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	SEP 1 2 2017	September 12, 2017	SEP 1 2 2017
Via Hand Delivery	By CMS	-	MAIL RECEIVED
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Irene K. Asbury, Secretary Board of Public Utilities 44 South Clinton Avenue, 3rd Fl., Ste. 314 P.O. Box 350 Trenton, NJ 08625

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

Dear Secretary Asbury:

Enclosed for filing on behalf of Jersey Central Power & Light Company ("JCP&L") is JCP&L's Reply to the Exceptions of the Montville Township Board of Education in the above-referenced matter. An original and ten copies are enclosed; kindly mark the extra copy as "filed" and return it in the enclosed return envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

Agy Einth

Gregory Eisenstark

Encl.

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cc: Hon. Leland S. McGee, ALJ Service list (via email only) + hard Coppy

Case Mano

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## SERVICE LIST

## 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, OFPUBLI Convenience or Welfare of the Public

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

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## STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES OFFICE OF ADMINISTRATIVE LAW

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MAIL DECENLO

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

# JERSEY CENTRAL POWER & LIGHT COMPANY'S REPLY TO THE EXCEPTIONS OF THE MONTVILLE TOWNSHIP BOARD OF EDUCATION

Gregory Eisenstark

On the Reply to Exceptions

# WINDELS MARX LANE & MITTENDORF, LLP

Attorneys for Petitioner, Jersey Central Power & Light Company

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#### **INTRODUCTION**

Through its Petition, testimony and briefs before the Office of Administrative Law ("OAL"), Jersey Central Power & Light Company ("JCP&L" or the "Company") demonstrated that it has clearly and unequivocally established that the Montville-Whippany 230 kV transmission project (the "Project") is reasonably necessary for the service, convenience or welfare of the public, under the statutory standard of *N.J.S.A.* 40:55D-19. JCP&L's testimony is comprehensive, robust, and was not unrebutted by any party. The only other party to introduce testimony in the record is the Montville Township Board of Education ("Montville BOE" or "BOE"). However, as JCP&L established in its OAL briefs, the BOE's sole piece of testimony is comprised of nothing more than vague, non-expert, and unproven "concerns" about the Project. *See JCP&L Initial Brief*, at pp. 17-21.

Administrative Law Judge ("ALJ") Leland S. McGee agreed that JCP&L's Petition satisfied the legal requirements for approval under *N.J.S.A.* 40:55D-19 and Board of Public Utilities' ("Board" or "BPU") precedent. Accordingly, ALJ McGee's Initial Decision appropriately recommended that the Board approve the Petition. In issuing his Initial Decision, ALJ McGee considered and properly rejected the Montville BOE's arguments.

In its Exceptions, the BOE does little more than rehash the same arguments it raised in its briefs before the OAL. These arguments had no merit when the BOE first raised them, and ALJ McGee properly rejected them. In this Reply to Exceptions, JCP&L responds to and refutes each of the issues that the BOE raises in its Exceptions to the Initial Decision.

The Montville BOE's Exceptions are notable in that they completely ignore the extensive, overwhelming evidence in the record that establishes that the Project fully satisfies the statutory standard for approval, and instead resorts to gross mischaracterizations of JCP&L's

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testimony and other evidence in the record. The BOE filed the testimony of a single witness, Dr. Karen A. Cortellino, the former BOE president. Dr. Cortellino is not an expert in any field relevant to this matter, and her testimony contains nothing more that vague, unsupported assertions of areas of concern. Moreover, JCP&L's rebuttal case completely addressed and refuted every element of the Montville BOE's testimony. *See* Exhibits JC-3 Rebuttal, JC-10 Rebuttal, and JC-11 Rebuttal. Faced with no evidentiary case of its own to support its allegations or its recommendations, the Montville BOE's Exceptions resort, as did its brief at the OAL, to gross mischaracterizations of JCP&L's testimony and evidence.

The Montville BOE's actions in this case also raise issues of fundamental fairness and due process. The BOE presented no concrete recommendations via testimony or other record evidence in this case; therefore, JCP&L did not have the opportunity in its rebuttal case to respond to any specific BOE proposals. Only after the evidentiary hearings were over, through arguments of counsel in its post-hearing briefs (and now again on Exceptions), did the Montville BOE make any proposals or recommendations. While JCP&L refuted the BOE's proposals in its reply brief before the OAL, and will do so again in its Reply to Exceptions, the Board should not countenance the BOE's inappropriate tactics. Accordingly, as more fully-explained below, the Board must reject the Montville BOE's recommendations in this case.

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#### Reply to the BOE's Exception Number 1

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## I. THE BOE HAS MISCHARACTERIZED THE BPU'S DECISION IN THE SUSQUEHANNA-ROSELAND CASE; MOREOVER, THAT DECISION IS NOT BINDING ON THE BPU OR JCP&L UNDER ANY THEORY OF LAW.

In its "Exception Number 1", the BOE argues that ALJ McGee was required to apply the Board's decision in PSE&G's *Susquehanna-Roseland* case<sup>1</sup> to the instant matter, but failed to do so. In essence, the BOE alleges that: (1) in *Susquehanna-Roseland*, the BPU ordered PSE&G to move the "towers" (actually monopoles) farther away from the Lazar Middle School property as a condition of approval; (2) the BPU's ruling with respect to the Susquehanna-Roseland project is binding on JCP&L in this case; and (3) the Board should order JCP&L to move the Project farther away from the Lazar Middle School. *See, e.g.,* BOE Exceptions at pp. 2-6. However, as ALJ McGee properly concluded in rejecting the BOE's arguments, the BOE is wrong on all three counts: (1) the BPU only directed PSE&G to evaluate whether the Susquehanna-Roseland line could be moved farther away from the school and to report back to the BPU; (2) the BPU's decision in the PSE&G case has no *res judicata*, collateral estoppel or other binding effect in the instant case; and (3) there is no reason for the Board to direct JCP&L to move the 230 kV line farther from the Lazar Middle School.

