



Agenda Date: 9/14/21
Agenda Item: IIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF)	ORDER APPROVING OF
ELIZABETHTOWN GAS COMPANY - APPROVAL)	FRANCHISE AGREEMENT
OF A MUNICIPAL FRANCHISE IN THE)	
TOWNSHIP OF BYRAM, SUSSEX COUNTY)	DOCKET NO. GE21020618

Parties of Record:

Brian O. Lipman, Esq., Acting Director, New Jersey Division of Rate Counsel
Van L. McPherson, III, Esq., on behalf of Elizabethtown Gas Company

BY THE BOARD:

Elizabethtown Gas Company ("ETG" or "Company"), a regulated public utility subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board"), is a corporation duly organized under the laws of the State of New Jersey and engaged in the distribution and transportation of natural gas to approximately 300,000 residential, commercial and industrial customers located in Hunterdon, Mercer, Middlesex, Morris, Sussex, Union and Warren counties in New Jersey.

ETG does not currently provide natural gas service within the Township of Byram ("Township"). On September 15, 2020, by Ordinance No. 008-2020 ("Ordinance"), the Township approved a franchise agreement for ETG for a period of 50 years, and granted ETG consent to lay, maintain, and operate gas facilities within a specified portion of the Township.¹ A copy of the Ordinance is attached to this Order as Exhibit "A". By letter dated September 24, 2020, ETG accepted and agreed to the terms and conditions of the Ordinance consistent with N.J.S.A. 48:3-16. Copies of the letter of acceptance and the hearing notice are attached to this Order as Exhibits "B" and "C", respectively.

On February 23, 2021, ETG filed a petition with the Board, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, seeking approval of the franchise agreement granted by the Township. As required by law and after notice, a municipal consent hearing in this matter was held on July 16, 2021. Heather Weisband, Esq., the Board's duly appointed hearing officer, presided over the hearing. Appearances were made on behalf of the Company, the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff. No other party participated in the hearing or filed any written comments with the Board related to this matter.

¹ A proposed municipal consent is pending before the Board. See In the Matter of the Petition of New Jersey Natural Gas Company ("NJNG") for Approval of a Municipal Franchise in the Township of Byram, Sussex County, BPU Docket No. GE21060921.

At the hearing, the Company relied on its petition and exhibits filed with the Board, submitted a revised map attached to this Order as Exhibit “D”, and presented the testimony of Mr. Gary Marmo, Director of Sales, and Mr. Michael Scacifero, Director of Engineering. According to Mr. Marmo’s testimony, ETG received inquiries for service from over 100 potential customers and could potentially serve up to approximately 2,200 customers in the Township over the next five (5) years. Mr. Scacifero testified that the Company has gas transmission and distribution systems adjacent to the Township and has sufficient capacity to serve potential customers within the Township.

While ETG has not provided a written agreement with New Jersey Natural Gas Company (“NJNG”) on the allocation of their respective territories within the Township, the Company represented that it would resolve any dispute with NJNG over which will serve a new customer based upon the best interests of the customer. ETG agreed to submit any dispute with NJNG regarding their respective territories or customers to the Board for resolution. Additionally, ETG will provide limited in-person service to its customers in the Township through its payment centers located in Elizabeth and Perth Amboy, which is over 50 miles from the Township.

Rate Counsel, in its written comments to the petition dated August 23, 2021, indicated that it does not object to the Company’s petition since the Company represented that it has the capacity necessary to provide natural gas service to the Township. The term of the municipal consent related to the use of streets is limited to a term of 50 years. However, Rate Counsel requested that the approval of the petition include certain restrictions which are incorporated in this Order.

DISCUSSION AND FINDINGS

After careful review and consideration of the petition and exhibits submitted in this matter, the Board **HEREBY FINDS** that the franchise agreement granted to ETG by the Township is necessary and proper for the public convenience, properly serves the public interest, and that ETG 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 adjacent to the Township to provide adequate and appropriate service to the Township’s customers, and that the 50-year duration of the municipal consent to use the streets is consistent with N.J.S.A. 48:3-15. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14, **HEREBY APPROVES** the consent granted to ETG by the Township to provide gas service, and for the use of its public streets for that purpose for a period of 50 years.

