



Agenda Date: 2/20/13

Agenda Item: 2M

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 VERIFIED PETITION OF)	ORDER GRANTING
JERSEY CENTRAL POWER & LIGHT COMPANY FOR)	REQUEST FOR
REVIEW AND APPROVAL OF INCREASES IN AND)	INTERLOCUTORY REVIEW
OTHER ADJUSTMENTS TO ITS RATES AND)	
CHARGES FOR ELECTRIC SERVICE, AND FOR)	
APPROVAL OF OTHER PROPOSED TARIFF)	
REVISIONS IN CONNECTION THEREWITH; AND FOR)	
APPROVAL OF AN ACCELERATED RELIABILITY)	
ENHANCEMENT PROGRAM ("2012 BASE RATE)	BPU DKT. NO. ER12111052
FILING"))	OAL DKT. NO. PUC16310-12

Parties of Record:

- Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**
- Gregory Eisenstark, Esq., Jersey Central Power & Light**
- Martin C. Rothfelder, Esq., Public Service Electric and Gas Company**
- Tracey Thayer, Esq., New Jersey Natural Gas**
- Steve Goldenberg, Esq., for NJLEUC**
- Catherine Tamamsik, Esq., Township of Marlboro**
- Michael Grunt, Esq., Walmart**
- Janine G. Bauer, Esq., for AARP**

BY THE BOARD:

In response to a Board Order dated July 18, 2012 in Docket No. EO11090528, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a base rate case petition which was transmitted to the Office of Administrative Law ("OAL") on December 10, 2012 for hearing as a contested matter. The case was referred to Administrative Law Judge ("ALJ") Richard McGill.

According to the Division of Rate Counsel ("Rate Counsel"), after realizing that JCP&L had failed to prepare and file a new depreciation study, and the Company subsequently refusing to do so voluntarily, Rate Counsel filed a Motion to Compel a New Depreciation Study ("Motion") at the OAL on January 10, 2013. In response, by letter brief dated January 22, 2013, JCP&L argued that there is no requirement that a depreciation study be filed with a base rate case submission, that the Company's depreciation rates have been updated annually since the year 2000, and that its depreciation rates were reviewed in the Company's 2002 base rate case,

resulting in a change in the depreciation methodology and a decrease in the allowed depreciation expense. Additionally, JCP&L asserted that it would need three months to complete a depreciation study. Rate Counsel filed a reply reiterating its position that the Board cannot set just and reasonable rates without a current depreciation study. By Order dated February 1, 2013, ALJ McGill denied the motion to compel, "...it appearing that the arguments against the motion are more persuasive...."

On February 7, 2013, Rate Counsel filed a request with the Board for interlocutory review of ALJ McGill's decision arguing, in part, that the Board cannot determine whether the Company's rates are just and reasonable relying on a depreciation study that was last prepared seventeen (17) years ago, and that excessive depreciation expenses result in an excessive cost of service which, in turn, results in unreasonable rates.

An order or ruling of an ALJ may be reviewed interlocutory by an agency head at the request of a party. N.J.A.C. 1:1-14.10(a). Pursuant to N.J.A.C. 1:14-14.4(a), a rule of special applicability that supplements N.J.A.C. 1:1-14.10, the Board shall determine whether to accept the request and conduct an interlocutory review by the later of (i) ten days after receiving the request for interlocutory review or (ii) the Board's next regularly scheduled open meeting after expiration of the 10-day period from receipt of the request for interlocutory review. In addition, under N.J.A.C. 1:14-14.4(b), if the Board determines to conduct an interlocutory review, it shall issue a decision, order, or other disposition of the review within 20 days of that determination. Under N.J.A.C. 1:14-14.4(c), if the Board does not issue an order within the timeframe set out in N.J.A.C. 1:14-14.4(b), the judge's ruling shall be considered conditionally affirmed. However, the time period for disposition may be extended for good cause for an additional 20 days if both the Board and the OAL Director concur.

