Agenda Date: 7/16/25
Agenda Item: 1C

STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

AUDITS

IN THE MATTER OF AN AUDIT OF THE AFFILIATED TRANSACTIONS BETWEEN JERSEY CENTRAL POWER & LIGHT COMPANY, FIRST ENERGY CORP. AND ITS AFFILIATES PURSUANT TO N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 & N.J.A.C.14:4-3.7(E) AND (F)	)))))	ORDER OF IMPLEMENTATION DOCKET NO. EA20110733

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Tori Geisler, **Esq.,** on behalf of Jersey Central Power & Light Company

BY THE BOARD:

On February 7, 2023, the Liberty Consulting Group ("Liberty") submitted its final report ("Final Report") to the New Jersey Board of Public Utilities ("Board" or "BPU") in the above docketed matter relating to the audit of the affiliated transactions between Jersey Central Power & Light Company ("JCP&L" or "Company") and its affiliates, and a comprehensive management audit ("Audit"). The Final Report was submitted in two (2) volumes (Phase I and Phase II), consists of thirty-eight (38) chapters, and includes an executive summary. Liberty made 105 recommendations, with thirty-two (32) recommendations in Phase I and seventy-three (73) recommendations in Phase II. At the Board's April 12, 2023 agenda meeting, the Board accepted the Final Report for filing purposes only and authorized the release of the Final Report for public comment. On July 31, 2023, JCP&L and the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments.

By this Order, the Board considers the recommendations in the Final Report and the comments submitted to the Board regarding recommendations to be implemented by JCP&L.

BACKGROUND AND PROCEDURAL HISTORY

JCP&L is a wholly-owned subsidiary of FirstEnergy Corp. ("FE") and is a public utility subject to regulation by the BPU. JCP&L was organized under New Jersey law in 1925 and owns property and does business as an electric public utility in New Jersey. JCP&L provides transmission and distribution services in 3,200 square miles of northern, western, and east central New Jersey. JCP&L serves 1.1 million New Jersey customers in the counties of Burlington, Essex, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren. JCP&L provides default electricity supply, which is the supply of electricity at regulated rates to retail customers in its service territory who do not elect to purchase electricity from a competitive supplier, also known as Basic Generation Service.

At its December 16, 2020 agenda meeting, the Board authorized staff of the Audits Division ("Staff") to initiate a two (2)-phase audit of JCP&L. Staff was authorized to send a Request for Proposal ("RFP") to those firms that were previously determined to be qualified for such work (i.e., "pre-qualified") for their bid submission for a two-phase audit of JCP&L.

Phase I was to consist of a comprehensive management audit, in accordance with N.J.S.A. 48:2-16.4 and N.J.A.C. 14:3-12 et seq. Phase I included two (2) sections: 1) Utility Operations and 2) Executive Management. As part of the Phase I work, the selected firm was to examine executive management and corporate governance, organizational structure, strategic planning, finance, accounting and property records, distribution and operations management, human resources ("HR"), customer services, external relations, cyber security and support services. Phase II was to consist of a review of the Company's compliance with the competitive services statutes and N.J.A.C. 14:4-3.7, N.J.S.A. 48-3-49 et seq., N.J.S.A. 48:3-55 k(1)(2), N.J.S.A. 48:3-56 f(4), and N.J.S.A. 48-3-58 k(1)(2) et seq. As part of Phase II review, the selected firm was to examine JCP&L's transactions with its parent company, FE, and its affiliates on both a retail and wholesale basis.

At its May 5, 2021 agenda meeting, the Board selected Liberty to perform the audit at a not-to-exceed cost of $1,469,584. The Board further authorized former President Fiordaliso to execute a consulting agreement with Liberty.

On February 7, 2023, Liberty submitted the Final Report to the Board. The Final Report contained 105 recommendations. At the BPU's April 12, 2023 agenda meeting, the Board accepted the Final Report for filing purposes only. Additionally, the Board authorized the release of the redacted version of the Final Report to the public for comment and the release of the confidential version of the Final Report to the appropriate parties, with the execution of a confidentiality agreement if requested by the Company.

On July 31, 2023, JCP&L filed its comments on the Final Report ("JCP&L Comments"). The Company responded to the specific recommendations made by Liberty and provided further commentary on various statements made within the Final Report. In JCP&L's Comments, the Company accepted fifty-seven (57) recommendations, and agreed to take action to implement those accepted recommendations. Additionally, the Company accepted twenty-four (24) of the recommendations with clarifications and modifications, accepted six (6) recommendations in part, and indicated that the Company considered five (5) recommendations as a base rate case matters. Finally, the Company indicated that it did not accept thirteen (13) of the recommendations.

By letter dated July 31, 2023, Rate Counsel submitted its comments on the Final Report ("Rate Counsel Comments"). Rate Counsel did not oppose the recommendations in Liberty's Final Report but offered additional comments and recommendations for the Board's consideration and action.

Below is a detailed discussion of the comments filed by the Company and Rate Counsel as they relate to specific Liberty recommendations. Additionally, the position of Staff is stated with respect to each of the audit recommendations that are listed.

Background of Federal Investigation of FE

At the time of drafting the RFP for this engagement, Staff became aware of federal investigations and internal investigations into FE. On July 21, 2020, the United States Attorney's Office for the Southern District of Ohio ("USAO-SDOH") announced that it had charged five (5) individuals, including the Ohio Speaker of the House, in a federal racketeering conspiracy involving payments from an energy company in exchange for assistance in passing Ohio House Bill 6 ("Federal Investigation"). On that date, FE also disclosed in a public statement that it had received subpoenas in connection with that investigation.

On October 29, 2020, FE issued a press release, which announced the termination of its Chief Executive Officer ("CEO"), Senior Vice President ("SVP") of Product Development, Marketing, and Branding, and its SVP of External Affairs, effective immediately. The press release indicated that the Independent Review Committee of FE's Board of Directors determined that the terminated individuals had violated FE policies and its code of conduct. On November 8, 2020, in a filing with the Securities and Exchange Committee ("SEC"), FE indicated that both its Chief Legal Officer and General Counsel had been "separated" from the Company, effective as of that date.

On July 20, 2021, the USAO-SDOH announced that FE had been charged with conspiring to commit honest services wire fraud, and that FE had signed a Deferred Prosecution Agreement ("DPA"). As part of the DPA, FE acknowledged that, through the acts of its employees and agents, it had conspired with public officials in Ohio to pay money in exchange for official action for FE's benefit.

FE agreed to pay a $230 million penalty with half to the United States Treasury, and the other half to Ohio electric-utility customers, further agreeing that the payment could not be collected from ratepayers. The DPA recognized that FE had already implemented various remedial measures at the time the DPA was announced, particularly in relation to the Company's compliance policies and the termination of multiple executives. Such remedial measures additionally included the establishment of new executive positions and reporting structures.

The DPA additionally required FE to modify its compliance program, as necessary and appropriate, to ensure that it maintains an effective system of internal controls and that it effectively detects violations of U.S. law throughout its operations. These modifications to FE's compliance program required FE to: 1) develop written compliance policies; 2) foster autonomy for executives tasked with compliance oversight; 3) implement mechanisms to effectively communicate compliance policies to all executives, employees, and business partners; 4) maintain or establish an effective process for confidential reporting of compliance violations; and 5) conduct periodic review of compliance policies.

The terms of the DPA indicated that the USAO-SDOH will not continue its criminal prosecution of FE if FE fully complies with all obligations under the DPA. The Federal Investigation ultimately resulted in the indictment of two (2) FE executives.

Federal Energy Regulatory Commission ("FERC") Audit

In response to the Federal Investigation, FERC initiated an audit of FE and its subsidiaries ("FERC Audit"). The FERC Audit covered the period January 1, 2015 to September 30, 2021.

The FERC Audit evaluated FE's compliance with: 1) cross-subsidization restrictions on affiliate transactions; 2) service company accounting, recordkeeping, and reporting requirements pertaining to transactions with associate companies; 3) accounting and reporting requirements prescribed for public utilities pertaining to transactions with affiliated companies; and 4) preservation of records requirements for holding companies and service companies.

The FERC Audit resulted in thirty-eight (38) recommendations. The recommendations addressed areas including, but not limited to, the allocation for overhead costs, accounting for vegetation management costs, accounting for amortization of regulatory assets, and accounting for lobbying expenses, donations, and unsupported costs. One (1) recommendation directed FE to submit a refund analysis regarding $3.8 million of deferred vegetation maintenance expenses treated as regulatory assets that were improperly amortized without obtaining FERC approval for recovery in rates and which American Transmission Systems, Incorporated and Trans-Allegheny Interstate Line Company, included such expenses in their annual transmission revenue requirements without FERC approval.

LIBERTY RECOMMENDATIONS, COMMENTS RECEIVED, STAFF POSITIONS

PHASE I

Chapter 4 – Asset Management

Recommendation 4-1: Develop, track and be accountable to annual transmission and distribution ("T&D") maintenance budgets based on the spending actually required to comply with inspection and maintenance program requirements.

In the Final Report, Liberty found that FE and JCP&L timely complete inspections and maintenance work, even though the operations & maintenance ("O&M") budgets are consistently and substantially exceeded.

Company: JCP&L accepted Liberty's recommendation, subject to reaching agreement with Staff as to an implementation plan and schedule. JCP&L stated that it strives to more closely balance the benefits of budget and spending decision flexibility through its use of blanket budget categories, with the data-driven benefits and discipline of less-flexible, more specific budget categorization. With regard to the Company's inspection and maintenance program budgeting, the Company stated it is now relying less on general blanket budgeting with more emphasis placed on specific categorization of its budget and spending which in JCP&L's opinion addresses the concerns reflected in Liberty's recommendation. According to JCP&L, this new budgeting process adapts to the Company's reorganization initiative, FE Forward.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with Liberty's recommendation. JCP&L should develop its budgets in a manner that is commensurate with its level of actual inspections and maintenance program spending, and in a manner that will ensure safe, adequate, and reliable service to end users, including maintaining compliance with inspection and maintenance program requirements. Staff recommends that the Board direct JCP&L, within six (6) months, to provide Staff with documentation of actual annual spending compared to budgeted spending for its T&D inspection and maintenance programs, showing that they are better aligned and that JCP&L has addressed the concerns reflected in the recommendation.

Recommendation 4-2: Develop a system-wide programmatic approach to mitigating the negative reliability impacts resulting from the failure of aging equipment.

Liberty found that JCP&L lacks a holistic approach for addressing and mitigating the negative impacts of system-wide aging equipment failures on reliability. Liberty indicated that, while current JCP&L programs include the replacement of line equipment specifically identified as aged and failure-prone, management does not employ any programs to proactively and holistically replace aged, failure-prone equipment system-wide. According to Liberty, a new system-wide approach should be informed by outcomes of current programs.

Company: JCP&L accepted Liberty's recommendation with modification, subject to reaching agreement with Staff as to an implementation plan and schedule. Specifically, JCP&L proposed to modify this recommendation to account for both age of equipment and equipment condition and criticality in determining the need for replacement.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with the recommendation as modified by JCP&L, as equipment condition and criticality should be considered in addition to age when making equipment replacement determinations. JCP&L should develop an approach for failure-prone, aging equipment replacement on a system-wide basis. This approach should be informed by the positive outcomes from the implementation of JCP&L's highest priority feeder and customers experiencing multiple interruptions programs, which specifically identified aged, failure-prone line equipment, and its prior ad hoc programs to replace defective spacer cable components and porcelain cutout switches. JCP&L shall provide supporting documentation to Staff indicating that the Company is incorporating a system-wide approach to mitigating negative reliability impacts resulting from aged and failure-prone equipment.

Chapter 5 – Vegetation Management

Recommendation 5-1: Demonstrate that enhanced zone 2 vegetation work conducted as part of Infrastructure Investment Program ("IIP") Reliability Plus was as effective in reducing System Average Interruption Frequency Index ("SAIFI") and Customer Average Interruption Duration Index ("CAIDI") as predicted.

Liberty found that, as part of its Board-approved Reliability Plus IIP, the Company conducted enhanced zone 2 tree trimming on 221 selected circuits during 2019 and 2020.[1] The Final Report noted that management was still in the process of evaluating the effectiveness of the enhanced tree trimming on SAIFI, CAIDI, and System Average Interruption Duration Index ("SAIDI") metrics, but new, preliminary data appeared to substantiate the effectiveness of the zone 2 work, contingent on additional scrutiny.

Liberty therefore recommended that JCP&L clarify and submit the results for review, using the latest data available. Liberty further recommended that JCP&L prepare and provide an analysis comparing those results to the costs of the enhanced vegetation efforts and to the expected CAIDI and SAIFI improvements which formed the basis for approval of the IIP. Liberty additionally stated that JCP&L should demonstrate whether enhanced zone 2 vegetation work was as effective in reducing SAIFI and CAIDI metrics as predicted in its IIP filing, or explain why it was not.

Company: JCP&L accepted this recommendation. The Company further urged the Board to consider this recommendation to not only be accepted, but fully implemented, arguing that the Company is in compliance with its reporting responsibilities with respect to the Reliability Plus vegetation management performed on the targeted circuits through its reporting in its Vegetation Management Circuit Performance ("VMCP") program. Moreover, JCP&L provided additional data showing that zone 2 tree-related outages have improved through 2022.

Rate Counsel: Rate Counsel stated that the data reviewed in the Audit do not establish prudence in JCP&L's IIP expenditures associated with the removal of overhanging limbs in zone 2 for the affected distribution feeders, as the prudency review was to be addressed in JCP&L's next base rate case.

Staff: Generally Staff supports Liberty's recommendation and believes that additional information would be helpful in determining the effectiveness of vegetation work. Staff recommends that the Board direct JCP&L to continue to provide data regarding zone 2 vegetation work within its semi-annual VMCP reports. The report should include the cumulative tree-related SAIDI, SAIFI, and CAIDI metrics (within zone 2) of the 221 circuits during blue sky days, minor weather days, and major events for the applicable reporting period. Staff notes that the prudence reviews of the Reliability Plus IIP Program reliability plus were conducted and the expenditures were deemed prudent by Orders dated October 28, 2020 April 7, 2021.[2]

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[1] In re the Verified Petition of Jersey Central Power & Light Company for Approval of an Infrastructure Investment Program (JCP&L Reliability Plus), BPU Docket No. EO18070728, Order dated May 8, 2019. Zone 2 refers to the portion of the circuits from the first protective device to the end of the three-phase conductor.

[2] In re 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 Revisions in Connection Therewith ("2020 Base Rate Filing"), BPU Docket No. ER20020146; OAL Docket No. PUC 04343- 2020N, Orders dated October 28, 2020 and April 7, 2021.

Chapter 6 – Contractors

Recommendation 6-1: Develop a standard process to inspect, evaluate, document, and manage the quality and quantity of a contractor's performance when measured against the standards, terms and conditions of their contract with JCP&L.

The Final Report stated that management does not employ a documented process or procedure for project manager, engineering, or field supervisor use in efforts to observe, evaluate, report, record, or archive the performance of contractors relative to any model or standardized quality, schedule, or cost effectiveness parameters. According to the Final Report, key performance indicators ("KPIs") relating to contractor effectiveness or efficiency are not collected or analyzed and the only permanent record of a contractor is a check off that the work was completed.

Company: JCP&L accepted the recommendation, stating that JCP&L believes this recommendation is already being addressed by the Company and agreed to continue its efforts. Additionally, JCP&L stated that Liberty's recommendations do not so much constitute a criticism of JCP&L's contractor performance management approach and results, but rather a criticism of the Company's lack of documentation. JCP&L further stated that it is already acting to address the need for additional documentation by utilizing tools intended to improve and better document contractor performance. One (1) such tool acquired is called "Supply Hive," which includes quarterly surveys for internal business unit personnel to complete and external surveys used to generate contractor performance scorecards related to different risk areas. JCP&L indicated that it would apply additional methods for capturing project supervisory and inspection data to the extent that Supply Hive cannot support such capabilities.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff agrees with Liberty's recommendation, as it believes that the Company's lack of documentation of contractor performance does not allow for adequate comparisons when selecting contractors or making decisions about using internal crews for future projects. Staff recommends that the Board direct JCP&L to provide Staff with documentation of its process to inspect, evaluate, document, and manage, including the KPIs used to measure, contractor performance and identify any risk areas within four (4) months of the effective date of this Order.

Recommendation 6-2: Develop a formal contractor performance management process and a system of record to capture performance data and enable comparative analyses of the quality, efficiency and cost effectiveness of competing contractor and company resources, and support data-driven resource allocation decisions.

The Final Report stated that, when making sourcing decisions, JCP&L should compare a contractor's cost effectiveness and contract performance history to those of other contractors and internal JCP&L crews. Liberty provided a list of qualitative and quantitative data that JCP&L should collect, collate, and store in its performance management information system, including but not limited to: contract, engineering, and construction standard conformance history, project and work order schedule adherence, personnel safety and injury performance, utility infrastructure and private property damage history, unplanned forced outage frequency, and municipal permit and processing adherence.

Company: JCP&L accepted the recommendation, stating that JCP&L believes this recommendation is already being addressed by the Company and agrees to continue its efforts.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with the recommendation and finds that a formal management process using detailed contractor performance metrics would enable the Company to better select between employing contractors or internal resources and crews. Staff further recommends that JCP&L be directed to provide Staff with a report detailing compliance with the recommendation, indicating that metrics to evaluate contractor performance are being collected, collated, and stored in a meaningful manner, are available to appropriate Company employees, and are applied by such employees when making resource decisions.

Recommendation 6-3: Integrate the analysis of relative execution risks and the potential of reducing risk into JCP&L resource allocation decisions.

Liberty found that the Company does not include potential changes in relative risk and potential for risk reduction opportunities when making decisions between available contractors or between contractors and Company personnel when selecting, scoping, and deploying contractors for projects. The Final Report stated that management first assigns internal resources to all planned workload until reaching their capacity, then it assigns the workload remaining to contractors.

Company: JCP&L accepted the recommendation and had no substantial objection as it relates to the analysis of relative execution risks or opportunities for risk reduction as among all contractors, which it believes it already undertakes. However, the Company took exception to Liberty's failure to acknowledge that JCP&L must also adhere to the terms and conditions of its collective bargaining agreement with the union when considering execution risk and risk reduction decisions and between the use of contractors versus internal work force needs. Thus, JCP&L stated that developing the analytics to address line resource allocation would not be justified in instances that the Company is constrained by union contract terms. The Company did not object to reviewing additional opportunities for integrating risk analysis into resource allocation decision-making for line work where a good business case can be made for doing so. JCP&L indicated that it would discuss the documentation of implementation with Staff.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendations, as risk management is a critical factor to consider in all operations and should be part of the Company's resource allocation decision-making processes. Staff recommends Board approval but also takes into consideration the information set forth in JCP&L's comments, understanding that the Company makes contractor decisions on a case-by-case basis with the union contract in mind. Staff further recommends that JCP&L provide documentation that the Company sufficiently considers risk management in its decision-making pertaining to selecting contractors versus internal employees within sixty (60) days from the issuance of this Order.

Chapter 7 – Reliability and Smart Grid Operations

Recommendation 7-1: Implement formal process to improve field diagnoses of outage causes by troubleshooters and improve accuracy in capturing causes in the outage management system by troubleshooters and Distribution Control Center personnel.

According to the Final Report, approximately twenty percent (20%) of customer minute interruptions occurring were attributed to "other/unknown" causes. The Final Report also stated that the SAIFI contribution of unknown causes has doubled since 2017. Liberty stated that failing to identify the causes of so many outages prevents reliability engineers from adequately addressing the causes of those outages and prescribing mitigations.

Company: JCP&L accepted Liberty's recommendation, subject to discussion with Staff as to implementation and documentation thereof when appropriate. Additionally, JCP&L stated that it can address Liberty's recommendation by including additional training and processes for field personnel as part of the implementation of the Company's new advanced distribution management system ("ADMS") scheduled to replace the existing outage management system in 2023, which will enable both outage management and distribution system management functionality.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with Liberty's recommendation, as frequent outages attributed to unknown causes limit JCP&L's ability to take action to prevent high SAIFI and CAIDI metrics. Staff also agrees that JCP&L's proposal to include additional training and processes for field personnel to the Company's ADMS could be helpful in addressing this recommendation.

Recommendation 7-2: Expedite analyses to validate that sub-transmission improvement projects planned for 2022-2026 adequately improve SAIFI and CAIDI performance.

Liberty found that sub-transmission contributions to customer interruptions have doubled since 2017 while distribution contributions to customer interruptions have declined over the same period. Liberty indicated that it expects that distribution-caused outages will continue to decline with the Company's Reliability Plus IIP improvements.

Company: JCP&L accepted Liberty's recommendation, subject to discussion with Staff as to implementation and documentation thereof when appropriate. While JCP&L acknowledged that Liberty's conclusion about a lack of improvement in JCP&L reliability metrics since 2017 is borne out statistically, the Company also stated that Liberty dismissed the value of tracking "minor weather days." JCP&L stated that it intends to continue collecting data about, and analyzing outages using, the concept of "minor weather days" and to consider the insights such data and analysis can provide.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation. Staff believes it is important to establish whether the additional expenditures for sub-transmission improvement are sufficiently improving SAIFI and CAIDI performance. Staff recommends that JCP&L provide a report addressing the impact on SAIFI and CAIDI performance from the additional projects to improve reliability on the sub-transmission system within one (1) year from the effective date of this Order.

Recommendation 7-3: Systematically address the reduction of outages attributed to aerial cable and open bare wire failures.

According to the Final Report, management lacks a formal program to specifically focus on reducing aerial space and open wire caused outages. Liberty stated that distribution line equipment issues, particularly issues with overhead space cables and bare conductors, were the largest contributors to distribution outages (38%) in terms of customer minutes interrupted in 2020. While JCP&L management has partially addressed these and other equipment failures in the past, Liberty recommended the adoption and execution of a systematic approach to reduce the significant impact of aerial spacer cable and open bare wire component failures on reliability.

Company: JCP&L accepted Liberty's recommendation, subject to discussion with Staff as to implementation and documentation thereof when appropriate. JCP&L also stated that it intended to propose a new IIP in 2023 for implementation beginning in 2024, which contemplates projects to address outages caused by line failures, including aerial cable.[3] The Company believes that this will provide a process of systematic review and response that will include aerial cable in the context of line-failure caused outages.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff agrees with this recommendation and believes it is necessary for JCP&L to regularly and systematically address these failures. Therefore, Staff recommends that JCP&L implement a formal process to systematically address outages caused by aerial spacer cable and open bare wire failures. JCP&L shall provide Staff, within one (1) year from the date of this Order, internal documentation showing that JCP&L is addressing these equipment failures, including a report of its detailed progress in this area. JCP&L shall additionally provide documentation that it has implemented a program employing a systematic approach including scheduled inspections, detailed checklists, and repair and replace schedules for deteriorated aerial spacer and open bare wires.

Chapter 8 – Cyber Security and System Vulnerability

Recommendation 8-1: Fill staffing vacancies promptly.

Company: JCP&L agreed with this recommendation. During Liberty's work leading to the preparation of the Final Report, JCP&L stated that FE filled the positions of VP of Cybersecurity and Chief Information Security Officer on June 5, 2022. JCP&L further stated that there were no other vacant key positions in the organization and that FE agreed it is important to maintain an appropriately staffed Cyber Security workforce.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with this recommendation as vacancies in key positions are not acceptable. Taking into consideration the Company's comments, Staff recommends that JCP&L provide to Staff supporting documentation that it has fully implemented Liberty's recommendation within three (3) months of the effective date of this Order.

[3] See In re the Verified Petition of Jersey Central Power & Light Company for Approval of an Infrastructure Investment Program II ("EnergizeNJ"), BPU Docket No. EO23110793 ("2023 IIP Proceeding").

Chapter 9 – System Resiliency and Restoration

Recommendation 9-1: Complete the update to the Emergency Preparedness Plan ("E-Plan") and related documentation by year-end 2021, as scheduled.

In the Final Report, Liberty found that even with some procedures and responsibilities not being documented in the E-Plan, JCP&L's current employees know their roles and responsibilities. However, Liberty found that this presents a risk for newer employees less familiar with their emergency preparedness role. In the Final Report, Liberty also raised concerns about infrequency of updates to the E-Plan as it was last updated in 2013.

Company: JCP&L indicated that it accepted and implemented this recommendation. According to the Company, JCP&L's E-Plan was still being revised when reviewed by Liberty, however, JCP&L stated that the updated E-Plan was completed after Liberty's review and addresses this recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with the recommendation that the Board direct JCP&L to provide to Staff supporting documentation that the E-Plan was updated in accordance with this recommendation, within three (3) months of the date of this Order. Staff further recommends that the Board direct JCP&L to review the E-Plan on an annual basis, at a minimum, to determine whether updates are necessary consistent with Liberty's recommendation in the Final Report.

Recommendation 9-2: Complete the development of the new Outage Volume Model ("OVM")-like model.

Liberty found that FE's OVM uses a database of historical weather events extending back ten (10) years in order to predict outage order volume and customer outage count for JCP&L. According to the Final Report, the significant inaccuracy of the OVM predictions associated with Tropical Storm Isaias and other weather events demonstrates the major challenges of reliably forecasting impacts from unprecedented or highly unusual storms. Liberty noted that JCP&L expected completion of its new OVM by year-end 2021, which is intended to improve storm response, and management should evaluate it annually for accuracy and usefulness.

