



Agenda Date: 11/30/11  
Agenda Item: 1A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue**  
**P.O. Box 350**  
**Trenton, NJ 08625-0350**  
**www.nj.gov/bpu/**

DIVISION OF AUDITS

IN THE MATTER OF PIVOTAL UTILITY HOLDINGS INC. )  
d/b/a/ ELIZABETHTOWN GAS COMPANY )  
REMEDIATION ADJUSTMENT CLAUSE )  
AUDIT NO. A-2888 ) ORDER  
DOCKET NO. GA10110840

(SERVICE LIST ATTACHED)

Kenneth Maloney, Esq., Cullen and Dykman, for Elizabethtown Gas Company  
Stefanie Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-16.1, and in accordance with the New Jersey Board of Public Utilities' ("Board") established audit program, the Division of Audits, Bureau of Financial Audits ("Staff"), conducted an audit ("Audit") of the Remediation Adjustment Clause ("RAC") of Pivotal Utility Holdings, Inc. d/b/a/ Elizabethtown Gas Company's ("Elizabethtown" and/or "Company") for the period October 1, 1987 through June 30, 2006. The Board now considers a Final Stipulation entered into by Staff and the Company in settlement of all issues in the Audit ("Stipulation"), a copy of which is attached.

The major provisions of the Stipulation are as follows<sup>1</sup>:

Out-of-state and Non-remediation Expenses Charged to the RAC

The Audit found that \$183,536 of costs was improperly recovered through the RAC for the period March 2005 through March 2006 (\$54,295 for out-of-state Manufactured Gas Plant ("MGP") site costs and \$129,241 for other non-MGP related costs).

Elizabethtown sought recovery of the \$183,536.00 in two RAC-related recovery proceedings in BPU Docket Nos. GR05080730 and GR06080621, respectively. These proceedings were resolved by the Board's Order dated July 30, 2008 ("July 30 Order"). The July 30 Order made no determination as to whether this \$183,536.00 of costs should be disallowed, but held the issue open pending the resolution of this Audit.

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<sup>1</sup> While described at some length in this Order, should there be any discrepancy between the summary in this Order and the terms of the Stipulation, the terms of the Stipulation control subject to any conditions in this Order.

The parties agree to the disallowance of \$183,536 for recovery through the RAC, along with simple interest calculated at the Board approved rate for customer deposits. Interest shall be calculated from September 15, 2005 through the effective date of the Stipulation which is forty-five (45) days from the date of the Order approving this Stipulation ("Effective Date"). Elizabethtown will credit the RAC with \$183,536.00 plus simple interest determined using the Board-approved rate applicable to customer deposits by the Effective Date.

The attached Stipulation resolves all issues related to the recovery of these costs in all past, present and future proceedings and the parties agree that they will work in good faith to ensure that the Company will not be made subject to a double disallowance of these costs in any future proceeding.

#### Internal Labor Costs Recovered through RAC

For the 10-year period July 1996 through June 2006, Elizabethtown's quarterly reports to the Board included internal labor costs in the amount of \$776,861 which were charged and recovered through the RAC. Staff contends that internal labor costs were not recoverable through the RAC. The Company contends that these expenses were approved by the Board in previous RACs.

During settlement negotiations, the company subsequently provided information demonstrating that internal labor costs recovered through the RAC were not reflected in base rates during the audit period. Moreover, in the Company's most recent base rate proceeding, in BPU Docket No. GR09030195, the Board approved a stipulation that eliminated these internal labor costs from the revenue requirement used to establish base rates and provided that Elizabethtown would be permitted to seek to recover such internal labor costs through the RAC. Accordingly, no adjustment will be made to the internal labor costs that previously have been recovered through the RAC.

#### Carrying Costs Over-Charges

Staff's review of the RAC indicated that interest on monthly RAC balances was compounded during the period May 2001 through June 2003. Staff contended that such compounding resulted in overcharges of carrying costs of \$14,657. Elizabethtown contended that its carrying charge calculations during this period were not inappropriate based upon the Board's March 20, 2001 Order in Docket No. GX99030121. No interest adjustment will be made for this period and future RAC filings should include specific reference to the Board's Order approving the detailed interest calculation to be applied to the RAC.

#### Miscellaneous Expenses Charged to RAC for Contracted Labor

Staff's review of Elizabethtown's RAC report for the second quarter of 2006 indicated that Elizabethtown incurred expense of \$11,493 related to contracted services associated with this Audit of the RAC. The referenced expenses did not occur until after approval of Elizabethtown's 2006 RAC proceeding in Docket No. GR06080621. Accordingly, the recovery of these costs will be addressed in the Company's pending RAC filings in Docket nos. GR07080645, GR08090836 and GR09080651.

