



Agenda Date: 4/27/16
Agenda Item: 2C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE TOWNSHIP OF SOUTH)
ORANGE VILLAGE SEEKING APPROVAL TO MOUNT) ORDER
AUTOMATED LICENSE PLATE READER CAMERAS)
ON LIGHT POLES OWNED BY PSE&G AS AN)
"UNMETERED SERVICE" PURSUANT TO B.P.U.N.J.) BPU Docket No. EO15070805
15-ELECTRIC TARIFF FOR SERVICES) OAL Docket No. PUC 17727-2015N

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Alexander C. Stern, Esq., Public Service Electric and Gas Company
Steven C. Rother, Esq., Post, Polak, Goodsell, MacNeill & Strauchler, P.A., Township of South Orange Village

BY THE BOARD:

This matter comes before the New Jersey Board of Public Utilities ("Board") on a petition filed by The Township of South Orange Village ("Village" or "Petitioner") on July 14, 2015, requesting the Board approve the Village's request to mount Automated License Plate Readers ("ALPRs") on Public Service Electric and Gas ("PSE&G" or the "Company") Light Poles as an "unmetered service", and for the Board to approve the unmetered service of the ALPR's to be billed on a constant monthly basis, consistent with the Electric Tariff. (Village Petition, p. 9.)

On October 30, 2015, PSE&G filed a Notice of Motion for summary decision with the Board seeking dismissal of the petition arguing that there is no legal obligation or authority for PSE&G to be compelled to install ALPRs on its infrastructure.

After the filing of PSE&G's Motion for summary decision in lieu of an answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") on November 11, 2015, for a hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On December 1, 2015, the Township filed a certification in opposition to the motion for summary decision. This matter was assigned to Administrative Law Judge ("ALJ") Leslie Z. Celentano.

The standard for summary judgment, found in N.J.A.C. 1:1-12.5(b), states that summary decision may be granted if "the papers and discovery which have been filed, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law."

After outlining the parties' positions as contained in their submissions, ALJ Celentano discussed and concluded the following:

- 1) The parties are in accord as to the material facts surrounding the application and thus the matter is appropriate for summary decision.
- 2) BPU has jurisdiction to decide disputes between the municipality and the utility concerning utility infrastructure. N.J.S.A. 48:2-13(1) and N.J.A.C. 14:3-2.3(c).
- 3) A PSE&G Tariff approved by the BPU provides that unmetered service is provided at the utility's discretion. See BPU Tariff, B.P.U.N.J. 15 at Original Sheet 135, paragraph (e).
- 4) The utility may enter into a written agreement with a municipality to install ALPRS's on its infrastructure. N.J.S.A. 48:3-18. However, contracts entered into under this statute are subject to modification by the BPU in the public interest. In re Application of Saddle River, 71 N.J. 23 (1976). Here, PSE&G and the Village did not enter into a written agreement.
- 5) The phrase "public interest" should not be interpreted to compel a utility to install ALPRs on its infrastructure.
- 6) The Village failed to address the discretionary authority granted to the utility by the Tariff. Absent a contract between PSE&G and the Village, the Board, should not impose an obligation on PSE&G, which would interfere with the utility's property interest in its infrastructure.

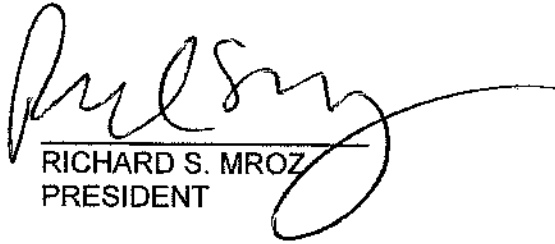
On March 24, 2016 ALJ Leslie Celentano issued an Initial Decision/Summary Decision granting PSE&G's motion for summary judgment. Neither party filed exceptions to the initial decision.

