

DECOTIIS, FITZPATRICK & COLE, LLP

Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
(201) 928-1100

Attorneys for the Municipal Intervenors

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

NOTICE OF MOTION

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

Kerri Kirschbaum, DAG
Division of Law
Dept. of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102

Tamara L. Linde, Esq., VP Regulatory
Law Department.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, New Jersey 07102

and

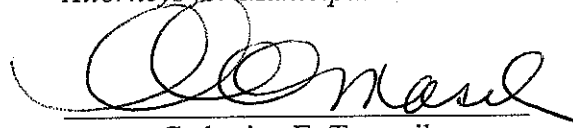
ALL OTHER PARTIES DESIGNATED ON THE SERVICE LIST

PLEASE TAKE NOTICE that, pursuant to N.J.A.C. 1:1-10.4, *et seq.*, DeCotiis, FitzPatrick & Cole, LLP, attorneys for the Municipal Intervenors, in this matter, Andover Township, Byram Township, East Hanover Township, Fredon Township, Hardwick Township, Montville Township and Parsippany Township (the "Intervenors"), hereby move to request supplemental escrow funds for the use of the Intervenors in this matter; and

PLEASE TAKE FURTHER NOTICE that, in support of their Motion, the Municipal Intervenor shall rely upon the letter brief filed herewith; and

PLEASE TAKE FURTHER NOTICE that the Municipal Intervenor have attached hereto a proposed form of Order.

DeCotiis, FitzPatrick & Cole, LLP
Attorneys for Municipal Intervenor



Catherine E. Tamasik

Dated: January 25, 2010

DeCOTIIS, FITZPATRICK & COLE, LLP

NEW YORK, NY
TRENTON, NJ

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January 25, 2010

VIA E-MAIL

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

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**Re: 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)
BPU DOCKET NO. EM 09010035**

Dear Ms. Izzo, Ms. Kirschbaum and Ms. Linde:

On behalf of the Municipal Intervenors, Andover Township, Byram Township, East Hanover Township, Fredon Township, Hardwick Township, Montville Township and Parsippany Township (the "Intervenors"), we submit this Letter Brief in support of the Intervenors' motion requesting that the Board order Petitioner, Public Service Electric and Gas Company ("PSE&G"), to supplemental the Escrow Fund PSE&G established earlier this year for the Intervenors' expert and legal fees. The Escrow Fund in the amount of \$300,000 was established in or about May 2009, based on a rationale derived from N.J.S.A. 40:55D-53.2, pursuant to which municipal planning and zoning boards may require an applicant to set aside an escrow fund for the boards' use in hiring

January 25, 2010

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The Escrow Fund in the amount of \$300,000 was established in or about May 2009, based on a rationale derived from N.J.S.A. 40:55D-53.2, pursuant to which municipal planning and zoning boards may require an applicant to set aside an escrow fund for the boards' use in hiring professionals and consultants to review an application. N.J.S.A. 40:55D-53.2.; *see also* Cox, William M., *New Jersey Zoning and Land Use Administration* §24-3 (2009). At that time, even though the Board of Public Utility's review of PSE&G's Petition supersedes local land use ordinances, *see* N. J.S.A. 40:55D-1 *et seq.*, it was understood that the Intervenors would be directly engaged in reviewing the Petition, propounding discovery and providing pre-filed testimony and actual testimony at the Hearings. In other words, the Intervenors would act, collectively, as a reviewing entity entitled to retain experts at PSE&G's expense to assist with the review of the Petition. N.J.S.A. 40:55D-53.2; *Flama Constr. Corp. v. Township of Franklin*, 201 N.J. Super. 498 (App. Div. 1985) (citations omitted). In the place of 16 individual, local hearings, all of the Intervenors' concerns were to be consolidated into the Evidentiary Hearings. In May 2009, the Intervenors and PSE&G entered into an Escrow Agreement that governs the Intervenors' use of the Escrow Fund.

