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September 15, 2017

SEP 15 2017

**Via Hand Delivery and Email**

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

**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,

We represent the participant, Wildlife Preserves, Inc., in the referenced matter. Enclosed for filing please find an original and three (3) copies of the Exceptions on Behalf of Wildlife Preserves to the Initial Decision of the Hon. Leland S. McGee with Exhibits 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.

Sincerely,

**MEYNER AND LANDIS LLP**

Albert I. Telsey

Enclosures

cc: The Hon. Leland S. McGee (via hand delivery)  
Attached Service List (via email)

*Case Mgmt  
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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  
BPU DOCKET NO. ER15030383  
OAL DOCKET NO. PUC 08235-2015N

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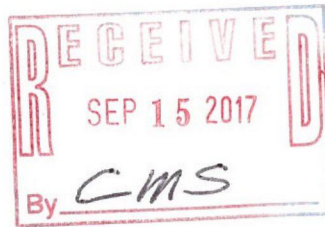
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OFFICE OF ADMINISTRATIVE LAW  
OAL Docket No. PUC-08235-15  
BPU Docket No. EO-15030383

IN THE MATTER OF THE PETITION OF  
JERSEY CENTRAL POWER & LIGHT  
COMPANY PURSUANT TO N.J.S.A.  
40:55D-19 FOR A DETERMINATION OF  
THE MONTVILLE-WHIPpany 230kV  
TRANSMISSION PROJECT IS  
REASONABLY NECESSARY FOR THE  
SERVICE, OR WELFARE OF THE  
PUBLIC

SEP 15 2017

**CERTIFICATION OF SERVICE**

I, Albert I. Telsey, Esq., of full age, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey, and a Partner of the law firm of Meyner and Landis LLP, attorneys for Intervenor Wildlife Preserves, Inc., in the above-captioned matter.
2. I hereby certify that on September 15, 2017, I caused an original and three (3) copies of the Exceptions on Behalf of Wildlife Preserves, Inc. to the Initial Decision of The Honorable Leland S. McGee, with Exhibit, and this Certification of Service to be hand delivered by courier service to:

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

3. I hereby certify that on September 15, 2017, I caused the aforementioned documents to be hand delivered to:

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

4. I further certify that on September 15, 2017, I caused copies of the aforementioned documents to be forwarded via electronic mail to the attached service list.

5. 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.

Dated: September 15, 2017

**MEYNER AND LANDIS LLP**  
*Attorneys for Wildlife Preserves, Inc.*

By:

  
\_\_\_\_\_  
Albert I. Telsey, Esq.

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. ER15030383  
OAL DOCKET NO. PUC 08235-2015N

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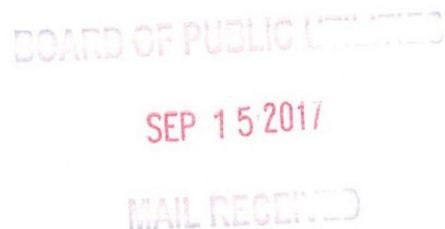
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IN THE MATTER OF THE PETITION  
OF JERSEY CENTRAL POWER &  
LIGHT CO. PURSUANT TO  
N.J.S.A. 40:55D-19 FOR A  
DETERMINATION THAT THE  
MONTVILLE- WHIPPANY 230 kV  
TRANSMISSION PROJECT IS  
REASONABLY NECESSARY FOR  
THE SERVICE, CONVENIENCE, OR  
WELFARE OF THE PUBLIC

BEFORE THE NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
  
AGENCY DOCKET No.: EO 15030383  
OAL DOCKET No. PUC 8235-15



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**EXCEPTIONS ON BEHALF OF WILDLIFE PRESERVES, INC.  
TO THE INITIAL DECISION OF THE HON. LELAND S. MCGEE**

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On the Brief: Albert I Telsey, Esq.

## PRELIMINARY STATEMENT

Petitioner Jersey Central Power & Light (“JCP&L”) filed a Verified Petition seeking approval of its 7 mile long Montville-Whippany 230 kV Transmission Project (“Project”). Approximately 2 miles of that line runs through the Wildlife Preserves nature preserve known as Troy Meadows located in Parsippany-Troy Hills. Troy Meadows is a United States Park Service “National Natural Landmark,” a US Fish and Wildlife and US Environmental Protection Agency “Priority Wetland,” a US Army Corp. of Engineers “Passaic River Preservation of Natural Flood Storage Area,” a New Jersey Department of Environmental Protection (“NJDEP”) wetland of “Exceptional Resource Value” and an NJDEP approved “Wetland Compensatory Mitigation Bank.”

