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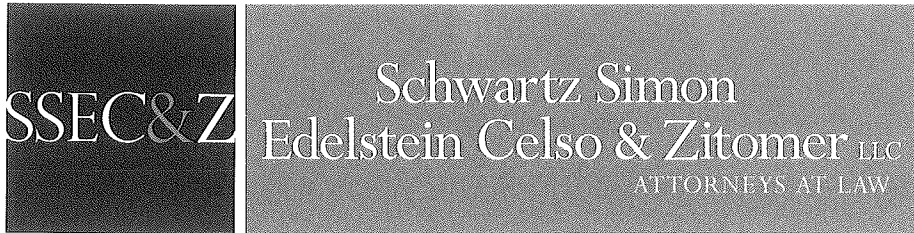
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January 6, 2010

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**VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL**

Kristi Izzo, Secretary of the Board
New Jersey Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

**RE: In the Matter of the Petition of Public Service Electric and Gas
Company for a Determination Pursuant to the Provision s of N.J.S.A.
40:55D-19 - BPU Docket NO. EM09010035
Post Hearing Brief on behalf of Montville Township Board of
Education**

Dear Ms Izzo:

This office represents the Montville Township Board of Education. Enclosed please find the following:

1. Reply Brief

Please feel free to contact me concerning this matter. Thank you.

Very truly yours,

Schwartz Simon
Edelstein Celso & Kessler LLC


PATRICK D. TOBIA
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PDT/nlr

Enc.

cc: Service List (by electronic mail)

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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

**REPLY BRIEF ON BEHALF OF INTERVENER
MONTVILLE TOWNSHIP BOARD OF EDUCATION**

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INTRODUCTION

Intervener, The Montville Township Board of Education (BOE) submits this reply brief in response to PSE&G's Post Hearing Brief dated December 28, 2009. The BOE joins in and incorporates the post hearing briefs filed by the Municipal Interveners, Stop The Lines and the Environmental Interveners (collectively "Interveners"). The BOE fully supports the efforts of the Interveners to have the BPU deny PSE&G's application for approval of the Upgrade Project. The BOE submits this reply to address specific issues concerning the Upgrade Project related to the Lazar Middle School property and the children who attend the school.

I. The Upgrade Project Is Not Needed

Preliminarily, the BOE points out that there is ample evidence in the record as set forth in the Post Hearing Briefs filed by the Interveners which demonstrates that there is not a *need* for the proposed Upgrade Project. All of the trends across the country, and here in New Jersey, are for energy conservation, renewable energy alternatives and clean energy technologies. What is PSE&G's response to this reality? A massive power line upgrade that will not only scar the New Jersey landscape with its 200 foot tall towers, but will be fueled by a dirty coal burning facility from the west. PSE&G's proposed upgrade is not needed, and the BPU should deny the application on this ground.

II. BOE Opposes the Upgrade Project Based Upon Safety and Health Concerns

As stated in the BOE's initial brief, the BOE opposes the Upgrade Project on several grounds: safety concerns, proximity of these towers to school property, health issues related to EMF exposure, and logistics and aesthetics. This reply focuses primarily on safety and EMF issues. The BOE anticipates an expansion of the school building in the next few years. This expansion must be built out the back of the school, in the direction which will place the addition even closer to the proposed new towers. Based upon the physical proximity of the new towers to

the anticipated school addition, as well as the potential adverse health impacts due to elevated EMF exposure, the BPU should require PSE&G, should the application be approved, to relocate/realign the towers on and around the Lazar Middle School. This will increase the distances between the towers and the school property. By increasing the distances, the new school addition will be at a safe and prudent distance from the 200 foot high 500kv towers, and the EMFs generated by the new power lines will have more distance to dissipate to lower levels before they can affect school children on the school property. PSE&G's argument about the distance of the lines to the school is wholly disingenuous, because PSE&G wants to use the distance to the school building. The school ball fields are a mere 200' from the proposed new towers. The ball fields are used every day by the school children.

