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VIA FEDERAL EXPRESS AND
EMAIL TO: rule.comments@bpu.state.nj.us

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: **I/M/O The Board's Review Of The Applicability And Calculation Of A Consolidated Tax Adjustment**
BPU Docket No. EO12121072

Dear Secretary Izzo:

On behalf of Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company"), enclosed for filing are an original and ten copies of these comments in response to the "Notice of Opportunity to Provide Additional Information" dated June 18, 2014 ("June 18 Notice") in the above proceeding. An electronic version of these comments is also being submitted as required by the June 18 Notice.

Background

In the June 18 Notice, the New Jersey Board of Public Utilities ("Board") requested written comments concerning its Staff's proposed modifications to the Board's policy with respect to consolidated tax adjustments ("CTA") in base rate proceedings (hereinafter "CTA Policy"). Specifically, Board Staff proposes that the current CTA Policy remain in effect except as amended by the following:

1. The revised time period for the calculation of the savings would look back five years from the beginning of the test year;

2. The savings allocation method would allow 75% of the calculated savings to be retained by the company and 25% of the calculated savings to be allocated to customers; and

3. Transmission assets of the State's electric distribution companies would not be included in the CTA.

Elizabethtown's Position

Elizabethtown appreciates the Board's willingness to review and consider modifications to its CTA policy. While Elizabethtown continues to believe that the Board should completely eliminate the CTA when establishing base rates for the State's distribution utilities, Elizabethtown nonetheless recognizes that the revised CTA policy will likely reduce the impact of the CTA on individual utilities and thus represents a positive step toward creating a fairer and more equitable ratemaking environment in comparison to the current CTA Policy.[1]

While The Staff's Proposal Represents A Step In The Right Direction, The Board Should Consider Eliminating The CTA Entirely

While the Staff's CTA proposal is an improvement to the Board's current CTA ratemaking practice, it begs the question of why the CTA should not be eliminated entirely. Certainly, there is no merit in claims that the Board is somehow required to adopt a CTA. While New Jersey's courts have held that the Board has the authority to include a CTA in determining just and reasonable rates, the courts have never held that the Board is required to do so.[2] On the contrary, continuing to utilize a CTA in setting base rates is only lawful to the extent that it permits the Board to establish just and reasonable rates. Whatever reasons may have supported the Board's decision to adopt its current CTA Policy in the 1990s, those reasons do not remain valid today.

As the Board has repeatedly recognized in the past few years, there is a need for the State's utilities to invest in replacing aging infrastructure to ensure the continued safety and reliability of their gas, water and electric distribution systems. Elizabethtown recognizes and appreciates that the Board has been among the most progressive state regulators in finding ways to promote infrastructure investments by the State's utilities. However, the continued use of a CTA in setting base rates is at cross-purposes with the goal of increasing investment. It simply does not make sense to continue a CTA that arbitrarily renders it more difficult for a utility to recover its cost of capital if the Board wishes to promote increased investment.

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[1] As Elizabethtown understands it, when the Board refers to the "current CTA Policy" it is referring to the time value based "rate base" approach first utilized by the Board in 1992. *See I/M/O the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service, Phase II*, BPU Docket No. ER90091090J (October 20, 1992); *I/M/O the Verified Petition of Rockland Electric Company for Approval of Changes in Electric Rates, its Tariff for Electric Service, Its Depreciation Rates, and for Other Relief*, BPU Docket No. ER02100724 (April 20, 2004).

[2] *See In re New Jersey Power & Light Co.*, 9 N.J. 498 (1952); *Lambertville Water Co. v. New Jersey Bd. of Public Utility Comm'rs*, 153 N.J. Super. 24 (App. Div. 1977), *rev'd in part on other grounds*, 79 N.J. 449 (1979); *Toms River Water Co. v. New Jersey Bd. of Public Utility Comm'rs*, 158 N.J. Super. 57 (App. Div. 1978); *New Jersey Bell Tel. Co. v. State, Dep't of Public Utilities, Bd. of Public Utility Comm'rs*, 162 N.J. Super. 60 (App. Div. 1978).

In an environment in which increased utility investment is being encouraged, the continuation of a CTA is nothing more than the product of reliance on precedent rather than logic and common sense. The unreasonableness of the continued application of a CTA is demonstrated by the fact that a comprehensive CTA is not currently used in ratemaking by the Federal Energy Regulatory Commission[3] or by regulatory authorities in 47 of 50 states.[4] Indeed, none of the five jurisdictions in which Elizabethtown's regulated gas distribution affiliates[5] provide service requires a CTA. The Board should conform its ratemaking practice with the vast majority of other jurisdictions by eliminating the CTA entirely.

If The Board Adopts The Revised CTA Policy, It Should Clarify That It Will Apply That Policy In A Manner That Considers Individual Utility Circumstances

In its June 18 Notice, the Board Staff proposes that the transmission assets of electric distribution companies ("EDCs") will not be included in the calculation of the CTA. Elizabethtown understands this to mean that the income associated with utility transmission facilities will not be used as a basis for allocating tax losses to an electric distribution utility and thus this adjustment will tend to reduce the size of the CTA reflected in individual electric utilities' rates. While Elizabethtown supports the use of this adjustment in determining CTAs for electric utilities, it submits that, assuming the Board adopts Staff's revised CTA Policy, other modifications to the calculation of CTAs, analogous to the exclusion of transmission assets for EDCs, may be appropriate for other utilities. Different corporate structures and business models may justify adjustments in the determination of individual utility CTAs within the context of the five-year look-back and 75%/25% sharing formula reflected in the revised CTA Policy. Accordingly, Elizabethtown requests clarification that as part of its revised CTA Policy, the Board will allow utilities to make a record concerning their individual circumstances and the way in which those circumstances may affect the application of the revised CTA Policy in individual utility rate proceedings.

Once again, Elizabethtown appreciates the Board's efforts to address the CTA. Please contact the undersigned if you have questions or require further information.

Yours truly,

/s/ Mary Patricia Keefe

Mary Patricia Keefe
Vice President, Regulatory Affairs

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[3] *See Columbia Gulf Transmission Co.*, 23 FERC ¶61,396 (1983).
[4] It is Elizabethtown's understanding that only New Jersey, Pennsylvania and West Virginia continue to apply a comprehensive CTA.
[5] Those jurisdictions are Illinois, Georgia, Virginia, Maryland and Florida.