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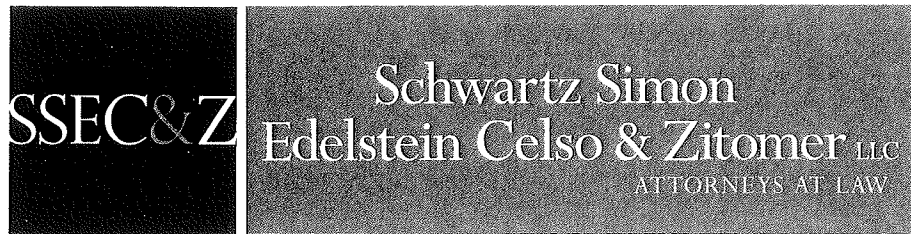
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December 24, 2009

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**VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL**

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

**RE: In the Matter of the Petition of Public Service Electric and Gas
Company for a Determination Pursuant to the Provision s of N.J.S.A.
40:55D-19 - BPU Docket NO. EM09010035
Post Hearing Brief on behalf of Montville Township Board of
Education**

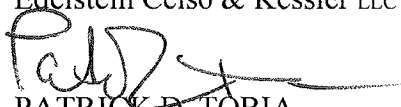
Dear Ms Izzo:

This office represents the Montville Township Board of Education. Enclosed please find the following:

1. Post Hearing Brief

Please feel free to contact me concerning this matter. Thank you.

Very truly yours,

Schwartz Simon
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PDT/nlr

Enc.

cc: Service List (by electronic mail)

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PRELIMINARY STATEMENT

The Montville Board of Education (BOE) joins in the Post-Hearing Briefs and the Motion to Dismiss filed by The Municipal Interveners, Stop The Lines and the Environmental Interveners. The BOE fully supports the efforts of these parties to have the BPU deny PSE&G's Application for approval for the Upgrade Project. The BOE submits this brief to address specific issues concerning the Upgrade Project related to the Lazar Middle School property and the children who attend the school.

PSE&G'S APPLICATION

On January 12, 2009 PSE&G filed a petition and exhibits with the NJBPU (BPU) seeking approval to construct the Susquehanna-Roseland transmission line (the Project). PSE&G's partner in this Project, PPL Electric Utilities, also filed its application for approval with the Pennsylvania Public Utilities Commission. PSE&G claims to have considered three different routes for the line (A, B and C). PSE&G decided on Route B from among the three possible routes. The New Jersey portion of the line, from the Delaware River to Roseland, will be built by PSE&G. Route B runs along existing power lines in New Jersey. However, the current line is a 230kv line, and PSE&G is proposing a second line in the same right of way, a 500kv line. This is a significant upgrade to the line already in the right of way. This massive undertaking will involve an upgrade to the existing voltage, towers and transmission stations. PSE&G claims that Route B is best because it involves the smallest "new" disturbance to existing lines and properties.

In its choice of Route B, PSE&G discounted the effect of the massive upgrade along the existing right of way which currently houses only a 230kv line. The right of way on the Lazar Middle School property (150 wide) is located on an easement granted

over 80 years ago. (BOE-1, copies of easements). Due to the narrow width of the easement, PSE&G could only build the massive new towers with their significantly increased voltage by going *up*, as opposed to towers of a reasonable height, *side by side*. PSE&G must go *up* to allow a *greater distance* for the electromagnetic fields (“EMFs”) to dissipate so that the EMFs are at safe levels at the edge of the right of way. If the easement were wider, PSE&G could build the towers lower, side by side. However, the current easement is too narrow to accommodate side by side structures of a reasonable height, and the tremendous increase in voltage the new lines will carry. This issue is directly related to electromagnetic field issues, which will be discussed below.

MONTVILLE BOARD OF EDUCATION ISSUES

Montville Board of Education’s Motion to Intervene in this matter set forth various concerns the Board of Education had with this proposed project:

1. There are significant safety concerns for the Montville BOE with the proposed Upgrade. The location of the existing power lines is adjacent to school property. With the height of the power lines doubling, as well as the voltage increasing significantly, there are far greater dangers to the children at the school. There are also dangers to the school from a tower collapsing, as well as from the possibility of downed power lines.

