# APPENDIX
# Item 7

Agenda Date: 4/16/09
Agenda Item: 2A

**_STATE OF NEW JERSEY_**
**_Board of Public Utilities_**
**_Two Gateway Center_**
**_Newark, NJ 07102_**
**_www.nj.gov/bpu/_**

ENERGY

| | | |
|---|---|---|
| IN THE MATTER OF THE PROCEEDING FOR INFRASTRUCTURE INVESTMENT AND A COST RECOVERY MECHANISM FOR ALL GAS AND ELECTRIC UTILITIES | ) ) ) ) | DECISION AND ORDER APPROVING STIPULATION<br><br>DOCKET NO. EO09010049 |
| IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS FOR APPROVAL OF A UTILITY INFRASTRUCTURE ENHANCEMENT COST RECOVERY RIDER | ) ) ) ) | DOCKET NO. GO09010053 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

**Background:**

On October 16, 2008 in response to the worldwide economic downturn and seeking to mitigate its effects on New Jersey, Governor Jon Corzine announced plans to provide immediate assistance for New Jersey residents and long term economic growth options through an "Economic Stimulus Plan." Governor Corzine called on the New Jersey Board of Public Utilities ("BPU" or "Board") and the State's public utilities to aid in that plan by implementing the policy changes to be proposed in the State's about to be released Energy Master Plan ("EMP").

The EMP, issued on October 22, 2008, is the roadmap to guide the State toward a responsible energy future with adequate, reliable energy supplies that are both environmentally responsible and competitively priced[1]. Under the EMP, major goals for New Jersey include maximizing energy conservation and energy efficiency, and reducing energy consumption by at least 20% by 2020. The EMP also calls for upgrading energy infrastructure to ensure the continued reliability of energy supply, support increased

[1] For the full text of the EMP, see www.nj.gov/emp.

energy efficiency, renewable energy, and reductions in peak demand.[2] Public utility involvement, along with competition in the renewable energy, conservation and energy efficiency industries are essential to meeting the goals of the EMP. The Governor, together with Board President Jeanne M. Fox, encouraged New Jersey's electric and gas utilities to formulate plans for enhanced investments in infrastructure improvements during 2009. Implementation of such plans would accelerate the current schedule of the electric and gas utilities for planned capital improvements and investments, thereby creating jobs and stimulating the State's economy.

New Jersey's gas and electric utilities responded by filing petitions outlining each utility's proposed projects, and seeking the Board's approval of accelerated investments in utility infrastructure. In reviewing the utilities' petitions, the Board seeks to ensure not only that the proposals further the EMP, but also create jobs to strengthen the local economy.

By Order dated January 29, 2009, the Board determined that these petitions should be retained by the Board for review and hearing, and, as authorized by N.J.S.A. 48:2-32, designated President Fox as the presiding officer.[3]

**Procedural History:**

Pursuant to N.J.S.A. 48:2-21 and 48:2-21.1, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("ETG" or the "Company") filed a petition ("Petition") on January 20, 2009, requesting that the New Jersey Board of Public Utilities ("BPU" or the "Board") approve a Utility Infrastructure Enhancement Program ("Infrastructure Program") and Cost Recovery Rider ("Cost Recovery Rider") and establish an initial Cost Recovery Rider surcharge of $0.0041 per therm to permit the recovery of costs for projects included within the Company's proposed Infrastructure Program.

ETG maintains that as part of its routine capital spending planning, ETG plans for the replacement, reinforcement and expansion of its infrastructure, including its property, plant, facilities and equipment, to maintain the reliability of its distribution system and to ensure the continuation of safe, adequate, and proper utility service. ETG recently proposed in this proceeding to increase its planned infrastructure capital spending at this time, to enhance the reliability of its system and to support economic development and job growth in New Jersey.

ETG initially proposed five projects for inclusion in its Infrastructure Program at a total projected cost of $60.4 million.[4] Those projects were to be constructed and placed in service within a period of approximately two years from the date of final Board approval of the Infrastructure Program. ETG further proposed that it could request to extend the Cost Recovery Rider.

---

[2] EMP at 75.

[3] In anticipation of the filings by the utilities, the Board assigned a generic docket number to facilitate the individual utility proceedings, i.e. BPU Docket No. EO09010049, as noted above.

[4] According to the Company, none of these projects duplicate the Pipeline Replacement Program that was previously considered by the Board in *I/M/O the Petition of Pivotal Holdings Inc. d/b/a Elizabethtown Gas Company to Establish a Pipeline Replacement Cost Recovery Rider*, BPU Docket No. GR05040371 "Order Adopting Stipulation" (August 18, 2006).

Public notice was provided through publication in newspapers in general circulation within ETG's service territory, and four public hearings on the Company's Infrastructure Program filing were held on the following dates at 2 locations in the ETG service territory: two hearings on March 4, 2009, in Flemington, New Jersey, and two hearings on March 11, 2009, in Rahway. One member of the public appeared at the Rahway public hearing. Two members of the public appeared at the Flemington hearing.

On February 11, 2009, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene in this proceeding. The Motion was unopposed, and was granted on February 25, 2009.

Discovery questions in this matter were propounded by Board Staff and Rate Counsel, and the Company responded to them.

Subsequent to the completion and review of discovery and the four public hearings, representatives of ETG, Board Staff, and Rate Counsel (the "Stipulating Parties") met to discuss the issues in this case and agreed that the Infrastructure Program proposal and associated interim cost recovery mechanism, as amended by the Stipulating Parties and set forth in the attached stipulation (the "Stipulation"), are reasonable and in the public interest[5].

On March 10, 2009, ETG filed a request to increase its base tariff rates and make other tariff changes pursuant to N.J.S.A. 48:2-21 ("2009 Base Rate Case"). ETG proposed that its revised base rates would take effect January 1, 2010. The Company further proposed that the Board's Order in the 2009 Base Rate Case incorporate final approval of the Company's proposals in this proceeding, creating a full legal nexus between this proceeding and the 2009 Base Rate Case.

ETG represents that the Company's proposal, as set forth in the Stipulation, is consistent with and meets the goals of the Economic Stimulus Plan for New Jersey proposed by Governor Jon Corzine to create new jobs and to stimulate the New Jersey economy. The Company maintains that the infrastructure investment projects set forth will enhance service, reliability, and energy efficiency and provide for the creation of approximately 65 incremental jobs.

In this Order, the Board considers the proposed Stipulation, with key provisions described below.

**The Proposed Stipulation[6]**

The Company represents that the four projects identified in Appendix A of the Stipulation ("Qualifying Projects" or "QP") will assist the Company in providing safe, adequate and proper service to its customers, are incremental in nature, and will create jobs in support

---

[5] NJLEUC did not sign the Stipulation but submitted a letter (attached to the Stipulation) indicating that it does not formally support or oppose the settlement.

[6] Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

of the Governor's Economic Stimulus Plan.[7] The costs associated with the Qualifying Projects will be recovered through the implementation of a Cost Recovery Rider charge, subject to review, as set forth in the Stipulation. Appendix A contains a description of each Qualifying Project, the projected cost for each Qualifying Project, the estimated number of jobs created as a result of each Qualifying Project, and the projected timeline and completion date for each Qualifying Project.

According to the Stipulation the Company anticipates that the design and construction work associated with the Qualifying Projects will generate approximately 65 incremental jobs in its service territory. The Company will endeavor to employ contractors and engineering firms located in New Jersey. The Company's estimate of the workforce necessary for the Qualifying Projects does not include any ancillary job impacts that will increase the overall benefits generated from the Qualifying Projects

The work associated with the Qualifying Projects will commence within a reasonable time of receipt of a final Board Order in this proceeding, and will proceed in accordance with the estimated construction start and completion dates set forth in Appendix A of the Stipulation.

ETG requests that the Board approve, subject to reconciliation and refund, cost recovery through the implementation of a Cost Recovery Rider rate of $0.0037 per therm for the four Qualifying Projects listed in Appendix A subject to a review of the prudence of the Qualifying Projects and expenditures made by Elizabethtown in its 2009 Base Rate Case. In any such prudency review, the record of this proceeding, including this Stipulation, shall be fully incorporated and considered.

The Stipulation states that if it is necessary for the Company to eliminate or substitute another project for any of the Qualifying Projects during the term of its Infrastructure Program, notice of any such changes and an opportunity for review and comment shall be provided to the Stipulating Parties, and any substitutions shall only be made with Board approval. Before seeking such approval, the Company will consult with the Stipulating Parties.

*Cost Recovery Mechanism*

The revenue requirement recovered through the Cost Recovery Rider will be calculated to include a return on investment and a return of the Company's investment through depreciation, as well as associated carrying costs. The calculation will include recovery of ETG's Capital Costs, grossed up for the revenue expansion factor, as well as depreciation expense and carrying costs on over and under recovery balances arising from the operation of the Cost Recovery Rider. ETG's Capital Costs are defined as the after-tax return on capital most recently established by the Board for the Company multiplied by net plant additions associated with the Qualifying Projects less the accumulated depreciation and accumulated deferred taxes associated with such Projects. Depreciation expense will be calculated using then-current Board-approved rates and methodologies at the time the expense is booked, i.e., the approved depreciation rate in effect at the time the expense is booked. Carrying costs on over and under-recovery balances will be calculated as set forth in Paragraph 20 of the Stipulation. The initial revenue requirement and resulting

[7] In its January 20, 2009 filing, the Company proposed to replace certain heaters at its Cloverleaf and Sussex Gate stations at a total cost of $630,000. In lieu of this project, the Company proposes to replace incremental bare steel or cast iron main.

Cost Recovery Rider rate of $0.0037 per therm is calculated utilizing projected cost data subject to annual adjustments. Draft tariff sheets necessary to implement the Cost Recovery Rider are set forth on Appendix B of the Stipulation. The calculation of the revenue requirement for the purpose of setting the initial Cost Recovery Rider rate is set forth in Appendix C of the Stipulation. The Board shall set the effective date of the initial Cost Recovery Rider rate.

The Parties have agreed that the initial revenue requirement calculation for the Qualifying Projects will commence during the month in which the Cost Recovery Rider charge is implemented and will be based upon projected expenditures for the Qualifying Projects. The monthly over and under recovery calculation will be based on actual revenues billed under the Cost Recovery Rider and revenue requirement for Qualified Projects in each month. A sample calculation, as well as a template for illustration purposes, is also set forth in Appendix C.

According to the Stipulation, the Company will file an annual petition ("Annual Filing") to adjust its Cost Recovery Rider rate on a calendar year basis, with copies provided to Board Staff and Rate Counsel, no later than November 1st of each year which is two months prior to the January 1st date proposed for the implementation of the revised Cost Recovery Rider rate. Each Annual Filing will contain a reconciliation of its projected Cost Recovery Rider costs and recoveries and actual revenue requirements, as well as the items described in the minimum filing requirements ("MFRs") in Appendix D of the Stipulation. The Company will not be permitted to seek to recover incremental operation and maintenance expenses in its future Annual Filings.

In calculating the monthly interest on net over and under recoveries, the interest rate shall be based upon the Company's interest rate obtained on its commercial paper and/or bank credit lines. If both commercial paper and bank credit lines have been utilized, the weighted average of both sources of capital shall be used. The interest amount charged to the Cost Recovery Rider will be computed using the methodology set forth in Appendix C of the Stipulation. The true-up calculation of over and under recoveries will be included in the Company's Annual Filing.

The projects and associated investment costs included in the Annual Filing, as well as the level of the proposed Cost Recovery Rider rate, will be subject to review by Board Staff, Rate Counsel, and Intervenors with opportunity for discovery and filed comments, prior to the issuance of a Board Order establishing the Company's proposed new annual Cost Recovery Rider rate adjustment. The issuance of the Board order will be preceded by public notice and hearing to the extent required by law. The Company's recovery will be limited to capital costs, depreciation expense and carry ing costs.

*Base Rate Case Require ment*

According to the Stipulation, at the conclusion of the 2009 Base Rate Case a Phase II will be established for the purpose of reviewing the prudence of the remaining Qualifying Projects and costs not previously incorporated into base rates. Unless and until an alternative mechanism is approved, the Company will be permitted to recover a revenue requirement for the Qualifying Projects through the Cost Recovery Rider which will be set at the conclusion of the 2009 Base Rate Case. The Stipulating Parties further stipulated that, during the Phase II proceedings, there will be annual true-ups of the net capitalized amounts of the Qualifying Projects and of the Cost Recovery Rider, and, the net capitalized amounts of the Qualifying Projects, deemed to be reasonable and prudent, will be rolled into the Company's base rates. Upon the last annual true-up, the net capitalized amounts of the Qualifying Projects, if deemed to be reasonable and prudent, will be rolled into the Company's base rates and the related Cost Recovery Rider and tariff will be terminated.

*Minimum Filing Requirements (MFRs)*

The Signatory Parties have agreed that the Company will provide the information set forth in Appendix D in its Annual Filing. The Company will also provide in each filing a detailed description, along with corresponding plant accounts, of the expenditures that are reflected in each blanket project in Appendix A, together with measurable parameters, such as line-feet or number of installations, associated with each blanket project.

