



Agenda Date: 7/12/23
Agenda Item: 2E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF) DECISION AND ORDER
ENERGO POWER & GAS LLC FOR A)
PROCEEDING TO ADDRESS JERSEY CENTRAL)
POWER & LIGHT UFE SETTLEMENT ISSUE) DOCKET NO. EO23020086

Parties of Record:

Murray Bevan, Esq., Bevan, Mosca & Giuditta, P.C., on behalf of Energo Power & Gas LLC
James A. Meehan, Esq., on behalf of Jersey Central Power & Light Company
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

On February 13, 2023, Energo Power & Gas LLC (“Energo”) filed a verified petition with the New Jersey Board of Public Utilities (“Board”) requesting an expedited proceeding to address Jersey Central Power & Light Company’s (“JCP&L” or “Company”) alleged incorrect unaccounted for energy (“UFE”) adjustments, which is currently involved in a PJM Interconnection, LLC (“PJM”) resettlement process (“Petition”). By this Decision and Order, the Board addresses the issues raised by Energo in the Petition, and JCP&L in its Motion to Dismiss the Petition (“JCP&L Motion to Dismiss”).

PETITION

According to the Petition, in September 2022, JCP&L’s parent company, FirstEnergy Corp. (“FirstEnergy”), experienced “data anomalies” when deploying a new system to manage its PJM settlement processes. As a result, Energo claimed that JCP&L submitted incorrect energy volumes to PJM based upon incorrect unaccounted UFE adjustments. Energo further alleged that the incorrect energy volumes were approximately 25% higher than appropriate, resulting in Energo incurring unwarranted costs and, as such, Energo is due a credit.

Energo explained that FirstEnergy planned on using Settlement C of the PJM settlement process (“Settlement C”) to re-settle the incorrect UFE values.² According to Energo, Settlement C

¹ Commissioner Marian Abdou did not participate.

² As provided in the Petition, the alleged data abnormalities affected the results stemming from the Settlement A and Settlement B PJM settlement processes.

provides electric distribution companies (“EDCs”) with a process to true-up significant metering or billing errors beyond timeframes required in other PJM settlement processes.³ However, Energo explained that Settlement C requires all affected parties to consent to a resettlement, which Energo stated it fears is unlikely to occur because the issues span more zones than just JCP&L. According to Energo, Settlement C has very little established procedures or rules pertaining to the process in PJM’s tariff, leaving no mechanism to resolve disputes. Energo requested that the Board examine whether the PJM Settlement C process is appropriate, specifically, “whether employing a resettlement process, that has a low likelihood of being unanimously agreed upon which would then delay issuance of credits JCP&L has been amassing as [a] result of the UFE overpayments by certain [third party suppliers], is the right path forward.”⁴

As such, Energo requested that the Board conduct its own investigation of the bill settlement issue and order JCP&L to resolve the issue with the third party suppliers (“TPS”) within 45 days outside of the Settlement C process. Energo further requested that the Board direct JCP&L to provide an explanation for the “data anomalies” that caused the UFE inaccuracies, and provide assurances that the anomalies are corrected. Additionally, Energo stated that if the Board supports FirstEnergy using the Settlement C process, the Board should direct JCP&L to provide Energo and other TPS and Basic Generation Service (“BGS”) providers with its proposed resettlement values prior to being submitted to PJM. Energo further requested that the Board require JCP&L to engage in an expeditious process for obtaining the required consents by March 15, 2023, and that the Board should direct that Settlement C refunds are issued no later than March 31, 2023.

JCP&L MOTION TO DISMISS

On March 6, 2023, JCP&L filed an Answer to the Petition and the JCP&L Motion to Dismiss. According to JCP&L, Energo “failed to demonstrate that the [Board] has jurisdiction over the dispute; has failed to demonstrate that there is any case or controversy between Energo and JCP&L at this time; and has failed to state or otherwise identify any relief that the [Board] can grant.”⁵

JCP&L acknowledged it had data issues when the Company implemented a new system to manage its PJM settlement processes. JCP&L explained it must resettle the entire wholesale market in its zone, and that this will take time through PJM’s Settlement C process. Regardless, JCP&L noted that the process is currently underway, and that JCP&L is working as expeditiously as possible.

JCP&L argued that Energo failed to provide any legal authority for the Board to intervene in this matter. Specifically, this matter concerns wholesale billing and settlement protocols that arise under the PJM Open Access Transmission Tariff (“PJM Tariff”) and PJM Operating Agreement (“PJM OA”) which JCP&L argues are exclusively under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”). JCP&L further explained that notwithstanding the inclusion of FERC-jurisdictional matters, the TPS Agreement between Energo and JCP&L specifically provides that it does not confer jurisdiction to the Board.

