



STATE OF NEW JERSEY

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314

Post Office Box 350

Trenton, New Jersey 08625-0350

www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE ACQUISITION OF)	ORDER ON MOTIONS TO
ELIZABETHTOWN GAS, A DIVISION OF)	INTERVENE AND FOR
PIVOTAL UTILITY HOLDINGS, INC. BY ETG)	ADMISSION PRO HAC VICE
ACQUISITION CORP., A SUBSIDIARY OF)	AND PREHEARING ORDER
SOUTH JERSEY INDUSTRIES INC. AND)	WITH PROCEDURAL
RELATED TRANSACTIONS)	SCHEDULE
)	
)	DOCKET NO. GM17121309

Parties of Record:

Ira Megdal, Esq., on behalf of South Jersey Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven Goldenberg, Esq., Fox Rothschild, LLP, for the New Jersey Large Energy Users Coalition
Joseph F. Accardo, Jr., Esq., Deputy General Counsel, for Public Service Electric and Gas Company

BY JOSEPH L. FIORDALISO:

BACKGROUND

On or about December 21, 2017, South Jersey Industries, Inc. ("SJI"), ETG Acquisition Corporation ("ETG Acquisition Corp.") and South Jersey Resources Group, LLC ("SJR"),¹ together with Pivotal Utility Holdings, Inc. ("Pivotal") (collectively, "Joint Petitioners") filed a verified joint petition ("Acquisition Petition") with the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval of the acquisition of control by ETG Acquisition Corp. of Pivotal's New Jersey utility operating division, Elizabethtown Gas ("Elizabethtown"), including the sale of substantially all of Elizabethtown's assets ("Acquisition") pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14, and N.J.A.C. 14:1-5.6.

The Joint Petitioners also seek approval of:

- Certain affiliate service agreements for provision of administrative, support and

¹ ETG Acquisition Corp. and SJRG are wholly owned subsidiaries of SJI.

management services pursuant to N.J.S.A. 48:3-7.1 and N.J.A.C. 14:4-4.5;

- A transfer of South Jersey Gas Company's ("SJG") stock from SJI to SJI Utilities, Inc. ("SJI Utilities") pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10;
- The discontinuance by Pivotal of the provision of utility service pursuant to N.J.S.A. 48:2-24, including all obligations under the "Elizabethtown Gas Tariff for Gas Service B.P.U. No.15" on file with the Board ("Elizabethtown Tariff")² and applicable Board Orders;
- The adoption of the Elizabethtown Tariff by ETG Acquisition Corp.; and
- Authority for ETG Acquisition Corp. to record certain regulatory assets and liabilities and to continue to employ deferred accounting for the costs recorded as regulatory assets and liabilities.

In addition, Pivotal further requests the Board to disclaim potential jurisdiction over the sale by Pivotal of the assets of Elkton Gas, Pivotal's Maryland utility operating division, or in the alternative, to approve the sale.

According to the Joint Petitioners, the Acquisition will result in Elizabethtown once again being brought under the umbrella of New Jersey-based ownership and control. SJI will expand its utility operations in New Jersey through ownership of both Elizabethtown and SJG, jointly servicing more than 675,000 utility customers in New Jersey. Some of the benefits identified in the petition by the Joint Petitioners are:

- A one (1) time \$5 million rate credit to Elizabethtown's Basic Gas Supply Service Customers within ninety (90) days of closing;
- For three (3) years following the closing, SJI or an affiliate, will maintain a minimum of 330 employees in New Jersey to support Elizabethtown's operations. SJI will also honor collective bargaining agreements in effect at the time of the closing and will maintain the same local core management that exists today;
- SJI will add a significant number of new employees to New Jersey, over and above the 330 employee commitment, to provide services that are currently provided to Elizabethtown by Southern Gas Company in other states;
-
- The current asset management agreement between Elizabethtown and Sequent Energy Management L.P. will be assigned to SJRG and extended for an additional five (5) year period with a guaranteed minimum \$26.25 million credit to customers over that period;
- Elizabethtown and SJG will have the opportunity to share local employees during times of emergency and otherwise take advantage of each other's resources during critical times, thereby enhancing safety and reliability; and
- The commitment to maintain Elizabethtown's current level of community support contribution of \$190,000 per year for a period of five (5) years post-closing.

