



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH)
JERSEY GAS COMPANY FOR A DETERMINATION)
PURSUANT TO THE PROVISIONS OF N.J.S.A.)
40:55D-19)
ORDER REGARDING MOTION TO)
PARTICIPATE AND MOTION FOR)
ADMISSION *PRO HAC VICE*)
DOCKET NO. GO13111049)

Ira Megdal, Esq., on behalf of South Jersey Gas Company
Stefanie A. Brand, Esq., Director, Division of Rate Counsel
Barbara L. Young, Municipal Clerk, Upper Township
Linda Costello, Acting Clerk, Maurice River Township
Fern A. Brown, Acting City Clerk, City of Estell Manor
Roxanne R. Wright, Esq., on behalf of Pinelands Preservation Alliance

BY COMMISSIONER JOSEPH L. FIORDALISO:

On November 4, 2013, South Jersey Gas Company ("Company" or "SJG"), a New Jersey public utility engaged in the business of purchasing, distributing, transporting, and selling natural gas to approximately 360,000 customers within its service areas in Cape May, Cumberland, Atlantic, and Salem counties, and parts of Gloucester, Camden and Burlington counties, filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.S.A. 40:55D-19 of the New Jersey Municipal Land Use Law ("MLUL"). N.J.S.A. 40:55D-19 provides that the MLUL, and any ordinance or regulations promulgated under the authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service if, upon petition by the public utility to the Board with notice to all affected municipalities, the Board thereafter conducts a hearing and determines that the proposed installation of the development in question is "reasonably necessary for the service, convenience or welfare of the public."

SJG is requesting that the Board issue an order finding that the construction of an approximately 21.6 miles, 24-inch natural gas pipeline ("Project") with an alignment that runs through Maurice River Township in Cumberland County, City of Estell Manor in Atlantic County and Upper Township in Cape May County, New Jersey is reasonably necessary for the service, convenience or welfare of the public and, in accordance therewith, further find that the zoning, site plan review and all other municipal land use ordinances and regulations promulgated under the authority of the MLUL shall not apply to the Project.

By Order dated December 18, 2013 ("December 18 Order"), the Board retained this matter for hearing and designated me as the presiding officer with the authority to establish and modify schedules, decide all motions and otherwise control the conduct of this case, subject to Board ratification. Additionally, the December 18 Order established December 30, 2013 as the deadline to file motions to intervene in this matter. No motions to intervene were filed prior to the expiration of the deadline.

After notice in newspapers in general circulation within the Company's service territory, a public hearing was held on December 18, 2013, at the Upper Township Municipal Building in Petersburg, New Jersey.

In a letter dated August 21, 2015 the Pinelands Commission's Executive Director forwarded a letter requesting certain information from the Board regarding this proceeding and attaching a copy of a Certificate of Filing regarding this matter. Additional public hearings are scheduled on October 19, 2015 at the Upper Township Municipal Court in Petersburg, New Jersey. An Evidentiary Hearing is scheduled for October 21, 2015 at 11:00 at the Board's offices, 44 South Clinton Street, Trenton, New Jersey.

On October 9, 2015, the Pinelands Preservation Alliance ("PPA") filed a motion to participate in this proceeding. According to its motion, PPA is a private, nonprofit organization dedicated to the preservation and conservation of the Pinelands of New Jersey ("Pinelands"). PPA represents that it has approximately 4,139 member individuals, families and organizations, of who approximately 1,046 reside or are located in Pinelands municipalities. Since its inception, PPA indicates that it has been involved in advocacy and education to achieve its mission of protecting and preserving the resources of the New Jersey Pinelands ("Pinelands"). PPA asserts that it has a strong interest in ensuring that the requirements of the New Jersey Pinelands Comprehensive Management Plan ("CMP") are adhered to, including the regional planning program embodied in the CMP, and to ensure that the Project is, in fact, reasonably necessary for the service, convenience or welfare of the public.

PPA claims that it did not seek to participate in this matter in December 2013 because at that time the Project's compliance with the CMP was properly before the Pinelands Commission. PPA asserts, however, that the issue of the Project's compliance with the CMP has now been thrust before the Board, and PPA now seeks to participate in order to further its interest in ensuring the Project's compliance with the CMP.

