



Agenda Date: 03/19/08

Agenda Item: 2A

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 PIVOTAL
UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN
GAS CONCERNING ITS PROPOSED CAPACITY
MANAGEMENT PLAN

ORDER

BPU Dkt. No. GM07100752

(SERVICE LIST ATTACHED)

BY THE BOARD:

By Order dated, November 17, 2004 in BPU Docket No. GM04070721, the Board of Public Utilities ("Board") approved the acquisition by AGL Resources Inc. ("AGL") of all of the common stock of NUI Corporation ("NUI"), the corporate parent that owned all of the common stock of NUI Utilities, Inc., d/b/a Elizabethtown Gas Company.¹ As part of the approval of the acquisition, the Board authorized Elizabethtown Gas Company's asset management to be performed by its then new affiliate, Sequent Energy Marketing L.P. ("Sequent") for a term of three years commencing on April 1, 2005. As a result, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company ("the Company", "ETG", or "Elizabethtown") currently purchases the majority of its gas supplies and receives capacity management services from Sequent.²

The November 17 Order stated:

ETG shall competitively bid its asset management unless the Board has previously authorized an alternative asset management procedure for ETG, which may include performing asset management in AGL Services Company on behalf of ETG, or other options the Board deems in the public interest. ETG shall file an asset management plan with the Board at least 6 months prior to the expiration of the Sequent Asset Management Agreement ("AMA"). The Board will make a determination, based on the filing and applicable procedures, on the appropriateness of an asset management plan to be effective after March 31, 2008.

Therefore, the asset management arrangement between Elizabethtown and Sequent will end on March 31, 2008 and ETG was required to file a plan by October 1, 2007. On October 1, 2007,

¹ I/M/O The Petition of NUI Utilities, Inc. d/b/a Elizabethtown Gas Company and AGL Resources Inc. For Authority Under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 Of A Change In Ownership And Control, "Order of Approval" (hereinafter "November 17 Order").

² NUI Utilities Inc. d/b/a Elizabethtown Gas Company is now known as Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company.

Elizabethtown made a filing with the Board in accordance with the November 17 Order in which the Company proposed to commence a process where the Board would determine whether it is in the public interest for Elizabethtown to enter into a new or extended capacity management and gas supply agreement with Sequent and/or to allow the Board to establish a process for Elizabethtown to competitively bid its gas supply and capacity management effective April 1, 2008.

Subsequent to its October 1 filing, Elizabethtown and Sequent concluded an agreement in principle, subject to Board approval, under which they propose to extend the current capacity management and gas supply arrangement. Representatives of the Company, the Board's Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the only parties to this proceeding (hereinafter collectively "the Parties"), conducted discovery and met on several occasions to review the proposed arrangement, to conduct discovery, and to discuss modifications to the proposed arrangement. As a consequence of these efforts, the Parties have entered into a Stipulation that will, if approved by the Board, permit the Company to extend its basic arrangement with Sequent for a three-year term subject to specific modifications to the terms of that arrangement which are set forth within the attached Stipulation.

The following are the salient provisions of the Stipulation:

- A) Extension of the Sequent-Elizabethtown Arrangement: Attached to the Stipulation are pro forma agreements for gas supply and capacity management services between Elizabethtown and Sequent. Elizabethtown is authorized to enter into these agreements with Sequent for a three-year term commencing April 1, 2008 and ending March 31, 2011. Under the agreements, Sequent will pay Elizabethtown an annual fee for the right to act as its gas supplier and capacity management agent. Elizabethtown will credit the entire fee to its Basic Gas Supply Service – Periodic ("BGSS-P") clause. The fee will consist of a minimum fixed annual payment and a sharing of the capacity release credits, off-system sales margins and storage arbitrage margins that Sequent is able to obtain for Elizabethtown as follows:
- i) The minimum fixed payment from Sequent to Elizabethtown will be 5 million dollars (\$5,000,000.00) annually;
 - ii) Capacity release credits, off-system sales margins and storage arbitrage margins obtained by Sequent for Elizabethtown will be shared as follows:
 - a) One hundred percent (100%) of the first 5 million dollars (\$5,000,000) of such margins or credits will be retained by Sequent because Sequent will have already made the minimum payment of five million dollars described above;
 - b) Eighty percent (80%) of the next 3 million dollars (\$3,000,000) of such margins/credits will be retained by Sequent with the remainder credited to Elizabethtown's BGSS-P clause;
 - c) Thirty percent (30%) of the next 6 million dollars (\$6,000,000) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown's BGSS-P clause; and
 - d) Fifty percent (50%) of the next 4.67 million dollars (\$4,670,000) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown's BGSS-P clause; and
 - e) All margins in excess of 18.67 million (\$18,670,000) will be shared thirty five percent (35%) to Sequent and sixty five percent (65%) to Elizabethtown's BGSS-P clause.

