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New Jersey Pinelands Commission  
P.O. Box 359  
New Lisbon, New Jersey 08064

Re: South Jersey Gas Pipeline  
Application No. 2012-0056.001

Dear Director Wittenberg and Members of the Commission:

I am writing to offer my comments on the South Jersey Gas Pipeline project, specifically its conformance with the Forest Area infrastructure standard of N.J.A.C. 7: 50-5.23(b)12. As a former member of the Commission's staff, first serving as its Assistant Director and then as its Executive Director, I hope I can offer you a perspective formed from 30 years of work on the Pinelands Comprehensive Management Plan.

N.J.A.C. 7: 50-5.23(b)12. provides, in part, that public service infrastructure is authorized in a Forest Area if it is "intended to primarily serve the needs of the Pinelands." This regulation is the result of several earlier amendments that attempted to improve upon and clarify the circumstances under which linear infrastructure such as roads and gas lines would be permitted to cross Pinelands Forest Areas. As the regulations further state in N.J.A.C.7:50-5.13(b), "Forest Areas are similar to the Preservation Area in terms of their ecological value and, along with the Preservation Area, serve to provide a suitable ecological reserve for the maintenance of the Pinelands environment." Consequently, Forest Areas are afforded a level of protection second only to the Preservation Area. The emphasis placed on protecting the Forest Area from potentially growth inducing infrastructure is obvious when one compares the Forest Area infrastructure standard to those that apply to other, less environmentally sensitive management areas.

The crux of the issue before you relative to the South Jersey Pipeline project seems to be whether it primarily serves the needs of the Pinelands by virtue of the fact that it will supply natural gas to the BL England facility, which is located in the Pinelands National Reserve. I believe the following three questions are critical to your evaluation:

**What is the intent of the N.J.A.C 7:50-5.23(b)12 infrastructure standard as it relates to this particular proposal?**

In hindsight, I regret to say that the wording of the standard is not as clear as it might be. Although it seems obvious that the standard is meant to deal with the needs of the Pinelands from a community or area-wide perspective, it is not clear that it was intended to apply to a single, stand-alone facility merely because that facility is located within the Pinelands. Prior permitting decisions might shed light on this but one must look closely at those decisions to determine how relevant they are. In his letter to you, Mr. Terrence D. Moore, the Commission's first Executive Director, discusses the history of the regulation and the relevance of past actions to your decision here. He and I share similar concerns about the intent of the standard and hope

that you do not base your decision on past actions that are not akin to this project.

## **2. How does the specific type of use to be served affect your decision?**

If one does conclude that the infrastructure standard could cover a single business, you should then look at the type of use being served. Perhaps infrastructure to serve a favored (or permitted) use in the Pinelands could be considered to “serve the needs” of the region but it is hard to imagine that service to a use which is disfavored (or not permitted) in the Pinelands actually serves the region’s needs. Indeed, well established planning principles anticipate that these disfavored or “nonconforming” uses will ultimately be discontinued; thus, changes or alterations that serve to extend or continue their use are discouraged.

The BL England property is partially designated as a Forest Area and partially as a Regional Growth Area. Even though the management area boundaries are generalized in the Pinelands National Reserve, there should be little doubt that this area is environmentally sensitive. Located on the shoreline of an important estuary that is overwhelmingly designated as Forest Area, the BL England facility should at the very least be viewed as a disfavored use. How does an alteration (i.e., conversion to natural gas) of such a facility at a disfavored location to lengthen its useful life actually “serve the needs” of the Pinelands?

If you were to conclude that the BL England plant is a nonconforming use pursuant to the CMP, a thorough analysis of the BL England facility should be undertaken pursuant to the standards set forth in N.J.A.C. 7:50- 5.2(b). However, even if it were found to meet those tests, that doesn’t justify the approval of a separate infrastructure project that extends well beyond the limits of the BL England property itself. Would you, for example, approve an off-site warehouse in the Forest Area because a manufacturing facility elsewhere in the Pinelands (in the Forest Area or another management area for that matter) needs additional storage space to sustain its operation? That off-site warehouse use would be approved only if it independently met CMP land use and intensity standards. The gas line to BL England should also be viewed the same way and judged against the CMP standard that it must “serve the needs” of the Pinelands.

## **3. What type of precedent will your decision set for the future?**

Whatever decision you make will help to set precedent for the future. If the South Jersey Gas Pipeline project is approved, what unintended consequences might occur in the future? We know from years of experience that the Pinelands CMP (permitted uses, intensity of those uses and environmental standards) are not effectively implemented within that portion of the Pinelands National Reserve located outside of the Pinelands Area. Thus, it can be argued that virtually all linear infrastructure which serves the shore region could pass through a Pinelands Forest Area merely because it serves something in the National Reserve, no matter how that use relates to the goals and objectives of the Pinelands protection program. A few hypothetical examples highlight the potential:

Should natural gas transmission lines to or from a receiving or exporting LNG terminal on the coast be automatically permitted to cross the Forest Area because those lines serve the terminal?

Should a new highway through the Forest Area to serve coastal areas that have developed in a manner contrary to the CMP’s land use recommendations be automatically approved?

Should electric transmission lines from the Forked River nuclear power plant be automatically permitted through a Forest Area because they distribute energy generated from the plant and,

therefore, “serve” the use?

These may seem unlikely, and perhaps they are, but ten years ago I doubt that anyone thought the BL England plant would be converted to natural gas and seek a pipeline through the Pinelands. These types of infrastructure projects should be the exception, not the rule, and should only be considered if they meet the tests for a Waiver of Strict Compliance or a Memorandum of Agreement. If you approve this gas line as a use that is typically permitted in the Forest Area and do not strengthen the Forest Area infrastructure standard of N.J.A.C. 7: 50-5.23(b)12 to avoid future abuses, I believe it’s inevitable that you’ll face these types of unforeseen circumstances in the years to come.

In closing, I recognize that your decision is a difficult one; one that is not clear cut. Some factors, such as the gas line’s location within an already disturbed area and the conversion of the BL England plant to a less noxious energy source, suggest that the gas line proposal should move forward. Of course, a contrary view is that, if the gas line is not approved, other regulatory agencies will be forced to seriously examine altogether different energy production choices or, at the very least, other BL England alternatives. If your decision leads to the closure of BL England, doesn’t the elimination of that point source of air pollution at a facility located on the shoreline of an important estuary that lies on the fringe of a nationally recognized ecological reserve represent a better, long term outcome?

Ultimately, however, I hope you’ll focus on whether a liberal application of the infrastructure standard here will set a dangerous precedent that undermines the long term integrity of the land use strategy that safeguards the Pinelands. I trust that each of you, as guardians of this special place, will make the decision that you believe best serves the future protection of this nationally and internationally acclaimed resource.

Thank you for taking the time to consider my comments.

Sincerely,

/S/

John C. Stokes