

South Jersey Gas sues over Pinelands Commission's pipeline rejection

By MICHELLE BRUNETTI POST Staff Writer | Posted: Friday, May 9, 2014 6:42 pm

PEMBERTON TOWNSHIP — South Jersey Gas has sued the Pinelands Commission over a January decision that effectively killed its chances to build a pipeline through 15 miles of protected Pinelands.

“The Action was arbitrary, capricious, and lacked fair support in the evidence,” according to the appeal, filed March 17 in Superior Court of New Jersey’s Appellate Division, but publicly discussed for the first time at a full commission meeting here Friday.

Also Friday the commission thanked Port Elizabeth portrait artist and conservation volunteer Leslie Ficcaglia for her 18 years of service as commissioner, which ended last month when she was not reappointed by the Democrat-controlled Cumberland County Board of Chosen Freeholders.

Ficcaglia, who voted against the pipeline, said she believes the freeholders appointed Jane Jannarone instead at an April 22 meeting because of Ficcaglia’s pipeline vote. She said no one from the freeholder board told her of their decision until she got a letter postmarked May 2.

Jannarone, a former Democratic freeholder and a real estate agent in Vineland, did not attend Friday’s meeting.

On Jan. 10, the commissioners narrowly voted against entering into a Memorandum of Agreement (MOA) with the Board of Public Utilities that would have allowed the gas company to build the pipeline in exchange for \$8 million for land preservation and construction of a visitor’s center.

The suit shows it was not an appropriate project for an MOA, said Kate Millsaps of The Sierra Club of New Jersey, which opposed the pipeline. MOAs are only supposed to be used in agreements between the commission and government agencies.

“South Jersey Gas is suing the commission, which just proves the point we raised all along,” said Millsaps. “It was for South Jersey Gas. BPU was not the applicant.”

The pipeline vote was 7-7; it needed 8 votes to pass.

South Jersey Gas attorney Ira Megdal of Cozen O’Connor, in Haddonfield, did not return a call for comment Friday; nor did a spokesperson for the BPU or the Attorney General’s Office.

South Jersey Industries Manager of Public Relations Dan Lockwood issued a written statement via email, saying only, “We believe that the Pinelands Commission made errors of fact and law in failing to approve the MOA.”

The suit also alleges that the commission disregarded fundamental evidence in the case, but doesn’t

specify exactly what that evidence is.

Commission Chairman Mark Lohbauer, also named in the case, voted against the pipeline and has said he believed the BPU was not the true applicant.

Commission Executive Director Nancy Wittenberg and other staff members supported the plan.

South Jersey Gas has the option of applying to the commission for a waiver of strict compliance to build the pipeline, but Millsaps said that would require more strict environmental considerations than an MOA.

Lohbauer said at Friday's meeting he knows of no application for a waiver from South Jersey Gas.

Kristen Heinzerling, the deputy attorney general who is handling the case for the commission, declined to talk publicly about how the case will proceed, but said she planned to discuss it with the commissioners in closed session.

The proposed 24-inch pipeline would have run underground for 22 miles along the right-of-way of existing roadways from Maurice River Township to the B.L. England Generating Station in Beesley's Point, Upper Township. It would have allowed the plant to convert from a coal burning electric plant to a one that runs on natural gas.

The New Jersey Department of Environmental Protection is requiring the plant to cease burning coal, the suit stated, and the conversion to natural gas "will have the additional benefit of providing service reliability to the Company's customers in Cape May and Atlantic Counties."

The civil suit also alleges that the commission did not give fair notice to the public "that it was reversing a long-standing interpretation of its own regulations regarding the use of Memoranda of Agreement," thus violating New Jersey administrative law. The gas company alleges the decision was "illegal rulemaking in violation of basic notions of fairness and due process."

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