



STATE OF NEW JERSEY
Board of Public Utilities
 44 South Clinton Avenue, 3rd Floor, Suite 314
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 Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF)	PREHEARING ORDER WITH
JERSEY CENTRAL POWER & LIGHT COMPANY FOR)	PROCEDURAL SCHEDULE
APPROVAL OF AN INFRASTRUCTURE INVESTMENT)	AND ORDER ON MOTIONS
PROGRAM (RELIABILITY PLUS))	TO INTERVENE OR
)	PARTICIPATE AND FOR
)	ADMISSION PRO HAC VICE
)	
)	DOCKET NO. EO18070728

Parties of Record:

James C. Meyer, Esq., Riker Danzig Hyland & Perretti, on behalf of Jersey Central Power & Light Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Giordano, Halleran and Ciesla, P.C., on behalf of New Jersey Large Energy Users Coalition

BY COMMISSIONER UPENDRA CHIVUKULA:

JCP&L RELIABILITY PLUS PETITION

On July 13, 2018, Jersey Central Power and Light Company (“JCP&L” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval to implement its Reliability Plus Infrastructure Investment Program (“JCP&L Reliability Plus” or “Program”), including a proposed cost recovery mechanism¹, pursuant to N.J.A.C. 14:3-2A.1 et seq. (“I&R Rules”)² and any other provision deemed applicable by the Board. JCP&L proposes to invest \$386.8 million over a four-year period from 2019 through 2022. The proposed Program

¹ The Company proposes cost recovery through a separate clause of JCP&L’s tariff, Rider RP-JCP&L Reliability Plus Charge (“Rider RP”). JCP&L anticipates that each year, a filing will be made by May 15 to recover revenue requirements for plant placed in-service during the period through and including July 31, with an update for actual data provided August 15, for rate adjustment November 1. Each year, a filing will also be made by November 15 to recover revenue requirements for plant placed in service during the period through and including January 31, with an update for actuals provided by February 15 of the following year for a rate adjustment effective May 1, of the following year.

² On December 19, 2017, the Board adopted new rules for utility “Infrastructure Investment and Recovery” to encourage utilities to implement infrastructure investments. The rules are codified at N.J.A.C. 14:3-2A.1 et seq. and became effective on January 16, 2018.

includes 15 electric distribution infrastructure projects. The projects are divided into four Program categories: Overhead Circuit Reliability and Resiliency; Substation Reliability Enhancement; Distribution Automation; and Underground System Improvements.

The Company proposes a return on investment based on a weighted average cost of capital ("WACC") of 7.47 percent, based on the Board's Order in JCP&L's last base rate case proceeding in Docket No. ER16040383. JCP&L proposes to base the initial WACC on a return on equity of 9.6 percent, long term debt rate of 5.73 percent, and a capital structure of 45 percent equity and 55 percent long term debt. JCP&L represents that any future Board-approved changes in the WACC in base rate cases would be reflected in any subsequent revenue requirement calculations for JCP&L Reliability Plus. On October 12, 2018, the Company filed an errata to the petition and direct testimony with regard to the customer benefits estimated in the Company's cost benefit analysis.

By Order dated August 29, 2018 ("August 2018 Order"), the Board determined that the Reliability Plus petition described above should be retained by the Board for hearings and, pursuant to N.J.S.A. 48:2-32, designated me as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings, and establish and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. The August 2018 Order further directed that any entities seeking to intervene or participate in this matter file the appropriate application with the Board by September 21, 2018, and directed that any motions motion for admission of counsel, pro hac vice, should do so concurrently with any motion to intervene or participate.

To aid in the setting of an appropriate schedule, Board Staff requested that the New Jersey Division of Rate Counsel ("Rate Counsel") and the Company circulate proposed procedural schedules. The Company and Rate Counsel prepared proposed procedural schedules, which were forwarded to Board Staff. The Company and Rate Counsel were unable to reach an agreement with regard to the procedural schedule. The Company's proposed schedule provided for evidentiary hearings at the end of January, while Rate Counsel proposed evidentiary hearings in early March.

