



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE BOARD'S ESTABLISHMENT)	DECISION REGARDING
OF A GENERIC PROCEEDING TO REVIEW THE)	MANNER OF RECOVERY
PRUDENCE OF COSTS INCURRED BY NEW JERSEY)	OF 2012 MAJOR STORM
UTILITY COMPANIES IN RESPONSE TO MAJOR STORM)	COSTS
EVENTS IN 2011 AND 2012)	
)	DOCKET NO. AX13030196
IN THE MATTER OF THE BOARD'S REVIEW OF THE)	
PRUDENCE 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:

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Janine Bauer, Esq., AARP
Steven S. Goldenberg, Esq., New Jersey Large Energy Users Coalition
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BY THE BOARD¹:

In July 2012, in response to a petition by the New Jersey Division of Rate Counsel ("Rate Counsel") and after notice and opportunity to be heard, the Board ordered Jersey Central Power and Light Company ("JCP&L" or "Company") to file a base rate case with 2011 as the historical test year.² The Board ordered that filing to facilitate a comprehensive review of JCP&L's

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

² 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").

financial integrity and adequacy of capital expenditures, and to provide insight as to the Company's operational efficiency and organizational effectiveness. See 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.³ The matter was transmitted to the Office of Administration Law ("OAL") and assigned to the Honorable Richard McGill, Administrative Law Judge ("ALJ"). On March 6, 2012, ALJ McGill issued a procedural order establishing a schedule with evidentiary hearings beginning on September 12, 2013 and continuing through October 17, 2013, with the hearings scheduled for 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 the preparation, response and recovery related to Superstorm Sandy and the subsequent Nor'easter snowfall. The requested costs for these events totaled approximately \$603 million. Subsequently, in the Company's June filing, the request was updated for actuals and included costs through March 31, 2013, totaling approximately \$580 million for both capital and deferred operating and maintenance ("O&M") expenses for the 2012 major storms.⁴

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 ("Storm Costs Proceeding").⁵ Among other things, the March 20 Order required that any utility seeking reimbursement for these costs from its ratepayers must file a detailed expense report by July 1, 2013 for evaluation and prudence review under a separate sub-docket within the Storm Costs Proceeding⁶.

On April 4, 2013, the Board sent a letter to the OAL in the JCP&L base rate proceeding (Docket No. ER12111052) directing that those portions of the Company's pending base rate case pertaining to the recovery of Major Storm Event expenditures should be returned to the Board for consideration in the Storm Costs Proceeding⁷. Simultaneously, JCP&L filed a letter motion with the Board seeking reconsideration and/or clarification of the Storm Costs Proceeding. On April 5, 2013, by letter motion, JCP&L requested that ALJ McGill defer action on the Board's request for the return of the storm cost issues to the Board until the Board acted on the motion for reconsideration. By correspondence dated April 15, 2013, ALJ McGill returned the 2011 and 2012 storm cost issues to the Board for review, and denied JCP&L's request to stay the base rate case pending resolution of the Storm Costs Proceeding.

In its Order Denying Reconsideration and Clarifying Original Order dated May 31, 2013 ("May 31 Order"), the Board reiterated that the Major Storm costs would be reviewed within this

³ In the Matter of the Verified Petition of Jersey Central Power & 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.

⁴ This revised amount was documented in Docket EO130050391 at discovery response RCR-A-5.

⁵ In re the Board's Establishing a Generic Proceeding to Review the Prudence of Costs Incurred by NJ Utility Companies in Response to Major Storm Events in 2011 and 2012, Docket No. AX13030196, March 20, 2013 ("March 20 Order")

⁶ See March 20 Order at 3.

⁷ Major Storm Event is defined as sustained impact on or interruption of utility service resulting from conditions beyond the control of the utility that affect at least 10 percent of the customers in an operating area. See March 20 Order at 2.

proceeding, retained the matter for hearing at the Board, and designated Commissioner Mary-Anna Holden as the presiding Commissioner. In addition, the May 31 Order directed the parties that intervened in the base rate case and wished to participate in the Storm Costs Proceeding file a notice making such request with Commissioner Holden.⁸

On June 23, 2013, JCP&L filed a petition with supporting testimony, schedules, and exhibits, pursuant to the Board's March 20 and May 31 Orders. In the petition, the Company sought approval to recover, through base rates, all the costs it incurred associated with the 2011 Major Storms (Hurricane Irene and the October snow storm), and the 2012 Major Storms (Super Storm Sandy and the November 2012 Nor'easter).

