

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,
YISROEL FRIEDMAN, S. MOSHE
PINKASOVITS, SARAH BERGER, MOSES
BERGER, CHAIM BREUER, YOSEF ROSEN, and
TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER
Defendant.

**DECLARATION OF KENNETH SULLIVAN PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Kenneth Sullivan, hereby declare under penalty of perjury:

1. I am a Unit Manager for Orange and Rockland Utilities, Inc. ("O&R"). Rockland Electric Company ("RECO") is a wholly owned subsidiary of O&R and an affiliate of Consolidated Edison Company of New York, Inc. ("Con Edison"). RECO has no operating employees. All of RECO's services are provided by employees of O&R. Among other things, I am the primary contact for counterparties that wish to make attachments (including eruv attachments) to O&R's utility poles in New York and RECO's utility poles in New Jersey. I have personal knowledge of the facts and circumstances set forth herein. Plaintiffs' counsel has requested that I provide this declaration, which I am aware will be submitted in connection with Plaintiffs' Motion for a Preliminary Injunction.

2. Eruv attachments such as lechis on RECO's poles have been installed consistent with the practices used for all other pole attachments, including telecommunications fiber optic cable, security cameras, license plate readers, small cell antennas and automated

metering devices. Both O&R and RECO have a policy in place to allow for the attachment of lechis to utility poles subject to a standard set of terms and conditions to ensure, among other things, the safety of their installation and maintenance. Pursuant to this policy, O&R and RECO have allowed for the installation of lechis in communities in New York and New Jersey. In 2016, O&R and RECO had contracts for pole attachments under this policy with 57 cable and telecommunications companies, and a number of other public and private entities. Also, numerous municipalities have contracts with O&R and/or RECO that permit holiday lighting installations on poles.

3. Lechis that comply with our standard terms and conditions pose no health or safety concerns. The rates charged for these attachments are consistent with the policies of the New York State Public Service Commission (“PSC”) or the New Jersey Board of Public Utilities (“BPU”), respectively. The fees O&R and RECO accumulate are nominal, and are used to benefit their customers. RECO is willing to allow, and has no objection to allowing, the installation of lechis to certain utility poles in Upper Saddle River (“USR”).

O&R Agreement with Vaad HaEruv

4. Pursuant to our standard policy, on June 1, 2015, RECO entered into a license agreement with the Vaad HaEruv permitting the installation of lechis on utility poles in USR and elsewhere (“2015 Eruv Agreement”).

5. Shortly thereafter in 2015, lechis were attached to 16 utility poles in USR with the consent of RECO pursuant to the 2015 Eruv Agreement. After the lechis were attached to these 16 utility poles, RECO did a walk-through of the 16 utility poles on Hillside Avenue with a representative of the Vaad HaEruv, approved the attachment of the lechis, and

was paid all of the necessary fees. We have never had any concerns, safety or otherwise, related to any of these lechis.

6. In 2017, I was approached by the Vaad HaEruv which wanted to attach additional lechis to utility poles in USR (and elsewhere) so as to expand the existing eruv. To date, the Vaad HaEruv has attached lechis to approximately 80 utility poles in USR (in addition to those attached in 2015). These attachments to utility poles were also done pursuant to the 2015 Eruv Agreement. We have already provided the Vaad HaEruv with our consent to attach lechis to each of these poles – consent which we provided prior to the lechis actually being attached. For many of these poles, we have satisfactorily completed our post-attachment walk-throughs and have supplied Vaad HaEruv with electronic pole-specific documentation acknowledging as much. For others, the post-installation walk-throughs have not yet been completed, in part due to USR's demand that Vaad HaEruv and O&R stop work on the eruv expansion. When these walk-throughs are completed, we anticipate providing similar pole-specific documentation to Vaad HaEruv.