The paragraph in the Susquehanna-Roseland order that the BOE relies upon states:

\* \* \*

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 the Montville BOE, as well as any additional options. If PSE&G believes that relocation or

The Board further ORDERS that:

<sup>&</sup>lt;sup>1</sup> I/M/O The Petition Of Public Service Electric And Gas Company For A Determination Pursuant To The Provisions Of N.J.S.A. 40:55d-19 (Susquehanna – Roseland Transmission Line), BPU Docket No. EM09010035 (Order dated April 21, 2010) (hereinafter, "Susquehanna-Roseland").

realignment is not possible, they shall report to the Board, in detail, the reasons for that conclusion;

#### [Susquehanna-Roseland order, at p. 78].

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Thus, it is clear that the BPU requirement was only that PSE&G evaluate whether it was possible to relocate the Susquehanna-Roseland lines near the school. As the Montville BOE is well-aware, PSE&G never actually relocated or realigned the transmission lines in the vicinity of the Lazar Middle School. Instead, PSE&G and the Montville BOE entered into a settlement agreement under which PSE&G paid a sum of money to the BOE, and the BOE withdrew its opposition to the Susquehanna-Roseland project. Accordingly, PSE&G never relocated its 500kV/230kV transmission lines near the Lazar Middle School.

The BOE's argument that principles of *res judicata* or collateral estoppel make the BPU's decision in *Susquehanna-Roseland* binding on JCP&L in this case is utterly without merit. Even under the case law and principles that the BOE cites in its own Exceptions, its arguments clearly must fail. As the BOE admitted in its brief before the OAL, collateral estoppel only "bars relitigation of any issue which was determined in a prior action, generally <u>between</u> the same parties, involving a different cause of action." *See Montville BOE Initial Brief*, at p. 22, citing *Winters v. North Hudson Reg'l Fire and Rescue*, 212 N.J. 67, 89 (2012)(emphasis added). Moreover, as the BOE acknowledges in its Exceptions, it is a long-settled principle of law 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." *Oliveri v. Y.M.F. Carpet, Inc.*, 186 N.J. 511, 521 (2006). Finally, collateral estoppel only precludes a party "from relitigating matters or facts which the party actually litigated . . . and which were directly in issue between the parties." *Zoneraich v. Overlook Hosp.*, 212 N.J. Super. 83, 93-94 (App. Div.

1986) (emphasis added). JCP&L was clearly not a party to the *Susquehanna-Roseland* case, did not litigate any issue in that case, and therefore is not subject to collateral estoppel here.

Perhaps in recognition that there is no case law that supports its claim that collateral estoppel applies to make the decision in *Susquehanna-Roseland* binding upon the Board or JCP&L in the instant case, the BOE makes a feeble argument that JCP&L's is "in privity" with PSE&G. *BOE's Exceptions*, at pp. 5-6. This is the same argument the BOE made below, and which ALJ McGee properly rejected in the Initial Decision (*see* Initial Decision, at pp. 33-35). This argument does not pass muster. JCP&L and PSE&G are unrelated, unaffiliated corporations with distinct service territories. There is absolutely no legal basis (and the BOE has cited to none) to support an argument that two entities that are in the same general line of business are in "privity."

In addition, the Board itself has explained that res judicata and collateral estoppel are never binding on an administrative agency. See *I/M/O* the Deferred Balances Audit of Public Service Electric and Gas Company, Phase II ("MTC"), BPU Docket Nos. EXO2060363 & EAO2060366 (Order dated 9-30-09 at p. 5). In that Order the Board explained: "In other words, an administrative agency can apply the doctrine of res judicata to preclude a party from relitigating issues. The same is true of collateral estoppel. However, these doctrines do not bar the agency from rehearing and reconsidering issues. On the contrary, 'administrative agencies have inherent power, comparable to that possessed by the courts ..., to rehear and reconsider' citing to Cohen v. Borough of Fair Lawn, 85 N.J. Super. 234, 237 (App. Div. 1964), citing Central Home Trust Co. v. Gough, 5 N.J. Super. 295, 301 (App. Div. 1949). Furthermore, administrative agencies 'have the inherent authority to reopen, modify, or rehear even final orders.' In re Kallen, 92 N.J. 14, 24 (1983)." Similarly, the law of this state is clear that the decisions of the

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Board are not binding on future Boards, which are free to modify prior decisions. See N.J.S.A. 48:2-40; Deptford Tp. v. Woodbury Terrace Sewerage Corp. 54 N.J. 418 (1969); Trap Rock Industries v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975).

In sum, the BOE has misstated the substance of the Board's holding with respect to the Susquehanna-Roseland project and the Lazar Middle School. Furthermore, the Board's *Susquehanna-Roseland* Order has no *res judicata* effect on JCP&L or the Board in the instant proceeding. Accordingly, the Board should reject the BOE's Exception Number 1.

#### Reply to the BOE's Exception Number 2

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## II. JCP&L'S EVAULATION OF ALTERNATIVE ROUTES AND ELECTRICAL OPTIONS WAS ROBUST AND FULLY-SATISFIED THE APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS; NO PARTY, INCLUDING THE BOE, INTRODUCED ANY EVIDENCE TO THE CONTRARY.

The Montville BOE also attempts to argue that JCP&L did not sufficiently evaluate alternative "sites or methods." *BOE Exceptions*, at pp. 6-16. As ALJ McGee concluded in his Initial Decision, this contention is meritless, considering that: (1) JCP&L introduced voluminous, unrebutted testimony concerning its comprehensive route selection study process and consideration of an electrical alternative; and (2) neither the BOE nor any party introduced <u>any</u> testimony on these issues.

In regard to alternative routes for the Project, JCP&L witness Peter W. Sparhawk filed comprehensive testimony and a detailed report on the route selection process. (Exhibit JC-6 -- Direct Testimony of Peter W. Sparhawk). Mr. Sparhawk summarized this comprehensive route selection study process:

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.

[JC-6 at p. 4, lines 4-17]

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Neither the BOE nor any other party introduced any testimony or relevant evidence that in any way disputes or contradicts the Company's route selection study. Accordingly, the BOE's unsubstantiated arguments to the contrary must be rejected.

