Ltr 9/21/15
Cas

State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P. O. BOX 003
TRENTON, NEW JERSEY 08625

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

September 18, 2015

Via Hand Delivery and Electronic Mail
Honorable Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: I/M/O 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 ("Montville-Whippany Line")
BPU Docket No. EO15030383
OAL Docket No. PUC 08235-2015N

Dear Secretary Asbury:

Please accept this letter in lieu of a more formal pleading, on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") objecting to the Intervenor Township of Montville's ("Montville" or "Township") September 15, 2015 request for interlocutory review and to establish an escrow account.

We are enclosing an original and ten copies of these comments. Please stamp and date the copy as "filed" and return it to our courier. Thank you for your consideration and assistance.

In its September 15 filing, Montville requested that the Board of Public Utilities ("Board") review on an interlocutory basis the decision of the Hon. Leland S. McGee, ALJ denying the Township's cross-motion to establish an escrow account. That escrow would fund

CMS
List copied

the expert and professional fees Montville anticipates it will expend to participate in the proceeding before Judge McGee regarding Jersey Central Power & Light's ("JCP&L" or the "Company") petition in the above-referenced matter.

Rate Counsel respectfully requests that the Board deny Montville's request for interlocutory review because establishing an escrow account is contrary to law and Board policy, and is unduly burdensome to JCP&L's ratepayers, imposing additional costs on the Company that will ultimately be passed through to the Company's ratepayers.

BACKGROUND

On June 16, 2015 Montville filed with the Office of Administrative Law a Motion to Intervene in the JCP&L Montville-Whippany Line Petition.[1] Judge McGee granted Montville's Motion to Intervene.[2] Exhibit B to September 14, 2015 Certification of Fred Semrau, Esq.

On August 21, 2015, JCP&L filed with the OAL a Motion to Establish a Procedural Schedule. On August 31, 2015, Montville filed a letter brief with the OAL, opposing JCP&L's Motion to Establish a Procedural Schedule, proposing an alternative schedule, and requesting by cross-motion that Judge McGee establish an escrow account to fund Montville's expert and professional fees in this matter. The September 8 Prehearing Order denied that cross-motion. In support of its request for interlocutory review, Montville relies upon its letter brief to the Board and certification of counsel. That certification provides several exhibits, including the letter brief and certification of counsel that the Township filed in support of its cross-motion before Judge McGee. In its briefs, the Township describes its concerns about JCP&L's

[1] Montville had previously filed its Motion to Intervene with the Board.
[2] On August 19, 2015, the Montville Township Board of Education also moved to intervene in this matter. Judge McGee's September 8 Prehearing Order granted that motion.

Montville-Whippany Line and that the Township anticipates retaining one or more experts to present those concerns in this matter.

ARGUMENT

The Statute Allowing Montville to Intervene in this Matter Does Not Permit the Municipality to Recover Its Associated Costs from the Public Utility.

In support of its motion to recover expert and legal fees that it anticipates expending to litigate this matter from JCP&L, Montville cites to a section of the Municipal Land Use Law, N.J.S.A. 40:55D-19, and case law discussing it. That statutory provision "authorizes the Board to exempt a public utility's development that spans multiple municipalities, from local zoning ordinances and regulations if the Board deems the development 'reasonably necessary for the service, convenience or welfare of the public.'" I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland Transmission Line), 2013 N.J. Super. Unpub. LEXIS 304 (unpublished) (App. Div. Feb. 11, 2013), at*23; see also Petition of Monmouth Consol. Water Co., 47 N.J. 251, 262 (1966). That statute and the case law interpreting it do not support the Township's request for an escrow account. Neither the statute nor any case directs that a public utility must pay the expert fees of an interested municipality. The Township acknowledges, as it must, that "there is no New Jersey case law or statutory authority requiring establishment of an escrow account in this situation." Montville brief, p. 4.[3]

[3] In its request for interlocutory review, the Township has apparently abandoned its argument before Judge McGee that a provision of the Municipal Land Use Law, N.J.S.A. 40:55D-53.2, allows municipalities to recover certain costs of reviewing local development applications from

The Township's request for interlocutory review fails to discuss or even to cite the relevant statutory provision that governs both intervention and the payment of its costs and fees in this matter. Montville's request lacks legal foundation based upon the applicable statute allowing municipal intervention in matters before the Board, N.J.S.A. 48:2-32.2, which discusses the costs incurred for legal, expert and other litigation fees:

> Every municipality may intervene alone or jointly with another municipality or municipalities in any hearing or investigation held by the board, which involves public utility rates, fares or charges, service or facilities, affecting the municipality or municipalities or the public within the municipality or municipalities and may employ such legal counsel, experts and assistants as may be necessary to protect the interest of the municipality or municipalities or the public within the municipality or municipalities. Such municipality or municipalities may by emergency resolution raise and appropriate the funds necessary to provide reasonable compensation and expenses of such legal counsel, experts and assistants.
>
> N.J.S.A. 48:2-32.2(a) (emphasis added).

In two prior matters the Board denied a municipality's motion to require a public utility to establish an escrow account to pay municipal costs and fees. The Township has not distinguished this matter or provided any reason to disregard those decisions.

In the 2009 Susquehanna-Roseland Proceeding, PSE&G filed a petition with the Board seeking authority to construct a 500 kV transmission line from Susquehanna substation to the Roseland substation. I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 ("Susquehanna-Roseland"), BPU Docket No. EM09010035, Order Denying Motions to Require PSE&G to Place Funds in

---

the applicant. That section of the Municipal Land Use Law does not apply to municipal intervention in proceedings before the Board under N.J.S.A. 40:55D-19. Montville's August 31 brief, pp. 3-4.

an Escrow Account (May 29, 2009), p. 4, attached as Exhibit A to the Certification of Brian Weeks. Several affected municipalities filed motions to require that PSE&G establish an escrow account to be used by the municipalities to pay for their experts and consultants to participate in the Susquehanna-Roseland Proceeding. Id. In denying the motions, the Board expressly stated:

> To date, based upon research and review, the Board has not required a petitioner to establish an escrow account for intervenors in a case involving an application pursuant to N.J.S.A. 40:55D-19. The Board is under no statutory requirement to require that a petitioner establish an escrow account for intervenors, and at this time, the Board does not find any compelling reason to do so. Therefore, the Board HEREBY DENIES, without prejudice, the motions for the establishment of an escrow account to be funded by PSE&G so that intervenors could use those funds to pay for experts in this proceeding. In making this determination, the Board takes note that PSE&G has offered to establish an escrow account for use by the municipal intervenors.[4]
>
> Id., p. 4.

Therefore, in the Susquehanna-Roseland Proceeding the Board clearly stated that there is no statutory requirement that a public utility set up an escrow account to pay for experts and consultants in a land use dispute before the Board filed pursuant to N.J.S.A. 40:55D-19.

In JCP&L's 2012 base rate case, the Board relied on N.J.S.A. 48:2-32.2 to affirm the decision of Judge Richard McGill, ALJ, denying a motion asking JCP&L to establish an escrow account to fund municipal expert and legal fees. 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 Service, and for Approval of other Proposed Tariff Revisions in Connection therewith; and for Approval of an Accelerated Reliability Enhancement Program

[4] Rate Counsel does not object if JCP&L voluntarily establishes an escrow account, as long as the costs associated with such escrow account are not recovered from JCP&L ratepayers.

("2012 Base Rate Filing"), BPU Docket No. ER12111052, Order on Interlocutory Appeal, June 21, 2013, pp. 4-8, attached as Exhibit B to the Certification of Brian Weeks. The 2012 Base Rate Filing was a base rate case filed by JCP&L, in which several municipalities intervened. One of them, the Township of Marlboro, moved for an order directing JCP&L to establish an escrow account to be used by Marlboro and other municipal intervenors to pay their expert and professional fees in the 2012 Base Rate Filing. By order dated May 22, 2013, ALJ McGill denied Marlboro's motion to compel JCP&L to establish an escrow fund. On interlocutory review, by order dated June 21, 2013, the Board affirmed, recognizing that it "is obligated to follow the terms and objectives of the statute." 2012 Base Rate Filing, Order on Interlocutory Appeal, June 21, 2013, p. 7.

