Ind. Judge's Links to Coal-Gasification Backers Questioned

INDIANAPOLIS (AP) — An Indiana Supreme Court justice has not said whether he intends to recuse himself from an upcoming case over a proposed $2.8 billion coal-gasification plant in which one of his friends is involved.

Justice Mark Massa is a longtime friend of Mark Lubbers, who represents the developers of the planned Rockport plant opposed by competitors and environmentalists.

Massa was general counsel to then-Gov. Mitch Daniels in 2009, when the Republican governor signed a law that authorized the Indiana Finance Authority, a state agency, to negotiate a contract with Indiana Gasification. The deal required the state to buy the plant's synthetic gas at a fixed rate and resell it on the open market for a 30-year period, with Indiana utility customers receiving the profits or shouldering the losses.

Opponents of the Rockport plant, including natural gas utility Vectren Corp, said the contract would cost Indiana utility customers as much as $1.1 billion in higher rates. Lawmakers in April passed legislation that requires regulators to consider new ratepayer protections that weren't in place when regulators approved the deal.

Lubbers has said additional regulatory hurdles could kill the project.

Daniels appointed Massa to the high court in March 2012. Earlier this month, the high court agreed to hear the dispute over the project. Those votes are confidential, however, so it isn't known whether or not Massa voted to take up the case.

Massa could not comment because of a judicial rule that bars judges from speaking publicly about cases pending before them, court spokeswoman Kathryn Dolan said.

Daniels' former energy adviser, David Pippen, who replaced Massa as general counsel, told The Indianapolis Star [1] that Massa likely would have overseen the legal review of the 2009 legislation, but he did not believe Massa was involved in the contract negotiations.

Indiana judicial ethics require judges to disqualify themselves from cases involving matters in which they participated as a lawyer or public official.

Opponents of the project question whether Massa can remain objective when one of his longtime friends is involved.

"To give the public confidence that this decision is based on the law and sound public policy, and not political cronyism, Justice Massa should recuse himself," said

Kerwin Olson, executive director of Citizens Action Coalition, which is a party to the case.

Lubbers told the Star that neither he nor anyone else associated with the developers has discussed the project with Massa.

"He will need no encouragement to recuse himself if there is a reason to do so," Lubbers said. "His ethical standards are well-honed and above reproach."

But experts said timing was an issue.

"If a judge doesn't get off a case as soon as he or she is made aware of a disqualification issue, that throws into question any ruling the judge participates in," said Les Abramson, a law professor at the University of Louisville who has written about judicial disqualification.

The plant about 30 miles east of Evansville, which is also run by New York-based Leucadia National Corp, would turn coal into synthetic natural gas.

The Supreme Court has scheduled oral arguments in the Rockport case for Sept. 5.

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