



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY

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 )

DECISION AND ORDER  
APPROVING STIPULATION

DOCKET NO. GM17121309

**Parties of Record:**

**Ira Megdal, Esq.**, on behalf of South Jersey Industries, ETG Acquisition Corp. and South Jersey Resources Group, LLC  
**Kenneth T. Maloney, Esq.**, Cullen and Dykman, LLP, on behalf of Pivotal Utility Holdings, d/b/a Elizabethtown Gas  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel  
**Joseph F. Accardo, Jr., Esq.**, Public Service Electric and Gas Company  
**Steven S. Goldenberg, Esq.**, New Jersey Large Energy Users Coalition

**BY THE BOARD:**

By this Decision and Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers a Stipulation of Settlement ("Stipulation") executed by South Jersey Industries, Inc. ("SJI"), ETG Acquisition Corp. South Jersey Resources Group, LLC, ("SJRG"),<sup>1</sup> and Pivotal Utility Holdings, Inc. ("Pivotal") d/b/a Elizabethtown Gas ("Elizabethtown") (collectively, the "Joint Petitioners"), the New Jersey Division of Rate Counsel ("Rate Counsel"), Board Staff ("Staff") and the New Jersey Large Energy Users Coalition ("NJLEUC") (collectively, "Signatory Parties"), which resolves the above-captioned matter.

**BACKGROUND**

On December 21, 2017, the Joint Petitioners filed a verified joint petition ("Acquisition Petition") with the Board seeking approval for the acquisition of Pivotal's New Jersey utility operating division, Elizabethtown, including the sale of substantially all of Elizabethtown's assets ("Acquisition") by ETG Acquisition Corp. The Petition was filed pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14, and N.J.A.C. 14:1-5.6. The post-Acquisition Elizabethtown entity ("Elizabethtown Gas Company") will be owned by SJI Utilities, Inc. ("SJI Utilities"), a wholly owned subsidiary of SJI. Headquartered in Union County, New Jersey, Elizabethtown provides service to approximately 282,000 customers and owns approximately 3,200 miles of distribution pipeline and twenty-two (22) miles of transmission pipeline. The Acquisition Petition

<sup>1</sup> ETG Acquisition Corp. and SJRG are wholly owned subsidiaries of SJI.

was supported by the direct testimony of five (5) witnesses: Michael J. Renna, Brian Maclean, Ann Anthony, David Robbins, Jr. and Gregory M. Nuzzo.

### **THE PROPOSED TRANSACTION**

SJI will acquire Elizabethtown for a base purchase price of approximately \$1.7 billion, which will be financed through a combination of debt and equity. Elizabethtown Gas Company will continue to provide service to customers pursuant to the current Elizabethtown tariff at current rates and terms and conditions of service. Post-acquisition, Elizabethtown Gas Company will remain a separate utility company.

The Joint Petitioners also sought various related approvals including the approval of certain affiliate service agreements, a transfer of stock to effectuate a reorganization<sup>2</sup> in connection with the Acquisition, the discontinuance by Pivotal of the provision of utility service, the corresponding adoption of the existing Elizabethtown Tariff<sup>3</sup> by Elizabethtown Gas Company, certain accounting approvals and a request that the Board disclaim jurisdiction over the sale by Pivotal of certain assets located in Maryland or in the alternative, approve the sale of the Maryland assets.

Upon closing of the transactions contemplated in the Acquisition Petition, certain functions currently performed for Elizabethtown by out-of-state employees will be performed by New Jersey-based employees. SJI will provide certain administrative services to Elizabethtown pursuant to a Master Services Agreement ("MSA"). Likewise, it is anticipated that SJI and Elizabethtown will enter into a Shared Services Agreement ("SSA") pursuant to which SJI will provide Elizabethtown with utility operations services. SJI commits that it will not seek to recover in rates any potential premium paid for the assets acquired in these transactions.

According to the Joint Petitioners, the Acquisition will result in Elizabethtown once again being brought under the umbrella of New Jersey-based ownership and control. SJI will expand its utility operations in New Jersey through ownership of both Elizabethtown and SJG, jointly servicing more than 675,000 utility customers in New Jersey. Some of the benefits identified by the Joint Petitioners are as follows:

- SJI will enable Elizabethtown Gas Company to provide a one-time \$15 million rate credit to Elizabethtown's Basic Gas Supply Service customers within ninety (90) days of closing;
- For three (3) years following the closing, SJI or an affiliate, will maintain a minimum of 330 employees in New Jersey to support Elizabethtown's operations. SJI will also honor collective bargaining agreements in effect at the time of the closing and will maintain the same local core management that exists today;
- SJI will add a significant number of new employees to New Jersey, over and above the 330 employee commitment, to provide services that are currently provided to Elizabethtown by Southern Gas Company in other states;

<sup>2</sup> The Acquisition Petition proposed a transfer of South Jersey Gas Company's ("SJG") stock from SJI to SJI Utilities pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10.

<sup>3</sup> The Elizabethtown Tariff is available on Elizabethtown's website at <https://elizabethtowngas.com/-/media/Files/ETG/ETG%20TARIFF%20NO%2015%20MAY%202018.pdf>

- The current Asset Management Agreement (“AMA”) between Elizabethtown and Sequent Energy Management L.P. (“Sequent”) will be assigned to SJRG and extended for an additional five (5) year period with a guaranteed minimum \$26.25 million credit to customers over that period;
- Elizabethtown and SJG will have the opportunity to share local employees during times of emergency and otherwise take advantage of each other’s resources during critical times, thereby enhancing safety and reliability; and
- Elizabethtown Gas Company will continue to meet Elizabethtown’s current level of community support contributions of \$190,000 per year for a period of five (5) years post-closing.

### **PROCEDURAL HISTORY**

By Order dated January 31, 2018 (“January Order”), the Board determined that the Acquisition Petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated President Joseph L. Fiordaliso as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the January Order directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by February 23, 2018.

Motions to Intervene were filed by the New Jersey Large Energy Users Coalition, (“NJLEUC”) on February 9, 2018 and Public Service Electric and Gas Company (“PSE&G”) on February 22, 2018. NJLEUC also filed a Motion for Admission Pro Hac Vice on behalf of Paul Forshay, Esq. By correspondence dated March 5, 2018 and March 8, 2018, respectively, the Joint Petitioners indicated that they did not oppose the motions filed by NJLEUC and PSE&G.

Following proper public notice, two (2) public hearings were each held in Flemington on April 17, 2018 and in Union on April 19, 2018. No members of the public appeared at the public hearings and the Board received one (1) letter from a customer opposing the Acquisition Petition.

By Order dated May 18, 2018, President Fiordaliso issued a Prehearing Order establishing the prehearing schedule in this matter (“Prehearing Order”). The Prehearing Order also granted the motions filed by NJLEUC and PSE&G. NJLEUC was further ordered to furnish a sample list of its members who are currently natural gas customers of Elizabethtown.

Extensive discovery was conducted and a number of settlement conferences were held. The Signatory Parties have come to an agreement executed concerning all of the factual and legal issues arising in this matter which is the subject of this Order.

### **STATUTORY STANDARD OF REVIEW AND POSITIVE BENEFITS TEST**

During the discovery process and the development of the Stipulation, Staff utilized the principles embedded in the “positive benefits” standard of review articulated in other acquisition cases considered by the Board. See, e.g. I/M/O the Merger of the Southern Company and AGL Resources, Inc., BPU Docket No. GM15101196 (June 23, 2016) and I/M/O the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Docket No. EM14060581 (March 6, 2015). Per N.J.A.C. 14:1-5.14(c), positive benefits must result from the transaction in order for the Board to approve an acquisition.

The Acquisition Petition was filed pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, which describe various specific issues to be evaluated by the Board when considering a request to acquire or seek to acquire control of a public utility, directly or indirectly. In particular, N.J.S.A. 48:2-51.1 requires the Board to consider the effect of the proposed acquisition on the following: (1) competition; (2) the rates of ratepayers affected by the acquisition of control; (3) the employees of the affected public utility; and (4) the provision of safe and adequate utility service at just and reasonable rates. Specifically, the statute provides :

No person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

N.J.S.A. 48:2-51.1.

Staff also reviewed the specific impact areas identified in N.J.S.A. 48:2-51.1 to structure the analysis, namely the impact of the acquisition on rates, employees, service quality and competition, as well as positive benefits associated with the transaction.

**STIPULATION:**

On June 21, 2018, the Signatory Parties executed the Stipulation<sup>4</sup>, which provides for the following:

**A. Acquisition and Related Approvals.**

- (i) **Standard of Review.** The statutory and regulatory criteria for approval of petitions involving acquisitions of control of a New Jersey public utility, including the sale of substantially all of the New Jersey public utility's assets, as set forth in N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14(c) and N.J.A.C. 14:1-5.6 and any related statutes and regulations have been satisfied. More particularly, the agreement and conditions set forth herein support findings and conclusions by the Board that: (a) the Acquisition will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of

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<sup>4</sup> Although summarized in this Order, should there be any conflict between this summary and the Stipulation, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order.

Elizabethtown, or on the provision of safe and adequate utility service at just and reasonable rates; and (b) that consummation of the Acquisition, consistent with the conditions set forth in the Stipulation, is in the public interest, and will result in positive benefits to customers and the State of New Jersey.

