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Via Hand Delivery

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 Wildlife Preserves, Inc. 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.

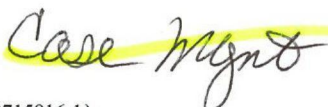
Respectfully submitted,

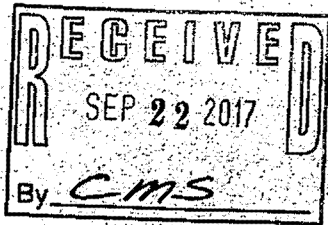


Gregory Eisenstark

Encl.

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





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

SEP 22 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

**JERSEY CENTRAL POWER & LIGHT COMPANY'S REPLY TO THE EXCEPTIONS  
OF WILDLIFE PRESERVES, INC.**

Gregory Eisenstark

*On the Reply to Exceptions*

WINDELS MARX LANE &  
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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”) 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 rebutted by any party. In contrast, participant Wildlife Preserves, Inc. (“WPI”) became involved in this proceeding at a very late stage and, as a participant, did not offer any witnesses or produce any other documentary evidence.<sup>1</sup>

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 WPI’s arguments.

In its Exceptions, WPI merely raises the same arguments it raised in its brief before the OAL. These arguments had no merit when WPI 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 WPI raises in its Exceptions to the Initial Decision. Accordingly, as more fully-explained below, the Board must reject WPI’s recommendations in this case.

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<sup>1</sup> See Order of Administrative Law (“ALJ”) Judge Leland S. McGee dated March 2, 2016. See also Letter Order of ALJ McGee dated June 10, 2016 denying WPI’s request for an adjournment of the briefing schedule and supplemental hearings.

## **REPLY TO WILDLIFE PRESERVES, INC.'S EXCEPTIONS**

WPI's exceptions raise two main allegations: (1) that JCP&L's petition fails to comply with *N.J.A.C.* 14:5-7.1(a) concerning the use of existing right-of-way ("ROW") for electric transmission projects; and (2) that the Project will cause environmental harm within WPI's Troy Meadows area. Both contentions are untrue. Not only is there no evidence in the record to support these arguments, but JCP&L's evidence establishes that, in fact, the exact opposite is true.

In this regard, WPI's exceptions are replete with misstatements of both fact and law. Either WPI does not understand JCP&L's proposed route for the Project in the vicinity of the Troy Meadows area or it has intentionally chosen to misrepresent the route to bolster its legal arguments. Similarly, WPI has both mischaracterized the record evidence in the matter and incorrectly described the applicable legal standards.

First, WPI is simply incorrect when it states that "JCP&L proposes to build the Project in areas adjacent to the existing ROWs in Troy Meadows instead of within existing ROWs." *WPI Exceptions*, at p. 3. As JCP&L's testimony establishes, contrary to WPI's assertions, JCP&L has proposed to use an existing JCP&L-owned ROW through the Troy Meadows area. The relevant area includes portions of Segment 2 and Segment 3, which are depicted on Exhibits DRK-14a through DRK-14e of the Direct Testimony of Dave Kozy, Jr. (Exhibit JC-3). The relevant cross-sections of the Project in the Troy Meadows area are depicted on Exhibits DRK-2 and DRK-3 of Mr. Kozy's testimony. As depicted on these Exhibits, JCP&L is indeed using its existing ROW throughout the Troy Meadows area.

However, JCP&L's existing ROW is not of uniform width. Rather, the width of the existing ROW varies widely over the length of the Project. Because the existing JCP&L ROW is

not wide enough to accommodate the new 230 kV line and transmission structures in certain portions of this area of the Project, the Company will need to expand the width of the ROW. As depicted in Exhibit DRK-14a, this portion of the Project within the Troy Meadows area (the shaded portion beginning north of Troy Road) is entirely within JCP&L's current ROW. On Exhibits DRK-14b, DRK-14c, DRK-14d and DRK-14e, a portion of the Project will be within the existing ROW and a portion will require additional ROW.

