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STEFANIE A. BRAND
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November 19, 2015

Via Hand Delivery and Electronic Mail
Honorable Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: I/M/O the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Montville-Whippany 230 kV Transmission Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public ("Montville-Whippany Line")
BPU Docket No. EO15030383
OAL Docket No. PUC 08235-2015N

Dear Secretary Asbury:

Please accept this letter brief in lieu of a more formal pleading, on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in opposition to the Intervenor Township of Montville's ("Montville" or "Township") November 6, 2015 motion for reconsideration of the Board's October 25, 2015 Order denying the Township's motion to establish an escrow account.

We enclose an original and ten copies of this letter brief. Please stamp and date the copy as "filed" and return it to our courier. Thank you for your consideration and assistance.

In its November 6 filing, Montville requested that the Board of Public Utilities ("Board") reconsider its October 25 Order that granted the Township's request for interlocutory review and affirmed the decision of the Hon. Leland S. McGee, ALJ denying the Township's cross-motion to establish an escrow account. That escrow would fund the expert and professional fees

Case Mgmt
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Montville anticipates it will expend to participate in the proceeding before Judge McGee regarding Jersey Central Power & Light's ("JCP&L" or the "Company") petition in the above-referenced matter.

Rate Counsel respectfully requests that the Board deny Montville's motion for reconsideration because it does not identify any material errors of law or fact relied upon in the Board's October 25 Order and that Order does not constitute an injustice. Moreover, the Township failed to present any new material arguments or analysis. The Board correctly affirmed Judge McGee's ruling that establishing an escrow account is contrary to law and Board policy, and is unduly burdensome to JCP&L's ratepayers, imposing additional costs on the Company that will ultimately be passed through to the Company's ratepayers.

BACKGROUND

On June 16, 2015 Montville filed with the Office of Administrative Law a Motion to Intervene in the JCP&L Montville-Whippany Line Petition.[1] Judge McGee granted Montville's Motion to Intervene.[2] On August 21, 2015, JCP&L filed with the OAL a Motion to Establish a Procedural Schedule. On August 31, 2015, Montville filed a letter brief with the OAL, opposing JCP&L's Motion to Establish a Procedural Schedule, proposing an alternative schedule, and requesting by cross-motion that Judge McGee establish an escrow account to fund Montville's expert and professional fees in this matter. Judge McGee's September 8 Prehearing Order denied that cross-motion.

On September 15, 2015, the Township filed with the Board a request for interlocutory review of the September 8 Prehearing Order. The Board decided that request by Order dated October 15, 2015, effective October 25. Due to the possible impact of its decision in this case and as possible precedent in future cases requesting that the utility establish an escrow in matters

[1] Montville had previously filed its Motion to Intervene with the Board.
[2] On August 19, 2015, the Montville Township Board of Education also moved to intervene in this matter. Judge McGee's September 8 Prehearing Order granted that motion.

under N.J.S.A. 40:55D-19, the Board granted Montville's request for interlocutory review. On the merits, the Board found that it has no legal authority to grant Montville's request to compel JCP&L to establish an escrow to cover the Township's professional fees and costs, and denied Montville's requested relief. October 15 Board Order, p. 8. On November 9, Montville filed this motion for reconsideration.

Montville relies upon its letter brief and certifications of Victor Canning, the Township Administrator, and James Bishop, Project Engineer with Maser Consulting P.A., the Township's technical consultant in this matter. Exhibits to those certifications include documentation of Township budgeting for its anticipated litigation costs and a description of the consultant's scope of work. In its brief, the Township alleges errors of fact and law in the Board's October 15 Order and offers the Canning and Bishop certifications for the record.

ARGUMENT

Rate Counsel will address herein only the Township's failure to meet the standard for the Board to reconsider its October 15 Order. We will rely upon the briefs we filed with Judge McGee and the Board to support the underlying denial of the Township's request for an escrow.

The Township Has Not Shown Any Reason for Reconsideration.

Montville has provided no legal or factual reason for the Board to reconsider its denial of the Township's request for an escrow account to pay the costs of its intervention in this matter. The Township is not entitled to reconsideration merely because it is dissatisfied with the decision to deny its escrow. See D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). For reconsideration, the Township would need to show that the Board's action was arbitrary, capricious or unreasonable, id.; however, it has failed to do so.

First, the Township fails to demonstrate that the Board based its decision on any "errors of law or fact." See N.J.A.C. 14:1-8.6(a)(1). Instead, the Board relied upon precedent

interpreting the governing statute, N.J.S.A. 40:55D-19. Second, the Township offers updated cost estimates that are not new evidence in any material regard. See N.J.A.C. 14:1-8.6(a)(2). Judge McGee and the Board already determined as a matter of law that the Township is not entitled to recover from JCP&L its legal and expert fees in this matter. The amount of costs or the issues involved are legally immaterial. Since the Township has failed to show any reason for reconsideration, its motion should be denied.