Company: JCP&L accepted the recommendation. Specifically, JCP&L stated that its new OVM, StormImpact ("SI"), was implemented and has been operational in New Jersey since early 2020. JCP&L stated that the OVM is based upon JCP&L's historical outage data. JCP&L further indicated that SI scientists are working with the Company on an ongoing basis to further refine and test the model, to improve accuracy and performance with more reference points to use for various types of events. JCP&L indicated that the Company has been using the SI model as the primary source for determining customer outages since February 3, 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends acceptance of Liberty's recommendation. As noted by Liberty, outage predictions can vary significantly if the Company's database does not contain an event like that being analyzed. Staff recommends that the Company provide documentation of development and refinement of its OVM model within eight (8) months of the date of this Order and provide Staff with quarterly status updates and results from management's evaluation of the new model's accuracy and usefulness.

Recommendation 9-3: Ensure clear, timely and widespread communication of storm event classification.

In the Final Report, Liberty found that the Company internally classified storm events on or after the start of an event, thereby undermining the purpose of event classification and communication as an organizational catalyst to the entire emergency preparedness organization, as well as other affected entities. Despite the lack of early event level communication, Liberty found that JCP&L's emergency preparedness team performed adequately due to experienced personnel.

Company: JCP&L accepted Liberty's recommendation. The Company indicated that it believes this recommendation is addressed in the updated E-Plan by requiring the Incident Commander to determine and communicate the event level classification to the FE and JCP&L emergency response organizations, while recognizing that the classification can change based on new information and revised analysis.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with the recommendation, as it is concerned that new employees with less experience in their roles may hinder the response of the emergency preparedness organization team if there is poor communication regarding storm event classification. Staff recommends that the Board direct JCP&L to provide supporting documentation, including the updated E-Plan, to Staff showing that the recommendation has been implemented within three (3) months of the date of this Order.

Recommendation 9-4: Ensure JCP&L resource requests are timely and consistent with Event Level classification declaration.

In the Final Report, Liberty stated that JCP&L's event classification matrix does not include, by design, ranges of resources associated with an event level such as internal or external resources which could range from regional mutual assistance groups and/or contractors/vendors partnerships. Management indicated it incorporates other factors into event classification and that identification of resource needs is a by-product of those deliberations. However, initial, and at times final, event classifications do not correlate to the number of resources requested or eventually deployed for major storms. Thus, Liberty opined that necessary resource requests should originate at the time JCP&L declares the event classification, providing FE with timely information for it to commence resource acquisition and deployment processes.

Company: JCP&L accepted this recommendation and indicated that it considers it to be implemented.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with Liberty's recommendation, as timely resource requests consistent with event level classification play a critical role in the overall improvement of the emergency preparedness organization. Staff recommends that the Board direct JCP&L to provide supporting documentation to Staff showing that the recommendation has been implemented within four (4) months of the date of this Order.

Recommendation 9-5: Continue to monitor and measure JCP&L's accuracy and success in creating, updating, and communicating estimated times of restoration ("ETRs").

Company: JCP&L accepted this recommendation. The Company indicated that it agrees to continue to monitor its accuracy and success in creating, updating and communicating ETRs.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation and believes that tracking the accuracy and success of creating, updating, and communicating ETRs is critical to determining the success of the Company's emergency preparedness organization and the necessity of further improvements. Communicating timely, accurate individual and localized ETRs, rather than global ETRs, and appropriate updates during an outage event is critical in preventing customers and government officials from becoming desperate and disgruntled. Staff further recommends that, within one (1) year from the issuance of this Order, and each year thereafter, JCP&L provide results from the continued application of its enhanced ETR process. With each annual filing the Company should include five (5) years of measured data as a comparison to measure improvement. Such reporting shall conclude at the end of the next audit unless otherwise directed by the Board to continue.

Recommendation 9-6: Continue to develop and improve communications with the public, elected officials and Office of Emergency Management staff based on feedback gathered following storm or outage events.

Liberty found a solid foundation of JCP&L and FE system employees with knowledge about specific territories and communities served, who were trained to act as liaisons during storms. Liberty found value in the localized municipal liaisons, as they develop strong relationships and build familiarity working in their role day-to-day and during storms. Liberty stated that as JCP&L continues to focus on improving ETR accuracy and effectiveness, it should also continue to reach out to customers and the communities it serves to monitor and improve communications effectiveness.

Company: JCP&L agreed with, and accepted, the recommendation. JCP&L asserted that it has implemented the recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports the recommendation and further recommends that JCP&L provide Staff with documentation of improvements to communication as part of the annual filing suggested in response to Recommendation 9-5. Staff also recommends that the Board direct JCP&L to provide, as part of the annual filing, information about the number of municipalities handled by each liaison, the length of time each liaison has acted as a liaison for those communities, and any training they have received.

Recommendation 9-7: Provide in JCP&L Major Event reports for which the Major Event classification was based on sharing of its resources how the unavailability of those resources directly affected its ability to maintain targeted reliability levels in its operating region(s).

Liberty noted that over twenty-one percent (21%) of days-per-year during the review period were declared a Major Event pursuant to N.J.A.C. 14:5-1.2. According to Liberty, part of the reason for this high percentage derives from the declaration of a Major Event when mutual aid is provided to other utilities, irrespective of the number of resources provided. Liberty found that the Company classified all such events as Major Events because its release of resources to provide mutual aid diminishes the capacity of JCP&L to meet internal reliability metrics during an event period. The Final Report noted that when events requiring the sharing of only a small number of resources are classified as Major Events, reliability metrics during the event period may artificially skew event day performance. Liberty concluded that it is not clear that degradation in reliability inevitably occurs in all cases where mutual aid has been provided. Therefore, Liberty's recommendation sought an explanation within JCP&L's Major Event report of how, and the degree to which, service was impacted for JCP&L due to the sharing of resources.

Company: JCP&L did not accept this recommendation. The Company asserted that this recommendation pertains to a matter already heavily regulated by the Board and one that was the subject of a recent BPU rulemaking proceeding[4]. According to JCP&L, Liberty took issue with the mutual assistance component of the Board's definition of a Major Event and now seeks to place its own limits on how and whether the component should apply to mutual assistance Major Events. JCP&L stated that this recommendation is at odds with current regulatory requirements and should instead be addressed in a rulemaking proceeding.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports the implementation of Liberty's recommendation. Providing the additional information will identify where further improvements are necessary in continuing the Company's efforts to improve reliability and restoration of service. Staff notes that this requirement would not alter the definition of a "Major Event" as codified at N.J.A.C. 14:5-1.2, but would simply require the Company to provide additional information describing the reliability impacts on JCP&L resulting from the provision of mutual aid by the release of Company resources to assist other utilities during a Major Event.

Recommendation 9-8: Conduct updates of analyses of the costs and benefits of using selective undergrounding at least every two years.

Liberty concluded that employing a range of input values, rather than single point variables, in regular analyses regarding moving existing overhead lines underground would provide a more up-to-date and robust range of benefit to cost ratios. Liberty recommended that the Company validate its assumptions using current data at least every two (2) years.

Company: JCP&L accepted this recommendation, but proposed modifications. The Company indicated that it would agree to periodically update its analysis, but asserted that requiring the update analysis every five (5) years, rather than every two (2) years, with the first update due in March 2027, is the most reasonable approach supported by the most recent analysis.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff concurs with Liberty's recommendation, but has taken the Company's concerns over the frequency of updating the analysis into consideration. Accordingly, Staff recommends that the Board direct the Company to update its analysis every three (3) years, with the first due one year from the effective date of this Order.

[4] See In re the Proposed Readoption N.J.A.C. 14:5 – Electric Service, BPU Docket No. EX21091121, January 11, 2023.

Recommendation 9-9: Develop a pilot project for undergrounding a poorly performing line segment or a small group of them.

The Final Report stated that actual information acquired through experience and data gained from undergrounding a small but representative line segment would be highly beneficial to providing more robust insights into the benefits and costs of undergrounding.

Company: JCP&L indicated that it accepts this recommendation, but proposed modifications. The Company asserted that it intended to file a new IIP during 2023 wherein the Company expected to propose some selective undergrounding and a demonstration of costs and benefits. Rather than develop a pilot project for undergrounding a poorly performing line segment or a small group of them, the Company proposed to assess a small list of locations for selective undergrounding in the anticipated new IIP, which will provide an appropriate cost-benefit analysis.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff does not agree with Liberty's recommendation, to develop a pilot program but supports selective undergrounding of the Company's system where it is most practical to improve reliability.

Chapter 10 – Customer Service

Recommendation 10-1: Pursue cost efficiencies and customer experience improvement opportunities, including those offered by FE Forward Customer Service recommendations.

According to Liberty, JCP&L's customer service strategy, as recommended by FE Forward, will focus on improving customer-facing technologies, strengthening core systems, facilitating data analytics to identify process improvement opportunities, measuring the customer experience through Voice of the Customer tools, and deploying process automation to automate manual tasks and reduce inefficiencies. Liberty stated that implementing this strategy should provide further opportunities to reduce customer service O&M costs through more efficient operations and expanded and enhanced options for customer self-service. Liberty stated that JCP&L should pursue the above initiatives with a focus on efficiency and improving the customer experience.

Company: JCP&L agreed with this recommendation insofar as it is consistent with FE's current business strategy and operating model, which is now laser-focused on the customer experience. JCP&L stated that this responsibility will be measured by the customer experience metric included in the KPIs that will be reported monthly to the FE and JCP&L leadership team.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports approval of Liberty's recommendation. Staff recommends that the Board direct JCP&L to provide Staff with documentation supporting that the Company has implemented and incorporated the recommendation in its current business strategies and operating model within three (3) months of the date of this Order.

Recommendation 10-2: Staff functions sufficiently to address backlog and transaction deficits.

Liberty found that a shortage of meter readers resulted in less meter readings and an increase in estimated bills, which in turn led to an increase in workload in the billing department, causing delays in issuing bills to some customers. Thus, Liberty recommended that JCP&L continue filling transitional meter reader and clerk positions to bring staffing back to its pre-pandemic levels in order to minimize missed manual readings and reduce existing backlogs. Liberty recommended that positions should be filled quickly and billing workloads should be reviewed to resolve backlogs.

Company: JCP&L accepted this recommendation and asserted that it has been implemented. JCP&L stated that, in the months after the issuance of the Phase I draft of the Final Report, JCP&L prioritized addressing meter reading rates, estimated, and delayed billing. The Company further attested that it had nearly completed the objectives in the recommendation and had been and continued to be in contact with Staff. According to JCP&L, by July 31, 2022, the Company was almost entirely back to pre-pandemic levels.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends Board approval of Liberty's recommendation. Staff believes that JCP&L's actions place it on track to reduce estimated bills and the backlog of billing work. As the Company continues with AMI implementation, estimated bills should be avoidable and allow JCP&L to focus on other operational areas of the Company in need of staffing. Within six (6) months from the effective date of this Order, JCP&L shall provide Staff with documentation that it has successfully reduced the backlog and transaction deficits.

Recommendation 10-3: Investigate options to address issues and develop and implement an action plan to address declining Customer Service employee ratings.

Liberty recommended that the customer experience organization investigate options to address issues identified in the Company's diversity and inclusion survey and implement changes to address the declining ratings by employees.

Company: JCP&L accepted the recommendation. JCP&L indicated that it will continue to use the annual survey program to investigate options that address employee ratings.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends approval of Liberty's recommendation.

Recommendation 10-4: Dedicate resources to develop a strategy and concerted approach to identifying and pursuing potential service theft.

According to Liberty, JCP&L has placed minimal focus on potential service theft. Liberty stated that no dedicated revenue protection organization exists at JCP&L, and rather, meter services or revenue operations personnel are responsible for investigating suspected tampering, theft, or bypass situations. Liberty found that the number of revenue protection orders completed each year has dropped substantially since 2017, from 533 to eighty (80) in 2020. Additionally, Liberty found that management does not offer any incentives to encourage employees to report possible theft of service. Liberty suggested that a hotline be established where anonymous tips about theft of service can be reported and that the Company explore the possibility of offering small incentives to employees who correctly identify service theft situations.

Company: JCP&L stated that it accepted this recommendation, with modification. JCP&L indicated that it intends to continue to pursue theft of service using existing personnel. However, JCP&L stated that as it implements its planned smart meters program, it is expected that the theft of service process will evolve to a process built on data analytics driven by smart meter capabilities.

JCP&L argued that, to the extent this recommendation proposes that the Company revert to operations that were in place prior to 2018, JCP&L does not agree with this approach, which would fail to take advantage of both the efficiencies and the capabilities of the smart meters as they are deployed.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends approval in part of Liberty's recommendation, as declining prosecution levels indicate that JCP&L needs dedicated resources to address theft of service. Staff sees value in Liberty's recommendation to establish a hotline to receive anonymous tips regarding theft of service. This is a simple and convenient way to report such incidences but such calls need to be monitored and tracked.

Staff also agrees with Liberty's suggestion that JCP&L should explore the possibility of incentivizing employees who correctly identify theft of service situations. Such monitoring should already be in the current scope of work for those front-line employees who currently handle theft of service. Accordingly, Staff recommends that the Company explore whether this idea would result in more investigations that would correctly identify theft and increase revenues for the Company going forward.

Finally, Staff concurs with JCP&L that as smart meters are deployed, they may also provide data analysis that identifies anomalies in usage, indicating theft. Within one (1) year of the effective date of this Order, JCP&L should provide to Staff a detailed list of ways in which it addressed this recommendation. Additionally, JCP&L should perform an analysis every year to assess whether these strategies and approaches such as the use of data from smart meters, a dedicated hot line for reporting potential thefts, resources and potentially implemented incentives have improved how JCP&L identifies, pursues, processes thefts of service and also completes revenue protection orders. This analysis should be reviewed as part of the next audit.

Chapter 11 – Financial Risks and Consequences of Parent and Affiliate Operations

Liberty found that FE's actions related to the Federal Investigation also led to downgrades in JCP&L's credit rating and, consequently, instability in JCP&L's access to liquidity. In October 2020, Standard & Poor's ("S&P") downgraded the issuer credit ratings of FE and its subsidiaries, including JCP&L. Subsequently, JCP&L lost access to various funding sources for day-to-day operations due to FE's violation of an anti-corruption covenant of its revolving credit facility. The covenant was ultimately waived and JCP&L's access to liquidity was restored, however, JCP&L's creditworthiness was damaged as a result. Liberty found that these consequences were the result of JCP&L's linkage to FE borrowing agreements, rather than a direct result of JCPL's own performance and actions.

Recommendation 11-1: Create for FE and JCP&L lasting and enforceable ring-fencing measures sufficient for JCP&L to make the utility an "insulated entity" by S&P, and to be rated on its own credit characteristics by all three credit rating agencies.

As a result of its above findings, Liberty expressed concerns regarding whether JCP&L's ring-fencing measures were sufficient to insulate JCP&L from the consequences of inappropriate actions undertaken by its parent and other FE subsidiaries. Liberty stated in the Final Report that the Company's existing ring-fencing provisions did not represent "best practices" and did not adequately protect JCP&L's financial status and New Jersey customers.

According to Liberty, as part of S&P's "Group Rating Methodology," JCP&L is assigned an issuer credit rating equal to that of FE, unless S&P deems JCP&L an insulated entity that qualifies for a higher rating. S&P's focused review of FE and its subsidiaries found strong credit linkage between the entities and, thus, S&P downgraded JCP&L's credit rating alongside FE's in 2020. Liberty stated that, if JCP&L maintained a higher level of insulation, S&P and other credit rating agencies would assign JCP&L a credit rating based on its own financial merits. Liberty therefore concluded that JCP&L should meet all S&P criteria for the maximum level of insulation, in order to enable JCP&L to be rated on its own financial characteristics.

Company: JCP&L did not accept this recommendation. JCP&L stated that prior to the events of 2020, FE and JCP&L had substantial ring-fencing measures in place and that a 2015 study of JCP&L's ring-fencing measures found such measures to be sufficient and, in some respects, superior to those of regulated utilities in other states within a holding company structure. JCP&L mentioned that it further strengthened its ring-fencing measures in 2021 by restructuring its short-term credit facilities, resulting in JCP&L having a stand-alone revolving $500 million short-term credit facility. JCP&L further stated that S&P already denotes JCP&L as having "insulated" group status and a senior unsecured credit rating two (2) notches above that of FE, under the S&P Group Credit Rating methodology. JCP&L argued that Liberty's recommendation for full insulation from FE may not be beneficial to the utility or its customers, as it would require a legal separation and would force JCP&L to leave the money pool, which presently provides access to borrowing resources that have lower costs and dependable liquidity. As the Company believes the measures required to achieve fully insulated status are nearly impossible and not in the interest of the Company nor its customers, and given the reduction in FE's overall financial and business risk profile and demonstrated balance sheet improvement, the Company rejected this recommendation.

Rate Counsel: Rate Counsel concluded that the recommendations made in this chapter of the Final Report were too vague. According to Rate Counsel, Liberty should have recommended specific insulation measures for JCP&L to take to free itself and New Jersey ratepayers from the detrimental effects of FE's weakened creditworthiness. As a result, Rate Counsel recommended that the Board return this chapter of the Final Report to Liberty and request that Liberty recommend specific measures that JCP&L should undertake, subject to Board approval, to provide effective ring-fencing for itself and New Jersey ratepayers.

Staff: Staff supports approval of Liberty's recommendation in part. Staff rejects Liberty's recommendation that JCP&L achieve full insulation from FE and instead recommends that JCP&L provide Staff and Rate Counsel with documentation of additional ring-fencing measures for review within four (4) months of the effective date of this Order. Staff will assess whether these additional measures provide increased protections sufficient to insulate JCP&L from potential credit rating downgrades caused by FE risks. As part of its documentation, JCP&L should also include ring-fencing measures that insulate JCP&L from potential bankruptcies of its parent whereby the assets of JCP&L cannot be used to pay off any FE debts. Staff does not concur with Rate Counsel's suggestion to return this chapter of the Final Report to Liberty for them to develop specific ring-fencing measures as Liberty has completed the audit. Staff believes its modification to the recommendation is sufficient as it requires additional ring-fencing measures and provides an opportunity for JCP&L to discuss these measures with both Staff and Rate Counsel.

Recommendation 11-2: Give JCP&L full governance and operational control over all of its financing facilities.

Liberty found that FE negotiates revolving credit facilities on behalf of all subsidiaries, meaning that such liquidity facilities are centrally controlled. Liberty concluded that JCP&L leadership and its board of directors have only insubstantial influence over planning, negotiation, approval, and amendments to liquidity facilities necessary for access to financing. FE Treasury and the parent board of directors control the revolving credit facilities and money pool, which provides a strong link between JCP&L and FE credit.

Company: JCP&L did not accept this recommendation. JCP&L asserted that Liberty's recommendation appeared to take issue with the FE Service Company ("FESC") structure and the way it functions. JCP&L asserted that Liberty did not identify any concrete benefits or cost savings from their recommendation. Additionally, JCP&L stated that the Company would lose economies of scale and such an approach would have little impact on "credit linkage."

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff does not support the approval of Liberty's recommendation for full governance. Staff recommends that, within four (4) months from the date of this Order, JCP&L provide Staff with its plan to achieve increased governance and operational control over all of its financing facilities, including any other measures that will enable JCP&L to increase direct control over financial decisions affecting its credit ratings. The JCP&L board should have the ability to make resolutions with regard to JCP&L's access to financing.

Chapter 12 – External Affairs – The "Department of Justice ("DOJ") Investigation"

Recommendation 12-1: Follow developments in continuing federal criminal and administrative and other state proceedings.

Liberty stated that, due to FE's lack of transparency, the most effective means for the Board to gain important information about ongoing investigations will be to closely follow developments at other authorities, such as the SEC, FERC, and other state regulatory agencies. A change in FE's willingness to be more transparent may permit well-informed decisions in New Jersey regarding the federal criminal actions undertaken by FE executives. Liberty stated that this approach also applies to addressing FE's use of 501(c)(4) organizations to facilitate payment transfers and whether such payments have been limited to the Ohio circumstances and thus whether costs have been assigned or allocated to JCP&L.

Company: JCP&L accepted Liberty's recommendation.

Rate Counsel: Rate Counsel supported Liberty's recommendation but indicated that it did not believe it goes far enough. Rate Counsel argued that the Board should compel additional data and information from FE and JCP&L and require the Company to fully respond to inquiries that Liberty deemed it unresponsive to. According to Rate Counsel, only after obtaining the information sought by Liberty, will the Board begin to know precisely how much FE's criminal actions, and the cover-up that occurred thereafter, have cost New Jersey customers.

Staff: Staff supports approval of Liberty's recommendation. Staff agrees with Rate Counsel's suggestion that FE and JCP&L provide additional data and information to enable Staff to more accurately assess any impact to customers relating to the Federal Investigation. Staff recommends that a detailed forensic audit be conducted relating to any impacts stemming from the Federal Investigation. Staff believes that a forensic audit would address Rate Counsel's recommendation that the Board compel additional information from the Company surrounding these circumstances. Staff suggests that the details regarding the scope of work and review be set forth in the bid solicitation for a specific forensic audit engagement, should the Board order the commencement of such an audit herein.

Staff also recommends that the Board direct JCP&L to provide status updates to Staff, as well as Staff of the Division of Revenue and Rates and the Economist's Office, regarding the Federal Investigation, and any other investigations and proceedings, every three (3) months until such proceedings and investigations are closed. The first status update should provide a detailed summary of all investigations and proceedings, regardless of jurisdiction, from commencement to current status. JCP&L should provide all relevant orders, decisions, settlements, and audit reports with each update. Staff suggests that status updates be reviewed and further updated as part of the scope of the forensic audit.

Recommendation 12-2: Establish means for precluding the inclusion in JCP&L rates FE and JCP&L employee and outside costs associated with state reviews of the implications of conduct related or similar to that encompassed by the Federal Investigation.

Liberty asserted that during the course of the Audit, FE was not forthcoming or transparent in providing information relevant to determining the impacts or implications of the Federal Investigation for JCP&L. Liberty stated that management should treat all costs related to state-level examinations of conduct arising out of or connected with the Federal Investigation as below the line and demonstrate the appropriate use of such accounting and segregation of these costs. Liberty stated that FE agreed to measures that will in effect settle the USAO-SDOH finding of criminal wire fraud charges and for which FE agreed not to recover some costs from ratepayers. State-level examination costs result from the same circumstances for which the USAO-SDOH has foreclosed all recovery. Therefore, Liberty stated that JCP&L customers should be held harmless for costs incurred by FE, its operating company, and any outside resources for the purpose of engaging in state-level efforts (New Jersey or elsewhere) associated with those circumstances and their implications.

<u>Company</u>: JCP&L accepted this recommendation, in part. JCP&L stated that FE has classified and will continue to classify all internal labor costs, external legal fees, and any related expenses associated with the Federal Investigation as expenses incurred by FE. Accordingly, JCP&L argued that all such costs were appropriately charged to an account which settles 100% of the costs to FE, with no such costs charged, allocated, or assigned to JCP&L.

<u>Rate Counsel</u>: Rate Counsel supported Liberty's recommendation but indicated that it did not believe it goes far enough. Rate Counsel argued that the Board should compel additional data and information from FE and from JCP&L and require the Company to fully respond to inquiries that Liberty deemed it unresponsive to. According to Rate Counsel, only after obtaining the information sought by Liberty will the Board begin to know precisely how much FE's criminal actions, and the cover-up that occurred thereafter, have cost New Jersey customers.

<u>Staff</u>: Staff recommends approval of Liberty's recommendation. Staff additionally recommends that the forensic audit suggested by Staff in response to Recommendation 12-1 above further examine costs included in JCP&L's distribution rates and determine whether additional refunds to customers are necessary relating to the Federal Investigation.

Staff notes that in its Order approving JCP&L's 2023 base rate case, the Board approved a stipulation of settlement whereby $17.9 million in distribution rates would be refunded to customers as a result of costs that were misclassified, misallocated, or lacked supporting documentation.[5] As part of that stipulation of settlement, the parties reserved their rights to challenge the amount and seek further refunds.

Recommendation 12-3: Provide semi-annual reports and presentations to Staff regarding Federal Investigation remediation measures.

Liberty found the measures required by the DPA comprehensive and appropriate. Liberty stated that not all management remediation efforts to address the actions and circumstances reflected in the DPA have been implemented or completed, but management is sufficiently well along in executing plans. Liberty stated that FE management should summarize progress and expected completion schedule for each requirement not yet fully implemented twice per year. For those implemented, management should provide an assessment of their effectiveness, any gaps in effectiveness noted, and plans to address those gaps. Such reporting to the BPU should continue until the BPU has confidence in complete, effective, and sustaining actions to mitigate the threats of and to respond effectively to actions the measures seek to address.

Company: JCP&L accepted this recommendation, but proposed modifications. Rather than provide FE's reports to the DOJ, which JCP&L argues are to be "non-public" according to the DPA, JCP&L proposed in the alternative, to meet with Staff on a semi-annual basis to discuss FE's compliance program enhancements and answer any questions Staff may have regarding such enhancements.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation, as written, and recommends approval. In addition, Staff further supports the Company's suggestion for periodic meetings on a semi-annual basis, at which Staff and the Company can discuss the filed reports. At this time, Staff is requesting that JCP&L compile reports summarizing progress and expected completion of all DPA requirements for BPU review, not reports submitted to the Federal government as understood by the Company.. However, Staff reserves the right to make a request for such DOJ reports as part of a future forensic audit. These progress reports shall be included as part of the quarterly reporting as required for recommendation 12-1.

Recommendation 12-4: Provide validation of the completeness of management's Vendor Invoice examination or, failing that, require an independent review sufficient to identify and calculate all likely impacts to JCP&L and its customers.

Liberty investigated the implications for JCP&L stemming from FE's review of vendor invoices and the related charging, assignment, or allocation of costs to the operating companies. This review revealed that costs were improperly assigned or allocated to the operating companies, including JCP&L, without adequate justification. According to Liberty, there appeared to be some connection between this examination and the Federal Investigation. The Final Report stated that

[5] In re 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 Revisions in Connection Therewith ("JCP&L 2023 Base Rate Filing"), BPU Docket No. ER23030144, Order dated February 14, 2024 ("2023 Base Rate Case Order").

management's examination of vendor invoices unjustifiably focused on a test-year approach. Moreover, Liberty found that management's failure to disclose the means and methods of its approach made it impossible to verify that management fully addressed the risks of improper or insufficient substantiated charges to JCP&L.

Company: JCP&L accepted this recommendation and asserted that it has been implemented. In addition to the information provided in response to Audit requests, JCP&L stated that FE retained Craig Energy & Financial Services ("CEFS") to review and confirm the results of the Company's internal review. According to JCP&L, CEFS determined that the refund methodology used by JCP&L followed the applicable tariff requirements and FERC regulations, and was reasonable.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation and recommends Board approval. Staff further recommends that a more detailed forensic audit be conducted to further examine costs included in JCP&L's distribution rates to determine whether additional refunds to customers are necessary relating to the Federal Investigation.

Chapter 13 – External Affairs Organizations

Recommendation 13-1: Return to JCP&L's lead officer responsibility for New Jersey external affairs.

Liberty found that JCP&L's external affairs organization operated directly under a vice president reporting to JCP&L's president until August 2021. That structure kept responsibility for managing local relationships close to where those relationships operated in a cost-efficient manner, with a reasonably sized staff. After August 2021, FE managed external affairs centrally on behalf of its subsidiaries, including JCP&L. Liberty found that the external affairs organization became diffuse and subject to continual leadership change following the termination of executives, and thus was unsustainable in serving JCP&L well. Liberty concluded that delegating responsibility to management at the local JCP&L level of external affairs proved effective and Liberty saw no benefit in changing such responsibility and delegation to the FE level.

Company: JCP&L accepted this recommendation, in part. The Company stated that it finds that the reporting structure and organization of local external affairs has consistently been matrixed with a solid reporting line into FE and a dotted line into JCP&L leadership. The Company asserted that this is a matter for management's discretion and outside the proper scope of the Audit. Nonetheless, JCP&L indicated that it agreed to continue to consider organizational changes and opportunities that would advance more localized control and decision-making. The Company committed to discussions with the BPU and Staff, as necessary, to provide additional background on recent organizational changes and rationale for the preference to maintain a centralized function that has and will continue to coordinate closely with JCP&L leadership.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation and recommends Board approval. Pursuant to N.J.S.A. 48:2-16.4, upon a determination that the operating procedures of JCP&L are inefficient or unreasonable, the Board may order JCP&L "to adopt such new or altered practices or procedures as [it] shall find to be necessary to promote efficient and adequate service to meet the public convenience and necessity." Additionally, N.J.A.C. 14:3-12.4 provides that "the Board may order the implementation of new or altered practices and procedures, as determined by the results of [an] audit." As such, this recommendation is within the scope of this Audit.

Staff is particularly concerned about the Company's over-centralization of an organization that is responsible for addressing and solving local issues that impact reliability and how this practice impacts the Company's relationship with local communities and government. Staff believes that it is imperative for the Company's management of external affairs work where the Company operates, , as this practice will lead to a better understanding of issues that face New Jersey and improve effective external communication. Given the recent management turnover at the FE level and ongoing investigations into FE, ensuring that JCP&L's external affairs organization operates under a vice president reporting to JCP&L's president is appropriate. Staff recommends that within three (3) months of the effective date of this Order, JCP&L provide Staff documentation of the current structure and organization within the external affairs organization, detailing the reporting structure, responsibilities, and decision-making functions. JCP&L should additionally provide a timeline indicating when local management of the external affairs department will be reinstated within New Jersey and when that department will begin reporting to the president of JCP&L. Staff can assess whether this documentation meets the intent of the recommendation and properly addresses the concerns regarding the lack of local oversight and authority.

Recommendation 13-2: Consolidate responsibility for rate and regulatory affairs under a senior legal executive.

Although Liberty found JCP&L personnel cooperative during the course of the Audit, the Final Report indicated that the culture and attitude at the FE level hindered Liberty's ability to obtain necessary information, particularly when questions pertained to the Federal Investigation. Liberty concluded that the structure of FE's board of directors and the overpowering influence of counsel engaged in defense of matters arising from the Federal Investigation showed that fear of, or at least defense of, litigation seemed to have driven decisions about providing information to the BPU rather than normal considerations in managing utility regulatory relations.

Liberty also found that many FE departments appeared to play a role in managing regulatory relations in New Jersey, including rate and regulatory affairs, state and federal regulatory affairs, and the legal group assigned to support regulatory matters. According to Liberty, this division of responsibility resulted in unneeded and unhelpful duplication, onerous need for coordination, and potential confusion with regard to the delineation of responsibility for effectively responding to BPU and other authority needs.

Liberty stated that eliminating the division of responsibilities among the three (3) departments managing regulatory affairs is a necessary first step and recommended the consolidation of the rate and regulatory affairs department under a senior legal executive. Liberty added that it is preferable for the person filling this role to either operate laterally to the top legal officer or directly under the top legal officer. The new executive should have the resources currently split between the separate regulatory organizations and the legal resources needed to provide guidance applicable to regulatory matters.

In the alternative, Liberty recommended that the Company create a position similar to, or expanding upon the duties of, JCP&L's vice president of external affairs, as discussed in Recommendations 13-1 above and 2-2 below. Liberty suggested that the resources currently assigned to FE regulatory groups be re-assigned to report to this vice president.

Company: JCP&L did not accept this recommendation. JCP&L argued that the number of significant management reorganizations that were being implemented during Phase I of the Audit may have led to confusion surrounding the topic. In rejecting this recommendation, JCP&L argued that, ultimately, the organization and management of personnel is a prerogative of the utility, not the Board. In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993), quoting Watkins v. Atlantic City Electric Company, 60 PUR 3d 483 at 490 (1965). JCP&L claimed that Liberty's recommendation would require the Board to violate this long-established principle.

In addition, JCP&L argued that consolidation of State Regulatory Affairs, Rates and Regulatory Affairs, and State Regulatory Legal under the same department, legal or otherwise, and/or reporting to a single legal executive is neither practical nor efficient. The Company stated that there is no basis for the Board to be concerned with the fact that FE has in-house lawyers within the legal department that work on BPU filings, or that such lawyers are in fact in the legal department (rather than in regulatory affairs or the rates department). JCP&L asserted that it is common utility industry practice for all, or most, in-house lawyers to be part of a legal department and report to the General Counsel.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff does not support approval of Liberty's recommendation currently but rather recommends approval of Liberty's alternative suggestion in part. Staff recommends that the personnel and team assigned to New Jersey and JCP&L regulatory matters from the three (3) regulatory organizations, operations, legal, and finance report at a minimum via a dotted line to the restored JCP&L Vice President, External Affairs or other JCP&L VP executive, who in turn directly reports with a solid line to the JCP&L President.

Pursuant to N.J.S.A. 48:2-16.4, upon a determination that the operating procedures of JCP&L are inefficient or unreasonable, the Board may order JCP&L "to adopt such new or altered practices or procedures as [it] shall find to be necessary to promote efficient and adequate service to meet the public convenience and necessity." Additionally, N.J.A.C. 14:3-12.4 provides that "the Board may order the implementation of new or altered practices and procedures, as determined by the results of [an] audit."

This will avoid consolidating each regulatory organization under one (1) legal executive, leaving the current division of responsibilities of FE management oversight for regulatory matters between FE's Chief Financial Officer, FE's Senior Vice President of Operations and FE's Senior Vice President and General Counsel that were created by FE after the termination and separation of senior executives at FE in response to the Federal Investigation. It will, however, give JCP&L's senior executives direct participation in the decision-making process on all regulatory matters. Staff believes JCP&L's senior executive involvement on New Jersey regulatory matters is vitally critical to ensuring efficiency and cohesiveness between the three (3) organizations. Staff believes local executive involvement in regulatory matter will keep the goal of improving service to meet the public convenience and necessity in New Jersey as senior JCP&L executives may have a different perspective on operations, and financial matters relative to JCP&L, New Jersey and regulators and may better understand the importance of transparency with the Board as senior JCP&L executives are closest to New Jersey issues. Involvement of JCP&L executives will help ensure that NJ's concerns are being accurately conveyed to senior executives at FE and if necessary to the JCP&L and FE boards.

With these organizational changes, Staff is giving FE additional opportunity to improve transparency in a manner that is satisfactory to Staff and the Board under the current FE organizational structure of three regulatory organizations. If transparency and other issues ensue with the current FE regulatory organizational structure Staff recommends that the Board reconsider Liberty's recommendation for more significant organizational changes in the future.

Recommendation 13-3: Conduct a focused study of means for cost effectively improving development program success in JCP&L's serving region.

Liberty found that FE operates a strong and generally effective program for encouraging project development, but its results have produced far fewer successfully developed projects in JCP&L's service territory than those undertaken in other FE service territories. Liberty stated that FE focuses to a greater extent on development of projects that will bring growth consistent with public policies in the regions it serves and promote cost-effective load additions to its system. Liberty further stated that the program provided attention to New Jersey, but successful developments have been rare in contrast to the remainder of the areas FE serves. Liberty also found that JCP&L was effective in communicating its needs to FE.

Company: JCP&L accepted Liberty's recommendation. The Company indicated that it would continue to work with community and State leaders on economic development efforts.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation and recommends Board approval.

Phase II

Chapter 2 – Organization and Executive Management

Recommendation 2-1: Provide to the BPU a full report explaining the purpose, scope, and methods employed in the C-suite review, a full description of and justification for any personnel or position changes made as a result, and a clear and comprehensive description of how they change the nature or level of service, support, or other assistance in the provision of service by the operating companies generally and by JCP&L specifically.

The Final Report found that, as part of a settlement to resolve litigation related to the Federal Investigation, the FE board was required to form a special board committee of members who joined the board in or after 2019 to review the current C-suite executives.[6] The special committee was to complete its review by September 2022 and make recommendations to the full FE board which had the authority to make final determinations. Although the full board was tasked with making final decisions, Liberty asserted that it lacks experience, as every board member had less than five (5) years of experience at FE and only three (3) of twelve (12) members had more than

[6] Employees Ret. Sys. of the City of St. Louis v. Jones, No. 2:20-cv-4813, 2022 U.S. Dist. LEXIS 194642 (S.D. Ohio Aug. 23, 2022).

two (2) years of experience. As a result, Liberty found that the board lacks perspective that is gained from engagement with executives as they progress and perform over the long-term.

Although Liberty concluded that senior management responded to evident hiring needs and filled positions with individuals exhibiting strong qualifications, Liberty also found that the impacts on New Jersey-specific public service responsibilities, expectations, and governance, and whether resulting changes from the C-suite review are substantial, remained unclear. Liberty stated that, in the absence of clear reason for concern regarding top leadership, the Company's first priority should be leadership stability in order to give changes in people, values, commitments, processes, and methods an opportunity to mature into full operation over time.

Company: JCP&L did not accept the recommendation, contending that there is no basis for the recommendation. JCP&L argued that there is no need for the report recommended by Liberty, which JCP&L described as an unwarranted intrusion into confidential and privileged matters that are beyond the scope of a management audit. The Company stated that the recommendation intrudes on personnel-related matters and decisions that are not typically, and should not be, subject to public discourse.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff agrees with Liberty's recommendation, in part. Given the significance of the Federal Investigation and the resulting FE executive turnover, Staff believes that it is imperative to ensure that the C-suite review has resulted in the retention of employees with general knowledge of the workings of a large holding electric company, as well as specific institutional knowledge at both FE and JCP&L. Thus, a report regarding the results of the C-suite review is critical to establishing Board confidence in any organizational changes. The Company shall provide a report that includes a detailed description of any changes resulting from the C-suite review, including but not limited to changes in leadership positions, qualifications and responsibilities, and any consolidations and decentralization of departments and positions. The Company shall provide documentation to Staff of the resulting effects of any C-suite changes on operations, the organization, governance, internal processes, and the overall impact on both FE and JCP&L. The Company shall provide details of the C-suite's organizational structure and internal processes prior to the C-suite review and include the analysis and findings supporting any changes.

Staff disagrees with the Company's position that this recommendation is unwarranted and relates to confidential and privileged matters, as a management audit generally consists of the review of "all or any portion of the operating procedures and any other internal workings" of a public utility under the Board's jurisdiction, pursuant to N.J.S.A. 48:2-16.4. Accordingly, JCP&L shall submit a report detailing the information above within six (6) months of the date of this Order.

Recommendation 2-2: Provide for JCP&L an organization structure and executive responsibilities necessary for promoting local responsibility and accountability for New Jersey distribution planning, engineering, asset management, operations, and operations support and for regional external affairs.

Liberty suggested, among other things, the following specific organizational changes:

- Restoration of the New Jersey vice president for operations position;
- Restoration of the New Jersey vice president for regional external affairs, responsible for directing the regional affairs team in New Jersey;
- Return of day-to-day direction of HR Partner resources responsible for New Jersey

matters to the JCP&L president, employing the previously provided direction from FE HR; and
- Assignment of a small, locally dedicated team under JCP&L executive direction for the performance of budgeting and of cost reporting and analysis, subject to direction from the FE Chief Accounting Officer's organization to assure performance per corporate standards, methods, and formats, and with the full transparency necessary to permit corporate cost and performance oversight of and control.

According to the Final Report, these changes do not threaten ensuring conformity to enterprise-wide standards, methods, and practices or to providing visibility sufficient to support central assessment of JCP&L effectiveness and efficiency. Liberty concluded that FE should focus on JCP&L's internal performance rather than on centralizing responsibilities. Implementation of these changes will improve the effective labor relations climate and the Company's relationship with bargaining unit representatives.

Company: JCP&L partially accepted the recommendation. The Company stated that it believes that the structure that has emerged from the FE Forward reorganization process has delivered what the recommendation appears to target and that Liberty's recommendations should not reach the level of seeking to reverse Company management strategic decision-making. JCP&L stated that the availability of resources to meet local needs is more important than the location and structure of such resources.

The Company also stated its willingness to work with Staff and the BPU to make sure they are comfortable that JCP&L is receiving the support from centralized service groups and agreed to consider opportunities to provide for more localized control and decision-making. The Company requested that the Board resist Liberty's recommendations to the extent that they intrude into management prerogatives with respect to the functional organization of the Company.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as written. Staff is concerned that an executive who is not dedicated to or located in New Jersey, and is responsible for multiple jurisdictions, may make decisions that do not result in the best outcomes for JCP&L and New Jersey. Knowledge of and direct experience with the internal workings of JCP&L's system, territory, and customers is critical to ensuring JCP&L receives proper, timely, and, in some cases, immediate approvals, resources, and funding for projects.

Staff recommends that JCP&L be ordered to provide Staff with the organizational chart for JCP&L, including the responsibilities of each executive and their authorities. JCP&L and FE shall provide supporting documentation that this recommendation has been implemented within six (6) months of the effective date of this Order. Staff will review the report to ensure that the changes listed above, and those suggested by Liberty in the Final Report, have been implemented. Staff further recommends that JCP&L meet with Staff to discuss the current organizational structure and division of executive responsibilities, and how JCP&L plans to address the implementation of this recommendation, including ways in which organizational structure and responsibilities will change.

Recommendation 2-3: Upon the settling of responsibility, process, methods, and other changes associated with initiatives like FE Forward, assess opportunities for position restructuring and consolidation.

Liberty reviewed FESC reporting relationships down to the director level and those reporting to that level and found a number of organizations, with fairly small resource numbers overall, with positions having a small number of direct reports, such as four or fewer reports to one lead. Liberty found about forty (40) positions for which titles involved did not disclose an evident reason for small ratios observed, over half of which were one to one or one to two. Thus, the numbers suggest a potential for small economies from consolidation which may be significant enough to pursue.

Company: JCP&L accepted the recommendation but requested modifications. JCP&L stated that, to the extent the recommendation is to monitor and assess ongoing opportunities for structural refinement on a data-driven basis, this recommendation is already underway, as it is a part of the FE Forward management philosophy.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff partially supports Liberty's recommendation as it cautions the Company from increasing centralization of functions, however, Staff is concerned that JCP&L's assessment of opportunities for position restructuring and consolidation may lead it to consolidate functions that have worked best under local leadership. Staff recommends that the Board direct JCP&L to provide Staff with a list detailing the roles of managers and directors at JCP&L, or at FESC handling JCP&L functions, with information about their direct reports and responsibilities both prior to the federal and state investigation settlements and after the consolidations resulting from settlements. The Company shall indicate any local titles, functions, and decision-making authority that has been centralized, with sufficient detail as to the tasks and responsibilities, and whether those titles have been moved or consolidated higher in FE, within six (6) months of the effective date of this Order.

Recommendation 2-4: Provide twice-yearly reports regarding ethics and compliance progress for so long as the BPU requires them.

Although FE made progress in addressing the requirements resulting from the DPA, according to Liberty, FE's plans for providing a stronger culture and program, including detailed actions under the ethics and compliance organization, remain in progress. Finalizing the directives under the DPA also remains ongoing, in addition to further review of the allocation, and perhaps propriety, of costs. Liberty indicated that it is imperative that the Board and Staff receive reports detailing FE's progress fulfilling directives within the DPA and related to any other proceeding or investigation, regardless of jurisdiction. Liberty further stated that FE should provide for itself and for all of its entities reports regarding ethics and compliance.

Company: JCP&L accepted the recommendation, but requested modifications. The Company stated that it would provide Staff its annual report to the FE board of directors on ethics and compliance progress under confidential cover. The Company proposed to do so until the filing of the Company's next base rate case, at which time the BPU can determine the need and the form of any ongoing reporting.

Rate Counsel: Rate Counsel has no comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff recommends that the Board direct the Company to commence the filing of progress reports with Staff no later than three (3) months from the effective date of this Order. The reports should list all mandates and requirements resulting from the Federal Investigation regarding ethics and compliance, and include a detailed description of how the Company is addressing each mandate and requirement. The report should additionally include the completion status of these directives, including expected completion dates for any directive not completed. For completed directives, the report shall provide federal, state, or other court issued documentation confirming completion of the mandate.

Once all mandates are completed, the Company should be directed to provide a detailed summary of all completed ethics and compliance mandates and evidence of its continued adherence to these mandates, including how they have been disseminated throughout the Company, and any ongoing employee training to ensure adherence. Once Staff receives documentation from the Company that all mandates, requirements, and directives have been successfully completed, and once Staff is satisfied that the Company has satisfactorily shown that they have been completed, Staff will advise the Company that it no longer needs to provide these reports. As part of the next Board initiated management audit, the scope should include a review of compliance and ongoing vigilance to ensure a strong ethics policy.

Chapter 3 – Governance

Recommendation 3-1: Restructure the JCP&L board and expand the scope and depth of its engagement in operations and customer service performance oversight.

In the Final Report, Liberty specifically recommended that the JCP&L board be expanded by at least two (2) additional independent members. Liberty stated that the additional JCP&L board members should include at least one (1) member with substantial electric utility senior executive leadership experience in operations or customer service. Liberty also concluded that placing one (1) independent parent board member on the JCP&L board would be useful, but was of less importance. Liberty further noted that the president of JCP&L and both independent members of the JCP&L board had substantial chamber of commerce backgrounds, posing concerns about interconnections within board membership. Liberty concluded that the parent board's age-based membership guidelines would eliminate this concern over the long-term.

With regard to the scope and depth of JCP&L board oversight, Liberty stated this recommendation specifically concerns the matters JCP&L's board addresses, how deeply its oversight dives in addressing them, and how sound becomes its opportunity to contribute to dialogue at the highest levels. Liberty found that maintaining a majority of FE executives on the JCP&L board to be an appropriate approach but suggested involving FE executives from multiple disciplines to engage the board in more deeply understanding, questioning, and contributing to the factors that drive JCP&L's performance. Liberty clarified that the goal of this recommendation is not to have conflicting sources of oversight. Liberty also states that it is appropriate for JCP&L, as a subsidiary of FE, to remain controlled by its parent.

Company: JCP&L accepted the recommendation, but requested modifications. The Company agreed to consider and develop a process to achieve more engagement in operations and customer service performance oversight by the board. However, the Company stated that it did not agree that specific board restructuring action items are necessary or effective in achieving the desired outcome at this time. The Company indicated that it would perform a measured and thorough analysis to consider increased engagement by the board.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends that the Board reject Liberty's recommendation. Staff believes that it may be appropriate for JCP&L's board to have additional, direct oversight and authority; this should be following a thorough analysis conducted by JCP&L. Accordingly, Staff recommends that JCP&L be directed to perform a measured and thorough analysis of its current board engagement. This report shall be provided to Staff within one (1) year from the effective date of this Order. Staff further recommends that the Company's analysis and this issue be reviewed in the next management audit.

Recommendation 3-2: Expand the operations and customer service metrics and trends regularly reported to and addressed by the JCP&L board of directors and by the FE Safety and Operations Oversight Committee.

Liberty found the FE board's new Operations and Safety Oversight Committee ("OSOC") to be of notable strength, however, Liberty also identified several areas of concern. Liberty stated in the Final Report that pre-meeting information provided to OSOC members included a limited set of operational metrics on a consolidated basis for all ten (10) of FE's operating utility companies, rather than on an individual basis for each operating company. The presentations lacked the specificity necessary for board members to gauge operational performance and suggest remedies for improvements at the individual utilities they oversee. The OSOC focused on one (1) company per meeting, but with six (6) meetings per year, it could take two (2) years for JCP&L concerns to be properly elevated to the FE board through this channel. Liberty also found that there was no significant direct interaction between the JCP&L board and the FE board or its committees. Liberty opined that these factors show the challenges of overseeing operations at ten (10) dispersed operating companies.

In the effort to address these concerns, Liberty stated that the JCP&L president should meet with the JCP&L board on a quarterly basis preceding committee meetings. The president should present to the board a reasonable range of operations and customer performance metrics. The presentation should include comparisons between targets and other operating companies, a narrative summary of the factors driving gaps, variances, and material circumstances, conditions, and issues. A full range of JCP&L performance metrics should be provided to address reliability, financial, safety, environmental, and other measures of operational performance such as productivity, work unit performance, staffing complements, overtime and backlogs in field operations, materials warehousing and distribution, and fleet management. According to Liberty, metrics provided should also include a vast range of customer service performance metrics such as call response times, appointments kept, first call resolutions, and customer complaints filed and sustained.

Liberty also recommended that, in addition to meetings between independent JCP&L board members and the JCP&L president, independent JCP&L board members should conduct meetings without management members. Liberty further stated that the JCP&L board's independent members should meet at least twice per year with the independent members of the OSOC. Liberty further recommended that the OSOC should have regular meetings where they more deeply receive and address JCP&L operations and customer service performance information and interact with the JCP&L independent board members which may lead to more summary level view of data, metrics gaps, and trends.

Liberty additionally recommended that the JCP&L president meet every three (3) months with the OSOC, timed to coincide with annual planning and budgeting activities and preceding board plan and budget review and approval.

Company: JCP&L accepted the recommendation. The Company indicated that it does not object to this recommendation and is already in the process of implementing it.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports and recommends Board approval of Liberty's recommendation. Staff recommends that the Board direct the Company to provide implementation status within six (6) months from the effective date of this Order.

Recommendation 3-3: Embark upon a longer range plan to diversify the professional, business, and institutional backgrounds of the FE board of directors.

Liberty found that recent changes in FE board membership have left it with membership that, while consisting of individually qualified members, nevertheless lacks the breadth of skills and experience one finds in other large U.S. utility holding companies. Liberty stated that the board should be made up of members with professional, business, and institutional track records that are consistent with similar large electric holding companies. Liberty concluded that such membership diversity would not occur immediately, as board member tenure only increases over time.

Company: JCP&L accepted the recommendation. After review of Liberty's conclusions and recommendation, the Company suggested that this recommendation be considered accepted and implemented.

Rate Counsel: Rate Counsel has no comment on this specific recommendation.

Staff: Staff recommends approval of Liberty's recommendation and that the Company provide Staff with a detailed and specific account of how the recommendation has been implemented within six (6) months from the date this Order.

Chapter 4 – Finance and Cash Management

Recommendation 4-1: Adopt for JCP&L ring fencing that includes new, strong "Equity Maintenance" provisions requiring ratemaking capital structure equity level not to fall below that informing the basis for New Jersey rates.

Liberty concluded that equity maintenance ring-fencing did not prove effective in preventing the removal of JCP&L equity capital to levels below its ratemaking capital structure levels. N.J.A.C. 14:4-4.7 requires notification to Board Staff when a company's equity to total capitalization ratio falls below thirty percent (30%). Liberty asserted that this notification requirement represents early generations of utility financial insulation which has evolved over the last twenty (20) years. According to Liberty, current best practice includes prohibiting the utility from reducing its equity to total capitalization ratio below BPU approved levels.

Company: JCP&L did not accept this recommendation and urged the Board to reject it. JCP&L stated that most of Liberty's discussion was now dated and did not reflect the current practices or policies for dividends and capital structure. JCP&L stated that Liberty acknowledged that

JCP&L's capital structure has aligned with Board approved ratemaking structure in the last five (5) years. JCP&L expressed that Liberty's recommendation did not specify what ring-fencing measure it was encouraging and that JCP&L did not support a minimum equity percentage threshold. JCP&L argued that there are times when the Company may need to issue additional long-term debt to fund system restoration costs after a major storm, which could reduce the ratio below mandated minimum levels, but would be necessary in order to restore service. JCP&L argued that, usually, a utility's capital structure is negotiated in the context of stipulations in base rate cases. Therefore, while the Company did not support such a measure, the Company believes that if such measure were to be considered by the BPU, it would have to be done through a general rulemaking whereby the results would apply more broadly to all utilities in New Jersey.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff rejects Liberty's recommendation. Although Staff agrees that JCP&L should strive to maintain an equity level closely aligned with its Board-approved capital structure, N.J.A.C. 14:4-4.7(c) does not prohibit JCP&L from reducing its equity to total capitalization ratio below the approved level. It does however require JCP&L to notify Staff. As such, Staff rejects Liberty's recommendation to require a minimum equity percentage threshold.

