board approved a stipulation among the Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (“Elizabethtown” or “Company”), Board Staff, and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively the “Parties”) authorizing the Company to implement six (6) Energy Efficiency Programs (“EE Programs”) designed to enhance or supplement New Jersey’s Clean Energy Program (“NJCEP”) commencing August 3, 2009 through December 31, 2010.² See August 3, 2009 Order at p. 4.

By Order dated January 19, 2011, the Board approved a January 12, 2011 Stipulation among the Parties authorizing Elizabethtown to extend its EE Programs for a one-year period ending December 31, 2011.³

By Order dated April 11, 2012, the Board authorized the Company to continue its EE Programs, subject to certain modifications.⁴

Elizabethtown’s current EE Programs were authorized by Board Order dated August 21, 2013 (“August 21, 2013 Order”).⁵ The EE Programs approved by the August 21, 2013 Order are: 1) Residential Gas Heating, Ventilation, and Air Conditioning (“HVAC”) and Gas Hot Water Incentive Program; 2) Commercial Customer Energy Efficiency Program; and 3) Customer

² In the Matter of Energy Efficiency Programs and Associated Cost Recovery Mechanisms, BPU Docket No. EO09010056 and In the Matter of The Petition of Pivotal Holdings, Inc. d/b/a Elizabethtown Gas for Approval of Energy Efficiency Programs and a Regional Greenhouse Gas Initiative Cost Recovery Rider, BPU Docket No. GO09010060, Order dated August 3, 2009.

³ In the Matter The Petition of Pivotal Holdings, Inc. d/b/a Elizabethtown Gas to Revise its Regional Greenhouse Gas Initiative Rider Rate, BPU Docket No. GO10070446 and In the Matter of The Petition of Pivotal Holdings, Inc. d/b/a Elizabethtown Gas to Extend the Term of Energy Efficiency Programs with Certain Modifications and Approval of Associated Cost Recovery Mechanism and Deferral Accounting Treatment, BPU Docket No. GO10100735, Order dated January 19, 2011.

⁴ In the Matter of The Petition of Pivotal Holdings, Inc. d/b/a Elizabethtown Gas for Authority to Extend the Term of Energy Efficiency Programs with Certain Modifications and Approval of Associated Cost Recovery, BPU Docket No. GO11070399, Order dated April 11, 2012.

⁵ In the Matter of The Petition of Pivotal Holdings, Inc. d/b/a Elizabethtown Gas for Authority to Extend the Term of Energy Efficiency Programs with Certain Modifications and Approval of Associated Cost Recovery Mechanism, BPU Docket No. GO12100946, Order dated August 21, 2013.

Education and Outreach/Dashboard Program. See August 21, 2013 Order at p. 4. These programs were to be in effect for a two year period ending September 1, 2015.

April 2015 Filing

On April 30, 2015, Elizabethtown filed a petition ("April 30, 2015 Petition"), Docket No. GO15050504, seeking to extend the term of the Company's EE Programs, with certain modifications, for an additional four (4) year period effective September 1, 2015.⁶

Discovery is ongoing and public hearings are scheduled to be held on August 26, 2015 in Rahway, New Jersey, and on August 27, 2015 in Flemington, New Jersey.

Pursuant to the terms of the August 21, 2013 Order, the Company's existing EE Programs will expire on August 31, 2015. Settlement discussions among the Parties are ongoing. Nonetheless, the Parties do not anticipate a Board Order in this matter prior to the August 31, 2015 expiration of the Company's existing EE Programs.

