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February 25, 2008

The Honorable Joseph T. Kelliher, Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: FERC Docket Nos. EL08-35-000

Dear Chairman Kelliher:

I am writing to register my strong opposition to the Declaratory Order requested by PSEG Energy Resources & Trade, PSEG Fossil LLC, ("PSEG") and Cross Hudson LLC (collectively "Petitioners") in the above captioned matter. Granting such an order would create higher electricity prices, reduce reliability, and set a disturbing precedent that would allow electricity generators to leave wholesale electricity markets without compensating existing customers for their losses. New Jersey electricity customers are already reeling from electricity rates which have almost doubled since 2004. To unfairly subject them to these additional costs is simply unconscionable.

On January 17, 2008 Petitioners submitted a request seeking certain assurances from the Federal Energy Regulatory Commission (FERC) for their proposed Cross Hudson line project. Petitioners' project is designed to disconnect a 550 megawatt combined-cycle electric generating unit, called Bergen 2, from the wholesale electricity market New Jersey is a part of (PJM) and connect it to New York's wholesale electricity market (NYISO). The Petitioners want a declaratory order from FERC allowing them to cut Bergen 2 from New Jersey customers and sell electricity from the unit exclusively to New York customers without compensating New Jersey ratepayers.

This declaratory order must be denied for two important reasons. First, section 202(b) of the Federal Power Act compels the Commission to require the Cross Hudson line to be interconnected (and thereby keep Bergen 2 connected to the PJM grid) because to do otherwise would be contrary to the public interest and at the same time would not pose an undue burden on Petitioners. Second, even if the Commission feels it cannot reject the petition outright with the current information available, a decision should be delayed pending further fact-finding and a chance for further public comment. Under its tariff, PJM is required to post information regarding the reliability impacts and necessary upgrades by April 14, 2008. It would be premature to grant the petition before this report is available.

Section 202(b) of the Federal Power Act makes clear that power lines should provide open access to different regional grids or different generators unless such access would prove contrary to the public interest or pose an undue burden to the public utility.[1] There is little question in my mind that this project as designed would be contrary to the public interest.

I found it deeply disappointing and surprising that PSEG, a company that considers itself a "lifelong 'resident'" of New Jersey,[2] would ignore the public interest of its home state and in fact place the public interest of New York over the public interest of New Jersey. The Petitioners' pleading trumpets the public benefits of increased competition in the New York electricity market, the environmental benefits of retiring older power generation plants in New York City, and discusses how this proposed project will help keep pace with rising electricity demand as discussed in Mayor Bloomberg's PlaNYC. The simple fact of the matter is that the public interest requirement contemplated in Section 202(b) of the Federal Power Act does not end at the New York border. Further, no matter how hard PSEG wishes to ignore that it is a New Jersey-based company with largely New Jersey customers, there is no question this project is not in New Jersey's interest.

The Cross Hudson line project will cause New Jersey's electricity rates to rise, result in decreased grid reliability, and will mean New Jersey ratepayers will lose any chance to be partially compensated for needed transmission or generation upgrades as a consequence of losing Bergen 2's power. New Jersey's electricity supply is severely limited which results in electricity prices among the highest in the nation. Earlier this month, the state held its annual auction for electricity. For the third year in a row New Jersey ratepayers will see dramatic increases in their electricity bills. Starting in June it is anticipated the average customer will be paying $11 to $18 more per month for electricity. In a time when gasoline is over $3.00 per gallon, home heating costs are skyrocketing, and our economy is suffering a downturn, rising costs of electricity will be especially damaging. To simply remove 550 MW of generation from New Jersey, as the Petitioners propose, will further raise electricity prices in this already expensive market and will therefore be contrary to the public interest as contemplated by Section 202(b).

