



State of New Jersey  
DIVISION OF RATE COUNSEL  
31 CLINTON STREET, 11<sup>TH</sup> FL  
P. O. Box 46005  
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

May 10, 2012

**Via Overnight Mail**

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:

Kindly accept, in lieu of a more formal brief, an original and ten copies of this letter reply brief on behalf of the Division of Rate Counsel ("Rate Counsel") in the above captioned matter. **We are enclosing one extra copy, please date stamp the extra copy as "filed" and return it to our messenger.**

## INTRODUCTION

Rate Counsel's Petition filed on September 9, 2011 (the "Petition") sought an Order from the Board directing Jersey Central Power & Light Company ("JCP&L" or the "Company") to file a base rate case petition so that the Board of Public Utilities (the "BPU" or the "Board") may determine whether the Company's rates are just and reasonable and to scrutinize the Company's level of capital investment and reliability matrix to insure that JCP&L provides safe, adequate and reliable service. Rate Counsel discussed at length in its Petition and Initial Brief filed on April 26, 2012, that there is reason to believe JCP&L is earning in excess of its allowed rate of return. More specifically, 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." Moreover, JCP&L has a history of reliability problems which have adversely affected its electric customers.<sup>1</sup> A base rate proceeding affords the Board the means to address these concerns. In its Initial Brief<sup>2</sup>, JCP&L did not provide any relevant facts to refute Rate Counsel's recommendation and the data and calculations provided exhibit the same flaws as contained in the Company's September 28, 2011 Verified Answer and Certification of Mark Mader. As set forth herein and in Rate Counsel's Petition and Initial Brief, a base rate case would help ensure that JCP&L: (1) charges rates that are just and reasonable; (2) is allowed to earn a reasonable, not

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<sup>1</sup> 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 Outages of August 2002, BPU Dkt. No. EX02120950; and 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

<sup>2</sup> Throughout this reply brief JCP&L's April 26, 2012 Initial Brief will be cited as JCPLIB and Rate Counsel's Initial Brief of the same date will be cited as RCIB.

excessive return; and (3) has made and continues to make necessary capital improvements required to provide safe, adequate and reliable utility service.

## **ARGUMENTS**

### **I. Rate Counsel Has Met Its Burden of Proof to Request That the Board Initiate a Base Rate Case to Review JCP&L's Earnings.**

As extensively discussed in Rate Counsel's Initial Brief, the New Jersey Supreme Court has long recognized that the burden of proof for establishing claims before state agencies in contested administrative matters such as in the instant case before the Board is "a fair preponderance of the evidence." Matter of Polk, 90 N.J. 550 (1982). In its Initial Brief, JCP&L sets forth the burden of proof it believes that Rate Counsel must bear in order to be granted the relief sought in the Petition. JCP&L claims that the burden the utilities must bear to be granted increases in rates by the Board is the same burden Rate Counsel must now bear. JCPLIB page 8. To further its argument, it cites to law applicable to utilities in FERC rate making proceedings, rather than references to the standard of proof in New Jersey administrative proceedings. Id. As discussed below, JCP&L's argument is fundamentally flawed since it fails to consider that Rate Counsel is not seeking a change in JCP&L's rates at this juncture but, rather, simply the initiation of a base rate case.

The Company obfuscates the issue by erroneously suggesting that Rate Counsel petitioned the Board to decrease JCP&L's rates. Nothing in Rate Counsel's Petition requests such a relief. Although it is true that, after JCP&L files a base rate case petition, the Board may very well come to the conclusion that the Company is over earning and

rates must be decreased in order for JCP&L's rates to be just and reasonable, such action would be undertaken only after a fully contested case with discovery, hearings and briefs where the Company is afforded due process. In its Petition, Rate Counsel requested that the Board exercise its power under N.J.S.A. 48:2-21(b) to order a rate case to be filed by the Company. The Board clearly has the ability on its own motion to order a utility to file a rate case. Whether a rate decrease or increase is appropriate will not be decided until JCP&L's case is filed and the matter litigated. The bar is understandably lower in this instance because ordering JCP&L to file a rate case does not change the Company's rates. As pointed out in Rate Counsel's Initial Brief and conceded by JCP&L, the only private interest at stake by requiring JCP&L to file a base rate case is the expense of a base rate case which is paid for in part by ratepayers.<sup>3</sup> JCPLIB page 4. Rate Counsel is asking that the Board exercise powers vested in it by the legislature to investigate the rates through traditional rate making mechanisms. JCP&L's argument is without merit.

