STATE OF NEW JERSEY
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)	**BPU DOCKET NO. EM09010035**

STOP THE LINES!
RENEWED MOTION TO DISMISS
and
INITIAL BRIEF
regarding the
PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
for the
SUSQUEHANNA-ROSELAND TRANSMISSION PROJECT

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PRELIMINARY STATEMENT

Stop the Lines! is an organization of landowners and residents directly affected by the proposed Susquehanna-Roseland transmission project, an Intervenor in this Board of Public Utilities docket. Its purpose is to "Stop the Lines!"

Public Service Electric and Gas Company (hereinafter "PSE&G") filed a Petition and supporting testimony (the "Petition") with the New Jersey Board of Public Utilities (hereinafter "BPU") on January 10, 2009, seeking approval of its Susquehanna-Roseland Transmission Project, proposed Route B (the "Project"). In the past year, there have been such significant changes in the energy markets, the national and regional economy, and to the Project itself as proposed, that the Petition and PSE&G's related filings have become outdated, incomplete and insufficient, and, in some cases, incorrect. In other instances, information that should be provided is missing. In other cases, there are promises of information to be provided in the future. When PSE&G's filings and testimony are reviewed, it is clear that it has not met either its burden of production or burden of proof.

Stop the Lines! renews its Motion to Dismiss filed November 6, 2009, that PSE&G's Petition be dismissed without prejudice, to allow PSE&G to refile when it has a project that fulfills a need while actually complying with New Jersey policy, or adjourned until PSE&G has provided the plans for changes proposed at the last minute for substation configuration,

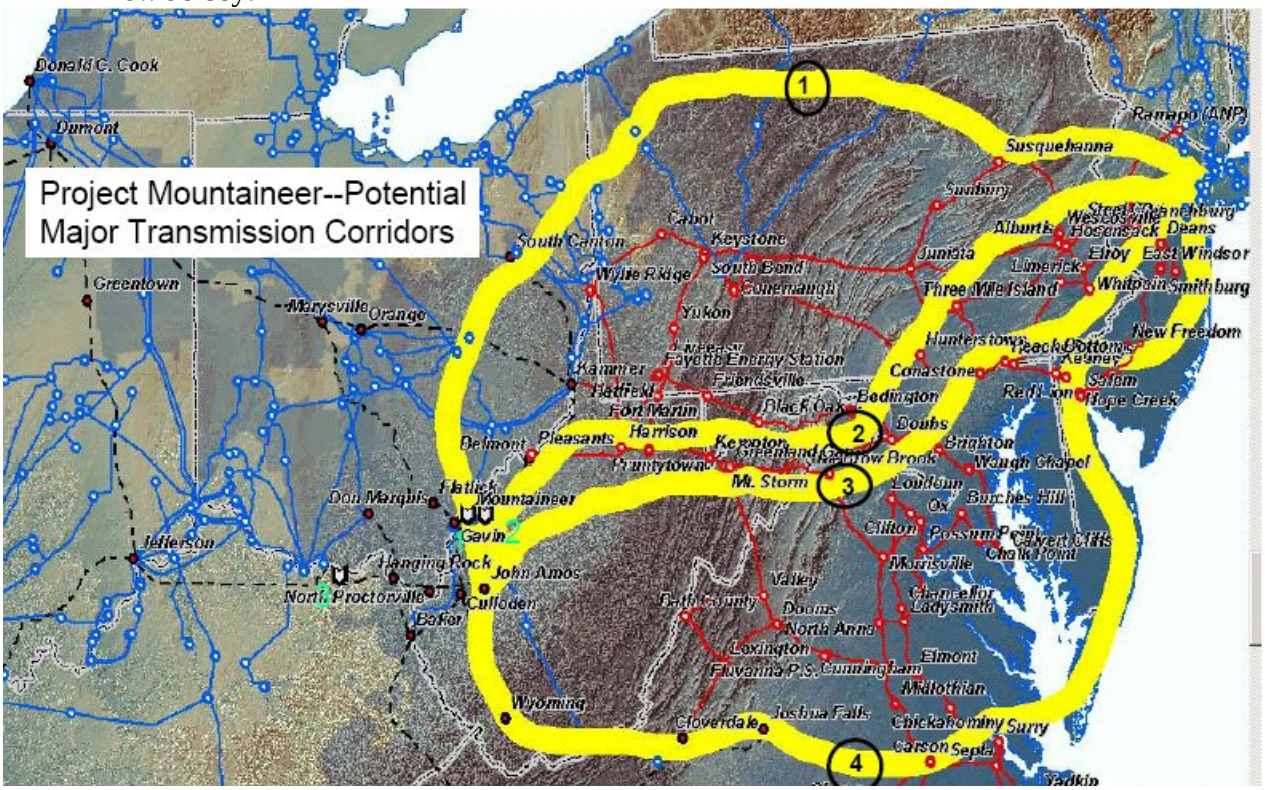
conductor configuration and rating with resultant EMF modeling, and a new “need” study and peak load projections.

Stop the Lines! further respectfully requests that the Board dismiss the Petition, without prejudice, until such time as PSE&G can present a complete application, sufficient to substantiate this Project, or, perhaps, a revised project; or to deny the Petition outright based on PSE&G’s failure of production and failure to demonstrate need. In the alternative, should the Board of Public Utilities approve this Petition against evidence, Stop the Lines! requests that specific conditions be placed on the permit sufficient to landowners, nearby residents, environment, and to substantiate the stated claims of Petitioners. These proposed conditions are set forth in detail in the Conclusion, below.

INTRODUCTION AND BACKGROUND

The "PJM Eastern Interface along the Delaware River, separating Pennsylvania and New Jersey" has been described as a "constraint," and an "impediment to west/east trade," one of three "certain physical constraints on the transmission system that have limited further flows of coal based generation to markets in the east." Exhibit 148, STL-14, STL-D-6, p. 5 and Exhibit A, Eastern Interface, Testimony of Pfirmann at FERC Coal Technical Conference, Docket AD-05-03; Exhibit 150, STL-15, STL-D-6b, Transcript of FERC Coal Technical Conference, p. 65.

> Any new additions to the transmission system, must address or minimize or eliminate the effects of these constraints.
>
> So, what is Project Mountaineer? PJM has taken a preliminary delineation of the magnitude of transmission improvements that are needed to enhance West-to-East power flows by up to 5,000 megawatts.
>
> As Exhibit C illustrates … to meet this increased power flow, two or more new backbone 500 kV or 765 kV transmission paths of approximately 500 to 900 circuit miles in length, will need to be constructed from the Kentucky, Ohio, and West Virginia areas to eastern load centers stretching from Washington, D.C., to northern New Jersey.



Id., and Exhibit B, showing Project Mountaineer map.

The Susquehanna-Roseland transmission project, at the northeasterly part of Project Mountaineer Line 1, would traverse that constraint, the "PJM Eastern Interface along the Delaware River, separating Pennsylvania and New Jersey" and address that impediment of coal-based generation to markets in the east.

On or about January 12, 2009, PSE&G submitted a Petition, the supporting testimony of 13 experts and consultants, and relevant exhibits, including a voluminous set of maps, to the Board for a determination pursuant to N.J.S.A. 40:55D-19 that PSE&G's proposed 500kV Susquehanna Roseland transmission system upgrade is "necessary to address 23 projected reliability criteria violations in the region" and is "reasonably necessary for the service, convenience or welfare of the public." Exhibit 1, PSE&G Petition to BPU at 1.

As it has been proposed, the Project consists of the installation of a new 500kV transmission line that will extend from the Delaware Water Gap National Recreation Area to Roseland in Essex County. The entire line as proposed is / miles, and in New Jersey, the line would extend 45 miles, passing through 16 municipalities in Warren, Sussex and Morris Counties. It is estimated that the entire Project will cost $ 1.2 – 1.3 billion, and the 45 miles of the New Jersey portion is expected to cost nearly $800 million, although the estimates provide no detail. PSE&G claims that the Project will be built primarily in the 150-foot wide right of way ("ROW") that presently contains a 230 kV transmission line. There are some areas where PSE&G would require new easements or expansion of existing land rights, and outside of the existing ROW there will be new construction access roads and permanent maintenance easements cut by PSE&G to build and accommodate the new line.

The Project as proposed would add a new double-bundled second circuit to the existing 230kV transmission line, and a new quad-bundled 500kV circuit, and this configuration was

altered in verbal testimony during the hearing to a single conductor 230kV circuit and triple-bundled 500kV transmission line – but hat configuration changed during the hearing to a tri-bundled 500kV line and a single conductor 230kV rather than bundled. The Project will require construction of all new towers that will measure up to 195 feet in height, double the 85-95 foot existing towers that hold the existing 230kV line. PSE&G admits and plans show that the 500kV line is not intended for local load service. Its purpose is to provide significantly increased transfer capacity *throughout the region*. Exhibit 210, MI-16 Munis-Herling/McGlynn Response to Municipal Request 13.

Pursuant to federal law and the regulations and rules of the Federal Energy Regulatory Commission ("FERC"), a state agency such as the BPU must act on the Petition within one year of its filing. Section 1221(a) of the Energy Policy Act of 2005, 16 U.S.C. §§ 824p(b)(1)(A)-(C). However, the state agency may deny a Petition if there are sufficient grounds to do so, supported by a federal holding that denial of a petition is not a "failure to act" as required by Section 1221(a). *See Piedmont Environmental Council, et al., v. Federal Energy Regulatory Commission, et al.*, 558 F.3d. 304 (4th Cir. 2009). The BPU is well within its rights and jurisdiction to deny PSE&G's Petition for the Susquehanna-Roseland transmission project.

Mindful of the looming January 2010 deadline for action, the BPU has established a truncated procedural schedule for the matter. The evidentiary hearings were from November 16 to November 23, 2009 and a decision by the BPU is expected on or before January 15, 2010.

I. PSEG'S PETITION SHOULD BE DENIED BECAUSE PSE&G AND PJM'S OWN STUDIES SHOW THE PROJECT IS NOT NEEDED.

PSE&G has not met either its burden of production or burden of proof to demonstrate that this project is needed. Petitioners base their claims of need for the Susquehanna-Roseland transmission project on PJM's Regional Transmission Plan and PJM's declaration of "need," PJM contingency studies and PJM congestion studies, claiming the transmission project is needed for "reliability." The North American Electric Reliability Council defines reliability of the bulk power system as system adequacy and operating reliability:

> **Adequacy** — is the ability of the electric system to supply the aggregate electric power and energy requirements of the electricity consumers at all times, taking into account scheduled and reasonably expected unscheduled outages of system components.
>
> **Operating Reliability** — is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system components.

Exhibit 152, STL-17, STL-D-14, 2009 NERC Reliability Assessment, p. 353.

The plans and studies produced by PSE&G to justify this project, and industry reports and documents entered into evidence, show a different picture. Upon closer and critical examination, we see a demonstration of the ability of the system to well-handle load existing and into the future, a transmission system that provides the essential reliability qualities of system adequacy and system security, and most importantly, a system that does not need urgent expensive upgrades, and which instead has capacity to provide a cushion of time to allow the deliberate and considered shifts now demanded of our electric system and our policy makers. The Board of Public Utilities is in a position to determine, with this decision, whether we will continue with unsustainable fossil central station power or continue on the path of the New Jersey Master Plan.

However, these documents instead demonstrate that there is not a "need" for this project, and instead demonstrate, through these PJM and FERC documents, that the purpose is to expand

transmission for PJM's economic market. Further, the PJM and FERC documents show that not only is economic dispatch and the shift to market based focus not a boon to utilities or ratepayers, it shows that economic dispatch has promoted activities contrary to the New Jersey Energy Master Plan, proposals of transmission infrastructure that has Mid-Atlantic Governors joining in resistance, and cost allocation schemes shifting costs away from economic benefactors so egregious that the court has rejected the cost allocation scheme for the Susquehanna-Roseland project. Foisting this project on landowners and ratepayers of New Jersey would be against the public interest and against the charge of the Board of Public Utilities.