2. Moreover, due to the proximity of these towers to school property, should the school want to expand in the future, which is likely, the place for expansion would be through the rear of the school property. This is precisely the area where the towers are located. Any expansion of the school in the rear would put the expansion even closer to the power lines, and therefore create more of a dangerous condition for the school and the children

3. There are health related to EMF exposure. The upgrade will generate additional increased electromagnetic effects. The Upgrade would add 500kv transmission to the already existing 230kv line and significantly increase the EMF.

4. There are logistics and aesthetics to consider. As the proposed Upgrade will have towers over 180 feet high, these will be more than twice the height of existing towers. As these towers will be higher

and wider and larger than those existing, they will clearly be aesthetically unpleasing.

See Montville Board of Education Motion to Intervene, Certification of Board President, Jon Alin.

A. The Proposed Tower Heights Are Not Safe Due to Their Proximity to the School Property.

From the Lazar Middle School the 230kv towers are visible to the eye behind the school property, rising above the existing mature tree line. On the school ball fields one can see the towers. The current structures are less than 200 feet from the edge of the ball fields. When the new towers soar to just under 200 feet, they will loom over the existing landscaping at the edge of the right of way like giants, making the mature trees look like dwarf plantings. At that time there will then be a 200 foot tower less than 200 feet from the edge of the ball field. Should a tower fall, it will be large enough to fall right onto the ball field.

B. The School's Expansion Plans Are Negatively Impacted By the Proposed Addition of the 500kv Power Line

Looking at an aerial view of the school property (BOE-2, Site Map) one can readily see that the configuration of the school property and the school building is such that the school occupies the limits of the property on both the east and west sides of the building. South of the building, to the rear of the school, are the school ball fields, extending all the way to the edge of the PSE&G right of way. The front of the school borders the street.

The school is anticipates an expansion of the building in the next few years, due to continued increased enrollments of students. The *only* place for such an expansion would be out the back of the school. This would be on to the school ball fields. This would place the school building itself several hundred feet closer to the power lines and

the towers. Therefore, the EMF levels which now exist, and the EMF levels after the Project is completed, will impact the school even more directly.

C. EMF Fields at the Lazar Middle School Will be Above Acceptable Levels if the Project is Approved

In order to try to convince the BPU (and the public) that EMFs generated by the new 500kv line would not be harmful to humans (thousands of eleven to fourteen year old children at the Lazar Middle School), PSE&G hired a power industry consultant, Kyle King, to test EMF levels at the school. Mr. King's "testing" at the Lazar Middle School purports to show that existing EMF levels are within acceptable limits. However, only *he* tested - there is no second expert used by PSE&G to check on the accuracy of the tests and results of Mr. King. Moreover, Mr. King was alone when he did his tests, so there is no way to evaluate his activities through the independent verification of anyone else. Moreover, neither PSE&G nor Mr. King informed any representative of the Montville Board of Education that this testing would be done, nor did Mr. King get permission to enter upon the school property to do his tests. PSE&G completely controlled the timing, method and conditions of the tests.

Mr. King posits that the existing EMF levels on the school property, on the ball fields, are within acceptable limits. What is an "acceptable limit" is a matter of debate. However, even if PSE&G's assertion regarding existing EMF levels with only one 230kv line in place were true, the projected EMF levels *after* the upgrade with the addition of the 500kv line, would far exceed acceptable levels. Mr. King's report does show extremely high EMF levels which he expects to see after the upgrade, but his report is crafted in such a way as to make those EMF readings appear not significant.

Mr. King provides a chart of anticipated readings along the edge of the right of way for both median currents (KGK-2, Table 5), and maximum currents (KGK-2, Table

4). However, when Mr. King shows this information graphically, on Figure 8 of KGK-2, he graphs only the median values, not the maximum values. The result is a graph which does not provide any guidance at all on what the edge of right of way EMF measurements will be for at least 50% of the time that the median currents are expected to be exceeded.

