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Cooper staffer's pipeline inquiry prompts warning against extortion from national governors' group

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in CJ Exclusives

February 15, 2019
1:29AM

As the Cooper administration engaged in negotiations involving the Atlantic Coast Pipeline, a national governors' group warned a Cooper adviser against a state agency taking action comparable to extortion.

The warning came in a Dec. 8, 2017, email from a National Governors Association staffer to Cooper energy policy adviser Jeremy Tarr. The email came to light as part of the Cooper administration's recent release of thousands of documents related to the ACP negotiations.

The word "extort" surfaced in a discussion of potential payments a state government could negotiate with a company pursuing state permits.

"A company could volunteer to make a 'stipulation agreement,' but it wouldn't be appropriate for a commission to require such a thing in a determination of public need and benefit," wrote Sue Gander, NGA's division director for environment, energy, and transportation. "A commission, it seems, ought to

keep to 'prudently incurred costs' for essential utility services. To 'extort' (not my word) payments for 'anything not directly related to the cost of providing utility service' would raise 'due process' and 'ethical' concerns."

In specifying a "commission," Gander was referring to a public utilities commission. She did not indicate whether an agreement reached between a state and company would raise similar "due process" or "ethical" concerns if negotiated by another government agency.

Gander's email followed a phone inquiry from Tarr, Cooper spokeswoman Noelle Talley told *Carolina Journal*. Documents indicate Tarr was doing research at the request of Cooper adviser Ken Eudy. Eudy negotiated a controversial \$57.8 million Atlantic Coast Pipeline fund unveiled a little more than a month after Gander offered her email advice. That fund generated a dispute between the governor and legislative leaders.

The 600-mile Atlantic Coast Pipeline involving Dominion Power and Duke Energy will go through West Virginia, Virginia, and North Carolina. Cooper's Department of Environmental Quality issued an important environmental permit on Jan. 26, 2018. The previous day, Cooper's office and the ACP partners signed an agreement requiring the ACP partners pay the \$57.8 million to a fund Cooper would control.

The General Assembly determined that Cooper lacked the authority to negotiate such a payment and in February 2018 voted to redirect the money to the school systems in the eight North Carolina counties where the pipeline will pass. The pipeline project is on hold due to permitting issues in Virginia.

Responding to multiple media requests and an investigation by a special General Assembly subcommittee investigating the ACP, Cooper's office and his DEQ in December released approximately 40,000 pages of documents and emails related to the project. The ACP subcommittee chairmen are Sen. Harry Brown, R-Onslow, and Rep. Dean Arp, R-Union.

The NGA response was an email to Tarr from Division Director for Environment, Energy & Transportation Sue Gander. She attributed her response to research by NGA Senior Policy Analyst Tom Simchak.

“We didn’t find an exact example in project construction approval at the wholesale level in gas or electric. What can be done would be based on what authority is involved — DNR or PUC etc.” She was referring to a state’s Department of Natural Resources or Public Utility Commission.

“In a ratemaking case, PUCs could add provisions. But that wouldn’t really apply to a wholesale pipeline being built,” she wrote.

She then cautioned Tarr about a situation involving extorting payments from a company. CJ couldn’t determine if she meant extortion would apply only to a PUC or to any government agency involved in the approval process.

Gander told *CJ* responding to questions from a governor’s office staff is routine. She couldn’t recall who used the word “extort,” and said it must have showed up in research based on a situation in another state.

Simchak is no longer with NGA, but *CJ* found him and asked where “extort” came from.

“Would’ve been quoting someone I spoke to when researching the memo. But I have no recollection who that was for that bullet,” he said.

CJ couldn’t determine when Tarr first shared the NGA response with Eudy, or if Tarr ever relayed the NGA language “extort,” “due process,” or “ethical.”

On Dec. 22, 2017, Tarr sent a memo to Eudy. “In a prior discussion, you asked whether there is a precedent for a company setting aside funds for community benefit before approval of a major deal or project. I found an illustrative case where utilities funded a customer investment fund for ratepayer benefits in order to win state approval of a merger. There is also precedent for a pipeline company paying more than the fair market value for an easement over public

lands, with the overage directed to purposes desired by the state. The ACP route does not cross any NC state parks, but if helpful, I can look into whether it crosses another type of public land such as property owned by local governments or the state in some other capacity,” Tarr wrote.

Eudy had been negotiating a fund with Duke Energy lobbyist Kathy Hawkins. She provided a draft Mitigation Project Agreement to the governor’s office on Dec. 13.

CJ asked Tarr to supply his original email request to NGA. Talley responded instead.

“The Governor’s Office requests research, guidance, and technical assistance from the NGA frequently. In this case, the NGA provided broad feedback in response to a call from policy adviser Jeremy Tarr requesting examples of how other states had structured similar funds. The administration seeks best practices and shared the view that the fund should not be connected with state regulatory requirements,” she wrote.

In December, the ACP subcommittee hired Eagle Intel Services to dig through documents and interview state employees connected with the pipeline permitting process. Eagle partners include former Internal Revenue Service special agent Thomas Beers, former IRS special agent Kevin Greene, and former FBI special agent Frank Brostrom. Cooper has told state employees not to speak with the investigators.

Cooper’s office maintains the “ACP water quality permit was issued solely based on a thorough, demanding review by DEQ regulators,” and a “fund was created to help the counties along the route with economic development and environmental issues.”

The NGA, based in Washington, D.C., is a nonpartisan public policy organization established for nation’s governors to share best practices and develop innovative solutions.

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tags: **Atlantic Coast Pipeline, duke energy, Gov. Roy Cooper, National Governors Association**