Wildlife Preserves contends that JCP&L has not satisfied the statutory requirements of N.J.S.A. 40:55D-19 because N.J.A.C. 14:5-7.1 requires JCP&L to use existing rights-of-way (“ROWs”) to minimize environmental damage and that JCP&L is proposing to build a second parallel line of transmission towers on a new and adjacent ROW within Troy Meadows which is unnecessary, harmful to the Troy Meadows ecosystem and does not take advantage of existing ROWs already present in Troy Meadows. The Petition does not explain why, as an alternative route, JCP&L cannot remove the existing towers within the existing ROWs and replace them with Monopoles that can be used to hang the proposed 230kV circuit wires and the existing K-115 kV, O-93 and 34.5kV circuits – hereinafter referred to as the “Wildlife Preserves Alternative Route” – instead of constructing a second parallel line of towers as has been proposed. The Wildlife Preserves Alternative Route would minimize the environmentally destructive consequences of the Project through Troy Meadows while satisfying the needs of the Project.

Wildlife Preserves respectfully submits that the Petition is insufficient and that BPU should remand this matter back to the Office of Administrative Law for a fixed period of time so the court can properly examine the Wildlife Preserves Alternative Route with Wildlife Preserves acting as an Intervenor prior to BPU moving forward with the Project.

### ARGUMENT

Wildlife Preserves takes issue with the portions of the Project that propose to expand existing ROWs as those expansions are not reasonably necessary, they will cause a greater environmental impact than the Wildlife Preserves Alternative Route, and JCP&L and the court have failed to consider this alternative route in accordance with N.J.A.C. 14:5-7.1.

The factors to consider in making a determination as to whether or not a proposed transmission line is “reasonably necessary for the service, convenience or welfare of the public” include whether the construction and routing of the line is in compliance with N.J.A.C. 14:5-6 and whether the proposed route will result in less of an environmental impact than any of the available alternatives. See Matter of Application of Jersey Cent. Power & Light Co., 92 N.J.A.R.2d (BRC) 43 (N.J. Adm. Nov. 7, 1991).

Pursuant to N.J.A.C. 14:5-7.1 JCP&L is required to, “make use of available railroad or other rights-of-way whenever practicable, feasible and with safety, subject to agreement with the owners.” N.J.A.C. 14:5-7.1. Although JCP&L expressly recognizes it must abide by the requirements of N.J.A.C. 14:5-7.1,<sup>1</sup> JCP&L has failed to appropriately demonstrate compliance with that requirement herein. That is because, despite the restrictions of N.J.A.C. 14:5-7.1, with little explanation, JCP&L proposes to build the Project in areas adjacent to the existing ROWs in Troy Meadows instead of within existing ROWs.

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<sup>1</sup> See Petition at page 9 (“the Preferred Route can be constructed largely within existing ROW, and thereby is in accord with N.J.A.C. 14:5-7.1(a)(1)”).

JCP&L proposes to expand the existing ROWs, including a right of way through Segment No. 3 – an area of undeveloped, forested wetlands that is part of the Troy Meadows ecosystem. The Troy Meadows area is home to copious amounts of wildlife, including federal and state endangered and threatened species of such as bald eagles, as well as several species of special concern. Troy Meadows is also home to the oldest tree in Parsippany-Troy Hills Township, and that tree is located directly within JCP&L’s “Preferred Route” for expansion. (See December 9, 2015 Transcript 74:12-81:24 and Fariello-1).

JCP&L currently maintains an existing easement of varying widths through Troy Meadows that JCP&L could (and intends to) continue to use for the Project. However, JCP&L intends to further expand the existing easements to a uniform width of one-hundred and fifty feet in order to construct a second set of parallel utility lines. In total, the proposed expansion will envelop an additional twenty-nine acres of wetlands within Troy Meadows and destroy a significant and valuable portion of the Troy Meadows Mitigation Bank, a wetlands mitigation bank owned and operated by Wildlife Preserves.

