



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)
JERSEY GAS COMPANY FOR APPROVAL OF A)
MUNICIPAL CONSENT IN THE TOWNSHIP OF)
OLDMANS, SALEM COUNTY, NEW JERSEY)

DECISION AND ORDER

DOCKET NO. GE13030250

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 Oldmans ("Township") to approximately 298 residential, 24 commercial and 5 industrial customers. The Company's consent to use the streets within the Township for the provision of gas service expired on September 2, 1997.¹ On August 1, 2012, the Township adopted Ordinance 2012-05 by which it renewed its consent and granted SJG permission to lay and construct its pipes and mains and related appurtenances and facilities within the streets, alleys, squares and public places within the Township in the manner prescribed by N.J.S.A. 48:3-17a and N.J.S.A. 48:9-21. By letter dated March 5, 2013, 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 1% for the next 3 to 5 years. According to the Company, it has the capacity to ensure continuation of its 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 in its July 17, 2013 reply, 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 reply, 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 for use of the streets, 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 continued use of its public streets for a period of 50 years for the provision of gas service in the Township.

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 previously granted by the Township.

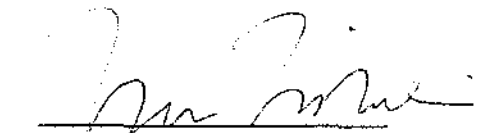
This Order shall be effective as of May 2, 2014.

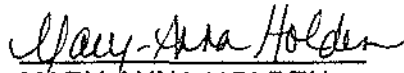
DATED: 4/24/14

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 OLDMANS,
SALEM COUNTY, NEW JERSEY - DOCKET NO. GE13030250

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EXHIBIT

A

EXHIBIT "A"

ORDINANCE NO. 2012-05

AN ORDINANCE GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO USE THE PUBLIC STREETS TO FURNISH GAS FOR LIGHT, HEAT AND POWER IN OLDMANS TOWNSHIP

WHEREAS, portions of the Township receives natural gas service from South Jersey Gas Company, a corporation of the State of New Jersey, pursuant to the consent first granted to South Jersey Gas Company n that certain Ordinance passed on September 2, 1947; and

WHEREAS, South Jersey Gas Company has requested Oldmans Township to renew that portion of the 1947 Ordinance, pursuant to N.J.S.A. 48:3-15, applicable to use the streets in the Township for said service by adopting the following Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Oldmans, County of Salem and State of New Jersey as follows:

Section 1. This 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 Oldmans Township in the manner prescribed by N.J.S.A. 48:3-17a and 48:9-21, subject to obtaining any applicable permits, subject to reasonable regulations imposed by ordinance or resolution with respect to the opening of streets and public places and subject to approval of such consent and permission by the Board of Public Utilities, as required.

Section 2. This consent is granted for the entire geographical area of Oldmans Township and extend to the boundaries of Oldmans Township.

Section 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by any Court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

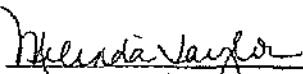
Section 4. All Ordinances or parts which are inconsistent with the provisions of this Amendment to an Ordinance, are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall take effect immediately upon posting, publication, final passage in the manner prescribed by law, and acceptance by South Jersey Gas Company.

Section 6. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the Township of Oldmans, then the restriction which imposes the greater limitation shall be enforced.

ATTEST:

OLDMANS TOWNSHIP


Melinda Taylor, Acting Municipal Clerk


William J. Miller, Mayor

RESOLUTION 2012-95

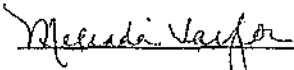
WHEREAS, an Ordinance entitled "AN ORDINANCE GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO FURNISH GAS FOR LIGHT, HEAT AND POWER IN OLDMANS TOWNSHIP" was introduced and passed on first reading on Wednesday, August 1, 2012; and

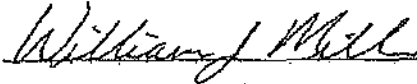
WHEREAS, public hearing to be held thereon;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Oldmans, County of Salem and State of New Jersey that an Ordinance entitled "AN ORDINANCE GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO FURNISH GAS FOR LIGHT, HEAT AND POWER IN OLDMANS TOWNSHIP" be finally adopted and that said notice of its adoption, by title only, be published in Today's Sunbeam in accordance with law.

ATTEST:

OLDMANS TOWNSHIP


Melinda Taylor, Acting Clerk


William J. Miller, Mayor

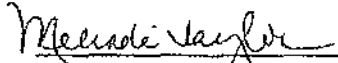
RESOLUTION NO. 2012 - 91

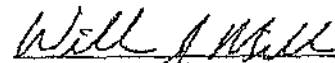
BE IT RESOLVED by the Mayor and Township Committee of the Township of Oldmans, County of Salem, and State of New Jersey, that an Ordinance entitled "AN ORDINANCE GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO FURNISH GAS FOR LIGHT, HEAT AND POWER IN OLDMANS TOWNSHIP" be adopted on first reading, final hearing thereof be held on September 5, 2012, at 7:30 p.m., Township Hall, Pedricktown, New Jersey, and that said Ordinance, together with Notice of Final Hearing, be published in the Today's Sunbeam in accordance with law.

Adopted: August 1, 2012

Attested By:

Oldmans Township


Melinda Taylor Acting Municipal Clerk


William J. Miller, Mayor

EXHIBIT

B

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

March 5, 2013

Melinda Taylor, Township Clerk
Township of Oldmans
40 Freed Road
P. O. Box 416
Pedricktown, NJ 08067

Re: Acceptance of Ordinance No. 2012-05 Granting Municipal Consent to Provide Natural Gas by South Jersey Gas Company

Dear Ms. Taylor:

I am writing on behalf of South Jersey Gas Company ("SJG") to advise that we received a fully executed copy of Ordinance No. 2012-05 (copy attached) granting municipal consent for SJG to provide gas and lay its mains and pipes in the Township of Oldmans. Pursuant to the requirements of N.J.S.A. 48:3-16, SJG hereby accepts Ordinance No. 2012-05, as passed.

Thank you for your assistance in this regard.

Very truly yours,

Gina Merritt-Epps
gmerritt@sjindustries.com

Enclosure

cc (via email): John Stanziola, Director of Regulatory Affairs
Ira G. Megdal, Esq.
Stacy A. Mitchell, Esq.
Ilene Lampitt