Agenda Date: 10/15/15
Agenda Item: 2H

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

IN THE MATTER OF THE PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY PURSUANT TO N.J.S.A. 40:55D-19 FOR A DETERMINATION THAT THE MONTVILLE-WHIPPANY 230 KV TRANSMISSION PROJECT IS REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE OR WELFARE OF THE PUBLIC	)	ORDER ON REQUEST FOR INTERLOCUTORY REVIEW BPU DOCKET NO. EO15030383 OAL PUC DOCKET NO. 08235-2015N

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Windels Marx Lane & Mittendorf, LLP on behalf of Jersey Central Power and Light
Fred Semrau, Esq., Township of West Milford
Stephen J. Edelstein, Esq., Montville Board of Education

BY THE BOARD:[1]

On or about March 27, 2015, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") pursuant to N.J.S.A. 40:55D-19 seeking a determination that the Montville-Whippany 230 kV Transmission project ("Project") is reasonably necessary for the service, convenience or welfare of the public, and therefore the Company is entitled to relief from complying with the zoning, site plan review and other municipal land use ordinances or rules passed by municipalities along the proposed Project route under authority of Title 40, the Municipal Land Use Law ("MLUL"). The matter was transmitted to the Office of Administrative Law ("OAL") for hearing as a contested matter, and subsequently assigned to the Honorable Leland McGee, ALJ ("ALJ McGee").

On May 1, 2015, the Township of Montville ("Montville"), a municipality located within JCP&L's service territory along the proposed route of the Project, moved to intervene as a party in the proceeding. ALJ McGee granted Montville's motion to intervene pursuant to N.J.S.A. 48:2-32.2 on June 17, 2015. The Montville Board of Education ("Montville BOE") filed a motion to intervene on August 19, 2015 which ALG McGee granted on September 8, 2015.

---

[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.

After prehearing conferences, JCP&L filed a Motion to Establish a Procedural Schedule on August 21, 2015. On September 2, 2015, Montville filed opposition to the motion and also filed a cross-motion requesting that JCP&L be directed to establish an escrow account to fund its expert and professional fees "to properly assess this project, its impact on the Township and possible alternatives." ("Montville Cross Motion").[2] Montville maintained that the JCP&L's petition should be likened to an application filed before a local planning or zoning board since N.J.S.A. 40:55D-53.2 and 53.2(b) allow municipal boards to require applicants to establish escrow accounts to cover the costs of the municipal zoning and planning boards to hire experts to properly vet an application. Montville argued there is no case law or statutory authority either allowing or denying the establishment of an escrow account in the current situation while the laws of Idaho, California, Minnesota and Wisconsin encourage participation by providing funds for professionals. Montville also argued that a prior Board Order allowed for the possibility of the Board in a future proceeding ordering an escrow account relying on language in that Order that "at this time, the Board does not find a compelling reason" to order the escrow.[3] Montville did not argue that it did not have the funding to pay for the experts but that "the cost of these experts may prove to be an additional harmful impact upon the residents if there is no escrow provided to offset or cover the expert witness fees."[4] Alternatively, Montville requested that ALJ McGee use his broad discretion to appoint an independent expert to review the widely disparate views of the parties likening this case to a condemnation case where the courts will appoint an independent expert.[5]

JCP&L opposed the Montville Cross Motion ("JCP&L Opposition"). By letter dated September 4, 2015, JCP&L maintained that Montville's request for an escrow fund had no legal basis. JCP&L asserted that Montville's reliance on the MLUL is simply irrelevant as Montville's characterization of JCP&L's Board petition as the equivalent of a zoning/planning board application is incorrect, and "also reveals Montville's fundamental misunderstanding of the nature of this case."[6] JCP&L argued that that a petition filed under N.J.S.A. 40:55D-19 is not the equivalent of a local zoning or planning application but rather is for the Board to determine whether a utility project "is reasonably necessary for the service, convenience or welfare of the public' without regard for local zoning and planning criteria."[7] JCP&L also argued that New Jersey case law has determined that the "public" in question is the body of the utility's customers and not the residents of the various municipalities in question."[8] JCP&L argued that the statutes of Idaho, California, Wisconsin and Minnesota are also not relevant to this matter.

