IN THE MATTER OF THE PETITION OF PUBLIC SERVCE ELECTRIC AND GAS COMPANY FOR A DETERMINATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40:55D-19

(SUSQUEHANNA-ROSELAND)

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

Docket No. EM-09010035

REPLY BRIEF OF THE ENVIRONMENTAL INTERVENORS

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INTRODUCTION

Environment New Jersey, New Jersey Highlands Coalition, Sierra Club – New Jersey, and New Jersey Environmental Federation (together, "Environmental Intervenors") oppose the Petition submitted by Public Service Electric & Gas Company ("PSE&G" or the "Company"). PSE&G has not met its burden, as demonstrated by the Environmental Intervenors in its initial brief, timely filed in this matter on December 28, 2009. The Environmental Intervenors also support the arguments made in opposition to the Petition by the State of New Jersey – Department the Public Advocate – Division of Rate Counsel, the Municipal Intervenors, Stop the Lines!, and the Montville Board of Education.

In addition to reaffirming the arguments advanced by the parties urging this Board to deny the Petition, the Environmental Intervenors wish to briefly address several arguments and misstatements made by PSE&G and by Exelon, which has filed a brief in support of the Petition. The most recent analysis done by PJM and PSE&G—or at least the one that was offered as evidence in support of the need for the Project—is stale. Furthermore, there have been a number of significant developments in other "backbone" transmission projects that simply mandate, in the interests of justice and public interest, that PSE&G conduct new sensitivity analyses. Finally, PSE&G has audaciously requested authorization from the Board to proceed with construction of portions of the Project that do not require other approvals. To allow PSE&G to proceed in its proposed piecemeal manner undermines the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA") process and could result in portions of a transmission line and related outside of the right of way impacts to be constructed—at the ratepayers expense—to essentially nowhere.

In summary, the Project has never been reasonably necessary. PSE&G has failed to prove reasonable necessity and that "there was no reasonable, practicable, permanent and reliable alternative . . . which would have any less adverse impact upon the environment or upon the Zoning and Land Use Ordinances of the affected municipalities or counties" within the selected route. In the Matter of the Amended Petition of Atlantic City Electric for a Determination under N.J.S.A. 40:55D-19, Appellate Division Docket No. A-6073-03T5 (App. Div. Feb. 10, 2006).

The Board should deny the Petition. As the State of New Jersey – Department of the Public Advocate has suggested, PSE&G could voluntarily agree to refrain from invoking Federal Energy Regulatory Commission ("FERC") backstop authority under the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 5594 (2005) ("EPA05") to allow time for PJM's RTEP process to be completed, as well as for sensitivity analyses to be conducted to validate the need for the line. Under no circumstances, however, should the Project be approved without the conditions advocated for by the various parties opposing the granting of the Petition.

ARGUMENT

As argued in the initial brief, the Environmental Intervenors maintain that the SR500 Project is not necessary. (Envtl. Int. Br. at 13-58). Given the unusual severity of the economic downturn not reflected in the January 2009 load forecast, PSE&G's baseline need analysis, as well as its March 2009 "retool" analysis, are sadly outdated. PJM has not incorporated the results of the 2012 Reliability Pricing Model auction (held in May, 2009), in which over 1,000 megawatts (MW) of demand response resources "cleared," or were made available for use in 2012 in the area of claimed need for enhanced transmission, eastern

MAAC.[1] In addition, PJM and PSE&G included none of the future energy efficiency and demand response resources that will result from the New Jersey Energy Master Plan, the Global Warming Response Act, New Jersey's Renewable Energy Portfolio Standards, and Pennsylvania's Act 129 and, major statutory and policy initiatives intended to substantially reduce peak load in the area of claimed need.

PSE&G has argued that the analysis is sound, that it is current, and that the line is necessary and must be placed in service or a parade of horribles will ensue. (PSE&G Br. at 40-56). PSE&G's claims are belied by the evidentiary record, which reflects that taking the above-mentioned elements into account would postpone the claimed peak loads in eastern MAAC by roughly eight years. While PJM and PSE&G insist that this would not be the case, neither has refuted this conclusion with a current updated study, as they were challenged to do, in the course of this case. Moreover, new analyses conducted by PJM at the order of the hearing officer presiding over the PATH-VA application, docketed in the Virginia Public Utility Commission as Case No. PUE-2009-00043, seriously call into question the validity of the underlying results that have been used to justify the SR500 Project. (LeMense Cert. ¶ 2, Ex A – PATH filing). As such, the underlying assumptions and need must be revisited. The Board cannot approve the Petition on the record currently before it.

