



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH )  
JERSEY GAS COMPANY FOR APPROVAL OF A ) DECISION AND ORDER  
MUNICIPAL CONSENT IN THE CITY OF ATLANTIC )  
CITY, ATLANTIC COUNTY, STATE OF NEW JERSEY ) DOCKET NO. GE11100678

**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 350,000 customers within its service territory.

SJG currently provides natural gas service within the City of Atlantic City ("City") to approximately 8,801 residential, 1,235 commercial and 8 industrial customers. The Company's most recent consent from the City expired on December 28, 2000.<sup>1</sup> On May 11, 2011, the City renewed its consent by adopting Ordinance No. 38 which gave SJG exclusive and perpetual consent and permission to lay and construct its facilities within the public rights-of-way. By letter dated August 4, 2011, 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.

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<sup>1</sup> 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 City in an uninterrupted manner.

On October 25, 2011, 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 City. As required by law, after notice, a hearing in this matter was held on January 25, 2012, 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 Charles F. Dippo, its 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 three to five 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 City.

By letter dated March 7, 2012, Rate Counsel submitted its comments to the petition. While not opposed to its approval, Rate Counsel 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.

By letter dated March 19, 2012, the Company responded to Rate Counsel's comments 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 City, unsupported by the record in the proceeding and inconsistent with existing law.

According to SJG, pursuant to the decisions rendered 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, consent to use the streets is statutorily limited to duration of 50 years. Therefore, according to SJG, the legislature has 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 three 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 City.

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 City 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 City for the provision of gas service in the City as sought in the Company's petition.

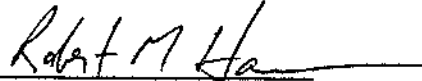
The approval granted hereinabove shall be subject to the following provisions:

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 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 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 City 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 fifty 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 City.

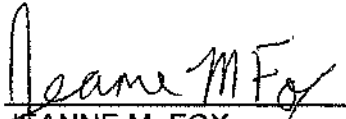
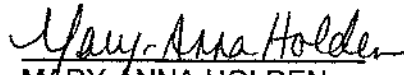
This Order shall be effective as of March 1, 2013.

DATED: 2/20/13

BOARD OF PUBLIC UTILITIES  
BY:



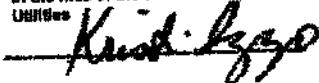
ROBERT M. HANNA  
PRESIDENT

  
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 CITY OF ATLANTIC CITY,  
ATLANTIC COUNTY, STATE OF NEW JERSEY  
DOCKET NO. GE11100678

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# Ordinance

Ordinance No. 38

OF THE

Date 5-11-2011

CITY OF ATLANTIC CITY, N.J.

Date to Mayor 5-26-2011

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

City Solicitor /s/ G. Bruce Ward

Business Administrator /s/ Michael K. Scott

Prepared by the City Solicitor's Office

Council Member RANDOLPH MARSH & GILLIAM

Presents the following Ordinance:

## AN ORDINANCE GRANTING CONSENT TO THE SOUTH JERSEY GAS COMPANY TO PROVIDE GAS TO ATLANTIC CITY RESIDENTS

WHEREAS, N.J.S.A 48:3-15 provides that any consent granted by the City of Atlantic City to South Jersey Gas Company to lay and maintain gas mains, pipes and or service pipes, below or on the surface of any street, avenue, park, parkway, highway or other public place, for the purpose of furnishing gas therein is subject to a fifty-year limitation; and

WHEREAS, the South Jersey Gas Company currently provides natural gas service to the residents of Atlantic City pursuant to municipal consent first granted by the City of Atlantic City in 1951 and subsequently approved by the New Jersey Board of Public Utilities; and

WHEREAS, it is in the best interest of the public health, safety and welfare of the residents of Atlantic City to maintain its natural gas service and to consent to authorizing the continuation of such service to the residents of Atlantic City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Atlantic City as follows:

### Section One.

That exclusive and perpetual consent permission, to furnish gas for light, heat and power in the City of Atlantic City, County of Atlantic, 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 Two.

