



State of New Jersey
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

JON S. CORZINE
Governor

SEEMA M. SINGH, Esq.
*Ratepayer Advocate
and Director*

April 6, 2006

VIA HAND DELIVERY

Honorable Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Re: I/M/O the Petition of Jersey Central Power & Light Company
For a Bondable Stranded Cost Rate Order in Accordance With
Chapter 23 of the Laws of 1999
BPU Docket No.: EF03020133

Dear Secretary Izzo:

Please accept for filing an original and ten copies of these supplemental comments filed on behalf of the Division of the Ratepayer Advocate ("Ratepayer Advocate") along with supporting documents including the Supplemental Testimony of James A. Rothschild in connection with the above captioned matter. The supplemental comments and Mr. Rothschild's Testimony are filed pursuant to the Board of Public Utilities' (the "Board") verbal request made on March 14, 2006 in response to Jersey Central Power & Light's ("JCP&L") updates to its initial filing made on February 14, 2003. An additional copy of the materials is enclosed. Please stamp and date the

additional copy as “filed” and return it to our courier. Thank you for your consideration and attention to this matter.

As a threshold matter, the Supplemental Testimony of James A. Rothschild addresses the narrow issues arising from new evidence since his Initial Testimony in this docket made January 16, 2004, including the updated schedules provided by the Company. Mr. Rothschild’s Supplemental Testimony supports the Ratepayer Advocate’s position that securitization does not provide ratepayer benefits.

Pursuant to the Electric Discount and Energy Competition Act (“EDECA”), *N.J.S.A. 48:3-62*, the Company has the burden of showing that securitization of the deferred balance will produce benefits for customers of the electric public utility. The relevant section of the EDECA states:

The board may authorize the issuance of transition bonds for the recovery of up to the full amount of an electric public utility’s reasonably and prudently incurred basic generation service transition costs based on the criteria that such amount will produce benefits for customers of the electric public utility ... *N.J.S.A. 48:3-62 c. 3*.

Contrary to JCP&L’s assertions, Mr. Rothschild’s Supplemental Testimony shows that securitization will not produce benefits for customers because when adjusted for transaction and other fees, the effective interest rate of 6.32% is higher than the interest rate on a 7 year Treasury Bond plus 60 basis points or 5.35%. As decided by the Board in its Order adopting the Stipulation of Settlement in the JCP&L Phase I Proceeding, the use of the 7 year Treasury Bond plus 60 basis points is the proper benchmark against which to compare securitization. *I/M/O the Verified Petition of JCP&L Company for Review and Approval of its Deferred Balances Relating to the*

Market Transition Charge and Societal Benefits Charge, BPU Docket No. ER02080507, Decision and Order Adopting Stipulations of Settlements (5/31/05), p. 9. In that proceeding the Company and Staff stipulated that in the event the Board should not approve securitization, the carrying cost on the outstanding transition period deferred balance is the 7 year Treasury Bond plus 60 basis points. The relevant part of the Order states:

In the event that, notwithstanding this Stipulation, the Board denies the Company's securitization petition, or if securitization cannot be accomplished for any reason by March 31, 2006, and in addition to the accrual of interest provided for earlier in this paragraph, the Parties agree that effective with the day of denial of the securitization petition or April 1, 2006, whichever occurs first, the carrying cost that will apply to the recovery of the MTC/BGS Deferred Balance shall be a rate equal to the rate on seven-year constant maturity Treasuries as shown in the Federal Reserve Statistical Release on or closest to August 1 of each year, plus 60 basis points. *Id.*

Using this benchmark, Mr. Rothschild's analysis shows that JCP&L has not met its burden of proving to the Board that ratepayers will ultimately benefit from securitization. When transaction and capital reduction costs are considered, securitization is not an economical choice for JCP&L at this time because the effective interest rate on the proposed securitized debt is 6.32%. This effective interest rate is higher than the rate on seven year Treasuries plus sixty basis points. Therefore, the Ratepayer Advocate recommends that the deferred balance accumulated during the transition period and properly vetted by the Board, should be amortized over a fifteen year period at a 7 year Treasury rate plus sixty basis points fixed within a month of the Board approval in this proceeding.

