



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
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www.bpu.state.nj.us

DIVISION OF ENERGY

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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ORDER DENYING
MOTIONS TO REQUIRE
PSE&G TO PLACE FUNDS
IN AN ESCROW ACCOUNT

DOCKET NO. EM09010035

(SERVICE LIST ATTACHED)

BY THE BOARD:

BACKGROUND

On January 12, 2009 and amended by letter on January 16, 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. On March 12, 2009, the Board issued a prehearing order.

The prehearing order requested that those parties advocating for PSE&G to set aside an escrow account for the purpose of paying experts file a joint motion by April 1, 2009, with responsive pleadings opposing the motion due by April 15, 2009, and replies due by April 21, 2009.

Timely motions for the establishment of an escrow account to allow Intervenors to fund experts were made by the Township of Byram, Township of Montville, Township of Andover, Township of East Hanover, Township of Parsippany-Troy Hills, Township of Fredon, Fredon School District, Willow Lake, Stop the Lines, and Proposed Environmental Intervenors.

Fredon School District and Willow Lake request that the Board order PSE&G to institute an escrow fund of at least \$200,000 to be used to pay for the experts and consultants that they must retain to meaningfully participate in the discovery phase of this proceeding. Fredon School District and Willow Lake state that rational for such an escrow stems from N.J.S.A. 40:55D-53.2, which affords municipal planning and zoning boards the right to require an applicant submitting a development application to set aside an expense fund for its use. Fredon School District and Willow Lake argue that the review process at the Board will supersede the land use ordinances and master plans of no less than 16 municipalities in favor of a single, generalized examination that will transcend municipal boundaries and that all local concerns must be subsumed in the Board's review process. Fredon School District and Willow Lake state that it would be a daunting task for them to review and comment upon PSE&G's application and the enormous amount of technical and scientific data that support it in the time allotted by the procedural schedule without the aide of experts.

Fredon School District and Willow Lake state that the Board could follow the framework in Chapter X (NYPSSL c. 519, §6, pt. 1000) to create a viable intervenor account from which Intervenor could draw the funds necessary to retain experts and consultants. Alternatively, they argue that the Board could require PSE&G to pay the Intervenor's experts directly, and thereby eliminate the need for a separate escrow account.

The Township of Parsippany-Troy Hills and the Township of Fredon join the motion for an escrow account filed by Fredon School District and Willow Lake.

The Township of Byram requests that the Board compel PSE&G to pay escrow fees in the amount of \$10,000 per municipality and to maintain \$5,000 per municipality for professional services charged by the municipalities for professional reviews, reports and testimony regarding the PSE&G petitions. The Township of Byram reasons that it would have received escrow fees if the matter had been heard by the Byram Land Use Board.

The Township of Montville joins the motion for an escrow account filed by Byram.

The Township of Andover urges the Board to establish an escrow of at least \$200,000 for judicious award to intervenors so that they may properly and independently review the transmission project by retaining experts. Andover states that this is a matter of equity and that it needs experts to vet the proposed project and the assumptions of the applicants to inform the record with a variety of perspective and emphasis.

STL states that the Board should require PSE&G to pay into escrow at least \$200,000 for intervenors to retain experts to inform the record. STL states that this is equitable because PSE&G would have significant escrow expense to fund experts for the 15 individual land use, planning or zoning boards in communities along the route in New Jersey if it had brought this matter to the many local governments along the line. STL argues that they do not have the same expertise or knowledge in the business of transmitting electricity and that experts are needed for them to vet the proposed project and the assumptions of the applicants. STL states that using the experts of the Intervenor is the best way for the BPU to develop a solid record. STL states that other states routinely fund Intervenor efforts in public utilities dockets and points to Minnesota, California, New York, Idaho, and Wisconsin.

Proposed Environmental Intervenor express support for, and join, the motions filed by Parsippany-Troy Hills, Byram, Fredon School District and Willow Lake for the establishment of an escrow to be funded by PSE&G.

The Township of East Hanover joins the motions made by STL, Fredon School District and Willow Lake. East Hanover states that PSE&G would have been compelled to create similar escrow accounts had it applied for approval in individual municipalities and that it would be inequitable for PSE&G to avoid these expenses associated with retaining experts and have those significant expenses borne entirely by municipalities and other Intervenor.

PSE&G opposes the motion submitted by intervenors to require PSE&G to place funds in escrow for their use during this proceeding. PSE&G argues that such a request is without legal support and contrary to established Board policy.