## **II. Rate Counsel Used Data That Was Publicly Available at the Time of the Filing of the Petition.**

Rate Counsel filed its Petition based on credible evidence supporting the belief that JCP&L is earning in excess of its allowed rate of return. In support of its Petition, Rate Counsel attached the Certification of Mr. Robert Henkes who formed his conclusions using publicly available documents, namely JCP&L's 2010 FERC Form 1. In its Initial Brief, the Company argues that Rate Counsel is using "stale" data and claims that "using 2010 data to determine whether a utility's rates are just and reasonable in 2012 would be akin to retroactive ratemaking, which is impermissible." JCPLIB page 9. Although Rate

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<sup>3</sup> To the extent that rate case expenses from JCP&L's prior case are fully amortized, the Company has already collected, or over collected these expenses.

Counsel's Petition filed in September 2011 requested that the Board order JCP&L to file using historical test year of 2010, in recognition of the passage of time since filing the Petition, Rate Counsel's Initial Brief suggested that a more recent 12 month historical test year may be appropriate. RCIB page 20. Thus, the Company's allegation that Rate Counsel would have the Board use 2010 data to determine just and reasonable rates plainly mischaracterizes Rate Counsel's position.

As stated earlier, Rate Counsel used the most recent publicly available data at the time its Petition was filed to show that there is reason to believe that JCP&L is over earning.<sup>4</sup> In its Petition, Rate Counsel asks the Board to initiate a base rate case proceeding in order for the Board and interested parties examine the justness and reasonableness of JCP&L's current rates, with access to relevant current Company data. Without such a proceeding, JCP&L has exclusive access to the data necessary to determine the reasonableness of its rates. In arguing against leveling that playing field, JCP&L carefully selects data that only support its position. Mark A. Mader's updated Certification attached to JCP&L's Initial Brief continues the lack of transparency. For example, JCP&L's newly introduced analysis of its return on rate base is completely composed of projected data, without a shred of supporting documentation. Mr. Mader's updated ROE analysis suffers from the same flaws as his original analysis, which were set forth in detail in Rate Counsel's initial brief. RCIB, pages 10-18.

The Company also raises its earlier criticisms of Rate Counsel's analysis, yet offers no substantive data to correct or refute Rate Counsel's analysis. For example, the Company criticizes Rate Counsel's use of bundled data (production, transmission and

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<sup>4</sup> JCP&L requested an extension to file its 2011 FERC Form 1 with the Board. Rate Counsel did not have access to the document until mid-April 2012.

distribution) but the Company once again fails to provide unbundled data to show distribution only data, even though it has access to the information needed to separate out the distribution system data. Mader Certification (Update) page 2 and Exhibit A, MAM-1. For all of the reasons enumerated in Rate Counsel's Initial Brief, Mr. Mader's updated ROE analysis on Exhibit A, Schedule MAM-1 contains many flaws and should be dismissed by the Board.

The Company also contradicts itself. While arguing in its Verified Answer, dated September 28, 2011, that a return on rate base analysis is not relevant, the Company included such an analysis in its Initial Brief. Mader Certification (Update), pages 2 – 6 and Exhibit A, Schedules MAM-2 through MAM-5. However, rather than basing this return on rate base analysis on actual data for the most recent 12-month period – such as calendar year 2011 which Mr. Mader used for his ROE analysis -- Mr. Mader's return on rate base analysis does not contain any actual financial data. The entire analysis is based on projected financial data for 2012 and 2013, further adjusted by numerous unsupported pro-forma adjustments. For example, Mr. Mader's return on rate base analysis is based on the Company's 2012 budget with a revised sales forecast, adjusted for numerous O&M expense changes projected to occur through the first 9 months of 2013; a capital structure projected as of the end of the first quarter of 2013; and a rate base that has been adjusted for major capital expenditures planned for the year 2013. Mr. Mader's entire analysis is therefore hypothetical. It is built purely on projected data unsupported by documentation and the accuracy of which cannot be verified at this time. There are no workpapers showing any of the assumptions and calculations in support of any of the adjusted projected data on Mader's Exhibit A, Schedules MAM-2 through MAM-5.

Hence, no one can verify JCP&L's proffered analysis. The Board should not rely on such unsupported numbers in its determination as to whether JCP&L's current financial condition would justify the filing of a base rate case. Instead, Rate Counsel's analysis is based on actual, verifiable historic JCP&L data found in the Company's FERC Form 1 filing, and thus may form the basis of a determination that a rate case is justified.