The BOE also argues that JCP&L did not "adequately consider a 115 kV line alternative." *BOE Exceptions*, at pp. 7-9. Once again, neither the BOE nor any other party submitted any evidence on this issue in the record of the case. For this reason alone, the Board should reject the BOE's attempts to foster this proposal, which it raised for the first time in its post-hearing brief at the OAL. Nonetheless, the record is clear that JCP&L fully-considered a 115 kV transmission line as an alternative to the 230 kV line and properly chose the better alternative.

JCP&L witness Lawrence A. Hozempa explained the basis for the Company's consideration of and decision not to construct a 115 kV line between its Montville and Whippany Substations. (Exhibit JC-4, at pp. 15-16). Contrary to the BOE's allegations, JCP&L properly chose not to use a 115 kV line for several important reasons. First, the Montville Substation does not have any 115 kV facilities. Therefore: (1) a new 115 kV yard would need to be developed; and (2) a 230/115 kV transformer would need to be installed at Montville Substation.

In addition, the 115 kV facilities at JCP&L's Whippany Substation are not presently designed for an additional 115 kV circuit, so the 115 kV yard would need to be expanded there as well. In addition to being slightly more complicated and costly to construct, the 115 kV alternative would not provide the same level of network support as the 230 kV alternative. Accordingly, the 230 kV Montville-Whippany Transmission Project was judged to be a superior electrical alternative.<sup>2</sup> *Id.* 

The BOE, having filed no testimony in support of the 115 kV alternative, instead resorts to using selective quotations from Mr. Hozempa's cross-examination to bolster its non-existent argument. For example, the BOE claims there are "clear advantages of the 115 kV alternative" (*BOE Exceptions*, at p. 7), yet provides no citation to any record evidence in support of its statement.

The BOE also faults the Company for not preparing a detailed cost estimate of a 115 kV alternative. *Id.* at p. 8. However, as Mr. Hozempa explained, there was no need for the Company to do so, because it was apparent that such an alternative would require extensive upgrades to the Company's existing infrastructure (which is not configured for 115 kV transmission circuits in this area), and be a less robust solution to the NERC criteria violation than a new 230 kV transmission line. *See* Exhibit JC-4, at pp. 15-16. There is no requirement that a utility prepare a detailed cost estimate for each and every alternative it may have considered during the process of evaluating the need for a new transmission facilities. *See, e.g., Application of Hackensack Water Co.*, 41 N.J. Super. 408, 426-427 (1956)(holding that in siting applications before the BPU, a utility is not obligated to set up a lot of alternative "straw men" and then knock them down).

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 $<sup>^2</sup>$  Mr. Hozempa also identified additional advantages of the 230 kV line versus the 115 kV alternative in Exhibit TOM-14.

The BOE also argues that because the 115 kV alternative could have addressed the NERC Category C violation, it should have been pursued. *Id.*, at p. 8. However, that argument must fail for several reasons. First, any electrical alternative that JCP&L may have evaluated would, by definition, have had to address the NERC violation or it would not have been a viable alternative. The BOE's argument uses circular logic – it faults JCP&L for evaluating a viable alternative. Second, despite the machinations in its argument of counsel, the BOE has cited to no evidence in the record that rebuts JCP&L conclusion that the 230 kV option was the preferable alternative for the reasons Mr. Hozempa testified to (*i.e.*, lower cost, compatible with existing substation equipment, and more robust network support).

The BOE also argues that JCP&L did not adequately consider partial underground construction in the vicinity of the Lazar Middle School. *BOE Exceptions*, at pp. 9-12. Once again, it is important to emphasize that neither the BOE, nor any other party, introduced testimony or other evidence proposing underground construction in any segment of the Project. Consequently, the Board should reject, as ALJ McGee did below, the BOE's arguments in this regard, which it proposed for the first time via post-hearing arguments of counsel.

Nonetheless, JCP&L clearly established why underground construction for the Project, including the segment nearest the Lazar Middle School, is neither required nor beneficial. JCP&L witness Dave Kozy, Jr. provided testimony outlining the problems with underground construction of high-voltage transmission lines:

# Q. Please explain why the Company did not choose to place the 230 kV line underground?

A. JCP&L chose not to place the 230 kV line underground for the following reasons:

1. Environmental Impacts. Underground cables, buried concrete duct banks and manholes would require extensive excavation when compared to

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overhead construction. The extensive excavation would negatively impact streams, wetlands, and other sensitive areas especially due to moving heavy large excavation equipment, concrete trucks, tractor-trailers with 80,000 pound manholes and 50,000 pound cable reels in the terrain associated with the ROW.

2. Restoration Period. Should an underground transmission line experience a problem, it will take longer to repair the underground transmission line compared to an overhead transmission line. This is due to specialized equipment being required to determine the location of a fault for an underground transmission line and the excavation that is necessary to reach the fault. A repair may take weeks, whereas that same repair for an overhead transmission line may take only hours or days. A failed cable can easily be out of service for a month or longer. Therefore, alternate provisions for power transfer must be made until the cable can be repaired.

3. Cost. As I discussed above, the total cost of the transmission line associated with the Project is approximately 35,463,300. If the Company was to construct this line underground the cost would be approximately 4 - 10 times as much.

4. Less capacity. Underground cables of the same size transmit less power than overhead lines of the same size. Therefore, larger or multiple cables will be required for an underground transmission line to transfer the same capacity as overhead transmission line. In order to protect the underground cables, those cables are placed in plastic encasement or oil filled reservoirs. Overhead transmission lines do not require the same type of protection.

# Q. Generally, what types of environmental impacts are related to underground transmission lines?

- A. Underground transmission construction generally has greater environmental impact than overhead transmission construction for several reasons:
  - The entire route must be excavated or installed by trenchless means;
  - Significant access roads would need to be constructed adjacent to the trenched area to support heavy equipment, such as large excavation equipment, concrete trucks, tractor-trailers with 80,000 pound manholes and 50,000 pound cable reels;
  - It is generally not practical to cross wetlands, creeks, rivers, railroads, or highways with open trenching. Horizontal directional drilling may be required. Horizontal drilling requires an extensive amount of equipment and requires using "drilling mud[]" that has the possibility of forcing its way to the surface in undesired locations.
  - If the wetlands have crossings of 3,000 feet or more, alternate routes may be required unless approval is granted by the New Jersey Department of Environmental Protection ("NJDEP") to open trench in

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the wetlands. It is generally more difficult to obtain permits for open trenches through wetlands as opposed to installing overhead structures and using temporary access roads;

[Exhibit JC-3, p. 23, l. 1 – p. 27, l. 5, fn. omitted].