Motions

New Jersey Large Energy Users Coalition ("NJLEUC")

By motion dated August 1, 2018, NJLEUC, an association whose members include large volume electric and natural gas customers serviced by JCP&L, moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC indicates it was formed, in part, to monitor regulatory proceedings involving the State's electric and natural gas utilities, including JCP&L. Members of NJLEUC are large volume purchasers of electric distribution service from JCP&L and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to Reliability Plus are unique from those of any other party, and as large end-use customers of JCP&L that will be directly affected by the Program's significant infrastructure upgrades, the interests of NJLEUC members are substantially different from those of any other party seeking intervention or participation. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric customers of the significant rate relief sought by JCP&L in this proceeding.

NJLEUC also argues that fundamental fairness and due process considerations require that it be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the cost of electric service to its members. NJLEUC states that the issues to be decided in this proceeding substantially, specifically, and directly affect NJLEUC, making intervention appropriate.

NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers on the JCP&L distribution system. NJLEUC further states that it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

NJLEUC, via Steven S. Goldenberg, Esq., also moved for the admission pro hac vice of Paul F. Forshay, Esq. on August 1, 2018. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay, is a member in good standing admitted to the bar of the District of Columbia and has had significant experience representing the interests of large end-use customers in utility rate and infrastructure proceedings, and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing large end-use customers before Federal Energy Regulatory Commission and the Board utility rate and infrastructure proceedings. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice.

On October 19, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

Atlantic City Electric Company ("ACE")

ACE filed a motion to participate on September 18, 2018. ACE claims it is entitled to participate because it is only one of four investor-owned electric utilities in New Jersey serving retail customers and, therefore, has a significant interest in the outcome of this matter. It states its significant interest is rooted in the fact that substantive policy and/or procedural requirements established in this proceeding can have a precedential effect on the positions and outcomes of proceedings involving ACE. ACE asserts that its interests are different from JCP&L, who represents its own interests, and from the other parties, who primarily represent consumer interests. ACE submits that its interests will contribute to the development of a complete record, and it will not cause undue delay or confusion.

Public Service Electric and Gas Company ("PSE&G")

PSE&G, an electric and gas public utility, filed a motion to participate pursuant to N.J.A.C. 1:1-16.1 on September 21, 2018. PSE&G asserts that a Board decision could have precedential effect and impact PSE&G and its customers, as well as other New Jersey utilities. PSE&G adds that it will be directly and specifically affected, as a variety of issues in this infrastructure investment case may impact PSE&G. It further argues that its service territories, customers, and operations are distinct from other parties and participants, and therefore no other party or participant will represent its interests. PSE&G submits that it will not cause undue delay or confusion.

Responses

On August 8, 2018, the Company filed its response indicating that it takes no position with regard to NJLEUC's motion to intervene because it did not identify any NJLEUC members that are currently JCP&L customers. However, JCP&L states that it would not oppose the motion if NJLEUC demonstrates that its members are current JCP&L customers. JCP&L does not object to the motion for admission pro hac vice of Mr. Forshay.

On September 6, 2018, NJLEUC provided the names of its members located in the Company's territory that are served by JCP&L.

By correspondence dated September 24, 2018, JCP&L indicated it does not object to the granting participant status to ACE and PSE&G, with the limited rights set forth in N.J.A.C. 17:27-16.6 (c). JCP&L requests that ACE and PSE&G coordinate their participation to the greatest extent possible.

PREHEARING ORDER

1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:

Through this proceeding, JCP&L seeks approval to implement and administer Reliability Plus and its associated cost recovery mechanism. The Company proposes a four-year program with a total investment level of approximately \$386.8 million. JCP&L claims the Program will provide accelerated investments that produce many benefits for customers, its electric distribution system and the economy of the state by enhancing safety, making its distribution system more resistant to outages during storms and blue-sky events and enabling the system to recover more quickly.

Issues to be Resolved

- A. Is the IIP program prudent, cost effective and cost efficient?
- B. Is the IIP program non-revenue producing, accelerated capital spending pursuant to the requirements of N.J.A.C. 17:27-16.6 *et seq.*?
- C. Is the IIP program necessary accelerated capital spend?
- D. What is the appropriate base line spend?
- E. Is the eligible IIP Program spending above the baseline spending level and incremental in nature?
- F. What is the appropriate cost of capital?
- G. Is the proposed cost recovery mechanism reasonable and lawful?