With the aid of the Escrow Fund, the Intervenors have been able to participate fully and meaningfully in the proceedings before the BPU: they engaged in extensive discovery with PSE&G and retained experts to prepare pre-filed testimony on their behalf, respond to PSE&G's discovery, assist the Intervenors with the preparation of discovery, and provide actual testimony at the Evidentiary Hearings. Because of the tremendous amount of expert and legal activity that has occurred in this matter since April 2009, the Intervenors have expended the entire \$300,000, and, at this time, they require additional funding to continue as participants in this process.

As the Intervenors pointed out to this Board in April 2009 when they made their initial request for an Escrow Fund, there was no legal impediment to PSE&G establishing the Escrow Fund. *See, e.g., V/M/O Rules and Regulations of the Board on Electric Generation Siting and the Environment*, Case 97-F-0809 (Dec. 16, 1997); *see also Urban League of Essex County, et al. v. Township of Mahwah*, 207 N.J. Super. 169 (Law Div. 1984) (special master appointed to review fair-share housing element of major development plan ordered developer to pay directly for review services rendered by experts). There is no impediment now, legal or otherwise, to PSE&G's supplementing the Escrow Fund. The Intervenors have been permitted to pay the invoices directed to them, and just a few days ago, they provided PSE&G with a current Escrow Fund statement, as well as the list of payables due from the Fund. Payables exist because pursuant to the Escrow Agreement, the Intervenors may access only 60 percent of the Escrow Fund prior to the Board's decision. Invoices against the remaining 40 percent of the Fund may not be paid until the Board renders its decision.

At this time, it is clear that the Intervenors must again seek expert and legal assistance to

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continue their participation in this proceeding before the Board. The Intervenors have just now received the Board's notice that the Evidentiary Hearings will continue on or about February 2, 2010. The Intervenors therefore must consult with their experts immediately. Without the financial means to call on their experts to participate in the continued Hearings, the Intervenors' own participation in this matter will be severely – and unfairly – curtailed. Their right to review additional testimony and engage in cross-examination of PSE&G's witness(es) will be significantly compromised, and the overall fairness of the proceedings will be diminished.

Therefore, the Intervenors respectfully request this Board to order PSE&G to place an additional \$250,000 in the Escrow Fund to permit the Intervenors to do what they must to defend their position in this matter, including, but not limited to, incur expert and legal fees that are made necessary by the continuation of this matter.

Thank you for your attention.

Respectfully submitted,

DeCotiis, FitzPatrick & Cole, LLP

By:


Catherine E. Tamasik

cc: All Parties on the Service List

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ORDER

This matter having been presented to the Commissioners of the New Jersey Board of Public Utilities by DeCotiis, FitzPatrick & Cole, LLP, attorneys for the Intervening Municipalities, and to the parties and persons set forth on the attached Service List, and the Board, having read and considered the motion and other documents filed in this matter, including the brief submitted in support of the motion, and other good cause appearing

IT IS on this ____ day of _____, 2010

ORDERED that the motion of the Municipal Intervenors for supplemental escrow be granted, and

IT IS FURTHER ORDERED that PSE&G be required to supplement the escrow account it established for the use of the Municipal Intervenors by \$250,000.

By: _____

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CERTIFICATION OF SERVICE

I, Catherine E. Tamasik, an Attorney at Law of the State of New Jersey, hereby certifies as follows:

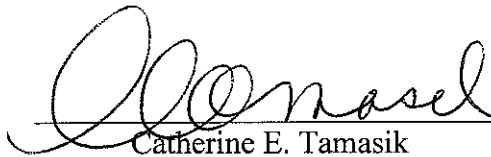
On January 25, 2010, I caused to be served by electronic mail a copy of the within Notice of Motion on behalf of the Municipal Intervenors, a letter brief in support of the motion, and a proposed form of Order, upon

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Tamara L. Linde, Esq., VP Regulatory
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I certify further that I sent copies of the same Notice of Motion, letter brief in support of the motion, and a proposed form of Order to all parties designated on the attached Service List either by e-mail or regular, first-class mail, as necessary.


Catherine E. Tamasik

Dated: January 25, 2010