Essentially, PJM asserts that, in its normal course of planning, it will update the RTEP and make it public in February 2010, which will demonstrate whether the Susquehanna-Roseland line appears to be needed as now claimed or in a later year. (PSE&G Br. at 50 fn 48). By that time, however, this proceeding will be over and there will be no opportunity for the affected parties to conduct an in-depth examination of the modeling that

[1] "MAAC" stands for "Mid-Atlantic Area Council"; PJM uses the phrase "eastern MAAC" to describe all four New Jersey utilities, PECO (Philadelphia Electric Company) and the Delmarva Peninsula, a historically transmission-congested sub-region of PJM.

led to the result. The notion that this Board should approve the project and then just "wait and see" what the 2010 RTEP shows is unacceptable.

PSE&G asserts that PJM's RTEP process has escaped unscathed from attacks by the various intervneors. (PSE&G Br. at 52). PSE&G appears to suggest that in the absence of independent studies to the contrary, this Board must simply swallow the results of the PJM RTEP process. (Id.). The Environmental Intervenors pointed out various flaws that are evident based on the record that currently exists before the Board and those concerns call into question whether PSE&G has met its burden. (Envtl. Int. Br. at 15-58). Additionally, PJM released its 2010 Load Forecast in January 2010, and its effect on the line has not yet been assessed. (LeMense Cert. ¶ 3, Ex. B – PJM 2010 Load Forecast). Moreover, those concerns have now been buttressed by the new information filed by PJM in the PATH case, which uses information from the 2010 Load Forecast. Furthermore, the data reveals skewed projections, overly conservative assumptions, and flawed projections, taken together, call into doubt the need for the SR500 Project.

Additionally, the Environmental Intervenors noted in the initial brief that there are serious concerns about the PJM RTEP process and its effect on price signals, the development of new generation or alternative energy resources or load reduction measures, and concerns about modeling demand side management resources. (Envtl. Int. Br. at 81). PSE&G ignores the issue almost entirely, and conveniently tries to downplay the fact that congestion relief and mitigating economic constraints is one of the main goals of the RTEP process. (PSE&G Br. at 33 and fn 35). Attempts to address congestion with transmission projects paid for by ratepayers, however, leads to incorrect price signals. In fact, the BPU has recently filed comments with FERC that reveal more concerns about the RTEP process—specifically the adverse consequences to states like New Jersey that are situated on

the "seams" of interfaces with other grids, like NYISO. (LeMense Cert. ¶ 4, Ex. C – BPU Comments to FERC). Those comments suggest additional reasons to re-examine not only the need for the Project, but also provide a good reminder about the other considerations facing the Board—the welfare of the public.

Finally, the Environmental Intervenors respectfully urge the Board to reject any requests by PSE&G to commence construction on any portion of the Project prior to Project obtaining any and all necessary state and federal licenses, certificates, approvals, permits, and the like. In particular with respect to the NEPA process (Envtl. Int. Br. at 70-72), to allow any construction to commence would fly in the face and frustrate the fundamental purposes of that process and provide an excellent basis to appeal the approval of the Project.

In summary, on this evidentiary record, PSE&G has not met its burden of proving the necessity for the Susquehanna-Roseland 500 kV line. Therefore, the Board cannot approve PSE&G's Petition at this time. As such, the Board must either deny the Petition outright or, in the alternative, request that PSE&G waive the federally-imposed one-year timeframe for a decision and hold this proceeding in abeyance while the required analyses and studies are performed and made available for the Board's and the parties' review.

