



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE BOARD'S ESTABLISHMENT)
OF A GENERIC PROCEEDING TO REVIEW THE)
PRUDENCY OF COSTS INCURRED BY NEW JERSEY)
UTILITY COMPANIES IN RESPONSE TO MAJOR)
STORM EVENTS IN 2011 AND 2012)

ORDER DENYING MOTION)
FOR RECONSIDERATION)
AND CLARIFYING ORIGINAL)
ORDER)

) DOCKET NO. AX13030196

IN THE MATTER OF THE BOARD'S REVIEW)
THE PRUDENCY OF THE COSTS INCURRED BY)
JERSEY CENTRAL POWER & LIGHT COMPANY IN)
RESPONSE TO MAJOR STORM EVENTS IN 2011)
AND 2012)

) DOCKET NO. EO13050391

Parties of Record:

- Ralph LaRossa**, Public Service Electric and Gas Co.
- Gregory Eisenstark, Esq.**, for Jersey Central Power & Light Co.
- Vince Maione**, Atlantic City Electric Co.
- John McAvoy**, Rockland Electric Co.
- Tracey Thayer, Esq.**, New Jersey Natural Gas
- Stefanie A. Brand, Esq.**, Director, Division of Rate Counsel

BY THE BOARD:

By this Order the New Jersey Board of Public Utilities ("Board") considers a motion for reconsideration and/or clarification of its March 20, 2013 Order ("March Order") filed by Jersey Central Power & Light Company ("JCP&L" or the "Company"). For the reasons stated below, the Board denies reconsideration but clarifies certain aspects of that Order.

BACKGROUND AND PROCEDURAL HISTORY

On March 20, 2013 the Board issued an Order establishing a generic proceeding to review the prudence of costs incurred by New Jersey utilities in response to multiple major storm events in 2011 and 2012 ("Generic Storm Costs Proceeding"). Among other things, the March Order requires any utility that seeks reimbursement for these costs from its ratepayers to file a detailed expense report by July 1, 2013, for evaluation and prudence review under its own separate sub-

docket within the Generic Storm Costs Proceeding. March Order at 3.

In July 2012, the Board had ordered JCP&L to file a base rate case with 2011 as the historical test year.¹ The base rate case was ordered to allow the Board to review JCP&L's financial integrity and adequacy of capital expenditures, and to provide insight as to the company's operational efficiency and organizational effectiveness. Rate Petition Order at 12-13. JCP&L filed the base rate case on November 30, 2012, and included its costs related to the 2011 storms including Hurricane Irene.² The matter was transmitted to the Office of Administration Law ("OAL") and is pending before the Honorable Richard McGill, Administrative Law Judge ("ALJ"). ALJ McGill issued a procedural order on March 6, 2012, establishing a schedule with evidentiary hearings beginning on September 12, 2013 continuing through October 17, 2013, with two specific hearings scheduled on November 19 and 20, 2013 to focus on the depreciation study the Board ordered JCP&L to file by June 14, 2013.

On February 22, 2013, JCP&L filed an "update" to its base rate case filing which included a request for recovery of JCP&L's costs for preparation, response and recovery related to Superstorm Sandy and the subsequent Nor'easter snowfall. The requested costs for these 2012 Major Storm Events total approximately \$603 million.

On March 14, 2013, the Board posted its agenda for the March 20, 2013 meeting which contained Agenda item 2J, the Generic Storm Costs Proceeding matter. On March 18, 2013, two days before the Board meeting, JCP&L filed a letter with the Board requesting that the Board not sever JCP&L's costs incurred as a result of storm events in 2011 and 2012 as their base rate case was pending. As noted above, the Board voted at the March 20, 2013 meeting to open the Generic Storm Costs Proceeding, applicable to all utilities seeking cost recovery of expenditures incurred in connection with the 2011 and 2012 Major Storm Events.

On April 4, 2013, the Board sent a letter to the OAL seeking the return of the storm expense issues from the JCP&L base rate case. Simultaneously, JCP&L filed a letter motion with the Board seeking reconsideration and/or clarification of the Generic Storm Costs Proceeding ("Motion") and on April 5, 2013, by letter motion, JCP&L asked Judge McGill to defer the Board's request for the return of the storm cost issues to the Board until the Board acted on its Motion. On April 15, 2013, Judge McGill, by letter, returned the 2011 and 2012 storm cost issues to the Board for review, and denied JCP&L's request to stay the pending base rate case pending resolution of the Generic Storm Costs Proceeding.³

The Division of Rate Counsel ("Rate Counsel") filed a letter reply on April 16, 2013 to the Motion and to JCP&L's letter to ALJ McGill. JCP&L filed a response to Rate Counsel's reply on April 19, 2013.

