



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

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

IN THE MATTER OF THE COMPLAINT OF THE)
VILLAGE OF RIDGEWOOD)
)
) DOCKET NO. EO13080751

Parties of Record:

Matthew S. Rogers, Esq., Village of Ridgewood
Kenneth J. Sheehan, Esq., Public Service Electric and Gas Company

BY THE BOARD:

The Board of Public Utilities ("Board") is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See, e.g. In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969); Bergen County v. Dep't of Public Utilities, 117 N.J. Super. 304 (App. Div. 1971). The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any public utility, and to issue orders to public utilities, pursuant to N.J.S.A. 48:2-16 and 48:2-40.

On or about August 15, 2013, the Village of Ridgewood ("Village") submitted a letter to the Board, in lieu of a more formal petition ("Petition"), regarding the installation of sixty-five (65) foot utility poles and the construction of a sixty-nine (69) kilovolt ("kV") transmission circuit within the Village by Public Service Electric and Gas Company ("PSE&G" or "Company") in the public right-of-way along South Maple Avenue, Spring Avenue, Hope Street and East Ridgewood Avenue. Specifically, the Village requested an expedited hearing to address substantive issues concerning the installation and the continuation of a consensual moratorium on any further work to be performed by PSE&G on the project during the course of the hearing process. Petition at 1.

INITIAL PLEADINGS:

The Village's Petition:

The Petition states that on or about June 20, 2013, PSE&G began the installation of the new electric utility poles in the Village in the public right-of-way along South Maple Avenue to its intersection with Spring Avenue, then continuing east to Spring Avenue to its intersection with Hope Street, then north on Hope Street until it reached the intersection with Ridgewood Avenue. Petition at 2.

The Village states that PSE&G began the installation of the poles without obtaining a Street opening permit from the Village, as required under Chapter 249, Section 72.1 of the Village Code. Ibid. PSE&G obtained a permit, on July 17, 2013, after being notified by the Village. As a result of PSE&G's failure to apply for and obtain the permit prior to the commencement of the installation, the Village asserts that it was unable to review the project as it was entitled to do. Ibid.

The Village recognizes PSE&G's right to upgrade its service and/or improve the reliability of its service. However, the Village argues that the route selected by PSE&G is not the best option, in that it intrudes on residences and encompasses an area subject to heavy flooding. The Village claims that reasonable alternative routes exist, including an underground option, as well as a route in another PSE&G right-of-way along a trolley track. Petition at 2-3.

The Village also claims that residents residing within twenty (20) to thirty (30) feet of the high voltage lines may experience negative long-term health impacts from the new wires and poles. By moving the proposed route, the Village argues that PSE&G can avoid any potential health risks, as well as alleviate the need to cut down trees and compensate property owners. Petition at 3. The Village further alleges that the installation of sixty-five (65) foot poles may negatively impact the assessed value of homes in affected neighborhoods because lot frontages are extremely close to the right-of-way where the poles are to be placed. Petition at 3.

Finally, the Village emphasizes that PSE&G failed to advise the Board of the scope and breadth of this project and timely file for a street opening permit. The Village maintains that N.J.S.A. 48:7-1 requires municipal authorization prior to the installation of utility poles and, because the initial authorization is not documented, since granted nearly a century ago, the scope of the initial authorization is unknown. The Village further relies on Duess v. PSE&G, 3 N.J. Super. 436, (Ch. Div. 1949) for the proposition that, despite PSE&G obtaining consent scores of years ago for the placement of the poles, the current project is a major deviation from a mere replacement of the existing infrastructure and, therefore, beyond the initial authorization. Petition at 4.

PSE&G's Response to Petition:

On August 21, 2013, PSE&G filed a response ("Response") to the Petition, requesting that the Board "reject the Petition in its entirety" or, alternatively, provide an "extremely limited schedule" to allow briefing on the legal issues. Response at 5-6. PSE&G argues that no hearing is necessary because the right to install replacement utility poles into the public right-of-way is not subject to municipal oversight.

PSE&G described the history of the project. PSE&G had identified the need to upgrade its system between the Fair Lawn, Paramus, Dumont and Bergenfield stations, as well as the

stations themselves, and had presented the proposal to PJM¹, the organization that manages the electric grid. PJM included the project as part of the Sub Regional Transmission Expansion Plan (“RTEP”) report of August 24, 2010. During the RTEP process, PJM identifies transmission system upgrades and enhancements that are necessary for the reliability, economic and operational requirements of the electric grid in its entirety. PJM permitted the project to be placed in the transmission planning model. Response at 3. PSE&G commenced construction in May and admits that it failed to get the street opening permits but, when notified of the requirement, obtained them in July. Id. at 4.

In support of its position, PSE&G cites N.J.S.A. 48:3-17a(a). According to PSE&G, this provision requires that a public utility obtain municipal consent before placing poles into a public right-of-way, but only in those municipalities that have existing gas lighting, unlike the Village.

PSE&G also cites N.J.S.A. 48:7-1, which it argues deems the poles in question only subject to certain local ordinances where the Village has reserved specific oversight. PSE&G claims that none of the Village’s ordinances call for municipal zoning approval or oversight. Rather, it submits that the Village only requires a street opening permit, limited location restrictions, and the obligation to remove poles once they are no longer used. Response at 6.

PSE&G also cites to case law which it asserts further supports its position that placement of utility poles in a public right-of-way can be completed without municipal oversight because control over poles and wires is subject to a statutory framework, and not municipal desires. In Seals v. County of Morris, 210 N.J. 157 (2012), the New Jersey Supreme Court was faced with the issue of public utility immunity in a tort suit arising out of the alleged negligent placement of an electric pole. While the Court found that the utility has no immunity for placement of utility poles in the absence of municipal designation, PSE&G asserts that the Seals court reiterated that nothing in N.J.S.A. 48:7-1 requires municipal approval in the placement of electric poles. Response at 7.

Likewise, PSE&G cites to In re Public Service Electric and Gas Co., 35 N.J. 358 (1961), where the Borough of Roselle sought to require PSE&G to place its electric lines underground through a zoning amendment and new ordinance. These changes were introduced after PSE&G had completed portions of the line in other municipalities. According to PSE&G, the Borough made similar arguments to those now being made by the Village, challenging the above ground placement because of the alleged danger to persons and property, the negative impact on property values, and aesthetics. In finding for the utility in the Roselle case, the New Jersey Supreme Court observed that no statutory power exists for a municipality to regulate the method of power transmission. Response at 8.

PSE&G further asserts that the Village’s reliance on Duess v. PSE&G, 3 N.J. Super. 439 (Ch. Div. 1949), is misplaced because Duess involved the placement of poles on private property, not in a public right-of-way. Response at 9.