*Rate Design*

Rate recovery through the Cost Recovery Rider rate will be effectuated through the assessment of a volumetric surcharge on all firm customers including those served under Service Classifications RDS, SGS, GDS, MFS, TC, LVD, IPF, EGF, GLS and FTS.

*Rate Impact*

The initial Cost Recovery Rider rate will be $0.0037 per therm including taxes ($0.0035 per therm without taxes), which would result in $0.8 million in incremental recoveries including taxes ($0.7 million in incremental recoveries excluding taxes) during 2009., as illustrated in Appendices B and C to the Stipulation. A typical residential customer using 100 therms of gas during a winter heating month or a typical small general service customer using 100 therms per month will see an increase of $0.37 or 0.2%. A large commercial customer using 1,000 therms in a month will see an increase of $3.70 or 0.3%. The rate impact of the implementation of the proposed Cost Recovery Rider rate for each customer class is set forth in Appendix E.

*Quarterly Reporting*

The Stipulation provides that the Company will provide the parties with a quarterly report ("Quarterly Report"), reflecting capital expenditures and the job growth resulting from the implementation of each Qualifying Project on a quarterly basis, in the format attached as Appendix F. This reporting will begin thirty days after the end of the first calendar quarter following the issuance of a final Board Order in this proceeding. The Company will also track the number of incremental contractor or other positions associated with the Qualifying Projects and will include that information with each Quarterly Report and Annual Filing submitted to the parties, in the format set forth in Appendix F.

*Calculation of Jobs Created*

Job creation is an integral part of the Economic Stimulus Plan underlying the Qualified Projects. For purposes of reporting jobs associated with the Qualifying Projects, the Company will define a Full-Time Equivalent ("FTE") job as 1,820 hours per year.

*Government Funding*

On February 17, 2009, the Federal American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub. L. No. 111-5) was signed into law by President Barack Obama. Subject to any restrictions set forth in the ARRA and other applicable law, if the Company receives any federal funds or credits directly related to the Qualifying Projects through the ARRA, the Company agrees to utilize that money to offset the Qualifying Projects' costs. If funding or credits from the ARRA or any subsequent state or federal action become available to the Company through the State of New Jersey, a County or Municipality for project reimbursement, the Company agrees that any such funds or credits directly applicable to work related to the Qualifying Projects will be used to benefit customers by offsetting the costs for which recovery will be sought to the extent permitted by law.

**Discussion and Findings**

The Board recognizes that the acceleration of utility infrastructure projects and the treatment of capital expenses on an expedited schedule outside the purview of a rate case is not part of the normal course of utility regulation. However, these are not ordinary times.

In his address to the Legislature on October 16, 2008, the Governor called upon the Board to help facilitate job growth and assist in New Jersey's economic stimulus program. The Board, in turn, called upon the State's public utilities to formulate plans for enhanced investments in infrastructure that would both increase reliability and promote employment.

The Board takes notice of the fact that the financial markets remain volatile, affecting the utilities' ability to fund incremental infrastructure projects within the usual framework which requires that capital expenditures be recovered through a rate case only after projects are completed. N.J.S.A. 48:2-21. It is within a rate case that the property that is used and useful in the utility's provision of service is evaluated, and the expenses that can become components of just and reasonable rates are determined. In re Investigation of Tele. Cos., 66 N.J. 476 (1975). These difficult economic times require creative responses that respect the law but adapt to extraordinary circumstances. In the past, the Board has found that it has the power to act to meet such challenges. N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (March 17, 1981). The Board continues to have that power.

Looking generally at all of the infrastructure settlements before the Board, and at ETG's in particular, the Board FINDS that the infrastructure programs reviewed today, if successfully executed, will both increase employment in the State and enhance the reliability of the utilities' distribution systems. Only capital projects which enhance the reliability, safety and security of each utility's distribution system are eligible under these programs as Qualifying Projects. These are projects originally scheduled for future years which can be brought forward into the 2009-2010 time period because they have already been researched and planned by the companies. In the absence of this program, most of the projects would be completed, but only in future years.

In identifying projects to be included in their infrastructure programs, projects using New Jersey-based employees were strongly favored; in contrast, projects not expected to affect employment in New Jersey, such as replacement of vehicles or computers, were eliminated from utility proposals. Projects without an obvious benefit to justify their costs were excluded as well.

Staff engineers reviewed the projects proposed by the utilities to establish that the projects would make the distribution systems more reliable, safer, or more secure, or would provide a combination of these benefits. Rate Counsel also conducted its own review, with substantial input from contracted professional consultants. Based on its review of the information provided, the Board is satisfied that the projects will positively contribute to the reliability, safety and security of utility service.

In addition to providing positive benefits to the provision of safe, adequate, and proper service, the proposed Qualifying Projects are designed to create direct jobs. Evidence presented to the Board during the overall proceedings indicate that the full impact of the overall accelerated infrastructure programs will create approximately 1,302 direct jobs in the private sector – without the use of additional government funding. The Qualifying Projects associated with this particular Order are expected to generate 65 direct jobs over the next two years, primarily in the construction industry. These are actual incremental private sector jobs which would not be created in the absence of these programs. The companies have provided an initial estimate of the incremental jobs to be created by these projects, and as part of the mandatory reporting requirements, will report the actual jobs created on a quarterly basis. Furthermore, the companies will provide reports on capital spending other than for the Qualifying Projects in order to identify any possible shifting of spending and assure that these are actually new jobs which would not have been created without these programs. Without question, the Board FINDS that the accelerated infrastructure programs will have a significant and real benefit on employment in the State.

The estimate of jobs to be created includes only the direct impact of the proposed projects on employment – the employees working on the utility projects themselves. It does not include the indirect impacts with respect to jobs created in other sectors of the state economy for labor, materials, and services needed for the utility projects. Neither does it include what is known as the "induced" impacts resulting from spending by the added employees for local goods and services. These "ripple" effects are difficult to quantify, but they clearly exist. Rate Counsel's consultants estimated that an additional 14,100 direct, indirect and induced jobs will be created by the accelerated infrastructure program. The multiplier calculation is based on the RIMS II Regional Input-Output Model, produced by the Bureau of Economic Affairs, US Department of Commerce, and has not been contradicted by any of the evidence provided during these proceedings. The Board therefore FINDS that the overall estimate of 1,302 direct jobs created is a relatively small fraction of the total jobs to be created as a result of the programs that the Board is approving today.

The Board also notes that current economic conditions have reduced commodity and other input costs, making this a propitious time to pursue capital investment on cost-effective terms. For example, the federal Bureau of Labor Statistics stated that the producer price index ("PPI") for the primary products of iron and steel mills dropped nearly 20% from March 2008 to March 2009; the PPI of iron and steel pipe and tube made from purchased iron and steel dropped nearly 7% over the same period; and the PPI for communication and energy wire and cable manufacturing dropped more than 19%.[8] The price of iron and steel scrap dropped by nearly half over the same period.[9] In addition, the prudency of the projects and reasonableness of the amounts actually spent on the projects will be subject to a base rate review – either within a current reopened or to be filed rate case. This review assures that the projects included in this program will receive

---

[8] Bureau of Labor Statistics, "Table 5 - Producer price indexes for the net output of selected industries and their products," http://www.bls.gov/ppi/ppitable05.pdf.

[9] Bureau of Labor Statistics, "Table 2 - Producer price indexes and percent changes for selected commodity groupings by stage of processing," http://www.bls.gov/news.release/ppi.t02.htm.

the same level of scrutiny as any project undertaken by a New Jersey utility where the resulting costs become part of the rate base used to calculate rates.

Likewise, the Stipulations require that each company use the Weighted Average Cost of Capital ("WACC") determined in its last rate case, which provides significant financial advantages to ratepayers because the cost of debt and common equity have risen substantially in recent months. The companies originally proposed two much less attractive approaches for determining the WACC for use with the stimulus program: (1) the embedded cost of debt currently on the utility's books plus the cost of equity which the Board awarded to New Jersey Natural Gas Company in its recently completed rate case, i.e., 10.30 percent; or (2) the expected future cost of debt to finance the projects and the expected cost of equity if the Board were making that decision today, possibly as high as 10.50 percent. In rejecting that, and instead negotiating a WACC from each utility's last base rate proceedings, the Board has ensured a significant saving that further solidifies the foundation of approving these accelerated infrastructure programs.

On a net present value basis, the Board FINDS that the cost of these accelerated infrastructure programs to ratepayers is essentially the same as it would be through conventional ratemaking. In the short term, the cost may be less than under conventional ratemaking because the cost of capital used in the clauses, as discussed above, is somewhat below the current market rate. Therefore, the Board FINDS that these additions to rate base are being financed between program inception and the next base rate case at a more attractive cost from a ratepayer perspective.

The federal stimulus package, enacted as the American Recovery and Reinvestment Act of 2009 ("ARRA 2009"), included funding to enhance energy independence and modernize infrastructure. It does not currently appear that the ARRA 2009 includes funding for the types of projects included in the accelerated infrastructure development programs. Should such funds become available under the ARRA 2009, the Stipulations provide that ARRA 2009 funding would be used to reduce the cost of the accelerated infrastructure development programs to ratepayers. The Board notes that the accelerated infrastructure programs eliminate the lag associated with waiting for ARRA 2009 funding to be available for implementing these projects while still preserving for ratepayers any benefits from ARRA 2009 should benefits become available later.

In summary, the Boards FINDS that the overall infrastructure improvement programs, and the projects proposed by the utilities under them, are reasonable and in the public interest because of the positive impact they are expected to have on the reliability, safety and security of utility service. These infrastructure investment programs are timely given the drop in commodity prices, the attractive cost of capital, and the impact on both direct employment and the positive ripple effect on the New Jersey economy. All of these factors make this an appropriate time to proceed with these programs, which enhance and support Governor Corzine's Economic Stimulus Program.

Turning to the ETG Stipulation that is under review, the Board FINDS that it meets the tests articulated above. The Company will invest an estimated $60.4 million over the next two years creating an estimated 65 direct jobs over that period. The projects, totaling four in all, will include the construction of 20 miles of high pressure 12-inch main in Sussex County in order to access additional supply sources and the replacement of over 70 miles of aging cost iron and bare steel mains. The accelerated replacement of this infrastructure is consistent with both state and federal DOT initiatives to improve reliability and enhance the safe operation of the natural gas delivery system in the state. For these improvements a typical residential or small commercial customer using 100 therms of gas during a month will see an increase of about $0.37 or 0.2%, while a large commercial customer using 1,000 therms in a month will see an increase of about $3.70 or 0.3%.

Accordingly, the Board will, in this case, allow the Company to begin recovery of capital expenses for these Qualifying Projects on an interim basis subject to refund during the pendency of the Company's base rate case as contemplated by Paragraph 22 of the Stipulation. This authorization in no way sets a new framework for future actions; instead, it reflects the realities of today's economic situation.

Therefore, the Board, having reviewed the complete record in this proceeding including the attached Stipulation, HEREBY FINDS the Stipulation to be reasonable, in the public interest, and in accordance with law and HEREBY APPROVES the attached Stipulation in its entirety and HEREBY INCORPORATES its terms and conditions as though fully set forth herein.

Furthermore, the Board HEREBY DIRECTS the Company to commence the design and construction of the Qualifying Projects identified in Appendix A of the attached Stipulation; and FURTHER DIRECTS the Company to file its first annual cost recovery filing no later than November 1, 2009, all as more fully set forth in the Stipulation.

The Board HEREBY SETS the effective date of the initial Cost Recovery Rider as the date of this Order written below. Finally, the Board HEREBY RATIFIES all provisional ruling by President Fox for the reasons stated in her Orders.

The Company's base rates will remain subject to audit by the Board. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.

DATED: 4/28/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

DISSENT OF COMMISSIONER ELIZABETH RANDALL

These five (5) requests were filed by the utilities in response to Governor Corzine's October 16, 2008 proposal to help revive the State's economy through the acceleration of capital spending projects. In his speech to the New Jersey Legislature on October 16, 2008, the Governor said:

> "First and most practically, I have instructed all Commissioners, most particularly the Commissioners and Directors of the Department of Transportation, New Jersey Transit, the Toll Authorities, the Schools Development Authority, the Board of Public Utilities and the Department of Environmental Protection, to accelerate where feasible all currently funded spending projects."

Although not "currently funded," the utilities are asking the Board to fund these improvements with rate increase which will take effect no later than May 1, 2009. It is my opinion that the projected economic stimulus from these petitions is not sufficient to justify the cost to New Jersey customers.

As discussed below, my decision is based upon two factors: (1) the unprecedented infusion to the State of New Jersey of an anticipated $17.5 billion in federal stimulus monies pursuant to the American Reinvestment Recovery Act (ARRA), and (2) the comparatively small number of new jobs which would be created under these proposals relative to the total cost to New Jersey utility customers.[10]

On February 17, 2009, President Obama signed the ARRA which will inject $787 billion into the U.S. economy. New Jersey is expected to receive $17.5 billion.[11] An additional $240 billion will be available in tax benefits and competitive grants, of which New Jersey hopes to receive $7.2 billion, bringing New Jersey's total of anticipated federal stimulus dollars to $24.7 billion.