PPA argues that any approval of a development project in the Pinelands must be consistent with the minimum standards of the CMP as set forth in N.J.S.A. 13:18A-10(c) and N.J.A.C. 7:50-4.81. Because of its mission of protecting and preserving the Pinelands, PPA states that it has a significant interest in ensuring that new development projects within the Pinelands comply with the requirements of the CMP. According to PPA, the Project is the kind of infrastructure development which the CMP bars from the Forest Area of the Pinelands unless it primarily serves the needs of the Pinelands, because such developments create pressure for more development along their length, strike at the integrity of the CMP, create precedents for future violations of the CMP, and risk damage to natural resources in a Pinelands conservation zone. PPA claims that its interest in ensuring full compliance with the CMP is significant and immediate, and that it appears to have no other forum in which to vindicate this interest because the Pinelands Commission seeks to have the Board determine the question of the proposed project's compliance with the CMP.

PPA references Commissioner Solomon's recent decision regarding its motion to participate that was rendered in I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4, BPU Docket No. GO15040403 (July 21, 2015) ("Southern Reliability Link") for the proposition that the Board has acknowledged that PPA has a "significant interest" within the meaning of N.J.A.C. 1:1-16.6 in development projects occurring within the Pinelands. PPA states that its motion to participate in the Southern Reliability Link matter was granted, which acknowledges both that PPA had a significant interest in the outcome, and that its participation would be constructive to the Board. It argues that the reasoning which led Commissioner Solomon to conclude that PPA should be granted the right to participate in the Southern Reliability Link matter applies with equal force in this case.

PPA further argues that its participation in this matter is constructive and necessary to ensure that the tenets of the CMP are upheld and that any approved development is consistent with applicable law. According to PPA, the Executive Director of the Pinelands Commission has stated that the matter of compliance with the CMP is now before the Board. While the Commission has requested that the Board provide information and documents regarding the above-captioned matter in order to ensure that any order by the Board is consistent with the CMP and to avoid inconsistencies, PPA alleges that the Commission apparently does not intend to take any formal action on this matter if the Board grants the pending petition. PPA, therefore, asserts that it can constructively and prospectively assist the Board in reaching a conclusion on the Project's compliance with the CMP and reasonable necessity of the Project at the evidentiary hearing.

In addition, PPA claims that its interests are different from every other party in this matter because it is the sole entity focused exclusively on the protection and preservation of the Pinelands and safeguarding the integrity of the CMP. Therefore, as in the Southern Reliability Link matter, PPA argues that it will offer a critical perspective that is distinct from the other parties and will assist the Board in its analysis of the Project's compliance with the CMP.

By letter dated October 16, 2015, the Company indicated that it did not oppose PPA's motion to participate. By letter dated October 16, 2015, the New Jersey Division of Rate Counsel indicated that it would not be taking a position on PPA's motion to participate.

Ms. Wright also moved for the admission *pro hac vice* of Mariel R. Bronen, Esq., a member of the bar of the State of New York. By her affidavit, Ms. Bronen represented that she is associated with Ms. Wright as New Jersey counsel of record, PPA has requested her representation in this matter, that she has paid the fees required by R. 1:20-1(b) and 1:28-2, and that she agrees to abide by the other requirements for admission *pro hac vice*.

DISCUSSION AND FINDINGS:

Before turning to the issue currently before me, whether to grant the motion participate described above, a review of the context for the motion is appropriate. As previously mentioned, SJG has filed a petition under N.J.S.A. 40:55D-19, which allows a public utility seeking to construct a utility project that passes through multiple municipalities to directly petition the Board for relief from complying with the zoning, site plan review and other municipal land use ordinances or rules passed by those municipalities under the authority granted by Title 40, the MLUL. For that relief to be granted, the Board must find, after hearing on notice to affected municipalities, that "the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public."