In the event that the Board does not reject the Village’s petition for hearing, PSE&G claims the alternative route, environmental, and revenue arguments are without merit. Response at 10.

¹ PJM is the privately-held, limited liability corporation approved by the Federal Energy Regulation Commission as a Regional Transmission Organization, that manages the regional, high-voltage electricity grid serving all or parts of 13 states, including New Jersey. PJM also operates the regional competitive wholesale electric market and manages the regional transmission planning process. N.J.S.A. 48:3-51.

PSE&G further contends that the Village's request for a stay should be rejected because the Village has not met its burden under Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), and, accordingly, its request for injunctive relief must be rejected. Response at 12.

PUBLIC COMMENT RECEIVED PRIOR TO HEARINGS:

Following receipt of PSE&G's Response, the Company consented to a stay of the construction until after a hearing was conducted addressing the concerns raised by residents in the Village. In the interim, the Board received several comments from the public concerning the proposed project. They are summarized below.

David and Erica Segal:

Mr. and Mrs. Segal reside on Hope Street in the Village and submitted a one (1) page letter to the Board, on or about August 19, 2013, in opposition to the construction and installation of the new utility poles ("Segal Correspondence"). The Segals oppose the project on the basis that: (1) the neighborhoods in question were not timely informed of PSE&G's intention to change the utility poles; (2) the new, 65 foot poles create an "unsightly and dangerous parade" along very narrow and heavily trafficked streets, causing a possibility of tragic consequences in the event of a collapse, and; (3) the lines are transformed from a distribution line to a transmission line, carrying an upwards of 69 kV, and greater microwave emissions. See, Segal Correspondence.

Individuals Concerned About Residential Electricity ("ICARE"):

On or about August 26, 2013, a group of concerned residents of Ridgewood, known as ICARE, filed an eleven (11) page letter brief with the Board in opposition to the proposed project ("ICARE Brief"). ICARE is primarily comprised of residents of the Village who reside on Spring Avenue and Hope Street. ICARE Brief at 1. ICARE states that it has obtained the signatures of two-hundred sixty (260) individuals and/or households supporting its cause. Id. at 3.

In its letter brief, the ICARE members requested that the Board issue an Order (1) confirming that, under N.J.S.A. 48:7-1, PSE&G is required to obtain the municipality's approval of the project at issue; and (2) confirming that local zoning rules, including height restrictions, are enforceable by the Village against PSE&G for this project. Id. at 1.

ICARE asserts that past approval for placement of utility poles does not give PSE&G unlimited discretion for replacement poles. Therefore, ICARE believes PSE&G is subject to municipal regulation for this project. Id. at 4.

In support of its position, ICARE provides a July 15, 2008 Montville committee appearance ("Montville") made by PSE&G in what ICARE sees as similar circumstances. Specifically, ICARE argues PSE&G's current position is in direct conflict with that of the one it adopted in Montville. At that meeting, ICARE claims that PSE&G Assistant General Counsel David Richter admitted that "if a utility project is crossing town boundaries, PSE&G has the option to go directly to the State or go before the municipal board." Id. at 7.

ICARE further argues that the proposed location does not address the “safety” aspect of PSE&G’s statutory mandate as a public utility. ICARE believes that running the 69 kV lines through a densely populated neighborhood is not the best route. In addition, ICARE’s members have concerns regarding electromagnetic field health impacts from high-voltage power lines placed in close proximity to residences. Id. at 7-8.

Finally, ICARE believes that PSE&G should not be allowed to skirt regulatory scrutiny. ICARE argues that simply because PSE&G states that the project at issue is intended to prepare for the possibility that the Energy Strong proposal does not get approved by the Board, does not give PSE&G the right to proceed without the Board’s approval. Id. at 9.

Karen Major:

Ms. Major resides in Glen Rock, a bordering town of Ridgewood. She submitted a two (2) page letter regarding one of the alternate routes proposed by the Village of Ridgewood (“Major Correspondence”). She has requested that the Board approve the project as submitted by PSE&G. Major Correspondence at 1.

One of the alternate routes proposed by the Village is to place the taller, higher voltage poles in an existing PSE&G right-of-way along the trolley track. Consistent with PSE&G’s position on this proposal, Ms. Major stated the negative implications and setbacks that would result from placing the poles in the trolley line right-of-way. She also stated that the proximity between the trolley line right-of-way and Glen Rock residences, the danger of constructing over gas lines, and the difficulty in servicing the new poles in the right-of-way all prove it is not the best alternative route. She further argues that Ridgewood is using its status as a wealthier town, with more aesthetic concerns, to move the project into Glen Rock via the trolley line right-of-way. Major Correspondence at 1-2.

THE HEARINGS:

After notice, evidentiary and public hearings were conducted simultaneously on September 9, 2013 in Hackensack, New Jersey before Commissioners Joseph Fiordaliso and Dianne Solomon in an effort to expedite the proceedings.

The Public Hearing Portion:

During the public hearing, comments were received from the Mayor of the Village, Paul Aronsohn. Mayor Aronsohn reiterated the fact that the Village has never questioned: (1) the importance of the regional system; (2) whether PSE&G should go through Ridgewood in any project; and (3) whether the Village should have all the decision-making authority. Mayor Aronsohn indicated, however, that the Village should have input, and given the fact that consent for the poles was granted one-hundred (100) years ago, PSE&G should not be permitted to take any action it desires within the right-of-way. The Mayor also discussed a March 27, 2013 meeting, where David Hollenbeck of PSE&G made a presentation. Mayor Aronsohn states that, in November 2012, Mr. Hollenbeck and the Village had previously agreed that they would meet in the future to discuss developments undertaken by both parties, particularly in reference to another major storm event. Nonetheless, Mayor Aronsohn stated that Mr. Hollenbeck made no

mention of the project in question and its impacts on the Village at the March 27, 2013 meeting. (T 168:5-175:3).

Additional comments were received from Village residents residing on Hope Street, Spring Street and Reynen Court. Their testimony is summarized below.

George Maurer:

George Maurer, a Village resident residing on Hope Street and a member of ICARE, explained how the street has become inundated with utilities, and how the foliage and beauty of the neighborhood have become obsolete. Mr. Maurer also presented two photographs, which depicted the size differential between the existing poles and the newly installed poles. (T 176:16-177:23).

Marshall Katzman:

Marshall Katzman, who resides on Hope Street, presented photographs from August 14, 2005, which depicted a submerged car with power lines draped over it. Mr. Katzman included a copy of an Emergency Medical Services ("EMS") report that was generated as a result of the incident. Mr. Katzman also submitted a copy of sixteen (16) questions the Village residents propounded on PSE&G, as requested by the Company following a workshop. According to Mr. Katzman, the only question that had been answered by PSE&G concerned the purpose of the project. (T 178:9-181:24).

