STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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**

BRIEF OF THE MUNICIPAL INTERVENORS, THE ENVIRONMENTAL INTERVENORS AND STOP THE LINES! IN SUPPORT OF THEIR MOTION TO DISMISS THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Carol A. Overland, Esq.
Attorney for Stop the Lines!
P.O. Box 176
Red Wing, MN 55066
(612) 227-8638 and (302) 834-3466
overland@legalectric.org

Julia LeMense, Esq.
Eastern Environmental Law Center
Attorneys for the Environmental Intervenors
744 Broad Street – Suite 1525
Newark, NJ 07102
(973) 424-1166
jlemense@easternenvironmental.org

Catherine E. Tamasik, Esq.
DeCotiis, FitzPatrick, Cole & Wisler, LLP.
Attorneys for the Municipal Intervenors
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666
201-907-5265
ctamasik@decotiislaw.com

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PRELIMINARY STATEMENT

On or about January 12, 2009, Public Service Electric and Gas Company ("PSE&G") filed a Petition and supporting testimony (the "Petition") with the New Jersey Board of Public Utilities (the "Board" or "BPU") seeking approval of its Susquehanna-Roseland Transmission Project, proposed Route B (the "Project"). In the past 10 months since the filing, there have been such significant changes in the energy markets, the national and regional economy and to the Project itself that the Petition and PSE&G's related filings have become outdated, incomplete and insufficient, and, in some cases, incorrect. Accordingly, the Municipal Intervenors (Andover Township, Byram Township, East Hanover Township, Fredon Township, Hardwick Township, Montville Township and Parsippany Township), the Environmental Intervenors (the New Jersey Highlands Coalition, Sierra Club-New Jersey Chapter, Environment New Jersey, and the New Jersey Environmental Federation) and Stop the Lines! (collectively, the "Intervenors") respectfully request that the Board dismiss the Petition, without prejudice, until such time as PSE&G can present a complete application, sufficient to substantiate this Project, or, perhaps, a revised project. Alternatively, if PSE&G is willing to voluntarily waive its right to invoke FERC "backstop authority" if this Petition is not acted on within a one-year time frame, the Board should hold it in abeyance until a current study, incorporating new peak load projections, the results of the RPM auction and the peak load reductions expected to occur through statutory and policy initiatives in Pennsylvania and New Jersey, is produced for consideration.

INTRODUCTION AND BACKGROUND

On or about January 12, 2009, PSE&G submitted a Petition, the supporting testimony of 13 experts and consultants, and relevant exhibits, including a voluminous set of maps, to the Board for a determination pursuant to N.J.S.A. 40:55D-19 that PSE&G's proposed 500kV Susquehanna Roseland transmission system upgrade is "necessary to address 23 projected reliability criteria violations in the region" and is "reasonably necessary for the service, convenience or welfare of the public." Petition at 1.

As it has been proposed, the Project consists of the installation of a new 500kV transmission line that will extend from the Delaware Water Gap National Recreation Area to Roseland in Essex County. The line would extend 45 miles, passing through 16 municipalities in Warren, Sussex and Morris Counties. It is estimated that the Project will cost $1.2 – 1.3 billion. PSE&G claims that the Project will be built primarily in the 150-foot wide right of way ("ROW") that presently contains a 230 kV transmission line. While the Intervenors do not contest this fact entirely, in fact, outside of the ROW there will be new construction access roads and permanent maintenance easements cut by PSE&G to build and accommodate the new line. The Project will add a new second circuit to the existing 230kV transmission line, and a new quad-bundled 500kV circuit. The Project will require construction of all new towers that will measure 195 feet in height. The towers that hold the existing 230kV line are between 85 and 95 feet high. PSE&G has admitted that the 500kV line is not intended for local load service. Its purpose is to provide significantly increased transfer capacity *throughout the region*. *See* Certification of Catherine E. Tamasik, ["Tamasik Cert."], Ex. 17 (McGlynn Response to Municipal Discovery Request 13)

Pursuant to federal law and the regulations and rules of the Federal Energy Regulatory Commission ("FERC"), a state agency such as the BPU must act on the Petition within one year of its filing. Section 1221(a) of the Energy Policy Act of 2005, 16 U.S.C. §§ 824p(b)(1)(A)-(C).

However, the state agency may dismiss a Petition if there are sufficient grounds to do so. Dismissal of a petition has been held not to be a failure to act as required by Section 1221(a). *See Piedmont Environmental Council, et al., v. Federal Energy Regulatory Commission, et al.*, 558 F.3d. 304 (4th Cir. 2009). Thus, if the BPU does not act on the Petition on or about January 12, 2010, PSE&G may, in its discretion, withdraw its Petition from the BPU and make application to FERC to take jurisdiction over the proposal.

Mindful of the looming January 2010 deadline for action, the BPU has established a truncated procedural schedule for the matter. The evidentiary hearings begin on November 16, 2009 and a decision by the BPU is expected in January, 2010.

POINT I

PJM'S COST APPORTIONMENT SCHEME HAS BEEN REJECTED BY THE FEDERAL COURT AND PSE&G CANNOT PROCEED WITH THE PROJECT UNTIL A NEW SCHEME IS APPROVED.

In a comprehensive and important decision, the Seventh Circuit Court of Appeals (Posner, J) struck down PJM's scheme of cost apportionment. *Commerce Commission, et al., v. Federal Energy Regulatory Commission*, Docket Nos. 08-1306, 08-1780, 08-2071, 08-2124, 08-2239 (7th Cir. Aug. 6, 2009) (the "Decision"). A copy of the decision is attached to the Tamasik Cert. as Exhibit 9. A cost apportionment scheme is an integral part of any transmission project because it directs who will pay for the project and how the contributing utilities will recover their costs. The Seventh Circuit Decision dismantled the cost apportionment scheme PJM intended to utilize for the Susquehanna Roseland Project. Now, this Project has no cost apportionment scheme in place. PSE&G is apparently continuing to rely on the scheme that was invalidated by the Seventh Circuit. In the three months since the Decision was issued, PSEG has not submitted any evidence of another, approved cost apportionment scheme. Thus, there is no cost apportionment scheme for the Project. Without one, the Project simply cannot be built. It is therefore neither reasonable nor prudent for the Board to permit PSE&G's Petition to proceed without a cost apportionment scheme in place to distribute the Project costs among the PJM utilities and to explain how ratepayers will be affected. More importantly, it is impossible for the Board, as a matter of law, to find that the Project is reasonably necessary in the absence of knowing how much it will cost the ratepaying public. For this reason, too, the Petition should be dismissed.

