



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.nj.gov/bpu**

IN THE MATTER OF ALLEGATIONS OF VIOLATIONS  
OF PIPELINE SAFETY REGULATIONS BY  
ELIZABETHTOWN GAS COMPANY WITH RESPECT  
TO COMPLIANCE WITH OPERATOR  
QUALIFICATION TRAINING

)  
) RELIABILITY AND SECURITY  
) DECISION AND ORDER  
)  
)  
DOCKET NO. GO09010031

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

This matter has been opened to the Board of Public Utilities ("Board") following an investigation by the Board's Bureau of Pipeline Safety ("BPS") pertaining to operator qualification ("OQ") training and work performed by a contractor for Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company ("ETOWN" or "Company") from January 2006 through January 2007. The BPS conducted a comprehensive investigation pertaining to OQ training and work performed by ETOWN's contractor, Northern Pipeline Company ("NPL"), on ETOWN'S natural gas distribution system. The investigation included an evaluation of compliance with the applicable laws, rules and regulations regarding the installation of various natural gas facilities by NPL from January 2006 through January 2007. The contractor ceased to perform work for ETOWN in January 2007, when ETOWN officials were advised of concerns raised by the BPS during its investigation.

As a result of the investigation and subsequent follow-up inquiries involving the OQ and installation records provided by ETOWN, the BPS determined that the Company was in probable violation of the following natural gas pipeline safety regulations:

**49 C.F.R. 192. 805(b) & (h), which states "Each operator shall have and follow a written qualification program. The program shall include provisions to:**

**(b) Ensure through evaluation that individuals performing covered tasks are qualified; and**

**(h) After December 16, 2004, provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities; and..."**

**N.J.A.C. 14:6-3.13, which states, "Each gas company employee shall be adequately trained for the job to which he or she is assigned and have adequate knowledge of the characteristics and hazards of natural gas. Employees assigned to positions covered by 49 CFR Part 192, Subpart N, shall be operator-qualified in accordance with the requirements therein."**

BPS Staff determined that ETOWN did not ensure that the individuals employed by NPL were properly qualified to perform covered tasks as required by its OQ Plan. Furthermore, the training and qualification of NPL employees were not conducted in a manner consistent with Plan requirements. Specifically, NPL employees either did not participate in OQ training for the tasks they performed and/or were given the answers during the course of the evaluation process.

It was also determined by the BPS that the Company's procedures were subject to a Notice of Amendment in accordance with the following regulation:

**49 C.F.R. 192.603 (c), which states, "...the State agency that has submitted a current certification under the pipeline safety laws....may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety."**

The BPS investigation revealed that ETOWN did not sufficiently oversee NPL's qualification process and records to ensure that the contractor employees were in compliance with OQ requirements. The BPS review of the ETOWN OQ Plan indicated a deficiency regarding a procedure to properly monitor and ensure compliance with required OQ evaluations, as the OQ Plan had no procedure to monitor the OQ sessions of its contractor employees.

On March 19, 2008, BPS Staff issued a Notice of Probable Violation to ETOWN, advising that it found certain probable violations with the minimum federal safety standards as codified in Title 49 of C.F.R. Part 192. The probable violations pertained to the Company's obligation to ensure that its contracted employees at NPL were adequately and properly trained to perform certain task specific work functions in accordance with the comprehensive operator qualification requirements set forth in the federal pipeline safety regulations.

On December 26, 2008, a Stipulation and Settlement Agreement ("Agreement" or "Stipulation") was entered into by ETOWN and the BPS. The Agreement is attached as Appendix A.

Pursuant to the Agreement, ETOWN, without admitting to any violation of law or wrongdoing, will provide a one-time payment to the Treasurer of the State of New Jersey in the amount of Sixty-Six Thousand Dollars (\$66,000). Additionally, ETOWN has agreed that it will not seek to recover any portion of this Sixty-Six Thousand Dollars (\$66,000) from ratepayers. This Stipulation also requires several corrective actions which were agreed to and will be

implemented by ETOWN. As listed in the Settlement Agreement, the Company Operator Qualification Plan must be amended to include the following:

- a. Performing periodic, documented monitoring of OQ training modules, OQ abilities and skills sessions, and polyethylene ("PE") pipe fusion qualifications to ensure compliance with established guidelines at all contractor locations doing work for the Company. On an annual basis, the Company shall be in attendance to monitor and document at least 25% of the employees being trained at these OQ sessions of the Company's approved blanket new business construction contractors. For other contractors who are awarded specific projects, the Company shall be in attendance to monitor and document their OQ training and qualification sessions at least once per year, with emphasis on performing the monitoring during the awarded project period or at the next OQ training session.
- b. Performing periodic, documented audits of OQ records for all contractor locations doing work for the Company during the year to ensure that contractor employees are sufficiently qualified to perform the covered tasks required to perform work assigned by the Company. The Company shall audit OQ records for each of the Company's blanket new business construction contractors on a bi-annual basis. For other contractors who are awarded specific bid projects, the Company shall audit OQ records once within one year of the initial bid award.
- c. Performing periodic, documented audits of OQ evaluators / trainers who conduct contractor OQ training modules, abilities and skills sessions and PE fusion qualifications for qualifying contractor employees to determine that the evaluations were conducted in a manner to ensure that employees are qualified to perform covered tasks. This requirement may be accomplished in conjunction with (a) above. The Company shall audit OQ evaluators / trainers for each of the Company's blanket new business construction contractors doing work for the Company on a bi-annual basis. For other contractors who are awarded specific bid projects, the Company shall audit OQ evaluators / trainers once within one year of the initial bid award.
- d. Performing periodic, documented audits by designated Company personnel to ensure that contractor employees are performing covered tasks in the field in accordance with the Company Operating and Maintenance Manual and the Operator Qualification Plan. The Company shall audit contractor employees performing covered tasks in the field for any covered tasks that they may be performing at the time of the audit. The Company shall at a minimum audit each contractor crew doing work for ETOWN twice a month on average. The Company shall provide as part of the semi-annual report in section (e) below, a listing of all contractor employees and the number of times they were individually assessed on an OQ task during that six month period.
- e. The Company shall provide a report to the Board's Bureau of Pipeline Safety one month after the end of each half year which summarizes performance against the annual requirements of this Stipulation. The end of the year report shall summarize performance against the annual requirements of this Stipulation for the entire year. This report will be submitted in a format provided by the Bureau of Pipeline Safety.

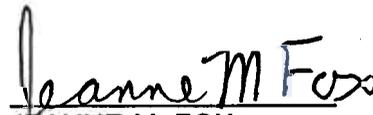
- f. Documentation associated with this auditing and monitoring shall be maintained for a period of at least five years.

The Board has reviewed the Agreement and HEREBY FINDS it to be a reasonable settlement of the outstanding issues, in the public interest, in accordance with law and in accordance with the intent and purpose of the Natural Gas Pipeline Safety Act of 1968 as amended, 49 U.S.C. 1671 et seq. and all regulations promulgated thereto and the Natural Gas Safety Act, N.J.S.A. 48:10-2, et seq. and all regulations promulgated thereto. Therefore, the Board HEREBY APPROVES and ADOPTS the Agreement as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

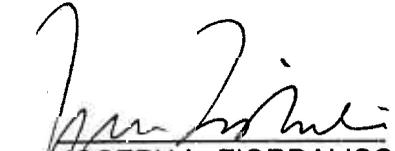
Accordingly, the Board HEREBY ORDERS ETOWN to comply with the terms of the Stipulation and Settlement Agreement as approved herein.

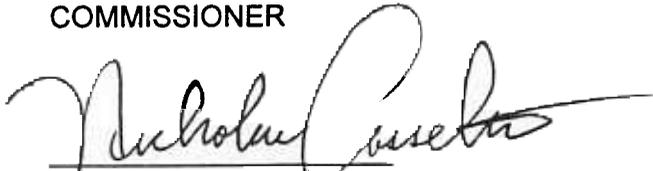
DATED: 1/28/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

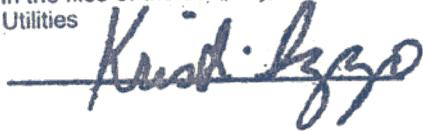
  
NICHOLAS ASSELYA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
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 ALLEGATIONS OF VIOLATIONS OF PIPELINE SAFETY  
REGULATIONS BY ELIZABETHTOWN GAS COMPANY WITH RESPECT TO OPERATOR  
QUALIFICATION TRAINING