At the December 8, 2015 public hearing a representative of Wildlife Preserves, Len Fariello, commented that JCP&L could quite easily stay within the existing right of way by constructing one steel monopole carrying the new 230kV circuit as well as the K-115 kV, O-93 and 34.5kV circuits. If JCP&L ran a single line instead of two separate parallel lines there would be no need to expand the existing right of way and twenty-nine acres of irreplaceable wetlands and habitats would remain preserved.

Notably, Wildlife Preserves’ proposed solution to prevent the unnecessary expansion and destruction of preserved wetlands is not a novel one. In fact, JCP&L intends to remove and replace the existing structures in Segment Nos. 1, 2 and 9 carrying the K-115 kV, O-93 and

34.5kV circuits with one steel monopole carrying the new 230kV circuit as well as the existing K-115 kV, O-93 and 34.5kV circuits. (See Petition at Pages 4-8.) Moreover, PSE&G recently utilized a similar form of construction along its recent Susquehanna-Roseland Transmission Project that also ran through Troy Meadows, whereby PSE&G utilized dual circuits of 230kV and 500kV line both attached to a single row of steel monopoles to minimize the disruption to wetlands within the Preserve. (See PSE&G Traverses New Jersey Wetland, Transmission and Distribution World Magazine, John Ribardo and Steve Davidow, July 28, 2014 attached hereto as “**Exhibit A**”).

Despite Wildlife Preserves’ assertions raised before the court, JCP&L has refused to explain why the proposed expansion to the ROW is necessary and why the use of the Wildlife Preserves Alternative Route along Segment No. 3 is not practicable or feasible. N.J.A.C. 14:5-7.1; (see also June 10, 2016 Response from JCP&L to Wildlife Preserves’ request to re-open hearings for additional evidence on the issue of expansion attached hereto as “**Exhibit B**.”).

The Petition refers to Tracey J. Janis’s testimony for discussion regarding the need for additional ROWs. (See Petition at Page 5). However, Ms. Janis provides no explanation as to why the expansion of the ROW is necessary. Ms. Janis testifies that the purpose of her testimony is to “describe any necessary property-related rights, including additional rights-of-way” yet the entirety of Ms. Janis’ testimony fails to address why the expansion of the ROWs is necessary and why it is not feasible or practicable for JCP&L to make use of available ROWs in a manner akin to the recommended Wildlife Preserves Alternative Route. See Petition – Exhibit 8, Page 2.

The testimony of Peter Sparhawk also briefly touches on JCP&L’s decision to run parallel lines but each of Mr. Sparhawk’s explanations fail to adequately explain why the use of

Monopoles to stay within the existing ROWs are either not practicable or not feasible. Mr. Sparhawk opines that constructing a single line of monopoles would be “challenging;” “significantly more expensive;” and “would require taller transmission structures.” He also testified that the “two short segments of the route that will be rebuilt [with Monopoles] are in areas that pose little risk of pole/car accidents.” Troy Meadows is in the middle of a wildlife preserve with no roads. There is little risk of pole/car accidents here as well.

Instead, the only conclusion we are left with is that the decision by JCP&L to run parallel lines is based on cost alone, with no consideration of the destruction to wildlife within Troy Meadows. At the very least, the record remains incomplete insofar as the Court has not been provided with information as to why the construction of a single line of monopoles is not feasible or practicable.

The court has recognized that factors to consider in making a determination as to whether or not a proposed transmission line is “reasonably necessary for the service, convenience or welfare of the public” include whether the construction and routing of the line is in compliance with N.J.A.C. 14:5-6 and whether the proposed route will result in less of an environmental impact than any of the available alternatives. See Matter of Application of Jersey Cent. Power & Light Co., 92 N.J.A.R.2d (BRC) 43 (N.J. Adm. Nov. 7, 1991). Since JCP&L’s Petition does not comply with N.J.A.C. 14:5-6 and because the expansion of existing ROWs will result in a *greater* environmental impact than the construction of a single monopole along the existing ROW then the Project fails to meet the standard of N.J.S.A. 40:55D-19.

#### Ruling of the Court

Judge McGee ruled as follows:

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.