Alyssa Steinberger:

Alyssa Steinberger resides on Hope Street and is a member of ICARE. She explained how she and other residents of Hope Street and Spring Street were caught completely off guard by this project. She stated she had no notice of the project until she arrived at her residence one day and observed that the entire street was blocked by trucks with 65 foot poles on their flatbeds. One main concern Mrs. Steinberg expressed was the health hazards potentially caused by the chemical preservative in the new poles. She stated that the new poles are treated with a toxic biocide, a chemical which emits an unpleasant odor. She stated that another neighbor, Diane Rudd, alerted PSE&G at a July 31, 2013 public forum of their concerns, and that the Company had told residents the smell would dissipate within twenty (20) days. However, according to Mrs. Steinberger and others, nine (9) weeks have gone by and the smell is "ever-present." (T 182:1-185:6).

Mrs. Steinberger also complained that a number of local residents have experienced respiratory symptoms, including coughing, congestion and bloody noses, and further stated that, because the poles are installed twenty (20) to thirty (30) feet away from the homes, their odor is extremely strong. Mrs. Steinberger presented pictures of the ring of color leaching out from the bottom of the poles. She also spoke of the fact that many residents fear that their drinking water, which is supplied by a shallow well, will be contaminated by the chemical, if it seeps into the ground beneath the poles. Pentachlorophenol (PCP), she explained, is a highly toxic biocide allowed for use in the United States in very limited circumstances, including wood preservation in utility poles.

She additionally testified that PCP is known to produce carcinogens leading to harmful human symptoms. (T 185:7-189:22).

David Steinberger:

Mrs. Steinberger's husband, David Steinberger is an attorney and a member of ICARE, who was not acting in any representative capacity during the hearing. Mr. Steinberger testified as to several of his concerns, the main one being that PSE&G purportedly had failed to obtain Ridgewood's approval under N.J.S.A. 48:7-1. He also expressed concerns regarding the street opening permit. He explained that, while the street opening permit is appropriate when replacing a pole with another like-kind pole, which is not the same as the wholesale approval of a new infrastructure project within the Village. Mr. Steinberger also cited to a transcript from a prior special session between PSE&G and the Township of Montville. He later supplied Commissioner Fiordaliso with a copy of that transcript, in which in-house counsel for PSE&G stated that the Company needs to seek zoning approval because of the height restrictions. (T 190:4-199:15).

Nicole Hough:

Nicole Hough resides on Spring Street and testified concerning the lack of communication between PSE&G and the Village. Mrs. Hough asserted that proposed changes to the new electric poles do not carry with them any past authorization because there is such a great deviation from the former use. She stated that she was also concerned about poles collapsing in rain floods because of the higher voltage lines. Mrs. Hough further stated that she was diagnosed with bronchitis in the weeks before the hearing, and she is concerned about the toxicity threats from the new, larger poles. (T 199:17-207:16).

George Hough:

Mrs. Hough's husband indicated that there had to be some type of partnership between the utility company and the Village and that there should be some recourse in resolving the situation. Mr. Hough also expressed concern that there was an institutional failure on the part of PSE&G in the manner in which it interacts with municipalities and its customers. (T 207:22-209:11).

Madeline Beresford:

Madeline Beresford, a resident of Hope Street, expressed concerns about PSE&G placing the new transmission lines twenty (20) feet from children's bedrooms. She was particularly concerned about the risks of leukemia. She further stated that there should be a mechanism to prevent PSE&G from consistently increasing pole height and voltage in the future. (T 209:17-211:9).

William Grae:

William Grae, who resides on Reynen Court, testified that he is of the opinion that the project is entirely new construction, rather than a mere replacement of the old poles. Mr. Grae cited to Duess v. PSE&G, 3 N.J. Super. 439 (1949) and Tide-Water Pipe Co. v. Blair Holding Co., 42 N.J. 591, (1964) in further support of

his position. This case law, according to Mr. Grae, supports the contention that even if there was prior authorization, the new project is such a deviation from the prior consent that new consent must be given, and the project must abide by the Village ordinances. (T 211:17-219:11).

Erica Segal:

Erica Segal, who, as mentioned previously resides on Hope Street with her husband David, distributed copies of photographs depicting the former pole and the new pole, and indicated that the new pole is very intrusive. Mrs. Segal also stated that the route taken by the new poles on her street is an “electric highway,” despite being assured by PSE&G that the route chosen was the least intrusive. (T 219:15-220:5).

David Segal:

David Segal testified that he wanted the Board and its Commissioners to make the right decision—the decision that felt right in their hearts. He further stated that the residents are being oppressed and it was the Board’s duty to “liberate the oppressed.” (T 220:8-21).

The Evidentiary Hearing:

During the evidentiary portion of the hearing, the Village and PSE&G presented their witnesses. The Village presented the testimony of Christopher Rutishauser and Michael Barker. PSE&G presented the testimony of Isabel Rooney, William Labos and Kyle King. A summary of the testimony of each witness follows.

Witnesses for the Village:

Christopher Rutishauser:

Christopher Rutishauser, an engineer and the Director of Public Works for the Village, testified regarding a March 5, 2013 meeting between himself and PSE&G representatives, where he asked PSE&G to consider using the right-of-way as a route, and that PSE&G declined to do so. (T 30:24-32:18). Mr. Rutishauser also testified that he asked PSE&G to not lay any poles on the ground in front of the residents’ driveways, as that would obstruct access to and from the street, to which PSE&G agreed. (T 32:22-33:1). Mr. Rutishauser stated that he notified PSE&G via email correspondence immediately following the meeting that there is a street opening permit requirement in the Village when installing a new utility pole. Mr. Rutishauser stated that he received no response from PSE&G, and on June 24, 2013 he observed numerous pole location mark outs.

Mr. Rutishauser testified that, on July 11, 2013, he started to receive complaints from residents of Hope Street, and he had still not received a response from PSE&G to his March 5 email correspondence at that time (T 33:2-37:20). Mr. Rutishauser testified that the Village received its permit check from the Company on July 17, 2013. He further stated that Spring Street and Hope Street are very quiet, residential areas that sustain frequent flooding because they are located in

a depression. Specifically, he said that there is one pole that was currently installed that is at the edge of where the water generally reaches. (T 37:23-40:14).

Mr. Rutishauser discussed the alternative routes. He first described the underground conduits, and how it could have come very close to the 69 kV transmission line. Finally, he testified that the PSE&G trolley line right-of-way is located just two (2) to three (3) blocks to the east of the Hope Street and Spring Street intersection. (T 40:22- 43:6).

Mr. Rutishauser testified that hundreds of utility poles have been installed during his tenure as Village engineer and none have been required to go through zoning approval. (T 43:1-44:9). He also stated that the street opening permits do not include any height restrictions, and that there is generally a higher cost for underground facilities. He also conceded that a newer, stronger pole with more sufficiently grounded circuits could be less dangerous than the pole that presently exists. (T 46:21-50:25).