A. THE REGIONAL TRANSMISSION EXPANSION PLAN DOES NOT DEMONSTRATE NEED – ONLY A DESIRE FOR TRANSMISSION EXPANSION.

PJM's business plan, the Regional Transmission Plan (hereinafter "RTEP"), is the primary demonstrative document in PSE&G's claim for need of this project. On the basis of RTEP, PJM unilaterally declared that the Susquehanna-Roseland transmission project was needed. Transmission expansion, however, is the title and focus of PJM's plan, and not energy reliability. Transmission expansion is apparent as the driving force in the iterations of the Regional Transmission Expansion Plan.

> *The purpose of the RTEP is to provide for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, and to maintain and enhance the efficiency of PJM's wholesale electricity markets.*

Exhibit 145, STL-11, STL-D-16b, FERC Order on Cost Allocation Report, Docket ER07-1186.

The RTEP is a moving target, morphing over time as this Petition moves forward on the BPU's docket. Thus far, in the documents submitted with the Petition and subsequently produced in discovery, PSE&G has introduced no less than four different iterations of RTEP, each with a different data set, and then claims that each data set independently demonstrates the need for the

Project. These data sets are derived from the 2007 RTEP Analysis, the 2008 RTEP Re-tool, the draft 2009 RTEP Re-tool, and the final 2009 RTEP Re-tool, which PSE&G released to Municipal Intervenors only weeks before the hearing. A review of the RTEP iterations, the various charts showing criteria violations, and other documents show that "reliability" is not at issue and the documents offered as justification for this project are inadequate.

1. Susquehanna-Roseland is transmission expansion serving points eastward, not providing reliability.

The Susquehanna-Roseland transmission project is transmission expansion, evidenced in the name of its formative study, the "Regional Transmission Expansion Plan," its lack of service to New Jersey, its committed service of a minimum of 1,670MW eastward from the Roseland substation, and its designation as a "backbone" project of PJM.

The 500kV quad-bundled double- circuited line will not service New Jersey, and instead passes by the intermediate substations for the 230kV line. PSE&G admits and plans reveal that the 500kV line is not intended for local load service. Its purpose is to provide significantly increased transfer capacity throughout the region. Exhibit 210, MI-16 Munis-Herling/McGlynn Response to Municipal Request 13.

According to testimony of the Petitioners, the normal rating planned for the Susquehanna-Roseland transmission project is 3005MVA, essentially 3,005MW, and an emergency rating of 3,400MVA, essentially 3,400MW. Testimony of Crouch, Tr. Nov. 18, 2009, p.0320, l. 2-5; p. 0323, l. 4-11; Testimony of King, TR. p 1019, l. 23; Testimony of Khadr, TR. p. 1250, 31, l. 5-7[1]. However, several witnesses testified that the "peak" for the 500kV line would be 1,657 amps. Testimony of King, TR. p. 1037, l. 20. Thermal limits are far above that,

[1] Thermal limit of the 500kV line, the amperage and capacity for this line if there were no other limiting factors is 1838 amps per wire, in the quad-bundled configuration, a total of 7,532 amps, and in the tri-bundled configuration, 5,414 amps and 4,795MVA or essentially 4,795 MW. Testimony of King, TR. at p. 1254-1255.

1,838 amps per wire, 7,352 amps if quad-bundled and 5,514 amps if tri-bundled. Testimony of King, TR. at 1254, l. 10-18.

In the FERC rate recovery tariff for this project and three others[2], the Susquehanna-Roseland line is committed to serve points east. See STL-12, FERC Compliance Filing, Docket ER07-1186. This purpose and commitment is evidenced by firm transmission withdrawal rights established for Neptune Regional Transmission System (Neptune) at 685MW and East Coast Power (ECP) at 330MW, totaling 1,015MW of firm transmission withdrawal rights. STL-12, FERC Compliance Filing, p. 8. The PJM tariff assigned cost responsibility for the Susquehanna-Roseland to Neptune and ECP, based on these firm transmission withdrawal rights. This 1,015MW is soon to be joined by Hudson Transmission Partners at 670MW. Exhibit STL-12, p. 8 (firm transmission withdrawal rights allocated and Susquehanna-Roseland cost allocation regarding those firm transmission withdrawal rights); Ex. S-96, Hudson Transmission Partners firm transmission withdrawal rights of 670MW presumed in staff base case). The firm withdrawal rights from the Roseland substation already in the tariff at 1,015MW plus that of the Hudson Transmission Partners (HTP), 670MW, which will be added as soon as the interconnection agreement is signed, totals 1,670MW or more committed.

2. Susquehanna-Roseland "need" is a moving target, with studies morphing over time.[3]

PJM has changed the analytical methodology with every successive data set introduced, using different assumptions, inputs and calculations, which, of course, produced different

[2] See Ex. 144-147, STL-10-13, which addresses rate recovery for b0487, b0489, b0490, b0491 and b0492. Susquehanna-Roseland is b0489. Network upgrades b0487 and b0489 are the Susquehanna-Roseland project, and b0489 is the portion of the S-R project located in New Jersey; b0490, b0491 and b0492 are a 765kV transmission line from the John Amos coal plant in West Virginia to Bedington and Kempton, in Maryland – the Amos/Bedington/Kepmtown Project. The Roseland substation is the furthest north and east to the Neptune, EPC and HTP merchant transmission lines that will withdraw the 1,670 MW.

[3] This section taken liberally from Joint Intervenors Motion to Dismiss.

results. Claiming that each new methodology adopted results in more accurate data, PSE&G has paid little attention to the parties' indictments of previous methodologies, and has disregarded those methodological improvements that have affected the data sets over time. Nor has PSE&G made any attempt to glean information by comparing the outcomes of each analysis. Exhibit 207-209, MI-13-15, Munis-Herling-Demand Response. The implication of the independence of each iteration is that each successive data set renders all preceding sets, and the Intervenors' criticism of each preceding data set, irrelevant. For example, Intervenors questioned the accuracy of PJM's 2007 RTEP analysis and 2008 RTEP Re-tool because they did not incorporate the affects of Demand Response (DR) Resources that would be available to mitigate projected thermal violations. PJM responded that DR Resources were incorporated in the final 2009 RTEP Re-tool and are reflected in the data set it provided after two rounds of discovery requests and two rounds of rebuttal testimony had been expended evaluating old data sets. Id.

In another example, when the Intervenors questioned the manner in which PSE&G incorporated DR Resources in the 2009 RTEP Re-tool, PSE&G responded that its methodology for analyzing the affects of DR Resources would be corrected in the 2010 RTEP and all subsequent analyses. Id. However, while implying that each improvement renders the Intervenors' criticism of previous methodologies moot, PSE&G claims that it has not acknowledged that the number and severity of its projected reliability criteria violations has decreased with each methodological improvement, or that the original violations put forward as justification for the Project have evaporated. Exhibit 240, MI-46, S-PP-5, Reynolds Demand Response. These improvements and the paucity of PSEG's claims are borne out in the congestion statistics for the PPL and PSE&G Control Zones in the PJM 2008 Annual Report. Exhibit 72, BKS-9, PJM 2008 Annual Report.

In yet another example, after clarifying a sentence that PSE&G admitted was confusing and created the impression that the Intervenors used erroneous load forecasting data when comparing forecasted and observed peak loads, PSE&G explained that the discrepancy between forecasted and observed loads was the result of unexpected weather conditions, restated also in testimony. Testimony of Herling and Khadr, TR. November 19, 2009, p. 0583-0585,

PSE&G described two tests it uses to determine if weather, and not the economy, was responsible for unexpectedly low demand. One involves weather normalizing the peak loads after the fact, and the other involves re-estimating the PJM load forecast model using actual weather data and comparing the re-simulated peak loads to the actual peak loads observed. PSE&G explains that it "uses the method described above to account for load forecasting errors that result from extreme weather conditions like those experienced in 2006 and 2008." *Id.* One could easily, but mistakenly, conclude that PJM performed both of the tests described on the 2006 *and* 2008 data sets. But the second, and more accurate, of the two tests was performed only on the 2006 data. There is no evidence that PJM conducted the second test on the 2008 data. Confusion like this results almost entirely from PSE&G's introduction of multiple data sets in support of its Petition.

PSE&G's delay in providing the actual data, and use of multiple changes in data and shifts in methodology, particularly at the eleventh hour, should not be permitted by the Board. It is impossible for the Intervenors and the Board to discern and apply the information necessary to inform the record and adequately address PSE&G's claim that the Project is born out of need.

B. RELIABILITY VIOLATIONS AND CONTINGENCY STUDIES PRODUCED DEMONSTRATE INSTEAD THE ELIMINATION OF VIOLATIONS AND ELIMINATION OF PSE&G'S CLAIM OF NEED

In PSE&G's Petition, the need for the Project was based on 23 potential reliability violations that were projected to occur in the future, ranging from the years 2012 to 2022. Exhibit 19, EAK-3a; Exhibit 51, PFM-1; Exhibit 126, PFM-2, Chart of 13 Outages between 2012 and 2022 based on load and generator deliverability; Exhibit 127, PFM-3, Chart of 10 Outages between 2012 and 2022 based on PJM generator deliverability. These 23 potential reliability violations were projected to occur based on load flow studies incorporating a complex set of modeling assumptions, tests, and most importantly, a peak load forecast. The peak load forecast (issued by PJM in January, 2008) that was used as part of these modeling assumptions, however, was created prior to the current economic recession. Due to the current recession, a sea change has taken place over the last twelve months as to the demand for electricity, with a concomitant effect on the peak load projections underlying PSE&G's claims that the Project is needed to serve the public. Of the original 23 potential reliability violations that the Company asserted as the basis of need for the Project, ten of them have been pushed out beyond even the 15-year planning horizon and thus are no longer relevant to this proceeding. Many of the 13 potential reliability violations remaining after the March 2009 RTEP are now projected to occur at a later date than was originally forecast; most significantly the 500 kV reliability standard violation was "pushed out" even beyond the fifteen-year planning horizon. Exhibit 19, EAK-3a; Exhibit 51, PFM-1; Exhibit 126, PFM-2; Exhibit 127, PFM-3.

Most of these "violations" are nominal in nature, less than 5%, and with the exception of two that occur in the 2012 timeframe, there are no additional violations until after 2016. Id; see Testimony of McGlynn, TR. at 0622, l. 22 to 0628, l. 14. (add julia's here)

As the number of violations shrinks it may well be more cost-effective and less environmentally intrusive to consider individual solutions to these violations that do not involve

a new $1.2 billion 500kV line. For example, reconductoring the offending lines could eliminate the violations, but reconductoring was not seriously considered because of the "severity" of the violations despite the low percentage of overload and the lessening number of violations and lengthening timeframe in which they occurred. Testimony of McGlynn, TR. p. 580-583. Although demand has dropped significantly, there was no effort made to determine the impact of a drop in demand, through economic conditions or in targeted demand response on the violations claimed, and yet decreased demand admittedly could decrease the number of violations, except for "violation number 3." Testimony of McGlynn, 0628, l. 15 to p. 0629, l. 3.

A current retool study incorporating all relevant data would prove to be a valuable tool to this Board in the analysis of whether a 500 kV line is reasonably necessary, considering the timing and number of the anticipated reliability issues. Indeed, it is the only way that this Board can determine whether the proposed 101-mile $1.2 billion Project is reasonably necessary.

The various iterations of RTEP reveal a discernable pattern showing that over time, the criteria violations are fewer and less severe. This leads to the question of what would occur with the passage of even more time. Given the decreased load, noted in detail in Point IV below, any need for the line that *may* have existed has evaporated, and it is apparent that this Petition should go no further. The Intervenors request, therefore, that the BPU dismiss the Petition, without prejudice, to allow PSEG to file it again if increased demand sufficiently demonstrates need.