BPU DOCKET NO. GO09010031

**SERVICE LIST**

Mary Patricia Keefe, Esq.  
Director –Regulatory Affairs  
Elizabethtown Gas Company  
300 Connell Drive, Suite 3000  
Berkeley Heights, New Jersey 07922

Elise Goldblat, SDAG  
Division of Law and Public Safety  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

Edward Beslow, Esq.  
Legal Specialist  
Counsel's Office  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Geoffrey Gersten, DAG  
Division of Law and Public Safety  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

Michael F. Stonack  
Chief, Bureau of Pipeline Safety  
Division of Reliability and Security  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Kenneth J. Sheehan, DAG  
Division of Law and Public Safety  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

James P. Giuliano  
Director, Division of Reliability & Security  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Appendix A

	)	
Pivotal Utility Holdings, Inc.	)	
d/b/a Elizabethtown Gas Company	)	STIPULATION AND
	)	SETTLEMENT AGREEMENT
	)	

This Stipulation and Settlement Agreement ("Stipulation") is entered into by and between the Staff of the New Jersey Board of Public Utilities ("Board Staff") and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company ("ETOWN" or "Company") as of this 26<sup>th</sup> day of December 2008.

WHEREAS, in January 2007, Board Staff commenced an investigation pertaining to operator qualification training and work performed by Northern Pipeline Company for ETOWN from January 2006 through January 2007 ("Investigation"); and

WHEREAS, the Bureau of Pipeline Safety of the New Jersey Board of Public Utilities ("Board") conducted the Investigation, including an evaluation of compliance with applicable laws, rules and regulations pertaining to natural gas facilities including the Natural Gas Pipeline Safety Act of 1968, 49 C.F.R. 1671 et seq., and Natural Gas Safety Act, N.J.S.A. 48:10-2 et seq., (collectively "Applicable Laws"); and

WHEREAS, as part of the investigation, Board Staff advised ETOWN that it found certain probable violations of Applicable Laws; and

WHEREAS, on March 19, 2008, Board Staff issued a Notice of Probable Violation, captioned as PS #7-08 (collectively the "Notices"); and

WHEREAS, the parties have reached an agreement to resolve any and all claims the Board may have against the Company arising from or relating to the investigation, including the Notices listed above, in a comprehensive settlement in accordance with the terms of this Stipulation.

WHEREAS, each party agrees that this Stipulation represents a fair and reasonable settlement of all issues that were or could have been raised in regard to the investigation, or the Notices issued; and

WHEREAS, the resolution of this matter through the adoption of the stipulated positions set forth herein best serves the interests of the parties, supports judicial economy and preservation of valuable judicial, administrative and corporate resources, and is, therefore in the public interest.

NOW THEREFORE, the parties hereby agree as follows:

1. As a compromise of civil penalties for alleged probable violations of Applicable Laws, ETOWN, without any admission of any violation of law or wrongdoing, shall make a one-time payment of Sixty Six Thousand Dollars 00/100. (\$66,000.00) to the Treasurer of the State of New Jersey. The Board shall dismiss all claims it may have

against ETOWN regarding violations of the Applicable Laws in connection with the Investigation. No later than thirty (30) days after the date that the Board enters a written Order approving this Stipulation, ETOWN will send a check for Sixty Six Thousand Dollars 00/100 (\$66,000.00) payable to the Treasurer, State of New Jersey to Joseph J. Potena, Chief Fiscal Officer, Board of Public Utilities, 44 South Clinton Avenue, 7<sup>th</sup> Floor, P.O. Box 350, Trenton, New Jersey 08625

2. ETOWN agrees that it will not seek to recover any portion of this Sixty Six Thousand Dollars 00/100 (\$66,000.00) from ratepayers.

3. ETOWN's agreement to pay the foregoing sum is not an acknowledgment of non-compliance with any law, including the Applicable Laws, Board Orders, or Board requirements. The payment is made as part of a negotiated stipulation intended to resolve the claims of the respective parties with respect to the Investigation without further litigation.

