



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 9<sup>th</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

IN THE MATTER OF THE MERGER OF THE )  
SOUTHERN COMPANY AND AGL RESOURCES, INC )

) ORDER ON MOTIONS TO  
) INTERVENE AND MOTION  
) FOR ADMISSION PRO HAC  
) VICE

) DOCKET NO. GM15101196  
)

**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**  
**Joseph Accardo, Jr. Deputy General Counsel, Public Service Electric and Gas Company**  
**Steven Goldenberg, Esq., New Jersey Large Energy Users Coalition**  
**Kenneth T. Maloney, Esq, Attorney for Joint Petitioners AGL Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas**  
**Stephen B. Genzer, Esq. Attorney for Joint Petitioners, The Southern Company and AMS**

BY COMMISSIONER DIANNE SOLOMON:

On or about October 16, 2015, The Southern Company ("Southern Company"), AGL Resources Inc. ("AGL Resources"), AMS Corp. and Pivotal Utility Holdings, Inc. ("Pivotal") d/b/a Elizabethtown Gas ("Elizabethtown") (collectively, the "Joint Petitioners") filed a Joint Petition for approval by the New Jersey Board of Public Utilities (the "Board" or "BPU") pursuant to N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14(c), and related statutes and regulations, for a change of control of Elizabethtown to be effectuated by the merger of AGL Resources with AMS Corp., a wholly-owned subsidiary of Southern Company (the "Merger").

The Merger will result in Southern Company becoming the parent of Elizabethtown and ten other regulated utilities serving over nine million customers in nine states, including New Jersey, Alabama, Florida, Georgia, Illinois, Maryland, Mississippi, Tennessee, and Virginia. The Joint Petition asserts that the Merger will support a strong credit profile, and continue to provide Elizabethtown with the ability to invest in necessary capital and infrastructure to ensure the provision of safe, adequate and proper service to its New Jersey customers at just and reasonable rates. Joint Petitioners argue that Elizabethtown's customers, and the State of New Jersey, will realize substantial tangible benefits from the Merger as a result of the Joint Petitioners' commitments to modify Elizabethtown's current Asset Management Agreement with Sequent Energy Management L.P. to provide an additional \$6 million of credits to customers

and to more than double Elizabethtown's current level of community support to \$500,000 annually. The Joint Petitioners also state that they are making a number of significant commitments to employees and the State of New Jersey.

By Order dated December 16, 2015 the Board retained this matter for hearing, and designated myself as the Presiding Officer with the authority to establish and modify schedules, decide all motions, and otherwise control the conduct of this case, subject to Board ratification. Additionally, the December 16, 2015 Order set January 29, 2016 as the deadline for the filing of motions to intervene or participate in this matter.<sup>1</sup>

By this Order, I address two motions to intervene.

### **THE MOTIONS:**

#### **NJLEUC**

By Motion dated January 5, 2016, the New Jersey Large Energy Users Coalition ("NJLEUC") moved to intervene. NJLEUC maintains that as an association of large end-use customers on Elizabethtown's system, and because the cost and quality of natural gas delivery service to NJLEUC's members will be directly and substantially affected by issues to be determined in this proceeding, the interests of its members are substantially different from those of any other party. NJLEUC asserts that intervention in this proceeding will measurably and constructively advance this case because of the status of its members as large end-use customers on the Elizabethtown system, and it will work cooperatively with the other parties in this proceeding.

NJLUEC also moved for admission pro hac vice of Paul F. Forshay, Esq., a member of the bar of the District of Columbia. NJLUEC represented that Mr. Forshay has significant experience representing the interests of large end-use customers, and that he has an attorney-client relationship with NJLEUC. Mr. Forshay paid the fees required by R. 1:20-1(b).

By correspondence dated February 8, 2016, Joint Petitioners noted that they will not object to NJLEUC's Motion to Intervene if NJLEUC discloses its members who are customers of Elizabethtown Gas. The Joint Petitioners believe this information is necessary to determine if the requirements of intervention have been satisfied.