Each of these reasons for not utilizing underground construction clearly, on their face, applies to Segment 10 of the Project, the area closest to the Lazar Middle School.

The BOE's meager attempts to "poke holes" at Mr. Kozy's testimony through selective quotes and other statements that have no evidentiary support should be given short-shrift. For example, the BOE argues that Mr. Kozy "conceded" that "a partially underground solution ... adjacent to the Lazar Middle School on Segment 10, could have been utilized." However, Mr. Kozy's actual testimony on that issue during cross-examination is as follows:

Q. Could a partially underground alternative at Segment 10 of the project be constructed?

A. [Mr. Kozy] As I stated, a lot of things are possible. But when you look at it it's not prudent to build that section underground.

[T:56:10-15 (5-23-16)].

Therefore, contrary to the BOE's argument, Mr. Kozy did not "concede" anything and instead testified that it would not be prudent to use underground construction in Segment 10.

Similarly misguided is the BOE's claim, at p. 11 of its Exceptions, that the environmental issues associated with underground construction are not present near the Lazar Middle School property. This statement is not supported by any citation to record evidence and for good reason – it is blatantly false. In fact, JCP&L witness Kirsty M. Cronin testified during cross-examination by the BOE's counsel that wetlands do exist in Segment 10 of the Project in the vicinity of the Lazar Middle School:

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Q. Are you aware whether there are already wetlands or other notable environmental features specific to the Lazar Middle School property or the portion of the proposed route running adjacent to the Lazar Middle School?

A. [Ms. Cronin] It appears from aerial photography there are streams.

Q. And do you know where those streams are located?

A. It looks like it's to the south of the property. And DEP mapped wetlands are within the right-of-way, in the vicinity.

[T:81:1-12 (5-23-16)].

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In addition, Exhibit DRK-14i to Mr. Kozy's testimony (Exhibit JC-3) contains an aerial photograph of a portion of Segment 10, including the Lazar Middle School. In the existing JCP&L right-of-way to the west of the school property, a stream or river is clearly visible. Accordingly, it is clear that the environmental issues associated with underground construction Mr. Kozy testified about are present in Segment 10 of the Project, and the BOE's Exceptions are simply misguided and inaccurate.

Finally, the BOE argues that underground construction should be used in Segment 10 because it would "block the electric field associated with the transmission line." *BOE Exceptions*, at p. 12. What the BOE fails to acknowledge, however, is that underground construction does <u>not</u> mitigate the *magnetic* field, and, that using underground construction in the vicinity of the Lazar Middle School would actually mitigate the magnetic field <u>reduction</u> that would occur from JCP&L's proposed overhead, parallel construction. As Mr. Kozy testified:

# Q. Would construction of the proposed transmission line underground eliminate electric and magnetic fields ("EMF")?

A. At the Project's public meetings, certain residents and property owners have voiced concerns over the EMF levels for this Project. Although the earth blocks the electric field from underground transmission lines, the earth does not block magnetic fields. At 1 meter above ground the magnetic field could be higher with underground construction than with the proposed overhead transmission line, but the magnetic field level would diminish quickly with distance from the underground line. However, an underground line might not be constructed on a ROW but be placed underneath or alongside public streets, which would increase the opportunity for the public to encounter higher magnetic fields. Moreover, modeling of the magnetic field from the existing and the proposed overhead line indicates that the construction of the Project will decrease the current levels of both electric and magnetic field levels near the Lazar Middle School. Please refer to the Testimony of Kyle G. King, Exhibit JC-10, for additional details. This anticipated reduction in EMF with the proposed Project would not occur if the new line was constructed underground under the existing ROW or public streets.

[Exhibit JC-3, p. 28, l. 16 - p. 29, l. 9, emphasis added].

Therefore, it is clear that the BOE's arguments concerning underground construction resulting in reduced levels of EMF near the Lazar School are simply inaccurate and offer no support for the use of underground construction.

In addition, the BOE argues that JCP&L did not adequately consider using underbuild construction<sup>3</sup> in Segment 10 of the Project. *BOE Exceptions*, at pp. 12-16. Once again, this is another issue that the BOE raised for the first time in its post-hearing brief, without having filed any testimony on the issue at all. Here too, the Board should reject this proposal for this reason alone.

Nonetheless, the record is clear that JCP&L has adequately justified its decision to use underbuild construction in only certain Project segments. As Mr. Kozy testified:

# Q. Please explain why the Company is only proposing to rebuild certain portions of the K-115 and O-93, 34.5 kV double circuit instead of rebuilding the whole circuit?

A. The only portions of the 34.5 kV subtransmission circuits that are proposed to be rebuilt are the portions where the new 230 kV line will need to occupy the same approximate centerline due to right-of-way limitations. In other words, in the segments where is the existing ROW is

<sup>&</sup>lt;sup>3</sup> In "underbuild" construction, existing lower-voltage circuits are moved to the new monopoles that will be installed for the 230 kV line. The lower-voltage lines are nearly always installed below the higher voltage facilities, hence the term "underbuild."

not wide enough for separate 34.5 kV and 230 kV pole lines, JCP&L plans to place the 34.5 kV circuits on the same poles as the new 230 kV circuit, in an underbuild configuration. *See, e.g.*, Exhibit DRK-5.

[Exhibit JC-3, p. 11, l. 19 – p. 12, l. 5]

Similarly, in Exhibits TOM-1 and TOM-2, JCP&L explained the factors that go into the design and construction considerations regarding underbuilding versus parallel construction, including engineering requirements, compliance with applicable codes and regulations, real property issues, and cost efficiency.