Based on estimates from the White House, these dollars will create or save 100,000 New Jersey jobs over the next two years.[12]

---

[10] The five (5) stipulations indicate the following cost and projected new jobs:

| Utility | Projected Cost | Projected Jobs | Customers |
|---|---|---|---|
| NJNG Co. | $70.8 Million | 75 – 100 | 485,000 |
| PSE&G Co. | $694.0 Million | 933 | 2.1M Elec./1.7M Gas |
| SJG Co. | $103.0 Million | 127 | 335,000 |
| Elizabethtown Gas Co. | $60.4 Million | 65 | 274,000 |
| Atlantic City Electric Co. | $27.6 Million | 92 | 544,000 |
| **TOTALS** | **$955.8 Million** | **1292-1317** | **5,438,000** |

[11] See http://www.recovery.nj.gov

[12] See http://www.recovery.nj.gov

Some four months before President Obama signed the federal stimulus bill, Governor Corzine addressed the New Jersey Legislature and proposed a New Jersey Economic Assistance and Recovery Plan.

The five matters before the Board are a direct result of the call to identify job-creation proposals. Specifically, the Executive branch sought company-specific program proposals with associated cost recovery and rate mechanisms, broken down into the following categories:

1 Infrastructure programs that will effectively spur an increase in construction employment, while increasing the reliability of the electric and gas distribution system.

2. Infrastructure programs that will improve energy efficiency of the electric or gas distribution system.

3. Statewide energy efficiency programs scaled down from the menu of programs submitted by the energy utilities.

Collectively, these five utilities seek permission to spend $955.8 Million (See Footnote 10), all of which will be recovered from customers through increases in utility rates.[13] The language used to describe the method of cost-recovery varies from utility to utility, with one company proposing an "Economic Stimulus Surcharge," and another calling it an "Infrastructure Investment Surcharge."

Terminology aside, while it is true that customers will benefit from these infrastructure investments, it is equally true that these improvements do not need to be completed within the next 24 months. None of the filings indicates that the delivery of safe and adequate service will be at risk if these requests are denied. Indeed, the petitions are replete with references to ongoing capital projects which are already planned and which will be funded by ratepayers.[14]

The number of new jobs to be created through approval of the accelerated projects is estimated at 1292-1317. Given the cost which customers will bear, I am persuaded that the cost of this job creation is too high. While it is true that the average bill will not go up by more than 1%, this amount will remain as part of the customer's bill for as long as it takes to repay the funds being borrowed by the utilities, which is approximately forty years.

Moreover, while some New Jerseyans would be put to work, there is no guarantee that the construction and engineering jobs created by these projects would go to companies

---

[13] Also recoverable from customers is a profit for each company. In these cases, the utilities will make a profit of approximately 10%.

[14] Illustrative of this point is paragraph 14 of the Stipulation with New Jersey Natural Gas Company (NJNG) which refers to ongoing infrastructure costs unrelated to this matter and states: "14. NJNG's current capital budgets contemplate the following levels of capital expenditures for non-qualifying projects: $64,563,000 in fiscal year 2009, $51,985,000 in fiscal year 2010 and $51,951,000 in fiscal year 2011. NJNG represents that the expenditures related to the qualifying projects will be incremental to such planned levels of expenditures for 2009, 2010 and 2011."

based in New Jersey.[15] Regardless, the jobs created will be temporary in nature, and do not reflect permanent job creation with the utility companies.

Contrast the efficiency of the BPU's job-creation effort with one recently announced by the Governor and the New Jersey Department of Transportation.

For a cost of $67 million and a promise of 500 jobs, a bridge upgrade will be done on Route 46 in Bergen County. Moreover, federal funds from the American Recovery and Reinvestment Act will pay for $47.6 million of this project, leaving New Jersey taxpayers paying only $19.4 million for 500 jobs.

In sum, the promise and benefits of the federal stimulus program are extraordinary. Were it not for the federal money, we would need to rely on New Jersey taxpayers and ratepayers to shoulder the burden of job creation through increased taxes and rates. Fortunately, this burden need not be increased at this time.

Elizabeth Randall

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Carmen D. Diaz

CARMEN D. DIAZ
ACTING SECRETARY

[15] Each of the stipulations simply states that the utilities will "endeavor to employ contractors and engineering firms located in New Jersey."

# APPENDIX
## Item 8

Agenda Date: 4/16/09
Agenda Item: 2A

**_STATE OF NEW JERSEY_**
**_Board of Public Utilities_**
**_Two Gateway Center_**
**_Newark, NJ 07102_**
**_www.nj.gov/bpu/_**

ENERGY

| | | |
|---|---|---|
| IN THE MATTER OF THE PROCEEDING<br>FOR INFRASTRUCTURE INVESTMENT<br>AND A COST RECOVERY MECHANISM<br>FOR ALL GAS AND ELECTRIC UTILITIES | )<br>)<br>)<br>) | DECISION AND ORDER<br>APPROVING STIPULATION<br><br>DOCKET NO. EO09010049 |
| IN THE MATTER OF THE PETITION<br>OF SOUTH JERSEY GAS COMPANY<br>FOR APPROVAL OF A CAPITAL<br>INVESTMENT RECOVERY<br>TRACKER PURSUANT TO N.J.S.A. 48:2-21.1<br>AND N.J.S.A. 48:2-21 | )<br>)<br>)<br>)<br>) | <br><br><br>DOCKET NO. GO09010051 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

**Background:**

On October 16, 2008 in response to the worldwide economic downturn and seeking to mitigate its effects on New Jersey, Governor Jon Corzine announced plans to provide immediate assistance for New Jersey residents and long term economic growth options through an "Economic Stimulus Plan." Governor Corzine called on the New Jersey Board of Public Utilities ("BPU" or "Board") and the State's public utilities to aid in that plan by implementing the policy changes to be proposed in the State's Energy Master Plan ("EMP").

The EMP, issued on October 22, 2008, is the roadmap to guide the State toward a responsible energy future with adequate, reliable energy supplies that are both environmentally responsible and competitively priced[1]. Under the EMP, major goals for New Jersey include maximizing energy conservation and energy efficiency, and reducing energy consumption by at least 20% by 2020. The EMP also calls for upgrading energy infrastructure to ensure the continued reliability of energy supply, support increased energy efficiency, renewable energy, and reductions in peak demand.[2] Public utility involvement, along with competition in the renewable energy, conservation and energy efficiency industries are essential to meeting the goals of the EMP. The Governor, together with Board President Jeanne M. Fox, encouraged New Jersey's electric and gas utilities to formulate plans for enhanced investments in infrastructure improvements during 2009. Implementation of such plans would accelerate the current schedule of the electric and gas utilities for planned capital improvements and investments, thereby creating jobs and stimulating the State's economy.

New Jersey's gas and electric utilities responded by filing petitions outlining each utility's proposed projects, and seeking the Board's approval of accelerated investments in utility infrastructure. In reviewing the utilities' petitions, the Board seeks to ensure not only that the proposals further the EMP, but also create jobs to strengthen the local economy.

By Order dated January 29, 2009, the Board determined that these petitions should be retained by the Board for review and hearing, and, as authorized by N.J.S.A. 48:2-32, designated President Fox as the presiding officer.[3]

**Procedural History**

South Jersey Gas Company ("SJG" or the "Company") filed a petition ("Petition") in Docket No. GO09010051 on January 20, 2009, requesting that the "Board approve an infrastructure investment program ("Infrastructure Program") and simultaneously approve the recovery of costs for projects included within its proposed Infrastructure Program through the implementation of a capital investment recovery tracker ("CIRT") charge, pursuant to N.J.S.A. 48:2-21 and 48:2-21.1.

In its Petition, the Company states that as part of its ordinary capital spending planning cycle, SJG continuously plans for the replacement, reinforcement and expansion of its infrastructure, including its property, plant, facilities and equipment, to maintain the reliability of its distribution system and to ensure the continuation of safe, adequate, proper service and the conservation and preservation of the environment. SJG has recently determined, however, to increase its planned infrastructure capital spending at this time to enhance the reliability of its system and to support economic development and job growth in New Jersey.

SJG proposed eleven projects for inclusion in its Infrastructure Program seeking to recover, through a CIRT, a revenue requirement, based on the cost of capital and depreciation rates used in SJG's most recent base rate case (BPU Docket No. GR03080683) for those projects

[1] For the full text of the EMP, see www.nj.gov/emp.

[2] EMP at 75.

[3] In anticipation of the filings by the utilities, the Board assigned a generic docket number to facilitate the individual utility proceedings, i.e. BPU Docket No. EO09010049, as noted above.

initiated within a period of approximately two years from the date of final Board approval of the Infrastructure Program.

On February 11, 2009, the New Jersey Large Energy Users Coalition ("NJLEUC") filed a Motion to Intervene in this proceeding. The motion was unopposed, and was granted on February 25, 2009.

Public notice was provided through publication in newspapers in general circulation in the Company's service territory, and two public hearings on the Company's Infrastructure Program filing were held on March 4, 2009, in Voorhees, New Jersey. No members of the public appeared at either public hearing.

Discovery questions in this matter were propounded by Board Staff and Rate Counsel, and the Company responded to them.

Subsequent to the completion and review of discovery and the two public hearings, representatives of SJG, Board Staff, Rate Counsel, and NJLEUC met to discuss the issues in this case. The Company, Rate Counsel and Board Staff (the "Parties") agreed that the Infrastructure Program proposal and associated interim cost recovery mechanism, as modified, are reasonable and in the public interest. The attached stipulation with accompanying appendices describes the terms and conditions of the Company's Infrastructure Program (the "Stipulation"), and resolves all issues in this proceeding[4]

In this Order the Board considers the proposed Stipulation with key provisions described below.

## The Proposed Stipulation[5]

*Qualifying Projects*

SJG represents that the Company's proposal, as set forth in the Stipulation, is consistent with and meets the goals of the comprehensive Economic Stimulus Plan for New Jersey proposed by Governor Jon Corzine to create new jobs and to stimulate the New Jersey economy. The Company represents that the eleven projects identified in Appendix A of the Stipulation ("Qualifying Projects" or "QP") will assist the Company in providing safe, adequate and proper service to its customers; are incremental in nature, and will create jobs in support of Governor Corzine's Economic Stimulus Plan. Accordingly, the Parties agreed that the costs associated with the Qualifying Projects should be recovered through the implementation of a CIRT charge, subject to review, as set forth in the Stipulation. Appendix A of the Stipulation contains a description of each Qualifying Project, the projected cost for each Qualifying Project, the estimated number of jobs created as a result of each Qualifying Project, and the projected timeline and completion date for each Qualifying Project.

---

[4] NJLEUC did not sign the Stipulation, but submitted a letter (attached to the Stipulation) indicating that it does not formally support or oppose the settlement.

[5] Although described in this Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

The Company anticipates that the design and construction work associated with the Qualifying Projects will generate approximately 127 incremental jobs in its service territory. The number of jobs is based on agreement by the Parties that 1,820 hours is equal to one full time equivalent ("FTE") employee. The Company agreed that it will endeavor to employ contractors and engineering firms located in New Jersey. The Company's estimate of the workforce necessary for the Qualifying Projects does not include any ancillary job impacts that will increase the overall benefits generated from the Qualifying Projects.

The work associated with the Qualifying Projects will commence upon receipt of the Board's Order approving the Stipulation, in conjunction with the estimated construction start and completion dates set forth in Appendix A. However, the Parties to the Stipulation recognized that to expedite the commencement of the Qualifying Projects, preliminary incremental expenditures (design, right-of-way acquisition, materials, etc.) have already been made on the Qualifying Projects. These expenditures will be recognized in the CIRT.

The Parties stipulated that the Board should approve on an interim basis, subject to refund, cost recovery through the implementation of a CIRT rate for the eleven Qualifying Projects listed in Appendix A, totaling $103 million, subject to a prudency review in the Company's next base rate case.

According to the Stipulation, if it is necessary for the Company to eliminate or substitute another project for any of the Qualifying Projects during the term of its Infrastructure Program, notice of any such changes and an opportunity for review and comment shall be provided to the Parties, and any substitutions shall only be made with Board approval. Before seeking such approval, the Company will consult with the Parties to the Stipulation, and seek their consent to the modifications which may be manifested in filings with the Board.

*Cost Recovery Mechanism*

The Parties have stipulated that the revenue requirement recovered through the CIRT will be calculated to include a return on investment and a return of investment through depreciation, which investment will include capitalized costs related to the Qualifying Projects. The Parties further stipulated that this calculation will use the depreciation rates and methodology and the cost of capital utilized to set rates in the Company's most recent base rate case (BPU Docket No. GR03080683), which was 7.97% overall (11.20% pre-tax). The Parties have also stipulated that the initial revenue requirement and resulting CIRT rate will be calculated utilizing projected cost and sales data subject to annual adjustments. The calculation of the revenue requirement for the purpose of setting the initial CIRT rate is set forth in Appendix B of the Stipulation attached hereto and made a part of the Stipulation.

The Company shall have the discretion to implement a bill credit or a refund at anytime while the CIRT rate is in effect with five (5) days notice to the BPU Staff and the Division of Rate Counsel. The Company shall have the discretion to file a self-implementing rate reduction without a cap at any time the CIRT rate is in effect with two (2) weeks notice to the BPU Staff and the Division of Rate Counsel. The Board shall set the effective date of the initial CIRT rate.

