



Agenda Date: 5/19/15
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 HOLDINGS, INC. D/B/A ELIZABETHTOWN)
GAS FOR APPROVAL OF A MUNICIPAL FRANCHISE)
IN THE BOROUGH OF ANDOVER, COUNTY OF)
SUSSEX)
DECISION AND ORDER

DOCKET NO. GE14101230

Parties of Record:

Mary Patricia Keefe, Esq., 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 BOARD¹:

Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas ("Elizabethtown" or "Company"), a regulated utility subject to the jurisdiction of the New Jersey 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 gas to approximately 275,000 customers within its service territory located principally in Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren Counties.

Elizabethtown does not currently provide natural gas service within the Borough of Andover ("Borough"). However, the Company represents that Borough residents have expressed an interest in receiving natural gas service. Accordingly, on June 10, 2013, the Borough adopted an ordinance which granted Elizabethtown: (1) non-exclusive consent and permission to furnish gas for light, heat and power in the Borough; and (2) non-exclusive consent and permission to lay and construct its pipes and mains and related appurtenances and facilities within the streets, alleys, squares and public places within the Borough for a period of twenty-five (25) years. By letter dated August 5, 2013, the Company accepted and agreed to the terms of the consent. Copies of the Ordinance and the letter of acceptance are attached to this Order as Exhibits "A" and "B", respectively.

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

On October 27, 2014, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, Elizabethtown filed a petition requesting that this Board give its approval to the consent adopted by the Borough. As required by law and after notice, a hearing in this matter was held on December 16, 2014, before William Agee, Esq., the Board's duly appointed hearing officer. 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, its Industrial Account Executive. According to Mr. Verran's testimony, Elizabethtown anticipates that it will initially provide service to the municipal facilities. The Company will then survey the population to determine if there are any customers interested in receiving natural gas service. There are approximately 241 homes and fifteen (15) commercial tenants in the Borough. According to the Company, it has the capacity to ensure continuation of its natural gas service to its current customers, and does not foresee any concerns regarding its ability to meet the existing and future demands of the Borough.

Rate Counsel, in its revised comments to the petition dated March 2, 2015, indicated that it does not object to the Company's petition, and noted that the term of the municipal consent related to the use of streets is limited to twenty-five (25) years. However, Rate Counsel requests that approval of the petition include certain restrictions which are incorporated into this order.

Following its receipt of Rate Counsel's comments, Elizabethtown filed correspondence dated April 3, 2015 indicating that it does not object to the comments.

After a full review of the entire record, the Board **HEREBY FINDS** that the municipal consent to serve, and to use the streets to provide service in the Borough, is necessary and proper for the public convenience and properly serves the public interest, and that Elizabethtown has the ability to provide safe, adequate and proper service. The Board **FURTHER FINDS** that the Company has the necessary experience, financial capability, and capacity to continue to provide adequate and appropriate service to its existing customers, and to expected future customers in the Borough, and that the twenty-five (25) year duration of the municipal consent to use the streets is consistent with N.J.S.A. 48:3-15. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14, **HEREBY APPROVES** the consent granted to Elizabethtown by the Borough to provide gas service and to use its public streets for that purpose for a period of twenty-five (25) years.

The approval granted above shall be subject to the following provisions:

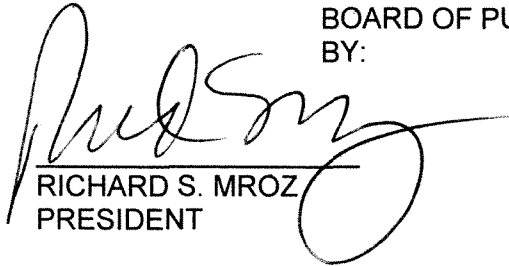
1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by Elizabethtown.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board of the 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 Elizabethtown.
3. In an appropriate subsequent proceeding, Elizabethtown shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.

