



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

ENERGY

- |   |                       |                                      |
|---|-----------------------|--------------------------------------|
| IN THE MATTER OF THE PETITION OF PIVOTAL<br>UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN<br>GAS CONCERNING ITS PROPOSED CAPACITY<br>MANAGEMENT PLAN   | )<br>)<br>)<br>)<br>) | ORDER<br><br>BPU Dkt. No. GR11020099 |
| IN THE MATTER OF THE PETITION OF PIVOTAL<br>UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN<br>GAS FOR APPROVAL OF INCREASED BASE TARIFF<br>RATES AND CHARGES FOR GAS SERVICES AND<br>OTHER TARIFF REVISIONS | )<br>)<br>)<br>)<br>) | BPU Dkt. No. GR09030195              |

(SERVICE LIST ATTACHED)

APPEARANCES:

**Mary Patricia Keefe, Esq.**, Vice President, Regulatory Affairs, for the Petitioner, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Felicia Thomas-Friel, Esq.**, Division of Rate Counsel, (**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel)

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

BY THE BOARD:

On March 19, 2008 in BPU Docket GM07100752, the New Jersey Board of Public Utilities ("Board") authorized Pivotal Utility Holdings Inc., d/b/a Elizabethtown Gas ("Elizabethtown" or "Company") to extend its gas supply and capacity asset management agreement with its affiliate, Sequent Energy Management L.P. ("Sequent") for a three-year term ending March 31, 2010.

As a condition of the contract extension, Elizabethtown was required to make a filing with the Board either to competitively bid its asset management and gas supply arrangements or to propose some alternative asset management / gas supply arrangement by no later than March

31, 2010. By Order dated March 19, 2010, the Board authorized an extension of this deadline to April 30, 2010 and By Order dated April 28, 2010, the Board authorized an extension of this deadline to May 31, 2010.

On May 12, 2010, Elizabethtown made a filing ("May 12 Filing") with the Board in BPU Docket Nos. GR11020099 and GR09030195 which was subsequently amended on February 22, 2011, requesting that the Board commence a process to (i) extend the gas supply/capacity management relationship the Company currently has with Sequent; and (ii) establish a new Efficiency and Usage Adjustment (EUA) surcharge that would replace the Company's existing Weather Normalization Clause.

Subsequent to its May 12 Filing, Elizabethtown and Sequent concluded an agreement in principle, subject to Board approval, under which they propose to extend the current capacity management and gas supply arrangement. Representatives of the Company, the Board's Staff, and the Division of Rate Counsel ("Rate Counsel"), the only parties to this proceeding, held a number of meetings and conducted discovery concerning the proposed arrangement, as well as the Company's EUA proposal. As a consequence of these efforts, the parties have entered into a Stipulation that will, if approved by the Board, (i) permit the Company to extend its arrangement with Sequent for a three-year term subject to certain minor contractual modifications which do not affect the sharing formula and are set forth in the Stipulation; and (ii) authorize Elizabethtown to withdraw the EUA proposal without prejudice to the Company's right to propose the same or another revenue decoupling mechanism in the future under the circumstances set forth in the Stipulation.

The following are the salient provisions of the Stipulation:

- A) Energy and Usage Adjustment: Within thirty days of this Order, Elizabethtown will file a letter with the Board withdrawing its EUA proposal, without prejudice to the Company's right to propose the EUA or some other revenue decoupling mechanism in the future under the circumstances specified in the Stipulation.
- B) Transition of the Current Elizabethtown – Sequent Arrangement: The current capacity management/gas supply arrangement between Elizabethtown and Sequent expires March 31, 2011. In connection with the transition to the new arrangement, Sequent and Elizabethtown will determine the difference, if any, between the quantity of gas in storage attributable to Elizabethtown's logical storage activity<sup>1</sup> and the quantity of gas that is physically in the storage assets and resolve such differences, if any, in the manner set forth in Section 18.5 of the current Asset Management and Agency Agreement. Elizabethtown shall submit a report to the parties setting forth the details of the storage reconciliation and the treatment of any excess or deficiency volumes. The reasonableness of the treatment of any excess or deficiency quantity is an issue that may be raised in Elizabethtown's annual Basic Gas Supply Service reconciliation proceeding.

