



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)
BUENA VISTA, ATLANTIC COUNTY, STATE OF NEW)
JERSEY) DOCKET NO. GE11110812

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 Township of Buena Vista ("Township") to approximately 138 residential and 11 commercial customers. The Company's most recent consent from the Township expired on February 27, 2011.¹ On October 24, 2011, the Township renewed its consent by adopting Ordinance No. 12-2-11 which gave SJG exclusive and perpetual consent and permission to lay and construct its facilities within the public rights-of-way. By letter dated November 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.

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 November 14, 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 Township. 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. Dipppo, its Vice-President, Engineering Services. According to Mr. Dipppo'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 Township.

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 any 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 Township, 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., BP duration U 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 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 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 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 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 Township.

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 TOWNSHIP OF BUENA VISTA,
ATLANTIC COUNTY, STATE OF NEW JERSEY
DOCKET NO. GE11110812

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