



Agenda Date: 4/27/09

Agenda Item: **2A**

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

DIVISION OF ENERGY

IN THE MATTER OF THE VERIFIED PETITION
OF JERSEY CENTRAL POWER & LIGHT
COMPANY FOR THE REVIEW AND APPROVAL OF)
COSTS INCURRED FOR ENVIRONMENTAL)
REMEDATION OF MANUFACTURED GAS)
PLANT SITES PURSUANT TO THE)
REMEDATION ADJUSTMENT CLAUSE OF)
ITS FILED TARIFF ("2005 ANNUAL RAC FILING"))

DECISION AND ORDER
APPROVING STIPULATION
OF SETTLEMENT

BPU DKT NO. ER06030258

(SERVICE LIST ATTACHED)

BY THE BOARD¹

On March 31, 2006, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a petition with the Board of Public Utilities ("Board") for the annual review of actual costs and expenditures incurred by JCP&L relating to the environmental remediation of its former Manufactured Gas Plant ("MGP") sites for the year 2005. The Company's total unrecovered net deferred Remediation Adjustment Clause ("RAC") balance, including carrying costs, as of December 31, 2005, is \$2,639,759.

The purpose of the 2005 RAC filing is to provide the Staff of the Board of Public Utilities ("Staff") and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties") with an opportunity to conduct an annual review of the reasonableness and prudence of all actual MGP costs and expenditures incurred by JCP&L from January 1, 2005 through December 31, 2005. In light of the relatively modest size of the net deferred RAC account balance at December 31, 2005, JCP&L determined not to seek an adjustment to its current RAC factor of \$0.0000 per kWh in this proceeding. Instead, JCP&L seeks to continue to defer the net deferred RAC balance at December 31, 2005, accruing interest at the rate and in the manner provided in the Board's prior Order in the Company's 2003 Annual RAC filing; See In the Matter of the Verified Petition of Jersey Central Power & Light Company for Review and Approval of Costs Incurred for Environmental Remediation of Manufactured Gas Plant Sites Pursuant to the Remediation Adjustment Clause of its Filed Tariff

Commissioner Frederick Butler did not participate in this matter.

("2003 Annual RAC Filing"), BPU Docket No ER03121020, Decision and Order dated October 5, 2004.

The matter was retained at the Board. No public hearing was necessary because the Company's filing did not seek to increase JCP&L's RAC rate. N.J.S.A. 48:2-32.4.

Following comprehensive discovery and extensive discussions, the Parties executed the attached Stipulation of Settlement on April 3, 2009. The Stipulation speaks for itself, and the terms are incorporated into this Order as if set forth in full below. As an overview, the Stipulation provides, in part, for the following:

- ξ The Company's current RAC rate factor will remain at \$0.0000 per kWh
- ξ The Company's ending deferred RAC net balance (including carrying costs) as of December 31, 2005, is an unrecovered balance of \$2,639,759.
- ξ Natural Resource Damage ("NRD")-related costs are not currently recognized as suitable for recovery through utility RAC clauses. JCP&L will not seek to recover, and will propose to defer, NRD-related costs in future RAC filings pending final Board resolution of the issue of including NRD-related costs within the scope of the Board's RAC recovery authorization.
- ξ The Parties recommend that \$2,576,903 of the \$2,639,759 balance of JCP&L's deferred RAC net balance as of December 31, 2005 be approved for recovery through the rider SBC, but all parties may challenge the recovery on the basis of error or if improperly accounted for in the pending Board Staff audit of RAC expenditures for 2005.
- ξ JCP&L will continue to defer all additional reasonable and prudent MGP remediation costs and expenses incurred and deferred subsequent to December 31, 2005, including NRD-related costs, together with accrued interest thereon, for review and inclusion in future annual RAC filings and related adjustments to the Company's Rider RAC and/or the application of the other provisions of Rider SBC, subject to the Board's review and approval.
- ξ Consistent with its agreement in the 2004 RAC Filing Stipulation, which was approved by the Board's Decision and Order dated March 22, 2006 in Docket No. ER04121758, the Company 1) agrees to continue to perform outside legal and community relations activities in a prudent and reasonable manner for the purposes of supporting its remediation program and mitigating potential liabilities related to its remediation program; 2) will continue to maintain a complaint log for each MGP site which will provide details about complaints (exclusive of formal legal claims or lawsuits) received from property owners, neighboring residents and municipal officials and a description of the Company's actions responding to that complaint; agrees to continue to include with its RAC filings responses to the minimum filing requirements as set forth in Exhibit A to the 2004 RAC Filing Stipulation.

The Parties agree that RAC costs which JCP&L seeks rate recovery for are subject to audit.

DISCUSSION AND FINDINGS

The Board has carefully reviewed the file to date in this proceeding and the attached Stipulation of Settlement of the Parties. The Board HEREBY FINDS that the Stipulation of Settlement is

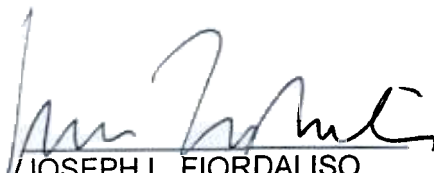
reasonable, in the public interest, and in accordance with the law. Accordingly, subject to the terms and conditions herein, the Board HEREBY ADOPTS and HEREBY APPROVES the Stipulation as its own, as if fully set forth herein.