- (ii) **Consummation of the Acquisition and Related Transfers.** The Joint Petitioners may undertake all those actions necessary for the Acquisition to be lawfully consummated in the manner set forth in the Asset Purchase Agreement (“APA”) entered into by and between Pivotal and SJI. Specifically, SJI, through its assignee Elizabethtown Gas Company, will purchase substantially all of the assets of Elizabethtown, including Elizabethtown’s property, franchises, privileges and rights, including all municipal consents, permits, licenses, easements and other authorizations and agreements. The Acquisition will also include the sale of certain regulatory assets and liabilities that are currently reflected on Elizabethtown’s balance sheet and represent certain deferred costs and/or revenues associated with various items including, but not limited to, pension and other post-employment benefit costs, gas costs and environmental costs and, in connection therewith, ETG Acquisition Corp. is authorized to record certain regulatory assets and liabilities and to continue to employ deferred accounting for the costs recorded as regulatory assets and liabilities as of the date of the Closing.
- (iii) **Corporate Reorganization.** SJI is authorized to undertake a corporate reorganization in connection with the Acquisition whereby SJG will be acquired by SJI Utilities through a contribution of stock from SJI and result in SJG becoming a wholly owned subsidiary of SJI Utilities. SJI Utilities will also wholly own two additional subsidiaries, ETG Acquisition Corp. and Elkton Acquisition Corp., the SJI entity that, in a separate transaction, will acquire substantially all of the assets of Elkton, Pivotal’s Maryland utility operating company, subject to final approval by the Maryland Public Service Commission (“MDPSC”) in Case No. 9475. Immediately post-Closing, ETG Acquisition Corp. will be renamed Elizabethtown Gas Company.
- (iv) **Sale of Elkton Assets.** The Signatory Parties further agree that it is in the public interest for the Board to disclaim jurisdiction over the sale of the assets of Elkton to SJI or, in the alternative approve the sale, on the basis that Elkton is subject to the jurisdiction of the MDPSC, none of the assets of Elkton that are proposed to be transferred are located in New Jersey and none of Elkton’s assets have been used to provide service to customers in New Jersey or reflected in rates paid by New Jersey customers. It is acknowledged that this disclaimer/approval is only required if and to the extent the sale of the Elkton assets precede the Closing of the Acquisition.
- (v) **Impact on Rates.**
  - a. After consummation of the Closing, SJI will enable Elizabethtown Gas Company to provide a one-time credit to all its customers totaling \$15 million to be provided in the form of a bill credit. The Signatory Parties request that the Board determine that these credits be distributed as per customer bill credits to all of Elizabethtown Gas Company’s then current customers served under Service Classifications RDS, SGS, GDS, LVD, EGF, GLS, CSI, IS, CS, FTS, NGV and ITS within ninety (90) days of the Closing of the

Acquisition. The Signatory Parties agree that the bill credits should be allocated among Elizabethtown Gas Company's customer classes based on the base rate revenues reflected in the rates that were approved by the Board in Elizabethtown's most recent base rate proceeding in BPU Docket No. GR16090826, as updated to reflect federal income tax changes. At least ten (10) days prior to issuing the bill credits, Elizabethtown Gas Company will submit to Board Staff and Rate Counsel backup documents and calculations in support of the bill credits.

- b. Post-Closing, Elizabethtown Gas Company will adopt the Elizabethtown Tariff. Within 10 days of Closing, Elizabethtown Gas Company will submit to the Board a filing to reflect a name change from Elizabethtown to Elizabethtown Gas Company effective simultaneously with the Closing. Upon the Closing, Pivotal, including its division Elizabethtown, is authorized to discontinue the provision of utility service pursuant to N.J.S.A. 48:2-24 and be relieved of its obligations under the Elizabethtown Tariff and associated Board Orders. Elizabethtown Gas Company will assume all of these obligations under the Elizabethtown Tariff and associated Board Orders;
- c. Elizabethtown Gas Company will file its next base rate case no later than June 2020 ("Next Base Rate Case") consistent with the Board Order ("2016 Rate Case Order") dated June 30, 2017 in BPU Docket Number GR16090826.<sup>5</sup>
- d. Any net savings realized by Elizabethtown Gas Company through the Acquisition integration process will be flowed through to Elizabethtown Gas Company's customers through the normal base rate case process;
- e. In future rate proceedings, to ensure that Elizabethtown Gas Company's customers will only pay costs to achieve to the extent that there are offsetting synergy savings, Elizabethtown Gas Company will net the total costs incurred to achieve synergy savings against the resulting total synergy savings, and may recover those costs to achieve only up to the amount of the total synergy savings generated. Commencing in January 2020, Elizabethtown Gas Company will file biannual reports identifying the Acquisition costs incurred by Elizabethtown Gas Company and any Acquisition savings realized by Elizabethtown Gas Company as a result of the Acquisition;
- f. Elizabethtown Gas Company will not seek recovery in rates of (a) any acquisition premium associated with the Acquisition or any previous acquisition, (b) any costs associated with goodwill arising from the Acquisition or any previous acquisition, or (c) any Transaction Costs incurred in connection with the Acquisition. For purposes of the Stipulation, Transaction Costs are defined as (i) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar expenses, (ii) change in control payments or (iii) any severance or retention costs. Such Transaction Costs also would

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<sup>5</sup> In re the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas for Approval of Increase Base Tariff Rates and Charges for Gas Service and Other Tariff Revisions, BPU Docket No. GR16090826, OAL Docket No. PUC 15870-16, Order dated June 30, 2017.

include SJI flotation expense (such as Underwriters fees) associated with common stock issuances undertaken to finance the Acquisition;

- g. Following the Closing, Elizabethtown Gas Company will maintain a capital structure that consists of no less than 46% common equity (calculated excluding goodwill). In its Next Base Rate Case, Elizabethtown Gas Company will file rates based on a capital structure that contains no more than 52.5% common equity (calculated excluding goodwill). Elizabethtown Gas Company will also submit with its Next Base Rate Case such information as it has available at the time of that filing concerning Southern Company Gas' capital structure. Nothing in the Stipulation shall prejudice the right of any party to challenge the reasonableness of the use of any capital structure submitted by Elizabethtown Gas Company for ratemaking purposes in any future proceedings and to propose alternatives to any capital structure submitted by Elizabethtown Gas Company. The capital structure requirements contained in this Section A.(v)g. apply only to the Next Base Rate Case and are not applicable to any subsequent Elizabethtown Gas Company rate case;
- h. Elizabethtown Gas Company will not include any common equity associated with goodwill (including Acquisition-related goodwill on SJI's or Elizabethtown Gas Company's balance sheet or good will arising from prior transactions) in Elizabethtown Gas Company's ratemaking capital structure;
- i. Joint Petitioners shall ensure that consummation of the Acquisition will not adversely affect customers because of accounting and ratemaking treatments of any of Elizabethtown's deferred balances of any kind that are due to or due from customers and would typically be a component in the determination of the cost of service and that exist prior to Closing on the Acquisition. Therefore, post-Closing, SJI agrees to indemnify and Hold Harmless all Elizabethtown ratepayers against any harm resulting from the loss of ratepayer benefits associated with any and all deferred credits or debits, and any and all deferred balances and regulatory liabilities of any kind and for any reason as a consequence of the Acquisition and this Hold Harmless is absolute and unconditional; and
- j. For a period of five (5) years following this proceeding, the amount of costs assessed to Elizabethtown Gas Company for services provided by an affiliate shall be no greater than they would have been had the Acquisition not occurred, regardless of whether such services are provided directly or indirectly by SJI, SJI Utilities, or any other SJI affiliate. An annual level of allocated SJI costs of \$19.7 million will serve as the baseline for this commitment for the next five (5) years. In any rate proceeding commenced during the five (5)-year commitment period, Elizabethtown Gas Company will have the burden to demonstrate that its service company costs are no higher than they would have been in the absence of the Acquisition for the services for which Elizabethtown Gas Company may seek cost recovery in such future rate proceedings. The baseline level of allocated SJI costs will not be treated as a hard cap on Elizabethtown Gas Company's recoverable service company costs but will be reviewed as evidence of whether Elizabethtown Gas Company has met the burden established in the

Stipulation. The parties to such future rate proceedings shall have full rights to challenge the prudence of any service company costs allocated to Elizabethtown Gas Company.

(v) **Impact on Employees.**

- a. Prior to Closing, SJI will extend offers of employment to all then current Elizabethtown employees on terms and conditions and at compensation and benefit levels comparable to their then-existing terms and compensation and benefit levels;
- b. For the first five (5) years following the closing of the Acquisition, SJI or an affiliate, together will maintain a minimum of three-hundred and thirty (330) employees in New Jersey to support Elizabethtown Gas Company's operations. Within twelve (12) months of the Closing, SJI will add a minimum of thirty (30) new employees to New Jersey to perform services currently provided to Elizabethtown by Southern Company Gas ("SCG"), Elizabethtown's parent company, in other states. Subject to operational needs, SJI expects these new employees to be employed in the following departments: Customer Experience, Dispatch, Engineering, Compliance and Construction Operations. SJI will not be required to add or maintain any such new employees to the extent SJI determines that such employees are not needed to support Elizabethtown Gas Company's operations;
- c. For five (5) years after Closing, Elizabethtown Gas Company will submit an annual report to Board Staff and Rate Counsel setting forth the number of employees by position and function with a baseline report to be filed within ninety (90) days of the Closing of the Acquisition and updates on the annual anniversary of that date;
- d. SJI will honor all of Elizabethtown's existing collective bargaining agreements in effect at the time of the Closing of the Acquisition;
- e. SJI will assume all of Elizabethtown's obligations and cause Elizabethtown to continue to meet its obligations to Elizabethtown's employees and retirees with respect to pension benefits; and
- f. SJI shall maintain an Elizabethtown Gas Company core management team for five (5) years following the completion of the Acquisition. Subject to operational needs, the core management team will consist of an Elizabethtown President, Chief Operating Officer and department heads responsible for the following areas (a) Rates and Regulatory, (b) Union Field Operations, (c) Northwest Field Operations, (d) Sales, (e) Engineering, (f) Construction Operations, (g) System Integrity, (h) Call Center, and (i) Gas Supply.