A. The Cost Recovery Scheme for the Susquehanna Roseland Project

PJM's authority to apportion costs for a transmission project, including new projects and upgrades, is derived from FERC's approval and acceptance of PJM's Operating Agreement and Tariff (the "Tariff"). *See* Herling Direct Testimony at. 7, l. 14-15; 13, l. 17-18. Cost apportionment for this Project is reflected in the Tariff. Cost recovery is, obviously, crucial to any transmission project. At a recent FERC Technical Conference, the President of PJM Interconnection discussed this essential component:

> One of the first issues that policymakers raise is "who pays?" In resolving this issue, we have the benefit of a body of existing precedent within PJM. Through our regional planning process and with FERC's oversight, we have addressed the appropriate rules for allocating costs associated both with economic and reliability upgrades to the transmission system. By way of example, as an independent entity with expertise and a proven track record, PJM can identify the portion of these transmission facilities which are attributable to enhancing overall regional reliability (and whose costs would therefore be spread among all customers in the affected areas) vs. those portions of the line which are needed for economics for which identified beneficiaries would shoulder the cost burden, or can be attributed to the interconnection requirements of specific generating facilities.

Tamasik Cert. Ex. 6 at 7 (Testimony of Karl Pfirrmann, President, PJM Interconnection, at FERC Technical Conference, May 13, 2005); *id.*, Ex. 7 (PSE&G Discovery Response STL-D-6(a) (selected portion)).

The Susquehanna Roseland Project is just one of PJM's so-called "backbone" transmission projects, dubbed "Project Mountaineer." These projects include: Trans-Allegheny Interstate Line (TrAIL), the Potomac-Appalachian Transmission Highline (PATH), Susquehanna-Roseland, and the Mid-Atlantic Power Pathway (MAPP). PJM submitted its cost apportionment tariff for the backbone projects to FERC for approval in 2007, and the tariff was approved. *See* FERC Docket ER07-1186; *see also* Tamasik Cert. Ex. 8, (FERC Order Accepting Cost Responsibility Assignments, January 28, 2009); *id.*, Ex. 7 (PSEG Discovery Response to STL-D16d). In the

Tariff, for Susquehanna Roseland, which is listed as Project b0489, to build new 500kV transmission facilities from the Pennsylvania – New Jersey border at Bushkill to Roseland, and Project b0487 to build new 500kV transmission facilities from Susquehanna to the Pennsylvania – New Jersey border at Bushkill, the PSE&G share of the cost as a "Responsible Customer" was 7.58% of Project b0489 in New Jersey, and 7.58% of Project b0487 in Pennsylvania. By contrast, ComEd, an Illinois utility, was charged with 16.11% of the cost of the Project, more than twice the share of the cost PSE&G would bear.

Required Transmission Enhancements		Annual Revenue Requirement	Responsible Customer(s)
b0487	Build new 500 kV transmission facilities from Susquehanna to Pennsylvania – New Jersey border at Bushkill		AEC (2.05%) / AEP (16.79%) / APS (5.96%) / BGE (4.91%) / ComEd (16.11%) / Dayton (2.53%) / DL (2.08%) / DPL (2.93%) / Dominion (13.22%) / JCPL (4.57%) / ME (2.04%) / Neptune* (0.47%) / PECO (6.10%) / PENELEC (2.09%) / PEPCO (4.47%) / PPL (5.16%) / PSEG (7.58%) / RE (0.30%) / UGI (0.14%) / ECP** (0.23%)

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PJM Amendments to Schedule 12 – Appendix of the PJM Tariff to reflect the assignments of cost responsibility for five baseline upgrades in RTEP); *see also* Tamasik Cert. Ex. 7 (PSEG Discovery Response to STL-D-16a); Herling Direct Testimony at 7, l. 14-15.

B. The Decision Dismantles the Cost Apportionment Scheme for the Project

PJM's revised Tariff was approved by FERC, pending the outcome of proceedings challenging the Tariff. The states of Illinois and Ohio took up the challenge, and in *Commerce Commission, et al., v. Federal Energy Regulatory Commission, supra*, the Seventh Circuit struck down the Tariff and remanded the matter to FERC. Tamasik Cert., Ex. 9 at 12.

In opposing Illinois' and Ohio's challenge to the Tariff, PJM argued that "classic" utilities had apportioned costs decades ago by utility consensus, and, therefore, costs should be apportioned in a similar manner now. The Court scoffed at this notion, remarking that there is no consensus, and, furthermore, PJM is now a different entity, larger in membership and with wide-ranging geographic scope. *Id.* at 6. The Court also sharply dismissed FERC's claim that the pricing scheme was appropriate because FERC claimed it was not feasible to measure benefits received in order to apportion according to benefits. FERC's claim that a ruling dismantling the scheme underlying the tariff would lead to litigation by and among the utilities, PJM and FERC was similarly rebuked by the Court. Judge Posner pointed to FERC's complete failure to make any attempt at estimating or calculating benefits, and noted that FERC's claims of infeasibility were unsubstantiated and irrational. *Id.* at 7.

The Court also took issue with FERC's contention that Midwest utilities would benefit from Project Mountaineer, and thus should pay their "fair share:"

> So utilities and their customers in the western part of the region could benefit from higher voltage transmission lines in the east, but nothing in FERC's opinions in this case enables even the roughest of ballpark estimates of those benefits.
>
> At argument FERC's counsel reluctantly conceded that if Commonwealth Edison would derive only $1 million in expected benefits from Project Mountaineer, for which it is being asked to chip in (by its estimate) $480 million, the disparity between benefit and cost would be unreasonable. The concession was prudent.