The Board HEREBY ORDERS that the Company's RAC costs shall remain subject to on-going audit, and that this Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of any such audit.


DATED: 4/27/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

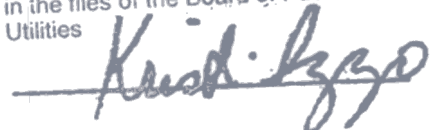

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**In the Matter of the Verified Petition of Jersey Central Power & Light Company
For Review and Approval of Costs Incurred For Environmental Remediation
of Manufactured Gas Plant Sites Pursuant to the Remediation Adjustment
Clause of Its Filed Tariff ('2005 Annual RAC Filing")
BPU Docket No. ER06030258**

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Verified Petition of
Jersey Central Power & Light Company
For the Review and Approval of Costs
Incurred For Environmental Remediation of
Manufactured Gas Plant Sites Pursuant to the
Remediation Adjustment Clause of Its Filed
Tariff (“**2005 Annual RAC Filing**”)

BPU Docket No. ER06030258

**Stipulation of Settlement
of
2005 Remediation Adjustment Clause
Filing
(the “2005 RAC Filing Stipulation”)**

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement of Remediation Adjustment Clause (the “2005 RAC Filing Stipulation”) is hereby made and executed as of the 2nd day of April, 2009, by and among the Petitioner, Jersey Central Power & Light Company (“JCP&L” or the “Company”), the Staff of the Board of Public Utilities (“Staff”) and the New Jersey Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”) (collectively, the “Parties”), in full and final resolution, upon the terms and conditions hereinafter set forth, of the issues pertaining to JCP&L in connection with the above-captioned proceeding.

The Parties do hereby join in recommending that the New Jersey Board of Public Utilities (the “Board”) issue a Final Decision and Order approving the terms hereof, based upon the following stipulations:

Procedural History. For a number of years, the Company’s filed Tariff has included a Remediation Adjustment Clause (“Rider RAC”), which is now part of the Societal Benefits Charge (“Rider SBC”) to provide for the recovery of reasonable costs and expenditures

related to the environmental remediation of its former manufactured gas plant ("MGP") sites in New Jersey. On March 31, 2006, JCP&L made its above-captioned 2005 Annual Remediation Adjustment Clause ("RAC") Filing in this Docket No. ER06030258, in order to provide the Board and the Parties with the opportunity to conduct an annual review of the reasonableness and prudence of all actual costs and expenditures incurred by JCP&L from January 2005 through December 31, 2005, relating to the environmental remediation of its former MGP sites, in accordance with the terms of Rider RAC of the Company's filed Tariff and with prior RAC Stipulations and related Board Orders.

2. **No RAC Rate Increase.** In light of the relatively modest size of the net deferred RAC account balance at December 31, 2005, the Company does not seek, and this 2005 RAC Filing Stipulation does not provide for, any increase or other change in the Company's current RAC rate factor which has previously been set at \$0.0000 per kWh.

Recoverable RAC Costs. Staff and Rate Counsel (and the latter's consultant) have conducted extensive discovery related to the Company's 2005 Annual RAC Filing and have reviewed all of the Company's actual MGP costs and expenditures for the period from January 1, 2005 through December 31, 2005. Based upon Staff's and Rate Counsel's review and after discovery conferences and settlement negotiations among the Company, Staff and Rate Counsel, the Parties have agreed upon the following:

(a) The Company's ending deferred RAC net balance (including carrying costs) at December 31, 2005, was an unrecovered balance of \$2,639,759. In accordance with generally accepted accounting principles ("GAAP") as applied by JCP&L's independent auditors, the deferred RAC balance at December 31, 2005 included certain RAC expense accruals. Although the Parties will continue to review the level of such accruals in the

Company's deferred RAC accounts in future proceedings, the Parties do not object to the use of such GAAP accrual accounting procedures as required by the Company's auditors.

(b) Staff and Rate Counsel agree and recommend that \$2,576,903 of JCP&L's deferred RAC net balance at December 31, 2005 be approved by the Board as eligible for future recovery through Rider RAC and/or through current application of the other provisions of Rider SBC of the Company's Tariff, subject to the Parties' reservation of their rights to challenge the recovery of expenditures that might be found to have been recorded in error or improperly accounted for in the pending Board Staff audit of RAC expenditures for 2005. In addition to the deferred RAC net balance at December 31, 2005 of \$2,576,903 referred to above, JCP&L has deferred \$62,856 of costs related to Natural Resource Damage ("NRD") issues from 2005. The Parties agree that it is appropriate for such NRD-related costs to be deferred, but such NRD-related costs should not be recovered at this time. The Parties reserve their rights to subsequently challenge recovery of such NRD-related costs on the basis that the costs may not be within the scope of the Board's RAC recovery authorization, and JCP&L reserves its rights to contest any such challenge.

