Agenda Date: 12/6/19
Agenda Item: 2D

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

NICOLE HAGNER AND JAMES NOVICK, Petitioners	)	ORDER ADOPTING INITIAL DECISION
v.	)	BPU DOCKETS NO. EC18080883, GC18080884, & QC18091075
JERSEY CENTRAL POWER AND LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondents	)	OAL DOCKET NO. PUC 04197-19

Parties of Record:

James Novick, Petitioner, Pro Se
Joshua Eckert, Esq., on behalf of Jersey Central Power and Light Company
Adrian Newall, Senior Counsel on behalf of Public Service Electric and Gas Company

BY THE BOARD:

PROCEDURAL HISTORY

On August 10, 2018, Nicole Hagner and James Novick ("Petitioners") filed a petition ("Petition") with the New Jersey Board of Public Utilities ("Board"), requesting that the Board grant instructions for the following: (a) Public Service Electric and Gas Company ("PSE&G") to reimburse Petitioners in the amount of $2,329.60 in trenching expenses related to an extension of gas service to their home in Chatham, NJ, (b) Jersey Central Power and Light Company ("JCP&L" or "Company") to reimburse Petitioners in the amount of $2,176.27 for the cost of wire plus $500.00 in trenching expenses related to an extension of electric service to their home in Chatham, NJ; and (c) the Office of Clean Energy ("NJ OCE") to reimburse Petitioners for the CoolAdvantage and WarmAdvantage rebates in the amount of $1,400.00 that were denied for installing Heating, Ventilation, and Air Conditioning ("HVAC") and domestic hot water heater in an area not designated for growth.[1] On September 11, 2018, JCP&L submitted its answer to the Petition. On September 24, 2018, PSE&G submitted its answer to the Petition. This matter was subsequently transmitted to the Office of Administrative Law ("OAL") on March 18, 2019, for determination as a contested case.

[1] Petitioners stated that they previously filed petitions in October 2008 and in February 2011, but these petitions were lost.

A prehearing conference was held on April 10, 2019, wherein a procedural schedule was established.

A plenary hearing was conducted before Administrative Law Judge ("ALJ") Irene Jones on July 25, 2019. At the hearing, James Novick, Petitioner, testified in support of his case. JCP&L presented the testimony of Mr. Sung Chung, an engineer in JCP&L's Regulated Asset Management Department. ALJ Jones noted that Board Staff ("Staff") did not respond to the Petition as it related to the NJ OCE rebates and did not make an appearance in this matter. Prior to the scheduled hearing, PSE&G informed ALJ Jones that it had reached a settlement with Petitioners, which was reduced to writing and signed on June 5, 2019. Petitioners and JCP&L submitted post-hearing briefs on September 3, 2019. On October 26, 2019, Petitioners withdrew their case against PSE&G, Docket No. GC18080884. The ALJ issued an Initial Decision on October 29, 2019.

PETITIONERS REQUEST RELATED TO JCP&L

On or about September 10, 2008, Petitioners requested that JCP&L extend electrical service to their home in Chatham, New Jersey. The request was submitted in the name of Joanne Hagner, who was the customer of record at the property until August 30, 2018.[2] (Exhibit R-2; 1T16:12-16).[3] The line extension connected service from the Company's existing facilities to a pole at the edge of the property. JCP&L calculated the cost of the extension at $2,159, exclusive of taxes. (1T32:16-17). The work to bring electric service to the property was completed on March 18, 2009.[4] (1T32:10-11). JCP&L did not charge the Petitioners for the cost of the line extension. However, the line extension needed to be connected from the edge of the pole to the Petitioners' residence. This extension, commonly referred to as the "service connection," was placed underground in lieu of a standard overhead line, at the Petitioners' request. (1T35:18-25). JCP&L did not perform all of the work for the service connection. Rather, the Petitioners hired a third-party contractor to excavate, dig a trench, etc. Thereafter, JCP&L connected the facilities installed by Petitioners' contractors to its facilities. JCP&L did not charge for this connection. (1T52:7-9). JCP&L estimated the cost to connect the facilities to its infrastructure at $936.06. (Initial Decision at 3). Further, JCP&L estimated that if the Petitioners elected to have the standard overhead line extension installed, the cost would have been $1,019.66. (Exhibit R-7; 1T48:24-49:2) However, the cost for JCP&L to install an underground-service connection was estimated at $2,139.72. (Exhibit R-6; 1T46:2-4) This estimate was based on a distance estimate of 92 feet measured by the Petitioners from the newly installed pole to the Petitioners' meter. (Initial Decision at 3). The costs did not include the requested $500 for trenching, which parties agreed is not a recoverable cost. (1T46:5-6).

