Agenda Date: 12/01/09
Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

DIVISION OF ENERGY &
OFFICE OF CLEAN ENERGY

IN THE MATTER OF ENERGY EFFICIENCY PROGRAMS AND ASSOCIATED COST RECOVERY MECHANISMS	)	ORDER DOCKET NO. EO09010056
IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY CONCERNING A PROPOSAL FOR ECONOMIC STIMULUS DEMAND RESPONSE AND ENERGY EFFICIENCY PROGRAMS AND ASSOCIATED COST RECOVERY MECHANISM	)	DOCKET NO. EO09010062

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Richard Webster, Esq. (Eastern Environmental Law Center) and Luis G. Martinez, Esq. (Staff Attorney) for Natural Resources Defense Council

BY THE BOARD:

BACKGROUND

In response to the worldwide economic downturn, in October 2008, Governor Jon Corzine announced a plan to help New Jersey weather the turbulence and lay a foundation for a long-term economic recovery. The plan was intended to directly support employment and economic activity in the short term, and to enhance the State's business climate and economic prospects in the long term.

As part of the plan, the Governor called upon New Jersey's electric and gas utilities to invest $500 million in utility energy efficiency programs for residential and business customers through 2009. Less than a week later, the New Jersey Energy Master Plan ("EMP") was released.[1] The EMP set a goal of reducing energy consumption by 20 percent by 2020, and determined that

[1] The Energy Master Plan is available at http://www.nj.gov/emp/docs/pdf/081022_emp.pdf.

one of the methods to achieve that goal is to transition the administration of energy efficiency programs to New Jersey utilities. Board Staff ("Staff") then held a series of meetings with representatives of the seven electric and gas utilities, the New Jersey Utilities Association ("NJUA"), and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") to explore the design of short-term large-scale investments by the utilities to improve energy efficiency. The discussions focused on designing investments that would: use the EMP's "whole building" approach to identify all cost-effective energy measures in a comprehensive audit of a building, and then implement as many of them as possible; support the future transition of the New Jersey Clean Energy Program ("NJCEP") to the utilities; avoid overlap between customers targeted by the utilities' programs and customers targeted by the NJCEP; and foster job creation.

In the course of these meetings, the participants recognized that the amount of money that utilities could invest in energy efficiency in one year depended in part on matters outside the control of the utilities and the New Jersey Board of Public Utilities ("Board"), such as the desire of energy customers to participate in programs to improve the efficiency of their buildings and equipment. The energy efficiency petitions ultimately filed by the seven utilities sought approval for programs with investments totaling approximately $305 million, with the programs in some cases extending into a second year. These investments are in addition to the $956 million in accelerated capital improvements and investments that the Board approved for five of New Jersey's major energy utilities in April 2009. Evidence presented to the Board indicated that the overall accelerated infrastructure programs would create about 1,300 direct jobs in the private sector – without the use of additional government funding. As discussed below, the Board has been reviewing the energy efficiency proposals not only to ensure that, if properly executed, they further the EMP's energy efficiency goals, but that they also create jobs to strengthen the local economy.

PROCEDURAL HISTORY

On February 20, 2009, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a petition ("EE Stimulus Petition") with the Board pursuant to N.J.S.A. 48:3-98.1. The petition included both energy efficiency programs ("EE Programs") and demand response programs. On March 20, 2009, Staff notified JCP&L that the filing was not administratively complete. By letter dated April 10, 2009 and filed on April 13, 2009, the Company submitted a supplemental filing.[2] By letter dated May 9, 2009, Staff notified the Company that the EE Stimulus Petition, as supplemented, was deemed to be administratively complete with respect only to the EE Programs.[3] By letter dated May 15, 2009, JCP&L agreed to separate the processing of its then-

[2] The Company's supplemental filing is date-stamped April 12, 2009. However, that date was Easter Sunday of this year, and it appears that some electronic or mechanical error must have occurred. Accordingly, the 180-day period for a Board determination on cost recovery associated with the EE Programs commenced on the following business day, April 13, 2009. While the earlier stipulation memorialized the end of the 180-day period as October 9, 2009, further calculation shows that this date should actually have been October 13, 2009.