At the hearing Mr. King was asked to show where on Figure 8 of KGK-2 other EMF values (which he did not graph) would appear. He did this on BOE-6 (attached hereto as **Exhibit A**). When these anticipated EMF levels are plotted on a graph showing the edge of the right of way and the right field fence line of the school's baseball field, even a lay person can see that the EMF readings far exceed what even a prudent person would find as acceptable to expose school children to all day, every day, for the entire school year, year after year. For example, BOE-6 shows in Mr. King's handwriting an anticipated EMF level at the edge of the right of way of 57.4mG. While it would have been relatively easy for PSE&G to include a graph of other EMF values as depicted on Figure 8 of KGK-2, PSE&G chose not to do this. The reason is obvious- when one sees where the higher EMF readings cross the edge of the right of way, it is apparent that the crossing points are so high that there is no possible way to show the EMF levels decreasing to tolerable levels at the ball fields or the school itself. Therefore, PSE&G omitted this information.

The technical and scientific issues concerning EMF fields can be confusing to experts, so one could imagine the average person having to try to understand how these fields are measured, what the readings mean, and whether the EMF fields pose any threat to the health and safety of humans, including in our case, the countless thousands of children who will pass through the Lazar Middle School. We have a responsibility to protect our children from the dangers from harmful exposure to such unseen invisible

dangers as radioactivity and EMFs. PSE&G's application fails to adequately address these issues.

The BPU should be guided by the research, findings and recommendations of such reputable organizations such as The World Health Organization (WHO) and the National Institute of Environmental Health Sciences (NIEHS). These findings were part of Dr. Martin Blank's testimony and exhibits. Dr. Martin Blank's pre-filed testimony refers to the NIEHS report to Congress suggesting a 3-4mG level. (A.11, pages 8-9). Dr. Blank stresses that the 3-4mG level does not indicate that there is safety below that level. (Id.) Br. Blank also points out that PSE&G relied upon EMF levels using median values, with fields being higher half the time and lower half the time. As PSE&G states that the median current values are going to be exceeded half the time, PSE&G admits that EMF levels will far exceed the NIEHS standard. From Mr. King's notations on BOE-6, the median current levels will produce EMFs of 19.3mG and current levels above the median to the maximum current levels will produce EMFs ranging from the 19.3mG up to 57.4 if a lattice structure is used.

Dr. Blank states emphatically that:

Because of the wide range of biological systems affected, the low response thresholds, the possibility of cumulative effects by repetitive stimulation and the inadequacy of exposure standards, it is urgent that the proposed powerline be moved to a distance where the anticipated magnetic fields will not pose a hazard to the community. At the very least, **peak EMF levels should not exceed 3-4mG**. The recent study linking the absence of DNA repair genes to EMF induced leukemia (**Exhibit I**) suggests that half that value. **1.4-1.8mG, would be a more prudent peak limit** to aim for.

Blank Pre-filed testimony at page 15. (emphasis in original)

Mr. King's report contains his findings and projections. KGK-2 shows that for a lattice type design for the towers, which is what PSE&G's application shows for the area behind the Lazar Middle School, the projected EMF levels for peak currents after the upgrade to the 500kv line, could be 57.4mG at the edge of the right of way closest to the school. This is 19 times the recommended level of 3mG. Mr. King shows this on BOE-6. A mere 150 feet from this 57.4mG EMF level is the right field fence of the baseball field. (BOE-4) Should PSE&G change the design to monopoles, the EMF reading at the edge of the right of way for peak currents is calculated by Mr. King to be 48.6mG.

PSE&G provides the peak values but argues that the BPU should not be concerned with these elevated EMF readings these because such peak values occur so infrequently that the EMF exposure at these times would be negligible. As the essence of PSE&G's application is based upon "need", and PSE&G claims that electricity use in the years to come will only increase, the prudent approach would be to consider (and not to ignore) the peak values. PSE&G has provided forecasts for only the next few years- the 500kv lines will be there essentially forever (at least for the next few generations of all of us). What is termed a "peak value" in 2013 may be standard fare in 2023 or beyond.

When that occurs the higher than acceptable EMF levels would prevail a greater percentage of the time. In that case they would not “be negligible”.

Even the median currents, which PSE&G heavily rely upon, show EMF values at the edge of the right of way of 20.9mG for lattice structures and 19.3mG for monopoles. The 20.9mG level is still seven time the recommended level of 3mG.