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

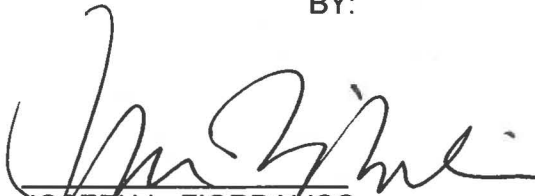
1. As required by N.J.S.A. 48:3-15, and limited by the Ordinance, the municipal consent to construct, maintain, and operate gas lines in the streets and other public places in the Township is limited to a term not exceeding 50 years.
2. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by ETG.
3. This Order shall not affect nor in any way limit the exercise of the authority of this Board or 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 ETG.

4. Any map submitted by ETG showing its proposed service territory within the Township shall be consistent with any map submitted by NJNG showing its proposed territory within the Township.
5. The Company will submit any agreement it proposes to enter into with NJNG regarding their respective service territories within the Township to the Board and Rate Counsel for review and approval.
6. In the event that ETG is unable to resolve a dispute with NJNG over the allocation of their respective territories within the Township, including the determination of which company will serve a customer, ETG will notify the Board and Rate Counsel and submit the dispute to the Board for resolution.
7. The Board reserves the right to modify the respective territories of ETG and NJNG within the Township, if necessary to resolve a dispute or other issue arising from the allocation of their territories or ability to provide safe, adequate and proper service to customers.
8. The Company will investigate and report to the Board and Rate Counsel the cost and practicality of opening a customer service center to provide in-person services to customers in the Township and nearby municipalities.

This Order shall be effective on September 21, 2021.

DATED: September 14, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF ELIZABETHTOWN GAS COMPANY FOR
APPROVAL OF A MUNICIPAL FRANCHISE IN THE TOWNSHIP OF BYRAM, SUSSEX
COUNTY

BPU DOCKET NO. GE21020618

SERVICE LIST

<p>Division of Rate Counsel: 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625</p> <p>Brian O. Lipman, Esq., Acting Director blipman@rpa.nj.gov</p> <p>Brian Weeks, Esq. bweeks@rpa.nj.gov</p> <p>Township of Byram: Ms. Cindy Church, Clerk Byram Township 10 Mansfield Drive Stanhope, NJ 07874 cchurch@byramtwp.org</p> <p> Elizabethtown Gas Company: South Jersey Industries, Inc. 1 South Jersey Plaza Folsom, New Jersey 08037</p> <p>Andrew McNally, Esq. Director, Government Relations amcnally@sjindustries.com</p> <p>Van L. McPherson, III, Esq. Assistant General Counsel vmcpherson@sjindustries.com</p> <p>Carolyn A. Jacobs Regulatory Compliance Specialist cjacobs@sjindustries.com</p> <p>Deborah M. Franco, Esq. VP, Rates, Regulatory & Sustainability SJI Utilities, Inc. 520 Green Lane Union, NJ 07083 dfranco@sjindustries.com</p>	<p>Board of Public Utilities: 44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Board Secretary board.secretary@bpu.nj.gov</p> <p>Stacy Peterson, Deputy Executive Director stacy.peterson@bpu.nj.gov</p> <p><u>Division of Energy</u></p> <p>Dean Taklif dean.taklif@bpu.nj.gov</p> <p><u>Office of General Counsel</u></p> <p>Heather Weisband, Esq., Senior Counsel heather.weisband@bpu.nj.gov</p>
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<p>Division of Law: R.J. Hughes Justice Complex 25 Market Street Post Office Box 112 Trenton, NJ 08625</p> <p>Pamela Owen, ASC pamela.owen@law.njoag.gov</p> <p>Terel Klein, DAG terel.klein@law.njoag.gov</p> <p>Matko Ilic, DAG matko.ilic@law.njoag.gov</p>	
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Exhibit A:
Ordinance

STATE OF NEW JERSEY
COUNTY OF SUSSEX
TOWNSHIP OF BYRAM

ORDINANCE NO. 008-2020

**AN ORDINANCE OF THE TOWNSHIP OF BYRAM GRANTING MUNICIPAL
CONSENT TO ELIZABETHTOWN GAS COMPANY TO CONSTRUCT, MAINTAIN
AND OPERATE A GAS LINE FOR THE DISTRIBUTION OF NATURAL AND MIXED
GAS.**

WHEREAS, Elizabethtown Gas Company, a Corporation of the State of New Jersey and a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities, on August 13, 2020 filed a Petition with the Township of Byram seeking Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption in portions of the Township of Byram.

