

Court Affirms Authority of NJ Board of Public Utilities to Override Municipalities

by Dennis C. Linken on May 3, 2013

A recent State Superior Court, Appellate Division, case has affirmed the overarching authority of the Board of Public Utilities (Board or BPU) to override municipal determinations regarding multi-municipal public utility projects. At issue was the construction and operation of the New Jersey portion of a 500 kV upgrade of a transmission line from Berwick, Pennsylvania to Roseland, New Jersey (the “Project”). Public Service Electric & Gas Company (PSE&G) had proposed the Project in an effort to address predicted problems regarding its electric transmission facilities.

Notwithstanding the objections of various municipalities and environmental groups opposing the project, the BPU concluded that the Project was “reasonably necessary for the service, convenience and welfare of the public in order to enable PSE&G to continue to provide safe, adequate, and reliable service to its customers.” The Board further held that the Project was reasonably necessary to avoid system overloads which could cause significant damage to the infrastructure, brown outs or black outs.

PSE&G’s New Jersey transmission system is part of a larger regional network operated by PJM Interconnection, LLC (PJM), which serves customers in thirteen states and the District of Columbia. In 2008, PJM projected that violations of appropriate reliability standards would occur beginning in 2012 and determined that the Project was necessary in order to avoid the hardships that would follow. Totalling 45 miles, the Project would follow an existing right-of-way pertaining to a previously constructed 230 kV powerline through sixteen municipalities in Warren, Sussex, Morris and Essex Counties. Along the way, the route would pass through the Delaware Water Gap and would cross fresh water wetlands, the Picatinny Arsenal, the Kittatinny Mountains and the New Jersey Highlands Region. The Project also included construction of switching stations in two municipalities. The total cost of the Project was estimated at \$750 million.

Despite a revision of its initial projections, PJM concluded that, without the Project, PSE&G’s bulk transmission lines would be overloaded beginning in 2012 and would worsen as time went on.

Facing objections from many of the municipalities along the proposed route, PSE&G filed a petition before the BPU seeking an order under N.J.S.A. 40:55D-19, exempting it from local land use regulation. That statute “authorizes the Board to exempt a public utility’s development that spans multiple municipalities ... if the Board deems the development ‘reasonably necessary for the service, convenience or welfare of the public.’” In its 2010 decision, the Board considered numerous arguments raised by the objectors, including legal issues involving the proper standard of review, as well as factual issues pertaining to, for example, environmental concerns, cost considerations,

health questions, routing issues and alternative solutions. The Board also examined whether PJM's assessment of predicted violations of reliability standards (even as later modified) were accurate, as well as other objector contentions, but after evaluating all factors concluded that the Project was necessary and appropriate.

On appeal, the Court held that the Board's application of the law was correct and that there was sufficient evidence in the record before the Board to support its decision. Accordingly, the Court affirmed the BPU, effectively ruling that overall regional considerations prevail over local determinations.

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Dennis Linken, or the Scarinci Hollenbeck attorney with whom you work.