

SOUTH JERSEY INDUSTRIES INC

Form 8-K

May 10, 2016

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of

the Securities Exchange Act of 1934

Date of Report

**May 10, 2016**

(Date of earliest event reported)

**SOUTH JERSEY INDUSTRIES, INC.**

(Exact name of registrant as specified in its charter)

**New Jersey**

**1-6364**

**22-1901645**

(State of incorporation) (Commission File Number) (IRS employer identification no.)

**1 South Jersey Plaza, Folsom, New Jersey 08037**

(Address of principal executive offices, including zip code)

**(609) 561-9000**

(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report):

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 8.01. Other Events.**

South Jersey Industries, Inc. (the Company, SJI, we, us or our) is updating the description of its capital stock for the purpose of updating the description of its capital stock contained in its registration statement filed under Section 12 of the Securities Exchange Act of 1934. To the extent the following description is inconsistent with prior filings, it modifies and supersedes those filings.

SJI is authorized to issue 120,000,000 shares of common stock, \$1.25 par value per share, and 2,500,000 shares of preference stock, without par value. As of May 6, 2016, there were 71,425,506 shares of common stock outstanding and no shares of preference stock outstanding.

Our common stock is listed on the New York Stock Exchange and trades under the ticker symbol SJI. All outstanding shares of our common stock are validly issued, fully paid and nonassessable.

The following description of the terms of our common stock is not complete and is qualified in its entirety by reference to our Certificate of Incorporation, as amended through February 27, 2015 (as so amended, our Certificate of Incorporation), our Bylaws, as amended and restated through April 29, 2016 (our Bylaws), and the laws of the state of New Jersey.

**Common Stock**

***Voting Rights***

The holders of our common stock are entitled to one vote per share on each matter submitted to a vote at a meeting of shareholders.

There is no provision for cumulative voting with regard to the election of directors. This could prevent directors from being elected by a relatively small group of shareholders.

***Dividend Rights***

Holders of our common stock are entitled to receive any dividends our board of directors may declare on our common stock, subject to the prior rights of any preference stock. Our board of directors may declare dividends from funds legally available for this purpose.

***Liquidation Rights***

If we liquidate, dissolve or are wound up, then after payment of or provision for claims of creditors and after payment of any liquidation preferences to holders of any preference stock, the holders of our common stock will be entitled to participate equally and ratably, in proportion to the number of shares held, in our net assets available for distribution to holders of common stock.

***Other Rights***

The holders of our common stock have no preemptive rights to maintain their percentage of ownership in future offerings or sales of stock of SJI and no rights to convert their common stock into any other securities. Our common stock is not subject to any redemption or sinking fund provisions.

**Preference Stock**

Our board of directors has the authority, without other action by shareholders, to issue preference stock in one or more series.

Our board of directors has the authority to determine the terms of each series of preference stock, within the limits of our amended and restated articles of incorporation, our amended and restated by-laws and the laws of the state of New Jersey. These terms include the number of shares in a series and applicable dividend rights, liquidation preferences, terms of redemption, conversion rights and voting rights, if any.

### **Anti-Takeover Provisions of our Certificate of Incorporation, Bylaws and New Jersey law**

Certain provisions of our Certificate of Incorporation, our Bylaws and New Jersey law could discourage, delay or prevent some transactions involving unsolicited acquisitions or changes of control of the Company. We believe that these provisions will enable us to develop our business in a manner that will foster our long-term growth without disruption caused by the threat of a takeover not deemed by our board of directors to be in the best interests of the Company, our shareholders and certain other constituents. However, such provisions could have the effect of discouraging third parties from making proposals involving an unsolicited acquisition or change of control of the Company, even when a majority of our shareholders might consider such proposals, if made, desirable. Such provisions also may have the effect of making it more difficult for third parties to cause the replacement of our current management without the assent of our board of directors. These provisions include:

- limitations on certain transactions (including mergers, consolidations, asset dispositions and securities issuances) with certain entities that beneficially own 5% or more of our capital stock;

- a requirement for the affirmative vote of the holders of at least 80% of the aggregate voting power of our outstanding common stock to amend the limitations on such transactions;

- authorization of our board of directors to issue common stock and preference stock from time to time in its discretion;

- authorization of our board of directors to establish one or more series or classes of undesignated preference stock, the terms of which can be determined by our board of directors at the time of issuance;

- noncumulative voting;

- authorization of our directors to fill any vacancies on our board of directors, including vacancies resulting from a board resolution to increase the number of directors; and

- advance notice procedures with respect to nominations of directors or proposals other than those adopted or recommended by our board of directors.

