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CASE MANAGEMENT

MAR 27 2018



BOARD OF PUBLIC UTILITIES
TRENTON, NJ

State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. BOX 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

Indg
3/28/18

STEFANIE A. BRAND
Director

March 27, 2018

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Via Hand Delivery and Electronic Mail

Ms. Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**Re: I/M/O Petition of South Jersey Gas Company for Approval of the
Sale and Conveyance of Block 502, Lot 3 in the Borough of Folsom,
Atlantic County
BPU Docket No.: GM18010026**

Dear Secretary Camacho-Welch:

Please accept for filing in the above-referenced matter an original and ten (10) copies of the New Jersey Division of Rate Counsel's ("Rate Counsel") comments regarding the South Jersey Gas Company's ("SJG" or "the Company") Petition for Approval to sell real property, Block 502, Lot 3, Borough of Folsom, Atlantic County, New Jersey (the "Property"), with a waiver of advertisement. We enclose one additional copy. Please date stamp it as "filed" and return it with our courier. Thank you for your attention to this matter.

CMG
List Copied

Tel: (609) 984-1460 • Fax: (609) 292-2923 • Fax: (609) 292-2954
<http://www.nj.gov/rpa> E-Mail: njratepayer@rpa.state.nj.us

SUMMARY

Rate Counsel has no objection to SJG's above-referenced Petition for Approval of the Sale and Conveyance of the Property, subject to the conditions set forth herein.

BACKGROUND

SJG is a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities ("BPU" or the "Board"). On January 16, 2018, SJG e-filed with the Board a Verified Petition for approval under N.J.A.C. 14:1-5.6 of the sale of the Property, and a waiver of the local newspaper advertisement pursuant to N.J.A.C. 14:1-5.6(i). SJG supports its Petition with the January 9, 2018 Verification of Paul Zuccarino, Senior Vice President and Chief Operations Officer for SJG, with attached exhibits, including a proposed form of Agreement of Sale (the "Contract") (Ex. E) and the January 10, 2017 Appraisal Report for the Property, by Harry Renwick of Renwick & Associates (the "Appraisal") (Ex. F). Subsequently, on February 20, 2018, SJG responded to Rate Counsel's discovery requests RCR-1 through RCR-5, and provided additional information via e-mail on March 13.

The Property consists of approximately 118 acres of farm land surrounding SJG's headquarters. (Petition, ¶¶ 1 & 9 and Ex. A) It is located northeast of Mays Landing – Blue Anchor Road (County Route 561), between Twelfth Street (State Route 54) and Eleventh Street, in the Borough of Folsom. (Petition, Ex. C) The Company acquired the Property, along with three adjacent lots, in 2007 for a total of \$578,671. (Petition, ¶ 2) SJG acquired those parcels from its parent company, South Jersey Industries. (Response to RCR-01)

SJG acquired the Property and the adjacent three lots for purposes of preservation to satisfy natural resource damage claims against it by the New Jersey Department of Environmental Protection (“DEP”). (See Petition, ¶ 2 and Ex. B, App. C) The acquisition satisfies one of the terms of a Ground Water Only Natural Resource Damages Settlement Agreement between SJG and the DEP dated April 21, 2008, I/M/O the South Jersey Gas Co. Properties and South Jersey Gas Co.. (Petition, Ex. B) The DEP’s natural resource damage claims arose from discharges by the Company that allegedly contaminated ground water on twelve properties that are the sites of former manufactured gas plants. (Petition, Ex. B) SJG is conducting investigation and remediation activities on those twelve sites. (Petition, Ex. B)

SJG already has taken certain measures to preserve the Property and three adjacent lots, including conveying to the DEP the right to preserve and protect the conservation values of those lands in perpetuity, as well as a right of first refusal, as memorialized in a recorded Deed of Conservation Easement. (Petition, Ex. B, ¶ 15 & App. C, and Petition, Ex. C) SJG proposes to sell the Property to the farmer who had leased and farmed it for approximately 20 years, (Petition, ¶ 1), and who intends to continue farming it, (Petition, Ex. E, ¶ 30). That farmer’s lease was not renewed approximately two or three years ago, pending negotiation of this transaction; however, he has continued some farming activity on the Property. (March 13, 2018 e-mail from Stacy A. Mitchell, Esq. of South Jersey Gas to Brian Weeks, Esq. of Rate Counsel).

The book value of the Property (i.e. Lot 3 alone) is \$481,180, (Petition, ¶ 2), and its assessed market value is \$476,000, (Petition, ¶ 10 and Ex. F). SJG proposes to sell the

Property to Joseph Shelli Properties LLC ("Purchaser") for \$580,000. (Petition, p. 1 and Ex. E) Although the Property does not have a net book cost or assessed market value of more than \$500,000, the Agreement of Sale for \$580,000 (Petition, Ex. E) indicates that the fair market value of the Property exceeds \$500,000.¹ Accordingly, SJG is required to advertise it for sale in a newspaper published in the county where the Property is located, twice at least one week apart, "within 150 days immediately prior to the filing of the petition for the approval of the sale." N.J.A.C. 14:1-5.6(b).²

The Petition is unclear as to when SJG proposes to close on the sale of the Property. However, the Agreement of Sale required the Purchaser to obtain a mortgage by June 30, 2017, required SJG to obtain all approvals for the sale from the DEP and the

¹ See Borough of Harvey Cedars v. Karan, 214 N.J. 384, 403 (2013) (the fair market value of a property is what a willing buyer and a willing seller would agree to, neither being under any compulsion to act).