[3] N.J.S.A. 48:3-98.1 requires the Board to decide cost recovery issues within 180 days. Pursuant to the Board Order issued in response to a further statutory directive within that section, Board Staff must review a petition for completeness within 30 days, and, when a petition is determined to be administratively complete, set the beginning of the 180-day period from the date of the filing or the date of the filing of the last remediating document. In The Matter Of Electric Public Utilities And Gas Public Utilities Offering Energy Efficiency And Conservation Programs, Investing In Class I Renewable Energy Resources, And Offering Class I Renewable Energy Programs In Their Respective Service Territories On A Regulated Basis Pursuant To N.J.S.A. 48:3-98.1, BPU Docket No. EO08030164 (May 12, 2008).

pending four proposed demand response programs from the processing of the EE Stimulus Petition. Thus, the 180-day review period commenced on April 13, 2009, and would have ended on October 9, 2009 for each of the EE Programs. However, the review period was extended until November 17, 2009 in accordance with the provisions of a stipulation dated October 2, 2009 that was approved by Board Order on October 8, 2009. The review period was further extended until December 9, 2009 in accordance with the provisions of a stipulation dated November 9, 2009 among JCP&L, Rate Counsel, Staff and Gerdau Ameristeel ("Gerdau").

JCP&L EE STIMULUS PETITION

In the EE Stimulus Petition, JCP&L proposed to implement, among other things, the following EE Programs: (1) a "whole house" energy efficiency program for residential customers; and (2) a "whole building" energy efficiency program for non-residential customers. As noted above, the Company also proposed four small scale/pilot demand response programs that had been previously filed and remained pending before the Board in Docket No. EO08080542. It is estimated that the two EE Programs, if authorized, will cost approximately $12.7 million including administrative costs, and will support approximately 84 jobs, plus three administrative positions.

The proposed segments are as follows:

Residential Customers – The Whole House Energy Efficiency Program for Residential Customers, with a budget of approximately $8.6 million, plus administrative costs, was designed to encourage existing residential customers to use a whole house approach to reduce energy consumption when considering home improvements, heating and cooling system installations or replacing appliances. Among other things, the program would offer an on-line energy audit, buy-down of financing costs associated with the NJCEP Home Performance With Energy Star program, enhanced incentives for heating and cooling appliance replacement and upgrades supported by the NJCEP, and community outreach and other efforts. The Company expected that management and implementation of this program will be provided through the NJCEP residential market managers or through third party providers.

Non-Residential Customers – The Whole Building Energy Efficiency Program for Non-Residential Customers, with a budget of approximately $3.1 million, plus administrative costs, was designed to enhance and complement existing NJCEP offerings by enabling continued non-residential investments in energy efficiency technologies supported by the New Jersey SmartStart Building ("SSB") program, particularly targeting municipal, school and state facilities. This program would entail, among other things, training seminars for customers, supplemental rebates for non-lighting energy efficiency investments supported by the SSB, supplemental grants for municipal, school, State and multi-family customers and evaluation of the energy savings impacts of the energy efficiency programs relative to customers' existing equipment. In implementing this program, the Company expected to work directly with the market managers as well as through one or more new contractors.

According to the EE Stimulus Petition, the Company wished to recover the expenditures under the EE Programs with a full return over the 12-month period commencing immediately upon issuance of a Board Order approving the EE Programs. JCP&L had requested carrying costs on any unrecovered expenditures at a rate equal to its Weighted Average Cost of Capital ('WACC"), including income tax effects, as determined in its last base rate case (11.61%). I/M/O the Verified Petition of Jersey Central Power & Light for Review and Approval of an Increase in its Unbundled Rates and Charges for Electric Service, Docket Nos. ER02080506, ER02080507, EO02070417, ER02030173, and ER95120633 (May 17, 2004). The Company also requested that the applicable rider or clause be subject to deferred accounting, with interest at the same rate on over-and under-recoveries based on a 12-month amortization

By Order dated February 19, 2009, the Board retained all EE matters for review and hearing and, as authorized by N.J.S.A. 48:3-32, designated President Jeanne M. Fox as the presiding officer who was authorized to rule on all motions that arise during the proceeding and modify any schedule(s) that may be set as necessary to secure just and expeditious determinations in this matter. Motions to intervene in this proceeding filed by Gerdau and the Natural Resources Defense Council ("NRDC") were granted by Orders dated April 6, 2009 and April 28, 2009, respectively, signed by Board President Jeanne M. Fox as presiding officer for this case.

