



MAR 26 2018

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

JWD
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March 23, 2018

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Via FedEx

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

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 Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown"), enclosed please find a "Confidentiality Claim and Substantiation of Confidentiality Claim for Response to RCR-AMA-2 and RCR-AMA-3, including RCR-AMA-2 Attachment 02 (Confidential)" and "RCR-AMA-3 Attachment 01 (Confidential)" ("Confidentiality Claim") (the "Confidential Information") relating to the above-referenced matter. Furthermore, any descriptions of the Confidential Information contained in the Confidentiality Claim should also be determined as confidential.

A public copy of the Confidential Information 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. 14:1-12.3.¹

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.

¹ 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.

CMS

Sincerely,

Deborah M. Franco/KB

Deborah M. Franco
Cullen and Dykman LLP
Attorneys to Pivotal Utility Holdings, Inc.
d/b/a Elizabethtown Gas

Enclosures: Confidentiality Claim, Public Copy and Confidential Copy

cc: Stacy A. Mitchell, Esq. (South Jersey Gas Company)
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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MAR 25 2018

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

	:	
	:	CONFIDENTIALITY CLAIM &
IN THE MATTER OF THE	:	SUBSTANTIATION OF
ACQUISITION OF ELIZABETHTOWN	:	CONFIDENTIALITY CLAIM FOR
GAS, A DIVISION OF PIVOTAL	:	RESPONSE TO RCR-AMA-2 AND RCR-
UTILITY HOLDINGS, INC. BY ETG	:	AMA-3, INCLUDING ATTACHMENT
ACQUISITION CORP., A SUBSIDIARY	:	RCR-AMA-2 Attachment 02 (Confidential)
OF SOUTH JERSEY INDUSTRIES, INC.	:	and RCR-AMA-3 Attachment 01
AND RELATED TRANSACTIONS	:	(Confidential)
	:	
	:	BPU Docket No. GM17121309

I. CONFIDENTIALITY CLAIM

Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (“Elizabethtown,” 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-AMA-2 Attachment 01 (Confidential) and RCR-AMA-3 Attachment 02 (Confidential) (the “Confidential Information”), produced in response to discovery requests RCR-AMA-2 and RCR-AMA-3, respectively, which includes certain margin sharing information associated with the Asset Management Agreement (“AMA”) between Elizabethtown and Sequent Energy Management, L.P. (“Sequent”), is entitled to confidential treatment.

The Providing Party respectfully requests that the Board determine that the enclosed 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 enclosed 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:

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Cullen and Dykman LLP
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Senior Counsel – Regulatory Affairs, Legal
Southern Company Gas
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ermcgill@southernco.com
Telephone: (404) 584-3682
Fax: (404) 584-3599

III. SUBSTANTIATION OF CONFIDENTIALITY CLAIM

A. Summary Description of Materials

Briefly described, the Confidential Information provides detailed non-public detailed information concerning margin sharing and related information associated with the AMA

between Elizabethtown and Sequent.¹ Disclosure of the Confidential Information to other competing entities would be detrimental to Elizabethtown and Sequent.

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). The Confidential Information derives from and is based on governing provisions of the AMA, which itself is subject to an OPRA claim made in BPU Docket No. GO13040272.

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).

¹ The regulations identify the following exemptions: information “which in the person’s or entity’s opinion constitutes trade secrets, energy trade secrets or other energy information submitted pursuant to N.J.S.A. 52:27F-18, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security....” N.J.A.C. 14:1-12.1(b).

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. 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 Information and the information contained therein has not been disclosed to the general public and has 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.

The Confidential Information is both (i) proprietary commercial information, and (ii) information which, if disclosed, would give an advantage to competitors. Specifically, the information for which confidential treatment is sought sets forth the cost sharing and revenue sharing information related to the capacity management and gas supply services provided under the AMA, which is competitively sensitive and proprietary. Capacity management and gas supply services are provided in highly competitive markets and the disclosure of the information for which confidentiality is sought could seriously harm both Elizabethtown's efforts to secure such services at the most reasonable cost for the benefit of its customers, its ability to maximize the value of its gas supply assets for the benefit of its customers and Sequent's ability to provide such services in unregulated, competitive markets. (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 and competitive position. 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: Deborah M Franco/KB
Deborah M. Franco
Cullen and Dykman LLP
Attorneys for Pivotal Utility Holdings, Inc.
d/b/a Elizabethtown Gas

Dated: March 23, 2018

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

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OF SOUTH JERSEY INDUSTRIES, INC. : **and RCR-AMA-3 Attachment 01**
AND RELATED TRANSACTIONS : **(Confidential)**
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----- **BPU Docket No. GM17121309**

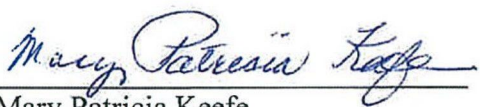
I, Mary Patricia Keefe, Vice President, Regulatory Affairs and Business Support of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, hereby certify that to the best of my knowledge, the confidential statements and affirmations contained in the enclosed confidentiality claim are true and accurate, 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 23, 2018

By: 
Mary Patricia Keefe
Vice President, Regulatory Affairs and
Business Support
Pivotal Utility Holdings, Inc. d/b/a
Elizabethtown Gas

Subscribed and Sworn to Before Me,
A Notary Public of the State of
New Jersey, This 23rd Day of March, 2018.


Notary Public

Jane James
Notary Public
My Commission Expires Dec. 20, 2021