



Agenda Date: 11/22/13
Agenda Item: 2K

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

SHAMONG TOWNSHIP,)	FINAL DECISION
Petitioner,)	
)	
V.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	
DISPUTE REMOVAL FOR ALL TREES,)	DOCKET NO. EC12090876
Respondent.)	OAL DOCKET NO. PUC 559-13

Parties of Record:

David K. Richter, Esq., Public Service Electric and Gas Company
Michael DiCroce, Esq., Attorney for Shamong Township

BY THE BOARD:

STATEMENT OF THE CASE

This matter involves a petition filed by Shamong Township (“the Township” or “Shamong”) against Public Service Electric and Gas Company (“PSE&G” or the “Company”) regarding the Company’s planned vegetation maintenance adjacent to a 500 kilovolt (“kV”) transmission line that runs near one of the Township’s residential communities called Packerah Trail. Operationally, PSE&G owns, operates and maintains the electric transmission lines and facilities within the Township and along the Packerah Trail, but it does not generate or deliver electrical service in this region.¹

PROCEDURAL HISTORY

On September 21, 2012, the Township filed a petition with the Board of Public Utilities (“Board” or “BPU”) seeking a formal hearing to resolve issues related to PSE&G’s proposed vegetation

¹ The Company’s right to occupy land within the Township for its high voltage electric transmission lines is pursuant to a January 6, 1967 easement from the Medford Lakes Company. The easement grants the Company, among other things, the right to trim, cut down, and remove all trees or excessive growth located within or adjacent to its right-of-way, which in the Company’s judgment, interferes with or endangers the construction, reconstruction, operation, inspection or maintenance of its electric transmission facilities. (Answer to Petition, Exhibit A.)

management within the existing right-of-way ("ROW") of its 500kV transmission line adjacent to the entrance of the Packerah Trail development.

According to the petition, beginning in July 2011, PSE&G notified the Township of its desire to remove trees within the easement and to trim branches which cross onto the PSE&G easement along the electric transmission ROW. (Petition at 1) Regarding the Packerah Trail development area, the Company notified the Township on October 12, 2011, and again on May 31, 2012, of its desire to perform vegetation maintenance in that area. On October 12, 2011, the Company communicated its intent to top some trees along the entrance to the Packerah Trail development and to eliminate those with trunks smaller than five inches in diameter. (Petition at 1) On May 31, 2012, however, the Company notified the Township of its intent to clear cut, rather than to top the trees at the entrance to the Packerah Trail development. (Petition at 2) The Township opposes the Company's revised May 31, 2012 plan, finding it to be a material deviation from the Company's original and less invasive plan, detrimental to the Township and bound to create an eyesore for the Packerah Trail community. The Township also argues that the Company has too much discretion regarding vegetation management based on the current guidelines, specifically ANSI-A300², and that the Company operates under a lack of transparency by not distributing its planned vegetation management schedule to the municipality. Additionally, the Township argued that the "clear cut" proposed by PSE&G is inconsistent with responses by the Board to comments during the 2009 rulemaking process for Vegetation Management. (Petition at 2)

On October 26, 2012, PSE&G filed an Answer addressing the Township's allegations. PSE&G admitted that a Company representative mistakenly informed the Township that the Company was limited to tree topping, based on the rules that were in effect prior to 2009. However, the Company asserted that a 2009 amendment by the Pinelands Commission to its Comprehensive Management Plan, allows utilities to fully maintain their ROWs and that ANSI-A300 Part 1 indicates that tree topping is an inappropriate pruning technique. (Answer, para. 2 and 4) The Company further submits that BPU regulations require the removal of all vegetation within the wire zone and most existing vegetation that falls within the border zone. The Company does not believe that its plan would result in an eyesore and believes that the plan is necessary to meet State and Federal regulations and to maintain the reliability of the transmission grid throughout New Jersey. (Answer, para. 2 and 4) The Company denies the Township's assertion that the Board's vegetation management regulations allow PSE&G too much discretion and adds that the Company's webpage does mention planned vegetation management in the Township, contrary to Petitioner's contention otherwise.

On January 10, 2013, the Board transmitted this case to the Office of Administrative Law in accordance with N.J.A.C. 1:1-8.2, where it was assigned to Administrative Law Judge ("ALJ") Edward J. Delaney, Jr. An initial pre-hearing conference took place on May 20, 2013, followed by status conferences on June 4, 2013 and July 9, 2013.

