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January 19, 2017

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

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

Dear Chairman Earlan and Members of the Commission:

I write as a former executive director of the Commission and as a resident of the Pinelands to provide comments on the above referenced application. As the Commission's first executive director between 1979 and 1999, I had the opportunity to assist in the development of most of the regulatory policies currently administered by the Commission including those pertinent to the application referenced above. I submit my comments solely from that perspective and do not represent any other party with interests in the matter presently before the Commission.

First, let me thank members of the Commission's staff who met with and provided former executive director John C. Stokes and I with access to the South Jersey Gas Company application materials and historical Commission documents regarding the administration of N.J.A.C. 7: 50-5.23(b)12 which governs the development of public service infrastructure in the Forest Area as delineated by the Comprehensive Management Plan. I believe it is clear from past Commission interpretations and administration of the regulation, as it has evolved through periodic amendments, that the application does not meet the required standard. It does not "primarily serve the needs of the Pinelands" within the historically applied meaning of that phrase.

Unlike the public service infrastructure provision in the Preservation Area District (N.J.A.C. 7:50-5.22(b)4) which permits such development to serve "Preservation

Area District Uses” (emphasis added), the Forest Area provision does not provide simply for a “use,” in the present case an electrical generating facility located within the Pinelands, to be the determining factor. Rather, it requires a larger scale of benefit to residents and communities within the region of the Pinelands to be primarily served by the development. Page 202 of the Comprehensive Management Plan, as adopted by the Commission and approved by the Governor of New Jersey and the U.S. Secretary of the Interior in January 1981, sheds some light on the Commission’s intent for permitting infrastructure development in the Forest Area. In the section describing Forest Areas and uses to be permitted, the plan states that “public service infrastructure to serve the region’s needs” is to be permitted; not the need of an individual use in the region, but rather to service the infrastructure needs of the geography encompassed by the Pinelands.

The Commission has previously addressed the question of the meaning of the term “serves the needs of the Pinelands” (the less stringent test later amended to the more restrictive “primarily serves” in 1988), as well as the current regulatory requirement.

1. In Letter of Interpretation #166 issued to Atlantic Electric Company on October 8, 1981 and reissued without change on October 14, 1982 (Application #81-0479) an electrical transmission line traversing the region from Winslow Township to Egg Harbor Township and crossing 15.3 miles of the Forest Area was found to serve the needs of the Pinelands. It did so because 82% of the electrical service area was in the Pinelands and the line would serve present and future needs within the region. The location of the Cardiff generating facility in Egg Harbor Township was not mentioned as having any relevance as a determining factor in the Letter of Interpretation.
2. In a Certificate of Filing issued to South Jersey Gas Company on June 12, 1990 (Application #81-037.05) a proposed 20 inch gas main to a generating facility located outside of the Pinelands was found to be consistent since the generating facility, although outside the boundary, would primarily serve the current and future service needs of the Pinelands.
3. In a Certificate of Filing issued to New Jersey Natural Gas Company on June 4, 2008 (Application #2007-0431.001) a gas line in part traversing the Forest Area was found to primarily serve the needs of the Pinelands since it was intended to provide natural gas service to the residents and businesses of the Pinelands Village of Whiting.

4. In a Certificate of Filing issued to New Jersey Natural Gas Company on April 23, 2015 (Application #1999-0016.004) a gas line in part traversing the Forest Area was found to primarily serve the needs of the Pinelands since it would provide service to the Pinelands Village of New Gretna.

The commission has been quite consistent over time in interpreting the regulation in a manner that requires service area as the criterion for determining whether public service infrastructure in the Forest Area will serve, or primarily serve the needs of the Pinelands. The historical record where such findings were made confirms that was the Commission's original intent and subsequent agency practice.

It is, perhaps, interesting to note that when the amendment to insert the word "primarily" into the test for public service infrastructure compliance in the Forest Area was first being contemplated by the Commission's Plan Review Subcommittee a letter with comments was received on November 7, 1984 from the General Attorney for Jersey Central Power and Light Company. His comments included concern that the adoption of the more restrictive Forest Area provision may preclude future facilities such as electrical transmission lines that may predominately serve a region beyond the Pinelands, but are also necessary to serve the Pinelands, itself.

