Ind. Justice Won't Withdraw from Power Plant Case

RICK CALLAHAN ,Associated Press

INDIANAPOLIS (AP) — Indiana Supreme Court Justice Mark Massa said Wednesday he won't withdraw from a case involving a proposed $2.8 billion coal-gasification plant, rejecting arguments that his longtime friendship with a representative of the plant's developers would leave him unable to be impartial in that case.

The Sierra Club and three other groups fighting the project that would turn coal into synthetic natural gas had asked Massa in a motion filed Tuesday to either recuse himself or be disqualified from the case involving a 30-year state contract for the synthetic gas the proposed Indiana Gasification LLC plant would produce.

The groups argued that Massa's nearly three-decade friendship with Indiana Gasification's project manager, Mark Lubbers, would leave him unable to be impartial in the case set for Sept. 5 oral arguments before the state's high court.

But Massa wrote in a Wednesday order denying the groups' request that while he is a longtime friend of Lubbers such friendships among lawyers are common and sometimes those attorneys appear before the state Supreme Court. He added that he's closer to and sees "more regularly" than Lubbers several attorneys who have argued cases before the state's five-member Supreme Court.

"If mere friendship with these lawyers were enough to trigger disqualification, my colleagues and I would rarely sit as an intact court of five," Massa wrote in his order.

The groups' motion had noted that Lubbers had spoken at Massa's May 2012 robing ceremony as a justice, calling Massa "a gem of extraordinary quality."

But Massa said in his order that those flattering remarks "cannot be a basis for recusal on a court of last resort."

Jodi Perras, who oversees the Sierra Club's Beyond Coal campaign in Indiana, said in a statement that the group is disappointed with Massa's decision not to step aside in the case and added that his decision appeared written in "haste."

"We have strong concerns about how this will affect the public's view of the integrity of the court, but Justice Massa has made his decision and we look forward to our day in court on Sept. 5," Perras said.

The four groups that filed the request are among the opponents, including natural gas utility Vectren Corp. and consumer advocates, of the plant proposed for the Ohio River town of Rockport about 30 miles east of Evansville. They contend Indiana Gasification's state contract would cost Indiana utility customers as much as

$1.1 billion in higher rates.

The state Supreme Court announced in June that it would hear Indiana Gasification's appeal of a lower court ruling invalidating a section of that contract, which would require Indiana to buy the plant's synthetic gas at a fixed rate and resell it on the open market for a 30-year period.

The plant's opponents noted in their request to Massa that he was then-Gov. Mitch Daniels' general counsel in 2009 when the administration successfully sought legislation authorizing the Indiana Finance Authority, a state agency, to negotiate the contract with Indiana Gasification and its New York-based developer, Leucadia.

Their motion states that Massa's role as general counsel during that time "exposed him to extrajudicial information" about that legislation.

But Massa wrote in his order that he has "no independent recollection" of reviewing the Indiana Gasification legislation. And he noted that Daniels signed 757 separate bills into law during Massa's time as general counsel.

Massa added that the Indiana Finance Authority had negotiated the Indiana Gasification contract "long after" he left the governor's office.

"I had no involvement in the negotiation of that contract and thus have no conflict," he wrote.

Aside from the Sierra Club, the other groups which filed the motion are the Citizens Action Coalition, Spencer County Citizens for Quality of Life and Valley Watch. Their motion cited Indiana judicial conduct code stating that a judge should disqualify him or herself "in any proceeding in which the judge's impartiality might reasonably be questioned."

Their motion contends that "an ordinary person could not avoid having a reasonable doubt that Justice Massa would have problems being impartial given the totality of the circumstances."

State lawmakers in April passed legislation that requires Indiana regulators to consider new ratepayer protections that were not in place when state regulators approved the contract.

Lubbers has said additional regulatory hurdles could kill the project.

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