I. THE PASSAGE OF TIME AND QUESTIONABLE JUSTIFICATION NECESSITATES DENIAL OF THE PETITION, OR AT MINIMUM, A RE-ANALYSIS

In response to concerns by the opposing Intervenors that the application and the Project were constantly changing, PSE&G applauds its own efforts to continually revise its plans as a sign of its responsiveness to public and agency comments and spends ten pages of its initial brief discussing those revisions and "refinements." (PSE&G Br. at 82-92). Indeed, PSE&G expects more "refinements" along the way. Id. at 83. In light of PSE&G's

sensitivity to refinements and changing conditions, the following changing circumstances should also be taken into consideration. First, there have been significant developments in the PATH project pending before the public utility commissions in Maryland, West Virginia, and Virginia. (LeMense Cert. ¶ 2). Because it is clear that a SR500-PATH connection is desirable (Envtl. Int. Br. at 78), it is only logical to consider these "refinements" to the PATH project at this point in time. Perhaps similar "refinements" will be made to SR500. Second, PJM released its 2010 Load Forecast. (LeMense Cert. ¶ 3, Ex. B - PJM 2010 Load Forecast). The 2010 Load Forecast takes into consideration, to some extent, one full year of economic data during the contraction of 2009. It has proven to be a pivotal document in the ongoing analysis of the PATH line and should be the subject of review and examination by PJM, PSE&G, and the BPU to determine if the line is still needed in 2012, or at all.[2]

A. PJM Concedes that Revised Studies Indicate PATH May Not Be Needed

The various entities collaborating to bring the PATH project to New Jersey's neighbors to the west and south hit a significant snag when their applications were rejected in Maryland, Virginia, and West Virginia due to the fact that the entities applying were not utilities authorized to make the applications. The companies attempted to amend their applications in the fall. Those motions were granted and adjustments made in procedural schedules in West Virginia; a similar motion is pending in Maryland. (PATH-VA filing at 1-2). However, the Virginia Hearing Officer required PATH-VA to conduct a series of revised sensitivity analyses using updated load forecasts and a variety of factors to play out a number of scenarios. Those analyses reveal that the PATH project may not be required to be in

[2] It should also be noted that a decision on the Pennsylvania portion of the SR500 line has been delayed until early February. (LeMense Cert. ¶ 7, Ex. F).

service by 2014, and may not be required at all. (Id.). PATH-VA has committed to work with PJM to conduct complete analyses as part of the RTEP process and provide the results to the Commission.

In one of Exelon's many, yet unpersuasive, attempts to discredit the testimony of Dr. Sovacool and Mr. Cooper, it states in its brief that "Mr. Cooper argues that the use of more accurate and updated PJM load forecasts and data could delay or eliminate entirely the need for the Susquehanna-Roseland line. (Cooper Direct at 3 and 13). Mr. Cooper's arguments are not supported by the record and must be rejected." (Exelon Br. at 22). Clearly, it is Exelon's arguments that supported neither by the record or reality.

In another failed attempt to discredit Dr. Sovacool and Mr. Cooper, Exelon argues that "the record is clear that as contrasted with its delays of the MAPP and PATH lines, PJM's ongoing evaluation of the Susquehanna-Roseland line continues to underscore the need to develop the line on schedule." (Exelon Br. at 24). Unfortunately, that conclusion is belied by statements from PJM itself made in response to the hearing officer's order in the Virginia proceeding for updated analyses: "While the results of these sensitivity analyses apply directly to the need date for the PATH Project, **they suggest the potential for delays to other projects as well**." (PATH-VA Response at 1 ¶ 1).

B. The 2010 Load Forecast Shows Demand Is Down

The 2010 Load Forecast generally shows a continuing decline in electricity use projections. The year 2020 estimate for the Mid-Atlantic portion of PJM is down by 0.3% compared to the January 2009 projections. Id. at Table A1. The Delmarva service area is down by a staggering 7.4% compared to the January 2009 projections. Id. The PSE&G area is down by 1.1% in 2020, and the JCP&L area is down by 1.0%. Id.

C. The Wisdom of a Wait and See Approach

Exelon's brief contains a brief discussion on the public policy surrounding encouraging renewable energy development and implementing the New Jersey Energy Master Plan. (Exelon Br. at 31). Exelon openly criticizes the various Intervenors opposed to the Project for taking what is referred to as a "wait and see" approach, because they have advocated for the position that the SR500 project may not be necessary. Id. Exelon cautions that the risks are too great and the sky is apparently falling, and waiting to see would create too many uncertainties. (Exelon Br. at 38).

