



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. BOX 003  
TRENTON, NJ 08625

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

August 23, 2021

**Via Electronic Mail**

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

**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 Docket No.: GE21020618**

Dear Secretary Camacho-Welch:

Please accept for filing the comments of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning the above-referenced Verified Petition of Elizabethtown Gas Company ("ETG" or "Company") for approval of a municipal franchise and consent in the Township of Byram, Sussex County. Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities (the "Board") in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, this communication is being filed electronically with the Secretary of the Board and is being provided to each person on the service list by electronic mail only. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you.

### **Background**

The Company filed the above-referenced Verified Petition on or about February 23 2021, seeking approval, pursuant to N.J.S.A. 48:2-14, N.J.S.A. 48:3-15 and N.J.A.C. 14:1-5.5, of Township of Byram Ordinance No. 008-2020, granting the Company a franchise to provide natural gas utility service, and consent to construct and maintain pipes and related facilities in streets and other public areas, within a certain area of the Township. RCR-5 and Attachment RCR-5.1. Rate Counsel propounded discovery requests RCR-1 through RCR-16 on ETG on March 4, 2021, which the Company answered on March 10; ETG provided revised responses to RCR-5, Attachment RCR-5.1, RCR-6 and RCR-7 on May 19. Board Staff propounded discovery requests S-ETG-ENG-1 and -2 on ETG on March 23, 2021, which the Company answered on March 24, and discovery request S-ETG-ENG-3 on April 28, 2021, which the Company answered on May 13. On July 12, ETG provided a further revised response to RCR-5, an Attachment RCR-5.2 Revised, and a further revised response to RCR-7. At the hearing on this Petition on July 16, Rate Counsel asked four informal discovery requests; ETG provided Informal Responses #1 through #4 on July 26.

ETG does not currently provide natural gas service within the Township, but intends to do so. RCR-1-4. New Jersey Natural Gas Company (“NJNG”) also intends to provide natural gas service within the Township, and has agreed with ETG upon the general scope of their respective territories within the Township. Attachment RCR-5.2; RCR-5, -6 and -7; Informal Responses #1 and #4. That agreement was arranged in a meeting with NJNG, Board Staff and the Byram Mayor and Township Manager, based upon the proximity of their respective gas distribution systems and geographic features. S-ETG-ENG-1 and -2; RCR-6; see Informal Responses #1 and #4; see 30T:L22 – 31T:L16 (7/16/21). ETG states that on June 17 NJNG filed

a petition and submitted a map to the Board of its planned gas distribution system within the Township. RCR-16; revised RCR-7; see RCR-5 and Attachment 5.2; S-ETG-ENG-2; see Informal Responses #1 and #4. ETG further stated that NJNG submitted the same map as ETG, but without the location identification information that ETG provided on its revised map RCR-5.2 Updated. Informal Response #4; see 31T:L17 - 19 (7/16/21). ETG says it does not think it must submit to the Board a copy of a written agreement with NJNG as to allocation of territory within Byram Township, since each will apply for its own franchise area within the Township. Revised RCR-7; Informal Response #4.

Over the next five years, ETG expects approximately 750 to 1,000 new customers within the Township, RCR-9 and RCR-10, and within its entire service territory, RCR-8. At the July 16 hearing in this matter, the Company stated that it anticipates approximately 1,500 to 2,000 new customers within Byram Township, likely almost all residential, over the next five years. 15T:L12 - 16T:L19 (7/16/21). The Company anticipates that its new customers in the Township will be owners of existing structures converting to natural gas from heating oil, propane or electricity. 21T:L2 - 12 (7/16/21).

ETG represents that it has the capacity necessary to ensure continuous natural gas service and does not foresee any concerns regarding its ability to safely and reliably provide the full natural gas supply requirements of anticipated new customers located within the Township. RCR-11 and RCR-12; 32T:L20 – 33T:L18 (7/16/21).