> As previously discussed, N.J.S.A. 48:2-32.2 provides a municipality with a means to raise the funds needed to pay for the assistance of professionals that it determines it needs to effectively represent the interests of its residents in a Board proceeding. The Board is not persuaded that Marlboro has provided any reason for the Board to override the legislative intent as expressed in the statute that the municipality must fund its own expenses, and instead shift those expenses to all of JCP&L's ratepayers. Therefore, the Board FINDS no basis to compel JCP&L to establish an escrow fund for the municipal interveners' costs and expenses as a matter of equity.
>
> Id.

In JCP&L's 2012 Base Rate Filing, the Board found no legal requirement that a utility must establish an escrow account to pay for a municipality's professionals in a matter before the Board, and also found that by statute the municipality must fund its own expenses.[5]

[5] JCP&L's 2012 Base Rate Filing also involved municipal concerns about the reliability of JCP&L's electric distribution system and its asserted "inability to respond rapidly and

Contrary to Montville's assertion that the Municipal Land Use Law or general principles of equity support its motion, the relevant statute and prior Board decisions expressly provide that the motion must be denied. Indeed, N.J.S.A. 48:2-32.2 shows that the legislative intent is that municipalities, by emergency resolution, raise the funds necessary to pay for legal and expert fees needed to participate in utility matters before the Board.[6] There is no reason to deviate from the procedure clearly set forth in the controlling New Jersey statute and prior Board decisions.[7]

JCP&L's Ratepayers Should Not Pay for Costs to Protect the Parochial Interests of One Municipality, Only One Portion of JCP&L's Customer Base.

It is clear from Montville's request for interlocutory review and its cross-motion that the Township's primary interest is protecting its residents and taxpayers. Montville's brief explains that the Township wants to participate in this matter and retain industry experts "to protect the health, safety and welfare" of Montville residents. Montville brief, p. 1. Protecting constituent interests is an appropriate response for any municipal governing body. What is of concern as a policy matter, however, is to allow a municipality such as Montville to charge all of JCP&L's ratepayers for its professional fees incurred in a proceeding to represent Montville's own particular interests. In its request for interlocutory review, the Township requests that the Board:

---

effectively" to Major Storm Events. 2012 Base Rate Filing, Order on Interlocutory Appeal, June 21, 2013, p. 3.

[6] In fact, the Township admits that it already has budgeted the funds to pay its experts. Montville brief, p. 3.

[7] The Township offers no reason for the Board to disregard the express controlling New Jersey statute and prior Board orders and rather rely upon statues from other states specific to those jurisdictions. Montville brief, p. 6.

> 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.
>
> Montville brief, p. 7.

The escrow account would be dedicated solely to costs incurred by Montville for its residents, with no requirement that the costs be reasonable or prudent. In addition to the Township of Montville, the Montville Board of Education has moved to intervene in this matter. In its August 27, 2015 letter to Judge McGee, the Montville Board of Education emphasized differences between its interests and those of the Township. Exhibit C to the Certification of Brian Weeks. The Township, however, highlights the duplication of the intervenors' concerns, pointing out that both the Township and the Board of Education are concerned about the proximity of the proposed project to a school. Montville brief, p. 5, n.1. If each of these intervenors received an escrow of $500,000, the expense to cover the municipal intervenors' litigation costs may potentially increase to $1 million for this case alone. This would set a precedent that could allow every municipality notified of a hearing, investigation or other matter before the Board to intervene and recover its professional fees from the utility company's ratepayers as a whole. Moreover, if the Board grants Montville's requested relief, JCP&L's ratepayers could be required to pay large sums of money for largely redundant efforts both between the two intervenors and Rate Counsel. To avoid such a scenario, the legislature has entrusted Rate Counsel with the task of protecting ratepayer interests, including municipalities served by public utilities. N.J.S.A. 52:27EE-46 et seq. The municipal intervenors have clearly stated in their filings their intention to advocate for their own interests and not for JCP&L customers as a whole. The statute allowing municipalities to intervene in matters before the

Board dictates that the taxpayers of those municipalities, and not JCP&L ratepayers, pay for such representation. N.J.S.A. 48:2-32.2(a).[8]

CONCLUSION

For all the forgoing reasons, Montville has not stated sufficient legal grounds to be granted the relief it seeks, and its request for interlocutory review and to establish an escrow account should therefore be denied.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: Brian Weeks
Brian Weeks
Deputy Rate Counsel

c: Honorable Leland S. McGee, ALJ
Service List (via Electronic Mail and U.S. Regular Mail)

[8] In its request for interlocutory review, the Township has apparently abandoned its request for the appointment of an independent expert. Montville's August 31 brief, p. 5. That request was premature. Court appointment of an independent expert has been found to be appropriate where a "large disparity" in expert opinions "suggesting undue partisanship, provided ample basis, for the action taken." Wayne Twp. v. Cassatly, 137 N.J. Super. 464, 469 (App. Div. 1975), certif. denied, 70 N.J. 137 (1976) (over $1 million disparity between condemnation valuation experts); Wayne Twp. v. Kosoff, 136 N.J. Super. 53, 56-57 (App. Div. 1975), rev'd on other grounds, 73 N.J. 8 (1977). Here, none of the parties has presented any testimony or evidence of any type; accordingly, there is no need for independent inquiry into widely divergent opinions.

In The Matter of the Petition of Jersey Central Power and 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 Dkt. No.: Pending

Honorable Irene Kim Asbury
Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Fl.
P.O. Box 350
Trenton, NJ 08625-0350

Jerome May, Director
Division of Energy
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Carl Dzierawiec
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Bethany Rocque-Romaine
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Paul Flanagan
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Megan Lupo
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Cynthia Covie
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625-0350

Caroline Vachier, DAG
Division of Law & Public Safety
124 Halsey Street- 5th Floor
P.O. Box 45029
Newark, NJ 07101

Alex Moreau, DAG
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Carolyn McIntosh, DAG
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

John Masiello
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Gregory Eisenstark, Esq.
Windels Marx Lane &
Mittendorf LLP
120 Albany Street Plaza
New Brunswick, NJ 08901

Kevin Connelly, Esq.
Jersey Central Power & Light Co.
300 Madison Avenue
P.O. Box 1911
Morristown, NJ 07960

Lauren M. Lepkoski, Esq.
FirstEnergy Service Company
Legal Department
2800 Pottsville Pike
Reading, PA 19612-6001

John T. Toth
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

Scott Humphrys
FirstEnergy Service Company
76 South Main St.
Akron, OH 44308

Stefanie A. Brand, Esq.
Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Brian O. Lipman, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Ami Morita, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Brian Weeks, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Lisa Gurkas
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

County Administrator
Morris County Administration &
Records Building
P.O. Box 900
Morristown, NJ 07963-0900

Clerk
Township of East Hanover
411 Ridgedale Avenue
East Hanover, NJ 07936

Clerk
Parsippany-Troy Hills Township
Parsippany-Troy Hills Town Hall
1001 Parsippany Blvd.
Parsippany-Troys Hills, NJ 07054

Fred Semrau, Esq.
Dorsey & Semrau
714 Main Street
P.O. Box 228
Booton, NJ 07005

Honorable Leland S. McGee, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Ms. Elisa Reyes
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Kenneth Sheehan, Chief of Staff
Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625

David Ballangee
Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625

Angela Hickson, Paralegal
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Ruby Smith, Legal Secretary
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Michael Connolly
Windels Marx Lane & Mittendorf,
LLP
One Giralda Farms
Madison, NJ 07940

Clerk, Morris County Board of
Chosen Freeholders
Morris County Administration &
Records Bldg.
P.O. Box 900
Morristown, NJ 07963-0900

Clerk, Montville Township
Municipal Building
195 Changebridge Road
Montville, NJ 07045-9498

Tracy W. Schnurr
Dorsey & Semrau
714 Main Street
P.O. Box 228
Boonton, NJ 07005

Dawn Sullivan
Dorsey & Semrau
714 Main Street
P.O. Box 228
Boonton, NJ 07005

Stephen J. Edelstein, Esquire
Schwartz Simon Edelstein & Celso
100 S. Jefferson Road, Suite 200
Whippany, NJ 07981

STEFANIE A. BRAND
Director, New Jersey Division of Rate Counsel
140 East Front Street, 4th floor
P.O. Box 003
Trenton, New Jersey 08625-0003

By: Brian Weeks
Deputy Rate Counsel
(609) 984-1460

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

I/M/O 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 ("Montville-Whippany Line")	))))))	Hon. Leland S. McGee, ALJ OAL Docket No. PUC 08235-2015N BPU Docket No. EO15030383 CERTIFICATION OF BRIAN WEEKS

I, BRIAN WEEKS, hereby certify as follows:

1. I am an attorney admitted to practice in this State, employed as a Deputy Rate Counsel with the New Jersey Division of Rate Counsel in connection with the above-captioned matter.

