



South Jersey Gas

Stacy A. Mitchell, Esq.  
Senior Director, Regulatory Affairs

*Filed*  
*3/27/18*

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March 21, 2018

MAR 23 2018

*Via FedEx*

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CASE MANAGEMENT

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

Records Custodian  
NJ Board of Public Utilities  
44 S. Clinton Ave., 3rd Floor  
Suite 314  
Trenton, NJ 08625

MAR 23 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**Re: In the Matter of the Acquisition of Elizabethtown Gas, a Division of Pivotal Utility Holdings, Inc., by ETG Acquisition Corp., a Subsidiary of South Jersey Industries, Inc., and Related Transactions  
BPU Docket No. GM17121309**

Dear Records Custodian,

In accordance with N.J.A.C. 14:1-12.8 of the New Jersey Board of Public Utilities' ("Board") regulations, on behalf of South Jersey Industries, Inc. ("SJI"), enclosed please find a "Confidentiality Claim and Substantiation of Confidentiality Claim for Response to RCR-POL-2" for certain attachments and information contained therein (the "Confidential Information") relating to the above-referenced matter. Furthermore, any descriptions of the Confidential Material contained in the Confidentiality Claims should also be determined as confidential.

A public copy of the Confidential Material is being submitted to the Board Secretary under a cover letter dated this same day. Both the confidential and public versions are also being submitted under this transmittal letter in accordance with the procedures set forth in N.J.A.C. 14:1-12.3.<sup>1</sup>

Kindly acknowledge receipt and filing of the enclosures by date stamping the enclosed copy of this letter and returning it to us in the enclosed self-addressed and stamped envelope. Should you have any questions, please contact the undersigned.

<sup>1</sup> In accordance with Section 14:1-12.3 of the Board's rules, the unredacted version of the filing is labeled "CONFIDENTIAL COPY" and is sealed in an envelope displaying the word "Confidential" which is enclosed in another envelope bearing no markings indicating the confidential nature of the contents. The redacted version of the filing is labeled "PUBLIC COPY" with the confidential information identified.

*CMG-Conf.*  
*T. Walker*



South Jersey Gas

Sincerely,

---

Stacy A. Mitchell, Esq.  
Senior Director, Regulatory Affairs

Enclosures: Confidentiality Claims, Public Copy and Confidential Copy

cc: Deborah M. Franco, Esq. (Cullen and Dykman LLP)  
Ira Megdal, Esq. (Cozen O'Connor)  
Secretary Asbury w/ Confidentiality Claim and Public Copy  
Paul Flanagan, Executive Director, Board Staff  
Tom Walker, Director, Division of Energy Board Staff  
Stefanie A. Brand, Director, Division of Rate Counsel  
Felicia Thomas-Friel, Managing Attorney-Gas

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CASE MANAGEMENT

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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IN THE MATTER OF THE :  
ACQUISITION OF ELIZABETHTOWN :  
GAS, A DIVISION OF PIVOTAL :  
UTILITY HOLDINGS, INC. BY ETG :  
ACQUISITION CORP., A SUBSIDIARY :  
OF SOUTH JERSEY INDUSTRIES, :  
INC. AND RELATED TRANSACTIONS :  
: :  
: :

CONFIDENTIALITY CLAIM &  
SUBSTANTIATION OF  
CONFIDENTIALITY CLAIM  
FOR RESPONSE TO RCR-POL-2

BPU Docket No. GM17121309

#### I. CONFIDENTIALITY CLAIM

South Jersey Industries, Inc. (“SJI,” the “Company,” or the “Providing Party”), a Joint Petitioner in the above-captioned matter pending before the New Jersey Board of Public Utilities (“Board”), in accordance with N.J.A.C. 14:1-12.8, hereby claims that the information contained in RCR-POL-2 Attachment 01 (Confidential – Attorneys’ Eyes Only/SJI) produced in response to discovery request RCR-POL-2, which includes material provided to the Board of Directors of SJI containing certain financial, operational and related information (the “Confidential Information”), is entitled to confidential treatment.