By correspondence dated February 17, 2016, NJLEUC stated that in accordance with the agreement by counsel, and without waiving its right to object to the identification of some or all of its members in future proceedings, the members that currently take gas distribution service from Elizabethtown include: Gerdau Long Steel North America, DSM Nutritional Products, Inc. and the United States Gypsum Company.

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<sup>1</sup> A proposed preliminary procedural schedule was generated by the Joint Petitioners and circulated to Board Staff, the New Jersey Division of Rate Counsel ("Rate Counsel"), and the Division of Law. Rate Counsel proposed minor revisions to the preliminary procedural schedule, and the Joint Petitioners were agreeable to those changes. By Order dated January 29, 2016, Presiding Commissioner Solomon executed a Prehearing Order establishing the Prehearing Schedule in this matter.

## PSE&G

By Motion dated January 27, 2016, Public Service Electric and Gas Company ("PSE&G") moved to intervene. PSE&G maintains that it will be directly and specifically affected by the Merger because it will impact markets in which PSE&G operates and relies upon as PSE&G is engaged in the purchase, distribution and sale of natural gas for more than 1,800,000 customers throughout the State. PSE&G asserts that no other party can represent PSE&G's interests because its service territories, customers and operations are distinct from other parties in this matter. PSE&G claims that its experience in the industry will add constructively to the proceeding, it will coordinate its representation with other similarly situated parties to the extent it is deemed appropriate, and granting PSE&G's Motion will not cause undue delay or confusion.

By correspondence dated February 8, 2016, Joint Petitioners represented that they do not object to PSE&G's Motion.

## DISCUSSION AND FINDINGS:

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. the nature and extent of the moving party's interest in the outcome of the case;
2. whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. the prospect for confusion and delay arising from inclusion of the party; and
4. other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3(a), that the members of NJLEUC will be directly affected by the outcome of the Merger, NJLEUC will add constructively to the matter and its participation will not cause confusion or undue delay. Therefore, I **HEREBY FIND** that NJLEUC has met the standards for intervention in the Merger

as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** the Motion for Intervention of NJLEUC in the Merger pursuant to the authority granted to me by the Board under the Order dated December 16, 2015. Counsel for NJLEUC has provided a list which identifies NJLEUC's members that are customers of Elizabethtown Gas to Board staff and all parties of record.

In light of this grant of intervention to NJLEUC, I have reviewed NJLEUC's motion and the supporting affidavit of Steven S. Goldenberg, Esq., for admission pro hac vice of Paul F. Forshay, Esq., and no objections to it having been received after due notice to the parties, I **HEREBY FIND** that Mr. Forshay has satisfied the conditions for admission, has provided proof that he has paid to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b), and therefore, **IS HEREBY** admitted to practice before the Board pro hac vice in the above-captioned matter provided that he shall:

- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

As to the Motion for Intervention filed by PSE&G, after consideration of the papers and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.3(a), that PSE&G will be directly affected by the outcome of the Merger, PSE&G will add constructively to the matter and its participation will not cause confusion or undue delay. Therefore, I **HEREBY FIND** that PSE&G has met the standards for intervention in the Merger as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** the Motion for Intervention of PSE&G in the Merger pursuant to the authority granted to me by the Board under the Order dated December 16, 2015.

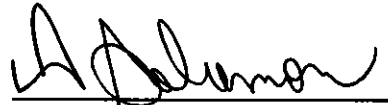
The parties are directed to work cooperatively with each other to the fullest extent possible in the interest of reaching a just determination in this proceeding.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED:

BY:

A handwritten signature in black ink, appearing to read "Dianne Solomon", written over a horizontal line.