As Mr. Kozy testified, the width of a transmission ROW must comply with the requirements of the National Electrical Safety Code ("NESC"), as well as provide the necessary conductor clearances when considering structure type, conductor motion and line voltage (*i.e.*, 230 kV) (Exhibit JC-3, p. 17, l. 3-7). Therefore, JCP&L will negotiate with all property owners, including WPI, to acquire the additional ROW width needed to construct the Project. *See* Direct Testimony of Tracey J. Janis (Exhibit JC-8, p. 4, l. 4-12).

In sum, WPI is clearly mistaken when it argues that JCP&L does not plan to use its existing ROW through the Troy Meadows area. In fact, as described above, JCP&L will use all of its existing ROW in this area of the Project. The fact is that, in order to comply with safety and operational requirements, the width of the ROW must be expanded in certain portions of the Project in the Troy Meadows area.

Accordingly, contrary to WPI's arguments, JCP&L's proposal completely complies with the requirements of *N.J.A.C.* 14:5-7.1(a). That BPU regulation provides, in pertinent part: "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." It is worth emphasizing that the use of existing rights-of-way is not absolute; rather, it must be used "whenever practicable, feasible and with safety, subject to

agreement with the owners.” *Id.* Here, JCP&L has proposed to use its entire existing ROW, but also needs to expand the ROW in certain portions of the Project to comply with safety and operational requirements. Thus, is it clear that JCP&L has complied with the requirements of *N.J.A.C. 14:5-7.1(a)*.

In regard to the Board’s overall standard of review, WPI is correct that the applicable statutory standard under *N.J.S.A. 40:55D-19* is that the Board shall approve the petition if it finds that the Project “is reasonably necessary for the service, convenience or welfare of the public.” *See WPI Exceptions*, at p. 6. However, WPI’s argument that JCP&L has failed to meet this standard because “the expansion of the existing ROWs will result in a greater environmental impact . . .” (*id.*) is both factually and legally incorrect. As a threshold matter, while the Board may consider the impact of a proposed transmission project on the environment, that is only one element of Board’s determination. *See, e.g., 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 at pp. 48; 76-77)(hereinafter, “Susquehanna-Roseland”).

More importantly, the record in this case establishes that JCP&L’s proposed route will result in a lower environmental impact than any of the alternative routes. As JCP&L witness Peter W. Sparhawk testified:

**Q. Describe how the routing team assessed potential natural environmental impacts.**

A. Natural environmental impacts include potential impacts to vegetation and habitat, surface waters, and conservation lands. The Routing Team evaluated the Alternative Routes with respect to the natural environment using publically available data including mapped wetlands, streams, conservation lands, potential threatened and endangered species habitat, floodplain information, soil information and aerial imagery (see Section

4.3 of the Routing Study). In determining the Preferred Route, the Routing Team assessed which Alternative Route had the least overall environmental impact.

**Q. Does the Preferred Route minimize the overall environmental impact compared to the other Alternative Routes?**

Yes. Route A3 would result in the least environmental impact because it rebuilds and/or parallels existing transmission line for the majority of its route. Route A3 would require tree clearing through Troy Meadows and ROW that is currently undeveloped; however, it would require significantly less tree clearing than Routes B and C.

[Exhibit JC-6, p. 15, l. 10 – p. 16, line 3]. *See also*, Section 4.3 of the Route Selection Study (Exhibit PWS-2 to Mr. Sparhawk's direct testimony).

Moreover, JCP&L witness Kirsty M. Cronin testified that JCP&L will comply with all applicable environmental regulations and requirements, including, if necessary, mitigation of any unavoidable Project-related impacts. *Exhibit JC-7* at pp. 3-10. Ms. Cronin also testified as to the measures JCP&L will employ to minimize environmental impacts of the Project. *Id.* at pp. 13-15.

In regard to WPI's environmental impact argument, it is also important to emphasize that, in reviewing a proposed utility project under *N.J.S.A.* 40:55D-19, the BPU does not focus on the impact on one particular property owner (such as WPI), but rather, on the welfare of the public at large. In other words, the "public" in question is the body of the utility's customers and not individual residents or property owners. *See Petition of Monmouth Consolidated Water Company*, 47 *N.J.* 251, 258 (1966); *Susquehanna-Roseland*, *supra*, Order at p. 48. Accordingly, WPI's parochial interest in maintaining the value of its wetlands bank cannot trump the benefit of the Project to JCP&L customers as a whole.