² Board regulations allow waiver of the advertising requirement of N.J.A.C. 14:1-5.6(b) if a utility shows the following:

1. The waiver shall not adversely affect the public interest;
2. The subject property is no longer used or useful for utility purposes;
3. There is no prospective use of the property for utility purposes or no other likely prospective purchaser;
4. The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service;
5. The selling price represents the fair market value of the property to be sold based on a current independent appraisal;
6. There is no relationship between the parties other than that of transferor and transferee, or lessor and lessee; and
7. The request states the reasons of the utility in seeking the waiver which may include, but are not limited, to the following:
 - i. The subject property is unique and requires an unusual sales contract or represents an unusual transaction;
 - ii. The advertising and bidding shall not result in a higher sales price;
 - iii. The advertising and bidding shall be detrimental to the sale of the property;
 - iv. The unlikelihood of the existence of other bona fide purchasers who could meet the requirements of the proposed sales contract;
 - v. The development of the property for private use will require extensive environmental permitting due to an existing contamination condition; and
 - vi. The inability of any other bidder to obtain the necessary permitting authorization to develop the property.

N.J.A.C. 14:1-5.6(i).

Board by August 15, 2017, and gives the Purchaser the right and obligation to continue farming on the Property at least until the closing. (Petition, Ex. B, ¶¶ 24, 27 & 28)

Board rules mandate that it review the prudence and other public interest considerations in the sale, conveyance or lease of real or personal property of a public utility, and has established procedures for that review. N.J.A.C. 14:1-5.6; see N.J.S.A. 48:3-7.

ANALYSIS

As explained below, Rate Counsel does not object to SJG's assertion that it has met the criteria of N.J.A.C. 14:1-5.6(i) to waive the advertisements required by N.J.A.C. 14:1-5.6(b). Moreover, the proposed transaction does not raise any concerns for SJG's ability to provide safe, adequate and reliable service, as per N.J.S.A. 48:2-23. Thus, the waiver of advertising would not adversely affect the public interest.

The Property is a farm and has never been used for any utility operations. (Petition, ¶¶ 1, 2, 3 4 & 7) SJG states that it purchased the Property in partial satisfaction of its obligations to the DEP for natural resource damages at twelve of its former manufactured gas plant sites. (Petition ¶¶ 3 & 4 and Exs. B & C) SJG does not now need or use the Property for utility purposes, and does not anticipate such need or use. (Petition ¶ 7) SJG also does not currently derive any rental income from the Property. (Petition ¶ 6) Accordingly, the Property is no longer used or useful for utility purposes and there is no prospective use of it for utility purposes.³

³ The Company does not have any current plans for the other three lots purchased as a parcel with the Property, i.e., Block 502, Lots 1, 5 and 8. (Response to RCR-04)

The Company purchased the Property with three adjacent lots for \$578,671, (Petition ¶ 2), and anticipates selling the Property alone for \$580,000, (Petition ¶ 9 and Ex. E). SJG pays annual property taxes on the Property, \$1,445.04 for 2017, but incurs no carrying costs. (Response to RCR-02) Accordingly, SJG does not anticipate any financial loss, and will realize a minor cost savings, on the sale of the Property.

The Company transferred the Property into its Remediation Adjustment Clause ("RAC") in November 2007. (Response to RCR-05) Rate Counsel agrees with SJG's plan to credit all proceeds from the sale as a credit to its RAC. (Petition ¶ 8; Response to RCR-05) SJG will thereby receive no income from the proposed sale. (Id.) Rate Counsel reserves all rights to review all costs related to the Property in the appropriate proceeding. For this reason too, the waiver should not adversely affect the public interest.

The Company retained Renwick & Associates, whose January 10, 2017 Appraisal Report opines that the Market Value of the Property as of that date was \$476,000. (Petition ¶ 10 and Ex. F) SJG has entered into a contract to sell the Property for \$580,000. (Petition ¶ 9 and Ex. E) Thus, the selling price represents the fair market value of the Property based on a recent independent appraisal.

SJG acquired the Property and three adjacent parcels from its parent company, South Jersey Industries, in 2007. (Response to RCR-01; Petition, ¶ 2) There is no relationship between SJG and the purchaser of the Property other than that of transferor and transferee. (Petition ¶ 12 and Response to RCR-01)

Accordingly, Rate Counsel does not object to the Company's assertion that it has met the criteria of N.J.A.C. 14:1-5.6(i)(1) through (6).

