



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
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DIVISION OF ENERGY

) PROCEDURAL ORDER

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)

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)
)
) DOCKET NO. EM09010035
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)

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

BACKGROUND

On January 12, 2009, Petitioner, Public Service Electric and Gas Company (“PSE&G” or “Petitioner”) filed a petition and thirteen testimonial exhibits with the New Jersey Board of Public Utilities (“BPU” or “Board”), seeking the Board to authorize the placement of a 500 kV transmission line from the Susquehanna substation to the Roseland substation. By letter dated January 16, 2009, PSE&G amended the petition to identify that a portion of the proposed Project would go through the Borough of Hopatcong. On February 26, 2009, a prehearing conference was held in this matter. On March 12, 2009, the Board issued a prehearing order.

The prehearing order set forth a procedural schedule with Requests for Intervention and Admission Pro Hac Vice due on April, 1, 2009, Objections due on April 15, 2009, and Responses to Objections due on April 21, 2009. A motion for the establishment of a fund to pay for experts was also included in this process. The Board determined to defer this element of the process, and thus the motions will be discussed in a later Board order, if necessary.

Interventions

Timely motions to intervene were filed by the following municipalities: Township of Fredon, Township of Parsippany-Troy Hills, Township of Byram, Township of Andover, Township of Hardwick, and the Township of East Hanover.

The Township of Montville filed an answer pursuant to N.J.A.C. 14:1-6.1, which the Board will treat as a timely motion to intervene.

¹ Commissioner Frederick Butler did not participate in this matter.

Timely motions to intervene were also filed by Fredon Parents Against the Lines ("Fredon PALS"), Stop the Lines ("STL"), Gerdau Ameristeel Corporation ("Gerdau"), Willow Lake Day Camp ("Willow Lake"), Fredon Township School District ("Fredon School District"), Environment New Jersey, The New Jersey Highlands Coalition, Sierra Club – New Jersey Chapter, New Jersey Environmental Federation, (together, "Proposed Environmental Intervenors"), Exelon Corporation, Montville Township Board of Education ("Montville BOE"), Deborah E. Kelly, Peggy Norris, David Cinnater, and the Estate of William Cinnater ("Estate of William Cinnater").

A timely motion to participate was filed by the National Park Service.

PSE&G does not oppose the intervention requests of Gerdau, Willow Lake, Fredon School District, Montville BOE, Exelon Corporation, Estate of William Cinnater, the National Park Service, or any municipality. PSE&G requests that the Board direct the Montville BOE and the Fredon School District to work with the municipal intervenors, 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 the proceeding.

PSE&G opposes the intervention request submitted by STL, Fredon PALS, and the Proposed Environmental Intervenors.

In its motion, STL argues that it has varying and multiple interests, including concerns with the forecasting, location of claimed load that the line will serve, alternatives to this project, financing, easements, tower height, economic impacts, EMF levels, and routing.

PSE&G argues that STL fails 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. PSE&G also argues that STL fails to demonstrate that it is specifically and directly affected by the outcome of this matter beyond a general assertion that its members are landowners along the route. PSE&G also argues that STL fails to establish that its involvement as an intervenor 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. PSE&G argues the interests of STL are already adequately represented in this proceeding.

STL filed a response to PSE&G's objection on April 21, 2009. STL states that its members will suffer a direct impact as many of its members hold easements along the route of the line. STL reiterates its concerns over the need of the line, the EMF impacts, property values, safety concerns, tower height concerns, and aesthetic concerns. STL also notes that individual landowners typically cannot afford to intervene individually, but that through STL, they can work together to raise a spectrum of concerns in a helpful manner.

STL further argues no requirement exists that they be a customer to PSE&G in order to be granted intervention status. STL notes that some concerns may overlap in subject matter, but that does not mean that each approach and/or viewpoint from any two intervenors is the same. STL also notes that to the extent intervenors do share concerns or perspective, that it would be willing to work with that intervenor to build the record. Accordingly, STL calls upon the Board to grant its application for Intervention.