2. I make this certification in support of the Division of Rate Counsel's objection to the September 15, 2015 request for interlocutory review and to establish an escrow account by intervenor Township of Montville.

3. I attach hereto as Exhibit A a true, accurate and complete copy of the New Jersey Board of Public Utilities' Order Denying Motions to Require PSE&G to Place Funds in an Escrow Account, dated May 29, 2009, in I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland), BPU Docket No. EM09010035, also available on the Board's web site at http://www.state.nj.us/bpu/pdf/boardorders/2009/5-14-09-2F.pdf.

4. I attach hereto as Exhibit B a true, accurate and complete copy of the New Jersey Board of Public Utilities' Order on Interlocutory Appeal, dated June 21, 2013, in 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 Service, and for Approval of other Proposed Tariff Revisions in Connection therewith; and for Approval of an Accelerated Reliability Enhancement Program ("2012 Base Rate Filing"), BPU Docket No. ER12111052, also available on the Board's web site at http://www.state.nj.us/bpu/pdf/boardorders/2013/20130619/6-21-13-2F.pdf.

5. I attach hereto as Exhibit C a true, accurate and complete copy of the August 27, 2015 letter from the Montville Board of Education to Judge McGee.

6. I hereby certify that the above statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Brian Weeks

Brian Weeks, Esq.
Deputy Rate Counsel
140 East Front Street, 4th floor
P.O. Box 003
Trenton, New Jersey 08625-0003

Date: September 18, 2015

EXHIBIT "A"

Agenda Date: 5/14/09
Agenda Item: 2F

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

DIVISION OF ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR A DETERMINATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40:55D-19 (SUSQUEHANNA-ROSELAND)	)))))	ORDER DENYING MOTIONS TO REQUIRE PSE&G TO PLACE FUNDS IN AN ESCROW ACCOUNT

DOCKET NO. EM09010035

(SERVICE LIST ATTACHED)

BY THE BOARD:

BACKGROUND

On January 12, 2009 and amended by letter on January 16, 2009, Petitioner, Public Service Electric and Gas Company ("PSE&G" or "Petitioner") filed a petition and thirteen testimonial exhibits with the New Jersey Board of Public Utilities ("BPU" or "Board"), seeking the Board to authorize the placement of a 500 kV transmission line from the Susquehanna substation to the Roseland substation. On March 12, 2009, the Board issued a prehearing order.

The prehearing order requested that those parties advocating for PSE&G to set aside an escrow account for the purpose of paying experts file a joint motion by April 1, 2009, with responsive pleadings opposing the motion due by April 15, 2009, and replies due by April 21, 2009.

Timely motions for the establishment of an escrow account to allow Intervenors to fund experts were made by the Township of Byram, Township of Montville, Township of Andover, Township of East Hanover, Township of Parsippany-Troy Hills, Township of Fredon, Fredon School District, Willow Lake, Stop the Lines, and Proposed Environmental Intervenors.

Fredon School District and Willow Lake request that the Board order PSE&G to institute an escrow fund of at least $200,000 to be used to pay for the experts and consultants that they must retain to meaningfully participate in the discovery phase of this proceeding. Fredon School District and Willow Lake state that rational for such an escrow stems from N.J.S.A. 40:55D-53.2, which affords municipal planning and zoning boards the right to require an applicant submitting a development application to set aside an expense fund for its use. Fredon School District and Willow Lake argue that the review process at the Board will supersede the land use ordinances and master plans of no less than 16 municipalities in favor of a single, generalized examination that will transcend municipal boundaries and that all local concerns must be subsumed in the Board's review process. Fredon School District and Willow Lake state that it would be a daunting task for them to review and comment upon PSE&G's application and the enormous amount of technical and scientific data that support it in the time allotted by the procedural schedule without the aide of experts.

Fredon School District and Willow Lake state that the Board could follow the framework in Chapter X (NYPSL c. 519, §6, pt. 1000) to create a viable intervenor account from which Intervenors could draw the funds necessary to retain experts and consultants. Alternatively, they argue that the Board could require PSE&G to pay the Intervenors' experts directly, and thereby eliminate the need for a separate escrow account.

The Township of Parsippany-Troy Hills and the Township of Fredon join the motion for an escrow account filed by Fredon School District and Willow Lake.

The Township of Byram requests that the Board compel PSE&G to pay escrow fees in the amount of $10,000 per municipality and to maintain $5,000 per municipality for professional services charged by the municipalities for professional reviews, reports and testimony regarding the PSE&G petitions. The Township of Byram reasons that it would have received escrow fees if the matter had been heard by the Byram Land Use Board.

The Township of Montville joins the motion for an escrow account filed by Byram.

The Township of Andover urges the Board to establish an escrow of at least $200,000 for judicious award to intervenors so that they may properly and independently review the transmission project by retaining experts. Andover states that this is a matter of equity and that it needs experts to vet the proposed project and the assumptions of the applicants to inform the record with a variety of perspective and emphasis.

STL states that the Board should require PSE&G to pay into escrow at least $200,000 for intervenors to retain experts to inform the record. STL states that this is equitable because PSE&G would have significant escrow expense to fund experts for the 15 individual land use, planning or zoning boards in communities along the route in New Jersey if it had brought this matter to the many local governments along the line. STL argues that they do not have the same expertise or knowledge in the business of transmitting electricity and that experts are needed for them to vet the proposed project and the assumptions of the applicants. STL states that using the experts of the Intervenors is the best way for the BPU to develop a solid record. STL states that other states routinely fund Intervenor efforts in public utilities dockets and points to Minnesota, California, New York, Idaho, and Wisconsin.

Proposed Environmental Intervenors express support for, and join, the motions filed by Parsippany-Troy Hills, Byram, Fredon School District and Willow Lake for the establishment of an escrow to be funded by PSE&G.

The Township of East Hanover joins the motions made by STL, Fredon School District and Willow Lake. East Hanover states that PSE&G would have been compelled to create similar escrow accounts had it applied for approval in individual municipalities and that it would be inequitable for PSE&G to avoid these expenses associated with retaining experts and have those significant expenses borne entirely by municipalities and other Intervenors.

PSE&G opposes the motion submitted by intervenors to require PSE&G to place funds in escrow for their use during this proceeding. PSE&G argues that such a request is without legal support and contrary to established Board policy.

Specifically, PSE&G argues that the Municipal Land Use Law only allows for monies to be escrowed for use by an approving authority and that it does not allow for monies to be escrowed for use by Intervenors. PSE&G cites Cerebral Palsy Center v. Mayor of the Borough of Fair Lawn, 374 N.J. Super. 437, 446-48 (App. Div.), certif. denied, 183 N.J. 586 (2005), to support its position

that N.J.S.A. 40:55D-53.2 is limited to professional fees for services required by the approving authority and that an applicant cannot be forced to bear intervenor expenses. PSE&G argues that intervenors in this case have voluntarily decided to seek intervention status with respect to PSE&G's Petition to the Board and that there is no basis in law or in fact for the establishment of a PSE&G funded escrow to pay the costs associated with these voluntary decisions.

PSE&G states that the argument that PSE&G would have had to create an escrow with a municipal land use board if PSE&G had gone to each municipality for approval is misplaced. First, PSE&G states that they have a right under N.J.S.A. 40:55D-19 to file an application directly with the Board and cannot be penalized for exercising that right. Second, PSE&G states that in this case the Board is the approving authority and that intervenors in Board proceedings have always paid their own expenses. Furthermore, the intervenors who are not municipalities and that would have attended the municipal process under the municipal land use law would have had to pay for their own expenses.