² The Elizabethtown Tariff is available on Elizabethtown's website at <https://www.elizabethtowngas.com/-/media/Files/ETG/Rates-Tariff/ETG%20TARIFF%20NO%2015.pdf>.

By Order dated January 31, 2018 ("January 31, 2018 Order"), the Board determined that the Acquisition Petition described above should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated the undersigned as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. The January 31, 2018 Order also directed that any entities seeking to intervene or participate or in this matter file the appropriate application with the Board by February 23, 2018. Any party wishing to file a motion for admission of counsel, pro hac vice, was further directed to do so concurrently with any motion to intervene or participate.

To aid in the setting of an appropriate schedule, Board Staff requested that the New Jersey Division of Rate Counsel ("Rate Counsel") and the Joint Petitioners circulate proposed procedural schedules. The Joint Petitioners circulated a proposed procedural schedule on January 30, 2018, which provided for evidentiary hearings to occur at the end of May. Rate Counsel proposed modifications that extended the schedule by nearly two (2) months. Thereafter, the Joint Petitioners revised the schedule which proposed evidentiary hearings to occur at the end of July. The Joint Petitioners simultaneously forwarded a list of the proposed issues to be addressed in this proceeding. Rate Counsel filed a response, which made further adjustments to the schedule based on its consultants' availability. The Joint Petitioners and Rate Counsel agreed upon this proposed procedural schedule, which were forwarded to Board Staff on April 11, 2018. The Joint Petitioners and Rate Counsel also reached an agreement with regard to the Statement of the Issues on May 1, 2018.

THE MOTIONS:

New Jersey Large Energy Users Coalition Motion to Intervene

By motion dated February 9, 2018, the New Jersey Large Energy Users Coalition ("NJLEUC"), an association whose members include large volume natural gas customers serviced by PSE&G, moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities, including Elizabethtown. Members of NJLEUC are large volume purchasers of natural gas distribution service from Elizabethtown and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to the Acquisition are unique from those of any other party and, as large end-use customers on the Elizabethtown system, the interests of NJLEUC members are substantially different from those of any other party. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact, on large volume gas customers, of the relief sought by the Joint Petitioners in this proceeding.

NJLEUC also argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the reliability and cost of gas distribution service received from Elizabethtown by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC points out that it has been granted intervenor status in Elizabethtown rate proceedings, NUI/AGL Resources and AGLR/Southern Company merger proceedings, as well as a number

of regulatory proceedings involving Elizabethtown, including the Elizabethtown Natural Gas Distribution Utility Reinforcement Effort infrastructure proceeding.

NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers on the Elizabethtown system, and its entry as a party would promote an informed and balanced presentation of the issues. NJLEUC further states that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

New Jersey Large Energy Users Coalition Motion for Admission Pro Hac Vice

By motion dated February 9, 2018, NJLEUC, via Steven S. Goldenberg, Esq., NJLEUC also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia, has had significant experience representing the interests of large end-use customers and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing NJLEUC before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in matters arising under the Natural Gas Act, matters involving interstate natural gas pipelines, including ratemaking, capacity release, infrastructure and construction issues, and natural gas and electric utility mergers and acquisitions, including the NUI/AGL Resources and AGLR/Southern Company mergers. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. On February 15, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

By correspondence dated March 5, 2018, the Joint Petitioners advised that they have no objection to the motion to intervene or for admission pro hac vice filed by NJLEUC.

PSE&G Motion to Intervene

By motion dated February 22, 2018, Public Service Electric and Gas Company ("PSE&G") moved for an Order granting it status as an intervenor pursuant to N.J.A.C. 1:1-16.1. PSE&G asserts that it is engaged as a New Jersey public utility in the purchase, distribution, and sale of natural gas for more than 1,800,000 customers located within the State of New Jersey. It states that it is also engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to approximately 2,200,000 residential, commercial and industrial customers located within the State of New Jersey.

PSE&G argues that the Board's decision in this proceeding could have precedential effect and impact not only on the Joint Petitioners, but also New Jersey's other electric and gas utilities, including PSE&G and its customers. PSE&G claims that the Joint Petition raises a variety of issues with respect to ring-fencing and other policy matters that will be addressed in this case, and may impact the markets that PSE&G operates in, and relied upon to serve customers. PSE&G states that these issues could conceivably impact PSE&G directly, including how it chooses to operate going forward.

