



Agenda Date: 8/15/12
Agenda Item: IIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY) DECISION AND ORDER
HOLDINGS, INC., D/B/A ELIZABETHTOWN GAS FOR)
APPROVAL OF A FRANCHISE IN THE TOWNSHIP OF)
GREEN, COUNTY OF SUSSEX, STATE OF NEW JERSEY) DOCKET NO. GE12040311

Parties of Record:

Mary Patricia Keefe, Esq., Berkeley Heights, New Jersey, on behalf of Petitioner, Pivotal Holdings, Inc., d/b/a Elizabethtown Gas
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas (ETG or Company), a regulated utility subject to the jurisdiction of the Board of Public Utilities (Board), is a corporation duly organized under the laws of the State of New Jersey engaged in the business of transmission and distribution of natural and mixed gas to approximately 275,000 customers within its service territory located principally in Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren Counties.

As many of the municipalities in the north-west section of the State have smaller populations and buildings that tend to be more spread out with most homes heated by propane gas or number two heating oil, ETG, over a period of approximately 10 years, has surveyed a number of municipalities in Hunterdon and Sussex Counties, including the Township of Green (Township) for interest in the extension of the Company's distribution system to provide gas service. Toward that end, ETG recently installed six miles of 8-inch high pressure gas pipeline between the Townships of Franklin and Sparta. The new pipe provides increased pressures in the winter and greater system reliability for the approximate 5,000 customers in this part of the Company's service territory. It should be noted that while residents of the Township do not currently receive natural gas service, a number of residents had expressed an interest in securing such service. This interest led to meetings between ETG and the Mayor and Council and an application by the Company to the Township on October 12, 2011, for the grant of a municipal consent to provide gas service. The record notes that the Township has a population of about 3,220 people living in approximately 1,066 housing units.

On December 19, 2011, the Mayor and Council of the Township adopted Ordinance No. 2011-21 which granted to ETG a municipal consent to provide natural gas and mixed gas services throughout the Township and to utilize the Township's public rights-of-way to construct, maintain and operate those facilities necessary for the provision of natural and mixed gas service within the Township for a term of fifty (50) years. A copy of the Ordinance is attached hereto and designated as Schedule "A." By letter dated March 5, 2012, the Company accepted and agreed to the terms and conditions of the franchise subject to the approval of this Board. A copy of the Company's acceptance letter is attached hereto and designated as Schedule "B".

On April 13, 2012, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, ETG filed a petition requesting that this Board give its approval to the consent adopted by the Township. As required by law, and after submission of responses to Staff discovery requests and appropriate and sufficient notice, a hearing in this matter was held on June 22, 2012, before Carol Artale, Esq., the Board's duly appointed Hearing Examiner. Appearances were made on behalf of the Company, the Division of Rate Counsel (Rate Counsel) and Board Staff. No other party participated in the hearing or filed any written submission with the Board related to this proceeding.

At the hearing, the Company relied on its petition and exhibits filed with the Board and presented the testimony of Kim T. Verran, of ETG. Mr. Verran spoke generally with regard to the benefits of the Company's reinforcement project and ETG's efforts related to the marketing of service within the Township. He indicated that it was the intent of the Company, assuming Board approval of the pending petition, to install the necessary mains and service connections in conformance with the Company's main and extension policy, Board rules, appropriate growth area policies and the terms of the Ordinance granted by the Township in order to provide gas service to Township residents prior to the upcoming heating season. No opposition to the granting of the relief requested by the Company was placed on the record.

By letter dated July 25, 2012, Rate Counsel filed written comments stating that it does not object to the Board's approval of the petition.

After a full review of the entire record, the Board HEREBY FINDS that the municipal consent, which is the subject of this matter, is necessary and proper for the public convenience and properly conserves the public interest and that the Company has the necessary experience, financial capability, capacity and facilities as well as the ability to install the appropriate infrastructure to allow it to provide safe, adequate and proper service in the Township as well as to continue to provide adequate and appropriate service to its existing customers. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14, HEREBY APPROVES the consent granted to ETG by the Township of Green for the provision of gas service in the Township as sought in the Company's petition.

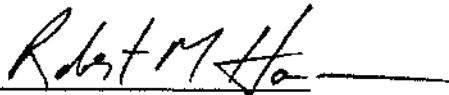
The approvals granted hereinabove shall be subject to the following provisions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by ETG.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board or the State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting ETG.

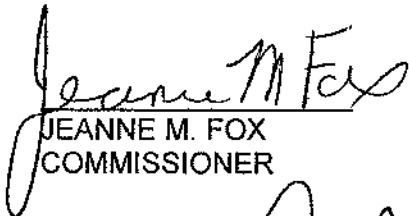
3. The rates for service in the Township shall be those set out in the Company's current tariff approved by and on file with the Board. These rates shall remain in effect until otherwise approved by the Board.
4. In an appropriate subsequent proceeding, ETG shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.
5. Approval of this municipal consent does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including but not limited to, cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.