PSE&G’s modeling did not provide a graphic depiction of the 20.9mG, the 48.6mG or the 57.4mG levels that PSE&G says will prevail at the site under certain conditions. Accordingly, PSE&G failed to provide the Montville Board of Education, the public and the BPU, with any way to evaluate the EMF levels as they approach the ball fields and the school building, except for the one 19.3mG value. King Testimony, 11/23/09, p.1103, lines16-23. Considering the short distance from the edge of the right of way to the right field fence (125 feet), there is not a sufficient distance to allow the EMF levels to decrease to safe levels over that distance. One need not be an expert to see that the any of these elevated levels (20.9mG, the 48.6mG or the 57.4mG) would not be able to decrease to acceptable levels in the short span of 125 feet to the ball field.

For any of the proposed EMF values, PSE&G also did not provide EMF values at any point other than the edge of the right of way. Figure 8 of KGK-2 is most unhelpful in this regard. Although Mr. King graphed a curve of some sort to depict how the EMF readings would look from the center line of the right of way to points 300 feet away, no values are given and even Mr. King could not testify with any degree of accuracy about what the EMF readings would be:

Q: Now, can you tell me either from your report or from this chart, with the existing new design waves that are on here, where it hits the ball field, that line, two hundred feet, what is the EMF level there?

A: This will be a very rough approximation. I am just going to look across, that might be six, seven or eight, is my estimate.

King Testimony, 11/23/09, p.1103, line 24 to page 1104, line5.

D. The Proposed New Towers Will Be Aesthetically Unpleasing

There is no landscaping available, except for mature sequoias and redwoods, sufficient to provide a natural screen for these proposed PSE&G monstrosities. PSE&G is going up to heights of just under 200 feet because PSE&G chose the existing right of way as the “best” route to construct these modern marvels. Had PSE&G planned a different route, where PSE&G could have obtained wider rights of way (200 feet or greater) the new towers could have been built at more reasonable heights, similar to the existing heights of the rest of the towers in New Jersey. It is PSE&G’s choice of this particular route which necessitates going to the ridiculously tall 200 foot towers. (PSE&G would have gone higher if not for the FAA requirement of lighted towers for structures 200 feet or higher).

Consider that the average two story house is about twenty feet tall, not including the roof height. The tallest telephone pole rises about 60 feet above the ground. Current towers holding high voltage lines rise about eighty feet. By any of these standards PSE&G’s proposed structures (coming in just under 200 feet) are immense. Current PSE&G towers might be visible above an existing tree line, but not by much. The new towers will loom over the existing mature trees, the telephone poles and the houses below. There is no reason to scar the landscape with these towers.

LEGAL ANALYSIS

PSE&G Has Failed To Meet Its Burden Of Proof

Montville Board of Education incorporates herein and relies upon the legal arguments of the Municipal Interveners, Stop The Lines and the Environmental Interveners concerning PSE&G's failure to sustain its burden of proof that this project is needed. Moreover, PSE&G has failed to sustain its burden of demonstrating that the upgrade, as proposed behind the Lazar Middle School, is safe, both in terms of the structures themselves and the electromagnetic fields that the lines will generate.

Mr. Crouch, PSE&G's Senior Project Manager, testified that he began working on this project in 2007. Crouch Testimony, 11/18/09, p.479, lines 4-9. From Mr. King's report, KGK-2, by the summer of 2008 Mr. King was fully engaged by PSE&G and traveling to the various locations where the new line might be built taking photographs and EMF measurements. Mr. King's report refers to EMF measurements he took in August 2008. PSE&G then submitted its application to the BPU in January 2009. The application has been pending for close to twelve months at this time.

In all of this time that PSE&G has had to compile the information needed for this application, PSE&G failed to provide certain EMF information which would have been helpful to an analysis of the EMF issues. As noted above, conspicuously missing from Mr. King's report is any graphing in any format of the anticipated EMF levels on the school ball fields for anything other than one possible value- a monopole structure using a median current value. Although PSE&G would like to treat the EMF issue as a non-issue, the fact remains that PSE&G must demonstrate that the new 500kv line will be safe and not injurious to the health of humans, and in the case of the Lazar Middle School, the children.