(c) The Company claims that it is entitled to retain NRD-related costs totaling approximately \$76,000 from two previous RAC years, 2003 and 2004. It is Rate Counsel's position that NRD-related costs are not included within the scope of the Board's RAC recovery authorization and are therefore not eligible for recovery through utility RAC clauses. JCP&L does not agree with Rate Counsel's position concerning NRD-related cost recovery, but nonetheless agrees that nothing shall affect or limit the Parties' rights to challenge such NRD-related cost recovery in connection with the Company's previous RAC Filings. JCP&L also reserves all of its rights to contest any such challenge by the Parties. JCP&L further agrees that it

will not seek to recover, and will propose to defer, NRD-related costs in future RAC filings pending the final Board resolution of the issue concerning the inclusion of NRD-related costs within the scope of the Board's RAC recovery authorization.

(d) The Parties hereby agree that JCP&L shall be authorized to continue to defer all additional reasonable and prudent MGP remediation costs and expenses incurred and deferred subsequent to December 31, 2005, including NRD-related costs, together with accrued interest thereon, for review and inclusion in future annual RAC filings and related adjustments to the Company's Rider RAC and/or the application of the other provisions of Rider SBC, subject to the Board's review and approval.

(e) Consistent with its agreement in the 2004 RAC Filing Stipulation settling the 2004 Annual RAC Filing, which was approved by the Board by Decision and Order dated March 22, 2006 (Docket No. ER04121758), the Company agrees to continue to perform outside legal and community relations activities in a prudent and reasonable manner for the purposes of supporting its remediation program and mitigating potential liabilities related to its remediation program. The Company agrees to continue to provide a description and explanation of the expenses incurred for these services in subsequent RAC filings, with claimed confidential information provided pursuant to a confidentiality agreement.

Other RAC Issues.

(a) Also consistent with the 2004 RAC Filing Stipulation, the Company agrees to continue to maintain a complaint log for each MGP site which will provide details about complaints (exclusive of formal legal claims or lawsuits) received from property owners, neighboring residents and municipal officials and a description of the Company's actions responding to that complaint. It is understood by the Parties that a purpose of a community

relations program is to help minimize and (where possible) mitigate complaints from stakeholders.

(b) Also consistent with the 2004 RAC Filing Stipulation, the Company agrees that it will continue to include with its RAC filings responses to the minimum filing requirements as set forth in Exhibit A to the 2004 RAC Filing Stipulation.

5. **Resolution of All Issues.** The Parties agree that the terms of this 2005 RAC Filing Stipulation shall be deemed to resolve all factual and legal issues relating to the determination of all amounts that were or could have been included in the calculation of JCP&L's deferred RAC balance through and at December 31, 2005, except as described in paragraph 3(c) above with respect to NRD-related costs.

6. **Entirety of 2005 RAC Filing Stipulation.** The Parties agree that this 2005 RAC Filing Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved by the Board in its entirety. In the event any particular aspect of this 2005 RAC Filing Stipulation is not accepted and approved in its entirety by the Board, then any Party aggrieved thereby shall not be bound to proceed with this 2005 RAC Filing Stipulation and shall have the right, upon written notice to be provided to all other Parties within ten (10) business days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. More particularly, in the event this 2005 RAC Filing Stipulation is not adopted in its entirety by the Board in its Final Order in this matter, then any Party hereto shall be free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this 2005 RAC Filing Stipulation, as though this Stipulation had not been signed.

Audit The Parties agree that the expenditures the Company seeks to recover through the RAC are subject to audit. Such audit may be through a review of the Company's internal audits conducted in relation to this proceeding or any other audit mechanism determined to be appropriate by the Board.

8. **Binding Effect.** The Parties further agree that, upon its approval in its entirety by the Board, this 2005 RAC Filing Stipulation shall be binding on them for all purposes herein.

9. **General Reservation.** It is specifically understood and agreed that this 2005 RAC Filing Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein

By executing this 2005 RAC Filing Stipulation, no Party waives any rights it possesses under any prior RAC Stipulation or Board Order.

(b) The contents of this 2005 RAC Filing Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any other Party's position on any related or other issue litigated in any other proceeding or forum in the future, except to enforce the terms of this Stipulation.

WHEREFORE, the Parties hereto, intending thereby to be legally bound, have duly executed this Stipulation, and do respectfully submit this Stipulation to the Board and

request that the Board issue a Final Decision and Order adopting and approving this 2005 RAC

Filing Stipulation in its entirety in accordance with the terms hereof.

MORGAN, LEWIS & BOCKIUS LLP
ATTORNEYS FOR PETITIONER,
JERSEY CENTRAL POWER & LIGHT
COMPANY

RONALD K. CHEN
PUBLIC ADVOCATE

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE
COUNSEL

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Marc B. Lasky

By: _____
Henry M. Ogden
Assistant Deputy Public Advocate

ANNE MILGRAM,
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR STAFF OF THE
BOARD OF PUBLIC UTILITIES

By: _____
Babette Tenzer
Deputy Attorney General

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Filing Stipulation in its entirety in accordance with the terms hereof.

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