The initial revenue requirement calculation for the Qualifying Projects will commence during the month in which the CIRT mechanism is approved by the Board and will be based upon projected expenditures for the Qualifying Projects. The monthly over and under recovery calculation will be based upon actual revenues billed monthly under the CIRT mechanism applied against the monthly revenue requirement of the Qualified Projects. The monthly over and under recovery calculation will follow the methodology illustrated in the sample calculation set forth in Appendix C of the Stipulation. The annual revenue requirement calculation will follow the methodology set forth in Appendix B attached hereto and made a part of the Stipulation.

The Parties stipulated that the Company will file an annual petition ("Annual Filing") to adjust its CIRT rate on a calendar basis, with copies provided to the Parties, no later than each November 1st which is two months prior to the January 1st date proposed implementation date of the revised CIRT rate each year. Each Annual Filing will contain a reconciliation of its projected CIRT costs and recoveries and actual revenue requirements for the relevant period, as well as the items set forth in the minimum filing requirements ("MFRs") set forth in Appendix D attached hereto and made a part of the Stipulation. The Company agreed that it will not seek to recover incremental operation and maintenance expenses (non-capitalized) in its future Annual Filings. The Annual Filings shall be made available to other parties to the Stipulation, as well as any other interested members of the public, through the prompt posting of all non-confidential portions of those filings on the Company's web site.

In calculating the monthly interest on net over and under recoveries, the interest rate shall be based upon the Company's monthly weighted interest rate obtained on its commercial paper and/or bank credit lines. If both commercial paper and bank credit lines have been utilized the weighted average of both sources of capital shall be used. The interest amount charged or credited to the CIRT will be computed using the methodology set forth in Appendix C attached hereto and made a part of the Stipulation. The true-up calculation of over- and under- recoveries shall be included in the Company's Annual Filing.

*Base Rate Case Requirement*

The projects and associated investment costs included in the Annual Filing, as well as the level of the proposed CIRT rate, will be subject to review by Board Staff, Rate Counsel, and Intervenors with opportunity for discovery and filed comments, prior to the issuance of a Board Order establishing the Company's proposed new annual CIRT rate adjustment. The issuance of the Board Order will be preceded by public notice and hearings to the extent required by law.

The Parties stipulated that the Company shall file a base rate petition on or before April 1, 2011. The Parties further stipulated that, in the context of the Company's next base rate case, the Qualifying Projects and the CIRT rates will be subject to a full and thorough examination. In addition, the Parties stipulated that, if required, full evidentiary hearings concerning Qualifying Project recoveries will take place in that base rate case proceeding. The Parties further stipulated that, by agreeing to the Stipulation, a party does not waive, or in any way prejudice, its ability to raise any issue with regard to the base rate petition contemplated by paragraph 23 of the Stipulation.

The Stipulation states that during the Company's next base rate case, the net capitalized amounts of the Qualifying Projects, if deemed to be reasonable and prudent, will be rolled into the Company's rate base and related CIRT charges will be terminated. Any Qualifying Project expenditures and CIRT charges not known and measurable at the conclusion of the required base rate case may be considered in a subsequent phase two proceeding, after which time the CIRT rate and tariff will terminate. Upon termination, the Parties further stipulate that the provisions relating to prior period over and under recoveries will continue until such time as there is no remaining balance to be refunded or charged to customers.

*Minimum Filing Requirements ("MFRs")*

Under the terms of the Stipulation, the Company will provide the information set forth in the MFR attached to the Stipulation as Appendix D, in its Annual Filing and as part of its required base rate case filing. The Company will also provide in each filing a detailed description, along with corresponding plant accounts, of the expenditures that are reflected in each Qualifying Project in Appendix A, together with measurable parameters, such as line-feet or number of installations, associated with each Qualifying Project

*Rate Design*

The Parties stipulated that rate recovery through the CIRT rate will be non-bypassable except as provided in the Board's Order in the Company's 2003 base rate case, BPU Docket No. GR03080683, and implemented on a volumetric basis (equal charge per therm applied to throughput of all customer classes). The calculation of the initial CIRT rate is set forth in Appendix B of the Stipulation. The Parties further stipulated that this initial volumetric recovery mechanism is not intended to govern, or to have any precedential value with respect to the ultimate allocation of Qualifying Project costs among SJG's rate classes in its next base rate case. The Parties also stipulated that after the Qualifying Projects are rolled into base rates, the ultimate allocation of Qualifying Project costs will be resolved in the base rate case contemplated by Stipulation Paragraph 23 on a going forward basis.

*Rate Impact*

The Parties stipulated to an initial CIRT rate of $.0094 per therm, including taxes ($.0088 without taxes), which would result in $3.2 million in revenue for the initial period as set forth in Appendix B of the Stipulation. The CIRT rate will result in a rate increase for a typical residential customer using an average of 100 therms of gas during a month of $.94 or 0.57%. The impact on a typical General Service customer using 500 therms during a month would be an increase of $4.72 or 0.62%. The impact for a Large Volume Service sales customer using 63,000 therms in a month would be an increase of $592 or 0.8%. The rate impact of the implementation of the proposed CIRT rate for each customer class is set forth in Appendix E of the Stipulation.

*Quarterly Reporting*

The Parties stipulated that the Company will provide the Board and Rate Counsel with a quarterly report ("Quarterly Report"), reflecting capital expenditures and the job growth resulting from the implementation of each Qualifying Project on a quarterly basis, in the format attached as Appendix F and made a part of the Stipulation. The Quarterly Report will also reflect actual construction expenditures not related to the Qualifying Projects. New business budget and actual expenditures will be provided in the Quarterly Report, but not used for spending comparison purposes. The Quarterly Report should also include a narrative, describing the status of each project, tasks completed, percentage of projects completed, the actual money spent to date, etc. This information, related to the bare steel main replacement Qualifying Project, will be provided on a consolidated basis for all sub-projects covered under the capital blanket authorization. Additionally, the Company will include in the Quarterly Report planned/budgeted capital expenditures by budget type for similar non-Qualifying Projects for comparison to the actual costs incurred for the Qualifying Projects. This reporting will begin 30 (thirty) days after the end of the first calendar quarter following the issuance of a Final Board Order in this proceeding. The Quarterly Reports shall be made available to other parties to the Stipulation, as well as any other interested members of the public, through the prompt posting of all non-confidential portions of those filings on the Company's web site. In addition, the Company agrees to track the number of incremental contractor or other positions associated with the Qualifying Projects and will include that information with each Quarterly Report and Annual Filing submitted to the Board Staff and Rate Counsel, in the format set forth in Appendix F of the Stipulation.

*Calculation of Jobs Created*

The Parties agreed that job creation is an integral part of the Economic Stimulus Plan underlying the Qualified Projects. For purposes of reporting jobs associated with the Qualifying Projects, the Company will define a Full-Time Equivalent ("FTE") job as 1,820 hours per year.

*Government Funding*

On February 17, 2009, the Federal American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub. L. No. 111-5) was signed into law by President Barack Obama. Subject to any restrictions set forth in the ARRA and other applicable law, if the Company gets federal funds or credits directly related to the Qualifying Projects through the ARRA, the Company agrees to utilize that money to offset the Qualifying Projects' costs. If funding or credits from the ARRA or any subsequent state or federal action become available to the Company through the State of New Jersey, a County or Municipality for project reimbursement, the Company agrees that any such funds or credits directly applicable to work related to the Qualifying Projects will be used to benefit customers by offsetting the costs for which recovery will be sought to the extent permitted by law.

**Discussion and Findings**

The Board recognizes that the acceleration of utility infrastructure projects and the treatment of capital expenses on an expedited schedule outside the purview of a rate case is not part of the normal course of utility regulation. However, these are not ordinary times.

In his address to the Legislature on October 16, 2008, the Governor called upon the Board to help facilitate job growth and assist in New Jersey's economic stimulus program. The Board, in turn, called upon the State's public utilities to formulate plans for enhanced investments in infrastructure that would both increase reliability and promote employment.

The Board takes notice of the fact that the financial markets remain volatile, affecting the utilities' ability to fund incremental infrastructure projects within the usual framework which requires that capital expenditures be recovered through a rate case only after projects are completed. N.J.S.A. 48:2-21. It is within a rate case that the property that is used and useful in the utility's provision of service is evaluated, and the expenses that can become components of just and reasonable rates are determined. In re Investigation of Tele. Cos., 66 N.J. 476 (1975). These difficult economic times require creative responses that respect the law but adapt to extraordinary circumstances. In the past, the Board has found that it has the power to act to meet such challenges. N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (March 17, 1981). The Board continues to have that power.

Looking generally at all of the infrastructure settlements before the Board, and at SJG's in particular, the Board FINDS that the infrastructure programs reviewed today, if successfully executed, will both increase employment in the State and reliability of the utilities' distribution systems. Only capital projects which enhance the reliability, safety and security of each utility's distribution system are eligible under these programs as Qualifying Projects. These are projects originally scheduled for future years which can be brought forward into the 2009-2010 time period because they have already been researched and planned by the companies. In the absence of this program, most of the projects would be completed, but only in future years.

In identifying projects to be included in their infrastructure programs, projects using New Jersey-based employees were strongly favored; in contrast, projects not expected to affect employment in New Jersey, such as replacement of vehicles or computers, were eliminated from utility proposals. Projects without an obvious benefit to justify their costs were excluded as well.

Staff engineers reviewed the projects proposed by the utilities to establish that the projects would make the distribution systems more reliable, safer, or more secure, or would provide a combination of these benefits. Rate Counsel also conducted its own review, with substantial input from contracted professional consultants. Based on its review of the information provided, the Board is satisfied that the projects will positively contribute to the reliability, safety and security of utility service.

In addition to providing positive benefits to the provision of safe, adequate, and proper service, the proposed Qualifying Projects are designed to create direct jobs. Evidence presented to the Board during the overall proceedings indicate that the full impact of the overall accelerated infrastructure programs will create approximately 1,302 direct jobs in the private sector – without the use of additional government funding. The Qualifying Projects associated with this particular Order are expected to generate 127 direct jobs over the next two years, primarily in the construction industry. These are actual incremental private sector jobs which would not be created in the absence of these programs. The companies have provided an initial estimate of the incremental jobs to be created by these projects, and as part of the mandatory reporting requirements, will report the actual jobs created on a quarterly basis. Furthermore, the companies will provide reports on capital spending other than for the Qualifying Projects in order to identify any possible shifting of spending and assure that these are actually new jobs which would not have been created without these programs. Without question, the Board FINDS that the accelerated infrastructure programs will have a significant and real benefit on employment in the State.

The estimate of jobs to be created includes only the direct impact of the proposed projects on employment – the employees working on the utility projects themselves. It does not include the indirect impacts with respect to jobs created in other sectors of the state economy for labor, materials, and services needed for the utility projects. Neither does it include what is known as the "induced" impacts resulting from spending by the added employees for local goods and services. These "ripple" effects are difficult to quantify, but they clearly exist. Rate Counsel's consultants estimated that an additional 14,100 direct, indirect and induced jobs will be created by the accelerated infrastructure program. The multiplier calculation is based on the RIMS II Regional Input-Output Model, produced by the Bureau of Economic Affairs, US Department of Commerce, and has not been contradicted by any of the evidence provided during these proceedings. The Board therefore FINDS that the overall estimate of 1,302 direct jobs created is a relatively small fraction of the total jobs to be created as a result of the programs that the Board is approving today.

The Board also notes that current economic conditions have reduced commodity and other input costs, making this a propitious time to pursue capital investment on cost-effective terms. For example, the federal Bureau of Labor Statistics stated that the producer price index ("PPI") for the primary products of iron and steel mills dropped nearly 20% from March 2008 to March 2009; the PPI of iron and steel pipe and tube made from purchased iron and steel dropped nearly 7% over the same period; and the PPI for communication and energy wire and cable manufacturing dropped more than 19%.[6] The price of iron and steel scrap dropped by nearly half over the same period.[7] In addition, the prudency of the projects and reasonableness of the amounts actually spent on the projects will be subject to a base rate review – either within a current, reopened or to be filed rate case. This review assures that the projects included in this program will receive the same level of scrutiny as any project undertaken by a New Jersey utility where the resulting costs become part of the rate base used to calculate rates.

Likewise, the Stipulations require that each company use the Weighted Average Cost of Capital ("WACC") determined in its last rate case, which provides significant financial advantages to ratepayers because the cost of debt and common equity have risen substantially in recent months. The companies originally proposed two much less attractive approaches for determining the WACC for use with the stimulus program: (1) the embedded cost of debt currently on the utility's books plus the cost of equity which the Board awarded to New Jersey Natural Gas Company in its recently completed rate case, i.e., 10.30 percent; or (2) the expected future cost of debt to finance the projects and the expected cost of equity if the Board were making that decision today, possibly as high as 10.50 percent. In rejecting that, and instead negotiating a WACC from each utility's last base rate proceedings, the Board has ensured a significant saving that further solidifies the foundation of approving these accelerated infrastructure programs.

On a net present value basis, the Board FINDS that the cost of these accelerated infrastructure programs to ratepayers is essentially the same as it would be through conventional ratemaking. In the short term, the cost may be less than under conventional ratemaking because the cost of capital used in the clauses, as discussed above, is somewhat below the current market rate. Therefore, the Board FINDS that these additions to rate base are being financed between program inception and the next base rate case at a more attractive cost from a ratepayer perspective.

