



RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-17- 10

TITLE: Resolution Setting Forth the Process By Which the Pinelands Commission will Review the Determination of its Executive Director Finding that the Installation of 12.1 miles of 30-inch Natural Gas Pipeline Proposed by New Jersey Natural Gas (Pinelands Application No. 2014-0045.001) is Consistent with the Standards of the Pinelands Comprehensive Management Plan.

Commissioner Ball moves and Commissioner Chila 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 April 10, 2015, New Jersey Natural Gas (NJNG) submitted a Pinelands Development Application (Application # 2014-0045.001) to the Pinelands Commission for the construction of a proposed natural gas pipeline in Jackson, Manchester and Plumsted Townships; and

WHEREAS, approximately 0.21 miles of the proposed natural gas pipeline will be constructed within a Regional Growth Area, 1.42 miles within a Rural Development Area and 10.45 miles within a Military and Federal Installation Area (Joint Base McGuire-Dix-Lakehurst (JB-MDL)); and

WHEREAS, the Pinelands CMP at N.J.A.C. 7:50-2.11 defines a natural gas pipeline as "public service infrastructure"; and

WHEREAS, public service infrastructure is a permitted use in a Regional Growth Area (N.J.A.C. 7:50-5.28(a) and a Rural Development Area (N.J.A.C. 7:50-5.26(b)(10)); and

WHEREAS, public service infrastructure is a permitted use in a Military and Federal Installation Area provided it will be associated with the function of the Federal Installation and certain other conditions are met (N.J.A.C. 7:50-5.29(a)); and

WHEREAS, the conditions set forth at N.J.A.C. 7:50-5.29(a) are: 1) the development shall be located in that portion of the Federal Installation located within the Pinelands Protection Area, where feasible; and 2) the use shall not require any development, including public service infrastructure, in the Preservation Area District or in a Forest Area; and

WHEREAS, based on its review of the NJNG application, on December 9, 2015, the Commission staff issued a Certificate of Filing indicating that proposed development was consistent with the standards of the CMP; and

WHEREAS, on February 4, 2016, the Commission staff wrote to the Executive Director of the Board of Public Utilities (BPU), enclosing a copy of the Certificate of Filing, and requested copies of the petition NJNG filed for municipal preemption in accordance with N.J.S.A. 40:55D-19; notice of any hearings, public meetings or other formal proceedings pertaining to that petition; copies of any written reports or comments that the Board may receive that raise issues concerning the standards of the Pinelands CMP; and copies of any draft orders; and

WHEREAS, following review of the information received from the BPU from the public and evidentiary hearings conducted by the BPU for the NJNG petition for a determination pursuant to the provisions of N.J.S.A. 40:55D-19 (BPU Docket Number GE15040402), the Commission's Executive Director, on March 10, 2016, issued a subsequent letter indicating that based on the Commission staff's expertise and experience in administering the Pinelands CMP and its review of the record, the finding of CMP consistency contained within the December 9, 2015 Certificate of Filing remained valid; and

WHEREAS, on or about April 21, 2016, Sierra Club filed a Notice of Appeal of the Commission staff's March 10, 2016 letter, Docket No. A-3753-15; and

WHEREAS, on or about April 28, 2016, the Pinelands Preservation Alliance filed a Notice of Appeal of the Commission staff's March 10, 2016 letter, Docket No. A-3762-15; and

WHEREAS, on November 7, 2016, the Appellate Division, in three unrelated, consolidated appeals involving a petition to the BPU for municipal preemption pursuant to N.J.S.A. 40:55D-19 submitted by the South Jersey Gas Company, issued a decision remanding that application to the Pinelands Commission for its review of the Commission staff's consistency determination on that application and issuance of a final decision as to the proposed project's consistency with the minimum requirements of the Pinelands CMP; and

WHEREAS, the Commission staff utilized the same review process for both the South Jersey Gas Company's and the New Jersey Natural Gas Company's Pinelands Development Applications; and