That 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 City of Atlantic City in the manner required by N.J.S.A 48:9-21, and subject to reasonable regulations imposed by ordinance or resolution with the respect to the opening of streets and public place, subject to approval to such consent and approval by the Board of Public Utilities.

**Section Three.**

The permission granted in Sections One and Two are granted for the entire geographical area of the City of Atlantic City and extend to the boundaries of the City of Atlantic City.

**Section Four.**

The said South Jersey Gas Company shall within thirty (30) days after the passage of this Ordinance file with the City Clerk a bond in the amount of One Thousand Dollars (\$1,000.00) conditions 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 Public Works for the City of Atlantic City

**Section Five.**

All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed to the extent to such inconsistency.

**Section Six.**

This Ordinance shall take effect upon final passage and publication as provided by law.

Tc May 26, 2011 9:00 AM

9-a

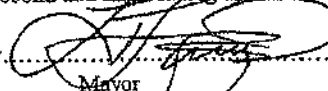
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RECORD OF COUNCIL VOTE ON FINAL PASSAGE

| COUNCIL MEMBER   | AYE | NAY | N.V. | A.B. | MOT. | SEC. | COUNCIL MEMBER | AYE | NAY | N.V. | A.B. | MOT. | SEC. |
|--|-----|-----|------|------|------|------|----------------|-----|-----|------|------|------|------|
| DELGADO  | X   |     |      |      |      |      | MOORE          | X   |     |      |      |      |      |
| GILLIAM  | X   |     |      |      |      |      | RANDOLPH       | X   |     |      |      | X    |      |
| MANCUSO  | X   |     |      |      |      |      | SMALL          | X   |     |      |      |      |      |
| MASON  | X   |     |      |      |      | X    | TIBBITT        | X   |     |      |      |      |      |
| MARSH, PRESIDENT   |     |     |      |      |      |      |                | X   |     |      |      |      |      |
| X-Indicates Vote    NV-Not Voting    AB-Absent    MOT-Motion    SEC-Second |     |     |      |      |      |      |                |     |     |      |      |      |      |

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on ... MAY 11, 2011.....

Adopted on second and final reading after hearing on... MAY 25, 2011.....

Approved By:  Date: 5-27-11 Reconsidered Over  
 By Council: \_\_\_\_\_ Ride \_\_\_\_\_  
 Mayor Aye Nay

This is a Certified True copy of the Original Ordinance on file in the City Clerk's Office.

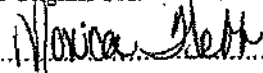
 City Clerk, Assistant

Exhibit B



**South Jersey Industries**

*Where we put all of our energy®*

**Steven R. Cocchi, Esq.**  
**Office of Corporate Counsel and Secretary**  
*Director, Legal Affairs*

August 4, 2011

Rhonda Williams, City Clerk  
City of Atlantic City  
1301 Bacharach Boulevard, Suite 704  
Atlantic City, New Jersey 08401

**Re: South Jersey Gas Company**  
**Acceptance of Ordinance No. 38 Granting Municipal Consent to Provide Gas**

Dear Ms. Williams:

I am writing on behalf of South Jersey Gas Company ("SJG") to advise that on August 3, 2011 we received a fully executed copy of Ordinance No. 38 (copy attached) granting municipal consent for SJG to provide gas and lay its mains and pipes in the City of Atlantic City. Pursuant to the requirements of N.J.S.A. 48:3-16, SJG hereby accepts Ordinance No. 38 as passed.

Thank you.

Very truly yours,

Steven R. Cocchi, Esq.  
Director, Legal Affairs  
scocchi@sjindustries.com

Encl.

cc: Deb Spinella, Government and Community Relations  
John Stanziola, Director of Regulatory Affairs  
Gina M. Merritt-Epps, Esq., Corporate Counsel & Secretary