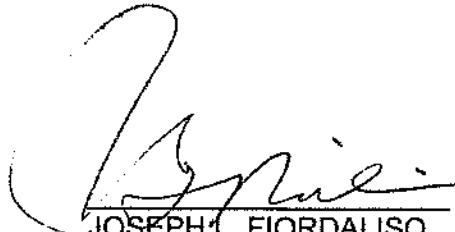
The Board has reviewed the parties' submission and **FINDS** that the parties are in accord with respect to the material facts. Consequently, having reviewed ALJ Celentano's Initial decision, the Board **HEREBY ADOPTS** the Initial Decision-Summary Decision in its entirety as if fully set forth herein and **ORDERS** that the Village's petition be **HEREBY DISMISSED WITH PREJUDICE**.

The effective date of this order is May 7, 2016.

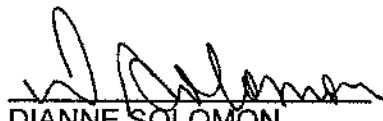
DATED: 4/27/16

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

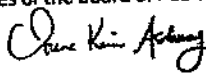

MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



IN THE MATTER OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE
Docket No. EO15070805
OAL Docket No. PUC 17727-2015 N

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 17727-15

AGENCY DKT. NO. EO15070805

**IN THE MATTER OF THE TOWNSHIP OF
SOUTH ORANGE VILLAGE.**

Steven C. Rother, Esq., for petitioner Township of South Orange Village (Post,
Polak, Goodsell, MacNeill & Strauchler, P.A., attorneys)

Alexander C. Stern, Esq., for respondent Public Service Electric and Gas
Company

Record Closed: February 8, 2016

Decided: March 24, 2016

BEFORE **LESLIE Z. CELENTANO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Public Service Electric and Gas Company (PSEG or utility) has moved for summary decision seeking to dismiss the petition of the Township of South Orange Village (Township) to install automated license plate readers (ALPRs) on utility infrastructure.

On April 19, 2010, PSEG issued Bulletin 10-021, outlining procedures for municipalities to follow in requesting the placement of surveillance-technology equipment, including closed-circuit cameras, on utility infrastructure. (Gray Cert. ¶ 9, Ex. D.) As part of the application process to install surveillance-technology equipment, PSEG requires the following information from the municipality: (1) a brief description of where the proposed cameras will be attached and for which municipality; (2) a map showing the pole numbers and street location of the proposed camera attachments; (3) an Exhibit A Form displaying the pole number and locations; (4) a certificate of insurance coverage; and (5) specifications on all equipment requiring electricity to determine the unmetered service amount plus the billing address and where the bills should be sent.¹

In March 2015 the Township decided to undertake efforts to mitigate criminal activity within its jurisdiction and requested permission from PSEG to install ALPRs on its infrastructure located on South Orange Avenue. (Gray Cert. ¶ 10, Ex. B.) The request was made pursuant to the Board of Public Utilities tariff (BPU Tariff). (Ver. Pet. ¶ 9.) An ALPR already exists on Irvington Avenue, but it is not clear whether this ALPR is installed on utility infrastructure or municipal infrastructure. (Ver. Pet. ¶ 7.)

On April 20, 2015, Township trustee Howard Levison advised PSEG's senior public affairs manager Everton Scott that in order to operate, the ALPR required less than 100 watts of continuous power. (Gray Cert. ¶ 2, Ex. C.)

On June 3, 2015, PSEG denied the Township's request via letter. The basis for the denial was that the Township's request did not fall under the category of "Unmetered Service" under the BPU Tariff² because "there is no way to bill for [the ALPRs'] usage or even adequately estimate the usage." (Gray Cert. ¶ 10, Ex. B.)

¹ "Requirements for Surveillance Technology Attachments," available at <https://www.pseg.com/business/local_government/safety/cctv.jsp> (last visited March 24, 2016).

² BPU Tariff, B.P.U.N.J. 15, at Original Sheet 134, paragraph (e), available at <https://www.pseg.com/family/pseandg/tariffs/electric/pdf/electric_tariff.pdf> (last visited March 24, 2016).

On July 14, 2015, the Township filed a verified petition with the BPU seeking approval to install ALPRs on utility infrastructure.

On October 30, 2015, PSEG filed a motion for summary decision with the BPU, seeking dismissal of the petition.