The BOE argues that using underbuild construction in Segment 10 will increase the distance of the 230 kV line from the Lazar Middle School and result in a lesser impact on the tree buffer in the area. *BOE Exceptions*, at p. 14. While using underbuild construction would likely result in a slightly greater distance between the Project's centerline and the school<sup>4</sup>, the BOE has not demonstrated that there is any benefit from such an increase in distance. For example, as JCP&L has established, the calculated EMF level at the edge of the ROW in Segment 10 near the Lazar Middle School will be lower after construction (using the Company's proposed parallel construction) than the current level. (Exhibit JC-10, KGK-2, Table 2 on page 24, and Figure 10 on page 34 of the report entitled "Electrical Effects from the Montville - Whippany 230 kV Project").

The BOE has identified no evidence in support of its supposition that using underbuild construction in Segment 10 will result in removal of fewer trees. *BOE Exceptions*, at p. 15. The BOE acknowledges that JCP&L's witnesses did not testify that this would be the case. *Id.* Although the BOE attempts to make this point using a comparison of Exhibits DRK 10 and DRK 9, such a comparison is of no value. These exhibits merely show cross-sections of what the

<sup>&</sup>lt;sup>4</sup> The exact location of the structures within the ROW in an underbuild configuration will only be determined upon final engineering for the Project.

transmission structures will look like, and have no bearing on vegetation management issues. Whether parallel or underbuild construction is used in Segment 10, the Project will still be constructed within JCP&L's existing ROW, and the ROW will need to be cleared of incompatible vegetation.

Finally, the BOE references the fact that, as part of a Stipulation of Settlement between JCP&L and Montville Township ("Stipulation"), JCP&L agreed to construct Segments 9 and 11 using an underbuild configuration. *BOE Exceptions*, at p. 13. This statement is accurate, but offers no support for the BOE's contention that JCP&L did not adequately consider underbuild construction for Segment 10. In any settlement, there is "give and take" between the settling parties, and the fact that JCP&L agreed to use underbuild construction in certain segments as part of a settlement with Montville Township offers no support for the BOE's allegation that the Company did not adequately consider using underbuild construction in the segment near the Lazar Middle School. As established in the evidentiary record and as discussed herein, the Company did in fact thoroughly evaluate the use of underbuild versus parallel construction in each segment of the Project.

In sum, JCP&L has provided voluminous, comprehensive and complete evidence demonstrating that it appropriately considered both alternatives locations and electrical options as part of the overall demonstration that the Project is reasonably necessary for the service, convenience or welfare of the public. The Montville BOE has submitted no relevant, substantive testimony or other evidence. Accordingly, the Board should reject the arguments of the BOE's counsel on Exceptions, and affirm the Initial Decision.

#### Reply to the BOE's Exception Number 3

## III. JCP&L HAS CONCLUSIVELY ESTABLISHED THE ELECTRICAL NEED FOR THE PROJECT; THE MONTVILLE BOE HAS OFFERED NO TESTIMONY OR OTHER EVIDENCE ON THIS ISSUE AND ITS LEGAL ARGUMENTS ON EXCEPTIONS ARE WITHOUT MERIT.

Starting at page 16 of its Exceptions, the Montville BOE argues that JCP&L has not established the electric need for the Project. Here too, the BOE did not file any testimony on this issue and its arguments of counsel should be summarily rejected. Moreover, JCP&L's testimony, supplied by Mr. Hozempa (Exhibit JC-4) and Paul F. McGlynn of PJM (Exhibit JC-5) conclusively establishes the electric need for the Project. No party rebutted Mr. Hozempa's or Mr. McGlynn's conclusions.

The main point of the BOE's argument on this issue<sup>5</sup> is its allegation that NERC Category C violations<sup>6</sup> are in some way "less substantial" than Category A or B violations. However, that contention has no basis in fact or the governing standards. The undisputed facts of this case are: (1) NERC is the North American Electric Reliability Corporation, which develops and enforces reliability standards for the bulk power system in the United States, Canada and portions of Mexico. NERC is the electric reliability organization ("ERO") for North America, subject to oversight by the Federal Energy Regulatory Commission ("FERC"); (2) PJM, as a FERC-approved Regional Transmission Organization ("RTO"), is responsible for ensuring the reliability of the electric transmission system under its functional control and coordinating the movement of wholesale electricity in all or parts of 13 states, including New

<sup>&</sup>lt;sup>5</sup> The BOE also rehashes its contention that JCP&L should have pursued a 115 kV alternative in this section of its Exceptions. JCP&L has already addressed this argument *supra* with respect to the BOE's Exception Number 2.

<sup>&</sup>lt;sup>6</sup> After the close of the record in this matter, NERC has reconfigured its reliability standards. Under the revised standards, the Category C violation as issue here would fall under NERC Category P6 or P7. *See* NERC Standard TPL-001-4 at www.nerc.com.

Jersey. PJM is responsible for assuring compliance with NERC planning and operating standards for the bulk electric system (i.e., above 100 kV) within its control area. NERC reliability standards require that the bulk electric system be designed to operate under approved thermal and voltage criteria during anticipated peak loading conditions and in consideration of credible outages of elements on the bulk electric system. (JC-5, at pp. 4-6); (3) In 2012 as part of its RTEP process, PJM identified a planning criteria violation in regard to the transmission lines supplying the Montville Substation. More specifically, during the 2012 RTEP process, PJM identified reliability criteria violations of NERC Category C contingencies for the N-1-1 outage of the Montville-Roseland (E2205) 230 kV transmission line followed by the loss of either the Kittatinny-Newton (T2298) 230 kV transmission line with the 230-34.5 kV transformer and the 34.5 kV capacitor at Newton or the Newton-Montville (N2214) 230 kV transmission line. JCP&L confirmed this contingency may result in more than 400 MW of load loss (equal to approximately 86,719 customers served by the affected substations), which would also violate the transmission owner Planning Criteria; (JC-4, at p. 12-14) and (JC-5, at pp. 16-17); and (4) PJM presented the Project at the April 27, 2012 Transmission Expansion Advisory Committee ("TEAC") meeting. (JC-4, Exh. LAH-2). The TEAC approved the Project on June 14, 2012 and the PJM Board of Managers approved it as part of the 2012 PJM Baseline Reliability Assessment issued January 4, 2013. PJM has subsequently re-affirmed the need for the Project (JC-5, at p. 18).

