



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)
BERLIN, CAMDEN COUNTY, NEW JERSEY)

DECISION AND ORDER

DOCKET NO. GE13080693

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 Berlin ("Township") to approximately 1,586 residential, 484 commercial and 3 industrial customers. The Company's consent from the Township expired on October 6, 1997.¹ On July 1, 2013, the Township renewed its consent by adopting Ordinance No. 2013-06 which gave SJG exclusive and perpetual consent and permission to furnish gas service and to lay and construct its facilities within the public rights-of-way. By letter dated July 26, 2013, the Company accepted and agreed to the terms of the consent ("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 August 2, 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 approve the Consent adopted by the Township. As required by law, after notice, a hearing in this matter was held on December 11, 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 the hearing, the Company relied on its petition and exhibits filed with the Board and presented the testimony of Robert Fatzinger, its Vice-President, Engineering Services. According to Mr. Fatzinger'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 natural gas service and does not foresee any concerns regarding its ability to meet existing and future demands of the Township.

While not opposed to its approval, Rate Counsel, in its written comments to the petition dated January 28, 2014, 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.

The Company responded to Rate Counsel's comments by objecting to the proposed limitation/modification of the duration of the Consent. SJG argued that the imposition by the Board of any limitation on the duration of the Consent would be contrary to the expressed intent of the Township, unsupported by the record in the proceeding and inconsistent with existing law.

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; and 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 consent for use of streets is statutorily limited to 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 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 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 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.

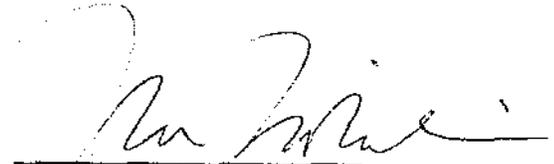
This Order shall be effective as of May 2, 2014.

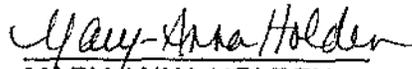
DATED: *April 24, 2014*

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

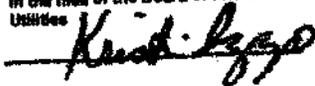

JOSEPH L. FIORDALISO
COMMISSIONER


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 BERLIN,
CAMDEN COUNTY, NEW JERSEY
DOCKET NO. GE13080693

SERVICE LIST

South Jersey Gas:

Stacy A. Mitchell, Esq.
Cozen O'Connor, P.C.
457 Haddonfield Road, Suite 300
P.O. Box 5459
Cherry Hill, New Jersey 08002
smitchell@cozen.com

John F. Stanziola
Director, Regulatory Affairs
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
istanziola@sjindustries.com

Gina Merritt-Epps, Esq.
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
gmerritt@sjindustries.com

Abbey Greenberg
Public Affairs Specialist –
Government and Regulatory Affairs
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
agreenberg@sjindustries.com

Babette Tenzer, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
babette.tenzer@dol.lps.state.nj.us

Board of Public Utilities:

Board of Public Utilities
Division of Energy
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Jerome May, Director
jerome.may@bpu.state.nj.us

Thomas Walker, Chief
thomas.walker@bpu.state.nj.us

Ricky John, Ph.D.
ricky.john@bpu.state.nj.us

Rate Counsel:

Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

Felicia Thomas-Friel, Assistant Deputy
Rate Counsel
ftomas@rpa.state.nj.us

Kurt Lewandowski, Assistant Deputy
Rate Counsel
klewando@rpa.state.nj.us

Brian Lipman, Litigation Manager
blipman@rpa.state.nj.us

EXHIBIT

A

ORDINANCE 2013-6 OF THE TOWNSHIP OF BERLIN, COUNTY OF CAMDEN, AND STATE OF NEW JERSEY, GIVING AND GRANTING CONSENT AND PERMISSION TO SOUTH JERSEY GAS COMPANY TO FURNISH GAS FOR LIGHT, HEAT AND POWER

