



Agenda Date: 11/09/11
Agenda Item: LSA

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

ENERGY DIVISION

IN THE MATTER OF THE BUSINESS)
COMBINATION OF AGL RESOURCES, PARENT) ORDER OF APPROVAL
COMPANY OF ELIZABETHTOWN GAS COMPANY,) BPU DOCKET NO. GM11090553
AND NICOR INC. FOR MERGER)
)

Parties of Record:

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

Kenneth T. Maloney, Esq., Cullen and Dykman LLP for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

By the Board:

BACKGROUND/PROCEDURAL HISTORY

On March 28, 2011, Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas ("Elizabethtown"), in conjunction with AGL Resources Inc. ("AGLR," and together "Petitioners"), filed a letter with the New Jersey Board of Public Utilities ("Board") providing notification of the intention to close on a transaction whereby a subsidiary of AGLR would merge with Nicor, Inc. ("Nicor"). The Petitioners claim that the transaction would not impact New Jersey or Elizabethtown in any manner, and that the transaction would be completely transparent to Elizabethtown's customers and to the Board.

According to the March letter, AGLR is a Georgia corporation headquartered in Atlanta, Georgia, and is the parent company of Elizabethtown. AGLR serves 2.3 million customers in New Jersey, Florida, Georgia, Maryland, Tennessee, and Virginia. Elizabethtown serves 275,000 retail customers in Hunterdon, Mercer, Middlesex, Morris, Sussex, Union, and Warren Counties in the State of New Jersey. Nicor is the parent company of Northern Illinois Gas Company, d/b/a Nicor Gas Company, and serves 2.2 million gas customers in Illinois. Nicor does not provide any utility services or conduct any utility business in New Jersey.

The proposed transaction involves a stock swap whereby: AGLR will acquire the stock of Nicor, an AGLR subsidiary; Apollo Acquisition Corporation will merge within and into Nicor; and Apollo /Nicor will then merge with and into Ottawa Acquisition LLC, another wholly owned subsidiary of AGLR, with the surviving company remaining a wholly owned subsidiary of AGLR (the "Transaction"). Thus, upon completion of the Transaction, Nicor will no longer exist, and Nicor Gas will be a wholly owned subsidiary of AGLR.

Petitioners assert the Transaction will not effectuate any direct or indirect change in the ownership or control of Elizabethtown, which remains a wholly owned subsidiary of AGLR. Petitioners acknowledge that the Transaction requires the approval of the Illinois Commerce Commission, but assert that no other state regulatory authority approval is required, including the approval of this Board.

Petitioners, Board Staff, and the Division of the Rate Counsel have conducted discovery and have met on a number of occasions to attempt to reach a settlement on the merger and resolve any question of jurisdiction. Following those meetings, and as a result of good faith discussions by all involved, the parties reached a Stipulation of Settlement on November 4, 2011. Throughout these discussions, Petitioners asserted that the Board did not have jurisdiction over the Transaction. Rate Counsel and Board Staff disagreed. Notwithstanding this disagreement, the parties were able to resolve the issues associated with the Transaction, and thus moved forward with the Stipulation.

Among other things, pursuant to the Stipulation, Elizabethtown agreed to the following: 1) that Elizabethtown would not attempt to recover costs related to the Transaction in rates and will track all post-closing integration costs associated with the Transaction for future review; 2) that the Transaction will have no negative impact upon the cost of capital for Elizabethtown and that all parties retain the ability to argue about capital structure in future rate cases; 3) that Elizabethtown will retain an adequate staffing level for at least three years following the closing of the Transaction; 4) to retain a headquarters and existing customer service and call center facilities in the State unless Board approval is received, and to continue to invest to ensure safe, adequate, and proper service in its service territory; 5) to honor all obligations to provide information on performance as required by past Board orders; 6) to cooperate in good faith with Staff and Rate Counsel to resolve issues in the most recent management audit, and to submit, within 120 days of the close of the Transaction, a filing detailing the proposed modifications to the current money pool arrangement; and 7) to submit, within 120 days of the closing of the Transaction, a detailed report on the possibilities and opportunities for natural gas transportation in the Elizabethtown service territory.