Also, PSE&G states that well-established Board policy runs counter to the establishment of an escrow account. PSE&G argues that the utility and its customers should not have to assume the expenditures associated with an individual party's pursuit of its interests and that intervenors should pay their own way. PSE&G points out that the Board, with its expertise in utility infrastructure, has been determined by the Legislature to be the best agency to determine whether a project spanning multiple municipalities is reasonably necessary for the service, convenience, and welfare of the public. PSE&G adds that if intervenors believe that they can add value to the Board's analysis, that they have a right to intervene, but must do so at their own cost and expense.

Finally, PSE&G argues that obligating PSE&G to pay into an escrow account for intervenors would result in rates paid by the utilities ratepayers that are not just and reasonable. PSE&G warns that establishing an escrow for intervenors here would set harmful precedent in New Jersey for every Board proceeding going forward.

Fredon School District and Willow Lake filed a response to PSE&G's protest of the escrow fund. Fredon School District and Willow Lake asked to have the amount of the escrow fund increased to $500,000 in light of the number of likely intervenors that joined the motion. Fredon School District and Willow Lake state that case cited by PSE&G is not analogous to this proceeding. Fredon School District and Willow Lake state that one set of experts with their attendant costs will be sufficient. They state that should the Board commit to retaining the essential panoply of relevant experts, the intervenors would step aside to avoid duplication of expenses. They note that given the potentially significant impact of the proposal, N.J.S.A. 40:55D-53.2 would not be violated if the Fredon School District and Willow Lake are permitted to "step into the shoes" of the Board and retain the experts and professionals necessary to evaluate the proposal.

Fredon School District and Willow Lake argue that an escrow account of a few hundred thousand dollars would have a barely perceptible impact on the ratepayers, and that regardless, this cost would be necessary if the Board were to retain experts.

STL also filed a response to PSE&G's protest of the escrow fund. STL argues that the escrow account should be established as a matter of equity. They state that the $200,000 request is a very small percentage of the budget for this project, and that the costs will be spread out over all ratepayers, such that PSE&G should be required to develop the escrow fund.

On May 12, 2009, PSE&G issued a letter offering the establishment of an escrow account for the seven (7) municipal intervenors.

FINDINGS and DISCUSSION

To date, based upon research and review, the Board has not required a petitioner to establish an escrow account for intervenors in a case involving an application pursuant to N.J.S.A. 40:55D-19. The Board is under no statutory requirement to require that a petitioner establish an escrow account for intervenors, and at this time, the Board does not find any compelling reason to do so. Therefore, the Board HEREBY DENIES, without prejudice, the motions for the establishment of an escrow account to be funded by PSE&G so that intervenors could use those funds to pay for experts in this proceeding. In making this determination, the Board takes note that PSE&G has offered to establish an escrow account for use by the municipal intervenors.

DATED: 5/29/09

BOARD OF PUBLIC UTILITIES
BY:

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ELIZABETH RANDALL
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

In the Matter of the Petition of Public Service Electric and Gas Company For a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19

(SUSQUEHANNA-ROSELAND) BPU DOCKET NO. EM09010035

BPU
Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Kristi.Izzo@bpu.state.nj.us

Damase Hebert, Esq.
Counsel's Office
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Damase.Hebert@bpu.state.nj.us

Frank Perrotti
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Frank.Perrotti@bpu.state.nj.us

Chris Haun
Policy and Planning
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Chris.Haun@bpu.state.nj.us

Ed Beslow, Esq.
Counsel's Office
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Ed.Beslow@bpu.state.nj.us

Jerry May
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Jerry.May@bpu.state.nj.us

David Ballengee
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
David.Ballengee@bpu.state.nj.us

Andrea-Sarmentero-Garzon
Counsel's Office
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Andrea.Sarmentero-Garzon@bpu.state.nj.us

Carl Dzierzawiec
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Carl.Dzierzawiec@bpu.state.nj.us

Joe Costa
Policy and Planning
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
Joseph.Costa@bpu.state.nj.us

Alex Moreau
Division of Law
Dept. of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
Alex.Moreau@dol.lps.state.nj.us

Anne Marie Shatto
Division of Law
Dept. of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
Anne.Shatto@dol.lps.state.nj.us

DAG
Ken Sheehan, DAG
Division of Law
Dept. of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
Kenneth.Sheehan@dol.lps.state.nj.us

Kerri Kirschbaum
Division of Law
Dept. of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
Kerri.Kirshbaum@dol.lps.state.nj.us

Rate Advocate
Stephanie Brand, Esq., Director
Division of the Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
s.brand@rpa.state.nj.us

Felicia Thomas-Friel, Esq.
Division of the Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
felicia.thomas-friel@rpa.state.nj.us

Paul Flanagan
Division of the Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
Paul.Flanagan@rpa.state.nj.us

Henry Ogden, Esq.
Division of the Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
Henry.Ogden@rpa.state.nj.us

DEP
Alyssa Wolfe
Dept. of Environmental Protection
501 E. State Street, 2nd Floor
Trenton, NJ 08625
alyssa.wolfe@dep.state.nj.us

Richard Reilly
Dept. of Environmental Protection
501 E. State Street, 2nd Floor
Trenton, NJ 08625

Jennifer Desmond
Dept. of Environmental Protection
501 E. State Street, 2nd Floor
Trenton, NJ 08625

Highlands Council
Eileen Swan
Highlands Council
100 North Road
Chester, NJ 07930
eileen.swan@highlands.state.nj.us

Chris Ross
NJ Highlands Council
100 North Road
Chester, NJ 07930

National Park Service
Andrew Tittler, Agency Counsel
Office of the Solicitor, Northeast Region
One Gateway Center, Suite 612,
Newton MA 08458
(617) 527-3400
Andrew.tittler@sol.doi.gov

John J. Donahue, Superintendent
Delaware Water Gap National Recreation Area
Middle Delaware National Scenic & Recreational River
1 River Road
Bushkill, Pennsylvania 18324
(570) 426-2418

Pamela Underhill, Superintendent
Appalachian National Scenic Trail
P.O. Box 50 (252 McDowell Street)
Harper's Ferry, WV 25425
(304) 535-6278

PSE&G
Tamara L. Linde, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102
Tamara.Linde@pseg.com

Alexander C. Stern, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102
Alexander.Stern@pseg.com

Jodi L. Moskowitz, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102
Jodi.Moskowitz@pseg.com

Jeanette Carlo
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102
Jeanette.Carlo@pseg.com

David K. Richter, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102
David.Richter@pseg.com

Municipalities

Andover
Fred Semrau, Esq.
Dorsey & Semrau, LLC
714 Main Street
P.O. Box 228
Boonton, NJ 07005

Vita Thompson, Clerk
Andover Township
134 Newton-Sparta Road
Newton, NJ 07860-2746

Byram
Thomas F. Collins, Jr., Esq. P.P.
Vogel, Chait, Collins and Schneider
25 Lindsley Drive, Suite 200
Morristown, NJ 07960-4454
Tcollins@vccslaw.com

Joseph Sabatini
Byram Township Manager
Township of Byram
10 Mansfield Drive
Stanhope, NJ 07874

Doris Flynn, Township Clerk
Township of Byram
10 Mansfield Drive
Stanhope, NJ 07874

East Hanover
Matthew J. O'Donnell, Esq.
Township Attorney
O'Donnell, McCord & DeMarzo
15 Mount Kemble Avenue
Morristown, New Jersey 07960
(973) 538-1230
modonnell@omdlaw.net

C. Richard Paduch
Township Administrator
411 Ridgedale Avenue
East Hanover, New Jersey 07936-1400
(973) 428-3000

Fredon
William E. Hinkes, Esq.
Hollander Strelzik
40 Park Place, P.O. Box 99
Newton, NJ 07860
(973) 383-3233

Hardwick
Michael B. Lavery
Courter, Kobert & Cohen
1001 Route 517
Hackettstown, NJ 07840
(908) 852-2600

Montville
James T. Bryce
Johnson, Murphy, Hubner, McKeon, Wubbenhorst, Bucco & Appelt, P.C.
Riverdale South
51 Route 23 South
P.O. Box 70
Riverdale, NJ 07457
jbryce@johnsonmurphy.com

Martin F. Murphy
Johnson, Murphy, Hubner, McKeon, Wubbenhorst, Bucco & Appelt, P.C.
Riverdale South
51 Route 23 South
P.O. Box 70
Riverdale, NJ 07457

Parsippany-Troy Hills
Catherine E. Tamasik, Esq.
DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpoint Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
ctamasik@decotiislaw.com