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<sup>1</sup> Elizabethtown's logical storage activity represents the storage nominations made by Elizabethtown to Sequent that form the basis for the charges incurred by Elizabethtown from Sequent for storage gas under the Gas Purchase and Sales Agreement between the parties.

C) Extension of the Sequent-Elizabethtown Arrangement: Attached to the Stipulation as Appendix A are confidential pro forma agreements for gas supply and capacity management services between Elizabethtown and Sequent. Elizabethtown is authorized to enter into these agreements with Sequent for a three-year term commencing April 1, 2011 and ending March 31, 2014. Under the agreements, Sequent will pay Elizabethtown an annual fee for the right to act as its gas supplier and capacity management agent. Elizabethtown will credit the entire fee to its Basic Gas Supply Service – Periodic (“BGSS-P”) clause. The fee will consist of a minimum fixed annual payment and a sharing of the capacity release credits, off-system sales margins and storage arbitrage margins that Sequent is able to obtain for Elizabethtown as follows:

- i) The minimum fixed payment from Sequent to Elizabethtown will be five million dollars (\$5,000,000.00) annually;
- ii) Capacity release credits, off-system sales margins and storage arbitrage margins obtained by Sequent for Elizabethtown will be shared as follows:
  - a) One hundred percent (100%) of the first five million dollars (\$5,000,000.00) of such margins/credits will be retained by Sequent because Sequent will have already made the minimum payment of five million dollars described above;
  - b) Eighty percent (80%) of the next three million (\$3,000,000.00) of such margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause;
  - c) Thirty percent (30%) of the next six million dollars (\$6,000,000.00) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause;
  - d) Fifty percent (50%) of the next \$4.67 million (\$4,670,000) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause; and
  - e) All margins in excess of \$18.67 million (\$18,670,000) will be shared thirty-five percent (35%) to Sequent and sixty-five percent (65%) to Elizabethtown’s BGSS-P clause.

The sharing mechanism described above is illustrated on Appendix B of the Stipulation and results in an overall sharing of thirty percent (30%) of margins/credits to Sequent/Elizabethtown and seventy percent (70%) of such margins/credits to Elizabethtown’s BGSS-P clause if total margins/credits for any annual period total between \$8,000,000.00 and \$14,000,000.00. Further, it will result in a minimum overall sharing level of 65% to Elizabethtown’s BGSS-P customers.

- D) Determination Of The Margins To Be Shared: Attached to the Stipulation as confidential Appendix C is a series of scenarios that detail how margins from various types of transactions will be calculated for purposes of sharing, a description of the various separate "books" that Sequent will maintain in order to properly account for the margins to be shared, and a glossary of technical terms that are utilized in Appendix C.
- E) Audit Rights/Reporting Requirements: Information contained in the Elizabethtown "books" maintained by Sequent will be made available to Staff and Rate Counsel on reasonable notice at Elizabethtown's headquarters in New Jersey. In addition, following the completion of the first year of the term of the Sequent/Elizabethtown agreements and each year thereafter, AGL Resources Inc. ("AGL"), the parent company of Elizabethtown and Sequent, will conduct an internal audit of the Sequent/Elizabethtown agreements. The audit will be conducted at AGL's cost and expense using either internal or external resources as determined by AGL. The auditor will be responsible for determining (i) whether margins were properly credited to Elizabethtown's BGSS-P clause in the manner required by the Stipulation and the attached agreements, and (ii) whether Sequent was treating Elizabethtown in a non-discriminatory manner in relation to other Sequent asset management arrangements. A copy of the results of this internal audit will be provided to the Director of the Division of Energy and the Director of Rate Counsel. All supporting documents will be provided at Elizabethtown's offices in New Jersey on reasonable notice. All of the information described herein will be provided under a mutually agreeable confidentiality agreement.

In addition, the Company will submit quarterly reports to the Board, the Director of Energy and Rate Counsel detailing activities that occurred in accordance with Section 2.5 of the Gas Purchase and Sale Agreement. These reports shall include Sequent's initial price quote, any price quotes obtained from others and whether Sequent exercised its right to match the lowest quote or the Company purchased quantities from third parties.