¹ In re 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, Docket No. EO11090528 (Order dated July 31, 2012) ("Rate Petition Order").

² In the Matter of the Verified Petition of Jersey Central Power and 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 Revision in Connection Therewith; and for Approval of an Accelerated Reliability Enhancement Program ("2012 Base Rate Filing"), Docket No. ER12111052, OAL Docket No. PUC 16310-2012N.

³ Judge McGill returned the entire supplemental filing submitted by JCP&L on February 22, 2013, along with the references to recovery of expenditures related to Major Storm Events interspersed in Exhibits JC-2, JC-3, JC-4 and JC-13.

JCP&L'S MOTION FOR RECONSIDERATION AND/OR CLARIFICATION

On April 4, 2013, JCP&L filed the Motion pursuant to N.J.S.A. 14:1-8.6 seeking a Board ruling that JCP&L's costs for the 2011 and 2012 Major Storm Events will remain under review in the pending base rate case and not be considered in the Generic Storm Costs Proceeding. Alternatively, JCP&L seeks clarification of the procedures, process and safeguards that the Board will employ to coordinate the Generic Storm Costs Proceeding with the base rate case to enable recovery of costs for the major storm events in 2011 and 2012, including holding the base rate case in abeyance until the Generic Storm Costs Proceeding is completed. Motion at 2.

JCP&L argues the Board should have distinguished its situation from that of the other utilities that will seek to recover storm costs because it is already involved in a pending base rate case, one which the Company was ordered to file, in which the 2011 and 2012 storm costs are an issue. The pending JCP&L base rate case, as with all base rate cases, includes both capital and operations and maintenance ("O&M") costs for the 2011 and 2012 storms, and JCP&L has filed both direct and supplemental testimony regarding its service restoration efforts and major storm costs. The ALJ has set a procedural schedule, discovery has been exchanged, notices of the proposed rate increase and proposed rate structure have been published in the required newspapers, and six public hearings in JCP&L's service territory are have been completed (beginning April 8, 2013).

JCP&L claims that severing the storm costs issue from the base rate case for review in the Generic Storm Costs Proceeding would be fundamentally unfair because just and reasonable rates cannot be established without consideration of the known, significant and measurable capital and O&M costs associated with the 2011 and 2012 Major Storm Events. Separate review of storm costs will likely delay a "comprehensive" conclusion to the base rate case that will incorporate all relevant costs and will therefore also delay the company's "ability to recover these costs which could result in significant adverse financial consequences." Motion at 6.

The 2011 major storms costs fall within the Board-ordered 2011 test year in the base rate case and, according to JCP&L, the 2012 major storm costs are significant, known and measurable costs that would ordinarily be recognized as post-test year adjustments in a base rate case. JCP&L cites the July 31, 2012 Board Order to argue that the Board stated JCP&L would have the opportunity to make a record regarding out-of-period costs.

According to JCP&L, the establishment of the Generic Storm Costs Proceeding will facilitate single issue ratemaking, which the Board has historically disfavored. The Board's long-standing policy and practice favors consideration of all of a utility's costs within the context of a base rate case rather than through single-issue ratemaking. Motion at 7 (citing In re Public Service Coordinated Transport, 5 N.J. 196, 216 (1950)). Since JCP&L has a base rate case pending, all issues including the major storm costs from 2011 and 2012 should be considered within that proceeding and not within a generic proceeding.

JCP&L further argues that the Board has a long-standing practice to only use generic proceedings to address issues of forward-looking policies, not to conduct retrospective review of an individual utility's expenditures. The examination of the costs of the various utilities, when the storms affected each utility differently, will yield such different results that there is nothing "generic" about the issues related to prudence of storm recovery costs. Id. at 9.

Finally, JCP&L argues that because the Generic Storm Cost Proceeding has no established "process," the company will be deprived the well-defined, essential rights and processes of a base rate case under the New Jersey Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1-1-1.1 et seq.). If all the Company's costs are not considered in the base rate case, duplication of process will result with excess time and money expended. Finally the Company asserts that if the Board attempts to re-set JCP&L's base rates without including the costs incurred for the 2011 and 2012 major storms, the result may produce confiscatory, unjust and unreasonable rates that would be unlawful and unconstitutional. Motion at 10-11.