The federal stimulus package, enacted as the American Recovery and Reinvestment Act of 2009 ("ARRA 2009"), included funding to enhance energy independence and modernize infrastructure. It does not currently appear that the ARRA 2009 includes funding for the types of projects included in the accelerated infrastructure development programs. Should

[6] Bureau of Labor Statistics, "Table 5 - Producer price indexes for the net output of selected industries and their products," http://www.bls.gov/ppi/ppitable05.pdf.

[7] Bureau of Labor Statistics, "Table 2 - Producer price indexes and percent changes for selected commodity groupings by stage of processing," http://www.bls.gov/news.release/ppi.t02.htm.

such funds become available under the ARRA 2009, the Stipulations provide that ARRA 2009 funding would be used to reduce the cost of the accelerated infrastructure development programs to ratepayers. The Board notes that the accelerated infrastructure programs eliminate the lag associated with waiting for ARRA 2009 funding to be available for implementing these projects while still preserving for ratepayers any benefits from ARRA 2009 should benefits become available later.

In summary, the Boards FINDS that the overall infrastructure improvement programs, and the projects proposed by the utilities under them, are reasonable and in the public interest because of the positive impact they are expected to have on the reliability, safety and security of utility service. These infrastructure investment programs are timely given the drop in commodity prices, the attractive cost of capital, and the impact on both direct employment and the positive ripple effect on the New Jersey economy. All of these factors make this an appropriate time to proceed with these programs, which enhance and support Governor Corzine's Economic Stimulus Program.

Turning to the SJG Stipulation that is under review, the Board FINDS that it meets the tests articulated above. The company will invest an estimated $103 million over the next two years creating an estimated 127 jobs over that period. The projects, totaling eleven in all, will include the installation of 15 miles of 24-inch diameter transmission line to improve system deliverability and the replacement of approximately 84 miles of aging bare steel mains. The accelerated replacement of this infrastructure is consistent with both State and federal DOT initiatives to improve reliability and enhance the safe operation of the natural gas delivery system in the state. The CIRT rate to recover the costs of these improvements will result in a rate increase for a typical residential customer using an average of 100 therms of gas during a month of $.94 or 0.57%, an increase of $4.72 or 0.62% for a typical General Service customer using 500 therms during a month, and an increase of $592 or 0.8% for a Large Volume Service sales customer using 63,000 therms in a month.

Accordingly, the Board will, in this case, allow the Company to begin recovery of capital expenses for these Qualifying Projects on an interim basis subject to refund pending the filing of the Company's base rate case as contemplated by Paragraph 23 of the Stipulation. This authorization in no way sets a new framework for future actions; instead, it reflects the realities of today's economic situation.

Therefore, the Board, having reviewed the complete record in this proceeding including the attached Stipulation, HEREBY FINDS the Stipulation to be reasonable, in the public interest, and in accordance with law and HEREBY APPROVES the attached Stipulation in its entirety and HEREBY INCORPORATES its terms and conditions as though fully set forth herein.

Furthermore, the Board HEREBY DIRECTS the Company to commence the design and construction of the Qualifying Projects identified in Appendix A of the attached Stipulation; and FURTHER DIRECTS the Company to file its first annual cost recovery filing no later than November 1, 2009, all as more fully set forth in the Stipulation.

The Board HEREBY SETS the effective date of the initial CIRT rate as the date of this Order written below. Finally, the Board HEREBY RATIFIES all provisional ruling by President Fox for the reasons stated in her Orders.

The Company's base rates will remain subject to audit by the Board. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.

DATED: 4/28/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

DISSENT OF COMMISSIONER ELIZABETH RANDALL

These five (5) requests were filed by the utilities in response to Governor Corzine's October 16, 2008 proposal to help revive the State's economy through the acceleration of capital spending projects. In his speech to the New Jersey Legislature on October 16, 2008, the Governor said:

> "First and most practically, I have instructed all Commissioners, most particularly the Commissioners and Directors of the Department of Transportation, New Jersey Transit, the Toll Authorities, the Schools Development Authority, the Board of Public Utilities and the Department of Environmental Protection, to accelerate where feasible all currently funded spending projects."

Although not "currently funded," the utilities are asking the Board to fund these improvements with rate increases which will take effect no later than May 1, 2009. It is my opinion that the projected economic stimulus from these petitions is not sufficient to justify the cost to New Jersey customers.

As discussed below, my decision is based upon two factors: (1) the unprecedented infusion to the State of New Jersey of an anticipated $17.5 billion in federal stimulus monies pursuant to the American Reinvestment Recovery Act (ARRA), and (2) the comparatively small number of new jobs which would be created under these proposals relative to the total cost to New Jersey utility customers.[8]

On February 17, 2009, President Obama signed the ARRA which will inject $787 billion into the U.S. economy. New Jersey is expected to receive $17.5 billion.[9] An additional $240 billion will be available in tax benefits and competitive grants, of which New Jersey hopes to receive $7.2 billion, bringing New Jersey's total of anticipated federal stimulus dollars to $24.7 billion.

Based on estimates from the White House, these dollars will create or save 100,000 New Jersey jobs over the next two years.[10]

---

[8] The five (5) stipulations indicate the following costs and projected new jobs:

| Utility | Projected Cost | Projected Jobs | Customers |
|---|---|---|---|
| NJNG Co. | $70.8 Million | 75 – 100 | 485,000 |
| PSE&G Co. | $694.0 Million | 933 | 2.1M Elec./1.7M Gas |
| SJG Co. | $103.0 Million | 127 | 335,000 |
| Elizabethtown Gas Co. | $60.4 Million | 65 | 274,000 |
| Atlantic City Electric Co. | $27.6 Million | 92 | 544,000 |
| **TOTALS** | **$955.8 Million** | **1292-1317** | **5,438,000** |

[9] See http://www.recovery.nj.gov

[10] See http://www.recovery.nj.gov

Some four months before President Obama signed the federal stimulus bill, Governor Corzine addressed the New Jersey Legislature and proposed a <u>New Jersey Economic Assistance and Recovery Plan</u>.

The five matters before the Board are a direct result of the call to identify job-creation proposals. Specifically, the Executive branch sought company-specific program proposals with associated cost recovery and rate mechanisms, broken down into the following categories:

1 Infrastructure programs that will effectively spur an increase in construction employment, while increasing the reliability of the electric and gas distribution system.

2. Infrastructure programs that will improve energy efficiency of the electric or gas distribution system.

3. Statewide energy efficiency programs scaled down from the menu of programs submitted by the energy utilities.

Collectively, these five utilities seek permission to spend $955.8 Million (See Footnote 8), all of which will be recovered from customers through increases in utility rates.[11] The language used to describe the method of cost-recovery varies from utility to utility, with one company proposing an "Economic Stimulus Surcharge," and another calling it an "Infrastructure Investment Surcharge."

Terminology aside, while it is true that customers will benefit from these infrastructure investments, it is equally true that these improvements do not need to be completed within the next 24 months. None of the filings indicates that the delivery of safe and adequate service will be at risk if these requests are denied. Indeed, the petitions are replete with references to ongoing capital projects which are already planned and which will be funded by ratepayers.[12]

The number of new jobs to be created through approval of the accelerated projects is estimated at 1292-1317. Given the cost which customers will bear, I am persuaded that the cost of this job creation is too high. While it is true that the average bill will not go up by more than 1%, this amount will remain as part of the customer's bill for as long as it takes to repay the funds being borrowed by the utilities, which is approximately forty years.

Moreover, while some New Jerseyans would be put to work, there is no guarantee that the construction and engineering jobs created by these projects would go to companies based in

[11] Also recoverable from customers is a profit for each company. In these cases, the utilities will make a profit of approximately 10%.

[12] Illustrative of this point is paragraph 14 of the Stipulation with New Jersey Natural Gas Company (NJNG) which refers to ongoing infrastructure costs unrelated to this matter and states: "14. NJNG's current capital budgets contemplate the following levels of capital expenditures for non-qualifying projects: $64,563,000 in fiscal year 2009, $51,985,000 in fiscal year 2010 and $51,951,000 in fiscal year 2011. NJNG represents that the expenditures related to the qualifying projects will be incremental to such planned levels of expenditures for 2009, 2010 and 2011."

New Jersey.[13] Regardless, the jobs created will be temporary in nature, and do not reflect permanent job creation with the utility companies.

Contrast the efficiency of the BPU's job-creation effort with one recently announced by the Governor and the New Jersey Department of Transportation.

For a cost of $67 million and a promise of 500 jobs, a bridge upgrade will be done on Route 46 in Bergen County. Moreover, federal funds from the American Recovery and Reinvestment Act will pay for $47.6 million of this project, leaving New Jersey taxpayers paying only $19.4 million for 500 jobs.

In sum, the promise and benefits of the federal stimulus program are extraordinary. Were it not for the federal money, we would need to rely on New Jersey taxpayers and ratepayers to shoulder the burden of job creation through increased taxes and rates. Fortunately, this burden need not be increased at this time.

Elizabeth Randall

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Carmen D. Diaz

CARMEN D. DIAZ
ACTING SECRETARY

---

[13] Each of the stipulations simply states that the utilities will "endeavor to employ contractors and engineering firms located in New Jersey."

# APPENDIX
## Item 9

Agenda Date: 4/16/09
Agenda Item: 2A

# *STATE OF NEW JERSEY*
***Board of Public Utilities***
***Two Gateway Center***
***Newark, NJ 07102***
***www.nj.gov/bpu/***

ENERGY

| | | |
|---|---|---|
| IN THE MATTER OF THE PROCEEDING FOR INFRASTRUCTURE INVESTMENT AND A COST RECOVERY MECHANISM FOR ALL GAS AND ELECTRIC UTILITIES | ) | DECISION AND ORDER APPROVING STIPULATION<br><br>DOCKET NO. EO09010049 |
| IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR APPROVAL OF AN ACCELERATED ENERGY INFRASTRUCTURE INVESTMENT PROGRAM PURSUANT TO N.J.S.A. 48:2-23, AND FOR APPROVAL OF NECESSARY CHANGES TO GAS RATES AND CHANGES IN THE COMPANY'S TARIFF FOR GAS SERVICE PURSUANT TO N.J.S.A. 48:2-21 | ) | DOCKET NOS. GO09010052<br>GR07110889 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

**Background:**

On October 16, 2008 in response to the worldwide economic downturn and seeking to mitigate its effects on New Jersey, Governor Jon Corzine announced plans to provide immediate assistance for New Jersey residents and long term economic growth options through an "Economic Stimulus Plan." Governor Corzine called on the New Jersey Board of Public Utilities ("BPU" or "Board") and the State's public utilities to aid in that plan by implementing the policy changes to be proposed in the State's about to be released Energy Master Plan ("EMP").

The EMP, issued on October 22, 2008, is the roadmap to guide the State toward a responsible energy future with adequate, reliable energy supplies that are both environmentally responsible and competitively priced[1]. Under the EMP, major goals for New Jersey include maximizing energy conservation and energy efficiency, and reducing energy consumption by at least 20% by 2020. The EMP also calls for upgrading energy infrastructure to ensure the continued reliability of energy supply, support increased energy efficiency, renewable energy, and reductions in peak demand.[2] Public utility involvement, along with competition in the renewable energy, conservation and energy efficiency industries are essential to meeting the goals of the EMP. The Governor, together with Board President Jeanne M. Fox, encouraged New Jersey's electric and gas utilities to formulate plans for enhanced investments in infrastructure improvements during 2009. Implementation of such plans would accelerate the current schedule of the electric and gas utilities for planned capital improvements and investments, thereby creating jobs and stimulating the State's economy.

New Jersey's gas and electric utilities responded by filing petitions outlining each utility's proposed projects, and seeking the Board's approval of accelerated investments in utility infrastructure. In reviewing the utilities' petitions, the Board seeks to ensure not only that the proposals further the EMP, but also create jobs to strengthen the local economy.

By Order dated January 29, 2009, the Board determined that these petitions should be retained by the Board for review and hearing, and, as authorized by N.J.S.A. 48:2-32, designated President Fox as the presiding officer.[3]

**Procedural History:**

On January 20, 2009, New Jersey Natural Gas Company ("NJNG" or the "Company") filed a petition requesting that the Board approve an Accelerated Energy Infrastructure Investment Program ("AIP") pursuant to N.J.S.A. 48:2-23, and that the Board simultaneously approve the recovery of costs for projects included within the AIP through a change in the NJNG base rates, pursuant to N.J.S.A. 48:2-21 and 48:2-21.1.

In its petition, the Company stated that, as part of its ordinary capital spending planning cycle, NJNG continuously plans for the replacement, reinforcement and expansion of its infrastructure, including its property, plant, facilities and equipment to maintain the reliability of its distribution and transmission system, and to ensure the continuation of safe, adequate, and proper service as well as the conservation and preservation of the environment. The Company further stated that it had recently determined that it is both reasonable and prudent to accelerate its capital spending at this time, to facilitate its operations and to support economic development and job growth in New Jersey. Accordingly, the Company has proposed to invest approximately $70.8 million in accelerated infrastructure projects that already had been included in the Company's longer term budgeting process.