JCP&L cited two Board Orders which it asserts contradict Montville's argument that there is no New Jersey case law or statutory authority which would prevent the establishment of an escrow account in this situation. JCP&L argued that the Board previously denied two motions

[2] ALJ McGee in his Pre-Hearing Order issued September 8, 2015 ordered the parties to follow the proposed Procedural Schedule as outlined in paragraph 4 of his order and denied Montville's cross motion.
[3] In re 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. p. 4 ("Susquehana-Roseland Order").
[4] Montville Cross Motion Letter Brief, at 5.
[5] Ibid.
[6] JCP&L Opposition at 7.
[7] Ibid.
[8] Ibid.

requesting that utilities establish escrow accounts: in PSE&G's Susquehanna-Roseland petition and in JCP&L's most recent base rate case.[9] According to JCP&L's reading of the Susquehanna-Roseland Order, the Board clearly denied the joint motion of several intervenors, which included seven municipalities, for PSE&G to fund an escrow account for the intervenors' expert fees.[10] The fact that PSE&G chose to voluntarily establish an escrow account for municipal intervenors was not the decisive factor.

In the JCP&L base rate case, the Board entertained an interlocutory appeal almost identical to this matter. There, ALJ Richard McGill had denied the township of Marlboro's motion and Marlboro filed a request for an interlocutory appeal with the Board. The Board affirmed ALJ McGill's decision and denied Marlboro's motion to compel JCP&L to establish an escrow fund for the use of Marlboro to fund expenses or attorneys and other professionals.[11]

In that case, as in the current matter, JCP&L contends that N.J.S.A. 48:2-32.2 which provides the municipality with the right to intervene, also provides the means for paying its expert and professional fees. In relevant part, the statute provides that the intervening municipality

> ...may employ such legal counsel, experts and assistants as may be necessary to protect the interest of the municipality or municipalities or the public within the municipalities or municipalities. Such municipality or municipalities may by emergency resolution raise and appropriate the funds necessary to provide reasonable compensation and expenses of such legal counsel, experts and assistants.
>
> [N.J.S.A. 48:2-32.2]

JCP&L asserted that given this express means for raising the necessary funds provided by the legislature, there is no basis to require that other ratepayers subsidize Montville's expenses. JCP&L also maintained that establishing an escrow account for the expenses of intervenors would be contrary to Board policy and would establish a dangerous precedent.

By Pre–Hearing Order dated September 8, 2015, ALJ McGee denied the Montville Cross Motion for JCP&L to establish an escrow account to fund Montville's expert fees.[12]

Montville's Request for Interlocutory Review

On September 15, 2015, Montville filed a request for interlocutory review of ALJ McGee's order denying its motion to compel JCP&L to establish a $500,000.00 escrow fund for Montville's use to retain experts and professionals to assist it in its review of the N.J.S.A. 40:55D-19 petition. According to Montville, in order "to participate in the process on behalf of its residents it must retain experts to ensure that this project is analyzed thoroughly, considering the interests of those who will be living and working in close proximity to the proposed (transmission) line."[13]

---

[9] In re the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Increases in and Other Adjustments to Its Rates and Charges For electric Service, et al., BPU Docket No. ER12111052 (Order dated June 21, 2013) ("JCP&L Base Rate Case Order").
[10] Susquehanna–Roseland Order at 4.
[11] JCP&L Base Rate Case Order at 7-8.
[12] ALJ Leland McGee, Prehearing Order dated September 8, 2015, at 5.
[13] Montville Interlocutory Review Letter Brief, at 2.

Montville argued that this matter is ripe for review as ALJ McGee denied its motion to establish an escrow account for its use, and a determination of the Board is appropriate pursuant to N.J.A.C. 1:1-14.10 and In re uniform Administrative Procedure Rules, 90 N.J. 85,97-98 (1982) which, according to Montville, concluded that "the agency has the right to review ALJ orders on an interlocutory basis to determine whether they are reasonably likely to interfere with decisional process or have a substantial effect upon the ultimate outcome of the proceeding."[14]

Montville argued that equitable considerations support the need for the escrow to pay its professional fees since JCP&L has not exhibited a willingness to work with Montville or consider its requests to alter the proposed project to address its citizens' health and safety concerns. Since JCP&L will have access to utility experts to help it satisfy its burden to establish that the Project is reasonably necessary for the service, convenience or welfare of the public, Montville argues that equity would be served if Montville is afforded the same opportunity to retain experts and JCP&L funding an escrow account would ensure that equity is served, even though no New Jersey case law or statutory authority requires the establishment of an escrow in this situation.[15]

Montville also argued that since JCP&L proposed the Project and Montville never requested that JCP&L build an additional line to supplement the already-existing two (2) transmission lines that are located in Montville, it is unfair that the township should have to pay the extra cost for experts. While Montville has budgeted these costs in its 2015 municipal budget, the funds allocated could be used for other purposes including needed services for its resident taxpayers. According to Montville, being forced to budget for expert fees is inequitable.