While the matter was pending and before an evidentiary hearing took place, the Township and Company entered into a June 25, 2013 settlement agreement and the Township adopted a resolution authorizing execution of the Settlement. (Exhibit J-1 to the Initial Decision) The salient terms of the Settlement are as follows:

- PSE&G agrees to pay \$20,000 into a Township identified tree fund which will be used by the Township to plant new vegetation within the 500 kV transmission line border zone of the Easement as defined in N.J.A.C. 14:5-9.2.

² ANSI A300 standards are the generally accepted industry standards for tree care practices.

- The Township must get written pre-approval from the Company authorizing the location to plant each tree, and the species to be planted must be on the approved tree list identified as Exhibit B to the settlement.
- The Township agrees that PSE&G will remove all trees within the transmission ROW wire zone and any incompatible trees within the border zone of the Easement as determined by PSE&G. However, PSE&G agrees not to remove any trees that fall wholly within an area five feet from the edge of the Easement unless the property owner requests removal. Otherwise, the Company may only trim or top the trees that fall within this five foot area.
- PSE&G will grind any stumps located within maintained lawns to below grade. For all other stumps, PSE&G will mow them until they are level with the ground.

As consideration for these promises, the Township agrees to release, waive and give up any and all claims that the Township may have against PSE&G. The Release is binding on the Township as well as the residents that currently reside adjacent to the ROW and who are listed in Exhibit A to the Settlement.

On July 10, 2013, the ALJ issued an Initial Decision approving the Settlement Agreement after determining that the written agreement was voluntarily, fully disposed of all issues in controversy and was consistent with the law, in accordance with N.J.A.C. 1:1-19.1.

On October 21, 2013, the parties submitted a letter to the Board amending the terms of the Settlement. Specifically, the parties agreed to alter the language in paragraph two of the agreement, by removing the words, "and the residents that currently reside adjacent to the ROW and are listed in Exhibit A attached hereto". (Final Decision, Exhibit 1) Originally, Paragraph two of the Settlement read,

Shamong Release. Shamong hereby releases, waives and gives up any and all Claims that Shamong may have against PSE&G. This release is binding on Shamong and the residents that currently reside adjacent to the ROW and are listed in Exhibit A, attached hereto. This Release is made for the benefit of PSE&G, and all who succeed to its rights and responsibilities, including but not limited to its successors and assigns. (Emphasis added)

By removing the language in accordance with the parties' amendment, paragraph two of the Settlement now reads,

Shamong Release. Shamong hereby releases, waives and gives up any and all Claims that Shamong may have against PSE&G. This release is binding on Shamong. This Release is made for the benefit of PSE&G, and all who succeed to its rights and responsibilities, including but not limited to its successors and assigns.

DISCUSSION AND FINDINGS OF LAW

N.J.A.C. 1:1-19.1 (b) provides that if the judge determines from the written stipulation that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

After review of the record, the Stipulation of the parties, and the subsequent letter of the parties amending the Settlement, the Board **HEREBY ADOPTS** the Initial Decision, finding that the parties voluntarily agreed to the Stipulation as evidenced by their signatures and that by the terms of the Stipulation, fully resolved all outstanding contested issues in this matter.

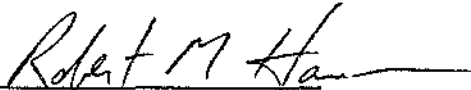
In approving the Settlement and adopting the Initial Decision, however, the Board notes the following:

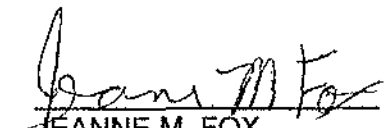
- a. The Settlement is adopted with the parties' amendment, which results in the release's application to the parties of record only. Exhibit A, which identifies the names and addresses of certain residents within the Township, is therefore not a part of the approved Settlement. To that end, Exhibit A should be removed.
- b. Notwithstanding the mutual agreement of the parties concerning the vegetation management plan, the parties must comply with all applicable State and Federal vegetation management requirements.


Accordingly, the Board **ADOPTS** the Initial Decision and the Stipulation executed by the parties, as amended, and in accordance with the Board's dictates noted above.

