



STATE OF NEW JERSEY
Board of Public Utilities
 44 South Clinton Avenue, 9th Floor
 Post Office Box 350
 Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

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| F. JOSEPH KILROY, |) | ORDER |
| Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| PUBLIC SERVICE ELECTRIC AND GAS COMPANY, |) | DOCKET NO. EC14111284 |
| Respondent |) | |

Parties of Record:

F. Joseph Kilroy, Petitioner, *pro se*
Sheree L. Kelly, Esq., on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD¹:

The Board's rules pertaining to electric line vegetation management are presently set out in N.J.A.C. 14:5-9.1 et seq. These rules were recodified from sections in N.J.A.C. 14:5-8.1 et seq. with the recodified rules bearing an effective date of March 17, 2008. N.J.A.C. 14:5-9.1, as did N.J.A.C. 14:5-8.1 prior thereto, makes clear that Subchapter 9

...sets forth requirements that EDCs shall follow in managing vegetation in proximity to an energized conductor in order to ensure public safety and the efficient and reliable supply of electric power.

In order to ensure that the vegetation rules are complied with, each electric distribution company ("EDC") shall retain on its staff a vegetation manager, who is an electric utility arborist and has the authority and the resources to administer all aspects of the utility's vegetation management program. N.J.A.C. 14:5-9.3(d). With regard to its maintenance cycle, N.J.A.C. 14:5-9-4, in part, an EDC shall: (1) perform an annual visual inspection of all energized conductors that are associated with a transmission line to determine whether vegetation management is needed; (2) perform vegetation management on vegetation that is close enough to pose a threat to its energized conductors at least once every four years; and (3) ensure that vegetation management will be promptly performed if it becomes aware at any time of any vegetation close enough to an energized conductor too affect reliability or safety prior to the next required vegetation management activity. In addition, unless there is an emergent situation, an EDC

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

shall make a "diligent attempt" to notify all municipal governments, customers and property owners that may be affected by the EDC's planned vegetation management activity and if said notice is provided in writing, it must be at least seven days' notice but not more than 45 days.

By letter Petition filed with the Board on November 10, 2014, F. Joseph Kilroy ("Petitioner") asserted that in 2005, after Public Service Electric and Gas Company ("PSE&G" or "Respondent") had removed over 100 trees from his yard, he and three other property owners on Magna Drive in Gillette, NJ negotiated with Respondent and reached an understanding with Richard Wolowicz, then an employee of the Respondent, that the Respondent would visit the properties every three to four years and directionally prune those trees that required trimming.

After nine years of this "understanding," Mr. Kilroy stated the Respondent had given four-week notice that three of the four properties were going to be clear cut. He questioned the fairness of treating one property owner differently than the others and stated the three neighbors had retained an attorney and paid for a forestry plan and that at a meeting with the Respondent, "...the PSE&G forester acknowledged the tree plan would work and that was how the one property was being maintained. PSE&G then refused to consider this option, even as the neighbors offered to pay for the pruning work and to have it done by the Cascade Tree Company located in our community."

The Petitioner asserts that the Respondent "...does not have the right to back out of this agreement because they want to" and that clear cutting would be detrimental to the homeowners and the community of Long Hill. Accordingly, the Petitioner seeks a Board Order requiring the Respondent to abide by the agreement that was entered into in 2005, forego the scheduled clear cutting of trees and abide by the pruning methods that have been exercised in the past.

In response to the Petitioner's allegations, Richard Arnold, the Respondent's Vegetation Manager – Transmission stated that at a meeting, maintenance costs were discussed and that he had explained that the application of Integrated Vegetation Management ("IVM") would result in the establishment of a compatible plant community that will require minimum maintenance in future maintenance cycles. In addition, he mentioned he had never implied the vegetation management plan presented by Mr. Kilroy was acceptable but that it addressed only one aspect of reliability, namely grow-ins. He went on to state he informed the Petitioner that his plan was not compliant with N.J.A.C. 14:5-9 as it allows for woody vegetation that matures over 3 feet to remain in the wire zone and does not allow for appropriate IVM in the border zone and is not compliant with federal regulations (FAC 003-3) as it does not remove the risk of fall-ins from within the corridor, which is also a requirement in the Board's rules.

PSE&G has further asserted that on August 9, 2007, Petitioner and his wife, Jeanne, entered into and executed a Settlement Agreement, Release and Waiver ("Settlement") with the Respondent wherein the parties acknowledged that the Board's rules, then contained in N.J.A.C. 14:5-8, had voided the 2005 agreement and that PSE&G will have to remove all trees pursuant to the Board's vegetation maintenance rules.

Paragraph 2 of the Settlement provides that:

Kilroy acknowledges that PSE&G will perform vegetation maintenance in conformity with the new State regulations...which means that PSE&G will be removing all trees under the lines and all trees that have the ability to reach a height of 15 feet at maturity within the border zone of the Right-of-Way, except for trees currently existing on the Right-of-Way. Kilroy shall maintain existing trees so that they do not reach a height that violates

New Jersey law. Kilroy agrees that no further vegetation will be planted on the Right-of-Way unless such vegetation is approved in writing by PSE&G and that if any existing trees reach a height extending 15 feet in height, they will be removed by PSE&G. Kilroy also acknowledges that the terms of the July 13, 2005 letter agreement are hereby null and void and of no force and effect.

As consideration for the release, the Respondent paid the Petitioner the sum of \$5,731.00 as compensation for any damages to Petitioner's property.

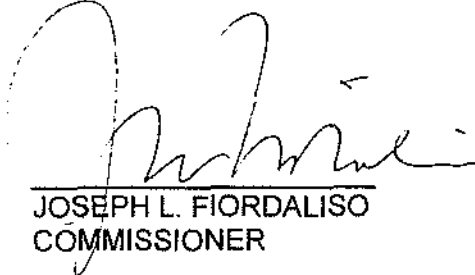
The Board notes that since the 2007 Settlement, its regulations have been amended and that PSE&G is obligated to comply with its current regulations set forth at N.J.A.C. 14:5-9.1 et seq. The Board's enforcement authority extends to enforcement of its regulations, however, this is not the question put before the Board. The Petitioner here seeks enforcement of a settlement agreement between himself and PSE&G, which PSE&G asserts has been superseded by a subsequent agreement. In this case, jurisdiction over enforcement of a private agreement between two parties is distinguished from enforcement of the Board's regulations.

As such, the Board **HEREBY ORDERS** that the petition be and is **HEREBY DISMISSED** for lack of jurisdiction. Notwithstanding this dismissal the Board reiterates that all EDCs, including PSE&G, are obligated to comply with the Board's vegetation management regulations as set forth in N.J.A.C. 14:5-9 et seq.

This Order shall be effective on December 26, 2014.

DATED: 12/17/14

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
COMMISSIONER

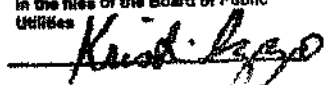

RICHARD S. MROZ
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
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


**F. JOSEPH KILROY,
Petitioner**

V.

**PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent**

BPU DOCKET NO. EC14111284

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