Id. at. 8. In a classic cost/benefits analysis, Judge Posner went on to recount the law of cost apportionment where benefits are at issue and chastised FERC for apportioning costs in a manner unrelated to benefits:

> FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members. "'[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.'
>
> Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."

Id. at 9-10 (internal citations omitted). The Court scoffed at FERC's contention that its experience with issues of reliability and network needs should convince the Court to take the soundness of its cost apportionment scheme "on faith." Noting the lack of substantial evidence on the record in support of FERC's approval of the scheme, the Court declined the offer. *Id.* at 10-11 (citations omitted). Instead, it remanded the matter to FERC with the instruction to undertake an honest, complete comparison of the costs and benefits to all the relevant utilities:

> If [FERC] cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; . . . the Commission can approve PJM's proposed pricing scheme on that basis. For that matter it can presume that new transmission lines benefit the entire network by reducing the likelihood or severity of outages. **But it cannot use the presumption to avoid the duty of "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."**

Id. at 11-12 (emphasis added) (internal citations omitted).[2]

[2] To hear the spirited oral argument online: http://www.ca7.uscourts.gov/tmp/Q019G7Q4.mp3

The remand ordered by the Court will require yet another "retooling" by PJM, which means that PJM must make a significant effort to compile cost/benefit information and analysis, rework the tariff for this Project, and submit it to FERC for approval. In all likelihood, the "retool" will require PJM to rethink its distributive and allocative policy and philosophy. Until this occurs, who pays for this Project, and how much, is unknown. Thus, it is impossible, as a matter of law, to ascertain whether the Project is reasonably necessary.

Because PJM's authority derives from the tariff, the Project cannot move forward without a valid, FERC-approved tariff. At present, there is none. All of PSE&G's testimony based on the overturned cost apportionment scheme is no longer valid. Indeed, the Decision removed the very "backbone" of the Project. PSE&G has remained silent about the Decision and its impact on the Project. It has made no corrections or amendments to its testimony, and provided no additional data evidencing new filing with FERC or stipulations regarding cost apportionment. The Intervenors are completely in the dark as to whether PSE&G and/or PJM intend to address the deficiencies in the tariff identified in the Decision. Nor has PSE&G or PJM provided any insight as to how long a time a new cost/benefit analysis will require, or even whether any such cost/benefit analysis has been initiated.

When the Seventh Circuit voided the cost apportionment and recovery schemes applicable to the Project, the Decision undercut the entire Project. The BPU and the Intervenors cannot proceed until a new tariff with a new scheme is approved. In the absence of information concerning the benefits to be derived by all the PJM utility parties from the Susquehanna-Roseland Transmission Project, and the costs to be borne by them, and by ultimately the ratepayers, the Board simply cannot make a reasonable and prudent determination regarding PSE&G's Petition. PSEG's Petition should be dismissed immediately, without prejudice, so that PSEG may re-file it when it has determined a cost allocation scheme acceptable to FERC and the courts.

POINT II

THE PETITION SHOULD BE DISMISSED BECAUSE THE PROJECT HAS CHANGED SIGNIFICANTLY SINCE JANUARY 2009

A motion to dismiss is appropriate in a contested administrative case. *Pennsville Commercial Land, Inc. and Delco, LLC v. Connectiv, Inc., and Atlantic City Elec. Co.* 2003 WL 21675028 (N.J. Adm.) (2003); *see also* N.J. A.C. 1:1-1.3(a). The test utilized to evaluate the efficacy of a motion to dismiss is whether the evidence and the inferences therefrom could sustain a judgment in favor of the non-moving party. The decisionmaker is instructed not to be concerned with the "worth, nature or extent . . . . of the evidence, but only with its existence, viewed most favorably to the party opposing the motion. *Dolson v. Anastasia*, 55 *N. J.* 2, 5-6 (1969) (citations omitted).

In this matter, PSE&G has not submitted evidence that can sustain a judgment in its favor because it has not demonstrated that the Project is "reasonably necessary for the service, convenience or welfare of the public…." In the instant case, construing the evidence in favor of the non-moving party, PSE&G has utterly failed to demonstrate through a current study that incorporates the major factors that have occurred since the need for the Project was initially manufactured in 2007, that its proposed Project is reasonably responsive to the need that PSE&G claims exists. Because the extant Project is now being based on a "need" that is so vastly different from the one contemplated in the Petition, the Board should dismiss the Petition, without prejudice and allow PE&G to refile it if additional information becomes available that will justify its re-submission and a determination by the Board.

A. The Project is not about Need; It Is About PJM's Regional Transmission Expansion Plan.

At the time PSE&G filed it Petition, it included testimony and supporting exhibits regarding the need for this project. The Susquehanna-Roseland Project is one component in PJM's Regional Transmission Expansion Plan ("RTEP") that includes four so-called "backbone" projects that PJM authorized in 2006 and 2007, which represent well over $5 billion in investment. These four major projects are the Trans-Allegheny Interstate Line (TrAIL), the Potomac-Appalachian Transmission Highline (PATH), Susquehanna-Roseland, and the Mid-Atlantic Power Pathway (MAPP). All of these projects lie squarely within the recently designated Mid-Atlantic National Interest Electric Transmission Corridor (NIETC). *See, e.g.,* Direct Testimony of Herling at 3)("I will discuss the Susquehanna – Roseland Project ("Project") in the context of the RTEP").

This point bears emphasis, because PSE&G's testimony regarding justification for this Project considers (as it must) the Regional Transmission Expansion Plan. This Project is not a transmission reliability improvement plan; it is about *expanding* the regional transmission system overseen by PJM. Expansion of the regional transmission system is PJM's *raison d'etre.* Expansion, however, is not required under the North American Electric Reliability Council criteria[3], as adopted by FERC; it is market driven. Because the purpose of the Project is "expansion," and electrical and reliability "need" have not been demonstrated,, the Project contravenes the public interest, ratepayers' interests, and the energy policies of the State of New Jersey—it may be in the interest of the transmission operators, but not the public.