Specifically, the Company sought approval for cost recovery of capital expenditures related to the 2011 Major Storm events in the total amount of \$74,458,814; \$24,693,632 for Hurricane Irene, and \$49,765,182 for the October snow storm. The Company also sought approval of deferred O&M expenses totaling \$89,504,499; \$47,800,390 for Hurricane Irene, and \$41,704,109 for the October snow storm. Regarding the 2012 Major Storm events, JCP&L sought approval for recovery of costs totaling \$580,187,857; \$333,184,830 for capital expenditures, and \$247,003,027 for deferred O&M expenses.

A pre-hearing conference was conducted on September 25, 2013. On October 23, 2013 Commissioner Holden issued a Prehearing Order along with a procedural schedule, and on November 18, 2013, Commissioner Holden issued an amended Prehearing Order and procedural schedule.

Throughout the course of this matter, the parties engaged in discovery. Pursuant to the May 31 Order, all relevant discovery from the Company's pending base rate case would also be considered in this matter.⁹ On November 15, 2013, the New Jersey Division of Rate Counsel ("Rate Counsel") filed direct testimony. On December 20, 2013, JCP&L filed rebuttal testimony.

On February 24, 2014 the Company, Rate Counsel and Board Staff executed a Stipulation of Settlement ("Stipulation") regarding the Hurricane Irene and Super Storm Sandy costs deemed prudent and recoverable. On March 19, 2014 the Board issued an Order approving the amount of the 2011 and 2012 Major Storm Costs that could be recovered from ratepayers, and returned the 2011 Major Storm Costs to the base rate case with the exact manner of recovery to be decided within the base rate case.¹⁰

With regard to recovery of the 2012 Major Storm Costs, Rate Counsel and JCP&L filed their briefs on March 21, 2014, and Rate Counsel, JCP&L and New Jersey Natural Gas ("NJNG") filed reply briefs on April 1, 2014.

On January 9, 2015, ALJ McGill issued an initial decision finding that JCP&L should recover the deferred 2011 Major Storm O&M costs of \$81,912,314 over a six year amortization period, with carrying charges at the overall rate of return, and the capital costs of \$74,007,396 should be recovered through the Company's rate base.¹¹

⁸ The following parties provided such notice: AARP, New Jersey Large Energy Users Coalition, the Township of Robbinsville, Gerdau Ameristeel Sayreville, Inc., the Township of West Milford, the County of Morris, Public Service Electric and Gas Company, New Jersey Natural Gas Company, the Township of Marlboro, and the Township of Wayne.

⁹ See May 31 Order at 8.

¹⁰ See March 19, 2014 Order at 5.

¹¹ Initial Decision 23, 42-43.

POSITIONS OF THE PARTIES

This Order will address the recovery method for the costs of the 2012 Major Storm Events that have already been determined to be reasonable and prudent.

JCP&L

JCP&L seeks to recover the Board–approved 2012 costs at the same time its base rates are set in the pending base rate case. It is also asking that the Board approve recovery of the major storm capital costs in rate base, and recovery of the O&M costs via a six-year amortization with a return on the unamortized balance set at the overall rate of return approved in the pending base rate case.

The Company provides that the costs are known and measurable, were incurred from October 2012 through March 201, and the amounts were booked, audited, and determined to be reasonable and prudent by the Board. JCP&L further argues that the inclusion of the costs in the pending base rate case is consistent with the Board’s language in the Rate Petition Order directing JCP&L to file a base rate case, as well as in the Board’s initial generic storm costs Order and the May 31 Order denying the Company’s motion for reconsideration.

Specifically, JCP&L refers to the portion of the storm costs Order which provides that “the Board, may, in its discretion, approve of costs associated with preparation, recovery and restoration efforts that it finds reasonable and prudent at any point during the course of this proceeding”¹² and argues that this language gives the Board the flexibility to approve the major storm costs via the pending base rate case.

JCP&L also refers to the provision in the May 31 Order which provides that “the recovery of prudent costs incurred in connection with the 2012 Major Storm Events will be considered in through a Phase II in the existing base rate case or through another method found to be appropriate by the Board,”¹³ and argued that this language gave the Board discretion to address this issue at a later time. JCP&L argues that since the Board did not explain the what, when or why of a “Phase II,” it is reasonable to assume the Board was concerned that the base rate case would get resolved prior to the generic storm costs proceeding, making Phase II necessary.