The problem with Judge McGee’s ruling is that he ignored the fact that 29 acres of Troy Meadows will be negatively impacted by a dual parallel line. Judge McGee focused only on one side of the issue – the alleged inconvenience to JCP&L. He did not examine the environmental consequences of the Project on Troy Meadows or the potential to reduce that environmental impact without unnecessary cost and inconvenience to JCP&L if the Wildlife Preserves Alternative Route was used (using one row of monopoles within the existing ROW) instead of the current proposed plan to construct a second tower line in a new ROW adjacent to the existing ROW.

This flaw must be corrected and it can be corrected quickly. For the reasons set forth herein, Wildlife Preserves respectfully requests that the BPU return this matter to the Office of Administrative Law for further proceedings during a fixed period of time so the court can address the feasibility of the Wildlife Preserves Alternative Route with Wildlife Preserve participating as an Intervenor.

Respectfully submitted,  
MEYNER AND LANDIS LLP

By:   
Albert I. Telsey

September 14, 2017



**EXHIBIT A**



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HOME > OVERHEAD TRANSMISSION > PSE&G TRAVERSES NEW JERSEY WETLAND

### PSE&G Traverses New Jersey Wetland

John Ribardo, Public Service Electric & Gas, and Steve Davidow, Crux Subsurface | T&D World Magazine Jul 28, 2014

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Innovative construction methods reduce impacts on protected habitat.

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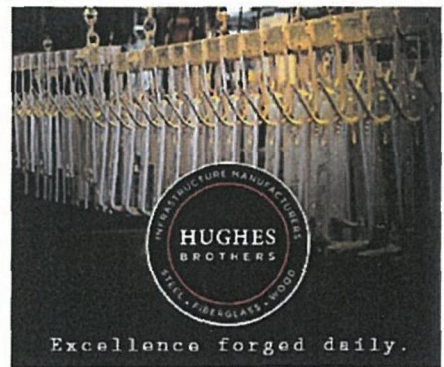


Aerial view of the Troy Meadows segment of the Susquehanna to Roseland Electric Reliability Project. Troy Meadows is both a priority wetland and a national natural landmark.

A steadily increasing demand for power has introduced a number of unique design and construction challenges within the overhead transmission sector, many of them environmental. The routing and siting process for transmission line construction is often extensive and time-consuming, requiring close coordination with numerous regulatory agencies. Although utilities strive to use existing rights-of-way (ROW), and are often successful, extensive alternate route analyses are typically required prior to gaining approval.

Environmental analysis of new routes or multiple routes can add significant time to the permitting process. Once routing and permitting have been approved, utilities and their consultants and contractors are faced with the challenge of constructing the alignment within the limitations set forth in each of the permits.

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A portion of the new Susquehanna to Roseland Electric Reliability Project (SRERP) crosses Troy Meadows, a 3,100-acre (12,505-hectare) freshwater marsh located in Morris County, New Jersey, U.S. The area has been designated a priority wetland by the U.S. Environmental Protection Agency as well as a national natural landmark by the U.S. National Park Service. Within the protected area, the project scope included replacement of seven 230-kV lattice towers with seven new double-circuit 500-kV monopoles. Public Service Electric & Gas (PSE&G) coordinated closely with regulatory agencies and employed unique construction methods to ensure all construction was completed with minimal impacts to the wetland.



Helicopter portable cranes effectively automated heavy-lifting activities at foundation sites.

**Access Restrictions and Challenges**

Detailed studies were completed for three potential alignment routes as a portion of the project siting application. The New Jersey Board of Public Utilities concurred with PSE&G that use of the existing ROW was the preferred route for the new 500-kV SRERP. This route included traversing the Troy Meadows wetland.

The contractor preferred to use conventional foundations, but road building for transportation of the necessary equipment and materials would have required extensive temporary fill or timber matting. Temporary fill was rejected immediately for a variety of reasons. Timber mat roads were considered, but their impact, though temporary in nature, would have been significant.

With conventional construction ruled out, the project team explored helicopter-supported construction as an alternative. The first challenge associated with this option was the feasibility of using a helicopter to set the monopoles, which had already been selected as the structure type for this portion of the project. Fortunately, the route through Troy Meadows did not include angle structures and allowed for lighter-weight, tangent monopole suspension towers to be used. However, at 190 ft (58 m) tall and weighing 150,000 lb (68,039 kg), the towers were still substantial.

Burns & McDonnell, PSE&G's program manager for the project, worked with the monopole supplier and engineer to incorporate helicopter installation means into the design of the monopoles. This was accomplished by further segmenting the poles and incorporating innovative guide details into the flange-connected pole sections.