PSE&G also asserts that the service territories, customers, and operations of PSE&G are distinct from those of other parties and participants, or potential parties and participants, in this case. Thus, no other party or participant will represent the interests of PSE&G in this case.

PSE&G points out that it has a history of coordinating activities in dockets at the Board with similar utilities where appropriated. PSE&G states that it will coordinate its representation with other similarly situated parties in this docket to the extent it finds appropriate. It adds that its experience in the gas and electric industry will allow it to likely constructively add to the proceeding.

By correspondence dated March 8, 2018, the Joint Petitioners advised that they have no objection to the motion to intervene filed by PSE&G.

DISCUSSION AND FINDINGS:

Motions to Intervene

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.

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 and given the lack of any objections, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), PSE&G and its customers, as well as the members of NJLEUC who are customers of Elizabethtown, will be directly affected by the outcome of this proceeding, and that PSE&G and NJLEUC have met the standards for intervention as they are interested parties in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motions for intervention of PSE&G and NJLEUC pursuant to the authority granted to me by the Board under the January 31, 2018 Order. NJLEUC is **FURTHER ORDERED** to furnish a sample list of its members who are currently natural gas customers of Elizabethtown.

Motion for Admission Pro Hac Vice

I have also reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. I agree that this proceeding involves a complex field of law, and I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this 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.

In addition, I have reviewed the proposal for a preliminary schedule. After giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED³:

- A. Whether Joint Petitioners can establish by a preponderance of credible evidence that the acquisition of control by ETG Acquisition Corp. of Elizabethtown will not adversely impact any of the criteria delineated in N.J.S.A. 48:2-51.1 and will provide positive benefits to customers and the State of New Jersey;
- B. Whether Joint Petitioners can establish by a preponderance of credible evidence that the sale of substantially all of Elizabethtown's assets to ETG Acquisition Corp. is in the public interest including, but not limited to, the total amount of bill credits provided to Elizabethtown customers, the number of customer service centers which will be maintained, and the minimum number of Elizabethtown employees which will remain employed post-closing.

³ All parties to this proceeding reserve their rights to contend that the issues identified exceed the scope of the Board's review or are otherwise not essential to the Board's decision in this proceeding.

- C. Establish the Board-ordered commitments that will be maintained by SJI during the ordered commitment period pursuant to In re the Merger of the Southern Company and AGL Resources Inc., BPU Docket No. GM15101196 (June 29, 2016).
- D. Whether Joint Petitioners can establish by a preponderance of credible evidence that the Master Services Agreement between SJI and ETG Acquisition Corp. does not violate the laws of the State of New Jersey or of the United States, does not contain a price or compensation that exceeds the fair price or fair compensation for the work to be done or the services to be rendered, do not increase costs to either Elizabethtown or to South Jersey Gas, and is not contrary to the public interest.
- E. Whether Joint Petitioners can establish by a preponderance of credible evidence that the two Shared Services Agreements among SJI Utilities, ETG Acquisition Corp. and SJG do not violate the laws of the State of New Jersey or of the United States, do not contain a price or compensation that exceeds the fair price or fair compensation for the work to be done or the services to be rendered, do not increase costs to either Elizabethtown or to SJG, and are not contrary to the public interest.
- F. Whether Joint Petitioners can establish by a preponderance of credible evidence that the Consent Agreement and the Replacement Agreement, do not violate the laws of the State of New Jersey or of the United States, do not contain a price or compensation that exceeds the fair price or fair compensation for the work to be done or the services to be rendered, do not increase costs to either Elizabethtown or to SJG, and are not contrary to the public interest.
- G. Whether the transfer of stock of SJG from SJI to SJI Utilities satisfies the criteria set forth in N.J.S.A. 48:3-10, including whether South Jersey Gas is able to fulfill its pre-acquisition pension obligations, if any, to its employees.
- H. Whether the Board should disclaim jurisdiction over the sale by Pivotal of the assets of Elkton Gas, a Maryland-based public utility that provides no services to customers in New Jersey and owns no New Jersey assets, or in the alternative, to approve the sale.
- I. Whether it is in customers' best interest to assign to SJRG and subsequently extend for five (5) years the current asset management agreement between Elizabethtown and Sequent Energy Management, L.P.
- J. Whether the Board should authorize ETG Acquisition Corp. (to be named Elizabethtown Gas Company after the closing) to record certain regulatory assets and liabilities and to continue to employ deferred accounting for the costs recorded as regulatory assets and liabilities.
- K. Whether the Board should approve the adoption of the Elizabethtown Tariff by ETG Acquisition Corp. and direct that a tariff compliance filing be made within ten (10) days of the closing reflecting a name change from Elizabethtown to Elizabethtown Gas Company effective simultaneously with the closing.
- L. Whether the Board should authorize Pivotal and its division, Elizabethtown, to discontinue the provision of utility service pursuant to N.J.S.A. 48:2-24 and relieve Pivotal of its obligations under the Elizabethtown tariff and associated Board Orders