On April 29, 2009 Gerdau filed direct testimony of Joseph G. Bowser of McNees Wallace and Nurick LLC, and Mark Quiring of Gerdau. Gerdau requested that the Board accept the testimony and consider it as part of the record in this proceeding. Gerdau filed the supplemental testimony of Mark Quiring on October 29, 2009, and corrected testimony on November 12, 2009, again asking that the Board accept the testimony and consider it as part of the record. No party objected to the inclusion of the testimony in the record; nor did any party file testimony in response or seek an opportunity to cross-examine Mr. Bowser or Mr. Quiring.

Since the filing of the EE Stimulus Petition, the Company, Rate Counsel, Staff and Gerdau (the "Parties") engaged in extensive discovery and participated in a number of settlement and discovery conferences.[4] In addition, the EE Programs were forwarded to the Center for Energy, Economic and Environmental Policy ("CEEEP") for performance of a Cost Benefit Analysis ("CBA") for each of the components of the EE Programs.

By letter dated November 25, 2009, Rate Counsel recommended that the Board reject the EE Programs because the Parties have been unable to reach an agreement. Additionally, the Company has refused to file for a base rate case which would permit scrutiny of the charges that are being passed through the RGGI surcharge, such as salary and wage costs, to ensure that there is no duplication with recoveries in base rates. Also by letter dated November 25, 2009, Gerdau clarified that it opposed approval of the EE Stimulus Petition unless it is exempted from all charges for the EE Programs.

By letter dated November 30, 2009, JCP&L responded to Rate Counsel's letter. According to the Company, no base rate case is required in connection with a filing under N.J.S.A. 48:98.1 since that section "explicitly contemplates clause-type recovery mechanisms for programs such as the EE Programs," and requiring a rate case would discourage utility involvement in energy efficiency and conservation programs. Id at 2.

DISCUSSION AND FINDINGS

JCP&L filed its petition under N.J.S.A. 48:3-98.1, which provides that an electric or gas public utility may provide and invest in energy efficiency and conservation programs in its service territory on a regulated basis and that such investment may be eligible for rate treatment approved by the Board. The Board has previously acknowledged that investments in energy efficiency can help lower energy costs over the long term and produce significant benefits to

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[4] While NRDC was provided with notice of the meetings and copies of all discovery and correspondence, it did not actively participate in the settlement negotiations.

customers. In addition, the EMP recognizes that New Jersey must dramatically increase energy efficiency and energy conservation measures in the 3.7 million existing buildings in the State.

In enacting the statutory changes which included N.J.S.A. 48:3-98.1, the Legislature recognized the need to involve utilities in delivering these energy efficiency measures, stating that "utility involvement and competition in the renewable energy, conservation and energy efficiency industries are essential to maximize efficiencies . . ." N.J.S.A. 26:2C-45. The Board believes that the principles developed out of the collaboration of Staff, Rate Counsel, and the energy utilities which led to the development of the proposed energy efficiency programs and eventually to the execution of the various stipulations can be valuable in furthering the transition of those programs to the utilities.

While recognizing the importance of energy efficiency in meeting the goals of the EMP, and the need to involve utilities in delivering energy efficiency measures, the Board is also mindful that the electric and gas utilities were asked to file energy efficiency proposals in order to support employment and economic activity in the short term, and to enhance the State's business climate and economic prospects in the long term. With this policy goal in mind, the Board has carefully considered the record in this matter. As previously stated, the EE Stimulus Petition anticipates the creation of 84 jobs. However, testimony filed by intervener Gerdau indicates that implementation of the Economic Stimulus Petition risks the loss of an even greater number of jobs.