To demonstrate compliance with N.J.A.C. 14:1-5.6(i)(7), SJG relies on the nature of its proposed sale transaction. The proposed Purchaser has farmed the Property for approximately 20 years and, by continuing to farm it after the closing, will carry out SJG's obligation to ensure that the natural resources of the Property are preserved. (Petition, ¶¶ 1, 3 & 4 and Exs. B, C and E) The Purchaser will thereby help the Company comply with its obligations to the DEP to mitigate natural resource damages. Those damages, at twelve sites, resulted from the Company's former manufactured gas plant operations. (Petition, Exs. B and C)

The reasons supporting the waiver of the publication requirement "may include, but are not limited," to the six factors listed in N.J.A.C. 14:1-5.6(i)(7). Rate Counsel does not object to SJG's assertion that it has met a sufficient number of those criteria to support its Petition:

- (i) The Property is unique and requires an unusual sales contract, since it is a farm that must be preserved from development in perpetuity. The Purchaser is familiar with the Property after approximately 20 years of farming it, and intends to continue to do so, and is purchasing subject to the DEP's perpetual Deed of Conservation Restriction. Accordingly, Rate Counsel agrees with SJG that a direct sale to that farmer is the more appropriate method of marketing such a property rather than in a general newspaper advertisement.

(ii) SJG's January 10, 2017 Appraisal opines that the Market Value of the Property as of January 10, 2017 was \$476,000, which is \$104,000 lower than the contract price of \$580,000. (Petition ¶¶ 9 & 10 and Exs. E & F) There are no carrying costs for the Property, but its most recent annual property taxes for 2017 were \$1,445.04. (Response to RCR-02) Accordingly, public advertising and bidding are not likely to result in a higher sales price.

(iii) The Company has not received any other offers to purchase the Property. (Response to RCR-03) Under the terms of its Deed of Conservation Easement, DEP has maintained a right of first refusal to purchase the Property. However, when notified by SJG of the proposed sale, by e-mail dated September 1, 2017, DEP declined to exercise that right. (Petition ¶ 5 and Exs. C and D; Response to RCR-03) Moreover, the proposed Purchaser intends to carry out the essential terms of the Agreement of Sale, i.e., to preserve the Property by continuing to farm it. Accordingly, Rate Counsel does not object to SJG's assertion that publishing at least two newspaper ads, as required by N.J.A.C. 14:1-5.6(b), likely would not result in a sale of the Property to another bona fide purchaser who could meet the requirements of the proposed sales contract. (See Petition ¶ 15.g)

(iv) Under the terms of the DEP's Deed of Conservation Easement, the Property may not be developed for private use but may only be used for activities such as farming that will preserve its natural resources. (Petition ¶ 4 and Ex. C) Accordingly, public advertising and bidding are not likely to result in the sale of the Property to a purchaser who could develop it for private use.

On balance, Rate Counsel considers that SJG has met a sufficient number of the criteria in N.J.A.C. 14:1-5.6(i)(1) through (7) that we do not object to the Petition.

RECOMMENDATION

Rate Counsel does not object to SJG's Petition seeking approval to sell the Property and to waive the local newspaper advertisement. We recommend that the Board review the revenue and other issues related to the purchase and sale of the Property in an SJG base rate case, Remediation Adjustment Clause filing or in another appropriate proceeding. Rate Counsel reserves all rights to review all related costs of and revenues from the purchase and sale of the Property in appropriate proceeding(s) for prudence and a determination that they are properly recoverable from and credited to SJG ratepayers. Accordingly, in any Order approving the petition, Rate Counsel respectfully asks the Board to require SJG to meet the conditions set forth below:

1. SJG shall notify the Board and Rate Counsel if it anticipates any material changes in the contract for sale of the Property.
2. Rate Counsel retains all rights to review all costs and proceeds related to the purchase and sale of the Property in SJG's next base rate case, RAC filing or another appropriate proceeding.
3. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future Petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Petitioner.

4. Nothing in this comment letter shall be construed to affect SJG's liability for Natural Resource Damages or other responsibilities or damages arising from its activities at any site or SJG's responsibilities or claims in any RAC filing or other matter arising from any of its MGP sites.

Very truly yours,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: Brian Weeks
Brian Weeks, Esq.
Deputy Rate Counsel

c: Service List (via e-mail and regular U.S. mail)

In the Matter of the Petition of South
Jersey Gas Company for Approval of
the Sale and Conveyance of Real
Property with a Municipal Tax Map
Designation of Lot 3, Block 502 in the
Borough of Folsom, Atlantic County
BPU Docket No. GM18010026

Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Stefanie A. Brand, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Brian O. Lipman, Litigation Manager
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Felicia Thomas-Friel, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Brian Weeks, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Thomas Walker, Director of Energy
NJ Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Alex Moreau, DAG
Dept. of Public Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Stacy A. Mitchell, Esq.
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Veronica Beke, DAG
Dept. of Public Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Steven R. Cocchi, Esq., Director
Rates & Revenue Requirements
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Kenneth J. Barcia, Manager
Rate & Revenue Requirements
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Stefany M. Gram, Senior Analyst
Rate & Revenue Requirements
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Paul J. Zuccarino, Senior Vice
President & Chief Operations Officer
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Tapan H. Jain, Senior Analyst
Rates & Revenue Requirements
South Jersey Gas Company
1 South Jersey Plaza, Route 54
Folsom, NJ 08037

Christopher Oprysk
NJ Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350