WHEREAS, South Jersey Gas Company ("SJG") currently provides gas service to the Township of Berlin ("Township") and its residents pursuant to municipal consent first granted by the Township, and approved by the New Jersey Board of Public Utilities, in 1947; and

WHEREAS, pursuant to N.J.S.A. 48:3-15, the Township's consent to SJG is to lay and maintain its gas mains, pipes and service pipes, either above, below or on the surface of any street, avenue, park, parkway, highway, or other public place, for the purpose of furnishing gas has expired; and

WHEREAS, the Township has received correspondence dated September 8, 2011 from SJG's Director of Legal Affairs requesting that it renew the required municipal consent; and

WHEREAS, the Mayor and Township Council of the Township of Berlin, County of Camden, State of New Jersey, have deemed it in the best interest of the public health, safety and welfare of the Township and its residents to establish and grant the requested consent and permission to SJG, a corporation of the State of New Jersey, to furnish gas for light, heat and power in the Township.

NOW THEREFORE, be it Ordained by the Mayor and Township Council of the Township of Berlin, County of Camden, State of New Jersey, as follows:

SECTION 1. That exclusive and perpetual consent and permission to furnish gas for light, heat and power in the Township of Berlin, 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. That exclusive and perpetual 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 Township of Berlin in the manner required by R.S. 48:9-21, 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 entire geographical area of the Township of Berlin and extends to the boundaries of the Township of Berlin.

SECTION 4. The said South Jersey Gas Company shall, within thirty (30) days after the passage of this ordinance, file with the Township 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 Department of Public Works and Township Engineer.

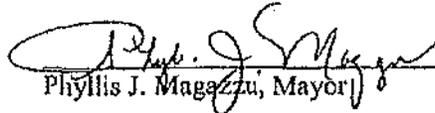
SECTION 5. All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

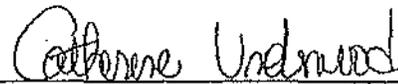
SECTION 6. If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 7. This Ordinance shall take effect upon passage and publication according to law.

Introduced: June 10, 2013

Adopted: July 1, 2013


Phyllis J. Magazzu, Mayor


Catherine Underwood, RMC - Township Clerk

It is hereby certified that the foregoing is a true copy of an ordinance adopted by the Mayor and Council of the Township of Berlin on June 10, 2013.


Catherine Underwood, RMC - Township Clerk

EXHIBIT

B



South Jersey Gas

*Where we put all of our energy**

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

July 26, 2013

(cunderwood@berlintwp.com)
Catherine Underwood, Township Clerk
Township of Berlin
135 Route 73 South
West Berlin, NJ 08091

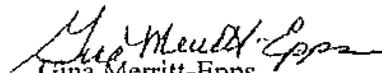
Re: Acceptance of Ordinance No. 2013-6 Granting Municipal Consent to South Jersey Gas Company to Furnish Gas for Light, Heat and Power

Dear Ms. Underwood:

I am writing on behalf of South Jersey Gas Company ("SJG") to advise that we received a fully executed copy of Ordinance No. 2013-6 (copy attached) granting municipal consent for SJG to provide gas and lay its mains and pipes in the Township of Berlin. Pursuant to the requirements of N.J.S.A. 48:3-16, SJG hereby accepts Ordinance No. 2013-6, as passed.

In addition, I have enclosed a copy of the Performance and Maintenance Surety Bond submitted by SJG in the amount of \$1,000 which is valid for the period of July 1, 2013 through June 30, 2014.

Very truly yours,


Gina Merritt-Epps
gmerritt@sjindustries.com

Enclosure

cc: (all via e-mail)
John Stanziola, Director, Regulatory Affairs
Sherri Vasu, Supervisor, Revenue Analyst Permits
Abbey Greenberg, Public Affairs Specialist
Ira G. Megdal, Esq.
Stacy A. Mitchell, Esq.