Contrary to the BOE's insinuations that NERC Category C violations are not serious or subject to penalties, it is clear that all violations of NERC planning criteria, including Category C, are serious and enforceable. As Mr. McGlynn testified, NERC's standards are mandatory and enforced by FERC. (Exhibit JC-5, at p. 14). Moreover, the NERC standards also "require that,

when PJM's simulations identify an inability of the system to respond as required, PJM must develop a schedule for implementation and in-service dates for plans to achieve required system performance throughout the planning horizon, taking into account the lead times necessary to implement those plans." *Id.* In addition, as Mr. Hozempa testified, the failure to comply with NERC standards can lead to penalties: "The FERC-approved NERC reliability standards are mandatory. Failure to comply with the standards can result in serious penalties." (Exhibit JC-4, at p. 7, l. 14-16).

In light of the overwhelming evidence in the record establishing the need for the Project, all the BOE can do is argue that the number of NERC violations in the instant case is lower than the number identified in the *Susquehanna-Roseland* case. *BOE Exceptions*, at pp. 18-19. However, that fact is irrelevant. Establishing that a transmission project is reasonably necessary does not require a "competition" with other projects to see which one is "more necessary." Rather, all that is required is that the "proposed use must be reasonably, not absolutely or indispensably, necessary for the service, convenience and welfare of the public." *Susquehanna-Roseland Order*, at p. 48. JCP&L's unrebutted testimony in this case has clearly satisfied this standard, and the Board should reject the BOE's unsupported machinations to the contrary, as ALJ McGee did in his Initial Decision.

#### **Reply to the BOE's Exception Number 4**

#### IV. JCP&L HAS CONCLUSIVELY ESTABLISHED THAT THERE WILL BE NO DETRIMENTAL IMPACTS FROM EMF, OR SAFETY ISSUES, AESTHETIC IMPACTS, OR LAND USE ISSUES IN THE VICINITY OF THE LAZAR MIDDLE SCHOOL.

As with the other sections of its Exceptions, the Montville BOE uses selective citation, unsupported allegations, and similar, non-evidential tactics to support its arguments regarding

electric and magnetic fields ("EMF"), alleged safety issues, alleged aesthetic impacts and land use issues in the vicinity of the Lazar Middle School. *BOE Exceptions*, at pp. 20-28.

In regard to EMF, the BOE attempts to argue that JCP&L did not take adequate field measurements of EMF levels near the Lazar Middle School. *Id.* at p. 20. This statement is not only misleading, but ultimately, irrelevant.<sup>7</sup> In his Direct Testimony and Report (JC-10), JCP&L witness Kyle G. King explained that it is the <u>calculation</u> of expected EMF levels along the Project route on a "before" and "after" scenario that is most relevant. Mr. King calculated such "before" and "after" EMF levels at every segment of the Project, including Segment 10, which is nearest the school. As depicted in Mr. King's report (Exhibit KGK-2 to JC-10) at p. 24, Table 2, the 2014 calculated magnetic field level on the eastern edge<sup>8</sup> of the ROW in Segment 10 is 5.1 mG. The calculated 2018 level in Segment 10 is 4.1 mG – in other words, the construction of the Project will <u>lower</u> the magnetic field level (due to partial cancellation of the magnetic fields from the existing electric lines in the area).

As shown in Table 2 on page 24, and Figure 10 on page 34 of my report, "Electrical Effects from the Montville - Whippany 230 kV Project", <u>the post</u> <u>Project calculated magnetic field level will decrease from the existing level</u> <u>along the edge of the ROW near the Lazar Middle School</u>. All calculated parameters include the effects of the PSE&G Susquehanna-Roseland 500 kV and Montvile-Roseland 230 kV tranmission lines on the adjacent ROW.

[JC-10 Rebuttal, at p. 3, l. 12 – p. 4, l. 8, emphasis added].

See also T20:22-25(5-24-16) (wherein Mr. King testified that "The Lazar School is on the

eastern side, so there actually would be a decrease on that side of the property.").

<sup>&</sup>lt;sup>7</sup> The BOE's argument that JCP&L failed to "obtain measurements of EMF levels at Segment 10" based on alternatives to the Project is similarly misguided. *BOE Exceptions*, at p. 20. First, "measurements of EMF levels" under alternatives is physically impossible. Second, a utility is not under any obligation to model EMF levels under every possible alternative to the proposed Project, particularly those that an intervenor may propose for the first time in its post-hearing brief. Here, JCP&L has fully-demonstrated that its proposed Project will comply with all applicable EMF guidelines and standards.

<sup>&</sup>lt;sup>8</sup> It is undisputed that the Lazar Middle School is located to the eastern side of the Project's ROW.

The actual field measurements reported by Mr. King are provided simply to give the Board an indication of the existing EMF levels today. Nonetheless, in response to the BOE's questioning as to why Mr. King did not take a field measurement on Segment 10, Mr. King explained that he took one on Segment 11 and, due to the similar configurations and close proximity, the field readings on Segments 10 and 11 would be virtually identical:

A. \* \* \* And the electric and magnetic field parameters that I measured are dependent of the line configuration and loadings. And the adjacent segments have a similar existing configuration to that. So the measurements that I performed at 11 are actually the same as 10.

Q. They're the exact same?

A. Given the same -- because the transmission lines run parallel to the existing distribution lines. And at the time of the measurements were carrying the current that they were carrying, the measurements would be the same.

[T14:16 – 15:4 (5-24-16)].

Similarly misleading is the BOE's arguments that there is cause for concern about electric field levels near the vicinity of the Lazar Middle School. *BOE Exceptions*, at p. 21. As demonstrated in Mr. King's Direct Testimony and Report, the Project will meet the New Jersey Guideline of 3 kV/meter at the edge of the ROW in all Project segments. Moreover, electric field levels before and after Project will be at or below 0.1 kV/m at the Lazar School ROW Edge. (Exhibit JC-10, KGK-2 (Report) p. 21, Table 1).