DISCUSSION AND FINDING

N.J.S.A. 48:2-51.1 describes specific issues to be reviewed and evaluated by the Board when considering a request to acquire or seek to acquire control of a public utility:

In considering a request for approval of an acquisition of control, the Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates.

[N.J.S.A. 48:2-51.1]

The current Board merger standard is what is known as the positive benefits test. According to N.J.A.C. 14:1-5.14(c), positive benefits must result from the Transaction in order for the Board to approve a merger. While acknowledging that the Petitioners assert that this statute and regulation do not apply to the Transaction, the Board will nevertheless conduct its review based upon this framework.

1. Impact on Competition

At the distribution level, there is no impact on the rate-regulated activities of Elizabethtown. Petitioners assert, and the Board agrees, that the impact upon competition in New Jersey should be minimal, as Nicor does not have any utility interests in the State. Thus, the Board is satisfied that the Transaction will not have any negative impact on competition.

2. Impact on Employees

Pursuant to the Stipulation, there will be no change in staffing levels or in the location of Elizabeth's headquarters. The Company further agreed there will be no net reduction due to involuntary attrition as a result of the closing of the Transaction and subsequent integration process for a period of at least three years after the consummation of the Transaction. The company commits to tracking and reporting on its staffing levels in New Jersey on a quarterly basis. Thus, the Board is satisfied that the Transaction will not have a negative impact upon employees.

3. Impact of Rates

Pursuant to the Stipulation, the Petitioners have committed that no costs associated with the Transaction will be placed into rates for Elizabethtown customers. The only costs that Elizabethtown may seek to recover are associated with the cost of providing services that benefit the company and its customers, and this will only occur through a base rate case. Board Staff and Rate Counsel reserve their rights to challenge recovery of any such costs. As such, the Board finds that the Transaction will not have a negative impact upon rates.

4. Impact on Service Quality

Pursuant to the Stipulation, Elizabethtown has committed to the continued provision of safe, adequate, and proper service, and provision of information concerning its performance in accordance with customer service metrics agreed to in its previous base rate proceeding. Elizabethtown has committed to retain a core of employees familiar with operations in New Jersey and to keep an adequate number of those positions in the State. Based upon these commitments, and the Board's continuing oversight of the utility, the Board finds that the Transaction will not have a negative impact upon service quality.

Positive Benefits

In addition to the items noted above, the Transaction is expected to provide a positive benefit by creating a strong, well-financed competitive entity with increased operational flexibility. ~~The merged entity is also expected to result in enhanced customer service and reliability, as well as synergies, best practices, efficiencies, and other cost savings over time.~~ In addition, the commitment on the part of the Petitioners to address the open audit questions, the open money pool concerns, and to review possible natural gas transportation opportunities in the Elizabethtown service territory are all positive impacts that flow directly from the Transaction. Elizabethtown has agreed to submit testimony with its next base rate case detailing the benefits to the company and its customers of the Transaction.

Additionally, Elizabethtown has agreed to increased reporting to the Board, Board Staff and Rate Counsel of AGLR filings with the Securities and Exchange Commission.

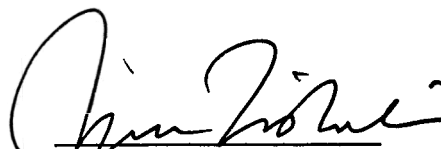
Based upon the Board's review of the Stipulation and review of N.J.S.A. 48:2-51.1, the Board HEREBY ACCEPTS the Stipulation as filed with the Board, and incorporates by reference its terms and conditions. The Board HEREBY FINDS that, as proposed, the Transaction is not likely to create any adverse impacts. In fact, as a result of the Stipulation, the Transaction is likely to produce positive benefits for New Jersey. As such, the Board HEREBY FINDS that the Transaction is in compliance with relevant law and regulations. Therefore, the Board HEREBY APPROVES the Stipulation filed with the Board and authorizes the Transaction to move forward without any further Board action.