STIPULATION

On August 6, 2015, the Parties entered into a stipulation agreeing to the following salient terms ("Stipulation"):⁷

8. The Parties agree that Elizabethtown shall extend its existing EE Programs through no later than December 31, 2015 or until the date set in the instant proceeding by a Board Order authorizing the implementation of revised or new Elizabethtown EE Programs, consistent in all other respects with the August 21, 2013 Order. The existing EE Programs include the Residential Gas Heating Ventilation and Air Conditioning and Gas Hot Water Heat Incentive Program, Commercial Customer Energy Efficiency Program, and Customer Education and Outreach Program.
9. Elizabethtown is not seeking any additional funding for the EE Programs, including grants, incentives, incremental O&M expenses and carrying costs during this extension. Rather, approximately \$739,000 will remain in the current EE Program budget as of August 31, 2015, which the Company will continue to utilize for its existing EE Programs.
10. The Parties agree to continue settlement discussions in good faith to reach a timely resolution of this proceeding.
11. The Parties further agree that Rate Counsel shall have until September 18, 2015 to file its direct testimony and the Parties propose the amended procedural schedule attached to the Stipulation as Attachment A.

⁶ The April 30, 2015 Petition was filed to replace a petition previously filed with the Board on February 23, 2015, BPU Docket No. GO15020262, in accordance with the Board's March 18, 2015 "Order denying Waiver of 30-Day Pre-filing meeting."

⁷ Although described in this Order, should there be any conflict between this summary and the stipulation, the terms of the stipulation control, subject to the findings and conclusions contained in this Order.

12. The Parties also agree to extend the 180-day RGGI Review Period to allow for a Board determination by December 31, 2015.

DISCUSSION AND FINDING

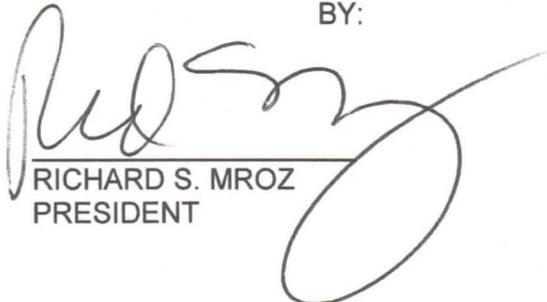
The Board carefully reviewed the record to date. The Board is satisfied and **HEREBY FINDS** that the Stipulation extending the existing EE Programs through December 31, 2015 on the same terms and conditions set forth in the August 21, 2013 Order is reasonable and is in the public interest. There will be no change to the EE Programs' rate by virtue of the approval of the Stipulation, and all authority to continue the existing EE Programs ends on December 31, 2015 unless authorized by further Board Order.

The costs and expenditures of the extended EE Programs are subject to the budget described in the Stipulation, and will be deferred and be the subject of a full review for reasonableness and prudence in future annual true-up proceedings. This short extension will provide additional time for a thorough review of the April 30, 2015 Petition, and will allow sufficient time for the development of a full and complete record for review by the Board while permitting Elizabethtown to continue offering its EE Programs. Accordingly, the Board **HEREBY ADOPTS** the attached Stipulation as its own, incorporating by reference its terms and conditions as if fully set forth herein.

The Order shall be effective as of August 31, 2015.

DATED: *Aug 27, 2015*

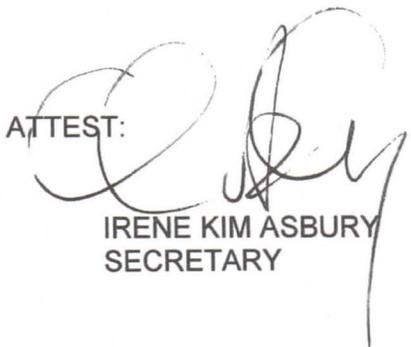
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

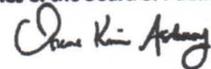

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COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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 AUTHORITY TO EXTEND THE TERM OF ENERGY
EFFICIENCY PROGRAMS WITH CERTAIN MODIFICATIONS AND APPROVAL OF
ASSOCIATED COST RECOVERY MECHANISM