B. Despite Being a Moving Target, PSE&G's Studies Show the Project Is Not Necessary

PJM's business plan, and not energy reliability, is apparent in the iterations of the Regional Transmission Expansion Plan. The RTEP is a moving target, morphing as this Petition moves forward on the BPU's docket. Thus far, in the documents submitted with the Petition and

[3] [3] NERC Reliability Standards, available online: http://www.nerc.com/page.php?cid=2|20

subsequently produced in discovery, PSE&G has introduced no less than four different data sets within an iteration of the RTEP, and claims that each data set independently demonstrates the need for the Project. These data sets are derived from the 2007 RTEP Analysis, the 2008 RTEP Re-tool, the draft 2009 RTEP Re-tool, and the final 2009 RTEP Re-tool, which PSE&G released to Municipal Intervenors only six weeks ago. Kadhr Rebuttal Testimony at 5.

PJM has changed the analytical methodology with every successive data set introduced, using different assumptions, inputs and calculations, which, of course, produced different results. Claiming that each new methodology adopted results in more accurate data, PSE&G has paid little attention to the parties' indictments of previous methodologies, and has disregarded those methodological improvements that have affected the data sets over time. Nor has PSE&G made any attempt to glean information by comparing the outcomes of each analysis. *See* Tamasik Cert., Ex. 19 (Response to Municipal Intervenors Discovery Request, McGlynn 22). The implication of the independence of each iteration is that each successive data set renders all preceding sets, and the Intervenors' criticism of each preceding data set, irrelevant. For example, Intervenors questioned the accuracy of PJM's 2007 RTEP analysis and 2008 RTEP Re-tool because they did not incorporate the affects of Demand Response (DR) Resources that would be available to mitigate projected thermal violations. PJM responded that DR Resources were incorporated in the final 2009 RTEP Re-tool and are reflected in the data set it provided after two rounds of discovery requests and two rounds of rebuttal testimony had been expended evaluating old data sets. *See* Tamasik Cert., Ex. 1 (McGlynn Response to Municipal Intervenor's Discovery Request 24); *see also id.*, Ex. 2, (McGlynn Response to Municipal Intervenor's Discovery Request 17).

In another example, when the Intervenors questioned the manner in which PSE&G incorporated DR Resources in the 2009 RTEP Re-tool, PSE&G responded that its methodology for analyzing the affects of DR Resources would be corrected in the 2010 RTEP and all subsequent analyses. Tamasik Cert., Ex. 2 (McGlynn Response to Municipal Intervenors Discovery Request 17); *id.* Ex. 3 (Reynolds Response to BPU Staff Interrogatory S-PP-45). However, while implying that each improvement renders the Intervenors' criticism of previous methodologies moot, PSE&G claims that it has not acknowledged that the number and severity of its projected reliability criteria violations has decreased with each methodological improvement, or that the original violations put forward as justification for the Project have evaporated. Tamasik Cert. Ex. 3 (Reynolds Response to BPU Staff Interrogatory S-PP-45). These improvements and the paucity of PSEG's claims are borne out in the congestion statistics for the PPL and PSE&G Control Zones in the PJM 2008 Annual Report. Tamasik Cert. Ex. 4 at 156-576, 182 (PJM 2009 Quarterly State of the Market).

In yet another example, after clarifying a sentence that PSE&G admitted was confusing and created the impression that the Intervenors used erroneous load forecasting data when comparing forecasted and observed peak loads, PSE&G explained that the discrepancy between forecasted and observed loads was the result of unexpected weather conditions. *See* Tamasik Cert Ex. 5 (McGlynn Response to Municipal Intervenors Request 26). PSE&G described two tests it uses to determine if weather, and not the economy, was responsible for unexpectedly low demand. One involves weather normalizing the peak loads after the fact, and the other involves re-estimating the PJM load forecast model using actual weather data and comparing the re-simulated peak loads to the actual peak loads observed. PSE&G explains that it "uses the method described above to account for load forecasting errors that result from extreme weather conditions like those experienced in 2006 and 2008." *Id.* One could easily, but mistakenly, conclude that PJM performed both of the tests described on the 2006 *and* 2008 data sets. But the second, and more accurate, of the two tests was performed only on the 2006 data. There is no evidence that PJM conducted the second test on the 2008 data. Confusion like this results almost entirely from PSE&G's introduction of multiple data sets in support of its Petition.

PSE&G's delay in providing the actual data that, presumably, it will rely on at the Evidentiary Hearings contravenes the purpose of the Board's review of the Petition. Multiple changes in data and shifts in methodology, particularly at the eleventh hour, should not be permitted by the Board. It is impossible for the Intervenors and the Board to discern and apply the information necessary to inform the record and adequately address PSE&G's claim that the Project is born out of need.

In PSE&G's Petition, the need for the Project was based on 23 potential reliability violations that were projected to occur in the future, ranging from the years 2012 to 2022. These 23 potential reliability violations were projected to occur based on load flow studies incorporating a complex set of modeling assumptions, tests, and most importantly, a peak load forecast. The peak load forecast (issued by PJM in January, 2008) that was used as part of these modeling assumptions, however, was created prior to the current economic recession. Due to the current recession, a sea change has taken place over the last twelve months as to the demand for electricity, with a concomitant effect on the peak load projections underlying PSE&G's claims that the Project is needed to serve the public. Of the original 23 potential reliability violations that the Company asserted as the basis of need for the Project, ten of them have been pushed out beyond even the 15-year planning horizon and thus are no longer relevant to this proceeding. Many of the 13 potential reliability violations remaining after the March 2009 RTEP are now projected to occur at a later date than was originally forecast; most significantly the 500 kV reliability standard violation was "pushed out" even beyond the fifteen-year planning horizon. *Compare* EAK-3a (2007 RTEP "violations") with PFM-2 and PFM-3 (2009 RTEP "violations").

As the number of violations shrinks it may well be more cost-effective and less environmentally intrusive to consider individual solutions on lower voltage lines that do not involve a new $1.2 billion 500kV line. A current retool study incorporating all relevant data would prove to be a valuable tool to this Board in the analysis of whether a 500 kV line is reasonably necessary, considering the timing and number of the anticipated reliability issues. Indeed, it is the only way that this Board can determine whether the proposed 101-mile $1.2 billion Project is reasonably necessary.