Recommendation 4-2: Provide for JCP&L ring fencing that will produce for its credit ratings on a stand-alone basis, in order to eliminate debt interest cost premiums like those of the past decade.

Liberty found that JCP&L's credit ties to FE resulted in higher interest expenses on its 2013, 2015, 2019, and 2021 long-term debt issuances. In particular, Liberty stated that JCP&L incurred a significant large premium for its $750 million of 2015 debt issuance with increased pricing spreads estimated at fifty-five (55) to 100 basis points as compared to debt issuances to other utilities. Liberty recommended that effective ring-fencing techniques could mitigate the impacts on JCP&L from higher long-term debt issuances.

Company: JCP&L did not accept the recommendation. The Company stated that, as a threshold matter, all JCP&L long-term debt issuances were approved by the Board, the pricing fell within the Board-approved interest rate spreads; and no party challenged or questioned the Company's embedded cost of debt in its 2012, 2016, or 2020 base rate cases. JCP&L also claimed that there is no legal basis for the Board to retroactively adjust the cost of debt embedded in the Company's rate structure. JCP&L further asserted that the "comparison" debt issuances of other utilities that Liberty used were amateurishly assembled and are so clearly distinguishable from the JCP&L issuances to the point that they provide no comparative value for the Board.

Rate Counsel: Rate Counsel indicated that it supports Liberty's recommendation that the Company establish adequate ring-fencing to insulate JCP&L from FE's adverse credit risks, however, Rate Counsel did not believe the recommendation went far enough. Rate Counsel suggested that the Board return this chapter of the Final Report to Liberty and direct Liberty to prepare analyses like that prepared for JCP&L's 2021 debt issuance to quantify the impact on customer rates that the higher interest rates had and will have for the remaining life of the debt so that JCP&L's customer rates can be adjusted downward accordingly.

Staff: Staff does not accept the recommendation as it pertains to directing the Company to enact ring-fencing measures that would result in JCP&L's credit being rated on a stand-alone basis. Alternatively, Staff recommends that the Board direct the Company to provide supporting information and detailed documentation of additional ring-fencing measures that increase protections sufficient to insulate JCP&L from potential credit rating downgrades caused by FE risk, and as discussed in Staff's response to Recommendation 11-1 in Phase I of the Final Report, within four (4) months of the effective date of this Order.

Staff does not support Liberty's finding that interest rates associated with the Company's debt issuances were unreasonably high, as it is based upon a small sample of comparisons. JCP&L's overall cost of debt is comparable to the market and lies more in the middle than on the high side when compared to similar utilities. The coupon rates associated with JCP&L's debt issuances have been within the limits established by the Board in the relevant authorizing Board Orders. Thus, Staff does not support the need for additional calculations regarding rate impact from any debt issuances reviewed by Liberty, as the Board performed a more robust market comparison at the time it approved such debt issuances.

Staff disagrees with the Company's assertion that Liberty is recommending "retroactive ratemaking," as the Company's rates remain subject to audit by the Board regardless of prior approval.

Recommendation 4-3: Provide improved ring fencing for JCP&L to enhance protection of its money pool positions and access to its new revolving credit facility, and stand prepared to consider a commercial paper program under improved credit ratings.

Liberty based its recommendation on three (3) conclusions. First, Liberty referenced concerns expressed by credit rating agencies that common liquidity facilities among FE companies was the cause of utility credit linkage with a less financially stable holding company parent. The liquidity facilities of concern included the Revolving Credit Facilities, the Utility Money Pool, and a separate unregulated money pool serving the remaining FE subsidiaries. In an effort to alleviate these concerns, FE Treasury put in place separate and stand-alone revolving credit facilities for multiple FE entities, including JCP&L, which resulted in improved credit ratings for JCP&L.

Second, Liberty found that JCP&L violated BPU restrictions on lending to the utility money pool. Pursuant to N.J.A.C. 14:4-4.7(f)(3), a non-utility subsidiary is prohibited from borrowing from the utility money pool. According to Liberty, FE's utility and non-utility money pools roll up into one (1) bank account. Consequently, in order to remain in compliance with these restrictions, the utility money pool is required to have a negative cash position at all times and net positive cash positions must be invested externally to take the pool back to a negative position, to ensure that funds do not flow to the unregulated money pool. JCP&L self-reported that for a period of time in November 2020 the utility money pool had a positive balance. Although the Company corrected the violation immediately, Liberty stated that its updates to procedures for compliance focus on remediating rather than preventing this type of occurrence.

Third, Liberty concluded that lower credit ratings due to credit linkage to FE have precluded a commercial paper financing alternative for JCP&L for a long time. None of the FE operating companies have short-term funding through commercial paper programs which requires the maintenance of high credit ratings. If the credit rating for JCP&L improves it may result in lower short-term debt costs and thus, JCP&L should stand ready to analyze.

<u>Company</u>: JCP&L accepted this recommendation in part. JCP&L indicated that it evaluated commencing a commercial paper program in 2017 and 2021 and determined it would be more expensive than the combination of the utility money pool and the short-term revolving credit facility. However, the Company stated that it can accept the recommendation that it "stand

prepared to consider a commercial paper program under improved credit ratings," with the knowledge that a short-term revolving credit facility is required in order to access the commercial paper market. JCP&L cautioned that there are additional fees associated with such a program and that the commercial paper market has a tendency to be more unreliable.

However, JCP&L indicated that it cannot accept the first portion of this recommendation related to "improved ring fencing . . . to enhance protection of its money pool positions and access to its new revolving credit facility." As discussed in JCP&L's comments on Phase I of the Final Report, the Company argued that it has significant ring-fencing measures in place, including additional steps taken in 2021 to establish a stand-alone credit facility for JCP&L. The Company asserted that any additional measures are either unnecessary, infeasible, or would come with burdens, including costs to achieve, that would outweigh any potential benefits to JCP&L's customers. JCP&L argued that participation in the utility money pool for short-term borrowing needs and the interest rates are more flexible. JCP&L argued that no additional ring-fencing is necessary as entering into a stand-alone $500 million short-term revolving credit facility and increasing its credit rating it provided additional means for short-term borrowing.

Rate Counsel: See Rate Counsel's response to Recommendation 4-2 above.

Staff: Staff supports the recommendation, as it shares Liberty's concerns regarding more expensive short-term borrowing costs and lack of liquidity for JCP&L. Although JCP&L entering into a stand-alone revolving credit facility provided some relief from liquidity risks and improved its credit ratings, JCP&L's credit link to FE has not been sufficiently reduced. Staff believes that enhanced ring-fencing measures would further alleviate these concerns. Such measures should enable JCP&L to develop a structure with its banks that more proactively reduces the risk of unregulated FE entities drawing down on money pool funds intended for JCP&L. Pursuing commercial paper as a source of short-term funding may also diversify JCP&L's sources of funding and lead it to have less reliance on FE to spread future risk around. JCP&L shall provide Staff with details of ring-fencing initiatives that JCP&L plans to implement to address Liberty's concerns and its corresponding recommendation within six (6) months from the date of this Order.

Chapter 5 – Planning and Budgeting

Recommendation 5-1: Continue to develop FE strategic and long-range planning development participants and processes.

Although FE returned to more complete and regularly sequenced planning that includes more appropriately scoped strategic and long-term plans, Liberty accentuated certain factors that highlight the importance of continuing this effort.

Company: JCP&L accepted the recommendation. The Company indicated that it has implemented a more formalized process for long-range planning and a structured strategic planning process. Therefore, the Company considers its implementation of this recommendation in process, as it will continue to develop strategic and long-range planning processes, including through further implementation of the foregoing initiatives.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation. Staff recommends that the Board direct JCP&L

to provide Staff with detailed information, including supporting documentation, showing that the recommendation has been fully implemented, addressing all the concerns expressed by Liberty in the Final Report, within three (3) months of the effective date of this Order.

Recommendation 5-2: Mitigate pressures that starting capital spending targets and a preference for "formula rate" recovery have applied on optimization of JCP&L capital spending.

Liberty found that JCP&L's use of distribution spending targets that have not moved for five (5) years established arbitrary guidelines which have not reflected the Company's actual needs and spending. Liberty also found that JCP&L, with support from FE, employs a bottom-up engineering approach to planning and budgeting for capital projects and spending targets, which serves to keep overall spending at an affordable basis on a consolidated enterprise level. Although Liberty stated that it respected that each round of capital spending proposals looked at the margins focusing on "formula rate" recovery or approval in rates by local regulators, this approach had not shown real changes in target spending and also impacted engineering planning targets.

Liberty suggested that FE permit JCP&L to begin capital planning unconstrained by static targets, trusting that JCP&L understands affordability constraints when prioritizing projects and spending focused on the needs of JCP&L's system. Each project and program should include an explanation of need and opportunities to which it responds, costs, quantifiable benefits or risk mitigation/avoidance they will achieve, execution risk, and analysis of the relationship between cost and benefits. Liberty stated that this will optimize capital planning, allowing JCP&L's first round of capital spending targets to have full objectivity while preserving the ability of FE to make adjustments in later rounds as needed to produce a coherent, coordinated, and achievable capital plan. As part of this optimization, Liberty also suggested that the Company focus on implementing "smart" targets for capital spending which address inflation, recent year trends in actual capital costs, major programs at or nearing completion, and new programs coming into being.

<u>Company:</u> JCP&L did not accept this recommendation and objected based on Liberty's framing. With respect to Liberty's finding that the Company's approach to budgeting and planning "can leave JCP&L deprived of capital that would produce much greater value than projects that make the cut at other operating companies," the Company argued that it receives the capital it needs to ensure service and reliability for its customers. The Company objected to Liberty's conclusion that there are "unsupportive pressures" and preferences for investments included in rider-recovering rate mechanisms impacting JCP&L's access to capital.

The Company argued that it is critical to consider base capital and discretionary capital separately, with respect to the impact recovery has on these categories of capital. According to the Company, base capital allocations for JCP&L results from an extensive three (3) round review process that scores and prioritizes funding for proposed capital projects at JCP&L, with service levels and utility needs driving these projects rather than cost recovery. With respect to discretionary capital, the Company stated recovery is a consideration but not the only consideration. The Company further stated that discretionary capital is deployed primarily for the purpose of accelerating future capital investments that otherwise would be made over time so as to bring forward the benefits for the Company and its customers. Whether the Company can arrange capital in an expedited manner is to some extent dependent upon the impacts on cash flow and debt levels, which are key factors in the determination of the Company's credit metrics.

The Company further stated that the greater the efficiency of recovery projects, the greater the opportunity to accelerate capital investments without a negative impact to the Company's credit metrics.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation. Staff is concerned about the Company's focus on capital projects that fit FE spending limits rather than those that may enable innovation and serve the best interests of New Jersey and JCP&L. Staff recommends that the Board direct JCP&L to implement this recommendation within six (6) months of the date of this Order. Staff further recommends that that Board direct JCP&L to provide a chart of capital spending targets, including all budgetary rounds, final spending budgets, and actual spending from 2021 through the conclusion of the next BPU mandated audit.

JCP&L should additionally provide supporting detail showing the concrete measures, particularly the inclusion of "smart" targets as recommended by Liberty, incorporated into its engineering group's bottom-up planning and spending budgets for all budgetary rounds. These "smart" targets shall address inflation, recent year trends in actual capital costs, major programs at or nearing completion, and new programs coming into being. The chart shall also reflect, for each project and program, an explanation of need and opportunities to which they respond, costs, quantifiable benefits or risk mitigation/avoidance they will achieve, execution risk, and analysis of the relationship between cost and benefits, and whether they were approved or expected to be approved for recovery in rates (either rider based, formula based, or other) at the times for each round of reviews and final spending targets. The Company shall also show that JCP&L includes detailed explanations of FE adjustments to its first round engineering capital spending targets in later budgetary rounds. JCP&L shall also show that it considers enhancement projects and programs which will improve reliability in underperforming portions of its distribution system and overall performance of JCP&L's distribution system.

Recommendation 5-3: Develop realistic budgets for capital costs and O&M expenditures related to storm costs.

Liberty's Final Report noted that FE develops budgets for storm-related events based on what is included in rates and not necessarily the costs that JCP&L has incurred or is expected to incur. Liberty stated that capital and expense budgets should conform to reasonable operating needs. According to Liberty, budgets that do not build in realistic storm expectations can be disruptive to work and impact cost effectiveness through performance, particularly through expanded overtime or unplanned contractor use.

Company: JCP&L accepted the recommendation. The Company stated that it is already in the process of implementing this recommendation, by developing future budgets more representative of historical storm spending. According to JCP&L, it incorporated this review in its current capital budget cycle for the 2023 through 2027 period using an average over a five (5)-year period. Regarding O&M expenditures, JCP&L stated that it separately prepares budgets for small and major (deferred) storms and considers historical expenditures and correlating offsetting amortizations entries to reflect the deferrals for major storms costs and sets the small storm annual budget at the level recovered in its last base rate case.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff further recommends that the Board direct JCP&L to provide within six (6) months from the effective date of this order, detailed reports to Staff, as well as Staff of the Division of Revenue and Rates and the Division of Engineering, showing the budgets from 2017 through the completion of the next audit for Staff to determine whether the Company's steps towards more realistic budgets have been adequate. During this time period, the Company shall also provide an analysis of whether excessive overtime, unplanned contractor use, and reallocations of funds away from other corporate projects in response to improperly budgeting for storms and other necessary operational spending have been alleviated. These reports will be reviewed as part of the next management audit to determine whether the Company appropriately addressed the concerns expressed in the Final Report and whether budgets more closely reflected realistic storm expectations.

Recommendation 5-4: Complete the FE Forward Phase 3 work required to support achievement of the capital cost savings, reporting status, actions remaining, and results achieved every six months.

Liberty found that Phase 3 of FE Forward identified changes that address three (3) fundamental drivers of cost, scheduling, and quality in planning and managing programs and projects on the transmission and distribution system. According to the Final Report, implementation of such changes could result in savings between ten (10) to fifteen (15) percent in annual capital expenditures. Liberty stated that savings even below the low end of this range could amount to around $20 million per year for JCP&L and its ratepayers. Therefore, Liberty encourages prompt completion of FE Forward Phase 3 and execution of resulting changes to JCP&L capital program and project planning. Liberty suggested that JCP&L should provide status reports to the Board twice per year. The reports should include detailed work unit comparisons and quantifiable factors to explain any changes resulting from FE Forward.

Company: JCP&L did not accept the recommendation. JCP&L argued that the recommendation follows Liberty's conclusion that "FE Forward has identified changes that can reduce annual JCP&L capital spending by a range of ten (10) to fifteen (15) percent." However, JCP&L argued that FE Forward was never intended to be a permanent program and the Company has shifted away from measuring or tracking capital efficiencies. The Company argued that it rejected this recommendation because of the intended structure and duration of FE Forward and the transition in reporting practices for capital spending.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Although JCP&L argued that FE Forward was not intended to be permanent, Phase 3 of the program was being implemented at the time of the Audit. The Company indicated in its comments that FE Forward began in 2021 and was expected to reach full impact by 2024, but was not intended to be extended beyond 2023. Staff recommends that JCP&L provide the analysis that it relied upon to determine expected efficiencies in capital costs and O&M expenses in 2023 and 2024 resulting from FE Forward. Staff also recommends that JCP&L be directed to provide Staff with the initial FE Forward Phase 3 work and a full explanation, including examples, of how the program has been modified as the Company has shifted away from measuring or tracking capital efficiencies, for the betterment of JCP&L, New Jersey, and its ratepayers within six (6) months from the effective date of this Order.

Recommendation 5-5: Reinstitute JCP&L strategic plans and give its board and leadership meaningful roles developing and overseeing performance in executing them.

Liberty reiterated the importance of expanding the roles of senior JCP&L leadership and the JCP&L board of directors, as mentioned throughout the Final Report. As part of expanding these roles, JCP&L should perform top-level planning and should conduct utility specific strategy formation, long-term planning, and budget development processes in parallel with those conducted at the FE and FE Utilities levels. Liberty stated that this will require synchronization to permit related activities to proceed on the basis of common overall values and information, in a manner that enables FE executive oversight and participation, including milestone and final approval by the parent board. Liberty further stated that this coordination will require JCP&L to directly provide perspective to FE leadership and its board on specific New Jersey and JCP&L matters and performance relevant to planning.

Company: JCP&L accepted this recommendation, but requested modifications. The Company indicated that it would agree to engage the JCP&L board annually on strategic matters and to increase engagement with the JCP&L board with respect to planning and budgeting. However, JCP&L asserted that it planned to continue to develop strategic plans at the FE Utilities level.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff agrees with and supports Board approval of the recommendation. Staff supports a more independent role for the JCP&L board, including the authority to develop and implement strategic plans and oversee performance. Such autonomy from the FE board would allow for projects that assist in ensuring a reliable system and service for JCP&L and its ratepayers to move forward. Staff notes that Liberty did not find failure at the FE board level through its audit process, but saw limitations for JCP&L due to the authority granted to the parent level board.

Staff agrees with Liberty's finding regarding the importance of the local board at the distribution level setting the specific goals, objectives, and targets addressing JCP&L's needs and circumstances. Staff also recognizes that when reconciling any differences in planning between JCP&L and FE, the judgment of the parent may prevail, as FE ultimately has authority over final strategic plans. With this understanding, Staff supports a more meaningful role of local JCP&L leadership and its board and recommends increased coordination and direct communication, particularly through regular meetings with presentations, data, forecasts, and facts, between JCP&L's senior leadership and its board, and between JCP&L's leadership and board and FE's senior leadership and board, enabling accountability at the local and parent levels. Staff recommends that within one (1) year from this Order, JCP&L provide Staff with documentation of internal changes within JCP&L and FE that show this recommendation was implemented.

Chapter 6 – Staffing

Recommendation 6-1: Examine the reasons underlying outlying JCP&L measures of productivity and resource utilization and identify measures other than those contemplated by FE Forward to improve them where practicable.

Liberty concluded that FE systems and capabilities provide a reasonable ability to measure productivity and utilization even before the improvement that FE Forward will bring, but that a number of anomalies indicate the need for determining the degree to which JCP&L performance-affecting factors require unique assessment. Liberty found that JCP&L measurements for overtime, contractor use, gaps between authorized and filled position, and flat projections of staffing requirements for multiple years are significantly inconsistent with those of the other FE operating companies. Liberty expressed concerns that, even with the improvements anticipated in efficiencies and effectiveness from FE Forward initiatives, JCP&L's performance may not be optimized. Liberty noted that waiting for data collection under new metrics may delay improvements, therefore the Company should immediately assess the reasons for the anomalies and promptly implement actions designed to control those performance areas.

Company: JCP&L accepted the recommendation. The Company indicated that it intends to implement the recommendation in a manner consistent with its understanding of individual company or state or local operational differences, whether by virtue of law, economic region, or practice. Further, the Company agreed to meet with Staff to discuss implementation and timing.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to provide Staff with a status update on its efforts to determine the reasons for JCP&L's outlier performance and its assessment of the ability to complement FE Forward measures with actions designed to control those performance areas. Staff recommends that JCP&L be directed to provide Staff with this implementation update within three (3) months from the effective date of this Order and provide quarterly updates thereafter. Moreover, Staff recommends that FE be directed to perform productivity analysis on the same bases and with the same frequency as it performs such analysis for its other utility operations companies, with comparisons provided to Staff on a quarterly basis.

Recommendation 6-2: Re-examine the resource levels dedicated to transmission and large substation planning, design, and operation; change their alignment and number as appropriate; examine any such changes in connection with the recommendations of the FERC audit.

Liberty found that the resource levels that FE employs in transmission exhibit a seemingly anomalous growth that management has not convincingly explained. Liberty stated that it was unclear whether an additional 100 or so personnel and their substantial costs of $10 million annually were warranted, and whether these additional costs were FERC or BPU jurisdictional related increases.

Company: JCP&L accepted the recommendation. JCP&L argued that the examination of the FERC Audit as part of this recommendation has been completed and resulted in no need of any action in this regard. The Company agreed to meet with Staff to further discuss the explanation required by Liberty's recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to provide to Staff supporting and detailed documentation of its examination of resource levels dedicated to transmission and large substation planning, design, and operations within three (3) months of the date of this Order. Staff further recommends that the Company be directed to provide any documentation supporting the Company's claim that no other action in the FERC Audit was necessary in this regard. The supporting documentation shall be detailed sufficiently for Staff to ascertain whether the increase in spending was for FERC or BPU jurisdictional infrastructure improvements.

Recommendation 6-3: Track New Jersey performance in comparison to the other operating companies across a range of measures used in the industry for labor management performance.

Liberty concluded that FE has appropriately centralized management of labor relations and sufficiently engages local management in bargaining and other labor relations matters. However, Liberty also concluded that FE does not capture and compare measures of performance in managing relations with the bargaining unit employees. Liberty stated that certain trackable metrics for labor management performance should be measured across the FE operating companies with comparative results to ensure that JCP&L's performance and relationships receive the appropriate attention and that any significant deviations are addressed and explained.

Company: JCP&L accepted the recommendation. The Company indicated that it is beginning to develop useful metrics and is willing to meet with Staff to discuss the schedule for completion of developing such metrics and the implementation thereof.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to complete development of its labor management performance metrics. Upon completion, JCP&L should provide Staff with the results of analysis of such metrics, including comparisons with other FE operating companies and explaining in detail any differences and poor performances within three (3) months of the effective date of this Order and on an annual basis thereafter until the conclusion of the next management audit.

Chapter 7 – Compensation and Benefits

Recommendation 7-1: Determine the reasons for the large gap in performance ratings between corporate service groups versus FE Utilities and Operating Company performance levels and for high compa-ratios for the higher-level employees who participate in the Long Term Incentive Program ("LTIP").

Liberty found disparities between the performance rankings and compensation of FE Utilities and operating company personnel and of personnel performing corporate and service functions. The percentage of operating company personnel performing at mid-point or higher levels was notably below the next lowest group and far below those with the highest percentages for performance. FE Utility personnel outside the operating companies also had a notably low performance percentage. FE corporate and FESC personnel, however, generally exceeded the operating company value by seventeen percent (17%).

Liberty found that FE employs a typical LTIP, whose measures do not focus on utility performance but rather on investor interests. Liberty also found that overall FE, FESC, and JCP&L compensation levels compare favorably with the market generally, but appear comparatively high for LTIP employees. The Final Report noted disparities between compensation for LTIP employees and the Short-Term Incentive Program ("STIP") in which lower-level employees participate. LTIP employee participants, with the exception of the most senior officers, had ratios better than others in the marketplace and between management at the corporate and service group levels versus management at the FE Utilities organizations or those working directing for the operating companies. Liberty found that analysis of the underlying data is necessary to determine whether the difference represents a performance measurement bias or is based on skill and performance. Both explanations would be problematic, as either performance is underrated or the level of contribution to job requirements is not at the same for the service company versus the operating companies.

Company: JCP&L accepted the recommendation. The Company stated that FE calibrates performance rankings and compensation for each individual group or department without cross-calibration. As part of this process, executive leaders in each respective department conduct the rankings against their own set of performance measures, as each functional group has different metrics to measure for performance. The Company asserted that these performance measures are consistent for the various functions within the organization.

The Company asserted that it maintains separate budgets for LTIP and STIP compensation and avoids co-mingling of funds. The Company also explained that positions eligible for LTIP are for senior employees who have worked longer at the Company, resulting in higher compensation ratios. According to JCP&L, non-LTIP positions have more opportunities for job growth, and employees tend to move into different roles and groups and experience less tenure stability. LTIP positions are for employees that are top performers and in management positions.

The Company stated that it considers this recommendation fully implemented based on the analysis outlined within its comment, demonstrating consideration of Liberty's conclusions. The Company indicated that it would agree to provide the BPU with more information or analysis upon request.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation in part, as Staff finds the Company's explanation reasonable. However, Staff is concerned about the disparities in compensation between senior management at the operating and utility companies and at the corporate and service company levels. Staff recommends that the Board direct JCP&L to provide, within three (3) months of the effective date of this Order, all detailed supporting documentation with regard to such compensation disparities, including sample calculations of the compensation and performance levels between these companies under the parent, showing that it is not biased toward corporate management and service company employees. The documentation provided shall fully address the findings and conclusions in the Final Report. If deemed necessary by Staff, JCP&L shall provide additional supporting information and analysis. JCP&L shall work with Staff to ensure that all findings and conclusions are properly addressed.

Recommendation 7-2: Treat LTIP costs as indicated by BPU policy regarding incentive compensation awarded strictly based on shareowner-focused factors.

In the Final Report, Liberty concluded that the Company's LTIP "measures focus strictly on investor interests; they do not directly encourage customer-affecting aspects of performance. Industry participants find such measures necessary to attract and retain talent. Despite the prevalence of their uses, some jurisdictions have limited recovery through retail rates of amounts awarded solely on the basis of bottom-line shareowner measures." Liberty indicated that the existence or absence of such cost recovery limitations comprise generally settled matters of regulatory policy, although those policies differ among regulatory jurisdictions. Liberty clarified that its intention with this recommendation was to describe the treatment of LTIP compensation policy as it differs among jurisdictions.

