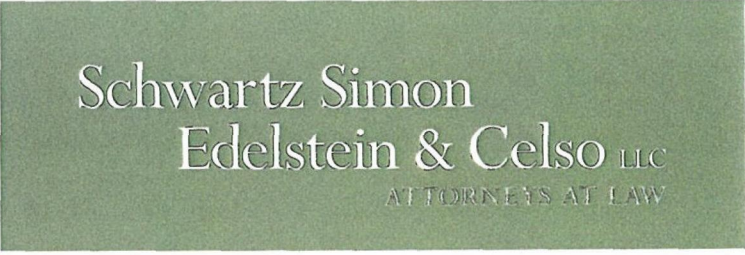


Final Sept. 7, 2017

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BOARD OF PUBLIC UTILITIES  
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September 5, 2017

**VIA LAWYERS SERVICE AND EMAIL**

Attention: Exceptions  
Irene Kim Asbury, Esq.  
Secretary of the Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Stephen J. Edelstein  
sedelstein@sseclaw.com

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

Dear Secretary Asbury:

This office represents the Intervenor, Montville Township Board of Education, in the above-referenced matter. Enclosed for filing please find an original and three (3) copies of the Exceptions On Behalf Of The Montville Board Of Education To The Initial Decision Of The Honorable Leland S. McGee, with Exhibit, and Proof of Service. Kindly file the original and return a stamped "Filed" copy to our office in the self-addressed, stamped envelope enclosed for your convenience.

Very truly yours,

Schwartz Simon  
Edelstein & Celso LLC

STEPHEN J. EDELSTEIN  
A Member Of The Firm

SJE/ASW  
Enclosures

cc: The Honorable Leland S. McGee (via Lawyers Service)  
Attached Service List (via Email) ✓

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Case mgmt  
B. Rosique-Lorraine



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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.

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:  
: BEFORE THE NEW JERSEY  
: BOARD OF PUBLIC UTILITIES

:  
: AGENCY DOCKET NO: EO15030383  
: OAL DOCKET NO: PUC 8235-15  
:

BOARD OF PUBLIC UTILITIES

SEP 06 2017

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**EXCEPTIONS ON BEHALF OF THE MONTVILLE BOARD OF EDUCATION  
TO THE INITIAL DECISION OF THE HON. LELAND S. MCGEE**

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## PRELIMINARY STATEMENT

In this matter, Petitioner Jersey Central Power & Light (“JCPL”) filed a Verified Petition seeking an exemption of its Montville – Whippany 230 kV Transmission Project from local ordinances and regulations pursuant to N.J.S.A. 40:55D-19. To prevail, JCPL was required to demonstrate, by a preponderance of the evidence, that the Project is reasonably necessary for the service, convenience or welfare of the public.

A portion of the proposed Project abuts the property of a school – Montville’s Lazar Middle School.

The advantages of the under-build option, in particular, so outweigh the disadvantages, that an Order directing utilization of an under-build in the vicinity of the Lazar Middle School may be appropriate. But JCPL should first be required to fully address the advantages and disadvantages of all of the potential alternatives in detail before such a decision is made. Such an approach is particularly appropriate in light of JCPL’s failure to demonstrate an underlying electrical need for the proposed 230 kV transmission line where a 115 kV transmission line would have fully resolved the issue JCPL relies upon as justification for the Project.

Additionally, the Petition must be denied upon a balancing of all interests and factors in light of the entire factual picture as required under N.J.S.A. 40:55D-19. The Project’s detrimental impact involving issues such as measured electric and magnetic field (“EMF”) levels, health risks, aesthetic impact, and safety and construction effects associated with the Project demand the Petition’s denial.

The Petition should be denied outright. But in any event, those concerns dictate that neither the Project as proposed nor any of its alternatives should be permitted to proceed absent an Order for JCPL’s ongoing monitoring of the EMF levels at the Lazar Middle School and the

developing scientific literature addressing EMF and health risks and regular reporting to the BPU on these efforts for appropriate action.

JCPL has failed to satisfy its burden under N.J.S.A. 40:55D-19 and the Petition must therefore be denied. In the alternative, JC&L should be required to address these issues prior to moving forward in this matter.

### **EXCEPTION NUMBER 1<sup>1</sup>**

#### **The Petition Must Be Denied Because the JCPL Project Is Inconsistent with The BPU's Prior Directive That Transmission Lines Should Not Be Constructed in Such Close Proximity to the Lazar Middle School**

In his Initial Decision, Judge McGee took far too narrow a view of the preclusive effect of the BPU's findings in In re Petition of PSE&G For A Determination Pursuant To The Provisions of N.J.S.A. 40:55D-19 (Susquehanna-Roseland Transmission Line), BPU Docket No. EM09010035, Decision and Order, (April 21, 2010), aff'd, Nos. A-4536-09 & A-4848-09 (consolidated), 2013 N.J. Super. Unpub. LEXIS 304, \*23 (App. Div. Feb. 11, 2013) (slip op.) (hereinafter "PSE&G's Susquehanna-Roseland Line Petition"). As a result, he reached a conclusion which plainly makes no sense.

In that prior 2010 case, the BPU considered an application by PSEG with regard to power lines which were proposed to run adjacent to the Lazar Middle School.

The PSEG project involve the construction of an approximately seven (7) mile long 230 kV transmission line between JCPL's Whippany Substation located in East Hanover Township, New Jersey and JCPL's Montville Substation in Montville, New Jersey. A portion of PSEG's proposed transmission line ran adjacent to the Lazar Middle School.

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<sup>1</sup> All exceptions are to Judge McGee's findings at Point B, page 33 -38 and his Decision based thereupon. The Initial Decision is attached hereto as Exhibit A.

The BPU squarely addressed the proximity of the PSEG power lines to the School in its 2010 Decision. First, the BPU made a Finding<sup>2</sup>:

Finally, the Montville BOE argues that the location of three specially identified transmission towers (78/3, 78/4, and 78/5) are too close to the Lazar Middle School, and has identified a location in which these three specific towers can be relocated or realigned. The Board FINDS with the Montville BOE that moving these three specific towers is prudent and reasonable.

As a result of that Finding, the BPU “ORDER[ED] PSE&G to provide a report to the Board within 90 days of the date of this Board Order identifying a relocation or realignment of these three towers.” See, Susquehanna-Roseland Line Petition Decision at page 70.

*In the JCPL matter, however, not only are we talking about literally the same ground, but JCPL's right of way is even closer to the school than PSEG's. JCPL's proposed transmission line will run hundreds of feet closer to the Lazar Middle School building than does PSEG's 500/230 kV Susquehanna-Roseland transmission line.*

Segment No. 10 of the JCPL proposed line runs in the vicinity of the Lazar Middle School in JCPL's existing right of way containing the K-115 and O-93 34.5 kV circuits as depicted in Exhibits DRK 14i and 14j<sup>3</sup>. Mr. Kozy never visited the Lazar Middle School property through his work on the Project. The Project's proposed transmission line's centerline will be approximately 330 feet from the Lazar Middle School building and only approximately 20 feet from the nearest playing field backstop. (See TOM-24.) Exhibit DRK 10 depicts the Project's proposed corridor cross section adjacent to the Lazar Middle School. The school is located to the east of the transmission poles. As reflected in Exhibit DRK 10, the Project's new proposed monopoles will be built on approximately 110 to 150 feet tall monopoles located

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<sup>2</sup> This was not mere commentary. It was a Finding.

<sup>3</sup> All exhibits referenced in this brief were submitted to the Administrative Law Judge and were a part of the record. For purposes of brevity, these exhibits will not be reproduced.

approximately 50 feet closer to the Lazar Middle School building than JCPL's existing 50 to 70 feet tall poles carrying the K-115 and O-93 34.5 kV circuits.

As such, JCPL's new proposed monopoles will be approximately 175 feet closer to the Lazar Middle School building than PSEG's 500/230 kV Susquehanna-Roseland line. PSEG's existing line is approximately 505 feet from the Lazar Middle School building.

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Here is where Judge McGee went wrong. The New Jersey Board of Public Utilities does more than merely adjudicate private disputes. Its jurisdiction extends to "all services necessary for the transmission and distribution of electricity and gas, including but not limited to *safety*, reliability, metering, meter reading and billing . . . ." N.J.S.A. 48:2-13(d). [emphasis added].

As set forth in its Mission Statement, it is the public purpose of the BPU:

[t]o ensure that safe, adequate, and proper utility services are provided at reasonable, non-discriminatory rates to all members of the public who desire such services. To develop and regulate a competitive, economically cost effective energy policy that promotes responsible growth and clean renewable energy sources while maintaining a high quality of life in New Jersey.

So when the BPU determines, as a matter of policy, that power lines should be moved away from a school, it clearly does not matter who owns the power lines. If the power lines are too close, the power lines are too close. This is the essence of even handed public policy.

Judge McGee's decision turned on the narrow fact that JCPL was not a party to the prior proceeding – period. This fact is true, but is not determinative.

"The term 'res judicata' refers broadly to the common-law doctrine barring relitigation of claims or issues that have already been adjudicated." Velasquez v. Franz, 123 N.J. 498, 505 (1991). Specifically, the doctrine "provides that a cause of action between parties that has been

finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those parties or their privies in a new proceeding." Ibid.

Collateral estoppel, also known as issue preclusion, is a "branch of the broader law of *res judicata* which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." Tarus v. Borough of Pine Hill, 189 N.J. 497, 520 (2007) (quoting Sacharow v. Sacharow, 177 N.J. 62, 76 (2003)). The application of collateral estoppel "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." State v. Brown, 394 N.J. Super. 492, 501 (App. Div. 2007) (quoting Ashe v. Swenson, 397 U.S. 436, 443 (1970)). But despite Judge McGee's conclusion to the contrary, it is truly not necessary that the parties be the identical, and to understand that, it is necessary to understand the basic nature of privity.<sup>4</sup>

Privity exists for purposes of *res judicata* when the party to the prior litigation represented the same legal right applied to the same subject matter. Jefferson School v. Subversive Activities Control Bd., 331 F.2d 76, 83 (D.C. Cir. 1963)(citing Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294, 37 S.Ct. 506, 61 L.Ed. 1148 (1917)).

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<sup>4</sup> It is well-settled that the doctrine of collateral estoppel forecloses the relitigation of an issue under the following circumstances:

- (1) the issue to be precluded is identical to the issue in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgment on the merits;
- (4) the determination of the issue was essential to the prior judgment; and
- (5) the party against whom the doctrine is asserted was a party to or in *privity* with a party to the earlier proceeding. [emphasis added]

Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) (quoting In re Estate of Dawson, 136 N.J. 1, 20-21 (1994)).

“The concept of privity, as well as its parameters, are necessarily imprecise: ‘Privity states no reason for including or excluding one from the estoppel of a judgment. It is merely a word to say that the relationship between the one who is a party on the record and another is close enough to include the other within the res judicata.’ Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 338 (1996). In general, “one [person] is [in] privity with another and is bound by and entitled to the benefits of a judgment as though he was a party when there is such an identification of interest between the two as to represent the same legal right.” Moore v. Hafeeza, 212 N.J. Super. 399, 403-04 (Ch. Div. 1986)).

For the BPU, this issue is and should be compelling. When deciding the similarity of issues for issue preclusion purposes, the adjudicatory body should consider whether there is substantial overlap of evidence or argument in the second proceeding; whether the evidence involves application of the same rule of law; and whether the claims asserted in the two actions are closely related. First Union Nat. Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 353 (2007).

For the BPU now to issue a decision approving JCPL’s Petition, having found an even safer alignment to be troublesome, would be tantamount to issuing inconsistent judgments. In addition, it is intellectually and socially unnerving.

Exception Number 1 of the Montville Board of Education should be granted.

## **EXCEPTION NUMBER 2**

**The Petition Must Be Denied Because JCPL Failed to Adequately Consider Alternative Sites and Methods As Required For Its Exemption From Local Ordinances and Regulations Pursuant to N.J.S.A. 40:55D-19**

Alternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining whether a project is



reasonably necessary and should be exempt from local zoning ordinances and regulations under N.J.S.A. 40:55D-19. PSE&G's Susquehanna-Roseland Line Petition, supra, Nos. A-4536-09 & A-4848-09 (consolidated), 2013 N.J. Super. Unpub. LEXIS 304, (App. Div. Feb. 11, 2013) (slip op. at 23). In this matter, JCPL failed to introduce sufficient evidence regarding its consideration of potential site or method alternative sufficient for a finding that the Project is reasonably necessary. As is clear from the record, JCPL conducted only a cursory consideration of reasonable and potentially more advantageous alternative sites and methods. As such, the Petition must be denied and JCPL should be ordered to address fully the advantages and disadvantages of a 115 kV line, a partially underground solution in the vicinity of the Lazar Middle School, and an under-build alternative in the vicinity of the Lazar Middle School in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

*i. JCPL Failed to Adequately Consider a 115 kV Line Alternative And Its Advantages As Compared to the Proposed Project*

In JCPL's pre-filed testimony, its witnesses claimed that JCPL considered an electrical alternative to the Project's proposed 230 kV transmission line: adding one (1) new 115 kV transmission line from Montville to Whippany. (See Exh. JC-4 at 15-16.) But the record developed is devoid of any details regarding JCPL's claim that it considered a 115 kV transmission line as an alternative to the Project's 230 kV line. In fact, the information gleaned in response to discovery demands and on cross-examination regarding this claim demonstrates that JCPL's consideration of this option did not even rise to the level of a cursory consideration. In light of the clear advantages of the 115 kV alternative, the Petition must be denied and JCPL should be required to fully address the advantages and disadvantages of a 115 kV line in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

JCPL discounted the 115 kV alternative on the grounds that work at the Montville and Whippany substations would be required and would “make the 115 kV alternative **slightly** more complicated and costly to construct[.]” (Id. at 16 (emphasis added).) But JCPL presented no evidence regarding the extent of the **slightly** increased cost. During cross-examination, Mr. Hozempa reiterated the claim that JCPL considered this electrical alternative. He went so far to suggest that an estimate regarding the cost of a 115 kV transmission line was prepared. But, in fact, no such estimate was ever prepared. JCPL’s other witness, Mr. Humphrys, twice certified in his transcript responses that 115 kV transmission line “was not considered a desirable solution for the project; therefore [a cost] estimate was not prepared.” (S-ENR-33; S-ENR-33 (Updated).) Despite its claim that JCPL considered the 115 kV transmission alternative, it did not even prepare a cost estimate regarding this alternative.

