STATE OF NEW JERSEY

Board of Public Utilities
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ENERGY

IN THE MATTER OF THE BOARD'S ESTABLISHMENT OF A GENERIC PROCEEDING TO REVIEW THE COSTS, BENEFITS AND RELIABILITY IMPACTS OF MAJOR STORM EVENT MITIGATION EFFORTS	)	ORDER GRANTING PARTICIPATION
	)	DOCKET NO. AX13030197
IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS FOR APPROVAL OF THE ELIZABETHTOWN NATURAL GAS DISTRIBUTION UTILITY REINFORCEMENT EFFORT PROGRAM AND DEFERRED ACCOUNTING TREATMENT	)	DOCKET NO. GO13090826

Parties of Record:

Mary Patricia Keefe, Vice President, Regulatory Affairs, Pivotal Utility Holdings, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., NJLEUC

BY COMMISSIONER MARY-ANNA HOLDEN:

The Board of Public Utilities ("Board") is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See, e.g. In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969); Bergen County v. Dep't of Public Utilities, 117 N.J. Super. 304 (App. Div. 1971). The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any public utility, and, pursuant to N.J.S.A. 48:2-16 and 48:2-40, to issue orders to public utilities.

In 2011 and 2012 New Jersey was struck by five unusually damaging major storm events which caused severe damage to the State's utility infrastructure, Hurricane Irene on August 28, 2011,

an unseasonal and powerful snowstorm on October 29, 2011, a derecho wind storm on June 20, 2012, Superstorm Sandy on October 29, 2012 and ten days later a powerful nor'easter on November 7, 2012.

On January 23, 2013 the Board issued an Order[1] ("January 23 Order") addressing five categories of potential improvements to be undertaken by New Jersey's electric distribution companies ("EDCs") in response to large-scale weather events. The areas for potential improvements include: 1) Preparedness Efforts; 2) Communications; 3) Restoration and Response; 4) Post Event; and 5) Underlying Infrastructure Issues.

In the January 23 Order, among other actions, the Board directed the EDCs to provide a detailed cost benefit analysis for a variety of utility infrastructure upgrades. The Board further required the EDCs to "carefully examine their infrastructure and use data available to determine how substations can be better protected from flooding, how vegetation management is impacting electric systems, and how Distribution Automation can be incorporated to improve reliability." January 23 Order at 56.

On March 20, 2013, the Board issued an Order[2] ("March 20 Order"), which initiated a generic proceeding (hereinafter "Storm Mitigation Proceeding") to investigate possible avenues to support and protect New Jersey's utility infrastructure so that it may be better able to withstand the effects of future Major Storm Events,[3] and focused on a portion of the January 23 Order-Underlying Infrastructure Issues – but for all utility companies, not exclusively for the EDCs. It also invited all regulated utilities to submit detailed proposals for infrastructure upgrades designed to protect the State's utility infrastructure from future Major Storm Events, pursuant to the terms and level of detail requested in the January 23 Order, and found that all petitions filed in the future should be retained by the Board for review and hearing as authorized by N.J.S.A. 52:14F-8. March 20 Order at 3.

On September 4, 2013, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company") petitioned the Board for approval of its Elizabethtown Natural Gas Distribution Utility Reinforcement Effort ("ENDURE") Program to "harden and protect the Company's infrastructure against damage from future major storm events" and to assist the Company "in developing a more robust capability to effectively communicate with customers and public officials during and after weather related emergencies." Petition at 1-2.

Elizabethtown requested approval of approximately $15 million to replace portions of its natural gas infrastructure and related facilities which includes (1) the replacement of 600 meter sets located in and around a designated Federal Emergency Management Agency ("FEMA") flood zone along with the replacement and upgrading to elevated pressure of 12 miles of low pressure cast iron main and associated facilities; (2) the hardening and elevation of the building located at its Erie Street property in Elizabeth, New Jersey; and (3) the hardening and elevation

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[1] In the Matter of the Board's Review of the Utilities' Response to Hurricane Irene, Order Accepting Consultants' Report and Additional Staff Recommendations and Requiring Electric Utilities to Implement Recommendations. BPU Docket No. EO11090543, January 23, 2013.

[2] In the Matter of the Board's Establishment of a Generic Proceeding to Review Costs, Benefits, and Reliability impacts of Major Storm Event Mitigation Efforts, BPU Docket No. AX13030197, March 20, 2013 ("March 20 Order").

[3] Major Storm Event is defined as sustained impact on or interruption of utility service resulting from conditions beyond the control of the utility that affect at least 10 percent of the customers in an operating area. March 20 Order at 2.

of gate station facilities. Id. at 2. Elizabethtown is also proposing to commence a project to consider whether to expand and enhance its current communication channels "to ensure that during and after major storm events, the Company is able to utilize available communications technologies. Id. at 7-8.