PSE&G acknowledges the importance of the EMF issue in its design of towers close to 200 feet tall. In order to counteract the EMF effects PSE&G, limited by 150 foot rights of way, had to design the towers higher. So up they went, soaring to a height of just under 200 feet. In this design PSE&G expressly recognized that these heights were needed to allow a greater distance from the electricity source, the lines, and the humans below. However, at the Lazar Middle School PSE&G's attempt to shove a massive upgrade into a narrow right of way does not work because the edge of the right of way is not some vacant uninhabited land, but rather a fully occupied bustling school with hundreds of children playing on those field daily, and thousands of children passing through the school in years to come.

The Proposed Towers Should be Relocated/Realigned In Accordance With The "Prudent Avoidance" Doctrine

In *In re Petitions of Vermont Electric Power Co. and Green Mountain Power Corp.*, 179 Vt. 370, 895 A.2d 226 (2006) Vermont's highest court considered three appeals from a Public Service Board approval of the power companies' application to construct a series of electric transmission upgrades. Three municipalities appealed the Board's approval of the transmission line project. The court affirmed the Board's approval of the project.

The municipalities attacked the project on various technical grounds. The municipalities also presented evidence of health risks associated with exposure to EMFs. The Court noted that "as part of the post-certification process, the Board ordered VELCO to identify areas of relatively high EMF levels near residences and propose measures to mitigate exposure at those locations, and to monitor and regularly report to the Board the scientific evidence regarding the health effects of EMF." The Court wrote:

[C]onsistent with the policy of “prudent avoidance” followed by the Department of Health and other states, the Board ordered VELCO to continue to identify areas of relatively high EMF levels, propose options to mitigate exposure in those areas, and monitor the scientific literature and regularly report to the Board on these efforts.

895 A.2d at 233.

PSE&G has submitted the report of Kyle King as evidence that the EMF levels currently existing along the Lazar Middle School right of way and school property are within acceptable limits. However, PSE&G’s proposed upgrade to add a 500kv line is projected to raise EMF levels above what the WHO and NIEHS recommend. Moreover, the levels will be above what the public generally perceives to be harmful. The “prudent avoidance” approach should be applied here. Essentially, if there is a cost effective way to reduce the EMF levels this alternative should be pursued. Realigning a few towers is clearly a prudent approach to avoiding complicated EMF issues.

Mr. Crouch, PSE&G’s Senior Project manager testified that “[t]he project would be certainly open to discussing any opportunities with the Board of Education to mitigate EMF levels in this area.” Crouch Testimony, 11/18/09, p.479, lines 4-9. According to Mr. King, there are several ways to reduce EMF levels. One is to bury the lines, although PSE&G maintains that this is not a feasible method on this project. A second way is split phasing, which PSE&G claims it will do. A third way is to *increase the distances* between the lines and where people live and work, or in our case, children go to school. King Testimony, 11/23/09, p. 486, lines 12-14.

The BOE owns the property upon which current tower 78/4 is located. There is an area to the south/west of current tower 78/4, extending a few hundred feet, owned by the BOE. Current tower 78/4 could be relocated farther from the school, with adjoining towers 78/3 and 78/5 being slightly moved or realigned so that the new configuration

would place the whole upgrade farther from the school ball fields and the school itself. (See BOE-2, PSE&G Exhibit RFC-3A, sheet 32 Site Plan). Mr. Crouch testified that PSE&G could move towers provided the move did not impact adjoining property owners. See generally Crouch Testimony, 11/18/09 page 482, line 18 to page 485, line 14. In this case the impact on adjoining property owners appears not to be significant, as most of the area on the site plan (BOE-2) appears to be forested area.

Relocating/realigning the proposed new towers would make the section of the upgrade project at the Lazar Middle School more acceptable because the increased distances would allow the EMFs to decrease to tolerable limits as they approached the ball fields and the school.

In the present matter PSE&G has the ability to redesign the three towers near or on the Montville Board of Education property so that the distances between the new towers and the school property will be increased by several hundred feet. This redesign should place the new towers and the new 500kv line at a sufficient distance from the school property so that the EMF levels should be at lower, more tolerable, prudent levels as they approach the school property. There may be an incremental cost above current projected costs for such a realignment, but had PSE&G proposed such an alignment in the original plans, there would be no additional cost now. And while there may be some additional minor legal considerations to moving proposed towers, PSE&G with its resources surely can overcome whatever minor legal bumps in the road this realignment entails. PSE&G did this with other interveners.