2. **PARTIES AND THEIR DESIGNATED ATTORNEYS OR REPRESENTATIVES:**

A. **Counsel for JCP&L:**

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No change in designated trial counsel shall be made without leave if such change will interfere with the dates for hearings. If no specific counsel is set forth in this Order, any partner or associate may be expected to proceed with evidentiary hearings on the agreed dates.

3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:

Pursuant to N.J.S.A. 48:2-32.6, public hearings will be held in the Company's service territory after publication of notice in newspapers of general circulation in JCP&L's service territory. Two public hearings will be held on November 13, 2018 with sessions at 1:30 p.m. in Freehold, NJ and 5:30 p.m. Morristown, NJ.

4. SCHEDULE OF HEARING DATES, TIME AND PLACE:

Evidentiary hearings will be held on March 4, 2019 starting at 10:00 a.m. on each day at the Board of Public Utilities, Merit System Room, 44 South Clinton Avenue, Trenton, New Jersey. Dates will be determined based on the availability of the parties and myself.

5. STIPULATIONS:

The Staff of the Board of Public Utilities, the Division of Rate Counsel and JCP&L have entered into an Agreement of Non-Disclosure of Information Agreed to Be Confidential.

6. SETTLEMENT:

Parties are encouraged to engage in settlement discussions. Notice should be provided to all parties of any settlement discussions for the preparation of an agreement to resolve the issues in the case.

7. AMENDMENTS TO PLEADINGS:

None at this time.

8. DISCOVERY AND DATE FOR COMPLETION:

The time limits for discovery shall be in accordance with N.J.A.C. 1:1-10.4 and as provided in Exhibit A.

9. ORDER OF PROOFS:

JCP&L has the burden of proof. The hearings will be conducted by topic (see point 12, below); within each topic, the hearings will be conducted in the following order:

First – JCP&L

Second – Rate Counsel

Third – NJLEUC

Fourth - Board Staff

10. **EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time.

11. **EXHIBITS MARKED IN EVIDENCE:**

None at this time.

12. **ESTIMATED NUMBER OF FACTS AND EXPERT WITNESSES:**

JCP&L will present the following witnesses: Dennis Pavagadhi and Mark Mader. Additional witnesses may be identified by JCP&L as necessary for purposes of rebuttal or sur-rebuttal.

Rate Counsel will present the following witnesses: David Dismukes, Kevin O'Donnell, Max Chang and Charles Salamone. Additional witnesses may be identified by Rate Counsel as necessary for purposes of testimony.

NJLEUC witnesses are to be determined.

Any party substituting witnesses shall identify such witnesses within five days of determining to replace a witness, and in no event later than five days before filing of testimony of a substitute witness. All direct testimony will be pre-filed, and all witnesses submitting pre-filed direct testimony will be subject to cross-examination at evidentiary hearings, which will be conducted by topic (e.g., program elements, revenue requirements, and so forth).

13. **MOTIONS:**

NJLEUC has moved to intervene. PSE&G and ACE have moved to participate.

14. **SPECIAL MATTERS:**

None at this time.

The parties are directed to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding.

DISCUSSION

Motions to Intervene

In deciding whether to grant a motion for intervention, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider: (1) the nature and extent of the moving party's interest in the outcome of the case; (2) whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case; (3) the prospect for confusion and delay arising from inclusion of the party; and (4) other appropriate matters. . N.J.A.C. 1:1-16.6 provides for a more limited form of involvement in the proceeding for entities with a significant interest in the outcome of a case called "participant" status where, in the discretion of the trier of fact, the participant's interest is likely to add constructively to the case without causing undue

delay or confusion. Participants are limited to one or all of these rights: to argue orally, file a statement or brief, and file exceptions consistent with N.J.A.C. 1:1-16.6(c), as the Presiding officer so designates.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The Board must balance the need and desire to allow for the development of a full and complete record to ensure consideration of a diversity of interests, with New Jersey Administrative Code requirements, recognizing a need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, e.g., Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control and Related Authorizations, BPU Docket No. EM05020106 (May 23, 2006).