In determining whether a proposed utility project is “reasonably necessary for the service, convenience or welfare of the public,” case law directs the Board to look at the following factors:

1. The benefits to the whole public served by the utility and not the limited group that benefits from the local zoning ordinances;
2. The locations must be found to be “reasonably necessary” and so the Board must consider the community zoning plan, the physical characteristics of the site, and the surrounding neighborhoods; and
3. Alternative sites and their comparative advantages and disadvantages, including cost, must be considered.

In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358 (1961). See also, Order, I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4, BPU Docket No. GO15040403 (July 21, 2015).

Within the scope of this proceeding set out above, I turn to the standards that apply to PPA’s motion to participate. N.J.A.C. 1:1-16.6 provides that the more limited form of involvement as a participant may be granted if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.S.A. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions¹, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, the application of these standards involves an implicit balancing test. See, Order, I/M/O the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106 (June 8, 2005). The need and desire for development of a full and complete record which involves consideration of a diversity of interests must be weighed against the requirements of the New Jersey Administrative Code which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener’s or participant’s interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case.

As expressed in its moving papers, PPA’s concerns with the Project arise from its reservations about whether the Project can comply with the CMP. However, under N.J.S.A. 40:55D-19, what the Board is required to determine is whether the Project is “reasonably necessary for the service, convenience or welfare of the public” weighing the factors described above. If the Board finds the Project reasonably necessary, it can grant relief from compliance with rules and laws passed under the authority of the MLUL. In contrast, the CMP is adopted by the Pinelands Commission under the authority granted by N.J.S.A. 13:18A-1 to 29 which is implemented through N.J.A.C. 7:50. As noted by PPA in its papers, in transmitting a copy of the Commission’s Certificate of Filing for the Project to the Executive Director of the Board, Paul Flanagan, Nancy Wittenberg, Executive Director of the Commission, specifically requested that copies of any written reports or comments on the Project that relate to the CMP that are presented to the Board be provided to the Commission, as required by N.J.A.C. 7:50-4.83.

¹ Because this proceeding was retained at the Board, there will be no Initial Decision to which parties can file exceptions.

To comply with that request, I understand that the Board's Executive Director will be forwarding any such comments received from the public to the Commission's Executive Director following the public hearings for its consideration. PPA was free to address any concerns pertaining to the Project's compliance with the CMP at the public hearings. Contrary to PPA's assertion, however, the Project's compliance with the CMP is not at issue in the evidentiary hearing.

Nonetheless, as the petition demonstrates, analyzing alternatives involves reviewing environmental permitting considerations, which includes measures taken for the protection of plants, animals, aquatic resources, ecological resources and natural habitat. See Petition at para. 54, and Exhibits P-2, P-3 and the Woodard and Curran Alternatives Analysis Addendum II attached to Exhibit P-4A, the Supplemental Direct Testimony of Richard A. Bethke. PPA is committed to protecting and preserving the resources of the Pinelands, and represents that it will assist the Board in its required analysis. I am persuaded that the members of PPA residing in the Pinelands municipalities will be directly affected by the outcome of this proceeding, and PPA can offer a different perspective that could assist the Board in its alternative sites analysis. Accordingly, I **HEREBY GRANT** PPA's motion for participation limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2), on the factors to be reviewed by the Board to determine whether the Project is reasonably necessary for the service, convenience or welfare of the public as outlined above.

In light of this grant of participation to PPA, I have reviewed and considered the motion for admission pro hac vice of Mariel R. Bronen, Esq., filed by Roxanne R. Wright, Esq., PPA's New Jersey attorney, and the supporting affidavit of Ms. Bronen. After notice to the parties, I **FIND** that Ms. Bronen satisfies the conditions for admission, and has provided proof that she has paid to the New Jersey Lawyers' Fund for Client Protection the fees required by R. 1:20-1(b) and 1:28-2. Therefore, Ms. Bronen **IS HEREBY** admitted to practice before the Board *pro hac vice* in this matter provided that she shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against her that may arise out of her participation in this matter;
- (3) Notify the Board immediately of any matter affecting her standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this case and the admitted attorney therein.

I **HEREBY DIRECT** Staff to post this Order on the Board's website and serve a copy of the Order to the service list electronically.

This ruling is provisional and subject to ratification or other alteration by the Board as it deems appropriate during the proceeding in this matter.