Other RAC Issues:

Elizabethtown agrees to implement a procedure to accurately track remediation expenses, and to prepare and file such a procedure with the Board by the Effective Date.

Elizabethtown agrees to require its internal or external auditors to audit the RAC at least every three years with copies of the resulting reports provided to Staff and the Division of Rate Counsel.

Based upon its review of the Stipulation and the recommendation of Staff, the Board is satisfied that the Stipulation resolves the outstanding issues in this Audit.

Accordingly, the Board HEREBY APPROVES the Stipulation as an appropriate resolution of the Audit issues, and incorporates its terms and conditions as if fully set forth herein.

The Board HEREBY ORDERS Elizabethtown to file a procedure to accurately track its RAC expenses with the Board by the Effective Date.

The Board HEREBY ORDERS Elizabethtown to credit the RAC in the amount of \$183,536 plus simple interest at the Board approved rate for customer deposits from September 15, 2005 to the Effective Date.

Finally, the Board HEREBY ORDERS Elizabethtown to file proof of compliance with this Order with the Board's Division of Audits, within fifteen days of the Effective Date, whereupon this Audit will be considered closed.

DATED: 11/30/11

BOARD OF PUBLIC UTILITIES  
BY:

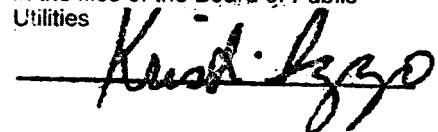
  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



ATTEST:  
  
KRISTI IZZO  
SECRETARY

IN THE MATTER OF PIVOTAL UTILITY HOLDINGS INC.  
d/b/a ELIZABETHTOWN GAS COMPANY  
REMEDIATION ADJUSTMENT CLAUSE  
AUDIT NO. A-2888

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

**Pivotal Utility Holdings, Inc.  
d/b/a Elizabethtown Gas**

**Audit A-2888  
Remediation Adjustment Clause**

**FINAL STIPULATION**

**BACKGROUND**

This Final Stipulation resolves all issues between Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas ("Elizabethtown" and/or "Company") and the Staff of the Division of Audits ("Staff") of the Board of Public Utilities ("BPU" or "Board") raised in Staff's Audit No. A-2888. During that audit, Staff reviewed Elizabethtown's deferral and recovery of costs through its Remediation Adjustment Clause ("RAC") for the period October 1, 1987 through June 30, 2006. Staff's audit report included seven findings and recommendations, which are described below in paragraphs numbered one (1) through seven (7). Representatives of Staff and the Company have met on a number of occasions to discuss Staff's findings and recommendations. As a result of those discussions, the parties have resolved all issues in this proceeding in accordance with the Stipulation set forth below.

**STIPULATION**

Based upon and subject to the terms and conditions set forth herein, Staff and Elizabethtown (hereinafter "the Parties") stipulate as follows:

1. **Cash and Accrual Accounts.** Staff determined that remediation costs reflected on Elizabethtown's quarterly RAC statements filed with the Board did not agree in certain instances with the costs reflected in Elizabethtown's general ledger. In those instances, the costs reported in the quarterly statement were reported on an accrual basis while both cash and accrual basis entries were recorded in the general ledger. Staff recommended that the Company not mix

cash and accrual accounting in preparing its various RAC reports and that the Company should implement a procedure to accurately track remediation expenses. Elizabethtown will prepare and file such a procedure with the Board within forty-five (45) days of the date of a Board order approving this Final Stipulation without modification (hereinafter "the Effective Date").

2. Non- New Jersey RAC Expenses Charged to Elizabethtown's RAC. Staff found that \$183,536.33 of costs were improperly charged to the RAC during the period March 2005 through March 2006. This amount included \$54,295.61 for out-of-state Manufactured Gas Plant ("MGP") site costs and \$129,240.71 for other non-MGP related costs. Staff recommended disallowance of \$183,536.33 for recovery through the RAC along with simple interest associated with this adjustment. Staff recommended that the interest rate to be applied should be the Board-approved rate for customer deposits. Elizabethtown disputed Staff's finding, claiming that only \$60,796.60 of the costs reviewed by Staff were erroneously debited to the RAC.