### ***Transactions with Related Persons***

Our Certificate of Incorporation prohibits us from engaging in certain transactions with certain Related Persons, as further described further below, including (i) any merger or consolidation, (ii) any sale, lease, exchange or other

disposition of any substantial part of our assets or (iii) any issuance or transfer of any securities having voting power in exchange for securities, cash or other property unless (x) approved by the affirmative vote of the holders of at least 80% of the outstanding shares of all classes of our capital stock entitled to vote in the election of directors or (y) approved by our board of directors prior to the time that the Related Person became a Related Person. The restriction applies to any such transaction with a person who was a Related Person within the 12 months preceding the record date for determination of the shareholders entitled to notice of the transaction and to vote thereon.

A Related Person is defined for this purpose as any person (other than a corporation or any subsidiary of SJI) who is the beneficial owner, directly or indirectly, of 5% or more of the outstanding shares of our capital stock entitled to vote generally in the election of directors.

The provisions of our Certificate of Incorporation relating to transactions with Related Persons may be amended only by the affirmative vote of the holders of at least 80% of the aggregate voting power of our outstanding capital stock.

***Anti-Takeover Effects of the New Jersey Shareholders Protection Act***

We are subject to Section 14A:10A of the New Jersey Shareholders Protection Act. Subject to certain qualifications and exceptions, the statute prohibits an interested stockholder of a corporation from effecting a business combination with the corporation for a period of five years unless (i) the corporation's board of directors approved the combination prior to the shareholder becoming an interested stockholder or (ii) the corporation's board of directors approved the transaction or series of transactions which caused the person to become an interested stockholder before the person became an interested stockholder and any subsequent business combination with that interested stockholder is approved by independent members of the board of directors and the holders of a majority of the voting stock not beneficially owned by the interested stockholder. In addition, but not in limitation of the five-year restriction, if applicable, corporations covered by the New Jersey statute may not engage at any time in a business combination with any interested stockholder of that corporation unless the combination is approved by the board of directors prior to the interested stockholder's stock acquisition date, the combination receives the approval of two-thirds of the voting stock of the corporation not beneficially owned by the interested stockholder or the combination meets minimum financial terms specified by the statute.

An interested stockholder is defined for this purpose to include any beneficial owner of 10% or more of the voting power of the outstanding voting stock of the corporation and any affiliate or associate of the corporation who within the prior five year period has at any time owned 10% or more of the voting power of the then outstanding stock of the corporation.

The term business combination is defined to include, among other things:

- the merger or consolidation of the corporation with the interested stockholder or any corporation that is or after the merger or consolidation would be an affiliate or associate of the interested stockholder;

the sale, lease, exchange, mortgage, pledge, transfer or other disposition to an interested stockholder or any affiliate or associate of the interested stockholder of 10% or more of the corporation's assets; or

the issuance or transfer to an interested stockholder or any affiliate or associate of the interested stockholder of 5% or more of the aggregate market value of the stock of the corporation.

#### ***Authorized but Unissued Common Stock and Preference Stock***

The authorized but unissued shares of our common stock and preference stock are available for future issuance without shareholder approval. Further, our board of directors can set the voting rights, redemption rights, conversion rights and other rights relating to any such preference stock and could issue such stock in either public or private transactions.

New Jersey law does not require shareholder approval for any issuance of authorized shares. However, the listing requirements of the New York Stock Exchange, which would apply to us so long as our common stock remains listed on the New York Stock Exchange, require shareholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or then outstanding number of shares of our common stock.

We may issue additional shares for a variety of corporate purposes. We may engage in public or private offerings to raise additional capital or to facilitate corporate acquisitions. We may issue shares of common or preference stock to persons friendly to current management. Such an issuance may discourage, delay or prevent an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management. This could deprive our shareholders of opportunities to sell their shares of our stock at prices higher than prevailing market prices. Our board of directors could also use these shares to dilute the ownership of persons seeking to obtain control of the Company.