The Lazar Middle School will have to expand its building in the next few years. When it does the expansion will have to, by necessity, be out the back of the school, onto the ball fields and closer to the existing power lines and the right of way. When this

expansion occurs, not only the ball fields but the school building itself will be in an area of elevated EMFs.

The Montville Board of Education opposes this upgrade being constructed. However, should the BPU grant PSE&G's application, the BPU should require PSE&G to realign the towers on and around the BOE property so that the towers and the new power lines are located as far from the school property as possible. The BPU has the power to condition any approval of PSE&G's application on the express requirement that PSE&G relocate or realign the towers around and on the BOE property as set forth herein.

This approach is consistent with the prudent avoidance doctrine. The present case warrants such action because it is PSE&G which has chosen the existing right of way to construct the additional 500kv power line. With that choice comes responsibility to ensure that the location of the new line will be safe to all those affected, and school children between the ages of 11 to 14 are clearly a vital group to protect.

There is an additional reason why the BPU should order PSE&G, if the project is approved, to relocate certain towers on or around school property. On September 21, 2009 the Second Circuit decided *State of Connecticut v. American Electric Power Co.*, 582 F.3d 309 (2nd Cir. 2009). In this case eight states, a city, and three land trusts separately sued the same six electric power corporations that owned and operated fossil-fuel-fired power plants in twenty states, seeking abatement of defendants' ongoing contributions to the public nuisance of global warming. The United States District Court for the Southern District of New York had dismissed plaintiffs' federal common law of nuisance claims as non-justiciable under the political question doctrine, and plaintiffs appealed. The Court of Appeals reversed and held (among other things) that municipal

and private plaintiffs were not precluded from bringing claims sounding in the federal common law of nuisance. Towers of 200 feet, less than 200 feet from an area where children play every day would be considered a nuisance. Elevated EMF levels on the BOE property, generated by the Project, would be considered a nuisance. Considering that some federal courts have held that under certain circumstances the activities of power companies could support a claim for nuisance, the BPU should take this into consideration.

By conditioning PSE&G's approval to proceed with the Project on the requirement that PSE&G relocate/realign some of the towers on or around the Lazar Middle School, the BPU can reduce the "nuisance" aspect that these high voltage wires and gargantuan towers pose to the school and the children.

REQUESTED RELIEF

Suggested Provisions for Inclusion in any BPU Order or Decision

The BOE respectfully requests that the BPU, should it grant PSE&G's petition, include a provision in the Decision and Order as follows:

Ordered that BPU's approval of PSE&G's Petition is expressly conditioned upon PSE&G relocating and/or realigning the proposed new towers on or around the Lazar Middle School to maximize distances of the towers and the lines from the school property, and PSE&G is further

Ordered that PSE&G must continue to identify areas of relatively high EMF levels, propose options to mitigate exposure in those areas, and monitor the scientific literature and regularly report to the BPU on these efforts.

CONCLUSION

The BOE respectfully submits that PSE&G's Petition be denied. PSE&G has failed to demonstrate that the proposed Project, particularly at the Lazar Middle School, has properly taken into consideration the safety issues with 200 foot tall towers, and the magnitude of the EMF levels that will prevail after the Project is completed. The existing right of way is too narrow for the proposed upgrade, which PSE&G has tried to compensate for by building *up*, rather than the preferable design of smaller side by side towers. As PSE&G has opted for this route, it is incumbent upon PSE&G to bear the responsibility to ensure that the benefits it claims (less disturbance to new areas) is properly balanced with the peculiar problems of placing a massive upgrade on an existing easement which no one eighty years ago could possibly have imagined. Accordingly, The BPU should deny PSE&G's Petition. Should BPU approve PSE&G's Petition, BPU should order PSE&G to take all appropriate measures to relocate/realign towers on and around the Lazar Middle School to reduce EMF levels.

Respectfully submitted,

SCHWARTZ SIMON
EDELSTEIN CELSO & ZITOMER LLC
Attorneys for Intervener
Montville Township Board of Education

By: 

PATRICK D. TOBIA, ESQ.

