UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Jersey Central Power & Light Co. | Docket No. ER20-227-000

**PROTEST OF THE
NEW JERSEY DIVISION OF RATE COUNSEL AND
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure,[1] and the Commission's October 30, 2019, Combined Notice of Filings #1,[2] the New Jersey Division of Rate Counsel ("Rate Counsel") and the New Jersey Board of Public Utilities ("NJBPU or "the Board") (collectively, "NJ Agencies"): (1) protest the October 30, 2019, filing by Jersey Central Power & Light Company ("JCP&L") to establish a formula rate for determining its annual transmission revenue "requirement" ("ATRR") under the PJM Interconnection, L.L.C. ("PJM") Open Access Transmission Tariff ("OATT"),[3] and (2) urge the Commission to suspend the filing for the maximum five month period, set a refund effective date, and establish settlement and hearing procedures.

I.   SUMMARY

As explained *infra*, if approved as proposed, the new formula would result in a first-year $35.35 million increase in JCP&L's ATRR. Key static elements and structural features of the proposed formula—including, most notably, the proposed return on equity ("ROE")—are unjust and unreasonable. In addition, several of the first-year inputs through which JCP&L illustrates the formula's effect are unsubstantiated and problematic, in ways that indicate structural

---

[1] 18 C.F.R. § 385.211.

[2] eLibrary No. 20191030-3026.

[3] JCP&L, Tariff Filing (Oct. 30, 2019), eLibrary No. 20191030-5097 ("JCP&L Tariff Filing").

problems with the formula as filed and/or with JCP&L's intended formula application. On each of these grounds independently, and especially so in combination, the resulting rate increase has not been shown to be just, reasonable and non-discriminatory; to the contrary, it would be substantially excessive. For the reasons stated below, JCP&L's proposed formula rate is unjust and unreasonable. It should be suspended for the maximum five-month period, to take effect (subject to refund) on June 1, 2020.

II.   PROTEST

Based on their preliminary review,[4] NJ Agencies here raise several issues concerning JCP&L's proposed formula rate.

A.   *JCP&L's requested base ROE far exceeds its cost of equity.*

JCP&L's proposed 10.3% base ROE far exceeds JCP&L's study-period cost of equity by so much as to require a five-month suspension on the strength of that difference alone. This conclusion holds whether JCP&L's equity cost is measured using only the established Discounted Cash Flow ("DCF") methodology, or by combining the four methods proposed in recent Commission orders, or by combining the multiple methods presented by Dr. Marlon Griffing in Exhibit A hereto. Below, we summarize the equity cost evidence presented by Dr. Griffing, and then address the arguments presented by JCP&L's witness, Mr. Adrien M. McKenzie.

---

[4] NJ Agencies require discovery rights and additional time before they could be reasonably confident of having identified all material issues with JCP&L's filing, and reserve their rights to raise additional issues as this proceeding moves forward.

1. JCP&L's proposed base ROE is inconsistent with Commission methodologies and substantially excessive.

JCP&L's reasonably estimated cost of equity—that is, the return that JCP&L must offer

to investors in order to attract capital that has other investment opportunities—is well below

10%. In Exhibit A to this protest (comprising a narrative affidavit and subsidiary exhibits MFG-1

through MFG-12), Dr. Griffing applies well-supported equity cost estimation methods. Dr.

Griffing concludes that in light of JCP&L's low risk (exemplified by its favorable Moody's and

S&P credit ratings, and reinforced by the proposed adoption here of a comprehensive formula

rate), the cost of the equity invested in JCP&L's transmission assets is far below 10%, indeed

below 9.0%. More specifically, Dr. Griffing finds that using a well-constructed proxy group, the

median DCF result is 7.16%; the median CAPM result is 7.56%; and the Risk Premium result is

9.45%. Thus, the median-based result of a reasonable application of those three cost-indicative

methods is 8.06%.[5]