DIANNE SOLOMON  
COMMISSIONER

IN THE MATTER OF THE MERGER OF THE SOUTHERN COMPANY  
AND AGL RESOURCES, INC.  
DOCKET NO. GM15101196

**SERVICE LIST**

**DEPUTY ATTORNEYS GENERAL**

Alex Moreau, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[alex.moreau@dol.lps.state.nj.us](mailto:alex.moreau@dol.lps.state.nj.us)

Patricia Krogman, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[patricia.krogman@dol.lps.state.nj.us](mailto:patricia.krogman@dol.lps.state.nj.us)

Geoffrey Gersten, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[geoffrey.gersten@dol.lps.state.nj.us](mailto:geoffrey.gersten@dol.lps.state.nj.us)

Carolyn Vachier, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[caroline.vachier@dol.lps.state.nj.us](mailto:caroline.vachier@dol.lps.state.nj.us)

**RATE COUNSEL**

Stefanie A. Brand, Esq., Director  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)  
[smassey@rpa.state.nj.us](mailto:smassey@rpa.state.nj.us)

**BOARD OF PUBLIC UTILITIES**

Honorable Irene Kim Asbury  
Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Irene.Asbury@bpu.state.nj.us](mailto:Irene.Asbury@bpu.state.nj.us)

Paul Flanagan, Executive Director  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[paul.flanagan@bpu.state.nj.us](mailto:paul.flanagan@bpu.state.nj.us)

Cynthia E. Covie, Esq., Chief Counsel  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Cynthia.Covie@bpu.state.nj.us](mailto:Cynthia.Covie@bpu.state.nj.us)

Heather L. Weisband, Esq.  
Legal Specialist  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Heather.weisband@bpu.state.nj.us](mailto:Heather.weisband@bpu.state.nj.us)

Jake Gertsman, Esq.  
Legal Specialist  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Jake.Gertsman@bpu.state.nj.us](mailto:Jake.Gertsman@bpu.state.nj.us)

Brian O. Lipman, Litigation Manager  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[blipman@rpa.state.nj.us](mailto:blipman@rpa.state.nj.us)

Sarah Steindel  
Assistant Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[ssteinde@rpa.state.nj.us](mailto:ssteinde@rpa.state.nj.us)

Henry Ogden  
Assistant Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[hogden@rpa.state.nj.us](mailto:hogden@rpa.state.nj.us)

Kurt Lewandowski  
Assistant Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[klewando@rpa.state.nj.us](mailto:klewando@rpa.state.nj.us)

Maura Caroselli  
Assistant Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[mcaroselli@rpa.state.nj.us](mailto:mcaroselli@rpa.state.nj.us)

Christine Juarez  
Assistant Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[cjuarez@rpa.state.nj.us](mailto:cjuarez@rpa.state.nj.us)

Jerome May, Director  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[jerome.may@bpu.state.nj.us](mailto:jerome.may@bpu.state.nj.us)

Jacqueline Galka  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Jacqueline.Galka@bpu.state.nj.us](mailto:Jacqueline.Galka@bpu.state.nj.us)

Robert Schultheis, Chief  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[robert.schultheis@bpu.state.nj.us](mailto:robert.schultheis@bpu.state.nj.us)

Jackie O'Grady  
Office of the Economist  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 07826-0350  
[jackie.ograd@bpu.state.nj.us](mailto:jackie.ograd@bpu.state.nj.us)

Mark Beyer, Director  
Office of the Economist  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 07826-0350  
[Mark.Beyer@bpu.state.nj.us](mailto:Mark.Beyer@bpu.state.nj.us)

**SYNAPSE ENERGY ECONOMICS, INC.**

John Rosenkranz  
Synapse Energy Economics, Inc.  
485 Massachusetts Avenue, Suite 2  
Cambridge, MA 02139  
[jrosenkranz@verizon.net](mailto:jrosenkranz@verizon.net)

Felicia Thomas-Friel, Esq.  
Deputy Rate Counsel  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[ftomas@rpa.state.nj.us](mailto:ftomas@rpa.state.nj.us)