The Company cites to In re Elizabethtown Water BPU Docket No. WR850433085 (Order dated May 23, 1985) (“Elizabethtown Water”) to support its decision that the Board allowed projected post-test year additions for various expenses, and that these are the “norm” (3-6-9 rule) for base rate cases, particularly expense items which are allowed 9 months outside of the test year.

According to the Company, the “3-6-9” rule allows a utility to base its proposed revenue requirement on mixed data, including a capital structure that may be either as of the test year or up to three months later, a rate case that may be as of the test year-end or up to six months later, and revenues and expenses that maybe be as of the test year or up to nine months later. The Company argues that, since it began incurring the 2012 storm costs several months after the base rate case, due to the Major Storms in the fourth quarter of 2012, it is consistent with the Elizabethtown Water case to include these costs within the base rate case.

¹² See March 20 Order at 5.

¹³ See March 19, 2014 Order at 4.

JCP&L argues that because of the Elizabethtown Water post-test year standard, “mismatch” is the “norm rather than the exception,” i.e. because of the Board’s limits on recovery of post-test year additions, the revenue requirement that comes out of a base rate case is always “based on mixed data,” and thus, incorporating the 2012 major storm costs should be permitted.

The Company further argues that not allowing it to recover the 2012 costs in the pending base rate case with an out-of-date test year would constitute retroactive ratemaking, citing Elizabethtown Water, where on appeal the New Jersey Supreme court reversed a Board decision, providing that “[f]uture or present adjustments to offset earnings in prior rate years are, by any other name, retrospective.”¹⁴

The Company next argues that any attempt to reset its base rates without including the 2012 major storm costs would result in confiscatory, unjust and unreasonable rates which it believes to be unlawful and unconstitutional.

JCP&L asserts that the deferred 2012 O&M storm costs should be recovered over a six year amortization period with carrying costs on the unamortized balance set at the company’s overall rate of return established in the pending base rate case. JCP&L explains that companies need to use their entire capital structure (its combination of debt and equity) to access the capital markets for the extraordinary funding needed to finance the deferred major storm costs. Therefore, JCP&L argues the overall rate of return, which is set based on the capital structure and overall costs of debt and equity, is the appropriate carrying cost to apply to the unamortized balance of deferred 2012 Major Storm Costs.

RATE COUNSEL

Rate Counsel argues that JCP&L’s pending base rate case uses a 2011 test year and the 2012 major storm costs were incurred well beyond the end of the 2011 test year. Therefore, recovery of all these costs should be deferred to the Company’s next base rate proceeding.

Rate Counsel also cites to the Elizabethtown Water’s exceptions to post-test year additions, but stresses that the 2012 storm costs are outside the time limit exceptions. It is Rate Counsel’s position that since the 2012 storm costs occurred eleven months beyond the end of the test year, they do not fit in the time frame established for exceptions.

Rate Counsel is concerned that undermining (expanding past the 3-6-9 rule) the rules established in Elizabethtown Water will set a dangerous precedent because, if allowed, the Board will effectively move to a two year test year for certain costs.

Rate Counsel argues that by allowing the 2012 Major storm costs into the 2011 test year of the base rate case, the Board will engage in single issue ratemaking, since the revenue requirement is based upon the utility’s aggregate costs and revenues, not one specific cost related to one component of the operation. Rate Counsel further argues that the policy against single issue rate making discourages the consideration of particular portions of a utility revenue requirement, stressing that the revenue requirement is based on aggregate costs and revenues, not specific costs related to one component of utility operations.

¹⁴ In re Elizabethtown Water, 107 N.J. 440, 449 (1987).

Rate Counsel also refers to the principle of the “regulatory triad,” arguing that rate base, revenues, and expenses must be synchronized at a single point in time to avoid manipulation of one or more of these components leading to a skewed and potentially unfair rate, and submits that, if the 2012 storm costs are inserted into the 2011 base rate case, a mismatch will occur among the components of the regulatory triad used to set rates in base rate cases.

NJNG:

NJNG filed a letter brief supporting JCP&L’s position that the Board allow recovery of the Board–approved 2012 Major Storm Costs through the pending base rate case. NJNG argues that: 1) the recoverability of known and measurable costs is a major tenant of traditional ratemaking; 2) Rate Counsel’s reliance on Elizabethtown Water is misguided because JCP&L was forced to use a stale and fully-historic test year; and 3) the costs at issue are fully approved capital costs or have been deferred as a regulatory asset.