After the request for the line extension, but before its completion, on October 22, 2010, the Board issued an order requiring that the State's utilities treat pending petitions regarding line extension charges, which included the instant petition, as if it were in a designated growth area under the Main Extensions Rules.[5] JCP&L alleged that the Petitioners were not charged a

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[2] Petitioner James Novick testified that Joanne Hagner was the mother of his wife, Nicole Hagner and that although the property was subdivided in or around 2004, the utilities were left in Joanne Hagner's name until 2018. (1T16:1-18).

[3] 1T is a reference to the transcript of the July 25, 2019 hearing in this matter.

[4] The Initial Decision finds that the work was completed in 2019, but this appears to be a typographical error.

[5] In re the Board's Main Extension Rules, N.J.A.C. 14:3-8.1 et seq., non-docketed matter, Order dated October 22, 2010. ("October 2010 Order").

deposit or a contribution in aid of construction ("CIAC") for the line extension or the service connection.

James Novick asserted that JCP&L did not provide all the work that was required to extend the service from its existing facilities to his newly constructed house. (1T12:18-22). He concluded that this was contrary to Company policy set forth in Exhibit C (R-3), which provides that the Company is required to provide overhead-line extension in a designated growth area without charge when the cost does not exceed 10 times the estimated distribution revenues. A refundable deposit is only required when the extension cost exceeds 10 times the annual distribution revenues. In this case, a refundable deposit was not required because the cost of line did not exceed the threshold. (1T12:23 to 13-7). Mr. Novick asserted that he cannot be denied a refund because no deposit was required. (1T13:8-16). Mr. Novick further disputed that he was required to pay the cost of extending the line underground stating that JCP&L was required to pay him for the difference in the cost of the overhead line ($1,019.66). (1T14:15-20) Under cross-examination, Mr. Novick conceded that his property was formerly owned by his mother-in-law, Joanne Hagner. It was subdivided in 2004, but they elected to leave the utility bill in her name. Consequently, Joanne Hagner was the customer of record from the time the line extension was completed until August 2018. (1T16:12-16). Mr. Novick confirmed the invoices that were attached to the Petition in support of his claimed out of pocket costs were signed by his father-in-law and that his father-in-law picked up the equipment and signed the invoices with his name. (1T20:9-21:2). However, Mr. Novick believes he probably provided the credit card. Mr. Novick further acknowledged that he paid no monies to JCP&L for any work performed by the Company at his residence even though his property was not in a designated growth area. (1T21:19-24).

Mr. Sung Chung, an engineer in JCP&L's Regulated Asset Management Department, supervises the refund process at JCP&L for refundable line-extension contributions that are collected from customers. Mr. Chung testified that under the Board's former line extension rules, customers that requested a line extension in areas designated for growth were still responsible for paying the difference between the company's standard least-cost design (overhead design) and the cost for the underground extension. (1T34-20 to 37-4). This requirement was in the Company's tariff that was in effect at that time, which provided that, "whether or not in a designated growth area or an area not designated for growth, the difference in cost between the alternate design and the Company's standard least cost design shall be paid in full by the Applicant as a non-refundable contribution." (R-3). Mr. Chung further testified that if JCP&L performed the entirety of the work at the property and had it been in an area designated for growth, Petitioners would still have been responsible to pay a non-refundable contribution for the cost difference between a standard overhead design and the underground design that was ultimately installed. However, Mr. Chung noted that because the Petitioners chose to perform the underground work themselves and because the property was in an area not designated for growth, the Company's records do not indicate that it ever performed an estimate of the incremental costs for either the underground or overhead design. (1T55:4-10). Mr. Chung did prepare an estimate for the evidentiary hearing that was set forth in Exhibits R-6 and R-7. The cost estimates were prepared using information that was provided by Petitioners about the underground work and were based on the Company's current costs. Based on his analysis, Mr. Chung estimated that JCP&L's incremental cost for the work at the property if the Company had done the underground work would have been $2,139.72. (R-6). He further estimated that JCP&L's incremental cost to provide overhead service from the pole it installed at the edge of property to the residence would have been $1,019.66. (R-7). Mr. Chung estimated that if JCP&L performed the underground work in addition to the line extension work and service

connection, Petitioners would have been responsible for paying a non-refundable contribution in the amount of $1,120.06 ($2,139.72 less $1,019.66). (1T49:4-12).