Ryan J. Scerbo
DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpoint Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
rscerbo@decotiislaw.com

Jasmine Lim, Business Administrator
Township of Parsippany-Troy Hills
1001 Parsippany Boulevard
Parsippany-Troy Hills, New Jersey 07054
limj@parsippany.net

Other Intervenors

Stopthelines
Dave Slaperud
Stopthelines.com
PO Box 398
Tranquility, NJ 07879
(973) 940-2976
info@stopthelines.com

Carol A. Overland, Esq.
Legalectric on behalf of stopthelines
P.O. Box 176
Red Wing, MN 55066
(612) 227-8638
overland@legalectric.org

Proposed Environmental Intervenors
Attn: Julia LeMense, Esq.
Eastern Environmental Law Center
744 Broad St., Suite 1525
Newark, NJ 07102
(973) 424-1166
jlemense@easternenvironmental.org

Dena Mottola Jaborska
Environment New Jersey
14 E. State St., Suite 7
Trenton, New Jersey 08608
(609) 392-5151
dmottola@environmentalreviewnewjersey.org

Willow Lake Day Camp and Fredon Township School District
William Harla, Esq.
DeCotiis, FitzPatrick, Cole & Wisler, LLP
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
wharla@decotiislaw.com

Thomas Abbate, Esq.
DeCotiis, FitzPatrick, Cole & Wisler, LLP
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
tabbate@decotiislaw.com

Ms. Wendy Saiff
16 Lawrence Avenue
Highland Park, NJ 08904
wsaiff@optonline.net

Sal Constantino, Superintendent
Fredon Township School District
459 Route 94
Newton, New Jersey 07860
sconstantino@fredon.org

Gerdau Ameristeel Corporation
Stephen R. Kern
McNees Wallace & Nurick LLC
100 Pine St.
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 237-5350
skern@mwn.com

Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC
777 N. Capitol St., NE
Suite 401
Washington, D.C. 20002-4292
(202) 898-5700
rweishaa@mwn.com

Dennis P. Jamouneau
McNees Wallace & Nurick LLC
777 N. Capitol St., NE
Suite 401
Washington, D.C. 20002-4292
(202) 898-5700
djamouneau@mwn.com

Exelon Corporation
Steven S. Goldenberg, Esq.
Fox Rothschild LLP
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648
(609) 896-3600
sgoldenberg@foxrothschild.com

Denise R. Foster
Exelon Generation, LLC
300 Exelon Way
Kennett Square, PA 19348
(610) 765-6560
denise.foster@exeloncorp.com

Fredon Parents Against the Lines
Murray E. Bevan
Bevan, Mosca, Giuditta & Zarillo, P.C.
776 Mountain Blvd., Suite 202
Watchung, NJ 07069
(908) 753-8300
mbevan@bmgzlaw.com

Montville Township Board of Education
Stephen J. Edelstein, Esq.
Schwartz Simon Edelstein Celso & Kessler, LLC
44 Whippany Road, Suite 210
P.O. Box 2355
Morristown, NJ 07962
sedelstein@sseck.com

Dr. Gary Bowen, Superintendent
Montville Township Board of Education
328 Changebridge Road
Pine Brook, New Jersey 07058

Jon Alin, President
Montville Township Board of Education
328 Changebridge Road
Pine Brook, New Jersey 07058

Other
Kevin D. Kelly
93 Spring St., 4th Floor
P.O. Box 887
Newton, New Jersey 07860
(973) 579-6250
kkelly@kellyandward.com

EXHIBIT "B"

Agenda Date: 6/21/13
Agenda Item: 2F

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF 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 SERVICE, AND FOR APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION THEREWITH; AND FOR APPROVAL OF AN ACCELERATED RELIABILITY ENHANCEMENT PROGRAM ("2012 BASE RATE FILING")	)	ORDER ON INTERLOCUTORY APPEAL BPU DOCKET NO. ER12111052 OAL DOCKET NO. PUC16310-12

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Jersey Central Power and Light
Steve Goldenberg, Esq., for NJLEUC
Catherine Tamasik, Esq., Township of Marlboro
Michael Gruin, Esq., Walmart
Bob Weishaar, Esq., Gerdau Ameristeel Sayreville Inc
Michael Selvaggi, Esq., Township of Tewksbury
Anthony R. Francioso, Esq., Township of Robbinsville
Matthew J. Giacobbe, Esq., Township of Wayne
Fred Semrau, Esq., Township of West Milford
Anthony J. Zarillo, Jr., County of Morris

BY THE BOARD:

In response to a Board Order dated July 18, 2012 in Docket No. EO11090528, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a base rate case petition which was transmitted to the Office of Administrative Law ("OAL") on December 10, 2012 for hearing as a contested matter. The case was referred to the Honorable Richard McGill, ALJ ("ALJ McGill").

On December 11, 2012, the Township of Marlboro ("Marlboro"), a municipality located within JCP&L's service territory, moved to intervene as a party in the proceeding. ALJ McGill granted Marlboro's motion to intervene in accordance with N.J.S.A. 48:2-32.2 on January 25, 2013. ALJ

McGill has also granted intervener status to additional municipalities: West Milford, Tewksbury, Wayne and Robbinsville Townships and the County of Morris.

By notice of motion dated April 17, 2013, Marlboro requested that the ALJ order JCP&L to establish an escrow fund for the use of Marlboro and other municipal Interveners to fund the expert and professional fees Marlboro will have to expend to participate meaningfully in the matter through discovery, analysis of data, preparation of expert testimony, motion practice, examination of JCP&L's experts at the evidentiary hearings, and other related tasks. Marlboro maintained that it was appropriate for JCP&L to establish an escrow account in the initial amount of $175,000, with possible replenishment of an additional $50,000, to cover the costs of Marlboro's professional fees. Marlboro pointed to the action of PSE&G in establishing an escrow fund for the municipalities that were participating in the review of the Susquehanna-Roseland line, and asserted that there was no legal impediment to JCP&L establishing a similar fund in connection with the rate case as more than rates are at issue.[1] Marlboro maintained that it could not fund these experts on its own and it would be inequitable to let JCP&L frustrate Marlboro's efforts to seek a full accounting of JCP&L's past inactions.

JCP&L and the New Jersey Division of Rate Counsel ("Rate Counsel") opposed Marlboro's motion. By letter dated April 26, 2013, JCP&L maintained that Marlboro's request for an escrow fund was without merit as there is no legal or regulatory authority that requires a public utility to fund an intervener's expert or professional fees in a rate case. JCP&L asserted that Marlboro's reliance on the PSE&G Susquehanna-Roseland matter was misplaced, and that the Board actually denied the request that it require PSE&G to establish such a fund while noting that PSE&G had volunteered to do so.[2] JCP&L contended that the same statute, N.J.S.A. 48:2-32.2, that provided Marlboro with the right to intervene, also provides the means for Marlboro to pay its expert and professional fees. In relevant part, the statute provides that the intervening municipality

> may employ such legal counsel, experts and assistants as may be necessary to protect the interest of the municipality or municipalities or the public within the municipalities or municipalities. Such municipality or municipalities may by emergency resolution raise and appropriate the funds necessary to provide reasonable compensation and expenses of such legal counsel, experts and assistants. [N.J.S.A. 48:2-32.2]

JCP&L asserted that given this express means for raising the necessary funds provided by the legislature, there is no basis to require that other ratepayers subsidize Marlboro's expenses. JCP&L also maintained that establishing an escrow account for the expenses of interveners would be contrary to Board policy and establish a dangerous precedent.

In its April 25, 2013 letter in opposition, Rate Counsel asserted many of the same arguments advocated by JCP&L adding that Marlboro's request lacks any legal foundation and that JCP&L's ratepayers should not be required to pay the costs of any single group of customers. The legislature has entrusted Rate Counsel with the task of protecting ratepayer interests,

---

[1] In re Petition of Public Service Electric and Gas Co. for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland) BPU Docket No. EM09010035 ("Susquehanna-Roseland").
[2] Susquehanna-Roseland, Order dated 5/14/09.

including those of the municipalities served by the public utilities. According to Rate Counsel, it is only equitable that the taxpayers of the municipalities that intervened, and not other JCP&L ratepayers, pay for such representation.