(vi) **Impact on Service.**

- a. Elizabethtown Gas Company will maintain the existing Elizabethtown field service centers, call center, walk-in payment centers and Union, New Jersey headquarters for a period of at least five (5) years following the Closing. Any relocation of these facilities prior to the five-year period will require



advance notification to the Board and any relocation outside of Elizabethtown Gas Company's service territory will require Board approval. All future relocations thereafter shall be made in accordance with the Board's regulations;

- b. SJJ will provide Elizabethtown Gas Company with the resources necessary to invest in capital and infrastructure projects to help ensure that Elizabethtown Gas Company may continue to provide safe, reliable and adequate utility service; post-acquisition Elizabethtown Gas shall, within six (6) months after discussion with Board Staff and Rate Counsel, develop a plan to address the following:
  - i. Leak Management
  - ii. Replacement of Cast Iron Mains
  - iii. Replacement of Bare Steel Mains
  - iv. Replacement of Ductile Iron and Copper Mains
  - v. Elimination of Master Meter Systems
- c. Elizabethtown Gas Company will maintain the current level of community support contributions of \$190,000 per year for a period of five (5) years following the Closing. Community support projects could include charitable, workforce development and economic development efforts;
- d. Elizabethtown Gas Company and South Jersey Gas will have access to each other's resources in emergencies and critical times; and post-acquisition Elizabethtown Gas shall implement Emergency Response Simulation Drills involving call center, dispatch, and operations personnel. Local emergency response personnel, such as police, fire and EMS, should be included in the emergency response drills whenever possible. Within the twelve (12) months following the execution of the Order, one of the two Elizabethtown Gas divisions shall perform an emergency drill simulating an event where the Elizabethtown Gas distribution system is compromised resulting in a simulated explosion or fire. After the conclusion of the twelve month period, each Elizabethtown Gas division shall perform an emergency drill, on an alternating calendar-year basis. The emergency drill shall be a site specific emergency drill at a training center facility or field site and not a tabletop drill. A tabletop drill, subject to the Bureau of Pipeline Safety approval, may be an additional option after each division has conducted its initial emergency drill. Elizabethtown Gas shall notify the Bureau of Pipeline Safety at least five business days prior to performing any emergency drill in order to allow Bureau of Pipeline Safety staff to schedule an inspection of the drill. A final audit report of each emergency drill shall be submitted to the Bureau of Pipeline Safety online reports database for review within two months after the emergency drill is performed.
- e. Elizabethtown Gas Company will continue to adhere to the requirement to submit to Rate Counsel and the Director of Customer Assistance quarterly reports concerning Elizabethtown Gas Company's performance in relation to certain service measures established in Elizabethtown's 2009 Base Rate Case in BPU Docket No. GR09030195, as supplemented in Elizabethtown's 2016 Base Rate Case in BPU Docket No. GR16090826. In addition, Elizabethtown Gas Company will adhere to the requirements contained in

the 2009 and 2016 Base Rate cases to conduct ongoing surveys of customer satisfaction using its telephone and field personnel and provide the results to Rate Counsel and Board Staff.

- f. Elizabethtown Gas Company shall meet regulations contained in the New Jersey Administrative Code and in the Pipeline Safety Regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration.

(vii) **Impact on Competition.**

- a. The Newly formed Elizabethtown Gas Company will remain financially indifferent as to whether customers purchase gas from Elizabethtown Gas Company or a third-party supplier; and
- b. Elizabethtown Gas Company and its affiliates, including, but not limited to SJI, SJI Utilities, SJRG and South Jersey Gas, will comply with all New Jersey and federal statutes and regulations and Board orders applicable to Elizabethtown Gas Company regarding competition, including those relating to retail access and customer choice.

**B. Shared Services Agreements/Affiliate Relationships**

- (i) Post-Closing, SJI and Elizabethtown Gas Company may enter into the MSA pursuant to which SJI will provide certain services to Elizabethtown Gas Company including, but not limited to administrative, corporate communications, government and community relations, human resources, insurance, information technology, legal, accounting and auditing services;
- (ii) Post-Closing, the following SSA's may be entered into: (a) an SSA between SJI Utilities and Elizabethtown Gas Company and (b) an SSA between SJI Utilities and South Jersey Gas Company. Pursuant to the SSAs, SJI Utilities will provide services to Elizabethtown Gas Company and South Jersey Gas that involve utility operations, including but not limited to strategic oversight of customer service, rates and regulatory and gas supply management;
- (iii) Within ninety (90) days of Closing, Elizabethtown Gas Company will file an updated Cost Allocation Manual pursuant to N.J.A.C. 14:4-4.5; and
- (iv) Within ninety (90) days of Closing, Elizabethtown Gas Company will file its Affiliate Standards Compliance Plan pursuant to N.J.A.C. 14:4-3.7.

**C. Ring Fencing and Financial Protections**

- (i) Post-Closing, SJI will continue to be in full compliance with BPU regulations related to ring fencing and will comply with all such provisions as they relate to Elizabethtown Gas Company. This shall be comparable to the ring-fencing measures maintained for South Jersey Gas Company. At a minimum, this shall include Elizabethtown Gas Company being a wholly-owned corporate subsidiary of SJI Utilities, Inc., issuing its own long-term debt, maintaining its own credit ratings, and refraining from pledging any of its assets for the benefit or support of any corporate affiliates.

- (ii) Elizabethtown Gas Company will not issue equity in connection with the Acquisition.
- (iii) Elizabethtown Gas Company is currently seeking BPU approval for and will then issue a mortgage indenture enabling the issuance of first mortgage bonds. It will maintain that capability.
- (v) ETG Acquisition Corp. in its name or the name of Elizabethtown Gas Company will enter into a three-hundred and sixty-four (364) day syndicated term facility with a group of banks. Within ninety (90) days of Closing, Elizabethtown Gas Company will:
  - a. Record a mortgage indenture;
  - b. Obtain a rating from a nationally recognized rating agency (Standard & Poor's, Moody's, Fitch);
  - c. Circle (lock-in) a long-term debt cost rate for its permanent (i.e. long term) financing of the planned \$530 million three-hundred and sixty-four (364) day syndicated term facility, approval of which is currently pending before the BPU; and
  - d. Complete this permanent financing at circled rate within one-hundred and eighty (180) days of Closing via the private placement process, potentially with hedging to mitigate the interest rate risk within one-hundred and eighty (180) days of Closing.
- (vi) SJI and/or SJI Utilities will establish a utility-specific commercial paper program within six (6) months of Closing;
- (vii) To the extent SJI has money pools, SJI will maintain separate money pools for regulated and unregulated operations. SJI may lend money to the regulated money pool but may not borrow from it. SJI's unregulated subsidiaries may neither lend money to, nor borrow money from, the regulated money pool. Within six months of Closing, SJI Utilities, Elizabethtown Gas Company and South Jersey Gas Company shall submit a plan to Board Staff and Rate Counsel pertaining to the potential establishment of such a utility-only money pool;
- (viii) In the event that the unsecured debt rating of SJI or Elizabethtown Gas Company falls below investment grade by any major rating agency, Elizabethtown will provide the Board, Staff and Rate Counsel with notice within ten (10) days of the downgrade and supply a mitigation plan within five (5) business days of the required notice; and
- (ix) If SJI's or Elizabethtown Gas Company's senior unsecured debt rating falls below investment grade by any major rating agency, Elizabethtown Gas Company shall cease paying dividends to SJI until such time as an investment grade rating is restored.

**D. Asset Management Agreement.**

- (i) Post-Closing, the asset management agreement between Sequent Energy Management L.P. and Elizabethtown pursuant to which Sequent provides

upstream pipeline capacity management services as well as gas supply to Elizabethtown ("SEM AMA"), as approved in BPU Docket No. GO13040272, will be assigned to SJRG. In accordance with this assignment, SJRG will replace SEM as the provider of these services to Elizabethtown Gas Company for a term commencing at Closing for the duration of the remaining term of the SEM AMA through March 31, 2019.