JCPL also discounted the 115 kV alternative based on the claim that it did “not provide the same level of network support as the 230 kV alternative.” (See Exh. JC-4 at 15-16.) But the record is clear that the 115 kV transmission alternative would have fully resolved the issue underlying the alleged need for the Project. Both in response to discovery and during cross-examination JCPL conceded that the 115 kV transmission line would have fully resolved the only Category C reliability planning violation underlying the need for the Project.

Despite Mr. Hozempa’s claim that JCPL considered a 115 kV line as an alternative in his pre-filed testimony, he was unable to testify on cross-examination regarding the potential impact of the alternative use of a 115 kV line on the Project’s transmission pole height or the necessary ROWs to accommodate a 115 kV line instead of the proposed 230 kV line. But documentation provided by JCPL in response to discovery clearly reflects that the construction of a 230 kV line between Montville and Whippany requires a larger ROW than the 115 kV line alternative. (See

TOM-14 Attachment at 10 (noting that the 230 kV option would require a larger ROW and that while the 115 kV line alternative provides less margin there would be sufficient margin to support further 115/12.5 kV mod subs.)

The 115 kV line would not only have fully resolved the only NERC reliability violation underlying the Project, but would also have margin available to support future 115/12.5 kV mod subs. JCPL's witnesses could not address whether the 115 kV line could have been constructed within a narrower right of way such that an increased distance between the Lazar Middle School and the new transmission line would be possible. But it must be emphasized again that the BPU's clear directive in the PSE&G's Susquehanna-Roseland Line Petition was for the utility to locate and align proposed transmission line towers around the Lazar Middle School "to maximize the distances of the towers and transmission lines from the school property." Supra, EM09010035, BPU Decision and Order at 78. And that matter involved consideration of transmission towers hundreds of feet further from the Lazar Middle School. While JCPL discounted the 115 kV line alternative as "slightly more complicated and costly" it failed to quantify the increased cost or complication in any meaningful way and disregarded potential advantages entirely. In light of the potential advantages of the 115 kV alternative and JCPL's failure to consider or address these advantages in any meaningful way, the Petition must be denied. JCPL should be ordered to fully address the advantages and disadvantages of a 115 kV line in detail prior to any exemption from local zoning ordinances and regulations.

***ii. JCPL Failed to Consider Adequately a Partially Underground Alternative And Its Advantages As Compared to the Proposed Project***

In JCPL's pre-filed testimony, its witnesses claimed that JCPL considered an underground alternative to the Project's proposed above-ground transmission line. (See Exh. JC-3 at 24-30.) But the record developed demonstrates that JCPL dismissed an underground

alternative to the Project's proposed above-ground transmission line alternative out-of-hand. In fact, the information gleaned in response to discovery demands and on cross-examination regarding this claim demonstrates that JCPL's conducted only cursory consideration of the disadvantages of an entirely underground transmission alternative. JCPL failed to consider a partially underground transmission solution in the vicinity of the Lazar Middle School, or any other segment of the Project, and such an approach's many advantages over the Project as proposed. In light of the clear advantages of a partially underground transmission solution in the vicinity of the Lazar Middle School, the Petition must be denied and JCPL should be required to fully address the advantages and disadvantages of a 115 kV line in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

As reflected in the record, JCPL discounted an entirely underground alternative to the Project's above-ground transmission line based on four disadvantages generally associated with underground transmission: (1) environmental impacts; (2) restoration period; (3) cost; and (4) lesser capacity than above-ground transmission lines. But it is clear that JCPL failed to consider a partially underground transmission solution, and more specifically a partially underground solution in the vicinity of the Lazar Middle School, as an alternative to the Project as proposed.

JCPL's aversion to underground transmission was clear—its witnesses stated that it would only utilize underground construction for a transmission line where no viable overhead option is available. But Mr. Kozy conceded in discovery responses and during cross-examination that a partially underground solution on one or more Segment of the Project, including a partially underground solution adjacent to the Lazar Middle School on Segment No. 10, could have been utilized. A partially underground solution would have consisted of transition line conductors switching from overhead to underground via steel "riser pole" structures with associated

equipment at each end (one per phase). (See TOM-10.) JCPL's only discussion regarding the cost of an underground alternative consisted of a vague estimate that entirely underground transmission solution would cost "approximately 4 – 10 times as much" as the proposed Project. (Exh. JC-3 at 25.) Mr. Kozy claimed that this estimate was based on general industry experience based off "high-level estimates, applying rule-of-thumb and practical experience with utility construction projects." (TOM-5(a).) But JCPL has no bulk underground transmission facilities in operation and neither JCPL nor its parent, FirstEnergy has built any 230 kV underground transmission lines. Thus its reliance on practical experience in underground transmission facilities is suspect at best. Beyond this broad "4 – 10 times as much" estimate for an entirely underground alternative to the Project, "JCP&L/First Energy did not develop more detailed cost estimates for underground construction of the Montville-Whippany Project." (TOM-5(a).)

JCPL could not provide even an estimate of the cost for utilizing a partially underground transmission solution. It conducted no study to determine the costs for utilizing a partially underground transmission solution at the Lazar Middle School. Moreover, the purported general disadvantages associated with an entirely underground transmission line, which may all apply when examining the approximately seven (7) mile long span between JCPL's Whippany Substation located in East Hanover Township, are not equally applicable to a partially underground transmission alternative of a fraction of that distance in the vicinity of the Lazar Middle School. For example, the environmental issues identified by JCPL in disregarding an underground alternative are not present at the Lazar Middle School property. No creeks, rivers, railroads, or highways exist on that span which would implicate in the environmental concerns.

JCPL also ignored the advantages of a partially underground transmission alternative to the Project, particularly with respect to a partially underground transmission alternative in the

vicinity of the Lazar Middle School. JCPL's witnesses conceded that at least initially, underground facilities can be expected to have less frequent outages "as the equipment is new and is not directly exposed to the weather." (See Exh. JC-3 at 29.) An underground transmission solution would also eliminate some or all of the risks associated with downed poles or downed wires and also block the electric field associated with the transmission line. This would be particularly advantageous in the vicinity of a school, where numerous children will be present. Underground transmission lines also require less extensive vegetation management than aboveground lines because it is necessary to maintain required line clearances from vegetation growth for aboveground lines. In light of these advantages of a partially underground transmission alternative in the vicinity of the Lazar Middle School and JCPL's failure to consider or address a partially underground solution in any meaningful way, the Petition must be denied. JCPL should be required to fully address the advantages and disadvantages of a partially underground solution in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

*iii. JCPL Failed to Adequately Consider an Under-build Alternative at the Lazar Middle School Property And Its Advantages As Compared to the Proposed Project*

The proposed Project includes some segments consisting of an under-build (removing and replacing) of JCPL's existing poles carrying its pre-existing K-115 and O-93 34.5 kV transmission circuits and other segments involving the construction of new lines monopoles running separate and/or parallel to the 34.5 kV line which will remain undisturbed. JCPL declined to utilize an under-build of the 34.5 kV line and justified this decision based on the fact that it possessed sufficient right of way in the vicinity of the Lazar Middle School (Segment No. 10 of the Project) to allow it to run a second line separate and parallel to the 34.5 kV circuits. In

reaching such a decision, JCPL failed to consider the clear advantages to an under-build solution at Segment No. 10 of the Project which overwhelm any potential disadvantages. In light of the clear advantages of an under-build in the vicinity of the Lazar Middle School on Segment No. 10 of the Project, the Petition should be denied and JCPL should be required to fully address the advantages and disadvantages of an under-build on Segment No. 10 of the Project in the vicinity of the Lazar Middle School in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

JCPL originally proposed to utilize an under-build of JCPL's pre-existing K-115 and O-93 34.5 kV circuits on Segment Nos. 1, 2, and 9 of the Project. JCPL did not pursue an under-build on other Segments where it had adequate right of way to install the proposed 230 kV line on separate poles and a new line running parallel to the pre-existing 34.5 kV circuits. However, as part of its Stipulation of Settlement with the Township of Montville, an under-build of JCPL's pre-existing K-115 and O-93 34.5 kV circuits will also now be utilized on Segment No. 11 of the Project. Stated differently, following the Settlement's revision to the Project, both Segment No. 9 and Segment No. 11—the Project's Segments adjacent to the portion of the Project traversing the Lazar Middle School property (Segment No. 10)—will utilize an under-build. Although both segment of the Project adjacent to Segment No. 10 will now utilize an under-build, JCPL does not propose to utilize an under-build at Segment No. 10.

In justifying JCPL's original decision not to pursue an under-build except on Segment Nos. 1, 2, and 9 of the Project, JCPL's witnesses identified a marginal increase in cost associated with the under-build option. For example, JCPL estimated that the cost of utilizing an under-build versus the Project's original proposal for the approximate 900 foot span through the Montville Chase section of Segment No. 11 to be "in the range of \$50,000 to \$100,000." (See

SH-TOM-5 Rebuttal.) This increase costs represents a mere fraction of the Project's total cost of approximately \$35,600,000. (S-ENR-33 (Updated).) Such increase would include removal of the existing 34.5 kV transmission structures on the Segments of the Project where JCPL intends to utilize an under-build of the existing 34.5 kV lines, which is estimated to cost only \$10,200 per structure. (See S-ENR-38; S-ENR-38 (Updated).) But JCPL conducted no study and could not provide any specific analysis regarding the increased cost of utilizing an under-build at Segment No. 10 of the Project.

The disadvantage of the potential marginal increase in cost associated with utilizing an under-build at Segment No. 10 of the Project is overwhelmed by the advantages of such an approach. An under-build would result in a greater monopole heights of approximately 20 feet which would also increasing the distance between the transmission line wires and any individual standing on the ground beneath them by approximately 20 feet as compared to the Project's proposed option. But the true advantage of an under-build at the Lazar Middle School on Segment No. 10 would result from its impact on the distance between the transmission line and the school.

An under-build of JCPL's pre-existing K-115 and O-93 34.5 kV circuits on Segment No. 10 would indisputably result in an increase in the distance between the Project's proposed transmission line and the Lazar Middle School building of approximately 50 foot. On this point there can be no dispute. As compared to the Project as proposed, an under-build at Segment No. 10 would be in furtherance the BPU's clear directive in the PSE&G's Susquehanna-Roseland Line Petition for the utility to locate and align proposed transmission line towers around the Lazar Middle School "to maximize the distances of the towers and transmission lines from the school property." Supra, EM09010035, BPU Decision and Order at 78. As proposed, it



cannot be said that the Project made any efforts to maximize the distances of towers and transmission lines from the school property. JCPL's own witnesses conceded that options existed for JCPL—including utilization of the same under-build proposed on other Segments—which would have increased the distance between the Lazar Middle School and the new transmission line.

An additional benefit for utilizing an under-build in the vicinity of the Lazar Middle School at Segment No. 10 of the Project surrounds the potential tree clearance required. As proposed with the construction of a new transmission line running parallel but 50 feet closer to the Lazar Middle School than JCPL's pre-existing line carrying the K-115 and O-93 34.5 kV circuits, construction of the Project's proposed line will result in clearance of the trees serving as a buffer between the transmission lines and the Lazar Middle School. This is depicted in Attachment 3 of TOM-63, which consists of a photo when looking southwest across the baseball fields behind the Lazar Middle School and a photo simulation of the Project's proposed line. Construction of the Project's transmission line as proposed will result in removal of the trees presently buffering the Lazar Middle School and its occupants from the visual and other effects of the transmission lines behind the school. JCPL's witnesses could not specifically address whether utilization of an under-build in the vicinity of the Lazar Middle School at Segment No. 10 of the Project would require similar removal of the buffer between the Lazar Middle School and the transmission lines. However, due to the spacing of the ROW, it is clear that utilization of an under-build will have a lesser impact on the tree buffer between the transmission lines and Lazar Middle School than the Project as proposed. (Compare Exh. DRK 10 (depicting the cross-section of Segment No. 10 of the Project as proposed) with Exh. DRK 9 (depicting the cross-section of a segment of the Project utilizing an under-build).

In light of the clear advantages of utilizing an under-build in the vicinity of the Lazar Middle School at Segment No. 10 of the Project, the furtherance of such an approach with the BPU's directive that the utility "maximize" the distances of the towers and transmission lines from the Lazar Middle School as compared to the Project as proposed, and JCPL's failure to consider or address the advantages of an under-build at Segment No. 10 of the Project in any meaningful way, the Petition must be denied. JCPL should be required to fully address the advantages and disadvantages of such an approach in detail prior to further consideration of any exemption from local zoning ordinances and regulations so that the issue of whether the BPU should be ordered to utilize an under-build may be fully addressed.

### **EXCEPTION NUMBER 3**

#### **The Petition Must Be Denied Because JCPL Failed to Demonstrate An Underlying Electrical Need for Project As Required For Its Exemption From Local Ordinances and Regulations Pursuant To N.J.S.A. 40:55D-19**

JCPL must demonstrate that the Project is "reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location" for it to be exempt from local zoning ordinances and regulations under N.J.S.A. 40:55D-19. PSE&G's Susquehanna-Roseland Line Petition, *supra*, Nos. A-4536-09 & A-4848-09 (consolidated), 2013 N.J. Super. Unpub. LEXIS 304, (App. Div. Feb. 11, 2013) (slip op. at 23). In this matter, JCPL failed to demonstrate a reasonable electrical need for the Project's proposed 230 kV transmission line between the Whippany and Montville substations. As such, the Petition must be denied.

The existing transmission system serves the load demands of individuals affected by the Project under normal system conditions. Rather than load demand under normal circumstances, the justification underlying the Project is the future NERC Category C (N-1-1) reliability criteria

violation, which according to JCPL's witnesses would occur in the event of the "outage of the Montville-Roseland (E2205) 230 kV line followed by the loss of either the Kittatinny-Newton (T2298) 230 kV line with the 230-34.5 kV transformer and the 34.5 kV capacitor at Newton or the Newton-Montville (N2214) 230 kV line." (Exh. JC-4 at 11.)