DATED: 11/22/13


BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

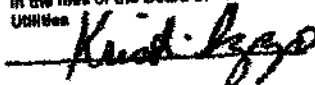

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



SHAMONG TOWNSHIP

VS.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY DISPUTE REMOVAL FOR ALL TRESS

BPU DOCKET NO. EC12090876
OAL Dkt. No. PUC 559-13

SERVICE LIST

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Shamong, NJ 08088

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Shamong, NJ 08088

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Public Service Electric and Gas
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David K. Richter, Esq.
PSEG Services Corp
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Newark, NJ 07102-4194

Honorable Edward J. Delanoy, Jr.
Administrative Law Judge
New Jersey Office of Administrative Law
Post Office Box 049
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for
7/17/13



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 559-13

AGENCY REF. NO. EC12090876

SHAMONG TOWNSHIP,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY, DISPUTE REMOVAL**

FOR ALL TREES,

Respondent.

Michael S. DiCroce, Esq. for Shamong Township, petitioner

David K. Richter, Esq., for Public Service Electric and Gas Company,
respondent

David Wand, Deputy Attorney General, for Board of Public Utilities (John J.
Hoffman, Acting Attorney General of New Jersey, attorney)

Record Closed: July 9, 2013

Decided: July 10, 2013

BEFORE EDWARD J. DELANOY, JR., ALJ:

This matter was transmitted to the Office of Administrative Law on January 10,
2013, for determination as a contested case, pursuant to N.J.A.C. 1:1-3.3(b) and 1:1-8.2.

The parties have agreed to a settlement and have prepared a Settlement Agreement indicating the terms thereof, which is attached and fully incorporated herein.

I have reviewed the record and terms of the Stipulation of Settlement and **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with law.

I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

July 10, 2013
DATE


EDWARD J. DELANOY, JR., ALJ

Date Received at Agency:

July 10, 2013

Date Mailed to Parties:

July 11, 2013

/cb

APPENDIX

LIST OF EXHIBITS

Jointly submitted:

J-1 Settlement Agreement

SETTLEMENT AGREEMENT, RELEASE AND WAIVER

This **SETTLEMENT AGREEMENT, RELEASE AND WAIVER** (the "Release") is made as of the ___ day of June, 2013 (the "Effective Date") by and among **PUBLIC SERVICE ELECTRIC AND GAS COMPANY**, a public utility corporation of the State of New Jersey ("PSE&G") with its principal address located at 80 Park Plaza, Newark, New Jersey, 07102 and the **TOWNSHIP OF SHAMONG**, a municipal corporation of the State of New Jersey (hereinafter referred to as "Shamong")

WITNESSETH:

WHEREAS, PSE&G is a public utility corporation of the State of New Jersey and its principal business is the distribution and transmission of electric and gas service to residents of the State of New Jersey; and

WHEREAS, Shamong is a municipal corporation and represents the interests of its residents, owners of property adjacent to PSE&G's Transmission ROW (the "Urgo Property"); and

WHEREAS, PSE&G has above-ground high voltage electric transmission facilities, including but not limited to towers, wires, conduits and other appurtenances (the "Facilities") located on the Urgo Property pursuant to those certain Indenture dated January 6, 1967 by and between the Medford Lakes Company and PSE&G (the "Easement");

WHEREAS, Shamong alleges that PSE&G has performed or is planning to perform excessive vegetation maintenance activities within the Easement;

WHEREAS, the Parties wish to resolve and settle all claims by Shamong and allow PSE&G to complete its vegetation maintenance in accordance with this Agreement; and

NOW, ~~THEREFORE~~, in consideration of the promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto execute and deliver this Release and Waiver on the terms and conditions set forth herein.

1. Definition of Claims. For the purpose of this Agreement, the term "Claim" or "Claims" refers to any and all claims, causes of action, rights, demands, suits, losses, damages, liabilities, judgments, costs, and expenses which were or could have been raised in connection with PSE&G's vegetation maintenance performed on the Urgo Property pursuant to the Easement.

2. Shamong Release. Shamong hereby releases, waives and gives up any and all Claims that Shamong may have against PSE&G. This Release is binding on Shamong, and the residents that currently reside adjacent to the ROW and are listed in Exhibit A attached hereto. This Release is made for the benefit of PSE&G, and all who succeed to its rights and responsibilities, including but not limited to its successors and assigns.