Michael Barker:

Michael Barker is the tax assessor and Director of Community Services for the Village. During his testimony, Mr. Barker presented a series of exhibits consisting of various maps of the Village. The first exhibit, marked as P-1, was a map obtained from Google Earth, which depicted residences on Hope Street. (T 61:7-62:11).

Next, Mr. Barker testified with regard to the exhibit marked as P-2, which was a map highlighting particular land uses in the neighborhood in question. According to Mr. Barker, Exhibit P-2 depicted a predominantly residential presence along the Spring Avenue and Hope Street intersection.

Mr. Barker also testified as to exhibit P-3, a map depicting lot frontage. He testified that sixty four (64) percent of the lots on Hope Street have lot frontage consisting of fifty-one (51) feet or less. Specifically, he indicated that twenty-five (25) of the thirty-nine (39) homes on Hope Street have frontage of less than fifty-one (51) feet. (T 65:9-23).

Mr. Barker further testified a frontage map with four "street view photos," marked s P-4. Mr. Barker stated that one of the photos depicted a newly installed pole leaning into the street. (T 69:22-70:1). He also stated that he was aware that one of the newly installed poles was placed on private property, and PSE&G had to obtain an easement from the property owner. (T 70:2-22). Mr. Barker then testified as to two other exhibits marked as P-5 and P-6. He stated that P-5 illustrates the current route, depicts underground utilities, the PSE&G right-of-way, and the route PSE&G intends to run further eastward, while P-6 depicts the PSE&G right-of-way through Glen Rock to Fair Lawn. (T 61:1-76:7).

Witnesses for PSE&G:

Isabel Rooney:

Isabel Rooney, the Company's Director of Transmission Projects, testified that several municipalities will be impacted by this project, including Fair Lawn, Glen Rock, Ridgewood, Paramus, Oradell, New Milford, Dumont and Bergenfield (T 91:17-21). She further indicated that a total of five-hundred and ninety-one (591) poles will be installed as a result of the project, with eighty-five (85) being installed in Ridgewood. Ms. Rooney stated that, of these eighty-five (85) poles, thirty-two (32) have been installed, sixteen (16) of which have been installed on Spring Street and Hope Street. (T 92:21-93:7).

Ms. Rooney testified that this project is necessary to address overload conditions in the general area where network is being installed, and specifically in the Dumont substation. Ms. Rooney also testified that the project will alleviate the load on the existing 26 kV network and provide a benefit to customers as it increases reliability. Additionally, Ms. Rooney testified that, because the 26 kV system that feeds the 6,000 customers on the Ridgewood substation is being installed on a new infrastructure, reliability would improve in the Village. (T 93:15-95:10).

Ms. Rooney further testified that the new poles are sturdier than the current poles because they have a base with a larger circumference. She also explained that the newer poles need to be taller as they will carry the existing 26 kV line and the proposed 69 kV line. She noted that PSE&G would need to maintain the safety clearance between the two voltages to allow its linemen to work on any part of the pole in a safe manner. (T 95:16-96:19).

Ms. Rooney testified that the most convenient route for the project would be the PSE&G right-of-way that traverses an old trolley line. She stated, however, that there are two 26 kV pole lines already in existence in that location, as well as two underground gas mains, which would create a congestion of infrastructure if a third line was installed. Furthermore, she indicated that the width of the right-of-way would not allow for PSE&G to "overbuild" in that area because of safety concerns. (T 98:5-99:6).

Following Ms. Rooney's explanation concerning PSE&G's rejection of installing the poles in the existing right-of-way along the trolley track, she testified that the next best option was to replace the old poles. She explained that the selected route was Maple Avenue up to Ridgewood Avenue, and that the first issue came about when PSE&G considered the intersection of Maple Avenue and East Ridgewood Avenue. As she had indicated in her previous testimony, she stated that as this intersection has several underground infrastructures, building there would cause too much congestion. Ms. Rooney explained that, at that point in time, PSE&G began exploring routes that went back onto East Ridgewood Avenue from Maple Avenue. Consequently, PSE&G first considered Dayton Avenue, but because of riser poles on the corner of Dayton Avenue and Maple Avenue, PSE&G concluded that engineering would be a challenge. Finally, Ms. Rooney explained that was the time when PSE&G considered Hope Street and Spring Street as another alternative route. (T 99:23-101:12).

Ms. Rooney stated that PSE&G could install the ninety-six (96) kV underground on Hope Street and Spring Street, but chose not to do so because the Company is an overhead utility, meaning that its rate base is based on overhead construction. Therefore, when it is safe and possible to construct overhead, the Company utilizes this method. Further, she testified that, if PSE&G were to go underground, there would be a deferential cost, which the Village would have to bear. (T 101:13-25). She also stated that going underground would not replace the existing poles that are overhead on Hope Street and Spring Street including the four (4) kV lines, street lights, as well as telephone and cable facilities. (T 102:1-10).

Ms. Rooney then proceeded to testify as to how PSE&G determined the need for the 65 foot poles. She stated that 65 foot poles are used throughout the industry in 69 kV construction and that PSE&G always meets, if not exceeds the National Electric Safety Code. (T 102:15-23). Ms. Rooney testified regarding a July 31, 2013 workshop for the community, where PSE&G experts came in to address the different aspects of the project. She indicated that she and Kyle King, another PSE&G representative, also provided testimony with regard to the project at an August 7, 2013 Village council meeting. (T 107:16-108:20). Ms. Rooney stated that, since her tenure with PSE&G, a total of eight hundred thousand (800,000) poles have been installed and none required zoning approval. (T 110:1-5).

Ms. Rooney stated that obtaining municipal input when deciding the most efficient route in projects, such as the one at hand, would have negative implications. Specifically she stated, "It really becomes a chaotic process if we start asking for the town's opinions on our route." (T 120:18-25).

According to Ms. Rooney, the option of going underground, with extra costs, was never discussed as an option at the Village council meeting, although PSE&G did mention that the costs of undergrounding the service would be borne by the Village. She claimed that costs associated with moving the installation of the project underground was previously evaluated by the Company in the event the issue was brought up by the Village, and the underground option was not considered because there was a viable aboveground option. (T 128:23-130:14).

William Labos:

William Labos, PSE&G's Director of Asset Reliability, testified as to the benefits of the 69 kV project, and specifically noted that a 69 kV line has the ability to deliver 2.65 times the amount of energy that can be delivered on a single 26 kV line. (T 141:14-142:1). Mr. Labos also testified that the project in question was presented to PJM and was approved through the RTEP process. He stated that RTEP involves projects of one hundred thousand (100,000) volts or greater, and because this project involved a network that tied together multiple switching stations, PJM agreed that it was beneficial to overall grid stability and reliability. (T 145:2-146:10).