- F) Payment of the Fee: The five million dollar minimum annual fee will be credited to Elizabethtown's BGSS-P clause in equal quarterly installments on the last day of each quarter – June 30, September 30, December 31, and March 31. Shared margins/credits, if any, in any annual period will be credited to Elizabethtown's BGSS-P clause twice a year on September 30 and March 31. Each year, within 30 days of the dates on which margins/credits are credited to the BGSS-P clause, Elizabethtown will contact representatives of Staff and Rate Counsel to review the results obtained by Sequent during the previous six month period.
- G) Modification to the Elizabethtown – Sequent Agreements: Section 6 of the pro forma Asset Management Agreement ("AMA") between Elizabethtown and Sequent provides that those entities may agree to modify the AMA to include new "Assets" or to remove, terminate or modify those Assets and to make changes to the AMA to reflect the changes in Assets. The AMA provides that such changes are subject to the approval of the Board. In lieu of requiring Elizabethtown to obtain formal Board approval for such changes in Assets, Elizabethtown will, if it seeks to change the Assets subject to the AMA, file a letter both electronically and in hard copy with the Board, the Director of

Energy and Rate Counsel describing the change in Assets, any further changes to the AMA to reflect the changes in Assets and any supporting documentation associated with the change. The Company's letter will state that the changes to the Assets and all associated changes to the AMA will become effective within sixty days unless an objection to the change is made by Board Staff or Rate Counsel. If an objection is raised then the Parties will meet to resolve it. If the matter cannot be resolved informally, it will be submitted to the Board for resolution. No change in the AMA will become effective until the later of (i) the sixty day notice period if no objection is raised by Board Staff or Rate Counsel, or (ii) the date on which Staff and/or Rate Counsel's written objection is resolved by either a written agreement of the Parties or an order of the Board. The Parties recognize that approval of a change in the AMA does not, by itself, constitute approval of any change in Elizabethtown's rates arising from a change in the AMA.

- H) Renewal: Elizabethtown shall make a filing with the Board concerning its asset management and gas supply arrangements on or before April 1, 2013. The Company may propose to extend the Sequent arrangement or consider some other asset management/gas supply arrangement. Elizabethtown's filing will include a request for proposals for gas supply and capacity management services and pro forma gas supply and asset management agreements. All Parties reserve the right to take any position concerning any proposal made by Elizabethtown in such filing.

## **DISCUSSION AND FINDINGS**

The Board has reviewed the attached Stipulation, the pro forma agreements for gas supply and capacity management services between Elizabethtown and Sequent, including the appendices.

The Stipulation will allow Elizabethtown and Sequent to extend their capacity management and gas supply arrangement for an additional three year period. Elizabethtown's Basic Gas Supply Service – Periodic clause will be credited with a minimum of five million dollars annually under this arrangement. In addition, the arrangement provides for a sharing of the capacity release credits, off-system sales margins and storage arbitrage margins. The sharing mechanism will result in an overall sharing of thirty percent (30%) to Sequent and seventy percent (70%) to Elizabethtown's BGSS-P clause if total margins / credits for any annual period total between \$8,000,000 and \$14,000,000 which, in essence, continues the benefits of the current agreement. In addition, the Stipulation provides that Elizabethtown will make a filing with the Board concerning its asset management and gas supply arrangement on or before April 1, 2013. This allows for a one year period within which the parties can develop a record and the Board can make a determination on the appropriateness of an asset management plan to be effective after March 31, 2014.

Based upon the foregoing and the recommendations of Staff and Rate Counsel, the Board **FINDS** that the Stipulation is reasonable, in the public interest, and in accordance with law. The Board **HEREBY ADOPTS** the Stipulation as its own, as if fully set forth herein. The Board **AUTHORIZES** Elizabethtown to enter into the agreements that are attached to the Stipulation with Sequent for a three-year term commencing April 1, 2011 and ending March 31, 2014.