3. Consideration. As consideration for this Release, the parties agree as follows:

(a) PSE&G agrees to pay into a tree fund identified by Shamong the sum of twenty thousand (\$20,000) dollars as consideration. Shamong will use these funds to replant vegetation within the border zone of the Easements as defined in N.J.A.C. 14:5-9.2. Shamong may only plant trees on PSE&G's approved list attached hereto as Exhibit B in the locations approved by PSE&G in writing. PSE&G may not deny the planting of a tree in a particular location in the border zone unless the species of such of tree shall violate clearances.

(b) Shamong agrees that PSE&G shall remove all trees within the wire zone and all incompatible trees in the border zone of the Easement as determined by PSE&G. However, PSE&G agrees not to remove any trees unless the property owner requests that fall wholly

Att: Christina

PSE&G agrees not to remove any trees unless the property owner requests that fall wholly within an area five (5) feet from the edge of the Easement. PSE&G may only trim or top trees within this five (5) foot area. PSE&G will mark all trees located adjacent to this five (5) foot area that they plan to remove.

(c) PSE&G agrees that it will grind any stumps located within maintained lawns to below grade. For all other stumps, PSE&G will mow same so that they are level with the ground.

4. No Admission of Liability. It is hereby understood and agreed that agreeing to provide the Consideration set forth in Paragraph 3 or accepting of this Release shall not be construed as an admission of liability or responsibility by PSE&G, of any nature.

5. Signature. The parties understand and agree to the terms of this Release and Waiver and execute it as of the date first set forth above.

**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY**

ATTEST:

By: 7-3-13
Name:
Title:

By: Brian Hartel
Name: Brian Hartel
Title: Vegetation Manager

ATTEST:

SHAMONG TOWNSHIP

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

within an area five (5) feet from the edge of the Easement. PSE&G may only trim or top trees within this five (5) foot area. PSE&G will mark all trees located adjacent to this five (5) foot area that they plan to remove.

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**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY**

ATTEST:

By: _____
Name:
Title:

By: _____
Name: Brian Hartel
Title: Vegetation Manager

ATTEST:

By: Susan D. Ororato
Name: Susan D. Ororato
Title: Clerk

SHAMONG TOWNSHIP

By: Jonathan Stueckew
Name: Jonathan Stueckew
Title: Mayor

ATTEST:

By: Susan D. Ororato
Name: Susan D. Ororato
Title: Clerk

By: Sean Grant
Name: Sean Grant
Deputy Mayor

SHAMONG TOWNSHIP

RESOLUTION 2013R-50

AUTHORIZING THE EXECUTION OF SETTLEMENT AGREEMENT WITH PUBLIC SERVICE, ELECTRIC AND GAS COMPANY (PSE&G)

WHEREAS, the Township of Shamong (hereinafter "Township") and its counsel, Michael S. Di Croce, Esq. Pro Bono, met with representatives and counsel, David Richter, Esq. on behalf of the Public Service Electric and Gas Company (hereinafter PSE&G) and representatives of the Packenah Trail Community (hereinafter "Representatives") in the matter docketed in the Office of Administrative Law, State of New Jersey, Docket No. PUC 0559-13; and

WHEREAS, as a result of court conferences before Administrative Law Judge Edward J. Delanoy, Jr before the Board of Public Utilities, the parties have negotiated and entered into a settlement; and

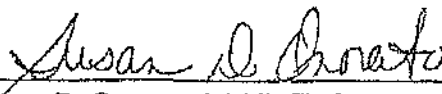
WHEREAS, counsel for the parties have prepared a form of Stipulation of Settlement and Order of Dismissal; and

WHEREAS, the Township Committee of the Township of Shamong desires to authorize the entry of the settlement and the execution of the accompanying Settlement agreement (a copy of which is attached hereto) in order to finalize this matter.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Township Committee of the Township of Shamong, County of Burlington, State of New Jersey, that the Township hereby authorizes the settlement with PSE&G; and

BE IT FURTHER RESOLVED that the Mayor, Deputy Mayor, and Township Clerk, as may be necessary, are hereby authorized to execute the Settlement Agreement and Release referenced above.

I certify that the foregoing Resolution was duly adopted at a regular meeting of the Shamong Township Committee of the Township of Shamong held on the 25th day of June, 2013.



Susan D. Onorato, RMC, Clerk