The Company further maintains that its proposal is consistent with and meets the goals of the comprehensive Economic Stimulus Package for New Jersey proposed by the Governor.

[1] For the full text of the EMP, see www.nj.gov/emp.

[2] EMP at 75.

[3] In anticipation of the filings by the utilities, the Board assigned a generic docket number to facilitate the individual utility proceedings, i.e. BPU Docket No. EO09010049, as noted above.

According to NJNG, the infrastructure investment projects proposed in its petition will serve to enhance service and reliability, meet energy efficiency goals by making natural gas service more readily available, and will provide for the creation of approximately 75 to 100 additional jobs. In its petition, the Company proposed fourteen projects for inclusion in the AIP (the "Associated Projects" or "AIP Projects"), in order to offer the greatest benefit to customers and to ensure an effective implementation process. The Company also proposed seeking base rate treatment for those projects initiated within a period of approximately two years from the date of final Board approval of the AIP, or as of the date the Associated Projects that have commenced construction as of December 31, 2010, are completed. According to the Company, the proposed projects shall be completed no later than August 31, 2011. To expedite the Board's review of the proposals, NJNG requested that the Board consider this matter in conjunction with NJNG's recently finalized base rate case in Docket No. GR07110889, and that the Board re-open that case for the sole purpose of considering the AIP proposal and cost recovery approach included therein.[4] The Company also requested that the Board retain the AIP filing for review on an expedited schedule in order to timely meet the State and Federal goals for infrastructure development and job creation.

Six public hearings on the AIP filing were held at three locations in the NJNG service territory: two hearings on February 24, 2009 in Rockaway Township, New Jersey; two hearings on February 26, 2009 in Freehold Borough, New Jersey; and two hearings on March2, 2009 in Toms River Township. One member of the public appeared at one of the Freehold Borough public hearings, but made no statement for the record on the AIP petition.

Discovery requests in this matter were propounded by Board Staff and Rate Counsel, all of which were responded to by NJNG. No motions to intervene were filed.

Subsequent to the completion and review of discovery and the six public hearings, and after engaging in settlement negotiations, representatives of NJNG, Board Staff, and Rate Counsel (collectively the "Parties"), the only parties to this proceeding, met to discuss the issues in this case and executed a Stipulation and Agreement (the "Stipulation") which resolves the issues in this proceeding, as described more fully below.

On April 3, 2009, NJNG notified representatives from Amerada Hess, Intelligent Energy and Public Service Electric & Gas about the settlement reached in this matter. The three companies were granted intervenor status in NJNG's base rate case (BPU Docket No. GR07110889) which the Company has asked the Board to reopen for the purposes of considering review and rate base recovery of the AIP. PSE&G stated that it had no objection to the Stipulation, while Amerada Hess stated that it neither objects nor supports the Stipulation. Intelligent Energy specifically objects to the treatment of capacity and storage costs and any changes that "lock in" base rates, including the additional costs that would be added under the Stipulation. No other comments were received.

In this Order, the Board considers the proposed Stipulation, with key provisions described below.

---

[4] On October 3, 2008, the BPU issued its Decision and Order in Docket No. GR07110889 ("October 3 Order"), adopting the terms of the Stipulation entered into by NJNG, Board Staff, and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the only active parties participating in the settlement of the NJNG base rate case.

## The Proposed Stipulation[5]

*AIP Projects:*

The Company represents that the fourteen projects identified in Appendix A of the attached Stipulation ("Qualifying Projects") will assist the Company in providing safe, adequate and proper service to its customers, are incremental in nature, and will create jobs in support of Governor Corzine's Economic Stimulus Plan. Accordingly, the Parties agree that the costs associated with the Qualifying Projects will be recovered through NJNG's base rates, subject to review, as described below.

Appendix A of the Stipulation contains a description of each Qualifying Project, the projected cost for each Qualifying Project, and the projected timeline and completion date for each Qualifying Project. The Company anticipates that the design and construction work associated with the Qualifying Projects will generate between 75 and 100 incremental jobs in its service territory. The Company agrees that it will try to employ contractors and engineering firms located in New Jersey. The Company's estimate of the workforce necessary for the Qualifying Projects does not include any ancillary job impacts that will increase the overall benefits generated from the Qualifying Projects.

According to the Stipulation, the work associated with the Qualifying Projects will commence upon receipt of a final Board Order in this proceeding coordinated with the estimated construction start and completion dates set forth in Appendix A. Based on current cost levels and available estimates, the Company estimates that the overall construction costs, prior to any capitalization of an Allowance for Funds Used During Construction ("AFUDC") related to the Qualifying Projects, will be approximately $70.8 million.

NJNG's current capital budgets contemplate the following levels of capital expenditures for non-Qualifying projects: $64,563,000 in fiscal year 2009, $51,985,000 in fiscal year 2010 and $51,951,000 in fiscal year 2011. NJNG represents that the expenditures related to the Qualifying Projects will be incremental to such planned levels of expenditures for 2009, 2010 and 2011. The Parties stipulate that NJNG should recover the costs of the fourteen Qualifying Projects listed in Appendix A, through the Company's base rates, subject to a prudency review and Board Order.

If it is necessary for the Company to eliminate or substitute another project for any of the Qualifying Projects during the term of its AIP, notice of any such changes and an opportunity for review and comment shall be provided to the Parties, and any substitutions shall only be made with Board approval. Before seeking such approval, the Company will consult with the Parties to the Stipulation, and will seek consent to the modifications from the Parties for filings with the Board.

[5] Although described in this Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

*Cost Recovery Mechanism:*

Under the terms of the Stipulation, NJNG's recently finalized base rate case in Docket No. GR07110889 will be re-opened for the sole purpose of considering NJNG's request for base rate increases associated with the Qualifying Projects. In June of 2010 and 2011, coincident with but separate from its annual Basic Gas Supply Service ("BGSS") filings, the Company will submit its annual AIP filing (the "Annual Filing") with the Board and provide public notice with copies to Rate Counsel.

The Annual Filing will include a request for recovery in base rates of the prudently incurred costs ("Capital Investment Costs"), associated with the Qualifying Projects. The Annual Filing will request that associated changes in base rates be effective the October following the Annual Filing, coincident with the annual BGSS rate changes. Capital Investment Costs will consist of all prudently incurred capital expenditures associated with the Qualifying Projects, including actual costs of engineering, design and construction, cost of removal (net of salvage) and property acquisition, including actual labor, materials, overheads and capitalized AFUDC (as described in paragraph 21 of the Stipulation) associated with each of the Qualifying Projects. Capital Investment Costs will be recorded, during construction, in an associated Construction Work in Progress Account ("CWIP") or in a Plant In Service Account upon the respective project being deemed used and useful. Additionally, if NJNG files a base rate case with the BPU prior to October 1, 2011, the request for rate relief associated with the Qualifying Projects sought in the NJNG June 2011 Annual AIP Filing will be withdrawn.

The Company's annual AIP base rate adjustment proposed in the Annual Filing will include a revenue requirement that reflects a rate of return calculated as follows: the Company's current CWIP balance associated with the Qualifying Projects as of August that year, including any previously capitalized AFUDC, and the Company's Qualifying Project plant-in-service investment balance as of August, multiplied by a Weighted Average Cost of Capital ("WACC") of 11.44 percent, as adjusted for income taxes. NJNG agrees that the request for recovery of higher incremental debt costs in the development of the WACC originally included in the petition is withdrawn and agrees that the WACC for this purpose is based on the Board's approved rate of return in the October 3 Order. The June 2011 filing will be limited to the Company's Qualifying Project plant-in-service investment balance as of August 31, 2011. The AIP base rate adjustment will also include depreciation expense for Qualifying Projects placed into service in the 12-month period ending August 31 of each year based on a composite depreciation rate of 2.34%, commencing with the AIP Order. NJNG agrees that it will not include incremental operation and maintenance expenses in future AIP Annual Filings

The Qualifying Projects, and any Board-approved substituted projects, and associated investment costs included in each Annual Filing will be subject to review by Board Staff and Rate Counsel prior to the issuance of a Board Order establishing that the Company's proposed annual base rate adjustment is just and reasonable. Such review will be conducted as a contested case in accordance with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At the conclusion of proceedings to review the June 2011 Annual Filing, the reopened base rate proceedings in Docket No. GR07110899 will close.

*Accounting Methodology for AIP:*

The Company will separately track Capital Investment Costs, as defined in Paragraph 17 of the Stipulation, for each of the Qualifying Projects by work order in a CWIP account and will record a monthly accrual of AFUDC which will be capitalized or included in the CWIP balance as follows:

(a) when NJNG's total CWIP balance, including CWIP associated with Qualifying Projects, is less than NJNG's outstanding short-term debt ("S/T debt") balance, the applicable AFUDC rate will be equal to NJNG's monthly cost of S/T debt; or when NJNG's total CWIP balance, including CWIP associated with Qualifying Projects, is greater than NJNG's outstanding S/T debt, the applicable AFUDC rate will be equal to NJNG's overall WACC--7.76% per annum; or
(b) when a Qualifying Project is placed into service, but not yet reflected in customer rates, the AFUDC rate will be equal to NJNG's WACC--7.76% per annum.
(c) be equal to NJNG's overall WACC--7.76% per annum; or
(d) when a Qualifying Project is placed into service, but not yet reflected in customer rates, the AFUDC rate will be equal to NJNG's WACC--7.76% per annum.

In determining the CWIP base upon which to apply the monthly AFUDC rate, a deduction will be made for any CWIP amount currently approved by the BPU and included in NJNG's base rates.

*Rate Design:*

NJNG will recover the costs approved in each of its AIP Annual Filings by adjusting, on a volumetric basis, the then-current base rate for all customer classes, allocated in the manner prescribed in the October 3 Order. Accordingly, the effect of the AIP base rate adjustments, consistent with the October 3 Order, will reflect an across-the-board adjustment to customer classes that will have an impact on natural gas revenues for each class by the same percentage. No change will be requested in any of the AIP filings for the current customer charges approved by the Board in the October 3 Order. The volumes used to determine base volumetric revenues for each customer class and for the AIP-related base rate changes to be coincident with the annual BGSS rate changes, will be based on the weather-normalized forecast for the upcoming annual BGSS period of October through September.

*Rate Impact:*

The Company estimates that the total rate increase resulting from the AIP will be approximately 1 to 1.25 percent in the aggregate to the bills of an average residential heating customer based on the Company's current rates and anticipated sales volumes.

*Minimum Filing Requirements ("MFRs"):*

The Company will provide the information set forth in the list of MFRs attached to the Stipulation as Appendix B with each Annual Filing. The Company will also provide in each filing a detailed description, along with corresponding plant accounts, of the expenditures that are reflected in each blanket project in Appendix A, if any, together with measurable parameters, such as line-feet or number of installations, associated with each blanket project, if any.

*Quarterly Reporting:*

Under the terms of the Stipulation, the Company will provide the Board and Rate Counsel with a quarterly report ("Quarterly Report"), reflecting capital expenditures and the job growth resulting from the implementation of each Qualifying Project on a quarterly basis, in the format attached hereto as Appendix C and made a part of the Stipulation. The Quarterly Report should also include a Gantt chart showing the status of the projects, tasks completed, percentage of projects completed, the actual money spent to date, etc. Additionally, the Company will include in the Quarterly Report planned/budgeted capital expenditures by budget type for non-Qualifying

Projects, other than new business, for comparison to the actual costs incurred for the non-Qualifying Projects. This reporting will begin 30 (thirty) days after the end of the first calendar quarter following the issuance of a Final Board Order in this proceeding. The Company agrees to track the number of incremental contractor or other positions associated with the Qualifying Projects and will include that information with each Quarterly Report and Annual Filing submitted to the Board Staff and Rate Counsel, in the format set forth in Appendix C of the Stipulation.

*Calculation of Jobs Created:*

The Parties agree that job creation is an integral part of the Economic Stimulus Plan underlying the Qualified Projects. For purposes of reporting jobs associated with the Qualifying Projects, the Company will define a Full-Time Equivalent ("FTE") job as 1,820 hours per year.

*Government Funding:*

On February 17, 2009, the Federal American Recovery and Reinvestment Act of 2009 ("ARRA") (Pub. L. No. 111-5) was signed into law by President Barack Obama. Subject to any restrictions set forth in the ARRA and other applicable law, if the Company receives federal funds or credits through the ARRA, the Company agrees to utilize that money to offset the Qualifying Project's costs. If funding or credits from the ARRA or any subsequent state or federal action becomes available to the Company through the State of New Jersey, a County or a Municipality project reimbursement, the Company agrees that any such funds or credits directly applicable to work related to the Qualifying Projects will be used to benefit customers by offsetting the costs for which recovery will be sought to the extent permitted by law.

**Discussion and Findings**

The Board recognizes that the acceleration of utility infrastructure projects and the treatment of capital expenses on an expedited schedule outside the purview of a rate case is not part of the normal course of utility regulation. However, these are not ordinary times.

In his address to the Legislature on October 16, 2008, the Governor called upon the Board to help facilitate job growth and assist in New Jersey's economic stimulus program. The Board, in turn, called upon the State's public utilities to formulate plans for enhanced investments in infrastructure that would both increase reliability and promote employment.