The Board has taken note especially of the April 2009 testimony of Mr. Mark Quiring, the Vice President and General Manager of the steel mill operated by Gerdau in Sayreville, New Jersey.[5] According to Mr. Quiring, the steel industry in North America "has been under severe market pressure" since October 2008, "as the financial crisis has drastically reduced the demand for steel."[6] He further states that Gerdau operates 19 steel mills in North America which compete with each other for work, capital investment by the parent company, and, ultimately, for the ability to continue in production. Gerdau engages in a continual review of operating efficiencies at each of its plants and will shift production to those mills where the lowest costs are achieved.[7]

Mr. Quiring also describes the effect of electricity costs on the competitiveness of Gerdau's Sayreville mill. The cost of electricity at that mill accounts for 14% of total production costs and a higher percentage of variable production costs.[8] According to the testimony, Sayreville's power costs are significantly higher than any of Gerdau's other mills in North America,[9] even though it ranks highest on natural gas per ton consumption efficiency and second on electricity per ton efficiency in the Gerdau North America group.[10] Notwithstanding these efforts, Sayreville has the highest per ton power costs in the Gerdau group.[11] Between April 2009 and November 2009, Sayreville lost 17% of its production to lower-cost mills in the Gerdau group.[12]

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[5] Direct Testimony of Mark Quiring, April 29, 2009 ("Quiring 4/09 Testimony").
[6] Quiring 4/09 Testimony, p. 6, lines 9-11.
[7] Id. at p. 2, lines 22-23; p. 4, lines 8-13 and 18-21; p. 13, lines 1-3.
[8] Id. at p. 3, lines 21-22.
[9] Id. at p. 4, line 22 through p. 5, line 12.
[10] Id. at p. 12, lines 17-19.
[11] Id. at lines 19-21.
[12] Direct Testimony of Mark Quiring, November 12, 2009 ("Quiring 11/09 Testimony"), p. 2, lines 9-10.

Gerdau has announced the closure of its Perth Amboy, New Jersey mill.[13] The company had also announced a planned suspension of production at Sayreville, but subsequently reversed that decision; nonetheless, the facility is operating on a thin margin, and all costs, including those for energy, are closely scrutinized and directly impact the Company's ongoing consideration of maintaining production at the Sayreville Mill. Mr. Quiring states that any increase in the Sayreville mill's energy costs, including that which would result from the proposal by JCP&L in this proceeding, will adversely affect the sustainability of the facility.[14]

The Board takes particular note of the testimony that 17% of the Sayreville workforce was laid off in December 2008 and another 16% was cut in April 2009. When Mr. Quiring's original testimony was filed, the plant employed approximately 224 people. (Quiring Testimony at 8).[15] As of the date of Mr. Quiring's supplemental testimony, employment had decreased to approximately 160 employees.[16]

The Board **FINDS** Mr. Quiring's unrefuted testimony to be credible. Accordingly, the Board further **FINDS** that it is appropriate to weigh the estimated 84 jobs that could be created under the JCP&L EE Programs, if properly implemented, against the risk of losing some or all of the remaining 160 jobs at Gerdau's Sayreville mill. The Board **FINDS** that this risk is unacceptable in the context of a program that the Board expressly intended to directly support employment and economic activity in the short term, and to enhance the State's business climate and economic prospects in the long term.

The Board acknowledges that JCP&L has invested substantial time and effort in developing the programs contained in the EE Stimulus Petition, in refining those programs in consultation with Staff and Rate Counsel, in reviewing the costs and benefits of the programs, and in attempting to negotiate a stipulation in good faith. Nonetheless, for the foregoing reasons, the Board cannot find that the EE programs as proposed will satisfy the Board's goals of supporting employment and economic activity in the short term as worldwide financial conditions continue to be accompanied by job losses and high unemployment. Therefore, the Board **HEREBY DENIES** the EE Stimulus Petition.

The Board's decision on the EE Stimulus Petition does not indicate agreement with Rate Counsel's position that when costs such as salaries are "passed through" to ratepayers for a program authorized under N.J.S.A. 48:2-98.1 that a rate case must also be filed to ensure that there is no duplication of cost recovery in the base rates. However, the Board agrees that when those base rates are several years old, it may be more difficult to determine whether the costs attributed to the energy efficiency or conservation program, especially if those costs are allocated among various activities, are indeed incremental to costs already recovered in base rates.

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[13] Id. at p. 1, lines 22-23.
[14] Id. at p. 2, lines 1-8.
[15] Quiring 4/09 Testimony, p. 8, line 16.
[16] Quiring 11/09 Testimony, p. 8, line 22.

The Board HEREBY RATIFIES all provisional rulings by President Fox for the reasons stated in her Orders.

DATED: 12/9/09

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ELIZABETH RANDALL
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ATTEST:

KRISTI IZZO
SECRETARY