Briefs

Petitioners

In support of its argument that its actions with respect to the refund request were in accordance with the Board's rules, the Petitioners cited the October 2010 Order wherein the Board required utilities to calculate deposits as if the property was in an area designated for growth and requiring the utilities to "recalculate any deposit agreements" entered by individuals with pending complaints. (Petitioner Brief at 1). Petitioners argued in their brief that JCP&L owes them a refund of $1,411.22. Petitioners disputed JCP&L's estimated incremental cost to provide overhead service of $1,019.66 and asserted that the incremental cost to provide overhead services is $1,775.47 because JCP&L erroneously omitted $755.81 of labor and material costs from its estimate. (Id. at 2 to 3). The Petitioners claimed that the non-refundable contribution would be $364.25 which Petitioners calculated by subtracting their estimated cost of $1,775.47 for overhead service from JCP&L's estimated cost of $2,139.72 for underground service. (Id. at 3). The Petitioners argued that a recalculation of their service agreement pursuant to the October 2010 Order reveals that JCP&L would be required to pay for the total overhead cost of the extension, $1,775.47 and JCP&L should refund to the Petitioners $1,411.22 ($1,775.47 less $364.25). (Ibid.)

JCP&L

JCP&L argued in its brief that the Petitioners are not entitled to the refund requested in the Petition. JCP&L asserts that the Company's actions were in accordance with its Board approved tariff and the rules adopted by the Board governing refund requests like the one submitted by Petitioners. (JCP&L Brief at 5). Moreover, JCP&L argued that even if the Board's rules allowed the Petitioners to receive a refund from JCP&L for costs the Petitioners paid to other parties (which JCP&L emphasized they do not), Petitioners have not met their burden of proof to establish they are entitled to any such refund. JCP&L maintained that Petitioners' request for relief must be denied and the Petition dismissed, with prejudice. (Ibid.)

JCP&L noted that the October 2010 Order specifically identified the Petitioners as being among the customers to which it applied. JCP&L also asserted that the Board provided additional guidance addressing how to handle the type of refund at issue in this proceeding. Specifically the Board adopted N.J.A.C. 14:3-8.14(c)(4) which provides that "[u]nder no circumstances shall a regulated entity refund an amount in excess of a contribution paid to the regulated entity for an extension." (Id. at 6).

In this case, the Petitioners are seeking a refund for monies they claim they paid to third-parties for the service connection. JCP&L argued that N.J.A.C. 14:3-8.14(c)(4) precludes the Petitioners from receiving that relief. Petitioners did not pay a contribution to JCP&L for either the line extension or the service connections. As such, JCP&L as a regulated entity argued that it cannot refund Petitioners for any amounts that were not paid to it. (Id. at 6 to 7). JCP&L further contended that even if JCP&L had performed the entirety of the work at the property and had the property been in an area designated for growth, the Petitioners still would have been responsible to pay a non-refundable contribution for the cost difference between a standard overhead design and the underground design that was ultimately installed. (Id. at 8). Based on JCP&L's estimates, the Petitioners would have been responsible to pay at least $1,120.06 for

the line extension at the property regardless of who performed the underground work and regardless of whether the property was in an area designated for growth or not. (Id. at 9).

PETITIONERS REQUEST RELATED TO NJ OCE REBATES

The Petitioners also raised an issue regarding payment of New Jersey Clean Energy Program ("NJCEP") incentives for their HVAC and Domestic Hot Water systems. According to Petitioners, they were denied rebates totaling $1100 for two (2) energy efficient furnaces and three (3) high efficiency air conditioning units, as well as a $300 rebate for their hot water heater. (Petition at Para. 19-20). Petitioners documented their claims by providing two (2) denial letters from NJCEP, each of which references "Not in Smartgrowth Area" as a reason for denial. (Id. at Attachment C).

Initial Decision

ALJ Jones issued her Initial Decision on October 29, 2019. ALJ Jones determined that the Petitioners bear the burden of proof to establish by a preponderance of the competent credible evidence that they are entitled to a refund/reimbursement of monies paid to third-party contractors for the underground-line extension and found that the Petitioners failed to meet the required burden of proof. ALJ Jones made the following findings:

1. The Petitioners have failed to meet the required burden of proof. (Initial Decision at 9).

2. JCP&L did not charge the Petitioners for the line extension; a fact that Petitioners did not seriously dispute.

3. The Petitioners requested an underground-service connection for which they were appropriately charged pursuant to Section 11.06 of the Company's Tariff which was effective at the time of the line extension and service connection. The tariff provided that whether for a designated growth area or an area not designated for growth, the difference in cost between the alternate design and the Company's standard least cost design shall be paid in full by the Applicant as a nonrefundable contribution.