Elizabethtown is requesting Board approval to utilize deferred accounting methods to account for actual costs associated with the ENDURE Program, and is seeking to recover these actual costs, including all deferred amounts, through bases rates in a base rate case to be filed no later than September 1, 2016. Id. at 8-9. Elizabethtown Gas further requests that the Board approve these expenditures and the recovery mechanism on an expedited basis "to help achieve the objectives of the ENDURE Program as soon as possible." Id. at 11.

By Order dated November 22, 2013 ("November 22 Order), the Board retained the matter for hearing, and designated me as the presiding Commissioner with authority to rule on all motions that arise during the proceeding.

On January 16, 2014, Steven S. Goldenberg, Esq. of Fox Rothschild, LLP, on behalf of the New Jersey Large Energy Users Coalition ("NJLEUC"), filed a motion to participate in this matter pursuant to N.J.A.C. 1:1-16.6. The motion represented that (1) NJLEUC was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities including Elizabethtown and to participate or intervene in regulatory and rate proceedings as needed to represent the interests of its members; (2) its members purchase natural gas service from Elizabethtown and that as large end-use customers on the Elizabethtown system its members will be directly and immediately affected by the infrastructure upgrades and associated rate relief sought by Elizabethtown in this proceeding; (3) it has a unique perspective and insight regarding the potential impact of the relief that will be sought by Elizabethtown in this proceeding. Additionally, NJLEUC represented that its motion is timely and will not delay or otherwise disrupt the prosecution of this proceeding; fundamental fairness and due process considerations require it be afforded an opportunity to fully participate in this proceeding, as the outcome will have an impact on the reliability and cost of natural gas distribution service received from Elizabethtown by its members; it has been granted intervener status in recent rate proceedings involving local natural gas distribution companies, as well as a number of regulatory proceedings convened pursuant to Section 13 of the Regional Greenhouse Gas Initiative ("RGGI") Law; and its interests in this matter are unique from and not adequately represented by any other party.

Mr. Goldenberg also filed a motion for the admission *pro hac vice* of Paul F. Forshay, Esq. Mr. Goldenberg represented that (1) Mr. Forshay has an attorney client relationship with NJLEUC; (2) Mr. Forshay has significant experience representing the interests of large end-use customers; and (3) he is a specialist in the field of law involved in this proceeding. Mr. Forshay represented that: (1) he is duly admitted to practice of law in the District of Columbia but not in the State of New Jersey (2) no disciplinary proceedings are pending against him and no discipline has previously been imposed in any jurisdiction, (3) he is a specialist in the field of law involved in this proceeding and he has an attorney client relationship with NJLEUC; (4) he has paid fees required by R.1:2-1(b) and 1:28-2; and (5) he will comply with the New Jersey Court Rules, consent to and give notices to the Board and the Office of Administrative Law ("OAL") as required, and ensure that all papers filed with the Board and OAL bear the signature of the attorney of record admitted to practice law in New Jersey.

By letter dated January 28, 2014, Elizabethtown responded that it did not oppose NJLEUC's motion to participate or motion for admission *pro hac vice*. The Board did not receive any other responses to NJLEUC's motion to participate or the motion for admission *pro hac vice* during the ten (10) day response period set forth in N.J.A.C. 1:1-12.2(b).

DISCUSSION AND FINDINGS

In ruling on a motion to participate, N.J.A.C. 1:1-16.6(b) requires that the decision-maker consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. This determination as to the nature and extent of participation is to be made on an individual basis. N.J.A.C. 1:1-16.6(c). N.J.A.C. 1:1-16.6(c) further provides that participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (Order dated June 8, 2005).

As the members of NJLEUC who are customers of Elizabethtown will be directly affected by the outcome of this proceeding, I **HEREBY FIND** that NJLEUC has met the standards for participation as it is an interest in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motion for participation of NJLEUC.

In light of this grant of participant status to NJLEUC, I have also reviewed the motion and the supporting affidavit of Steven S. Goldenberg, Esq. for admission *pro hac vice* of Paul F. Forshay, Esq., and no objections to it having been received after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission, has affirmed to the Board that he has made payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, is **HEREBY** admitted to practice before the Board *pro hac vice* in the above-captioned matter provided that he shall:

(1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;

(2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;

(3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and

(4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of the cause and the admitted attorney therein.

Consistent with the Board's November 22 Order, I **HEREBY** **DIRECT** that all documents be served by electronic mail, while still providing hard copies to the Board for those documents which must be filed with the Board, with hard copies to each party upon request.

I **HEREBY** **DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: February 7, 2014

BY:

Mary-Anna Holden
COMMISSIONER

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Docket Nos. AX13030197 & GO13090826

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