Ironically, Mr. Herling conceded that PJM's planning process is by its nature a "wait and see" process. (Tr. 728:18-729:14). In response to a question about how PJM was preparing to deal with a delay to the in-service date of the SR500 Project, as indicated was likely by PPL and PSE&G, Mr. Herling stated:

> A. (Witness: Mr. Herling) No. We would wait and see how the line was progressing through the regulatory process. And if it becomes apparent that it will not be able to be placed in service on June 1, 2012, in anticipation of that we will look at the alternatives open to us, including talking to our system operators and the system operators at the transmission owning companies. And we will develop procedures to ensure the reliability of service to the customers at PJM.
> Q. That sounds like a wait-and-see approach to me.
> A. (Witness: Mr. Herling) To a degree, it has to be….

Thus it appears that a wait and see approach might not be an anathema to PJM after all. And if such an approach can be taken in this regard, then why cannot the same approach be taken to determine if additional renewable energy resources, demand side management resources, energy efficiency measures, and distributed generation projects will alleviate the alleged violations? Indeed, the recent analyses submitted to the Virginia Public Utilities Commission suggests that these factors, when properly considered, can have a profound impact on reliability concerns.

II. PJM'S SKEWED DELIVERABILITY ANALYSES CONTRIBUTE TO SUSPECT NEED FINDINGS

Both PSE&G and Exelon refer a number of times to the number of "projects" that are proposed, but are never placed in service, thus attempting to justify the different treatment generators receive during the RTEP process. (PSE&G Br. at 47; Exelon Br. at 17 and fn 1). PSE&G and Exelon claim that the difference in treatment of generators for purposes of contributing to reliability violations versus relieving them is due to the fact that 88% of projects drop out of the queue. This is plainly wrong. It is also misleading and cannot be used to justify why PJM and PSE&G advocate for the difference in treatment. This difference skews findings in favor of reliability violations. When the dust settles, however, we see that there is very little basis for the difference in treatment, yet the effects on the RTEP process remain unknown.

A. The Drop Out Rates between FSA and ISA Do Not Merit Different Treatment in PJM's Tests

PJM indicates that 72% of proposed projects drop out before the Facilities Study Agreement stage of the interconnection process. An additional 5% drop out after the Facilities Study Agreement is completed and another 4% will drop out after the Interconnection Service Agreement. (R. 13, McGlynn Direct Testimony at 10).

Mr. Herling approaches the issue from a slightly different angle—one that PSE&G and Exelon have distorted. In contrast to Mr. McGlynn's table about **projects**, Mr. Herling speaks in terms of megawatt capacity. He states that it is PJM's experience that **88% of the megawatt capacity** in the proposed projects is never placed into service. (R. 12, Herling Direct Testimony at 39). Mr. Herling states that "PJM has, to date, seen approximately 23% of the MW associated with executed ISAs withdraw from the interconnection process

and fail to be placed in service, and projects constituting about 25% of the MW associated with executed ISAs are currently suspended." (Id. at 40).

Using Mr. McGlynn's chart and equating 100% of proposals to 100 generation projects, we can assume, then, that 28 projects will be modeled for purposes of contributing to violations. Only 23 projects will be modeled for purposes of contributing to solutions to reliability problems. Four more projects will drop out before going into operation and about the same number will be suspended for some time. Thus, the number of projects scheduled to be put into service is approximately 19, with a number of these suspended (longer duration) or delayed (shorter duration). The project suspensions and delays push out the in-service dates of those projects and thus, the requirement for transmission facilities.

There is simply not a compelling case for modeling 28 projects for violations and only 23 for solutions. PJM consistently overestimates the generation that must be transmitted through the system, the percentage varying by the MW capacity of the projects that drop out or are suspended or delayed. This has real consequences for the number and timing of the reliability violations found by the reliability tests. This is among Dr. Sovacool's criticisms—and it remains a valid one.