Finally, WPI alleges that JCP&L could address WPI's concerns by using underbuild construction of the new 230 kV line with the existing 34.5 kV circuits on single monopoles



throughout the Troy Meadows area of the Project. See *WPI Exceptions*, at pp. 2, 4-6.<sup>2</sup> However, WPI cites to no evidence in the record that establishes that the use of an underbuild configuration would allow construction of the Project in the Troy Meadows area without the need for expansion of JCP&L's existing ROW. Instead, WPI has attached to its Exceptions an internet article (that is not part of the record of this case) about the type of construction PSE&G used on its Susquehanna-Roseland project. The Board should disregard that out-of-record document in its entirety, as ALJ McGee did.<sup>3</sup> In any case, the construction method PSE&G may have used for its 500 kV Susquehanna-Roseland project is not relevant to this Project. More important is that JCP&L's rebuttal testimony in this case explained why using underbuild construction will not decrease the need for additional ROW:

[It is] also incorrect [to] stat[e] that an under-build option would decrease the need for additional right-of-way as well as construction of additional structures. Although additional engineering still has to be performed, it is likely that under JCP&L's proposed [parallel] configuration fewer new structures would be required as the loading on the poles would be less with fewer circuits attached and with shorter poles. To clarify, more circuits on taller poles generally result in shorter span lengths between poles increasing the number of poles required than shorter poles with fewer circuits.

[Exhibit JC-3 Rebuttal (Rebuttal Testimony of Dave Kozy, Jr.), at p. 3 line 19 – p. 4, line 3].

There is simply no factual basis for WPI's argument that using underbuild construction would result in fewer environmental impacts. In fact, using underbuild construction would

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<sup>2</sup> In this regard, WPI's reference to "Wildlife Preserves Alternative Route" is misleading. First, Wildlife never proposed any "alternative" in the record of this matter. Second, the proposal as set forth in Wildlife's Exceptions is not an "alternative route" – rather, it is simply a proposal that JCP&L use underbuild construction on the Project segments within the Troy Meadows area.

<sup>3</sup> Moreover, because nearly all of the allegations in WPI's Exceptions are based, in whole or in part, on out-of-record information, the Board should disregard any of WPI's statements or claims that are not supported by a citation to record evidence. For example, WPI argues that "29 acres of Troy Meadows will be negatively impacted by the Project." *WPI's Exceptions*, at p. 7. However, there is no record evidence in support of either the 29 acre figure or the alleged negative impact, and, accordingly, this contention must be also be disregarded.

require JCP&L remove the existing 34.5 kV circuits and structures, which could result in a disturbance to the wetlands that will not occur if those structures remain in place. In addition, as Mr. Kozy described in his rebuttal testimony, underbuild construction would require the use of an increased number of new monopoles compared to parallel construction. *See* JC-3 Rebuttal at p. 3 line 19 – p. 4, line 3.

Finally, in its request for relief, WPI asks the Board to return the matter to the OAL for “further proceedings . . . so the court can address the feasibility of the Wildlife Preserves Alternative Route with Wildlife Preserves participating as an Intervenor.” *WPI Exceptions*, p. 7. First, as discussed above, WPI’s late-filed motion to intervene was denied, and ALJ McGee appropriately limited its involvement in this matter to that of a Participant. WPI has offered no basis for the Board to overturn ALJ McGee’s ruling at this late stage of the proceeding and expand WPI’s role *after* the Initial Decision was issued. Second, for the reasons discussed above, WPI’s proposal that JCP&L be required to use underbuild construction in the Project segments in the Troy Meadows area is wholly-unsupported; in fact, it would be more environmentally disruptive than the Company’s proposal and would be more expensive and time-consuming to construct.

In conclusion, WPI has offered no record evidence that supports its requested relief. Similarly, WPI has offered no basis for its request to remand this matter the OAL, which is substantially similar to WPI’s earlier requests that ALJ McGee denied.

### **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 between JCP&L and Montville Township, 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 aforesaid Stipulation.

Respectfully submitted,

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Attorneys for Jersey Central Power & Light Company



Dated: September 22, 2017

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

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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.: EO15030383**  
**OAL Docket No. PUC 08235-2015N**

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