DATED: 11/9/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

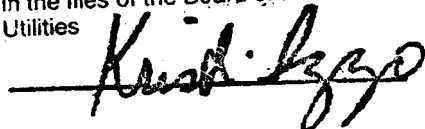

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

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



**In the Matter of the Business Combination of AGL Resources Inc.,
Parent Company of Elizabethtown Gas Company and Nicor Inc. for Merger
BPU Docket No. GM11090553**

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November 7, 2011

Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

**Re: In The Matter Of The Business Combination Of
AGL Resources, Inc. Parent Company
Of Elizabethtown Gas, and NICOR, Inc.
For Merger, BPU Docket No. GM11090553**

Dear Secretary Izzo:

Enclosed for filing in the above docket are an original and ten copies of a Final Stipulation executed by representatives of Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas ("Elizabethtown"), the Staff of the Board of Public Utilities and the Department of the Public Advocate, Division of Rate Counsel. Elizabethtown requests that the Board consider and adopt the Stipulation at its next agenda meeting, which is currently scheduled for November 9, 2011.

Please contact the undersigned if you have questions or require further information.
Thank you.

Yours truly,

Kenneth T. Maloney

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

cc: Attached Service List

**NOTIFICATION OF AGL RESOURCES INC. AND PIVOTAL UTILITY HOLDINGS, INC.
D/B/A ELIZABETHTOWN GAS PROPOSED MERGER WITH NICOR, INC.
BPU DOCKET NO. GM11090553
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

-----X
In The Matter Of The Business Combination Of :
AGL Resources Inc., Parent Company : **BPU Docket No. GM11090553**
Of Elizabethtown Gas, and NICOR, Inc. : **STIPULATION**
For Merger :
-----X

Counsel:

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Paul Flanagan, Litigation Manager, Division of Rate Counsel, Felicia Thomas-Friel, Managing Attorney – Gas, Division of Rate Counsel, Sarah H. Steindel, Esq., Henry M. Ogden, Esq. and Kurt Lewandowski, Esq. Assistant Deputy Rate Counsels, Division of Rate Counsel (Stefanie A. Brand, Director, Division of Rate Counsel)

Alex Moreau, Deputy Attorney General, Marisa Slaten, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

Background

This Stipulation by and among Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (“Elizabethtown” or “the Company”), the Staff (“Staff”) of the New Jersey Board of Public Utilities (“BPU” or “Board”) and the New Jersey Division of Rate Counsel (“Rate Counsel”) addresses issues pertaining to the proposed merger of AGL Resources Inc. (“AGLR”), the parent company of Elizabethtown Gas, and NICOR, Inc. (“NICOR”), a holding company that is the parent company of Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”)(the proposed merger will hereinafter be referred to as the “Transaction”).

AGLR, Nicor, Apollo Acquisition Corporation, an Illinois corporation and a wholly-owned subsidiary of AGLR (“Apollo”), and Ottawa Acquisition LLC, an Illinois limited liability company and a wholly owned subsidiary of AGLR, have entered into an Agreement and Plan of

Merger, dated December 6, 2010 (“the Merger Agreement”). Pursuant to the Merger Agreement (i) AGLR will acquire the stock of Nicor by exchanging that stock for a combination of cash and AGLR stock, (ii) Apollo will merge within and into Nicor, and (iii) Apollo/Nicor will merge with and into Ottawa, with the surviving company remaining a wholly-owned subsidiary of AGLR. Upon completion of the Transaction, Nicor, Inc. will no longer exist and Nicor Gas will become a wholly-owned subsidiary of AGLR. Following the completion of the Transaction, it is anticipated AGLR shareholders will own approximately 67 percent and NICOR shareholders will own approximately 33 percent of the common equity of AGLR as a combined company.