The various iterations of RTEP reveal a discernable pattern showing that over time, the criteria violations are fewer and less severe. This leads to the question of what would occur with the passage of even more time. Given the decreased load, noted in detail in Point IV, infra, any need for the line that *may* have existed has evaporated, and it is apparent that this Petition should go no further. The Intervenors request, therefore, that the BPU dismiss the Petition, without prejudice, to allow PSEG to file it again if increased demand sufficiently demonstrates need.

POINT III

THE RELOCATION OF THE SWITCHING STATION IS A MAJOR ALTERNATION TO THE PROJECT AND THE BOARD MAY NOT PROCEED WITHOUT A FULL REVIEW AND PUBLIC HEARINGS.

On May, 19, 2009, PSE&G announced that it would relocate the Project's switching station from its designated site in Jefferson Township to a new site in the Borough of Hopatcong. The relocation of the switching station occurred in conjunction with PSE&G's application to the Highlands Council for an exemption from the Highlands Act, which would allow PSE&G to construct the Project in and on land protected under the Highlands Act. Of course, the relocation would require rerouting of the line itself. In exchange for its approval of the exemption, the Highlands Council accepted $18.6 million from PSE&G as "environmental mitigation."

The Highlands Council touted the relocation as a victory for the Highlands Area:

> A major change to the proposal is a relocation of a switching station that was intended for ecologically sensitive land in Jefferson Township, a location that was of primary concern to the Highlands Council. The switching station will be moved to a site in Hopatcong Borough, and the utility has agreed to construct a smaller station utilizing Gas Insulated Switching gear technology. This relocation also means 13 fewer towers will have to be constructed. Other changes to the proposed project include new management plans, consistent with NJDEP permit requirements, for work in forested, wetlands and critical habitat areas; a restoration plan for streams and riparian habitats; and a historic and archaeological resources protection plan.

Tamasik Cert., Ex. 10 (Highlands Council Press Release, May 19, 2009). However it was August 2009 before PSEG provided "notice" to the BPU of the planned relocation of the switching station. In its notice, PSE&G tried to minimize any concern that the relocation might have altered the Petition filed in January 2009:

> PSEG has expressed a willingness to move construction of a Switching Station included as a part of the Susquehanna-Roseland Project ("the Project") from Jefferson Township to the Borough of

> Hopatcong. Although PSE&G's filing in this matter remains unchanged by the Highlands Council's determination, in furtherance of the relocation of the switching station, PSE&G wishes to provide you and the parties in this proceeding with the following additional information.

Tamasik Cert., Ex. 11 .

PSE&G, on its own initiative cavalierly determined that its Petition, filed in January, 2009, was not altered by the relocation of a major Project component. No hearings were held on the relocation; no public announcements were made. If news of the relocation reached anyone, it was only because it was mentioned in news articles reporting on Highlands Council matters.

Neither the Intervenors nor the BPU have had a reasonable amount of time to investigate the relocation and its potential impact For example, the PSEG letter of "notification" declares that "[t]here would be no significant change to the route of the proposed line caused by acceptance of the Mitigation Plan approved by the Highlands Council." *Id.* at 2. Logically, the change is significant if PSE&G was willing to "donate" $18.6 million to the Highlands Council in order to obtain it. The Board should insist on a full review of the agreement between PSE&G and the Highlands Council. For example, the Gas Insulated Switchgear PSE&G proposes to install in Hopatcong uses sulfur hexafluoride gas, which is hazardous, requiring release prevention and limitation through design, monitoring and maintenance *See* Direct Testimony of Jacober at 5:19; *see also* ABB: Questions and Answers About SF6[4]; Tamasik Cert. Ex. 18 (Jacober Response to STL Discovery Requests 4 and 5). In addition, there is no evidence of the cost of the relocation, or its consequences to the Project overall. Furthermore, PSE&G has produced no electrical studies showing the feasibility or impact on reliability of the changes it has proposed.

[4] *Available at* http://www.abb.com/cawp/seitp161/c125692200220ad3412568770074697d.aspx. SF6 has also been recognized as a greenhouse gas by the 3rd Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change in 1997

The Board should conduct public hearings on the relocation, preferably in Hopatcong Borough. The three (3) public hearings held by the Board were conducted in June, 2009, but the relocation was not widely publicized nor even definite at that time. Indeed, PSE&G's notice of it did not occur until August. It is presumptuous of PSE&G to come so late to the table with this very significant alteration to the Project and expect that the Board – and the Intervenors—will not notice. The Board and the public are entitled to the time necessary to review the changes to the Project brought about by this relocation. Rather than rush to judgment about the efficacy of the Project overall, the Intervenors submit that the Board should dismiss the Petition, without prejudice.

POINT IV

DECREASED ENERGY CONSUMPTION IN 2008 AND 2009 NEGATES THE ALLEGED NEED FOR THE PROJECT

There is no doubt that the decrease in peak demand, overall demand for electrical energy, and sales of electricity in the region over the past two years is so significant that current and projected consumption rates cancel out all of PSE&G's claims that the Project is needed. The reports show that that in the first half of 2009, demand in the PJM region was down 4.4%, which followed a drop of 2.7% in 2008. Tamasik Cert., Ex. 4 (PJM 2009 Quarterly State of the Market) . In August 2009, the Wall Street Journal reviewed PJM's Quarterly Report and reported that "Electricity Prices Plummet." Tamasik Cert., Ex. 12. That story followed an earlier Wall Street Journal article, "Surprise Drop in Power Use Delivers Jolt to Utilities," questioning infrastructure construction. "The message is: be cautious about what you build because you may not have the demand" to justify the expense, said Michael Morris, CEO of AEP. *See* Tamasik Cert. Ex. 20.

In the meantime, the cost of energy has declined. This decline is reflected in PSEG's SEC filings, which show a precipitous drop in net income, from $656 million in Third Quarter 2008 to $488 million in Third Quarter 2009.