***Number of Directors; Filling of Vacancies***

Our Bylaws provide that our board of directors will have eleven directors. The size of the board of directors may be changed by a majority vote of the board of directors. Our Bylaws permit the board of directors to fill any new directorships it creates and any other vacancies. Accordingly, our board of directors may be able to prevent any shareholder from obtaining majority representation on our board of directors by increasing the size of the board of directors and filling the newly created directorships with its own nominees.

The provisions of our Bylaws relating to the number of directors and filling of vacancies may be amended only by the majority vote of the directors or the affirmative vote of the holders of at least 80% of the aggregate voting power of our outstanding capital stock.

***Advance Notice Provisions***

Our Bylaws provide that in order for a shareholder to nominate a director or bring other business before an annual meeting, the shareholder must give written notice, in proper form, to our Secretary (i) in the case of an annual meeting that is called for a date that is within 30 days before or after the anniversary date of the previous year's annual meeting of shareholders, not less than 60 days nor more than 90 days prior to the anniversary date, (ii) in the case of an annual meeting that is called for a date that is not within 30 days before or after the anniversary date of the previous year's annual meeting, not later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever comes first, and (iii) in the case of any special meeting of the shareholders, not less than 60 days nor more than 90 days prior to the date of such meeting.



Only persons who are nominated by, or at the direction of, our board of directors, or who are nominated by a shareholder who has given timely written notice, in proper form, to our Secretary prior to a meeting at which directors are to be elected, will be eligible for election as directors. The notice of any nomination for election as a director must set forth:

- the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated;

- the class and number of shares of the Company beneficially owned by the shareholder and any persons acting in concert with the shareholder;

- a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons, naming such person or persons, pursuant to which the nomination or nominations are to be made by the shareholder;

- such other information regarding each nominee proposed by such shareholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had each nominee been nominated, or intended to be nominated, by our board of directors; and

- the consent of each nominee to serve as a director if so elected.

The notice to bring any other matter a shareholder proposes to bring before a meeting of the shareholders must also set forth:

- a description of the proposal containing all material information relating thereto; and

- a representation that the shareholder is a holder of record of the stock of the Company entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring the business specified in the notice before the meeting.

The advance notice provisions may discourage, delay or prevent a person from bringing matters before a shareholder meeting. The provisions may provide enough time for us to begin litigation or take other steps to respond to these matters, or to prevent them from being acted upon.

## **Transfer Agent**

Broadridge Corporate Issuer Solutions, Inc., serves as our transfer agent and registrar.

**Item 9.01. Financial Statements and Exhibits.**

| <u>Exhibit No.</u> | <u>Description</u>  |
|--------------------|---|
| 3.1                | Certificate of Incorporation of South Jersey Industries, Inc., dated November 10, 1969.   |
| 3.2                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated April 21, 1983.  |
| 3.3                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated April 19, 1984.  |
| 3.4                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated April 23, 1987.  |
| 3.5                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated April 23, 1987.  |
| 3.6                | Certificate of Amendment of Certificate of Incorporation of South Jersey Industries, Inc., dated October 7, 1996.   |
| 3.7                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated May 5, 2005.   |
| 3.8                | Certificate of Amendment of the Certificate of Incorporation of South Jersey Industries, Inc., dated April 28, 2009.  |
| 3.9                | Certificate of Amendment to the Certificate of Incorporation of South Jersey Industries, Inc., dated June 2014.   |
| 3.10               | Certificate of Amendment to the Certificate of Incorporation of South Jersey Industries, Inc. Increasing the Number of Authorized Shares, dated February 27, 2015.                                |
| 3.11               | Bylaws of South Jersey Industries, Inc. as amended and restated through April 29, 2016. (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed May 3, 2016.) |

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**SOUTH JERSEY INDUSTRIES, INC.**

Date: May 10, 2016 /s/ *Gina Merritt-Epps*  
Gina Merritt-Epps, Esq.

Senior Vice President, General Counsel & Corporate Secretary