The second challenge was to select a foundation to meet the needs of the project. A comparative study was completed to determine the foundation type that would impose the least environmental impact and could also be constructed entirely by helicopter. Ultimately, micropile foundations were selected, and Burns & McDonnell worked with the T-line construction contractor Kh&m (a joint venture between Kiewit and Henkels & McCoy) to select a micropile foundation contractor.



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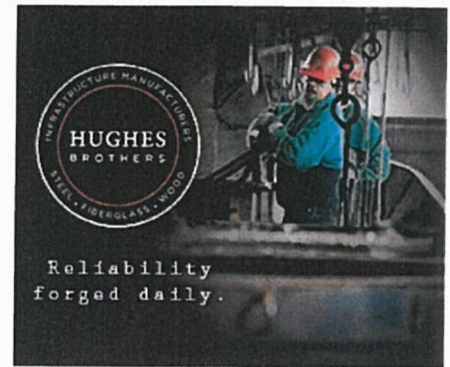
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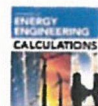
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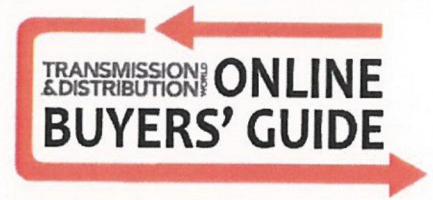
Micropile drills were transported to structure locations by helicopter.

Micropile foundations have been employed for numerous projects requiring helicopter construction techniques. They can be constructed with lighter-weight equipment and materials, making them conducive to light- and medium-lift helicopter transportation. Another benefit of micropile foundations over conventional foundation equipment is the compact nature of the smaller drilling equipment and the ability to minimize the total area of temporary and permanent disturbance.

With the unique capabilities to meet project schedule and other requirements, Kh&m selected Crux Subsurface to design and install the micropile foundations. The selection of a single specialty foundation contractor with numerous projects of similar design-build experience created the highest level of assurance of on-time completion for this project with an aggressive schedule.

Once it was determined helicopter support and micropile foundations would be employed, individual activities needed to be scheduled within a condensed project time frame. A bald eagle siting in close proximity to the ROW limited construction within Troy Meadows to a 106-day window, with just 60 of those days allotted for foundation work. This necessitated efficient collaboration among all parties involved.

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**EXHIBIT B**

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June 10, 2016

VIA EMAIL AND OVERNIGHT DELIVERY

SEP 15 2017

Honorable Leland McGee, ALJ  
Office of Administrative Law  
33 Washington Street  
Newark, New Jersey 07102

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

Dear Judge McGee:

Please accept this letter on behalf of Jersey Central Power & Light Company ("JCP&L") in response to the letter dated June 6, 2016 submitted on behalf of Wildlife Preserves, Inc. ("Wildlife") in the above-referenced matter.

Wildlife has requested that Your Honor adjourn the briefing dates established in the matter at the conclusion of the evidentiary hearings on May 26, 2016. The purported reason for Wildlife's request is to allow it to present a witness and cross-examine a JCP&L witness on certain issues that it alleges are relevant.

JCP&L requests that Your Honor deny Wildlife's request. First, Wildlife only has participant status in this case and, as a participant, does not have the right to either cross-examine JCP&L's witnesses or present its own witnesses. See N.J.A.C. 1:1-16.6. Your Honor confirmed this to Wildlife's counsel during the evidentiary hearing, May 23, 2016 Transcript at 9:15 – 10:11. Second, even if it had a right to cross-examine or present a witness (which it does not), Wildlife has not provided any basis for re-opening the evidentiary hearings – e.g., Wildlife has not alleged new or changed facts that would warrant re-opening the record.

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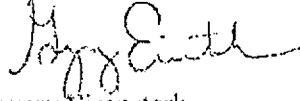
Hon. Leland McGee, ALJ

June 10, 2016

Page 2

Accordingly, Your Honor should deny Wildlife's request and also disregard the unsubstantiated and out-of-record factual allegations contained in the June 6, 2016 letter.

Respectfully submitted,



Gregory Eisenstark

cc: Lisa Reyes, Secretary to ALJ McGee (via email)  
Service list (via email only)  
Albert I. Telsey, Esq. (via regular mail and email)