PSE&G also opposes the intervention request submitted by Fredon PALS. Fredon PALS, a non-profit corporation, seeks intervention status, claiming that it represents the interests of the

community surrounding the Fredon Township School, and that these interests are sufficiently different from all other entities to justify an active role in this case. In opposition, PSE&G argues that Fredon PALS fails to demonstrate a sufficient interest to justify intervention status and that 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. PSE&G states that the only difference between the Fredon School District and Fredon PALS is that Fredon PALS represents only a limited set of parents that have chosen to join its organization. PSE&G argues that granting intervention status to Fredon PALS would dilute and confuse the representation of Fredon's interests.

Fredon PALS filed a timely response to PSE&G's opposition. Fredon PALS states that their interests are their own and are not entirely shared with the Township of Fredon or the Fredon School District. Fredon PALS states that they represent a distinct subset of Fredon Township and that although certain members of Fredon PALS have school age children, that the group generally represents a limited geographical area including adults, homeowners, adults with pre-school age children and those children themselves. Fredon PALS states that its active participation will contribute to the development of a complete record. Fredon PALS also states that to the extent possible, it will work cooperatively with the other parties to this proceeding. Based upon these concerns, Fredon PALS calls upon the Board to grant their request for Intervention.

PSE&G opposes the intervention request submitted by the Proposed Environmental Intervenors. The Proposed Environmental Intervenors state that they have invested considerable time and energy in matters concerning energy and climate change, that they have fought to preserve open space and environmentally sensitive lands, and that they have fought to protect the waters in the Highlands region. The Proposed Environmental Intervenors state that their interests are unique in this proceeding by working to ensure the success of the State's Energy Master Plan, Global Warming Response Act ("GWRA"), and the Regional Global Greenhouse Initiative ("RGGI").

PSE&G argues that the interests of the Proposed Environmental Intervenors, namely the environment, reducing greenhouse gas emissions, and successful implementation of New Jersey's Energy Master Plan, are not directly related to the issues in this case so that granting intervention status would present a danger of confusion or undue delay. PSE&G argues that Proposed Environmental Intervenors have failed to establish that their expertise and full involvement as a party would meaningfully assist the Board in evaluating the need for this project. PSE&G also states that environmental impacts are properly addressed as part of the Highlands Applicability Determination proceeding currently pending before the Highlands Commission and the New Jersey Division of Environmental Protection.

The Proposed Environmental Intervenors filed a timely reply on April 21, 2009. The Proposed Environmental Intervenors argue that the issues the Board and the Courts consider when reviewing whether a project is reasonably necessary for the service, convenience or welfare of the public is much broader than alleged reliability questions. They note that the Board makes its determination based on the totality of the circumstances, which includes environmental considerations. Based upon these concerns, and the details and insight that the Proposed Environmental Intervenors can bring, they call upon the Board to grant their request for Intervention.

In addition, PSE&G states that it would not oppose the Board granting STL, Fredon PALS, and the Proposed Environmental Intervenors participant status, provided that such participants are

directed by the Board to work together with those entities granted intervenor status as closely as possible to avoid delay in this proceeding and that participants are limited to the filing of briefs, and only address issues that are deemed to be relevant and within the scope of this subject proceeding.

Pro Hac Vice

Timely motions for admission Pro Hac Vice were filed on behalf of Jodi L. Moskowitz for PSE&G, Robert A. Weishaar, Jr. and Dennis P. Jamouneau for Gerdau, and Carol A. Overland for STL. No objections were made to any motion for admission Pro Hac Vice.

FINDINGS and DISCUSSION

Pursuant to N.J.A.C. 1:1-16.1, any entity who will be “substantially, specifically and directly affected by the outcome of a contested case” may seek intervention. Under N.J.A.C. 1:1-16.3(a), the standards for intervention require a consideration of the nature and extent of the party's interest in the outcome of the investigation, whether the party's interest is sufficiently different from that of other parties, whether inclusion of the party will add constructively to the case, and whether intervention will confuse or unduly delay the matter.