B. The March 2009 Retool Does Not "Fully" Take Into Account Load Drop

PSE&G and Exelon both suggest that PJM's analysis undertaken in the March 2009 Retool is not only current, but also "incorporated recession-related data and load projections that **fully** took into account the largest load drop that PJM has ever addressed." (Exelon Br. at 5, 19, 23; PSE&G Br. at 51, 55) (emphasis added). This is patently false—and repeating it over and over does not make it true.

First, by way of clarification, In PSE&G's Petition, the need for the SR500 Project was based on twenty-three potential reliability violations that were projected to occur in the

future, ranging from the years 2012 to 2022. These twenty-three 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 the Company's claims that the SR500 line is needed to serve the public.

This rapidly-changing landscape requires that the most current data available be included for the Board to consider in this proceeding. Through the discovery process, the Company was obligated to continually update its responses to requests. At no time did PSE&G offer an updated analysis with the latest load projection data available. The Company produced with a retool study that was performed during January, 2009, and reviewed with PJM's Transmission Expansion Advisory Committee (TEAC) during March, 2009 (referred to on this record as the "March 2009 Retool Study"). The March 2009 Retool Study used the PJM Peak Load Forecast issued in January 2009, which was based on 2008 economic growth data and thus, incorporated no data more recent than the final quarter of 2008.

The March 2009 Retool Study, using the January 2009 Peak Load Forecast information, showed a substantial change in the number and the timing of potential reliability violations from PSE&G's filed case. And, not only did the number of potential reliability violations decline, but also the severity diminished because the only projected 500kV overload from the original 23 potential violations was no longer included in the list of the remaining 13 potential violations. Moreover, several of the remaining potential reliability

violations' projected year of occurrence had been pushed out to a later timeframe. The March 2009 Retool Study showed a significantly changed set of potential reliability violations from the original projections made by PSE&G in its filed case. Other external events that would also bear directly on the need for the SR500 Project, however, had not been included in the analysis.

Neither PSE&G nor PJM had included the results of the May 2009 RPM Auction in their analyses. Neither PSE&G nor PJM performed any sensitivity analysis using the New Jersey Energy Master Plan peak load growth reduction estimates. As the discussion and materials mentioned above regarding the changes in number, timing, and severity of violations driving the need for the PATH line clearly illustrate—this information is at the core of the proceeding. To not require an updated analysis along the lines and incorporating the scenarios required in the Virginia proceeding would do a great disservice to the public.

C. The CETO Analyses Are Based on Arbitrary and Overly Stringent Assumptions

Board Staff raised a number of compelling issues during discovery and while cross examining PJM witnesses that reveal the "robust" analyses performed by PJM force the finding reliability violations. For example, when Board Staff requested CETO/CETL analyses for the years 2012 through 2022 "for the following LDAs with and without the Susquehanna-Roseland transmission line in service: Northern PSEG, PSEG, EMAAC, MAAC. Please provide a CETO/CETL analysis for the same year and for the same LDAs excluding all new projected transmission export capability to New York," PJM responded that it had not performed those studies. (R. 180).

With respect to NERC reliability tests to determine CETO, PJM uses for the Mid Atlantic region only, as compared to PJM RTO, a 1-day-in-25-years resource adequacy

criterion.[3] For PJM RTO, it uses a 1-day-in-10-years criterion.[4] This is not mandated by NERC. It is not mandated by any external authority. Employing this has the result of making the CETO extremely conservative, leading to increased CETO values. Until this analysis is done, it is uncertain whether the line is reasonably necessary.

D. The Promise of Increased Renewable Power Is Unsubstantiated and Disingenuous

PSE&G suggests in its initial brief that transmission upgrades, such as the SR500 Project, will enable renewable generation resources to benefit customers in PJM. (PSE&G Br. at 26). PSE&G alludes to 44,000 MW of wind generation in the queue, where exactly, we cannot be sure, primarily located in western PJM. Id. The inference here is that that line will bring renewable energy to New Jersey. This inference, however, is contradicted by PSE&G's own responses to discovery, in which in stated that "The Susquehanna-Roseland Project is neither intended to deliver any one specific generating resource or class of generating resources, nor is it designed to promote the future development of any class of new generation." (LeMense Cert. ¶ 6, Ex. E - Response to ENV-138). Furthermore, the 2008 PJM Reserve Requirement Study indicates that for delivery year 2012/2013, the actual capacity of wind in the PJM RTO fleet is 840 MW (0.5% of total), as compared to 82,321 MW of fossil (47.9% of total).[5] A graphic depiction from the same study is set forth below:

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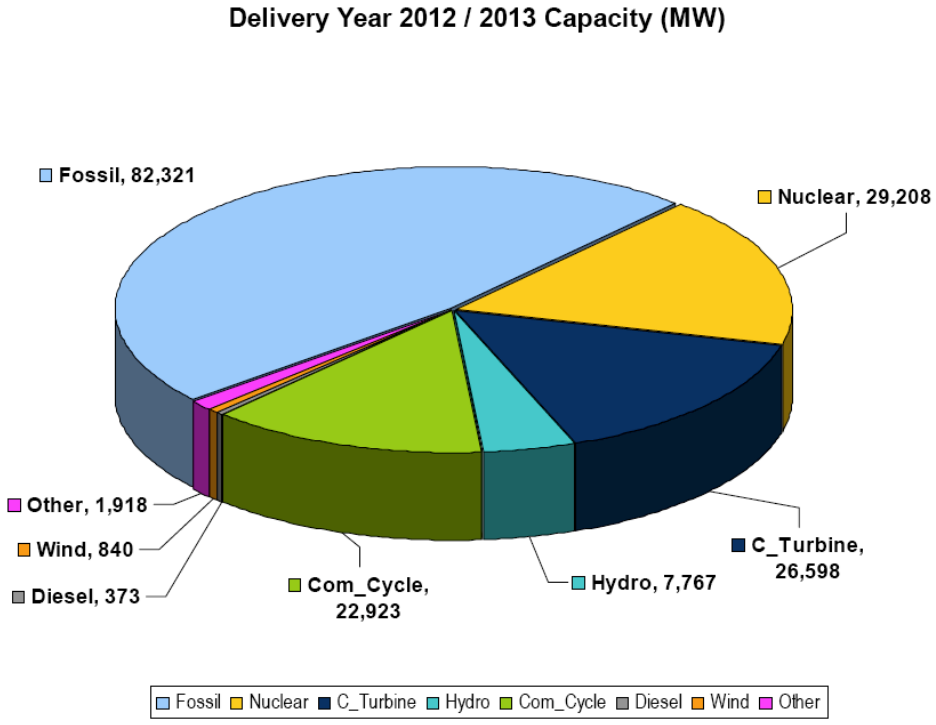
[3] LeMense Cert. ¶ 5, Ex. D - PJM 2008 Reserve Requirement Study at 87, Appendix H.

[4] Id. at 89, Appendix I.

[5] From Table II-6 of 2008 Reserve Requirement Study, dated October 8, 2009 at 23, available at http://www.pjm.com/planning/resource-adequacy-planning/~/media/documents/reports/20081015-item-04-2008-pjm-reserve-requirement-study.ashx

Figure II - 5: PJM RTO Capacity by Fuel Type



III. THE PJM PROCESS IS BROKEN AND BAD FOR NEW JERSEY'S ENERGY FUTURE

Shortly after the close of the evidentiary hearing in this matter, on November 30, 2009, the BPU submitted comments to FERC in the matter of Transmission Planning Processes under Order No. 890 – Notice of Request for Comments, FERC Docket No. AD09-8-000. (LeMense Cert. ¶ 4, Ex. C – BPU Comments). A complete copy of those comments is attached, and it reveals the BPU's concern over the current the process. In short, it expresses similar concerns to those of the Environmental Intervenors: approving this Project, based on an alleged need determined by a flawed process, will cement our energy future in a direction that is diametrically opposed to the will of the public. In a time when New Jersey is striving to meet goals established in the Energy Master Plan, comply

with its Renewable Portfolio Standards, foster renewable energy, curb greenhouse gas emissions, and clean up its air, this Project will do exactly the opposite. (Envtl. Int. Br. at 38-44). It is no surprise that PSE&G is also critical of the planning process, as Mr. Khadr already testified about the incorrect pricing signals that are causing generation to deactivate or withdraw, thereby increasing the need for more imported energy. (R. 214; FERC 11/21/06 Order in Docket No. ER06-1474-000 ¶¶ 40, 55). The New Jersey BPU submitted comments critical of the process as recently as November 2009. (BPU Comments) Those comments reflect the concerns of the Environmental Intervenors and the other intervenors opposed to the Project.