Company: JCP&L asserted that this recommendation is outside the proper scope of Liberty's management audit and intrudes into the BPU's ratemaking powers and authority, which are properly raised and addressed in the context of a pending base rate case. Accordingly, JCP&L argued that this recommendation should not be addressed or resolved in an audit proceeding.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff understands Liberty to be advising the Board that rate recovery of LTIP costs varies among other regulatory jurisdictions, particularly for costs incurred strictly based on bottom-line performance obligations related to investors rather than based on customer service performance obligations related to ratepayers, or a combination of the two. Staff additionally understands Liberty to be recommending that JCP&L adhere to current Board policy and, as such, Staff supports Board approval of the recommendation. Existing Board policy currently prohibits the Company from recovering management incentive compensation from ratepayers, except in some circumstances where compensation is designated for its union workforce and includes specific operational measures.[7]

Recommendation 7-3: Recognize the compensation of the FE Vice Chair and Executive Director as shareowner, not customer costs.

Liberty noted that the hybrid Vice Chair and Executive Director position was created to address issues identified in the DPA, rather than for usual utility operations functions. Thus, Liberty concluded that costs associated with the position should not be included in JCP&L base rates.

Company: While JCP&L argued that this recommendation is outside the scope of the Audit and is more appropriately raised in a base rate proceeding, the Company considers this recommendation unnecessary. JCP&L stated that the Company made no request to recover this specific compensation in 2023 its base rate case, and because this position no longer exists, the Company would not make any requests to recover this specific compensation in any future base rate cases.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports approval of the recommendation. Pursuant to N.J.A.C. 14:3-12.4, the Board is permitted to direct that the Company implement "new or altered practices and procedures, as determined by the results of [an] audit", including procedures related to the allocation of costs for future ratemaking review. Staff is not recommending any adjustment to rates as part of this Order.

It is Staff's position that these costs should not be allowed in rates and should not be treated as above the line costs for recovery from customers in any rates. As such, Staff recommends that the Board direct JCP&L to provide documentation that these costs, as well as any other costs that have arisen out of the Federal Investigation or any related investigations which dealt with the Company's challenges resulting thereof, have not been included in rates. Staff further recommends that the Board direct JCP&L to file testimony showing it has not included any direct or indirect costs related in any way to the Federal Investigation, or any related state or other investigation or proceeding, including costs relating to defense or the conduct of a proceeding that would otherwise have been avoided had there been no fraud or investigation. Such direct

[7] See In re 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 Revisions in Connection therewith; and for Approval of an Accelerated Reliability Enhancement Program ("2012 Base Rate Filing"), BPU Docket No. ER12111052; OAL Docket No. PUC16310-12, Order dated March 26, 2015.

and indirect costs are not the responsibility of ratepayers. JCP&L shall file the testimony in its next base rate case where it will have the burden of proof of showing that ratepayers have not been adversely impacted by FE's actions related to the Federal Investigation or any costs associated with resolving related investigations whether federal, state, or other proceeding. Staff further suggests that this be reviewed as part of the forensic audit, as recommended in Staff's response to Recommendation 12-1 above, to confirm that customers have not and are not bearing these costs.

Chapter 8 – Accounting and Property Records

Recommendation 8-1: Complete the planned, full review of all corporate accounting policies by June 2023 and set a schedule calling for periodic, continuing reviews.

Liberty found that the Company's accounting policies and procedures were generally sound and complete. However, Liberty stated that the policies and procedures were insufficiently reviewed or scheduled for review to determine their continued applicability as some could be outdated or in need of modification.

Company: JCP&L accepted this recommendation. JCP&L reported that a schedule calling for periodic, continuing reviews based on the risk rating of each policy has been established. The Company indicated that it expected the remainder of the policies under review to be completed by December 31, 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to provide Staff the results of all policy reviews, including supporting documentation showing which policies were reviewed and whether changes were required, and a document showing continued periodic scheduled reviews in the future within three (3) months from the effective date of this Order.

Recommendation 8-2: Establish a reasonable timetable for elimination of the Account 106 backlog, and implement a process established for preventing backlog recurrence.

Liberty stated that, in accounting for construction projects, the process for accruing allowances for funds used during construction and the path from Construction Work in Progress (FERC Account 107) to Completed Construction Not Classified (FERC Account 106) to Plant in Service – Classified (FERC Account 101) functioned adequately with no discrepancies. However, Liberty identified a timeliness concern during the unitization process, which assigns assets whose construction is completed to a detailed proper asset group which ties to specific depreciation rates for that particular asset. This issue was raised in the last audit and, although Liberty found that JCP&L made progress in reducing the backlog by $124 million, there remained a $60 million backlog for Account 106 at the end of 2021. Liberty recommended that management set a firm deadline for ending the current backlog and additionally set a target of six (6) months as the point at which items enter backlog status, to prevent backlogs from occurring in the future.

Company: JCP&L accepted this recommendation with modifications. The Company agreed to establish reasonable guidelines in which to target completion of the existing backlog in the unitization process, and to establish reasonable guidelines for the on-going timely completion of the unitization process. JCP&L stated that it does not believe that Liberty's recommendation of six (6) months for triggering backlog status is reasonable under the circumstances and intends to retain nine (9) months as such triggering point.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends that Liberty's recommendation be approved and that JCP&L be directed to implement a six (6) month timeline as the point at which items enter backlog status. Staff believes that identifying backlogs sooner will encourage management to initiate tighter controls and conduct a review and analysis regarding why an asset remains in Account 106 and has not yet been assigned to the proper asset group and depreciation rate under Account 101. Staff notes that the nine (9) month backlog triggering point has eliminated a good portion of the backlog but not the entire backlog, as $60 million remains since the last audit. Thus, Staff finds Liberty's recommended six (6) months appropriate.

Staff further agrees that JCP&L should establish a firm deadline for ending the current backlog within a reasonable timeframe. Staff recommends that the Board direct JCP&L to eliminate the current backlog within one (1) year from the date of this Order. JCP&L should also endeavor to eliminate future backlogs within three (3) months from the date new items enter backlog status. If JCP&L does not believe three (3) months to be a reasonable timeframe, the Company shall discuss with Staff why it cannot comply so that Staff can re-evaluate the timeframe and determine whether it is necessary to address internal controls to assist JCP&L in meeting that goal.

JCP&L shall provide Staff with the status of updates to its unitization process and whether they have resulted in proper timeframes for assigning assets to the appropriate asset groups and depreciations rates and in preventing backlogs. These accounting and property record department performance goals should be documented internally and provided to Staff within one year from the date of this Order. JCP&L should include an ongoing monitoring of all capital projects as a control to ensure capital work orders are timely closed out to plant, costs are properly reviewed, and unitization is completed timely.

Recommendation 8-3: Make a full accounting of resolution of the issues raised in the FERC Audit for the BPU and account for the impacts on current revenue requirements related to rate base and O&M from the practices eventually changed.

According to Liberty, the FERC Audit noted that FE was overstating overhead for capital projects which increased its rate base. Liberty concluded that overstatement in rate base would result in a corresponding understatement to O&M costs. The net impacts on rates would depend upon the timing of the costs in question and the rate base test periods. Liberty recommended that JCP&L provide a full description of how practices changed due to the FERC Audit compared with those applicable to assets whose costs New Jersey retail rates recover. Liberty stated that JCP&L should further provide a detailed accounting of the impacts resulting from these changed practices and how it would deal with retroactive adjustments. Liberty mentioned that the BPU could initiate its own independent review as an alternative, however, Liberty stated that FERC may have resolved the issue by that time.

Company: JCP&L accepted this recommendation, but requested modifications. The Company indicated that rate implications, if any, could be addressed as part of its 2023 base rate case, which was pending before the Board at the time the Company filed comments in this matter. Accordingly, the Company requested that this recommendation be considered accepted by the Company as modified.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends approval of Liberty's recommendation. Staff is not satisfied that JCP&L made a full accounting in its most recent base rate case of the resolution of the issues raised in the FERC Audit. Within three (3) months, or as part of its next base rate case proceeding, whichever comes first, the Company shall provide to Staff, as well as Staff of the Division of Revenue and Rates, a detailed analysis of the accounting utilized to resolve the issues raised in the FERC Audit, and its impact on the revenue requirements, rate base, and O&M. If addressed in a rate case, this detail shall be provided in filed testimony.

Chapter 9 – Controls, Sarbanes-Oxley ("SOX"), Auditing, and Listing Requirements

Recommendation 9-1: Adopt a more expansive conception and means of expression for addressing profound failings like those that produced the DPA for what federal criminal authorities consider wire fraud and that produced a payment of $230 million.

In the Final Report, Liberty made several observations and conclusions relating to transparency at the FE leadership level, particularly with regard to the Federal Investigation which resulted in a federally mandated $230 million penalty. Specifically, Liberty found that FE's description of a "tone at the top" material weakness was unclear and not comprehensive. Liberty stated that, although the Federal Investigation resulted in the termination or separation of an extensive number of top executives and legal, external affairs, and regulatory personnel, FE top leadership failed to promote a proper tone from the top as it trickled down to subordinates during the course of the Audit.

According to Liberty, the lack of detail provided during the Audit diluted FE's claims of transparency. Liberty took issue with the Company's use of broad classifications generally worded to restrict insight into the details necessary to assess robustly the implications and consequences for JCP&L of affairs managed for and costs assigned to it by FE. In the Final Report, Liberty stated that FE did not share information regarding the impact to New Jersey in a meaningful manner. Based on the limited information provided, Liberty asserted that it could not conclude whether FE was a good steward of the interests of New Jersey customers and stakeholders, whether management had a full handle on, or the proper dedication to, addressing the root causes of the problems that occurred at the senior leadership level, or whether improper charges to JCP&L were corrected.

Liberty concluded that, in the least, management should work with the BPU to develop a plan that will provide more comprehensive, open, and transparent dialog about issues, circumstances, and events like those addressed here.

Company: JCP&L did not accept the recommendation. JCP&L argued that FE and JCP&L take their obligations to be responsive to regulators seriously. JCP&L countered Liberty's conclusions and findings, arguing that FE worked cooperatively with Liberty to provide non-privileged information and documents related to the material weakness identified. The Company stated that it would continue working cooperatively with Staff and the BPU, subject to the traditional protections offered by the attorney-client privilege and work product doctrine.

The Company further stated that it would continue to evaluate its financial and accounting systems and internal controls to: i) confirm the Company's compliance with applicable laws governing the maintenance of fair and accurate books, records, and accounts; and ii) ensure that the Company's financial statements are compliant with generally accepted accounting principles. The Company argued that it has a robust audit and risk mitigation process that includes an annual scoping and risk assessment exercise to identify accounts and transactions that pose the risk of creating material misstatements in financial statements, as well as the annual testing of approximately 500 SOX controls and quarterly attestation concerning those controls.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff finds merit in Liberty's recommendation and supports Board approval. JCP&L should meet with Staff to discuss measures implemented by the Company that show concrete changes in the tone at the most senior levels of management and the FE board within six (6) months of the date of this Order. Staff recommends that the Company additionally provide detailed documentation of specific actions taken within the Company to identify risk areas, including any weaknesses in attitudes and tone within senior leadership that may lead to criminal actions, and show that such weaknesses have been addressed with defined and clear internal controls. The Company shall provide documentation of communication policies that management and outside lobbying firms that represent the Company must adhere to when interacting with politicians, regulators, and others. These discussions and documents should indicate how setting a proper "tone at the top" trickles down to all employees throughout the Company and encourages them to report improper actions without concerns of retaliation.

Recommendation 9-2: Move administrative reporting of FE's top internal audit officer from the chief legal officer to the CEO.

In the Final Report, Liberty stated that it is appropriate for the internal audit officer to functionally report to the FE board's audit committee and that the functional reporting relationship is the more significant relationship. However, regarding administrative reporting, it is considered best practice by the Institute of Internal Auditors ("IIA") for the internal audit officer to administratively report to the CEO rather than to the chief legal officer. Liberty stated that administrative reporting to the chief legal officer is a minority practice within the industry and that administrative reporting to the CEO is the more common and prevalent practice. Liberty noted that the IIA's recommendation is that direction should come from the board of directors, but acknowledges the need to have an administrative person to report to, which is generally recommended to be the highest person in the organization to best avoid any organizational bias.

Liberty also noted that the trustworthiness and stability of an internal auditing department depends significantly on its independence, particularly as the Company contends that its "tone at the top" led to substantial departures related to litigation surrounding internal controls. According to the Final Report, there have been many changes at the top executive levels of FE and the FE board currently has strong representation by attorney board members. The combined factors of strong legal representation at both the functional and administrative reporting levels, and the unusually strong use of legal privilege as a bar to sharing information, give more significance to ensuring full independence of the audits function.

Liberty concluded that moving the audit organization to a more common reporting structure would better ensure changes to the tone at the top, prevent the recurrence of certain actions, and promote transparency.

Company: JCP&L did not accept the recommendation. The Company argued that utility regulatory commissions, including the Board, do not have jurisdiction to dictate personnel decisions, management structures, or the like. JCP&L maintained that such decisions, including to whom the Vice President of Internal Audits reports to, are wholly within management's discretion. JCP&L further argued that this recommendation appeared to be related to Liberty's claims that the Company used "legal privilege" to be less than fully cooperative during the Audit, which JCP&L claimed was inaccurate.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Pursuant to N.J.S.A. 48:2-16.4, upon a determination that the operating procedures of the Company are inefficient or unreasonable, the Board may order it "to adopt such new or altered practices or procedures as [it] shall find to be necessary to promote efficient and adequate service to meet the public convenience and necessity." Additionally, N.J.A.C. 14:3-12.4 provides that "the Board may order the implementation of new or altered practices and procedures, as determined by the results of the audit." Thus, this recommendation falls within the scope of the Audit.

The IIA recognizes that the chief audit executive/officer should administratively report to senior management, most commonly the CEO or equivalent, and have the authority to challenge management perspectives.[8] Staff agrees that this is the most efficient and effective structure, as the scope of work in an internal audit includes the review of the CEO's overall management of the Company, and in particular the executives and departments that report to the CEO. Further, the chief legal officer is not responsible for the proper management of the overall operations and performance of the Company; therefore, the chief audit officer should not administratively report to the chief legal officer. As, the CEO is the highest management position within the company, administrative reporting to the CEO supports the role of the senior auditor as a senior management executive and helps avoid organizational bias in the conduct of an internal audit. Staff is also concerned that the Company's lack of transparency during this Audit will extend to the conduct of internal audits due to fears related to divulging sensitive internal information to the Company's board and regulators. Thus, Staff supports Board approval of Liberty's recommendation.

Staff observes that the IIA additionally states that the chief audit executive/officer may administratively report to another senior officer who is the equivalent of the CEO if "appropriate safeguards are implemented."[9] Although Staff's preference is for the Company to structure its internal audits function in line with leading practice according to the IIA, Staff recommends that the Board permit the chief audit executive/officer to continue to administratively report to the chief legal officer, so long as the chief audit executive's independence in performing internal audits is not impaired.

The Company must provide to Staff the exact title of the executive that the chief audit executive/officer will report to within six (6) months from the date of this Order. The Company shall additionally provide a list of specific protections established to ensure that the independence of the internal audit function will not be impaired and a detailed explanation of how each of these protections address the situations which may impair independence, as referenced in the IIA

[8] The Institute of Internal Auditors, Inc., Global Internal Audit Standards, 47-48 (2024).

[9] Ibid.

standards.[10] The Company shall also indicate that there are safeguards in place, including ring-fencing measures, to prevent influence by the chief legal officer, or anyone else within the Company, to change areas of review in an audit, the facts, findings, and conclusions therein, or to suppress audit reports from review by the FE board and the Board.

Finally, Staff notes that it is critical that internal auditing be independent and objective. Regardless of whom the chief auditor executive administratively reports to, such independence of the auditing department and its chief executive is necessary to effectuate an unbiased, untainted assessment and audit report of the internal workings of the corporation. Thus, functional reporting to the FE Board Audit Committee, on which the CEO or any company manager/executive including the chief legal officer cannot be a member, also ensures proper separation in the event the CEO or officer to whom the internal audit officer reports is under investigation. To further ensure such independence, and to avoid conflicts of interest, the functional responsibility of the FE board should include the appointment and removal of the internal audit officer in charge of the internal auditing group, as the internal auditing group's role is to review the internal controls and operations of each function and department including the CEO and other executives, officers and/or managers.

Recommendation 9-3: Place greater weight on work identified through the risk assessment process in final audit plans.

Liberty stated that the Company used risk assessment effectively in informing audit planning. Liberty also found the process used to assess risk well run and documented. The risk assessment process undergoes refinements and internal audits uses it as an important input to TeamMate, the Company's audit management software which can assess risk, develop an audit program, and document work papers, among other functions. Liberty found that one strength of the audit process was the use of enterprise risk management to determine audit program work based on risk assessment. However, Liberty found that despite the integration of risk assessment into audit planning, only a small number of audit plans have corresponding work identified through that process.

Company: JCP&L accepted this recommendation and stated that it has already been implemented. JCP&L stated that pursuant to the reorganization in January 2022, FE increased staffing authorization to thirty-five (35) [thirty-three (33) full-time employees plus two (2) full-time contractors] to allow for greater risk-based audit coverage.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to provide Staff with all supporting documentation indicating that the audit process addresses areas of risk as identified in risk assessment reviews. JCP&L should also provide documentation that increasing staff to thirty-five (35) will be sufficient to accomplish the objectives in the recommendation. Staff further recommends that the Board direct JCP&L to provide Staff with reports that show the types of audits being performed each year and identifies the audits that have been flagged by the enterprise risk management. JCP&L should provide all such documentation within three (3) months of the effective date of this Order and every year thereafter until the conclusion of the next management audit.

[10] See Id. at 48.

Recommendation 9-4: End the predisposition to find ways to inhibit the flow of information (protected as required by legitimate needs for confidentiality) to the BPU.

Liberty stated that it encountered an unprecedented degree of claims of legal privilege by the Company to justify denying access to internal audit work and presentations to the FE Audit Committee, as well as information pertaining to other areas within the scope of this Audit. JCP&L personnel and FESC personnel assigned to JCP&L rates and regulatory matters did not have substantial influence in making judgements about what to provide. All of this led Liberty to conclude that the culture among those making decisions about disclosure significantly discounts the common sense of providing information when legal resources can formulate a legally based argument for denying it. Liberty found this use of legal barriers to be an important and unfortunate business cultural dimension.

Company: JCP&L accepted the recommendation. JCP&L rejected Liberty's rationale for this recommendation, but nonetheless indicated it would continue working cooperatively with Staff and the BPU, subject to the traditional protections offered by the attorney-client privilege and work product doctrine. The Company further rejected Liberty's assertions regarding the Company's lack of transparency and stated that the Board's own regulations at N.J.A.C. 14:4-4.4 recognize the Company's interests in ongoing litigation and other legal or regulatory processes.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of the recommendation. In addition to Liberty's findings as part of this recommendation, Liberty referred throughout the Final Report to FE's practice of "making attorneys responsible for examinations of conduct and then declining to provide [relevant] information…based on claims of [legal] privilege." As such, Staff is concerned about the frequency of the Company's improper reliance on alleged "attorney-client privilege."

N.J.A.C. 14:4-4.4 requires the Company to provide the Board with copies of any report or document resulting from an investigation by another federal or state agency into the public utility or any part of its public holding company system. Therefore, as acknowledged by JCP&L elsewhere in its response to the Final Report, the Board's rules recognize the Board's interest in ongoing legal and regulatory processes impacting the Company. Further, a management audit generally consists of the review of "all or any portion of the operating procedures and any other internal workings" of a public utility under the Board's jurisdiction. N.J.S.A. 48:2-16.4. The Board's officers and employees are also permitted to inspect various documents kept by a public utility pertaining to "any matter within the Board's jurisdiction and which would not be privileged in any judicial proceeding" pursuant to N.J.S.A. 48:2-16.2.

Pursuant to N.J.S.A. 2A:84A-20, attorney-client privilege serves to protect communications between a lawyer and his or her client in connection with that relationship.[11] The communication is privileged when it is expressed by a client "in conjunction with seeking or receiving legal advice from the attorney in his capacity as such." Fellerman v. Bradley, 99 N.J. 493, 499 (N.J. 1985). The purpose of attorney-client privilege is to encourage "free and full disclosure of information from the client to the attorney" to ensure that clients receive "sound legal counsel." Id. at 498, 502. Staff is unaware of any internal management examination that would consist solely of privileged communication between a utility and its counsel. As such, the Company has an obligation to provide information relating to internal examinations into management conduct upon

[11] The lawyer-client privilege rule applies to contested administrative cases pursuant to N.J.A.C. 1:1-15.4.

Liberty's request as part of this Audit. Attorney-client privilege does not shield the Company from its obligation to provide required information to regulators. In other words, the mere inclusion of attorneys in the reporting process does not construct a barrier between the Company and its regulators.

Staff is also concerned about the frequency of unsupported claims for confidentiality during the course of the Audit and the impact these claims had on Liberty's ability to perform a full management audit. Pursuant to N.J.A.C. 14:1-12.1 et seq., the Company has the burden of proof for claims of confidentiality and must provide supporting documentation as to the need for confidentiality and any harm it may present if the information is made public. According to Liberty, the Company frequently improperly claimed confidentiality without sufficiently substantiating the harm that would occur should information become public.

Staff recommends that the Board direct JCP&L to provide documentation highlighting the Company's internal guidelines for substantiating claims of confidentiality. These internal guidelines should additionally enable the flow of relevant and required information from the Company to the Board. Information regarding the appropriate treatment of confidential information should be provided to all executives and employees responsible for providing information to regulators. The Company shall demonstrate its commitment to fulfilling its obligation to provide information to regulators, including the Board and its Staff, during audits and other proceedings. The Company shall provide the required internal documentation within three (3) months from the effective date of this Order. Additionally, the Company shall act in accordance with internal guidelines and Board rules pertaining to confidentiality during the conduct of any future audit, including the forensic audit referenced herein.

Chapter 10 – Affiliate Relationships and Cost Allocation

Recommendation 10-1: Update the Cost Allocation Manual ("CAM") to match the factors currently in use and conduct an annual review thereafter to ensure continued applicability.

In the Final Report, Liberty stated that JCP&L did not use good practice in periodically updating its CAM to reflect its actual practice. According to Liberty, the current CAM includes outdated cost charging, allocation methods, factors and calculations.

Company: JCP&L accepted the recommendation. Although the Company disagreed with Liberty's characterization of the cost allocation process, JCP&L believes that Liberty reflected that the Company was underway with a CAM review and update process, which was still in progress as of the date JCP&L filed comments in this matter.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and also notes that JCP&L filed a petition in January 2024 for approval of an updated FE Service Agreement and its Mutual Assistance Agreement.[12] As part of its January 2024 Petition, JCP&L indicated that it incorporated an annual review process and comprehensive training was developed in order to ensure that the CAM remains current and compliant on an ongoing basis. The January 2024

[12] In re the Petition of Jersey Central Power and Light Company for Approval of a Revised Service Company Agreement and a Mutual Assistance Agreement Pursuant to N.J.S.A. 48:3-7.1 and N.J.A.C. 14:4-4.5, BPU Docket No. EM24010062 ("January 2024 Petition").

Petition is currently under review. Staff recommends that, upon the conclusion of that matter, JCP&L update the CAM to be consistent with any Board directives in the associated Board Orders, the approved Service Agreements, the Mutual Assistance Agreement, and the recommendations approved herein. Staff also recommends that the Company take steps to ensure that the CAM is updated timely in the future.

Recommendation 10-2: Update the Service Agreement and Mutual Assistance Agreement to be consistent with the CAM and the annual cost center review process.

Liberty stated that the Service Agreement and Mutual Assistance Agreement must be correspondingly updated to reflect the changes to the CAM. Liberty recommended that both agreements be updated annually to match changes that occur in the annual cost center review process.
Company: JCP&L accepted the recommendation. JCP&L indicated that the Company's review and revision process was already underway and would address all issues needed to improve or create consistency and to acknowledge and better align with the annual cost center review process. The Company requested that the Board consider this recommendation as accepted, subject to confirming discussion with Staff at the appropriate time.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and notes that JCP&L's January 2024 Petition sought approval of an updated FE Service Agreement and Mutual Assistance Agreement. Staff supports Liberty's recommendation that the Company must update its CAM once the FE Service Agreement and the Mutual Assistance Agreement are approved by the Board. JCP&L shall review the agreements and the CAM annually and update as necessary so there is consistency across all documents. Pursuant to N.J.A.C. 14:4-4.5, a public utility must notify the Board of any modification to an approved service agreement and must obtain Board approval for any modification to cost allocation methodologies resulting in a change in allocation factors of five percent (5%) or greater to JCP&L. The January 2024 Petition is currently under review, including proposed changes to JCP&L's procedures to ensure annual review of the agreements.

Recommendation 10-3: Explore what changes must occur to enhance SAP configuration to allow for the production of a monthly summary of transactions from one affiliate to another.

In the Final Report, Liberty concluded that FE's primary accounting system, SAP, has controls to assure the completeness and accuracy of transactions and records to the general ledger but does not include monthly affiliate to affiliate transaction summaries. Liberty stated that such summaries would provide useful advantages with regard to assurances of accuracy of each transaction as it should include monthly billing information that permits independent analysis at a detailed level.

Company: JCP&L accepted the recommendation. JCP&L indicated that, as of 2022, the Company had made configuration changes to allow for the production of monthly summaries of FESC charges to the utilities under the Service Agreement. The Company indicated that it is reviewing whether and how a similar configuration might be rendered for utility-to-utility transactions under the Mutual Assistance Agreement.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation for Board approval and further recommends that the Board direct JCP&L to provide Staff with the configuration of changes implemented under the Service Agreement and any configuration changes for utility-to-utility, affiliate-to-affiliate transactions under the Mutual Assistance Agreement, as described in the Company's response, within six (6) months from the effective date of this Order.