- (ii) SJRG and Elizabethtown will enter into a new asset management agreement ("AMA Replacement Agreement") for the term April 1, 2019 through March 31, 2022. The AMA Replacement Agreement, attached to the Stipulation as confidential Appendix A, is subject to the requirements contained in paragraph (iii) immediately below. At the time of expiration of the AMA Replacement Agreement on March 31, 2022, the Elizabethtown Gas Company Gas Supply function will be brought in-house unless otherwise ordered by the Board.
- (iii) Within 90 (ninety) days of the Closing, Elizabethtown Gas Company will file the AMA Replacement Agreement with the Board, Board Staff and Rate Counsel. Within 10 (ten) days of the Closing, Elizabethtown Gas Company will withdraw the Petition filed by Elizabethtown on October 2, 2017 in BPU Docket No. GO17101033. The AMA Replacement Agreement will reflect the following consideration:
  - a. SJRG will pay Elizabethtown Gas Company an annual fee for the right to act as its gas supplier and capacity management agent. Elizabethtown Gas Company 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, physical dispatch optimization and storage arbitrage margins that SJRG is able to obtain for Elizabethtown Gas Company as follows:
    - 1. The minimum fixed payment will be \$4.25 million annually;
    - 2. Capacity release credits, off-system sales margins, physical dispatch optimization and storage arbitrage margins obtained by SJRG for Elizabethtown Gas Company will be shared as follows:
      - a. One hundred percent (100%) of the first \$4.25 million of such margins/credits will be retained by SJRG because SJRG will have already made the minimum payment of \$4.25 million described above;
      - b. Seventy percent (70%) of annual margins/credits in excess of \$4.25 million and up to \$7.452 million will be retained by SJRG with the remaining thirty percent (30%) credited to Elizabethtown Gas Company's BGSS-P clause;
      - c. Twenty-nine percent (29%) of annual margins/credits in excess of \$7.452 million up to \$13.717million will be retained by SJRG with the remaining seventy-one percent (71%) credited to Elizabethtown Gas Company's BGSS-P clause;
      - d. Fifty percent (50%) of annual margins/credits in excess of \$13.717 million up to \$18.667 million will be retained by SJRG with the remaining fifty percent (50%) credited to Elizabethtown Gas Company's BGSS-P clause; and
      - e. All margins in excess of \$18,667,000.00 will be shared eighty-five percent (85%) to Elizabethtown Gas Company's

BGSS-P clause and fifteen percent (15%) to SJRG.

- b. The margin sharing mechanism described above is illustrated on confidential Appendix B which is attached to the Stipulation. The margin sharing formula results in an overall sharing of approximately thirty percent (30%) of margins/credits to SJRG and seventy percent (70%) of such margins/credits to Elizabethtown Gas Company's BGSS-P clause if total margins/credits for any annual period are between \$8.0 million and \$14.0 million.
- (iv) Information contained in the Elizabethtown Gas Company "books" maintained by SJRG will be made available to Staff and Rate Counsel on reasonable notice at Elizabethtown's Gas Company's headquarters. In addition, following the completion of the first year of the term of the AMA Replacement Agreement, and each year thereafter, SJI, the parent company of Elizabethtown Gas Company and SJRG, will conduct an internal audit of the SJRG/Elizabethtown Gas Company agreements. The audit will be conducted at SJI's cost and expense using either internal or external resources as determined by SJI. The auditor will be responsible for determining (i) whether margins were properly credited to Elizabethtown Gas Company's BGSS-P clause in the manner required by the Stipulation and the AMA Replacement Agreement, and (ii) whether SJRG was treating Elizabethtown Gas Company in a non-discriminatory manner in relation to other SJRG asset management arrangements. The audit shall be completed within nine (9) months of the applicable year. A copy of the results of this internal audit will be provided to the Director of the Division of Energy of the Board and the Director of Rate Counsel within ten (10) days of completion. All supporting documents will be provided at Elizabethtown Gas Company's offices in New Jersey on reasonable notice. All of the information described in the Stipulation will be provided under a mutually agreeable confidentiality agreement.
  - (v) Elizabethtown Gas Company will submit the following reports to the Board, the Director of the Division of Energy of the Board and Rate Counsel:
    - a. Quarterly reports detailing margin sharing activities and related information in a form similar to that currently filed by Elizabethtown; such reports shall be filed no later than forty-five (45) days after the end of the applicable quarter;
    - b. Quarterly reports detailing any costs incurred by Elizabethtown Gas Company as a result of SJRG having to liquidate supply contracts or obtain replacement supplies as a result of its inability to purchase supplies at certain secondary points to be identified in the AMA Replacement Agreement for subsequent delivery to Elizabethtown Gas Company; such reports shall be filed no later than forty-five (45) days after the end of the applicable quarter if and to the extent any costs are incurred by Elizabethtown Gas Company;
    - c. Annual reports detailing activities that occurred in accordance with Section 2.5 of the Gas Purchase and Sale Agreement; such reports will include SJRG's initial price quote, any price quotes obtained from others and whether SJRG exercised its right to manage the lowest quote or

Elizabethtown purchased quantities from third parties, and shall be filed no later than 45 days after the end of the year in which the applicable activities occurred; and

- d. An analysis prepared by a third party of the expected asset optimization margin that could have been extracted from Elizabethtown Gas Company's natural gas capacity and supply portfolio during the years ended March 31, 2020 and March 31, 2021 shall be filed no later than September 30, 2021.
- (vi) The \$4.25 million minimum annual fee will be credited to Elizabethtown Gas Company'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 Gas Company's BGSS-P clause twice a year no later than September 30 and March 31. Each year in Elizabethtown Gas Company's Annual BGSS-P filing with the Board, Elizabethtown Gas Company will advise Staff and Rate Counsel of the results obtained by SJRG during the previous BGSS-P annual period.

By letter dated June 21, 2018, PSE&G submitted a letter to the Board stating that it does not object to the Stipulation.

#### **DISCUSSION AND FINDINGS:**

The Board, having reviewed the Acquisition Petition, the Stipulation, and the entire record, **FINDS** that the proposed acquisition by SJL of Elizabethtown satisfies N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c) and provides a net benefit to Elizabethtown customers and to New Jersey. With regard to the specific impact areas identified by the statute, the Board **FINDS**:

- A. **Competition**: The change in control will not adversely impact competition in New Jersey because Elizabethtown will continue to operate in its current franchise territory under the same market condition which currently exists subject to the continuing jurisdiction of the Board. The Joint Petitioners note that Elizabethtown will remain financially indifferent as to whether gas is purchased from Elizabethtown or a third-party supplier. Elizabethtown will also comply with all regulations, including those relating to retail access and customer choice.
- A. **Customer Rates**: The transaction will have a positive impact on rates as customers will receive \$15 million in direct rate credits, will be shielded from any pass-through of acquisition premiums, transactions costs or goodwill, and will receive protections in future rate case so that costs to achieve savings may not exceed allocated merger savings in rates. The Stipulation also provides protections with regard to the calculation of shared services charges so that costs to Elizabethtown customers in post-acquisition rate cases will not exceed charges had the Acquisition not occurred.
- B. **Employees**: The Joint Petitioners have committed to maintaining a minimum of 330 employees in New Jersey for five (5) years following the Closing and Elizabethtown will submit reports to the Board annually detailing the number of employees by position and function. SJL will maintain core management teams now in place for five (5) years following the Closing. SJL will honor all collective

bargaining agreements, continue to meet obligations to employees and retirees and maintain a management team in New Jersey.

- D. Provision of Safe and Adequate Service: Elizabethtown will continue to provide safe, adequate and reliable, high-quality service and fulfill all of its obligations under New Jersey law, subject to the continued jurisdiction of the Board. Additionally, Elizabethtown's operations, call and walk-in payment centers and headquarters will be maintained for at least five (5) years post-Closing. SJL will provide Elizabethtown with the resources necessary to invest in capital and infrastructure projects to help ensure that Elizabethtown may continue to provide safe and adequate service.

With regard to positive net benefit, the \$15 million dollar direct rate credit and the employment commitments that extend five (5) years constitute a net positive benefit for Elizabethtown ratepayers and New Jersey. Ratepayers will receive \$15 million via a credit to bills which is a real financial benefit to ratepayers which would not occur absent the Acquisition. SJL agreed to maintain employment at levels specified in the Stipulation and committed to maintain core management to assure continued maintenance of safe, adequate and proper service. Further, the Stipulation contains various ring fencing and other measures including the establishment of a commercial paper program to assure the continuing financial integrity of the utility.

In considering the Acquisition Petition at issue herein, the Board as required by N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14, and N.J.A.C. 14:1-5.6 and as set forth above, has carefully evaluated the impact of the proposed acquisition on competition, on the rates of ratepayers affected by the Acquisition, on Elizabethtown's employees, and on Elizabethtown's provision of safe and adequate utility service at just and reasonable rates. In doing so, the Board has carefully considered the entire record in this matter, including the Stipulation. Based on the foregoing and subject to the conditions set forth herein and in the Stipulation, the Board **HEREBY CONCLUDES** that the statutory criteria are satisfied and that the proposed change in control can be accomplished without adverse impact on competition, rates, employees or the provision of safe and adequate service at just and reasonable rates, and that on balance positive benefits will accrue to the customers of Elizabethtown and the State of New Jersey. Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein.

Based on the aforementioned, the Board **HEREBY APPROVES** the Acquisition of Elizabethtown by SJL and such other relief sought in the Acquisition Petition as modified by the Stipulation. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the Acquisition is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such;
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting Elizabethtown;
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter owned by Joint Petitioners.

4. Within thirty (30) days of the date of the closing of this transaction, the Joint Petitioners shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses of the sale; and
5. Approval of this Acquisition does not constitute review or approval of any subsequent mergers or corporate restructuring.
6. Consummation of the Acquisition must take place no later than December 31, 2018, unless otherwise extended by the Board.

The Board **HEREBY RATIFIES** the decisions of President Fiordaliso rendered during the proceedings for the reasons stated in his Orders.