The Board takes notice of the fact that the financial markets remain volatile, affecting the utilities' ability to fund incremental infrastructure projects within the usual framework which requires that capital expenditures be recovered through a rate case only after projects are completed. N.J.S.A. 48:2-21. It is within a rate case that the property that is used and useful in the utility's provision of service is evaluated, and the expenses that can become components of just and reasonable rates are determined. In re Investigation of Tele. Cos., 66 N.J. 476 (1975). These difficult economic times require creative responses that respect the law but adapt to extraordinary circumstances. In the past, the Board has found that it has the power to act to meet such challenges. N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (March 17, 1981). The Board continues to have that power.

Looking generally at all of the infrastructure settlements before the Board, and at Public Service's in particular, the Board FINDS that the infrastructure programs reviewed today, if successfully executed, will both increase employment in the State and reliability of the utilities' distribution systems. Only capital projects which enhance the reliability, safety and security of each utility's distribution system are eligible under these programs as Qualifying Projects. These are projects originally scheduled for future years which can be brought forward into the 2009-2010 time period because they have already been researched and planned by the companies. In the absence of this program, most of the projects would be completed, but only in future years.

In identifying projects to be included in their infrastructure programs, projects using New Jersey-based employees were strongly favored; in contrast, projects not expected to affect employment in New Jersey, such as replacement of vehicles or computers, were eliminated from utility proposals. Projects without an obvious benefit to justify their costs were excluded as well.

Staff engineers reviewed the projects proposed by the utilities to establish that the projects would make the distribution systems more reliable, safer, or more secure, or would provide a combination of these benefits. Rate Counsel also conducted its own review, with substantial input from contracted professional consultants. Based on its review of the information provided, the Board is satisfied that the projects will positively contribute to the reliability, safety and security of utility service.

In addition to providing positive benefits to the provision of safe, adequate, and proper service, the proposed Qualifying Projects are designed to create direct jobs. Evidence presented to the Board during the overall proceedings indicate that the full impact of the overall accelerated infrastructure programs will create approximately 1,302 direct jobs in the private sector – without the use of additional government funding. The Qualifying Projects associated with this particular Order are expected to generate 75-100 direct jobs over the next two years, primarily in the construction industry. These are actual incremental private sector jobs which would not be created in the absence of these programs. The companies have provided an initial estimate of the incremental jobs to be created by these projects, and as part of the mandatory reporting requirements, will report the actual jobs created on a quarterly basis. Furthermore, the companies will provide reports on capital spending other than for the Qualifying Projects in order to identify any possible shifting of spending and assure that these are actually new jobs which would not have been created without these programs. Without question, the Board FINDS that the accelerated infrastructure programs will have a significant and real benefit on employment in the State.

The estimate of jobs to be created includes only the direct impact of the proposed projects on employment – the employees working on the utility projects themselves. It does not include the indirect impacts with respect to jobs created in other sectors of the state economy for labor, materials, and services needed for the utility projects. Neither does it include what is known as the "induced" impacts resulting from spending by the added employees for local goods and services. These "ripple" effects are difficult to quantify, but they clearly exist. Rate Counsel's consultants estimated that an additional 14,100 direct, indirect and induced jobs will be created by the accelerated infrastructure program. The multiplier calculation is based on the RIMS II Regional Input-Output Model, produced by the Bureau of Economic Affairs, US Department of Commerce, and has not been contradicted by any of the evidence provided during these proceedings. The Board therefore FINDS that the overall estimate of 1,302 direct jobs created is a relatively small fraction of the total jobs to be created as a result of the programs that the Board is approving today.

The Board also notes that current economic conditions have reduced commodity and other input costs, making this a propitious time to pursue capital investment on cost-effective terms. For example, the federal Bureau of Labor Statistics stated that the producer price index ("PPI") for the primary products of iron and steel mills dropped nearly 20% from March 2008 to March 2009; the PPI of iron and steel pipe and tube made from purchased iron and steel dropped nearly 7% over the same period; and the PPI for communication and energy wire and cable manufacturing dropped more than 19%.[6] The price of iron and steel scrap dropped by nearly half over the same period.[7] In addition, the prudency of the projects and reasonableness of the amounts actually spent on the projects will be subject to a base rate review – either within a current reopened or to be filed rate case. This review assures that the projects included in this program will receive the same level of scrutiny as any project undertaken by a New Jersey utility where the resulting costs become part of the rate base used to calculate rates.

Likewise, the Stipulations require that each company use the Weighted Average Cost of Capital ("WACC") determined in its last rate case, which provides significant financial advantages to ratepayers because the cost of debt and common equity have risen substantially in recent months. The companies originally proposed two much less attractive approaches for determining the WACC for use with the stimulus program: (1) the embedded cost of debt currently on the utility's books plus the cost of equity which the Board awarded to New Jersey Natural Gas Company in its recently completed rate case, i.e., 10.30 percent; or (2) the expected future cost of debt to finance the projects and the expected cost of equity if the Board were making that decision today, possibly as high as 10.50 percent. In rejecting that, and instead negotiating a WACC from each utility's last base rate proceedings, the Board has ensured a significant saving that further solidifies the foundation of approving these accelerated infrastructure programs.

On a net present value basis, the Board FINDS that the cost of these accelerated infrastructure programs to ratepayers is essentially the same as it would be through conventional ratemaking. In the short term, the cost may be less than under conventional ratemaking because the cost of capital used in the clauses, as discussed above, is somewhat below the current market rate. Therefore, the Board FINDS that these additions to rate base are being financed between program inception and the next base rate case at a more attractive cost from a ratepayer perspective.

The federal stimulus package, enacted as the American Recovery and Reinvestment Act of 2009 ("ARRA 2009"), included funding to enhance energy independence and modernize infrastructure. It does not currently appear that the ARRA 2009 includes funding for the types of projects included in the accelerated infrastructure development programs. Should such funds become available under the ARRA 2009, the Stipulations provide that ARRA 2009 funding would be used to reduce the cost of the accelerated infrastructure development programs to ratepayers. The Board notes that the accelerated infrastructure programs eliminate the lag associated with waiting for ARRA 2009 funding in implementing these projects while still preserving for ratepayers any benefits from ARRA 2009 should benefits become available later.

---

[6] Bureau of Labor Statistics, "Table 5 - Producer price indexes for the net output of selected industries and their products," http://www.bls.gov/ppi/ppitable05.pdf.

[7] Bureau of Labor Statistics, "Table 2 - Producer price indexes and percent changes for selected commodity groupings by stage of processing," http://www.bls.gov/news.release/ppi.t02.htm.

In summary, the Boards FINDS that the overall infrastructure improvement program, and the projects proposed by the utilities under it, are reasonable and in the public interest because of the positive impact they are expected to have on the reliability, safety and security of utility service. These infrastructure investment programs are timely given the drop in commodity prices, the attractive cost of capital, and the impact on both direct employment and the positive ripple effect on the New Jersey economy. All of these factors make this an appropriate time to proceed with these programs, which enhance and support Governor Corzine's Economic Stimulus Program.

Turning to the NJNG Stipulation that is under review, the Board FINDS that it meets the tests articulated above. The Company will invest an estimated $70.8 million over the next two years creating an estimated 75 to 100 direct jobs over that period. The projects, totaling 14 in all, will include the replacement of eight miles of 8-inch steel main, vintage 1960's with a 12-inch main and replacement of approximately four miles of 8-inch main with 12-inch steel main. Both projects will improve reliability and enhance the safe operation of NJNG's system.

Accordingly, the Board will, in this case and in light of the extreme contraction of the credit markets, allow NJNG to begin recovery of capital expenses for these QPs based upon the review within the reopened rate case. This authorization in no way sets a new framework for future actions; instead, it reflects the realities of today's economic situation.

The Stipulation requests that the Board reopen the Company's recently completed base rate case to allow a prudency review of the proposed Qualifying Projects and their cost recovery. In doing so, the Board HEREBY FINDS that within the reopened rate case it has the power to grant the requested increases pursuant to N.J.S.A. 48:2-21 and 48:2-21.1 after the contemplated reviews. See, In re Intrastate Industrial Sand Rates. 66 N.J. 12 (1974). However, the Board's approval of the Stipulation should not be taken to represent either a common, new, or precedent-setting treatment of rate regulation, but appropriate relief during trying financial conditions.

Therefore, the Board, having reviewed the complete record in this proceeding including the attached Stipulation, HEREBY FINDS the Stipulation to be reasonable, in the public interest, and in accordance with law., and HEREBY APPROVES the attached Stipulation in its entirety and HEREBY INCORPORATES its terms and conditions as though fully set forth herein.

The Board notes the objection to the Stipulation posed by Intelligent Energy and HEREBY FINDS that the changes to policy related to the treatment of capacity and storage inherent in that objection are beyond the scope of this proceeding, in light of the pressing economic situation which is the impetus for this Order. As such, the objection does not provide a basis for rejection of the Stipulation.

Furthermore, the Board HEREBY DIRECTS the Company to commence the design and construction of the fourteen AIP projects identified in Appendix A of the attached Stipulation

The Board HEREBY REOPENS recently completed BPU Docket No. GR07110889 for the purposes of reviewing the prudency of the Qualifying Projects as constructed and of the AIP base rate adjustments which will be requested in the annual AIP cost recovery filings; and

FURTHER DIRECTS NJNG to file its first annual AIP cost recovery filing in June of 2010, coincident with the Company's annual BGSS filing, as described in the Stipulation.

The Company's base rates will remain subject to audit by the Board. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.

DATED: 4/28/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

DISSENT OF COMMISSIONER ELIZABETH RANDALL

These five (5) requests were filed by the utilities in response to Governor Corzine's October 16, 2008 proposal to help revive the State's economy through the acceleration of capital spending projects. In his speech to the New Jersey Legislature on October 16, 2008, the Governor said:

> "First and most practically, I have instructed all Commissioners, most particularly the Commissioners and Directors of the Department of Transportation, New Jersey Transit, the Toll Authorities, the Schools Development Authority, the Board of Public Utilities and the Department of Environmental Protection, to accelerate where feasible all currently funded spending projects."

Although not "currently funded," the utilities are asking the Board to fund these improvements with rate increases which will take effect no later than May 1, 2009. It is my opinion that the projected economic stimulus from these petitions is not sufficient to justify the cost to New Jersey customers.

As discussed below, my decision is based upon two factors: (1) the unprecedented infusion to the State of New Jersey of an anticipated $17.5 billion in federal stimulus monies pursuant to the American Reinvestment Recovery Act (ARRA), and (2) the comparatively small number of new jobs which would be created under these proposals relative to the total cost to New Jersey utility customers.[8]

On February 17, 2009, President Obama signed the ARRA which will inject $787 billion into the U.S. economy. New Jersey is expected to receive $17.5 billion.[9] An additional $240 billion will be available in tax benefits and competitive grants, of which New Jersey hopes to receive $7.2 billion, bringing New Jersey's total of anticipated federal stimulus dollars to $24.7 billion.

Based on estimates from the White House, these dollars will create or save 100,000 New Jersey jobs over the next two years.[10]

---

[8] The five (5) stipulations indicate the following costs and projected new jobs:

| Utility | Projected Cost | Projected Jobs | Customers |
|---|---|---|---|
| NJNG Co. | $70.8 Million | 75 – 100 | 485,000 |
| PSE&G Co. | $694.0 Million | 933 | 2.1M Elec./1.7M Gas |
| SJG Co. | $103.0 Million | 127 | 335,000 |
| Elizabethtown Gas Co. | $60.4 Million | 65 | 274,000 |
| Atlantic City Electric Co. | $27.6 Million | 92 | 544,000 |
| **TOTALS** | **$955.8 Million** | **1292-1317** | **5,438,000** |

[9] See http://www.recovery.nj.gov

[10] See http://www.recovery.nj.gov

Some four months before President Obama signed the federal stimulus bill, Governor Corzine addressed the New Jersey Legislature and proposed a New Jersey Economic Assistance and Recovery Plan.

The five matters before the Board are a direct result of the call to identify job-creation proposals. Specifically, the Executive branch sought company-specific program proposals with associated cost recovery and rate mechanisms, broken down into the following categories:

1 Infrastructure programs that will effectively spur an increase in construction employment, while increasing the reliability of the electric and gas distribution system.

2. Infrastructure programs that will improve energy efficiency of the electric or gas distribution system.

3. Statewide energy efficiency programs scaled down from the menu of programs submitted by the energy utilities.

Collectively, these five utilities seek permission to spend $955.8 Million (See Footnote 8), all of which will be recovered from customers through increases in utility rates.[11] The language used to describe the method of cost-recovery varies from utility to utility, with one company proposing an "Economic Stimulus Surcharge," and another calling it an "Infrastructure Investment Surcharge."

Terminology aside, while it is true that customers will benefit from these infrastructure investments, it is equally true that these improvements do not need to be completed within the next 24 months. None of the filings indicates that the delivery of safe and adequate service will be at risk if these requests are denied. Indeed, the petitions are replete with references to ongoing capital projects which are already planned and which will be funded by ratepayers.[12]

The number of new jobs to be created through approval of the accelerated projects is estimated at 1292-1317. Given the cost which customers will bear, I am persuaded that the cost of this job creation is too high. While it is true that the average bill will not go up by more than 1%, this amount will remain as part of the customer's bill for as long as it takes to repay the funds being borrowed by the utilities, which is approximately forty years.

