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April 15, 2009

***VIA ELECTRONIC, HAND-DELIVERY & REGULAR MAIL***

Honorable Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center, 8<sup>th</sup> Floor  
Newark, NJ 07102

Re: **IN THE MATTER OF THE PETITION OF PUBLIC  
SERVICE ELECTRIC AND GAS COMPANY FOR A  
DETERMINATION PURSUANT TO THE PROVISIONS OF  
N.J.S.A. 40:55D-19**

**(SUSQUEHANNA-ROSELAND)**

**BPU DOCKET NO. EM09010035**

Dear Secretary Izzo:

In accordance with the Board of Public Utilities' ("Board") March 12, 2009 prehearing order in the above-referenced matter, please accept this reply on behalf of Public Service Electric and Gas Company ("PSE&G" or the "Company") in opposition to the timely Motions for Intervention filed by:

- Fredon Parents Against the Lines ("Fredon PALS")
- Stop the Lines ("STL"); and
- Proposed Environmental Intervenors<sup>1</sup>

An original and ten (10) copies are enclosed for filing.

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<sup>1</sup> Environment New Jersey, The New Jersey Highlands Coalition, Sierra Club – New Jersey Chapter and New Jersey Environmental Federation (collectively, the "Proposed Environmental Intervenors").

## I. LEGAL STANDARD FOR INTERVENTION

Parties seeking to intervene in a Board matter must establish that they “will be substantially, specifically and directly affected by the outcome of a contested case.” N.J.A.C. 1:1-16.1(a). In considering a motion to intervene, the Board (or, as in this case, the Presiding Commissioner) must “take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.” N.J.A.C. 1:1-16.3(a). Additionally, the Board “must balance the need and desire to allow for the development of a full and complete record and to ensure the consideration of a diversity of interests, with the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener’s interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case.” See I/M/O Joint Petition of Public Service Electric and Gas Company and Exelon, BPU Docket No. EM05020106, Order dated May 23, 2006 (denying Mid-Atlantic Solar Energy Industry Association intervention, and instead granting participant status<sup>2</sup>).

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<sup>2</sup> N.J.A.C. 1:1-16.6(b) provides for a more limited form of participation in a proceeding, called “participant” status where, in the discretion of the trier of fact, the participant’s interest “is likely to add constructively to the case without causing undue delay or confusion.” The Board typically limits entities accorded participant status to the right to file written briefs. See, e.g., In Re Bell Atlantic Corporation, BPU Docket No. TM98101125, 1999 WL 641828, (Order dated June 21, 1999) (“participant status affords an interested party an opportunity to be heard on issues it deems important through the filing of briefs, but does not allow direct participation in the discovery or cross-examination process”).

## **II. OPPOSITION TO INTERVENTIONS**

Fourteen (14) entities have filed timely motions to intervene in this proceeding. Those interveners are as follows: (1) the Township of Montville; (2) the Township of Fredon; (3) the Township of Parsippany-Troy Hills; (4) the Township of Andover; (5) the Township of Byram; (6) the Township of East Hanover; (7) the Montville Board of Education; (8) the Fredon School District; (9) the Willow Lake Day Camp; (10) Gerdau Ameristeel; (11) Exelon Corporation; (12) STL; (13) Fredon PALS; and (14) Proposed Environmental Intervenors.

PSE&G has carefully reviewed the content of all of the above interventions, and submits that the first eleven above-listed interventions – consisting of six municipalities; two Boards of Education; a property owner on whose property towers associated with the Project will be placed; a large industrial PSE&G customer that takes transmission service directly off of the PSE&G transmission grid; and a company with a transmission owner subsidiary directly interconnecting with the PSE&G system, overloads on which are contributing to the need for this Project – may satisfy the requisite legal threshold for intervention. By contrast, PSE&G submits that the last three above-listed interventions – those of STL, Fredon PALS and Proposed Environmental Intervenors – clearly do not satisfy the standard.

Thus, for the reasons set forth below, the Board should deny the intervention requests of (i) STL; (ii) Fredon PALS; and (iii) Proposed Environmental Intervenors, as none of these interveners have established the presence of a direct interest that is “measurably different” from other interveners in the proceeding so as to “add measurably and constructively” to this proceeding. Moreover, granting them intervener status would cause confusion and delay, as their interests are largely duplicative of those of other

interveners. In the case of Proposed Environmental Intervenors, many of the issues they are seeking to raise herein are being addressed in other forums as part of the environmental permitting process for the Project.