On March 10, ETG provided a map generally showing the areas within the Township where it proposes to provide natural gas service. RCR-5; Attachment 5.1. On July 12, ETG provided a revised map, Attachment 5.2, which it updated with a more detailed map on July 26. Informal Response #1, “proposed franchise line with developed areas.” That more detailed map

shows the ETG/NJNG franchise boundary line with GPS coordinates tied to ETG's original proposed map, which ETG represents was approved by Byram Township and NJNG. That more detailed map also shows existing structures of potential new customers, entry points for gas infrastructure expansions into the Township, proposed gas mains and defined neighborhoods within the Township. Informal Request #1.

ETG has not provided a written agreement with NJNG on the allocation of their respective territories within the Township, and does not believe it requires one, because both companies filed with the Board the same map of their proposed service territories. Informal Request #4; see 19T:L12 - 23 and 27T:L4 – 12 and 35T:L24 – 36T:L11 and 36T:L23 – 37T:L20 (7/16/21). The Company represents that it will resolve any dispute with NJNG over which will serve a new customer based on the best interests of the customer. S-ETG-ENG-2; 48T:L13 – 49T:L9 (7/16/21). ETG also stated that it would agree to submit any dispute with NJNG regarding their respective territories or customers to the Board for resolution. 26T:L6 - 16 (7/16/21).

The Company has not yet provided plans for the natural gas distribution system that it proposes to install in the Township, but will develop it in accordance with customer interest, RCR-14, and whether the new customer is located closer to the distribution system of ETG or of NJNG, S-ETG-ENG-1 and -2. It is unclear whether ETG will submit its distribution system plan to the Board for approval. 25T:L19 - 26T:L4 (7/16/21). The Company has no plan to change its gas transmission system in order to provide service to Byram Township. RCR-15; 33T:L19 - 24 (7/16/21).

The Company plans to provide in-person service to its customers within the Township through its customer service centers located in either Elizabeth or Perth Amboy; any customer

seeking any service in person must travel there. Their hours are from 8:30 a.m. to 1 p.m. and 2 to 4 p.m. Informal Request #3; 22T:L23 - 24T:L25 (7/16/21). The Elizabeth and Perth Amboy Payment Centers process customer payments and answer simple customer inquiries. If a customer needs to speak with a customer service representative, they must use phones located in the lobby. Due to current Covid-19 restrictions those Payment Centers are accepting payments and answering customer inquiries in a “contactless” manner. Beginning in the fourth quarter of 2021, each of those Payment Centers will have a payment kiosk that will enable customers to make payments 24 hours a day, 7 days a week. Informal Request #3.

A google maps search indicates that driving to the ETG customer service center in Elizabeth<sup>1</sup> from Forest Lake Drive North, located in one of the residential areas in Byram Township that ETG plans to serve, is a distance of over 50 miles and 1.25 hours each way.

The Township granted the Company a non-exclusive franchise and consent to provide natural gas utility service and to construct and maintain pipes and related facilities in streets and other public areas within the Township, for a period of fifty (50) years, by Ordinance No. 008-2020, adopted on September 15, 2020. See Petition, ¶ 3 and Ex. A. In Ordinance No. 008-2020, the Township set forth certain limits on its franchise and consent to ETG, including limiting both to a period of fifty (50) years from the date of the final adoption of the Ordinance. Petition, Ex. A. On September 24, 2020, the Company accepted and agreed to the terms and conditions of the municipal franchise and consent in Ordinance No. 008-2020, pursuant to N.J.S.A. 48:3-16. Petition, ¶ 3 and Ex. B.

---

<sup>1</sup> Located at 12 West Jersey Street, Elizabeth. <https://www.elizabethtowngas.com/residential/pay-your-bill>. The ETG customer service center at 296 State Street in Perth Amboy is even farther from Byram Township.

At the hearing held by the hearing officer for the Board on this Petition on July 16, 2021, ETG witnesses Mr. Gary Marmo, ETG Director of Marketing and Customer Relations, and Michael Scacifero, ETG Director of Engineering, testified that the Company has the capacity to meet the anticipated future needs of customers located within the municipality; has no plans to change its gas transmission system in order to serve the Township; will plan its gas distribution system within the Township based on customer demand; and will provide limited in-person service to its customers in Byram Township through its Payment Centers located in Elizabeth and Perth Amboy. 12T:L11-18; 13T:L1-12 & 13T:L13-16 (7/16/21); Informal Request #3. No one has contacted Rate Counsel with any objection regarding this matter.