II. DECREASED ENERGY CONSUMPTION IN 2008 AND 2009 NEGATES THE ALLEGED NEED FOR THE PROJECT

The "need" for the project, even if assumed, as been eliminated by the years' long drop in the electricity market. Market decline is evident, reflected in corporate filings and industry

reports, and the decrease in peak demand, overall demand for electrical energy, and sales of electricity in the region, over the past two, nearly three, years is so significant that current and projected consumption rates cancel out all of PSE&G's claims that the Project is needed. Reports of PJM market activity show that that in the first half of 2009, demand in the PJM region was down 4.4%, which followed a drop of 2.7% in 2008. Exhibit 160, STL-25, Monitoring Analytics PJM 2Q Quarterly Report, August, 2009. The subsequent quarter's report showed that the trend continued. Exhibit 154, STL-19, Monitoring Analytics PJM 3Q Quarterly Report, November, 2009. Because demand has fallen so precipitously, for such a long period of time, there is no need for the Susquehanna-Roseland transmission project.

PSE&G and PJM have made no effort to address demand decrease, and instead deny it by not taking actual demand into account, instead making its "need" claim based on projections, projections that have proven falsely high. For example, the 2007 PJM forecast predicted 1.7% growth, but when asked what actual growth was, Herling replied, "I don't recall." Testimony of Herling, TR. at 0583, l. 12. When asked the same question of the PSG&E zone, Herling replied, "I don't recall." Id, l. 16. Herling admitted that the 2007 and 2008 forecasts would have been higher than the actual, but did not know by how much. Id., p. 0585. As for the 2009 forecast compared with actual, he again did not know. Id. Reynolds stated that:

> *For example, when we published the load forecast in January 2009, we were forecasting a drop to whether (sic) normalized demand for 2009.*
> *And then nearly flat for 2010.*
> *And then growth in 2011 and accelerating in 2012 to come back to near its long term projection.*

Testimony of Reynolds, TR. p. 0589, l. 1-19. When asked whether his demand projection pushed out the timeline for the Susquehanna-Roseland transmission project, he replied, "No." Id, p. 0590,

l. 10-13. The North American Electric Reliability Council portrays a very different picture of demand.

The North American Electric Reliability Council's Reliability Assessment summarizes its overview of decreased demand:

> *Reduced economic activity and higher adoption of Demand-Side Management programs have led to decreased projected peak demand for electricity and, as a result, higher reserve margins throughout North America for much of the ten-year period. The increase in Demand-Side Management contributes to approximately 20 percent of the total reduction in summer peak demand for the 2017 forecast when compared to last year's forecast, while economic recession effects contribute 80 percent. While some Regions, including Texas, continue to see record peak demand, overall peak demand forecasts for 2009 have decreased by four percent from forecasts projected in 2008. Projected compound annual growth rate over the ten-year period for peak demand has also decreased overall, from 1.6 percent in 2008 projections to 1.5 percent in 2009 projections. Areas with the highest growth rates include the Desert Southwest (2.3 percent), the Southeastern subregion (2.2 percent), and Texas (2.1 percent). Areas with the lowest/negative growth rates include Ontario (-1.1 percent, due in part to aggressive energy efficiency programs), the Maritimes (.5 percent), and New York (.7 percent). The most significant change in projected peak demand occurs in Florida and the Northeast U.S. / Southeast Canada, where demand previously projected to be realized in 2010 is now not expected until 2015.*
>
> …
>
> *The pace and shape of economic recovery will dramatically influence actual load growth across North America over the ten-year period. Largely unpredictable economic conditions result in a degree of uncertainty in 2009 demand forecasts that is not typically seen in periods of more stable economic activity.*

Exhibit 152, STL-17, STL-D-14, 2009 NERC Reliability Assessment, p. 1-2.

For RFC, the region that includes PJM and parts of MISO it is more specific:

> *RFC – A five percent drop in peak demand compared to last-year's forecast for 2009. In 2011 and 2012, the annual growth rates increase and then decline through 2018.*

Id, p. 14.

The projection of NERC, the reliability entity for the nation, does not support a claim of need for the Susquehanna-Roseland transmission project.

The reports of decreased demand are not anything new. This situation has been building long enough that it should be no surprise to the Petitioners and the Board of Public Utilities. A Wall Street Journal article reported on this decreased demand more than a year ago, and prior to PSE&G's Petition for the Susquehanna-Roseland transmission project. In "Surprise Drop in Power Use Delivers Jolt to Utilities," the extent of the demand drop was addressed, questioning infrastructure construction. Even utility executives recognized the significance of the decrease in demand. "The message is: be cautious about what you build because you may not have the demand" to justify the expense, said Michael Morris, CEO of AEP. Exhibit 73, BKS-10, Rebecca Smith, Surprise Drop in Power Use Delivers Jolt to Utilities, Wall Street Journal, Nov. 21, 2008. Indeed, some utilities are announcing delays and withdrawing projects, including other "backbone" projects in geographic proximity to Susquehanna-Roseland – the Potomac Appalachian Transmission Highline (PATH) and the Mid-Atlantic Power Pathway. Exhibit 79, BKS-16, PATH Announces Change to Transmission Line In-Service Date, iStockAnalyst, October 31, 2008; Exhibit 80, BKS-17, PATH press release Announcing Change to Transmission Line Completion Date, April 15, 2009. The MAPP project has been delayed, and one length of it, from Indian River in Delaware to Salem, New Jersey, has been eliminated. Exhibit 81, BKS-18, Aaron Nathans, News Journal, MAPP's Va.-to-Del. Section put off a year; Del. To N.J. leg is put on hold indefinitely.

Not unexpectedly, as demand as plummeted, the cost of energy has also declined. This decline is reflected in PSEG's SEC filings, which show a precipitous drop in net income, from $656 million in Third Quarter 2008 to $488 million in Third Quarter 2009.

PSEG CONSOLIDATED EARNINGS (unaudited) Third Quarter Comparative Results 2009 and 2008				
	Income ($millions)		Diluted Earnings Per Share	
	2009	2008	2009	2008
Net Income	$488	$656	$0.96	$1.29
Less: Income from Discontinued Ops	--	180	--	0.35
Income From Continuing Ops	$488	$476	$0.96	$0.94
Less: Excluded Items	24	(1)	0.04	--
Operating Earnings (Non-GAAP)	$464	$477	$0.92	$0.94
		Avg. Shares	507M	508M

Exhibit 66, BKS 3, PSEG 10-K 2008; see also Exhibit 68, PSEG 2009 1st Quarter Earnings Call. PSE&G is not alone, other utilities report the same decrease in earnings and resultant decrease in generation. See Exhibit 67, BKS-4, NERC press release re: outlook for electricity reliability for summer season, May 19, 2009; Exhibit 74, BKS-11, Xcel 2008 10-K; Exhibit 75, BKS-12, Duke Energy Corp. 2008 10-K; Exhibit 76, BKS-13, American Electric Power 2008 10-K. Most have weathered the decrease in sales and decrease in generation through the decrease in operating costs that results from decreased generation. Id.

The drop in demand and price is also reflected in Monitoring Analytics' 2nd Quarter and 3rd Quarter "2009 Quarterly State of the Market Report for PJM".[4] Exhibit 160, STL-25, Monitoring Analytics PJM 2Q Quarterly Report, August, 2009; Exhibit 154, STL-19, Monitoring Analytics PJM 3Q Quarterly Report, November, 2009. As reported, demand has decreased and prices have dropped leaving an electricity market glutted with supply.

Some excepts from the 2Q and 3Q PJM Quarterly Reports, comparing the overview, are instructive:

Supply:

• **2Q -** During the April through June 2009 quarter, the PJM Energy Market received an hourly average of 153,310 MW in supply offers including hydroelectric generation.

[4] Available online at: http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2009.shtml

The second quarter 2009 average supply offers were 2,149 MW lower than the second quarter 2008 average supply of 155,459 MW.

3Q - During the July through September 2009 quarter, the PJM Energy Market received an hourly average of 152,314 MW in supply offers.3 The third quarter 2009 average supply offers were 338 MW higher than the third quarter 2008 average supply of 151,976 MW.

Demand:

• **2Q -** The PJM system peak load in the second quarter 2009 was 116,732 MW in the hour ended 1700 EPT on June 25, 2009, while the PJM peak load in the second quarter 2008 was 130,100 in the hour ended 1700 on June 9, 2008. The 2009 second quarter peak load was 13,368 MW, or 11.5 percent, lower than the second quarter 2008 peak load.

• **3Q** - The PJM system peak load in the third quarter 2009 was 126,805 MW in the hour ended 1700 EPT on August 10, 2009, while the PJM peak load in the third quarter 2008 was 129,481 in the hour ended 1700 on July 18, 2008.4 The 2009 third quarter peak load was 2,676 MW, or 2.1 percent, lower than the third quarter 2008 peak load.

Load:

• **2Q -** On average, PJM real-time load decreased in the first six months of 2009 by 3.4 percent from the first six months of 2008, falling from 78,684 MW to 75,993 MW. PJM day-ahead load decreased in the first six months of 2009 by 7.1 percent from the first six months of 2008, falling from 95,485 MW to 88,688 MW.

• **3Q** - On average, PJM real-time load decreased in the first nine months of 2009 by 4.5 percent from the first nine months of 2008, falling from 80,611 MW to 76,956 MW. PJM day-ahead load decreased in the first nine months of 2009 by 8.0 percent from the first nine months of 2008, falling from 97,505 MW to 89,680 MW.

Prices:

PJM LMPs are a direct measure of market performance. Price level is a good, general indicator of market performance, although the number of factors influencing the overall level of prices means it must be analyzed carefully. For example, overall average prices subsume congestion (price differences at a point in time) and price differences over time.

2Q - PJM Real-Time Energy Market prices decreased in the first six months of 2009 compared to the first six months of 2008. The system simple average LMP was 42.9 percent lower in the first six months of 2009 than in the first six months of 2008, $40.12 per MWh versus $70.19 per MWh. The load-weighted LMP was 43.2 percent lower in the first six months of 2009 than in the first six months of 2008, $42.48 per

> MWh versus $74.77 per MWh. The fuel-cost-adjusted, load-weighted, average LMP was 6.4 percent lower in the first six months of 2009 than the load-weighted, average LMP in the first six months of 2008, $70.00 per MWh compared to $74.77 per MWh. Fuel costs and lower loads in the first half of 2009 contributed to downward pressure on LMP.
>
> **3Q** - PJM Real-Time Energy Market prices decreased in the first nine months of 2009 compared to the first nine months of 2008. The system simple average LMP was 48.0 percent lower in the first nine months of 2009 than in the first nine months of 2008, $37.42 per MWh versus $71.94 per MWh. The load-weighted LMP was 48.8 percent lower in the first nine months of 2009 than in the first nine months of 2008, $39.57 per MWh versus $77.27 per MWh. The fuel cost adjusted, load-weighted, average LMP was 11.2 percent lower in the first nine months of 2009 than the load-weighted, average LMP in the first nine months of 2008, $68.61 per MWh compared to $77.27 per MWh. In other words, if fuel costs for the first nine months of 2009 had been the same as for the first nine months of 2008, the 2009 load-weighted LMP would have been higher, $68.61 per MWh, instead of the observed $39.57 per MWh, and 11.2 percent lower than the load-weighted average LMP for the first nine months of 2008. Fuel costs and lower loads in the first nine months of 2009 contributed to downward pressure on LMP.
>
> **2Q** - PJM Day-Ahead Energy Market prices decreased in the first six months of 2009 compared to the first six months of 2008. The system simple average LMP was 42.9 percent lower in the first six months of 2009 than in the first six months of 2008, $40.01 per MWh versus $70.12 per MWh. The load-weighted LMP was 42.7 percent lower in the first six months of 2009 than in the first six months of 2008, $42.21 per MWh versus $73.71 per MWh.
>
> **3Q** - PJM Day-Ahead Energy Market prices decreased in the first nine months of 2009 compared to the first nine months of 2008. The system simple average LMP was 47.7 percent lower in the first nine months of 2009 than in the first nine months of 2008, $37.35 per MWh versus $71.43 per MWh. The load-weighted LMP was 48.2 percent lower in the first nine months of 2009 than in the first nine months of 2008, $39.35 per MWh versus $75.96 per MWh.