In addition to the financial reasons against securitization as more fully explained in Mr. Rothschild's Supplemental Testimony, there are serious legal concerns regarding securitizing a large portion of the deferred balance now estimated to be \$332.0 million, or \$196.0 million net of tax. First, in a concurrent proceeding before the Board, the audit of the deferred balance for the fourth and final year of the transition period is under review (JCP&L Phase II Audit). At issue is approximately, \$150 million, or \$90.0 million net of tax, in deferred balance costs incurred from August 1, 2002 to July 31, 2003. Pursuant to the Board Secretary's letter dated December 5, 2005, interested parties were invited to submit initial and reply comments on the JCP&L Phase II Audit in January of 2006. On December 7, 2005, the Ratepayer Advocate filed a motion requesting, among other things, a full evidentiary hearing, along with a new schedule that would allow for a comprehensive review of the Audit as afforded the parties in the Phase I Audit. Pending the Board's determination of the Ratepayer Advocate's December motion, and in the interest of avoiding undue delay, our office submitted several discovery questions in the Phase II Audit Proceeding earlier this year. Because of the Company's refusal to cooperate in discovery, on March 7, 2006, the Ratepayer Advocate again filed a motion, requesting that the Board compel the Company to respond to the Ratepayer Advocate's discovery. To date, neither motion has been decided by the Board. While two motions are pending before the Board in the JCP&L Phase II Audit proceeding, the fourth year deferred balance amount should not be considered for securitization.

The Company has challenged the Ratepayer Advocate's position regarding the relevance of the Phase II Audit proceeding to this case stating that the prudence of the

last year of the transition period was already addressed and resolved in the Phase I Audit proceeding. If JCP&L's interpretation of the scope of the Phase II Audit were to be adopted, the Phase II Audit Proceeding would become essentially meaningless. It is doubtful that the Board would invite all parties to comment on the Phase II Audit through a Secretary's Letter if the Board had already completed its review of the fourth year deferred balance amounts. Because the Phase II Audit is still pending before the Board, there is a legitimate question as to whether the entire sum of the deferred balance incurred in the fourth year of the transition period was "reasonably and prudently incurred." Only costs that are determined to be reasonable and prudent are permitted to be securitized under EDECA. *N.J.S.A. 48:3-62c(3)*. Thus, securitization of the entire \$332.0 million, which includes the costs incurred during the fourth year of the transition period, should not be permitted.

The second concern that the Ratepayer Advocate has with respect to the securitization of the entire \$332.0 million as proposed by the Company is that a portion of the \$332.0 million represents above-market NUG costs that cannot be securitized pursuant to EDECA. As discussed at length in our comments filed on February 27, 2004 and attached hereto as Exhibit A, it is the position of the Ratepayer Advocate that the EDECA as currently formulated only permits securitization of the under recovered market value of BGS costs, EDECA does not permit the securitization of the above market portion of the BGS under-recovery. The above market portion should be recovered elsewhere in the utility's unbundled rates. The uncertainty surrounding the

amount permitted to be securitized only furthers our argument that securitization should be denied.

For the foregoing reasons, the Ratepayer Advocate respectfully requests that the Board order JCP&L to amortize the deferred balance over a fifteen year term at a carrying cost equal to the rate of seven year Treasuries plus 60 basis points fixed shortly after the Board Order in this proceeding.

Respectfully Submitted,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: s/ Diane Schulze
Diane Schulze, Esq.
Asst. Deputy Ratepayer Advocate

DS/lg

Enclosures

- C: President Jeanne M. Fox, (via hand delivery)
- Commissioner Connie O. Hughes, (via hand delivery)
- Commissioner Frederick F. Butler, (via hand delivery)
- Commissioner Joseph L. Fiordaliso, (via hand delivery)
- Commissioner Christine V. Bator, (via hand delivery)
- Service List (via hand delivery or electronic mail w/o attachments and U.S. regular mail)