The BOE also argues that the maximum calculated magnetic field levels will exceed thresholds established by certain other states. *BOE Exceptions*, at p. 22. However, what the BOE fails to acknowledge is that the higher maximum magnetic field levels are on the western side of the ROW (*i.e.*, the side furthest away from the Lazar School), and are caused largely by the existing PSE&G 500 kV circuit. Moreover, the maximum levels are based on the conductor

thermal ratings and the lines could never, in reality, be operated at such levels. As Mr. King

explained during the May 24, 2016 evidentiary hearing:

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Q. I see. And am I correct that the upper limit for Segment 10 on the western side is 256.5 milligauss?

A. [Mr. King] Correct. And that's caused by the 500kV circuit. There's actually -because at higher voltages you have to have a certain number of wires in each bundle or each phase. And the number of wires that you have in their spacing is determined by the electrical stress of the conductor. If you don't have sufficient number of wires and spacing, it will breakdown the air electrically and you could have little spark discharges that cause noise. So the 500kV circuit actually has to have much more wire in the air than you need in order to transmit a certain amount of current. So if you calculate the thermal limit of those wires, they could never actually reach that limit. It's not possible to take that much power in this section of New Jersey and cause it to run on that circuit.

Q. So you're saying that it would never -- at Segment 10 the levels would never reach 256.5 milligauss?

A. Correct. It's a physical limit of the wires. But the transmission system couldn't operate that way.

[T23:11 - 24:12(5-24-16)].

Mr. King's oral testimony is consistent with his Report, where he stated "[i]t would not be physically possible for all circuits on these ROWs to carry their maximum current at the same time" (Exhibit JC-10, KGK-2, p. 23). Finally, the BPU has approved other transmission projects with existing conductor thermal limit magnetic field levels above 200 mG. *See I/M/O PSE&G North Central Reliability Project (NCRP)*, BPU Docket No. EO1105023 (Order Dated 6/18/12).

Finally, the BOE argues that, if it approves the Project, the Board should "require JCP&L to conduct a survey of field readings upon the Project's completion . . . ." BOE Exceptions, at p.
23. JCP&L has no objection to this requirement, and notes that such a provision is standard in the Board's recent Orders approving electric transmission projects under N.J.S.A. 40:55D-19.

In regard to any potential health concerns related to EMF, the BOE, having introduced absolutely no evidence on the issue, again resorts to mischaracterizations of JCP&L's testimony. For example, the BOE claims that JCP&L witness Dr. Bailey "confirmed the Board's worst fears when he testified that it is possible that EMF exposure can have detrimental effects on health." *BOE Exceptions*, at p. 24. However, what Dr. Bailey really said during cross-examination is as follows:

At very high levels everything in our environment could have some potential adverse effect. So electric and magnetic fields are no different. In sufficiently high levels they may stimulate nerves and produce other similar affects [sic] due to neurostimulation. In setting guidelines we determine what is the likely threshold for the onset of such adverse effects and then we set maximum permissible exposures, orders of magnitude to below that level so as to prevent any untoward adverse effects.

[T36:20 – 37:5 (5-24-16)].

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Moreover, in his pre-filed testimony, Dr. Bailey explained that while the International Commission on Non-Ionizing Radiation Protection (ICNIRP) and the International Committee on Electromagnetic Safety (ICES) had recommended Basic Restrictions on EMF exposures to the general public to avoid stimulation of nerves and muscles (Exhibit JC-11, p. 9, 1. 1-23), the exposures to EMF from the Project are far below the lowest of these guideline limits (Exhibit JC-11, p. 10, 1. 4-6).

The BOE's Exceptions (at p. 24) makes the *non-sequitur* argument that "JCP&L's consideration of health concerns associated with increased exposure to electric and magnetic fields is incomplete at best" because "... 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" (which was adopted in 1981). However, the BOE simply ignores the fact that Dr. Bailey summarized in his pre-filed testimony

guidelines for public exposure to EMF prepared by ICNIRP and ICES in 2010 and 2002, respectively, following just such a scientific process (Exhibit JC-11, at p. 9, l. 1-23). (The ICNIRP guidance levels are 2,000 mG for magnetic fields and 4.2 kV/m for electric fields; the ICES guidance levels are 9,040 mG for magnetic fields and 5 kV/m for electric fields.) The EMF levels at the edges of the ROW after construction of the Project calculated by Mr. King (Exhibit KGK-2, Tables 1, 2, and 3) are well below these guidance levels (Exhibit JC-11, p. 9, l. 5-17).

The BOE's Exceptions further allege that "JCP&L has not taken <u>any</u> 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" (emphasis in original) (*BOE Exceptions*, at p. 24). Once again, the BOE statement is contrary to the voluminous record evidence, namely, that, as Dr. Bailey explained in his testimony, exposure to EMF at the levels associated with the proposed Project would not have any detrimental health effects (Exhibit JC-11, p. 13, l. 6-11). As discussed above, Mr. King has demonstrated that the proposed Project complies with international guidelines for public exposure to EMF that are protective of public health. Furthermore, in his direct testimony, Dr. Bailey summarized the conclusions of the WHO:

Subsequent to its most comprehensive in-depth review of the scientific literature on potential health effects related to EMF, the WHO [World Health Organization] stated "Based on a recent in-depth review of the scientific literature, [we conclude] that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic fields" (WHO, 2014).

[Exhibit JC-11, at p. 12, l. 7-11].

In sum, the Montville BOE introduced no testimony, expert or otherwise, on EMF levels or possible health impacts. The only witness on health issues, Dr. Bailey, testified that

The weight of the scientific evidence from research studies does not support the conclusion that electric fields or magnetic fields are harmful at the levels to which

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people are exposed under transmission lines, in homes, or near machines and electrical appliances. EMF can cause transient effects at extremely high levels, but not at the levels found under transmission lines of this voltage or even near home appliances.