The parties have requested that the proforma agreements in Appendix A and the scenarios and descriptions in Appendix C be treated as confidential information because the parties agree that

the information is competitively sensitive. With respect to this request for confidential treatment, the Board FINDS that this issue should be decided by the Board's Custodian of Records pursuant to the Board's regulations in N.J.A.C. 14:1-12, if a request for release of such information is made pursuant to those rules.

This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any audit of the utility or its affiliates.

DATED: 3/30/11

BOARD OF PUBLIC UTILITIES  
BY:




LEE A. SOLOMON  
PRESIDENT




JEANNE M. FOX  
COMMISSIONER



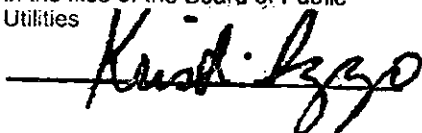
JOSEPH L. FIORDALISO  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

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





**CULLEN and DYKMAN LLP**

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March 16, 2011

Honorable Kristi L. Izzo  
Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

**Re: In The Matter Of The Petition Of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Concerning Its Proposed Capacity Management Plan, BPU Docket No. GR11020099**

**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, Docket No. GR09030195**

Dear Secretary Izzo:

Enclosed for filing in the above proceeding are an original and ten copies of the preliminary public version of a Stipulation executed by Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown"), the Staff of the Board of Public Utilities ("Board") and the Department of the Public Advocate, Division of Rate Counsel in the above captioned proceedings. The Stipulation would, if approved by the Board, (i) resolve issues associated with Elizabethtown's proposal to implement a new Efficiency and Usage adjustment tariff mechanism, and (ii) permit Sequent Energy Management L.P. ("Sequent") to serve as Elizabethtown's capacity manager and gas supplier for a three year term beginning April 1, 2011. Elizabethtown requests that the Board consider and approve the Stipulation at the earliest possible opportunity.

The Stipulation contains two appendices – Appendix A and C that are proprietary and confidential. Accordingly, this filing contains only the preliminary public version of the Stipulation. Elizabethtown will make a filing pursuant to the Open Public Records Act (*N.J.S.A. 47:1A-1 et seq.* and *N.J.A.C. 14:1-12.1 et seq.*) that will contain the full confidential version of the stipulation.

Honorable Kristi Izzo, Secretary  
March 16, 2011

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Copies of the Stipulation have been served electronically on all parties. Kindly acknowledge receipt of this letter by file stamping and returning the designated copy in the enclosed self addressed envelope.

Yours truly,

/s/ *Kenneth T. Maloney*

Kenneth T. Maloney

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

cc: Service List w/enclosures



**IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A  
ELIZABETHTOWN GAS CONCERNING ITS PROPOSED CAPACITY MANAGEMENT PLAN,  
BPU DOCKET NO. GR11020099**

**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,  
BPU DOCKET NO. GR09030195**

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**IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A  
ELIZABETHTOWN GAS CONCERNING ITS PROPOSED CAPACITY MANAGEMENT PLAN,  
BPU DOCKET NO. GR11020099**

**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,  
BPU DOCKET NO. GR09030195**

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**IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A  
ELIZABETHTOWN GAS CONCERNING ITS PROPOSED CAPACITY MANAGEMENT PLAN,  
BPU DOCKET NO. GR11020099**

**IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. D/B/A  
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FOR GAS SERVICES AND OTHER TARIFF REVISIONS,  
BPU DOCKET NO. GR09030195**

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On May 12, 2010, Elizabethtown made a filing ("May 12 Filing") which was subsequently amended on February 28, 2011 with the Board in BPU Docket Nos. GR11020099 and GR09030195 in which the Company requested that the Board commence a process to (i) extend the gas supply/capacity management relationship the Company currently has with Sequent; and (ii) establish a new EUA surcharge as proposed in Elizabethtown's March 10 Filing.