The Providing Party respectfully requests that the Board determine the Confidential Information is confidential, and that it is not to be provided by the Board’s Government Records Custodian in response to any request for access under the Open Public Records Act (“OPRA”). N.J.S.A. 47:1A-1, et. seq. Due to its sensitive nature, the Confidential Information falls under specific exemptions from OPRA’s definition of “government record” and therefore should receive confidential treatment and not be subject to disclosure. Furthermore, any descriptions

contained in this substantiation of confidentiality of the subject Confidential Information should also be determined as confidential. The following paragraphs will serve to satisfy the confidentiality substantiation requirements of N.J.A.C. 14:1-12.8.

## II. DESIGNATION OF ADDRESSEE FOR NOTICE

Pursuant to N.J.A.C. 14:1-12.4, 12.7 and 12.9, the Providing Party hereby designates that all correspondence, custodian communications (oral and written) including but not limited to, notices, and inquiries relating to this confidentiality claim and substantiation should be directed to:

Stacy A. Mitchell, Esq.  
Senior Director, Regulatory Affairs  
South Jersey Gas Company  
1 South Jersey Plaza  
Folsom, NJ 08037  
Telephone: (609) 561-9000 x.4364

## III. SUBSTANTIATION OF CONFIDENTIALITY CLAIM

### A. Summary Description of Materials

Briefly described, the enclosed Confidential Materials provide detailed non-public information regarding business operations, financial data and other commercially sensitive information involving the Providing Party. The Confidential Materials provided to the Board of Directors of SJI regarding the acquisition of the assets of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown") include competitively sensitive information underlying the strategic planning and decision-making of the SJI Board of Directors. Disclosure of the Confidential Materials to other competing entities would be harmful to the competitive position of the Company.

### B. OPRA Exception(s)

The Confidential Information contains proprietary financial and competitive information, as well as proprietary trade secrets, and therefore falls squarely under at least two exemptions to the definition of "government record" given in OPRA. N.J.S.A. 47:1A-1.1. Thus, it is not subject to any presumption of public access, see id., at N.J.S.A. 47:1A-1, and is not subject to disclosure. See id., N.J.S.A. 47:1A-1.1; see also N.J.A.C. 14:1-12.8(a)(6).

**C. Measures Taken to Prevent Disclosure of Sensitive Information.**

The Providing Party has protected the confidential portions of the Confidential Information by refusing to make it, or the information contained therein, available to the public or to submit it to public agencies without seeking confidential protection. See N.J.A.C. 14:1-12.8(a)(1).

**D. The Confidential Information is Not Presently Attached to, Cited in, Or Included in Other Publicly Available Materials.**

The Providing Party hereby asserts that the Confidential Information is not found in any other materials available to the general public. There are no final orders in contested case adjudications, press releases, copies of speeches, pamphlets, educational materials or other materials which contain sensitive portions of the Confidential Information, or any substantive information contained therein. The sensitive information found in the Confidential Information has been kept confidential by the Providing Party. See N.J.A.C. 14:1-12.8(a)(2).

**E. The Confidential Information Has Only Been Disclosed Pursuant to a Non-Disclosure Agreement.**

The Confidential Information has been or will only be disclosed to the parties in this proceeding pursuant to a Non-Disclosure Agreement, which provides that recipients of Confidential Information shall not disclose the contents of the documents produced pursuant to that agreement. Further, the Company is otherwise bound to maintain confidentiality of certain

portions of the Confidential Information consisting of information and advice provided by investment banks retained by the Company in connection with the acquisition of Elizabethtown's assets. Thus, the Providing Party has taken adequate precautions to ensure the non-dissemination of the Confidential Information. See N.J.A.C. 14:1-12.8(4).

**F. The Confidential Portions of the Confidential Information Have Not Otherwise Been Disclosed.**

The Providing Party hereby asserts that the confidential portions of the Confidential Information and the information contained therein have not been disclosed to the general public and have not been disclosed to any other tribunals, agencies, courts, administrative or governmental bodies without first seeking acceptable confidentiality protections. See N.J.A.C. 14:1-12.8(a)(3).