DATED: 8/15/12

BOARD OF PUBLIC UTILITIES
BY:



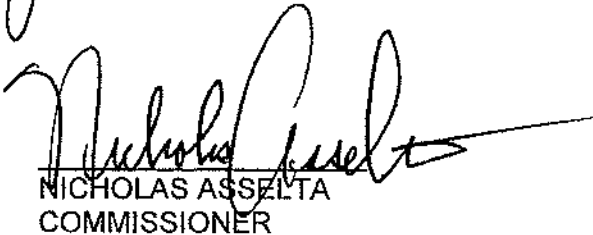
ROBERT M. HANNA
PRESIDENT



JEANNE M. FOX
COMMISSIONER



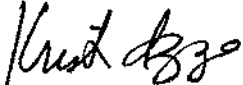
JOSEPH L. FIORDALISO
COMMISSIONER



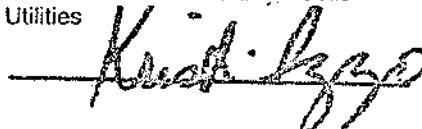
NICHOLAS ASSELTA
COMMISSIONER



MARY-ANNA HOLDEN
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



**I/M/O THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC., D/B/A
ELIZABETHTOWN GAS, FOR APPROVAL OF A FRANCHISE IN THE TOWNSHIP OF
GREEN, COUNTY OF SUSSEX, STATE OF NEW JERSEY**

BPU DOCKET NO. GE12040311

SERVICE LIST

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Trenton, NJ 08625

SCHEDULE A

ORDINANCE NO. 2011-21

TOWNSHIP OF GREEN, COUNTY OF SUSSEX, STATE OF N.J.

**AN ORDINANCE OF THE TOWNSHIP OF GREEN GRANTING MUNICIPAL
CONSENT TO PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN
GAS TO CONSTRUCT, MAINTAIN AND OPERATE A GAS LINE FOR THE
DISTRIBUTION OF NATURAL AND MIXED GAS.**

WHEREAS, Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey and a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities, on October 12, 2011, filed a Petition with the Township of Green seeking Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption throughout the Township of Green.

WHEREAS, M. Richard Valenti and Gary Marmo, representatives of the Petitioner appeared before the Green Township Committee on November 21, 2011 and December 5, 2011 to present their general plans for extension of gas lines within the Township as the need arose; and

WHEREAS, the Petitioner has provided public notice of such Petition through publication in the official newspaper of the Municipality, the New Jersey Herald, and by posting notice of such Petition pursuant to Statute.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Committee of the Township of Green.

Section I. Grant of Municipal Consent.

Pursuant to N.J.S.A., 48:3-11, the Mayor and Township Committee of the Township of Green hereby grant to Pivotal Utility Holdings, Inc. doing business as Elizabethtown Gas, a Corporation of the State of New Jersey (hereinafter "Elizabethtown") with principal offices located at 300 Connell Drive, Berkeley Heights, New Jersey 07922, its successors and assigns, a nonexclusive consent, right and privilege for the use, without impairment of, or obstruction to the public use, of the roads, streets, parks, avenues, ways, and other public places of the Township of Green to construct, lay, maintain, and operate for a period of fifty (50) years, the necessary mains, conductors, pipes and concomitant appurtenances for the purpose of conveying, storing, supplying and distributing natural and mixed gas for heat, power, light and other purposes for public and private use and consumption, along in, or under the following described service area: all the streets, avenues, alleys, parks, parkways, highways, or other public places within the Township as they now exist or may be hereinafter be laid out by the municipal authorities of the said Township or dedicated to said Township.

Section II. Conditions on Grant of Municipal Consent.

The Municipal Consent granted herein is expressly conditioned upon the following:

- (a) the written acceptance of Elizabethtown of the terms and conditions of this municipal Consent Ordinance within thirty (30) days of its final adoption.

restore any disturbed area at its cost and expense, and in compliance with all applicable Municipal Ordinances in effect at the time, to its pre-existing or better condition, any street, road, pavement, driveway or other reserves after having made an opening or excavation, the necessary work to accomplish such restoration may be done by the Township of Green, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Township upon receiving notice thereof.

- D. **Preconditions to Undertaking Construction.** Elizabethtown shall give to the Township of Green, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Township of Green's Ordinance regulating the excavation and opening of streets, roads and highways, with the exception that such notice requirement shall be waived in the event of an emergent circumstance such that such emergency will affect public health or safety. As soon as practically possible after the occurrence of such emergent circumstance, Elizabethtown shall give prompt written notice to the Township of any emergency opening or excavation that Elizabethtown shall undertake.

Section IV. Indemnification, Performance Bond, Liability.