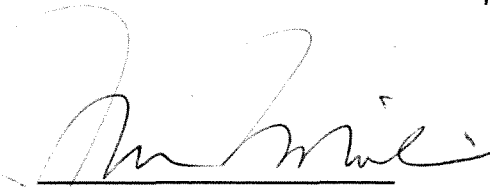
4. The rates for service to the Company's customers in the Borough shall continue to be those set out in the Company's current tariff approved by and on file with the Board. These rates shall remain in effect until otherwise approved by the Board.
5. Approval of this municipal consent does not constitute 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.

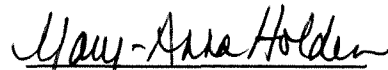
The effective date of this Order shall be May 30, 2015.


DATED: *May 19, 2015*

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

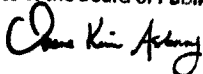

MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

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



IN THE MATTER OF THE PETITION OF PIVOTAL HOLDINGS, INC., D/B/A
ELIZABETHTOWN GAS, FOR APPROVAL OF A MUNICIPAL FRANCHISE IN THE
BOROUGH OF ANDOVER, SUSSEX COUNTY - BPU DOCKET NO. GE14101230

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Exhibit A

STATE OF NEW JERSEY
COUNTY OF SUSSEX
BOROUGH OF ANDOVER

AN ORDINANCE OF THE BOROUGH OF ANDOVER 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 April 17th, 2013, filed a Petition with the Borough of Andover seeking Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption throughout the Borough of Andover;

WHEREAS, representatives of the Petitioner appeared before the Andover Borough Council on May 13th, 2013 to present their general plans for extension of gas lines within the Borough 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 Council of the Borough of Andover.

Section I. Grant of Municipal Consent.

Pursuant to N.J.S.A., 48:3-11, the Mayor and Borough Council of the Borough of Andover 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 Borough of Andover to construct, lay, maintain, and operate for a period of twenty-five (25) 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 Borough as they now exist or may be hereinafter be laid out by the municipal authorities of the said Borough or dedicated to said Borough.

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.

- (b) the New Jersey Board of Public Utilities (hereinafter "N.J.B.P.U.") approval of the Consent herein granted and the issuance of such other grants or approvals as determined by the N.J.B.P.U.
- (c) Elizabethtown shall satisfy all Statutory requirements of N.J.S.A. 48:13-1 et seq. regarding the proper organization and operation of a Public Utilities engaged in the distribution of natural and mixed gas, and shall remain subject to the jurisdiction of and comply with all Rules and Regulations of the United States Department of Transportation, Office of Pipeline Safety and the N.J.B.P.U. as well as the Ordinance of the Borough of Andover.
- (d) Elizabethtown shall construct and continuously maintain and operate their distribution line within the service area in a safe and efficient manner, and maintain such gas distribution lines in a state of good operation and repair and including all streets, roads, and public rights-of-way within the Borough of Andover wherein its lines are located.
- (e) the construction, operation and maintenance of the gas distribution system within the rights-of-way of the Borough of Andover shall in no way place any obligation, financial or otherwise, or any liability of any kind, upon the Borough of Andover and no obligation is to attach for the construction, operation and maintenance of the said gas distribution system to the Borough.
- (f) any and all regulating pits and venting structures or like facilities shall not be located along the public rights-of-way comprising the Service Area.

Section III. Construction; Installation; Restoration.

- A. Construction. In each and every case in which road openings or excavation of any nature are required or made for the purposes aforesaid, Elizabethtown shall restore, all such public and private lands or facilities to as good a condition as existed at the commencement of the said work or such better condition, at its sole cost and expense. All such openings and installation and maintenance shall be undertaken in strict compliance with the standards imposed by the N.J.B.P.U., any other regulatory agency, and all applicable Borough Ordinances, with such work to be done in a careful, prudent and workmanlike manner, and within such time limitations as shall be best for the proper safeguard of the public.
- B. Relocation. If at any time during the period of this Municipal consent, the Borough of Andover finds it necessary to alter or change the grade of any street, road or other public right-of-way or area, Elizabethtown shall, upon reasonable notice by the Municipality, remove and relocate its distribution line and pipes at the expense of Elizabethtown.