DATED:

10/20/15



JOSEPH L. FIORDALISO
COMMISSIONER

IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR A
DETERMINATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40:55D-19

DOCKET NO. GO13111049

SERVICE LIST

South Jersey Gas Company:

Ira G. Megdal, Esq.
Cozen O'Connor
Liberty View Building, Suite 300
457 Haddonfield Road
Cherry Hill, NJ 08002
imegdal@cozen.com

Stacy F. Mitchell, Esq.
Cozen O'Connor
Liberty View Building, Suite 300
457 Haddonfield Road
Cherry Hill, NJ 08002
smitchell@cozen.com

Daniel J. Bitonti, Esq.
Cozen O'Connor
457 Haddonfield Road
Suite 300
Cherry Hill, NJ 08002
dbitonti@cozen.com

Steven R. Cocchi, Director
Rates and Revenue Requirements
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
scocchi@sjindustries.com

John F. Stanziola, Director
Regulatory Affairs
South Jersey Gas Company
One South Jersey Plaza
Route 54
Folsom, NJ 08037
jstanziola@sjindustries.com

Board of Public Utilities:

44 South Clinton Avenue, 9th floor
Post Office Box 350
Trenton, NJ 08625-0350

Rate Counsel:

Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie Brand, Esq., Director
sbrand@rpa.state.nj.us

Brian Lipman, Litigation Manager
blipman@rpa.state.nj.us

Felicia Thomas-Friel, Esq.
ftomas@rpa.state.nj.us

Henry Ogden, Esq.
hogden@rpa.state.nj.us

James W. Glassen, Esq.
jglassen@rpa.state.nj.us

Deputy Attorneys General:

Division of Law
124 Halsey Street
Post Office Box 45029
Newark, New Jersey 07101-45029

Alex Moreau, DAG
alex.moreau@dol.lps.state.nj.us

Carolyn McIntosh, DAG
carolyn.mcintosh@dol.lps.state.nj.us

Babette Tenzer, DAG
babette.tenzer@dol.lps.state.nj.us

Upper Township:

Paul Dietrich, Township Engineer
Post Office Box 205
Tuckahoe, NJ 08327
planning@uppertownship.com

Division of Energy

Jerome May, Director

jerome.may@bpu.state.nj.us

John Masiello

john.masiello@bpu.state.nj.us**Executive Director**

Paul Flanagan, Esq.

paul.flanagan@bpu.state.nj.us**Secretary for the Board**

Irene Kim Asbury

irene.asbury@bpu.state.nj.us**Division of Reliability & Security**

James Giuliano, Director

james.giuliano@bpu.state.nj.us

Michael Stonack, Chief

michael.stonack@bpu.state.nj.us**Counsel's Office**

Cynthia Covie, Esq.

cynthia.covie@bpu.state.nj.us

Megan Lupo, Esq.

megan.lupo@bpu.state.nj.us**City of Estell Manor:**

Fern A. Brown, Acting City Clerk

148 Cumberland Avenue

Estell Manor, NJ 08319

emcityclerk@verizon.net

Shelley Lea, Zoning Officer

Post Office Box 205

Tuckahoe, NJ 08250

planning@uppertownship.com

Dean Marcolongo, Esq., Board Attorney

Post Office Box 428

Millville, NJ 08332

planning@uppertownship.com

Barbara L. Young, Municipal Clerk

Post Office Box 205

Tuckahoe, NJ 08250

clerk@uppertownship.com**Maurice River Township:**

Lillian Johnson

Secretary of the Land Use Board

Maurice River Township

Post Office Box 218

Leesburg, NJ 08327

ljohnson@mauricerivertwp.org

Linda Costello, Acting Clerk

590 Main Street

Post Office Box 218

Leesburg, NJ 08327

lcostello@mauricerivertwp.org**PPA:**

Roxanne R. Wright

Dechert, LLP

902 Carnegie Center, Suite 500

Princeton, NJ 08540

roxanne.wright@dechert.com

Mariel R. Bronen, Esq.

Dechert, LLP

1095 Avenue of the Americas

New York, NY 10036

mariel.bronen@dechert.com