- A. **Indemnification.** Elizabethtown, its successors and assigns, by the acceptance of the grants, rights and privileges conferred by this ordinance, shall at all times and does hereby and will indemnify and hold harmless, the Township of Green and all of its subsidiary agencies, officials and employees for any and all claims of whatsoever kind or nature arising from or relating to the construction, installation, maintenance, laying, repairing, inspecting, or altering of maintains conductors, pipes and appurtenances thereto, and any other facilities, and including, but not by way of limitation, any damages, penalties, costs, attorney's fees and charges for personal injury, property damage or otherwise, based upon Elizabethtown's negligence or the negligence of its agents, servants, employees or independent contractors.
- B. **Performance Bond.** Prior to the commencement or any construction or installation under this Municipal Consent, Elizabethtown shall execute and deliver to the Clerk of the Township and subject to prior review and approval by the Township Attorney, a Bond in the amount of \$10,000.00 guaranteeing the faithful performance of all of its obligations and undertakings under this Ordinance, which Bond shall be enlarged or renewed from time to time as the Council may require.
- C. **Liability Insurance.** Elizabethtown agrees to maintain and keep in full

- E. Notice of Proceedings. Elizabethtown shall give the Municipality timely written notice of at least fifteen (15) days in advance of all proceedings initiated by Elizabethtown or the N.J.B.P.U. or other Regulatory Agency, when such proceedings may affect the commitments, this Municipal Consent or relationship between Elizabethtown and the Municipality, whether or not such notice is required by law. All submissions provided to such Regulatory Agency by Elizabethtown shall also be provided to the Township of Green.

Section VI. Severability.

If the provision of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or Competent jurisdiction, such Order or Judgment shall not effect or invalidate this remainder of any such article, section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.


Section VII. Effective Date.

This Municipal Consent Ordinance shall become effective upon adoption and publication according to law, and only upon written acceptance of this Municipal Consent by Elizabethtown, which written consent shall be filed with the Clerk of the Municipality within thirty (30) days of the date after which Elizabethtown receives notice of the passage of this Ordinance.

ATTEST


Linda Peralta, Clerk

TOWNSHIP OF GREEN


James P. Chirip, Mayor

INTRODUCED: 12/05/2011
PUBLIC HEARING: 12/19/2011
ADOPTED: 12/19/2011

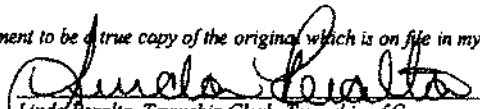
ADVERTISED: 12/09/2011
ADVERTISED: 12/23/2011

Vote on Ordinance No. 2011-21:

| | AYE | NAY | ABSTAIN | ABSENT |
|---------------|-------|-----|---------|--------|
| Mr. Bilik | ✓ 2nd | | | |
| Mr. Conking | ✓ 1st | | | |
| Mrs. Esenlohr | | | | ✓ |
| Mr. Michaud | ✓ | | | |
| Mr. Chirip | ✓ | | | |

I, Linda Peralta, Township Clerk of the Township of Green, do hereby certify this document to be a true copy of the original which is on file in my office.

Date: 3/6/12


Linda Peralta, Township Clerk, Township of Green

SCHEDULE B

MIDS

MORRIS • DOWNING • SHERRED, LLP

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Christopher D. Quinn
James P. Fox
M. Richard Valenti
Paul G. Hunczak
Todd M. Hooker

ASSOCIATES

Angela C. Paternostro-Pfister
Michelle M. Beatty
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*Also member of NY Bar

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James M. Cerra

SPECIAL COUNSEL

Douglas C. Gray*

NEW YORK OFFICE

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800.394.2700

Reply to: rvalenti@mdsfirm.com

March 5, 2012

Linda Peralta, Clerk
TOWNSHIP OF GREEN
150 Kennedy Road
Tranquility, NJ 07879

Re: Elizabethtown Gas – Franchise in Green Township

Dear Ms. Peralta:

Thank you for your speaking with my assistant last week. We appreciate the Township's time and cooperation in this matter.

In accordance with N.J.S.A. 48:2-14, I hereby notify you on behalf of Pivotal Utility Holdings, d/b/a Elizabethtown Gas that the Company accepts the terms of the Ordinance granting Elizabethtown Gas a municipal consent to provide natural gas service to the Township of Kingwood, which Ordinance was passed by the Mayor and Committee at the December 19, 2011 meeting and which Ordinance has been published on December 23, 2011.

So that we can process the application with the BPU, kindly forward certified copies of the Ordinance and Minutes of the meetings evidencing the first reading, second reading and passage of the Ordinance. In addition, kindly forward proof of publication of the Ordinance and proof of posting of the Petition. A proposed form of Proof of Posting is attached hereto as well as a copy of the Proof of Publication of the public notices concerning the Petition.

March 29, 2012
Page 2 of 2

MDS

Thank you.

Very truly yours,

MORRIS, DOWNING & SHERRED, LLP

M. Richard Valenti

MRV:nlc

Enc.

cc: Mary Patricia Keefe, Vice President, Regulatory Affairs
Kevin Lynott, Elizabethtown Gas
Gary Marmo, Elizabethtown Gas