JCP&L's argument about the data used by Rate Counsel underscores an important point. The Company is the only entity that has information and without a base rate case proceeding, all others, including the Board and Rate Counsel, have limited access to timely and relevant information. To argue that the Board is barred from initiating a base rate case or that Rate Counsel's motion is flawed because they do not have access to the most up to date utility data creates a conundrum that could render the power of the Board pursuant to N.J.S.A. 48:2-21(b)(1) meaningless. The Company's position in this regard should be rejected.

### **III. A Base Rate Proceeding Would Afford Interested Parties an Opportunity to Address JCP&L's Reliability Issues.**

In support of its Petition for an order directing JCP&L to file a base rate case petition, Rate Counsel cited numerous reliability and service quality concerns that have come to the Board's attention, especially in recent months. The Board initiated its own investigation of JCP&L's reliability and service quality along with other New Jersey electric utilities' in response to Hurricane Irene in 2011. The Board convened six public hearings throughout the State to allow the public an opportunity to testify on their experiences with the utilities' responsiveness during the storm. Staff also completed a preliminary investigation and prepared a report entitled "Hurricane Irene Electric

Response Report” (“Hurricane Report”) which the Board accepted on December 15, 2011. In the Hurricane Report, Board Staff made special note of JCP&L’s poor performance:

At the [Hurricane Irene] hearings numerous people testified, with the vast majority complaining about JCP&L's service. To a much lesser extent, complaints involved PSE&G or Rockland Electric. The following is a summary of the most predominate complaints:

**Communications with mayors** by JCP&L: Many mayors, municipal officials and local offices of emergency management (OEMs) had an extremely difficult time reaching JCP&L to get information regarding restoration in their towns.<sup>5</sup>

**Communications with the public** by JCP&L: Many customers could not contact JCP&L to get information regarding restoration of their service and automated company call backs were confusing.

**Estimated Restoration Times** (ETRs) provided by JCP&L were inaccurate or nonexistent.

**Prioritization of Restoration** by JCP&L of special needs customers or customers utilizing well water: these should be given priority restoration.

**Infrastructure** issues related to JCP&L's system design and/or maintenance and whether this increased the level of outages in the event.

**Flooding** of PSE&G and JCP&L substations, more specifically why where they built in flood areas, and that they should be moved to higher ground or flood proofed.

**Tree Damage** on the JCP&L distribution system and whether this was related to ineffective tree trimming practices.

In fact, JCP&L’s poor performance in recent years merited a special investigation when a series of underground electrical fires in JCP&L system located in and around Morristown caused personal injury to a woman who was hit with an exploding manhole

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<sup>5</sup> Subsequent to the Hurricane Irene and the October 2011 snow storm, three municipalities, Township of Robbinsville, Township of Warren, and Borough of Bernardsville filed complaints with the Board against JCP&L for inadequate service. I/M/O Township Of Robbinsville And Warren v Jersey Central Power & Light Co., BPU Dkt. No. EC11110802 (Bernardsville Complaint, although not listed in the caption was nevertheless made a part of BPU Docket No. EC11110802.)



cover, and in another incident the Morristown library was extensively damaged when JCP&L's underground system exploded.<sup>6</sup> In the September 22, 2011

Order, the Board noted other service quality problems:

There have also been a number of other incidents where equipment malfunctions have caused power interruptions. Since 2005, there has been at least four other incidents where power was lost, evacuations were required or explosions that could have endangered lives have occurred. Id.

In response, the Board retained the services of a Special Reliability Master to investigate the Company's Morristown underground network. In a public statement released by the Board, Robert M. Hanna, President of the NJ Board of Public Utilities was critical of JCP&L's performance:

The Special Reliability Master's report contains an alarming litany of failures by JCP&L to perform preventative maintenance on its underground network system. ...