> The NJBPU notes that since 2003 PJM has consistently identified factors that "continue collectively and progressively to reduce system reliability in New Jersey and the rest of eastern Mid-Atlantic PJM." These factors include:
>
> • Load growth;
> • Power exports to New York City and Long Island;
> • Deactivation/retirement of generation resources;
> • Sluggish development of new generating facilities; and
> • Continued reliance on transmission to meet load deliverability requirements and to obtain access to more economical sources of power west of the Delaware River.
>
> The persistence of these factors in reducing reliability suggests that current planning processes are in need of review. These factors lead to the following concerns:
>
> First, existing transmission planning processes are inadequate to identify and evaluate threats to reliability arising from transmission projects that cross the border between two planning regions with critically congested areas on both sides. These projects tend to serve needs in one region while creating or exacerbating needs in the other and the failure of cross-border cooperation leaves more effective local solutions unexplored.
>
> Second, an interconnection-wide planning process cannot resolve this local reliability problem because it will reduce rather than enhance the opportunities for stakeholders with local interests to participate effectively in planning activities that span different regions.

> Third, in any planning process a consistent approach that allows effective consideration of demand resources (such as demand response, energy efficiency, and distributed storage), as well as strategically sized and located supply resources, is essential to identify and implement least-cost solutions to reliability and congestion problems that are consistent with state and national public policy.

IV. THE PROJECT, IF APPROVED, CANNOT PROCEED UNTIL ALL APPROVALS HAVE BEEN OBTAINED

PSE&G has requested in its relief section (PSE&G Br. at 5-6) that the Project be approved, and that such approval not be subject to any conditions, such as approvals of other state or federal agencies. Additionally, PSE&G has requested that any approval allow for the commencement of construction of portions of the Project prior to the receipt of all necessary certificates, licenses, permits, etc. For all the reasons stated in the briefs of the opposing Intervenors, in particular by Environmental Intervenors (Envtl. Int. Br. at 58-75), the Petition should be denied. However, assuming for purposes of argument that the Board grants the Petition, it must condition the approval on PSE&G receiving all necessary approvals and must prohibit commencement of construction until those approvals are in hand. PSE&G has offered no authority in support of its request to essentially eviscerate the goals and purposes of the National Environmental Policy Act. "Compliance with NEPA is required before any portion of the [project] is built." Maryland Conservation Council, Inc. v. Gilchrist, 808 F.2d 1039, 1042 (4th Cir. 1986).

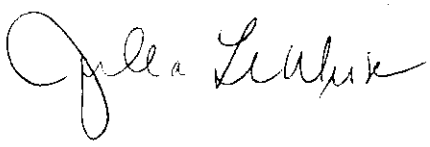
This approach is consistent with federal court precedent, sound public policy, as well as with the fact that PSE&G has conceded that if the in-service date changes or the justification for the Project no longer exists, then PSE&G would abide by that determination (PSE&G Br. at 50 fn 48). There is simply no way to put the genie back in the bottle after the cork is removed, and to allow PSE&G to begin piecemeal construction at the expense of

the ratepayers, in light of PSE&G's ability to be reimbursed for costs it incurs even if the Project does not go forward, adds insult to injury.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the initial brief of the Environmental Intervenors, the Board should deny the Petition. In the alternative, PSE&G were voluntarily consent to waive invoking FERC backstop authority to allow time for PJM to conduct new sensitivity analyses using the same scenarios as set forth by the Virginia Public Utilities Commission, based on the 2010 Load Forecast, factoring in the results of the 2009 RPM, at a minimum. The results of those analyses could be considered by the BPU and PJM could incorporate them into the latest RTEP to determine the need for the SR500 line. Finally, under any circumstances, the Board should condition the approval of the Project as suggested by the parties in their opening briefs, and should in any case disallow PSE&G from commencing construction on any portion of the Project until all state and federal licenses, approvals, permits, etc. have been obtained.

Respectfully submitted,



Julia LeMense, Esq.

Dated January 6, 2010
Newark, NJ