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BOARD OF PUBLIC UTILITIES
MAIL ROOM

September 15, 2015

VIA LAWYER'S SERVICE

Cynthia Covie, Chief Counsel
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, New Jersey 08625-0350

Re: In the Matter of the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Montville-Whippany 230 kV Transmission Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public
BPU Docket No. EO15030383
OAL Docket No. PUC-08235-2015N

Dear Ms. Covie:

This office represents the Township of Montville as intervenor in the above captioned matter. On September 8, 2015, Honorable Leland S. McGee, A.L.J. issued a Prehearing Order in this matter. As part of that Order, Judge McGee denied the Township of Montville's motion seeking establishment of an escrow account by Jersey Central Power and Light.

Pursuant to N.J.A.C. §1:1-14.10, the Township of Montville hereby requests interlocutory review of Judge McGee's denial of the motion seeking an escrow account. In support of this appeal, the Township will rely upon the letter brief attached hereto.

Respectfully,
DORSEY & SEMRAU

Fred Semrau /s/
Fred Semrau

Enclosures

FCS/dms

cc: Hon. Leland S. McGee, A.L.J. – via e-mail
Clerk of the Office of Administrative Law – via e-mail
All parties on service list attached - via e-mail

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VIA LAWYER'S SERVICE

Commissioners

New Jersey Board of Public Utilities

44 South Clinton Avenue, 9th Floor

PO Box 350

Trenton, New Jersey 08625-0350

Re: In the Matter of the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Montville-Whippany 230 kV Transmission Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public
BPU Docket No. EO15030383
OAL Docket No. PUC-08235-2015N

Dear Commissioners:

This office represents the Township of Montville (hereinafter "Township" or "Montville") as intervenor in the above captioned matter. Gregory Eisenstark, Esq. represents Jersey Central Power & Light Company ("JCP&L"). This matter is pending before the Honorable Leland S. McGee of the Office of Administrative Law. Please accept this letter brief in lieu of a more formal memorandum in support of Montville's request for interlocutory appeal.

The Township has intervened in this matter in order to ensure the safety and reliability of the project proposed by JCP&L. As a municipal intervenor, there are certain experts that must be retained in order to allow the Township to adequately and vigorously participate in this process in order to protect the health, safety and welfare of its residents. As such, Montville filed a motion for the establishment of an escrow account in the amount of \$500,000 for professional expert fees and is respectfully appealing Judge McGee's denial of that motion. A copy of the motion and Judge McGee's Order, dated September 8, 2015, are attached to the accompanying Certification of Dawn M. Sullivan, Esq. ("Sullivan Cert.") as Exhibits A and B, respectively. This issue is ripe for review and determination by the BPU is appropriate pursuant to N.J.A.C. § 1:1-14.10. In re Uniform Administrative Procedure Rules, 90 N.J. 85, 97-98 (1982) (concluding that the agency has the right to review ALJ orders on an interlocutory basis to determine whether they are reasonably likely to interfere with the decisional process or have a substantial effect upon the ultimate outcome of the proceeding).

I. It is Necessary for JCP&L to Fund an Escrow Account for the Township of Montville's Professional Expert Fees on the Basis of Equitable Considerations

In the instant matter, JCP&L has filed a petition proposing the build-out of certain transmission lines. These lines are located in extremely close proximity to residential developments and to the Montville Lazar Middle School, which has outdoor recreational facilities that run directly alongside the proposed line. Given the potential health and financial impact this project may have on the residents of Montville, the Township has a responsibility to participate in the process on behalf of its residents, and must retain industry experts to ensure that this project is analyzed thoroughly, considering the interests of those people who will be living and working in close proximity to the proposed line.

From the beginning of this project, Montville has expressed serious concerns over many aspects of the project as presented by JCP&L to the Montville Township Committee and residents of Montville. JCP&L has not exhibited a willingness to alter its proposed project to address the concerns of Montville's citizens or administration. As a result, Montville must do everything in its power to ensure that the safety, health and well-being of its citizens is not compromised or endangered by this project. In order to properly assess this project, it is necessary for Montville to retain experts in certain specialized fields, including without limitation transmission design and system planning, to ensure that the interests of the Township and its residents are protected. This is JCP&L's proposed project and JCP&L's refusal to entertain alternative plans or paths has forced Montville into this position. Therefore, it is reasonable to require JCP&L to fund the escrow account.