It is clear that the company understood that the regulation being contemplated dealt with a primary service area criterion, and not one regarding a specific facility's location within or outside of the Pinelands boundary. The Commission proceeded to adopt the more stringent regulation in 1988.

The current application before the Commission by South Jersey Gas Company for a gas pipeline traversing the Forest Area to serve the B.L. England Generating Station does not primarily provide needed service to the Pinelands. The application, itself, indicates that to be the case. Instead, the applicant has attempted to construct an interpretation that the regulation is met because the gas line will serve a specific use (the generating plant) within the Pinelands, and by that fact alone, primarily serves the needs of the Pinelands.

There is no precedent in the Commission's history, other than appropriately in the Preservation Area District, where a use served as the basis for meeting the applicable restrictive public service infrastructure standard. Should the Commission approve the present pipeline application, it will set a precedent that is

likely to be detrimental to the resources of the Pinelands in both the short and long term.

Approval of the present application will serve to interpret the standard as permitting any existing or future use in the Pinelands (within and outside of the Commission's permitting jurisdiction) to be served by public service infrastructure across the Forest Area as long as at least 51% of that infrastructure development serves the use and meets the plan's environmental standards. Unlike a memorandum of agreement (previously denied by the Commission for this application), or an application for a waiver of strict compliance, there will be no requirement to explore alternatives. Other than the 51% on-site service requirement, such infrastructure in the Forest Area, as well as roadways, electrical transmission, or rail connection lines designed to serve a specific use, large or small, will be treated the same as any other as-of-right development under the plan. One may only speculate on the potential cumulative impacts of such approvals.

Such an interpretation is also likely to have additional unintended consequences. Obviously, if Forest Area public service infrastructure primarily serves a use in the Pinelands, and by definition the needs of the Pinelands, so too must above or below ground transmission lines or other infrastructure emanating from that use across the Forest Area primarily serve the needs of the Pinelands. Under the interpretation now proposed, if the use need and therefore the Pinelands need are primarily served, how does one approve the incoming, but not the outgoing?

Part of the reasoning behind the efforts to enact federal and state legislation to protect the resources of the Pinelands was speculation at the time of a potential LNG receiving plant being located along the coast and transmitting its product across the Pinelands to other locations. While that is neither currently contemplated, nor expected, a future on-shore potential could exist for a facility associated with off-shore wind power generation. I believe with appropriate Coastal Area Facility Act approvals for either such plant, or a comparable existing or future development within or outside of the Commission's permitting jurisdiction, that such a pipeline, or any other proposed above or below ground transmission line, could be achieved. It would, after all, primarily serve the needs of the use within the boundary; therefore, it would primarily serve the needs of the Pinelands regardless of its actual service area or point of delivery outside of the Pinelands.

The Pinelands Commission has over the past 36 years been called upon many times to undertake the task of making very difficult decisions and displaying

exceptional courage when other pressures or political intrusions may also be in play. Indeed, that was particularly the case among the members when the Comprehensive Management Plan was adopted in 1980. Your predecessor members of the Commission, many of whom I served throughout the 20 years of my tenure, admirably managed in their own decision making processes to prioritize the protection of the Pinelands over other, often influential pressures and interests. I am hopeful that present members of the Commission will not only grasp the short and long-term implications of interpreting the Forest Area public service infrastructure standard as the applicant has proposed, but also think carefully about potential unforeseen consequences of such an approval.

I have reviewed the letter that former assistant director and executive director John C. Stokes has also sent regarding this application. I concur with his thoughtful questions regarding the future implications of the interpretation of the regulation offered by the applicant.

As the Commission's first executive director, who helped frame the regulations in question and continues to care deeply for the precious resources you administer, let me join with Governors Brendan T. Byrne, Thomas H. Kean, James J. Florio, and Christine Todd Whitman in urging you to deny the present South Jersey Gas Company application for a pipeline through the Forest Area of the New Jersey Pinelands.

Sincerely,



Terrence D. Moore

c: Nancy Wittenberg, executive director, New Jersey Pinelands Commission