Date: December 24, 2009

EXHIBIT A

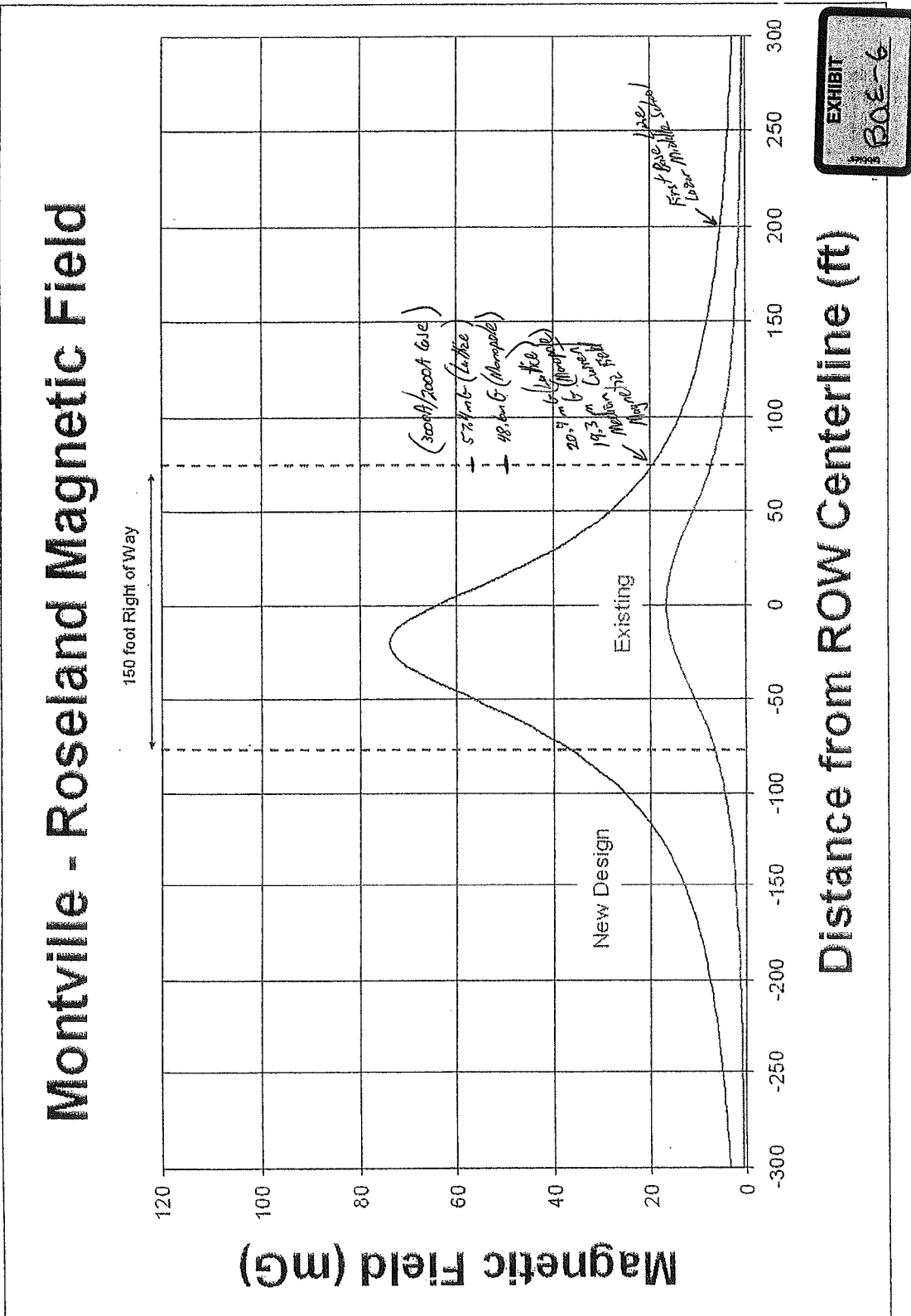


Figure 8 – Calculated magnetic field profile for the existing 230 kV circuit and the Project circuit lattice configuration on the Montville - Roseland line section. The median 2013 currents provided by PSE&G were used for these calculations.