As noted above, "NERC Standard TPL-003-0b was used to determine the project's need." (S-ENR-43.)<sup>5</sup> Under this standard, Category C contingencies are treated differently than Category A and Category B contingencies. Their different treatment reflects the improbability of such events. In fact, when considering the area affected by the Project, no such contingency has occurred within the last decade. JCPL could identify only one such event ever occurring and that event occurred more than a decade ago in 2004.

Category C contingencies are treated much differently than Category A or B contingencies under the NERC standards. NERC Standard TPL-003-0b permits firm load and power transfers to be curtailed during Category C contingencies, but not Category A or B contingencies. See NERC Standard TPL-003-0b at 4-5. Specifically, NERC Standard TPL-003-0b provides the following regarding Category C events:

Depending on system design and expected system impacts, the controlled interruption of electric supply to customers (load shedding), the planned removal from service of certain generators, and/or the curtailment of contracted Firm (non-recallable reserved) electric power transfers may be necessary to maintain the overall reliability of the interconnected transmission systems.

Id. at 5, footnote c. The BPU has previously rejected "planning for involuntary load curtailment during Category C events" as an unreasonable alternative to the violations.

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<sup>5</sup> NERC promulgates Standard TPL-003-0b and interpretation statements regarding this rule at: <http://www.nerc.com/files/TPL-003-0b.pdf>.

PSE&G's Susquehanna-Roseland Line Petition, Supra, EM09010035, BPU Decision and Order at 78. But the present matter is distinguishable from the circumstances considered in that case.

In PSE&G's Susquehanna-Roseland Line Petition, the challengers argued that changing conditions including a decreased in demand and sluggish economy obviated the proclaimed need for PSEG's previously proposed transmission line. Supra, EM09010035, BPU Decision and Order at 31. A number of the NERC reliability violations cited as justification for PSEG's project no longer existed by the time of the hearing. Id. at 31, 52. PSEG originally relied upon 2 Category A violations and 21 Category B violations as justification for its project when filing its petition. Id. at 52. No Category C violations were originally identified in justifying the need for the project. Ibid. A year later, the Category A violations had been resolved without the project and only 13 Category B violations remained. Ibid. When faced with the resolution of many of the violations underlying the project, PSEG identified 37 Category C violations as justification for the project. Ibid. The BPU ultimately rejected the challengers' argument that since NERC Category C reliability violations could be addressed through responsive action after such an event without the imposition of federal penalties, those violations did not support the purported need for PSEG's proposed project. Id. at 59. The BPU recognized that NERC Category C events are less likely to occur than Category A or B events and that no penalties are imposed if operators react quickly enough following such events, but determined that "planning for involuntary load curtailment during Category C events is not a reasonable alternative to the violations." Ibid. Nonetheless, due to the changing nature of the violations and the decreased load demand, the BPU ordered "that PSE&G notify the [BPU] of the results of the next RTEP and, should there be a substantial delay or change in projected reliability violations" so the BPU could take appropriate action. Id. at 53.

Here, the scope of the reliability criteria violations underlying the need for the Project pales in comparison to those originally presented PSE&G's Susquehanna-Roseland Line Petition or those which remained by the time of the hearing. Unlike PSE&G's Susquehanna-Roseland Line Petition, the JCPL's Project is not based on any Category A or Category B reliability violations. Additionally, where the PSEG project addressed dozens of Category C violations, the proposed Project addresses only one. Thus, while the BPU rejected voluntarily load curtailment as a reasonable alternative to the numerous Category C violations in that case, the magnitude of potential load curtailment in the unlikely event of a Category C contingency pales in comparison to that presented in PSE&G's Susquehanna-Roseland Line Petition.

But the absence of an underlying electrical need for the Project as proposed is not limited to the possibility of load curtailment as a reasonable alternative to a violation during a Category C event. More significantly, there is absolutely no electrical need for the Project's proposed 230 kV transmission line when a 115 kV alternative at half the voltage would also fully resolve the Category C reliability violation proffered as the justification for the Project. A 115 kV transmission line would not only fully resolve the only NERC reliability violation underlying the Project but also have margin available to support future 115/12.5 kV mod subs. As addressed above, while JCPL discounted the 115 kV line alternative as "slightly more complicated and costly" compared to the Project's proposed 230 kV transmission line it failed to quantify the increased cost or complication in any meaningful way. But even putting aside JCPL's failure to adequately address the advantages of a 115 kV line as compared to the Project, it remains clear that there is no underlying electrical need for a 230 kV transmission line. The 115 kV alternative would have provided more than robust enough a solution both now and in the future. This is especially true in light of the decreased load forecast since the 2012 RTEP. Accordingly, the

Petition must be denied because JCPL failed to demonstrate an underlying electrical need for the Project's proposed 230 kV transmission line.

#### **EXCEPTION NUMBER 4**

##### **The Petition Must Be Denied When Balancing All Interests And Factors In Light Of The Entire Factual Picture**

The BPU must weigh various interests and factors in the light of the entire factual picture when considering the reasonable necessity of the Project and whether it should be exempt from local zoning ordinances and regulations under N.J.S.A. 40:55D-19. PSE&G's Susquehanna-Roseland Line Petition, *supra*, Nos. A-4536-09 & A-4848-09 (consolidated), 2013 N.J. Super. Unpub. LEXIS 304, (App. Div. Feb. 11, 2013) (slip op. at 23). Looking at the totality of the circumstances, it is clear that JCPL has failed to properly consider the detrimental effect of electric and magnetic field levels as a result of the Project, the damaging aesthetic impact of the Project, and significant safety concerns which pose a substantial threat to students and faculty at the Lazar Middle School. As a result of JCPL's failure to introduce sufficient evidence regarding these crucial issues in preparation for the Project, the Petition must be denied.

##### ***a. JCPL Failed to Adequately Measure Electric And Magnetic Field Levels Associated With The Project***

At the outset, JCPL has not fulfilled its responsibility of taking calculations of electric and magnetic field levels at the appropriate locations. There have been absolutely no calculations taken from Segment No. 10, the Segment of the Project in closest proximity to the Lazar Middle School. Further, JCPL has not taken any steps to obtain measurements of EMF levels at Segment No. 10 if the Project were to utilize one of the reasonable alternatives available such as an under-build or 115 kV line. Nor has JCPL taken steps to determine EMF levels if it were to place the

230 kV transmission line partially underground. It is clear that JCPL did not properly consider these alternatives, as projected EMF calculations for these options were not even contemplated.

### 1) Electric Field Levels

In JCPL's pre-filed testimony, its witnesses claimed that upon completion, the Project will meet the State of New Jersey's electric field level guideline of 3.0 kV/m at the edge of the ROW. Specifically, Mr. King's testimony indicates that the Project will produce a maximum electric field of 0.7 kV/m along the edges of the ROWs. (See Exh. K GK-2 at 21.) This demonstrates an increase from the existing circuits, which produce a maximum of 0.3 kV/m. However, these measurements are worthless, as Mr. King failed to take measurements at Segment No. 10, the only Segment of the Project that is adjacent to the Lazar Middle School.

Particularly, during cross-examination, Mr. King identified Line Segment Nos. 1, 4, 7, 11, and 12 as the locations in which he performed electric and magnetic field measurements on August 8, 2014 along the existing Montville – Whippany 230 kV Project ROWs. In fact, Mr. King, acknowledged that he did not take measurements at Segment No. 10, the section of the Project adjacent to the Lazar Middle School property. Disturbingly, the record is devoid of any evidence that Mr. King, or anyone else, performed electric and magnetic field level calculations on the Lazar Middle School property when developing the Project. Moreover, the pre-filed testimony indicates Mr. King solely conducted measurements along the edges of the ROWs. The record is entire lacking in EMF measurements taken at the transmission line centerline. This is simply because JCPL has failed to perform its due diligence and properly evaluate the projected EMF levels associated with the Project. Such deficiencies warrant denial of the Petition.

### 2) Magnetic Field Levels

In JCPL's pre-filed testimony, its witnesses acknowledged that there are neither New Jersey nor Federal standards for magnetic fields from transmission lines. Still, JCPL maintains that it has "applied Prudent Avoidance principles and limited magnetic field levels under summer loading conditions." (Exh. JC-10 at 10.)

Due to the absence of New Jersey and federal guidelines setting acceptable standards for magnetic field levels, the BPU has looked to other states' guidelines for guidance. In PSE&G's Susquehanna-Roseland Line Petition, when the BPU addressed the Board's concerns regarding magnetic field levels, it stated:

There are no federal standards for magnetic fields at power frequencies. Additionally, New Jersey has not adopted standards for magnetic fields. Therefore, the Board reviewed standards adopted by other states and the international community for guidance on commonly accepted levels of magnetic fields for transmission lines. At the state level, only New York and Florida have guidelines for magnetic fields. Those guidelines establish that magnetic fields for new 500 kV transmission lines at the edge of the ROW should not exceed 200 mG. The projected maximum levels of magnetic fields associated with the Project are 115 mG at the edge of the ROW. Thus, the levels are lower than the standards set in other states.

Supra, EM09010035, BPU Decision and Order at 74. The BPU then concluded that the estimated magnetic field levels were within the guidelines set by other states. Ibid.

The same cannot be said for the instant matter. Specifically, the projected maximum level of magnetic fields associated with the Project at the edge of the ROW for Segment No. 10 is 256.5 mG. (Exh. KGK-2 at 38.) Pursuant to Table 15 of Mr. King's Electrical Engineering Analysis Report, the Florida guidelines establish that magnetic fields for new 500 kV transmission lines at the edge of the ROW should not exceed 200 mG, and magnetic fields for new 230 kV transmission lines at the edge of the ROW should not exceed 150 mG. (Exh. KGK-2 at 54.) As such, the projected magnetic field levels will exceed Florida's guidelines for both 230



kV and 500 kV transmission lines. Further, the New York guidelines establish that magnetic fields for new transmission lines at the edge of the ROW should not exceed 200 mG. (Exh. KGK-2 at 54.) At 256.5 mG, the projected maximum level of magnetic fields associated with the Project at the edge of the ROW for Segment No. 10 also surpasses the acceptable magnetic field level set forth by New York guidelines.

JCPL has failed to consider the fact that the calculated magnetic field levels for the Project will now exceed the standards set forth by other states. The Board has a responsibility to protect students and faculty from the dangers from harmful exposure to unseen invisible dangers such as EMF, and the Board cannot fulfill its duty absent appropriate measurements demonstrating that the magnetic field levels will be within acceptable limits. JCPL's Petition fails to adequately address these issues, and should therefore be denied. In the event the Petition is not denied, the OAL should follow the BPU's directive and require JCPL to conduct a survey of field readings upon the Project's completion for the purpose of ensuring that its estimated EMF levels are correct, and within the guidelines and standards set forth by New Jersey and other states. See PSE&G's Susquehanna-Roseland Line Petition, Supra, EM09010035, BPU Decision and Order at 74. If the actual readings are substantially greater than the estimated readings testified to in the proceeding, the Board should be permitted to take appropriate action. Supra, EM09010035, BPU Decision and Order at 79. Further, JCPL should be required to conduct continued monitoring of EMF levels, in furtherance of ensuring continued compliance with any and all existing guidelines.

***(b) JCPL Failed to Properly Consider Health Risks Caused By EMF Associated With The Project With Respect To The Lazar Middle School***

JCPL's consideration of health concerns associated with increased exposure to electric and magnetic fields is incomplete at best. Significantly, JCPL's witness testified that the New

Jersey guideline for electric fields at the edge of the right of way was not recommended based upon a formal health risk assessment. (Exh. JC-11 at 8.) This demonstrates that a comprehensive review of scientific research and how exposure levels relate to reported effects was neither conducted nor considered in conjunction with developing New Jersey's electric field level guideline. Therefore, the fact that Mr. King testifies that the electrical field levels expected by the Project will be within New Jersey's guidelines is absolutely meaningless within the context of health concerns resulting from the Project.

Dr. Bailey, JCPL's witness who has conducted research on potential health effects of EMF in the past and not with regard to the instant Petition, conceded that scientific review panels have reported a "statistical association" between magnetic field exposure of greater than 3-4mG and childhood leukemia (Exh. JC-11 at 10.) Further, his discovery responses indicate that expert panels have reviewed research on EMF and health for national and international health and scientific agencies and have specifically recommended the need for additional research. (See BOE-WHB-2 Rebuttal.) Notably, this recommendation was based on statistical associations between magnetic fields and children with cancer and statistical associations between magnetic fields and adult diseases. Ibid. During cross-examination, Dr. Bailey confirmed the Board's worst fears when he testified that it is possible that EMF exposure can have detrimental effects on health.

The serious concerns with both the short-term and long-term effects on the students and faculty arising from exposure to certain levels of EMF due to the close proximity of the proposed lines to the Lazar Middle School should be apparent. JCPL has not taken any steps to assure the Board that detrimental health effects related to increased exposure to EMF from the Project can be ruled out, or at least mitigated, at this time. Prior to further consideration of any exemption

from local zoning ordinances and regulations, the BPU should require JCPL to perform studies as to the health effects of increased EMF from the Project to students and adults attending, working, or present at the Lazar Middle School.

***(c) The Project Will Hinder The Board's Ability to Expand the Lazar Middle School In Coming Years***

The Petition should be denied because it will interfere with the Board's ability to expand the Lazar Middle School in the coming years, and JCPL has failed to consider such potential Lazar Middle School expansion in its preparation of the Project. As a matter of practicality, due to the layout of the school and property, any expansion would need to be at the back of the building. (See Exhs. DRK 14i and 14j.) The Project's proposed transmission is already too close to the Lazar Middle School building when considering the BPU's order in the PSE&G's Susquehanna-Roseland Line Petition. Supra, EM09010035, BPU Decision and Order at 78. Expansion at the Lazar Middle School would only increase the close proximity of the Project's proposed line to the school, creating increasing the risks associated with the proximity of that line, including danger for collapsed poles and downed wires, increased EMF levels, and other harmful effects from the transmission lines. Thus the Project will hinder the Board's ability to expand the Lazar Middle School and must be denied.