In the alternative, JCP&L asks the Board to issue an Order clarifying the procedures and processes the Board will employ to conduct the Generic Storm Costs Proceeding and the pending JCP&L base rate case, and hold the base rate case in abeyance pending conclusion of the first proceeding. The Company contends that the Board gave no explanation as to how resolution of the Generic Storm Costs Proceeding and the pending base rate case will allow JCP&L to arrive at new base rates that reflect all relevant costs to meet the just and reasonable standard. JCP&L then identifies six procedural issues and six coordination issues, illustrative and not exhaustive, it seeks to have clarified that it claims raise substantive and due-process, as well as unnecessary duplication concerns. Id. at 12-13.

JCP&L requests the Board to issue an Order of Clarification with the following nine specific directions to ALJ McGill: (1) hold the base rate case in abeyance pending the final Order in the Generic Storm Costs Proceeding; (2) confirm that JCP&L's testimony and schedules relating to its 2011 and 2012 Major Storm Costs become part of the record in the Generic Storm Costs Proceeding; (3) apply JCP&L's served and published public hearing notices to the Generic Storm Costs Proceeding; (4) confirm the Generic Storm Costs Proceeding will be conducted as a contested case with discovery and evidentiary hearings and briefs; (5) deem the Board's final order at the conclusion of the Generic Storm Costs Proceeding a final agency action; (6) transmit the final Generic Storm Costs Proceeding Order to OAL to become part of the record in JCP&L's base rate case; (7) re-commence the base rate case after the Generic Storm Costs Proceeding is final allowing JCP&L to re-calculate its revenue requirement and proposed base rates incorporating the results of the Board's order; (8) assume the base rate case will proceed to conclusion at OAL with the ALJ issuing an Initial Decision addressing all issues; and (9) transmit the Initial Decision to the Board for review and a final order.

JCP&L argues that the Board should order AJL McGill to hold its pending base rate case in abeyance pending the conclusion of the Generic Storm Costs Proceeding because two overlapping proceedings reviewing JCP&L's costs and rates will lead to unavoidable and excessive confusion, wasteful duplication of effort and potentially inconsistent results. Further, a determination of the allowed costs for both the 2011 and 2012 Major Storms must be incorporated into JCP&L's cost of service for any new "just and reasonable" rates to be meet the constitutional standards. JCP&L continues that, at a minimum, the Board should direct ALJ McGill to withhold a base rate case Initial Decision until the Generic Storm Costs Proceeding is concluded, and JCP&L's Major Storm Costs are incorporated into the base rate case to ensure that the resulting base rates encompasses all relevant costs. Motion at 15.

RATE COUNSEL RESPONSE

On April 16, 2013, Rate Counsel filed a response to the Motion ("Response"), stating that the Motion alleges no errors of fact or of law that warrant reconsideration of the Board's decision, as required under N.J.A.C. 14:1-8.6.

Rate Counsel states that it is a long standing practice for the Board to review certain generic utility practices and expenditures outside the context of a base rate case for the purpose of developing uniform standards. Citing a number of issues examined by the Board through generic proceedings, Rate Counsel argues that the Board has clear precedent to support review of certain issues outside of a base rate case without violating the single issue ratemaking principle. Response at 6. Although Rate Counsel recognizes that the 2011 Major Storm Event costs can be scrutinized and reviewed in the generic proceeding prior to being reincorporated into rates based on the 2011 test year, allowing the 2012 Major Storm Event costs to remain in the base rate case would in fact violate the single issue ratemaking principle. Accordingly, Rate Counsel recommends that, following the Generic Storm Costs Proceeding, recovery of those 2012 Major Storm Event costs that are found to be reasonable and prudent should be deferred to JCP&L's next base rate case. Response at 6-7.

Rate Counsel disagrees with JCP&L's claim that the base rate case must be held in abeyance pending the resolution of the Generic Storm Costs Proceeding. The concerns which motivated Rate Counsel to file the initial September 2011 petition seeking an order from the Board to direct JCP&L to file a base rate case petition remain paramount.⁴ Rate Counsel sought the filing of the base rate case to expedite the review of JCP&L's books so as to ascertain if JCP&L was earning a return, in excess of what would be considered within the "zone of reasonableness" (Rate Counsel Petition at 3), and argues that JCP&L's customers are entitled to a timely resolution of the base rate case.