Subsequent to its May 12 Filing, Elizabethtown and Sequent concluded an agreement in principle, subject to Board approval, under which they propose to extend the current capacity management and gas supply arrangement. Representatives of the Company, the Board's Staff and the Division of Rate Counsel ("Rate Counsel"), the only parties to this proceeding, held a number of meetings and conducted discovery concerning the proposed arrangement, as well as the Company's EUA proposal. As a consequence of these efforts, the Parties have reached this Stipulation that, if approved by the Board, will (i) permit the Company to extend its arrangement with Sequent for a three-year term subject to certain minor contractual modifications, which do not affect the sharing formula and are set forth in this Stipulation and the attachments hereto; and (ii) authorize Elizabethtown to withdraw the EUA proposal without prejudice to the Company's right to propose the same or another revenue decoupling mechanism in the future under the circumstances set forth in this Stipulation.

#### **Stipulation**

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

**A. Energy and Usage Adjustment.** Within thirty days of Board approval of this Stipulation and subject to paragraph H below, Elizabethtown will file a letter with the Board withdrawing its EUA proposal, without prejudice to the Company's right to propose the EUA or some other revenue decoupling mechanism in the future under the following circumstances: (i)

if a statute or regulation is adopted that permits the filing of a revenue decoupling or similar mechanism outside a base rate case; (ii) if the Company files a new base rate case; or (iii) if the Company elects, at its discretion, to participate in any process established at the time the New Jersey Natural Gas Company ("NJN") and South Jersey Gas Company ("SJG") Conservation Incentive Programs ("CIP") are considered for renewal. Nothing in this Stipulation will prevent or prejudice Elizabethtown from proposing a CIP or a modified CIP to the extent that NJN and/or SJG advance similar proposals in the future.

**B. Transition Of The Current Elizabethtown – Sequent Arrangement.** The current capacity management/gas supply arrangement between Elizabethtown and Sequent expires March 31, 2011. In connection with the transition to the new arrangement, Sequent and Elizabethtown will determine the difference, if any, between the quantity of gas in storage attributable to Elizabethtown's logical storage activity<sup>1</sup> and the quantity of gas that is physically in the storage assets and resolve such differences, if any, in the manner set forth in Section 18.5 of the current Asset Management and Agency Agreement. Elizabethtown shall submit a report to the parties setting forth the details of the storage reconciliation and the treatment of any excess or deficiency volumes. The reasonableness of the treatment of any excess or deficiency quantity is an issue that may be raised in Elizabethtown's annual Basic Gas Supply Service reconciliation proceeding.

**C. Extension Of The Sequent-Elizabethtown Arrangement.** Attached hereto as Appendix A are confidential *pro forma* agreements for gas supply and capacity management services between Elizabethtown and Sequent. Elizabethtown is authorized to enter into these agreements with Sequent for a three-year term commencing April 1, 2011 and ending March 31, 2014. Under the agreements, Sequent will pay Elizabethtown an annual fee for the right to act as

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<sup>1</sup> Elizabethtown's logical storage activity represents the storage nominations made by Elizabethtown to Sequent that form the basis for the charges incurred by Elizabethtown from Sequent for storage gas under the Gas Purchase and Sales Agreement between the parties.

its gas supplier and capacity management agent. Elizabethtown will credit the entire fee to its Basic Gas Supply Service – Periodic (“BGSS-P”) clause. The fee will consist of a minimum fixed annual payment and a sharing of the capacity release credits, off-system sales margins and storage arbitrage margins that Sequent is able to obtain for Elizabethtown as follows:

- (i) The minimum fixed payment will be five million dollars (\$5,000,000.00) annually;
- (ii) Capacity release credits, off-system sales margins and storage arbitrage margins obtained by Sequent for Elizabethtown will be shared as follows:
  - (a) One hundred percent (100%) of the first five million dollars (\$5,000,000.00) of such margins/credits will be retained by Sequent because Sequent will have already made the minimum payment of five million dollars described above;
  - (b) Eighty percent (80%) of the next three million (\$3,000,000.00) of such margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause;
  - (c) Thirty percent (30%) of the next six million dollars (\$6,000,000.00) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause;
  - (d) Fifty percent (50%) of the next \$4.67 million (\$4,670,000.00) of margins/credits will be retained by Sequent with the remainder credited to Elizabethtown’s BGSS-P clause; and
  - (e) All margins in excess of \$18.67 million (\$18,670,000.00) will be shared thirty-five percent (35%) to Sequent and sixty-five percent (65%) to Elizabethtown’s BGSS-P clause.