Id. **2Q** SoM at p. 3, 5; **3Q** SoM at p. 5,7. These same downward trends are shown in other metrics, including the Real-Time Annual and Monthly Load, (Id., 2Q PJM Quarterly Report at 18), Day-Ahead Load (Id., 2Q PJM Quarterly Report at 19), Average Locational Marginal Price (LMP) (Id. 2Q PJM Quarterly Report at 21), Real-Time Load-Weighted LMP (Id., 2Q PJM Quarterly Report at 22), Day-Ahead Load-Weighted LMP (Id., 2Q PJM Quarterly Report at 26)(3Q has same metrics at different page numbers).

The PJM Quarterly Report also reveals the decrease in "benefits" to the PSE&G territory, "benefits" reaped from transmitting cheaper generation into PSE&G territory and then selling it to its own market or reselling it to other wholesalers. This decrease is evidenced in the Energy Market tables where PSEG's Economic Program credits are far less than those of other utilities in the region. For example, PSE&G's credits were $1,809 for 90 hours, as compared to $260,617, 2933 hours for PPL. PJM Quarterly Report at 38. Despite these specific claims of economic benefits, P/

Congestion is often cited as a justification for new transmission infrastructure, and congestion has also significantly lessened. Lack of congestion is one reason that the MAPP project has been delayed:

> The projections show it will take longer to arrive at previously forecast levels of congestion on the grid, making the need for the new line less pressing, PJM officials said.

Exhibit 81, BKS-18, Aaron Nathans, News Journal, MAPP's Va.-to-Del. Section put off a year; Del.-to- N.J. leg is put on hold indefinitely.

The congestion cost market impact on PSE&G—or perhaps more correctly stated, the lack of cost impact—is also cited in the PJM Quarterly Report, showing that "congestion" has decreased and should not be used to support approval of the Susquehanna-Roseland transmission line. For example, PSE&G experienced congestion costs that were significantly lower than they were for other utilities. Exhibit 160, STL-25, Market Analytics' PJM 2Q State of the Market Report at 156-57. PSE&G has hedged more than 100% against congestion, and the Report shows its revenue from credits at $137,683,031 and congestion costs of $2,672,958, bringing total revenue of $140,355,989. Id. at 182; 156-57.

In addition to decreased congestion, Transmission Loading Relief (TLR) has decreased in PJM, again, likely to decreased demand due to conservation and efficiency efforts and the economy.

> One measure of bulk transmission congestion, used in parts of the Eastern Interconnection of North America, is Transmission Loading Relief (TLR) requests, which have increased during the last six years. In some cases, the over-scheduling of electricity transactions requires the issuance of TLRs, which is how system operators maintain system loadings within reliability limits.

Exhibit 152, STL-17, STL-D-14, 2008 NERC Reliability Assessment, p. 23. TLRs in PJM are dropping:

Curtailment of Transactions

TLRs

Figure 4-25 PJM and Midwest ISO TLR procedures: Calendar year 2008 and January through September 2009 (See 2008 SOM, Figure 4-15)

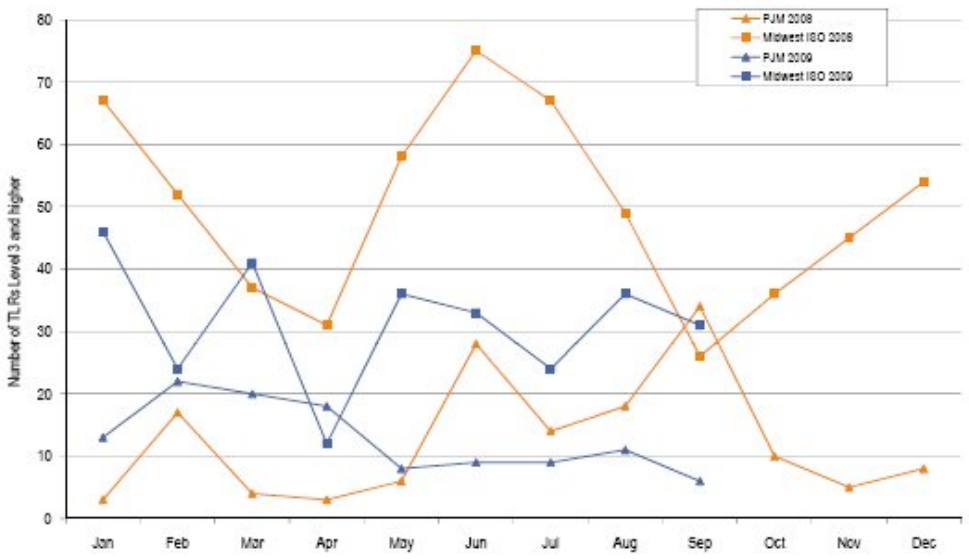
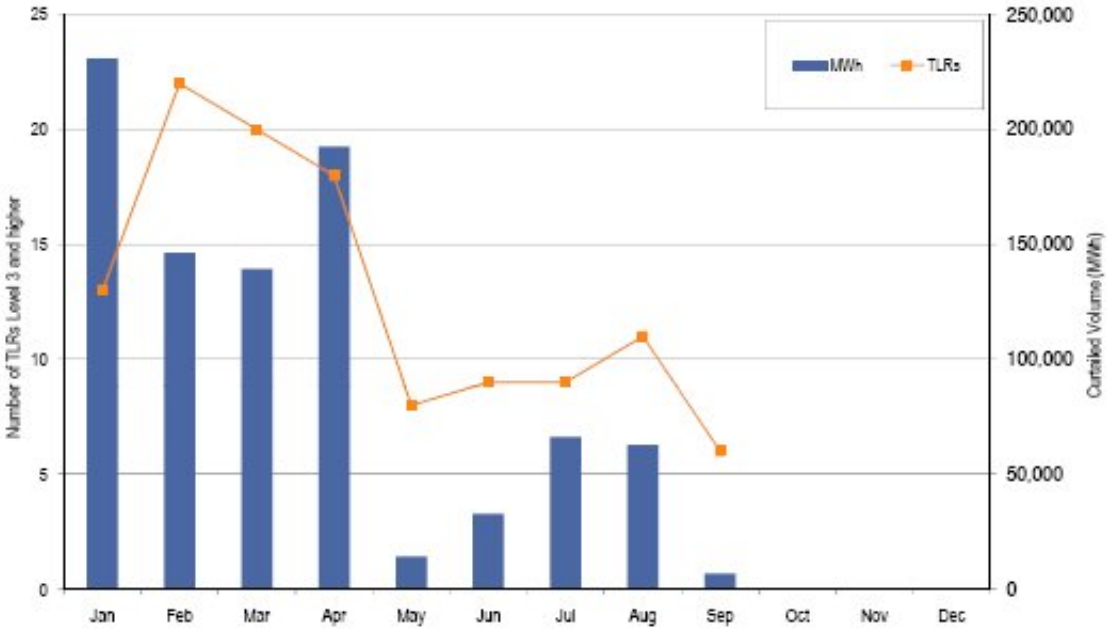


Exhibit 154, STL-19, Market Analytics 3Q State of the Market Report for PJM, November 2009, p. 93. Curtailed volume, however, is not directly correlated with TLR levels:

Figure 4-27 Number of PJM TLRs and curtailed volume: January through September 2009 (See 2008 SOM, Figure 4-17)



Id. Nor is TLR level necessarily indicative of a reliability problem, as will be explained below, it may be an economic driver, which should not be conflated with reliability. Id. p. 23.

Decreased demand means that reserve margins increase, a reliability benefit. Adequate, and reserve margins provide additional evidence that the transmission system is adequate.

> *A two percentage point decrease in projected (summer) Net Internal Demand growth in the U.S. also contributes to higher Reserve Margins over the ten-year period.*

Exhibit 152,STL-17, STL-D-14, 2009 NERC Reliability Assessment, p. 11.

Reserve margins are the amount of excess capacity that utilities are required to generate to assure that load can be met. Comparisons of load to reserve margins can be found by looking at the North American Electric Reliability Council's annual Reliability Assessment for the Reliability First area for summer, the time of year when demand is highest:

RFC-PJM NERC Year	Total Internal Demand (MW)	Net Internal Demand (MW)	Total Potential/Resources Capacity Resources	Existing Certain and Net Firm Transactions Margin	Total Potential Resources/Capacity Margin	**NERC Reference Capacity Margin Level**
2007 Table 3a[5]	--------	189,900	221,980	14.5%	17.9%	-------
2007 estimate for 2011[6]	--------	203,800	220,841	7.7%	15.3%	-------
2008 RFC Table 13a[7]	--------	177,200	213,787	17.1%	17.1%	-------
2008 RFC PJM only Table 13a[8]	--------	119,700	141,542	15.4%	15.4%	12.8%
2009 RFC Table 2a[9]	178,100	169,900	219,200	27.0%	29.0%	15.0%
2009 RFC PJM only Table 2a[10]	116,163	109,653	146,740	32.1%	33.8%	15.0%
2009 estimate of 2013 RFC Table 2c[11]	192,100	183,900	259,700	16.4%	41.2%	15.0%
2009 estimate of 2013 PJM only[12]	127,079	120,579	153,732	17.8%	50.5%	15.4%
2009 estimate of 2018 RFC[13]	201,300	193,100	267,900	10.9%	38.7%	15.0%
2009 estimate of 2018 PJM only[14]	134,524	128,024	187,144	10.9%	46.2%	16.2%

[5] Exhibit 152, STL-17, STL-D-14, 2007 NERC Reliability Assessment, Table 3a, p. 125.
[6] Exhibit 152, STL-17, STL-D-14, 2007 NERC Reliability Assessment, Table 3c, p. 125
[7] Exhibit 152, STL-17, STL-D-14, 2008 NERC Reliability Assessment, Table 13a, p. 68, RFC total.
[8] Exhibit 152, STL-17, STL-D-14, 2008 NERC Reliability Assessment, Table 13a, p. 68, RFC-PJM only.
[9] Exhibit 152, STL-17, STL-D-14, 2009 NERC Reliability Assessment, Table 2a, p. 395, RFC total.
[10] Exhibit 152, STL-17, STL-D-145, 2009 NERC Reliability Assessment, Table 2a, p. 395, RFC-PJM only.
[11] Exhibit 152, STL-17, STL-D-14, 2009 NERC Reliability Assessment, Table 2c, p. 397, RFC.
[12] Exhibit 155, 2009 NERC Reliability Assessment, Table 2c, p. 397, RFC-PJM only.
[13] Exhibit 155, 2009 NERC Reliability Assessment, Table 2e, p. 399, RFC.
[14] Exhibit 155, 2009 NERC Reliability Assessment, Table 2e, p. 399, RFC-PJM only

Reserve margins going forward in time are way above the NERC Preference Reserve Margin Level. There is no shortage of electricity, no shortage of electricity projected, and no anticipated need for more in the foreseeable future. Projected reserve margins are far above that required, and indicators of transmission congestion issues are becoming less frequent.