In this matter, in light of the lack of objection, and the foundations presented, the motions to intervene for the Township of Fredon, Township of Parsippany-Troy Hills, Township of Byram, Township of Andover, Township of Hardwick, Township of East Hanover, Township of Montville, Gerdau, Willow Lake, Fredon School District, Exelon, Montville BOE, and the Estate of William Cinnater are HEREBY GRANTED. The Board also HEREBY GRANTS the National Park Service's unopposed motion to participate.

The contested motions to intervene, covering Fredon PALS, STL and the Proposed Environmental Intervenors, require additional analysis. In regards to Fredon PALS and STL, of the criteria listed in N.J.A.C. 1:1-16.3(a), the only open question deals with the determination of whether the party's interests differ sufficiently from that of other parties; each party has an interest, has asserted that they can add constructively to the case, and will not cause delay or confusion at this early point in the case. In terms of the difference in interests, Fredon PALS and STL are similarly situated – each represent a self-selected group of individuals who are, in theory, also represented by municipal parties. Yet the members of these two groups nevertheless believe that Fredon PALS and STL will serve a different purpose – representation of those entities directly and specifically impacted by the proposed project. The Board agrees – the municipal parties must represent the interests of all residents; Fredon PALS and STL represent those residents who self-identify as the most likely to be at risk of harm here. This distinction, in this case, is sufficient to justify intervention. Accordingly, the Board HEREBY GRANTS the motions for intervention of both Fredon PALS and STL.

In terms of the Proposed Environmental Intervenors, the question is not whether any other party already represents the interests so much as whether the interests they propose to bring to the matter will add constructively to the case. The Proposed Environmental Intervenors clearly indicate that they will be bringing environmental issues to the table for inclusion in this case. PSE&G has also made clear its belief that these issues belong in different forums. The Board, without passing judgment on the admissibility or relevancy, HEREBY FINDS that the issues that may be raised by the Proposed Environmental Intervenors have the possibility of being appropriate, and thus HEREBY GRANTS the motion to intervene by the Proposed Environmental Intervenors.

The Board does, however, HEREBY REQUESTS that all parties, to the extent possible, work together with other intervenors to combine efforts, minimize duplication of discovery and testimony, and otherwise streamline involvement in this case on an ongoing basis.

Based on review of the timely motions for admission pro hac vice of Jodi L. Moskowitz for PSE&G, Robert A. Weishaar, Jr. and Dennis P. Jamouneau for Gerdau, and Carol A. Overland for STL, and the supporting affidavits, and no objections having been received, the Board HEREBY FINDS that Jodi L. Moskowitz, Robert A. Weishaar, Jr., Dennis P. Jamouneau, and Carol A. Overland have satisfied the conditions for admission, and therefore, HEREBY GRANTS the motions for admission to practice before the Board for this proceeding only, provided that they shall:

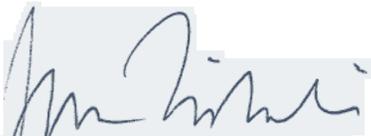
- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) submit proof of payment of the fees required by R.1 :20-1 (b) and 1 :28-2;
- (3) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against him that may arise out of his participation in this matter;
- (4) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (5) have all pleadings, briefs and other papers filed with the Board signed by the attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the attorney admitted by this Order.

Finally, the Board HEREBY DESIGNATES Commissioner Joseph L. Fiordaliso as the presiding commissioner in this proceeding, and HEREBY AUTHORIZES him to preside over the evidentiary hearings scheduled for this proceeding, to modify the schedule set in the prior Order, decide upon motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

DATED: 4/30/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

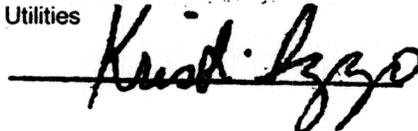

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the 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)
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