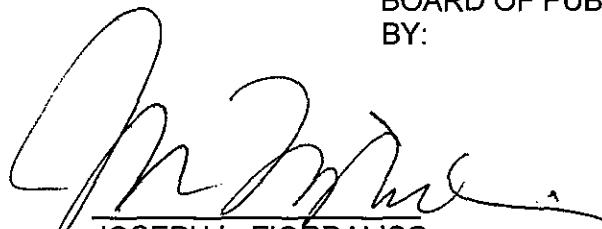
Elizabethtown Gas Company is **HEREBY DIRECTED** to file the appropriate tariff sheets conforming to the terms and conditions of this Order within ten (10) days of the closing of the acquisition.

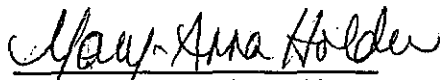
Elizabethtown Gas Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude or prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

The Order shall be effective on July 1, 2018.

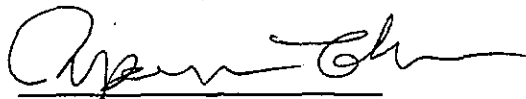
DATED: 6/22/18

BOARD OF PUBLIC UTILITIES  
BY:

  
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PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

  
ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
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 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

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June 21, 2018

***Via Electronic Mail and 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

**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,

Enclosed for filing with the New Jersey Board of Public Utilities ("Board") in the above proceeding are an original and ten copies of the public version of a Stipulation of Settlement ("Stipulation") executed by representatives of South Jersey Industries, Inc. ("SJI"), ETG Acquisition Corp., South Jersey Resources Group, LLC ("SJRG"), Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas,<sup>1</sup> Board Staff, the New Jersey Division of Rate Counsel, and the New Jersey Large Energy Users Coalition. It is our understanding that the Stipulation is not opposed by any party to this proceeding. The Stipulation resolves all issues in this proceeding.

The Stipulation contains two appendices – Appendix A and Appendix B – that are proprietary and confidential. Accordingly, this filing contains only the public version of the Stipulation. On this same day, a filing is being made 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.<sup>2</sup>

It is respectfully requested that the Board consider and approve the Stipulation at its June 22, 2018 agenda meeting.

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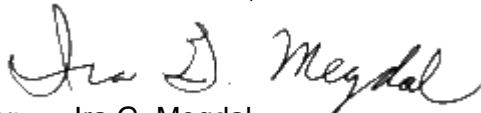
<sup>1</sup> ETG Acquisition Corp. and SJRG are wholly owned subsidiaries of SJI.

<sup>2</sup> Accordingly, the enclosed Stipulation is marked "Preliminary Public Copy".

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

Respectfully,

COZEN O'CONNOR, PC

A handwritten signature in black ink that reads "Ira G. Megdal". The signature is written in a cursive style with a large initial "I" and a stylized "M".

By: Ira G. Megdal

IGM:lvk

cc: Service List w/ enclosures

**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**

**SERVICE LIST**

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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE :  
ACQUISITION OF ELIZABETHTOWN :  
GAS, A DIVISION OF PIVOTAL : DOCKET NO.: GM17121309  
UTILITY HOLDINGS, INC. BY ETG :  
ACQUISITION CORP., A SUBSIDIARY : STIPULATION OF SETTLEMENT  
OF SOUTH JERSEY INDUSTRIES, INC. :  
AND RELATED TRANSACTIONS :

**APPEARANCES:**

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**Mary Patricia Keefe, Esq.**, Vice President on behalf of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Kenneth T. Maloney, Esq. and Deborah M. Franco, Esq.**, Cullen and Dykman LLP, on behalf of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas

**Alex Moreau**, Deputy Attorney General (Gurbir S. Grewal, Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

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**Steven Goldenberg, Esq.**, Fox Rothschild and **Paul Forshay, Esq.**, Eversheds Sutherland, on behalf of Intervenor, the New Jersey Large Energy Users Coalition

**Joseph F. Accardo Jr., Esq. and Danielle Lopez, Esq.** on behalf of Intervenor, Public Service Electric and Gas Company

**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

The parties to this proceeding are as follows: South Jersey Industries, Inc. (“SJI”), ETG Acquisition Corp., and South Jersey Resources Group LLC (“SJR”),<sup>1</sup> together with Pivotal Utility Holdings, Inc. (“Pivotal”), (collectively, the “Joint Petitioners”); the New Jersey Division

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<sup>1</sup> ETG Acquisition Corp. and SJRG are wholly owned subsidiaries of SJI.

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of Rate Counsel (“Rate Counsel”); the Staff of the New Jersey Board of Public Utilities (“Board Staff” or “Staff”); and Intervenors, New Jersey Large Energy Users Coalition (“NJLEUC”) and Public Service Electric and Gas Company (“PSE&G”). The New Jersey Board of Public Utilities shall be referred to in this Stipulation of Settlement (the “Stipulation”) as the “Board” or “BPU.”

**PROCEDURAL HISTORY**

On December 21, 2017, the Joint Petitioners initiated this proceeding with the filing of a Verified Joint Petition (“Joint Petition”) with the Board seeking approval of the acquisition of control by ETG Acquisition Corp. of Pivotal’s New Jersey utility operating division, Elizabethtown Gas (“Elizabethtown”), including the sale of substantially all of Elizabethtown’s assets, including Elizabethtown’s property, franchises, privileges, rights and municipal consents (“Acquisition”) pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14, and N.J.A.C. 14:1-5.6. As stated in the Joint Petition, ETG Acquisition Corp. would be renamed as “Elizabethtown Gas Company” after closing (“Closing”) of the Acquisition. Subsequent references in this Stipulation to the post-Closing entity ETG Acquisition Corp. will be referred to as “Elizabethtown Gas Company”. Subsequent references in this Stipulation to the pre-Closing entity Elizabethtown will be referred to as “Elizabethtown.”

The Joint Petitioners also sought approval of certain affiliate service agreements for the provision of administrative, support and management services pursuant to N.J.S.A. 48:3-7.1 and N.J.A.C. 14:4-4.5. These agreements, to be entered into post-Closing, included (i) a Master Services Agreement (“MSA”) between SJI and Elizabethtown Gas Company and (ii) two Shared Services Agreements (“SSAs”), one between SJI Utilities, Inc., (“SJI Utilities”) and Elizabethtown Gas Company and the other between SJI Utilities and South Jersey Gas Company (“South Jersey Gas”) and (iii) certain agreements, discussed further herein, to enable the

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provision of capacity management and gas supply services to Elizabethtown Gas Company by SJRG after the Closing of the Acquisition.

The Joint Petition also sought the following additional approvals: (a) authority to transfer the stock of South Jersey Gas from SJI to SJI Utilities pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.10 to enable South Jersey Gas to become a wholly owned subsidiary of SJI Utilities; (b) the discontinuance by Pivotal of the provision of utility service pursuant to N.J.S.A. 48:2-24, including relief from all obligations under the “Elizabethtown Gas Tariff for Gas Service B.P.U. No. 15” on file with the Board (“Elizabethtown Tariff”) and applicable Board Orders, (c) the adoption of the Elizabethtown Tariff by Elizabethtown Gas Company, and (d) authority for Elizabethtown Gas Company to record certain regulatory assets and liabilities and to continue to employ deferred accounting for the costs recorded as regulatory assets and liabilities.

Finally, it was further requested that the Board disclaim potential jurisdiction over the sale by Pivotal to SJI of the assets of Elkton Gas (“Elkton”), Pivotal’s Maryland utility operating division, or in the alternative, to approve the sale of Elkton. As reflected in the Joint Petition, none of the assets of Elkton are located in New Jersey, and none of Elkton’s assets have been used to provide service to customers in New Jersey or reflected in rates paid by New Jersey customers.

By Order dated January 31, 2018, the Board retained this matter for hearing, designated President Joseph L. Fiordaliso as the presiding officer, and required that motions to intervene or participate be filed by February 23, 2018. Motions to intervene were filed by NJLEUC on February 9, 2018, and by PSE&G on February 22, 2018. NJLEUC also made a Motion for Admission *Pro Hac Vice* on behalf of Paul Forshay. By correspondence dated March 5, 2018, Joint Petitioners advised they would not oppose NJLEUC’s Motion to Intervene or for the

admission *pro hac vice* to the extent NJLEUC disclosed its members who are customers of Elizabethtown. By correspondence dated March 8, 2018, the Joint Petitioners indicated they had no objection to the Motion to Intervene filed by PSE&G. By order dated May 18, 2018, President Fiordaliso issued a Pre-Hearing Order setting a procedural schedule for this matter and granting the motions to intervene of NJLEUC and PSE&G.

After proper public notice, two public hearings were held in Elizabethtown's service territory in Flemington, New Jersey on April 17, 2018 with sessions at 4:30 P.M. and 5:30 P.M. and in Union, New Jersey on April 19, 2018 with sessions at 4:30 P.M. and 5:30 P.M. No members of the public appeared at the public hearings. The Board received one letter in opposition of the Acquisition.

The Joint Petition was supported by the Direct Testimony of five witnesses: Michael J. Renna, David Robbins Jr. and Ann T. Anthony of SJI; Gregory M. Nuzzo of SJRG; and Brian MacLean of Elizabethtown. For the purpose of providing the Board with a record supporting the Stipulation, the Signatory Parties stipulate into the record and rely upon the veracity of these Direct Testimonies, supporting documents and all of the discovery and informal responses provided during the course of this proceeding.

Extensive discovery was conducted and a number of settlement discussions were held. Joint Petitioners, Board Staff, Rate Counsel and NJLEUC (collectively, the "Signatory Parties") have come to an agreement on all of the factual and legal issues arising in this matter.