Montville asserted that the two Board decisions denying requests for the establishment of a utility funded escrow account for the use of a municipality or municipalities to fund the hiring of experts are not analogous to this matter. Montville maintained that the decision in JCP&L's base rate case is clearly distinguishable since a decision in a rate case is financial while the potential impact here is upon the health, welfare and well-being of the township's residents. Montville argued that there is a compelling reason for the Board to divert from its past decisions as the transmission lines proposed here would run within close proximity of residents' homes and a school with outdoor recreational facilities.

Montville believes that the Susquehanna-Roseland Order shows that the concept of establishing an escrow fund is not unique. While Montville concedes that the Board denied the request, it argues that the Board did so after PSE&G voluntarily agreed to provide the fund, and did not disapprove of the utility paying the fees. An escrow fund should be made available to Montville to allow Montville the same opportunity as JCP&L to retain utility experts to "adequately and substantively engage in discourse on this matter," and to "ensure that equity is served."[16] Montville argues that the Board left this issue open when it stated that it did not find any compelling reason to order the escrow "at this time."[17]

---

[14] Id. at 1.
[15] Id. at 4.
[16] Id. at 5.
[17] Ibid.

Montville cites to the laws of Idaho, California, Minnesota and Wisconsin which it maintains provide what they are seeking here. While Montville acknowledges that these provisions are not binding on the Board, these jurisdictions encourage participation in a proceeding, something the Board has also done. Since this is JCP&L's project, it is not unfair to require JCP&L to provide funding in the form of a $500,000 escrow fund that will ensure representation to Montville on an equal footing with the Company.[18]

Responses to Montville's Request for Interlocutory Appeal

JCP&L

In its response, by letter brief dated September 17, 2015, JCP&L requested that the Board deny the request for interlocutory appeal or, in the alternative, confirm ALJ McGee's decision. JCP&L states that Montville's interlocutory appeal raises no new factual or legal arguments not already argued in the motion before ALJ McGee, and cites no authority requiring a utility to fund an escrow account for intervenors to use to pay professional experts for matters before the Board.[19]

The Company argued that there is no statute, regulation or Board precedent that requires, or allows the Board to order a public utility to fund the expert fees of municipal intervenors in a BPU Case. [20]

Montville's unsupported allegations regarding JCP&L's unwillingness to consider the township's concerns are untrue and offer no support for its interlocutory appeal request.[21]

Additionally, JCP&L asserts that the statutes of Idaho, California, Wisconsin and Minnesota that Montville cited have no legal authority in New Jersey. Furthermore, Montville has misstated what those statutes provide since Montville would not actually qualify to have its professional fees covered under those statutes.[22]

Montville has not claimed financial hardship and has already budgeted for and retained an expert for this matter. Moreover, New Jersey law in N.J.S.A. 48:2-32.2 provides municipalities with a mechanism to fund their participation in BPU proceedings.[23]

JCP&L maintains that Montville's request is at odds with Board precedent and policy, would result in an increase in costs that would be recoverable from all JCP&L customers, and would establish an inappropriate and dangerous precedent for future Board proceedings.[24] JCP&L argues that the Board should affirm its prior Orders denying similar requests for utility funding of intervenors' experts as Montville has not provided any instance where a utility was ordered to

---

[18] Id. at 6.
[19] JCP&L Interlocutory Appeal Letter Brief, at 2.
[20] Id. at 3.
[21] Id. at 6.
[22] Id. at 7.
[23] Id. at 9.
[24] Id. at 11.

fund an escrow account to fund intervenor's experts. JCP&L asserts that the annual utility assessments which are funded by utility customers already fund the Board, Board Staff and Rate Counsel, providing multiple levels of expertise in reviewing matters brought before the Board. The Company argues that if it was required to set up an escrow fund the ratepayers would pay for an additional review for one municipality, and further, that to do so would run counter to the legislature's intent when it established a statutory right for a municipality to choose to intervene in Board proceedings, at its own expense. The Company expresses its concern that a dangerous precedent will be created if it is ordered to establish an escrow account for an intervenor, as if this were to be made applicable to all Board proceedings, it would create a legally and financially unsupportable precedent.[25]

Rate Counsel

Rate Counsel also responded by letter brief dated September 18, 2015, agreeing with JCP&L that there is no basis for granting interlocutory review and agreeing with JCP&L that the statute allowing Montville to intervene in the matter does not permit Montville to recover its costs from the utility.[26] According to Rate Counsel, the statute specifically provides a mechanism for the municipality to raise funds if it's unable to budget these costs.[27]