As of the Effective Date, Elizabethtown will credit the RAC \$183,536.33 plus simple interest determined using the Board-approved rate applicable to customer deposits calculated from September 15, 2005 (the approximate mid-point of the period from which the contested invoices dated) to the Effective Date. The parties recognize that Elizabethtown sought recovery of the \$183,536.33 of costs for which recovery will be disallowed under this Final Stipulation in two RAC-related recovery proceedings in BPU Docket Nos. GR05080730 and GR06080621, respectively. These proceedings have been resolved by the Board by Order dated July 30, 2008 ("July 30 Order"). The July 30 Order made no determination as to whether this \$183,536.33 of costs should be disallowed, but held the issue open pending the resolution of this Audit. This Final Stipulation resolves all issues related to the recovery of these costs in all past, present and future proceedings and the Parties agree that they will work in good faith to ensure that the

Company will not be made subject to a double disallowance of these costs in any future proceeding. To assist in resolving these issues, a list of the invoices reflected in this adjustment is attached as Appendix A.

3. Sharing Cost of Remediation – Newton and Flemington Sites. A letter agreement was signed on February 23, 1993 between Elizabethtown and Jersey Central Power & Light Company (“JCP&L”) concerning the allocation of the costs of site investigations and remediation/clean-up of contamination associated with jointly owned former MGPs in Flemington and Newton. The agreement provided for an allocation of remediation costs in the ratio of 40% to Elizabethtown and 60% to JCP&L. On October 19, 1993, Elizabethtown and JCP&L entered into an amended agreement that provided for a 50/50 sharing with respect to costs incurred at Flemington prior to June 14, 1993.

Staff found five transactions between July 1992 and June 1993 for the Flemington site in which expenses were allocated 40% to Elizabethtown instead of in accordance with the 50/50 cost sharing required by the October 19, 1993 amended agreement. The total under-billing to Elizabethtown by JCP&L was \$6,427.97. Staff recommended that Elizabethtown abide by the terms of the sharing agreement for all future allocations of Elizabethtown/JCP&L shared site expenses.

Elizabethtown will abide by the terms of the sharing agreements, as they may be modified from time to time, for all future allocations of Elizabethtown/JCP&L shared site expenses. No adjustment will be made to resolve this issue. Elizabethtown shall not seek recovery of the under-billed amount identified above in any future proceeding.

4. Performance RAC Audits. Staff found that Elizabethtown had not issued any internal or external RAC-related audit reports since September 1, 1996. Staff recommended that

AGL Resources Inc.'s internal audit group should regularly include the Elizabethtown RAC in its audit plan. Prospectively, Elizabethtown will require its internal or external auditors to audit the RAC at least every three years for the prior three years of data. The Company may conduct such audits at one or two year intervals if it chooses. All audit reports resulting from these audits shall be provided to the Board's Division of Audits, Division of Energy and to the Department of Public Advocate, Division of Rate Counsel ("Rate Counsel").

5. **Internal Labor Costs.** For the 10-year period July 1996 through June 2006, Elizabethtown's quarterly reports to the Board reflected internal labor costs in the amount of \$776,861.00. These costs have been recovered through the RAC. The Company provided information demonstrating that internal labor costs recovered through the RAC were not reflected in base rates during the audit period. Moreover, in the Company's most recent base rate proceeding in BPU Docket No. GR09030195 the Board approved a stipulation that eliminated these internal labor costs from the revenue requirement used to establish base rates and provided that Elizabethtown would be permitted to seek to recover such internal labor costs through the RAC. Accordingly, no adjustment will be made to the internal labor costs that previously have been recovered through the RAC.

6. **Calculation of Carrying Costs.** Staff's review of the RAC indicated that interest on monthly RAC balances was compounded during the period May 2001 through June 2003. Staff contended that such compounding resulted in overcharges of carrying costs amounting to \$14,657.00. Elizabethtown contended that its carrying charge calculations during this period were not inappropriate based upon the Board's March 30, 2001 Order in Docket No. GX99030121. No interest adjustment will be made for this period and future RAC filings should



include specific reference to the Board Order approving the detailed interest calculation applied to the RAC.

7. **Recommendation No.7.** Staff's review of Elizabethtown's RAC report for the second quarter of 2006 indicate that Elizabethtown incurred expenses of \$11,493.00 related to contracted services associated with this audit. Staff recommended that these expenses be removed from the 2006 RAC proceeding in Docket No. GR06080621 and considered in Elizabethtown's next RAC proceeding. Elizabethtown asserted that any issues associated with such costs should be addressed in BPU Docket No. GR06080621 and included these costs in its recoverable RAC costs in that proceeding. However, issues associated with these specific costs have not been resolved. Accordingly, issues associated with the recovery of these costs will be addressed in the Company's current pending RAC filings which include Board Docket Nos. GR07080645, GR08090836, and GR09080651

8. **All Issues Resolved.** This stipulation provides for a final resolution of this proceeding. All issues raised in Staff's Audit No. A-2888 are resolved.