Elizabethtown asserts that the Transaction will effectuate no change of control in AGLR, which will remain a publicly- traded holding company. Nor will the Transaction effectuate any direct or indirect change in the ownership or control of Elizabethtown, which will remain a wholly owned subsidiary of AGLR. Elizabethtown is not a party to the Transaction and it involves no sale or transfer of any shares of capital stock on Elizabethtown’s books, no disposition of the Company’s assets by or merger or consolidation of the property, franchises, privileges, certificates or rights of Elizabethtown. In addition, NICOR owns no New Jersey public utility and conducts no utility business in New Jersey. As a consequence, Elizabethtown asserts that no New Jersey statute or regulation requires any party to seek prior Board approval of the Transaction or any aspect thereof.¹

~~Notwithstanding Elizabethtown’s asserted position regarding New Jersey’s statutes and regulations, Elizabethtown recognizes that the Board has expressed an interest in transactions that are similar to the Transaction. As a result, Elizabethtown submitted a letter to the Board describing the Transaction and the benefits that it will have for Elizabethtown, its customers,~~

¹ Elizabethtown further asserts that in addition to New Jersey, AGLR currently owns gas distribution utilities that operate in Georgia, Florida, Maryland, Tennessee and Virginia. None of these states has asserted jurisdiction over the proposed merger.

employees and other stakeholders.² Elizabethtown also provided information concerning the Transaction to Staff and Rate Counsel, responded to questions concerning the Transaction and met with representatives of Staff and Rate Counsel to discuss the Transaction.

Elizabethtown asserts that the Transaction will have no adverse impacts on Elizabethtown's customers, who will continue to receive services from the Company in the same fashion and pursuant to the same rates, terms and conditions under which they currently receive service. Elizabethtown further asserts that over time its customers will benefit from the merger because (i) all AGLR utilities will be able to share best practices, (ii) the combined organization will experience positive impacts as a result of having greater scale, and (iii) the Transaction will have a positive impact on the ability of all AGLR utilities to have access to the capital markets as a result of the creation of a larger financial platform for making investments to maintain safety and improve reliability and customer service in all of the jurisdictions in which AGLR provides utility service. Elizabethtown further asserts that the Transaction will also create a greater opportunity for growth, skill development and advancement for all AGLR employees and will have no adverse impact on Elizabethtown's employees or competition in New Jersey or other jurisdictions served by AGLR.

Based upon the foregoing, Elizabethtown, Board Staff and Rate Counsel (collectively "the Stipulating Parties") hereby agree as follows:

² Elizabethtown does not concede that the Board has jurisdiction over the Transaction.

STIPULATED MATTERS

1. Elizabethtown will not attempt, or be permitted, to recover through rates Transaction Costs related to the Transaction. Transaction Costs include the purchase price, goodwill, consultant fees, fees for investment services, legal fees, regulatory fees or costs associated with lenders' consents, shareholders meetings and proxies or registration statements related to the Transaction, change in control or retention payments related to the Transaction, or any costs associated with the imposition of conditions or settlement terms imposed by other states. Transaction Costs also include all integration-related costs incurred *prior* to the closing of the Transaction in anticipation of the integration of AGLR and NICOR. Except as set forth above, Elizabethtown reserves the right to seek Board approval to recover through rates any costs incurred from its affiliates to the extent such costs are incurred for services that benefit Elizabethtown and its customers and Board Staff and Rate Counsel reserve all rights to challenge the recovery of any such costs, including the right to assert that any such costs should be considered to be Transaction Costs that should not be recovered from customers. In addition, nothing herein shall constitute approval of any cost deferrals or the creation of any regulatory assets or the authorization of rate recovery of any costs associated with the Transaction. Elizabethtown agrees that all post-closing integration costs associated with the Transaction will be tracked so that both the costs themselves and the allocation of costs can be reviewed by the parties in future rate proceedings.