**STIPULATED MATTERS**

Based upon the foregoing, the Signatory Parties hereto agree and stipulate as follows:

**A. Acquisition and Related Approvals.**

(i) **Standard of Review.** The statutory and regulatory criteria for approval of petitions involving acquisitions of control of a New Jersey public utility, including the sale of substantially all of the New Jersey public utility's assets, as set forth in N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.14(c) and N.J.A.C. 14:1-5.6 and any related statutes and regulations have been satisfied. More particularly, the agreement and conditions set forth herein support findings and conclusions by the Board that: (a) the Acquisition will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of Elizabethtown, or on the provision of safe and adequate utility service at just and reasonable rates; and (b) that consummation of the Acquisition, consistent with the conditions set forth in this Stipulation, is in the public interest, and will result in positive benefits to customers and the State of New Jersey.

(ii) **Consummation of the Acquisition and Related Transfers.** The Joint Petitioners may undertake all those actions necessary for the Acquisition to be lawfully consummated in the manner set forth in the Asset Purchase Agreement ("APA") entered into by and between Pivotal and SJI. Specifically, SJI, through its assignee Elizabethtown Gas Company, will purchase substantially all of the assets of Elizabethtown, including Elizabethtown's property, franchises, privileges and rights, including all municipal consents, permits, licenses, easements and other authorizations and agreements. The Acquisition will also include the sale of certain regulatory assets and liabilities that are currently reflected on Elizabethtown's balance sheet and represent certain deferred costs and/or revenues associated with various items including, but not limited to, pension and other post-employment benefit

costs, gas costs and environmental costs and, in connection therewith, ETG Acquisition Corp. is authorized to record certain regulatory assets and liabilities and to continue to employ deferred accounting for the costs recorded as regulatory assets and liabilities as of the date of the Closing.

(iii) **Corporate Reorganization.** SJI is authorized to undertake a corporate reorganization in connection with the Acquisition whereby South Jersey Gas will be acquired by SJI Utilities through a contribution of stock from SJI and result in South Jersey Gas becoming a wholly owned subsidiary of SJI Utilities. SJI Utilities will also wholly own two additional subsidiaries, ETG Acquisition Corp. and Elkton Acquisition Corp., the SJI entity that, in a separate transaction, will acquire substantially all of the assets of Elkton, Pivotal's Maryland utility operating company, subject to final approval by the Maryland Public Service Commission ("MDPSC") in Case No. 9475. Immediately post-Closing, ETG Acquisition Corp. will be renamed Elizabethtown Gas Company.

(iv) **Sale of Elkton Assets.** The Signatory Parties further agree that it is in the public interest for the Board to disclaim jurisdiction over the sale of the assets of Elkton to SJI or, in the alternative approve the sale, on the basis that Elkton is subject to the jurisdiction of the MDPSC, none of the assets of Elkton that are proposed to be transferred are located in New Jersey and none of Elkton's assets have been used to provide service to customers in New Jersey or reflected in rates paid by New Jersey customers. It is acknowledged that this disclaimer/approval is only required if and to the extent the sale of the Elkton assets precede the Closing of the Acquisition.

(v) **Impact on Rates.**

a. After consummation of the Closing, SJI will enable Elizabethtown Gas Company to provide a one-time credit to all its customers totaling \$15 million to be



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provided in the form of a bill credit. The Signatory Parties request that the Board determine that these credits be distributed as per customer bill credits to all of Elizabethtown Gas Company's then current customers served under Service Classifications RDS, SGS, GDS, LVD, EGF, GLS, CSI, IS, CS, FTS, NGV and ITS within ninety (90) days of the Closing of the Acquisition. The Signatory Parties agree that the bill credits should be allocated among Elizabethtown Gas Company's customer classes based on the base rate revenues reflected in the rates that were approved by the Board in Elizabethtown's most recent base rate proceeding in BPU Docket No. GR16090826, as updated to reflect federal income tax changes. At least ten (10) days prior to issuing the bill credits, Elizabethtown Gas Company will submit to Board Staff and Rate Counsel backup documents and calculations in support of the bill credits.

**b.** Post-Closing, Elizabethtown Gas Company will adopt the Elizabethtown Tariff. Within 10 days of Closing, Elizabethtown Gas Company will submit to the Board a filing to reflect a name change from Elizabethtown to Elizabethtown Gas Company effective simultaneously with the Closing. Upon the Closing, Pivotal, including its division Elizabethtown, is authorized to discontinue the provision of utility service pursuant to N.J.S.A. 48:2-24 and be relieved of its obligations under the Elizabethtown Tariff and associated Board Orders. Elizabethtown Gas Company will assume all of these obligations under the Elizabethtown Tariff and associated Board Orders;

**c.** Elizabethtown Gas Company will file its next base rate case no later than June 2020 ("Next Base Rate Case") consistent with the Board Order ("2016 Rate Case Order") dated June 30, 2017 in BPU Docket Number GR16090826.<sup>2</sup>

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<sup>2</sup> *In re the Petition of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas for Approval of Increase Base Tariff Rates and Charges for Gas Service and Other Tariff Revisions*, BPU Docket No. GR16090826, OAL Docket No. PUC 15870-16, Order dated June 30, 2017.

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**d.** Any net savings realized by Elizabethtown Gas Company through the Acquisition integration process will be flowed through to Elizabethtown Gas Company's customers through the normal base rate case process;

**e.** In future rate proceedings, to ensure that Elizabethtown Gas Company's customers will only pay costs to achieve to the extent that there are offsetting synergy savings, Elizabethtown Gas Company will net the total costs incurred to achieve synergy savings against the resulting total synergy savings, and may recover those costs to achieve only up to the amount of the total synergy savings generated. Commencing in January 2020, Elizabethtown Gas Company will file biannual reports identifying the Acquisition costs incurred by Elizabethtown Gas Company and any Acquisition savings realized by Elizabethtown Gas Company as a result of the Acquisition;

**f.** Elizabethtown Gas Company will not seek recovery in rates of (a) any acquisition premium associated with the Acquisition or any previous acquisition, (b) any costs associated with goodwill arising from the Acquisition or any previous acquisition, or (c) any Transaction Costs incurred in connection with the Acquisition. For purposes of this Stipulation, Transaction Costs are defined as (i) consultant, investment banker, legal and regulatory support fees (internal as well as external), and printing and similar expenses, (ii) change in control payments or (iii) any severance or retention costs. Such Transaction Costs also would include SJI flotation expense (such as Underwriters fees) associated with common stock issuances undertaken to finance the Acquisition;

**g.** Following the Closing, Elizabethtown Gas Company will maintain a capital structure that consists of no less than 46% common equity (calculated excluding goodwill). In its Next Base Rate Case, Elizabethtown Gas Company will file rates based on a

capital structure that contains no more than 52.5% common equity (calculated excluding goodwill). Elizabethtown Gas Company will also submit with its Next Base Rate Case such information as it has available at the time of that filing concerning Southern Company Gas' capital structure. Nothing in this Stipulation shall prejudice the right of any party to challenge the reasonableness of the use of any capital structure submitted by Elizabethtown Gas Company for ratemaking purposes in any future proceedings and to propose alternatives to any capital structure submitted by Elizabethtown Gas Company. The capital structure requirements contained in this Section A.(v)g. apply only to the Next Base Rate Case and are not applicable to any subsequent Elizabethtown Gas Company rate case;

**h.** Elizabethtown Gas Company will not include any common equity associated with goodwill (including Acquisition-related goodwill on SJI's or Elizabethtown Gas Company's balance sheet or good will arising from prior transactions) in Elizabethtown Gas Company's ratemaking capital structure;

**i.** Joint Petitioners shall ensure that consummation of the Acquisition will not adversely affect customers because of accounting and ratemaking treatments of any of Elizabethtown's deferred balances of any kind that are due to or due from customers and would typically be a component in the determination of the cost of service and that exist prior to Closing on the Acquisition. Therefore, post-Closing, SJI agrees to indemnify and Hold Harmless all Elizabethtown ratepayers against any harm resulting from the loss of ratepayer benefits associated with any and all deferred credits or debits, and any and all deferred balances and regulatory liabilities of any kind and for any reason as a consequence of the Acquisition and this Hold Harmless is absolute and unconditional; and

j. For a period of five (5) years following this proceeding, the amount of costs assessed to Elizabethtown Gas Company for services provided by an affiliate shall be no greater than they would have been had the Acquisition not occurred, regardless of whether such services are provided directly or indirectly by SJI, SJI Utilities, or any other SJI affiliate. An annual level of allocated SJI costs of \$19.7 million will serve as the baseline for this commitment for the next five (5) years. In any rate proceeding commenced during the five (5)-year commitment period, Elizabethtown Gas Company will have the burden to demonstrate that its service company costs are no higher than they would have been in the absence of the Acquisition for the services for which Elizabethtown Gas Company may seek cost recovery in such future rate proceedings. The baseline level of allocated SJI costs will not be treated as a hard cap on Elizabethtown Gas Company's recoverable service company costs but will be reviewed as evidence of whether Elizabethtown Gas Company has met the burden established herein. The parties to such future rate proceedings shall have full rights to challenge the prudence of any service company costs allocated to Elizabethtown Gas Company.