Additionally, JCP&L argued that even if the Board had jurisdiction, the Petition fails to demonstrate

³ Energo stated that the PJM Settlement C process provides EDCs a process to true-up significant errors beyond the 60-day Settlement B timeframe.

⁴ Petition at p.3.

⁵ JCP&L Motion to Dismiss at p. 1.

that action by a tribunal is needed at this time. As provided by JCP&L, Energo is asking the Board to direct JCP&L to expedite the settlement process. According to JCP&L, there is no requirement under the PJM protocols that JCP&L must complete the Settlement C resettlement by a certain date, nor is the Company required to forego the Settlement C process to resettle with an individual TPS. JCP&L also noted that the Petition contained no quantification or demonstration of the amount Energo claims it is due.

Finally, JCP&L explained that pursuant to R. 4:6-2, a complaint or petition may be dismissed for lack of jurisdiction or failure to state a claim upon which relief can be granted. Additionally, pursuant to N.J.A.C. 14:1-5.4, the Board may also dismiss a petition that the Board deems deficient. JCP&L claimed that Energo failed to cite any statutory or regulatory authority that would allow the Board to determine the issues raised, and the claims asserted, in the Petition. Further, JCP&L stated Energo failed to state a claim upon which relief can be granted because Energo is not injured by following the PJM Settlement C process, and that Energo's complaints regarding the PJM Settlement C process are not warranted in this forum. As such, JCP&L sought dismissal of the Petition.

ENERGO OPPOSITION

On March 16, 2023, Energo filed a letter with the Board opposing the JCP&L Motion to Dismiss ("Energo's Response"). Energo's Response clarified that Energo is not asking the Board to direct PJM to act. Instead, Energo argued that its Petition focused on the actions of JCP&L, a public utility that the Board has jurisdiction over, including billing issues.

Specifically, Energo requested that the Board 1) investigate the cause of the problem and the accuracy of JCP&L's proposed resettlement values; 2) order JCP&L to be transparent regarding the data and process in resolving this matter; and 3) if the Board determines Settlement C is permissible, order JCP&L to resolve the issue, with interest, in accordance with the original JCP&L schedule, or, if the Board determines that Settlement C is not permissible, order JCP&L to resolve the issue outside of the Settlement C process by May 1, 2023.

Energo asserted that JCP&L failed to point to any PJM tariff, provision, or rule requiring resettlement via the PJM Settlement C process. Additionally, Energo noted that the PJM OA does not require JCP&L to use Settlement C. Therefore, Energo argued that JCP&L may resolve this issue privately between JCP&L and the impacted parties, and should not be permitted to use an elective process to resolve a problem that the Company caused.

Additionally, according to Energo, the new settlement system and the problems it caused are appropriate subjects for an investigation or a management audit by the Board. Energo stated that the Board has the power to conduct management audits on all or any portion of the operating procedures and any other internal workings of every gas or electric utility subject to its jurisdiction. Specifically, Energo stated that JCP&L's Total Hourly Energy Obligation ("THEO") Procedural Manual, incorporated by reference in the TPS Agreement, allows TPSs to audit JCP&L's compliance with the procedures for calculating the supplier's THEO, which include UFE calculations, and that the Board has the authority to audit JCP&L's compliance with the THEO Procedural Manual.

Finally, Energo claimed it does not know the specific amount owed because JCP&L failed to provide those amounts to Energo and other TPSs, and only JCP&L possesses those amounts. Energo requested that, at a minimum, the Board should order JCP&L to provide all relevant data to affected TPSs and BGS providers, explain the data anomalies in their new settlement system

that caused this problem, and direct JCP&L to clarify whether the data anomalies were fixed. Alternatively, Energo requested the Board address this issue by initiating a stakeholder proceeding overseen and mediated by the Board involving all affected TPSs and BGS providers.

RETAIL ENERGY SUPPLY ASSOCIATION'S CORRESPONDENCE

On March 16, 2023, the Retail Energy Supply Association ("RESA") filed correspondence with the Board in support of the Petition ("RESA's Correspondence"). RESA noted that its members are also experiencing problems with JCP&L's UFE settlement calculations, and believes it is necessary for the BPU to step in to assist in resolving this issue with JCP&L. RESA stated the financial impact of this billing settlement problem is material and concerning for the customers of New Jersey's TPSs.

JCP&L'S REPLY

On March 23, 2023, JCP&L filed a reply to Energo's Response and RESA's correspondence ("JCP&L's Reply").