2. Elizabethtown has asserted that the closing of the Transaction and subsequent integration of AGLR and NICOR will have no adverse impact on Elizabethtown's ratemaking cost of capital. In future ratemaking proceedings, the equity portion of Elizabethtown's capital structure used for ratemaking purposes will not reflect goodwill or an acquisition premium

related to the Transaction. In addition, Elizabethtown, Rate Counsel and Board Staff reserve their rights in future rate proceedings to take any position regarding whether it is appropriate to reflect merger-related debt in the capital structure used for ratemaking purposes or the cost of debt used for ratemaking purposes, and to assert that a portion of Elizabethtown's asserted cost of capital should be disallowed for ratemaking purposes because it is attributable to the Transaction.

3. Elizabethtown commits that an adequate number of positions staffed with people familiar with the Company's New Jersey rate, regulatory, reliability, engineering and labor relations matters will be maintained in the future and that an adequate number of those positions will be maintained in New Jersey. There will be no net reduction in the number of employees at Elizabethtown in New Jersey due to involuntary attrition as a result of the closing of the Transaction or the subsequent integration of AGLR and NICOR following the closing of the Transaction. This commitment shall not apply to employees who leave due to voluntary attrition or termination for cause. This commitment will apply for at least three years from the closing of the Transaction. The Company will track and report on a quarterly basis its level of staffing in New Jersey.

4. Elizabethtown will, following the closing of the Transaction, continue to maintain (i) a headquarters in New Jersey, and (ii) existing customer service and call center facilities sufficient to meet the needs of providing service in its New Jersey service territory unless and ~~until appropriate notice is given to and any authorizations are received, if required, from the~~ BPU. Elizabethtown commits to continuing to maintain its facilities and investing capital as needed to fulfill its obligation to provide safe, adequate and proper utility service. In addition, within 120 days of a Board order approving this Stipulation, the Company will submit to the Board a study detailing the potential for natural gas transportation in its service territory. In its

first base rate proceeding filed after the Transaction closes, Elizabethtown will submit testimony concerning the benefits that have inured to Elizabethtown and its customers as a result of the Transaction.

5. Elizabethtown will continue to adhere to its obligations to provide information concerning its performance in relation to various customer service metrics agreed to by the Company and required by the Board in Elizabethtown's previous base rate proceeding in Docket No. GR09030195.

6. Elizabethtown shall cooperate in good faith with Staff and Rate Counsel to resolve issues that were raised in Elizabethtown's most recent management audit in Docket GA07100795. Within 120 days of a Board order adopting this Stipulation, Elizabethtown will make a filing detailing prospective modifications that it will propose with respect to its current money pool arrangement. Nothing in this Stipulation will excuse Elizabethtown from complying with all applicable laws, regulations and Board orders applicable to the Company.

7. Elizabethtown agrees to provide notice to the Board, Board Staff and Rate Counsel of the following events within 48 hours of AGL's making of the applicable filings with ~~the Securities and Exchange Commission:~~

(a) change of control;

(b) material acquisition or disposition of assets other than the ordinary course of ~~business;~~

(c) bankruptcy filing or appointment of receiver; or

(d) change in independent accountants.

8. The commitments set forth in this Stipulation are contingent upon the closing of the Transaction. In addition, this Stipulation, if approved by the Board, satisfies any obligation for the Board to review or approve the Transaction.

9. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Stipulating Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in any applicable order(s), then any Stipulating Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

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

~~11. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these matters. Except as expressly provided herein, Elizabethtown, the Board, its Staff and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein and, in total or by specific item. The Stipulating Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.~~

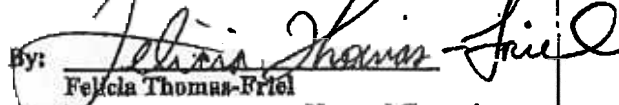
12. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall be completely executed when one or more counterparts have been signed by each of the Stipulating Parties.

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 at its November 9, 2011 agenda meeting.

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

**DIVISION OF RATE COUNSEL
STEFANIE A. BRAND, DIRECTOR**

By: 
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Vice President, Regulatory Affairs
and Assistant Corporate Secretary**

By: 
**Felicia Thomas-Briel
Managing Attorney - Natural Gas**

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Attorney for the Staff of the New Jersey
Board of Public Utilities**

By: 
Alex Moreau, DAG

Dated: November 4, 2011