9. **Entirety Of Stipulation.** This Stipulation represents a mutual balancing of interests and, therefore, is intended to be accepted and approved in its entirety. In the event that the Board does not adopt this Stipulation in its entirety in an Order, then any Party hereto is free to pursue its then-available legal remedies with respect to all issues in this Stipulation as though this Stipulation had not been signed.

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

11. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, neither Elizabethtown, nor Staff shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein. This Stipulation shall not be cited as precedent except for the purpose of enforcing its terms

WHEREFORE, the Parties hereto do respectfully submit this Stipulation to the Board of Public Utilities and request the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof.

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


PAULA T. DOW  
ATTORNEY GENERAL OF NEW  
JERSEY  
ATTORNEY FOR THE AUDIT STAFF  
OF THE NEW HERSEY BOARD OF  
PUBLIC UTILITIES

By:



Dated: October 18, 2010

By:

  
Caroline Vachin  
Deputy Attorney General

# Appendix A

| Exception No. | NJBPU RAC Audit Description  | Vendor | Invoice Total | Elizabethtown RAC Report |                  | Elizabethtown Revised Invoiced Allocation |                | KJBPU Recommended RAC Adjustment |               | Proposed NJ RAC Adjustment |
|---------------|------------------------------|--------|---------------|--------------------------|------------------|-------------------------------------------|----------------|----------------------------------|---------------|----------------------------|
|               |                              |        |               | Account?                 | Member / Account | Reported RAC                              | New Jersey MGP | Non-NJ MGP                       | Non-MGP Other |                            |
| 1             | P-Card                       |        | 731.78        | Miscellaneous            | 150065           | 731.78                                    | 365.89         | 365.89                           | 3,029.90      | 3,029.90                   |
| 2             | P-Card                       |        | 3,029.90      | Miscellaneous            | 150065           | 3,029.90                                  | 486.10         | 486.10                           | 486.10        | 486.10                     |
| 3             | P-Card                       |        | 486.10        | Miscellaneous            | 150065           | 486.10                                    | 52.14          | 52.14                            | 52.14         | 52.14                      |
| 4             | P-Card                       |        | 52.14         | Miscellaneous            | 150065           | 52.14                                     | 192.68         | 192.68                           | 192.68        | 192.68                     |
| 5             | P-Card                       |        | 192.68        | Miscellaneous            | 150065           | 192.68                                    | 7,365.25       | 7,365.25                         | 7,365.25      | 7,365.25                   |
| 6             | McKenna Long                 |        | 7,485.25      | Legal                    | 150065           | 7,485.25                                  | 192.68         | 192.68                           | 192.68        | 192.68                     |
| 7             | Omniarch+061                 |        | 2,431.25      | Unallocated              | 670200           | 2,431.25                                  | 192.68         | 192.68                           | 192.68        | 192.68                     |
| 8             | URS-001                      |        | 192.68        | Unallocated              | 670200           | 192.68                                    | 192.68         | 192.68                           | 192.68        | 192.68                     |
| 9             | RETEC                        |        | 792.05        | Miscellaneous            | 150065           | 792.05                                    | 485.81         | 485.81                           | 485.81        | 485.81                     |
| 10            | Elcom, Dorell                |        | 4,394.12      | Unallocated              | 150076           | 4,394.12                                  | 6,445.74       | 6,445.74                         | 6,445.74      | 6,445.74                   |
| 11            | Covington & Burling          |        | 5,445.74      | Ins. Litigation          | 150076           | 5,445.74                                  | 179.89         | 179.89                           | 179.89        | 179.89                     |
| 12            | Covington & Burling          |        | 179.89        | Ins. Litigation          | 150076           | 179.89                                    | 293.11         | 293.11                           | 293.11        | 293.11                     |
| 13            | Covington & Burling          |        | 293.11        | Ins. Litigation          | 150076           | 293.11                                    | 4,363.47       | 4,363.47                         | 4,363.47      | 4,363.47                   |
| 14            | McKenna Long                 |        | 15,957.43     | Miscellaneous            | 150065           | 15,957.43                                 | 11,583.97      | 11,583.97                        | 11,583.97     | 11,583.97                  |
| 15            | McKenna Long                 |        | 10,707.98     | Miscellaneous            | 150065           | 10,707.98                                 | 4,394.12       | 4,394.12                         | 4,394.12      | 4,394.12                   |
| 16            | McKenna Long                 |        | 27,580.40     | MGP Sites                | Various          | 27,580.40                                 | 13,212.45      | 13,212.45                        | 13,212.45     | 13,212.45                  |
| 17            | ERM                          |        | 14,760.50     | MGP Sites                | Various          | 14,760.50                                 | 868.27         | 868.27                           | 868.27        | 868.27                     |