The Township has not shown that the decision to deny its escrow is based upon a "palpably incorrect or irrational basis." See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); I/M/O Michael Manis and Manis Lighting, LLC -- New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316, (N.J. Board of Public Utils. April 15, 2015), 2015 N.J. PUC LEXIS 99 at *7-*8. Instead, the Board correctly and rationally relied on its own precedent applying the statute governing this matter. That statute, N.J.S.A. 40:55D-19, "authorizes the Board to exempt a public utility's development that spans multiple municipalities, from local zoning ordinances and regulations if the Board deems the development 'reasonably necessary for the service, convenience or welfare of the public.'" I/M/O 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 Transmission Line), 2013 N.J. Super. Unpub. LEXIS 304 (unpublished) (App. Div. Feb. 11, 2013), at*23; see also Petition of Monmouth Consol. Water Co., 47 N.J. 251, 262 (1966).

The Board relied on two prior decisions applying N.J.S.A. 40:55D-19 where it denied a municipality's motion to require a public utility to establish an escrow account to pay municipal costs and fees. I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Increases in and other Adjustments to its Rates and Charges for Electric Service, and for Approval of other Proposed Tariff Revisions in Connection therewith; and for Approval of an Accelerated Reliability Enhancement Program ("2012 Base Rate Filing"), BPU Docket No. ER12111052, Order on Interlocutory Appeal, June 21, 2013, pp. 4-8; I/M/O 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, Order Denying Motions to Require PSE&G to Place Funds in an Escrow Account (May 29, 2009), p. 4. The Township has not distinguished those decisions from this matter or shown that the Board's reliance on them was "incorrect or irrational."

The express language of N.J.S.A. 40:55D-19 undermines Montville's legal arguments. First, the Board and not the Township is the trier of fact in this matter. N.J.S.A. 40:55D-19. Therefore, the provisions of the Municipal Land Use Law allowing a municipality to recover certain costs and fees from the applicant when it reviews a local development application, N.J.S.A. 40:55D-8 and -53.2, are inapplicable here. In this matter, the Township is a municipal intervenor in a proceeding before the Board under N.J.S.A. 40:55D-19. See Montville's November 6 brief, pp. 3-4; Montville's August 31 brief, pp. 3-4.

Second, the statutes that govern this matter provide no basis for the Board to direct JCP&L to pay the expert fees of an interested municipality. The Township already acknowledged before Judge McGee that "there is no New Jersey case law or statutory authority requiring establishment of an escrow account in this situation." Montville's August 31 brief, p. 4. Instead, the legislature has provided that municipalities, by emergency resolution, may raise the funds necessary to pay for legal and expert fees needed to participate in utility matters before the Board. N.J.S.A. 48:2-32.2. Judge McGee correctly cited the law when he denied the Township's escrow request in the September 8 Prehearing Order, and the Board reiterated the governing law in its interlocutory review of the Judge's decision. October 15 Board Order, p. 8. Accordingly, since the Township has shown no error of law and no "palpably incorrect or irrational basis" for the decisions denying its escrow, there is no reason for reconsideration.

The Township also has not shown that Judge McGee or the Board failed to consider or to appreciate the significance of the evidence of record. See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); I/M/O Michael Manis and Manis Lighting, LLC -- New Jersey Clean Energy Program Renewable Energy Incentive Program, Docket No. QS14040316, (N.J. Board of

Public Utils. April 15, 2015), 2015 N.J. PUC LEXIS 99 at *7-*8. Instead, the Township now offers further evidence of its anticipated costs to litigate as an intervenor in this matter, and details of the issues it will ask its consultant to explore. See Canning and Bishop Certifications. Both Judge McGee and the Board already have considered the allocation of costs in this matter, though, and determined that there is no legal basis to impose those costs on JCP&L or its ratepayers, regardless of their actual amount. The legislature, too, considered this issue when it enacted the statute allowing municipalities to intervene in matters before the Board. The taxpayers of the intervening municipality, and not the utility company's ratepayers, must pay for such representation. N.J.S.A. 48:2-32.2(a).

While the amount of costs is an issue that each party in litigation must consider, it is immaterial to the statutory allocation of costs between the parties. Accordingly, since the Township has not shown that the Board failed to consider or to appreciate the significance of the evidence of record when denying its escrow request, there is no reason for reconsideration.

CONCLUSION

For all the forgoing reasons, Montville has provided no legal or factual reason for the Board to reconsider its denial of the Township's request for an escrow account, and its motion for reconsideration should therefore be denied.

Respectfully submitted,

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By: 
Brian Weeks
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c: Honorable Leland S. McGee, ALJ
Service List (via Electronic Mail and U.S. Regular Mail)

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