4. The testimony of Mr. Chung that the Petitioners never sought a cost estimate for the underground-service connection was credible. ALJ Jones noted that at the time that the work was being performed, the Petitioners were not customers of JCP&L and some of the invoices for material and supplies were not in the Petitioners' names, but in the name of Mr. Novick's father-in-law, who along with this wife were the customers of JCP&L.

ALJ Jones concluded that no refund is due to the Petitioners as they paid no CIAC to JCP&L, nor did JCP&L charge the Petitioners for any cost associated with the line extension. Accordingly, ALJ Jones ordered that this matter be dismissed. ALJ Jones made no findings with respect to Petitioners' request related to NJ OCE Rebates. No Exceptions to the Initial Decision were received by the Board.

DISCUSSION AND FINDINGS

The Board's Main Extension Regulations at 14:3-8.1 et seq. generally provide that a gas or electric utility will provide an extension of service to individual permanent residential customers free of charge where the extension cost does not exceed expected distribution revenue based on an established formula. A customer may be required to provide a refundable deposit for the

value of any extension cost that is greater than the expected distribution revenue. However, for a period of time beginning March 20, 2005, the Main Extension Regulations provided that in areas not designated for growth, utilities were (with limited exceptions) prohibited from contributing to the cost of a utility extension and therefore, applicants were required to pay the full cost of the extension as a non-refundable CIACs. While refunds were permissible for extensions to serve designated growth areas, the Main Extension regulations in effect from March 20, 2005 through December 30, 2009 provided for these extensions, "in no event shall a regulated entity refund more than the total deposit amount to the applicant." (N.J.A.C. 14:3-8.9(f)).

As noted in the Initial Decision, the Petitioners withdrew the portion of their Petition related to PSE&G. Accordingly, upon issuance of this Order, the Board **HEREBY DIRECTS** Staff to close Docket No. GC18080884.

In the October 2010 Order, the Board ordered that the Petitioners' case should be treated "as if it were in a designated growth area under the Main Extension Regulations." In this case, neither the Petitioners, nor anyone else, paid JCP&L for work related to the extension of service from JCP&L's facilities to the Petitioners' home.

After a review of the record in this matter, including the Initial Decision, the Board **HEREBY FINDS** that the Petitioner failed to meet its burden of proof and that no refund is due to Petitioners as they paid no CIAC to JCP&L and JCP&L did not charge the Petitioners for any cost associated with the line extension.

In support of its argument that the Petitioner was entitled to Clean Energy Rebates, the Petitioner relied on In re Centex Homes, Petition for Extension of Service, 411 N.J. Super. 244 (App. Div. 2009) and N.J.A.C. 14:3-8.1, et seq.

The Appellate Division in Centex stated that "[a]n agency's rules will be invalidated if they are 'inconsistent with the statute they purport to interpret.'" In re Centex Homes, Id, at 250 (quoting Smith v Dir, Div. of Taxation, 108 N.J. 19, 27, 527 A.2d 843, (1987). While the language of N.J.S.A. 48:2-27 provided that the Board "may" require a public utility to extend its existing facilities, courts have held that it is mandatory for the Board to allow the extension of service, upon notice, and after hearing, provided the extension is reasonable and practicable, would furnish sufficient business to justify the extension, and if the financial condition of the utility reasonably warrants the expenditure. Centex, at 252. The Appellate Division further noted that "[t]he legislative intent of N.J.S.A 48:2-27, 'does not have land use or environmental concerns as main purposes.'" As such, the Court found that the Board could not incorporate a smart growth requirements into its Main Extension rules.

