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Sewer ratepayers in Central Jersey continue to lose money on \$36 million 'boondoggle'

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It was supposed to save more than a million dollars a year.

At least that's what Rahway Valley Sewerage Authority officials were led to believe as they spent millions of public dollars building a methane gas-fueled facility designed to generate power for the 35-acre wastewater treatment plant in Rahway and Woodbridge.

But after 10 years and \$36 million, the cogeneration plant is silent. Public officials and the RVSA's own legal team have described the investment as a "boondoggle" and "a white elephant." Forensic auditors hired by the RVSA in 2009 say the facility could never save money, is too costly to operate and never should have been recommended by firms with limited experience in cogeneration facilities.

Now in an attempt to recoup their losses, the RVSA last month filed a court-ordered demand for arbitration seeking damages from 12 contractors, engineers and equipment manufacturers accused by the RVSA of defrauding and hoodwinking the authority into approving a project that the firms knew or should have known was wasteful.

Meanwhile, as a Home News Tribune review of financial and legal documents obtained from the authority through the Open Public Records Act shows, the overall cost of the project continues to climb by hundreds of thousands of dollars a month based on lost revenues, added expenses and ongoing legal fees associated with the cogeneration plant.

The continued expenses will be passed on to home and business owners in 15 municipalities in Union and Middlesex counties in the form of higher sewer bills, which for most homes already costs hundreds a year.

Additional costs

Additional costs and losses related to the project include:

- . \$2.39 million paid to Cipolla & Co., a Franklin Lakes-based accounting and litigation consulting firm hired by the RVSA in December 2009 to perform an ongoing forensic audit to gather information for litigation. Recent bills have averaged \$135,000 a month. The authority this week will be voting to renew a \$600,000 contract for the firm for 2011.

- . More than \$815,000 paid to Weiner Lesniak, a Parsippany law firm that has handled litigation related to the project since 2009.

- . More than \$2 million worth of methane gas that the RVSA has had to discard by burning it into the air. The gas could have been used to fuel engines, but the consultants hired by the RVSA had convinced the RVSA to scrap them for a cogeneration plant.

. More than \$2 million has been added to the RVSA's electric bills since converting to electric motors in 2007, based on the recommendation by the same consultants.

. Nearly \$800,000 paid to Elizabethtown Gas for a use-it-or-lose-it gas-purchase agreement signed in 2004. The gas was supposed to be mixed with methane and power the cogeneration plant, but the RVSA never was able to use most of it.

Waste

The litigation highlighting this project comes at a time when Gov. Chris Christie is looking to expand the state's oversight of the various independent agencies and authorities in the state. These public entities are sometimes referred to as an invisible layer of government because the officials serving on these panels are not elected and the public often is not even aware of their purpose or existence, although their sewer bills fund the facility.

Operating out of sight, sewer authorities have been steadily increasing their spending plans, which are not subject to the same tax-hike caps imposed on municipalities and school and fire boards.

What RVSA charges its member towns has climbed from \$17.5 million in 2007 to \$23.2 million this year. Assessments for the neighboring Middlesex County Utilities Authority, also serving parts of Somerset and Union counties, increased from \$63.8 million in 2008 to \$75.6 million this year.

The RVSA this year, however, slashed its operating budget by 8.7 percent to \$12.9 million, not including \$13.5 million in annual debt service for the facility's expansion and cogeneration project.

While the RVSA's litigation blames nearly every private firm or contractor involved with the cogeneration plant, the defendants are firing back and critics of the RVSA say its 11-member board provides inadequate oversight. It is unclear whether more regulation, as Christie has proposed, could have derailed the cogeneration project. RVSA officials insist it wouldn't have made a difference.

In their interim report submitted in March 2010, Cipolla said the feasibility studies on which the RVSA based its decision to approve the project in 2001 was rife with faulty assumptions, errors and miscalculations.

A committee of consultant and engineering firms hired to evaluate the proposal and design plans never caught the errors or warned the RVSA about design flaws, likely because they were looking to profit from the project by constructing the facility and providing its equipment, the RVSA alleges in its arbitration claim.

"We were misled," said RVSA commissioner Frank Mazzarella, an appointee from Clark. "You hire professionals to give you correct guidance. And we now believe that they weren't as forthright as they should have been."

The Cipolla report said that the facility as designed was "much too large and costly to be feasible" and "worthless but for salvage value."

Cippolla found "substantial, actual and potential conflicts of interests" among the firms that worked on the project. The same companies hired to evaluate the project's merits later were hired to build it. Cipolla's findings are now the basis of the authority's litigation against the firm that prepared the study and the consultants and contractors.

Rising costs

In 2000 the RVSA paid Paulus Sokolowski and Sartor of Warren \$25,000 to study the feasibility of using methane gas ... a byproduct of the facility's sewage treatment ... to fuel a cogeneration facility.