Reply to Energo's Response:

JCP&L claimed that Energo failed to provide any legal authority for the Board to intervene in a PJM wholesale billing issue. Instead, Energo cited broad provisions of statutory and case law to support its position. JCP&L also noted that Energo did not address the New Jersey TPS Agreement that explicitly disclaims Board jurisdiction over FERC-jurisdictional wholesale issues.

According to JCP&L, Energo is attempting to establish Board jurisdiction by claiming that this matter is a billing dispute. JCP&L stated that this matter is not a customer billing dispute, contrary to Energo's assertion. Additionally, due to the TPS Agreement, Energo has a different relationship to JCP&L than a retail customer.

Regarding Energo's request for a JCP&L Board audit, JCP&L acknowledged that the Board has jurisdiction to audit public utilities, and even noted that the Board is currently performing a management audit of JCP&L. However, JCP&L argued that the Board's ability to perform management audits does not enlarge or widen the scope of the Board's jurisdiction, and that the results of an audit may be used to implement altered practices and procedures.

JCP&L further argued that the Board's jurisdiction over BGS rates does not confer jurisdiction in this matter, and that Energo's assertion that the data issues are likely to affect the accuracy of the BGS reconciliation process is speculative and an attenuated attempt to circumvent the lack of Board jurisdiction. JCP&L noted that Energo is not a BGS supplier and has no standing to represent the interest of BGS suppliers.

JCP&L further stated that the THEO Procedural Manual does not empower or mention the Board having the authority to oversee or conduct any audits of JCP&L by a supplier. JCP&L stated that Energo failed to mention that pursuant to the THEO Procedural Manual, "disputes shall be resolved through the PJM Dispute Resolution process."

Finally, JCP&L noted that Energo could not establish that it was injured by JCP&L's actions in pursuing Settlement C because JCP&L may conduct Settlement C resettlements and such a process is designed to resolve the types of issues identified in the Petition and governed by PJM Tariff and PJM OA. According to JCP&L, Energo has not substantiated any level of refund or any

amount of financial loss it is due.

Reply to RESA's Correspondence

In response to RESA's Correspondence, JCP&L stated that RESA does not identify any basis for the Board to interfere with the established PJM settlement process.

DISCUSSION AND FINDINGS

The Board reviewed the Petition, JCP&L's Motion to Dismiss, Energo's Response, RESA's Correspondence, and JCP&L's Reply. Pursuant to N.J.A.C. 14:1-5.1(a), petitions to the Board must "clearly and concisely state the facts and relief sought" and "cite by appropriate reference the statutory provision or other authority under which the Board's action is sought." Such petitions must comply substantially with the Board's rules and appear on its face to state a matter within the Board's jurisdiction. N.J.A.C. 14:1-5.4(a).

The Board agrees that the issues raised in the Petition concern wholesale billing and settlement protocols that arise under the PJM Tariff and PJM OA. The Board further agrees that the PJM Tariff and PJM OA fall under the jurisdiction of FERC. The Board also agrees that the Petition cites no legal authority providing a legal basis for the Board to intervene in an ongoing PJM resettlement of a FERC wholesale billing issue. Therefore, the Petition fails to state or otherwise identify any relief that the Board may grant.

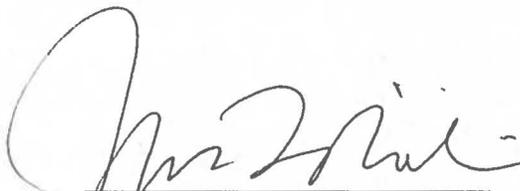
As such, the Board **HEREBY FINDS** that the issues raised in the Petition concern the PJM Settlement C process governed by the PJM Tariff and PJM Operating Agreement. The Board **FURTHER FINDS** the Petition lacks any legal authority for the Board to interfere in the ongoing PJM Settlement C process concerning a FERC wholesale billing issue. Therefore, the Board **HEREBY GRANTS** JCP&L's Motion to Dismiss and **HEREBY DISMISSES** Energo's Petition for failure to state a claim upon which relief can be granted pursuant to N.J.A.C. 14:1-5.4.

The Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions deemed to be appropriate as a result of any such audit.

This Order shall be effective on July 19, 2023.

DATED: July 12, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



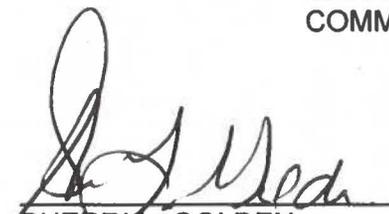
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CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST: 

SHERRIL L. GOLDEN
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 VERIFIED PETITION OF ENERGO POWER & GAS LLC FOR A PROCEEDING TO
ADDRESS JERSEY CENTRAL POWER & LIGHT UFE SETTLEMENT ISSUE

DOCKET NO. EO23020086

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