



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/

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

)
)
)
)

**PREHEARING ORDER
SETTING PROCEDURAL
SCHEDULE**

DOCKET NO. GM15101196

Parties of Record:

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

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

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 ultimate 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. As the deadline to file motions to intervene or participate in this matter will expire on the same date as the execution of this Order, all such motions will be addressed in a subsequent order.

To aid in the setting of an appropriate schedule, a proposed preliminary procedural schedule was generated by the Joint Petitioners and circulated to the 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.

DISCUSSION AND FINDINGS:

I have reviewed the proposed preliminary schedule, and after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the attached as the Prehearing Order, along with the Procedural Schedule identified as "Exhibit A", and **HEREBY DIRECT** the parties to comply with its terms.

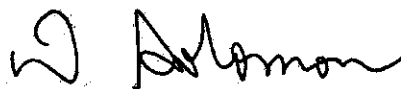
I **HEREBY DIRECT** that all documents required to be served under the terms of the schedule described on "Exhibit A" shall be served by electronic-mail, while still providing hard copies 1) to the Board for those documents which must be filed with the Board, and 2) to each party requesting hard copies.

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: January 29, 2016

BY:



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

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

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

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

RATE COUNSEL

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us
smassey@rpa.state.nj.us

BOARD OF PUBLIC UTILITIES

Honorable Irene Kim Asbury
Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Irene.Asbury@bpu.state.nj.us

Paul Flanagan, Executive Director
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
paul.flanagan@bpu.state.nj.us

Cynthia E. Covie, Esq., Chief Counsel
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Cynthia.Covie@bpu.state.nj.us

Heather L. Weisband, Esq.
Legal Specialist
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Heather.weisband@bpu.state.nj.us

Jake Gertsman, Esq.
Legal Specialist
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Jake.Gertsman@bpu.state.nj.us

Brian O. Lipman, Litigation Manager
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
blipman@rpa.state.nj.us

Sarah Steindel
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ssteinde@rpa.state.nj.us

Henry Ogden
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
hogden@rpa.state.nj.us

Kurt Lewandowski
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
klewando@rpa.state.nj.us

Maura Caroselli
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
mcaroselli@rpa.state.nj.us

Christine Juarez
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
cjuarez@rpa.state.nj.us

Jerome May, Director
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
jerome.may@bpu.state.nj.us

Jacqueline Galka
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Jacqueline.Galka@bpu.state.nj.us

Robert Schultheis, Chief
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
robert.schultheis@bpu.state.nj.us

Jackie O'Grady
Office of the Economist
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 07826-0350
jackie.ograd@bpu.state.nj.us

Mark Beyer, Director
Office of the Economist
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 07826-0350
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

Felicia Thomas-Friel, Esq.
Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
ftomas@rpa.state.nj.us

PCMG AND ASSOCIATES LLC

Karl Pavlovic
PCMG and Associates LLC
22 Brookes Avenue
Gaithersburg, MD 20877
kpavlovic@pcmgregcon.com

Dante Mugrace
PCMG and Associates, LLC
90 Moonlight Court
Toms River, NJ 08753
mugrace@pcmgregcon.com

EXETER ASSOCIATES, INC.

Matthew I. Kahal
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, MD 21044
mkahal@exeterassociates.com

**CHESAPEAKE REGULATORY
CONSULTANTS**

David Peterson
Chesapeake Regulatory Consultants
10351 Southern Maryland Boulevard
Suite 202
Dunkirk, MD 20754-9500
davep@chesapeake.net

ELIZABETHTOWN GAS

Mary Patricia Keefe, Esq.
Elizabethtown Gas
520 Green Lane
Union, NJ 07083
pkeefe@aglresources.com

Max Chang
Synapse Energy Economics, Inc.
485 Massachusetts Avenue, Suite 2
Cambridge, MA 02139
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

Edward McGee
Acadian Consulting Group
5800 One Perkins Drive, Suite 5-F
Baton Rouge, LA 70808
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

Kenneth T. Maloney, Esq.
Cullen and Dykman
1101 14th Street, NW, Suite 550
Washington, DC 20005
kmaloney@cullenanddykman.com

SAUL EWING LLP

Stephen B. Genzer, Esq.
Saul Ewing LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102
sgenzer@saul.com

Courtney Schultz
Saul Ewing LLP
Centre Square West, 38th Floor
1500 Market Street
Philadelphia, PA 19102
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

Colleen A. Foley, Esq.
Saul Ewing LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102
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

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

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 ultimate 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.

A. Issues to be Resolved:

- 1) Whether the proposed merger satisfies the requirements of N.J.S.A. 48:2-51.1, specifically, whether the merger does not negatively affect competition, the rates of ratepayers affected by the acquisition of control, the employees of the affected public utility, and the provision of safe and adequate utility service at just and reasonable rates; and
- 2) Whether, as required by N.J.A.C. 14:1-5.14(C), positive benefits will flow to customers and to the State of New Jersey from the proposed merger.

2. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:**

Counsel for Joint Petitioners

Stephen B. Genzer, Esq.
Saul Ewing LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102
sgenzer@saul.com

Kenneth T. Maloney, Esq.
Cullen and Dykman
1101 14th Street, NW, Suite 550
Washington, DC 20005
kmaloney@cullenanddykman.com

Counsel for the Staff of the New Jersey Board of Public Utilities ("Board"):

Caroline Vachier, DAG
Alex Moreau, DAG
Patricia Krogman, DAG
Department of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, N.J. 07102
(973)648-3709 (phone) (Vachier)
(973) 648-3762 (phone) (Moreau)
(973) 648-3441(phone) (Krogman)
(973) 648-3555 (fax)
caroline.vachier@dol.lps.state.nj.us
alex.Moreau@dol.lps.state.nj.us
patricia.krogman@dol.lps.state.nj.us

Counsel for Division of Rate Counsel (“Rate Counsel”):

Stefanie Brand, Esq., Director
Felicia Thomas-Friel, Esq.
Brian Lipman, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, N.J. 08625
(609) 984-1460 (phone)
609-292-2923 (fax)
sbrand@rpa.state.nj.us
ftomas@rpa.state.nj.us
blipman@rpa.state.nj.us

Counsel For Proposed Interveners/Participants: The December 16, 2015 Order set January 29, 2016 as the deadline for the filing of motions to intervene or participate in this matter. As the deadline to file motions to intervene or participate in this matter will expire on the same date as the execution of this Order, there may be additional proposed interveners/participants.¹

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

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

No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

¹ These potential parties are listed for informational purposes at this time. No party has been granted participant or Intervener Status in this matter.

3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Joint Petitioners' service territory after publication of notice in newspapers of general circulation. The two (2) public hearings will be held as follows:

**Monday, February 22, 2016
4:30 P.M. and 5:30 P.M.
Hunterdon County Complex, Building #1
314 State Route 12
Flemington, NJ 08822**

**Wednesday, February 24, 2016
4:30 P.M. and 5:30 P.M.
Liberty Hall Corporate Center
1085 Morris Avenue
Union, NJ 07083**

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Evidentiary hearings will be held May 17, 2016 – May 20, 2016 starting at 9:00 a.m. on each day at a location to be determined.

5. **STIPULATIONS:**

None at this time.

6. **SETTLEMENT:**

Parties are encouraged to engage in settlement discussions. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case. Settlement Conferences will be held May 10, 2016 – May 12, 2016 at a time and location to be determined.

7. **AMENDMENTS TO PLEADINGS:**

None at this time.

8. **DISCOVERY AND DATE FOR COMPLETION:**

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 or as provided in "Exhibit A". Unless I otherwise provide, all discovery shall be completed in accordance with the schedule in "Exhibit A".

9. **ORDER OF PROOFS:**

Joint Petitioners have the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – Joint Petitioners

Second – Rate Counsel

Third – Interveners

Fourth – Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

Joint Petitioners anticipate presenting the following three (3) witnesses: Art P. Beattie, Southern Company's Executive Vice President and Chief Financial Officer, Henry P. Linginfelter, Executive Vice President of Distribution Operations at AGL Resources and the Chief Executive Officer of AGL Resources' seven natural gas distribution companies, including Elizabethtown, and Mark S. Lantrip, President and Chief Executive Officer of SCS and Executive Vice President of Southern Company. Additional witnesses may be identified by Joint Petitioners as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel anticipates presenting the following seven (7) witnesses: John Rosenkranz, Max Chang, David Dismukes, Ph.D., Edward McGee, Matthew Kahal, Dante Mugrace, and David Peterson. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

Intervenors shall identify its witnesses no later than five (5) days prior to the filing of testimony.

Any party substituting witnesses shall identify such witnesses within five (5) days of determining to replace a witness, and in no event later than five (5) days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

I will address the motions to intervene or participate filed by NJLEUC, PSE&G, and any additional motions in a subsequent Order. All motions are due on or before January 29, 2016.

14. **SPECIAL MATTERS:**

None at this time.

EXHIBIT A
IN THE MATTER OF THE MERGER OF THE SOUTHERN COMPANY
AND AGL RESOURCES, INC.
DOCKET NO. GM15101196
PROCEDURAL SCHEDULE²

<u>ACTION TO BE TAKEN</u>	<u>DATE</u>
All Initial Discovery Requests Served	January 4, 2016
Responses to Initial Discovery Requests Served ³	January 19, 2016
Last Day for Motions to Intervene/Participate	January 29, 2016
Second Round Discovery Requests Served	February 1, 2016
Discovery Conferences Served ⁴	Week February 8, 2016
Responses to Second Round Discovery Served	February 15, 2016
Public Comment Hearings	February 22 and 24, 2016
Rate Counsel/Intervener Direct Testimony Filed	March 4, 2016
Discovery on Rate Counsel/Intervener Testimony Served	March 11, 2016
Responses to Discovery Served	March 28, 2016
Petitioners' Rebuttal Filed	April 8, 2016
Discovery on Petitioners' Rebuttal Testimony Served	April 15, 2016
Responses to Discovery On Petitioners' Rebuttal Served	April 29, 2016
Settlement Conferences	May 10, 2016 – May 12, 2016
Evidentiary Hearings – With Oral Surrebuttal	May 17, 2016 – May 20, 2016
Briefing Schedule	To Be Determined

Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4, subject to the scheduled end dates.

² The final procedural schedule will be subject to the discretion and the calendar of the presiding commissioner.

³ Discovery responses are due 15 days from receipt. Discovery requests also may be received on a rolling basis during this period.

⁴ Discovery responses are due 15 days from receipt. Discovery requests also may be received on a rolling basis during this period.