Mr. Labos described the upgrades that the subject project will provide, including new transformers, taller poles, static wire (for lightning strikes), and fiber optic lines. Mr. Labos also stated that the new infrastructure would be an upgrade to

the existing facility and would increase safety and reliability. (T 146:15- 148:18). Mr. Labos testified that taller poles are required under the National Electric Safety Code. He stated that the taller poles are also necessary to accommodate static wire, which enhances safety and reliability in the event of a lightning strike. (T 146:11-148:17). He also stated that an added benefit of the static wire is that it will hold the pole up in the air if it is snapped. (T 149:20-150:21). Mr. Labos further indicated that the taller poles are “no more dangerous than a shorter pole,” because as the pole gets taller, “the girth of it gets wider and more of the pole gets placed underground.” (T 149:25-150:5). Mr. Labos added that the fact that PSE&G places the poles one hundred and ten (110) feet apart makes them safer and more reliable. (T: 150:16-25).

Kyle King:

Kyle King, the president of K&R Consulting, was hired as a consultant by PSE&G and was referenced in Ms. Rooney’s testimony. Mr. King testified that the amount of electric field produced by the new lines would be about the same as are produced by the existing facilities, specifically 0.1 or 0.2 kV per meter. Mr. King also testified that magnetic fields will likewise not change and that the current fields are in the two (2) to ten (10) milligauss range, and that the new poles will produce a two (2) to eight (8) milligauss range or possibly even a six (6) to eight (8) range. (T 158:24-161:19)

POST HEARING SUBMISSIONS:

ICARE's Memorandum:

On September 24, 2013, ICARE file a memorandum with the Board (“ICARE Memorandum”) regarding “recent events” that its members had become aware of following the hearings. Specifically, residents on Hope Street became aware of a leaching utility pole and obtained a photograph of the pole, which was attached as an Exhibit to the Memorandum. The residents forwarded the photograph to counsel for both PSE&G and the Village. The Village filed a hazardous spill complaint with the New Jersey Department of Environmental Protection (“DEP”). ICARE claims that Ms. Rooney from PSE&G contacted a Hope Street resident with regard to the leaching pole and explained that the leaching depicted in the photograph was normal. ICARE Memorandum at 1.

ICARE also states that other residents filed complaints with and/or contacted DEP, the Ridgewood Health Department, the Bergen County Health Department and the State Health Department regarding residents’ health concerns purportedly caused by the installation of the utility poles. In further support of its position with regard to health hazards, ICARE provides an “Up-to-Date Summary of Perceived Adverse Health Events,” which indicates that a total of seventeen (17) individuals residing in the four (4) block radius where the utility poles have been installed have sustained bronchitis like symptoms and/or bloody noses. Id. at 2.

Additionally, the ICARE states in its post-hearing submission to the Board that it believes that the public has a right to know of the potential health hazards posed by the subject project, and that the Board should require “any utility company” to post specific notice on “each and every newly installed utility pole to this effect” and that “any strange health symptoms should be reported immediately to the relevant health department.” Id. at 3.

POST HEARING BRIEFS:

The Village's Position:

The Village reiterates that it is not requesting the final approval on PSE&G's right to install new 65 foot poles within the right-of-way and leaves that decision to the Board. The Village also does not challenge the purpose of the project and has never claimed that it was not necessary. However, the Village states that residents consider the municipality to be a special place and no one knows the Village's qualities better than its council. Village Post Hearing Brief at 1.

The Village, accordingly, indicates that it takes exception to the process used by PSE&G in approaching municipalities when undertaking a project, as well as the assumption it makes that its authority gives it unfettered access to place any facilities it deems appropriate within the right-of-way. The Village asserts that PSE&G prepared for and proceeded with its project with no consideration of local concerns. Ibid.

While the Village does not agree with the statement of PSE&G's counsel that state law gives the Company the right to install poles within the right-of-way without municipal consent, it believes it to be the Company's practice. The Village further recognizes that the Board has authority to consider the reasonableness of the method by which PSE&G could utilize municipal input in the design of the project – location, timing, nature and extent. If that had been done, the Village claims that the need for a petition to the Board could have been averted. Id. at 2.

The Village states that PSE&G's arrogance was further demonstrated through its failure to apply for and secure required street opening permits. It also states that PSE&G's Project Director dismissed the possibility of working with the Village before deciding on the route and admitted that the route was set before March 2013, prior to the only meeting with Village representatives. While PSE&G's Project Director set forth the reasons she would not work with municipalities, the Village argues that such refusal only makes her reasons suspect. Ibid.

The Village asserts that the Board does not have to accept PSE&G's practice or arrogance and can direct the Company to communicate with the municipality in a respectful and positive way. It argues, once again, that it is not seeking the final approval of the project; rather it is only seeking an opportunity to discuss and disclose municipal interests on behalf of the utility's local residential and business customers. Ibid.

In addition, the Village argues that this is not a replacement project but a new project based on the change in voltage and appurtenant facilities. To further support its position, the Village refers to the testimony of the Company's witness, Mr. Labos, wherein he described the necessary upgrades to the facilities. The Village also claims that Mr. Labos' testimony indicated that municipalities have been struggling with how these changing conditions affect the original grants under N.J.S.A. 48:7-1. The Village argues that no documentation seems to exist, and PSE&G relies on the presence of existing poles as the basis for its claim of unfettered access to the right-of-way. Id. at 3.

The Village submits that the changes proposed by PSE&G would amount to significant differences in use pursuant to Duess v. PSE&G, 3 N.J. Super. 439 (Ch. Div. 1949), the only reported decision that gives guidance on the issue of limitations, if any, on prior consents. Without limitations, the Village claims that PSE&G could install one-hundred (100) foot poles or metal poles at its discretion. Ibid. Therefore, the Village argues that, while PSE&G may have a

purported need for new facilities to meet changing needs in the distribution of electricity, municipalities should not be forever bound to outdated consents. Id. at 5.

Further, the Village claims that municipal participation in the design stages of these types of projects should be mandated to assist the utility prior to “lock down” of the project. It also requests that the Board revisit the issue of municipal consents and find that 100 year-old authorizations by municipalities do not give utilities unfettered and unregulated access to the public right-of-way. Id. at 5

PSE&G’s Position:

PSE&G emphasizes that, according to N.J.S.A. 48:7-1, its right to install and replace utility poles within the public right-of-way, absent municipal input, is uncontestable when a municipality has consented to the use of its public right-of-way for utility service. PSE&G Post Hearing Brief at 5.

