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Tax for roads hits speed bump

BY SHANE SCOGGINS
PUBLISHER

CARNESVILLE – A county plan to ask voters to approve a sales tax to fix local roads will be delayed until May or November of 2020.

Commissioners voted earlier this month to negotiate an agreement with the county's five cities on a way to distribute funds for a new special purpose local option sales tax for transportation (T-SPLOST).

But, final agreements with the cities were not reached by Christmas, which will mean the vote will be later in the year.

County officials had hoped to put the referendum on a presidential primary ballot March 24,

By law, commissioners had to call for the election 90 days prior to the designated Election Day.

County officials estimate a one-cent sales tax for roads could bring in \$16 million over a five-year period.

Transportation projects that may be funded by the tax include roads, streets, bridges, the airport and public transit.

The additional cent would increase the total sales tax in the county to eight cents on every dollar spent for most items.

By state law, a T-SPLOST cannot be collected on gas and fuel.

The county has suggested that proceeds from the tax be divided among the county and cities at the same rate as the coun-

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Local pastor Bob Claytor (standing, far right) has been travelling to the African country of Zambia to minister since 2001.

Reaching Zambia

Local pastor, wife continue ministry to reach souls in African nation

BY SHANE SCOGGINS
PUBLISHER

CARNESVILLE – The Rev. Bob Claytor pastors Canon and Gaines Chapel United Methodist churches.

But he has another congregation a world away from Franklin County in the African country of Zambia.

Bob Claytor has been going to Zambia since 2001.

“AIDS was wiping out people by the thousands,” Claytor said of the situation when he first began the ministry.

Claytor spent a week on his first trip working with Luke Buleya, president of the Zambia Baptist Fellowship and a local pastor then in his 30s.

“He had already started 1,200 churches at that stage of his career,” Bob said.

Buleya told Claytor that



Janet Claytor stands with Zambian children during one of her trips to the African nation. The Claytors' work with a ministry in the country has included building a school.

he needed help to reach people with the Gospel before they died.

“That made me feel good because that's something I could help with,”

Claytor said.

Since then, the Franklin County pastor has recruited other believers to take the trip to help out with the ministry in Zam-

bia.

On a 2007 trip, teams did village evangelism for two weeks.

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Page 16

Suit alleges owners misrepresented power plants



The Franklin County GRP plant (above) near Carnesville is part of a suit that alleges the owners of it and other plants misrepresented financial information to get help with foreign investment.

BY ZACH MITCHAM
THE MADISON
COUNTY JOURNAL

A lawsuit in federal court claims owners of Greenfuels Energy misrepresented the capabilities of their power plants while seeking foreign investment, then terminated those who pointed out the factual problems in their application for assistance in a federal foreign investment program.

The plaintiffs seek \$9 million in compensation in a pending civil Racketeer Influenced and Corrupt Organization (RICO) case in the U.S. Northern District of Georgia Court

in Atlanta.

Three firms – Five on Fifty, Gate Industries and Southern Film Regional Center-Atlanta – are suing F. Raymon Bean, David Shaffer, Jeffrey Kuehr, Greenfuels Energy and its subsidiary, Georgia Renewable Power (GRP), which has four power plants, including facilities in Madison and Franklin counties.

The construction of the power plants costs in the hundreds of millions of dollars.

An April 2019 article in *Biomass Magazine* quotes

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From the Front ▶

Suit: Franklin GRP plant part of federal lawsuit

a GRP official saying that the company needed \$350 million to build the plants in Madison and Franklin counties.

SEEKING FOREIGN INVESTMENT

GRP has sought funding for the pricey projects from various sources, including the federal EB-5 program, overseen by federal immigration services, that offers foreigners the opportunity to receive green cards in exchange for investment in American business.

That investment must lead to a certain number of jobs in the U.S.

The plaintiffs were hired to assist in the complex EB-5 application process.

Plaintiffs Dominic “Nic” Applegate and Lowell Elliott said they were asked by Shaffer and Bean to work exclusively on the applications for a year. They agreed to do this.

