



# **RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION**

**NO. PC4-19-\_\_\_\_\_**

**TITLE:** Resolution Addressing the Remand of the South Jersey Gas Company Application Due to a Significant Change in Material Fact

**Commissioner \_\_\_\_\_ moves and Commissioner \_\_\_\_\_ seconds the motion that:**

**WHEREAS**, the Pinelands Commission (Commission) is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act (the Act), N.J.S.A. 13:18A-1, *et seq.*, and charged with the implementation of the Act and the Pinelands Comprehensive Management Plan (the CMP), N.J.A.C. 7:50; and

**WHEREAS**, the Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978; and

**WHEREAS**, on May 21, 2015, South Jersey Gas Company (“South Jersey Gas”) filed a revised application (“Original application”) to install approximately 15 miles of an approximately 22-mile, 24-inch natural gas pipeline within the Pinelands (“Project”); and

**WHEREAS**, as discussed in the Original application, the Project was intended to provide natural gas required to repower the BL England electrical generation plant (“BLE plant” or “BLE”) at Beesley’s Point in Upper Township 95% of the time and to provide natural gas redundancy to the southernmost portion of South Jersey Gas’s service territory; and

**WHEREAS**, 9.51 miles of the proposed Project would be located within a Forest Area; and

**WHEREAS**, the Project is considered “public service infrastructure” as defined by the Pinelands CMP at N.J.A.C. 7:50-2.11; and

**WHEREAS**, “public service infrastructure” is a permitted use in a Forest Area if it is demonstrated that the proposed infrastructure is “intended to primarily serve only the needs of the Pinelands,” N.J.A.C. 7:50-5.23(b)(12); and

**WHEREAS**, South Jersey Gas’s Original application represented that the Project’s primary purpose would be to provide the natural gas required to repower the BLE plant, which is located within the Pinelands; and

**WHEREAS**, the Commission, on December 9, 2016, approved Pinelands Resolution No. PC4-16-42 setting forth the process by which the it would review South Jersey Gas’s Original application and the Pinelands Preservation Alliance (“PPA”) subsequently appealed that resolution (“process appeal”); and

**WHEREAS**, after considering the Original application and public comment, the February 17, 2017 Executive Director’s Recommendation Report concluded that the Project was consistent with the CMP, because the proposed pipeline would serve the BLE plant, an existing Pinelands business, more than 95% of the time, and thus it would primarily serve only the needs of the Pinelands; and

**WHEREAS**, on February 24, 2017, the Commission approved Pinelands Resolution No. PC4-17-03, which adopted the factual findings in the February 17, 2017 Executive Director’s Recommendation Report, and approved the Project as delineated in the Original application; and

**WHEREAS**, the PPA, New Jersey Sierra Club, and Environment New Jersey appealed the Commission’s approval of the Project and adoption of Pinelands Resolution No. PC4-17-03 (“substantive appeals”); and

**WHEREAS**, R.C. Cape May Holdings, LLC, (“RCCM”) the entity that owns and operates BLE, intervened in the appeal; and

**WHEREAS**, on February 27, 2019, RCCM filed a motion seeking permission to withdraw as an intervenor, because it had decided not to repower the BLE plant; and

**WHEREAS**, RCCM's decision not to repower BLE with natural gas changes a fundamental fact relied upon by the Pinelands Commission for its finding that the project was "intended to primarily serve only the needs of the Pinelands"; and

**WHEREAS**, RCCM's decision not to repower BLE with natural gas is a fundamental change in the scope of the Project delineated in the Original application and the prior approval of same; and

**WHEREAS**, in correspondence dated March 6, 2019, the Commission's Executive Director informed South Jersey Gas that, based on the new information that RCCM would not repower BLE with natural gas, the factual basis for the Commission's approval, as detailed in the February 17, 2017 Executive Director's Recommendation Report, had substantially changed and the approval was no longer justified; and

**WHEREAS**, South Jersey Gas did not provide a substantive response to the March 6, 2019 letter; and

**WHEREAS**, by letter dated April 12, 2019, South Jersey Gas advised the Commission that the Commission should not reconsider its previous approval of South Jersey Gas's natural gas pipeline application, unless the Appellate Division remanded the matter to the Commission and that South Jersey Gas felt it was entitled to an adjudicatory hearing prior to any revocation of its existing approval pursuant to the Administrative Procedures Act; and

**WHEREAS**, on May 10, 2019, the Pinelands Commission filed a motion to remand the appeals on Resolution No. PC4-17-03 (granting South Jersey Gas's application) and Resolution No. PC4-16-42 (regarding the Commission's review process for South Jersey Gas's application); and

**WHEREAS**, on May 20, 2019, PPA and New Jersey Sierra Club opposed the motion to remand the process appeal, and South Jersey Gas opposed the motion to remand the substantive appeals; and

**WHEREAS**, by Order dated May 29, 2019, the Appellate Division granted the Commission's motion to remand the matter back to the Commission so it could reconsider its approval of the Project "in light of the decision by R.C. Cape May Holdings, LLC, not to re-fire the B.L. England plant with natural gas"; and

**WHEREAS**, in the May 29, 2019 Order, the Appellate Division rejected all arguments submitted in opposition to the Commission's remand motion, did not retain jurisdiction, and dismissed the appeals; and

**WHEREAS**, despite having received written notice from the Commission's Executive Director that the approval was no longer justified given the material change from the scope of the project in the Original application, i.e. that the Project would no longer serve BLE 95% of the time, South Jersey Gas has not voluntarily relinquished its approval, submitted a new application, or modified its existing application filed on May 21, 2015 to account for the substantially changed facts or provided any formal indication of its intentions whatsoever relative to the Project; and

**WHEREAS**, South Jersey Gas acknowledged in its Appellate Division filings that BLE will no longer be served by the Project, and thus there are no material facts in dispute and an adjudicatory hearing is not required; and

**WHEREAS**, given South Jersey Gas's failure to provide information to account for the substantial change in facts and to address how the current scope of the Project satisfies the public service infrastructure requirements for a Forest Area set forth at N.J.A.C. 7:50-5.23(b)12, the application is incomplete; and

**WHEREAS**, pursuant to N.J.S.A. 13:18A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED**, because the Project has significantly changed, i.e. it will no longer serve BL England, the submitted application no longer addresses the Forest Area Public Infrastructure standard of the Pinelands CMP at N.J.A.C. 7:50-5.23(b)12. As a result, SJG may not proceed with the Project.

**Record of Commission Votes**

AYE NAY NP A/R*				AYE NAY NP A/R*				AYE NAY NP A/R*			
Ashmun				Irick				Quinn			
Avery				Jannarone				Rohan Green			
Christy				Lloyd				Prickett			
Earlen				Lohbauer							
Howell				Pikolycky							

\*A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: \_\_\_\_\_

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Nancy Wittenberg  
Executive Director

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Richard Prickett  
Chairman