BPU DOCKET NO. GO12100946 and GO15050504

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

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In the Matter of the Petition of Pivotal Utility :
Holdings Inc. d/b/a Elizabethtown Gas for : **BPU Docket No. GO12100946**
Authority to Extend the Term of Energy :
Efficiency Programs with Certain Modifications :
And Approval of Associated Cost Recovery :
Mechanism :
:
And :
:
:
:
In the Matter of the Petition of Pivotal :
Utility Holdings, Inc. d/b/a Elizabethtown : **BPU Docket No. GO15050504**
Gas for Authority to Extend the Term of :
Energy Efficiency Programs with Certain :
Modifications and Approval of Associated : **STIPULATION TO EXTEND**
Cost Recovery Mechanism : **ENERGY EFFICIENCY**
: **PROGRAMS**
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APPEARANCES:

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Mary Patricia Keefe, Vice President for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

Felicia Thomas-Friel, Esq., Managing Attorney – Gas, Division of Rate Counsel,
Maura Caroselli, Esq., Sarah H. Steindel, Esq., and Kurt S. Lewandowski, Esq., Assistant Deputy Rate Counsels, Division of Rate Counsel (Stefanie A. Brand, Director, Division of Rate Counsel)

Alex Moreau and Patricia A. Krogman, Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (John Jay Hoffman, Acting Attorney General of New Jersey)

TO THE NEW JERSEY BOARD OF PUBLIC UTILITIES:

I. Pursuant to the State's Regional Greenhouse Gas Initiative ("RGGI") legislation, an electric or natural gas utility can offer and invest in regulated energy efficiency and conservation programs within its service territory. *N.J.S.A. 48:3-98.1.*

Furthermore, utilities are authorized to seek approval from the New Jersey Board of Public Utilities ("Board") for recovery of costs related to such programs. *Id.*

2. On April 30, 2015, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or the "Company") filed a petition ("Petition" or "April 30 Petition") in BPU Docket No. GO15050504 with certain modifications to the energy-efficiency programs ("EE Programs") made available to Elizabethtown's customers pursuant to *N.J.S.A. 48:3-98.1* (the "Statute") for a four year period effective September 1, 2015. The April 30 Petition was filed to replace the Petition filed February 23, 2015 in BPU Docket No. GO15020262 in accordance with the Board's March 18, 2015 "Order Denying Waiver of 30-Day Pre-filing Meeting". The Statute provides for, subject to certain conditions, the investment by a natural gas or electric utility in customer or utility side energy efficiency and renewable energy programs in its service territory on a regulated basis.

3. Based on the Statute, Elizabethtown has made filings in Docket Nos. EO09010056, GO09010060, GO10100735, GO11070399 and GO12100946 seeking approval to implement EE Programs that complemented or supplemented existing programs offered through the New Jersey Clean Energy Program ("NJCEP"). In Orders dated August 3, 2009, January 19, 2011, April 11, 2012 and August 21, 2013 ("August 21, 2013 Order"), the Board adopted the terms of Stipulations entered into among representatives from Board Staff ("Staff"), the New Jersey Division of Rate Counsel ("Rate Counsel") and Elizabethtown (the "Parties") approving the implementation of

Elizabethtown's EE Programs¹ and the associated cost recovery mechanism. Recovery of the costs necessary to deliver these programs, including grants, incentives, incremental O&M expenses and carrying costs is provided through Rider G to the Company's Tariff.

4. Discovery is ongoing in this proceeding and public hearings are scheduled to be held on August 26, 2015 in Rahway, New Jersey and August 27, 2015 in Flemington, New Jersey.

5. The Parties have begun to engage in certain discussions, but the Parties have yet to reach a settlement of the matter.

STIPULATION

6. Pursuant to the terms of the August 21, 2013 Order, Elizabethtown's existing EE Programs will expire on August 31, 2015.

7. Settlement discussions among the Parties are ongoing. Nonetheless, the Parties do not anticipate a Board Order in this matter prior to the August 31, 2015 expiration of the Company's existing EE Programs.