Rate Counsel requested that the Board deny Montville's interlocutory appeal arguing it has not stated sufficient grounds to be granted relief, and deny its request to overturn ALJ McGee's decision by requiring JCP&L to establish an escrow account for Montville's litigation use. Rate Counsel also agreed with JCP&L that the two Board Orders previously cited, the Susquehanna-Roseland Order and the JCP&L Base Rate Case Order, are on point, indistinguishable and previously decided this issue against Montville's position.[28]

Rate Counsel argues that JCP&L's ratepayers should not pay the costs to protect the interests of one municipality that is only one portion of JCP&L's customer base. Rate Counsel agrees with Montville that the township's interests are in protecting its residents and its taxpayers, and that protecting constituent interests is appropriate for any municipal governing body, but disagrees that the Board should allow a single municipality to charge all of JCP&L's ratepayers for the costs to represent its particular interests.[29]

DISCUSSION AND FINDINGS

As the Board has noted in previous Orders, an order or ruling of an ALJ may be reviewed interlocutorily by an agency head at the request of a party. N.J.A.C. 1:1-14.10(a). Pursuant to N.J.A.C. 1:14-14.4(a), a rule of special applicability that supplements N.J.A.C. 1:1-14.10, the Board shall determine whether to accept the request and conduct an interlocutory review by the later of (i) ten days after receiving the request for interlocutory review or (ii) the Board's next regularly scheduled open meeting after expiration of the 10-day period from receipt of the request for interlocutory review. In addition, under N.J.A.C. 1:14-14.4(b), if the Board determines to conduct an interlocutory review, it shall issue a decision, order, or other

[25] Id. at 12.
[26] Rate Counsel Response letter at 3.
[27] Id. at 4.
[28] Id. at 4-6.
[29] Id. at 7-8.

disposition of the review within 20 days of that determination. Under N.J.A.C. 1:14-14.4(c), if the Board does not issue an order within the timeframe set out in N.J.A.C. 1:14-14.4(b), the judge's ruling shall be considered conditionally affirmed. However, the time period for disposition may be extended for good cause for an additional 20 days if both the Board and the OAL Director concur.

The legal standard for accepting a matter for interlocutory review, as acknowledged by Montville and JCP&L, is stated in In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982). In that case, the Court concluded that an agency has the right to review ALJ orders on an interlocutory basis "to determine whether they are reasonably likely to interfere with the decisional process or have a substantial effect upon the ultimate outcome of the proceeding." Id. at 97-98. The Court also held that the agency head has broad discretion to determine which ALJ orders are subject to review on an interlocutory basis. However, it noted that the power of the agency head to review ALJ orders on an interlocutory basis is not itself totally unlimited, and that interlocutory review of ALJ orders should be exercised sparingly. In this regard, the Court noted:

> In general, interlocutory review by courts is rarely granted because of the strong policy against piecemeal adjudications. See Hudson v. Hudson, 36 N.J. 549 (1962); Pennsylvania Railroad, 20 N.J. 398. Considerations of efficiency and economy also have pertinency in the field of Administrative law. See Hackensack v. Winner, 82 N.J. at 31-33; Hinfey v. Matawan Reg. Bd. of Ed., 77 N.J. 514 (1978). See infra at 102, n.6. Our State has long favored uninterrupted proceedings at the trial level, with a single and complete review, so as to avoid the possible inconvenience, expense and delay of a fragmented adjudication. Thus, "leave is granted only in the exceptional case where, on a balance of interests, justice suggests the need for review of the interlocutory order in advance of final judgment." Sullivan, "Interlocutory Appeals," 92 N.J.L.J. 162 (1969). These same principles should apply to an administrative tribunal.
>
> [90 N.J. at 100].

The Court held that interlocutory review may be granted "only in the interest of justice or for good cause shown." Ibid. In defining "good cause," the Court stated:

> In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case.
>
> [Ibid.].

As stated above, the decision to grant interlocutory review is committed to the sound discretion of the Board, and is to be exercised sparingly to avoid piecemeal adjudication. However, given the possible impact on the actions of Montville, and the question of the possible precedent set for future cases of requiring (or denying) the request that a utility establish an escrow to fund the expert costs of a municipality intervening in a proceeding under N.J.S.A. 40:55D-19, the Board **FINDS** that interlocutory review is warranted here. Accordingly, the Board **HEREBY GRANTS** Montville's request for interlocutory review of ALJ McGee September 8, 2015 Order.