In contrast to the Main Extension rules, the NJCEP was developed and implemented by the Board, pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, et. seq. ("EDECA"). In addition to deregulating energy generation, EDECA directed the Board to initiate programs to conserve energy and further other environmental goals. N.J.S.A. 48:3-50(a)(8) authorized the Board to, "approve alternative forms of regulation in order to address changes in technology and the structure of the electric power and gas industries; to modify the regulation of competitive services; and to promote economic development." N.J.S.A.48:3-50(a)(9) specifically directed the Board to "[p]revent any adverse impacts on environmental quality in this State as a result of the introduction of competition in retail power markets in this State;" and N.J.S.A. 48:3-50(a)10 directed the Board to "[e]nsure that improved energy efficiency and load management practices, implemented via marketplace mechanisms or State-sponsored programs, remain part

of this State's strategy to meet the long-term energy needs of New Jersey's consumers." As such, as a matter of policy, the Board implemented the NJCEP and its programs with certain requirements. The Appellate Division's ruling in Centex applied to main extension applications pursuant to N.J.S.A. 48:2-27. The NJCEP was implemented by the Board pursuant to EDECA, N.J.S.A. 48:3-49 and was therefore not affected by the Centex Decision. The Board **FINDS** that the NJ OCE denial of Petitioners' request for Clean Energy rebates was consistent with the Board's requirements for the program at the time of the request and that it would be inappropriate to reevaluate Petitioners' request for these rebates based upon program requirements that may have been implemented at a later date.

Accordingly, the Board **ADOPTS** the ALJ's Initial Decision relating to JCP&L in its entirety, as if fully set forth herein. For the reasons set forth herein, the Board **HEREBY DENIES** Petitioners' request for Clean Energy Rebates.

The effective date of this Order is December 16, 2019.

DATED: 12/6/19

BOARD OF PUBLIC UTILITIES
BY:

JOSEPH L. FIORDALISO
PRESIDENT

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

UPENDRA J. CHIVUKULA
COMMISSIONER

ROBERT M. GORDON
COMMISSIONER

ATTEST:

AIDA CAMACHO-WELCH
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 NICOLE HAGNER AND JAMES NOVICK VS. JERSEY CENTRAL POWER AND LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY
BPU DOCKETS NO. EC18080883, GC18080884, & QC18091075
OAL DOCKET NO. PUC 04197-19

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. PUC 04197-19
AGENCY DKT. NO. EC18080883

NICOLE HAGNER AND JAMES NOVICK,
Petitioners,
v.
JERSEY CENTRAL POWER AND LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent.

James Novick, petitioner, pro se

Joshua Eckert, Esq., for respondent, First Energy Service/Jersey Central Power and Light Company (attorneys)

Adrian Newall, Senior Counsel for respondent, Public Service Electric and Gas Company

Record Closed: October 26, 2019 Decided: October 29, 2019

BEFORE **IRENE JONES**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On August 2, 2018, petitioners, Nicole Hagner and James Novick, filed a petition for a formal hearing with the Board of Public Utilities (BPU) seeking reimbursement of "lines extension fees and costs" incurred by them for utility services at their newly constructed home on 396 River Road in Chatham, NJ. Additionally, petitioners seek "reimbursement of rebates" denied them as they were not in a smart-growth area.

As will be discussed infra, petitioners first filed a petition in October 2008 against respondents. Petitioner asserts that a second petition was filed in February 18, 2011, but was lost. The third and final petition was filed on August 2, 2018, which was accepted for filing on August 10, 2018, and thereafter transmitted to the Office of Administrative Law for hearing as a contested case. A prehearing conference was held on April 10, 2019, wherein a procedural schedule was established. The parties to this matter are the petitioners and respondents Jersey Central Power and Light Company (JCP&L) and Public Service Electric and Gas Company (PSEG). The petitioners seek reimbursement from the utilities for line-extension costs. They seek to recover rebates from the Board of Public Utilities for rebates for smart appliances that they purchased for their new home. The Board Staff has not responded to the petitioners or to the undersigned regarding this issue. Nor has the Board Staff made an appearance in this matter.

Prior to the scheduled hearing, respondent Public Service Electric Gas, informed the undersigned that it had reached a settlement with the petitioners. The terms of the settlement were reduced to writing and is attached hereto.[1] On October 26, 2019, the petitioners withdrew their case against PSE&G.

A hearing was held and concluded on July 25, 2019. At the hearing, James Novick, petitioner, testified in support of his case. JCP&L presented the testimony of Sun Chung, engineer at JCP&L's Regulated Asset Management Department. The

[1] Petitioners filed their orginal petition against PSEG on or about October 25, 2008, seeking reimbursement from paying the cost associated with the extension of gas service from the street to their home.

parties submitted post-hearing briefs on September 3, 2019, at which time the record closed.

FINDINGS OF FACT

Based on the record, I **FIND** the following **FACTS:**

On or about September 10, 2008, petitioners requested of Jersey Central Power and Light a line extension for electric service at their home located at 396 River Road, Chatham Township, New Jersey. This request was submitted in the name of Nicole Hagner, who was the customer of record at the property until August 30, 2018. The line extension connected service from the company's existing facilities to a pole at the edge of the property.