PSE&G's proposed Upgrade Project will not meet *all* applicable guidelines for harmful EMF exposures, and the new 500kv power lines will pose a threat to human health and safety. PSE&G's sweeping assertion that the proposed upgrade meets all applicable EMF standards is misleading. PSE&G's own EMF witness, Dr. Bailey, conceded that there are scientific studies showing a "statistical association" between EMF exposure of greater than 3-4mG and childhood leukemia. (Ex 11 at 18) While PSE&G cites to a variety of other standards and studies to try to bolster its position, the fact remains that after the proposed upgrade is completed, the anticipated peak EMF levels on the edge of the right of way nearest the Lazar Middle School will be 48 – 57mG. PSE&G claims the EMF levels are currently 3-4mG. Based upon these numbers, which all come from PSE&G's expert Kyle King's report, after the Upgrade Project is built there will be an almost 2000% increase in EMF readings. Adjacent to the school and the ball fields elevated EMFs will persist at all times, and EMFs exceeding PSE&G's "projected" 19 -21mG levels will prevail at least 50% of the time. Even at PSE&G's median levels, the EMF exposure increases by 700%.

PSE&G improperly relies on median currents. By doing so, PSE&G bootstraps into EMF levels which are calculated to be 19 – 21mG on the school side edge of the right of way. While the EMF values for median currents are of statistical interest, PSE&G admits that the currents in the lines will exceed those values at least 50% of the time. In practical terms this means that for at least half the time that the children are in school or on the ball fields they will be exposed to EMF levels of at least 19-21mG, and upward to 57mG.

PSE&G's reliance on charts showing typical EMF exposures for various household appliances is not relevant to the concerns of the Lazar Middle School. Our concern here is not how often school children will be exposed to a power saw or an electric drill. While over the course of their lives children might be exposed to these appliances, the exposure, if it occurred, would be short term. The exposure to the EMFs from the power lines, on the other hand, will be continuous over the course of minutes, hours, days, weeks, months and years that the children are at the school. The BPU needs to be concerned about this constant EMF bombardment on the children.

PSE&G has not taken "prudent" steps to reduce harmful EMF exposures. Prudent steps would involve real solutions to the problem, not theoretical models and predictions based upon such things as "split phasing" and line cancellations. Increasing distances is the most direct and effective way to reduce EMF exposure, yet it is the one thing PSE&G refuses to do. At the BOE site, there is ample property on or adjacent to the existing right of way to relocate/realign a mere three towers to make the new configuration run the new power lines further from the school property. The BPU should order PSE&G to relocate/realign the towers on or around the Lazar Middle School to achieve maximum distances from the lines to the school.

PSE&G's claim that by constructing the upgrade in an existing right of way, the EMF exposure to the public is minimized is irrelevant as this argument pertains to the BOE. While

this generality may pertain at some points along the line, it fails to apply in the case of the Lazar Middle School. The reason is that the proposed upgrade at the school site places 200 foot towers and peak EMF levels of 57mG within 200 feet of ball fields where children play every day. The math is simple- should a 200 foot tower topple over, it could fall onto children on the ball field. And while it is true that placing the upgrade in an existing right of way limits the spread of EMF sources, this too misses the point that the upgrade in the area of the Lazar Middle School significantly increases the EMF exposure to the school children. It is as if PSE&G is saying “it is okay to bombard children at the school with high EMF levels because at least we are not exposing new members of the public to the EMFs.”

The World Health Organization has concluded that:

International guidelines and national safety standards for electromagnetic fields are developed on the basis of the current scientific knowledge to ensure that the fields humans encounter are not harmful to health. To compensate uncertainties in knowledge (due, for example, to experimental errors, extrapolation from animals to humans, or statistical uncertainty), large safety factors are incorporated into the exposure limits. The guidelines are regularly reviewed and updated if necessary. It has been suggested that taking additional precautions to cope with remaining uncertainties may be a useful policy to adopt while science improves knowledge on health consequences. However, the type and extent of the cautionary policy chosen critically depends on the strength of evidence for a health risk and the scale and nature of the potential consequences. The cautionary response should be proportional to the potential risk.

World Health Organization Report, referenced throughout the testimony of Dr. Martin Blank and Dr. William Bailey.

In a Texas case the court spoke about the doctrine of “prudent avoidance”:

The rules of the PUC define “prudent avoidance” as the “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”

Hurley v. Wood County Elec. Co-op., Inc., citing 16 Tex. Admin. Code Ann. § 25.101 (2008). WL 4365923 Tex.App.- Texarkana, 2008 (Not Reported in S.W.3d, 2008).