Rate Counsel states that JCP&L's claim it will be denied due process is premature and can be adequately addressed within the Generic Storm Costs Proceeding. Rate Counsel agrees with JCP&L's procedural suggestions including that the Generic Storm Costs Proceeding should continue as a contested case with time for discovery, pre-filed testimony, and evidentiary hearings with cross-examination of witnesses, if needed. Rate Counsel calls for the Board to clarify the procedural protections that will be afforded to the parties in the Generic Storm Costs Proceeding. Response at 4.

JCP&L's REPLY

On April 19, 2013, JCP&L filed a letter replying to Rate Counsel's Response ("Reply"). With respect to Rate Counsel's argument in support of the Board's authority to conduct generic proceedings, JCP&L stated that "none of the generic matters Rate Counsel refers to involved the consideration of the recoverability of utility expenditures that are currently under review in a base rate case." Reply at 2.

JCP&L disputes Rate Counsel's claim that JCP&L's 2012 Major Storm Event costs do not belong in the pending base rate case because they were incurred outside of the 2011 test year. While the Board's July 31, 2011 Order did specify a 2011 test year, it "clearly" allowed JCP&L to

⁴ In re the Rates and Charges of Jersey Central Power and Light Company, Rate Counsel Petition, Sept. 7, 2011 ("Rate Counsel Petition").

"make a record" with respect to post-test year adjustments. In support, JCP&L cites page 13 of the July 31, 2011 Order:

With regard to any out-of-pocket adjustments, the Company shall have the opportunity to make a record with regard to "known and measurable" changes to the test year provided that the changes are 1) shown to be prudent and major in nature and consequence, 2) carefully quantified through proofs which 3) manifest reliable data.

According to JCP&L, the 2012 Major Event Storm costs are known and measurable, as shown by the testimony and schedules filed in the base rate case; major in nature and consequence, as evidenced by \$603 million in costs, and the issue of whether they are prudent and carefully quantified will be resolved in the base rate case.

JCP&L further states that, in its original base rate case petition, it indicated it would file an update to incorporate its 2012 costs into the base rate case and did in fact file for \$603 million in additional costs on February 22, 2013. JCP&L states that neither Rate Counsel nor any other party objected when the Company noticed the intent to update the filing, when the Company actually filed the update in February nor when the Company advised ALJ McGill it would be updating its filing with 2012 Major Storm Event costs at the prehearing conference on February 8, 2012. Since JCP&L filed the 2012 costs update, discovery has been exchanged by Rate Counsel, Board Staff and JCP&L regarding these costs and the Board Staff statement at several public hearings referred to JCP&L's request to recover its 2011 and 2012 storm-related costs and "the allowed expenses will be returned to the pending case for a determination on their recovery." Reply at 6.

Finally, JCP&L claims that requiring the company to file a second base rate case to recover its 2012 Major Storm Event costs serves no legitimate public purpose, is a waste of resources, and would delay the recovery of these costs "which could have significant financial impacts on [JCP&L], and may also adversely impact the financial community's perception of the Company's business profile." *Ibid.*

DISCUSSION AND FINDINGS

The Board is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See, e.g. In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp. 54 N.J. 418, 424 (1969); Bergen County v. Dep't of Public Utilities, 117 N.J. Super. 304 (App. Div. 1971). The Board also has the power to set "just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed, and followed" by a public utility. N.J.S.A. 48:2-25(a); Muise v. GPU, Inc., 332 N.J. Super. 140, 148-150 (App.Div. 2000).

Following extensive review, the Board **FINDS** that it is within its discretion to require a prudency review of JCP&L's 2011 and 2012 Major Storm Event costs within the Generic Storm Costs Proceeding, and **FINDS** no grounds to reconsider the March Order. The Board has flexibility to determine how to proceed in matters presented to it, and may use its discretion to choose the

most appropriate manner including by contested case, rulemaking or informal process, based on the issues raised and the potential effects of the resolution. See In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508 (1987); In re the Petitions of MP Real Estate LP, Studebaker Submetering, Inc. and the New Jersey Apartment Association for Permission to Check-Meter Water Service, BPU Dkt. Nos. WO00040254, WO00060360, WO00070510 (Order dated June 24, 2004).