PSE&G asserts that the Village’s witnesses acknowledged that municipal zoning approval was not required for the project. Id. at 4. The witnesses testifying on behalf of PSE&G further noted that the Village was unable to establish a claim that an alternative route for the project existed and could be utilized. Ibid. Based upon the foregoing, PSE&G argues that it has refuted any presumed right to pre-approve, reject or modify the project, as well as any attempts to prevent the continuation of the plans that would impede PSE&G’s ability to ensure service reliability and public safety. Id. at 5.

In support of its position, PSE&G relies on The Inhabitants of The Township of East Orange v. The Suburban Electric Light and Power Company, 59 N.J. Eq. 563, 657 (E. & A. 1899). In that case, PSE&G contends that the Township of East Orange sought to require the placement of underground facilities, and that the court held that “the statutory regime for utilities rendered the municipality unable to regulate utility facilities.” Id. at 6 Moreover, PSE&G cites to Seals v. County of Morris, 210 N.J. 157 (2012), where it points out that the New Jersey Supreme Court held that that N.J.S.A. 48:7-1 allows no discretion to local governments over electric pole placement and that installation determinations rest with the utility. Id. at 6

PSE&G further contends that additional authority in support of its position can be found in N.J.S.A. 48:3-17(a), which expressly requires a public utility to obtain municipal consent prior to the installation of electric facilities when there is pre-existing gas lighting within a municipality. Id. at 7. The absence of these same requirements in N.J.S.A. 48:7-1, PSE&G believes, is the basis upon which to conclude that no consent is required in this matter.

PSE&G disputes the relevance of Duess v. Public Service Electric and Gas Co., 3 N.J. Super. 439 (Ch. Div. 1949) as relied upon by the Village, as that matter involved a dispute between a utility and a private property owner—not a municipality. Further, PSE&G refers to the testimony of Mr. Rutishauser, wherein he stated that the replacement poles will be safe, responding to the Village’s claims that the route selected by PSE&G is unsafe and that the poles will cause environmental hazards to the public. Id. at 8 (citing Petition at 2 and Rutishauser Testimony at T50:12-51:2). Moreover, no factual or legal support has been entered into the record, according to PSE&G, that gives rise to safety concerns. Id. at 9.

In sum, PSE&G argues that the subject project is part of a continuous effort to develop, repair and upgrade its service territory and, accordingly, to allow PSE&G to continue to provide safe adequate and proper utility services, as required by statute and Board rules. PSE&G further argues that the project should not be altered, nor should the municipality be permitted to

intervene in the installation and replacement of utility poles within the public-right-of-way. Id. at 10.

DISCUSSION AND FINDINGS:

PSE&G and the Village are requesting the Board to decide: (1) whether the action by PSE&G, to replace existing poles in the public right-of-way along four residential streets in the Village with taller poles that carry higher voltage current, is contemplated in the original grant of consent; (2) if not, whether the expansion is allowed as required for the public convenience and necessity; or (3) if it required additional permission of the Village as a change in use.

New Jersey law provides that electric utility poles shall not be erected in any street of an incorporated city or town "without first obtaining from the incorporated city or town a designation of the street in which the same shall be placed and the manner of placing the same." N.J.S.A. 48:7-1. PSE&G maintains that it did not need to acquire additional consent from the Village as the existence of the polls manifests the grant of permission. Certain residents of the Village dispute any consents given to PSE&G since none were produced, and assert that, in any event, such consents are outdated. N.J.S.A. 48:3-17.1 creates a presumption that if the poles have been at the stated locations for 10 years or more, that consent was given for their placement. No evidence was provided to rebut that presumption.

In the matter at hand, the Village does not dispute that municipal consent was provided to PSE&G pursuant to N.J.S.A. 48:7-1 at some point. Petition at 4. The Village also does not dispute that it issued street opening permits pursuant to its municipal authority to PSE&G after the utility had commenced work on the project. Petition at 2. Although the Village contends that the Company's delay in applying for these permits denied the Village the right to review the project as it claims it was entitled to do, there is no evidence in the record to support this claim. In fact, the Village has not identified any ordinances which authorize it to oversee the exact location of the installation of the utility poles.²

Nonetheless, the Village relies on the Duess decision, supra, for the proposition that the installation of the heightened poles and higher voltage electric lines poses a significant deviation from the intention of the initial authorization provided by the Village many years ago. 3 N.J. Super. 439 (Ch. Div. 1949). See, Petition at 4. The Village's reliance on Duess, however, is misplaced.

In Duess, the plaintiff brought an injunction action against PSE&G for the removal of an electric utility pole and high tension wires. PSE&G had removed the pre-existing utility pole and installed a larger pole equipped with an extra cross-arm for purposes of carrying high tension wires running to a new power substation. 3 N.J. Super. 440-41. The distinction in Duess from the present matter is that the pole was located at the "curb line on the property of the plaintiff," and not in the public right-of-way. Id. at 440. In reaching its decision in requiring PSE&G to remove the additional cross arm and high tension wires, the court found that the change in the pole "put an additional burden upon the land of the plaintiff" and the plaintiff "had not consented to the imposition of the added burden upon *his* land." Ibid. (emphasis added). Here, however, it is undisputed that the utility poles are being installed in the public right-of-way, and not on private land, which was the case in Duess. Therefore, the Board **HEREBY FINDS** that, with the possible exception of one (1) pole and/or any appurtenances that may be located on private

² The Board notes that a request was made for the Board to invalidate the permits. Such action lies outside the jurisdiction of the Board.

property, the project contemplates the installation of poles in the public right-of-way, a matter subject to municipal oversight only in limited circumstances.

While the Board was not presented with and could not find authority directly on point, State v. Jersey Central Power & Light Co., 55 N.J. 363 (1970) does provide some guidance. In that case, JCP&L was convicted of violating zoning ordinances in connection with its erection of a transmission line running through the Borough of Shrewsbury and New Shrewsbury. The transmission line in question was being built upon or adjacent to a railroad right-of-way, and there was no suggestion that the line was not needed. Id. at 365. Under an ordinance passed by New Shrewsbury, electric transmission lines were not permitted uses in the zones through which the line would pass. Under the Shrewsbury ordinance, the electric transmission lines were also not a permitted use with the height of the frames exceeding the permitted height of structures in the various zones, including residential and industrial zones. Both municipalities filed complaints against JCP&L for failure to obtain site plan approval.

JCP&L appealed its convictions claiming that based on its reading of In re PSE&G, 35 N.J. 358 (1961), municipalities could not apply their zoning ordinances to bulk transmission lines as regulation of the transmission of electricity lies in the State and is beyond local legislative power. Id. at 368. While agreeing with the municipalities that under N.J.S.A. 40:55-50³ the municipalities did retain some local power over utility installations through zoning regulation, the Court distinguished between transmission lines, at issue in that case, and distribution lines. With respect to distribution lines, the Court concluded that provisions of the "utility law" give the utility the right to install these lines "subject, generally speaking, to the municipal consent as to the designation of the street and the manner of installation and to such reasonable regulations as may be locally imposed." Id. at 368.