- C. Restoration. In the event that Elizabethtown shall refuse or neglect, after ten (10) days notice in writing by the representative of the Borough, that is, the Borough Clerk or Borough Engineer, to 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 Borough of Andover, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Borough upon receiving notice thereof.

- D. Preconditions to Undertaking Construction. Elizabethtown shall give to the Borough of Andover, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Borough of Andover'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 Borough 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 Borough of Andover 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 Borough and subject to prior review and approval by the Borough 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.

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- C. Liability Insurance. Elizabethtown agrees to maintain and keep in full force and effect, at its sole expense, and at all times during the terms and duration of this Municipal Consent, sufficient liability insurance naming the Borough of Andover as an additional insured party, and insuring and indemnifying the Borough against any loss by any such claim, suit, judgment, execution or as follows:
- (a) Elizabethtown shall carry Workman's Compensation Insurance with Statutory limits.
 - (b) Elizabethtown shall at all times, maintain a Comprehensive General Liability Insurance Policy with a single limit amount of \$1,000,000.00 covering liability for any death, personal injury, property damage or other liability arising out of its construction and operation of the gas distribution systems herein and in addition, an excess liability (or "umbrella") policy in the amount of \$3,000,000.00.
 - (c) Elizabethtown shall furnish to the Borough of Andover a certified copy or Certificate of Insurance of each of the Policies as set forth herein.

Section V. Duration of Consent.

- A. Term. The Limited Municipal consent granted to Elizabethtown herein is for a period of twenty-five (25) years from the effective date of this Ordinance.
- B. Public Hearing. Immediately prior to the twenty-five (25) year expiration of this Consent, the Borough of Andover shall conduct public hearings regarding the performance of Elizabethtown with the terms of this Municipal Consent. The public hearing shall be duly advertised and shall provide any opportunity for all interested persons to participate.
- C. Extension. Upon the conclusion of the public hearings as set forth herein, the Borough of Andover shall consider such extension and such additional conditions as the record of the public hearings may warrant.

- D. Transferability. The right of Elizabethtown to transfer or assign any and all of its rights and obligations under this Municipal Consent Ordinance shall only be permitted upon Elizabethtown providing to the Borough thirty (30) days advance written notice of such intent to transfer, and specifying the name of the assignee and other pertinent data as may be required by the Borough. No transfer or assignment shall be made without the prior written consent of the Borough of Andover, which consent shall not be unreasonably withheld. Any notice or request for assignment must contain the written acknowledgement of the proposed assignee to be bound by all the terms and conditions of this Municipal Consent Ordinance and shall require the posting of a replacement Performance Bond and satisfaction of the liability insurance requirements prior to any written consent to transfer by the Andover Mayor and Borough Council.
- 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 Borough of Andover.

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.

The foregoing Ordinance was introduced at a meeting of the Mayor and Council of the Borough of Andover on Monday, May 13, 2013 at the Borough Hall and was considered for final passage and adopted, after public hearing, at a regular meeting of the Mayor and Council held on Monday, June 10th, 2013 at 7:00 p.m. at the Borough Hall.

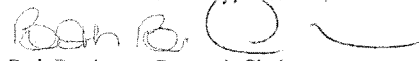

Beth Brothman, Borough Clerk

Exhibit B

MDS

MORRIS-DOWNING-SHERRED, LLP

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**Also member of OH Bar

August 5, 2017

Beth Brothman, Clerk
BOROUGH OF ANDOVER
137 Main Street
Andover, NJ 07821

Re: Request for Municipal Consent - Elizabethtown Gas

Dear Ms. Brothman:

In accordance with N.J.S.A. 48:3-16, 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 Borough of Andover, which was passed by the Mayor and Council at the June 10, 2013 meeting.

So that we can process the application with the BPU, kindly forward a certified copy 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 posting of the Petition. A proposed form of Proof of Posting is attached hereto.

Thank you.

Very truly yours,

MORRIS-DOWNING & SHERRED, LLP

M. Richard Valenti

MRV:nlc

cc: Mary Patricia Keefe, Vice President
Francis McGovern, Esq.

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