PSEG CONSOLIDATED EARNINGS (unaudited) Third Quarter Comparative Results 2009 and 2008				
	Income ($millions)		Diluted Earnings Per Share	
	2009	2008	2009	2008
Net Income	$488	$656	$0.96	$1.29
Less: Income from Discontinued Ops	--	180	--	0.35
Income From Continuing Ops	$488	$476	$0.96	$0.94
Less: Excluded Items	24	(1)	0.04	--
Operating Earnings (Non-GAAP)	$464	$477	$0.92	$0.94
		Avg. Shares	507M	508M

Tamasik Cert., Ex. 13 at 1; see also *id.*, Ex. 20, PSEG 10-K 2008.

The drop in demand and price is also reflected in PJM's 2009 Quarterly State of the Market Report for PJM: January through June, dated August 14, 2009 (the "PJM Quarterly Report").[5] As reported, demand has decreased and prices have dropped leaving an electricity market glutted with supply. In addition, electrical constraints have been relieved, meaning the system is less congested and implementation of Transmission Loading Relief (TLR) has lessened. Congestion is no longer an overriding problem. *Id.* at. 72

Some excepts from the PJM Quarterly Report are instructive:

<u>Supply</u>:

• During the April through June 2009 quarter, the PJM Energy Market received an hourly average of 153,310 MW in supply offers including hydroelectric generation. The second quarter 2009 average supply offers were 2,149 MW lower than the second quarter 2008 average supply of 155,459 MW.

<u>Demand</u>:

• The PJM system peak load in the second quarter 2009 was 116,732 MW in the hour ended 1700 EPT on June 25, 2009, while the PJM peak load in the second quarter 2008 was

[5] Available in its entirety online at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.shtml

130,100 in the hour ended 1700 on June 9, 2008. The 2009 second quarter peak load was 13,368 MW, or 11.5 percent, lower than the second quarter 2008 peak load.

Load:

• On average, PJM real-time load decreased in the first six months of 2009 by 3.4 percent from the first six months of 2008, falling from 78,684 MW to 75,993 MW. PJM day-ahead load decreased in the first six months of 2009 by 7.1 percent from the first six months of 2008, falling from 95,485 MW to 88,688 MW.

Prices:

• PJM LMPs are a direct measure of market performance. Price level is a good, general indicator of market performance, although the number of factors influencing the overall level of prices means it must be analyzed carefully. For example, overall average prices subsume congestion (price differences at a point in time) and price differences over time.

PJM Real-Time Energy Market prices decreased in the first six months of 2009 compared to the first six months of 2008. The system simple average LMP was 42.9 percent lower in the first six months of 2009 than in the first six months of 2008, $40.12 per MWh versus $70.19 per MWh. The load-weighted LMP was 43.2 percent lower in the first six months of 2009 than in the first six months of 2008, $42.48 per MWh versus $74.77 per MWh. The fuel-cost-adjusted, load-weighted, average LMP was 6.4 percent lower in the first six months of 2009 than the load-weighted, average LMP in the first six months of 2008, $70.00 per MWh compared to $74.77 per MWh. Fuel costs and lower loads in the first half of 2009 contributed to downward pressure on LMP.

PJM Day-Ahead Energy Market prices decreased in the first six months of 2009 compared to the first six months of 2008. The system simple average LMP was 42.9 percent lower in the first six months of 2009 than in the first six months of 2008, $40.01 per MWh versus $70.12 per MWh. The load-weighted LMP was 42.7 percent lower in the first six months of 2009 than in the first six months of 2008, $42.21 per MWh versus $73.71 per MWh.

Id. at 3, 5. These same downward trends are shown in other metrics, including the Real-Time Annual and Monthly Load, (PJM Quarterly Report at 18), Day-Ahead Load (PJM Quarterly Report at 19), Average Locational Marginal Price (LMP) (PJM Quarterly Report at 21), Real-Time Load-Weighted LMP (PJM Quarterly Report at 22), Day-Ahead Load-Weighted LMP (PJM Quarterly Report at 26).

The PJM Quarterly Report also reveals the decrease in benefits to the PSE&G territory, which is evidenced in the Energy Market tables where PSEG's Economic Program credits are far less than those of other utilities in the region. For example, PSE&G's credits were $1,809 for 90 hours, as compared to $260,617, 2933 hours for PPL. PJM Quarterly Report at 38. The congestion cost market impact on PSE&G—or perhaps more correctly stated, the lack of cost impact—is also cited in the PJM Quarterly Report. PSE&G experienced congestion costs that were significantly lower than they were for other utilities. PJM Quarterly Report at 156-57. PSE&G has hedged more than 100% against congestion, and the Report shows its revenue from credits at $137,683,031 and congestion costs of $2,672,958, bringing total revenue of $140,355,989. *Id.* at 182; 156-57. These statistics and reports lead to the conclusion that the Susquehanna Roseland Transmission Line is not economically necessary for PSE&G to address congestion. In short, neither PSE&G nor the energy market needs this Project.

POINT V

THE PROJECT IS CONTRARY TO NEW JERSEY POLICY AND THE PUBLIC INTEREST

The Susquehanna-Roseland Transmission Project is transmission for coal, and as such, it is, on its face, contrary to New Jersey policy and the New Jersey Energy Master Plan. For this reason, the BPU should dismiss the Petition of PSEG because the Project is against the public interest.

