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April 26, 2012

Via Hand Delivery

Honorable Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**RE: In the Matter of the Petition of Rate Counsel Requesting
a Board Order Directing Jersey Central Power and Light
Company to File a Base Rate Case Petition and Establishing
a Test Year of 2010
BPU Dkt No.: EO11090528**

Dear Secretary Izzo:

Pursuant to the schedule set forth in the Order entered by the Board of Public Utilities ("Board", "BPU") on March 21, 2012, the New Jersey Division of Rate Counsel ("Rate Counsel") submits this Letter Brief to the Board in the referenced matter. Enclosed please find an original and ten copies of Rate Counsel's Letter Brief. We are enclosing one additional copy of the materials transmitted. Please stamp and date the copy as "filed" and return it to our courier.

Procedural History

Rate Counsel initiated this matter via a Petition (“Petition”) and a supporting certification of Mr. Robert Henkes (“Henkes Cert.”) filed on September 9, 2011. Jersey Central Power and Light Company (“JCP&L”, “the Company”) filed its Answer (“Answer”) together with a supporting certification of Mr. Mark Mader (“Mader Cert.”) and Schedule (“Mader Schedule A”) on September 28, 2011. By Order dated November 30, 2011 (“November 30 Order”), the Board determined that it had jurisdiction over the question of whether JCP&L should be required to file a base rate case and appointed the President of the Board to serve as the presiding officer over the instant proceeding. On March 14, 2012 the Board entered a scheduling Order, which was later amended by a revised scheduling Order (“Amended Scheduling Order”) dated March 21, 2012. The Amended Scheduling Order set the dates for intervention requests and objections thereto as March 22 and March 29, 2012, respectively. The filing date for initial briefs was set for April 26, 2012, with reply briefs due May 10, 2012.

Summary

Rate Counsel’s Petition sought an Order pursuant to N.J.S.A. 48:2-21(b)(1) directing JCP&L to file a base rate case petition so that the Board may determine whether the Company’s current rates for electric service are just and reasonable. More specifically, in order to expedite the proceeding and provide the Board with actual data for review, Rate Counsel asked that the Board require JCP&L to file its petition using a 2010 historical test year.

Argument

Pursuant to N.J.S.A. 48:2-21, the Board has broad authority to set rates and tariffs for public utilities. The Board “may, after hearing, upon notice...[f]ix just and reasonable ...rates” for those utilities. N.J.S.A. 48:3-21. Furthermore, N.J.S.A. 48:2-21(b) specifically provides that the Board may initiate a base rate proceeding on its “own motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint.” Here, Rate Counsel petitioned the Board to order JCP&L to file a base rate case to consider whether JCP&L’s present rates are “just and reasonable.”

Over six years have elapsed since the Board set JCP&L’s current base rates for electric service. On May 31, 2005, the Board issued an Order establishing JCP&L’s current base rates (BPU Dkt. No.ER02080506, et al.). Since that time, notwithstanding the numerous changes affecting the local and national economic environment and the expiration of three-year amortizations established in its most recent base rate case in 2005,¹ JCP&L has not filed a request to change its base rates, thereby depriving its customers of an opportunity to review the Company’s revenues, expenses, and other facets of its operations typically reviewed in a base rate case. In contrast, within the past two years, all of the State’s other electric public utilities were subject to the scrutiny of a base rate case.²

Furthermore, JCP&L has a history of reliability problems which have adversely affected its electric customers.³ As set forth herein and in the Petition, a base rate case would help ensure

¹ See I/M/O JCP&L, BPU Dkt. No. ER02080506, et al (Order, 5/31/05), p.p. 13-14.

² See I/M/O Public Service Electric and Gas Company, BPU Dkt. No. GR09050422 (Order, 6/7/10); I/M/O Atlantic City Electric Company, BPU Dkt. No. ER09006664 (Order, 5/12/10); and I/M/O Rockland Electric Company, BPU Dkt. No.ER090080668 (Order, 5/12/10).

³ See I/M/O the Board’s Investigation into JCP&L’s Emergency Management of the Seaside Heights/Tom’s River July 5-8, 2003 Event, BPU Dkt. No. EO04050373; I/M/O the Board’s Investigation into JCP&L’s Outages of the July 4, 2003 Weekend, BPU Dkt. No. EX03070503; I/M/O the Board’s Investigation into JCP&L’s Storm Related

that JCP&L makes, and has made, the necessary capital improvements required to provide safe, adequate and reliable utility service. Moreover, the service provided by a utility is a factor which may be considered by the Board in determining what is a reasonable rate of return. See Petition of Valley Road Sewerage Co. for Approval of an Increase in its Rates for Sewer Service, 285 N.J. Super. 202 (App. Div., 1995).

As set forth below, and in Rate Counsel's Petition and supporting Certification of Mr. Henkes, there is reason to believe that JCP&L is earning in excess of its allowed rate of return. Rate Counsel is concerned that under its current base rates for service JCP&L is earning an unreasonable rate of return, outside of what may be considered "the zone of reasonableness." Furthermore, as set forth below, JCP&L has submitted nothing which seriously refutes Rate Counsel's findings. Therefore, for the reasons set forth below and in Rate Counsel's Petition and the supporting Certification of Mr. Henkes, the Board should issue an Order directing JCP&L to file a base rate case petition so that the Board may determine whether the Company's current rates are just and reasonable. In order to expedite the proceeding, Rate Counsel asks that the Board require JCP&L to file its petition using a historical test year. The use of a historical test year would provide the Board with readily available actual data and the historical data would not suffer from the uncertainty inherent in a projected test year.

I. The Board has the Authority and the Support of the Record to Order JCP&L to File a Base Rate Case.

The Board has a broad statutory grant of authority over public utilities:

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

Furthermore, the Board's grant of authority over public utilities encompasses the power to fix just and reasonable rates for utility service:

The board may after hearing, upon notice, by order in writing:

1. Fix just and reasonable individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates which shall be imposed, observed and followed thereafter by any public utility, whenever the board shall determine any existing rate, toll, charge or schedule thereof, commutation, mileage or other special rate to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential. In every such proceeding the board shall complete and close the hearing within 6 months and enter its final order within 8 months after the filing of the order of the board initiating such proceeding, when such proceeding is on the board's own motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint. [N.J.S.A. 48:2-21(b)(1)]

Notably, N.J.S.A. 48:2-21(b) specifically provides that the Board may initiate a base rate proceeding on its "own motion; or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint." Here, this matter was initiated by a Petition filed by Rate Counsel to which JCP&L filed an answer.

As set forth hereinbelow, and in Rate Counsel's Petition and supporting Certification, there is sufficient credible evidence to support an Order directing JCP&L to file a base rate case. Notably, the relief sought by Rate Counsel in its Petition is not a decrease or change in JCP&L's rates per se but, rather, the initiation of a base rate case where the Company's rate base, expenses service, rate of return and other factors considered in the determination of just and reasonable

rates may be examined. Although the Board is not bound by the New Jersey Rules of Evidence, reference thereto helps to frame the issue of sufficiency in the instant matter. The New Jersey Rule of Evidence sets forth three standards of proof: (1) preponderance of the evidence, (2) clear and convincing evidence, and (3) beyond a reasonable doubt. N.J.R.E. 101(b)(1). In deciding what standard to apply in an administrative agency action, the New Jersey Supreme Court set forth a balancing test. See Matter of Polk, 90 N.J. 550 (1982). In Matter of Polk, the New Jersey Supreme Court set forth the three factors to examine and balance in considering the applicable standard of proof: “(1) the nature of the private interest affected by the proceeding; (2) the countervailing governmental interest to be furthered by the proceeding; and (3) the risk of error in the ultimate determination created by the use of the particular burden of proof.” Matter of Polk at 562. The Supreme Court in Polk also recognized that “this jurisdiction has long recognized that the usual burden of proof for establishing claims before state agencies in contested administrative adjudications is a fair preponderance of the evidence”, the least stringent standard found in the N.J..R. E. Id at 560.

In the instant matter, the only private interest at stake is the expense of a base rate case. If, in the course of the base rate proceeding, JCP&L’s rates are found to be “just and reasonable,” the only burden is the expense of a base rate case. In contrast, if JCP&L’s rates are found not to be “just and reasonable,” its ratepayers will be adversely affected for as long as the unjust and unreasonable rates are in effect. Whether or not JCP&L’s rates will be re-set is not an issue in the instant matter. The “justness and reasonableness” of JCP&L’s rates will be considered in the course of a base rate proceeding. Weighing the expense of a base rate case against the likelihood that JCP&L’s ratepayers might be charged rates in excess of what is considered “just and reasonable,” suggests that the standard of review for deciding whether to order a rate case should

be liberal, even below that for the base rate case itself. In a base rate case, the standard for setting rates is “sufficient or substantial competent and relevant evidence.” Central R. Co. of N.J. v. Department of Public Utilities, 7. N.J. 247, 260 (1951). As set forth below, there is clearly “sufficient or substantial competent and relevant evidence” to support an inquiry, in the form of a base rate case, to examine whether JCP&L’s present rates are “just and reasonable.”

The Board’s enabling statutes clearly provide it with the authority to initiate a base rate case proceeding by issuing an Order directing JCP&L to file a base rate case. In fact, the Board acknowledged as much in its November 30 Order: “the Board is comfortable with the legal foundation for directing the filing of a base rate case under NJSA 48:2-21.” November 30 Order, p. 2. There is sufficient credible evidence in the record to support an Order directing JCP&L to file a base rate case.

II. There is Sufficient Credible Evidence to Suggest that JCP&L’s Existing Rates for Electric Service Yield Earnings in Excess of a Reasonable Rate of Return to Support Ordering the Company to file a Base Rate Case.

As set forth herein and in its Petition, there is reason to believe that JCP&L is earning an unreasonable return on its jurisdictional rate base and, accordingly, the Board should initiate a base rate proceeding in order to determine whether the Company’s current rates for service are just and reasonable. A utility’s rate of return is an important component of a base rate proceeding. Earnings form the numerator in the rate of return equation. Investment in rate base forms the denominator.

The Board’s regulation of a utility’s rate of return is intended to identify the fair and reasonable cost of capital invested in the utility’s rate base and to approve rates that give a soundly

managed utility an opportunity to recover those costs. A utility's rate of return should be "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Waterworks and Imp't. Co. v. Public Svc. Comm., 262 U.S. 679, 693 (1923). However, in fixing "just and reasonable" rates, the Board must balance the interests of utility investors and ratepayers. Federal Power Commission et al v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). Furthermore, the rate of return figure must fall "within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public." In re N.J. Power & Light Co., 9 N.J. 498, 534 (1952).

There is reason to believe that, under its current base rates, JCP&L is earning a return in excess of what may be considered within the "zone of reasonableness." Rate Counsel engaged expert consultant Mr. Robert Henkes to examine JCP&L's recent earnings. See Henkes Cert. Mr. Henkes examined the Company's overall earnings and rate base using publicly available data found in JCP&L's filings with the Federal Energy Regulatory Commission ("FERC") and, in turn, calculated the Company's current earned rate of return and evaluated its reasonableness.

Mr. Henkes found that JCP&L earned a rate of return of 12.37% in 2010 for its total electric operations (distribution, generation, and transmission). Henkes Cert., Para. 8. This is far in excess of its allowed overall rate of return, 8.50%, for its regulated distribution operations which was established in its most recent base rate case.⁴ Mr. Henkes ultimately concluded that JCP&L's current rate of return is excessive, i.e., outside the "zone of reasonableness." Henkes

⁴ I/M/O JCP&L, BPU Dkt. No. ER02080506, et al (Order, 5/31/05) ("2005 JCP&L Base Rate Case Order").

Cert., Para. 5. Mr. Henkes' conclusion is supported by a sensitivity analysis, wherein he applied different scenarios to his earnings calculation. As part of his analysis, Mr. Henkes developed a range of estimates using several different scenarios, including updates of the Company's authorized rate of return and capital structure. Henkes Cert., Para. 19-25. Mr. Henkes concluded that JCP&L's potential overearnings for its total electric operations (distribution, generation, and transmission) range from \$86 to \$90 million which, on a tax-grossed up basis, is equivalent to a revenue requirement excess range of \$146 to \$152 million. Henkes Cert., Para. 10.

The data upon which Mr. Henkes bases his analysis was subject to certain limitations, as discussed below and in his certification. However, Mr. Henkes believes that any potential inaccuracies in his analysis attributable to the data limitations will not change the conclusions of his earnings review. Henkes Cert., Para. 7. The range of scenarios considered in Mr. Henkes' analysis supports his conclusion.

Mr. Henkes acknowledged certain limitations of the available data upon which he based his analysis. Henkes Cert., Para. 7. For his analysis, Mr. Henkes used data gathered from JCP&L's annual FERC Form 1 submission, which Mr. Henkes understands forms the basis of the Annual Reports submitted to the Board by electric utilities. Henkes Cert., Para. 6, footnote 1. Mr. Henkes recognized the scope and limitations of using FERC Form 1 data. Henkes Cert., Para. 7. The FERC Form 1 provides only JCP&L's combined distribution, generation and transmission results, whereas the Board's ratemaking jurisdiction is limited to JCP&L's distribution operations and does not extend to its transmission and divested generation operations. Mr. Henkes' rate of return calculations, based on FERC Form 1 data, also encompassed generation and transmission operations, which fall outside the scope of the Board-

authorized return on its distribution operations. Furthermore, Mr. Henkes' calculation is based on 2010 FERC data.⁵ Overall, Mr. Henkes states that he does not believe that any potential inaccuracies attributable to the data limitations will affect his ultimate conclusion. Henkes Cert., Para. 7.

Mr. Henkes' analysis provides evidence that gives reason to believe that JCP&L is earning a return far in excess of its authorized return. A base rate case would address any doubts as to whether JCP&L is overearning, and whether its current rates for service are just and reasonable. Furthermore, a base rate case would provide the Board and JCP&L's customers with an opportunity to examine the Company's earnings in the context of establishing a reasonable rate of return for its investors. Additionally, a base rate case would also provide an opportunity to examine the Company's earnings in the context of its investment in its rate base, the plant and equipment needed to provide service to its customers. Finally, a base rate case would provide the Board with an opportunity to examine JCP&L's rate of return, capital spending, and operations in the context of an evaluation of the service provided to its customers.

III. JCP&L has Presented No Credible Argument to Refute the Calculations Which Show the Company is Over-earning.

JCP&L has not presented any substantive material in its Answer to support its contention that Mr. Henkes analysis and his analytical approach is flawed. In fact, JCP&L's analysis exhibits many of the characteristics which JCP&L regards as flaws in Mr. Henkes' analysis. As set forth below, JCP&L's criticism of Mr. Henkes' analysis is misplaced and unsupported.

⁵ Rate Counsel's analysis is based on 2010 FERC Form 1 data. The recent release of 2011 FERC Form 1 data did not leave sufficient time to conduct an analysis using 2011 data.

A. Contrary to JCP&L's Claims, Rate Counsel's Use of Achieved Rate of Return on Rate Base is Proper.

Rate Counsel's earnings analysis properly relies on a traditional ratemaking measure, JCP&L's achieved rate of return on its rate base. See Henkes Cert. In contrast, JCP&L mistakenly relies on a return on equity ("ROE") analysis in its attempt to refute the earnings analysis performed by Mr. Henkes. Rate Counsel's earnings analysis is based on a conventional rate base/rate of return calculation of the type typically used in a base rate case, focusing on the Company's achieved rate of return on its rate base. Earnings form the numerator in the rate of return equation. Investment in rate base forms the denominator. In contrast, JCP&L's analysis is based on a ROE calculation, looking at the earnings on the Company's outstanding equity balance.

The Company argues that Rate Counsel's achieved overall rate of return analysis should be disregarded by the Board in favor of an achieved ROE analysis because "in a base rate case, the parties most often litigate the appropriate ROE – not the overall rate of return." Answer, p. 2, Para. 1. This argument holds no water. In each and every base rate case, the revenue requirement and associated rate increase/decrease is determined by applying the utility's overall rate of return to that utility's rate base. The ROE is only relevant because it is one of the components considered in the determination of the utility's overall rate of return, together with a utility's cost of debt and capital structure. Furthermore, as the denominator, variations in the amount of outstanding equity could sway the Company's calculation.

The arguments advanced by JCP&L to advocate the use of ROE are specious at best. For example, the Company argues that the former Demand Side management ("DSM") regulations

contained an ROE earnings test. Answer, p. 2, Para. 2. However, as confirmed in the Company's Answer, the cited DSM regulations have by now been repealed and are no longer relevant and in effect. Id.

B. JCP&L's Criticism of Rate Counsel's Calculation of Net Operating Income is Unsupported by any Evidence.

Mr. Henkes' analysis is based on actual per books net operating income numbers because reliable data to make appropriate annualization, normalization or BPU ratemaking adjustments was not available from the publicly available data. See Henkes Cert., Para. 7 and 11. Nonetheless, Mr. Henkes stated in his Certification that the correction for these potential inaccuracies will not change the overall conclusions of his earnings review. Henkes Cert., Para. 7. JCP&L's challenges to Mr. Henkes' calculation of operating income and its materiality are without merit.

First, in its Answer JCP&L contends that Rate Counsel's analysis is flawed because Net Operating Income in Mr. Henkes' analysis "has not been adjusted for annualization, normalization or BPU ratemaking adjustments." Answer, p. 3, Para. 5. However, JCP&L's achieved ROE analysis contains the exact same potential inaccuracies. See Mader Schedule A. In other words, with one exception, JCP&L's achieved ROE analysis is based on per books income numbers that have not been adjusted for appropriate annualization, normalization or BPU ratemaking adjustments.⁶ Mader Cert., Para. 6. Schedule A.

⁶ JCP&L made an adjustment to its per books common equity balance to reflect purchase accounting adjustments associated with the 2002 FirstEnergy/GPU merger that are reflected in JCP&L's per books stockholder equity. Mader Cert., Para. 6.

Second, JCP&L's claim that such adjustments are material is unsupported by the evidence. Specifically, the Company makes the baseless statement that the "impact [of reflecting these ratemaking adjustments] would indeed be material." Answer, p. 3, Para. 5. However, JCP&L's materiality concerns were not supported by any analysis. Notably, the Company did not offer any sensitivity analyses incorporating income adjustments to support its materiality claim. Remarkably, even though JCP&L has easy and unlimited availability of and access to all information necessary to determine appropriate annualization, normalization or BPU ratemaking adjustments, the Company did not make such adjustments. Furthermore, as noted above, JCP&L did not even reflect any annualization, normalization or BPU ratemaking adjustments in its own ROE analysis. Mader Schedule A.

In sum, the Company in its Answer and attached Mader Schedule A has not provided one shred of information to support its claim that the impact of the annualization, normalization, and ratemaking adjustments "would indeed be material." This merely represents an empty statement not backed up by any facts, calculations or documentation whatsoever. The fact that JCP&L did not present these adjustments to refute Mr. Henkes' conclusions supports Mr. Henkes' statement that such adjustments would not change the overall conclusions of his earnings review.

C. Both Rate Counsel's and JCP&L's Analysis Include Non-Jurisdictional Revenue.

In the absence of public financial data for JCP&L's jurisdictional operations, Mr. Henkes relied on JCP&L's filed FERC Form 1 reports, which included non-jurisdictional revenue. In other words, the publicly available data used in Mr. Henkes' analysis included total revenue and financial data, including financial information from activities beyond the scope of the Board's

ratemaking jurisdiction. Mr. Henkes considered this limitation in his analysis and concluded that it would not affect his ultimate finding that JCP&L is earning in excess of its allowed return. Henkes Cert., Para. 7. JCP&L believes that Rate Counsel's analysis is flawed in that Rate Counsel's achieved overall rate of return analysis not only includes jurisdictional electric distribution assets, revenues and expenses, but also includes non-jurisdictional generation and transmission assets, revenues and expenses. However, JCP&L also considered data from non-jurisdictional in its analysis. See Mader Schedule A.

Notably, while JCP&L calls the inclusion of these non-jurisdictional items - such as generation and transmission data - a "significant error," it did not correct for this potential inaccuracy in its own analysis when it prepared its Answer and the accompanying ROE analysis on Mader Schedule A, even though the Company has easy and unlimited access to all information necessary to carve out the distribution-only equity, revenue and expenses.⁷ JCP&L's achieved ROE analysis on its Mader Schedule A similarly includes non-jurisdictional generation and transmission equity, revenues and expenses. In doing so, JCP&L has presented nothing to refute Mr. Henkes' findings.

D. JCP&L's Criticism of Rate Counsel's Treatment of ADIT is Without Merit.

JCP&L's mischaracterizes Mr. Henkes' treatment of accumulated deferred income taxes ("ADIT"). Specifically, JCP&L states that "Rate Counsel's consultant admits that his rate base deduction for accumulated deferred income taxes ("ADIT") is overstated because he included

⁷ Rate Counsel only had access to the publicly available FERC Form 1 financial information, which did not allow for segregation of the Company's generation, transmission and distribution operations.

non-property ADIT (Henkes Certification, paragraph 16) which results in JCP&L's rate base being understated in Rate Counsel's analysis." Answer, p. 4, Para. 6. JCP&L's criticism here is wrong on two counts. First, the Account 282 ADIT balance used as a rate base deduction in Mr. Henkes' analysis (See Henke Cert., Schedule RJH-2, line 5) represents only property-related ADIT and does not include non-property ADIT as erroneously claimed by JCP&L. Second, Mr. Henkes did not "admit" that his rate base deduction for ADIT is overstated. Rather, Mr. Henkes stated that the ADIT balance used by him as a rate base deduction "may not be completely accurate" as it "may include ADIT items that may not be properly be treated as a rate base deduction for ratemaking purposes." Henkes Cert., Para. 16. In sum, there is nothing in the record to support JCP&L's contentions that Mr. Henkes overstated the ADIT deduction. Furthermore, contrary to JCP&L's assertions, Mr. Henkes did not categorically state that his rate base deduction for ADIT was overstated.

E. Both Rate Counsel's and JCP&L's Analyses Include Non-Jurisdictional Revenue.

Another unsupported criticism leveled by JCP&L at Mr. Henkes' analysis concerns weather normalized revenues. In its Answer, JCP&L also states that Rate Counsel's achieved rate of return "calculations did not use weather-normalized revenues, which results in an overstatement of revenues during the 2010 period examined," and "the Net Utility Operating Income used in the consultant's analysis includes earnings from non-rate base related items...." Answer, p. 4, Para. 6. While JCP&L characterizes this as a "significant error", the Company offers no proof in the form of actual source documentation and pro-forma adjustment calculations to support its overstatement claim. Id. Moreover, the Company's achieved ROE

analysis on its Mader Schedule A similarly did not use weather-normalized revenues and similarly included non-rate base earnings. Thus, JCP&L's analysis contains these exact same so-called "significant errors"⁸ and the Company did not make any adjustments to them, even though JCP&L has easy and unlimited access to the data necessary to make these adjustments.

In sum, JCP&L has provided nothing to support its claims regarding Mr. Henkes' calculation of revenues. Furthermore, JCP&L's calculation of revenues follows the approach used by Mr. Henkes, thereby implicitly bolstering the merit of Mr. Henkes' revenue calculations.

F. Unlike JCP&L's Analysis, Rate Counsel's Analysis Properly Reflects Net Utility Operating Income as a Return Percentage of Net Utility Investments (Rate Base).

Notably, Rate Counsel's achieved rate of return analysis appropriately includes only Net Utility Operating Income and does not include non-operating income and income deductions that are "below-the-line," which are not included in traditional rate base rate of return ratemaking. "Below the line" income refers to income from non-utility operations, which is not considered in establishing the revenue requirement in traditional rate base rate of return ratemaking. The net Utility Operating Income is then divided by the net Utility Rate Base in order to derive the overall rate of return for JCP&L's utility operations. Rate Counsel's net Utility Rate Base also does not include any "below-the-line" investments of the sort not included in traditional rate base rate of return ratemaking. Henkes Cert., Para. 14. By contrast, the Company's achieved ROE analysis represents nothing more than a division of the per books Net Income Available to Common Stock in the numerator and Common Equity Balance in the denominator. See Mader

⁸ The Company's per books net income available to common stockholders used in its ROE analysis has not been weather-normalized and contains the same income from non-rate base items.

Schedule A. The Company simply uses book net income, making no distinction between utility operating income and other income. Thus, the Net Income Available to Common Stock computed by the Company inappropriately includes non-operating income and income deductions that are always treated as “below-the-line” items for ratemaking purposes since they are not related to the utility operations of JCP&L. Similarly, the common equity balance making up the denominator in JCP&L’s ROE analysis includes such “below-the-line” investments as Construction Work In Progress (“CWIP”), Non-Utility Property, Plant Held for Future Use, etc. that are never considered for ratemaking purposes by this Board. Mader Schedule A. Here, Rate Counsel’s calculation of Net Utility Operating Income reflects the traditional measure used for ratemaking purposes, unlike the simple per books net income figure used by the Company is its achieved ROE calculation.

G. JCP&L’s Achieved ROE Analysis is Unsupported by Documentation.

The achieved rate of return analysis presented by Rate Counsel in Mr. Henkes’ Certification shows all calculations and source references in support of the figures shown in his analysis. See Henkes Cert., Schedules RJH-1 through RJH-3. In contrast, the one-page achieved ROE analysis presented by JCP&L is not supported by any source references, actual source documentation, or calculations in support of many of the numbers presented on Mader Schedule A. For example, JCP&L did not provide worksheets showing how the five-quarterly average common equity balances and equity adjustments balances were determined. See Mader Schedule A. Significantly, these balances form the denominator in JCP&L’s ROE calculation.

This significant omission of supporting documentation is in addition to the numerous other flaws in JCP&L's analysis which are set forth above.

IV. Recent Reliability Problems Warrant a Base Rate Case Review of JCP&L's Capital Spending and Expenses.

JCP&L's ratepayers continue to suffer the effects of the Company's reliability and service problems. Since the date of the filing of Rate Counsel's Petition, the Board has addressed several service-related issues affecting JCP&L customers. First, the Board concluded an investigation of underground fires and explosions affecting JCP&L customers in Morristown.⁹ More recently, the Board investigated the Company's and other electric utilities' response to storm-related outages.¹⁰ As set forth in the Petition, a base rate case would help ensure that JCP&L makes, and has made, the necessary capital improvements required to provide safe, adequate and reliable utility service, noting that one way for a utility to increase its rate of return for its investors in the short term is to reduce its investment in the plant and equipment needed to provide its customers with safe, adequate and proper service. A base rate case would tie the utility's rate of return to its rate base. Moreover, the service provided by a utility is a factor which may be considered by the Board in determining what is a reasonable rate of return. See Valley Road Sewerage at 209-10. This aspect of a base rate case is of particular concern for JCP&L, which had experienced several significant service reliability incidents in the past and

⁹ See I/M/O Board's Investigation into Reliability Issues Related to Jersey Central Power & Light Company's Morristown Underground Distribution System, BPU Dkt. No. E011090526 (Special Reliability Master Report and Analysis, 2/10/12).

¹⁰ See I/M/O the Board's Review of New Jersey's Utilities' Response to Hurricane Irene, BPU Dkt. No. EO11090543 (Order Accepting Staff's Report and Requiring Electric Utilities to Implement Recommendations, 12/15/11).

continues to present service and reliability problems.¹¹ JCP&L's recent reliability problems are particularly relevant because in its most recent base rate case the Company was provided with an additional \$36.1 million per year in revenue amortized over three years to address reliability problems. The \$36.1 million continues to be collected in rates even though the amortization period has long since ended.¹²

Furthermore, as noted in the Petition, unlike JCP&L, the capital budgets and spending of the State's other three electric utilities were examined in recent infrastructure investment proceedings before the Board.¹³ JCP&L's capital budget and spending has not been reviewed in a proceeding since its last base rate case where the Board considered reliability, nor have its expenses been subject to scrutiny since its last base rate case. In sum, JCP&L's continuing saga of service and reliability problems merit the initiation of a base rate case.

V. A Historical Test Year Should Be Used if the Board Orders the Company to File a Base Rate Case.

If the Board directs the Company to file a base rate case, Rate Counsel respectfully submits that the Company should be required to file its case using a historical test year. A historical test year would provide the Board with readily available actual data and would help

¹¹ See I/M/O the Board's Investigation into JCP&L's Emergency Management of the Seaside Heights/Tom's River July 5-8, 2003 Event, BPU Dkt. No. EO04050373; I/M/O the Board's Investigation into JCP&L's Outages of the July 4, 2003 Weekend, BPU Dkt. No. EX03070503; and I/M/O the Board's Investigation into JCP&L's Storm Related Outages of August 2002, BPU Dkt. No. EX02120950.

¹² This revenue requirement amount represents \$63.2 million of net additions to its rate base, a three-year amortization of one-time operation and maintenance costs incurred in 2003-2005, and a three-year amortization of tree-trimming costs incurred in 2003-2005. See 2005 JCP&L Base Rate Case Order, p. 14.

¹³ See I/M/O Public Service Electric and Gas Company, BPU Dkt. No. E011020088; I/M/O Atlantic City Electric Company, BPU Dkt. No. EO09010054; and I/M/O Rockland Electric Company, BPU Dkt. No. EO09010064. By letter dated July 6, 2010, JCP&L withdrew its infrastructure investment program petition (BPU Dkt. No. EO09010055).

expedite a base rate case review. Furthermore, the historical data would not suffer from the uncertainty inherent in a projected test year.

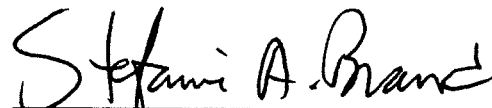
In its Petition, Rate Counsel requested that the Board order JCP&L to file a base rate case using a historical 2010 test year. See Petition, p. 6. Given the passage of time since the filing of the Petition, more recent actual data is available to enable a base rate filing incorporating a full 12-month historical test year extending beyond 2010. The salient factor is the filing of a base rate case incorporating a historical test year. Thus, Rate Counsel would not object to incorporating a more recent 12-month historical test year in a base rate case filing.

Conclusion

Rate Counsel has established that New Jersey ratepayers are entitled to the requested relief. The Board has authority to order the requested relief. Accordingly, Rate Counsel hereby respectfully asks that the Board issue an Order directing JCP&L to file a base rate case petition using a historical test year so that the Board may expeditiously conduct a proceeding to determine whether the Company's current rates for electric service are just and reasonable.

Respectfully submitted,

By:



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c: Service List (via electronic mail)

**I/M/O the Matter of the Petition of
Rate Counsel Requesting a Board
Order Direction Jersey Central Power
and Light Company to File a Base
Rate Case Petition and Establishing a
Test Year of 2010
BPU Docket No.: EO11090528**

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