[Exhibit JC-11, at p. 13, l. 6-11].

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Accordingly, the Board should reject the Montville BOE's arguments on EMF issues, because they are not supported by any evidence in the record and are contrary to the comprehensive, unrefuted testimony of Mr. King and Dr. Bailey. Therefore, the Board should affirm ALJ McGee's Initial Decision in regard to EMF-related issues.

The BOE next argues that the Project will impact its ability to expand the Lazar School, result in aesthetic impacts near the school, and result in safety concerns. *BOE Exceptions*, at pp. 25-27. Again, JCP&L refuted each of these contentions below, but will do so again in response to the BOE's Exceptions.

The BOE's allegation that the Project will impact the school district's ability to expand the Lazar Middle School simply ignores JCP&L current, existing easement in that area. As JCP&L witness Dave Kozy, Jr. explained in his rebuttal testimony:

JCP&L has a valid easement across the school property. Any school expansion will not be permitted to violate the existing easement with or without the proposed transmission line. JCP&L would not object to any school expansion that was outside the existing easement areas that did not adversely impact its existing rights.

[JC-3 Rebuttal at p. 8, lines 12-16].

There is similarly no substance to the BOE's allegations concerning aesthetic concerns

near the Lazar Middle School, specifically with respect to the height of the monopoles. As Mr.

Kozy explained in his rebuttal testimony:

As proposed, the 230kV transmission structures will be approximately 110'-150' in height. The proposed transmission line will not exceed the height of the existing 500/230kV PSEG poles located within the same transmission corridor.

The proposed 230kV structures are planned to be approximately 35'-85' shorter than the existing 500/230kV PSEG poles.

[Id. at p. 9, lines 3-7].

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Thus, the new JCP&L monopoles will be significantly shorter than PSE&G's existing monopoles in the exact same transmission corridor.

The BOE's allegations about aesthetic or safety impacts concerning vegetation removal are similarly unavailing. The BOE argues that "... the Project's clearance of the tree buffer between the Lazar Middle School and transmission lists will not only intrude on the aesthetics of the area, but also increase the potential impact of the electric field at the school" (*BOE Exceptions*, at p. 26). However, the BOE has overlooked JCP&L witness Kyle King's testimony on this very issue. As Mr. King explained under cross-examination on May 24, 2016:

- Q. And if trees are removed in conjunction with the project, would the electric field levels be higher than those calculated in Table 1 because the buffer would be removed?
- A. [Mr. King] No. These calculations do not take into account any buffering of that material. So any conductive vegetation, building, structures along the edge of the right-of-way would further reduce these levels.

[T17:10-18 (5-24-16)].

Thus, not only is the BOE's claim belied by Mr. King's testimony, but that testimony also indicates that buffering by buildings, trees or other material may reduce the electric field levels below those set forth in his Report.

The BOE's contentions regarding safety and construction impacts are also misguided.

As JCP&L witness Mr. Kozy testified:

Q. Please respond to Dr. Cortellino's concerns about the potential for safety issues relating to pole collapse or downed wires (page 5, lines 13-20).

A. JCP&L is required to design transmission lines to meet or exceed criteria set forth by the NESC<sup>9</sup>. The NESC is a safety manual that specifies minimum required clearances. It also specifies the minimum required design loads (wind, ice, etc.) and safety factors that are to be applied to the transmission facilities. In addition to these design requirements, JCP&L inspects the transmission lines on a regular basis.

[JC-3 Rebuttal, at p. 8, 1. 9-16]

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Mr. Kozy similarly rebutted the BOE's concerns about safety during construction, explaining that "Any construction access is temporary. The existing lines are currently maintained, and the transmission facilities in the corridor will continue to be maintained in a similar manner if the new line is constructed." *Id.* at l. 19-21.

The BOE's Exceptions also mischaracterize Mr. Kozy's testimony concerning downed wires. *See BOE Exceptions*, at p. 28. For example, the BOE writes that "... downed wires may remain energized for a period of time." *Id.* However, what Mr. Kozy actually testified regarding this topic was as follows:

- Q. And what happens when a transmission line is subject to downed wires, electrically speaking, so to speak?
- A. When a transmission line falls, it is generally protected by [fault protection] at the substation ends. So it will see a [fault], and the transmission line will be de-energized through the substation equipment.
- Q. So when the wires initially fall, there's the possibility that they will remain energized?
- A. <u>For a momentary time</u> in order for the equipment to act at either end of the line.

[T:61:9-21 (5-23-16), emphasis added].

Similarly misguided (and misleading) are the BOE's references to Project being located in proximity to a baseball field near the Lazar Middle School. *BOE Exceptions*, at pp. 27-28. As the BOE is well-aware, the referenced baseball field has not been used in years (and the BOE

<sup>&</sup>lt;sup>9</sup> "NESC" is the acronym for the National Electrical Safety Code.

received a substantial sum of money from PSE&G to relocate its athletic fields as part of the resolution of the Susquehanna-Roseland matter). Furthermore, the referenced "backstop" for the ball field is actually located inside JCP&L's easement in the transmission corridor.

In sum, the Company will construct and operate the Project in compliance with all applicable safety requirements; any aesthetic concerns are belied by the extensive, existing electric transmission facilities in the ROW adjacent to the school property; and expansion of the school property is already limited by the existing JCP&L and PSE&G ROWs adjacent to the school property. Consequently, it is clear that JCP&L's record evidence completely addressed and refuted the Montville BOE's vague and undocumented allegations regarding safety, aesthetic and land use issues near the Lazar Middle School.

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#### **CONCLUSION**

For all the foregoing reasons, along with those set forth in its briefs filed with the OAL, JCP&L respectfully requests that the Board issue a Final Decision that: (1) concludes that the Project is reasonably necessary for the service, convenience or welfare of the public and fully satisfies the statutory criteria of *N.J.S.A.* 40:55D-19; (2) adopts the Initial Decision, including the Stipulation, as part of the Final Decision; and (3) authorizes JCP&L to site and construct the Project as described in the record of this matter, including the Stipulation.

Respectfully submitted,

By:

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Dated: September 12, 2017

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