**PCMG AND ASSOCIATES LLC**

Karl Pavlovic  
PCMG and Associates LLC  
22 Brookes Avenue  
Gaithersburg, MD 20877  
[kpavlovic@pcmgregcon.com](mailto:kpavlovic@pcmgregcon.com)

Dante Mugrace  
PCMG and Associates, LLC  
90 Moonlight Court  
Toms River, NJ 08753  
[mugrace@pcmgregcon.com](mailto:mugrace@pcmgregcon.com)

**EXETER ASSOCIATES, INC.**

Matthew I. Kahal  
Exeter Associates, Inc.  
10480 Little Patuxent Parkway  
Suite 300  
Columbia, MD 21044  
[mkahal@exeterassociates.com](mailto:mkahal@exeterassociates.com)

**CHESAPEAKE REGULATORY  
CONSULTANTS**

David Peterson  
Chesapeake Regulatory Consultants  
10351 Southern Maryland Boulevard  
Suite 202  
Dunkirk, MD 20754-9500  
[davep@chesapeake.net](mailto:davep@chesapeake.net)

**ELIZABETHTOWN GAS**

Mary Patricia Keefe, Esq.  
Elizabethtown Gas  
520 Green Lane  
Union, NJ 07083  
[pkeefe@aglresources.com](mailto:pkeefe@aglresources.com)

Max Chang  
Synapse Energy Economics, Inc.  
485 Massachusetts Avenue, Suite 2  
Cambridge, MA 02139  
[mchang@synapse-energy.com](mailto:mchang@synapse-energy.com)

**ACADIAN CONSULTING GROUP**

David Dismukes, Ph.D.  
Acadian Consulting Group  
5800 One Perkins Place Drive, Suite 5-F  
Baton Rouge, LA 70808  
[daviddismukes@acadianconsulting.com](mailto:daviddismukes@acadianconsulting.com)

Edward McGee  
Acadian Consulting Group  
5800 One Perkins Drive, Suite 5-F  
Baton Rouge, LA 70808  
[edmcgee@acadianconsulting.com](mailto:edmcgee@acadianconsulting.com)

**CULLEN AND DYKMAN**

Deborah Franco, Esq.  
Cullen and Dykman  
Garden City Center  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530  
[DFranco@cullenanddykman.com](mailto:DFranco@cullenanddykman.com)

Kenneth T. Maloney, Esq.  
Cullen and Dykman  
1101 14<sup>th</sup> Street, NW, Suite 550  
Washington, DC 20005  
[kmaloney@cullenanddykman.com](mailto:kmaloney@cullenanddykman.com)

**SAUL EWING LLP**

Stephen B. Genzer, Esq.  
Saul Ewing LLP  
One Riverfront Plaza, Suite 1520  
Newark, NJ 07102  
[sgenzer@saul.com](mailto:sgenzer@saul.com)

Courtney Schultz  
Saul Ewing LLP  
Centre Square West, 38<sup>th</sup> Floor  
1500 Market Street  
Philadelphia, PA 19102  
[cschultz@saul.com](mailto:cschultz@saul.com)



**New Jersey Large Energy Users  
Coalition (“NJLEUC”):**

Steven S. Goldenberg, Esq.  
Fox Rothschild, LLP  
997 Lenox Drive, Bldg. 3  
Lawrenceville, NJ 08648  
(609) 896-3600  
(609) 896-1469 (fax)  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

Colleen A. Foley, Esq.  
Saul Ewing LLP  
One Riverfront Plaza, Suite 1520  
Newark, NJ 07102  
[cfoley@saul.com](mailto:cfoley@saul.com)

**Public Service Electric And Gas Company**

Joseph F. Accardo, Jr., Deputy General  
Counsel  
Martin C. Rothfelder, Esq.  
Public Service Electric and Gas Company  
80 Park Plaza, T-5  
Newark, New Jersey 07102