Recommendation 10-4: As part of the revision of the CAM, undertake a thorough review to determine the most logical and cost causative factors for each cost center.

Liberty found that the allocation factors used to allocate costs had reasonable bases and factors but differed in many respects from those included in the CAM. Liberty stated that it is good practice to update the CAM with current allocation factors as the CAM is expected to reflect the Board-approved service agreements, cost allocation methods, and factors for services. Liberty maintained that direct charging should occur whenever possible and if not possible, indirect allocations should, whenever possible, use factors that reflect cost causation of the product or service being provided. General allocators like FE's set of multi-factor allocators should be used where adequate cost causation cannot be determined and as a last resort. Liberty found that FESC cost centers predominantly used general factors which, Liberty argued, showed insufficient attention to the use of cost causative factors. Liberty also found that the "direct charge ratio" did not conform to the CAM and actually employed eleven different factors that produced various allocation methods, none of them applying what was reflected in the CAM. Liberty recommended a thorough review to determine possible allocation bases that represent logical and cost causative ways to allocate costs without being bound by the current CAM to ensure that the allocations fit the nature of the costs.

Company: JCP&L accepted the recommendation, subject to the understanding that Liberty failed to properly distinguish between allocation methodologies and allocation factors. JCP&L further noted that the multi-factor methodologies used as allocators contain many "sub-factors" for the allocation of costs to different combinations of companies.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports and recommends the Board approve Liberty's recommendation. Staff reiterates its support for costs to be directly allocated as often as possible or that the factors used to allocate be based upon how the costs are incurred if they cannot be directly allocated. Staff also notes that the January 2024 Petition is currently under review to determine whether it sufficiently reflects the intent of Liberty's recommendations.

Recommendation 10-5: Revise allocation factor calculation worksheets to align with other changes in methods or language in the CAM and Service Agreement.

According to the Final Report, the Company's worksheets are adequate in supporting current allocation factors, but the language and references need adjustment to align with the CAM and agreements.

Company: JCP&L accepted the recommendation. JCP&L stated that methodologies do not change and any changes to them require regulatory approvals. Allocation factors do change to accommodate types of costs and other variables that may address cost causation or changes in system circumstances from time to time and over time. In JCP&L's opinion, the Company has already implemented this recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff recommends that the Board direct JCP&L to file revised allocation factor calculation worksheets as an update to the pending January 2024 Petition to ensure consistency among all agreements, the CAM, and worksheets.

Recommendation 10-6: Implement the enhancements committed to in the 2011 Management Audit regarding the identification of triggering events that would require a mid-cycle change to the allocation factors.

Liberty found that, as part of a previous internal audit, management committed to addressing events that triggered the need to change allocation factors during the year (mid-cycle). Liberty found that neither of the two (2) changes made to the Company's allocation process addressed the commitments resulting from the internal audit. Liberty recommended that these commitments be addressed now.

Company: JCP&L accepted the recommendation. The Company indicated that, in response to this recommendation, it intends to add language to its accounting policy recently implemented as part of the FERC Audit to document the annual allocation review practice.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation. Triggering events that require mid-cycle changes to allocation factors should be addressed in a timely fashion as major business, operations, or other changes can prevent existing factors from properly reflecting the causes for cost occurrences. Such triggering events should be identified and any changes necessary to address them should be proposed for review and approval by management. Within six (6) months from the effective date of this Order, JCP&L shall provide Staff with detailed information showing that it implemented the enhancements committed to as part of the 2011 internal management audit.

Recommendation 10-7: Create a time reporting policy document that emphasizes the policy of direct charging and the reasons why it is the most appropriate way to charge time when possible and establish a formal, recurring training and communications program.

In the Final Report, Liberty stated that the current documents are procedure documents and do not explain policies for direct charging. Liberty found that the Company's lack of training on time recording and its failure to properly communicate the importance of directly allocating time was also a concern. According to Liberty, the Company anticipated completion of FESC employee training by mid-2022. Liberty recommended that the Company complete its planned training for all FESC employees for time reporting with an emphasis on the importance of direct charging where possible.

Company: JCP&L accepted the recommendation. The Company indicated that this procedure exists as an attachment to the CAM. The Company further indicated that it has developed training, which all FESC employees will be required to take on an annual basis.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports the recommendation. Staff recommends that the Board direct JCP&L to provide a copy of any updated documents that support the Company's claim this recommendation has been addressed, including documentation outlining and explaining in detail the Company's policy on direct charging and its policy on training existing and new employees. This documentation shall be provided to Staff within three (3) months from the effective date of this Order and as an update to JCP&L's January 2024 Petition.

Recommendation 10-8: Employ in the annual review of allocation factors a sampling selection method that ensures broader coverage of different allocation methods.

In the Final Report, Liberty found that best cost allocation practice centers on three (3) principles: 1) direct charging as much as possible; 2) allocating most remaining costs using a factor that relates to how the costs were incurred; and 3) allocating a minimum of residual costs using a general allocator. Liberty stated that the Company's use of general allocators/multi-level factors is high, raising concerns that the Company is not applying cause-based allocation where possible.

Company: JCP&L asserted that Liberty's conclusion incorrectly presupposes that only ten percent (10%) of the allocation factors are reviewed, which JCP&L asserted is not the case given that all of the allocation factors are reviewed as part of the annual update of the factors. Despite the factual disagreement, the Company accepted the recommendation and indicated that it has already implemented the recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Liberty's recommendation and recommends that the Board also direct JCP&L to provide Staff with supporting documentation and work papers that indicate all allocation factors are reviewed annually, within three (3) months of the effective date of this Order.

Recommendation 10-9: Following a thorough review and modification of the CAM, strengthen the cost center review process to ensure that cost centers use only allocations detailed in the CAM.

Liberty's Final Report stated that the annual cost center review did not make sound use of the CAM as a means for changing cost allocation methods and factors. Cost centers have the ability to identify allocation details not necessarily consistent with the methods authorized in the CAM. Liberty stated that the CAM can change where needed, subject to clear and timely change controls serving as a control on how readily and freely individual cost centers can diverge.

Company: JCP&L agreed to the recommendation. JCP&L argued that Liberty muddled the distinction between allocation factors and allocation methodologies. JCP&L asserted that factor changes within approved methodologies do not require any new regulatory review of approval. Notwithstanding the disagreement, the Company indicated that it believes that the recommendation can be considered accepted and in process for implementation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, finding it reasonable to strengthen the cost center review process to ensure that cost centers use only allocations detailed in the CAM. The Company should implement a formal review and approval process by which CAM allocations can be modified. Pursuant to N.J.A.C. 14:4-4.5(c), the Company must file with the Board work papers and supporting documentation pertaining to any change to cost allocation methodologies resulting in a more than five percent (5%) change in allocation factors. JCP&L shall continue to provide this report if such changes are made. JCP&L shall additionally provide Staff with details on how it intends to comply with the recommendation, including implementation timelines, so that the Company's internal process will be effective within one year from the date of this Order.

Recommendation 10-10: There should be a review of the development and application of cost allocation factors and the resultant changes to JCP&L by someone whose focus is JCP&L costs and protection of New Jersey customers.

Liberty concluded that JCP&L does not have a sufficient role in the development of allocation factors, in the application of such factors to FESC costs, or in examining the resulting costs charged to JCP&L. Although Liberty detected no bias suggesting unfair allocation of costs to JCP&L, Liberty recommended that a dedicated JCP&L employee with a JCP&L-only focus should have a direct and sufficient role in developing allocation factors, as such factors and changes impacting JCP&L and its customers directly.

<u>Company:</u> JCP&L accepts this recommendation, but requested modifications. Rather than introduce the need for independent JCP&L review of the results rendered through delegated authority in this context where audits may also be performed from time to time, the Company suggested that the concerns highlighted in this recommendation and its supporting conclusion can be addressed through periodic reporting on changes affecting JCP&L by the JCP&L Controller to the JCP&L President and the JCP&L board of directors on an annual basis. The Company requested that the BPU accept this modification.

<u>Rate Counsel</u>: Rate Counsel did not comment on this specific recommendation.

<u>Staff</u>: Staff supports Board approval of Liberty's recommendation. The CAM and FE Service Agreement should be internally reviewed annually by JCP&L management to determine whether the factors embedded in allocation formulas are reasonable and appropriate, and to ensure that JCP&L and its customers' interests are properly protected and addressed. In order to ensure New Jersey ratepayers' interests are protected, Staff concurs with Liberty's recommendation that this review must be performed by a JCP&L employee who focuses on the local interests of JCP&L and its customers.

Recommendation 10-11: Consider holding the depreciation and carrying charges associated with the portion of FESC assets previously charged to FirstEnergy Solutions Corp. ("FES") and First Energy Nuclear Operating Company ("FENOC") at the parent company, rather than increasing the allocation to the regulated entities.

Liberty found that the bankruptcy of FE's commercial power and energy entities, FES and FENOC, left FESC with a smaller base over which to allocate certain depreciation and carrying costs. Consequently, the allocation of these assets was shared by the remaining entities, including JCP&L, and a portion of such costs were ultimately passed onto JCP&L's ratepayers. Liberty found that the share of relevant depreciation costs allocated to the operating companies went from two-thirds in 2017 to more than ninety-seven percent (97%) in 2021. Liberty stated that FE's failure to provide for the possibility of bankruptcy in the Service Agreement, recover the stranded costs as a result of the FES and FENOC bankruptcy, and sell or otherwise dispose of any assets, left FESC with the same significant amount of asset-related costs as before the bankruptcy. Liberty argued that New Jersey customers should not pay for those entities' shares of return of and on those assets and recommended that FE account for those costs without subjecting JCP&L to portions of them.

Company: JCP&L argued that this recommendation is a base rate case matter. The Company asserted that the FE system costs are what they are and are allocated to system affiliates in accordance with the cost allocation methodologies authorized for use by the SEC and FERC (and the BPU in this instance). JCP&L further argued that this recommendation is inconsistent with such authorizations and is subject matter more appropriately addressed in the context of a base rate case.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, in part. Specifically, Staff agrees that FE should consider holding the depreciation and carrying charges associated with FESC assets that were allocated to FES and FENOC at the parent level, rather than reallocating portions of them to JCP&L. Given Liberty's concerns regarding whether it is appropriate for FE to recover these costs from its remaining companies, and that such costs, if allowed by the Board, generally would be passed through base rates, it would be appropriate for this matter to be addressed in the context of JCP&L's next base rate case, as well as in the context of a future forensic audit as discussed in Staff's response to Recommendation 12-1 of Phase I. Allocation of such costs to JCP&L would be of significance and material impact to JCP&L and may also require Board review and approval pursuant to N.J.A.C. 14:4-4.5. Thus, the proper review to determine the reasonableness of the reallocation, retentions of these costs at the parent level, and the level of costs reallocated is a review more appropriately dealt with in the pending January 2024 proceeding and a future forensic audit.

Recommendation 10-12: Capture and hold all remediation costs and current management audit costs related to the DOJ, SEC, FERC, and internal investigations at the parent company.

In the Final Report, Liberty stated that the Company acknowledged, by the creation of a cost collector at the parent, that ratepayers should not be charged for the investigation costs resulting from the DOJ, SEC, and FERC investigations. Liberty concluded that this should also extend to remediation and enhancement costs and costs embedded in the current management audit related to the same investigations.

Company: JCP&L argued that this recommendation is a base rate case matter and requested that the Board reject the recommendation.

The Company claimed that FE has classified and will continue to classify all internal labor costs, external legal fees, and any related expenses associated with the investigation conducted by the USAO-SDOH as expenses incurred by FE, rather than JCP&L or its other subsidiaries. JCP&L asserted that expenses related to JCP&L's management audit for external legal firms specifically supporting matters related to the investigations to address issues raised in the management audit are being charged to FE, with no such costs charged, allocated, or assigned to JCP&L.

Expenses related to JCP&L's management audit for internal labor costs, external legal expenses for firms specifically supporting the management audit, and other consulting expenses are being charged to JCP&L. JCP&L further contended that while the DPA required specific reforms, the Company's Office of Ethics and Compliance implemented extensive actions that were outside of the requirements of the DPA. JCP&L argued that there is no factual or legal basis upon which to allocate a portion of the costs for this Audit to FE. JCP&L claimed that this management audit is fundamentally about JCP&L, irrespective of the fact that it may also examine affiliate transactions involving or impacting JCP&L. JCP&L further stated that any recovery from ratepayers is not an issue germane to this Audit, but rather would be more appropriately addressed in a ratemaking proceeding. Therefore, the Company requested that the Board reject this recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct the Company to hold internal and external costs related to and stemming from the Federal Investigation, including those associated with the C-suite review, at the FE level. Pursuant to N.J.A.C. 14:3-12.4, the Board is permitted to direct that the Company implement "new or altered practices and procedures, as determined by the results of [an] audit", including procedures related to the allocation of costs for future ratemaking review. Staff also recommends that this be reviewed as part of a forensic audit to ensure such costs are not passed onto ratepayers.

Recommendation 10-13: Defer consideration of the need for a detailed, comprehensive examination of allocations pending the results of current internally initiated examinations and the ultimate transparency FE provides about them and previous ones.

Liberty found that FE's transparency declined during the Audit, leading to a need for further examination to review and verify the sufficiency of the Company's efforts to provide proper control over cost reasons, sources, amounts, and allocations to operating companies. Liberty argued that it could not confirm independently that JCP&L customers have not borne further costs inappropriately either through improper conduct or through misallocation of costs incurred in good faith.

Company: JCP&L accepted this recommendation. According to JCP&L, CEFS issued its final report to FE in the first quarter of 2023. JCP&L claimed it provided the CEFS final report to both Staff and Rate Counsel. JCP&L argued that the above-mentioned reviews were being addressed in JCP&L's then-pending distribution base rate case.

Rate Counsel: Rate Counsel has no comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that the Board direct JCP&L to provide to Staff the CEFS report and all supporting documentation within three (3) months from the effective date of this Order. JCP&L should additionally provide all responses and party positions relating to this issue as submitted in its 2023 base rate case, and the results of the internal review to Staff. Staff further recommends that the CEFS report, documentation, and all allocations be reviewed in the context of a forensic audit as discussed in Staff's response to Recommendation 12-2 of Phase I.

Chapter 12 – Electric Discount and Energy Competition Act ("EDECA")

Recommendation 12-1: Include in the next version of the Compliance Plan information stating where oversight, responsibility, and enforcement for each section of the Affiliate and Fair Competition Standards ("Standards") lie.

In the Final Report, Liberty stated that the responsibility for compliance and enforcement previously fell within the Legal and Regulatory Affairs departments but FE shifted this responsibility to the FESC Vice President, Compliance and Regulated Services soon after the conclusion of the EDECA Phase I Audit period. Liberty found this shift sound but suggested that there should be more detail and clarity on responsibilities so that employees know which section and sub-section of the Standards upon which they have oversight. Liberty reviewed JCP&L Compliance Plans from January 2010 through December 2020, during which timeframe the Company made only minor edits. Liberty concluded that the plan has not undergone significant review in quite some time. Liberty found the Company's Compliance Plans are mostly compliant with the Standards, however, some revisions are necessary to make the Compliance Plan more responsive and to provide employees with more guidance across multiple working groups and functions within the Company.

Company: In light of the organizational changes, the Company accepted this recommendation as a reasonable request that is consistent with the Company's own plans and processes for updating existing written policies, plans, and processes, materially affected by the reorganization.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation in that it will provide clarity on staffing responsibility and assist them in understanding "who" is responsible for enforcement and "how" such enforcement will occur. In addition, JCP&L shall provide to Staff in its next Compliance Plan to be submitted to the Board, highlighting all updates and changes, including those that address Liberty's recommendation.

Recommendation 12-2: Make additional elements of the Standards subject to Internal Audit review.

Liberty reviewed JCP&L's internal audit reports over the Audit period and determined that the Company sufficiently reviewed its compliance with the Standards in most areas, as well as FERC compliance, and went beyond a review of costs allocations. Liberty found that the Company's internal audits should review additional areas of the Standards for compliance, including non-discrimination, information disclosure, and separation standards.

Company: JCP&L did not object to this recommendation and indicated it would request that Internal Audits add these subject matters to its existing list of audit topics to be subject to periodic audits in future years.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. The recommendation will ensure that the Company includes a more thorough review in its internal audit scopes of work to cover all areas within the Standards for Company compliance.

Recommendation 12-3: Institute measures to secure regular, timely filing of EDECA reports and undertake a review designed to determine the root causes of failure to timely file reports, and to identify any gaps in compliance measures or rigor in executing them.

Liberty found that the Company had gaps in meeting its reporting requirements under N.J.A.C. 14:4-3.6(o), which requires utilities to provide semi-annual and annual financial performance reports reflecting the most current cost information for each competitive product or service offered by the utility. Although JCP&L's Consumer Electronic Protection Services ("CEPS") offering is very small as it stopped taking new participants in 1999, Liberty found that the Company failed to timely provide such reports for its CEPS offering.

Company: JCP&L accepted the recommendation. The Company agreed that there should be no such gaps in meeting reporting requirements, but argued that the reporting gap was not a total failure to report, rather late reporting that sometimes combined multiple years. As such, the Company agreed to add the specific CEPS reporting obligation to an existing reporting database with assigned responsibility and notice in order to facilitate timely reporting.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as JCP&L should not have gaps in mandatory reporting. JCP&L should be directed to provide Staff with supporting documentation indicating any internal measures it has implemented to ensure future compliance with reporting requirements within three (3) months from the effective date of this Order. JCP&L should be further directed to provide Staff with the most recent EDECA compliance report to show compliance.

Recommendation 12-4: Provide to the BPU a full report of the findings and conclusions made in connection with all reviews and evaluations (regardless of the specific jurisdiction or operating company involved) of Suvon, LLC ("Suvon") structural separation, common work assignments, and sharing of utility information, and address their implications for historical compliance with Section 14:4-3.3(o) and any other applicable standards.

According to Liberty, Suvon is a related competitive business segment ("RCBS") of FE that provides energy brokering and other services to New Jersey customers. Liberty noted that regulators in Ohio expressed concerns about the mingling of resources engaged in FE utility and Suvon activities in that state. Liberty stated that it had difficulty gaining access to information about these circumstances, as well as information that would assist in its review of the Company's compliance with the Standards, due to FE's practice of making attorneys responsible for examinations of conduct and subsequently declining to provide information based on legal privilege.

In order to resolve questions about compliance with this and other provisions of the Standards that may be implicated, Liberty recommended that JCP&L be required to secure from those responsible for overseeing compliance with the Standards a full explanation of the findings, conclusions, and recommendations of all studies, evaluations, or other assessments of the operations of Suvon in each state, including but not limited to Ohio, where reason exists for concern about mingling of resources.

Company: JCP&L partially accepted the recommendation. JCP&L indicated that it did not agree that additional formal reporting is necessary under all of the circumstances and suggested that the Board reject this aspect of Liberty's recommendation. JCP&L proposed to continue to notify Staff regarding changes in competitive service offerings that implicate, and in accordance with, applicable regulations. With this modification, JCP&L indicated that it would accept the recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Pursuant to N.J.A.C. 14:4-3.7(e)(1), the scope of an EDECA compliance audit shall take into consideration the utility's level of activity with its affiliates. Thus, the Company is obligated to provide any information about affiliates necessary for the Board to assess JCP&L's relationship with Suvon. The Company's failure to provide sufficient information inappropriately prevents regulators from fulfilling their duties and violates BPU regulations.

Staff recommends that JCP&L be directed to provide a full report on the findings and conclusions made with all reviews and evaluations (regardless of the specific jurisdiction or operating company involved) relating to the Suvon structural separation, common work assignments, and sharing of utility information, and address their implications for historical compliance with N.J.A.C. 14:4-3.3(o) and any other applicable Standards to Staff within six (6) months from the effective date of this Order. The report shall also address each of the areas identified in Liberty's Final Report.

Recommendation 12-5: Update the next version of the Compliance Plan to include discussion of the potential for FERC rules records conformity as included in 14:4-3.3(s) of the Standards.

Liberty provided that Section 14:4-3.3(s) of the Standards requires that records maintained regarding discounts, waivers, fees, penalties, and rebates offered by a utility to its public utility holding company ("PUHC") or an RCBS of its PUHC also conform to FERC rules. Liberty found that the Company's Compliance Plan failed to reference this section of the Standards, as it did not make any offerings covered by the provision. As a result, Liberty recommended a minor update to the Compliance Plan to express JCP&L's need to ensure FERC rules conformity in the event that future activity triggers the need for compliance with this provision.

Company: JCP&L accepted the recommendation. The Company agreed that this recommendation was a request for a minor change in the Compliance Plan, which would be updated in August 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and recommends that JCP&L be directed to provide Staff its August 2023 and 2024 Compliance Plans within five (5) months from the effective date of this Order, highlighting the sections addressing compliance with and implementation of this recommendation.

Recommendation 12-6: Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards.

N.J.A.C. 14:4-3.4(c) states that

> [w]hen an electric and/or gas public utility makes available a list of electric generation and/or gas service suppliers (suppliers), the list shall only contain those suppliers who are duly licensed by the Board and comply with the electric and/or gas public utility's Board-approved tariff to operate on its distribution system. The suppliers list shall be maintained in alphabetical order, and not highlight or otherwise promote any particular supplier.

Although JCP&L complied with this rule, Liberty stated that the Company could not locate the list of suppliers for thirty-seven (37) months of the EDECA Audit period.

Company: JCP&L accepted the recommendation. According to JCP&L, beginning in September 2022, the Company updated its record retention instructions to assure that pertinent supplier lists are retained and remain accessible until the later of five (5) years or the conclusion of the next BPU management audit. JCP&L further stated that any additional documentation needs will be identified and addressed prior to September 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as adequate retention policies allow for auditors to confirm compliance over the Audit period.

Recommendation 12-7: Change the Compliance Plan to align the reference to Section 14:4-3.4(e) to where the Compliance Plan provides a summation of and guidance regarding this provision.

In the Final Report, Liberty stated that JCP&L was in compliance with Section 14:4-3.4(e), as the Compliance Plan provides adequate guidance to personnel regarding the prohibition against soliciting the release of information to the Company's PUHC or an RCBS of the PUHC. However, Liberty found that discussion of the requirements of Section 14:4-3.4(e) was located in the incorrect portion of the Compliance Plan.

Company: JCP&L accepted this recommendation. The Company agreed to the suggested re-alignment of the Compliance Plan to clarify and combine the heading of Section 14:4-3.4(e) to Section 14:4-3.4(d) and (e) of the Standards, and to remove the reference of subsection (d) from the header for Section 14:4-3.4(f) and (g).

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff recommends that the Board direct JCP&L to provide Staff with its 2023 and 2024 Compliance Plans showing that the recommendation has been implemented within three (3) months from the effective date of this Order.

Recommendation 12-8: Update the next version of the Compliance Plan to make clear management's understanding of the PUHC requirements included in Sections 14:4-3.3(h), (i), (j), and (k) of the Standards.

According to the Final Report, the Company's Compliance Plan omits a discussion of its compliance with Sections 14:4-3.3(h), (i), (j), and (k) of the Standards, all of which apply to transactions with both its PUHC and any RCBS. The Compliance Plan acknowledges that these sections of the Standards apply to transactions with an RCBS but does not address their application to its PUHC.

Company: JCP&L accepted this recommendation, but requested modifications. JCP&L asserted that Liberty misread its Compliance Plan with regard to this recommendation. JCP&L stated that FE does not provide competitive services and thus they are not mentioned in the Compliance Plan. Nevertheless, in the interest of the efficiency of this comment process, the Company indicated that it would make an adjustment to the next version of its Compliance Plan to accommodate this recommendation and to provide relevant training by the close of 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Although the PUHC may not currently provide competitive services, it could do so in the future. Accordingly, the Company should ensure that there is a level playing field in the marketplace between non-affiliated and affiliated competitors in the event that FE offers competitive services in the future. Staff recommends that JCP&L be directed to provide Staff with its 2023 and 2024 Compliance Plans, showing that this recommendation has been implemented within three (3) months from the effective date of this Order.

Recommendation 12-9: Update the next version of the Compliance Plan to include acknowledgement of management's understanding of the PUHC requirements included in Sections 14:4-3.5(d) of the Standards.

According to Liberty, JCP&L's Compliance Plan acknowledges RCBS transactions with JCP&L but omits discussion of PUHC transactions, which are also open for review by the Board pursuant to N.J.A.C. 14:4-3.5(d). Specifically, this section requires books and records of an electric and/or gas public utility's PUHC, or an RCBS of its PUHC, engaged in transactions, interactions, and relations with the electric or gas public utility shall be open for examination by the Board.
Company: JCP&L accepted the recommendation, but requested modifications. JCP&L believes that Liberty misread its Compliance Plan. Nevertheless, in the interest of efficiency of this comment process, the Company indicated that it would make an adjustment to the next version of its Compliance Plan to accommodate this recommendation and to provide relevant training by the close of 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. JCP&L should address, clearly explain, and discuss the Company's compliance with each section of the Standards in Compliance Plans filed with the Board. Staff recommends that the Board direct JCP&L to provide Staff with its 2023 and 2024 Compliance Plans, showing that this recommendation has been implemented within three (3) months from the effective date of this Order.

Recommendation 12-10: Deep-seated, corporate cultural barriers have prevented conformity to levels of transparency typical of other holding company/utility cases we have witnessed - - our interaction with FirstEnergy throughout this audit shows that major efforts remain to eliminate those barriers.