The big payoff for the plaintiffs would come after the funding was secured and the plants went online.

According to the suit, the plaintiffs “stood to earn significant compensation, in excess of \$25 million over a period of years, for their work in raising EB-5 funding the projects through foreign investment.”

The plaintiffs emphasized to the GRP ownership that all information submitted in applications to the Immigrant Investor Program must be truthful.

Misrepresentation to the U.S. Citizenship and Immigration Services (USCIS) on the funding applications is punishable as perjury.

The plaintiffs received detailed “pro forma” reports to show the performance and profitability projected for each plant.

EB-5 applications must include an economist’s report and a detailed business plan to demonstrate to the USCIS that the business venture is viable and will create the required number of jobs and investment.

But the 89-page plaintiffs’ complaint alleges that the GRP reports weren’t truthful.

The plaintiffs said they saw a pattern of deceit in the power company’s dealing with both potential investors and those hired to help them secure investment.

“Plaintiffs began to discover that defendants had fraudulently misrepresented (and omitted) key facts about the projects that were to be used in the EB-5 applications for the projects, to prove that each project was financially viable and would produce revenues necessary to fund the underlying business,” wrote Thomas Grant, the plaintiffs’ attorney. “These misrepresentations and omissions occurred through interstate emails, telephone calls, and in face-to-face meetings.”

The plaintiffs also said that GRP failed to revise its information after problems were pointed out.

“Even after being warned by Nic Applegate and other representatives of plaintiffs about these misrepresentations, the entity defendants proceeded in bad faith and chose not to pay for updated economic studies and reports that would be necessary to revise the EB-5 applications to reflect the true facts and figures about the projects,” wrote Grant.

The plaintiffs were subsequently cut from the project after the defen-

dants found other investment sources.

The attorney wrote that “Defendant Shaffer suddenly and unilaterally terminated their commercial relationship with plaintiffs.”

THE PLANS

Greenfuels Energy signed power purchase agreements (PPAs) with Georgia Power for two plants in Georgia and Duke Energy for two plants in North Carolina.

The agreements dictated how much electrical power would be provided to the utility, as well as the deadline to produce the power and the price paid by the utility for that power.

GRP faced liquidated damages if they didn’t get the plants operational by the utility’s deadline.

So the company was under pressure to produce electricity by the deadline at a profitable cost.

The lawsuit details some of the difficulties of operating a biomass power plant.

The plaintiffs noted that profitability in the field requires “substantial expertise in a niche area of power production and the use of new and expensive technologies.”

Biomass produces more moisture than coal-burning plants.

And the availability and price of biofuels is a key factor in profitability, “especially when two or more biofuel-burning plants are located near one another”

– as in Madison and Franklin counties – since plants at a close proximity to each other will “increase demand on local supplies of fuel, thus increasing the price of fuel. Therefore, being able to attract investors and funding for biofuel power projects requires a strong and verifiable business plan to demonstrate that a plant can and will produce the required amount of electrical power at an overall cost that will allow the plant to operate at a specified profit level,” the complaint states.

THE EQUIPMENT

The plaintiffs noted that a “key part of the plan for the Lumberton plant was to replace an antiquated boiler there with a modern, \$70 million Andritz Group boiler that was capable of generating the necessary amount of heat and hence power output using biofuels.”

GRP asserted that the Lumberton plant “would generate an output of 40 megawatts (which turned out to be nearly double the amount of actual output),” the complaint stated.

The EB-5 application factored in the Andritz Group boiler as a key component in seeking foreign investment.

According to the lawsuit, the defendants then scrapped the newer boiler as part of the plan and decided to go with a cheaper option without informing the plaintiffs, who left the boiler as part of the EB-5 application.

“The entity defendants made that decision well before September 2015 but chose not to notify plaintiffs until well into 2016,” the complaint states.