WHEREAS, Richard Valenti, Esq., and Gary Marmo, representatives of the Petitioner appeared before the Byram Township Council on September 1, 2020 to present their general plans for extension of gas lines within the Township as the need arose; and

WHEREAS, the Petitioner has provided public notice of such Petition through publication in the official newspaper of the Municipality, and by posting notice of such Petition pursuant to Statute.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Byram.

Section I. Grant of Municipal Consent.

Pursuant to N.J.S.A., 48:3-11, the Mayor and Township Council of the Township of Byram hereby grant Elizabethtown Gas Company, a Corporation of the State of New Jersey (hereinafter "Elizabethtown") with principal offices located at 520 Green Lane, Union, New Jersey 07083, its successors and assigns, a nonexclusive consent, right and privilege for the use, without impairment of, or obstruction to the public use, of the roads, streets, parks, avenues, ways, and other public places of the Township of Byram to construct, lay, maintain, and operate for a period of fifty (50) years, the necessary mains, conductors, pipes and concomitant appurtenances for the purpose of conveying, storing, supplying and distributing natural and mixed gas for heat, power, light and other purposes for public and private use and consumption, along in, or under the following described Service Area: all the streets, avenues, alleys, parks, parkways, highways, or other public places within the portion of the Township shown as the green colored area in the map attached hereto as Exhibit A as said streets, avenues, alleys, parks, parkways, highways, and other public places now exist or may be hereinafter be laid out by the municipal authorities of the said Township or dedicated to said Township.

Section II. Conditions on Grant of Municipal Consent.

The Municipal Consent granted herein is expressly conditioned upon the following:

- (a) the written acceptance of Elizabethtown of the terms and conditions of this municipal Consent Ordinance within thirty (30) days of its final adoption.
- (b) the New Jersey Board of Public Utilities (hereinafter "N.J.B.P.U.") approval of the Consent herein granted and the issuance of such other grants or approvals as determined by the N.J.B.P.U.
- (c) Elizabethtown shall satisfy all Statutory requirements of N.J.S.A. 48:13-1 et seq. regarding the proper organization and operation of a Public Utilities engaged in the distribution of natural and mixed gas, and shall remain subject to the jurisdiction of and comply with all Rules and Regulations of the United States Department of Transportation, Office of Pipeline Safety and the N.J.B.P.U. as well as the Ordinance of the Township of Byram.
- (d) Elizabethtown shall construct and continuously maintain and operate their distribution line within the service area in a safe and efficient manner, and maintain such gas distribution lines in a state of good operation and repair and including all streets, roads, and public rights-of-way within the Township of Byram wherein its lines are located.

- (e) the construction, operation and maintenance of the gas distribution system within the rights-of-way of the Township of Byram shall in no way place any obligation, financial or otherwise, or any liability of any kind, upon the Township of Byram and no obligation is to attach for the construction, operation and maintenance of the said gas distribution system to the Township.
- (f) any and all regulating pits and venting structures or like facilities shall not be located along the public rights-of-way comprising the Service Area.

Section III. Construction; Installation; Restoration.

- A. Construction. In each and every case in which road openings or excavation of any nature are required or made for the purposes aforesaid, Elizabethtown shall restore, all such public and private lands or facilities to as good a condition as existed at the commencement of the said work or such better condition, at its sole cost and expense. All such openings and installation and maintenance shall be undertaken in strict compliance with the standards imposed by the N.J.B.P.U., any other regulatory agency, and all applicable Township Ordinances, with such work to be done in a careful, prudent and workmanlike manner, and within such time limitations as shall be best for the proper safeguard of the public.
- B. Relocation. If at any time during the period of this Municipal consent, the Township of Byram finds it necessary to alter or change the grade of any street, road or other public right-of-way or area, Elizabethtown shall, upon reasonable notice by the Municipality, remove and relocate its distribution line and pipes at the expense of Elizabethtown.
- C. Restoration. In the event that Elizabethtown shall refuse or neglect, after ten (10) day's notice in writing by the representative of the Township, that is, the Township Manager or Township Engineer, to restore any disturbed area at its cost and expense, and in compliance with all applicable Municipal Ordinances in effect at the time, to its pre-existing or better condition, any street, road, pavement, driveway or other reserves after having made an opening or excavation, the necessary work to accomplish such restoration may be done by the Township of Byram, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Township upon receiving notice thereof.
- D. Preconditions to Undertaking Construction. Elizabethtown shall give to the Township of Byram, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Township of Byram's Ordinance regulating the excavation and opening of streets, roads and highways, with the exception that such notice requirement shall be waived in the event of an emergent circumstance such that such emergency will affect public health or safety. As soon as practically possible after the occurrence of such emergent circumstance, Elizabethtown shall give prompt written notice to the Township of any emergency opening or excavation that Elizabethtown shall undertake.