Turning to the merits of Montville's request, Montville argues that the petition herein is comparable to a municipal zoning/planning board application. Montville cites the Susquehanna-Roseland Order as support for its argument that there is no legal impediment to a utility funding an escrow for intervenors' costs for professional experts to participate effectively in a public utility proceeding. Montville concedes that there is no statutory basis for its request but asserts that it is equitable for its fees to be funded by JCP&L (and ratepayers).

JCP&L argues that Montville has not presented any legal authority for requiring JCP&L to fund professional expenses of a municipal intervenor, and in fact has presented flawed unsupported allegations and failed to identify and acknowledge statutory language that contravenes its request. JCP&L cites the same Susquehanna-Roseland Order, underscoring that the Board denied the motion of several intervenors to require PSE&G to establish an escrow fund for experts. JCP&L specifically highlighted language from the Order:

> To date, based upon research and review, the Board has not required a utility 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 utility 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.
>
> [Susquehanna-Roseland Order at 4].

Rate Counsel agrees with JCP&L that Montville has presented no legal authority that supports its position that it is appropriate to require JCP&L and its ratepayers to cover Montville's fees.

Rate Counsel and JCP&L point to the authority granted to municipalities by N.J.S.A. 48:2-32.2 to both retain professionals for assistance in participating in "any hearing or investigation held by the board, which involves public utility rates, fares or charges, service or facilities," and to raise the funds to pay those professionals by emergency resolution. Rate Counsel and JCP&L maintain that this provision clearly establishes that the Legislature expected municipalities to pay their own way, and Montville has failed to prove that any deviation from the statutory scheme is warranted here.

Both Rate Counsel and JCP&L raise concern about the precedent that could be set if the Board requires an escrow to pay intervenors' professional fees and expenses, even if the amounts requested are small in comparison to the total requested rate increases at issue or some other metric. Montville asserts that the request is justified because it is forced to act to protect the health, safety and welfare of its constituents.

Having carefully considered the submissions, and having reviewed the applicable statutes and cases, the Board **HEREBY FINDS** no legal authority to support Montville's request to compel JCP&L to establish an escrow to cover the fees and costs of counsel, experts and assistants retained by Montville.

Montville has also argued that it would be inequitable to require its taxpayers to shoulder the burden of these costs, notwithstanding the authority provided by N.J.S.A. 48:2-32.2 for municipalities to raise these funds from their residents. According to Montville, JCP&L should be required to establish an escrow fund to pay the reasonable professional fees and expenses of intervenors as a matter of fundamental fairness, equity, and sound public policy. The Board is not persuaded that a petition filed under N.J.S.A. 40:55D-19 should be treated differently than any other petition filed with the Board. In making its decisions, the Board is called upon to balance the needs of the utility and the needs of its customers within the statutory framework provided by Title 48. In deciding the current petition, the Board will determine whether JCP&L should be relieved from complying with zoning, site plan review and other municipal land use ordinances, but will so find only if it determines that the Project is reasonably necessary for the service, convenience or welfare of the public served by the Company.

The Board is obligated to follow the terms and objectives of the statute. "[A]dministrative agencies are part of the executive branch of government, charged under the State constitution with the responsibility of faithfully executing the laws." In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 93 (1982) (citing N.J. Const. (1947), Art. 5, § 1, para. 11)). See also T.H. v. Division of Developmental Disabilities, 189 N.J. 478, 491 (2007) (an administrative agency may not "alter the terms of a legislative enactment or frustrate the policy embodied in the statute.").

The Board, like a court, must apply legislative enactments in accordance with the plain intent and language used by the legislature, and should not act in equity when there is an adequate remedy at law. See Cohen v. Dwyer, 133 N.J. Eq. 226, 229 (Ch. 1943), aff'd 134 N.J. Eq. 350, 351 (E. & A. 1943). Likewise, equity may not disregard statutory law, but looks to its intent rather than its form. Sheridan v. Sheridan, 247 N.J. Super. 552, 559 (Ch.Div. 1990). Equitable relief is not available where an existing administrative procedure created by statute is an adequate remedy that assures full protection of rights and offers complete relief. Overall, equity may not be invoked to avoid application of a statute and by doing so usurp the legislative role under the guise of equity. See Crusader Servicing Corp. v. City of Wildwood, 345 N.J. Super. 456, 464 (Law Div. 2001).