(vi) **Impact on Employees.**

a. Prior to Closing, SJI will extend offers of employment to all then current Elizabethtown employees on terms and conditions and at compensation and benefit levels comparable to their then-existing terms and compensation and benefit levels;

b. For the first five (5) years following the closing of the Acquisition, SJI or an affiliate, together will maintain a minimum of three-hundred and thirty (330) employees in New Jersey to support Elizabethtown Gas Company's operations. Within twelve (12) months of the Closing, SJI will add a minimum of thirty (30) new employees to New Jersey to perform services currently provided to Elizabethtown by Southern Company Gas ("SCG"),

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Elizabethtown's parent company, in other states. Subject to operational needs, SJI expects these new employees to be employed in the following departments: Customer Experience, Dispatch, Engineering, Compliance and Construction Operations. SJI will not be required to add or maintain any such new employees to the extent SJI determines that such employees are not needed to support Elizabethtown Gas Company's operations;

c. For five (5) years after Closing, Elizabethtown Gas Company will submit an annual report to Board Staff and Rate Counsel setting forth the number of employees by position and function with a baseline report to be filed within ninety (90) days of the Closing of the Acquisition and updates on the annual anniversary of that date;

d. SJI will honor all of Elizabethtown's existing collective bargaining agreements in effect at the time of the Closing of the Acquisition;

e. SJI will assume all of Elizabethtown's obligations and cause Elizabethtown to continue to meet its obligations to Elizabethtown's employees and retirees with respect to pension benefits; and

f. SJI shall maintain an Elizabethtown Gas Company core management team for five (5) years following the completion of the Acquisition. Subject to operational needs, the core management team will consist of an Elizabethtown President, Chief Operating Officer and department heads responsible for the following areas (a) Rates and Regulatory, (b) Union Field Operations, (c) Northwest Field Operations, (d) Sales, (e) Engineering, (f) Construction Operations, (g) System Integrity, (h) Call Center, and (i) Gas Supply.

(vii) **Impact on Service.**

a. Elizabethtown Gas Company will maintain the existing Elizabethtown field service centers, call center, walk-in payment centers and Union, New Jersey headquarters for a period of at least five (5) years following the Closing. Any relocation of these facilities prior to the five-year period will require advance notification to the Board and any relocation outside of Elizabethtown Gas Company's service territory will require Board approval. All future relocations thereafter shall be made in accordance with the Board's regulations;

b. SJI will provide Elizabethtown Gas Company with the resources necessary to invest in capital and infrastructure projects to help ensure that Elizabethtown Gas Company may continue to provide safe, reliable and adequate utility service; post-acquisition Elizabethtown Gas shall, within six (6) months after discussion with Board Staff and Rate Counsel, develop a plan to address the following:

1. Leak Management
2. Replacement of Cast Iron Mains
3. Replacement of Bare Steel Mains
4. Replacement of Ductile Iron and Copper Mains
5. Elimination of Master Meter Systems

c. Elizabethtown Gas Company will maintain the current level of community support contributions of \$190,000 per year for a period of five (5) years following the Closing. Community support projects could include charitable, workforce development and economic development efforts;

d. Elizabethtown Gas Company and South Jersey Gas will have access to each other's resources in emergencies and critical times; and post-acquisition

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Elizabethtown Gas shall implement Emergency Response Simulation Drills involving call center, dispatch, and operations personnel. Local emergency response personnel, such as police, fire and EMS, should be included in the emergency response drills whenever possible. Within the twelve (12) months following the execution of the Order, one of the two Elizabethtown Gas divisions shall perform an emergency drill simulating an event where the Elizabethtown Gas distribution system is compromised resulting in a simulated explosion or fire. After the conclusion of the twelve month period, each Elizabethtown Gas division shall perform an emergency drill, on an alternating calendar-year basis. The emergency drill shall be a site specific emergency drill at a training center facility or field site and not a tabletop drill. A tabletop drill, subject to the Bureau of Pipeline Safety approval, may be an additional option after each division has conducted its initial emergency drill. Elizabethtown Gas shall notify the Bureau of Pipeline Safety at least five business days prior to performing any emergency drill in order to allow Bureau of Pipeline Safety staff to schedule an inspection of the drill. A final audit report of each emergency drill shall be submitted to the Bureau of Pipeline Safety online reports database for review within two months after the emergency drill is performed.

e. Elizabethtown Gas Company will continue to adhere to the requirement to submit to Rate Counsel and the Director of Customer Assistance quarterly reports concerning Elizabethtown Gas Company's performance in relation to certain service measures established in Elizabethtown's 2009 Base Rate Case in BPU Docket No. GR09030195, as supplemented in Elizabethtown's 2016 Base Rate Case in BPU Docket No. GR16090826. In addition, Elizabethtown Gas Company will adhere to the requirements contained in the 2009 and 2016 Base Rate cases to conduct ongoing surveys of customer satisfaction using its telephone and field personnel and provide the results to Rate Counsel and Board Staff.

f. The newly-formed Elizabethtown Gas Company shall meet regulations contained in the New Jersey Administrative Code and in the Pipeline Safety Regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration.

**(viii) Impact on Competition.**

a. Elizabethtown Gas Company will remain financially indifferent as to whether customers purchase gas from Elizabethtown Gas Company or a third-party supplier; and

b. Elizabethtown Gas Company and its affiliates, including, but not limited to SJI, SJI Utilities, SJRG and South Jersey Gas, will comply with all New Jersey and federal statutes and regulations and Board orders applicable to Elizabethtown Gas Company regarding competition, including those relating to retail access and customer choice.

**B. Shared Services Agreements/Affiliate Relationships**

(i) Post-Closing, SJI and Elizabethtown Gas Company may enter into the MSA pursuant to which SJI will provide certain services to Elizabethtown Gas Company including, but not limited to administrative, corporate communications, government and community relations, human resources, insurance, information technology, legal, accounting and auditing services;

(ii) Post-Closing, the following SSA's may be entered into: (a) an SSA between SJI Utilities and Elizabethtown Gas Company and (b) an SSA between SJI Utilities and South Jersey Gas Company. Pursuant to the SSAs, SJI Utilities will provide services to Elizabethtown Gas Company and South Jersey Gas that involve utility operations, including but not limited to strategic oversight of customer service, rates and regulatory and gas supply



management;

(iii) Within ninety (90) days of Closing, Elizabethtown Gas Company will file an updated Cost Allocation Manual pursuant to N.J.A.C. 14:4-4.5; and

(iv) Within ninety (90) days of Closing, Elizabethtown Gas Company will file its Affiliate Standards Compliance Plan pursuant to N.J.A.C. 14:4-3.7.

**C. Ring Fencing and Financial Protections**

(i) Post-Closing, SJI will continue to be in full compliance with BPU regulations related to ring fencing and will comply with all such provisions as they relate to Elizabethtown Gas Company. This shall be comparable to the ring-fencing measures maintained for South Jersey Gas Company. At a minimum, this shall include Elizabethtown Gas Company being a wholly-owned corporate subsidiary of SJI Utilities, Inc., issuing its own long-term debt, maintaining its own credit ratings, and refraining from pledging any of its assets for the benefit or support of any corporate affiliates.

(ii) Elizabethtown Gas Company will not issue equity in connection with the Acquisition.

(iii) Elizabethtown Gas Company is currently seeking BPU approval for and will then issue a mortgage indenture enabling the issuance of first mortgage bonds. It will maintain that capability.

(iv) ETG Acquisition Corp. in its name or the name of Elizabethtown Gas Company will enter into a three-hundred and sixty-four (364) day syndicated term facility with a group of banks. Within ninety (90) days of Closing, Elizabethtown Gas Company will:

- a. Record a mortgage indenture;
- b. Obtain a rating from a nationally recognized rating agency

(Standard & Poor's, Moody's, Fitch);

c. Circle (lock-in) a long-term debt cost rate for its permanent (i.e. long term) financing of the planned \$530 million three-hundred and sixty-four (364) day syndicated term facility, approval of which is currently pending before the BPU; and

d. Complete this permanent financing at circled rate within one-hundred and eighty (180) days of Closing via the private placement process, potentially with hedging to mitigate the interest rate risk within one-hundred and eighty (180) days of Closing.

(v) SJI and/or SJI Utilities will establish a utility-specific commercial paper program within six (6) months of Closing;

(vi) To the extent SJI has money pools, SJI will maintain separate money pools for regulated and unregulated operations. SJI may lend money to the regulated money pool but may not borrow from it. SJI's unregulated subsidiaries may neither lend money to, nor borrow money from, the regulated money pool. Within six months of Closing, SJI Utilities, Elizabethtown Gas Company and South Jersey Gas Company shall submit a plan to Board Staff and Rate Counsel pertaining to the potential establishment of such a utility-only money pool;

(vii) In the event that the unsecured debt rating of SJI or Elizabethtown Gas Company falls below investment grade by any major rating agency, Elizabethtown will provide the Board, Staff and Rate Counsel with notice within ten (10) days of the downgrade and supply a mitigation plan within five (5) business days of the required notice; and

(viii) If SJI's or Elizabethtown Gas Company's senior unsecured debt rating falls below investment grade by any major rating agency, Elizabethtown Gas Company shall cease paying dividends to SJI until such time as an investment grade rating is restored.

**D. Asset Management Agreement.**

(i) Post-Closing, the asset management agreement between Sequent Energy Management L.P. and Elizabethtown pursuant to which Sequent provides upstream pipeline capacity management services as well as gas supply to Elizabethtown (“SEM AMA”), as approved in BPU Docket No. GO13040272, will be assigned to SJRG. In accordance with this assignment, SJRG will replace SEM as the provider of these services to Elizabethtown Gas Company for a term commencing at Closing for the duration of the remaining term of the SEM AMA through March 31, 2019.

