



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH ) DECISION AND ORDER
JERSEY GAS COMPANY FOR APPROVAL OF A )
MUNICIPAL CONSENT IN THE TOWNSHIP OF )
CHERRY HILL, CAMDEN COUNTY, NEW JERSEY ) DOCKET NO. GE13030249

Parties of Record:

Stacy A. Mitchell, Esq., on behalf of Petitioner, South Jersey Gas Company
Stefanie A. Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

South Jersey Gas Company ("SJG" or "Company"), a regulated utility subject to the jurisdiction of the Board of Public Utilities ("Board"), is a corporation duly organized under the laws of the State of New Jersey engaged in the business of transmission and distribution of natural gas to approximately 360,000 customers within its service territory.

SJG currently provides natural gas service within the Township of Cherry Hill ("Township") to approximately 3,404 residential and 94 commercial customers. The Company's consent from the Township expired on September 22, 1997.1 On June 25, 2012, the Township renewed its consent by adopting Ordinance No. 2012-19 which gave SJG exclusive and perpetual consent and permission to furnish natural gas service and to lay and construct its facilities within the public rights-of way. By letter dated August 22, 2012, the Company accepted and agreed to the terms of the consent. Copies of the Ordinance and the letter of acceptance are attached to this Order as Exhibits "A" and "B," respectively.

1 The Board notes that municipal consents often expire some time prior to their renewal even when the Company initiates the renewal process prior to the expiration of the previous term. This is primarily the result of the time necessary for a municipality to fulfill the legal requirements that attend to all formal actions it must take along with the additional time for hearing and Board approval as required by law. The Board has been assured that pending review of its petition, SJG has continued to provide service to its customers within the Township in an uninterrupted manner.

On March 25, 2013, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, SJG filed a petition requesting that this Board give its approval to the consent adopted by the Township. As required by law and after notice, a hearing in this matter was held on June 12, 2013, before Edward D. Beslow, Esq., the Board's duly appointed Hearing Examiner. Appearances were made on behalf of the Company, the Division of Rate Counsel ("Rate Counsel") and Board Staff. No other party participated in the hearing or filed any written submission with the Board related to this proceeding.

At hearing, the Company relied on its petition and exhibits filed with the Board and presented the testimony of Charles F. Dippo, its Senior Vice-President, Engineering Services. According to Mr. Dippo's testimony, SJG anticipates growth in its defined service territory to be approximately one percent annually for the next 3 to 5 years. According to the Company, it has the capacity to ensure continuation of its safe, adequate and proper natural gas service and does not foresee any concerns regarding its ability to meet the existing and future demands of the Township.

While not opposed to its approval, Rate Counsel, in its written comments to the petition dated July 9, 2013, recommended that the Board condition its approval on the limitation of the consent to a reasonable period not to exceed 50 years, and that any Order approving the consent reserve ratemaking issues for future proceedings. Rate Counsel maintains that grants in perpetuity are not favored under New Jersey law, and under N.J.S.A. 48:2-14, the Board can impose conditions on its approvals, including limiting the consent to a reasonable term.

According to SJG, pursuant to the decisions rendered in In re Petition of South Lakewood Water Co., 61 N.J. 230 (1972), and Township of Dover v. United Water Toms River, OAL BPU Docket No. WC97080581 (July 6, 2005) (Order adopting Initial Decision) ("United Water"), the municipal consent granting a utility the right to provide service within a given municipality constitutes the "franchise" pursuant to which the utility is permitted to provide service; that consent is governed solely by N.J.S.A. 48:2-14 which imposes no durational limitation. The additional consent relating to the use of the streets provides the additional authority necessary for the utility to construct and maintain its infrastructure in the public right-of-way in order to furnish service. According to SJG, pursuant to N.J.S.A. 48:3-15, the use of streets consent is statutorily limited to a duration of 50 years. Therefore, according to SJG, the legislature has thus provided a mechanism requiring a municipality and a franchisee to confer every 50 years to renew the consent for use of the streets without limiting the duration of the consent to serve. Moreover, SJG asserts that perpetual franchises are not novel and have been approved by the Board historically in United Water, supra, and In re City of Trenton and New Jersey-American Water Company, Inc., BPU Docket No. WM08010063 (April 3, 2009) (approving 3 franchises of perpetual duration).