***(d) The Project Will Result In Substantial Negative Visual And Electric Field Effects In The Vicinity Of The Lazar Middle School***

The Petition should be denied due to the aesthetic impact associated with the Project both at the Lazar Middle School and throughout the Project area. JCPL has failed to contemplate the entire factual picture, as it did not properly consider under-building or underground transmission lines for the purpose of mitigating the aesthetic impact of the Project, as set forth in detail above.

As reflected in Exhibit DRK 10, the monopoles JCPL proposes to construct adjacent to the Lazar Middle School will range from approximately 110 to 150 feet tall. The height of these

new monopoles significantly exceeds the height of the existing 34.5 kV circuits within JCPL's ROW at the Lazar Middle School which range from 50 to 70 feet. These monopoles will be visible not only from the Lazar Middle School, but also the surrounding area including other Board property.

The aesthetic impact of the Project is not limited to the visibility and monstrosity of the monopoles. Specifically, the Project will result in the clearance of vegetation, including, but not limited to, the removal of tall growth vegetation. Dying vegetation and limbs outside the ROW will also be removed as part of the Project. The clearance of vegetation at the Lazar Middle School property to accommodate the new transmission line as proposed will lead to far greater visibility of the nearby PSEG 500 kV line as it will include removal of the trees serving as a buffer between the Lazar Middle School and the transmission lines. (See TOM-63, Attachment 3.)

The Project's clearance of the tree buffer between the Lazar Middle School and transmission lines will not only intrude on the aesthetics of the area, but also increase the potential impact of the electric field at the school. Mr. King testifies that trees will substantially shield or reduce electric field levels. (Exh. JC-10 at 5.) Mr. Bailey similarly testifies that shrubbery and trees between people and the transmission line will "partially or largely reduce the electric field level from the proposed lines." (Exh. JC-11 at 6-7.) As such, not only will the clearance of vegetation exacerbate the eyesore caused by the Project, it will increase the potential electric field level exposure to the occupants of the Lazar Middle School.

The transmission line from the Project, coupled with the existing transmission lines, will result in a great concentration of massive and obstructive structures significantly marring the

landscape. The negative impact of the Project's proposed transmission line will not be limited to its visual impact and the Petition must be denied.

***(e) The Project Will Result In Substantial Negative Safety And Construction Effects In The Vicinity Of The Lazar Middle School***

The Project will result in negative safety and construction effects in the vicinity of the Lazar Middle School. The Petition should be denied due to significant safety concerns related to pole collapse or downed wires and construction at the Lazar Middle School. The Project's 110 to 150 foot monopoles and connected transmission wires will be directly adjacent to the baseball fields located on the Lazar Middle School property. Specifically, the Project's proposed transmission line's centerline will be located approximately 330 feet from the Lazar Middle School building. (See TOM-24.) Moreover, the centerline will be located a mere 20 feet from the nearest playing field backstop on the baseball field. Ibid. Notably, JCPL has not taken any measures to conduct a study in furtherance of identifying and mitigating potential safety issues resulting from a collapse of the proposed monopole and line onto the Lazar Middle School property.

In PSEG's Susquehanna-Roseland Line Petition, the Board presented various safety concerns regarding the possible dangers to school children and faculty if a tower collapsed or power lines downed on the Lazar School property. Supra, EM09010035, BPU Decision and Order at 29. As recognized by the BPU in that case, the edge of PSEG's ROW was 150 feet from the right field fence of the closest baseball field. Ibid. After considering the safety and other concerns associated with the location of PSEG's line, the BPU ultimately found that moving three specific towers identified by the Board was prudent and reasonable. Id. at 70, 78. The BPU Ordered PSEG to provide a report to the BPU identifying a relocation or realignment of those

towers and required PSEG to provide a detailed report if the towers could not be relocated to the location proposed by the Board, or another reasonable alternative. Ibid.

The close proximity of JCPL's proposed line to the Lazar Middle School and its baseball fields raises substantial concerns regarding the potential risk to nearby students, faculty, and anyone in the populated area in the event of a pole collapse or downed wires. JCPL's own witnesses recognized the risks associated with the Project's falling poles and falling trees despite the Project's expected compliance with the National Electric Safety Code. Mr. Kozy conceded that the safety risk arose not only from falling poles or wires, but also the downed wires remaining energized for a period of time and energizing objects or people. A greater risk of harm would exist in the event of downed poles or downed wires in the vicinity of people or children, such as on school property.

The negative impact of the Project extends beyond safety concerns related to pole collapse and downed wires including the necessary construction activity adjacent to the school. Construction activities in the vicinity of the school will include drilling and placing the monopoles. In addition to heavy machinery such as cranes, bucket trucks, bulldozers, concrete trucks, wire stringing equipment, and augers, use of helicopters may also be necessary. These construction activities are anticipated to occur during the school year and during school hours and will bring physical danger, noise, and pollution issues that may result in added health and safety risks to students and faculty. In weighing the totality of the factual picture as required by N.J.S.A. 40:55D-19, it is clear that the Petition should be denied due to the Project's negative impact related to safety and construction concerns.

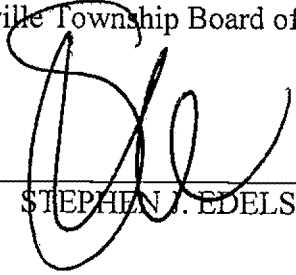
## CONCLUSION

For all of the reasons set forth in these Exceptions, but especially for the reasons set forth in Exception Number 1, JCPL's petition must be denied. The proposed Project is inconsistent with the BPU's prior directive that transmission lines should not be constructed in such close proximity to the Lazar Middle School. JCPL has failed to adequately address alternative sites and methods including an under-build or a partially underground transmission solution in the vicinity of the Lazar Middle School or a 115 kV transmission alternative. As reflected in the record, the advantages of these alternatives outweigh any disadvantages, and due to JCPL's failure to adequately address these alternatives, if the Petition is not denied outright, JCPL should be ordered to fully address the advantages and disadvantages of these alternatives in detail prior to further consideration of any exemption from local zoning ordinances and regulations.

JCPL has failed to satisfy its burden under N.J.S.A. 40:55D-19. In the alternative, similar to the BPU Order in PSE&G's Susquehanna-Roseland Line Petition, JCPL should be ordered to address the deficiencies in its filings within a fixed period of time for further consideration prior to moving forward in this matter.

SCHWARTZ SIMON  
EDELSTEIN & CELSO LLC  
Attorneys for Intervenor  
Montville Township Board of Education

By: \_\_\_\_\_

  
STEPHEN J. EDELSTEIN

Dated: September 5, 2017







**State of New Jersey**  
**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

OAL DKT. NO.: PUC 08235-15

AGENCY DKT. NO.: EO15030383

**IN THE MATTER OF THE PETITIONER OF JERSEY  
CENTRAL POWER & LIGHT COMPANY PURSUANT  
TO N.J.S.A. 40:55D-19 FOR A DETERMINATION  
THAT THE MONTVILLE-WHIPpany 230Kv TRANS-  
MISSION PROJECT IS REASONABLY NECESSARY  
FOR THE SERVICE, CONVENIENCE OR WELFARE  
OF THE PUBLIC BPU DOCKET NO. EO15030383.**

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**Gregory Eisenstark, Esq.**, for Petitioner JCP&L (Windels Marx Lane &  
Mittendorf, LLP, Attorneys)

**Brian Weeks**, Deputy Rate Counsel, for Rate Counsel (Stefanie A. Brand,  
Director, Division of Rate Counsel)

**Alex Moreau**, Deputy Attorney General, for Board of Public Utilities (Christopher  
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**Fred Semrau, Esq.**, for Intervenor Montville Township, (Dorsey & Semrau,  
attorneys)

**Stephen J. Edelstein, Esq.** for Intervenor Montville Board of Education  
(Schwartz Simon Edelstein & Celso, LLC, attorneys)

Record Closed: June 27, 2016

Decided: August 10, 2017

BEFORE LELAND S. MCGEE, ALJ:

## FACTUAL AND PROCEDURAL DISCUSSION

### GENERAL BACKGROUND

On March 27, 2015, pursuant to N.J.S.A. 40:55D-19, JCP&L filed a petition ("Petition") with BPU seeking approval for its Montville-Whippany 230 kV Transmission Project (the "Project"), along with several volumes of the direct testimony of individuals involved with the Project.

The Project consists of the construction of a new 230 kV transmission line traveling between JCP&L's Whippany substation in East Hanover, New Jersey, and its Montville substation in Montville, New Jersey, as well as upgrades to the substations themselves to accommodate the new line. The Project is a significant undertaking which implicates a wide swath of technical and legal issues. According to JCP&L, the Project is necessary to address, identify and confirm reliability issues within their transmission grid.

The following entities are integral to the creation and implementation of the Project:

**Jersey Central Power & Light Company** ("JCP&L") is a public utility as defined in N.J.S.A. 48:2-13, and is thus subject to the regulatory jurisdiction of the Board of Public Utilities ("BPU").

**PJM Interconnection, LLC** ("PJM") is a Regional Transmission Organization ("RTO") that is responsible for the planning, operation, and reliability of the

electric transmission systems under its control. JCP&L is a PJM Transmission Owner ("TO"), which means that JCP&L is a member of the PJM RTO.

**The Federal Energy Regulatory Commission ("FERC")** is the Federal agency responsible for regulating the transmission and sale of energy in interstate commerce throughout the United States.

**The North American Electric Reliability Corporation ("NERC")** develops and enforces standards of reliability for large-scale power systems in the United States, and is subject to oversight by FERC. NERC establishes certain standards for large scale electrical transmission systems, standards which are then approved by FERC. FERC then authorizes RTOs to effectuate implementation of those standards; PJM is one of those RTOs. In turn, PJM then enters into agreements with various entities to further implement its obligations; JCP&L is one of those entities.

### PROCEDURAL HISTORY

JCP&L filed the Petition with the BPU pursuant to N.J.S.A. 40:55D-19 seeking approval of the Project on March 27, 2015. Along with the Petition, JCP&L filed the direct testimony of the following ten witnesses, testifying to specific subject matters:

1. Scott Humphrys: Overview of the Project and filing of the Petition;
2. Dave Kozy, Jr.: Design, engineering, construction, operation, and maintenance of the Project, as well as the issues associated with an underground installation of a 230 kV transmission line;
3. Lawrence A. Hozempa: Need for the Project;
4. Paul M. McGlynn: PJM transmission planning process and the need for the Project;

5. Peter W. Sparhawk: route selection and routing study;
6. Kirsty M. Cronin: Environmental impacts and the permitting process;
7. Tracey J. Janis: Real estate and property rights;
8. Jerome J. McHale: Real estate property analysis;
9. Kyle G. King; Electric fields, magnetic fields, audible noise, and radio noise associated with the Project; and
10. William H. Bailey: Electromagnetic fields and health impacts.

On May 1, 2015, the Township of Montville ("Montville") filed a motion to intervene.

On June 3, 2015, this matter was transferred to the New Jersey Office of Administrative Law and assigned to the Honorable Leland S. McGee.

On August 19, 2015, the Montville Board of Education ("Montville BOE") filed a motion to intervene.

On July 21, 2015, Judge McGee presided over a prehearing conference.

On September 8, 2015, Judge McGee issued a Prehearing Order granting both the Montville's and the Montville BOE's motions to intervene and adopted a procedural schedule.

Pursuant to Judge McGee's September 8, 2015, Prehearing Order, the parties began discovery.

Pursuant to the schedule established by Judge McGee, Montville filed the direct testimony of two witnesses and the surrebuttal testimony of one witness. The Montville

BOE filed the direct testimony of one witness, Dr. Karen Cortellino. Subsequently, JCP&L filed rebuttal testimony of three witnesses: Dave Kozy Jr., Kyle G. King, and Dr. William A. Bailey. BPU staff and the Division of Rate Counsel ("Rate Counsel") are parties to this matter but filed no testimony.

On December 8, 2015, a duly noticed, Public Hearing was held at the Montville Township High School, 100 Horsneck Road, Montville, New Jersey. The Honorable Danielle Pasquale, ALJ presided over this proceeding.

On February 9, 2016, Wildlife Preserves, Inc. ("Wildlife") filed a motion to intervene, which JCP&L opposed. Wildlife's motion was denied, and Judge McGee granted Wildlife "Participant Status" by Order dated March 2, 2016.

Evidentiary hearings were scheduled and held for the week beginning May 23, 2016.

On May 23, 2016, JCP&L presented witnesses Scott M. Humphrys, Dave Kozy Jr., Kirsty M. Cronin, and Peter W. Sparhawk.

On May 24, 2016, JCP&L filed a Stipulation of Settlement between JCP&L and Montville.

On May 25, 2016, JCP&L presented witnesses Kyle G. King, Dr. William H. Bailey, and Lawrence a. Hozempa. All parties waived cross-examination of the remaining JCP&L witnesses whose testimony, both direct and rebuttal was admitted into evidence. All parties waived cross-examination of Montville BOE's sole witness Karen A. Cortellino, whose testimony was admitted into evidence.

On May 26, 2016, JCP&L presented Scott M. Humphrys as a witness for cross-examination as requested by Rate Counsel in light of the settlement with Montville. After this, the evidentiary hearing was concluded.

**TESTIMONY**

**A. The Need for the Project**

Lawrence A. Hozempa

Lawrence A. Hozempa ("Hozempa") filed direct testimony on behalf of JCP&L in support of the Petition. The nature of his testimony was the electrical need that the Project will satisfy. See March 27, 2015, Direct Testimony of Lawrence A. Hozempa ("Hozempa Test").

Hozempa testified that JCP&L's service territory encompasses approximately 3,300 square miles, provides electricity to 1.1 million residential, commercial, and industrial customers, totaling 25% of the metered electricity customers in New Jersey. Hozempa Test., Page 5. He testified further that JCP&L's transmission system provides a mechanism for the delivery of bulk electric power to the "distribution circuits" and "sub-transmission circuits" within JCP&L's territory, and that this Bulk Electric System ("BES") is designed with three nominal voltages: 500 kV, 230 kV, and 115 kV. Id.