(ii) SJRG and Elizabethtown will enter into a new asset management agreement (“AMA Replacement Agreement”) for the term April 1, 2019 through March 31, 2022. The AMA Replacement Agreement, attached hereto as confidential Appendix A, is subject to the requirements contained in paragraph (iii) immediately below. At the time of expiration of the AMA Replacement Agreement on March 31, 2022, the Elizabethtown Gas Company Gas Supply function will be brought in-house unless otherwise ordered by the Board.

(iii) Within 90 (ninety) days of the Closing, Elizabethtown Gas Company will file the AMA Replacement Agreement with the Board, Board Staff and Rate Counsel. Within 10 (ten) days of the Closing, Elizabethtown Gas Company will withdraw the Petition filed by Elizabethtown on October 2, 2017 in BPU Docket No. GO17101033. The AMA Replacement Agreement will reflect the following consideration:

a. SJRG will pay Elizabethtown Gas Company an annual fee for the right to act as its gas supplier and capacity management agent. Elizabethtown Gas Company 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-

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system sales margins, physical dispatch optimization and storage arbitrage margins that SJRG is able to obtain for Elizabethtown Gas Company as follows:

1. The minimum fixed payment will be \$4.25 million annually;

2. Capacity release credits, off-system sales margins, physical dispatch optimization and storage arbitrage margins obtained by SJRG for Elizabethtown Gas Company will be shared as follows:

(a) One hundred percent (100%) of the first \$4.25 million of such margins/credits will be retained by SJRG because SJRG will have already made the minimum payment of \$4.25 million described above;

(b) Seventy percent (70%) of annual margins/credits in excess of \$4.25 million and up to \$7.452 million will be retained by SJRG with the remaining thirty percent (30%) credited to Elizabethtown Gas Company's BGSS-P clause;

(c) Twenty-nine percent (29%) of annual margins/credits in excess of \$7.452 million up to \$13.717 million will be retained by SJRG with the remaining seventy-one percent (71%) credited to Elizabethtown Gas Company's BGSS-P clause;

(d) Fifty percent (50%) of annual margins/credits in excess of \$13.717 million up to \$18.667 million will be retained by

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SJRG with the remaining fifty percent (50%) credited to Elizabethtown Gas Company's BGSS-P clause; and

(e) All margins in excess of \$18,667,000.00 will be shared eighty-five percent (85%) to Elizabethtown Gas Company's BGSS-P clause and fifteen percent (15%) to SJRG.

**b.** The margin sharing mechanism described above is illustrated on confidential Appendix B which is attached hereto. The margin sharing formula results in an overall sharing of approximately thirty percent (30%) of margins/credits to SJRG and seventy percent (70%) of such margins/credits to Elizabethtown Gas Company's BGSS-P clause if total margins/credits for any annual period are between \$8.0 million and \$14.0 million.

**(iv)** Information contained in the Elizabethtown Gas Company "books" maintained by SJRG will be made available to Staff and Rate Counsel on reasonable notice at Elizabethtown's Gas Company's headquarters. In addition, following the completion of the first year of the term of the AMA Replacement Agreement, and each year thereafter, SJI, the parent company of Elizabethtown Gas Company and SJRG, will conduct an internal audit of the SJRG/Elizabethtown Gas Company agreements. The audit will be conducted at SJI's cost and expense using either internal or external resources as determined by SJI. The auditor will be responsible for determining (i) whether margins were properly credited to Elizabethtown Gas Company's BGSS-P clause in the manner required by this Stipulation and the AMA Replacement Agreement, and (ii) whether SJRG was treating Elizabethtown Gas Company in a non-discriminatory manner in relation to other SJRG asset management arrangements. The audit shall be completed within nine (9) months of the applicable year. A copy of the results of this

internal audit will be provided to the Director of the Division of Energy of the Board and the Director of Rate Counsel within ten (10) days of completion. All supporting documents will be provided at Elizabethtown Gas Company's offices in New Jersey on reasonable notice. All of the information described herein will be provided under a mutually agreeable confidentiality agreement.

(v) Elizabethtown Gas Company will submit the following reports to the Board, the Director of the Division of Energy of the Board and Rate Counsel:

a. Quarterly reports detailing margin sharing activities and related information in a form similar to that currently filed by Elizabethtown; such reports shall be filed no later than forty-five (45) days after the end of the applicable quarter;

b. Quarterly reports detailing any costs incurred by Elizabethtown Gas Company as a result of SJRG having to liquidate supply contracts or obtain replacement supplies as a result of its inability to purchase supplies at certain secondary points to be identified in the AMA Replacement Agreement for subsequent delivery to Elizabethtown Gas Company; such reports shall be filed no later than forty-five (45) days after the end of the applicable quarter if and to the extent any costs are incurred by Elizabethtown Gas Company;

c. Annual reports detailing activities that occurred in accordance with Section 2.5 of the Gas Purchase and Sale Agreement; such reports will include SJRG's initial price quote, any price quotes obtained from others and whether SJRG exercised its right to manage the lowest quote or Elizabethtown purchased quantities from third parties, and shall be filed no later than 45 days after the end of the year in which the applicable activities occurred; and

**d.** An analysis prepared by a third party of the expected asset optimization margin that could have been extracted from Elizabethtown Gas Company's natural gas capacity and supply portfolio during the years ended March 31, 2020 and March 31, 2021 shall be filed no later than September 30, 2021.

**(vi)** The \$4.25 million minimum annual fee will be credited to Elizabethtown Gas Company'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 Gas Company's BGSS-P clause twice a year no later than September 30 and March 31. Each year in Elizabethtown Gas Company's Annual BGSS-P filing with the Board, Elizabethtown Gas Company will advise Staff and Rate Counsel of the results obtained by SJRG during the previous BGSS-P annual period.

**E. Miscellaneous**

**(i)** Each Signatory Party shall use its best efforts to ensure that this Stipulation be presented to the Board for approval at its June 22, 2018 public agenda meeting in order to facilitate the Closing of the Acquisition by July 1, 2018;

**(ii)** This Stipulation represents the entirety of the agreement among the Signatory Parties. This Stipulation includes proposals and conditions above and beyond the terms contained in the Joint Petition. Notwithstanding statements made in the Joint Petition, testimony, discovery materials or any information provided by the Joint Petitioners, only those commitments stated in this Stipulation shall apply;

**(iii)** The Signatory Parties shall support approval of the Acquisition upon the terms set forth in this Stipulation in any proceedings before the Board regarding approval of the

Acquisition. The Signatory Parties shall defend this Stipulation in the event of opposition to approval of the Acquisition from non-signatory parties before the Board;

(iv) It is the intent of the Signatory Parties that the provisions hereof be approved by the Board as being in the public interest. The Signatory Parties further agree that they consider the Stipulation to be binding on them for all purposes herein;

(v) In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Signatory 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 any applicable Order(s), then any Signatory 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;

(vi) This Stipulation shall become effective and be binding on the Signatory Parties after the issuance of a Board Order approving this Stipulation or upon such date as the Board may specify. This Stipulation contains terms and conditions above and beyond the terms contained in the Joint Petition, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, because the Signatory Parties expressly and jointly state that they would not have signed the Stipulation had any term been modified in any way. None of the Signatory Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter;

(vii) This Stipulation sets forth a compromise of divergent positions and shall not be regarded as precedent in any future case. Except as expressly provided herein, no




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Signatory Party shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein; and

This Stipulation may be executed in as many counterparts as there are Signatory Parties of this Stipulation, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


**SOUTH JERSEY INDUSTRIES, INC.,  
ETG ACQUISITION CORP. AND  
SOUTH JERSEY RESOURCES GROUP,  
LLC**

By:   
Ira G. Megdal

**PIVOTAL UTILITY HOLDINGS  
d/b/a ELIZABETHTOWN GAS**

By: \_\_\_\_\_  
Kenneth T. Maloney

**GURBIR S. GREWAL  
ATTORNEY GENERAL OF  
NEW JERSEY**  
Attorney for the Staff of the  
Board of Public Utilities

By:   
Alex Moreau  
Deputy Attorney General

**STEFANIE BRAND  
DIRECTOR  
DIVISION OF RATE COUNSEL**

By:   
Stefanie A. Brand  
Rate Counsel

**NEW JERSEY LARGE ENERGY USERS  
COALITION**

By: \_\_\_\_\_  
Paul Forshay

**DATE: June 20, 2018**

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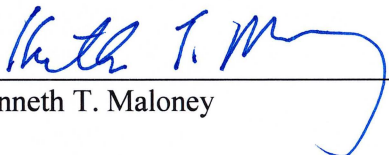
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LLC**

**PIVOTAL UTILITY HOLDINGS  
d/b/a ELIZABETHTOWN GAS**

By: \_\_\_\_\_  
Ira G. Megdal

By: \_\_\_\_\_  
Kenneth T. Maloney

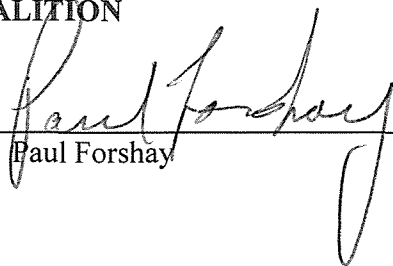
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