The plaintiffs requested that GRP revise its plans to reflect the lack of a new boiler, noting that without the equipment, the plant would not “generate the output, profit and job creation” the company promised.

The plaintiffs said GRP stuck with the application stating that it would use

the new boiler at Shaffer’s direction.

MORE ALLEGED MISREPRESENTATIONS

The plaintiffs later learned about a “diligence report” dated Aug. 10, 2015, that “outlined numerous discrepancies and concerns about the representations about the projects being made in the EB-5 applications.”

GRP withheld this report from the plaintiffs for months, eventually turning over a “bank book” that “further demonstrated inaccuracies” the defendants allowed to remain in the EB-5 application.

The PPA for the Lumberton plant called for 35 megawatts of power, but that output wasn’t met.

“That plant has been unable to generate more than approximately 20 megawatts, which level could only be sustained for a short period of time, due to problems with ash buildup caused by the burning of biofuels,” the complaint stated.

Emissions at the Lumberton plant have also been an issue.

“It has not been possible to operate the Lumberton Plant, at all, for significant periods of time, because the plant has continually exceeded the permissible level of emissions, which has required shutdowns so that the plant could stay within the applicable pollution limits,” Grant wrote.

The plaintiffs said GRP also misrepresented the output from the Franklin County plant.

“Additionally, the entity defendants produced and provided pro formas for the Franklin plant that were inaccurate and misrepresented the amount of output that could reasonably be expected from that plant,” wrote Grant.

According to the lawsuit, an independent report by E3 Consulting showed that the company overstated the expected output and profitability of the Franklin plant.

“Subsequent analysis and review of the E3 Consulting report indicated that misrepresentations of the parasitic load of the plant would reduce projected revenues by approximately \$2.5 million; that misrepresentations about the ‘availability’ of the plant would likely reduce projected revenues by approximately \$3.2 million; and that misrepresentations about the ‘heat rate’ of the plant would likely reduce projected revenues by approximately \$1.75 million,” wrote Grant. “These material differences, alone, would significantly impact the profitability and job creation of the project, both of which were necessary for USCIS approval and for attraction of the required amount of investment.”

The plaintiffs’ attorney said GRP kept his clients in the dark about the company’s problems.

“Although defendants knew and/or should have known (for a considerable amount of time) about the problems that have significantly and adversely affected the operation of the power plants, they instead chose to misrepresent information about the plants to the plaintiffs and to hide material facts from the plaintiffs,” wrote Grant. “Consequently, plaintiffs were kept in the dark, as they continued to work, exclusively and for months, on the projects.”

He also said the company willfully misled his

clients about the departure of key personnel who quit GRP “because of concerns about defendants’ ability to properly configure and operate the projects, and related concerns about maintaining their reputations in the electrical-power-generation industry, due to missteps by defendants.”

“When Mr. Applegate specifically asked Defendant Kuehr about the status of the key personnel with respect to the projects, Defendant Kuehr falsely advised that they were still involved and knowingly failed to disclose to plaintiffs that the key personnel had actually quit working for the projects more than a month before, as plaintiffs would subsequently learn from another source,” wrote Grant. “Similarly, defendants Shaffer and Bean also failed to respond accurately about the status of the key personnel, when asked by Nic Applegate in interstate phone calls that occurred after the departure of the key personnel.”

The suit states that the defendants also failed to get proper permitting for the Lumberton plant and failed to let the plaintiffs know about the issue or include it in their reports to be used in the investment program.

OTHER FINANCING

The plaintiffs stated that the defendants struggled to get financing from other sources due to their “inability to provide accurate, verifiable information about the performance and profitability of the power plants.”

Investors also expressed concern about the involvement of Kuehr, the finance director for GRP.

While working for Regions Bank, Kuehr was fined \$70,000 in 2014 by the Securities Exchange Commission (SEC) and banned from serving as an officer or director of publicly traded companies for taking “intentional steps to circumvent internal accounting controls and improperly classify \$168 million in commercial loans as performing so Regions could avoid recording a higher allowance for loan and lease losses,” according to a press release from the SEC.

