

Tamara L. Linde  
Vice President – Regulatory

Law Department  
80 Park Plaza, T5G, Newark, NJ 07102-4194  
tel: 973.430.8058 cell: 973.204.2386  
fax: 973.430.5983  
email: Tamara.Linde@pseg.com



January 30, 2009

Honorable Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Re: **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**

Dear Secretary Izzo:

On behalf of Public Service Electric and Gas Company ("PSE&G"), please accept this letter in response to the attached correspondence submitted directly to President Fox and the Commissioners by Thomas F. Collins, Jr., Esq., the municipal attorney for Byram Township ("Byram") on January 23, 2009 ("January 23rd Letter"). In the January 23rd Letter, Byram requests (1) an additional ninety (90) days to prepare and file its response to the PSE&G Petition submitted to the Board on January 12, 2009 in connection with the above-captioned matter; (2) postponement of the above proceeding "until PSE&G obtains the necessary NJDEP Exemption or Highlands Council Waiver;" and (3) that the Board require PSE&G to create an escrow fund to cover its costs of participation in this matter. PSE&G opposes the requests contained in the January 23rd Letter, as these requests evidence a misunderstanding of both the Board process and the relationship between the pending Board proceeding in the above-captioned docket and the Highlands Applicability Determination ("HAD") currently being considered by the NJDEP and the Highlands Water Protection and Planning Council ("Highlands Council"). Nonetheless, PSE&G believes that, by scheduling a prehearing conference in the above-captioned proceeding as soon as possible, the Board would help to alleviate the concerns of Byram, and of other interested municipalities, by providing information about the Board process in a timely manner.

With respect to Byram's request for a ninety (90) day extension of time to file a responsive pleading, PSE&G presumes that this request is based upon a mistaken belief that the filing of the above-Petition by PSE&G triggered the time in which a municipality must respond to the petition. Scheduling a prehearing conference as soon as possible would help to inform Byram and all other interested municipalities of the mechanics of the process, including the right of the municipalities to formally intervene in the proceeding under N.J.A.C. 1:1-16.1 to 1:1-16.6 and submit discovery. At this stage, the only decision that Byram needs to make is whether or not it wants to intervene.

At the prehearing conference, Board Staff and a presiding hearing officer for the conference can exercise their considerable expertise and facilitate discussion of an appropriate procedural schedule, which will include reasonable timeframes for discovery, public hearings, settlement conferences and evidentiary hearings.

With respect to Byram's request that the Board "postpone" consideration of the PSE&G Petition until such time as the NJDEP and the Highlands Council act on the HAD, PSE&G submits that granting of this request would be legally unsupportable and inconsistent with (i) the approach taken by the Board in other petitions filed under N.J.S.A. 40:55D-19;<sup>1</sup> and (ii) the timeline established by Congress to ensure the timely processing of transmission siting applications.<sup>2</sup> Most importantly however, as explained in the Petition and supporting testimony, this project is needed for reliability of the electric grid. Postponing this proceeding will not postpone the need for the project.

Byram's reliance on the 1988 Law Division case, Morris Cty. Fair Hous. v. Boonton Tp., 228 N.J. Super 635 (L. Div. 1988), is misplaced since, unlike that case, here the NJDEP and Board are holding separate proceedings, addressing different issues under separate statutory authorities. PSE&G's petition to the Board, made in accordance with the Board's authority set forth at N.J.S.A. 40:55D-19, requires the Board to determine whether the Project is necessary for the service, convenience or welfare of the public. Conversely, PSE&G's petition to the NJDEP for a HAD, made pursuant to the authority of the Highlands Act, N.J.S.A. 13:20-1 et seq., concerns whether the Project meets the statutory exemption requirements of the Highlands Act. Even assuming a relationship between the two proceedings, each agency has a separate and distinct statutory charge and the Board need not wait for the NJDEP to act on the HAD before moving forward on the pending Petition.

Finally, PSE&G hereby requests the Board reject Byram's request for PSE&G to establish an escrow that would allow each of the municipalities to hire consultants to oppose PSE&G's Petition. In accordance with established Board policy in matters such as this, PSE&G is ready, willing and able to establish such a reasonable escrow for use by the Board to review this Petition. However, PSE&G's ratepayers should not be

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<sup>1</sup> Most recently in I/MO the Petition of Atlantic City Electric Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, BPU Docket No. EE02080521, Orders dated April 20, 2004 and June 15, 2004.

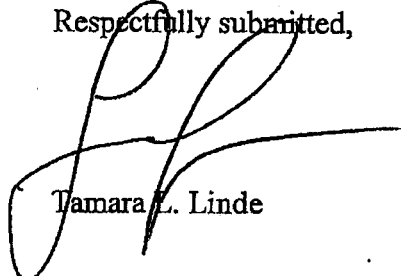
<sup>2</sup> See 16 U.S.C.A. §824p. See also 18 CFR Part 50.

responsible for funding any of the research or consultants that the various interveners or other interested parties wish to hire to support their participation in the process.

In summary, PSE&G believes that Byram's concerns are best addressed by the Board scheduling a prehearing conference as soon as possible so as to enable Byram Township and all of the interested municipalities to ask questions, familiarize themselves with the Board's review process, and work together with PSE&G on the development of an appropriate procedural schedule.

Thank you for consideration of this matter.

Respectfully submitted,



Tamara L. Linde

ACS/jb

cc: Service List