Hozempa testified that while the transmission line would constitute the majority of the Project, work would be required at both Montville and Whippany substations as well, as they would both require a new 230 kV breaker to be installed to accommodate the new transmission line. Id. at 7.

As a part of PJM's responsibility as a RTO, PJM conducts a series of ongoing analyses to identify the need for upgrades to the system within their control in order to preserve reliability. Id. at 8. These analyses are known as the PJM Regional Transmission Expansion Plan ("RTEP"). Id.

Part of the RTEP process is assessing compliance with NERC standards, which set certain standards that must be met, both during normal conditions, as well as,

conditions where one or more aspects of the BES are suffering an outage. Id. at 9. NERC has three categories of conditions that are used to assess reliability: NERC Category A, NERC Category B, and NERC Category C. Id.

NERC Category A is a standard of assessment that looks at whether or not, when the entirety of the system is operating under normal conditions, the transmission network can meet projected customer demands. Id. Essentially, NERC Category A looks at whether the BES can meet its needs when it is completely functional.

NERC Category B contingencies are events resulting in the loss of any single generating unit, transmission line, transformer, circuit breaker, capacitor, or single pole of a bi-polar transmission line. Id. at 9-10. It is required that, if such an event were to occur, the thermal load of the BES does not exceed a certain point. Id. at 10. It is also required that, in a NERC Category B Contingency, voltage levels within the system remain within a prescribed maximum variation and within an established minimum/maximum voltage limit. Id. A NERC Category B Contingency is also known as an N-1 contingency, where N is the total number of transmission components in the system. Id. Essentially, NERC Category B looks at whether the BES can meet its needs, and stay within established safety parameters, if one component of the network is not functional.

NERC Category C contingencies are events resulting in the loss of any double-circuit BES transmission line, bi-polar double-circuit line, faulted circuit breaker, bus section, or the combination of a single generating unit, transmission line, transformer, circuit breaker, or capacitor followed by the loss of another single generating unit, transmission line, transformer, circuit breaker, or capacitor. Id. It is required that, if such an event were to occur, the thermal load of the BES does not exceed a certain point. Id. It is also required that, in a NERC Category C Contingency, voltage levels within the system remain within a prescribed maximum variation and within an established minimum/maximum voltage limit. Id. A NERC Category C Contingency is also known as an N-1-1 contingency, where N is the total number of transmission components in

the system. Id. Essentially, NERC Category C looks at whether the BES can meet its needs, and stay within established safety parameters, if two components in the network are not functioning.

During PJM's 2012 RTEP process a reliability criteria violation of NERC Category C was identified. Id. at 11. The specific violation would occur if there was an outage of JCP&L's Montville-Roseland 230 kV line followed by the loss of either: (1) the Kittatinny-Newton 230 kV line with the 230-34.5 kV transformer and the 34.5 kV capacitor at Newton, or (2) the Newton-Montville 230 kV line. Id. Hozempa also testified that the Project would adequately address this violation. Id.

If the potential N-1-1 contingency were to occur, it would potentially affect 86,719 of JCP&L's customers. Id. at 14. Moreover, despite a forecast of reduced load levels in future years, the violations remain. Id. at 15.

JCP&L considered solving the NERC Category C Contingency by constructing a Montville-Whippany 115 kV line instead of the 230 kV line that constitutes the Project. Id. Ultimately, this alternative was not selected for several reasons: (1) the Montville substation does not have 115 kV facilities, and therefore a new 115 kV yard would need to be developed along with the installation of a 230/115 kV transformer at the Montville substation, and (2) the 115 kV facilities at Whippany substation are not designed to accommodate an additional 115 kV circuit, so the 115 kV yard would need to be expanded. Id. at 16. Hozempa testified that in light of these complications, the 115 kV alternative to the Project would be more complicated and expensive to build while simultaneously providing less network support than the 230 kV alternative that constitutes the Project. Id.

Hozempa concluded his testimony by reaffirming that the Project was necessary to avert the NERC Category C Contingencies, and by pointing out that JCP&L has experienced the type of outages that would constitute a NERC Category C



Contingency. Id. at 17. Specifically, an incident of this nature occurred on July 21, 2004. Id.

Under cross examination by counsel for the Montville BOE, Hozempa was questioned about the NERC Category C Contingency driving the Project. (2T:44:18-21)<sup>1</sup>. He testified that, in layman's terms, the NERC Category C Contingency would consist of two 230 kV lines going into Montville "going down," or failing to function, and further that he was not aware of such an event occurring within the past ten years. (2T:45:3-17). Hozempa also testified that a NERC Category C violation could have penalties as high as \$1,000,000 per day. (2T:46:1).

Hozempa testified further that JCP&L considered a potential 115 kV line between Montville and Whippany as an alternative, but ultimately decided against it due to cost, as well as the associated substation work that would be required at both the Montvale and the Whippany substations to accommodate a new 115 kV line. (2T:49:2-15). The possible 115 kV alternative would have satisfied the Category C contingency. (2T:50:18-24).

As of the date of the hearing, the costs associated with the Project had not increased. (2T:51:14-18).

#### Paul F. McGlynn

Paul F. McGlynn ("McGlynn") filed direct testimony on behalf of JCP&L in support of the Petition. The nature of his testimony was general background of the PJM transmission planning process and how the process identified the electrical demand necessitating the Project. See March 27, 2015, Direct Testimony of Paul F. McGlynn (Ex. JC-5). The purpose of McGlynn's testimony was to explain the electrical need that motivated the Project and to describe the process by which that need was

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<sup>1</sup> Herein "1T" shall refer to transcript dated May 23, 2016, "2T" shall refer to transcript dated May 25, 2016, and "3T" shall refer to transcript dated May 26, 2016.

identified and assessed. Id. at 4. McGlynn serves as the Chair of the PJM Transmission Expansion Advisory Committee ("TEAC"). Id. at 1.

PJM is an RTO regulated by FERC that is responsible for the planning, operation, and reliability of the electrical system under its control; a system which includes all or parts of: Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Id. PJM serves approximately 60 million people through its management of more than 65,000 miles of transmission lines, and either serves or supports approximately 20% of the U.S. economy. Id.

As part of its duties as an RTO, PJM manages a regional planning process within the area it controls. Id. at 3. This planning process is known as the RTEP. Id. The purpose of the RTEP is to identify specific areas of need, including: reliability, market efficiency, operational performance, public policy, and addressing congestion. Id. at 3-4.

Part of PJM's responsibilities as an RTO include preparing the RTEP every year in order to understand the transmission and electricity needs of those within the PJM region. Id. at 6. The RTEP plans approximately 15 years ahead, and PJM is authorized to direct TOs to implement upgrades to the transmission infrastructure under their control. Id. at 7.

PJM determines that there is a sufficient need for new transmission facilities when certain specific criteria of the RTEP are met. One of those criteria is "reliability". Id. at 12. The RTEP must conform to minimum reliability standards established by NERC. Id. As part of the RTEP conducted in 2012, PJM identified that the Project was necessary to meet these reliability standards. Id. at 13.

Historically, compliance with NERC reliability standards was voluntary, however, Federal legislation enacted to address the 2003 blackout established mandatory

compliance with NERC standards under the oversight of FERC. Id. at 14. FERC-enforced reliability standards began on June 18, 2007, and failure to comply with these standards may result in penalties as high as \$1,000,000 per violation per day. Id.

With regards to transmission planning, FERC-approved reliability standards which are the standards used to measure the need for new transmission lines. Id. These reliability standards require PJM to perform assessments and demonstrate compliance in both the near term of 1 to 5 years and the long term of six to ten years. Id. These standards also require PJM to develop a schedule for compliance when a violation or potential violation is discovered, and it was these standards that were used to determine the necessity for the Project. Id. at 14-15.

During the 2012 RTEP, PJM identified the violation of NERC reliability standards. Id. at 17. Additionally, PJM has completed two additional assessments of the need for the Project based on more recently updated forecasts of electrical need in both the 2013 and 2014 RTEP, and that the results of these additional assessments was consistent with the conclusions of the 2012 RTEP. Id. at 18.

## **B. Engineering and Construction of the Project**

Dave Kozy, Jr.

Dave Kozy Jr., General Manager for Substation Engineering with FirstEnergy Service Corporation ("FirstEnergy"),<sup>2</sup> filed direct testimony on behalf of JCP&L in support of the Petition. The nature of his testimony was to provide background on the design, engineering, construction, operation, and maintenance of the Project, as well as the issues associated with a potential underground installation of the transmission line. March 27, 2015 Testimony of Dave Kozy Jr. ("Ex. JC-3.").

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<sup>2</sup> FirstEnergy is a company that works with JCP&L regarding the implementation of transmission line planning.

Kozy testified that the Project consists of thirteen segments, beginning at JCP&L's existing Whippany Substation in East Hanover, New Jersey heading north, and ending at JCP&L's Montville Substation located in Montville Township, New Jersey. For most of the Project's length, the new 230 kV circuit will follow the path of an existing JCP&L 34.5 kV double circuit: the K-115 Montville-Whippany No. 2 circuit ("K-115"), and the O-93 Chapin Road – Montville – Whippany circuit ("O-93"). Kozy Test., Page 4.

Segment 1 of the project begins at the Whippany substation and heads north to Troy Road in Parsippany-Troy Hills Township for a distance of approximately 0.6 miles. Id. Segment 1 will be built within JCP&L's existing right of way ("ROW"), which is approximately 395 feet wide. Id. at 4-5. In Segment No. 1, JCP&L is proposing to remove the existing two-pole, double circuit wood structures within the JCP&L ROW that currently carry the K-115 and O-93 circuits and replace them with new steel monopoles which would carry the existing lines, as well as, the new line. Id. at 5. Both the new and existing lines would be "underbuilt" on the new steel monopoles, which would range from 130 to 150 feet high in Segment No. 1. Id.

Segment No. 2 runs from Troy Road to approximately 0.2 miles north of Troy Road and mostly within JCP&L's existing ROW that is approximately 340 to 365 feet wide. Id. An additional 25 feet of new ROW will be needed on the western side of the existing ROW where the ROW narrows north of Troy Road. Id. Like Segment No. 1, Segment No. 2 would similarly involve removing the existing structures carrying the K-115 and O-93 circuits and replacing them with new steel monopoles, ranging from 130 to 150 feet in height that would carry both the new and existing circuits after they were "underbuilt". Id. at 5-6.

Segment No. 3 runs from approximately 0.2 miles north of Troy Road to Interstate 80, a distance of approximately 2.2 miles that would fall mostly within JCP&L's existing ROW, which is approximately 155 feet wide. Id. at 6. There are several parcels within Segment No. 3 where the ROW would require expansion. Id. Segment No. 3 would also contain new steel monopoles, ranging from 110 to 150 feet

in height, that would be located on the east side of the existing ROW, adjacent to the steel towers currently carrying the K-115 and O-93 circuits. Id.

Segment No. 4 runs from Interstate 80 to State Route 46, a distance of approximately 0.4 miles, within JCP&L's existing ROW that is approximately 155 feet wide. Id. JCP&L will need to obtain a highway crossing permit for this segment. Id. This segment will contain new steel monopoles ranging from 165 to 185 feet in height, located on the east side of the existing ROW, adjacent to the current two-pole, wooden structures carrying the K-115 and O-93 lines. Id.

Segment No. 5 runs from State Route 46 to Vail Road/Stiles Lane in Montville Township, a distance of approximately 0.7 miles, and will require approximately 120 feet of new ROW. Id. at 7. This segment will contain new steel monopoles ranging from 110 to 150 feet in height that will be constructed along the center of the new ROW. Id.

Segment No. 6 runs from Vail Road/Stiles Lane to John Henry Drive, a distance of approximately 0.9 miles, and will be within JCP&L's existing ROW that is approximately 170 feet wide. Id. This segment will contain new steel monopoles ranging from 110 to 150 feet in height that will be constructed approximately 60 feet from the eastern edge of the ROW. Id.

Segment No. 7 runs from John Henry Drive to approximately 0.3 miles north of John Henry Drive, within JCP&L's existing ROW that is approximately 170 feet wide. Id. This segment will contain new steel monopoles ranging from 100 to 140 feet in height that will be constructed approximately 75 feet from the western edge of the ROW. Id.

Segment No. 8 runs from approximately 0.3 miles north of John Henry Drive to Changebridge Substation, a distance of approximately 0.4 miles, and will be within JCP&L's existing unused ROW that is approximately 100 feet wide. Id. at 7-8. This segment will contain new steel monopoles ranging from 110 to 150 feet in height that will be constructed along the center of the ROW. Id. at 8.

Segment No. 9 runs from the Changebridge Substation to approximately 0.1 miles north of Old Changebridge Road, a distance of approximately 0.2 miles, and will be within JCP&L's existing ROW that is approximately 100 feet wide. Id. In Segment No. 9, JCP&L is proposing to remove the existing two-pole, double circuit wood structures within the JCP&L ROW that currently carry the K-115 and O-93 circuits and replace them with new steel monopoles, ranging from 130 to 170 feet in height, which would carry the existing lines, as well as, the new line. Id.

Segment No. 10 runs from approximately 0.1 miles north of Old Changebridge road to south of Church Lane, a distance of approximately 0.4 miles, and within JCP&L's existing ROW that is approximately 170 feet wide. Id. This segment will contain new steel monopoles ranging from 110 to 150 feet in height that will be constructed approximately 70 feet from the east side of the existing ROW and adjacent to the current single pole structures carrying the K-115 and O-93 lines. Id. JCP&L's ROW in this area is located adjacent to the east side of the Public Service Electric & Gas 500/230 kV Susquehanna-Roseland monopoles. Id.

Segment No. 11 runs from south of Church Lane to north of Springbrook Road East, a distance of approximately 0.4 miles, and within JCP&L's existing ROW that is approximately 210 feet wide. Id. at 9. This segment will contain new steel monopoles, ranging from 110 to 150 feet in height, that will be located approximately 55 feet from the east side of the existing ROW and adjacent to the current two-pole, double circuit structures carrying the K-115 and O-93 lines. Id.