On November 11, 2015, the matter was transmitted to the Office of Administrative Law (OAL) as a contested case.

On December 1, 2015, the Township filed a certification in opposition to the motion for summary decision.

PARTIES' ARGUMENTS

The Township argues that the installation of ALPRs would help mitigate criminal activity along South Orange and Irvington avenues, and pursuant to PSEG's Bulletin 10-021 it apprised PSEG of the ALPRs' electric usage. PSEG counters that there is no legal obligation or authority for it to be compelled to install ALPRs on its infrastructure.

STANDARD FOR SUMMARY DECISION

Summary decision may be granted only if "the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). These provisions mirror the summary-judgment language of R. 4:46-2(c) of the New Jersey Court Rules. See also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

In making a determination on a motion for summary judgment, the judge should consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill, supra, 142

N.J. at 523. The inquiry essentially is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)).

If the non-moving party's evidence is merely colorable, or is not significantly probative, summary judgment should not be denied. See Bowles v. City of Camden, 993 F. Supp. 255, 261 (D.N.J. 1998). An evidentiary hearing is not required if there is no genuine issue of material fact. Contini v. Bd. of Educ., 286 N.J. Super. 106, 121 (App. Div. 1995), certif. denied, 145 N.J. 372 (1996). The parties here are in accord as to the material facts surrounding the application, and I **CONCLUDE** that this matter is therefore ripe for summary decision.

DISCUSSION

I. **The BPU has jurisdiction to decide disputes between the municipality and the utility concerning utility infrastructure.**

N.J.S.A. 48:2-13(a) provides as follows:

The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

Subsections (b) through (g) of the statute describe specific BPU regulatory authority, as well as exclusions from regulatory authority. In this regard, N.J.A.C. 14:3-2.3(c) provides as follows:

In the event of disagreement between a utility and a municipality or other utility as to the necessity of repair, replacement or modification of a utility pole, facilities or attached equipment, the matter shall be submitted to the Board for determination.

A municipality has broad police powers to legislate, but some matters, such as regulation of utilities, are governed by uniform treatment and are not a proper subject for municipal legislation. In re Pub. Serv. Electric & Gas Co., 35 N.J. 358, 370 (1961) (hereinafter PSEG). The New Jersey Legislature established the Board of Public Utilities in order to regulate utilities, and through which issues of concern and disputes between public utilities, their customers, and the municipalities in which they provide service can be adjudicated. Id. at 371. In PSEG, the municipality passed an ordinance that compelled a utility to carry its 33,000-volt high-capacity electric power lines, transmitting current for other than local use, through the municipality by underground installation rather than on overhead structures. Id. at 361. The Court concluded that the municipality's ordinance exceeded its police power to regulate local zoning because the Legislature expressly granted jurisdiction of disputes between the utility and the municipality to the Board. Id. at 370. See Middlesex Water Co. v. City of Perth Amboy, 97 N.J.A.R.2d (BRC) 22 (the BPU has the authority to resolve disputes between a regulated utility and a municipality that consents to the provision of service by such regulated entity).

- a. The BPU Tariff provides that unmetered service is provided at the utility's discretion.

Prior to offering service to the public, the utility must submit a tariff or tariff amendments to the BPU for approval. N.J.A.C. 14:3-1.3(a). A tariff is a published schedule of rates, filed by the utility, which in the absence of a successful challenge is applicable equally to all customers. In re Application of Saddle River, 71 N.J. 14, 23 (1976). The application of the tariff may or may not have been preceded by a rate-making hearing, but it is more than a contract, it is the law, and its provisions are binding on a customer regardless of the customer's awareness of the tariff. Ibid. The BPU Tariff, for unmetered service, provides in relevant part as follows:

Unmetered service will be supplied, at the discretion of Public Service, where estimates of kilowatts and kilowatt hours are based upon information supplied by the customer and agreed to by Public Service. Such estimates of demand and usage shall be constant on a monthly basis.