The current situation involves a hybrid use. PSE&G is continuing to use the poles to provide distribution service, as it has in the past, but is also using these same poles to carry electricity at what PSE&G has categorized as transmission voltage. The Board notes that the new poles are higher than the existing poles, and that the increased height could, in certain circumstances, require a variance application under the Municipal Land Use Law ("MLUL") set forth in N.J.S.A. 40:55D, et seq. The Board further notes that it has the authority under N.J.S.A. 40:55D-19 to override certain municipal zoning determinations when a utility files a petition with the Board. That section provides that the MLUL,

or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

Although the instant petition was filed by the Village, and not by PSE&G, the Board **HEREBY FINDS** sufficient notice and opportunity to be heard was provided, and the record contains sufficient credible evidence to support a finding that the requirements of N.J.S.A. 40:55D-19 have been met.⁴

³ This provision has been recodified as N.J.S.A. 40:55D-19.

⁴ Under this section, only the municipality must be given notice and opportunity to be heard. Here, the Board has extended that opportunity to the residents of the Village as well. See In re JCP&L, 130 N.J. Super. 394 (App. Div. 1974).

N.J.S.A. 40:55D-19 grants the Board authority to require modifications, including changes in route, to a project when important local considerations can be given recognition along with the wider public interest. See State of New Jersey v. JCP&L, supra, 55 N.J. at 370. Nonetheless, while the Board has an obligation to “inquire diligently and act positively and affirmatively” in considering these local interests, the service of the broader public welfare is entitled to primary consideration. Id. at 371. This balance between the local interests and the public welfare can be achieved by the imposition by the Board “of reasonable conditions designed to preserve relevant zoning considerations or to apply some, but not all, of local zoning ordinance provisions.” Ibid.

The record before us reflects that the local considerations raised by the Village primarily concern the proximity of the route to residences, the perceived adverse aesthetic effects created by the taller poles and additional lines, as well as the potential negative health and safety impacts upon residents. See, ICARE Memorandum at 2.

The Village also refers the Board to several of its local zoning ordinances for its consideration in determining whether to modify the project. Local Village zoning ordinance § 249-85A requires that a street opening permit be obtained prior to commencing work. Specifically, it states:

Any firm, public utility, or other entity, public or privately owned, engaged in the placement or replacement of utility poles within the public right-of-way in the Village, after the effective date of this article, shall obtain a minor street opening permit for each pole location proposed in accordance with the requirements in Article IV, § 249-45, Application for permit.

Village zoning Ordinance § 249-44 also requires that ground mounted utility facilities “be of a design compatible with the visual quality of the roadway section being traversed.” Further, while the Village refers to the residential ordinance contained in Ordinance § 190-104 pertaining to limitations on the height of structures in the R-2 residential district, Ordinance § 190-123B(2)(a) provides that public utility buildings and structures are subject to a forty-five (45) foot height restriction in a residential zone.

While the Board has reviewed the foregoing considerations and local zoning provisions set forth by the Village at length, the Board **HEREBY FINDS** that they are outweighed by the greater public interest to be served by the project. The Board recognizes that Village Ordinance § 249-85A required PSE&G to obtain street opening permits before beginning construction, which it admits it neglected to obtain prior to the commencement of the project. However, by the admission of the Village’s engineer, Christopher Rutishauser, the street permits themselves do not require zoning approval or include any height restrictions. (T 46:14-22). In fact, Mr. Rutishauser, testified that hundreds of utility poles have been installed during his tenure as the Village engineer, and none have been required to go through zoning approval. (T 43:25-44:9; See also, Rooney testimony at T 110:1-5).

Even assuming that the project is subject to the forty-five (45) foot height restriction contained in Village Ordinance § 190-23B(2)(a), the increase in reliability and safety that will result from the installation of the new poles outweighs the Village’s interest in maintaining the height limitations, as well as its interest in maintaining the visual quality of the roadway pursuant to the requirements set forth in Ordinance § 249-44.

The evidence in the record reflects that the project at issue will enhance the reliability of the regional electric grid. The "Sub Regional RTEP Committee – Mid Atlantic" report dated August 24, 2010, attached as Exhibit A to PSE&G's Response, indicates that the project is necessary to relieve grid overloads on the existing 26 kV system from the Fair Lawn and Bergen switch, and to improve the reliability at the Paramus and Dumont substations. PSE&G Response, Exhibit A at 1.

The record further reflects that the project was approved through PJM's RTEP process, which, according to PJM's website, involves planning for the growth of the electric grid in the PJM region "to ensure that future needs are met for both the reliability and the economic performance of the grid." See, PJM website (<http://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/rtep-fact-sheet.ashx>) at 1. The RTEP process utilizes a fifteen (15) year planning horizon to better address major transmission investments and upgrades that will maintain grid reliability and improve economic efficiency. Under PJM agreements, transmission owners, i.e. the utility companies, are required to build transmission projects that are "needed to maintain reliability standards and that are approved by the [PJM's] board." *Ibid.* Accordingly, this project was determined by PJM to improve and maintain the overall reliability of the regional electric grid when it was approved through the RTEP process.

PSE&G's witness, William Labos, also testified as to the increased reliability benefits to the regional electric grid. He stated that the new infrastructure would be an upgrade to the existing facility and would allow capacity to be shared with other stations and would tie together multiple sources. (T 140:3-143:22). As previously noted, he also testified that the project enhances PJM's bulk power system and has been accepted into the PJM RTEP. (T 145:2-148:17).

Isabel Rooney, also testified that there is a need for the current project, based upon internal modeling conducted by the Company, because there are overload conditions in the area where network is being installed, and specifically in the Dumont substation. (T 93:13-94:2). Ms. Rooney also testified that that the project will alleviate the load on the existing network, and provide a benefit to customers by increasing reliability. She stated that reliability would improve in the Village through the installation of the new poles, hardware brackets and insulators. (T 94:15-95:10). She further stated that, based upon modeling conducted by the Company, overload issues will be present commencing in December 2014 if the project is not completed prior to that date. (T 109:14-21).

The record further supports PSE&G's claim that the installation of the taller poles is required under National Electrical Safety Code ("NESC") section 23, titled 'Clearance'. The NESC is adopted by the Board through the provisions of N.J.A.C. 14:5-2.1, 'Plant Construction'.⁵ Ms. Rooney testified that the installation of the 65 foot poles is standard practice in the industry for projects involving the construction of 69 kV transmission lines. (T 102:11-23).