The margin sharing mechanism described above is illustrated on Appendix B which is attached hereto. The margin sharing formula results in an overall sharing of thirty percent (30%) of margins/credits to Sequent/Elizabethtown and seventy percent (70%) of such margins/credits to Elizabethtown's BGSS-P clause if total margins/credits for any annual period total between \$8,000,000.00 and \$14,000,000.00.

**D. Determination Of The Margins To Be Shared.** Attached hereto as confidential Appendix C is a series of scenarios that detail how margins from various types of transactions will be calculated for purposes of sharing, a description of the various separate "books" that Sequent will maintain in order to properly account for the margins to be shared, and a glossary of technical terms that are utilized in Appendix C.

**E. Audit Rights/Reporting Requirements.** Information contained in the Elizabethtown "books" maintained by Sequent will be made available to Staff and Rate Counsel on reasonable notice at Elizabethtown's headquarters in New Jersey. In addition, following the completion of the first year of the term of the Sequent/Elizabethtown agreements and each year thereafter, AGL Resources Inc. ("AGL"), the parent company of Elizabethtown and Sequent, will conduct an internal audit of the Sequent/Elizabethtown agreements. The audit will be conducted at AGL's cost and expense using either internal or external resources as determined by AGL. The auditor will be responsible for determining (i) whether margins were properly credited to Elizabethtown's BGSS-P clause in the manner required by this Stipulation and the attached agreements, and (ii) whether Sequent was treating Elizabethtown in a non-discriminatory manner in relation to other Sequent asset management arrangements. A copy of the results of this internal audit will be provided to the Director of the Division of Energy and the Director of Rate Counsel. All supporting documents will be provided at Elizabethtown's offices in New Jersey on reasonable notice. All of the information described herein will be provided under a mutually agreeable confidentiality agreement.



In addition, the Company will submit quarterly reports to the Board, the Director of Energy and Rate Counsel detailing activities that occurred in accordance with Section 2.5 of the Gas Purchase and Sale Agreement. These reports shall include Sequent's initial price quote, any price quotes obtained from others and whether Sequent exercised its right to match the lowest quote or the Company purchased quantities from third parties.

**F. Payment Of The Fee.** The five million dollar minimum annual fee will be credited to Elizabethtown's BGSS-P clause in equal quarterly installments on the last day of each quarter – June 30, September 30, December 31, and March 31. Shared margins/credits, if any, in any annual period will be credited to Elizabethtown's BGSS-P clause twice a year on September 30 and March 31. Each year, within 30 days of the dates on which margins/credits are credited to the BGSS-P clause, Elizabethtown will contact representatives of Staff and Rate Counsel to review the results obtained by Sequent during the previous six month period.

**G. Modification To The Elizabethtown – Sequent Agreements.** Section 6 of the *pro forma* Asset Management Agreement (“AMA”) between Elizabethtown and Sequent provides that those entities may agree to modify the AMA to include new “Assets” or to remove, terminate or modify those Assets and to make changes to the AMA to reflect the changes in Assets. The AMA provides that such changes are subject to the approval of the Board. In lieu of requiring Elizabethtown to obtain formal Board approval for such changes in Assets, Elizabethtown will, if it seeks to change the Assets subject to the AMA, file a letter both electronically and in hard copy with the Board, the Director of Energy and Rate Counsel<sup>2</sup> describing the change in Assets, any further changes to the AMA to reflect the changes in Assets and any supporting documentation associated with the change. The Company's letter will state that the changes to the Assets and all associated changes to the AMA will become effective within sixty days unless an objection to the change is made by Board Staff or Rate Counsel. If

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<sup>2</sup> Such letter will be served on the representatives of Staff and Rate Counsel on the service list of these proceedings.

an objection is raised, then the Parties will meet to resolve it. If the matter cannot be resolved informally, it will be submitted to the Board for resolution. No change in the AMA will become effective until the later of (i) the sixty day notice period if no objection is raised by Board Staff or Rate Counsel, or (ii) the date on which Staff's and/or Rate Counsel's written objection is resolved by either a written agreement of the Parties or an order of the Board. The Parties recognize that approval of a change in the AMA does not, by itself, constitute approval of any change in Elizabethtown's rates arising from a change in the AMA.