The idea of the small-scale power plant had been considered in the 1990s by the then-executive director, who believed that the RVSA could save money by producing its own electricity.

At about the same time the authority undertook a \$300 million upgrade to its system, increasing capacity of the treatment plant from 63 million gallons per day to 102 million gallons. The upgrade was prompted by a state Department of Environmental Protection lawsuit in response to several instances in the 1990s when the plant spilled sewage into the Rahway River during severe storms. As part of the judicial consent order with the DEP, the upgraded plant needed to have a back-up power source. The cogeneration plant became part of that solution.

The initial five-page Paulus Sokolowski and Sartor report, obtained by the Home News Tribune through a public records request, stated the project would cost \$10.4 million but would save the RVSA \$1.4 million a year. By September, however, the firm was saying the cost would be \$16.2 million. A year later PS&S said the cost would be \$19.2 million after the firm recommended increasing the capacity of the cogeneration facility and the sludge driers.

Despite the cost increase, Paulus Sokolowski and Sartor continued to claim the project would save more than \$1 million a year, the RVSA claims.

During construction, general contractor J.H. Reid of South Plainfield submitted 12 change orders that increased their billings from \$17 million to \$20.7 million as consultants recommended expanding the size and scope of the project, the RVSA's lawyers claim. While some commissioners questioned the cost overruns, the professionals insisted the changes were necessary.

Paulus Sokolowski and Sartor, which was ultimately paid \$3.25 million for its work on the project, said the RVSA's claims are without merit.

"After years of study involving RVSA staff, commissioners, legal advisors and other engineering experts, RVSA voted to proceed with the cogeneration facility," the company said last week in a statement. "RVSA then made numerous changes to plant design and operational methods that added millions of dollars to the cost of the facility.

RVSA's legal and financial advisors were involved in every step of the decision making process."

In 2009, then-executive director of RVSA Michael Brinker realized that the only way to realize savings would be to not operate the plant.

The RVSA considered salvaging the cogeneration plant by using it as a back-up power source. But officials learned that the engines manufactured by Peoria, Ill.-based Caterpillar and supplied by Foley Power Systems of Piscataway, both named in the arbitration claim, would not be designed to start up during a power failure.

Who's to blame?

RVSA executive director James J. Meehan, who was appointed in November 2010, long after the cogeneration plant was deemed worthless, says the \$36 million loss "wouldn't have been avoided."

"The board has to put their trust in the engineers," he said. "Do you think Gov. Christie knows anything about wastewater treatment?"

Robert Luban, the RVSA commissioner from Woodbridge, said the feasibility studies did "raise a red flag," but the consultants "would always give us whatever answer it was at the time to explain it."

The plans for facility upgrade were approved by the state DEP, but department spokesman Larry Hejna said state officials are "not reviewing the nuts and bolts of the design of the plan."

"We look at design plans to see that they are certified by an engineer and that the project is in compliance with state and federal regulations and all permits have been satisfied," he said.

Woodbridge Mayor John E. McCormac, who along with the mayors of Clark and Rahway more than a year ago began criticizing the RVSA's budget, said he "always thought (the cogeneration plant) was a boondoggle from the beginning. Everything we said was going to happen happened."

"The governor has targeted these independent entities very aggressively and they should really take a look at the Rahway Valley Sewerage Authority," he said. "I totally support the governor's legislation to establish more oversight."

As for the RVSA's board of commissioners, McCormac said it would help if they had more knowledge about budgets and engineering.

"The next appointment will be the township engineer, not a politician," he said.

WHO'S WATCHING?

The board of the Rahway Valley Sewerage Authority acts much like a school board would in that they are a committee of laymen charged not with running an agency but ensuring that it is well-run by full-time administrators.

The 11 commissioners are appointed for five-year terms by each of the member municipalities. Commissioners earn \$600 a year and the chairman earns \$2,000 a year for attending 20 meetings.

The RVSA board has few, if any, members who would be able to scrutinize engineering proposals, which is why Executive Director James J. Meehan, who's had nearly 30 years of experience in the wastewater treatment industry, justifies the six-figure monthly payments to Cipolla & Co. to provide forensic accounting on this project.

The board includes an owner of a naval architectural and marine engineering firm, several politicians, a former property manager, a marketing manager, the former president of a general contracting company, a financial adviser, an emergency management coordinator, a vehicle maintenance manager, a retired municipal public works director, a law firm comptroller, and a municipal health and engineering department director.

RVSA TOWNS

RVSA serves Clark, Cranford, Fanwood, Garwood, Kenilworth, Linden, Mountainside, Rahway, Roselle Park, Scotch Plains, Springfield, Westfield, Winfield Park and Woodbridge.