Section IV. Indemnification, Performance Bond, Liability.

- A. Indemnification. Elizabethtown, its successors and assigns, by the acceptance of the grants, rights and privileges conferred by this ordinance, shall at all times and does hereby and will indemnify and hold harmless, the Township of Byram and all of its subsidiary agencies, officials and employees for any and all claims of whatsoever kind or nature arising from or relating to the construction, installation, maintenance, laying, repairing, inspecting, or altering of maintains conductors, pipes and appurtenances thereto, and any other facilities, and including, but not by way of limitation, any damages, penalties, costs, attorney's fees and charges for personal injury, property damage or otherwise, based upon Elizabethtown's negligence or the negligence of its agents, servants, employees or independent contractors.
- B. Performance Bond. Prior to the commencement or any construction or

installation under this Municipal Consent, Elizabethtown shall execute and deliver to the Clerk of the Township and subject to prior review and approval by the Township Attorney, a Bond in the amount of \$10,000.00 guaranteeing the faithful performance of all of its obligations and undertakings under this Ordinance, which Bond shall be enlarged or renewed from time to time as the Council may require.

- C. Liability Insurance. Elizabethtown agrees to maintain and keep in full force and effect, at its sole expense, and at all times during the terms and duration of this Municipal Consent, sufficient liability insurance naming the Township of Byram as an additional insured party, and insuring and indemnifying the Township against any loss by any such claim, suite, judgment, execution or as follows:
 - (a) Elizabethtown shall carry Workman's Compensation Insurance with Statutory limits.
 - (b) Elizabethtown shall at all times, maintain a Comprehensive General Liability Insurance Policy with a single limit amount of \$1,000,000.00 covering liability for any death, personal injury, property damage or other liability arising out of its construction and operation of the gas distribution systems herein and in addition, an excess liability (or "umbrella") policy in the amount of \$3,000,000.00.
 - (c) Elizabethtown shall furnish to the Township of Byram a certified copy or Certificate of Insurance of each of the Policies as set forth herein.

Section V. Duration of Consent.

- A. Term. The Limited Municipal consent granted to Elizabethtown herein is for a period of fifty (50) years from the effective date of this Ordinance.
- B. Public Hearing. Immediately prior to the fifty (50) year expiration of this Consent, the Township of Byram shall conduct public hearings regarding the performance of Elizabethtown with the terms of this Municipal Consent. The public hearing shall be duly advertised and shall provide any opportunity for all interested persons to participate.
- C. Extension. Upon the conclusion of the public hearings as set forth herein, the Township of Byram shall consider such extension and such additional conditions as the record of the public hearings may warrant.
- D. Notice of Proceedings. Elizabethtown shall give the Municipality timely written notice of at least fifteen (15) days in advance of all proceedings initiated by Elizabethtown or the N.J.B.P.U. or other Regulatory Agency, when such proceedings may affect the commitments, this Municipal Consent or relationship between Elizabethtown and the Municipality, whether or not such notice is required by law. All submissions provided to such Regulatory Agency by Elizabethtown shall also be provided to the Township of Byram.

Section VI. Severability.


If the provision of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or Competent jurisdiction, such Order or Judgment shall not effect or invalidate this remainder of any such article, section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.

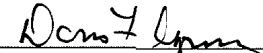
Section VII. Effective Date.