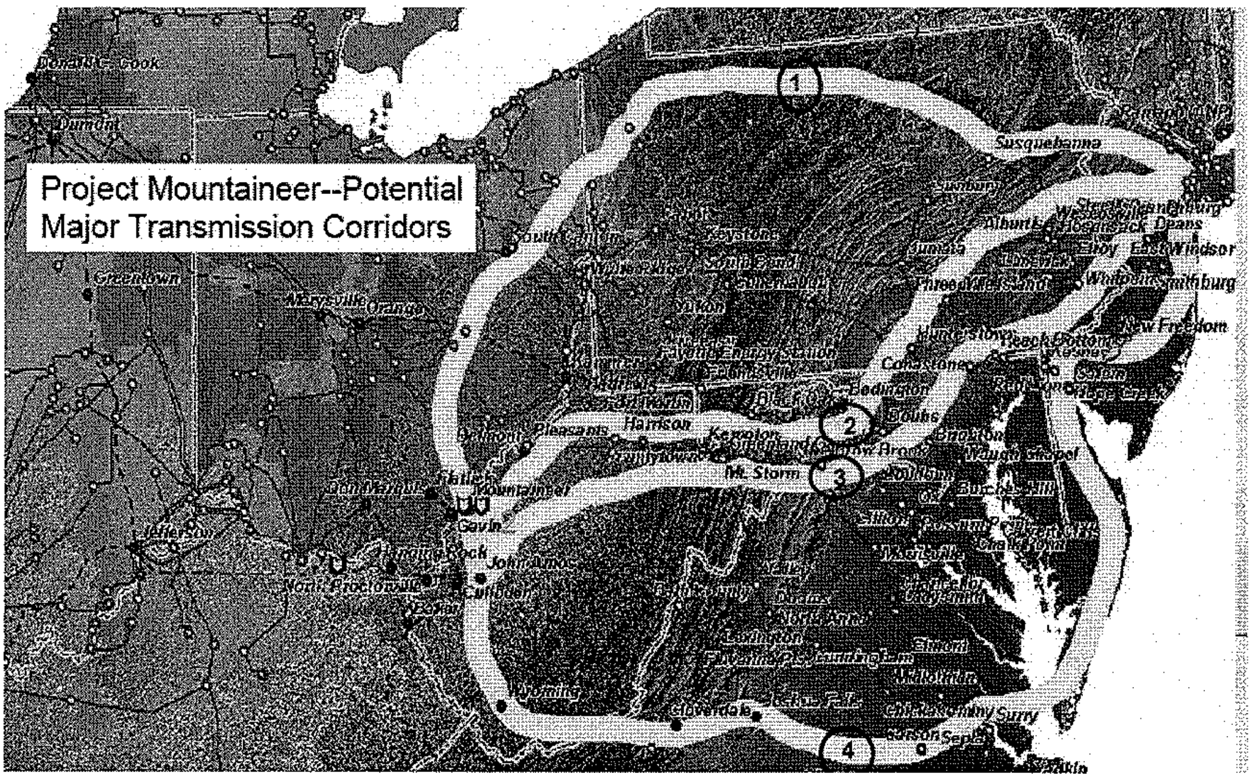
Karl Pfirrmann, President of PJM, testified at the May 13, 2005 FERC Technical Conference "Promoting Regional Transmission Planning and Expansion to Facilitate Fuel-Diversity Including Expanded Use of Coal-Fired Resources.[6] Tamasik Cert., Ex. 6 at 5; *id.* Ex. 7 (PSEG Discovery Response STL-D-6(a)(selected portion)); *see also* FERC Docket No. AD05-03-000. In his testimony, he announced "Project Mountaineer," PJM's plan to expand the market for low-cost coal resources:

[6] A transcript of this Conference may be found on-line at: http://legalectric.org/f/2009/03/transcript5-13-05-2005-reduced.pdf. For the complete FERC docket, go to the Search page at: http://elibrary.ferc.gov/idmws/docket_search_consol.asp and search for FERC Docket No. AD05-3.

PJM is certainly proud of what has been accomplished to date to open up markets to coal, but there is much more that we and others in this region can do to further enhance that use of coal.

It is for this reason that, today, PJM is setting out by example, a new initiative which we have labeled Project Mountaineer . . . to utilize our regional transmission expansion planning process to explore ways to further develop an efficient transmission super highway, if you will, to deliver the low-cost coal resources in this region of the country, to market.[7]

See also Tamasik Cert., Ex. 6. The northeast segment of Project Mountaineer's "Line I" is the Susquehanna-Roseland transmission project.



Project Mountaineer map, attached to Pfirrmann Testimony before FERC.

The Delaware River, between Pennsylvania and New Jersey has been identified by PJM as a primary "impediment to West/East trade:"

7 Comments of Karl Pfirrmann, President of the PJM Interconnection, Western Region, *Conference on Promotion Regional Transmission Planning and Expansion to Facility Fuel Diversity Including Expanded Uses of Coal-Fired Resources*, at 61 (May 13, 2005)

> [T]here remain certain physical constraints on the transmission system that have limited further flows of coal based generation to markets in the east. These constraints are depicted on Exhibit B and principally exist at three locations:
>
> The Wylie Ridge transformers and Sammis-Wylie Ridge transmission line at the AEP/APS/FE interface;
>
> The Bedington/ Black Oak 500 kV transmission line within the APS system; and
>
> **The PJM Eastern Interface along the Delaware River, separating Pennsylvania and New Jersey.**

Id. at 5 (emphasis added). This environmentally sensitive Delaware River crossing is an inherent feature of the Susquehanna-Roseland Project, as is its 500kV quad-bundled transmission line for coal.

A. The Project is Contrary to New Jersey Energy Master Plan

The Susquehanna-Roseland transmission project is unabashedly in violation of the New Jersey Energy Master Plan ("EMP"), and contrary to New Jersey's interest. While New Jersey is moving toward a more secure, less fossil-fuel depending energy future, PJM has given its blessing to a new 500kV transmission line fired by coal. To add to the absurdity of this scenario, PSE&G has agreed to build this coal-fired behemoth in spite of the clear energy policy shifts summarized in the New Jersey Energy Master Plan. Because the Susquehanna-Roseland transmission project represents a significant infrastructure investment that would lock the state into a path that is diametrically opposed to the Energy Master Plan, PSEG's Petition should be dismissed.

The Goals of the New Jersey Energy Master Plan are:

> GOAL 1: Maximize the State's energy conservation and energy efficiency to achieve reductions in energy consumption of at least 20% by 2020.
>
> GOAL 2: Reduce peak demand for electricity by 5,700 MW by 2020.
>
> GOAL 3: Strive to surpass the current RPS goals with a goal of achieving 30% of the State's electricity needs from renewable sources by 2020.

GOAL 4: Develop a 21st century energy infrastructure that supports the goals and action items of the Energy Master Plan, ensures the reliability of the system, and makes available additional tools to consumers to manage their energy consumption.

GOAL 5: Invest in innovative clean energy technologies and businesses to stimulate the industry's growth in New Jersey

New Jersey Energy Master Plan, at 54, 60, 67, 75, 81. The New Jersey Energy Master Plan could not be more clear in its directive that the state must be pro-active in transmission policies and actions. *See generally* New Jersey Energy Master Plan.