Marlboro responded to the opposition filed by JCP&L and Rate Counsel by letter brief dated May 6, 2013. Marlboro maintained that it and the other municipal interveners have a unique interest and position in the rate case that is separate and apart from the interests represented by Rate Counsel. Only Marlboro and the other municipal interveners can adequately represent the interests of the citizens who were forced to endure the company's failures in the wake of Irene and Sandy, and who should not be forced to do so again in the future, giving them a different perspective on the need for community-based remedial efforts. Marlboro does not contend that it has a statutory right to the escrow fund, rather that nothing prevents ordering JCP&L to establish such a fund based on equitable considerations, including the magnitude of the devastations resulting from Sandy or the consistent failures of the company to respond to such disasters. The establishment of a reasonable escrow fund is not unprecedented and the legislature and courts have found it appropriate to require payment of fees for attorneys and other professionals when it was deemed inequitable to have a successful party use its own funds to right a wrong. Marlboro maintains that the current circumstances qualify and that the minimal ratepayer contribution requested to fund the unique perspective of Marlboro and the other municipal interveners is not reasonable under these circumstances.

The townships of Tewksbury, Wayne and Southampton submitted letters in support of Marlboro's motion for establishment of a municipal escrow fund.

By order dated May 22, 2013, ALJ McGill denied Marlboro's motion to compel JCP&L to establish an escrow fund. ALJ McGill stated that "...it appearing that the arguments in opposition to the motion are more persuasive, it is therefore ORDERED that Marlboro's motion is denied."

Marlboro's Request for Interlocutory Appeal

On June 3, 2013, Marlboro filed a Request for Interlocutory Review of ALJ McGill's order denying its motion to compel JCP&L to establish an escrow fund for Marlboro's use to retain experts and professionals to assist it in the rate case. According to Marlboro, its significant concerns regarding the commitment of JCP&L to ensuring future reliability of its electric distribution system and its concerns regarding JCP&L's inability to respond rapidly and effectively to Major Storm Events, requires meaningful participation by the township in the base rate case. Marlboro argues that in order to achieve meaningful participation and act as an advocate who will insist on JCP&L making significant commitments to the repair and restoration of its distribution system, Marlboro must retain experts who can analyze the voluminous discovery in the base rate case. Marlboro asserts that it intervened in the base rate case because it opposes the requested rate increase but even more importantly to hold JCP&L accountable for its failure to adequately respond to the effects of Sandy and its failure to effectively restore and rebuild its power distribution system. Unless Marlboro is able to retain qualified professionals to match those retained by JCP&L, it will not be able to effectively advocate for its residents and businesses. Marlboro has no line item in its budget to cover the costs of the needed experts, and it is not equitable to burden its taxpayers with the costs of retaining experts and professionals to hold JCP&L accountable to established reliability standards. As demonstrated by the Susquehanna-Roseland Order, the concept of establishing an escrow fund is not unique. While Marlboro concedes that the Board denied the request, it

argues that the Board did so after PSE&G voluntarily agreed to provide the fund and did not disapprove of the utility paying the fees. An escrow fund should be made available to Marlboro to insure that JCP&L commits to a schedule of repairs, and accounts for its responses to the 2011 and 2012 storms. Marlboro submits that there is no legal impediment to ordering the set aside of the small amount requested, and the adequacy of JCP&L's performance is properly within the rate case proceeding. Marlboro reiterated its belief that it and the other municipal interveners have a unique interest and position in the proceeding that is distinct from that represented by Rate Counsel. Marlboro concludes that given the wide-scale devastations resulting from Sandy and JCP&L's responses, this matter is unique and justifies, as a matter of public policy and fundamental fairness, the establishment of the requested escrow.

In response, by letter brief dated June 6, 2013, JCP&L argued that Marlboro's request for interlocutory review raises no new legal or factual arguments and is simply a recitation of the same arguments presented to and rejected by ALJ McGill, and fails to satisfy the standard for the grant of interlocutory review articulated in In re Uniform Administrative Procedure Rules, 90 N.J. 85, 90(1982). Accordingly, JCP&L maintains that the request for interlocutory appeal should be denied. Additionally, Marlboro has failed to identify any legal authority requiring a public utility to fund the professional fees of an intervener in a rate case. PSE&G's voluntary establishment of an escrow fund in the context of the Susquehanna-Roseland case provides no support for the current request. Marlboro's claims of financial hardship are both unsupported and irrelevant given the clear statutory direction on the funding of the municipality's fees at its own cost and expense. See N.J.S.A. 48:2-32.2. According to JCP&L, Board policy does not support the establishment of an escrow fund for intervener expenses and doing so could create a dangerous precedent which could impose unnecessary and duplicative costs on JCP&L's ratepayers.

Rate Counsel also responded by letter dated June 6, 2013 agreeing with JCP&L that there is no basis for granting interlocutory appeal, and relying on its brief submitted to ALJ McGill since Marlboro has simply repeated the arguments already made. Rate Counsel also expressed its concern that based on the various "me too" letters of the other townships, granting the right to an escrow fund could require ratepayers to pay large sums of money for what Rate Counsel sees as mostly redundant efforts.

By letter dated June 10, 2013, Marlboro clarified that if the Board approved an escrow fund, the fund would be used by all of the municipal interveners jointly to pay for the assistance of experts.

DISCUSSION AND FINDINGS

An order or ruling of an ALJ may be reviewed interlocutorily by an agency head at the request of a party. N.J.A.C. 1:1-14.10(a). Pursuant to N.J.A.C. 1:14-14.4(a), a rule of special applicability that supplements N.J.A.C. 1:1-14.10, the Board shall determine whether to accept the request and conduct an interlocutory review by the later of (i) ten days after receiving the request for interlocutory review or (ii) the Board's next regularly scheduled open meeting after expiration of the 10-day period from receipt of the request for interlocutory review. In addition, under N.J.A.C. 1:14-14.4(b), if the Board determines to conduct an interlocutory review, it shall issue a decision, order, or other disposition of the review within 20 days of that determination. Under N.J.A.C. 1:14-14.4(c), if the Board does not issue an order within the timeframe set out in N.J.A.C. 1:14-14.4(b), the judge's ruling shall be considered conditionally affirmed. However,

the time period for disposition may be extended for good cause for an additional 20 days if both the Board and the OAL Director concur.

The legal standard for accepting a matter for interlocutory review, as noted by JCP&L, is stated in In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982). In that case, the Court concluded that an 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." Id. at 97-98. The Court also held that the agency head has broad discretion to determine which ALJ orders are subject to review on an interlocutory basis. However, it noted that the power of the agency head to review ALJ orders on an interlocutory basis is not itself totally unlimited, and that interlocutory review of ALJ orders should be exercised sparingly. In this regard, the Court noted:

> In general, interlocutory review by courts is rarely granted because of the strong policy against piecemeal adjudications. See Hudson v. Hudson, 36 N.J. 549 (1962); Pennsylvania Railroad, 20 N.J. 398. Considerations of efficiency and economy also have pertinency in the field of Administrative law. See Hackensack v. Winner, 82 N.J. at 31-33; Hinfey v. Matawan Reg. Bd. of Ed., 77 N.J. 514 (1978). See infra at 102, n.6. Our State has long favored uninterrupted proceedings at the trial level, with a single and complete review, so as to avoid the possible inconvenience, expense and delay of a fragmented adjudication. Thus, "leave is granted only in the exceptional case where, on a balance of interests, justice suggests the need for review of the interlocutory order in advance of final judgment." Sullivan, "Interlocutory Appeals," 92 N.J.L.J. 162 (1969). These same principles should apply to an administrative tribunal.
>
> [90 N.J. at 100].

The Court held that interlocutory review may be granted "only in the interest of justice or for good cause shown." Ibid. In defining "good cause," the Court stated:

> In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case.
>
> [Ibid.].

As stated above, the decision to grant interlocutory review is committed to the sound discretion of the Board, and is to be exercised sparingly to avoid piecemeal adjudication. However, given the possible impact on the actions of Marlboro and the other municipal interveners on the one hand, and the question of the possible precedent set for future rate base cases of requiring (or denying) the request that a utility establish an escrow for expert costs for an intervening municipality, the Board **FINDS** that interlocutory review is warranted here. Accordingly, the Board **HEREBY GRANTS** Marlboro's request for interlocutory review of ALJ McGill's May 22, 2013 Order.