And in *In re Petitions of Vermont Electric Power Co. and Green Mountain Power Corp.*,

179 Vt. 370, 895 A.2d 226 (2006) the Court wrote:

[C]onsistent with the policy of “prudent avoidance” followed by the Department of Health and other states, the Board ordered VELCO to continue to identify areas of relatively high EMF levels, propose options to mitigate exposure in those areas, and monitor the scientific literature and regularly report to the Board on these efforts.

895 A.2d at 233.

As presently proposed, the new 200 foot tall 500kv towers will be only 200 feet from the edge of the ball field, actually reaching the ball field as Kyle King’s measurements show a 200 foot distance to the right field or first base fence line, which is on the field. Moreover, when the Lazar Middle School expands in a few years due to increasing enrollments, the 200 foot towers will be the expansion will place the new school addition perilously close to the new monstrous towers. The new addition will extend out the back of the school for a considerable distance. Consistent with the doctrine of prudent avoidance, PSE&G has the ability to remedy this. PSE&G can realign the three towers associated with the area near the Lazar Middle School so that the new lines run farther from the school property, thereby increasing the physical distances and likewise reducing the EMF levels as they dissipate over the greater distances as they approach the school. This is a way of limiting exposure to EMFs that can be accomplished with reasonable investments of money and effort.

PSE&G alleges that it has used split phasing to reduce EMF exposure. However, at the hearing PSE&G announced a move from quad bundles to tri-bundles, and there was no possible way at the hearing, with no discovery on this issue, to determine what effect this change had on EMF readings.

To the extent that PSE&G asserts that realignment could not be done due to other variables, such as rights of other property owners or DEP issues, such claims are not credible.

PSE&G found a way with its resources to have the project run through the pristine Highlands. PSE&G found a way to redesign the towers around the Fredon School, and also agreed to pay Fredon a massive amount of money. PSE&G certainly could find a way to realign three towers in this massive project near the Lazar Middle School. Additionally, at the hearing there was ample testimony from PSE&G about revisions to the original application- towers moved, towers eliminated, sub-stations relocated. Surely relocating/realigning three towers to accommodate a school which needs to expand is not an insurmountable task for PSE&G. Since PSE&G remains stubbornly adherent to its original plan, the BPU should order PSE&G to realign the towers near the school to reduce the EMF exposure on the children.

PSE&G's cites to N.J.A.C.14:5-7(a)(1) as authority for its application to construct a massive upgrade on an existing right of way:

14:5-7.1 Requirements for electric transmission lines

- (a) 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;***

PSE&G ignores the fact that it does not have an agreement with the owner- the Board of Education. Therefore PSE&G's reliance on this section to support its choice of route is misguided. While the BOE opposes the upgrade, it certainly would be willing to try to reach agreement with PSE&G if PSE&G were to provide some reasonable alternatives to the current proposed alignment of the towers. As it presently stands, PSE&G is attempting to make use of an existing right of way on the BOE property without the agreement. As set forth in the BOE's initial brief, the 150' easement, originally granted in the 1920's, is not sufficient for the 21st century, state of the art, massive power line upgrade that PSE&G proposes. The BPU must bring

sanity to this matter and deny the application so that PSE&G can go back to the drawing board and come up with a better plan.

CONCLUSION

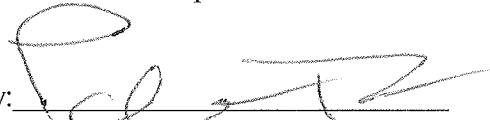
If the Petition is granted, then consistent with the case law and other authorities the BPU should require that PSE&G take additional precautions to cope with remaining uncertainties as a useful policy to adopt while science improves knowledge on health consequences. Accordingly, the Montville Board of Education respectfully requests that the BPU include a provision in the Decision and Order as follows:

Ordered that BPU's approval of PSE&G's Petition is expressly conditioned upon PSE&G relocating and/or realigning the proposed new towers on or around the Lazar Middle School to maximize distances of the towers and the lines from the school property, and PSE&G is further

Ordered that PSE&G must continue to identify areas of relatively high EMF levels, propose options to mitigate exposure in those areas, and monitor the scientific literature and regularly report to the BPU on these efforts.

Respectfully submitted,

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Dated: January 6, 2010