The testimony of Mr. Labos provided further evidence as to the safety benefits of the project. Mr. Labos indicated the installation of the taller poles enhances safety because they allow for the addition of static wire. He stated that the advantage of static wire is that, if struck by lightning, the charge will be dissipated to the ground and not affect the circuit. Mr. Labos stated that the taller poles are no more dangerous than shorter poles, and they are actually safer and more reliable. He added that PSE&G places the poles one-hundred and ten (110) feet apart so that if a pole snaps, the phase conductors and the static wire will hold the pole up in the air. (T: 149:20-150:25).

⁵ See NESC § 23-232C(1). The NESC is available at <http://standards.ieee.org/nesc/>.

Mr. Rutishauser likewise testified that the installation of the stronger, newer poles, with more sufficiently grounded circuits, could potentially pose fewer safety risks than the older poles during a period of flooding. (T 50:12-51:2). Further, Mr. Rutishauser testified that, in general, there is a higher cost differential for the installation of underground facilities, as opposed to aboveground facilities. (T 47:21-24).

Mr. Rutishauser testified that he discussed an alternative route with PSE&G at the March 5, 2013 meeting, at which time he questioned PSE&G with regard to placing the line in the right-of-way on the trolley line. PSE&G advised him that the trolley line right-of-way was at its maximum capacity as far as electrical transmission lines, and he stated that he did not disagree with this conclusion. (T 44:10-45:7).

Accordingly, based on all of the aforementioned and as required by N.J.S.A. 40:55D-19, the Board **HEREBY FINDS** the uncontested testimony by PSE&G's representatives to be credible, and that the installation of the electric utility poles in question by PSE&G in the public right-of-way along the Village streets is reasonably necessary for the service, convenience and welfare of the public. Based on the testimony provided at the hearing, requiring any shortening of the poles in question would create a safety issue, and no viable alternative route that would not also raise safety concerns was presented. Therefore, the Board also **HEREBY FINDS** that no modifications to the height of the poles or to the route as requested by the Village will adequately accommodate the needs of the wider public while maintaining safe, adequate and reliable utility service. See In re New Jersey Dept of Env'tl. Prot. Conditional Highlands Applicability Determination, 2013 N.J. Super. LEXIS 145 (App. Div. 2013) (rejecting challenge to DEP approval of exemption from Highlands Act of substation found by the Board to be necessary for the service, convenience and welfare of the public, for failure to give adequate weight to local concerns).

We further note that the crux of the Village's position is that it was not given a meaningful opportunity to comment on the project proposed by PSE&G in that it was not included in any discussions with PSE&G prior to the commencement of the construction of the utility facilities. While recognizing that it does not and should not have the final word as to the placement of the facilities, the Village believes that PSE&G should have scheduled meetings with the appropriate municipal officials and residents to discuss the utility's specific plans and to listen to local concerns and, if possible, address them. While the record before us reflects that PSE&G conducted a workshop in July 2013, and appeared before the Village council in August 2013, the installation of the facilities had already begun.

Based upon our determination that there is no viable alternative route for the project, the Board is not persuaded that meeting with the Village prior to the installation of the poles at issue would have altered the result. We do believe, however, that the stated position of the Village is sound. Accordingly, when PSE&G is planning a project, it should arrange for meetings with appropriate municipal officials before construction begins to explain the nature of the work to be done and to discuss how that work may be accomplished in a manner that is efficient yet as non-intrusive on the local residents as is possible. Of course, in an emergent situation, a prior meeting with officials may not be an option, but they should be notified as soon as possible.

Since the Board has found PSE&G's construction of the project in Ridgewood to be reasonably necessary for the service, convenience and welfare of the public as required under N.J.S.A. 40:55D-19, the Board has no reason to address the Village's argument on the scope of the previously granted municipal consent. The Village concedes it previously provided PSE&G with


the consent to use the public right-of-way along the Village streets pursuant to N.J.S.A. 48:7-1 at some point in time, and has failed to provide any evidence to the contrary. Therefore, the Board **HEREBY DECLINES** to address the issue of the extent of the municipal consent as raised by the Village.

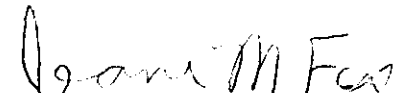
Finally, the Board is sensitive to the alleged health and safety concerns raised by the Village and ICARE. However, with regard to health-related issues, the Village should continue to address those concerns with the appropriate health officials, as its residents have indicated in their submissions and statements to the Board.⁶ See, ICARE Memorandum at 1-2. The Board **HEREBY DIRECTS** PSE&G to report any developments to the Board on this issue.

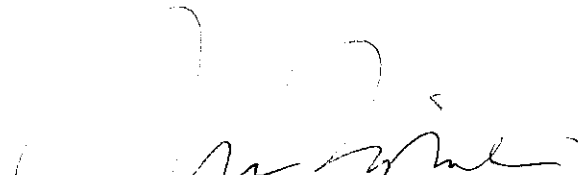
Accordingly, based upon its review of the entire record, the Board **HEREBY DENIES** the Village's request for continuation of the consensual moratorium, and **HEREBY ORDERS** that PSE&G may resume construction of the subject project.

DATED: 11/22/13

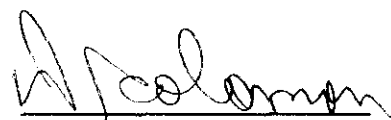
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ROBERT M. HANNA
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JEANNE M. FOX
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ATTEST:


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


⁶ The Board notes that a meeting was conducted between PSE&G and Bergen County Health Department, Ridgewood and Glen Rock officials on October 11, 2013.

IN THE MATTER OF THE COMPLAINT OF THE VILLAGE OF RIDGEWOOD
DOCKET NO. EO13080751

SERVICE LIST

Village of Ridgewood:

Matthew S. Rogers, Esq.
123 Prospect Street
Ridgewood, NJ 07451
msr@mrogerslaw.com

PSE&G:

Kenneth J. Sheehan, Esq.
Genova, Burns, Giantomasi & Webster, LLC
494 Broad Street
Newark, NJ 07102
ksheehan@genovaburns.com

Board of Public Utilities:

44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Executive Director

Paul Flanagan, Esq.

Counsel's Office

Tricia Caliguire, Esq.
Bethany Rocque-Romaine, Esq.
Edward Beslow, Esq.
Megan Lupo, Esq.

Division of Energy

Jerry May, Director
Rosalie Serapiglia, Manager
Thomas Walker, Chief
Nanik Aswani

Deputies Attorney General:

Division of Law
124 Halsey Street
Post Office Box 45029
Newark, New Jersey 07101

Caroline Vachier, DAG
caroline.vachier@dol.lps.state.nj.us

Babette Tenzer, DAG
babette.tenzer@dol.lps.state.nj.us

ICARE Ridgewood:

Alyssa Steinberger
136 Hope Street
Ridgewood, NJ 07450
alyssasteinberger@gmail.com