Congestion is an indicator of market activity, not of electrical reliability problems, and congestion is focused on the transaction interfaces:

> The MMU analyzed the transactions between PJM and neighboring balancing authorities for the first nine months of 2009, including evolving transaction patterns, economics and issues. During the first nine months of 2009, PJM was a net exporter of energy and a large share of both import and export activity occurred at a small number of interfaces. Four interfaces accounted for 72 percent of the total real-time net exports and two interfaces accounted for 88 percent of the real-time net import volume. Three interfaces accounted for 62 percent of the total day-ahead net exports and three interfaces accounted for 80 percent of the day-ahead net import volume.

The NERC Reliability Assessment Report draws the important distinction between drivers of congestion, finding that the drivers behind network limits and congestion are economic, and not reliability issues:

> It is necessary to understand the drivers behind congestion to determine if it represents a reliability or economic issue. If congestion is increasing because the transmission system is being fully used to optimize economic dispatch they are not a reliability concern. If congestion is occurring because transfers are needed to serve load, then this variety of congestion is an indicator of reliability concerns. TLR can indicate enforcing the boundaries of economic market activity or they can suggest reliability concerns. TLR below level 5 suggest that non-firm transactions are encountering system limits. While the network limits are rooted in reliability the drivers behind them are economic in nature.

Exhibit 155, STL-20, 2009 NERC Reliability Assessment, p. 59.

> Why is this important?
>
> While TLRs and EEAs were initially developed to help manage/ensure adequacy, they are being used more and more as triggering events for individual entity market decision points. This blurs the lines between reliability tools and market drivers.

Id, p. 61. Conflation of the source of congestion means that there is misuse of the term "reliability," where market drivers causing congestion, such as the claimed "need" for the Susquehanna-Roseland transmission project, is deemed needed for "reliability" when instead the congestion is market driven, and the project is wanted for market purposes.

These demand and congestion statistics and reports lead to the conclusion that the Susquehanna Roseland transmission line is not needed to address congestion. The Susquehanna-Roseland transmission line is not needed to address reliability. In light of decreased demand, decreased congestion, and the decreased cost of electricity that has affected the broad spectrum of market participants for years, it would be foolhardy to proceed with this project.

III. PJM'S COST APPORTIONMENT SCHEME HAS BEEN REJECTED BY THE FEDERAL COURT

Last August, the Seventh Circuit Court of Appeals (Posner, J) struck down PJM's scheme of cost apportionment. *Illinois Commerce Commission, et al., v. Federal Energy Regulatory Commission*, Docket Nos. 08-1306, 08-1780, 08-2071, 08-2124, 08-2239 (7th Cir. Aug. 6, 2009)(filed as Exhibit 9, Joint Intervenors Motion to Dismiss)[15]. Without cost apportionment in place, this project cannot go forward.

PJM's authority to apportion costs for a transmission project, including new projects and upgrades, is derived from FERC's approval and acceptance of PJM's Operating Agreement and Tariff. A cost apportionment scheme is an integral part of any transmission project because it directs who will pay for the project and how the contributing utilities will recover their costs. The Seventh Circuit Decision dismantled the cost apportionment scheme PJM intended to utilize for the Susquehanna Roseland Project. Now, this Project has no cost apportionment scheme in

[15] Illinois Commerce Commission, et al., v. Federal Energy Regulatory Commission may be found online at: http://legalectric.org/f/2009/08/ilcommcommvfercaug62009.pdf .

place. In the three months since the Decision was issued, PSEG has not submitted any evidence of another, approved cost apportionment scheme.

Without evidence of a FERC-approved tariff blessed by the court, or at least not rejected by the court, it is neither reasonable nor prudent for the Board to permit PSE&G's Petition to proceed. Without a cost apportionment scheme in place, PSE&G has no basis to recover costs and no basis under which to distribute the Project costs among the PJM utilities, much less any basis to explain the impact of this project on ratepayers. Most importantly, there is no support for the Board, as a matter of law, to find that the Project is reasonably necessary in the absence of knowing how much the Susquehanna-Roseland transmission project will cost the ratepaying public. The Board must deny PSE&G's Petition.

A. COST RECOVERY SCHEME FOR THE SUSQUEHANNA-ROSELAND

According to PSE&G's witness Herling, PJM's authority to apportion costs for a transmission project, including new projects and upgrades, is derived from FERC's approval and acceptance of PJM's Operating Agreement and Tariff ("Tariff"). Exhibit 12, P-11, Direct Testimony of Steven R. Herling, p. 7, l. 14-15; 13, l. 17-18.The Susquehanna Roseland Project is just one of PJM's so-called "backbone" transmission projects, dubbed "Project Mountaineer." These projects include: Trans-Allegheny Interstate Line (TrAIL), the Potomac-Appalachian Transmission Highline (PATH), Susquehanna-Roseland, and the Mid-Atlantic Power Pathway (MAPP). PJM submitted its cost apportionment tariff for the backbone projects to FERC for approval in 2007, and the tariff was approved. *See* FERC Docket ER07-1186; *see also* Exhibit 147, STL-13, PSEG Discovery Response Exhibit STL-D16d. On July 23, 2007, PJM filed amendments to Schedule 12 – Appendix of the PJM Tariff to reflect cost responsibility for five segments of two transmission projects which included the Susquehanna-Roseland transmission

project. Exhibit 144, STL-10, STL-D-16a. The cost of these projects was apportioned on a region wide basis using annual peak loads for apportionment purposes. Id. at p. 6 of filing.

The cost apportionment scheme for Susquehanna Roseland, which is listed as Project b0489, to build new 500kV transmission facilities from the Pennsylvania – New Jersey border at Bushkill to Roseland, and Project b0487 to build new 500kV transmission facilities from Susquehanna to the Pennsylvania – New Jersey border at Bushkill, the PSE&G share of the cost as a "Responsible Customer" was 7.58% of Project b0489 in New Jersey, and 7.58% of Project b0487 in Pennsylvania. By contrast, ComEd, an Illinois utility, was charged with 16.11% of the cost of the Project, more than twice the share of the cost PSE&G would bear.

Required Transmission Enhancements		Annual Revenue Requirement	Responsible Customer(s)
b0487	Build new 500 kV transmission facilities from Susquehanna to Pennsylvania – New Jersey border at Bushkill		AEC (2.05%) / AEP (16.79%) / APS (5.96%) / BGE (4.91%) / ComEd (16.11%) / Dayton (2.53%) / DL (2.08%) / DPL (2.93%) / Dominion (13.22%) / JCPL (4.57%) / ME (2.04%) / Neptune* (0.47%) / PECO (6.10%) / PENELEC (2.09%) / PEPCO (4.47%) / PPL (5.16%) / PSEG (7.58%) / RE (0.30%) / UGI (0.14%) / ECP** (0.23%)

Required Transmission Enhancements		Annual Revenue Requirement	Responsible Customer(s)
b0489	Build new 500 kV transmission facilities from Pennsylvania – New Jersey border at Bushkill to Roseland		AEC (2.05%) / AEP (16.79%) / APS (5.96%) / BGE (4.91%) / ComEd (16.11%) / Dayton (2.53%) / DL (2.08%) / DPL (2.93%) / Dominion (13.22%) / JCPL (4.57%) / ME (2.04%) / Neptune* (0.47%) / PECO (6.10%) / PENELEC (2.09%) / PEPCO (4.74%) / PPL (5.16%) / PSEG (7.58%) / RE (0.30%) / UGI (0.14%) / ECP** (0.23%)

Exhibit 144, STL-10, STL-D-16a, FERC Petition, PJM Amendments to Schedule 12; Exhibit; see also Exhibit 147, ST-13, STL-D-16d, FERC Order Accepting Cost Responsibility Assignments, January 28, 2009. Exhibit 12, P-11 Herling Direct at 7, 1. 14-15.

Cost recovery is essential to any transmission project. At a recent FERC Technical Conference, the President of PJM Interconnection discussed this essential component:

> One of the first issues that policymakers raise is "who pays?" In resolving this issue, we have the benefit of a body of existing precedent within PJM. Through our regional planning process and with FERC's oversight, we have addressed the appropriate rules for allocating costs associated both with economic and reliability upgrades to the transmission system. By way of example, as an independent entity with expertise and a proven track record, PJM can identify the portion of these transmission facilities which are attributable to enhancing overall regional reliability (and whose costs would therefore be spread among all customers in the affected areas) vs. those portions of the line which are needed for economics for which identified beneficiaries would shoulder the cost burden, or can be attributed to the interconnection requirements of specific generating facilities.

Exhibit 148, STL-14, STL-D-6, p. 7, Testimony of Karl Pfirrmann, President, PJM Interconnection, at FERC Technical Conference, May 13, 2005; Exhibit 150, STL-15, STL-D-6b, Transcript of Technical Conference, Transmission for Coal, including Karl Pfirrmann,

B. THE DECISION REJECTS THE COST APPORTIONMENT SCHEME FOR THE PROJECT

PJM's revised Tariff was approved by FERC, pending the outcome of proceedings challenging the Tariff. The states of Illinois and Ohio took up the challenge, and in *Commerce Commission, et al., v. Federal Energy Regulatory Commission, supra,* the Seventh Circuit struck down the Tariff and remanded the matter to FERC. Tamasik Cert., Ex. ___ at 12,

In opposing Illinois' and Ohio's challenge to the Tariff, PJM argued that "classic" utilities had apportioned costs decades ago by utility consensus, and, therefore, costs should be apportioned in a similar manner now. The Court scoffed at this notion, remarking that there is no consensus, and, furthermore, PJM is now a different entity, larger in membership and with wide-ranging geographic scope. *Id.* at 6. The Court also sharply dismissed FERC's claim that

the pricing scheme was appropriate because FERC claimed it was not feasible to measure benefits received in order to apportion according to benefits. FERC's claim that a ruling dismantling the scheme underlying the tariff would lead to litigation by and among the utilities, PJM and FERC was similarly rebuked by the Court. Judge Posner pointed to FERC's complete failure to make any attempt at estimating or calculating benefits, and noted that FERC's claims of infeasibility were unsubstantiated and irrational. *Id*. at 7.

The Court also took issue with FERC's contention that Midwest utilities would benefit from Project Mountaineer, and thus should pay their "fair share:"

> So utilities and their customers in the western part of the region could benefit from higher voltage transmission lines in the east, but nothing in FERC's opinions in this case enables even the roughest of ballpark estimates of those benefits.
>
> At argument FERC's counsel reluctantly conceded that if Commonwealth Edison would derive only $1 million in expected benefits from Project Mountaineer, for which it is being asked to chip in (by its estimate) $480 million, the disparity between benefit and cost would be unreasonable. The concession was prudent.

Id. at. 8. In a classic cost/benefits analysis, Judge Posner went on to recount the law of cost apportionment where benefits are at issue and chastised FERC for apportioning costs in a manner unrelated to benefits:

> FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members. "'[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.'
>
> Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."

Id. at 9-10 (internal citations omitted). The Court scoffed at FERC's contention that its experience with issues of reliability and network needs should convince the Court to take the soundness of its cost apportionment scheme "on faith." Noting the lack of substantial evidence on the record in support of FERC's approval of the scheme, the Court declined the offer. *Id.* at 10-11 (citations omitted). Instead, it remanded the matter to FERC with the instruction to undertake an honest, complete comparison of the costs and benefits to all the relevant utilities:

> If [FERC] cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; . . . the Commission can approve PJM's proposed pricing scheme on that basis. For that matter it can presume that new transmission lines benefit the entire network by reducing the likelihood or severity of outages. **But it cannot use the presumption to avoid the duty of "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."**

Id. at 11-12 (emphasis added) (internal citations omitted).[16]

The remand ordered by the Court will require yet another "retooling" by PJM, which means that PJM must make a significant effort to compile cost/benefit information and analysis, rework the tariff for this Project, and submit it to FERC for approval. In all likelihood, the "retool" will require PJM to rethink its distributive and allocative policy and philosophy. Until this occurs, who pays for this Project, and how much, is unknown. Thus, it is impossible, as a matter of law, to ascertain whether the Project is reasonably necessary.