Experts must be retained from outside of the Township as the expertise needed to evaluate the project is above and beyond that which is available from the Township's staff. JCP&L has a distinct advantage over Montville, and any other intervening parties, in that it has highly specialized industry experts readily available and working with the company on a regular basis to ensure that JCP&L's needs are addressed. As a matter of equity, Montville must be afforded the same opportunity to retain experts in order to adequately and substantively engage in discourse on this matter. An escrow account established by JCP&L would ensure that equity is served.

JCP&L's burden is to establish that the project in question "is reasonably necessary for the service, convenience or welfare of the public." N.J.S.A. § 40:55D-19. JCP&L will attempt to meet its burden by utilizing its experts and testimony from its experts. Again, in order to be able to properly refute and/or challenge these experts, Montville must have its own experts. The escrow sought from JCP&L is purely to fund these experts to ensure that the best possible individuals are retained to properly question all aspects of this project.

II. It is Inequitable for the Township of Montville to Be Forced to Utilize Municipal Funds to Cover the Costs of Professional Expert Fees

JCP&L stipulated in its papers to Judge McGee that the Township of Montville is able to and has budgeted for the funding of these experts. While this is true and the Township did allocate space in its budget for 2015 to cover the costs of expert fees, it did so out of necessity. For the above-stated reasons, the Township must utilize the services of experts in order to properly assess the proposed project and protect the health, safety and welfare of its residents.

However, just because the Township is having to expend these monies, does not make it fair under the circumstances. This is a project proposed by JCP&L. The Township never requested that JCP&L build an additional line to supplement the already-existing two (2) lines running through Montville. If JCP&L is solely proposing this line and seeks to build it despite Montville's objections, it is patently unfair to then also impose upon Montville additional costs that would otherwise not need to be expended. If Montville did not need to expend its funds to cover the costs of experts in this JCP&L matter, those funds could be used otherwise to provide the Township's residents with services. For example, the funds allocated for this matter could be used to make necessary road repairs, or provide recreation programs for the Township's youth. However, instead of providing these services for its resident taxpayers, great sums of Township monies are instead being utilized to fund Montville's need for experts in this matter.

III. A Consideration of the Factors Established by the Courts Necessitates the Establishment of an Escrow Fund

In a recent decision, the Appellate Division reviewed the factors that a public utility must establish in relation to an exemption review of the utility's development plan. A development plan is deemed to be "reasonably necessary for the service, convenience or welfare of the public" under N.J.S.A. § 40:55D-19 following a consideration of the following:

1. That the statutory phrase, "for the service, convenience and welfare of the public" refers to the whole "public" served by the utility and not the limited local group benefited by the zoning ordinance.
2. The utility's proposed use is reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location.
3. It is the "situation," i.e., the particular site or location . . . which must be found "reasonably necessary," so the Board must consider the community zone plan and zoning ordinance, as well as the physical characteristics of the plot involved and the surrounding neighborhood, and the effect of the proposed use thereon.
4. Alternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity.
5. The Board's obligation is to weigh all interests and factors in the light of the entire factual picture and adjudicate the existence or non-existence of reasonable

necessity therefrom. If the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.

[See also In re Petition of Monmouth Consol. Water Co., 47 N.J. 251, 261–63 (1966) (Monmouth) (holding that even where the Board finds the deviation from the zoning ordinance is sufficiently necessary for the public convenience and welfare, **the Board must consider measures to mitigate impacts on local residents served by zoning ordinance**) (emphasis added).]

In re Pub. Serv. Elec. & Gas Co., 2013 WL 490171, at *7-8 (App. Div. 2013) (emphasis added). A true and accurate copy of this decision is attached to Sullivan Cert. as Exhibit C.

Although it is recognized that the “public” in this proceeding is the public at large, it is clear that the impact on the local residents is also an important consideration. In light of the nature of this type of proceeding, it is imperative that intervenors, such as Montville, are able to engage in a true analysis of the plan. It is incumbent upon the Township to ensure that the plans submitted and the lines to be constructed are done in a way that does not significantly impact or harm the local residents. In order to do so, industry experts are necessary. Montville has requested a reasonable escrow be established in order to permit the necessary analysis.

Montville acknowledges that there is no New Jersey case law or statutory authority requiring establishment of an escrow account in this situation. However, it is the Township’s assertion that in the instant matter, a reasonable escrow is appropriate and necessary as a matter of public policy and based upon considerations of equity. JCP&L has not listened to and thoroughly considered the concerns raised by the Township and its citizens. The numerous concerns regarding the proximity of the project to homes and schools have not been adequately addressed due to JCP&L’s lack of responsiveness.