The Plan instructs that New Jersey must insure its part in the decision-making at PJM and FERC. One of the ways in which the state can do this is to work with PJM and FERC to modify or replace the Reliability Pricing Model with a mechanism that focuses incentives on new generation capacity, demand response, and energy efficiency. As the Plan reports, the first five years of RPM's capacity prices will cost New Jersey customers more than $7 billion, a sum that is more than sufficient to fund the construction of several new power plants outright. However, that sum is being spread among all capacity resources, leaving only a sliver for new power plants or demand response. The Plan continues to conjecture that direct State action will achieve more certain results than RPM, and will tailor the results more closely to New Jersey's particular economic and environmental needs. The goal is to relieve the state ratepayers from paying for RPM above the costs of more wisely targeted efforts. The Plan goes on to say:

> Therefore, the State will continue its advocacy, with the goal of modifying or replacing the RPM with something that will produce better results while being more cost-effective and takes into consideration energy efficiency and demand response efforts.

New Jersey Energy Master Plan, at 93. Clearly, this goal was ignored altogether by PSE&G, and by PJM in proposing the Project.

Another way in which the State can work with PJM and FERC is to actively participate in PJM's planning of the electric transmission system to better protect New Jersey's economy and the environment. According to the Plan, PJM has determined that the reliability of electricity supply will be jeopardized over the next several years, unless the state's energy demand and supply are addressed. Since PJM is responsible for planning and operating the transmission grid, it is in the process of directing upgrades to the grid that will enable New Jersey to import more electricity. These imports will come primarily from coal production regions where coal-based electric generation is prevalent. In other words, our efforts to cut greenhouse gas emissions within New Jersey's borders will be undermined if the shortage of electricity supply is solved by importing more coal-based electricity.

The Plan goes on to say that we here in New Jersey cannot stake our energy future on increased imports of coal-based electricity:

> The prospect of increased greenhouse gas emissions is only one reason to avoid increasing our reliance on imports of coal-based electricity. Just as importantly, hopes that these imports would bring us greater reliability and lower prices are likely to be dashed. The prospect of federal limits on power plant emissions of greenhouse gases is creating major uncertainty about what coal-based power will cost. In addition, demand for coal is increasing, as coal is becoming more difficult and expensive to mine and transport, and recent history has featured disruptions in coal supply and spikes in coal prices. All of these factors suggest that it would be irresponsible to stake our energy future on increased imports of coal-based electricity.

New Jersey Energy Master Plan, at 9, 37, 93-94. The Plan admonishes New Jersey to work closely with PJM to insure that transmission planning reflects the state's desire to increase in-state supply and reduce demand, and that transmission planning does not undermine the State's economic and environmental goals. Apparently, PJM and PSE&G never read the New Jersey Energy Master Plan.

B. <u>The Project is Contrary to Neighboring States' Interests</u>.

In addition to violating the New Jersey Energy Master Plan, the Project contravenes the policy statements of nearby states, which have objected to west-east transmission for coal. Because the Project would use New Jersey as a pass-through to these states, their concerns must be considered.

In February, 2009 New York Independent System Operator ("ISO") and the ISO New England issued a joint letter removing their ISOs from promotion of the Joint Coordinated System Plan ("JCSP"), for west to east transmission, stating that:

- No single transmission plan is a solution until renewable energy resources are incorporated; and
- Cost allocation and value-based planning are policy issues for a policy making body, not JCSP; and
- Much renewable energy development is moving forward in the NYISO and ISO-New England regions; and
- JCSP presumes development of new coal fired generation.

Tamasik Cert., Ex. 15 (NYISO & ISO-New England letter, February 4, 2009).

Nearly identical concerns were expressed in the testimony of Paul A. DeCotis, the State of New York's Deputy Secretary for Energy before the United States Senate Committee on Energy and Natural Resources. *Id.*, Ex. 16 (Testimony of Paul A. DeCotis before U.S. Senate Committee on Energy, March 26, 2009). In particular, Mr. DeCotis noted that New York already has over 1,200MW of wind generation on line, with 7,400MW in queue for interconnection. His simple bottom line is worth repeating:

> The most cost-effective way to reduce dependence on imported and fossil energy and to reduce carbon emission is to first optimize local resources available.

Id. at 3.

These same sentiments were echoed by ten (10) Mid-Atlantic Governors, including New Jersey's Governor Jon S. Corzine, who wrote to Senate and House leaders, advising that their states have significant offshore wind resources that are beginning to be developed, and that they wished to

> express our concern about the significant risks posed by recent proposals regarding transmission that we believe could jeopardize our states' efforts to develop wind resources and inject federal jurisdiction into an area traditionally handled by states and regions.

Id., Ex. 17 at 1 (Mid-Atlantic Governors letter, May 4, 2009). The Governors noted also that "it is well accepted that local generation is more responsive and effective in solving reliability issues than long distance energy inputs." *Id.* at. 2.

The Susquehanna-Roseland transmission Project does not even pretend to have considered local generation, demand response, more efficient use of available power, optimization of resources and use of the grid, or alternative sources of power. PJM and PSE&G also have ignored the glaring lack of demand for power that will cost the ratepayers over a billion dollars just for the system to carry it, and will cost the residents of New Jersey and neighboring states the added burdens of damaged air quality, environmental degradation, compromised energy plans, and a less secure energy future.

CONCLUSION

For all of these reasons, the Petition should be dismissed, without prejudice, to allow PSE&G to refile when it has a project that fulfills a need while actually complying with New Jersey policy, or adjourned until PSE&G has the opportunity to prepare a new study and peak load projections.

Respectfully submitted,

Eastern Environmental Law Center\
Attorneys for Environmental Intervenors

By: Julia LeMense, Esq

Carol A. Overland, Esq.
Attorney for Stop the Lines!

By: ____________________
Carol A. Overland

DeCotiis, FitzPatrick, Cole & Wisler, LLP.
Attorneys for the Municipal Intervenors

By: ____________________
Catherine E. Tamasik

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