JCP&L calculated the cost of the extension at $2,159, exclusive of taxes. The extension was completed on March 18, 2019. JCP&L did not charge the petitioners for the cost of the line extension. However, the line extension needed to be connected from the edge of the pole to the petitioners' residence. This extension, commonly referred to as the "service connection," was placed underground in lieu of a standard overhead line, at the petitioners' request. JCP&L did not perform all of the work for the service connection. Rather, the petitioners hired a third-party contractor to excavate, dig a trench, etc. Thereafter, JCP&L connected the facilities installed by petitioners' contractors to its facilities. JCP&L alleges that it also did not charge for this connection. JCP&L estimates the cost to connect the facilities to its infrastructure at $936.06.

Further, JCP&L estimates that had the petitioners elected to have the standard overheard line extension installed the cost would have been $1,019.66. However, the cost for JCP&L to install an underground-service connection is estimated at $2,139.72. This estimate is based on a distance estimate of ninety-two feet measured by the petitioners from the newly installed pole to the petitioners' meter. The costs do not include $500 for trenching, which parties agreed is not a recoverable cost.

After the request for the line extension—but before its completion—the BPU on October 22, 2010, issued an order requiring that the State's utilities treat pending petitions regarding line extension charges, which includes the instant petition, as if it were in a Designated Growth Area under the Main Extensions Rules. See In re the Board's Main Extension Rules, N.J.A.C. 14:3-8.1 et seq., non-docketed matter (October 2010). Accordingly, JCP&L alleges that the petitioners were not charged a deposit or a contribution in aid of construction for the line extension or the service connection.

TESTIMONY

Petitioner, James Novick, testified on his own behalf. He asserts that JCP&L did not provide all the work that was required to extend the service from its existing facilities to his newly constructed house. He concludes that this was contrary to company policy set forth in Exhibit C. Exhibit C provides that the company is required to provide overhead-line extension in a Designated Growth Area without charge when the distance does not exceed ten times the estimated distribution revenues. A refundable deposit is only required when extension cost exceeds ten times the annual distribution revenues. Here, a refundable deposit was not required because the cost of line did not exceed the threshold. Thus, Novick asserts that he cannot be denied a refund because no deposit was required.

Novick further disputes that he was required to pay the cost of extending the line underground. He concludes that JCP&L was required to pay him for the difference in the cost of the overhead line or $1,019.66.

Under cross-examination, Novick conceded that his property was formerly owned by his mother-in-law. It was subdivided in 2004 but they elected to leave the utility bill in her name. Consequently, in August 2018, Joanne Hanger was the customer of record at the time the line extension was completed. Novick identified the invoices attached to his petition as B-1 to B-4, now R-8. He confirms that the invoices were signed by his father-in-law. He concedes that his father-in-law picked up the equipment and signed the invoices with his name. However, he believes he probably provided the credit card.

He further acknowledged that he paid no monies to JCP&L for any work performed by the company at his residence even though his property was not in a Designated Growth Area. He admits that he did pay a deposit to PSEG for connecting the gas line from the house to the street, which PSEG refunded after the main extension case.

Sung Chung (Chung) is an engineer in the respondent's Regulated Asset Management Department. Chung supervises the refund process at JCP&L for refundable line-extension contributions that are collected from customers. Chung testified that under the Board's former line-extension rules, customers that requested a line extension in areas that were designated for growth were still responsible for paying the difference between the company's standard least-cost design (overhead design) and the cost for the underground extension. This requirement was found in the Company's tariff in effect at that time, which provided that:

> Whether or not in a designated growth area or an area not designated for growth, the difference in cost between the alternate design and the Company's standard least cost design shall be paid in full by Applicant as a non-refundable contribution.
>
> [Exhibit R-3.]

Accordingly, he testified that had JCP&L performed the entirety of the work at the property and had it been in an area designated for growth petitioners still would have been responsible to pay a non-refundable contribution for the cost difference between a standard overhead design and the underground design that was ultimately installed.