This Municipal Consent Ordinance shall become effective upon adoption and publication according to law, and only upon written acceptance of this Municipal Consent by Elizabethtown, which written consent shall be filed with the Clerk of the Municipality within thirty (30) days of the date after which Elizabethtown receives notice of the passage of this Ordinance.

INTRODUCED: September 1, 2020

ADOPTED: September 15, 2020

By: 
 Alexander Rubenstein, Mayor

Attest: 
 Doris Flynn, Township Clerk

TOWNSHIP OF BYRAM

	Councilman Bonker	Councilwoman Franco	Councilman Gallagher	Councilman Roseff	Mayor Rubenstein
Motion				✓	
2nd			✓		
Yes	✓	✓	✓	✓	✓
No					
Abstain					
Absent					

NOTICE OF ADOPTION

NOTICE is hereby given that Ordinance 008-2020 was introduced and passed on first reading at a meeting of the Township Council of the Township of Byram, held on an audio conference call using Zoom on the 1st day of September, 2020. The said ordinance was further considered for final adoption at a meeting of the Byram Township Council on an audio conference call using Zoom on the 15th day of September at 7:30 p.m. at which time all persons were given the opportunity to be heard. It was finally passed and adopted and will be in full force in the Township according to law.

Doris J. Flynn, RMC
 Township Clerk

EXHIBIT A

Byram Township, Sussex County
Proposed Franchise Map

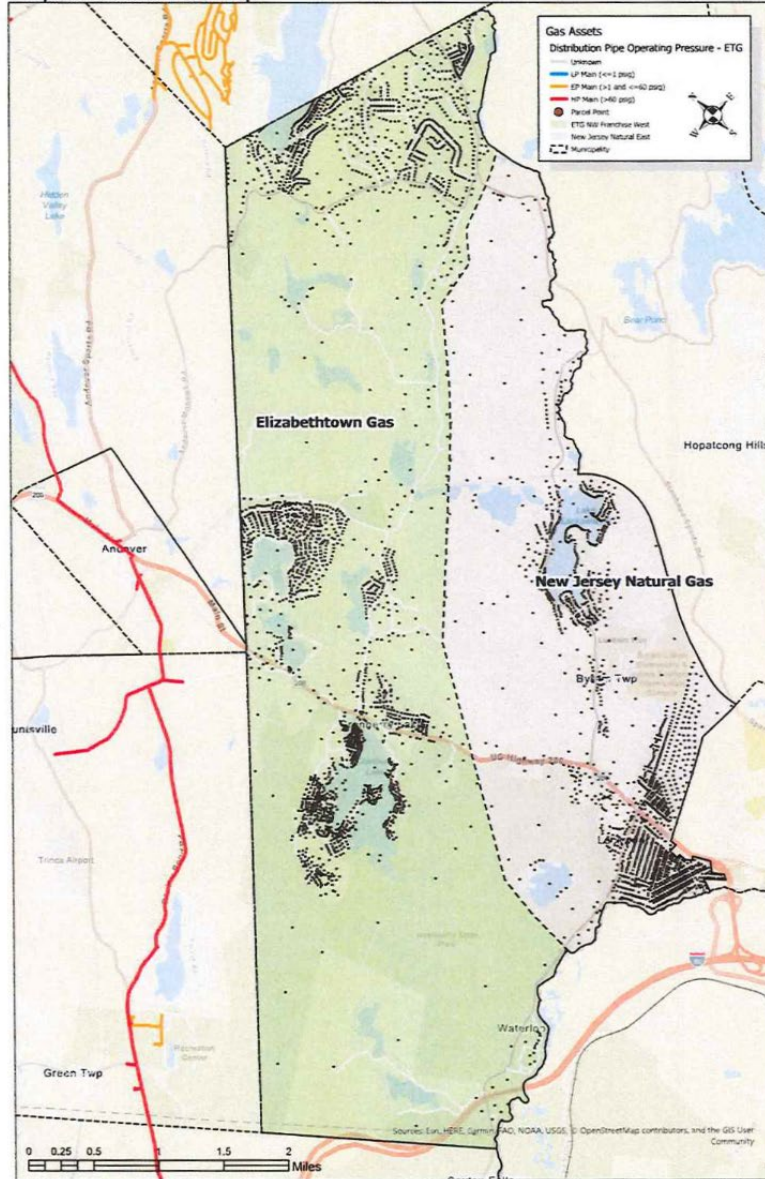


Exhibit B:
Letter of Acceptance



MORRIS • DOWNING • SHERRED, LLP

Founded 1899

One Main Street
P.O. Box 67
Newton, NJ 07860

email: rvalenti@mdsfirm.com

September 24, 2020

PARTNERS

David L. Johnson*
M. Richard Valenti
Paul G. Hunczak
Douglas C. Gray**
Brian C. Lundquist*
Dina M. Mikulka