4. In addition to reaching a resolution of the above violations, the Board requires amendment of the Company operator qualification procedures to include monitoring by the Company that ensures an adequate level of safety. In accordance with 49 C.F.R. 192.603(c), a "State Agency ... may ... require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety." The Board's Bureau of Pipeline Safety has determined that the Company Operator Qualification Plan must be amended to include the following:

- a. Performing periodic, documented monitoring of OQ training modules, OQ abilities and skills sessions and PE fusion qualifications to ensure compliance with established guidelines at all contractor locations doing work for the Company. On an annual basis, the Company shall be in attendance to monitor and document at least 25% of the employees being trained at these OQ sessions of the Company's approved blanket new business construction contractors. For other contractors who are awarded specific projects, the Company shall be in attendance to monitor and document their OQ training and qualification sessions at least once per year, with emphasis on performing the monitoring during the awarded project period or at the next OQ training session.
- b. Performing periodic, documented audits of OQ records for all contractor locations doing work for the Company during the year to ensure that contractor employees are sufficiently qualified to perform the covered tasks required to perform work assigned by the Company. The Company shall audit OQ records for each of the Company's blanket new business construction contractors on a bi-annual basis. For other contractors who are awarded specific bid projects, the Company shall audit OQ records once within one year of the initial bid award.
- c. Performing periodic, documented audits of OQ evaluators / trainers who conduct contractor OQ training modules, abilities and skills sessions and PE fusion qualifications for qualifying contractor employees to determine that the evaluations were conducted in a manner to ensure that employees are qualified to perform covered tasks. This requirement may be accomplished in conjunction with (a) above. The Company shall audit OQ evaluators /

trainers for each of the Company's blanket new business construction contractors doing work for the Company on a bi-annual basis. For other contractors who are awarded specific bid projects, the Company shall audit OQ evaluators / trainers once within one year of the initial bid award.

- d. Performing periodic, documented audits by designated Company personnel to ensure that contractor employees are performing covered tasks in the field in accordance with the Company Operating and Maintenance Manual and the Operator Qualification Plan. The Company shall audit contractor employees performing covered tasks in the field for any covered tasks that they may be performing at the time of the audit. The Company shall at a minimum audit each contractor crew doing work for ETG twice a month on average. The Company shall provide as part of the semi-annual report in section (e) below, a listing of all contractor employees and the number of times they were individually assessed on an OQ task during that six month period.
- e. The Company shall provide a report to the Board's Bureau of Pipeline Safety one month after the end of each half year which summarizes performance against the annual requirements of this Stipulation. The end of the year report shall summarize performance against the annual requirements of this Stipulation for the entire year. This report will be submitted in a format provided by the Bureau of Pipeline Safety.
- f. Documentation associated with this auditing and monitoring shall be maintained for a period of at least five years.

5. The parties agree that the terms of this Stipulation shall not be cited or otherwise used by or against each other or other parties or argued as binding or persuasive precedent in this or any other forum, except in any proceeding to enforce the Stipulation or the terms and conditions thereof and/or the Board Order adopting this Stipulation.

6. After this Stipulation has been fully executed, it shall be presented to the Board for approval.

7. Upon written approval of this Stipulation by the Board, it shall then constitute the entire agreement between the Board Staff and ETOWN with respect to the investigation and the above referenced matters, including the Notices, and shall operate as a complete and final disposition of the investigation by the Board subject only to the fulfillment of all the provisions of this Stipulation.

8. This Stipulation may not be amended in any way, or any part of its provisions waived, except by writing executed by all the parties to this Stipulation. In the event the Board modifies any provision of this Stipulation, absent express written consent of the parties, the Stipulation shall be void, and the parties shall be restored to their positions prior to the execution of the Stipulation.

9. This Stipulation may be executed in as many counterparts as there are signatures, thereof, each of which shall be an original, but all of which shall constitute one and the same instrument. No amendment or waiver of any substantive provision of

this Stipulation shall be effective unless it is agreed to by the authorized representative of each party hereto.

10. This Stipulation shall be governed by, and construed in accordance with the laws of the State of New Jersey

NOW, THEREFORE, the Parties cause this Stipulation to be executed by their duly authorized officers or officials.

Dated: 12/26/2008

By: Mary Patricia Keele  
Mary Patricia Keele  
Director-Regulatory Affairs  
on behalf of  
Pivotal Utility Holdings, Inc.  
d/b/a Elizabethtown Gas Company

ANNE MILGRAM  
ATTORNEY GENERAL OF THE  
STATE OF NEW JERSEY  
Attorney for the Staff of the  
New Jersey Board of Public Utilities

Dated: 12/26/2008

By: Geoffrey Gersten  
Geoffrey Gersten  
Deputy Attorney General