Because PJM's authority derives from the tariff, the Project cannot move forward without a valid, FERC-approved tariff. At present, there is none. All of PSE&G's testimony based on the overturned cost apportionment scheme is no longer valid. Indeed, the Decision

[16] To hear the spirited oral argument online: http://www.ca7.uscourts.gov/tmp/Q019G7Q4.mp3

removed the very "backbone" of the Project. PSE&G has remained silent about the Decision and its impact on the Project. It has made no corrections or amendments to its testimony, and provided no additional data evidencing new filing with FERC or stipulations regarding cost apportionment. The Intervenors are completely in the dark as to whether PSE&G and/or PJM intend to address the deficiencies in the tariff identified in the Decision. Nor has PSE&G or PJM provided any insight as to how long a time a new cost/benefit analysis will require, or even whether any such cost/benefit analysis has been initiated.

When the Seventh Circuit voided the cost apportionment and recovery schemes applicable to the Project, the Decision undercut the entire Project. The BPU and the Intervenors cannot proceed until a new tariff with a new scheme is approved. In the absence of information concerning the benefits to be derived by all the PJM utility parties from the Susquehanna-Roseland Transmission Project, and the costs to be borne by them, and by ultimately the ratepayers, the Board simply cannot make a reasonable and prudent determination regarding PSE&G's Petition. PSEG's Petition should be dismissed immediately, without prejudice, so that PSEG may re-file it when it has determined a cost allocation scheme acceptable to FERC and the courts.

IV. THE SUSQUEHANNA-ROSELAND TRANSMISSION PROJECT IS CONTRARY TO NEW JERSEY ENERGY POLICY AND THE PUBLIC INTEREST

The Susquehanna-Roseland Transmission Project is transmission for coal, and as such, it is, on its face, contrary to New Jersey policy and the New Jersey Energy Master Plan. For this reason, the BPU should deny the Petition of PSEG because the Project is against New Jersey energy policy and against the public interest.

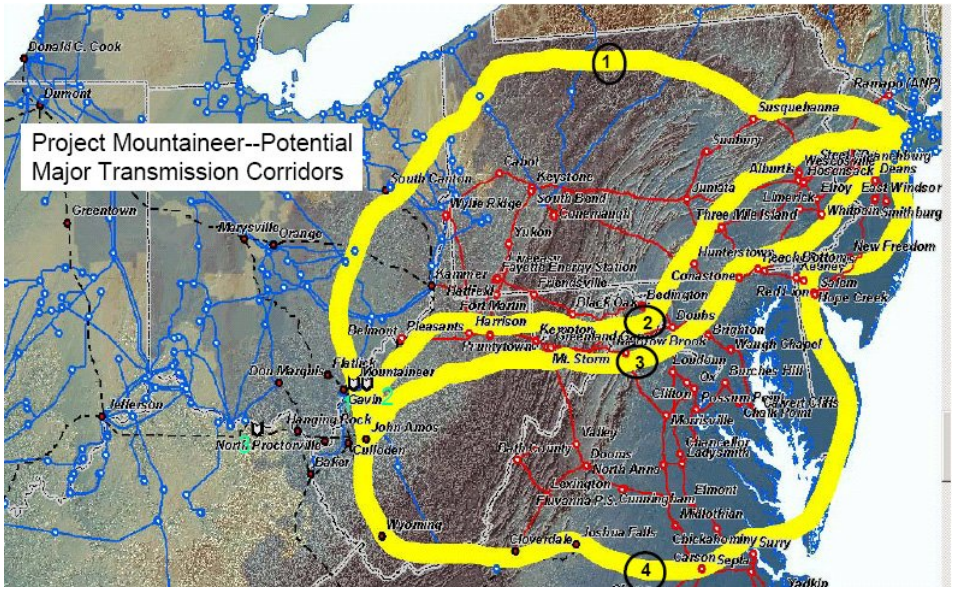
Karl Pfirrmann, President of PJM, testified at the May 13, 2005 FERC Technical Conference "Promoting Regional Transmission Planning and Expansion to Facilitate Fuel-Diversity Including Expanded Use of Coal-Fired Resources.[17] Exhibit 148, STL-14, STL-D-6, and Exhibits A &B, Testimony of Pfirmann at FERC Coal Technical Conference, Docket AD-05-03; Exhibit 150, STL-15, STL-D-6b, Transcript of FERC Coal Technical Conference.

In his testimony, he revealed "Project Mountaineer," PJM's plan to expand the market for low-cost coal resources:

> PJM is certainly proud of what has been accomplished to date to open up markets to coal, but there is much more that we and others in this region can do to further enhance that use of coal.
>
> It is for this reason that, today, PJM is setting out by example, a new initiative which we have labeled Project Mountaineer . . . to utilize our regional transmission expansion planning process to explore ways to further develop an efficient transmission super highway, if you will, to deliver the low-cost coal resources in this region of the country, to market.

Exhibit 150, STL-15, STL-D-6b, Transcript of FERC Coal Technical Conference, p. 61.

The Susquehanna-Roseland transmission project is the northeast segment of Project Mountaineer's "Line I." Id., and Exhibit B, showing Project



[17] For the complete FERC docket, go to the Search page at: http://elibrary.ferc.gov/idmws/docket_search_consol.asp and search for FERC Docket No. AD05-3.

Mountaineer, Transcript of FERC Coal Technical Conference, Docket AD-05-03-000.

. The Delaware River, between Pennsylvania and New Jersey has been identified by PJM as a primary "impediment to West/East trade:"

> [T]here remain certain physical constraints on the transmission system that have limited further flows of coal based generation to markets in the east. These constraints are depicted on Exhibit B and principally exist at three locations:
>
> The Wylie Ridge transformers and Sammis-Wylie Ridge transmission line at the AEP/APS/FE interface;
>
> The Bedington/ Black Oak 500 kV transmission line within the APS system; and
>
> **The PJM Eastern Interface along the Delaware River, separating Pennsylvania and New Jersey.**

Id. at 5 (emphasis added). This impediment, the environmentally sensitive Delaware River crossing, is an inherent feature of the Susquehanna-Roseland Project, as is its 500kV quad-bundled or tri-bundled transmission line for coal.

A. THE PROJECT IS CONTRARY TO NEW JERSEY ENERGY MASTER PLAN

The Susquehanna-Roseland transmission project is unabashedly in violation of the New Jersey Energy Master Plan ("EMP"), and contrary to New Jersey's interest. While New Jersey is moving toward a more secure, less fossil-fuel depending energy future, PJM has given its blessing to a new 500kV transmission line fired by coal. To add to the absurdity of this scenario, PSE&G has agreed to build this coal-fired behemoth in spite of the clear energy policy shifts summarized in the New Jersey Energy Master Plan. Because the Susquehanna-Roseland transmission project represents a significant infrastructure investment that would lock the state

into a path that is diametrically opposed to the Energy Master Plan, PSEG's Petition should be dismissed.

> The Goals of the New Jersey Energy Master Plan are:
>
> GOAL 1: Maximize the State's energy conservation and energy efficiency to achieve reductions in energy consumption of at least 20% by 2020.
>
> GOAL 2: Reduce peak demand for electricity by 5,700 MW by 2020.
>
> GOAL 3: Strive to surpass the current RPS goals with a goal of achieving 30% of the State's electricity needs from renewable sources by 2020.
>
> GOAL 4: Develop a 21st century energy infrastructure that supports the goals and action items of the Energy Master Plan, ensures the reliability of the system, and makes available additional tools to consumers to manage their energy consumption.
>
> GOAL 5: Invest in innovative clean energy technologies and businesses to stimulate the industry's growth in New Jersey

New Jersey Energy Master Plan, at pp. 54, 60, 67, 75, 81. The New Jersey Energy Master Plan could not be more clear in its directive that the state must be pro-active in transmission policies and actions. *See generally* New Jersey Energy Master Plan.

The Plan instructs that New Jersey must insure its part in the decision-making at PJM and FERC. One of the ways in which the state can do this is to work with PJM and FERC to modify or replace the Reliability Pricing Model with a mechanism that focuses incentives on new generation capacity, demand response, and energy efficiency. As the Plan reports, the first five years of RPM's capacity prices will cost New Jersey customers more than $7 billion, a sum that is more than sufficient to fund the construction of several new power plants outright. However, that sum is being spread among all capacity resources, leaving only a sliver for new power plants or demand response. *Id.* The Plan continues to conjecture that direct State action will achieve more certain results than RPM, and will tailor the results more closely to New

Jersey's particular economic and environmental needs. The goal is to relieve the state ratepayers from paying for RPM above the costs of more wisely targeted efforts. *Id.* The Plan goes on to say:

> Therefore, the State will continue its advocacy, with the goal of modifying or replacing the RPM with something that will produce better results while being more cost-effective and takes into consideration energy efficiency and demand response efforts.

New Jersey Energy Master Plan, at p. 93. This goal was ignored altogether by PSE&G, and by PJM in proposing the Susquehanna-Roseland transmission project.

Another way in which the State can work with PJM and FERC is to actively participate in PJM's planning of the electric transmission system to better protect New Jersey's economy and the environment**.** According to the Plan, PJM has determined that the reliability of electricity supply will be jeopardized over the next several years, unless the state's energy demand and supply are addressed. Since PJM is responsible for planning and operating the transmission grid, it is in the process of directing upgrades to the grid that will enable New Jersey to import more electricity. These imports will come primarily from coal production regions where coal-based electric generation is prevalent. In other words, our efforts to cut greenhouse gas emissions within New Jersey's borders will be undermined if the shortage of electricity supply is solved by importing more coal-based electricity.

The Plan goes on to say that we here in New Jersey cannot stake our energy future on increased imports of coal-based electricity:

> The prospect of increased greenhouse gas emissions is only one reason to avoid increasing our reliance on imports of coal-based electricity. Just as importantly, hopes that these imports would bring us greater reliability and lower prices are likely to be dashed. The prospect of federal limits on power plant emissions of greenhouse gases is creating major uncertainty about what

> coal-based power will cost. In addition, demand for coal is increasing, as coal is becoming more difficult and expensive to mine and transport, and recent history has featured disruptions in coal supply and spikes in coal prices. All of these factors suggest that it would be irresponsible to stake our energy future on increased imports of coal-based electricity.

New Jersey Energy Master Plan, at pp. 9, 37, 93-94. The Plan admonishes New Jersey to work closely with PJM to insure that transmission planning reflects the state's desire to increase in-state supply and reduce demand, and that transmission planning does not undermine the State's economic and environmental goals.

Another issue presented in the hearing was "leakage," where the impacts of the Regional Greenhouse Gas Initiative charge for CO2 generation would be circumvented by transmission available to import generation from a non-RGGI state. See BPU Order, May 4, 2009, Docket EO-08030150. The Board has ordered that increased imports of electricity and increased Statewide Greenhouse Gas Emissions be addressed.

The Order summarizes challenges outlined in the Energy Plan:

- Growth in the supply of electricity has not been keeping up with the growth in demand.
- The price of energy has increased substantially over the past few years, has become increasingly volatile, and these trends are expected to continue.
- Without action, our contribution to global warming and other pollutants will continue to increase.
- The State has much less authority over the supply and price of electricity than it used to.

Id. at 22. Ultimately, the BPU found that aggressive action is necessary:

> *Therefore, the Board FINDS that New Jersey can serve the goals of the EMP and take effective action to mitigate leakage, as required in the Act, by* ***aggressively supporting actions to make New Jersey more self-sufficient in satisfying its energy needs, without seeking to impose disadvantages on out-of-state electric generation.*** *Such actions will further the energy and environmental goals of the EMP while reducing our need to import electricity, thereby serving to mitigate leakage.*

> The Board DIRECTS Board Staff to immediately begin developing for the Board's consideration the regulatory mechanisms to effectuate these actions to mitigate leakage, pursuant to N.J.S.A. 48:3-87(c)(2)...
> …
> Public utilities rnay seek a decision under N.J.S.A. 40:550-19 for improvements to the electric transmission system across multiple municipalities. As discussed above, the Board found that it is possible for new or expanded transmission lines to result in increased imports of electricity and increased Statewide Greenhouse Gas Emissions. Accordingly, the Board DIRECTS that in any proceeding under N.J.S.A. 40:550-19 in which the development proposed by a public utility is an electric transmission facility, Staff shall seek information from the parties to enable the Board to evaluate the effect of the development upon Statewide Greenhouse Gas Emissions.