JCP&L Response:

JCP&L again argues that the “3-6-9” rule actually supports the fact that the “matching” of all components of a utility’s rate structure is never required in a base rate case.

JCP&L provides that the stale 2011 test year (established in July 2012) is now more stale with new rates to be set in the 2nd quarter of 2014. The Company points out that in Elizabethtown Water the test year was premised on a test year that was partially historic (5 months) and partially forecast (often 7 months), but nonetheless, the test year is always based upon the most current data available.

Rate Counsel’s Response:

Rate Counsel argued that the Company is aware of the 3-6-9 rule in the Elizabethtown Water case, but asks the Board not to apply the rule in this case. Rate Counsel asserted that the long standing Elizabethtown Water standard will be undermined if the Board allows recovery of storms costs incurred in 2012 and 2013 in a 2011 test year.

Rate Counsel further provided that whether there is a precise, temporal match of all the rate case data is not relevant because these are extraordinary additional amounts well beyond the 2011 test year which may substantially change the outcome of the rate case in the Company’s favor. Rate Counsel argues that allowing deferral for future recovery of certain costs through the creation of a regulatory asset is a long-standing, generally accepted Board practice, and the Company never previously argued that this practice resulted in unjust rates, or constitutes retroactive rate making.

Rate Counsel highlighted the Company’s admission that the Board consistently allowed it to defer major storm restoration costs as a regulatory asset to be recovered in a future base rate case. Rate Counsel urged the Board to abide by the decision in Elizabethtown Water and reject the Company’s effort to add \$600 million in 2012 Major Storm Costs to rates in the base rate proceeding that uses 2011 data. Rate Counsel further urged the Board to reject JCP&L’s request for special treatment of these costs, and to direct the Company to follow the same rules as all of the other utilities.

DISCUSSION AND FINDINGS

The question before the Board is whether JCP&L should currently be allowed some form of recovery of the already reviewed 2012 Major Storm Event costs, or whether the Company should be required to file another base rate case. The Board continues to believe that a base rate case is the appropriate mechanism for a comprehensive review of a utility's rate base, expenses, operations and rate of return as required by N.J.S.A. 48:2-21 to ensure that rates are just and reasonable, and that the Company is investing sufficiently to assure the provision of safe, adequate and proper utility service to its customers as required by N.J.S.A. 48:2-23.¹⁵

JCP&L just completed its base rate case, a matter the Board considered as part of this same agenda. The 2012 storm costs were reviewed and found to be prudent, and the capital investments at issue are complete and being used by the Company to provide service to customers. Yet, given the historic 2011 year used in the rate case, the Board agrees that these extraordinary expenses fall too far outside that period to be directly included in the base rate case. This unusual situation requires a creative response by the Board that respects the law but adapts to circumstances. In the past, the Board found that it has the power to act to meet such challenges. See N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (Order dated March 17, 1981). The Board continues to have that power. See In re Petition of JCP&L for An Approval of an Amendment to its Tariff, 85 N.J. 520 (1981) (upholding accelerated amortization of deferred energy account in an amount equal to removal of asset from rate base to protect financial condition of the utility). More recently, the Board found it has the power to reopen a recently completed base rate case to allow infrastructure projects built under an accelerated infrastructure investment plan to be rolled into rate based after completion and prudence review based on circumstances in the economy. See In re Petition of New Jersey Natural Gas Company for Approval of an Accelerated Energy Infrastructure Investment Program, Docket No. GO09010052 (Order dated April 28, 2009).

The Board finds that this is the appropriate time to make a decision concerning the recovery of the Major Storm Event costs associated with JCP&L's response to Super Storm Sandy and the November 2012 Nor'easter. As previously stated, the amount of these costs, already reviewed by Rate Counsel and Board Staff, and found to have been prudently incurred, total approximately \$580 million. The rationale for making this decision concurrently with the Board's decision in the JCP&L base rate case is to avoid the confusion associated with lowering rates as a result of the Board's findings in the base rate case, as set out in the Order issued contemporaneously with this one, only to subsequently raise rates as result of the necessity to allow recovery of the large amount of prudently incurred costs resulting from the 2012 Major Storm Events.