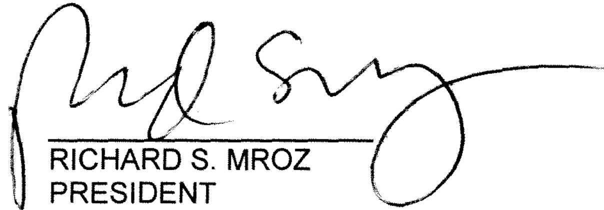
As previously discussed, N.J.S.A. 48:2-32.2 provides a municipality with a means to raise the funds needed to pay for the assistance of professionals that it determines it needs to effectively represent the interests of its residents in a Board proceeding. The papers submitted show that Montville has exercised its authority under this provision to do so. The Board is not persuaded that Montville has provided any reason for the Board to override the legislative intent as expressed in the statute that the municipality must fund its own expenses, and instead shift those expenses to all of JCP&L's ratepayers. Therefore, the Board **FINDS** no basis to compel JCP&L to establish an escrow fund for Montville's costs and expenses as a matter of equity.

Therefore, after reviewing the submissions of Montville, JCP&L and Rate Counsel, and after due consideration of the arguments and the law, the Board **HEREBY AFFIRMS** the decision of ALJ McGee denying Montville's motion to compel JCP&L to establish an escrow fund for the use of Montville to fund expert fees.

This Order shall be effective on October 25, 2015.

DATED: October 15, 2015

BOARD OF PUBLIC UTILITIES
BY:



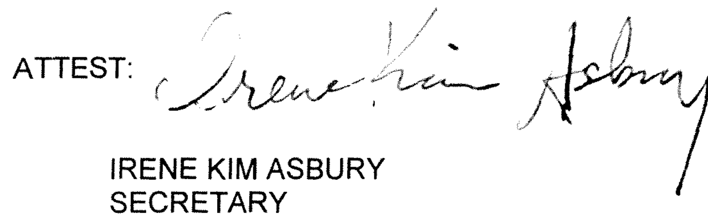
RICHARD S. MROZ
PRESIDENT

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

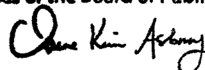
DIANNE SOLOMON
COMMISSIONER

ATTEST:



IRENE KIM ASBURY
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 JERSEY CENTRAL POWER & LIGHT COMPANY PURSUANT TO N.J.S.A. 40:55D-19 FOR A DETERMINATION THAT THE MONTVILLE-WHIPPANY 230 KV TRANSMISSION PROJECT IS REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE OR WELFARE OF THE PUBLIC
BPU DOCKET NO. ER15030383
OAL DOCKET NO. PUC08235-2015N

SERVICE LIST

Irene Kim Asbury, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
secretary@bpu.state.nj.us

The Honorable Leland McGee, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

Ms. Elisa Reyes
Office of Administrative Law
33 Washington Street
Newark, NJ 07102
Elisa.reyes@oal.state.nj.us

Gregory Eisenstark, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, NJ 08901
geisenstark@windlesmarx.com

Michael Connolly, Esq.
Windels Marx Lane & Mittendorf, LLP
One Giralda Farms
Madison, NJ 07940
mconnolly@windelsmarx.com

Mark A. Mader
Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07961-1911
mamader@firstenergycorp.com

Paul Flanagan, Esq.
Executive Director
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Paul.flanagan@bpu.state.nj.us

Jerome May, Director
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Jerome.may@bpu.state.nj.us

Cynthia Covie, Esq., Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Cynthia.covie@bpu.state.nj.us

John Masiello
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
John.masiello@bpu.state.nj.us

Carl Dzierawiec
Division of Energy
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Carl.dzierawiec@bpu.state.nj.us

Stefanie A. Brand, Esq., Director
Division of the Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton NJ 08625
sbrand@rpa.state.nj.us

Ami Morita, Esq.
Division of the Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton NJ 08625
amorita@rpa.state.nj.us

Brian Lipman. Esq.
Division of the Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton NJ 08625
blipman@rpa.state.nj.us

Brian Weeks, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
PO Box 003
Trenton NJ 08625
bweeks@rpa.state.nj.us

Lisa Gurkas, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
lgurkas@rpa.state.nj.us

Fred Semrau, Esq,
Dorsey & Semrau
714 Main Street
P.O. Box 228
Boonton, NJ 07005
fsemrau@dorseysemrau.com

Tracy W. Schnurr
Dorsey & Semrau
714 Main Street
P.O. Box 228
Boonton, NJ 07005
tschnurr@dorseysemrau.com

Bethany Rocque-Romaine, Esq.
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350
Bethany.rocque-romaine@bpu.state.nj.us

Caroline Vachier, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Caroline.vachier@dol.lps.state.nj.us

Babette Tenzer, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Babette.tenzer@dol.lps.state.nj.us