The Board has reviewed Rate Counsel's recommendations and the opposition submitted by SJG, and has determined that there is no legal bar to the grant of a municipal consent with an unlimited duration. As indicated in its comments, SJG consents to a limitation of 50 years on the use of the streets granted by the Township.

After a full review of the entire record, the Board **HEREBY FINDS** that the municipal consent, which is the subject of this matter, is necessary and proper for the public convenience and properly conserves the public interest, and that SJG has the ability to provide safe, adequate and proper service. The Board **FURTHER FINDS** that the Company has the necessary experience, financial capability, capacity and facilities in the Township to continue to provide adequate and appropriate service to its existing customers. Accordingly, the Board, pursuant to **N.J.S.A. 48:2-14, HEREBY APPROVES** the consent granted to SJG by the Township for the provision of gas service in the Township as sought in the Company's petition.

The approvals granted hereinabove shall be subject to the following provisions:

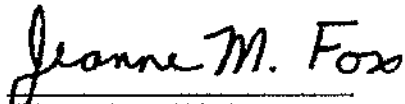
1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by SJG.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board of the State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting SJG.
3. In an appropriate subsequent proceeding, SJG shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.
4. The rates for service to the Company's customers in the Township shall continue to be those set out in the Company's current tariff approved by and on file with the Board. These rates shall remain in effect until otherwise approved by the Board.
5. Approval of this municipal consent does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including but not limited to, cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.
6. The Company has agreed to a 50-year limitation on the consent for the use of the streets. The term of the consent as to the right to provide service is not limited by this Order and shall be effective as granted by the Township.

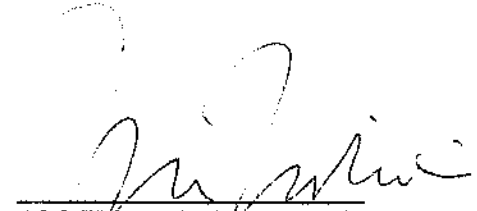
This Order shall be effective as of May 2, 2014.

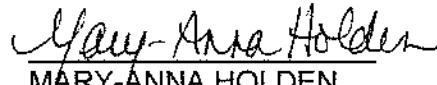
DATED: 4/24/14

BOARD OF PUBLIC UTILITIES  
BY:

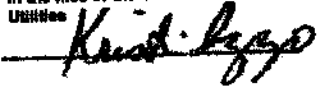
  
DIANNE SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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 THE PETITION OF SOUTH JERSEY GAS COMPANY FOR  
APPROVAL OF A MUNICIPAL CONSENT IN THE TOWNSHIP OF CHERRY HILL,  
CAMDEN COUNTY, NEW JERSEY - DOCKET NO. GE13030249

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**EXHIBIT**

**A**

**ORDINANCE GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO  
FURNISH GAS FOR LIGHT, HEAT AND POWER IN THE TOWNSHIP OF CHERRY HILL**

**WHEREAS**, South Jersey Gas provides natural gas services to residents of Cherry Hill Township pursuant to the municipal consent first granted by Delaware Township in 1947 as the predecessor of Cherry Hill Township and subsequently approved by the New Jersey Board of Public Utilities; and

**WHEREAS**, N.J.S.A 48:3-11 et seq. provides the Township may grant consent to South Jersey Gas to use any street either above, below or on the surface thereof in furtherance of the provision of natural gas services by South Jersey Gas; and

**WHEREAS**, South Jersey Gas has petitioned Cherry Hill Township requesting consent to use the streets of Cherry Hill Township in furtherance of the provision of natural gas services, and

**WHEREAS**, the Governing Body has determined that it is in the best interest of the residence of Cherry Hill Township that are provided natural gas services by South Jersey Gas to grant said consent.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of the Township of Cherry Hill, County of Camden, State of New Jersey that:

**Section 1.** Exclusive and perpetual consent and permission to furnish gas for light, heat and power in the Township of Cherry Hill, County of Camden, State of New Jersey, is hereby given and granted to South Jersey Gas Company, a corporation of the State of New Jersey, subject to approval of such consent and permission by the Board of Public Utilities of the State of New Jersey.