In the Final Report, Liberty stated that FE management declined to provide information relevant to the scope of work under this Audit on the basis of attorney-client privilege. Additionally, JCP&L declined to provide information on the basis that the requested information was about actions undertaken by affiliates serving it and JCP&L did not have access to such information. Liberty found this to be the case in other sections of the Audit, as previously mentioned in this Order. Liberty asserted that JCP&L used these excuses to avoid transparency and providing information to the auditors in order for them to determine compliance.

<u>Company</u>: JCP&L accepted the recommendation. While the Company disagreed with Liberty's characterization of FE's transparency during the Audit, JCP&L indicated that it would continue working cooperatively with Staff and the BPU, subject to the scope of the Audit and traditional protections offered by the attorney-client privilege and work product doctrine.

<u>Rate Counsel</u>: Rate Counsel did not comment on this specific recommendation.

<u>Staff</u>: Staff supports Board approval of Liberty's recommendation. As discussed previously, the Company relied upon attorney-client privilege when the attorney was providing operational functions for the Company, rather than acting in the capacity of a lawyer. It is not a lawyer's responsibility to provide information to regulatory authorities but rather the Company's responsibility. Staff recommends that the Board direct the Company to provide Staff all documentation that supports a cultural change within FE and the Company within six (6) months of the effective date of this Order.

Recommendation 12-11: Update the next version of the Compliance Plan to acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.5(f) regarding joint product and joint services offerings.

N.J.A.C. 14:4-3.5(f) does not preclude JCP&L from offering joint services, provided that such services are approved by the Board and are available to all non-affiliated product and/or service providers on the same terms and conditions. According to Liberty, the Compliance Plan does not mention joint products or services. Liberty recommended that JCP&L acknowledge its understanding of this section of the Standards in its Compliance Plan.
<u>Company</u>: JCP&L accepted the recommendation. The Company stated that it would accommodate this recommendation to "address the particular concepts of joint products and services and joint purchases distinctly" in the next version of its annual Compliance Plan, which was due in August 2023, in order to provide employees with guidance on these topics.

<u>Rate Counsel</u>: Rate Counsel did not comment on this specific recommendation.

<u>Staff</u>: Staff supports Board approval of Liberty's recommendation. Staff further recommends that JCP&L be directed to provide all supporting documentation, including its 2023 and 2024 Compliance Plans, showing management's understanding and implementation of the recommendation within six (6) months from the effective date of this Order.

Recommendation 12-12: Update the next version of the Compliance Plan to include direct discussion of the Section 14:4-3.5(m) of the Standards.

According to Liberty, the Compliance Plan did not address Section 14:4-3.5(m) which prohibits JCP&L from representing that, as a result of its relationship with the PUHC, or an RCBS of the PUHC, its affiliate will receive any different treatment than other product and/or service providers.

Company: JCP&L accepted the recommendation. The Company acknowledged that there is no cross-reference to Section 14:4-3.5(m) and that the Compliance Plan is not specific in addressing this particular section. Accordingly, the Company agreed to accommodate this recommendation through additional specificity in the next version of its annual Compliance Plan which was due in August 2023.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff recommends that the Board direct JCP&L to provide Staff with its 2023 and 2024 Compliance Plans within six (6) months from the effective date of this Order.

Recommendation 12-13: Create a plan to log and track joint JCP&L and RCBS attendance at the types of events described in Section 14:4-3.5(o) of the Standards.

Liberty found no joint marketing or advertising activities by JCP&L, its PUHC, or any RCBS, which would be prohibited pursuant to N.J.A.C. 14:4-3.5(o). However, Liberty indicated that some data limitations prevented it from making a full conclusion.

Company: JCP&L accepted the recommendation, but requested modification. JCP&L asserted that such tracking is neither required nor reasonably necessary. However, the Company indicated that it is willing to require JCP&L and RCBS employees to log attendance at trade shows, conferences, or other information or marketing events held in New Jersey that have been planned in advance with a JCP&L or RCBS employee, or when it is subsequently recognized that joint attendance has occurred.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff believes this recommendation is reasonable and supports Board approval. Tracking attendance will ensure that nothing is overlooked regarding any situation that may pose a conflict with the Company's compliance with the relevant Standard.

Recommendation 12-14: Increase diligence in ensuring full conformity with Section 14:4-3.5(q) of the Standards.

N.J.A.C. 14:4-3.5(q) requires that an electric and/or gas public utility and the PUHC or RCBSs of its PUHC shall not have the same persons serving on the board of directors as corporate officers, except for in certain circumstances. Liberty identified eight (8) individuals who, at any point during the Audit period, served as an officer or director of JCP&L and of an FE RCBS. Liberty found that the Compliance Plan appropriately acknowledged the restrictions on the sharing of officers and directors. However, Liberty found that one (1) individual served simultaneously as an officer of both JCP&L and FES in 2012, which is prohibited by this section of the Standards. The situation only occurred for a short period of time and has not occurred since then and up until completion of the Final Report by Liberty. As Liberty only observed a brief non-compliance years ago, Liberty cautioned JCP&L to exercise diligence when positions change to ensure no overlap prohibited by this provision of the Board's rules.

Company: JCP&L accepted the recommendation and indicated that it has been implemented. The Company indicated that it would continue its diligence in ensuring full conformity with Section 14:4-3.5(q) of the Standards.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation as it is aiming for full compliance with the Standards. Staff recommends that the Board direct JCP&L to provide to Staff all supporting documentation with specific detail as to how it implemented the recommendation within one (1) year from the effective date of this Order.

Recommendation 12-15: Institute measures for ensuring the timely public posting of employee transfers covered by Section 14:4-3.5(r) of the Standards.

Section 14:4-3.5(r) restricts the Company with regard to the transfer of employees between the utility and an RCBS and/or the PUHC to avoid allowing the competitive businesses from gaining an unfair competitive advantage over other purveyors of similar services in the marketplace. Such transfers allow for employee knowledge and information gained at the utility to unfairly benefit the competitive business sector unless these employees have been properly instructed on confidential, competitively restricted information prior to and after the transfer.

During the Audit period, Liberty found that the Company transferred employees between the competitive businesses and the utility. Pursuant to Section 14:4-3.5(r), the Company was required to report such transfers to the BPU and to publicly post them within three (3) days. Liberty noted in the Final Report that management could not demonstrate that it made the required public posting.

Company: JCP&L accepted the recommendation. The Company indicated that it intended to implement, or has implemented, measures in the form of policy, processes, and procedures to assure timely notice and appropriate posting and reporting as required by the Standards.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff recommends that JCP&L be directed to provide all policy, processes, and procedures, and documentation of any notices, postings, and reporting that supports the Company's implementation of the recommendation within one (1) year from the effective date of this Order.

Recommendation 12-16: Treat all employees working on or for Suvon, except those providing Standards-permitted shared services functions, as Suvon employees - - either organizationally or for Standards tracking and compliance purposes; apply similar treatment to any future RCBS which FirstEnergy may have.

Liberty found that FE treated Suvon employees as FESC employees, enabling employee transfers between JCP&L and Suvon while circumventing reporting and tracking requirements pursuant to N.J.A.C. 14:4-3.5(r). According to Liberty, management reported post-Audit efforts to improve compliance in this area, including dedication of employees who work on Suvon matters as Suvon-only, however, Liberty asserted that transfer concerns were not fully addressed by these efforts.

Company: JCP&L accepted the recommendation, but requested it be modified. JCP&L stated that, as part of its ongoing assessment of strategic direction and related factors, FE has unwound the Suvon business. As of May 2023, Suvon is not part of FE. JCP&L stated that, if necessary, the Company can provide an update to Staff regarding such matters.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation with modification. Staff recognizes that Suvon is no longer part of FE's business structure. Given the separation, Staff recommends that the Company be directed to provide Staff will all supporting documents which codified the separation of Suvon from FE and to confirm compliance with the recommendation for any future RCBS.

Chapter 13 – Human Resources Organization

Recommendation 13-1: Give local leadership continuing direction of the HR Partner resources assigned to supporting JCP&L operations.

Liberty found that the Company's HR "Partners" previously reported directly to the utility president, however, FE Forward proposed to change this practice to have HR personnel begin reporting to FE-level HR. Liberty concluded that this change would not be sound, as removing day-to-day management of HR Partners from JCP&L would diminish local direction and would provide only de minimis savings to JCP&L when compared to the impact on relations.

Liberty raised substantial concerns about the relationship between local management and the bargaining unit members. In Liberty's opinion, these concerns are heading towards crisis proportions if not addressed. Liberty stated that the bargaining unit leadership has fundamentally lost confidence in local management in such areas as work practices, excessive overtime, timeliness in addressing individual benefits concerns, and direction to customer service representatives. Accordingly, local leadership for day-to-day HR functions may improve responsiveness and thus would be optimal for improving labor relations.

Company: JCP&L accepted the recommendation, in part. The Company argued that the decision of whether to have a centralized or localized approach to HR resources for JCP&L operations is a matter of business management and outside the proper scope of this Audit process. JCP&L stated that the Company does not wholly reject this recommendation, but agreed to consider organization changes and opportunities for more localized control and engagement with respect to supporting JCP&L operations, including HR resources. The Company also committed to further discussions with the Board and Staff, as necessary, to provide additional background on organizational changes and rationale for any preference to maintain the HR Partner resources centralized.

Rate Counsel: Rate Counsel has no comment on this specific recommendation.

Staff: Staff supports Board approval of the recommendation. Given the substantial concerns raised by Liberty pertaining to labor relations, Staff firmly believes that maintaining local leadership for HR Partners is critical to improving relations and, therefore, centralization may not be appropriate at this critical time. Staff recommends that the Board encourage JCP&L and FE management, as well as union leadership, to meet regularly to improve relations over the next six (6) months. These meetings should be used to address work practices, excessive overtime, timeliness in addressing individual benefits concerns while improving performance metrics, and direction to customer service representatives. After six (6) months, JCP&L management shall provide Staff with a resolution or the status of discussions, including a plan and timeline for improvement in these areas. JCP&L shall also indicate its intention to keep HR Partners resources local.

Throughout this Order, Staff recommends that the president of JCP&L be granted expanded authority which would include the ability to hire personnel at JCP&L and authorize appropriate training for new employees, especially field personnel responsible for service restorations and other operational tasks with the goal of improving JCP&L's performance metrics and labor relations with the union.

Recommendation 13-2: Develop commensurate with the transition to new Human Resource Information Systems capabilities a much more comprehensive set of performance measures for gauging HR performance and attainment of workforce characteristics and expectations.

In comparison to other corporations, Liberty found that the Company has a small set of metrics by which it measures performance in HR functions. According to Liberty, metrics should be tied directly to HR performance of activities it performs or manages and used to measure conditions and attitude that the corporation seeks to instill in its culture.

<u>Company</u>: JCP&L stated that it accepts the recommendation as a means to improve metrics for gauging HR performance and attainment of workforce characteristics and expectations.

<u>Rate Counsel</u>: Rate Counsel did not comment on this specific recommendation.

<u>Staff</u>: Staff supports Board approval of Liberty's recommendation, as it will improve data on performance and employee perspectives of the Company. Implementing new metrics at the time of instituting a new HR system is appropriate. Staff recommends that JCP&L be directed to provide Staff with the status of its implementation of this recommendation within six (6) months of the effective date of this Order.

<u>Chapter 15 – Information Technology ("IT")</u>

Recommendation 15-1: Provide progress reporting to the BPU on IT-related plans made and progress achieved resulting from FE Forward or other programs, initiatives, or activities affecting IT plans, forecasts, and budgets.

Liberty found that centralized management of IT promoted efficiency and common applications, system, planning, and development, while providing sound resources to all areas of the Company, from corporate and operations to users and individuals. Liberty also found that the Company should focus on identifying gaps in capturing new technology and approaches in IT.
<u>Company</u>: JCP&L accepted the recommendation, but requested modifications. The Company proposed to provide the BPU with a summary report at the conclusion of FE Forward detailing the business outcomes and progress achieved resulting from the FE Forward IT-related plans. Because of the decision to transition away from measuring cash flow metrics and related reporting identified above, the business outcomes report for FE Forward would not include forecasts or

results for capital. According to JCP&L, the proposed summary approach at the conclusion of FE Forward would take into account that FE Forward was never intended to be a permanent program and that the benefits and progress achieved would reach full impact before the conclusion of the program.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.
Staff: Staff supports Board approval of Liberty's recommendation, as modified by JCP&L, and recommends that the Company be directed to provide to Staff a summary report within six (6) months from the effective date of this Order. If FE Forward has not yet concluded, the Company should additionally provide quarterly status reports starting after the effective date of this Order and continuing thereafter until FE Forward has concluded, at which time the Company shall provide to Staff a summary report.

Chapter 16 – Insurance and Risk Management

Recommendation 16-1: Adopt and continuously employ a structured approach to determining appetite for risk and use it to guide the establishment of objectives, the identification of and selection from among strategies to meet those objectives, and monitor performance and the external business environment to identify the need for strategy revision.

In the Final Report, Liberty stated that senior FE leadership provides guidance on risk appetite and that FE implied its intention to provide such guidance through a more structured process. Liberty suggested that FE use the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") guidelines as a starting point to establish this structured approach. COSO guidelines explain how to use risk appetite to analyze alternative strategies, set objectives and strategies, measure and set trigger levels for threats that emerge in executing strategies, monitor performance, revisit risk appetite and strategies when there is an imbalance, and address changes in the environment in which the business operates.

Company: JCP&L accepted the recommendation. According to the Company, FE began a process to formalize a risk appetite program and implemented a pilot which was published as a dashboard to the Enterprise Risk Management committee in the first quarter of 2023. The Company stated that even though the Chief Risk Officer position was filled in 2023, the work was still in progress and would not be concluded until 2024. The Company stated that it agrees to keep Staff apprised on the progress of implementing this recommendation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation and further recommends that the Board direct JCP&L to provide to Staff a quarterly progress report commencing three (3) months from the effective date of this Order and thereafter until the completion of the Company's work, no later than one (1) year from the effective date of this Order, at which time the Company shall provide a final summary report with documentation showing that the Company has implemented this recommendation. The report shall provide detail with regard to the Company's process for identifying areas of risk, forming and analyzing alternative strategies and objectives, the final setting of objectives and strategies, and the frequency with which risk appetite and related strategies are reevaluated. The report should also indicate the metrics used to measure performance, how the Company determines what to measure and how to set trigger levels, the impact this process has had on operations, and the external business environment for functional areas.

Recommendation 16-2: Restructure the basis for allocating Directors and Officers ("D&O") insurance costs to JCP&L to avoid charging it amounts arising from risks to which it does not contribute.

Liberty stated that JCP&L, through FE allocations, has paid a substantial portion of the very high premiums FE has paid for D&O insurance relating to the risks associated with the Federal and other investigations. Liberty concluded that FE should charge JCP&L amounts consistent with those of a panel of large enterprises that consist overwhelmingly of distribution utilities. Liberty stated that, if such a panel cannot be created, FE should identify and justify for the BPU a reputable source for determining general rates of premium increase each year since 2019 and, going forward, compare those general rates to premiums actually paid in 2019 and limit rate-recovery to general premium rates so escalated, if the general rates are significantly lower than those actually paid. Liberty identified estimated cost savings from this approach and stated that this approach should apply until the Company can demonstrate that a substantial penalty in premiums for D&O insurance no longer exists.

<u>Company</u>: JCP&L did not accept this recommendation and asserted that it is a base rate case matter. JCP&L interpreted the recommendation as a ratemaking adjustment to the allocation of shared service costs. JCP&L posited that this is not an appropriate recommendation for a management audit, as ratemaking adjustments can only be proposed and approved within a base rate case.

JCP&L further argued that the directors and officers of FE provide management services to all of the operating companies, including JCP&L, and a portion of the costs for such services are appropriately allocated to JCP&L based on approved cost allocation factors. JCP&L argued that, if the Board wishes to pursue the issue, it can be addressed in a JCP&L base rate case.

<u>Rate Counsel</u>: Rate Counsel argued that Liberty's estimate of savings indicates that Liberty has a preferred method for restructuring JCP&L's D&O insurance costs. Rate Counsel suggested that the Board direct Liberty to make a specific recommendation on the appropriate methodology for restructuring the allocation of D&O insurance costs, rather than relying on FE to choose a method that more closely preserves the present allocation method.

<u>Staff</u>: Staff concurs with, and recommends Board approval, of Liberty's recommendation. Staff believes that FE should not allocate to JCP&L increased insurance premium costs resulting from risks associated with the Federal and other investigations into FE. Thus, JCP&L ratepayers should not bear higher cost premiums to insure Company directors and officers that resulted from the recent legal proceedings at the parent level and bankruptcies.

Staff agrees with Liberty's recommendation that a panel of large enterprises consisting overwhelmingly of distribution utilities, or another reputable source identified and justified by FE, should be developed to determine the appropriate level of fair market-based premiums to insure D&Os consistent with standard risk as compared to such premiums paid by FE. Staff also concurs with Rate Counsel's suggestion that a more direct method be developed to determine the amount ratepayers paid in excess of the norm and to develop a proper allocation method.

To implement this recommendation, Staff recommends that JCP&L prepare the analysis suggested by Liberty and Rate Counsel, as summarized above. The Company shall provide this analysis for Staff's review within six (6) months of the date of this Order and as part of the forensic audit recommended by Staff in response to Recommendation 12-1 in Phase I. Moreover, JCP&L shall present suggestions for a method of reimbursing ratepayers for any high-risk premiums that are found to be inconsistent with general rates as a result of the panel of enterprises. If necessary, the Board will consider the appropriate mechanism by which to return any portion of premiums determined to have been unfairly paid by ratepayers as part of the forensic audit.

If a base rate case occurs prior to the completion of a forensic audit, Staff recommends that JCP&L be directed to provide testimony addressing this recommendation in its next base rate proceeding, including detailed calculations of the D&O premium costs that exceeded JCP&L's percentage of the D&O premium costs incurred.

Staff disagrees with the comments submitted by JCP&L, as affiliate transactions and relationships, including costs allocated to JCP&L from FE or its affiliates, are critical components of an audit. Additionally, pursuant to N.J.A.C. 14:3-12.4, the Board is permitted to direct that the Company implement "new or altered practices and procedures, as determined by the results of [an] audit", including procedures related to the allocation of costs for future ratemaking review. Staff is not recommending any adjustment to rates as part of this Order.

Chapter 17 – Legal Services

Recommendation 17-1: Establish structured and regular means for engaging JCP&L, Legal, and Rates and Regulatory in reviews of prior performance, status and needs for current matters, and forward-looking needs and resources.

In the Final Report, Liberty concluded that management reports monthly legal costs effectively, but lacks other useful performance measures. Liberty encouraged JCP&L to adopt a formal, organized, and comprehensive process to solicit performance feedback. Under this structure, JCP&L leadership would meet to discuss current and emerging matters of significance, as well as near term milestones and events, so that leadership gains a different perspective on matters rather than simply hearing feedback from those who report to them on these matters.

Company: JCP&L accepted the recommendation. The Company reiterated that there is a formal attorney annual evaluation process, and that informal input has been gathered and is used in that context. Nevertheless, JCP&L stated that the Legal department is proceeding to establish a formal structure for the type of discussions contemplated by the recommendation as well as a schedule outline for implementation on an ongoing basis. The Company requested that the Board recognize this recommendation as accepted, subject to discussion of the details with Staff at the appropriate time.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation as it will allow management in these areas to directly discuss significant matters that their respective groups are or will be involved with in the near future. These discussions should incorporate lessons learned from past performance and preparation for anticipated future matters and decisions, leading to enhanced coordination and communication between functional areas. Staff recommends that JCP&L be directed to provide details supporting its implementation of the recommendation within four (4) months of the effective date of this Order.

Recommendation 17-2: Provide for system notation reflecting an in-house counsel opinion concluding that no conflict exists between the interests of JCP&L and any other FE entity with whom JCP&L has common legal representation in any civil or regulatory proceeding.

According to Liberty, it is good practice in civil and administrative agency proceedings for senior in-house attorneys for the regulated entity to review participants representing the entity for conflicts of interest. Liberty found that there was a lack of documented formal process ensuring that JCP&L's interests would not be better served by separate representation in civil and administrative proceedings or in internal matters where legal advice is solicited. Liberty stated that it is sound management and good practice to make clear the propriety of mandating a before-the-fact, deliberate, documented process for validating common representation for JCP&L and affiliates, as it will set the tone at the top.

Company: JCP&L accepted the recommendation. JCP&L indicated that the Legal department did not object to the formality of the proposed notation system, but proposed that its efforts to implement this recommendation will take until the end of December 2024.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as it will foster the expected due diligence on behalf of the legal department leading to accountability and responsibility. Staff further supports JCP&L's proposed timeline for implementation. Staff recommends that JCP&L be directed to provide Staff with supporting details regarding its implementation of the recommendation within three (3) months from the date of this Order.

Recommendation 17-3: See Recommendation #2 from the Internal Controls, SOX, and Auditing Chapter of this Phase Two report regarding the change in administrative reporting of Internal Auditing from the Chief Legal Officer to the FirstEnergy Corp. CEO.

Company: See Recommendation 9-2 of Phase II.

Rate Counsel: See Recommendation 9-2 of Phase II.

Staff: See Recommendation 9-2 of Phase II.

Recommendation 17-4: See Recommendation #2[13] from Chapter XIII, External Affairs Organizations of the Phase One report regarding the creation of a senior executive position to head a regulatory affairs department reporting to the FE CEO and combining FE Legal resources now dedicated to state regulatory affairs and technical and liaison persons with state and local agencies now dispersed among a number of FE senior executives.

Company: See Recommendation 13-2 of Phase I.

Rate Counsel: See Recommendation 13-2 of Phase I.

Staff: See Recommendation 13-2 of Phase I.

[13] The Final Report erroneously refers to the referenced recommendation as "Recommendation #3."

Chapter 20 – Supply Chain

Recommendation 20-1: Provide for clear New Jersey-specific diversity spend targets, report against them regularly and in a documented manner, and develop and execute plans for bringing it to realistically achievable state levels, should it show persistent gaps from overall measures.

In the Final Report, Liberty stated that management should gather and report data to gauge notable lags or particular successes in New Jersey or at JCP&L. According to Liberty, increasing diversity spend targets and programs to address lagging supplier categories regularly would demonstrate efforts to improve performance. However, Liberty asserted that combining all the operating company results into one target can obscure circumstances of individual operating companies. Liberty further stated that specific operating company data would provide management the ability to address recurring gaps and strengths.

Company: JCP&L accepted the recommendation. JCP&L stated that the Company would work with Staff to understand the specific metrics and structure Staff would expect the Company to implement for such suggested plans and reporting. JCP&L stated that the Company currently tracks several categories, including minority-owned, women-owned, veteran-owned, and service-disabled-owned businesses, and annually reports diversity spend to the BPU. The Company submitted that the ability to streamline tracking diversity spend in New Jersey and align with current practices and other jurisdictions would be preferable to avoid unnecessary administrative burden in implementation.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff recommends that JCP&L be directed to draft plans to implement this recommendation and to provide documentation of any progress it has made since the commencement of the Audit for Staff's consideration.

Recommendation 20-2: Assign to the Business Services Groups responsible for the corporate, utility, and transmission sourcing the responsibility for ensuring periodic make/buy review by common service providers.

In the Final Report, Liberty stated that the Business Service Groups at the Company play useful roles in controlling the costs of common service providers who support JCP&L operations, but FE does not employ a structured process for overseeing make/buy decisions of those serving entities. Liberty stated that FE made efforts to address resource alignment and numbers, thus there has been recent attention to outside resource use. Liberty suggested that going forward, it would be good practice to periodically re-examine how best to balance internal and external resources operating under a group that provides coordination, scheduling, and common methods.

Company: JCP&L accepted the recommendation, but requested modifications. The Company requested that the recommendation be modified consistent with the Company's current practices and structure. According to JCP&L, such modification aims to achieve the desired outcome without requiring an overhaul in Company activities or resources, as reflected in current practices. JCP&L indicated that it would agree to work with Staff regarding periodic make/buy review specific to JCP&L. In implementing this recommendation with the BPU and Staff, JCP&L recommended developing specific metrics for the periodic make/buy review to apply for key areas or above certain monetary amounts in which this periodic review would be most useful.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as modified by JCP&L. Staff believes it is important for JCP&L and each unit/organization involved to use knowledge of trends in costs, changing internal resource requirements, and magnitudes of outside provider costs, among other areas of consideration and metrics, to make decisions as to whether to perform activities internally or through outsourcing. Staff recommends that the Company be directed to provide an implementation plan to discuss with Staff within six (6) months from the date of this Order.

Chapter 21 – Surface and Air Fleet Management

Recommendation 21-1: Conduct a focused examination of the reasons why JCP&L Fleet Services cost and performance metrics compare unfavorably with those of the other operating companies, accounting for differences among the operating companies.

According to Liberty, JCP&L's fleet performance from 2017 through 2021 consistently compares unfavorably to other FE operating companies across a range of metrics used to measure performance. Liberty also found that labor factors that measure work units performed to personnel show low productivity, potentially leading to high cost performance. According to Liberty, JCP&L vehicles have exhibited low mileage and significant overdue maintenance as compared to the other operating companies. No studies have been performed regarding comparative assessment of fleet management since at least 2017.

Company: JCP&L accepted the recommendation, but requested a modification. JCP&L agreed with the need for further assessment of its fleet services, but requested to begin such examination in the first quarter of 2024.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. If not conducted as of the date of this Order, Staff requests that JCP&L be directed to conduct a study to determine deficiencies that led to increased costs, in order to correct certain poor performance measures seen over the last several years. The Company shall provide its findings, conclusions, and recommendations stemming from its fleet services assessments within either three (3) months from the date of this Order, if already completed, or not later than nine (9) months from the date of this Order, if conducted pursuant to this Order. The Company shall work with Staff toward a continuing implementation plan. This analysis shall also be included as part of the Company's next base rate case if the Company seeks to include such costs in base rates.