Id., BPU Order, p. 23-25[18](emphasis added).

Oddly, PSE&G agrees that the Susquehanna-Roseland transmission project will increase leakage. Testifying regarding the existence of firm transmission withdrawal rights of three merchant transmission entities, and impacts Khadr stated:

> And one more thing, okay, the more we study out of … the more we add transmission lines to New York, the more it's going to cause congestion which would make the leakage even worse.

Testimony of Khadr, TR. at 1263, l. 10-13.

> *Q: So looking at essentially 1,670 megawatts with firm transmission withdrawal rights soon?*
>
> *A. The study that we are doing does not looking to firm. These are energy analysis… It does not look at the capacity for firm withdrawal rights. However, the way we modelling it, is we're modeling the withdrawal – the maximum withdrawal every hour of the year. And that, again, is going to make the – the leakage worse.*

Testimony of Khadr, TR. at 1265-1266.

[18] The Order references *Potential Emissions Leakage and the Regional Greenhouse Gas Initiative (RGGI): Final Report of the RGGI Emissions Leakage Multi-State Staff Working Group to the RGGI Agency Heads*, March 2008, http://www.rggi.org/docs/20080331leakage.pdf

The tariff for the Susquehanna-Roseland transmission project establishes that it will provide these firm transmission withdrawal rights. Exhibit 144-147, STL-10-13. The Susquehanna-Roseland transmission project will make leakage worse.

What's noteworthy is how much has changed since the Energy Master Plan challenges were acknowledge and an action plan was issued. With demand dropping, there are more options for addressing leakage, and more time to determine impacts of decisions. Where a transmission line provides import capacity, and pass-through capacity to export elsewhere, and demand reduction is signification, the Board priority of mitigation of leakage is something that can be accomplished.

B. THE PROJECT IS CONTRARY TO THE PUBLIC INTEREST

The Susquehanna-Roseland project is not in the public interest. Landowners and ratepayers are the public, and this project serves to harm both.

Landowners along the right of way, accustomed to the 230kV transmission line in the easement, had no way to anticipate, and now have no way to mitigate, the 500kV tri-bundled line that is the Susquehanna-Roseland project. The right of way for Although PSE&G claims to be using existing Right of Way for this project, the existing Right of Way was not planned or designed for a project of the magnitude that is now proposed. The primary reason for selection of "Route B" is cost, for example, utilizing Interstate 80 was rejected because it would be entirely new easement that would have to be acquired:

> *Upon subsequent review, it was determined that such a route would not be a viable alternative for a number of reasons including a complete lack of right-of-way requiring PSE&G to secure new easement through the length of the corridor in New Jersey.*

Testimony of Halpern, TR. at 0056, l. 3-8; see Exhibit 45, JH-1 & 46, JH-1a, p. 13. Routing problems were acknowledged, from the technical difficulties of putting a 500kV line in a 125

foot right of way to siting substations around objecting communities. PSE&G itself states that the preferred right of way width for a 500kV line is 200 feet. Exhibit 6, P-5, Testimony of Crouch, p. 10, l. 16.

PSE&G does not have all land rights needed to proceed with this project even for its use of the 125 foot existing right of way. The impacts of this project on adjacent landowners, and the environmental impacts anticipated but not mitigated, make this project against the public interest. Where benefits are shown to be limited, and where costs are high, the project is not reasonable and should be denied.

PSE&G admits that it does not have the land rights necessary to move forward with this project. Testimony of Franklin, TR. at p. 0044-0049. At least 22 landowners are affected. Testimony of Franklin, TR. at p. 0047.

PSE&G blithely claims there will be no impacts on adjacent properties, but has no support for this claim.

> *Q: In your opinion will this transmission line have any adverse effect on real estate values or properties within a line-of-sight of the structures.*
>
> *Mr. Franklin: No, I do not feel it will.*
>
> *Q: What is the basis for that opinion?*
>
> *Mr. Franklin: The Right-of-way is an existing right-of-way, it's been there, all of the properties have existed, the line pre-exists most of the home that were built so I feel it will not have an adverse impact on the properties.*
>
> *Q: Do you have any studies that bear that out?*
>
> *Mr. Franklin: No, I do not.*

Testimony of Franklin, TR. at p. 0044, l. 7; see also 0051, l. 12.

.What consideration has been given to the studies regarding EMF that have occurred since the time of the easements?

Mr. Franklin: … I am not aware of any studies that have been done.

Id., p. 45, l. 4-5.

At least 22 landowners are subject to easement modifications regarding the number of wires permitted, trees, and other issues. Id. at 47. When asked when or if the landowners affected by substation changes had received notice, he did not now. Id. at 50. When asked if health effects, health risk, and liability would be addressed in newly negotiated easement language, the response was "No, they would not." Testimony of Franklin, p. 0045, l. 14 to p. 0045, l. 19. Mr. Franklin was not familiar with the New Jersey DOT's policy of Utility Accommodation, nor was Mr. Ribaldo familiar with clearances required under the National Electric Safety Code. Id. at p. 0051 and 0058. Although the right of way is 150 feet, with just 75 feet on each side of the centerline, blowout[19] clearance required ranges from 84.96 feet to 184.23 feet. At a 100% span length, 14 are in violation, and at a 80% span length, 6 are in violation. Exhibit 135, STL-2, S-ENR-35, "Blowout Summary."

The EMF levels for this project are unclear because EMF levels are based on amperage. The amperage levels for EMF modeling is not that of the normal rating planned for the Susquehanna-Roseland transmission project. Several witnesses testified that the "peak" for the 500kV line would be 1,657 amps. Testimony of King, TR. p. 1037, l. 20. Thermal limits are far above that, 1,838 amps per wire, 7,352 amps if quad-bundled and 5,514 amps if tri-bundled. Testimony of King, TR. at 1254, l. 10-18. The EMF modeling is inadequate to provide any reasonable measure of what expected levels might be. Too many people live too close to the easement to let this issue go unanswered.

Affected landowners have little recourse and should be allowed the option of forcing PSE&G to buy out their property, allowing them to leave. When a landowner has a transmission

[19] "Blowout" is the distance the conductor moves longitudinally in high wind.

line on their property, they are unable to obtain a mortgage from FHA or the VA due to perceived risk. Exhibit 59, Testimony of Jaros, p. 2, l. 19-24. Policies have been established regarding transmission lines, which the HRA regards as "special neighborhood hazards and nuisances" to expose applicants' homes who have a transmission on the property. A property with a transmission line is regarded as an "unacceptable site." Id., p. 3-4; see also Exhibits 60-62, U.S. Dept of Housing and Urban Development, Publication 4150.2, CHG-1, p. 6-7. If a property is not within the engineered fall-down distance, the utility may execute a letter by a utility engineer that this is the case, and the FHA may consider the property. Exhibit 404, P-24, PSE&G letter. However, the letter provided as Exhibit 404 does not make the requisite declarations, and does not make Ms. Jaros' property one that the FHA would consider, in fact, it remains regarded as a unacceptable site under FHA rules. This financing problem pertains to each of the landowners, and the increased height of the poles puts them in an untenable position where they do not want to stay in their homes but cannot afford to leave because they cannot find a buyer. It is not in the public interest to put landowners in this position.

The Susquehanna-Roseland project is also not in the ratepayer interest. The cost apportionment scheme, as above, has been rejected by the 7th Circuit Federal Court. *Illinois Commerce Commission, et al., v. Federal Energy Regulatory Commission*, Docket Nos. 08-1306, 08-1780, 08-2071, 08-2124, 08-2239 (7th Cir. Aug. 6, 2009)(filed as Exhibit 9, Joint Intervenors Motion to Dismiss)[20]. Costs have not been adequately disclosed or vetted to establish reasonableness or prudence. The most detailed cost itemization is the April 28, 2008 "Expected Cost Estimate for Roseland-Bushkill," which lists $467,500 in costs, but is for transmission only. Exhibit 134, STL-1, S-ENR-21, Project Costs. Substation cost is provided, utterly non-itemized,

[20] Illinois Commerce Commission, et al., v. Federal Energy Regulatory Commission may be found online at: http://legalectric.org/f/2009/08/ilcommcommvfercaug62009.pdf .

with a bare-bones several item chart dated 11/9/09, and a bottom line, claiming $173,546,175 for the Roseland switching station, $98,092,159 for the Hopatcong switching station estimate, transmission at a cost of $478,361,666 ($13+ million more than in April, 2008). Exhibit 136, STL-3, Alternative S-ENR-55, Design & Construction. The per mile for just transmission is $10,283,516! Exhibit 134, STL-1, S-ENR-21, Project Costs.

Revenue from fiber optic has not been disclosed. Mr. Ribardo testifies at first that he did not know if the shield wire was fiber optic, and then Mr. Franklin stated that it was, that the fiber optic is used for transmission line control and operations:

> Mr. Franklin: They permit the operating of the line, the fiber is not a telecommunications fiber, it is not being used for telecommunication purposes. It is being used to operate the system, the engineers could talk more about that, that piece I understand, fiber is not being put in so that we can enter into the telecommunications business. It Is there to operate the system.
> Q: So is it correct that the fiberoptic that is there will not be used for any other purpose other than operating the line?
> Mr. Ribardo: That's correct.

Testimony of Franklin & Ribardo, TR. at 0060-0061. That's the opposite of the response to a similar question posited by Staff:

> QUESTION: Provide a list of any planned and potential uses of the new and existing towers and poles besides carrying power lines (i.e., fiber optic cables, internet lines).
>
> ANSWER: PSE&G is considering utilizing Optical Ground Wire in the shield wire position to facilitate electric system relaying communications. Currently, the existing line supports several third party communications facilities. The new line will accommodate these existing communications facilities.

Exhibit 316, S-21, S-ENR-45. Will this established fiber optic communications stream of revenue from the line be offset to ratepayers paying the cost of the line, wherever they may be?

These are examples of the cost issues not adequately addressed, and which must be in the record prior to any determination by the Board. For all of these reasons, the Petition should be

dismissed, without prejudice, to allow PSE&G to refile when it has a project that fulfills a need while actually complying with New Jersey policy.

The Board must either dismiss the Petition outright or, if PSE&G is willing to voluntarily waive its right to invoke FERC "backstop authority" if this Petition is not acted on within a one-year time frame, the Board should hold any decision in abeyance until detailed cost estimates are produced, together with a current study, incorporating new peak load projections, the results of the RPM auction and the peak load reductions expected to occur through statutory and policy initiatives in Pennsylvania and New Jersey.

V. THE SUSQUEHANNA-ROSELAND TRANSMISSION PROJECT IS NOT RIPE – THE LINE AND PROJECT CONFIGURATION HAS CHANGED.

The Susquehanna-Roseland transmission project is not ripe, it is "not ready for prime-time." There is too much information missing, and too much information was presented at the last minute, too many changes, and too little disclosure and notice for the Board to make a reasonable and prudent decision that is adequately supported by the record. The Petition should be dismissed as uncertain and incomplete, and in the alternative, denied.