The Board is concerned with the potential impact on the financial integrity of JCP&L of any further delay in the recovery of these significant and prudently incurred costs. Any further uncertainty concerning the timing and outcome of the Board's decision with regard to the storm costs could precipitate a credit rating downgrade. The Company's credit ratings are BBB- from Standard & Poor's, and Baa2 from Moody's, the two major credit rating agencies. If Standard & Poor's downgrades the Company's debt, JCP&L's bonds would be rated as speculative, while a downgrade by Moody's would leave the bonds one notch above. Having a major New Jersey utility with bonds rated below investment grade sends a negative message to the investment community, which could in turn be counter-productive from a ratepayer standpoint. Given the

¹⁵ See Rate Petition Order at 12.

capital-intensive nature of the utility business, customer rates would likely increase over time as a result of a downgrade-associated increase in the Company's borrowing costs. Parenthetically, the potential for a credit rating downgrade is one the reasons the Board agreed with Rate Counsel and the ALJ with regard to requiring JCP&L to provide a study of the costs and benefits associated with ring-fencing JCP&L from the risks associated with other FirstEnergy activities.

Furthermore, the Board is currently rated in the middle of the range between consumer-oriented and investor-friendly by Regulatory Research Associates, an organization that monitors and ranks the regulatory commissions. Such a rating is considered optimal in that it shows that the Board is fairly balancing the interests of ratepayers and shareholders. It would be unfortunate if that balanced perception of the Board were to change as a result of inaction on the recovery of the storm costs that the Board already determined were reasonably and prudently incurred.

The delay in bringing this case to final resolution is certainly unfortunate, but the delay has not been caused by JCP&L, Rate Counsel or the Board. A highly contested rate case of this degree of complexity takes a good deal of effort and time. JCP&L spent a combined \$736 million on 2011 Major Storm costs (included in JCP&L's base rate case), and 2012 Major Storm costs (addressed in this Order) which the Board has found to be prudently incurred, but for which the Company has not yet received recognition in rates, nor has the Company been earning a return on these expenditures which were incurred over two years ago. Therefore, the Board **HEREBY FINDS** that it is appropriate to implement the recovery of approved 2012 Major Storm costs coincident with implementation of the reduction in base rates flowing from JCP&L's base rate case. This timing will lessen the rate volatility to ratepayers who have had the benefit of these expenditures.

The Board **HEREBY ORDERS** that the 2012 Major Storm capital costs should be incorporated into base rates established in the 2012 base rate case, while the operations and maintenance expenses should be recovered on a per kilowatt hour basis, amortized over the six year period that the Company has agreed is appropriate for recovery of major storm O&M costs, through a clause to be true-up annually. Carrying costs on the unamortized balance of major storm O&M costs shall be recovered through the clause and calculated on a monthly basis at an interest rate equal to the rate on seven-year constant maturity Treasuries, as shown in the Federal Reserve Statistical Release on or closest to January 1 of each year, plus sixty basis points, compounded annually. By January 15th of each year, the Company shall file its annual cost true-up petition with rates proposed to be effective April 1st of the filing year.

The capital costs shall be reflected in base rates using the cost allocation and rate design method approved by the Board in the base rate case. The O&M costs shall be recovered through the use of a special clause conforming to the terms set out above to be submitted by the Company.

The Board **HEREBY ORDERS** the Company to file tariff sheets conforming to the terms of this Order within five (5) days of the service of this Order.

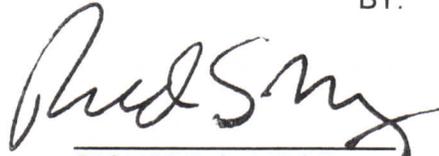
To ensure that there is no over-recovery, the Company is **HEREBY DIRECTED** to file a base rate case no later than April 1, 2017.

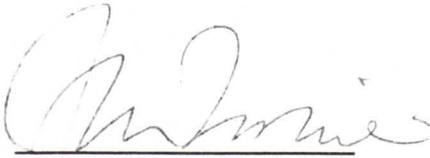
The Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude or prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

The rates, terms and conditions shall become effective for service rendered on and after April 1, 2015.

DATED: 3/24/15

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within document 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 Prudence of Costs Incurred by New Jersey Utility Companies in Response to Major Storm Events in 2011 and 2012 - Docket No. AX13030196 and

In the Matter of the Board's Review of the Prudence of the Costs incurred by Jersey Central Power & Light Company in Response to Major Storm Events in 2011 and 2012 – Docket No. EO13050391

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