upon closing where such discontinuance will not adversely affect public convenience and necessity.

- M. Whether the Transition Services Agreement for continuing centralized services being provided to Elizabethtown Gas for one (1) year post acquisition is reasonable.

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

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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.

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

Pursuant to N.J.S.A. 48:2-32.6, public hearings were held in Elizabethtown's service territory after publication of notice in newspapers of general circulation in Elizabethtown's service territory on April 17, 2018 and April 19, 2018, 2018 with sessions at 4:30 p.m. and 5:30 p.m.

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

Evidentiary hearings will be held on one or more of the following dates, as needed: August 13, 15, 17, 20, 22 and 24, 2018, starting at 9:00 a.m. on each day at the Board of Public Utilities, 44 South Clinton Avenue, First Floor Multipurpose Room, Trenton, New Jersey. Specific hearing dates will be determined based on the availability of the parties and myself.

5. **STIPULATIONS:**

The Staff of the Board of Public Utilities, the Division of Rate Counsel and the Joint Petitioners have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. **SETTLEMENT:**

The parties are encouraged to engage in settlement discussion. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

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.

9. **ORDER OF PROOFS:**

The 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 – Intervenors

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 FACTS AND EXPERT WITNESSES:**

The Joint Petitioners will present the following five (5) witnesses: Michael J. Renna, Brian Maclean, Ann Anthony, David Robbins, Jr. and Gregory M. Nuzzo. Additional witnesses may be identified by the Joint Petitioners as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following seven (7) witnesses: Julie McKenna, Dante Mgrace, David Peterson, Matthew I. Kahal, David E. Dismukes, Maximilian Chang and John Rosenkranz. Additional witnesses may be identified by Rate Counsel as necessary for purposes 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:**


None at this time.

14. **SPECIAL MATTERS:**

None at this time.

DATED: 5/14/14

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT

IN THE MATTER OF THE ACQUISITION OF ELIZABETHTOWN GAS, A DIVISION OF
PIVOTAL UTILITY HOLDINGS, INC. BY ETG ACQUISITION CORP., A SUBSIDIARY OF
SOUTH JERSEY INDUSTRIES INC. AND RELATED TRANSACTIONS
DOCKET NO GM17121309

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Exhibit A

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SOUTH JERSEY INDUSTRIES INC. AND RELATED TRANSACTIONS
DOCKET NO GM17121309**

Procedural Schedule

May 24, 2018:	Settlement conference
Week of June 4, 2018	Settlement conference
June 15, 2018:	Deadline for Rate Counsel/Intervenors to file direct testimony
June 22, 2018:	Deadline for propounding discovery on Rate Counsel/Intervenor testimony
June 29, 2018	Deadline for responses to discovery on Rate Counsel/Intervenor testimony
July 13, 2018	Deadline for Joint Petitioners to file rebuttal testimony
Week of July 23, 2018:	Settlement conference
July 27, 2018:	Deadline for propounding discovery on Joint Petitioners' rebuttal testimony
August 7, 2018:	Deadline for responses to discovery on Joint Petitioners' rebuttal testimony
August 13, 15, 17, 20, 22, and 24, 2018:	Evidentiary hearings – with live sur-rebuttal in Trenton, subject to the President's availability
To Be Determined:	Briefing schedule

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.