Recommendation 21-2: Include in the examination reportedly underway the option of reducing or eliminating the current air fleet.

Liberty found that the Company indicated that it planned to commence an analysis of flight operations costs in 2020, but delayed its commencement until January 2021. Liberty stated that the Company's examination needs to include a robust examination of the cost changes that would result from partial or total fleet elimination. If there are benefits provided by private transport not available from commercial options, the Company should explicitly identify, describe, and quantify them, along with their specific nature and the personnel whose travel produces those benefits.

Company: JCP&L accepted the recommendation. The Company suggested that the Board consider this recommendation as accepted, subject to confirming discussions with Staff at the appropriate time.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation. Staff further recommends that JCP&L be directed to provide Staff with detailed supporting documentation showing the results of its study regarding whether it should reduce or eliminate its air fleet within six (6) months from the effective date of this Order.

Recommendation 21-3: The absence of a structured system for user feedback about vehicle performance, availability, and suitability for intended use misses an opportunity to manage the fleet more effectively.

Liberty noted that Company employees using vehicles are uniquely able to assess fleet effectiveness as they observe vehicle conditions, performance, and suitability. Liberty concluded that using such input would provide valuable direct knowledge of performance, care, maintenance, and utility for management consideration.

Company: JCP&L accepted the recommendation. The Company requested that the Board consider this recommendation as accepted, subject to confirming discussions Staff at the appropriate time.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation, as vehicle conditions directly correlate to the health and safety of Company staff in the field. Garnering employee feedback would substantiate progress in this area.

Chapter 22 – Power Supply and Market Conditions

Recommendation 22-1: Establish a formal process, supported by clear procedures, that gives JCP&L a forum for addressing its circumstances, issues, concerns, and recommendations on Market, PJM Interconnection, LLC ("PJM"), and FERC matters on which FE may or will take positions, whether publicly or in formal proceedings on matters in which PJM solicits member input.

In the Final Report, Liberty recognized FE's overall effectiveness and efficiency in its participation in PJM and FERC matters. However, Liberty stated that FE needs to employ procedures that provide for JCP&L participation in development of positions at PJM or before FERC.

Company: JCP&L accepted this recommendation, but requested modification. To enhance FE's understanding of New Jersey's priorities, the Company believes that it would be worthwhile to establish a process whereby FE would meet semi-annually with designated Staff for the purpose of discussing PJM, FERC, and other federal or multistate utility regulatory matters that are important to the Company and to the Board.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports the Board's approval of Liberty's recommendation and JCP&L's suggestion to meet quarterly to discuss PJM, FERC, and other federal or multistate utility regulatory matters important to the Company and to the Board. JCP&L should coordinate and meet with the Board's Office of Federal and Regional Policy ("OFRP"), as well as any other needed Board Staff. Staff supports additional coordination between the OFRP and JCP&L, as needed. Staff recommends that the first meeting commence within three (3) months from the date of this Order, or sooner as such issues arise that need to be addressed. Thereafter, quarterly discussion will be beneficial.

Chapter 23 – Manufactured Gas Plant Remediation

Recommendation 23-1: Consider changing the budget/actual comparisons to match the periods covered by each.

Liberty found that annual budget comparisons submitted by the Company as part of its Remediation Adjustment Clause ("RAC") fillings routinely included explanations of variances due to JCP&L's use of different time periods for the comparisons. Liberty asserted that adding a comparison that matches budget periods used with those employed for actual costs may prove useful in examining sources and amounts of variances from a management and control perspective.

Company: JCP&L accepted the recommendation, but requested a modification. JCP&L argued that the long-established timing and procedures for cost recovery through the RAC require JCP&L to use the current format and structure. In addition, JCP&L noted that its annual RAC filings have been proceeding smoothly for many years without issue using the current budget/actual comparisons. Nonetheless, JCP&L agreed to work with Staff to determine the best way to implement this recommendation if that is the desired approach.

Rate Counsel: Rate Counsel did not comment on this specific recommendation.

Staff: Staff supports Board approval of Liberty's recommendation with modification. Specifically, Staff supports the Company's current RAC process and the reporting therein may remain the same. However, the Company should include in its RAC filing a comparison of budgeted costs and actual costs for each remediation project during the time period under review, or as soon as actuals become available. This comparison will enable JCP&L to provide more accurate and realistic variances to the parties participating in the RAC filing, as well as explanations of those variances. Staff recommends that JCP&L be directed to work with Staff toward implementing this recommendation, including providing Staff with suggestions for implementation.

DISCUSSION AND FINDINGS

As noted above, Liberty's Final Report includes 105 recommendations for improvement of the management and operations of JCP&L. Additionally, Rate Counsel provided four (4) recommendations pertaining to certain areas of the Final Report. After careful review of the Final Report, the comments filed by the Company and Rate Counsel, and Staff's positions, the Board agrees with Staff's recommendations. Therefore, the Board **HEREBY ORDERS** the Company to implement the recommendations, as modified above.

Additionally, the Board **HEREBY DIRECTS** JCP&L, with the assistance of Staff, to formulate detailed implementation plans for the recommendations, as modified above, within sixty (60) days from the effective date of this Order. JCP&L shall implement all recommendations as soon as possible but no later than one (1) year from the date of this Order, unless otherwise indicated.

Staff shall monitor, evaluate, and modify, as necessary, the implementation of the recommendations.

Furthermore, the Board **HEREBY DIRECTS** JCP&L to file quarterly reports with Staff by the fifteenth day of the month following the conclusion of each calendar quarter regarding the status of implementation of all recommendations directed within this Order. The Board **HEREBY ORDERS** that such quarterly reports additionally include status updates regarding the implementation of measures directed by the DPA, the FERC Audit report, and any other State, federal, or other investigation as they impact New Jersey and JCP&L.

The Board **HEREBY DIRECTS** Staff to develop a Bid Solicitation to seek bid proposals for the commencement of a forensic audit and to bring the Bid Solicitation to the Board for its approval.

The recommendations of the Final Report shall not be dispositive of issues raised in any other proceedings before this Board.

The effective date of this Order is July 23, 2025.

DATED: July 16, 2025

BOARD OF PUBLIC UTILITIES
BY:

CHRISTINE GUHL-SADOVY
PRESIDENT

DR. ZENON CHRISTODOULOU
COMMISSIONER

MARIAN ABDOU
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

ATTEST:

SHERRI L. LEWIS
BOARD 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 AN AUDIT OF THE AFFILIATED TRANSACTIONS BETWEEN JERSEY CENTRAL POWER & LIGHT COMPANY, FIRST ENERGY CORP. AND ITS AFFILIATES PURSUANT TO N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 & N.J.A.C. 14:4-3.7(E) AND (F)

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Appendix 1 - Summary of Board Decision on Recommendations

Phase 1	Decision
Chapter 4 – Asset Management	
Recommendation 4-1: Develop, track and be accountable to annual T&D maintenance budgets based on the spending actually required to comply with inspection and maintenance program requirements.	Agree
Recommendation 4-2: Develop a system-wide programmatic approach to mitigating the negative reliability impacts resulting from the failure of aging equipment.	Agree with Modification
Chapter 5 – Vegetation Management	
Recommendation 5-1: Demonstrate that enhanced zone 2 vegetation work conducted as part of Infrastructure Investment Program ("IIP") Reliability Plus was as effective in reducing System Average Interruption Frequency Index ("SAIFI") and Customer Average Interruption Duration Index ("CAIDI") as predicted.	Agree
Chapter 6 – Contractors	
Recommendation 6-1: Develop a standard process to inspect, evaluate, document, and manage the quality and quantity of a contractor's performance when measured against the standards, terms and conditions of their contract with JCP&L.	Agree
Recommendation 6-2: Develop a formal contractor performance management process and a system of record to capture performance data and enable comparative analyses of the quality, efficiency and cost effectiveness of competing contractor and company resources, and support data-driven resource allocation decisions.	Agree
Recommendation 6-3: Integrate the analysis of relative execution risks and the potential of reducing risk into JCP&L resource allocation decisions.	Agree
Chapter 7 – Reliability and Smart Grid Operations	
Recommendation 7-1: Implement formal process to improve field diagnoses of outage causes by troubleshooters and improve accuracy in capturing causes in the outage management system by troubleshooters and Distribution Control Center personnel.	Agree
Recommendation 7-2: Expedite analyses to validate that sub-transmission improvement projects planned for 2022-2026 adequately improve SAIFI and CAIDI performance.	Agree
Recommendation 7-3: Systematically address the reduction of outages attributed to aerial cable and open bare wire failures.	Agree
Chapter 8 – Cyber Security and System Vulnerability	
Recommendation 8-1: Fill staffing vacancies promptly.	Agree

Chapter 9 – System Resiliency and Restoration	
Recommendation 9-1: Complete the update to the Emergency Preparedness Plan ("E-Plan") and related documentation by year-end 2021, as scheduled.	Agree
Recommendation 9-2: Complete the development of the new Outage Volume Model ("OVM")-like model	Agree
Recommendation 9-3: Ensure clear, timely and widespread communication of storm event classification.	Agree
Recommendation 9-4: Ensure JCP&L resource requests are timely and consistent with Event Level classification declaration.	Agree
Recommendation 9-5: Continue to monitor and measure JCP&L's accuracy and success in creating, updating, and communicating estimated times of restorations ("ETRs").	Agree
Recommendation 9-6: Continue to develop and improve communications with the public, elected officials and Office of Emergency Management staff based on feedback gathered following storm or outage events.	Agree
Recommendation 9-7: Provide in JCP&L Major Event reports for which the Major Event classification was based on sharing of its resources how the unavailability of those resources directly affected its ability to maintain targeted reliability levels in its operating region(s).	Agree
Recommendation 9-8: Conduct updates of analyses of the costs and benefits using selective undergrounding at least every two years.	Agree with Modification
Recommendation 9-9: Develop a pilot project for undergrounding a poorly performing line segment or a small group of them.	Disagree
Chapter 10 – Customer Service	
Recommendation 10-1: Pursue cost efficiencies and customer experience improvement opportunities, including those offered by FE Forward Customer Service recommendations.	Agree
Recommendation 10-2: Staff functions sufficiently to address backlog and transaction deficits.	Agree
Recommendation 10-3: Investigate options to address issues and develop and implement an action plan to address declining Customer Service employee ratings.	Agree
Recommendation 10-4: Dedicate resources to develop a strategy and concerted approach to identifying and pursuing potential service theft.	Agree in Part
Chapter 11 – Financial Risks and Consequences of Parent and Affiliate Operations	
Recommendation 11-1: Create for FE and JCP&L lasting and enforceable ring-fencing measures sufficient for JCP&L to make the utility an "insulated entity" by S&P, and to be rated on its own credit characteristics by all three credit rating agencies.	Agree in Part
Recommendation 11-2: Give JCP&L full governance and operational control over all of its financing facilities.	Disagree

Chapter 12 – External Affairs - The "Department of Justice ("DOJ") Investigation"	
Recommendation 12-1: Follow developments in continuing federal criminal and administrative and other state proceedings.	Agree
Recommendation 12-2: Establish means for precluding the inclusion in JCP&L rates FE and JCP&L employee and outside costs associated with state reviews of the implications of conduct related or similar to that encompassed by the Federal Investigation.	Agree
Recommendation 12-3: Provide semi-annual reports and presentations to the BPU staff regarding Federal Investigation remediation measures.	Agree
Recommendation 12-4: Provide validation of the completeness of management' Vendor Invoice examination or, failing that, require an independent review sufficient to identify and calculate all likely impacts to JCP&L and its customers.	Agree
Chapter 13 – External Affairs Organizations	
Recommendation 13-1: Return to JCP&L's lead officer responsibility for New Jersey external affairs.	Agree
Recommendation 13-2: Consolidate responsibility for rate and regulatory affairs under a senior legal executive.	Agree with Modification
Recommendation 13-3: Conduct a focused study of means for cost effectively improving development program success in JCP&L's serving region.	Agree

Phase 2	**Decision**
Chapter 2 – Organization and Executive Management	
Recommendation 2-1: Provide to the BPU a full report explaining the purpose, scope, and methods employed in the C-suite review, a full description of and justification for any personnel or position changes made as a result, and a clear and comprehensive description of how they change the nature or level of service, support, or other assistance in the provision of service by the operating companies generally and by JCP&L specifically.	Agree in Part
Recommendation 2-2: Provide for JCP&L an organization structure and executive responsibilities necessary for promoting local responsibility and accountability for New Jersey distribution planning, engineering, asset management, operations, and operations support and for regional external affairs.	Agree
Recommendation 2-3: Upon the settling of responsibility, process, methods, and other changes associated with initiatives like FE Forward, assess opportunities for position restructuring and consolidation.	Agree in Part
Recommendation 2-4: Provide twice-yearly reports regarding ethics and compliance progress for so long as the BPU requires them.	Agree
Chapter 3 – Governance	
Recommendation 3-1: Restructure the JCP&L board and expand the scope and depth of its engagement in operations and customer service performance oversight.	Disagree
Recommendation 3-2: Expand the operations and customer service metrics and trends regularly reported to and addressed by the JCP&L board of directors and by the FE Safety and Operations Oversight Committee.	Agree
Recommendation 3-3: Embark upon a longer range plan to diversify the professional, business, and institutional backgrounds of the FE board directors.	Agree
Chapter 4 – Finance and Cash Management	
Recommendation 4-1: Adopt for JCP&L ring fencing that includes new, strong "Equity Maintenance" provisions requiring ratemaking capital structure equity level not to fall below that informing the basis for New Jersey rates.	Disagree
Recommendation 4-2: Provide for JCP&L ring fencing that will produce for its credit ratings on a stand-alone basis, in order to eliminate debt interest cost premiums like those of the past decade.	Disagree
Recommendation 4-3: Provide improved ring fencing for JCP&L to enhance protection of its money pool positions and access to its new revolving credit facility, and stand prepared to consider a commercial paper program under improved credit ratings.	Agree

Chapter 5 – Planning and Budgeting	
Recommendation 5-1: Continue to develop FE strategic and long-range planning development participants and processes.	Agree
Recommendation 5-2: Mitigate pressures that starting capital spending targets and a preference for "formula rate" recovery have applied on optimization of JCP&L capital spending.	Agree
Recommendation 5-3: Develop realistic budgets for capital costs and O&M expenditures related to storm costs.	Agree
Recommendation 5-4: Complete the FE Forward Phase 3 work required to support achievement of the capital cost savings, reporting status, actions remaining, and results achieved every six months.	Agree
Recommendation 5-5: Reinstitute JCP&L strategic plans and give its board and leadership meaningful roles developing and overseeing performance in executing them.	Agree
Chapter 6 – Staffing	
Recommendation 6-1: Examine the reasons underlying outlying JCP&L measures of productivity and resource utilization and identify measures other than those contemplated by FE Forward to improve them where practicable.	Agree
Recommendation 6-2: Re-examine the resource levels dedicated to transmission and large substation planning, design, and operation; change their alignment and number as appropriate; examine any such changes in connection with the recommendations of the FERC audit.	Agree
Recommendation 6-3: Track New Jersey performance in comparison to the other operating companies across a range of measures used in the industry for labor management performance.	Agree
Chapter 7 – Compensation and Benefits	
Recommendation 7-1: Determine the reasons for the large gap in performance ratings between corporate service groups versus FE Utilities and Operating Company performance levels and for high comp-ratios for the higher-level employees who participate in the Long Term Incentive Program ("LTIP").	Agree in Part
Recommendation 7-2: Treat LTIP costs as indicated by BPU policy regarding incentive compensation awarded strictly based on shareowner-focused factors.	Agree
Recommendation 7-3: Recognize the compensation of the FirstEnergy Vice Chair and Executive Director as shareowner, not customer costs.	Agree

Chapter 8 – Accounting and Property Records	
Recommendation 8-1: Complete the planned, full review of all corporate accounting policies by June 2023 and set a schedule calling for periodic, continuing reviews.	Agree
Recommendation 8-2: Establish a reasonable timetable for elimination of the Account 106 backlog, and implement a process established for preventing backlog recurrence.	Agree
Recommendation 8-3: Make a full accounting of resolution of the issues raised in the FERC audit for the BPU and account for the impacts on current revenue requirements related to rate base and O&M from the practices eventually changed.	Agree
Chapter 9 – Controls, Sarbanes-Oxley ("SOX"), Auditing, and Listing Requirements	
Recommendation 9-1: Adopt a more expansive conception and means of expression for addressing profound failings like those that produced the DPA for what federal criminal authorities consider wire fraud and that produced a payment of $230 million.	Agree
Recommendation 9-2: Move administrative reporting of FE's top internal audit officer from the chief legal officer to the CEO.	Agree with Modification
Recommendation 9-3: Place greater weight on work identified through the risk assessment process in final audit plans.	Agree
Recommendation 9-4: End the predisposition to find ways to inhibit the flow of information (protected as required by legitimate needs for confidentiality) to the BPU.	Agree
Chapter 10 – Affiliate Relationships and Cost Allocation	
Recommendation 10-1: Update the Cost Allocation Manual ("CAM") to match the factors currently in use and conduct an annual review thereafter to ensure continued applicability.	Agree
Recommendation 10-2: Update the Service Agreement and Mutual Assistance Agreement to be consistent with the CAM and the annual cost center review process.	Agree
Recommendation 10-3: Explore what changes must occur to enhance SAP configuration to allow for the production of a monthly summary of transactions from one affiliate to another.	Agree
Recommendation 10-4: As part of the revision of the CAM, undertake, a thorough review to determine the most logical and cost causative factors for each cost center.	Agree
Recommendation 10-5: Revise allocation factor calculation worksheets to align with other changes in methods or language in the CAM and Service Agreement.	Agree
Recommendation 10-6: Implement the enhancements committed to in the 2011 Management Audit regarding the identification of triggering events that would require a mid-cycle change to the allocation factors.	Agree
Recommendation 10-7: Create a time reporting policy document that emphasizes the policy of direct charging and the reasons why it is the most appropriate way to charge time when possible and establish a formal, recurring training and communications program.	Agree
Recommendation 10-8: Employ in the annual review of allocation factors a sampling selection method that ensures broader coverage of different allocation methods.	Agree
Recommendation 10-9: Following a thorough review and modification of the CAM, strengthen the cost center review process to ensure that cost centers use only allocations detailed in the CAM.	Agree
Recommendation 10-10: There should be a review of the development and application of cost allocation factors and the resultant changes to JCP&L by someone whose focus is JCP&L costs and protection of New Jersey customers.	Agree

Recommendation 10-11: Consider holding the depreciation and carrying charges associated with the portion of FESC assets previously charged to FirstEnergy Solutions Corp. ("FES") and First Energy Nuclear Operating Company ("FENOC") at the parent company, rather than increasing the allocation to the regulated entities.	Agree in Part
Recommendation 10-12: Capture and hold all remediation costs and current management audit costs related to the DOJ, SEC, FERC, and internal investigations at the parent company.	Agree
Recommendation 10-13: Defer consideration of the need for a detailed, comprehensive examination of allocations pending the results of current internally initiated examinations and the ultimate transparency FE provides about them and previous ones.	Agree
Chapter 12 – Electric Discount and Energy Competition Act ("EDECA")	
Recommendation 12-1: Include in the next version of the Compliance Plan information stating where oversight, responsibility, and enforcement for each section of the Affiliate and Fair Competition Standards ("Standards") lie.	Agree
Recommendation 12-2: Make additional elements of the Standards subject to Internal Audit review.	Agree
Recommendation 12-3: Institute measures to secure regular, timely filing of EDECA reports and undertake a review designed to determine the root causes of failure to timely file reports, and to identify any gaps in compliance measures or rigor in executing them.	Agree
Recommendation 12-4: Provide to the BPU a full report of the findings and conclusions made in connection with all reviews and evaluations (regardless of the specific jurisdiction or operating company involved) of Suvon, LLC ("Suvon") structural separation, common work assignments, and sharing of utility information, and address their implications for historical compliance with Section 14:4-3.3(o) and any other applicable standards.	Agree
Recommendation 12-5: Update the next version of the Compliance Plan to include discussion of the potential for FERC rules records conformity as included in 14:4-3.3(s) of the Standards.	Agree
Recommendation 12-6: Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards.	Agree
Recommendation 12-7: Change the Compliance Plan to align the reference to Section 14:4-3.4(e) to where the Compliance Plan provides a summation of and guidance regarding this provision.	Agree
Recommendation 12-8: Update the next version of the Compliance Plan to make clear management's understanding of the PUHC requirements included in Sections 14:4-3.3(h), (i), (j), and (k) of the Standards.	Agree
Recommendation 12-9: Update the next version of the Compliance Plan to include acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.4(d) of the Standards.	Agree
Recommendation 12-10: Deep-seated, corporate cultural barriers have prevented conformity to levels of transparency typical of other holding company/utility cases we have witnessed - - our interaction with FirstEnergy throughout this audit shows that major efforts remain to eliminate those barriers.	Agree
Recommendation 12-11: Update the next version of the Compliance Plan to acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.5(f) regarding joint product and joint services offerings.	Agree

Recommendation 12-12: Update the next version of the Compliance Plan to include direct discussion of the Section 14:4-3.5(m) of the Standards.	Agree
Recommendation 12-13: Create a plan to log and track joint JCP&L and RCBS attendance at the types of events described in Section 14:4-3.5(o) of the Standards.	Agree
Recommendation 12-14: Increase diligence in ensuring full conformity with Section 14:4-3.5(q) of the Standards.	Agree
Recommendation 12-15: Institute measures for ensuring the timely public posting of employee transfers covered by Section 14:4-3.5(r) of the Standards.	Agree
Recommendation 12-16: Treat all employees working on or for Suvon, except those providing Standards-permitted shared services functions, as Suvon employees - - either organizationally or for Standards tracking and compliance purposes; apply similar treatment to any future RBCS which FirstEnergy may have.	Agree with Modification
<u>Chapter 13 – Human Resources Organization</u>	
Recommendation 13-1: Give local leadership continuing direction of the HR Partner resources assigned to supporting JCP&L operations.	Agree
Recommendation 13-2: Develop commensurate with the transition to new Human Resource Information Systems capabilities a much more comprehensive set of performance measures for gauging HR performance and attainment of workforce characteristics and expectations.	Agree
<u>Chapter 15 – Information Technology</u> ("IT")	
Recommendation 15-1: Provide progress reporting to the BPU on IT-related plans made and progress achieved resulting from FE Forward or other programs, initiatives, or activities affecting IT plans, forecasts, and budgets.	Agree with Modification
<u>Chapter 16 – Insurance and Risk Management</u>	
Recommendation 16-1: Adopt and continuously employ a structured approach to determining appetite for risk and use it to guide the establishment of objectives, the identification of and selection from among strategies to meet those objectives, and monitor performance and the external business environment to identify the need for strategy revision.	Agree
Recommendation 16-2: Restructure the basis for allocating Directors and Officers ("D&O") insurance costs to JCP&L to avoid charging it amounts arising from risks to which it does not contribute.	Agree
<u>Chapter 17 – Legal Services</u>	
Recommendation 17-1: Establish structured and regular means for engaging JCP&L, Legal, and Rates and Regulatory in reviews of prior performance, status and needs for current matters, and forward-looking needs and resources.	Agree
Recommendation 17-2: Provide for system notation reflecting an in-house counsel opinion concluding that no conflict exists between the interests of JCP&L and any other FE entity with whom JCP&L has common legal representation in any civil or regulatory proceeding.	Agree
Recommendation 17-3: See Recommendation #2 from the Internal Controls, SOX, and Auditing Chapter of this Phase Two report regarding the change in administrative reporting of Internal Auditing from the Chief Legal Officer to the FirstEnergy Corp. CEO.	Agree

Recommendation 17-4: See Recommendation #2 from Chapter XIII, External Affairs Organizations of the Phase One report regarding the creation of a senior executive position to head a regulatory affairs department reporting to the FE CEO and combining FE Legal resources now dedicated to state regulatory affairs and technical and liaison persons with state and local agencies now dispersed among a number of FE senior executives.	Agree
Chapter 20 – Supply Chain	
Recommendation 20-1: Provide for clear New Jersey-specific diversity spend targets, report against them regularly and in a documented manner, and develop and execute plans for bringing it to realistically achievable state levels, should it show persistent gaps from overall measures.	Agree
Recommendation 20-2: Assign to the Business Services Groups responsible for the corporate, utility, and transmission sourcing the responsibility for ensuring periodic make/buy review by common service providers.	Agree with Modification
Chapter 21 – Surface and Air Fleet Management	
Recommendation 21-1: Conduct a focused examination of the reasons why JCP&L Fleet Services cost and performance metrics compare unfavorably with those of the other operating companies, accounting for differences among the operating companies.	Agree
Recommendation 21-2: Include in the examination reportedly underway the option of reducing or eliminating the current air fleet.	Agree
Recommendation 21-3: The absence of a structured system for user feedback about vehicle performance, availability, and suitability for intended use misses an opportunity to manage the fleet more effectively.	Agree
Chapter 22 – Power Supply and Market Conditions	
Recommendation 22-1: Establish a formal process, supported by clear procedures, that gives JCP&L a forum for addressing its circumstances, issues, concerns, and recommendations on Market, PJM Interconnection, LLC ("PJM"), and FERC matters on which FE may or will take positions, whether publicly or in formal proceedings on matters in which PJM solicits member input.	Agree
Chapter 23 – Manufactured Gas Plant Remediation	
Recommendation 23-1: Consider changing the budget/actual comparisons to match the periods covered by each.	Agree with Modification