The Cross Hudson line project will also compromise grid reliability in New Jersey. PJM has identified dozens of locations in northern New Jersey that will be in violation of grid reliability criteria in the next few years unless new transmission and generation is built. These stresses are compounded by the large amounts of electricity New Jersey already exports into New York. PSEG will surely point to their promises to voluntarily build new generation and pay for any added transmission costs for PJM. These promises are to be commended, but are not legally binding and cannot serve as a basis to approve this project. Thus, compromising New Jersey grid reliability is another reason the Cross Hudson project is not in the public interest.

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[1] 16 U.S.C. §824a(b)

[2] PSEG website, http://www.pseg.com/community/development.jsp

Further, unlike "extension cord" projects which extend additional transmission lines across the Hudson to increase New York's access to New Jersey electricity, Petitioners seek to completely remove 550 MW of electricity from New Jersey without compensating New Jersey ratepayers for the additional transmission and generation costs they will have to incur in order to make up for this lost electricity. In other words Petitioners seek to have their cake and eat it too. If the Commission allows this project to go forward it will in effect allow PSEG to drive up profits for its remaining facilities in New Jersey while also allowing Bergen 2 to serve another market exclusively. This is not an act designed to increase competition, but an act that could raise questions about the possibility of market manipulation. If allowed to go forward, this could set a bad precedent for future plants being electrically re-sited to New York. My home state will be forced to endure the pollution of these power plants, but receive none of the benefits. Of course, this will not just be an issue in New Jersey, but along borders of other RTO's across the nation. These projects will undermine reliability, reduce the interconnectivity of our national grid, and encourage attempts to play off neighboring electricity markets. For all of these reasons -- the price of New Jersey's electricity, the reliability of its grid, and the lack of payments to cover these losses -- the Cross Hudson line is decidedly not in the public interest.

Not only is the Cross Hudson line project against the public interest under Section 202(b) analysis, but requiring Bergen 2 to remain connected to the PJM grid should not be considered an undue burden under the Federal Power Act either. Normally, when determining whether a utility is being unduly burdened by interconnecting a facility to another grid, the question is whether the requirement would unfairly impact the utility's ability to serve existing customers. Here we have exactly the opposite situation. PSEG is attempting to make Bergen 2 stop serving its existing customers in order to serve a new market. This argument simply puts the law on its head. Further, as described earlier in this letter, the electricity market in New Jersey should not be a hardship for PSEG. Rates are at historic highs, are set to increase yet again this summer, and demand for electricity is still rising by 1.4% a year. Remaining connected to the robust electricity market in northern New Jersey should hardly be considered a burden. Lastly, it is important to note that the argument here is not whether a new cable will be extended to New York City allowing them to access more electricity. The question is whether to require Bergen 2 to remain connected to the PJM grid while also being connected to NYISO. Seen under this light it should be clear that requiring the line to remain connected to PJM should hardly be viewed as a burden, let alone an undue burden under section 202(b) of the Federal Power Act.

In conclusion, because the Cross Hudson line project as planned is both against the public interest and it would not be an undue burden to change the project to require the line to connect with the PJM grid, I ask the Commission to reject the Petitioners request for declaratory order.

However, if the Commission cannot reject the request outright based upon the minimal pleadings that have been thus far filed, I urge the Commission to press the Petitioners for more information and to wait for the PJM impact report before deciding this important dispute. For instance, the Petitioners have made many claims about how the project must be done without interconnecting

the line with the PJM grid and how no capacity will actually be lost in New Jersey. Both of these claims seem to defy common sense, but they offer no economic modeling or other data to back up their bold assertions. At the very least Petitioners should be required to offer more than vague assertions and promises before being granted the order they seek.

This is a new issue with many potential impacts on my home state. I hope the Commission agrees that to grant this request for a declaratory order would run contrary to policies you have sought to promote -- namely fairness to electricity consumers, increased competition, greater interconnectivity of regional grids, and improved reliability.

I thank the Commission for their great work and efforts on this matter. I look forward to hearing the Commission's decision.

Sincerely,

ROBERT MENENDEZ
United States Senator