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BY ELECTRONIC MAIL

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

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:

Please accept this letter on behalf of Public Service Electric and Gas Company ("PSE&G") in response to the January 7, 2010 request of the Municipal Intervenors for oral argument in the above-captioned proceeding.¹ In this request, the Municipal Intervenors requested an "opportunity to be heard prior to the Board rendering a decision in this matter." For the reasons set forth below, PSE&G opposes this unusual and unnecessary request to hold an oral argument two months after the conclusion of the evidentiary hearing in this proceeding.

Case law establishes that the Board has discretion in determining whether to permit or require the conduct of oral argument. See, e.g., Rolling Hills Condominium Association, Inc. v. Andover Nursing Home, Inc., BPU Docket No. WC94080364, 1997 WL 53482 (1997) (the Board has "complete discretion" whether it will entertain oral argument on matters before it); I/M/O the Investigation of Intralata Toll Competition for Telecommunications Services, BPU Docket No. TX94090388, 1995 WL 592864 (1995) (decision to grant or deny a motion for oral argument is "purely discretionary with the Board"). In fact, in the case of Re Public Service Electric and Gas Company, BPU Docket No. EO96010028, 170 P.U.R.4th 334 (1996), the Board, in rejecting a request for oral argument, stated that "motions for oral argument are granted only sparingly." Id. at 347.

¹ By subsequent e-mail notification, the Montville Board of Education and the Environmental Intervenors joined in this request for oral argument.

Significantly, the evidentiary record in this proceeding is extensive, consisting of three rounds of written expert testimony, hundreds of responses to data requests, and five days' worth of cross-examination of 16 witnesses, 13 of whom were sponsored by PSE&G. In fact, five of PSE&G's witnesses were subject to additional cross-examination to address specific issues concerning routing, location of towers and access roads, switching station locations, environmental issues and "leakage." The record now consists of thousands of pages of evidence. In addition, all parties made statements at the commencement of the evidentiary hearing, and each party had the opportunity (which was not exercised) to make closing statements. It is difficult to imagine why, or for what purpose, the Municipal Intervenors would need a further "opportunity to be heard" in this matter, as they have presented their own witnesses and conducted extensive cross-examination on PSE&G's witnesses on every factual issue presented in this proceeding. If the request for oral argument represents some sort of attempt to supplement the record with additional evidence, which would then not be subject to cross-examination, that would clearly be improper since the record closed with the conclusion of the evidentiary hearing. Thus, it is clear that there is no need for an oral argument in this matter. See Intralata, supra (In denying a motion for oral argument based on the "existing and extensive record discussions," the Board states its belief that the "issues have been sufficiently explored at the hearings and discussed by the parties in their briefs such that oral argument will be wasteful of the Board's resources and only lead to unnecessary delay."); Rolling Hills, supra (Board denies oral argument as it is "neither necessary for a complete understanding of the issues nor to otherwise assist it in its deliberations"); In re Public Service, supra (Board denies request for oral argument, noting that there "do not appear to be any extraordinary circumstances which would warrant oral argument The issues have been extensively briefed to the Board.").

Second, permitting oral argument at this stage has the potential to confuse the record and thus to cause prejudice to the parties. Oral argument should address legal issues only, and the only legal issue in this case is whether the Susquehanna-Roseland Project is "reasonably necessary for the service, convenience or welfare of the public" under N.J.S.A 40:55D-19. That issue was the subject of the evidentiary proceeding and the two rounds of briefing that followed, and thus has been fully presented and argued by all parties to this proceeding.

Finally, oral argument at this stage of the proceeding may inevitably result in counsel improperly "testifying" before the Board. As noted, there is no legal issue to argue and a full and complete evidentiary record has been developed. As a result, the arguments will consist of recitation of factual assertions by attorneys who are not, and cannot be, witnesses in the proceeding. This will serve no purpose and will only distort and undermine the evidentiary record presented, with resulting prejudice to the parties.

For these reasons, PSE&G respectfully requests that the Board deny Municipal Intervenors' request for oral argument.

Respectfully submitted,

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