However, Chung noted that because the petitioners chose to perform the underground work themselves and because the property was in an area not designated for growth, the company's records do not indicate that it ever performed an estimate of the incremental costs for either the underground or overhead design. He did prepare an estimate for the hearing that is set forth in R-6 and R-7. These cost estimates were prepared using information that was provided by petitioners about the underground work and were based on the company's current costs. Based on his analysis, Chung's

estimates that JCP&L's incremental cost for the work at the property had the company done the underground work would have been $2,139.72. (R-6.) He further estimated that JCP&L's incremental cost to provide overhead service from the pole it installed at the edge of property to the residence would have been $1,019.66. (R-7.) Chung estimates that had JCP&L performed the underground work in addition to the line extension work and service connection, petitioners would have been responsible for paying a non-refundable contribution in the amount of $1,120.06.

ARGUMENT

Petitioners agree that JCP&L did not charge them for any costs associated with the line extension. However, at issue is the cost associated with the service connection to the residence. Petitioners dispute witness Chung's testimony that they were treated as if they were in a Designated Growth Area. Further, petitioners deny Chung's testimony that it was their decision not to get an estimate for the service connection from the company. Petitioners further dispute the date that Chung alleged that the pole was installed.

Petitioners further assert that the calculations in R-6 and R-7 are erroneous. They contend that when calculating the cost estimate for JCP&L underground extensions at the property, Chung rightfully includes a line item for labor and material for "Service Cable 600v AL XLPE TPK STR 350-2/A& 4/0/-1/C (SERV-CD)" in the amount of $244.14 labor, $495.12 materials, and $16.55 equipment: Total $755.81. (R-6.) By contrast, this line item was not included when calculating the cost estimate for the overhead extension. (R-7.) This line item is for the cost associated with wire and is the most pertinent expense for which they seek relief. When the cost of wire is included in the cost estimate for overhead extension, it brings that total cost to $1,775.47. When that number is then subtracted from the cost estimate for the underground extensions, $2,139.72, the difference is $364.25. Petitioners assert that this is the amount that should be applied as the non-refundable contribution pursuant to the calculation in N.J.A.C. 14:3-8 and the balance of the overhead extension cost of $1,775.47 should have been refunded to them.

JCP&L contends that the petitioners are not entitled to their requested relief. Specially, it notes that the Board passed rules in March 2005 requiring different cost for line extensions that were in areas not designated for growth than in areas designated for growth. See In re Main Extension Rules, at 1-2. Under those rules, individuals seeking a line extension to serve a property in an area not designated for growth were required to pay the full cost of the line extension as non-refundable contribution in aid of construction, with limited exceptions. Id. at 2.

On appeal, the Appellate Division found these rules to be ultra vires in In re Centex Homes, Petition for Extension of Service, 411 N.J. Super. 244 (App. Div. 2009). In response to the Centex decision, the Board required utilities to calculate deposits as if the property was in an area designated for growth and ultimately provided "pipeline" retroactively of the Centex decision, requiring the utilities to "recalculate any deposit agreements" entered by individuals with pending complaints. In re Main Extension Rules, at 7. It is this "pipeline" provision that retroactively applies to petitioners.

Thereafter, the Board implemented rules specifically addressing how to handle the type of refund at issue in this proceeding. See N.J.A.C. 14:3-8.14 (Refunds of contributions paid for extensions built from March 20, 2005, through December 30, 2009 to serve areas not designated for growth). This rule sets forth the process for a refund and specifically provides that "[u]nder no circumstances shall a regulated entity refund an amount in excess of a contribution paid to the regulated entity for an extension. See N.J.A.C. 14:3-8.14(c)(4).

Here, the petitioners are seeking a refund for monies they paid to third-parties for the service connection. N.J.A.C. 14:3-8.14(c)(4) precludes the petitioners from receiving that relief. Petitioners did not pay a contribution to JCP&L for either the line extension or the service connections. As such, JCP&L as a regulated entity cannot refund petitioners for any amounts that were not paid to it.

Respondent further contends that petitioners' argument that they are entitled to a refund is based on the erroneous premise that it would have constructed the entire service connection free of charge had the property been in an area designated for

growth. Petitioners' counter-factual argument, which assumes JCP&L would have performed the entirety of the work for the service connection, completely ignores the proper treatment of charges given what occurred at the property. While it is true that petitioners performed a large portion of the work associated with the service connection, JCP&L was still required to perform additional work to connect the facilities that petitioners contractor installed to the company's facilities. Under the regulations in place at the time of the service connection, petitioners would have been responsible for these costs because the property was in an area not designated for growth. However, in accordance with the Board's directions set forth in the October 22, 2010, Order, JCP&L treated the property as if it were in an area designated for growth and never charged petitioners for these costs, which JCP&L estimates were $939.16. As such, by not being charged these costs, petitioners already received the benefit of the property being treated as if it were in an area designated for growth based on the actual circumstances of how the service connection was completed.