[BPU Tariff, B.P.U.N.J. 15, at Original Sheet 134, paragraph (e), available at <https://www.pseg.com/family/pseandg/tariffs/electric/pdf/electric_tariff.pdf> (last visited March 24, 2016) (emphasis added).]

Here, the Tariff provides that unmetered service will be supplied at the discretion of the utility. The Township claimed that each ALPR requires less than 100 watts of continuous power to operate. PSEG did not agree with this assessment and denied the Township's request because "there is no way to bill for [the ALPRs'] usage or even adequately estimate the usage." In addition, PSEG pointed out in its brief that installing ALPRs on utility infrastructure would not comport with standard industry practice. Thus, PSEG had the discretion to deny the Township's request.

II. The utility may enter into a written agreement with a municipality to install ALPRs on its infrastructure.

N.J.S.A. 48:3-18 provides that "[a]ny person municipal or otherwise, may enter into a written agreement with any other such person owning or using any poles erected under municipal consent in any street, highway or other public place for the use by the former person of the poles upon such terms and conditions as may be agreed upon by the persons." Distinguished from a tariff, a contract is an agreement that is individually negotiated between a utility and a particular customer, with rates that may differ according to circumstances. Application of Saddle River, supra, 71 N.J. at 23. Utilities may establish rates, in certain circumstances, by the negotiation of contracts with individual customers. Id. at 29–30. However, contracts between municipalities and utilities, although their provisions are agreed upon by the parties, are nevertheless subject to modification by the BPU in the public interest. Ibid. (emphasis added). Here, the Township and PSEG did not enter into a written agreement.

- a. The phrase "public interest" should not be interpreted to compel a utility to install ALPRs on its infrastructure.

The BPU has the authority to regulate a utility's assets, insofar as these assets are related to a recognized public interest such as its duty to provide safe, adequate, and proper service. In re Valley Rd. Sewerage Co., 285 N.J. Super. 202, 209–11 (App.

Div. 1998) (noting that utility has a constitutional right to seek rate of return for services it provides, but denying utility's request for rate increase because utility was mismanaged and rate increase would not serve public interest). The question of whether the phrase "public interest" allows the BPU to compel a utility to install ALPRs on its infrastructure has not been addressed by statute, regulation (outside the context of a written agreement) or case law.

The phrase is broad enough to include road-widening projects, in which case the utility is responsible for relocation costs of its infrastructure. For example, in Pine Belt Chevrolet, Inc. v. Jersey Central Power & Light Co., 132 N.J. 564, 572 (1993), the Court noted that the utility's interest was subordinate to the predominant public interest served by a road-widening project that resulted in improved traffic flow, as well as in a wider and safer highway, and required the utility to pay for the costs of relocating utility poles. See Fellowship Bank v. Pub. Serv. Electric & Gas Co., 158 N.J. Super. 107 (App. Div. 1978) (requiring PSEG to absorb costs of utility poles' relocation); cf. Jersey Cent. Power & Light Co. v. Twp. Comm. of Lakewood, 174 N.J. Super. 394, 402 (Law Div. 1980) (utility not required to pay relocation costs of utility poles placed in township's unimproved street because public interest never attached when street was never formally accepted or used for travel)).

The Township fails to address the discretionary authority given to the utility by the Tariff over whether to grant or deny the municipality's request. Circumnavigating this discretion would mean interference with the utility's property interest in its infrastructure. See Sussex Rural Elec. Coop. v. Wantage, 217 N.J. Super. 481, 491 (App. Div. 1987) (noting that municipal action that terminates or substantially impairs the delivery of utility services can result in a compensable taking). The mitigation of criminal activity is not a recognized "public interest" in the context of a utility-municipality relationship. The structure of the statute and the regulations, as well as the BPU Tariff, provides the utility with discretion over whether to grant or deny a municipality's request to install surveillance technology on its infrastructure.

CONCLUSION AND ORDER

For all of the foregoing reasons, I **CONCLUDE** that PSEG is entitled to summary decision, and accordingly **ORDER** that PSEG's motion for summary decision is **GRANTED**.

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 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.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 24, 2016

DATE



LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

March 24, 2016

Date Mailed to Parties:

dr