| 18            | ERM                          |        | 3,034.57      | MGP Sites                | Various          | 3,034.57                                  | 2,579.93       | 2,579.93                         | 2,579.93      | 2,579.93                   |
| 19            | McKenna Long                 |        | 11,871.00     | Miscellaneous            | 150065           | 11,871.00                                 | 455.18         | 455.18                           | 455.18        | 455.18                     |
| 20            | RETEC                        |        | 55,905.31     | Miscellaneous            | 150065           | 55,905.31                                 | 1,967.70       | 1,967.70                         | 1,967.70      | 1,967.70                   |
| 21            | CH2M HILL                    |        | 3,456.90      | Miscellaneous            | 150065           | 3,456.90                                  | 738.00         | 738.00                           | 738.00        | 738.00                     |
| 22            | Covington & Burling          |        | 1,967.70      | Miscellaneous            | 150065           | 1,967.70                                  | 1,967.70       | 1,967.70                         | 1,967.70      | 1,967.70                   |
| 23            | Covington & Burling          |        | 738.00        | Miscellaneous            | 150065           | 738.00                                    | 738.00         | 738.00                           | 738.00        | 738.00                     |
| 24            | CH2M HILL                    |        | 8,634.92      | Miscellaneous            | 150065           | 8,634.92                                  | 8,634.92       | 8,634.92                         | 8,634.92      | 8,634.92                   |
| 25            | RETEC                        |        | 11,005.30     | Miscellaneous            | 150065           | 11,005.30                                 | 11,005.30      | 11,005.30                        | 11,005.30     | 11,005.30                  |
| 26            | McKenna Long                 |        | 15,163.10     | Miscellaneous            | 150076           | 15,163.10                                 | 15,163.10      | 15,163.10                        | 15,163.10     | 15,163.10                  |
| 27            | McKenna Long                 |        | 2,520.50      | Legal                    | 150076           | 2,520.50                                  | 2,520.50       | 2,520.50                         | 2,520.50      | 2,520.50                   |
| 28            | McKenna Long                 |        | 5,107.30      | Legal                    | 150065           | 5,107.30                                  | 5,107.30       | 5,107.30                         | 5,107.30      | 5,107.30                   |
| 29            | CH2M HILL                    |        | 151.65        | Miscellaneous            | 150065           | 151.65                                    | 151.65         | 151.65                           | 151.65        | 151.65                     |
| 30            | LTM Environmental LLC        |        | 2,955.09      | Miscellaneous            | 150065           | 2,955.09                                  | 1,802.89       | 1,802.89                         | 1,802.89      | 1,802.89                   |
| 31            | McKenna Long                 |        | 684.63        | Miscellaneous            | 150065           | 684.63                                    | 684.63         | 684.63                           | 684.63        | 684.63                     |
| 32            | McKenna Long                 |        | 8,520.35      | Miscellaneous            | 150065           | 8,520.35                                  | 8,520.35       | 8,520.35                         | 8,520.35      | 8,520.35                   |
| 33            | McKenna Long                 |        | 180.00        | Miscellaneous            | 150065           | 180.00                                    | 180.00         | 180.00                           | 180.00        | 180.00                     |
| 34            | Environmental Cost Mgt       |        | 5023.24       | Miscellaneous            | 150065           | 5023.24                                   | 3,374.12       | 3,374.12                         | 3,374.12      | 3,374.12                   |
| 35            | Covington & Burling          |        | 474.93        | Miscellaneous            | 670200           | 474.93                                    | 474.93         | 474.93                           | 474.93        | 474.93                     |
| 36            | URS-001                      |        | 1570.95       | Miscellaneous            | 670200           | 1570.95                                   | 1570.95        | 1570.95                          | 1570.95       | 1570.95                    |
| 37            | Treasurer, State of NJ       |        | 40.00         | Miscellaneous            | 670200           | 40.00                                     | 40.00          | 40.00                            | 40.00         | 40.00                      |
| 38            | Treasurer, State of NJ       |        | 40.00         | Miscellaneous            | 670200           | 40.00                                     | 40.00          | 40.00                            | 40.00         | 40.00                      |
|               | Total                        |        | \$234,711.75  |                          |                  | \$234,711.75                              | \$54,102.95    | \$54,102.95                      | \$51,175.80   | \$183,536.33               |
|               | Total per Eborn revised Inv# |        |               |                          |                  |                                           |                |                                  |               |                            |
|               | Per NJBPU MGP Costs          |        |               |                          |                  |                                           |                |                                  |               |                            |