WHEREAS, given the holding of the Appellate Division in the South Jersey Gas Company consolidated appeals, the Commission passed Resolution PC4-16-43, authorizing the Division of Law to file motions in the Appellate Division to have the two appeals related to the Commission's consideration of the NJNG's proposed pipeline project (Pinelands Development Application 2014-0045-.001) remanded to the Pinelands Commission; and

WHEREAS, on January 10, 2017, motions to remand the two appeals related to the Commission's consideration of the NJNG's proposed pipeline project to the Pinelands Commission were filed; and

WHEREAS, on January 19, 2017, Sierra Club filed a response to the Commission's remand motion; and

WHEREAS, also on January 19, 2017, the Pinelands Preservation Alliance filed a response to the Commission's remand motion and a Cross Motion to Invalidate Resolution PC4-16-42 and Amend the Comprehensive Management Plan in Compliance with APA and Provide a Hearing; and

WHEREAS, on January 31, 2017, the Appellate Division issued an Order granting the Commission's remand motion and dismissing Sierra Club's appeal; and

WHEREAS, in its Order, the Appellate Division directed the Commission to determine whether to render its decision based on the record developed before the Board of Public Utilities or to allow the parties to present additional evidence and to also determine whether to refer the matter to the Office of Administrative Law for an evidentiary hearing before an Administrative Law Judge; and

WHEREAS, on February 15, 2017, the Appellate Division issued Orders granting the Commission's remand motions and denying Pinelands Preservation Alliance's cross motion and motion to amend; 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 that, in conformance with the Appellate Division's Remand Orders dated January 31, 2017 and February 15, 2017, the Commission will review the Commission staff's consistency determination for the proposed pipeline project according to the following process:

1. The Commission intends to rely on the record developed before the Board of Public Utilities for NJNG's N.J.S.A. 40:55D-19 municipal preemption petition, as well as the Commission's Regulatory Program's application file for Pinelands Development Application 2014-0045.001 and the staff's consistency determination.
2. The Commission has considered whether to refer this matter to the Office of Administrative Law for an evidentiary hearing and has decided not to do so, because:
 - a. An additional evidentiary hearing is not necessary at this time given the limited regulatory issues involved in this application and the extensive record already developed both as part of the Commission's review of the application and hearings conducted before the BPU.

3. The Commission staff shall provide notice of the public's opportunity to provide both oral and written comments regarding the Commission staff's consistency determination. Such notice shall be posted on the Commission's website and mailed to the applicant, the Sierra Club and the Pinelands Preservation Alliance, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2). Such notice shall indicate that the oral comment meeting will occur no sooner than 45 days after the execution of this resolution and that written comments may be provided until 5:00 p.m. one week following the meeting at which the opportunity for oral public comment on the proposed pipeline application will be provided.
4. The former Appellants (Sierra Club and the Pinelands Preservation Alliance) may submit any additional information that they wish as part of the public comment process.
5. The Commission staff shall, following the close of the public comment period, review the record and any public comment provided and shall prepare a recommendation as to whether its prior consistency determination should be affirmed. Such recommendation report shall be posted on the Commission's website within 10 days of the Commission meeting at which Commission staff plans to present it for the Commission's consideration.
6. Any interested party who possesses a particularized property interest sufficient to require a hearing on constitutional or statutory grounds in accordance with N.J.S.A. 52:14B-3.2 & 3.3, may within 15 days of the posting of the Commission staff's recommendation report, submit a hearing request to the Commission.
7. At the next Commission meeting after the time for appeal set forth in Paragraph 6 above has expired and if no valid hearing request has been submitted, the Commission, based on the record as delineated in Paragraph 1 above, any public comments received and the Commission staff's recommendation, shall either approve or disapprove such recommendation.

Record of Commission Votes

AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*	AYE	NAY	NP	A/R*
Ashmun	X			Galletta	X			Prickett	X		
Avery	X			Jannarone	X			Quinn	X		
Barr	X			Lloyd			R	Rohan Green	X		
Brown	X			Lohbauer		X		Earlen	X		
Chila	X			McGlinchey	X						

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date:

June 9, 2017

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman