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November 13, 2017

Via Overnight Mail

Honorable Gail M. Cookson, A.L.J.
Office of Administrative Law
33 Washington Street
Newark, NJ 07102

**Re: In the Matter of the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Monmouth County Reliability Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public
BPU Docket No. EO16080750
OAL Docket No.: PUC 12098-16**

Dear Judge Cookson:

Please accept this letter brief on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in reply to the Initial Brief of Petitioner Jersey Central Power & Light Company (“JCP&L” or “the Company”) in the referenced matter.

Comparison of the Cost Alternatives

The Company, in its initial brief, fails to address the fact that “[T]he Board must consider the cost that New Jersey electricity customers will bear in connection with the Project.”¹ Instead, JCP&L summarily asserts that it has met its burden of proof by comparing the estimated cost of the Company’s preferred route (Route B) as being less than the cost of the Company’s chosen

¹ Order, IMO the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna – Roseland Transmission Line), BPU Dkt. No.: EM09010035 (2010).

alternative (Route A). The evidence and argument advanced by the Company is insufficient to meet the legal requirement to examine costs. The Company did not adequately review other viable, less costly alternatives, only the more expensive “strawman” it proposed. This is insufficient to meet the legal requirements established by the New Jersey Supreme Court decision in In re Public Service Electric & Gas Co., 35 N.J. 358, 377 (1961). That requirement, which was cited by the Board in Susquehanna Roseland², requires applicants to review “Alternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost.”

The only evidence in the record on which the Court can rely regarding the costs of the Monmouth County Reliability Project (“MRCP”) is the 2016 \$111 million estimate provided by the Company in discovery. (T. 4/4/2017, p. 96, l. 17-19, S-MCRP-10.) That amount did not include many costs yet to be determined, most significantly the not yet negotiated New Jersey Transit Right of Way costs, including any terms and conditions that may apply. With respect to this omission, JCP&L states in its Initial Brief that “having the terms and conditions of the [NJ Transit ROW] at this time is really irrelevant because we don’t have the cost and terms and conditions that would be associated with the other routes,” (JCP&L Initial Brief at p. 66.) and that “Apples-to-apples comparisons would be highly impractical.” (JCP&L Initial Brief at p. 66). While some uncertainty with respect to potential costs may be unavoidable, to sustain its burden of proof the Company must attempt to provide an estimate of the total costs of the proposed project and alternatives so that the Board can determine if the costs are reasonable and just. As Rate Counsel witness Mr. Peter Lanzalotta (RC-2, p. 20, l. 6-7) noted in his direct

² Order, IMO the Petition of Public Service Electric & Gas Company for a Determination pursuant to the Provisions of N.J.S.A. 40:55D (Susquehanna – Roseland Transmission Line), BPU Docket No.: EM09010035, paragraph 21 (April 21, 2010).

testimony, the Board needs to know the terms and conditions of the New Jersey Transit access for the Company's proposed route before approving any project.

There has been no demonstration that the preferred route is the least costly alternative to remedy the potential NERC violation, or, that potentially less costly alternatives will fail to achieve this goal. The two routes examined in detail by the Company, with respect to cost comparison, were the only alternatives reviewed, in detail, out of 17 potential routes that were identified by the Company. (JC-7, Exhibit PWS 1.) Other alternatives were offered by the parties and subject to examination and argument regarding both feasibility and cost during the proceeding. (See, Rate Counsel Initial Brief, Point II. B., p. 19; Joint Municipal Group Initial Brief, Point IV. A., p. 27; and, Residents Against Giant Electric, Inc. Initial Brief, Point F. 5. and 6., p. 62.) The Company failed to address the cost of other potential alternatives in any significant way, offering only a more detailed explanation of the Company's preferred route. As Rate Counsel witness Mr. Lanzalotta noted in his direct testimony, "The Company did not develop cost estimates for these alternatives, so it is difficult to say how much the Company would spend for the additional benefits the Company attributes to the Project." (RC-2, p. 13, l. 9-13.). Based upon the evidence in the record, the Company has failed to carry its burden of proof to demonstrate that the costs to ratepayers of the proposed route are reasonable when compared with the potential alternatives.

In its initial brief, the Company is simultaneously arguing that by comparing the cost of its selected and preferred routes it can demonstrate the reasonableness of the project's cost, but that without knowing the costs of the NJ Transit ROW, the Company cannot compare the costs of the alternatives. JCP&L cannot have it both ways. It cannot say the cost of the ROW is irrelevant when justifying the overall cost of the project, and then argue it is indispensable when

comparing the cost of the alternatives.³ This further demonstrates that the Company has failed to meet its burden.