Turning to the merits of Marlboro's request, Marlboro states that, along with its opposition to a base rate increase, it has significant concerns regarding JCP&L's commitment to the reliability of its electric distribution system and its ability to respond rapidly and effectively to crises like Superstorm Sandy. These concerns stem from its frustration with what it believes to have been JCP&L's poor response time to handle the many issues occurring during and after the Major Storm events which led to unprecedented power outages for long periods of time for its residents. It argues that JCP&L has demonstrated historical failures to provide electrical service to its 15,364 JCP&L residential customers. Marlboro cites the May 29, 2009 Susquehanna-Roseland Order[3] as support for its argument that there is no legal impediment to utility funding an escrow for interveners' costs for professional experts to participate effectively in a public utility proceeding. Marlboro concedes that there is no statutory basis for its request but asserts that it is equitable for its fees to be funded by JCP&L (and ratepayers) in light of its unique perspective and commitment to holding JCP&L accountable for its past failures and to ensuring timely and full remediation.

JCP&L argues that Marlboro has not presented any legal authority for requiring JCP&L to fund professional expenses of a municipal intervener, and in fact has presented flawed unsupported allegations and failed to identify and acknowledge statutory language that contravenes its request. JCP&L cites the same Susquehanna-Roseland decision, underscoring that the Board denied the motion of several interveners to require PSE&G to establish an escrow fund for experts. JCP&L specifically highlighted language from the Order:

> To date, based upon research and review, the Board has not required a petitioner to establish an escrow account for interveners in a case involving an application pursuant to N.J.S.A. 40:55D-19. The Board is under no statutory requirement to require that a petitioner establish an escrow account for interveners, and at this time, the Board does not find any compelling reason to do so. Therefore, the Board HEREBY DENIES, without prejudice, the motions for the establishment of an escrow account to be funded by PSE&G so that interveners could use those funds to pay for experts in this proceeding.
>
> [Susquehanna Roseland Order at 4]

Rate Counsel agrees with JCP&L that Marlboro has presented no legal authority that supports its position that it is appropriate to require JCP&L and ratepayers to cover Marlboro's fees, especially since Rate Counsel is available, with its resources, to advocate and investigate on behalf of all ratepayers.

Rate Counsel and JCP&L point to the authority granted to municipalities by N.J.S.A. 48:2-32.2 to both retain professionals for assistance in participating in "any hearing or investigation held by the board, which involves public utility rates, fares or charges, service or facilities," and to raise the funds to pay those professionals by emergency resolution. Rate Counsel and JCP&L maintain that this provision clearly establishes that the Legislature expected municipalities to pay their own way, and Marlboro has failed to prove that any deviation from the statutory scheme is warranted here.

---

[3] In re the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland), BPU Docket No. EM09010035.

Both Rate Counsel and JCP&L raise concern about the precedent that could be set if the Board requires an escrow to pay interveners' professional fees and expenses, even if the amounts requested are small in comparison to the total rate increases at issue or some other metric. Marlboro asserts that the request is justified by the unique circumstances of this case, and the commitment that all municipal interveners will share in the use of the fund and there will be no proliferation of requests.

Having carefully considered the submissions, and having reviewed the applicable statutes and cases, the Board **HEREBY FINDS** no legal authority to support Marlboro's request to compel JCP&L to establish an escrow to cover the fees and costs of counsel, experts and assistants retained by the municipalities.

Marlboro has also argued that it would be inequitable to require its taxpayers to shoulder the burden of these costs, notwithstanding the authority provided by N.J.S.A. 48:2-32.2 for municipalities to raise these funds from their residents. According to Marlboro, JCP&L should be required to establish an escrow fund to pay the reasonable professional fees and expenses of the interveners as a matter of fundamental fairness, equity, and sound public policy.

The Board is obligated to follow the terms and objectives of the statute. "[A]dministrative agencies are part of the executive branch of government, charged under the State constitution with the responsibility of faithfully executing the laws." In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 93 (1982) (citing N.J. Const. (1947), Art. 5, § 1, para. 11)). See also T.H. v. Division of Developmental Disabilities, 189 N.J. 478, 491 (2007) (an administrative agency may not "alter the terms of a legislative enactment or frustrate the policy embodied in the statute.").

The Board, like a court, must apply legislative enactments in accordance with the plain intent and language used by the legislature, and should not act in equity when there is an adequate remedy at law. See Cohen v. Dwyer, 133 N.J. Eq. 226, 229 (Ch. 1943), aff'd 134 N.J. Eq. 350, 351 (E. & A. 1943). Likewise, equity may not disregard statutory law, but looks to its intent rather than its form. Sheridan v. Sheridan, 247 N.J. Super. 552, 559 (Ch.Div. 1990). Equitable relief is not available where an existing administrative procedure created by statute is an adequate remedy that assures full protection of rights and offers complete relief. Overall, equity may not be invoked to avoid application of a statute and by doing so usurp the legislative role under the guise of equity. See Crusader Servicing Corp. v. City of Wildwood, 345 N.J. Super. 456, 464 (Law Div. 2001).

As previously discussed, N.J.S.A. 48:2-32.2 provides a municipality with a means to raise the funds needed to pay for the assistance of professionals that it determines it needs to effectively represent the interests of its residents in a Board proceeding. The Board is not persuaded that Marlboro has provided any reason for the Board to override the legislative intent as expressed in the statute that the municipality must fund its own expenses, and instead shift those expenses to all of JCP&L's ratepayers. Therefore, the Board **FINDS** no basis to compel JCP&L to establish an escrow fund for the municipal interveners' costs and expenses as a matter of equity.

Therefore after reviewing the submissions of Marlboro, JCP&L and Rate Counsel, and after due consideration of the arguments and the law, the Board **HEREBY AFFIRMS** the decision of ALJ McGill denying Marlboro's motion to compel JCP&L to establish an escrow fund for the use of Marlboro and other municipal Interveners to fund expenses of attorneys and other

professionals. The Board encourages Marlboro and the other municipal interveners to work cooperatively to the fullest extent possible with other parties, including Rate Counsel, so that experts are used in a manner that leads to a just and reasonable resolution of the case.

DATED: 6/21/13

BOARD OF PUBLIC UTILITIES
BY:

ROBERT M. HANNA
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

IN THE MATTER OF 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 SERVICE, AND FOR APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION THEREWITH; AND FOR APPROVAL OF AN ACCELERATED RELIABILITY ENHANCEMENT PROGRAM ("2012 BASE RATE FILING")

BPU DOCKET NO. ER12111052
OAL DOCKET NO. PUC16310-12

SERVICE LIST

The Honorable Richard McGill Office of Administrative Law 33 Washington Street Newark, NJ 07102 Gregory Eisenstark, Esq. Michael J. Connolly, Esq. Morgan, Lewis & Bockius, LLP 89 Headquarters Plaza North Suite 1419 Morristown, New Jersey 07960 James W. Glassen, Esq. Assistant Deputy Rate Counsel Division of Rate Counsel 31 Clinton Street, 11th Floor P.O". Box 46005 Newark, New Jersey 07101 Babette Tenzer, DAG Division of Law 124 Halsey Street – P.O. Box 45029 Newark, New Jersey 07101 Alex Moreau, DAG David Wand, DAG Division of Law 124 Halsey Street – P.O. Box 45029 Newark, New Jersey 07101 Stacy Peterson Division of Energy Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350	Jerome May, Director Division of Energy Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350 Alice Bator Division of Energy Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350 Mark C. Beyer, Chief Economist Office of Economist Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350 Tricia Caliguire, Chief Counsel Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350 Dennis Moran, Director Division of Audits Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, NJ 08625-0350

Dr. Son Lin Lai
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Jackie O'Grady
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Bethany Rocque-Romaine, Esq.
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Julie Ford-Williams
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Richard Lambert
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Jacqueline Galka
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Eric Hartsfield, Director
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Michael J. Connolly, Esq.
Morgan, Lewis & Bockius LLP
89 Headquarters Plaza North,
Suite 1419
Morristown, NJ 07960

Rosalie Serapiglia
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Tom Walker
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

James Giulano, Director
Div. Of Reliability & Security
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Caroline Vachier, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Babette Tenzer, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Alex Moreau, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Carolyn McIntosh, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Gregory Eisenstark, Esq.
Morgan, Lewis & Bockius LLP
89 Headquarters Plaza North,
Suite 1419
Morristown, NJ 07960