While I am pleased that JCP&L has already implemented some of the expert's recommendations, more needs to be done. As a first step, Board staff has been directed to develop specific, verifiable protocols for JCP&L to adopt, including a rigorous preventative maintenance schedule and effective corrective maintenance plan. We will closely monitor JCP&L's compliance and, if necessary, take additional enforcement action.<sup>7</sup>

In spite of the long list of service quality issues, in response to Rate Counsel's criticism about the Company's service quality and reliability, the Company claims that "JCP&L has maintained low rates, while also maintaining its system wide reliability indices since 2002." JCPLIB page 6. In the face of extensive evidence of poor reliability and service quality, JCP&L nonetheless cites to the Company's 10-year SAIDI

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<sup>6</sup> I/M/O the Board's Investigation Into Reliability Issues Related to Jersey Central Power & Light Company's Morristown Underground Distribution System, Order- Reliability Master to Review the Design and Operation Standards of JCP&L's Morristown Underground System and Develop Recommendations to the Board, BPU Docket No. EO11090526 (9/22/11).

<sup>7</sup> New Jersey Board of Public Utilities Press Release dated February 10, 2012 link: <http://nj.gov/bpu/pdf/announcements/2012/201202102.pdf>

performance to suggest that the Company's overall reliability has improved since the last base rate case. First, SAIDI is a limited measure of reliability only measuring system-wide duration of outages. The frequency of the outages both system-wide and by customer is not provided by the Company. Even if JCP&L's rates are among the lowest in the state as the Company claims, the appropriate standard is not necessarily the lowest rates possible but the lowest just and reasonable rates that will provide ratepayers safe, adequate and proper service.<sup>8</sup> JCPLIB page 6. Clearly, the Company has failed in this regard. Without a base rate case proceeding, the Board and interested parties will not have an opportunity to examine whether prudent levels of infrastructure investment have been made by the Company to ensure reliability.<sup>9</sup>

Finally, JCP&L's recent reliability problems are particularly troubling since the Company has been collecting an additional \$36.1 million per year in base rates since the most recent base rate case to address reliability problems the Company exhibited 7 years ago.<sup>10</sup> In granting the additional \$36.1 million in revenues the Board made note of JCP&L's need to make improvements:

At the out set the Board must reiterate the importance it places upon reliability of utility service. The Board's actions in its Summary and Final Orders, including the imposition of a rate of return penalty as a result of

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<sup>8</sup> JCP&L's claim that its electric rates are lowest among the four NJ electric companies is misleading. A monthly bill charged to JCP&L's residential distribution customer under rate class RS (not including clauses) is comparable to PSE&G's and Atlantic's monthly bill for a residential customer using 1000 kWh in a summer month. JCP&L's residential customer using 1200 kWh or more in summer months will have monthly bills that are higher than PSE&G's and Atlantic's residential customer with the same level of usage. This is because JCP&L charges the first 600 kWh \$0.016293 but raises the rate to \$0.064429 for usage over 600 kWh. (See attachment A)

<sup>9</sup> JCP&L's February 28, 2012 press release announced the Company's plans to invest approximately \$200 million in 2012. While JCP&L's announcement to refocus on reliability spending is welcome news, the Board must insure that any new infrastructure spending is not making up for past inadequacies in infrastructure investments.

[https://www.firstenergycorp.com/newsroom/news\\_releases/jersey\\_central\\_powrelighttoinvestnearly200millionin2012toenhance.html](https://www.firstenergycorp.com/newsroom/news_releases/jersey_central_powrelighttoinvestnearly200millionin2012toenhance.html)

<sup>10</sup> I/M/O JCP&L, BPU Dkt. No. ER02080506, et al (Order, 5/31/05) ("2005 JCP&L Base Rate Case Order").

record evidence of insufficient reliability measures by the Company, were intended to place the proper onus upon the Company to expeditiously establish additional performance standards in order to improve JCP&L's reliability and service quality throughout the Company's entire service territory, especially the shore areas. Id.

The \$36.1 million continues to be collected in rates even though the three year amortization period has long since ended. As this money is still being collected, ratepayers are entitled to know how the Company has spent what is now over \$140 million collected over the last four years. Without a full base rate case, the Board and interested parties cannot know if the \$36.1 million that the Company collects every year is effectively spent to improve reliability. This further supports Rate Counsel's request for relief.