Comparison of the Feasibility of Alternatives

As acknowledged by JCP&L in its brief, N.J.S.A 40:55D-19 provides for the balancing of interests including a comparison of “Alternative sites and their comparative advantages and disadvantages, including cost.” To justify its selection, JCP&L argues that “it has completed a comprehensive route selection process and chosen the route that will result in the less [sic] cumulative impacts compared to the available alternative routes.” (JCP&L Initial Brief at p. 7.) However, the “cumulative impacts” were not considered in the elimination of a number of identified alternatives. The Company eliminated the alternatives because they were not as “robust” as its preferred alternative, as argued by JCP&L; “All of these alternatives were given serious consideration; however, each was rejected because it did not provide the same level of robustness as the MCRP...” (JCP&L Initial Brief, p. 17-18.)

Each of the alternatives that JCP&L dismisses resolves the potential NERC violation which is driving the need for the Project. (RC-2, p. 11, l. 19-20.) Mr. Lanzalotta addressed these alternatives, stating: “Each of these alternatives would remedy the NERC violation...these alternatives were judged, in part, by how well they addressed reliability needs other than this NERC violation.” (RC-2, p. 11, l. 21-22.) Residents Against Giant Electric, Inc. fully addresses the resolution of the NERC violation and the Company’s desire for a “robust” project in rejecting the alternatives. (Residents Against Giant Electric, Inc. Initial Brief, p. 18-22.) The Joint Municipal Group, in its Initial Brief, addresses some of the comparative advantages of the alternatives examined in this proceeding. (Joint Municipal Group Initial Brief, p 16-21.) The

³ Both the Joint Municipal Group and the Residents Against Giant Electric, Inc. addressed this issue in their briefs. (Joint Municipal Group Initial Brief, Point IV.A., p. 36; Residents Against Giant Electric, Inc. Initial Brief, Point F. 1., p. 58.)

Company, however, failed to compare the “cumulative impacts” of the alternatives, relying only on its preferred project as it was more “robust” in resolving the potential NERC violation.

The Company preferred project suffers from some of the same reliability defects attributed to these alternatives. JCP&L argues that alternatives were rejected for adding length to existing transmission lines that will be subject to faults. “[T]he other alternatives did not provide the same level of robustness...[they] either added exposure to existing networked transmission lines [or] added transmission lines to existing corridors...” (JC-8 at p. 18.)

However, the Project creates a new transmission line 10 miles long which is subject to electrical faults. This shortcoming is shared by all the overhead transmission line alternatives to some degree. (RC-2, p. 12, l. 9-13.) As for part of the system remaining in a radial configuration, these radial feeds are not NERC violations. (RC-2, p. 12, l. 19-20.) In addition, there is a trade-off between having only one transmission line in a ROW and having more than one transmission line in a ROW. The Company has opined that having only one transmission line in a ROW, while more reliable, may not be practical for cost or environmental reasons. (RC-2, p. 13, l. 4-8.) As Mr. Lanzalotta states, “While there may be additional reliability benefits associated with the Project compared to the alternatives, we should be able to consider how much these benefits are going to cost.” (RC-2, p. 13, l. 16-18.)

JCP&L’s reliance on N.J.A.C. 14:5-7.1(a) to support its selected route is misplaced. The Company relies on that portion of the regulation stating that it should “[m]ake use of available railroad or other right of way...” but ignores the rest of the sentence which says that it should do so “[w]henver practicable, feasible and with safety.” There is no evidence in the record not only to establish the cost, but also the practicality, feasibility or safety of using the NJ Transit ROW.

Reliance Upon Excluded Evidence

Rate Counsel believes JCP&L, in its initial brief, inappropriately referred to evidence that was subject to extensive argument and ultimately excluded from the record. “While JCP&L cannot cite to the non-admitted portion of Mr. Hosempa’s Rejoinder Report...it is likely that the required upgrades would be far more substantial...” A full paragraph is devoted to discussion of and argument about conclusions and assumptions that are drawn from the previously excluded evidence, even though the Company states that “[J]CP&L has been prohibited from introducing its analysis of the impacts into the record of this proceeding.” (JCP&L Initial Brief at p. 29-30) No part of any decision here can be based on the excluded evidence.

This reference to excluded evidence only serves to illustrate the lack of evidence supporting the Company’s petition. Only by referencing and relying on argument from evidence outside the record does the Company hope to bolster its position in support of the relief sought in its petition. The effort to “bootstrap” its argument in this manner should be rejected.

For all the foregoing reasons and those contained in the Initial Briefs of Rate Counsel, the Joint Municipal Group and Residents Against Giant Electric, Inc. the relief requested in the petition should be denied.

Respectfully submitted,

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By:



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JWG
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I/M/O Jersey Central Power & Light
Company Pursuant to N.J.S.A. 40:55D-19 for
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