Segment No. 12 runs from north of Springbrook Road East to south of Schneider Lane, a distance of approximately 0.3 miles, and within JCP&L's existing ROW that varies from approximately 160 to 210 feet wide. Id. This segment will contain new steel monopoles, ranging from 110 to 150 feet high, that will be located approximately 55 feet from the east side of the existing ROW and adjacent to the current single pole, double circuit structures carrying the K-115 and O-93 lines. Id. at 9-10. Segment No. 12 runs

adjacent to two underground gas pipelines owned by Spectra Energy Corporation, and is also adjacent to the Public Service Electric & Gas 500/230 kV Susquehanna-Roseland double circuit steel monopoles. Id. at 9.

Segment No. 13 runs from south of Schneider Lane to the existing Montville Substation in Montville Township, New Jersey, a distance of approximately 0.2 miles, and within JCP&L's existing ROW that is approximately 170 feet wide. Id. at 10. This segment will contain new steel monopoles, ranging from 110 to 150 feet in height, that will be located approximately 70 feet from the east side of the existing ROW and adjacent to the current single pole, double circuit wood structures carrying the K-115 and O-93 lines. Id. Segment 13 will also be adjacent to a Public Service Electric & Gas ("PSE&G") easement. Id.

The Project will require construction on both the Whippany and Montville substations so that they may accommodate the new 230 kV transmission line. Id. The cost estimate of this work is approximately \$1,187,100 for the Whippany substation and \$1,132,600 for the Montville substation. Id. at 10-11.

Regarding JCP&L's decision to only rebuild certain portions of the K-115 and O-93 lines, Kozy testified that this was only necessary in certain segments of the Project where the existing ROW does not provide enough room for both the existing structures and the new structures that must be built to accommodate the new 230 kV line. Id. at 12. The new monopoles installed for the Project will support an additional 230 kV line in the future should that become necessary. Id.

The factors that determine the height of the monopoles include terrain, National Electric Safety Code ("NESC") standards, clearance among the multiple lines at each monopole, clearance between the lines and the ground, clearance between the lines and other utilities that might be present, and the need to cross roads, other structures, and bodies of water. Id. at 15. Kozy testified that JCP&L uses the most cost effective

methods possible while minimizing electric and magnetic fields and meeting all applicable safety standards. Id.

Regarding construction, the monopole erection requires large construction equipment, and that the Project in general will involve the clearing of some of the land involved as well as acquiring additional easements to store and transport construction equipment. Id. at 13, 20.

The Project's construction plan was designed to minimize environmental impact by: submitting a Soil Erosion and Sedimentation Control Plan to the New Jersey Department of Environmental Protection, using soil erosion and sedimentation control measures prior to making any geographical changes to land; avoiding, to the extent possible, construction of permanent access roads; and restoring temporary access roads to their prior conditions. Id. at 21. Areas disturbed by construction work will also be re-vegetated with drainage, fencing, and erosion control aspects of the ROW being restored to conditions as good as, or better than, they were prior to construction. Id. at 22.

All ROW clearing would comply with N.J.A.C. 14:5-9.6, as well as, JCP&L's internal standards regarding vegetation management with regards to the clearance between physical structures and vegetation. Id. at 21. These conditions will be maintained in accordance with NESC and Occupational Safety and Health Administration ("OSHA") regulations. Id. at 23.

Kozy also testified regarding JCP&L's assessment of placing the new 230 kV transmission line underground instead of above ground. Id. at 24. According to Kozy, JCP&L decided against placing the new 230 kV transmission line underground for several reasons: environmental impacts, restoration periods, cost, and capacity. Id. at 25.



Regarding the environmental impacts of an underground transmission line, Kozy testified that installation would require extensive excavation of land and installation of underground cables, concrete banks, and manholes. Id. This activity would negatively impact streams, wetlands, and other sensitive areas because of the heavy equipment required, including excavation equipment, concrete trucks, 80,000-pound manhole covers, and 50,000-pound spools of transmission wire. Id. Specifically, for an underground installation the entire length of the Project must be excavated which requires construction of additional access roads. Id. at 26. Moreover, in areas where the Project crosses certain geographic conditions such as wetlands, creeks, rivers, railroads, or highways, digging a trench is not feasible and thus a practice known as "horizontal drilling" would be required, which requires extensive equipment and poses further environmental risks. Id. In certain areas of the project, horizontal drilling would require approvals from the New Jersey Department of Environmental Protection that are difficult to obtain and would likely require a complete re-routing of those portions. Id. at 27.

An underground installation of the Project would also have significant effects regarding Electric and Magnetic Fields ("EMF"). Id. at 28. While the earth blocks electric fields, it does not block magnetic fields. Id. Installing the Project underground could therefore result in a much higher concentration of magnetic fields at ground level. Id. at 28-29.

Regarding the repairing of an underground installation, it would be problematic to fix an underground portion of the transmission line because it requires excavation and equipment to locate the issue, and repairs could take several weeks. Id. at 25. With an overhead transmission line, the repair would take days, or even hours. Id. A failed underground transmission wire could be out of service for over a month, which would then require alternate provisions to supply the necessary power to the region. Id.

The total cost of the Project as planned is approximately \$35,463,300. Id. Where the Project to be installed underground, Kozy estimated that cost to be approximately 4 to 10 times as expensive. Id.

Regarding capacity, underground cables transmit less power than overhead cables, thus, larger or multiple cables would be required to support an underground installation. Id. at 26. Moreover, underground transmission wires require protection via plastic encasement or placement in oil filled reservoirs placed underground. Id.

On May 23, 2016, Kozy adopted the Direct Testimony that was submitted with the Petition and was cross examined by counsel for the Montville Board of Education, and the Division of Rate Counsel.

Regarding Segment No. 10, Kozy stated that the Project would be approximately 175 feet closer to the Lazar Middle School ("Lazar") than the existing PSE&G Susquehanna-Roseland 230 kV transmission line. (1T:46:2-6). Trees that interfered with the transmission lines would be removed. (1T:49:11-25). Kozy was questioned about the noise generated from construction activity, and he testified that while construction necessarily generates some increase in noise, he would not describe the noise expected to be generated from the Project in Segment No. 10 as "noisy." (1T:51:20-25). Kozy also testified that the construction in Segment No. 10 would be far enough away from Lazar that it would not interfere with teaching. (1T:52:8-16).

Regarding the decision to install the new transmission line overhead as opposed to underground, Kozy testified that JCP&L would consider placing a transmission line underground in a situation where there is no viable overhead alternative, and that no viable alternative would exist in a situation where JCP&L could not find a ROW or where an existing ROW was surrounded by high buildings or other features making above ground construction impossible. (1T:53:7-19). JCP&L considered the underground option until they concluded that an above ground installation made more sense, at which point the underground option was abandoned. (1T:56:1-9). Moreover,

while no specific study was done regarding installing Segment No. 10 underground, an underground line was considered in general and estimated to cost 4 to 10 times as much as an above ground line. (1T:59:4-12).

With respect to the potential danger posed by electrically charged wires detaching or falling from the above ground installation, Kozy testified that while falling wires are obviously dangerous, there are safety measures that quickly de-energize a falling wire so they do not pose a threat for more than a moment in such instances. (1T:61:5-21).

Finally, JCP&L made no changes to the Project from the plans outlined in the Petition and did not have any plans to do so. (1T:69:9-19).

### C. Routing

#### Peter W. Sparhawk

Peter W. Sparhawk ("Sparhawk") filed Direct Testimony on behalf of JCP&L in support of the Petition. He is the Associate Vice President of Power and Energy for the Louis Berger Group, Inc. ("Louis Berger"). The nature of his testimony was to the siting and route selection of the Project. See, March 27, 2015 Testimony of Peter W. Sparhawk ("Ex. JC-6").

Sparhawk testified that a detailed analysis by an interdisciplinary routing team produced three preliminary alternative routes: Alternative Route A, Alternative Route B, and Alternative Route C. Id. at 10. There were also two alternative segments of Alternative Route A, identified as Route A2 and Route A3, that were developed to provide options to divert the Project away from a heavily developed area containing one or more overhead transmission lines and underground natural gas pipelines. Id. Initially, the routing team selected Alternative Route A as the preferred route because it was the shortest and most direct route into the Montville Substation and that it either

paralleled or rebuilt existing transmission lines for the entirety of the route. Id. Ultimately, after further consideration, Alternative Route A3 emerged as the preferred route for the Project.

Alternative Route A, the initial preferred route, was developed to parallel an existing PSE&G transmission line that feeds into the Montville Substation. Id. at 11. Certain portions of this route would have required JCP&L to build within PSE&G's existing ROW, which also contains a Texas Eastern gas line. Id. PSE&G informed JCP&L that they were not willing to allow the Project to be constructed within their ROW, and therefore Alternative Route A would require JCP&L to obtain a new ROW adjacent to PSE&G's ROW. Id. Ultimately, this would have required JCP&L to purchase between fourteen and twenty-four residential homes, and as a result this route was abandoned. Id. at 12.

Route A2 would have required JCP&L to acquire new ROW in order to construct certain segments of the Project. Id. Sparhawk also testified that Route A2 raised issues of reliability. Id.

The preliminary version of Route A3 was modified subsequent to discussions with PSE&G, a detailed engineering review, and information received from the public. Id. at 13. Initially, the preliminary Route A3 was going to consist of a rebuild of JCP&L's existing 34.5 kV transmission lines, K-115 and O-93, that would ultimately combine these existing lines with the new 230 kV line making up the Project. All three lines would run on the same structures. Id. However, additional analysis showed that JCP&L has sufficient ROW along Route A3 to parallel the existing lines with new monopole construction, leaving the existing K-115 and O-93 lines in place and constructing the new transmission lines parallel to them, and attached to new structures, to the extent possible Id. This has significant benefits over the preliminary plan, including: it would be challenging to schedule a power outage that would be necessary to take down and rebuild the existing K-115 and O-93 lines; rebuilding is significantly more expensive than paralleling; rebuilding would require taller transmission structures with shorter

transmission spans, resulting in more structures overall; and that rebuilding all of the lines onto one structure would create a greater risk of losing all the transmission lines if one of the structures were to fail. Id. at 13. Ultimately Route A3 is preferred because it is the shortest route of all those considered, it parallels or rebuilds existing JCP&L transmission lines for most the route, and it minimizes new ROW acquisition. Id. at 15. Route A3 also has significant access advantages because it is primarily located near existing transmission lines which minimizes new ROW acquisition, vegetation clearing, and land disturbance, thus reducing the overall Project cost and environmental impact. Id.

Regarding the environmental impact Route A3 would have the smallest environmental impact because of its proximity to existing transmission lines. Id. Since Route A3 parallels or rebuilds existing transmission lines, most of the work needed will be performed within existing ROW and therefore would require the least amount of forest clearing. Id. at 16. The forest clearing that would occur with the implementation of Route A3 is significantly less than what would occur with Routes B or Route C. Id. Additionally, Route A3 would minimize the Project's impact on residential, commercial, and industrial development. Id. at 23.

Regarding JCP&L's public outreach, it contacted local, county, and State officials about the Project. Id. at 24. Public hearings were also held on November 13, 2013, and November 14, 2014. Id. at 26. In addition, JCP&L met with Montville and Parsippany-Hills-Troy townships multiple times before and after the public hearings. Id. Based on the information received from public outreach, JCP&L made several modifications to potential routes. Id. Finally, after the selection of Route A3 as the route for the Project, JCP&L held an additional public hearing on November 10, 2014, where they presented Route A3 and solicited additional input, which was considered when finalizing the decision. Id. at 27.

Sparhawk testified that he and the team believe that the cumulative social, environmental, and financial impacts associated with route A3 will be less than all other

possible routes that were considered. Id. at 28-29. Route A3 is the shortest route, most of the route parallels or rebuilds existing transmission lines, and approximately 89% of Route A3 can be constructed either entirely or partially within JCP&L's existing ROW. Id. at 29. The total estimated cost of Route A3 is approximately \$35,500,000, while the total estimated costs of Routes B and C are approximately \$50,400,000 and \$78,300,000, respectively. Id. Finally, Route A3 significantly minimizes the potential environmental impacts of the Project compared with the other routes considered. Id.

Sparhawk testified that the Project's proposed route would result in the construction of structures that would be closer to the Lazar Middle School than the existing PSE&G Susquehanna-Roseland 230 kV transmission line. (1T:92:14-17). Moreover, at least some of the existing trees that currently serve as a buffer between the PSE&G transmission line and the Lazar Middle School would be subject to removal. (1T:92:18-25). Regarding the Project's aesthetic implications, the existing PSE&G transmission line, as well as, the line proposed by the Project, would be more visible after completion of the new line than they are now. (1T:96:9-14).

**D. EMF**

Kyle G. King

Kyle G. King ("King") filed Direct Testimony on behalf of JCP&L in support of the Petition. King is the President of K&R Consulting, an electric power engineering firm that he founded in 2004. His prior employment was as the Director of the Electric Power Research Institute High Voltage Research and Test Center in Lenox, Massachusetts. The nature of King's testimony was to provide analysis on the effects of electric fields, magnetic fields, audible noise, and radio noise associated with the Project. See March 27, 2015 Testimony of Kyle G. King ("Ex. JC-10").

With respect to magnetic fields, King testified that in 2014, the magnetic field along the edges of JCP&L's existing ROWs from the Whippany Substation to the

Montville Substation range from 1.6 milligauss ("mG") to 62.4 mG. Id. at 8. After completion of the Project, the expected magnetic field along the edges of JCP&L's ROWs from the Whippany Substation to the Montville Substation will range from 0.7 mG to 58.4 mG in 2018. Id. at 8-9. The maximum possible magnetic fields would be between 37.9 mG and 270.2 mG, a number which was calculated by using the maximum possible currents that the transmission lines of the Project could handle. Id. at 9. King also stated that the State of New Jersey has no legal limit regarding magnetic fields produced by transmission lines either inside or at the edge of a ROW. Id. at 10.

With respect to electric fields, the Project will produce a maximum electric field of 0.7 kilovolts per meter ("kV/m") along the edges of the ROWs, an increase from the 0.3 kV/m maximum along the ROWs currently produced by the existing transmission lines. Id. at 9-10. King also testified that the State of New Jersey has a guideline of 3 kV/m for electric fields at the edge of a transmission line ROW, a limit that both the current transmission lines and the upgrades envisioned by the Project would fall well within. Id. at 9-10.