- B) The sharing mechanism described above is illustrated on Appendix C of the Stipulation and results in an overall sharing of thirty percent (30%) to Sequent/Elizabethtown and seventy percent (70%) to Elizabethtown's BGSS-P clause if total margins/credits for any annual period total between \$8,000,000 and \$14,000,000. Further, it will result in a minimum overall sharing level of 65% to Elizabethtown's BGSS-P customers.
- C) Determination of the Margins to Be Shared. Attached to the Stipulation as Appendix B is a series of scenarios that detail how margins from various transactions will be calculated for purposes of sharing, a description of the various separate "books" that Sequent will maintain in order to properly account for the margins to be shared, and a glossary of technical terms that are utilized.
- D) Audit Rights. Information contained in the Elizabethtown "books" maintained by Sequent will be made available to Staff and Rate Counsel on reasonable notice and under mutually agreeable confidentiality arrangements, at Elizabethtown's headquarters in New Jersey. In addition, following the completion of the first year of the term of the Sequent/Elizabethtown agreements and each year thereafter, AGL will conduct an internal audit of the Sequent/Elizabethtown agreements. The audits will be conducted at AGL's cost and expense using either internal or external resources as determined by AGL. The auditor will be responsible for determining (i) whether margins were properly credited to Elizabethtown's BGSS-P clause in the manner required by this Stipulation, and (ii) whether Sequent was treating Elizabethtown in a non-discriminatory manner in relation to other Sequent asset management arrangements. A copy of the results of the internal audits, and all supporting documentation, will be provided to Staff and Rate Counsel. In addition, Elizabethtown will hire, at its expense, a non-affiliated consultant to conduct an independent evaluation of Sequent's performance as a capacity manager / gas supplier for Elizabethtown. Elizabethtown will provide copies of such evaluation to Staff and Rate Counsel.
- E) Payment of the Fee. The five million dollar minimum annual fee will be credited to Elizabethtown's BGSS-P clause in equal quarterly installments on the last day of each quarter – June 30, September 30, December 31, and March 31 – commencing June 30, 2008. Shared margins, if any, in any annual period will be credited twice a year on September 30 and March 31 – commencing September 30, 2008.
- F) Renewal. Elizabethtown shall make a filing with the Board to competitively bid its asset management and gas supply arrangements on or before March 31, 2010. The Company may also propose to extend the Sequent arrangement or consider some other asset management/gas supply arrangement. Elizabethtown's filing will include a request for proposals for gas supply and capacity management services and pro forma gas supply and asset management agreements. All Parties reserve the right to take any position concerning any proposal made by Elizabethtown in such filing.
- G) Additional Elizabethtown Gas Supply Resources. Elizabethtown is in the process of enhancing its staffing in the gas supply area. Elizabethtown will conduct periodic meetings with Staff and Rate Counsel to review staffing issues. If any staffing issues arise, the Parties will use good faith efforts to resolve them collaboratively.

DISCUSSION AND FINDINGS

The Board has reviewed the attached Stipulation and pro forma agreements for gas supply and capacity management services between Elizabethtown and Sequent. The Stipulation will allow Elizabethtown and Sequent to extend their current capacity management and gas supply arrangement under terms that will provide for larger payments to Elizabethtown for its

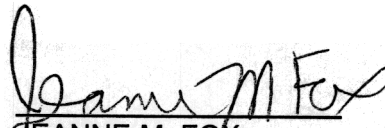
customers than under the terms of the previous arrangement. Elizabethtown's Basic Gas Supply Service – Periodic clause will be credited with a minimum of one million dollars more annually under this arrangement than under the previous arrangement. In addition, the new arrangement provides for a sharing of the capacity release credits, off-system sales margins and storage arbitrage margins. The sharing mechanism will result in an overall sharing of thirty percent (30%) to Sequent and seventy percent (70%) to Elizabethtown's BGSS-P clause if total margins / credits for any annual period total between \$8,000,000 and \$14,000,000. In addition, the Stipulation provides that Elizabethtown will make a filing with the Board to competitively bid its asset management and gas supply arrangement on or before March 31, 2010. This allows for a one year period within which the parties can develop a record and the Board can make a determination on the appropriateness of an asset management plan to be effective after March 31, 2011.

Based upon the foregoing, the Board FINDS that the Stipulation is reasonable, in the public interest, and in accordance with law. The Board HEREBY ADOPTS the Stipulation as its own, as if fully set forth herein. The Board AUTHORIZES Elizabethtown to enter into the agreements that are attached to the Stipulation with Sequent for a three-year term commencing April 1, 2008 and ending March 31, 2011.

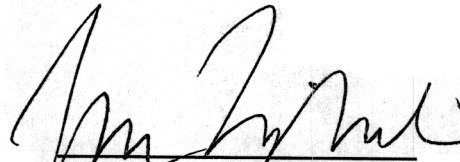
This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any audit of the utility or its affiliates.

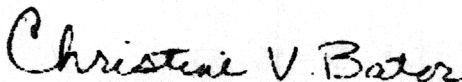
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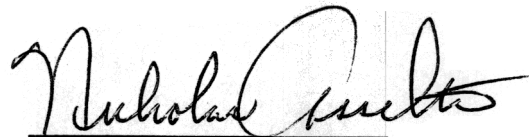
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
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FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

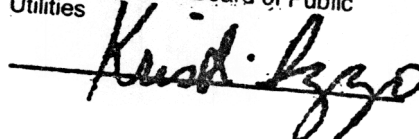

CHRISTINE V. BATOR
COMMISSIONER


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 Company Concerning Its Proposed Capacity Management Plan
Docket No. GM07100752

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