Specifically, PSE&G argues that the Municipal Land Use Law only allows for monies to be escrowed for use by an approving authority and that it does not allow for monies to be escrowed for use by Intervenor. PSE&G cites Cerebral Palsy Center v. Mayor of the Borough of Fair Lawn, 374 N.J. Super. 437, 446-48 (App. Div.), certif. denied, 183 N.J. 586 (2005), to support its position

that N.J.S.A. 40:55D-53.2 is limited to professional fees for services required by the approving authority and that an applicant cannot be forced to bear intervenor expenses. PSE&G argues that intervenors in this case have voluntarily decided to seek intervention status with respect to PSE&G's Petition to the Board and that there is no basis in law or in fact for the establishment of a PSE&G funded escrow to pay the costs associated with these voluntary decisions.

PSE&G states that the argument that PSE&G would have had to create an escrow with a municipal land use board if PSE&G had gone to each municipality for approval is misplaced. First, PSE&G states that they have a right under N.J.S.A. 40:55D-19 to file an application directly with the Board and cannot be penalized for exercising that right. Second, PSE&G states that in this case the Board is the approving authority and that intervenors in Board proceedings have always paid their own expenses. Furthermore, the intervenors who are not municipalities and that would have attended the municipal process under the municipal land use law would have had to pay for their own expenses.

Also, PSE&G states that well-established Board policy runs counter to the establishment of an escrow account. PSE&G argues that the utility and its customers should not have to assume the expenditures associated with an individual party's pursuit of its interests and that intervenors should pay their own way. PSE&G points out that the Board, with its expertise in utility infrastructure, has been determined by the Legislature to be the best agency to determine whether a project spanning multiple municipalities is reasonably necessary for the service, convenience, and welfare of the public. PSE&G adds that if intervenors believe that they can add value to the Board's analysis, that they have a right to intervene, but must do so at their own cost and expense.

Finally, PSE&G argues that obligating PSE&G to pay into an escrow account for intervenors would result in rates paid by the utilities ratepayers that are not just and reasonable. PSE&G warns that establishing an escrow for intervenors here would set harmful precedent in New Jersey for every Board proceeding going forward.

Fredon School District and Willow Lake filed a response to PSE&G's protest of the escrow fund. Fredon School District and Willow Lake asked to have the amount of the escrow fund increased to \$500,000 in light of the number of likely intervenors that joined the motion. Fredon School District and Willow Lake state that case cited by PSE&G is not analogous to this proceeding. Fredon School District and Willow Lake state that one set of experts with their attendant costs will be sufficient. They state that should the Board commit to retaining the essential panoply of relevant experts, the intervenors would step aside to avoid duplication of expenses. They note that given the potentially significant impact of the proposal, N.J.S.A. 40:55D-53.2 would not be violated if the Fredon School District and Willow Lake are permitted to "step into the shoes" of the Board and retain the experts and professionals necessary to evaluate the proposal.

Fredon School District and Willow Lake argue that an escrow account of a few hundred thousand dollars would have a barely perceptible impact on the ratepayers, and that regardless, this cost would be necessary if the Board were to retain experts.

STL also filed a response to PSE&G's protest of the escrow fund. STL argues that the escrow account should be established as a matter of equity. They state that the \$200,000 request is a very small percentage of the budget for this project, and that the costs will be spread out over all ratepayers, such that PSE&G should be required to develop the escrow fund.

On May 12, 2009, PSE&G issued a letter offering the establishment of an escrow account for the seven (7) municipal intervenors.

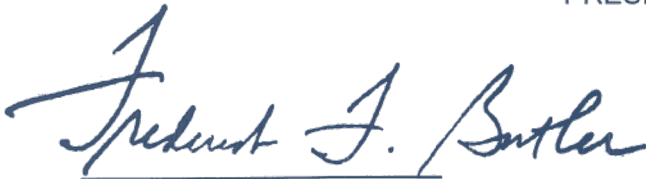
FINDINGS and DISCUSSION

To date, based upon research and review, the Board has not required a petitioner to establish an escrow account for intervenors in a case involving an application pursuant to N.J.S.A. 40:55D-19. The Board is under no statutory requirement to require that a petitioner establish an escrow account for intervenors, and at this time, the Board does not find any compelling reason to do so. Therefore, the Board HEREBY DENIES, without prejudice, the motions for the establishment of an escrow account to be funded by PSE&G so that intervenors could use those funds to pay for experts in this proceeding. In making this determination, the Board takes note that PSE&G has offered to establish an escrow account for use by the municipal intervenors.

DATED: 5/29/09

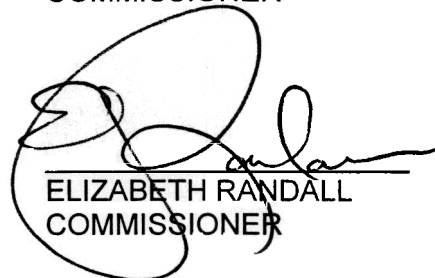
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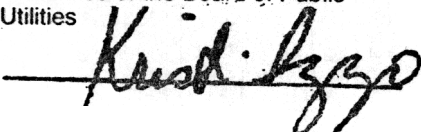

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ATTEST:


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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