**G. Harmful Effects Resulting from Disclosure.**

If the Confidential Information were made public it would significantly harm the business operations and competitive position of the Company by providing their competitors in the utility business with valuable information about SJT's strategic planning and business decision-making activities. See N.J.A.C. 14:1-12.8(a)(6).

**H. Indefinite Confidentiality**

Given the sensitive nature of the information contained in the Confidential Information, the period of time for which it receives confidential treatment from the Board should be indefinite. At no time can this information be divulged to any person or entity because doing so would seriously compromise the Providing Party's business plans and competitive standing in the utility industry and the competitive position of third parties. See N.J.A.C. 14:1-12.8(a)(7).

WHEREFORE, for the foregoing reasons, the Providing Party respectfully requests that the Board approve this Confidentiality Claim, rule that the enclosed Confidential Information are not government records in that they are exempt from OPRA's definition of government records, direct its Records Custodian, as that term is defined in OPRA, to deny all applications for access to, or disclosure of, the enclosed Confidential Information, continue indefinitely to treat the enclosed documents as confidential, and grant such other relief and approvals as it may deem appropriate and necessary.

Respectfully submitted,

By:



Stacy A. Mitchell, Esq.

Dated: March 21, 2018

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE :  
ACQUISITION OF ELIZABETHTOWN :  
GAS, A DIVISION OF PIVOTAL :  
UTILITY HOLDINGS, INC. BY ETG :  
ACQUISITION CORP., A SUBSIDIARY :  
OF SOUTH JERSEY INDUSTRIES, :  
INC. AND RELATED TRANSACTIONS :

CONFIDENTIALITY CLAIM &  
SUBSTANTIATION OF  
CONFIDENTIALITY CLAIM  
FOR RESPONSE TO RCR-POL-2

BPU Docket No. GM17121309

I, David Robbins, Jr., Senior Vice President of South Jersey Industries, Inc., hereby certify that to the best of my knowledge, the confidential statements and affirmations contained in the enclosed confidentiality claim are true and accurate, and that said Confidential Information requires unqualified confidential protection.

I further certify that the Confidential Information contains confidential information which falls within exemptions to the definition of "government record" given in N.J.S.A. 47:1A-1.1 as this document contains proprietary, commercial, financial, and competitive information. I also certify that the Providing Party has taken substantial measures to prevent disclosure of this confidential information to others.

I further certify that disclosure of this confidential information will result in harmful effects to the Providing Party and to the counterparties to the proposed transactions. The competitive position of the Providing Party will be undermined if the confidential information becomes available to competitors in the utility industry.

I understand that if any of the foregoing is willfully false, I am subject to punishment.

Date March 21, 2018

By: David Robbins, Jr.  
David Robbins, Jr.  
Senior Vice President  
South Jersey Industries, Inc.

Subscribed and Sworn to Before Me,  
A Notary Public of the State of  
New Jersey, This 21<sup>st</sup> Day of March, 2018.

Carolee Sherr  
CAROLEE A. SHERR  
Notary Public STATE OF NEW JERSEY  
My Commission Expires October 23, 2019





GUGGENHEIM




Discussion Materials

October 15, 2017

CONFIDENTIAL



GUGGENHEIM



Discussion Materials

October 15, 2017

CONFIDENTIAL

[THE FOLLOWING PAGES HAVE BEEN REDACTED IN THEIR ENTIRETY]



Stacy A. Mitchell, Esq.  
Senior Director, Regulatory Affairs

*Handwritten:* J and  
3/27/18

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

March 21, 2018

**Via FedEx**

Aida Camacho, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Fl., Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

**Re: In the Matter of the Acquisition of Elizabethtown Gas, a Division of Pivotal Utility Holdings, Inc., by ETG Acquisition Corp., a Subsidiary of South Jersey Industries, Inc. and Related Transactions  
BPU Docket No. GM17121309**

Dear Secretary Camacho,

In accordance with N.J.A.C. 14:1-12.8 of the New Jersey Board of Public Utilities' ("Board") regulations, on behalf of South Jersey Industries, Inc. ("SJI"), enclosed please find a "Confidentiality Claim and Substantiation of Confidentiality Claim for Response to RCR-POL-2" submitted this same day in this proceeding.