## CONCLUSION

JCP&L did not provide sufficient evidence in its Verified Answer or Initial Brief to refute Rate Counsel's showing that the Board should order JCP&L to file a base rate case. 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 respectfully asks that the Board issue an Order directing JCP&L to file a base rate case petition using an appropriate 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,

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

By: s/ Ami Morita  
Ami Morita, Esq.  
Deputy Rate Counsel

AM/lg  
Enclosures  
c: Service List (via Electronic Mail and U.S. Regular Mail)

Attachment A

Distribution Charge for residential (RS) customers using 1000 kWh and 1200 kWh  
in summer months as of April 30, 2012 (excluding clauses)

Company	Fixed Charges including SUT	Summer Rate First Block	Summer Rate Second Block	RS 1000 kWh usage/month	RS 1200 kWh usage/month
JCPL	\$2.20	\$0.016293 (1 <sup>st</sup> 600 kWh)	\$0.064429 (over 600 kWh)	\$2.20 \$9.7758 <u>\$25.7716</u> \$37.7473 Total	\$2.20 \$9.7758 <u>\$38.6516</u> \$50.63 Total
ACE	\$2.73	\$0.031162 (1 <sup>st</sup> 750 kWh)	\$0.035864 (over 750 kWh)	\$2.73 \$23.3715 <u>\$8.966</u> \$35.0675 Total	\$2.73 \$23.3715 <u>\$16.136</u> \$42.23 Total
PSEG	\$2.43	\$0.034333 (1 <sup>st</sup> 600 kWh)	0.038422 (over 600 kWh)	\$2.43 \$20.5998 <u>\$15.3688</u> \$38.3986 Total	\$2.43 \$20.5998 <u>\$23.0488</u> \$46.07 Total
RECO	\$3.88	0.04067 (1 <sup>st</sup> 250 kWh)	0.04755 (over 250 kWh)	\$3.88 \$10.1675 <u>\$35.6625</u> \$49.71 Total	\$3.88 \$10.1675 <u>\$45.1725</u> \$59.22 Total

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Ms. Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Fl.  
P.O. Box 350  
Trenton, NJ 08625

Jerome May, Director  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Mark C. Beyer, Chief Economist  
Office of Economist  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Kenneth Sheehan, Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Dennis Moran, Director  
Division of Audits  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Kristina A. Miller, Legal Specialist  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Richard Jackson  
Executive Director  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Fl.  
P.O. Box 350  
Trenton, NJ 08625

Rosalie Serapiglia  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Tom Walker  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

James Giulano  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Heather Azoulay  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625

Caroline Vachier, DAG  
Dept. Of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Alex Moreau, DAG  
Dept. Of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Carolyn McIntosh, DAG  
Dept. Of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Marc B. Lasky, Esq.  
Morgan, Lewis & Bockius LLP  
89 Headquarters Plaza North,  
Suite 1435  
Morristown, NJ 07960

Gregory Eisenstark, Esq.  
Morgan, Lewis & Bockius LLP  
89 Headquarters Plaza North,  
Suite 1435  
Morristown, NJ 07960

Donald M. Lynch  
Region President  
Jersey Central Power and Light  
Company  
300 Madison Avenue  
P.O. Box 1911  
Morristown, NJ 07962-1911

Arthur E. Korkosz, Esq.  
FirstEnergy Corp.  
76 S. Main Street, 18<sup>th</sup> Floor  
Akron, OH 44308

Stefanie A. Brand, Esq.  
Director  
Division of the Rate Counsel  
31 Clinton Street-11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Paul Flanagan, Esq.  
Division of the Rate Counsel  
31 Clinton Street-11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Ami Morita, Esq.  
Division of the Rate Counsel  
31 Clinton Street-11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Kurt S. Lewandowski, Esq.  
Division of the Rate Counsel  
31 Clinton Street-11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Lisa Gurkas  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101

Robert Henkes  
Henkes Consulting  
7 Sunset Road  
Old Greenwich, CT 06870

Stephen R. Kern, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1666  
Harrisburg, PA 17108

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
777 N. Capital St., NE  
Suite 401  
Washington, DC 20001-4292

Jim Dieterle  
NJ State Director  
AARP New Jersey  
101 Rockingham Row Forrestal  
Village  
Princeton, NJ 08540

Evelyn Liebman  
Assoc. State Director for Advocacy  
AARP New Jersey  
101 Rockingham Row Forrestal  
Village  
Princeton, NJ 08540

Janine G. Bauer, Esq.  
Szaferman, Lakind, Blumstein &  
Blader, PC  
101 Grover Mill Road  
Suite 200  
Lawrenceville, NJ 08648

Tracey Thayer, Esq.  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall, NJ 07719

Steven S. Goldenberg, Esq.  
Fox Rothschild LLP  
997 Lenox Drive, Bldg. 3  
Lawrenceville, NJ 08648-2311

Babette Tenzer, DAG  
Dept. Of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101