Respondent further contends Section 11.06 of its tariffs at that time provides that applicants for a line extension are "required to provide all trenching and backfill, including excavation for the transformer foundation." In accordance with this provision, petitioners were responsible for the trenching for the service connection regardless of the property's smart-growth status. Accordingly, petitioners do not dispute that they are not entitled to the $500 in relief associated with such charges.

Moreover, the company's tariffs at that time required at least a portion of the cost for the service connection to be paid by petitioners in the form of a non-refundable contribution. Section 11.06 states that residential line extensions will be provided overhead based on the company's standard least-cost-design criteria and may be provided underground as an alternative design. Here, the petitioners requested that the service connection be made underground. As such, respondent estimates that petitioners would have owed at least $1,120.06 as a non-refundable contribution had the company completed the service connection for petitioners. Moreover, petitioners would have been required to pay the entire cost of the service connection had the company performed the work and would have only been entitled to a refund (by way of a bill credit) based on their usage. (See Exhibit C.) Thus, assuming de arguendo if

petitioners are entitled to any refund it would be at most the difference between what respondent estimates the cost to have been for the company to complete the underground extension and the amount of the non-refundable contribution required by the Company's Tariff. JCP&L calculates this amount to be $1,019.66.

DISCUSSION, FINDINGS, AND CONCLUSIONS

It is axiomatic in an administrative proceeding that a petitioner bears the burden of proof to establish by a preponderance of the competent credible evidence that he/she is entitled to the requested relief. Here, petitioners, seek a refund/reimbursement of monies paid to third-party contractors for the underground-line extension.

Having reviewed the entire record, I **FIND** that the petitioners have failed to meet the required burden of proof.

I **FIND** that the respondent did not charge the petitioners for the line extension. A fact that the petitioners did not seriously dispute.

I **FIND** that the petitioners requested an underground-service connection for which they were charged. The Company's Tariffs provide for the service connections on at least-cost-design basis. A least-cost design is an overheard line/service connection. Pursuant to the its tariffs, the respondent appropriately charged the petitioners for an underground-service connection. Section 11.06 of the Company's Tariff, which was effective at the time of the line extension and service connection provided, in part:

> 11.06 New Extension of Service to Serve a Single-Phase, Individual Residential Customer: Such an extension shall be provided overhead based on the Company's standard least cost design criteria, and may be provided underground as an alternative design, but shall not be provided underground on a public right-of-way. When a New Extension Service is Provided underground pursuant to this Section 11.06, the applicant shall be required to provide all trenching and backfill, including excavation for the transformer foundation.

> Whether or not in a designated growth area or an area not designated for growth, the difference in cost between the alternate design and the Company's standard least cost design shall be paid in full by the Applicant as a non-refundable contribution.
>
> [Exhibit C (emphasis added).]

I **FIND** credible the testimony of witness Chung that the petitioners never sought a cost estimate for the underground-service connection. This is logical because the petitioners were informed upfront that this was a cost they would have to assume, and they elected to hire their own third-party contractors. It is worth noting here that at the time that the work was being performed, petitioners were not customers of JCP&L. Indeed, some of the invoices for material and supplies were not in the petitioners name but in the name of his father-in-law, who along with this wife were the customers of the respondent.

I **CONCLUDE** that no refund is due to petitioners as they paid no contribution in aid of construction to the respondent. Nor did the respondent charge the petitioners for any cost associated with the line extension.

ORDER

It is therefore **ORDERED** that this matter be and is hereby **DISMISSED.**

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES,** which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 29, 2019
DATE

IRENE JONES, ALJ (Ret. on recall)

Date Received at Agency: October 29, 2019

Date Mailed to Parties:

mm

APPENDIX

WITNESSES

For Petitioner:

James Novick

For Respondent, JCP&L:

Sung Chung

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 JCP&L Verified Answer to Petition

R-2 Printout of CREWS Order Related to Line Extension

R-3 JCP&L Tariff, Sections 11.06 through 11.08, Effective March 20, 2005

R-4 (Not in Evidence)

R-5 JCP&L bills, date October 5, 2015, through June 1, 2017

R-6 Cost Estimate for JCP&L Underground Extension at Property

R-7 Cost Estimate for JCP&L Overhead Extension at Property

R-8 Mr. Novick's Exhibit B.1 through Exhibit B.4

R-9 Regulations