Alex Moreau, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Alex.moreau@dol.lps.state.nj.us

Carolyn McIntosh, DAG
Dept. Of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Caroline.mcintosh@dol.lps.state.nj.us

Angela Hickson, Paralegal
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101
Angela.hickson@dol.lps.state.nj.us

Dawn Sullivan
Dorsey & Semrau
714 Main Street
P.O. Box 228
Boonton, NJ 07005
dsullivan@dorseysemrau.com

Clerk, Montville Township
Municipal Building
195 Changebridge Road
Montville, NJ 07045-9498

County Administrator
Morris County Administration and Records Building
P.O. Box 900
Morristown, NJ 07963-0900

Clerk
Township of East Hanover
411 Ridgedale Avenue
East Hanover, NJ 07936
paulam@easthanovertownship.com

Clerk
Parsippany-Troy Hills Township
Parsippany-Troy Hills Town Hall
1001 Parsippany Blvd
Parsippany-Troy Hills, NJ 07054

Ruby Smith, Legal Secretary
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101
Ruby.smith@dol.lps.state.nj.us

Kevin Connolly, Esq.
Jersey Central Power & Light Co.
300 Madison Avenue
Morristown, NJ 07960
kconnelly@firstenergy.com

Scott Humphrys.
FirstEnergy Corp.
76 S. Main Street,
Akron, OH 44308
shumphrys@firstenergy.com

Lauren Lepkoski, Esq.
FirstEnergy Corp.
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
llepkoski@firstenergycorp.com

Stephen J. Edelstein, Esq.
Schwartz Simon Edelstein & Celso
100 S. Jefferson Road, Suite 200
Whippany, NJ 07981
sedelstein@sseclaw.com

Clerk, Morris County Board of Chosen Freeholders
Morris County Administration and Records Building
P.O. Box 900
Morristown, NJ 07963-0900

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

PREHEARING ORDER

OAL DKT. NO.: PUC 1189-09

AGENCY DKT. NO.: ER09110921

IN THE MATTER OF THE PETITIONER OF JERSEY CENTRAL POWER & LIGHT COMPANY PURSUANT TO N.J.S.A. 40:55D-19 FOR A DETERMINATION THAT THE MONTVILLE-WHIPPANY 230Kv TRANSMISSION PROJECT IS REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE OR WELFARE OF THE PUBLIC
BPU DOCKET NO. EO15030383.

Pursuant to N.J.A.C. 1:1-13.1 et seq. a telephone prehearing conference was held in the above-entitled matter on July 21, 2015, and on August 21, 2015, Petitioner filed a Motion to Establish a Procedural Schedule, following are the procedures to be followed in this proceeding:

1. **NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:**

A. Nature of Proceedings:

Petitioner, Jersey Central Power & Light Company ("JCP&L" or the "Company"), filed a petitioner pursuant to N.J.S.A. 40:55D-19 seeking approval of the Montville-Whippany 230 kV Transmission Project, which involves the construction of a new 230 kV transmission line between JCP&L's Whippany substation, located in East Hanover, New Jersey and its Montville substation, located in Montville, New Jersey, along with the associated upgrades to these substations ("the project")..

B. Issues to be Resolved:

The reasonable necessity for, and prudency of the project.

2. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:**

Counsel for Petitioner:

Gregory Eisenstark, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, New Jersey 08901
(732) 846-7600

Counsel for Rate Counsel
Stefanie A. Brand, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, New Jersey 08625-003

For the Board of Public Utilities
Alex Moreau, Deputy Attorney General
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, N.J. 07102
(973) 648-3762
(973) 648-3555 (fax)

For Intervenor Montville Township
Fred Semrau, Esq.
714 Main Street
P.O. Box 228
Boonton, New Jersey 07005
(973) 334-1900

For Intervenor Montville Board of Education
Stephen J. Edelstein, Esq.
Schwartz Simon Edelstein & Celso, LLC
100 South Jefferson Road, Suite 200
Whippany, New Jersey 07981
(973) 993-3152

3. **SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

Notice of public hearings shall be provided in accordance with the rules of the Board of Public Utilities.