8. Through this Stipulation, the Parties agree that Elizabethtown shall extend its existing Board approved EE Programs through no later than December 31, 2015 consistent in all other respects with the Board's August 21, 2013 Order, or until the date set in the instant proceeding by a Board Order authorizing the implementation of revised or new Elizabethtown EE programs. The existing EE Programs as approved by the August 21, 2013 Order include the Residential Gas Heating Ventilation and Air

¹ Elizabethtown's current EE Programs include the following: (i) Residential Expanded Gas Heating Ventilation and Air Conditioning ("HVAC") and Gas Hot Water Heater Incentive Program; (ii) Commercial Customer Energy Efficiency Program; (iii) Customer Education and Outreach/Dashboard Program.

Conditioning ("HVAC") and Gas Hot Water Heater Incentive Program, Commercial Customer Energy Efficiency Program and Customer Education and Outreach Program.

9. Elizabethtown is not seeking approval of any additional funding for the EE Programs, including grants, incentives, incremental O&M expenses and carrying costs during this extension. Rather, approximately \$739,000 will remain in Elizabethtown's program budget as of August 31, 2015, which the Company will continue to utilize for its existing EE Programs.

10. The Parties agree to engage in settlement discussions in good faith in order to reach a timely resolution of this proceeding.

11. The Parties further agree that Rate Counsel shall have until September 18, 2015 to file its direct testimony and the Parties propose the amended procedural schedule attached hereto as Attachment A.

12. The Parties also agree to extend the 180-day RGGI review period to allow for a Board determination by December 31, 2015.

Further Provisions

13. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

14. It is the intent of the Parties that the provisions hereof be approved by the Board as being in the public interest. The Parties further agree that they consider the Stipulation to be binding on them for all purposes herein.

15. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, Elizabethtown, Board Staff and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein and, in total or by specific item. This Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

WHEREFORE, the Parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

**PIVOTAL UTILITY HOLDINGS, INC.
D/B/A ELIZABETHTOWN GAS**

**STEFANIE A. BRAND,
DIRECTOR, DIVISION OF
RATE COUNSEL**

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Mary Patricia Keefe, Esq.
Vice President, Regulatory
Affairs and Assistant Corporate
Secretary

By: Kurt S. Lewandowski
Kurt S. Lewandowski, Esq.
Assistant Deputy Rate Counsel

**JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey Board of Public Utilities**

By: Patricia Krogman
Patricia Krogman
Deputy Attorney General

Dated: August 6, 2015

ATTACHMENT A

IMO the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas for Authority to Extend the Term of Energy Efficiency Programs with Certain Modifications and Approval of Associated Cost Recovery Mechanism- BPU Docket No. GO15050504
Proposed Procedural Schedule

Initial Discovery Requests Submitted*	June 26, 2015
Public Hearings	TBD
Responses to Discovery on Initial Testimony	July 8, 2015
Discovery Conference	August 7, 2015
Additional Discovery due	August 17, 2015
Responses to Additional Discovery Due	August 24, 2015
Discovery/Settlement Conference	Sept 1 or 2, 2015
Intervener / Respondent Testimony	Sept 18, 2015
Discovery on Intervener/Respondent Testimony	Sept 24, 2015
Responses to Discovery on Intervener/Respondent Testimony	Oct 1, 2015
Rebuttal Testimony	Oct 9, 2015
Discovery on Rebuttal Testimony	Oct 15, 2015
Responses to Discovery on Rebuttal Testimony*	Oct 22, 2015
Evidentiary Hearings (if necessary)	TBD [2 days]2015
Initial Briefs	Nov 13, 2015
Reply Briefs	Nov 24 2015
Anticipated Board Action	Dec 16, 2015

- Discovery will proceed on a rolling basis subject to the scheduled end date.
- Oral Surrebuttal allowed at Evidentiary Hearing