#### **Rate Counsel Position**

The Company represents that it has the capacity necessary to meet the full natural gas supply requirements, and to provide safe and reliable natural gas service to its anticipated customers located in the Township. The Company represents that it will resolve any dispute with NJNG over which will serve a new customer based on the best interests of the customer. Moreover, ETG states that NJNG has applied to the Board for its own franchise within Byram Township. For these reasons, and the fact that the non-exclusive municipal franchise and consent granted in Ordinance No. 008-2020 does not exceed the statutory maximum term of fifty years, as per N.J.S.A. 48:3-15, Rate Counsel does not object to approval of ETG's Petition. Rate Counsel recommends that the Board's Order specifically provide that its approval does not include authorization to include in rate base any specific assets that may be constructed as a result of approval of this Petition. The determination of any assets to be included in rate base, and any ratemaking impacts as a result of the municipal franchise and consent, should be addressed in a future base rate case or other appropriate proceeding.

Accordingly, Rate Counsel recommends that any Board Order approving the Company's Petition contain the following language:

1. Since Township of Byram Ordinance No. 008-2020 complies with N.J.S.A. 48:3-15, the municipal franchise and consent for the use of streets and other public places is limited to a term not exceeding fifty years.
2. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
3. This Order shall not affect, nor in any way limit, the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioner.
4. Any map submitted by ETG showing its proposed service territory within Byram Township must be consistent with any map submitted by NJNG showing its proposed service territory within Byram Township.
5. ETG will submit to the Board and Rate Counsel for review and approval any agreement it proposes to enter into with NJNG as to the scope of their respective service territories within Byram Township.
6. ETG will notify the Board and Rate Counsel in the event it is unable to resolve any dispute with NJNG over the allocation of their respective territories within Byram Township, including without limitation which company will serve a customer, and will submit that dispute to the Board for resolution.
7. The Board reserves to itself the right to modify the respective territories of ETG and NJNG within Byram Township, if necessary to resolve a dispute or other problem arising from the scope of their territories or other difficulty providing safe, reliable and appropriate service to customers.
8. Due to the lengthy travel necessary for a customer to visit an ETG Payment Center in Elizabeth or Perth Amboy, the Company will investigate the cost of providing in-person services to its customers located in Byram Township and nearby municipalities through a customer service center located closer to Byram, perhaps in a facility shared with NJNG, and report the cost and practicality of such arrangement to the Board and Rate Counsel.

These provisions will satisfy the concerns of Rate Counsel that the Company is in compliance with the proper statutory framework, that Board approval is limited to the municipal franchise

Honorable Aida Camacho-Welch, Secretary  
August 23, 2021  
Page 8

and consent, and that there is no authorization to include any specific assets or amounts in rate base, nor authorization for any other ratemaking treatment. If the Board adopts these conditions, Rate Counsel is not opposed to approval of the above-referenced Petition.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

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

c: Service List (by electronic mail)

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

Aida Camacho, Board Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
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

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

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

Terel Klein, DAG  
Dept. of Law & Public Safety  
Division of Law  
RJ Hughes Justice Complex  
25 Market Street, 7th Floor West  
P.O. Box 112  
Trenton, NJ 08625

Stacy Peterson, Director  
Division of Energy  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
P. O. Box 350  
Trenton, NJ 08625-0350

John Zarzycki  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Andrew McNally, Esq.  
SJI Utilities Inc.  
1 South Jersey Plaza  
Folsom, NJ 08037

Deborah M. Franco, Esq.  
SJI Utilities, Inc.  
520 Green Lane  
Union, NJ 07083

Carolyn A. Jacobs  
SJI Utilities Inc.  
One South Jersey Place  
Atlantic City, NJ 08401

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

Van L. McPherson, III, Esq.  
SJI Utilities Inc.  
1 South Jersey Plaza  
Folsom, NJ 08037

Cynthia Church, RMC, CMR  
Byram Township  
10 Mansfield Drive  
Stanhope, NJ 07874

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