Mark A. Mader
Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07961-1911

Sally J. Cheong
Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07961-1911

Stefanie A. Brand, Esq.
Director
Division of the Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Paul Flanagan, Esq.
Division of the Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Ami Morita, Esq.
Division of the Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Kurt S. Lewandowski, Esq.
Division of the Rate Counsel
31 Clinton Street-11th Floor
P.O. Box 46005
Newark, NJ 07101

Brian Weeks, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Kidar Twine, Paralegal
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Susan D. Marano
Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07961-1911

Arthur E. Korkosz, Esq.
FirstEnergy Corp.
76 S. Main Street, 18th Floor
Akron, OH 44308

Lauren Lepkoski, Esq.
FirstEnergy Corp.
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

William R. Ridmann
FirstEnergy Service Company
Rates & Regulatory Affairs
76 South Main
Akron, OH 44308

Joyce Wong
Morgan Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540-6241

Andrea Preate
Senior Paralegal
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Anthony C. DeCusatis, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Thomas P. Gadsen, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

James Glassen, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Maria Novas-Ruiz, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Lisa Gurkas
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Diane Schulze, Esq.
Division of the Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Catherine E. Tamasik, Esq.
DeCotiis, Fitzpatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd., Suite 3
Teaneck, NJ 07666

William Harla, Esq.
DeCotiis, Fitzpatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd., Suite 3
Teaneck, NJ 07666

Peter Lanzalotta
Lanzalotta & Associates LLC
67 Royal Point Drive
Hilton Head Island, SC 29926

Robert Henkes
Henkes Consulting
7 Sunset Road
Old Greenwich, CT 06870

Brooke Leach
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Jonathan Capp,
Business Administrator
Township of Marlboro
1979 Township Drive
Marlboro, NJ 07746

Andrea Crane
The Columbia Group
P.O. Box 810
Georgetown, CT 06829

Michael Majoros, Jr.
Snavely King Majoros &
Associates, Inc.
8100 Professional Place, Suite 306
Landover, MD 20785

Karl Pavlovic
Snavely King Majoros &
Associates, Inc.
8100 Professional Place, Suite 306
Landover, MD 20785

Roger D. Colton
Fisher, Sheehan and Colton
Public Finance and General
Economics
34 Warwick Road
Belmont, MA 02478

David Petersen
Chesapeake Regulatory
Consultants, Inc.
10351 Southern Maryland Blvd.
Suite 202
Dunkirk, Maryland 20754-9500

Matthew I. Kahal
Economic Consultant
c/o Exeter Associates Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, MD 21044

Steven S. Goldenberg, Esq.
Fox Rothschild LLP
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648

Paul F. Forshay, Esq.
Sutherland, Asbill & Brennan, LLP
700 Sixth Street, N.W. Suite 700
Washington, DC 20001-0100

Michael A. Gruin, Esq.
STEVENS & LEE, P.C.
17 N. 2nd St., 16th Floor
Harrisburg, PA 17101

Linda R. Evers, Esq.
STEVENS & LEE, P.C.
111 N. Sixth Street
Reading, PA 19603-0679

Stephen W. Chriss
Senior Manager, Energy
Regulatory Affairs
Walmart
2001 Southeast 10th St.
Bentonville, AR 72716-5530

Janine G. Bauer, Esq.
Szaferman, Lankind, Blumstein,
& Blader, P.C.
101 Grovers Mill Road
Suite 200
Lawrenceville, NJ 08648

Michael Selvaggi, Esq.
Township Attorney- Tewksbury
Courter, Kobert & Cohen
1001 Route 517
Hacketstown, NJ 07840
mselvaggi@ckclaw.com

Mr. Jesse Landon
Tewksbury Township Administrator
169 Old Turnpike Road
Califon, NJ 07380
jwlandon@tewksbury.net

Robert A. Weishaar, Jr., Esq.
McNees Wallace & Nurick LLC
777 N. Capital St., NE
Suite 401
Washington, DC 20002-4292

Tracey Thayer, Esq.
New Jersey Natural Gas Co.
1415 Wyckoff Road
P.O. Box 1464
Wall, NJ 07719

Martin C. Rothfelder, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, NJ 07102

Evelyn Liebman
Assoc. State Director for Advocacy
AARP NJ Forrestal Village
101 Rockingham Row
Princeton, NJ 08450

Jim Dieterle
NJ State Director
AARP NJ Forrestal Village
101 Rockingham Row
Princeton, NJ 08450

Anthony R. Francioso, Esq.
Fornaro & Francioso
98 Franklin Corner Road
Lawrenceville, NJ 08648
afrancioso@fornarofrancioso.com

Matthew J. Giacobbe, Esq.
Wayne Township Attorney
475 Valley Road
Wayne, NJ 07470-3586
mgiacobbe@cgailaw.com

Ms. Nancy Gage
West Milford Township Administrator
1480 Union Valley Road
West Milford, NJ 07480
twpadministrator@westmilford.org

Fred Samrau, Esq, Dorsey & Semrau 714 Main Street P.O. Box 228 Boonton, NJ 07005 fsemrau@dorseysemrau.com	Anthony J. Zarillo, Jr. Bevan, Mosca, Giuditta & Zarillo 222 Mount Airy Road – Suite 200 Basking Ridge, NJ 07920-2335 azarillo@bmgzlaw.com

EXHIBIT "C"

SSE&C Schwartz Simon Edelstein & Celso LLC
ATTORNEYS AT LAW

100 South Jefferson Road ▪ Suite 200 ▪ Whippany, New Jersey 07981
Tel: 973.301.0001 ▪ Fax: 973.993.3152 ▪ www.sseclaw.com
Please Reply to Whippany Office

August 27, 2015

Stephen J. Edelstein
sedelstein@sseclaw.com

VIA EMAIL AND REGULAR MAIL
Honorable Leland S. McGee, A.L.J.
Office of Administrative Law
33 Washington Street
Newark, New Jersey 07102

Re: I/M/O Petition of Jersey Central Power & Light Company
OAL Docket No. PUC 8235-15
BPU Docket No. EO15030383

Dear Judge McGee:

Please accept this letter on behalf of the Montville Township Board of Education (the "Board") in response to that aspect of Mr. Eisnestark's August 26 letter which proposes that the Board and Montville Township, also an intervener, be required to coordinate their participation.

The Board opposes this suggestion. While some of the interests of the Township and the Board may be complimentary, many of the Board's issues are unique to it. The Board and the Township are separate, unrelated public entities, governed by two entirely different sets of statutes.

South Jersey Office:
1000 Crawford Place
Suite 140
Mt. Laurel, New Jersey
08054
973.301.0001

New York Office:
415 Madison Avenue
16th Floor
New York, New York
10017
212.752.5258

The Board, but not the Township, has in loco parentis considerations. See, e.g. Titus v. Lindberg, 49 N.J. 66 (1967). School authorities are obligated to take reasonable precautions for the safety and well-being of their students. Jackson v. Hankinson and Bd. of Educ. of New Shrewsbury, 51 N.J. 230 (1968). The Board's interest in the safety and health of its students is a significant interest with which it alone (and not the Township) is charged.

The height of the poles and their proximity to school property raises significant safety concerns for the Board. For example, this project involves the construction of power lines along Board property. The poles are expected to be located approximately 70 feet from the side of an existing right-of-way that abuts the Board's Lazar Middle School property. That easement is located along and within the Board's property and encroaches upon the Board's athletic fields. The potential danger from collapsed poles or downed wires is obvious and, again, unique to the Board.

The Board also has its own interest in investigating potential health consequences of student exposure to electric and magnetic fields from the new power lines. Also, the construction will require the use of heavy equipment and various construction materials, which present the possibility of physical danger, noise pollution and air pollution which also could impact the safety and health of the students.

Additional concerns of the Board include the project's affect on aesthetics at and around the schools, impingement on the use of Board property, and the value of the Board's property.

While some of the Board's concerns may overlap with those of the Township, the approach each takes may be different. As was the case in the PSE&G litigation, the Township and the Board should be permitted to proceed independently.

Thank you.

Respectfully,
Schwartz Simon
Edelstein & Celso LLC

STEPHEN J. EDELSTEIN
A Member Of The Firm

SJE/DPL
Enclosures

cc: All Parties on the Service List (Via Email)