**Section 2.** Exclusive consent and permission is hereby given to South Jersey Gas Company to lay and construct its pipes and mains and related appurtenances and facilities within the streets, alleys, squares and public places within the Township of Cherry Hill in the manner required by R.S. 48:9-21, and subject to reasonable regulations imposed by ordinance or resolution with respect to the opening of streets and public places, subject to approval of such consent and permission by the Board of Public Utilities.

**Section 3.** The consents granted in Sections 1 and 2 are granted for the geographical area of the Township of Cherry Hill in which gas is furnished by South Jersey Gas Company as that area is defined in the applicable boundary agreements between South Jersey Gas Company and Public Service Electric and Gas Company.

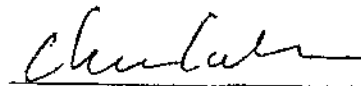
**Section 4.** The said South Jersey Gas Company shall within thirty (30) days after the passage of this ordinance file with the Municipal Clerk a bond in the amount of One Thousand Dollars (\$1,000.00) conditioned upon the restoration of any street or public place which may be opened by it in a manner satisfactory to the Director of the Department of Public Works.

**Section 5:** All Ordinances or parts of Ordinances inconsistent with this amending Ordinance be and hereby repealed to the extent of such inconsistencies only.

**Section 6:** This ordinance shall take effect twenty (20) days after its final passage and publication, as required by law.

INTRODUCED: JUNE 11, 2012

ADOPTED: JUNE 25, 2012

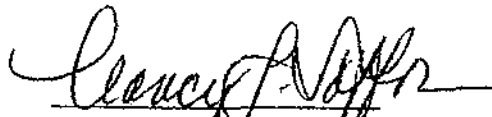


CHARLES M. CAHN  
MAYOR



COUNCIL PRESIDENT

ATTEST:



NANCY L. SAFFOS, RMC  
TOWNSHIP CLERK



**EXHIBIT**

**B**



*South Jersey Industries*

*Where we put all of our energy\**

**Gina Merritt-Epps, Esq.**  
**Office of General Counsel and Corporate Secretary**  
*General Counsel and Corporate Secretary*

August 22, 2012

Nancy Saffos, Municipal Clerk  
Cherry Hill Township  
820 Mercer Street  
Cherry Hill, New Jersey 08002


Re: Acceptance of Ordinance No. 2012-19 Granting Municipal Consent to Provide Gas  
By South Jersey Gas Company

Dear Ms. Saffos:

I am writing on behalf of South Jersey Gas Company ("SJG") to advise that we received a fully executed copy of Ordinance No. 2012-19 (copy attached) granting municipal consent for SJG to provide gas and lay its mains and pipes in the Township of Cherry Hill. Pursuant to the requirements of N.J.S.A. 48:3-16, SJG hereby accepts Ordinance No. 2012-19, as passed.

In addition, I have enclosed a copy of the Performance and Maintenance Surety Bond filed by SJG in the amount of \$25,000 which is valid for the period of February 1, 2012 through January 31, 2014.

Very truly yours,

  
Gina Merritt-Epps  
[gmerritt@sjindustries.com](mailto:gmerritt@sjindustries.com)

Enclosure

cc: (all via e-mail)  
Deb Spineilla, Government and Community Relations  
John Stanziola, Director of Regulatory Affairs  
Ira G. Megdal, Esq.  
Stacy A. Mitchell, Esq.