The legal standard for accepting a matter for interlocutory review is stated in In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982). In that case, the Court concluded that an agency has the right to review ALJ orders on an interlocutory basis "to determine whether they are reasonably likely to interfere with the decisional process or have a substantial effect upon the ultimate outcome of the proceeding." Id. at 97-98. The Court also held that the agency head has broad discretion to determine which ALJ orders are subject to review on an interlocutory basis. However, it noted that the power of the agency head to review ALJ orders on an interlocutory basis is not itself totally unlimited, and that interlocutory review of ALJ orders should be exercised sparingly. Id. at 100. In this regard, the Court noted:

In general, interlocutory review by courts is rarely granted because of the strong policy against piecemeal adjudications. See Hudson v. Hudson, 36 N.J. 549 (1962); Pennsylvania Railroad, 20 N.J. 398. Considerations of efficiency and economy also have pertinency in the field of administrative law. See Hackensack v. Winner, 82 N.J. at 31-33; Hinfey v. Matawan Reg. Bd. of Ed., 77 N.J. 514 (1978). See *infra* at 102, n.6. Our State has long favored uninterrupted proceedings at the trial level, with a single and complete review, so as to avoid the possible inconvenience, expense and delay of a fragmented adjudication. Thus, "leave is granted only in the exceptional case where, on a balance of interests, justice suggests the need for review of the interlocutory order in advance of final judgment." Sullivan, "Interlocutory Appeals," 92 N.J.L.J. 162 (1969). These same principles should apply to an administrative tribunal.

[90 N.J. at 100].

The Court held that interlocutory review may be granted "only in the interest of justice or for good cause shown." Id. In defining "good cause," the Court stated:

In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case.

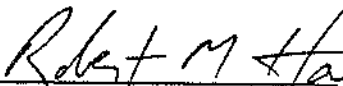
[Ibid.].


As stated above, the decision to grant interlocutory review is committed to the sound discretion of the Board, and is to be exercised sparingly to avoid piecemeal adjudication. However, given the possible impact of the calculation of depreciation on the determination of just and reasonable rates, the expected outcome of this case, interlocutory review is warranted here. Accordingly, the Board **HEREBY GRANTS** Rate Counsel's motion for interlocutory review of ALJ McGill's February 1, 2013 Order.

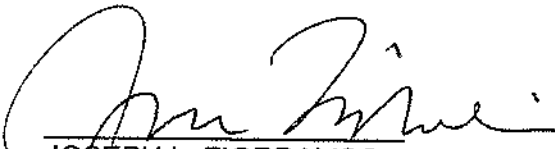
Pursuant to N.J.A.C. 1-14-14.4(b), the Board has twenty (20) days from this date, which is March 12, 2013, to issue a decision on the Motion. Since the date of the Board's next scheduled agenda meeting is currently scheduled for March 20, 2013, the Board **HEREBY REQUESTS** an extension of time for issuing a decision on Rate Counsel's motion as provided by N.J.A.C. 1-14-14.4(c), and **DIRECTS** that a copy of this Order be forwarded to the Director of the OAL with an explanation of the Board's request.

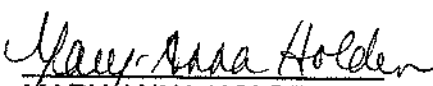
DATED: 2/20/13

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BY:


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PRESIDENT



JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
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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



**IN THE MATTER OF THE VERIFIED PETITION OF
JERSEY CENTRAL POWER & LIGHT COMPANY FOR
REVIEW AND APPROVAL OF INCREASES IN AND
OTHER ADJUSTMENTS TO ITS RATES AND CHARGES FOR ELECTRIC SERVICE, AND
FOR APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION
THEREWITH; AND FOR APPROVAL OF AN ACCELERATED RELIABILITY
ENHANCEMENT PROGRAM ("2012 BASE RATE FILING")**

**BPU DOCKET NO. ER12111052
OAL DOCKET NO. PUC16310-12**

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