7. The Vaad HaEruv has also told us that it wishes to attach lechis to certain additional utility poles in USR and elsewhere, but has not yet been able to attach the lechis because of the pending dispute between the Plaintiffs and USR (and others). Pursuant to the 2015 Eruv Agreement, we have given our consent to allow lechis to be attached to these poles and have conducted pre-installation walk-throughs with the Vaad HaEruv for these poles.

8. To date, RECO has provided its consent to the Vaad HaEruv to attach lechis to each of the utility poles in USR that I understand are currently needed for the Vaad HaEruv's expansion of the eruv into USR and elsewhere.

Verizon and O&R

9. I understand that Mr. Gudino of Verizon submitted a declaration on November 2, 2017 in connection with the Opposition to Plaintiffs' Motion for a Preliminary Injunction (Dkt. No. 29-10) in which he stated that "O&R has not sought the concurrence and approval of Verizon for the Plaintiffs or the Vaad HaEruv to use the poles identified Exhibit A to install lechis or construct an eruv, in any part of the Borough of Upper Saddle River." In fact, however, I, on behalf of O&R and RECO, have contacted Verizon on several occasions to address this matter since 2015, when the Vaad HaEruv approached me in connection with the eruv. Verizon has never responded to those communications.

10. After making several attempts to contact Verizon to discuss the eruv and having never received a response, RECO decided to move forward and permit the Vaad HaEruv to attach lechis to utility poles that are owned by Verizon and those that are subject to a joint use agreement between RECO and Verizon.

11. When counsel for USR began to contact O&R and RECO to demand that we remove the lechis and threatening legal action, as discussed below, I again reached out to Verizon and never received a response. On July 17, 2017, I reached out to Veronica Sanchez of Verizon regarding the eruv and never received a response. On July 18, 2017, I reached out to Frank Antisell of Verizon regarding the eruv and never received a response.

12. I understand that Mr. Gudino has also submitted a declaration on November 17, 2017 in connection with the instant Reply to Defendant's Opposition to the Motion for a Preliminary Injunction ("Gudino Reply Declaration") in which he confirmed that O&R reached out to a member of Verizon's engineering staff in connection with the eruv.

Letters and Emails from USR

13. On July 18, 2017, O&R and RECO received a threatening letter from counsel for USR stating that the “the Borough hereby directs that the devices and materials placed on the utility poles be immediately removed. Failure to comply with this directive will result in the Borough pursuing all available remedies to secure the removal of these devices and fixtures.” This letter was addressed to Thomas Brizzolara, Director of Corporate Affairs of O&R. Verizon was not a recipient.

14. On July 21, 2017, O&R and RECO received an email from counsel for USR demanding that all lechis attached to utility poles in USR be removed by July 26, 2017. The email stated, “If these items have not been removed by that time, the Borough will act to remove these devices, materials and items.” This email was addressed to “John Carley, Esq., Associate General Counsel of Rockland Electric Company”. Verizon was not a recipient.

15. On July 24, 2017, O&R and RECO received another letter from counsel for USR threatening that “failure to have the eruv removed by [July 26, 2017] will result in the Borough acting to have the eruv removed.” This letter was addressed to “John Carley, Esq., Associate General Counsel of Rockland Electric Company.” Verizon was not a recipient.

16. Because of these letters and emails for USR’s counsel, RECO has temporarily stopped conducting activities such as post-installation walk-throughs with the Vaad HaEruv covering the utility poles in USR.

O&R Press Releases

17. I understand that one of the declarations accompanying USR’s briefing indicated that “O&R complained about the political signs affixed to its utility poles.” Declaration of Ted Preusch, Exhibit H to Defendant’s Opposition to the Motion for a Preliminary Injunction (Dkt. No. 29-5). The Regional & Community Affairs office of O&R

periodically issues such widespread press releases to all municipalities in its service territory, as well as the service territory of RECO, asking them to remind their residents not to attach signs for the safety of O&R's employees. Our communication of September 29, 2015 was no different. It was not a press release that was specific to USR.

Executed on December 1, 2017.



KENNETH SULLIVAN