**H. Renewal.** Elizabethtown shall make a filing with the Board concerning its asset management and gas supply arrangements on or before April 1, 2013. The Company may propose to extend the Sequent arrangement or consider some other asset management/gas supply arrangement. Elizabethtown's filing will include a request for proposals for gas supply and capacity management services and *pro forma* gas supply and asset management agreements. All Parties reserve the right to take any position concerning any proposal made by Elizabethtown in such filing.

**I. Entirety Of Stipulation.** This Stipulation is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion.

More particularly, in the event this Stipulation is not adopted in its entirety by the Board in its Order in this matter, then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.

**J. Binding Effect.** It is the intent of the Parties that the provisions hereof be approved by the Board. The Parties further agree that they consider this Stipulation to be binding on them for all purposes herein.


**K. General Reservation.** It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein, is intended to be binding only in this proceeding and only as to the matters specifically addressed herein.

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

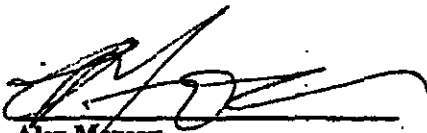
PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A ELIZABETHTOWN GAS

STEFANIE A. BRAND,  
DIRECTOR, DIVISION OF  
RATE COUNSEL

By:   
Mary Patricia Keefe  
Vice President, Regulatory Affairs

By:   
Felicia Thomas-Friel  
Deputy Rate Counsel

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the New Jersey Board of Public Utilities

By:   
Alex Moreau  
Deputy Attorney General

Dated: March 16, 2011

**REDACTED**

# **Appendix A**

**REDACTED**

# **Appendix C**

I/M/O the Petition of Pivotal Utility Holding, Inc. d/b/a Elizabethtown Gas Concerning Its Proposed Capacity Management Plan  
(To Be Supplied)

Calculation of Payment to Elizabethtown at Various Levels of Margins and Credits

			Total Annual Capacity Release Credits, Off-System Sales Margins and Storage Arbitrage Margins											
			\$0	2,000,000	6,000,000	8,000,000	10,000,000	12,000,000	14,000,000	16,000,000	18,000,000	18,670,000	22,000,000	24,500,000
Fixed Fee	5,000,000	\$5M	\$5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000
1st Tier	3,000,000	20%	\$0	0	200,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000	600,000
2nd Tier	6,000,000	70%	\$0	0	0	0	1,400,000	2,800,000	4,200,000	4,200,000	4,200,000	4,200,000	4,200,000	4,200,000
3rd Tier	4,670,000	50%	\$0	0	0	0	0	0	0	1,000,000	2,000,000	2,335,000	2,335,000	2,335,000
4th Tier	50,000,000	65%	\$0	0	0	0	0	0	0	0	0	0	2,164,500	3,789,500
<b>Total Dollars to ETG Customers</b>			<b>\$5,000,000</b>	<b>5,000,000</b>	<b>5,200,000</b>	<b>5,600,000</b>	<b>7,000,000</b>	<b>8,400,000</b>	<b>9,800,000</b>	<b>10,800,000</b>	<b>11,800,000</b>	<b>12,135,000</b>	<b>14,299,500</b>	<b>15,924,500</b>
<b>% to ETG Customers</b>					<b>86.67%</b>	<b>70.00%</b>	<b>70.00%</b>	<b>70.00%</b>	<b>70.00%</b>	<b>67.50%</b>	<b>65.56%</b>	<b>65.00%</b>	<b>65.00%</b>	<b>65.00%</b>
<b>Sequent Gain/(Loss):</b>			<b>(\$5,000,000)</b>	<b>(3,000,000)</b>	<b>800,000</b>	<b>2,400,000</b>	<b>3,000,000</b>	<b>3,600,000</b>	<b>4,200,000</b>	<b>5,200,000</b>	<b>6,200,000</b>	<b>6,535,000</b>	<b>7,700,500</b>	<b>8,575,500</b>