With respect to the audible noise associated with the Project, in New Jersey there is a 50 dBa limit for airborne sound found at N.J.A.C. 7:29-1.2(a)(2)(i). Ex. JC-10, Page 10. King testified that the estimated noise levels generated by the Project after completion would be approximately 45.8 dBa, well within the limit required by the State. Id. at 11.

Dr. William H. Bailey

Dr. William H. Bailey ("Bailey") provided Direct Testimony on behalf of JCP&L in support of the Petition. The nature of Bailey's testimony was the expected levels of EMF associated with the existing transmission lines and the new transmission line that would constitute the Project, as well as, the current consensus on the health concerns

relating to EMF. See March 27, 2015 Testimony of William H. Bailey, Ph.D. ("Ex. JC-11").

Bailey testified regarding EMF exposure standards established by the International Committee on Non-Ionizing Radiation Protection ("ICNIRP"), as well as, the International Committee on Electromagnetic Safety ("ICES"), stating that ICNIRP and ICES have recommended limits on EMF. Id. at 9. ICNIRP and ICES recommend these limits to protect against the "acute established effects" of EMF, or the stimulation of nerves and muscles that occur at extremely high EMF exposure levels. Id. Bailey testified that these limits are difficult to measure directly, so both ICNIRP and ICES establish "screening levels," or exposure limits of EMF, that are 2-3 times below the amount of EMF exposure that would produce "acute established effects." Id. The ICNIRP screening value for EMF exposure is 2,000 mG and the ICES screening value at 9,040 mG and 5 kV/m. Id. To put this more simply, both ICNIRP and ICES established their projected safety limits of EMF exposure at a level which is 2-3 times lower than the level at which EMF exposure produces noticeable effects. Bailey stated that the electric field produced by the Project will be at or below the lowest ICNIRP and ICES guideline and that the magnetic field produced by the Project will be "far, far below" the lowest ICNIRP and ICES guidelines. Id. at 10.

With respect to the scientific community's consensus on the potential effects of EMF on public health, Bailey testified that the scientific consensus of the National Institutes of Environmental Health Sciences, the Health Council for the Netherlands, the National Radiological Protection Board of the United Kingdom, the International Agency for Research in Cancer, the World Health Organization, the Scientific Committee on Emerging and Newly Identified Health Risks in the European Union, the European Health Risk Assessment Network on Electromagnetic Fields, the Swedish Radiation Safety Authority, and the ICNIRP have all concluded that there is no scientific evidence sufficient to establish that EMF exposure is a cause of any adverse health effects. Id. at 10-12.



Dr. Karen Cortellino

Dr. Karen Cortellino ("Cortellino") submitted Direct Testimony on behalf of Montville BOE addressing concerns about the Project's impact on the Lazar Middle School, located in Segment NO. 10 of the Project. See December 3, 2015 Testimony of Dr. Karen Cortellino ("Cortellino Test."). Cortellino is the President of the Montville Township Board of Education.

Cortellino testified that Montville BOE has both safety and health concerns regarding the Project. Cortellino Test., Page 5. Regarding the safety concerns, the height and proximity of the new monopoles that would be placed near the Lazar Middle School would create a potential danger to students, faculty, and anyone else on the property. Id. Regarding the health concerns, the Montville BOE was concerned about the potential health effects on students and faculty of Lazar Middle School arising from exposure to certain levels of EMF that may be associated with the Project. Id. at 5-6. EMF was a particular concern because of the already existing PSE&G 500 kV circuit and the JCP&L 34.5 kV circuit already in place near Lazar Middle School. Id. at 6. Finally, the Montville BOE has concerns about an increase in noise that may affect the students and faculty of Lazar Middle School. Id. at 7.

Initial Briefs

A. JCP&L

JCP&L filed its initial post-hearing brief on June 17, 2016. See Initial Brief of Petitioner Jersey Central Power & Light Company ("JCP&L Brief"), June 17, 2016.

In its initial brief, JCP&L argues that it has unequivocally established that the Project is reasonably necessary for the service, convenience, or welfare of the public as required by N.J.S.A. 40:55D-19. JCP&L Brief, Page 4. Additionally, JCP&L contends that the "public" posited by N.J.S.A. 40:55D-19 is the entire body of its utility customers

and not smaller, more specific groups of residents may have objections to the Project. Id.

JCP&L also asserts that in establishing the route of the Project, it has followed N.J.A.C. 14:5-7.1(a), which states in pertinent part that JCP&L, in constructing a transmission line, must "make use of available railroad or other rights of way whenever practicable, feasible and with safety, subject to agreement with the owners."

Regarding the need for the Project, JCP&L contends that during the 2012 RTEP, PJM identified a planning criteria violation with respect to the transmission lines that supply the Montville substation. JCP&L Brief, Page 6. This violation would constitute a NERC Category C contingency violation that, were it to occur, it would result in JCP&L suffering the loss of all 230 kV sources feeding into the Montville Substation. Id. at 7. JCP&L suggests that such an event would affect approximately 86,719 customers. Id. JCP&L states that PJM has confirmed that the Project will address this potential violation, that PJM presented the Project at the April 27, 2012, TEAC meeting, and that subsequently TEAC and PJM approved the Project. Id. at 7-8.

JCP&L also contends that it considered electrical alternatives to the Project, but that the alternatives would have required substantive engineering upgrades to both the Montville and Whippany substations. Id. at 8. Moreover, the alternatives considered by JCP&L would not have provided the same level of network support as the Project. Id.

Regarding route selection, JCP&L contends that it considered multiple alternative routes which were studied and presented to the public during several open public meetings. Id. at 9. Following comprehensive study and public input, JCP&L chose Route A3, which it argues is the least expensive route considered. Id. at 11. Moreover, JCP&L avers that Route A3 will have the smallest environmental impact and will require the least amount of new ROW. Id.

Regarding EMF and noise issues, JCP&L argues that the Project will not result in any levels of EMF or audible noise in excess of limits established by the State of New Jersey. Id. at 17. Additionally, the consensus of the international scientific community is that there are no links between EMF and negative health effects on human beings. Id. JCP&L also claims that, with respect to Lazar Middle School, the Project will actually decrease the existing levels of EMF found near the school as a result of existing transmission lines. Id. at 18.

Regarding issues of safety and aesthetics, JCP&L contends that there was no factual, credible evidence provided that would support the claim that the Project would result in dangerous conditions for the students of Lazar Middle school. Id. at 20. Moreover, JCP&L states that the Project was designed and will be implemented according to NESC safety standards. Id.

#### **B. Wildlife Preserves**

Wildlife Preserves filed a Post-Hearing Letter Brief on June 16, 2016. See Wildlife Preserves Letter Brief ("Wildlife Brief"), June 16, 2016.

Wildlife Preserves contends that in order to satisfy the statutory requirements of N.J.S.A. 40:55D-19, JCP&L must establish not only that the Project is "reasonably necessary for the service, convenience, or welfare of the public," but also that the Project is in compliance with N.J.A.C. 14:5-7.1, and that the proposed route for the Project will have the smallest environmental impact of any available alternatives. Wildlife Brief, Page 2.

Wildlife posits that JCP&L has not met the required legal standards because the Project does not intend to use existing ROW through the Troy Meadows area. Id. at 3. Moreover, Wildlife contends that JCP&L could stay within existing ROW within the Troy Meadows area if it constructed a single steel monopole that would carry the new 230 kV line, as well as, the existing K-115 and O-93 lines. Id. at 4. Wildlife claims that JCP&L

offers no explanation as to why they are not constructing the Troy Meadows located segment of the Project in this fashion. Id.

**C. Montville Board of Education**

Montville BOE filed a post-hearing brief on June 17, 2016. See Post-Hearing brief on Behalf of Intervenor Montville Township Board of Education ("BOE Brief"), June 17, 2016. The BOE Brief makes numerous arguments against the approval of the Petition, all of which essentially charge JCP&L with failing to meet the statutory standard required in N.J.S.A. 40:55D-19. Montville BOE requests denial of the Project's approval, in the alternative, an Order directing JCP&L to provide "ongoing monitoring of the EMF levels at the Lazar Middle School." BOE Brief, Page 2.

Montville BOE contends that JCP&L should be denied permission to proceed with the Project as proposed because the placement of the monopoles in Segment No. 10 would explicitly contravene a previous BPU order regarding the construction of transmission lines in the same area. Id. at 21. Montville BOE claims that the Project's proposed route would result in monopole construction significantly closer to the Lazar Middle School than a past project proposed by PSE&G, which the BPU found to be too close to the school. Id. at 21. Positing that JCP&L and PSE&G are "in privity," Montville BOE contends that *res judicata* should preclude JCP&L from constructing monopoles in a location closer to the Lazar Middle School than PSE&G was prohibited from doing the same. Id. at 22.

Montville BOE then argues that JCP&L failed to adequately consider alternative sites and methods as required by N.J.S.A. 40:55D-19. Id. at 25. Specifically, that JCP&L did not adequately consider the 115 kV transmission line alternative despite the fact that a 115 kV line would have satisfied the NERC Category C contingency violation. Id. at 25-27. Additionally, JCP&L failed to adequately consider constructing the portion of the Project located near the Lazar Middle School underground, which would have addressed the Board's concerns about the Project. Id. at 28-31. It also argues that

JCP&L failed to adequately consider “under building” the portion of the Project located near the Lazar Middle School, which would eliminate the need to construct additional monopoles closer to the school than those already present. Id. at 31-35.

Montville BOE disputes that JCP&L has established a sufficient electrical need for the Project. Id. at 35. Specifically, a single potential NERC Category C contingency violation is not only insufficient with respect to necessitating the Project, but also that such an event is extremely unlikely and has not occurred in the past decade. Id. at 35-38.

Finally, Montville BOE claims that in planning the Project, JCP&L has not adequately considered the potential safety issues that Lazar Middle School might face in light of EMF levels and the possible health hazards of EMF exposure, the noise and aesthetics that would be created by the Project’s construction, and the potential danger of a falling wire or monopole. Id. at 39-47.

### **JCP&L Reply Brief**

On June 27, 2016, JCP&L filed a reply brief responding to the claims made in the post-hearing briefs filed by Wildlife and Montville BOE. See Reply Brief of Petitioner Jersey Central Power & Light Company (“JCP&L Reply”), June 27, 2016.

Regarding the claims made by Wildlife, JCP&L contends that Wildlife has either failed to comprehend or has mischaracterized the Project and the testimony submitted by JCP&L in support of it. JCP&L Reply, Page 1. Specifically, despite Wildlife’s claims, the Project does in fact propose the use of existing JCP&L ROW in the Troy Meadows area. Id. at 2. Only certain segments of the ROW within Troy Meadows will require the acquisition of additional ROW due to insufficient width, and this is a result of required NESC standards regarding ROW width. Id. at 2-3.

Additionally, JCP&L argues that N.J.S.A. 40:55D-19 simply does not contain any language that requires JCP&L to show that the proposed route for the Project will have the smallest environmental impact of any available alternatives. Id. at 3. Moreover, JCP&L points out that despite this standard not being supported by N.J.S.A. 40:55D-19, the proposed route for the Project nevertheless does have the lowest environmental impact of all the potential routes that JCP&L considered. Id. at 4.

Regarding the claims made by Montville BOE, JCP&L contends that the BOE Brief completely ignores the “overwhelming” evidence in the record that shows the Project fully satisfying the statutory requirements of N.J.S.A. 40:55D-19. JCP&L Reply, Page 9-10. Specifically, JCP&L argues that the prior BPU decision relied upon by Montville BOE is not binding upon the BPU or the OAL, that *res judicata* is completely inapplicable as there is no privity between JCP&L and PSE&G, and, notwithstanding, Montville BOE has mischaracterized the holding BPU applied to PSE&G in that prior case. Id. at 12-13.

Additionally, JCP&L argues that despite Montville BOE’s claims, the evaluation of alternatives assessed by JCP&L was robust and adequate and that the record contains no evidence to the contrary. Id. at 15-23. JCP&L reiterates the arguments made in its initial post-hearing brief that it has conclusively established the electrical need for the Project, that there are no EMF, safety, or aesthetic risks to the Lazar Middle School sufficient to deny the Petition, and that there is no evidence in the record that suggests otherwise. Id. at 23-31.

### **LEGAL ANALYSIS**

JCP&L filed the Petition pursuant to N.J.S.A. 40:55D-19, which provides that New Jersey’s Municipal Land Use Act, or any regulations or ordinances made pursuant to that act, shall not apply to a project proposed by a public utility if, upon petition to the BPU, the BPU finds that the project is “reasonably necessary for the service, convenience or welfare of the public.” Id.

The New Jersey Supreme Court addressed this issue in Petition of Monmouth Consolidated Water Company, 47 N.J. 251 (1996), where the Court held:

In enacting this section the Legislature recognized that local municipal authorities are ill-equipped to comprehend adequately the needs of the actual and potential users of the utility's services beyond as well as within their territorial limits. . . . The exemption also signifies an awareness that if the local authorities were supreme the Board of Public Utility Commissioners could not compel a utility to provide adequate service if the zoning ordinance conflicted with the need for expansion or extension of its facilities within the municipality. . . . The conclusion is inescapable that "public" in N.J.S.A. 40:55-50 means the public served by the utility and not the limited group whose interests are protected by a zoning ordinance.  
[Id. at 258]

**A. Wildlife Preserves**

Wildlife argues that JCP&L's proposed route for the Project is in violation of N.J.A.C. 14:5-7.1 which reads:

(a) Whenever an EDC constructs an overhead transmission line, it shall:

1. Make use of available railroad or other rights-of-way whenever practicable, feasible and with safety, subject to agreement with the owners . . .

[Id.]

Wildlife claims that the proposed route for the Project does not utilize existing ROW through the Troy Meadows area, and further that JCP&L has failed to provide any justification for this failure.

Specifically, JCP&L has proposed that the Project necessitates the expansion of certain segments of ROW within the Troy Meadows area; that JCP&L could avoid the need to expand its ROW in the Troy Meadows area by using a single steel monopole to

carry both the new 230 kV transmission line, as well as, the existing K-115 and O-93 lines instead of running the new line parallel to the existing lines; and that JCP&L has failed to provide evidence as to why a single monopole construction was not chosen. Wildlife has introduced no evidence into the record other than their Letter Brief.