OTHER LITIGATION

The RICO complaint also references other litigation faced by Greenfuels and GRP.

“Plaintiffs are aware... that GreenFuels Energy LLC and GreenFuels International LLC are currently being sued for allegedly taking another party’s business opportunity in violation of a non-circum-

vention agreement regarding a biofuel-powered project in Ireland,” wrote Grant, referencing a suit filed in federal court in New Jersey.

The defendants were sued in federal court in Atlanta for their “nonpayment of \$3 million allegedly owed by them on a purchase and sale agreement concerning the power plant in Franklin (County),” the complaint states.

WHAT THEY’RE SAYING NOW

GRP officials said they cannot comment on pending litigation.

“It is our company policy not to comment on pending litigation matters with third parties,” wrote a GRP official in response to questions about the suit. “That said, the Five on Fifty litigation was dismissed by the court in 2016, but the judge allowed the plaintiffs to cure a large number of deficiencies in their complaint. They did refile their complaint, and GRP filed a new motion to dismiss. That motion has been pending since it was filed two years ago. All of this is public information.”

Grant disputed GRP’s assertion that there was a dismissal.

“Defendants are incorrect that the case is dismissed,” wrote Grant.

“The court has instead recognized that ‘the factual and legal complexity of this case is a double-edged sword’ because ‘plaintiffs cannot avoid relying on a lengthy complaint,’ in its April 28, 2017, order. Accordingly, that order (issued more than two years ago) granted plaintiffs’ request to file an even more detailed complaint about the defendants’ misrepresentations regarding the power plants in Madison and elsewhere, which plaintiffs have done.”

The plaintiffs’ attorney said the defendants are hiding behind procedural and technical arguments.

“Because defendants asked the court to prevent any discovery – including depositions and the production of documents – during the more than two years that the court has been considering plaintiffs’ amended complaint, plaintiffs have as yet been unable to compel defendants and other parties to provide any information about the projects,” wrote Grant. “During this time, defendants have been hiding behind procedural and other technical arguments to delay discovery in a case involving significant misrepresentations about the power plants at issue.”

Grant wrote that the is-

ssues seen at the Madison County plant are in line with past behavior by the company.

“Although plaintiffs have been frustrated by this delay, the fact that the Madison plant has only recently begun to operate and is already encountering financial and regulatory problems is a testament to defendants’ inability to operate it and the other plants as represented, years ago, by defendants,” wrote the attorney.

LATEST FILINGS

Grant filed a “motion for a status conference” with the court on Dec. 17. And GRP filed a motion that same day opposing the request for such a conference.

“Due to the passage of time and need to conduct discovery, plaintiffs respectfully seek guidance from the Court about when this case will proceed, because discovery and other pretrial deadlines have been stayed pending a ruling on defendants’ motion to dismiss,” wrote Grant.

The attorney also mentioned Madison County’s emissions issues with GRP in his request for an update on the status of the case, informing Judge Brown that GRP is “generating complaints from surrounding residents about excessive pollution from the burning of chipped railroad ties containing creosote. Problems with delay and emissions are among the bases for plaintiffs’ claims in this action.”

Attorney Janna Nugent, representing the defendants, responded to the plaintiffs’ “motion for a status conference,” stating that the request “amounts to an improper and unsupported motion for reconsideration of the Court’s previous orders staying discovery in this case.”

Nugent argued that the case should be put to bed, and she took issue with the plaintiffs’ use of RICO statutes in their allegations.

“A stay is particularly warranted in this case given the nature of the claims asserted by plaintiffs,” she wrote. “Notably, plaintiffs have asserted numerous claims under federal and state RICO statutes and common law. As this Court has noted, ‘the mere invocation of the [RICO] statute has such an in terrorem effect that it would be unconscionable to allow it to linger in a suit and generate suspicion and unfavorable opinion of the putative defendant unless there is some articulable factual basis which, if true, would warrant recovery under the statute.’”

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