After consideration of the papers, I **FIND**, pursuant to N.J.A.C. 1:1-16.6(b), the members of NJLEUC who represents a large and identifiable customer group of JCP&L will be directly affected by the outcome of this proceeding. I **FURTHER FIND** that NJLEUC has met the standards for intervention, as it is an interest in this proceeding. Accordingly, I **HEREBY GRANT** the motion to intervene filed by NJLEUC pursuant to the authority granted to me by the Board under the August 2018 Order.

I have also reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. I agree that this proceeding involves a complex field of law, and I am persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, I **FIND** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay is **HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that he shall:

- (1) Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

Additionally, after considering the motions to participate and given the lack of any opposition, I note that ACE and PSE&G have expressed a significant interest in the outcome of this case, as it will have a precedential impact on each company and its customers. ACE and PSE&G can add measurably and constructively to the scope of this case by providing their expertise in the electric industry and infrastructure investment, without causing confusion and delay. I **HEREBY FIND** ACE and PSE&G have a significant interest in the outcome of this case, and their

intervention would contribute to the development of a full and complete record for review by the Board in its evaluation. Accordingly, I **GRANT** ACE and PSE&G participant status in this proceeding on the basis of their representations that they will adhere to the scope of the issues to be addressed and limited to the right to argue orally and file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(1) and (2).

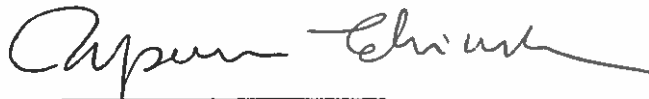
Procedural Schedule

I have reviewed the proposals for a preliminary schedule, after giving due consideration to the positions of Staff, Rate Counsel and the Company, I **HEREBY ISSUE** the following as the Prehearing Order, along with the procedural schedule identified as Exhibit A, and **HEREBY DIRECT** the parties to comply with its terms.

I **HEREBY DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: November 22, 2018



UPENDRA CHIVUKULA
COMMISSIONER

IN THE MATTER OF THE PETITION OF THE VERIFIED PETITION OF JERSEY CENTRAL
POWER & LIGHT COMPANY FOR APPROVAL OF AN INFRASTRUCTURE INVESTMENT
PROGRAM (RELIABILITY PLUS)
DOCKET NO. EO18070728

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Exhibit A

**IN THE MATTER OF THE PETITION OF THE VERIFIED PETITION OF JERSEY CENTRAL
POWER & LIGHT COMPANY FOR APPROVAL OF AN INFRASTRUCTURE INVESTMENT
PROGRAM (RELIABILITY PLUS)
DOCKET NO. EO18070728**

Procedural Schedule³

October 15, 2018	Deadline for filing first round discovery responses
November 2, 2018	Deadline for propounding second round discovery requests on Company
November 8, 2018	Technical conference/discovery conference
November 13, 2018	Public hearings in Freehold and Morristown at 1:30 p.m. and 5:30 p.m., respectively
November 15, 2018	Technical conference/discovery conference
November 16, 2018	Deadline for Company to provide responses to all outstanding discovery
December 17, 2018	Deadline for filing Rate Counsel/Intervenor direct testimony
January 4, 2019	Deadline for propounding discovery requests on Rate Counsel/Intervenor direct testimony
January 18, 2019	Deadline for responses to discovery requests on Rate Counsel/Intervenor direct testimony
January 25, 2019	Deadline for filing rebuttal testimony
February 8, 2019	Deadline for propounding discovery requests on rebuttal testimony
February 22, 2019	Deadline for responses to discovery on rebuttal testimony discovery
TBD	Settlement conferences
March 4, 2019	Evidentiary hearing, with live surrebuttal, subject to the Commissioner's availability
TBD	Briefing schedule

³ Discovery will be conducted on a rolling basis, with responses due in accordance with N.J.A.C. 1:1-10.4, subject to the scheduled end dates. The aforementioned dates are subject to modification by the presiding Commissioner. The parties on the service list will be notified accordingly.