Dismissal is appropriate in a contested administrative case, where the Board would evaluate whether the evidence and the inferences therefrom could sustain a judgment in favor of the non-moving party. *Pennsville Commercial Land, Inc. and Delco, LLC v. Connectiv, Inc., and Atlantic City Elec. Co.* 2003 WL 21675028 (N.J. Adm.) (2003); *see also* N.J. A.C. 1:1-1.3(a). The decision-maker is instructed not to be concerned with the "worth, nature or extent . . . . of the evidence, but only with its existence, viewed most favorably to the party opposing the motion. *Dolson v. Anastasia*, 55 *N. J.* 2, 5-6 (1969) (citations omitted).

In the alternative, denial of a Petition, where it is not adequately supported by the record, is well within the rights of the Board. A state agency such as the BPU must act on the Petition within one year of its filing. Section 1221(a) of the Energy Policy Act of 2005, 16 U.S.C. §§ 824p(b)(1)(A)-(C). However, the state agency may deny a Petition if there are sufficient grounds to do so, and such a denial of a Petition is supported by a federal holding that denial of a petition is not a "failure to act" as required by Section 1221(a). *See Piedmont Environmental Council, et al., v. Federal Energy Regulatory Commission, et al.*, 558 F.3d. 304 (4th Cir. 2009). The BPU is well within its rights and jurisdiction to deny PSE&G's Petition for the Susquehanna-Roseland transmission project.

A. THE CONFIGURATION OF THE TRANSMISSION LINE ITSELF CHANGED AT THE VERY LAST MINUTE – DURING THE HEARING IN NOVMEBER.

On the second day of the hearing, November 18, 2009, in the morning, PSEG revealed that it planned to reduce the bundle configurations for both the 500kV and 230kV circuits:

> *We were pushing the manufacturing limits of monopoles so it took those out of consideration, and there was a very large interest from the public about the use of monopoles for aesthetic reasons, and in order to consider those we took a look at whether or not we could reduce the bundle size so that it would be less impact on the structure and we could consider using monopoles; that's why we did that.*

Testimony of Crouch, TR. November 18, 2009, 0318, l. 15-23.

At this time, it was disclosed that due to structural concerns that should have been apparent at the outset, the 500kV bundle would be 3 conductors per phase rather than 4 as proposed. It was also disclosed that the 230kV line would be a single conductor rather than a double bundled conductor, and that the existing circuit would be reconductored. TR., Nov. 23, 2009, p. 0308, l. 24 – p. 0309, l. 14. The proposed monopoles simply could not handle the load. With the change from four conductors to three on the 500kV side, the amperage level expected

on each conductor would increase, with current from for lines now flowing over three. Testimony of Crouch, p. 0323, l. 8-11. In addition to the electrical changes of this impact, which have not been disclosed and which are unknown at this time, there are cost impacts and modeling impacts, and potential for other impacts as well.

One impact of the change in conductor number and configuration is that EMF modeling is now inaccurate. EMF modeling is based on the amps on a given circuit in a given configuration. Where three conductors are used in a bundle rather than four, the amps on the individual conductors rises. TR, p. 0323, l. 4-11; TR.

B. THE RELOCATION OF THE JEFFERSON SWITICHING STATION TO HOPATCONG AND THE NEW JERSEY HIGHLANDS DEAL IS A MAJOR ALTERATION TO THE PROJECT

The relocation of the Jefferson switching station to Hopatcong and the New Jersey highlands deal is a major alteration to the project and the board should not proceed without a full review and public hearings.

On May, 19, 2009, PSE&G announced that it would relocate the Project's switching station from its designated site in Jefferson Township to a new site in the Borough of Hopatcong. The relocation of the switching station occurred in conjunction with PSE&G's application to the Highlands Council for an exemption from the Highlands Act, which would allow PSE&G to construct the Project in and on land protected under the Highlands Act. Of course, the relocation would require rerouting of the line itself. In exchange for its approval of the exemption, the Highlands Council accepted $18.6 million from PSE&G as "environmental mitigation."

The Highlands Council touted the relocation as a victory for the Highlands Area:

> A major change to the proposal is a relocation of a switching station that was intended for ecologically sensitive land in Jefferson Township, a location that was of primary concern to the Highlands Council. The switching station will be moved to a site in Hopatcong Borough, and the utility has agreed to construct a smaller station utilizing Gas Insulated Switching gear technology. This relocation also means 13 fewer towers will have to be constructed. Other changes to the proposed project include new management plans, consistent with NJDEP permit requirements, for work in forested, wetlands and critical habitat areas; a restoration plan for streams and riparian habitats; and a historic and archaeological resources protection plan.

Tamasik Cert., Ex. 10 (Highlands Council Press Release, May 19, 2009). However it was not until August, 2009 that PSEG provided "notice" to the BPU of the planned relocation of the switching station. In its notice, PSE&G tried to minimize any concern that the relocation might have altered the Petition filed in January 2009:

> PSEG has expressed a willingness to move construction of a Switching Station included as a part of the Susquehanna-Roseland Project ("the Project") from Jefferson Township to the Borough of Hopatcong. Although PSE&G's filing in this matter remains unchanged by the Highlands Council's determination, in furtherance of the relocation of the switching station, PSE&G wishes to provide you and the parties in this proceeding with the following additional information.

Tamasik Cert., Ex. 11 .

PSE&G unilaterally determined that its Petition, filed in January, 2009, need not be amended despite the relocation of a major Project component. No hearings were held on the relocation; no public announcements were made. If news of the relocation reached anyone, it was only because it was mentioned in news articles reporting on Highlands Council matters. Broad public notice to affected landowners was not provided.

The PSEG letter of "notification" declares that "[t]here would be no significant change to the route of the proposed line caused by acceptance of the Mitigation Plan approved by the

Highlands Council." *Id.* at 2. Logically, the change is significant if PSE&G was willing to "donate" $18.6 million to the Highlands Council in order to obtain it. The Board should insist on a full disclosure and review of the terms of the agreement between PSE&G and the Highlands Council, electrical impacts, and changes in cost.

The Board and the public are entitled to full disclosure and the time necessary to review the changes to the Project brought about by this relocation.

C. THE RELOCATION OF THE EAST HANOVER SWITCHING STATION TO ROSELAND IS A MAJOR ALTERATION TO THE PROJECT AND THE BOARD SHOULD NOT PROCEED WITHOUT A FULL REVIEW AND PUBLIC HEARINGS.

The relocation of the East Hanover switching station to Roseland is a last-minute major alteration to the project and the board should not proceed without a full review and public hearings.

On the second day of the hearing, November 18, 2009, in the morning, PSEG revealed that although it was now proposing another switch of the switching stations, this time from East Hanover to Roseland, no plans were available on that change.

> *COMMISSIONER FIORDALISO: I would like to suggest something here: These are substantive changes as far as the substations and things of that sort and it would be helpful if we had those prior to the end of these proceedings just so everybody is up to snuff on what is what… When do we anticipate having those? Because I think that's important, you may not think it is important for this hearing but I do…*
> …
>
> *MR. JACOBER: We just started working on those, you're probably looking at a four to six week period.*

TR., at 0316, l. 6- p. 0317, l. 12.

What was learned was that essentially the plan is to fit the expanded substation's equipment into the Roseland footprint, with not only additional room for planned 500kV

expansion, but that nine circuit breakers would be installed, not only the six required, taking future upgrade to another 500kV circuit one step further than previously planned in the East Hanover substation. Testimony of Jacober, TR. November 18, 2009, p. 0329, l. 6 – p. 0339, l. 12. However, no substation plans have been provided, despite the substation plans haven been deemed necessary for the original Petition and Testimony, and a four to six week production time was expected. See Exhibits 37-40, RIJ 1a-d, East Hanover substation drawings. No replacements were prepared for the hearing. Statement of Richter, TR. at p. 0314, l. 16-18; Testimony of Jacober, TR. at p. 0317, l. 10-12.

Needless to say, when the hearing lasts only 6 days, and plans would not be available for 4-6 weeks, the parties did not have this information prior to the close of the hearing. See also objection of Tamasik, TR. p. 0317, l. 18 – 0318, l. 5. The Board should not make any decision regarding this substation change without record development regarding the specifics and impacts of the changes Petitioners propose.

D. FULL DRAWINGS OF THE PROPOSED PROJECT WERE NOT PROVIDED UNTIL THE FIRST DAY OF THE HEARINGS, WITH NO TIME FOR DISCOVERY OR EVEN REASONABLE TIME FOR REVIEW.

On the first day of the hearing, November 16, 2009, a large and detailed set of drawings was produced and later entered into the record. Exhibit 29, RFC-3a. This is a project for which Petitioners have presented no alternatives in their Petition. Exhibit 1, PSE&G Petition to BPU for Determination Pursuant to Provisions of NJSA 40:55D-19. This is a project which Petitioners claim is on existing easement and needs no new easement – that should be easily defined. Yet on the first day of the Hearing, PSE&G provided two large rolls of large maps reflecting changes made in the project. For changes of this magnitude, the project Petition should have been amended and rescheduled.

VI. CONCLUSION – REQUESTED RELIEF

For the forgoing reasons, the Intervenors request that the Board dismiss the Petition without prejudice, or in the alternative, deny the Petition for failure to meet the burden of production and burden of proof.

Should the Board instead choose to approve the Petition, Stop the Lines! requests the following conditions to protect landowners, nearby residents, and environment:

- .**A comprehensive mitigation plan must be ordered to address landowner, resident and ratepayer concerns.**
    - That a complaint process be established at the Board of Public Utilities to hear and address any problems with PSE&G related to this transmission line.
    - To protect ratepayers, BPU approval is conditional on FERC approved cost allocation. Permit shall be held in abeyance until such cost allocation is approved.
    - PSEG shall not have amperage greater than 1,700, that declared in record of proceeding

    .
    - Establish an escrow account, or require a bond be posted, sufficient to assure**.** that if landowners have any structural damage, drainage or well problems, during construction or afterward, attributable to PSEG and/or its contractors, that those issues be addressed promptly through correction, rehabilitation and compensation.
    - PSE&G must offer <u>both</u> of the following alternatives to homeowners that have an easement with PSE&G or have a home, business or other structure located within 200’ of the edge of the ROW:
        - For landowners who want to leave, PSE&G would offer to purchase the homes of any people along the line at “fair market value” plus 25%, and PSEG would resell the home within two years. PSE&G would purchase the home; or modify/update the easement language to include specifics regarding EMF encroachment onto property, and resell the home to someone who is not concerned with EMF or the safety issue. Property value should be based on the same formula PSE&G used when purchasing the house on Route 94 under the lines and the homes on Larikat Lane. There should also be an “adder” for costs of relocating. (25% of agreed upon value?) Another alternative is for PSE&G to find a “like kind and quality” home for willing sellers, which may be less cumbersome in some instances, but difficult in rural areas.

- For people that do not wish to relocate and are willing to stay, PSE&G should offer another option. Offer to compensate people for the drop in property value that would certainly occur if this project is approved. We believe that property values would drop by 25% or more if the project goes through as most recently proposed. Compensate people 25% of the value of their home (value, again, would be based on whatever formula PSE&G used in purchasing home on Rt. 94 and Larikat Lane), and people can choose to either stay or if they wish, try to sell their homes at a reduced price, without risking the irreparable financial harm that would certainly be put on homeowners if no compensation were offered.

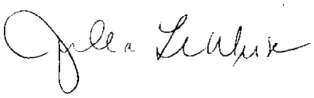
    - Because many people are upside down on their mortgages, and to buy them out would have little value to them, hence the "value" + 25%, to let those who are upside down have a down-payment for another home.

    - PSE&G should also try to route lines further away from residences wherever possible. A 150' wide ROW is not recommended for 500KV lines. A 400 foot ROW should be obtained to allow for a safe "fall zone" for 195' high structures

- PSEG shall assure magnetic field levels at ROW edge at all times are at or lower than PSEG produced Exhibit 135, S-ENR-35.

- PSEG shall assure that sound levels from substations and transmission lines shall at all time be below limits set by New Jersey code through continuous monitoring.

Respectfully submitted,



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