ASSOCIATES

Michelle M. Beatty
Andrew N. Koske

OF COUNSEL

Christopher D. Quinn
James P. Fox
Angela C. Paternostro-Pfister
Karen D. Russell (Ret. J.S.C.)

*Also member of NY Bar
*Also member of OH Bar

Cynthia Church, RMC/CMR
Deputy Municipal Clerk
10 Mansfield Drive
Stanhope, NJ 07874

Re: Elizabethtown Gas – Franchise in the Township of Byram

Dear Ms. Church:

In accordance with N.J.S.A. 48:3-16, I hereby notify you on behalf of Elizabethtown Gas that Elizabethtown Gas accepts the terms of the Ordinance granting Elizabethtown Gas a municipal consent to provide natural gas service to the Township of Byram, which Ordinance was adopted by the Mayor and Council at the September 15, 2020 meeting.

So that Elizabethtown Gas can process the application with the BPU, kindly forward when available: (i) a certified copy of the Ordinance and Minutes of the meetings evidencing the first reading, second reading and adoption of the Ordinance; (ii) proof of publication of the Ordinance for the second reading; (iii) proof of publication of the Notice of Adoption; and, (iv) certification of posting of the Petition in five (5) public places. I have attached a form that can be used as a template for the certification. Please place the completed and signed form on the Township's letterhead.

Thank you for all of your help in this matter.

Very truly yours,

MORRIS, DOWNING & SHERRED, LLP

M. Richard Valenti

MRV:nlc

cc: Gary Marmo, Business Development
Thomas F. Collins, Jr., Esq.

Exhibit C:
Hearing Notice



Van L. McPherson III, Esquire
Assistant General Counsel
Office of General Counsel

June 24, 2021

VIA E-MAIL ONLY

Ms. Cindy Church, Clerk
Byram Township
10 Mansfield Drive
Stanhope, New Jersey 07874

Gregory V. Poff, II, County Administrator
Sussex County Administrative Center
1 Spring Street
Newton, NJ 07860

Teresa Lyons, Clerk of the Board of Commissioners
Sussex County Administrative Center
1 Spring Street
Newton, NJ 07860

**RE: In the Matter of the Petition of Elizabethtown Gas Company for Approval of
a Municipal Franchise in the Township of Byram, Sussex County
BPU Dkt. No. GE21020618**

Dear Ms. Church, Mr. Poff, and Ms. Lyons:

Pursuant to the provisions of N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, Elizabethtown Gas Company ("ETG") has applied to the New Jersey Board of Public Utilities ("Board") for approval of Township of Byram Ordinance No. 008-2020, which grants ETG permission to serve natural gas within its community as provided in said Ordinance.

Please be advised the Board has set July 16, 2021 at 10 a.m. as the date and time for the hearing on this matter. This matter will be held virtually due to the pandemic.

Dial-In: 1-866-984-3163

Conference ID: 602 023 056#

Video Conference Link: <https://tinyurl.com/6tfm8c>

You are welcome to attend and place your views on the record if you desire.

Very truly yours,

A handwritten signature in blue ink that reads "V L McPherson III". The signature is stylized with a large "V" and "L" and a cursive "McPherson III".

Van L. McPherson III
Assistant General Counsel
vmcpherson@sjindustries.com

VLM/cmm
cc: Attached Service List (E-Mail Only)

Exhibit D:
Revised Map

Byram Township, Sussex County Proposed Franchise Map



Elizabethtown Gas - GIS, July 2021
Created by Marisa Fawcett
Path: C:\Users\mfrancaso\OneDrive - SJ Industries\Desktop\ETG Maps\ETG_Byram_FranchiseProposal_20200601.aprx