Although JCP&L filed for recovery of expenses related to the 2011 Major Storm Events within the base rate case prior to entry of the March Order, the amount of the allowed recovery of those costs, as well as the costs incurred by JCP&L for Major Storm Events in 2012, has not yet been determined. Accordingly, consistent with the March Order, the Board **DIRECTS** that the prudence of those 2011 and 2012 Major Storm-related costs shall be reviewed in the Generic Storm Costs Proceeding.⁵ As stated in the March Order, the focus of this proceeding is a review of the costs incurred by JCP&L to determine whether they were reasonable and prudent. No cost recovery shall be determined within this proceeding.

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions, e.g. In re Trantino Parole Application, 89 N.J. 347, 364 (1982). As to the Board, N.J.S.A. 48:2-40 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify an order made by it. Tp. of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 425 (1969). An administrative agency may invoke its inherent power to rehear a matter "to serve the ends of essential justice and the policy of law." Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950). The power to reappraise and modify prior determinations may be invoked by administrative agencies to protect the public interest, and thereby to serve the ends of essential justice. Trap Rock Industries, Inc. v. Sagner, 133 N.J. Super. 99, 109 (App. Div. 1975).

Accordingly, while the Board **AFFIRMS** the March Order as indicated above, it agrees that clarification of the March Order is warranted. The Board **HEREBY CLARIFIES** the March Order as follows:

The Major Storm Event costs incurred by JCP&L in 2011 and 2012 will be reviewed for prudence within the Generic Storm Costs Proceeding. Those costs incurred in 2011, during the base rate case test year, will be reviewed expeditiously and returned to the base rate case for consideration there with the goal of maintaining the schedule of the case already set by ALJ McGill. The recovery of prudent costs incurred in connection with the 2012 Major Storm Events will be considered through a Phase II in the existing base rate case or through another method found to be appropriate by the Board. That decision will be made by the Board at the conclusion of JCP&L's Generic Storm Costs Proceeding review.

As stated above, the issue to be determined through the Generic Storm Costs Proceeding is the prudence of Major Storm Event costs. The actual recovery through rates of those costs found to be prudent and reasonable shall be determined in other appropriate proceedings. JCP&L has stated that it sees no reason to deviate from previous Board practice of deferring storm restoration costs as a regulatory asset for consideration in a subsequent base rate case. Motion at 8.

To expedite this review, the Board **ORDERS** JCP&L to make a supplemental filing with

⁵ What JCP&L has described as "routine" storm costs incurred during the test year remain in the base rate case.

supporting testimony to respond to all questions presented in the March 20 Order. Because the public hearings already held by ALJ McGill in the base rate case provided notice to the public of the storm-related costs, and included public statements on those costs incurred in 2011 and 2012, the Board **FINDS** that no additional public hearings are needed at this time.

The Board **DESIGNATES** Commissioner Mary Anna Holden as the presiding commissioner with authority, to rule on all motions that arise during the review of JCP&L's Major Storm Costs, and set the procedural schedule following receipt of JCP&L's supplemental filing.

Testimony, schedules and discovery in the base rate case relating to Major Storm Costs incurred by JCP&L during 2011 and 2012 shall be deemed as part of the record in this proceeding. JCP&L is **DIRECTED** to file a list in this docket of all such testimony, schedules and discovery at or before the date of the supplemental filing.

The Board **DIRECTS** those parties who intervened in the base rate case who also wish to participate in the Generic Storm Costs Proceeding under this docket to file a notice making that request with Commissioner Holden.

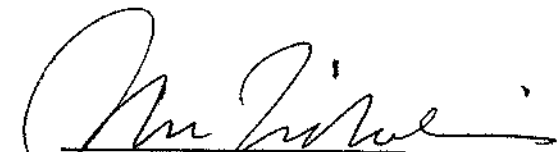
Therefore, except as specifically amended above, the Board **HEREBY DENIES** reconsideration but **CLARIFIES** the March Order as outlined above.

DATED: 5/31/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

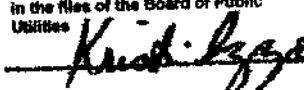

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ATTEST:


KRISTI IZZO
SECRETARY

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


IN THE MATTER OF THE BOARD'S ESTABLISHMENT OF A GENERIC PROCEEDING TO
REVIEW THE PRUDENCY OF COSTS INCURRED BY NEW JERSEY UTILITY COMPANIES
IN RESPONSE TO MAJOR STORM EVENTS IN 2011 AND 2012

Docket No. AX130130196

Docket No. EO13050391

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