In addition, although PSE&G is not opposing the interventions of either the Montville Board of Education or the Fredon School District, PSE&G does note that their interests are similar to the interests represented by the Townships of Montville and Fredon respectively. Thus, consistent with prior Board orders governing interventions, PSE&G requests that these two entities be directed by the Board to work with the municipal intervenors – namely the Township of Montville and the Township of Fredon - to the greatest extent possible so as to limit repetitive discovery, testimony and cross-examination and permit efficient resolution of this proceeding.<sup>3</sup>

*a. Stop the Lines, Inc.*

PSE&G opposes the intervention request submitted by Stop the Lines, Inc. (“STL”). STL has failed to substantiate an interest that is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case, while its inclusion would increase the prospect for confusion and delay. Additionally, STL has failed to demonstrate, in accordance with N.J.A.C. 1:1-16.1(a) that, as an organization, it is specifically and directly affected by the outcome of this matter beyond a general assertion that members of its organization, hidden behind the curtain of the organization, are “landowners along the route.” STL Motion at 2. STL itself, as a corporate entity, does not in fact own any property along the route of this Project.

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<sup>3</sup> See, e.g., I/M/O Public Service Electric and Gas Company for Approval to Increase the Level of Its Levelized Gas Adjustment Clause (LGAC), BPU Docket No. GR94070292, Order dated November 30, 1994 (directing intervenors to work with each other and with the Ratepayer Advocate to limit repetitive discovery, testimony and cross-examination).

STL lacks standing to be a party in its own right. STL is not a customer of PSE&G. STL does not own property along the route of this Project and has not established that as an organization, it would be “substantially, specifically and directly affected by the outcome” of this matter. N.J.A.C. 1:1-16.1(a). To the contrary, STL has presented general and undefined concerns about the Project as a whole.

Even if the Board were to assume that STL possessed a direct interest in this matter, STL has failed to establish that its involvement as a party would meaningfully assist the Board in performing its duty to evaluate whether “the proposed installation is reasonably necessary for the service, convenience or welfare of the public.” N.J.S.A. 40:55D-19. As discussed above, there are already pending motions from interveners representing municipalities, customers and property owners. Additionally, the New Jersey Division of Rate Counsel is a party to this proceeding with the statutory mandate to represent the interests of all of PSE&G’s ratepayers and Board Staff is a party to this proceeding with the statutory obligation to ensure safe, adequate and proper utility service, as well as to develop a full and fair record from which the Board may render an informed decision.

STL vaguely asserts that it has a general interest in virtually every aspect of this matter, without establishing how its participation would translate into measurable or constructive contributions with regard to any of those aspects in the context of the Project. In fact, in its request for the establishment of an escrow account to fund its expenses, STL acknowledges that it has no expertise in transmission construction issues at all. It states that “none of the members of Stop the Lines are experts in transmission,

we do not have training or education in many of the issues presented by PSE&G's proposal for this transmission line."<sup>4</sup>

Without providing any specific information with respect to the composition of its membership, who it actually represents or its organizational qualifications, STL alleges that (1) its interests are as many and varied as its members; (2) it has an interest in assuring that the Project is compatible with the Obama Administration's proposed electrical priorities and new grid design; (3) it is in a position to inform the record about efficiency and inefficiency when comparing this proposal against other options, such as distributed generation near load; (4) it is concerned about the methodology, inputs and theory of PSE&G's/PJM forecasting; (5) it has an interest in the location of claimed load; (6) it has an interest in alternatives to this transmission project; (7) it is concerned about the costs of the Project as well as economic impacts; and (8) it is concerned about the proposed height of certain towers as well as EMF levels. While STL has recited a laundry list of issues and alleged concerns, it has failed to demonstrate how it is impacted by any of these factors directly, and has not explained how it would add measurably and constructively to the proceeding with regard to these issues. PSE&G submits that STL's concerns and interests are already adequately represented in this proceeding, and are of a scope and nature that STL is not qualified to represent. Given these facts, it is more likely that STL's intervention would result in confusion and delay than that it would assist the process. Accordingly, STL's motion for intervention should be denied.<sup>5</sup>

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<sup>4</sup> Motion of Stop the Lines! for Escrow for Intervener Expert Expenses, at 1.

<sup>5</sup> See, e.g., Petition of Atlantic City Electric Co., BPU Docket Nos. EX94120585Y; EO97070455; EO97070456; EO97070457; EO97070458; EO97070459; EO97070460; EO97070461; EO97070462; EO97070463; EO97070464, Order dated October 22, 1997 (denying intervention to Skipping Stone, an organization purporting to represent marketers and brokers planning to provide electric service in New Jersey but failing to identify its members or state interests sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case; also denying intervention by other New

b. Fredon PALS

Fredon PALS has also failed to demonstrate a sufficient interest to justify its requested intervener status. There is no reason to anticipate that the interests of Fredon PALS cannot be fully represented by both the Township of Fredon and the Fredon School District. Although one could reasonably argue that the Township of Fredon should be able to represent the interests of both the Fredon School District and Fredon PALS, PSE&G has not opposed the Fredon School District's intervention due to concerns raised regarding the proximity of the Project to a school located in Fredon. Fredon PALS' intervention, however, is wholly unnecessary given the participation of both the Township of Fredon and the Fredon School District (which represents the interests of all of the children in Fredon, not just a particular subset), and its intervention would further dilute and confuse the representation of Fredon's interests.