4. **SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Responses to Initial Discovery Requests	October 1, 2015
Additional Discovery Requests Served	October 9, 2015
Responses to Additional Discovery	October 30, 2015
Intervenor Direct Testimony	November 20, 2015
Public Hearing	Late Nov./Early Dec.
Discovery on Intervenor Testimony Served	December 11, 2015
Intervener Responses to Discovery	January 8, 2016
JCP&L Rebuttal Testimony	January 22, 2016
Discovery on Rebuttal Testimony	February 5, 2016
Responses to Discovery on Rebuttal Testimony	February 22, 2016
Intervener Surrebuttal Testimony	March 11, 2016
Discovery on Surrebuttal Testimony	April 1, 2016
Responses to Discovery on Surrebuttal Testimony	April 22, 2016
Evidentiary Hearings	Late May 2016
Post-Hearing Briefs due	TBD

5. **STIPULATIONS:**

Counsel shall file a joint stipulation of facts with the undersigned on or before 10 days prior to the first day of the hearing. The stipulation will contain a recitation of all facts which are not the subject of dispute. Counsel will attach to the stipulation any item of documentary evidence which will be admitted either by consent or without objection.

6. **SETTLEMENT:**

The parties or their counsel are urged to confer and attempt to settle this matter. In the event a settlement is reached, the parties shall be required to immediately notify the ALJ, and shall submit a settlement agreement pursuant to N.J.A.C. 1:1-19.1, or a written withdrawal pursuant to N.J.A.C. 1:1-19.2, within ten (10) days thereof, unless extended by the ALJ.

7. **AMENDMENTS TO PLEADINGS:**

None.

8. **DISCOVERY AND DATE FOR COMPLETION:**

See No. 4 above.

9. **ORDER OF PROOFS:**

Petitioner bears the burden of proof and the Company shall proceed first.

10. **EXHIBITS MARKED FOR IDENTIFICATION OR INTO EVIDENCE:**

An original and one (1) copy of all exhibits to be marked for identification, or introduced into evidence at the hearing, shall be provided to the undersigned and to each other party. This requirement will be strictly enforced unless impracticable.

Petitioner has pre-filed and served the direct testimony of its witnesses, John T. Toth, Dave Kozy, Jr., Lawrence A. Hozempa, Paul M. McGlynn, Peter W. Sparhawk, Kirsty M. Cronin, Tracey J. Janis, Jerome J. McHale, Kyle G. King, and William H. Bailey, marked as "JC-2" et seq. Board of Public Utility (BPU) Exhibits shall be marked "BPU-," Rate Counsel Exhibits shall be marked "RC-," Montville Township Exhibits shall be marked "MT-," and Montville Board of Education Exhibits shall be marked "MBOE-" unless the parties agree to alternative designations. All Exhibits shall be pre-marked and numbered.

11. **ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

Petitioner – 10 witnesses. The number of witnesses for the other parties is to be determined.

12. **MOTIONS:**

On or about May 1, 2015, Montville Township filed a Motion to Intervene. There was no opposition to the motion and by way of email dated June 17, 2015, from my Assistant Lisa Reyes, the undersigned granted the motion. By way of this Order the Motion to Intervene by the Township of Montville is hereby **GRANTED**.

On August 19, 2015, the Montville Board of Education filed a Motion to Intervene. There was no opposition to this motion and there is no evidence at this point that granting this motion will cause any undue delay in the proceedings. The Motion to Intervene filed by the Montville Board of Education is hereby **GRANTED.**

On August 21, 2015, Petitioner filed a Motion to Establish a Procedural Schedule. On September 2, 2015, the Township of Montville filed an Answer to the Motion to Establish a Procedural Schedule and a Cross-Motion for Petitioner to Establish an Escrow Account. On September 8, 2015, Petitioner filed an Answer to the Township's Cross-Motion.

Under Petitioner's proposed Procedural Schedule, responses to Initial Discovery Requests were due on September 1, 2015. The parties have engaged in an exchange of motions, sufficient to render the proposed Procedural Schedule moot. Therefore the Motion is moot. The undersigned presumes that the parties have not attempted to delay these proceedings, have moved forward with diligently representing their respective clients' interests, and have served the appropriate discovery requests. Therefore, I hereby **ORDER** that the parties follow the Procedural Schedule outlined above in Paragraph 4.

On September 2, 2015, the Township of Montville filed an Answer to the Motion to Establish a Procedural Schedule and a Cross-Motion for Petitioner to Establish an Escrow Account. That motion is hereby **DENIED**.

13. **OTHER SPECIAL MATTERS:**

Notice of the public hearing shall be publicized pursuant to the appropriate regulations governing publication of public hearings.

This order may be reviewed by the **DIRECTOR OF BOARD OF PUBLIC UTILITIES,** either upon interlocutory review, pursuant to N.J.A.C. 1:1-14.10, or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6.

September 8, 2015	
DATE	**LELAND S. McGEE,** ALJ

LSM/lr

ADDENDUM