The New Jersey Supreme Court has noted that in deciding the merits of a petition filed directly with the BPU, the BPU is required to consider both aspects of the public interest. Petition of Monmouth Consol. Water Co., 47 N.J. 251, 262 (1966). These aspects of the public interest are:

[T]he interest of the consumers being served and to be served by the utility within and without the affected municipality, and the interest of the local citizenry

Id. In the instant matter, JCP&L has not been receptive to the interests and concerns of the Montville citizenry. For that reason, and in order to ensure proper weight and value is given to the Township, Montville must retain experts.

IV. The Case Law Relied Upon by JCP&L is Not Analogous to the Instant Matter

JCP&L was asked to voluntarily establish a reasonable escrow account in order to permit Montville to retain the four (4) or five (5) experts necessary to evaluate all aspects of the project and petition. Specifically, the Township is looking at experts in transmission, system design, substation, and real estate. Throughout the discussions regarding an escrow, JCP&L has repeatedly referenced two (2) recent decisions denying such motions. Those orders are: I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Increases in and Other Adjustments to its Rates and Charges for Electric Services, et al. (“2012 Base Rate Filing”), 2013 WL 3776636, N.J. Bd. Reg. Com.) (June 21, 2013) and I/M/O the Petition of Public Service Electric & Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (“Susquehanna-Roseland”), BPU Docket No. EM09010035, Order dated May 29, 2009. These cases, while dealing with similar motions, were distinguishable in their fundamental considerations.

The 2012 Base Rate Case is distinguishable from this matter due to the nature of the case. While both have potential impacts on the ratepayers, the instant petition has the potential of significant impact upon the health, welfare and well-being of the Township’s residents. The BPU in the 2012 Base Rate Case held that it found “no compelling reason” to require establishment of an escrow account. 2012 Base Rate Case, supra, 2013 WL 3776636 at 6. As part of its submission, JCP&L asserts the position that the BPU, as a matter of policy, “does not support the establishment of an escrow fund for intervenor expenses.” Id. at 4. Looking at the instant case, there is a significant compelling reason to divert from the alleged BPU “policy” asserted by JCP&L: the residents of the Township of Montville. Id. Rather than rely upon an unwritten “policy” of the BPU to not order escrow accounts, Montville respectfully asks the BPU to consider the reason for the request. Id. at 4. The proposed lines are to run within close proximity of residents’ homes – closer than any other lines currently standing – and to a school with outdoor recreational facilities¹. There must be extensive, proper and careful analysis as to the safety of these proposed lines as well as any potential alternatives to the lines. It is not unreasonable to request JCP&L to fund, in whole or in part, the experts needed to do so as the safety, welfare and well-being of so many are at issue.

The Susquehanna-Roseland case also involved the construction of transmission lines across multiple municipalities. I/M/O the Petition of Public Service Electric & Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, supra. Many of those municipalities intervened along with several citizens’ groups and boards of education. Id. at 1. Thereafter the intervenors filed motions for establishment of an escrow account to fund the expert fees to be incurred in assessing the petition’s merits. Id. Following the submissions on behalf of all parties, but prior to a decision on the motion’s merits, PSE&G voluntarily entered into an escrow agreement with the intervenors. Id. at 3. In the Susquehanna-Roseland matter, the motion for an escrow was clearly not decided on the merits of the request. The BPU specifically left open the option of future applications by finding that “at this time, the Board does not find any compelling reason” to order the escrow. Id. at 4. This decision was entered after

¹ Although the Montville Township Board of Education is a separate intervenor in this matter, the proximity of the proposed transmission lines to the school remains a concern to the Township as a whole.

PSE&G agreed to voluntarily establish an escrow account and the BPU Commissioners took note of that fact in its decision as well. Id.

That PSE&G voluntarily entered into an agreement to establish an escrow account in that matter speaks volumes. PSE&G stepped up and provided an escrow account for the intervenors so that they were able to appropriately participate in the matter. The Township is asking JCP&L to do the same thing here.

The Susquehanna-Roseland matter and the instant matter are very similar in that both projects involved the erection of additional transmission lines. As in Susquehanna-Roseland, the instant project may have detrimental impact upon the health, safety, welfare and well-being on the residents of the communities where the lines are proposed to be erected. There must be expert input as to the feasibility and safety, of the need, current design and any alternatives. Without same, the Township would not be serving its residents or the public interest. Therefore, it is imperative that JCP&L be ordered to fund an escrow account to cover the professional fees to ensure proper and adequate evaluation of the proposed project.