Fredon PALS does not present a "measurably different" interest from that of Fredon and the Fredon School District; rather it proposes to provide representation of **exactly the same interest**. In fact, a link on the Fredon School District website explains that "Fredon parents have created a new organization [Fredon PALS] to work with the Board of Education" with respect to this Project.<sup>6</sup> The only difference between Fredon School District and Fredon PALS is that Fredon PALS represents only those limited set of parents that have chosen to join its organization while Fredon and Fredon School District, as duly elected government bodies, represent the entire township and the children living there. Consistent with N.J.A.C. 1:1-16.3(a) and the Fredon School

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Jersey utilities in Atlantic City Electric's restructuring filing for failure to establish sufficiently different interests).

<sup>6</sup> See

<http://www.fredon.org/education/components/scrapbook/default.php?sectiondetailid=1608&PHPSESSID=b6e014da90087a481c461c73a103fbc1>

District website, Fredon PALS' intervention should be denied. Fredon PALS should instead work with its elected officials and their respective counsel to ensure that its interests are reflected.

*c. Proposed Environmental Intervenors*

Finally, PSE&G submits that the intervention request of Proposed Environmental Intervenors should be denied. As explained in its moving papers, the Environmental Intervenors are environmental groups concerned about the environment, reducing greenhouse gas emissions and successful implementation of New Jersey's Energy Master Plan. Although these interests are important and some or all of them will likely be considered in the context of other administrative proceedings, these interests are not directly related to the issues in this case. Inclusion of a party whose interests are at most indirectly related to the statutory mandate set forth in N.J.S.A. 40:55D-19 – whether the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public – presents a danger of confusion or undue delay.<sup>7</sup>

Most notably, the Proposed Environmental Intervenors have failed to establish that their expertise and full involvement as a party would meaningfully assist the Board in performing its statutory duty to evaluate the need for the Project. Instead, the Proposed Environmental Intervenors vaguely assert that they have an interest in this matter because they have a general interest in preserving open space, safe drinking water, energy and climate change. Although some or all of these issues may be indirectly implicated by this Project application, none are directly related. Moreover, the Proposed

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<sup>7</sup> See generally In re Lyonnaise American holding, Inc., BPU Docket No. WM99110853, Order dated July 20, 2000 (approving United Water merger and noting that although Sierra Club and the Hackensack Riverkeeper both sought intervention in the merger docket, they were only granted participant status).



Environmental Intervenors have not explained how they would add measurably or constructively to the proceeding beyond asserting that they have “invested tremendous time and resources in addressing climate change,”<sup>8</sup> which is **not** the subject of the instant Petition; rather, the Petition seeks a determination that municipal zoning and land use ordinances do not apply to this reliability-based Project.

Although the need for the Project will be addressed by the Board as required by applicable law, environmental impacts, including impacts through the Highlands area, are properly addressed as part of the Highlands Applicability Determination (“HAD”) proceeding currently pending before the Highlands Commission and the NJDEP. Similarly, concerns about air quality issues will be addressed by the DEP. The Proposed Environmental Intervenors raise issues that are misplaced in this proceeding. Accordingly, the Proposed Environmental Intervenors’ motion for intervention should be denied.

PSE&G recognizes that, with respect to these three (3) intervention requests, the Board may decide to accord “participant” status to the interveners as permitted by the Board’s regulations. PSE&G would not oppose such an approach, provided that (i) Intervenors, as “participants,” are directed by the Board to work together with those entities granted intervener status as closely as possible to avoid delay in this proceeding; and (ii) Intervenors, as “participants” limited to the filing of briefs, only address issues that are deemed to be relevant and within the scope of this subject proceeding.

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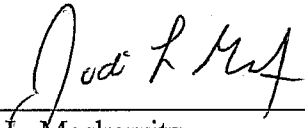
<sup>8</sup> Proposed Environmental Intervenors Motion for Intervention at Para. 23.

**III. CONCLUSION**

For all the foregoing reasons, PSE&G respectfully requests that the Board: (i) deny the motions for intervention filed by STL, Fredon PALS and Proposed Environmental Intervors; and (ii) direct the Fredon School District and the Montville Board of Education to work together with their respective Townships that have intervened in this proceeding so as to minimize confusion and delay.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By:   
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Jodi L. Moskowitz

Dated: April 15, 2009  
cc: Service list