Kindly acknowledge receipt and filing of the enclosures by date stamping the enclosed copy of this letter and returning it to us in the enclosed self-addressed and stamped envelope. Should you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in cursive that reads "Stacy Mitchell".

Stacy A. Mitchell, Esq.  
Senior Director, Regulatory Affairs

cc: Deborah M. Franco, Esq. (Cullen and Dykman LLP)  
Ira Megdal, Esq. (Cozen O'Connor)  
Paul Flanagan, Executive Director, Board Staff  
Tom Walker, Director, Division of Energy Board Staff  
Stefanie A. Brand, Director, Division of Rate Counsel  
Felicia Thomas-Friel, Managing Attorney-Gas

*Handwritten:* CMS - Conf.  
T. Walker

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GAS, A DIVISION OF PIVOTAL :  
UTILITY HOLDINGS, INC. BY ETG :  
ACQUISITION CORP., A SUBSIDIARY :  
OF SOUTH JERSEY INDUSTRIES, :  
INC. AND RELATED TRANSACTIONS :  
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CONFIDENTIALITY CLAIM &  
SUBSTANTIATION OF  
CONFIDENTIALITY CLAIM  
FOR RESPONSE TO RCR-POL-2

BPU Docket No. GM17121309

I. CONFIDENTIALITY CLAIM

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Telephone: (609) 561-9000 x.4364

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### B. OPRA Exception(s)

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**C. Measures Taken to Prevent Disclosure of Sensitive Information.**

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**F. The Confidential Portions of the Confidential Information Have Not Otherwise Been Disclosed.**

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**G. Harmful Effects Resulting from Disclosure.**

If the Confidential Information were made public it would significantly harm the business operations and competitive position of the Company by providing their competitors in the utility business with valuable information about SJI's strategic planning and business decision-making activities. See N.J.A.C. 14:1-12.8(a)(6).

**H. Indefinite Confidentiality**

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Respectfully submitted,

By:

  
Stacy A. Mitchell, Esq.

Dated: March 21, 2018

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE :  
ACQUISITION OF ELIZABETHTOWN : CONFIDENTIALITY CLAIM &  
GAS, A DIVISION OF PIVOTAL : SUBSTANTIATION OF  
UTILITY HOLDINGS, INC. BY ETG : CONFIDENTIALITY CLAIM  
ACQUISITION CORP., A SUBSIDIARY : FOR RESPONSE TO RCR-POL-2  
OF SOUTH JERSEY INDUSTRIES, : BPU Docket No. GM17121309  
INC. AND RELATED TRANSACTIONS :  
:  
:

I, David Robbins, Jr., Senior Vice President of South Jersey Industries, Inc., hereby certify that to the best of my knowledge, the confidential statements and affirmations contained in the enclosed confidentiality claim are true and accurate, and that said Confidential Information requires unqualified confidential protection.

I further certify that the Confidential Information contains confidential information which falls within exemptions to the definition of "government record" given in N.J.S.A. 47:1A-1.1 as this document contains proprietary, commercial, financial, and competitive information. I also certify that the Providing Party has taken substantial measures to prevent disclosure of this confidential information to others.

I further certify that disclosure of this confidential information will result in harmful effects to the Providing Party and to the counterparties to the proposed transactions. The competitive position of the Providing Party will be undermined if the confidential information becomes available to competitors in the utility industry.

I understand that if any of the foregoing is willfully false, I am subject to punishment.

Date March 21, 2018

By: David Robbins, Jr.  
David Robbins, Jr.  
Senior Vice President  
South Jersey Industries, Inc.

Subscribed and Sworn to Before Me,  
A Notary Public of the State of  
New Jersey, This 21<sup>th</sup> Day of March, 2018.

Caroleen Jacobs  
CAROLEEN M. JACOBS  
Notary Public of the State of New Jersey  
My Commission Expires October 28, 2018