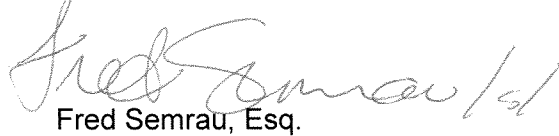
V. The Township of Montville's Request for an Escrow Account Funded by JCP&L for Professional Expert Fees is Provided for in the Governing Law in Similar Jurisdictions

While not binding on the BPU, it is significant that several other states routinely engage in the practice of providing financing assistance to intervenors. Title 61 of the Idaho Code states: "It is hereby declared the policy of this state to **encourage** participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings." Idaho Code §61-617A(1). Therefore, the Idaho Code provides for the payment of all or a portion of the costs related to the participation. See Idaho Code § 61-617A(2). In California, the Public Utilities Code contains an article specifically designed "to provide compensation for reasonable . . . expert witness fees . . ." Cal. Pub. Util. Code § 1801. Minnesota and Wisconsin's statutes also contain a provision for intervenor compensation. See Minn. Stat. § 136B.16, subd. 10; Wis. Stat. §196.31.

Clearly, this is not an unheard of or unique request. Montville wishes to be able to ensure full and fair representation through its experts. Requiring JCP&L to provide part or all of the funding will ensure such representation and that the parties or on equal footing. JCP&L has the resources and should be required to establish the requested escrow account because this is JCP&L's proposed project. The Township is not satisfied that JCP&L has shown that the project will not detrimentally affect the Township and its residents. Therefore, there must be equal access to the necessary experts.

Based upon all of the above, Montville respectfully requests that the BPU consider all of the facts of this case and order that JCP&L establish an escrow account in the amount of \$500,000 for the use of intervenor, Township of Montville, to retain professional experts to properly assess this project, possible alternatives to the proposed project, and the impact of the proposed project on the Township and its residents.

Respectfully submitted,
DORSEY & SEMRAU



Fred Semrau, Esq.

Enclosures

FCS/dms

cc: Hon. Leland S. McGee, A.L.J. – via e-mail
Clerk of the Office of Administrative Law – via e-mail
All parties on service list attached - via e-mail

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Attorneys for Intervenor, Township of Montville

In The Matter Of The Petition Of Jersey
Central Power & Light Company
Pursuant To N.J.S.A. 40:55d-19 For A
Determination That The Montville-
Whippany 230 kV Transmission Project
Is Reasonably Necessary For The
Service, Convenience Or Welfare Of
The Public

OFFICE OF ADMINISTRATIVE LAW

BPU Docket No. EO15030383
OAL Docket No. PUC 08235-2015N

**CERTIFICATION OF
DAWN M. SULLIVAN, ESQ.**

I, DAWN M. SULLIVAN, ESQ., do hereby certify as follows:

1. I am an Attorney at Law of the State of New Jersey and am an associate in the law firm of Dorsey & Semrau, LLC, counsel for Intervenor, Township of Montville (hereinafter “Montville” or “Township”). I am fully familiar with the facts and circumstances set forth herein.

2. This Certification is being made in support of Montville’s request for interlocutory appeal of an Order of Honorable Leland S. McGee, A.L.J. denying Montville’s motion for an escrow account.

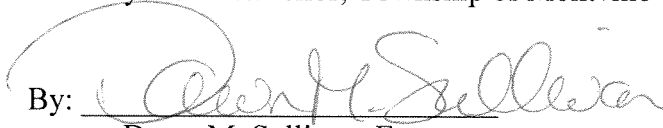
3. Attached hereto as **Exhibit A** is a true and accurate copy Montville’s submission to the Honorable Leland S. McGee, on August 31, 2015, containing Montville’s motion for establishment of an escrow account.

4. A true and accurate copy of Judge McGee's Prehearing Order, dated September 8, 2015, denying Montville's motion is attached hereto as **Exhibit B**.

5. Attached hereto as **Exhibit C** is a true and accurate copy of the unpublished opinion, In re Pub. Serv. Elec. & Gas Co., 2013 WL 490171 (App. Div. 2013), cited in Montville's letter brief

I hereby certify that the above statements made by me are true. I am aware that if any of the above statements are willfully false, I am subject to punishment by the Court.

DORSEY & SEMRAU, LLC
Attorneys for Intervenor, Township of Montville

By: 
Dawn M. Sullivan, Esq.

Dated: September 14, 2015