Despite Wildlife's claims, the record makes clear that JCP&L is using its existing ROW through the Troy Meadows area to the extent possible. The relevant areas are located in Segment 2 and Segment 3 of the Project, where JCP&L's existing ROW is of a varying width. Certain portions of the Project within Troy Meadows will fall entirely within JCP&L's existing ROW, while other portions will both maximize the available ROW while also requiring the acquisition of additional ROW in order to accommodate the new transmission line and accompanying structures.

Additionally, as Kozy testified, the width of JCP&L's ROW must comply with certain requirements of the NESC which also underlies JCP&L's need to acquire additional ROW in certain areas of Troy Meadows.

Finally, Wildlife argues that JCP&L would address Wildlife's position if the Project's route within Troy Meadows were constructed as an underbuild, where both the new and existing transmission lines would all be attached to one monopole, as this would remove the need for additional ROW acquisition.

As the entirety of JCP&L's Direct Testimony makes clear, substantial thought, planning, and revision was put into adopting the Project's proposed route and the specifics therein. Moreover, despite the significant record established by JCP&L as to why the specifics of the Project were adopted, Wildlife did not support its brief with any substantive evidence to the contrary. There is nothing that Wildlife points to, other than its own assertion, that support its claim that an underbuild in the Troy Meadows area of the Project would be either structurally or financially sound, nor that an underbuild would not require additional ROW acquisition by JCP&L.



N.J.A.C. 14:5-7.1 requires JCP&L to construct the Project within existing ROW “whenever practicable, feasible, and with safety...,” which is precisely what they are doing. JCP&L is using existing ROW to the maximum extent possible, and where safety standards and the Project necessitate new ROW acquisition, they have established the necessity to do so.

**B. Montville BOE**

Montville BOE argues that JCP&L has failed to establish that the Project is “reasonably necessary for the service, convenience or welfare of the public,” and therefore has not met the statutory standard of N.J.S.A. 40:55D-19, necessitating the denial of the Petition.

Specifically, *res judicata* prevents the approval of JCP&L’s Petition; that JCP&L did not adequately consider alternative routes and options for the Project; that JCP&L has not established the electrical need for the Project; and that the Lazar Middle School will be subjected to potentially dangerous and aesthetically adverse results due to the Project.

Montville BOE has neither introduced nor relied on any evidence in the record in support of its position other than that introduced by JCP&L.

In support of its *res judicata* claim, Montville BOE relies on the prior BPU decision, 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 Transmission Line), BPU Docket No. EM09010035, April 21, 2010 (“Susquehanna-Roseland”).

In Susquehanna-Roseland, PSE&G petitioned the BPU to find that their proposed electrical project satisfied the statutory standards of N.J.S.A. 40:55D-19. Susquehanna-Roseland at 1. The specifics of that case are very similar to this one,

despite differences in size and scope. Montville BOE was a party in Susquehanna-Roseland and raised virtually identical claims to those raised here.

Montville BOE's argument is that since the BPU ordered PSE&G to study the implications of moving the monopoles associated with that project further away from Lazar Middle School, that Order is binding on JCP&L since both JCP&L and PSE&G are electrical utilities. Therefore, according to Montville BOE, through *res judicata* or collateral estoppel JCP&L should be denied the petition or alternatively ordered to move the monopoles in Segment 10 further away from Lazar Middle School.

Montville BOE is correct in that the BPU did order PSE&G to consider moving the proposed Susquehanna-Roseland transmission line further away from Lazar Middle School:

The Board further **ORDERS** that:

7) PSE&G provide a report to this Board within ninety (90) days of the date of this Board Order identifying a relocation or realignment of the proposed new towers that are located on or around the Lazar Middle School in Montville Township to maximize the distances of the towers and transmission lines from the school property. PSE&G should explore the option raised by Montville BOE, as well as any additional options. If PSE&G believes that relocation or realignment is not possible, they shall report to the Board, in detail, the reasons for that conclusion.  
[Id. at 78.]

However, this is where the similarities end. Montville BOE cites to Winters v. North Hudson Reg'l Fire and Rescue, 212 N.J. 67 (2012) which holds that collateral estoppel "bars relitigation of any issue which was determined in a prior action, generally between the same parties, involving a different cause of action." Id. at 89. Montville also cites to Oliveri v. Y.M.F. Carpet, Inc., 186 N.J. 511 (2006), which holds that a central element of collateral estoppel is that "the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding." Id. at 521.

Additionally, Montville BOE cites to Zoneraich v. Overlook Hosp., 121 N.J. Super. 83, (App. Div. 1986), which holds that collateral estoppel precludes parties from relitigating matters "which the part[ies] actually litigated . . . and which were directly in issue between the parties." Id. at 93-94.

The fact that PSE&G and JCP&L are both electrical utilities, practicing the same type of business in no way places two entities in privity for the purposes of collateral estoppel or *res judicata*. Susquehanna-Roseland was a decision by the BPU regarding PSE&G's petition to the BPU, and JCP&L and PSE&G are completely different entities. Thus, the litigation entered into by one cannot possibly bind the options of the other. Moreover, the facts and evidence in Susquehanna-Roseland were completely different than those in this case. The outcome of the BPU's decision in Susquehanna-Roseland is plainly not prohibitive of JCP&L's Project.

Montville BOE also argues that JCP&L did not properly evaluate alternative routes for the Project. It bears repeating that the only evidence in the record regarding the extent of effort that went into the Project is on behalf of JCP&L.

At the outset, Sparhawk's testimony as to the route selection process is clear:

The Route Development process for the Project was an inherently iterative process that consisted of an initial Corridor Screening Study followed by a comprehensive Route Selection Study.

The purpose of the Corridor Screening Study was to identify the most feasible transmission path(s) ("corridors") that could potentially be used to provide a new 230 kV source into the Montville Substation. Based on the results of the Corridor Screening Study, the most feasible corridors were retained for further analysis in the Route Selection Study.

The purpose of the Route Selection Study was to refine the most feasible corridors identified during the Corridor Screening Study by developing Potential routes. During the Route Selection Study, the Potential Routes were further

refined and assembled into Alternative Routes. The potential impacts associated with the Alternative Routes were evaluated, and, ultimately, a preferred route for the Project was identified.

[Ex. JC-6, Page 4.]

Sparhawk's Direct Testimony and accompanying exhibits alone consist of hundreds of pages of analysis and explanation regarding the various routes considered for the Project.

In addition, Montville BOE claims that JCP&L did not adequately consider alternative construction options for the Project. Specifically, it claims that JCP&L did not adequately consider a 115 kV alternative or a partial underground installation of the new 230 kV transmission line in the vicinity of Lazar Middle School.

Hozempa addressed JCP&L's consideration of a 115 kV alternative in detail. Hozempa testified explicitly that a 115 kV alternative to the Project was considered, but abandoned because neither the Montville nor the Whippany substations are currently compatible with a new 115 kV line and would require substantial renovation; that a 115 kV alternative would not provide the same amount of overall network support as the 230 kV option; and that the 115 kV alternative would cost more. Additionally, the 230 kV line would provide greater electrical supply possibilities and therefore reduce the need for additional projects in the future. Montville BOE faults JCP&L for ignoring the 115 kV alternative when it would have solved the NERC Category C violation, but any alternative considered by JCP&L would have had to solve the NERC Category C violation as that is the primary motivation behind the existence of the Project.

Regarding the possibility of a partially underground construction, JCP&L provided direct evidence that they considered, but ultimately eliminated such an option. Kozy stated in his Direct Testimony that placing the line underground was not feasible due to environmental impacts; restoration issues – a significant cost increase; lower

capacity; and the challenges of repairing an underground transmission line were there to be a service issue. See Ex. JC-3, Pages 23-27.

While Montville BOE also posited that an underground transmission line would ease its concerns regarding EMF levels near the Lazar Middle School, the only evidence introduced regarding this issue is the testimony of Kozy, who stated that an underground cable would ultimately be closer to the surface than the line would be as proposed in the Project, and cause *higher* levels of EMF in the vicinity of Lazar Middle School. Id. at 28-29.

Montville BOE's next argument is that JCP&L has not established the electrical need for the Project. Again, Montville BOE cites to no evidence in the record in support of this claim other than the Direct Testimony filed on behalf of JCP&L.

Both Hozempa and McGlynn thoroughly established the electrical need for the project, specifically the potential NERC Category C violation discovered during PJM's 2012 RTEP. The potential NERC violation, is a serious and significant federal regulatory violation that could result in the loss of electricity to approximately 86,719 JCP&L's customers, as well as fines of up to one million dollars per day were the violation to actually occur. PJM and JCP&L are legally obligated to test for potential NERC violations and remedy them when they are found. Montville BOE correctly points out that only one NERC Category C event has occurred in the past decade, and that PSE&G's Susquehanna-Roseland line was motivated by several NERC Category A, B, and C violations. While all of these points are true, they do not change the fact that even one NERC violation is a serious and significant issue that PJM and JCP&L are obligated to prevent against. I am persuaded that the testimony and evidence introduced by JCP&L establishes the electrical need for the Project.

Finally, Montville BOE argues that JCP&L failed to adequately investigate the possibility of dangerous levels of EMF; aesthetic impacts; and land use issues in the vicinity of the Lazar Middle School. There is no testimony or evidence in the record in

support of this argument other than the Direct Testimony of Cortellino who testified that she has "concerns" about the effects of EMF on Lazar Middle School. There is no substantive evidence in support of this argument.

King and Bailey filed Direct Testimony regarding EMF and the Project, testifying that virtually all major National and International health organizations who had studied the impact of EMF arrived at the same conclusion: that the levels of EMF that are under consideration in this project does not impact humans negatively. Moreover, King testified that the amount of EMF levels found in Segment 10 near Lazar Middle School would actually *decrease* as a result of the Project, as the EMF generated by the existing transmission lines and the new 230 kV transmission line proposed by the Project would to some degree cancel out. Regarding electric field levels specifically, King testified that the Project is well within the 3 kV/meter guideline established by the State of New Jersey for the entirety of the Project.

In sum, the Direct Testimony of both King and Bailey establishes a voluminous record regarding EMF. The record in this case supports the conclusion that EMF does not present a danger to humans and more importantly that with respect to the Lazar Middle School, the Project may actually reduce EMF levels at the surface.

### CONCLUSION

For the foregoing reasons, I **CONCLUDE** that JCP&L has established, through significant and thorough testimony and evidence that the Project is reasonable and is for the service, convenience, or welfare of the public pursuant to N.J.S.A. 40:55D-19. I am persuaded by the record JCP&L has established. It is voluminous, thorough and overwhelming supports the conclusion that the Project satisfies the applicable statutory requirements of N.J.S.A. 40:55D-19. Therefore, I **CONCLUDE** that the Petition should be **GRANTED**.

**ORDER**

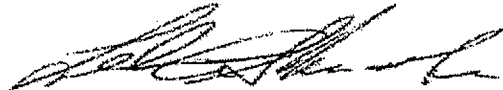
It is hereby **ORDERED** that the Petitioner of JCP&L seeking approval for its Montville-Whippany 230 kV Transmission Project is hereby **GRANTED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 10, 2017



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**LELAND S. McGEE, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

LSM/sej



**APPENDIX**

**WITNESSES:**

**For JCP&L**

Scott M. Humphreys  
David R. Kozy, Jr.  
Kirsty M. Cronin  
Peter W. Sparhawk  
Kyle G. King  
William H. Bailey  
Lawrence A. Hozempa

**For Other Parties**

None

**EXHIBITS** - Admitted into Evidence by Stipulation:

**For BPU Staff**

S-ENR-1 to 90 (with S-ENR-53 designated as confidential)

**For Township of Montville**

TOM-1 to 67 (with TOM-13 designated as confidential)  
TOM-DOC\_REQ-1 to 9  
TOM-SUPP-1 to 12  
SH-TOM-1 to 11 Rebuttal

For Montville Board of Education

BOE 1 to 36

BOE-DKJ-1 - 5 Rebuttal

KGK-1 & 2 Rebuttal

WHB-1 & 2 Rebuttal

For Jersey Central Power & Light Company

JC-TOM-1 to 14

JC-BOE-1 to 3

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Attorneys for Intervenor  
Montville Township Board of Education

IN THE MATTER OF THE PETITION  
OF JERSEY CENTRAL POWER &  
LIGHT COMPANY PURSUANT TO  
N.J.S.A. 40:55D-19 FOR A  
DETERMINATION REGARDING  
THE MONTVILLE-WHIPpany 230  
KV TRANSMISSION PROJECT

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO. PUC 8235-15

BOARD OF PUBLIC UTILITIES  
BPU DOCKET NO. EO15030383

**CERTIFICATION OF SERVICE**

**I, STEPHEN J. EDELSTEIN, ESQ.**, of full age, hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and a Member of the law firm of Schwartz Simon Edelstein & Celso LLC, attorneys for Intervenor, Montville Township Board of Education, in the above-captioned matter.

2. I hereby certify that on September 5, 2017, I caused an original and three (3) copies of the Exceptions On Behalf Of The Montville Board Of Education To The Initial Decision Of The Honorable Leland S. McGee, with Exhibit, and this Proof of Service to be forwarded via New Jersey Lawyers Service and Electronic Mail to the following:

Irene Kim Asbury, Esq.  
Secretary of the Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

3. I hereby certify that on September 5, 2017, I caused the aforementioned documents to be forwarded via New Jersey Lawyers Service and Electronic Mail to the following:

Honorable Leland S. McGee, A.L.J.  
Office of Administrative Law  
33 Washington Street  
Newark, New Jersey 07102  
Elisa.Reyes@oal.nj.gov

4. I further certify that on September 5, 2017, I caused copies of the aforementioned documents to be forwarded via Electronic Mail to the following: See Attached Service List.

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

SCHWARTZ SIMON  
EDELSTEIN & CELSO LLC  
Attorneys for Intervenor  
Montville Township Board of Education

By:  \_\_\_\_\_  
STEPHEN J. EDELSTEIN

Dated: September 5, 2017

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

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