Moreover, while some New Jerseyans would be put to work, there is no guarantee that the construction and engineering jobs created by these projects would go to companies based in New Jersey.[13] Regardless, the jobs created will be temporary in nature, and do not reflect permanent job creation with the utility companies.

[11] Also recoverable from customers is a profit for each company. In these cases, the utilities will make a profit of approximately 10%.

[12] Illustrative of this point is paragraph 14 of the Stipulation with New Jersey Natural Gas Company (NJNG) which refers to ongoing infrastructure costs unrelated to this matter and states: "14. NJNG's current capital budgets contemplate the following levels of capital expenditures for non-qualifying projects: $64,563,000 in fiscal year 2009, $51,985,000 in fiscal year 2010 and $51,951,000 in fiscal year 2011. NJNG represents that the expenditures related to the qualifying projects will be incremental to such planned levels of expenditures for 2009, 2010 and 2011."

[13] Each of the stipulations simply states that the utilities will "endeavor to employ contractors and engineering firms located in New Jersey."

Contrast the efficiency of the BPU's job-creation effort with one recently announced by the Governor and the New Jersey Department of Transportation.

For a cost of $67 million and a promise of 500 jobs, a bridge upgrade will be done on Route 46 in Bergen County. Moreover, federal funds from the American Recovery and Reinvestment Act will pay for $47.6 million of this project, leaving New Jersey taxpayers paying only $19.4 million for 500 jobs.

In sum, the promise and benefits of the federal stimulus program are extraordinary. Were it not for the federal money, we would need to rely on New Jersey taxpayers and ratepayers to shoulder the burden of job creation through increased taxes and rates. Fortunately, this burden need not be increased at this time.

Elizabeth Randall

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Carmen D. Diaz

CARMEN D. DIAZ
ACTING SECRETARY

# APPENDIX
## Item 10

Agenda Date: 12/17/09
Agenda Item: 2F

**STATE OF NEW JERSEY**
**Board of Public Utilities**
**Two Gateway Center**
**Newark, NJ 07102**
**www.nj.gov/bpu/**

ENERGY

| | | |
|---|---|---|
| IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS FOR APPROVAL OF INCREASED BASE TARIFF RATES AND CHARGES FOR GAS SERVICES AND OTHER TARIFF REVISIONS | ) | DECISION AND ORDER APPROVING STIPULATION AND ADOPTING INITIAL DECISION<br><br>DOCKET NO. GR09030195 |

**Kenneth T. Maloney and Deborah M. Franco** (Cullen and Dykman LLP), Attorneys for the Petitioner, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas
**Mary Patricia Keefe, Esq.** for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Felicia Thomas-Friel**, Deputy Public Advocate; **Henry M. Ogden and Judith B. Appel, Sarah H. Steindel, Kurt Lewandowski and Maria Novas-Ruiz**, Assistant Deputy Public Advocates, Division of Rate Counsel (**Ronald K. Chen**, Public Advocate, **Stefanie A. Brand**, Director)

**Alex Moreau, Anne Shatto and Cynthia Holland**, Deputy Attorney Generals, for the Staff of the New Jersey Board of Public Utilities (**Anne Milgram**, Attorney General of New Jersey)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-18 and N.J.S.A. 48:2-16, on March 10, 2009, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company") filed a petition with the New Jersey Board of Public Utilities ("BPU" or "Board") seeking an increase in the Company's base gas distribution rates, changes to certain depreciation rates, rate design and tariff items, and authorization to defer costs associated with relocating the Company's call center to New Jersey. Elizabethtown also requested that the Board find a nexus between its Utility Infrastructure Enhancement ("UIE") Rider filing in Dkt. Nos. EO09010049 and GO09010053, its Regional Greenhouse Gas Initiative ("RGGI") Rider filing in Dkt. Nos. EO09010056 and GO09010060, and incorporate the results of these four dockets into the final order in the instant proceeding.

The petition stated that the increased distribution rates, and changes in the Company's proposed tariff, were designed to produce additional revenues of $24.8 million, representing a 4.7% increase in gas distribution rates. According to the petition, the filing was made in compliance with the Board's November 17, 2004 Order in Docket No. GM04070721 in which the Board authorized the acquisition of Elizabethtown by AGL Resources Inc., and required the Company to file a base rate case no later than March, 2009 so that new rates could be effective at the beginning of the sixth year after the closing of the merger[1].

The March 10, 2009 filing was based on a test-year consisting of the twelve months ending September 30, 2009, comprised of three months of actual results and nine months of projected data, and post test-year adjustments for projected changes, some of which extended through the end of February, 2010.

The petition was transmitted to the Office of Administrative Law ("OAL") on April 6, 2009 for evidentiary hearings, and was assigned to Administrative Law Judge ("ALJ") Richard McGill.

On June 4, 2009, the ALJ issued his Pre-hearing Order, which included deadlines for submittal of testimony by the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") and Company rebuttal, and established dates for public and evidentiary hearings.

On May 14, 2009 New Jersey Natural Gas Company ("NJNG") filed a motion to intervene in this docket. NJNG was granted participant status by ALJ McGill.

Notice of the four public hearings was published in newspapers of general circulation in Elizabethtown's service area. These hearings were held in Rahway, on July 6, 2009 and August 11, 2009 and in Flemington on August 3, 2009 and August 5, 2009. No members of the public appeared at these public hearings.

Following the review of the Company's filing, representatives of Rate Counsel, Staff of the Board of Public Utilities ("Staff") and the Company (collectively referred to herein as "the Stipulating Parties") engaged in extensive discovery over several months.

On August 21, 2009, Rate Counsel filed its Direct Testimony in response to Elizabethtown's filing.

On September 15, 2009, the Company filed its Rebuttal Testimony with updated schedules which included nine months of actual and three months of estimated data ("9+3 Update"). The 9+3 Update supported a revenue requirement of $17.6 million which is $7.2 million less than the $24.8 million requested by the Company in the petition.

[1] A filing certification issued by the New Jersey Department of Treasury states that a certificate of merger was filed on November 30, 2004. Therefore, the sixth year begins in December 2009.

The Stipulating Parties met on numerous occasions to discuss settlement, and executed a stipulation dated November 25, 2009 ("Stipulation"), the salient points of which are as follows:

THE PROPOSED STIPULATION [2]

1. Upon Board approval, Elizabethtown will be permitted to increase its base rates in a manner designed to produce a total annual revenue requirement increase of $2.9 million.

2. The new distribution rates agreed to reflect a pre-tax rate of return of 11.30% and a weighted average after-tax cost of capital of 7.64%.

3. The rate base used to establish rates in this proceeding includes a reduction for consolidated tax savings in accordance with principles established in the April 20, 2004 Board Order in I/M/O Rockland Electric Company for Approval of Changes In Its Electric Rates, Its Tariff for Electric Service, Its Depreciation Rates, And for Other Relief, Docket No. ER02100724. Elizabethtown has agreed to maintain copies of the Federal consolidated income tax returns that include Elizabethtown, and any additional financial information that is necessary to prepare this calculation, at its New Jersey office.

4. The revised composite depreciation rate is 2.58% as set forth in Appendix C to the Stipulation.

5. $557,000 in rate case expenses will be amortized over a five year period.

6. $1,423,056 of costs associated with Pipeline Replacement Program that were deferred in accordance with the Board's August 18, 2006 Order in I/M/O The Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company To Establish A Pipeline Replacement Program Cost Recovery Rider, Docket Number GR05040371, will now be included in the rate base.

7. The following cost recoveries sought by the Company have been excluded from the determination of the revenue requirement in this proceeding:

   a. Internal labor costs associated with manufactured gas plant ("MGP") investigation and remediation;
   b. Internal labor costs associated with energy efficiency;
   c. Energy efficiency-related outreach and education costs;
   d. On-going expenses associated with operating a customer dashboard.

   The Company will be permitted to seek to recover reasonable and prudent levels for item *a.* (above) through the MGP cost recovery component of the Societal Benefits Charge ("SBC") or an appropriate successor tariff rider, and *b. c.* and *d.* (above) through Elizabethtown's RGGI Rider or appropriate successor tariff riders.

---

[2] Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusion in this Order.

8. The Company will submit to Rate Counsel and Staff quarterly reports concerning Elizabethtown's performance of the service measures specified in the Stipulation.

9. In its annual UIE Rider filings, the Company will provide Staff and Rate Counsel with forecasted and actual UIE Rider-related capital expenditures as specified in the Stipulation.

10. Board approval of this Stipulation will be interpreted as the Board ruling that there is a sufficient nexus between the instant docket and the RGGI and UIE proceedings that will permit Elizabethtown to assess rates, after appropriate Board approval, that would allow recovery of reasonable and prudent costs that are included in Elizabethtown's annual RGGI and UIE rider filings pursuant to the Board's Orders in the most recent RGGI and UIE rider filings.

11. Temperature Control and Multi-Family rate classifications are eliminated, and re-classed as 'General Delivery Service';

12. The Weather Normalization Clause ("WNC") factors were updated to reflect the use of a twenty-year weather pattern to establish rates.

13. The current Residential Delivery Service dual block volumetric rate structure is replaced with a single volumetric block rate structure.

14. Transitional Energy Facility Assessment rates are consolidated into three rates assigned, as appropriate, into residential, commercial or industrial service classifications.

15. The effective date of the Stipulation is the date of a Board Order approving this Stipulation without modification.

16. The docket will remain open for the purpose of resolving the following issues in a Phase II proceeding:

   a. Within thirty days of Board approval of the Stipulation, the Stipulating Parties will meet to consider the Company's proposed Efficiency and Usage Adjustment ("EUA") tariff to replace the Company's existing WNC.
   b. Within six months of the effective date of a Board Order in this matter, the Company will prepare a study of the possible locations for a new walk-in service center to be located in its Northwest portion of its service territory. Once it is determined where the Company will establish the new service center, and the Staff, Rate Counsel and the Company reach an agreement concerning the costs for the new service center, Elizabethtown will be permitted to revise its rates, after appropriate Board approval, to recover its prudent and reasonable start-up and ongoing costs of operating the new service center. The method by which such costs will be recovered by the Company will be determined by the Board in Phase II.
   c. The Stipulating Parties recognize that the management audit recently conducted by Liberty Consulting may result in recommendations which, if implemented, would require Elizabethtown to incur incremental costs. The management audit

conceivably also could recommend the disallowance of costs reflected in the Company's base delivery rates. The Company will be permitted to revise its rates to recover its prudent, reasonable, and known and measurable costs of complying with recommendations adopted by the Board after such costs have been offset by the known and measurable cost savings resulting from efficiency measures that the Company implements as a result of the recommendations set for the in the management audit and directives set forth in the Board order in the matter. The Company's rates will also be reduced for any cost disallowances arising from the management audit and approved by the Board. The amount and method by which rates will be adjusted, if at all, for costs and savings will be determined by the Board in Phase II.

d. The Stipulating Parties agree to permit modifications to base delivery rates as are necessary to incorporate the costs of UIE projects in Phase II.
e. The Stipulating Parties will investigate supplemental reporting requirements to increase information on the Company's integrated resource planning.
f. In the event that any of the Phase II issues cannot be resolved by the Stipulating Parties, Staff will notify the Board via memorandum indicating that the Parties are unable to resolve the open issues by stipulation, and the case will proceed as a litigated matter.

Except as specified in the Stipulation, Elizabethtown will not propose to make effective a general increase in its base delivery rates for a period of two years from the effective date of the Board's decision in this docket. This 'stay-out' agreement will not preclude the resolution of the Phase II issues described above or prevent the Company. from seeking approval to implement rate adjustments generally applicable to utilities in the State or resulting from the operation of tariff riders, both existing or subsequently approved.

On December 2, 2009, ALJ Richard McGill issued his Initial Decision in the proceeding. ALJ McGill found that the Signatory Parties to the Stipulation voluntarily agreed to a settlement in this matter, and that the Stipulation fully disposes of all issues in controversy and is consistent with the law.

Based on the Board's careful review and consideration of the record in this proceeding, the Board HEREBY FINDS the Initial Decision and the Stipulation to be reasonable, in the pubic interest and in accordance with the law. Therefore, the Board HEREBY ADOPTS ALJ McGill's Initial Decision and the Stipulation as its own, as if fully set forth herein. The Board notes that the stipulated increase in gas distribution rates is \$2.9 million or 0.55% compared to the \$28.4 million or 4.7% sought by the Company in its petition. As such, typical residential gas heating customers using 100 therms of gas per month will see an increase of \$0.93 or 0.7% in their overall monthly gas bills.

The Board HEREBY FINDS that the tariff sheets attached to the Stipulation by Elizabethtown comply with the terms of the Stipulation and HEREBY APPROVES the attached tariff sheets.effective as of the date of this Board's Order, and HEREBY DIRECTS the Company to file within the next five (5) business days a compliance tariff, with the appropriate effective date, that is consistent with the terms of this Order.

DATED: 12/17/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M Fox
JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Kristi Izzo
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

Kristi Izzo