As current Commission policy stands, the lower of these two results—the one based on

the DCF median alone—reasonably could be used to evaluate preliminarily whether JCP&L's

proposed rate increase is substantially excessive. To be sure, recent Briefing Orders propose an

approach that would combine four methods—some version of the three methods mentioned

immediately above, and an expected earnings method that, as explained elsewhere in this

Protest,[6] is not cost-indicative. But even if that approach were used, it too would produce a base

ROE well below JCP&L's request. *See infra* Part III.C.2. As of now, however, the Commission's

---

[5] The fourth methodology proposed in recent Commission orders, "Expected Earnings" or "E/B," starts from Earnings/Book ratios that purportedly represent what parent-level entities earn on their own long-held capital. It therefore does not indicate the returns that utilities must offer equity investors in order to attract their capital away from other current market-priced investment opportunities. *See infra* Part II.A.3.a).

[6] *See supra* note 5 and *infra* Part II.A.a).

ROE policy for single-electric-utility filings remains as stated in Opinion No. 554.[7] Under that policy, which is applicable here, the base ROE is set at the median of a properly-constructed, GDP-constrained, DCF study of electric utility proxies, unless the proxy group is shown to be non-risk representative or market conditions are shown to be anomalous.

Here, a risk-representative proxy group is available and JCP&L has not alleged—let alone demonstrated—that market conditions are anomalous. To the contrary, the only times the word "anomalous" appears in Mr. McKenzie's testimony, it is by way of affirming that in current market conditions, DCF results are no less valid than ever.[8] Given this testimony and that JCP&L filed as a single utility, it would be reasonable, for purposes of preliminarily evaluating the filing, to use the DCF median as the indicated ROE value. According to JCP&L itself, that median is **9.01%**.[9] In Dr. Griffing's better-constructed study, that median is **7.16%**.[10]

Alternatively, it would also be reasonable to preliminarily evaluate JCP&L's filing by applying the three-method combined result present by Dr. Griffing in Exhibit A. That average is 8.06% (7.16%+ 7.56%+ 9.45%)/3=8.06%).[11]

>   2.   Under the Briefing Orders methodology, JCP&L's Base ROE is well below 10%.

While Dr. Griffing's equity cost estimation methods and recommendations are compelling, JCP&L's own analyses themselves demonstrate that a 10.3% base ROE would far

---

[7] *Potomac-Appalachian Transmission Highline, LLC*, Op. No. 554, 158 FERC ¶ 61,050 (2017).

[8] *See* JCP-200 at 12-13 (the merits of the DCF methodology, like other methods, are "not at all contingent on a particular set of capital market conditions," and "any suggestion that particular ROE methodologies lose their relevance unless capital market conditions are found to be 'anomalous' is without foundation").

[9] *See* JCP-204 at 1.

[10] *See* Exhibit A at P 10 and MFG-5.

[11] *See id.*

exceed JCP&L's cost of equity. JCP&L witness McKenzie purports to apply approaches

"[c]onsistent with the Briefing Orders,"[12] and asserts that at all times and in all capital market

conditions, "the four quantitative approaches included in the Briefing Orders' ROE methodology

should serve as an integral part of the decision-making underlying the determination of a just and

reasonable ROE."[13] Despite that view, Mr. McKenzie actually applies only *one* of the four

methods proposed in the Briefing Orders—the one that has no connection to the prices that

investors pay in capital markets—and he upwardly distorts even that one. When his submission

is conformed to the methodologies identified and illustratively quantified in the Briefing Orders,

it indicates an ROE no higher than 9.27%. And as shown in *infra* Part III, that well-founded ROE

reduction has so substantial an effect on JCP&L's proposed formula rate as to require, by itself, a

five month suspension.

Briefing-Orders-Style DCF. The first method proposed in the Briefing Orders is a

Discounted Cash Flow model, in which proxy company near-term analyst-projected earnings

growth rates are tempered by long-term GDP growth—that is, a DCF model that is "constant

growth" in form, but in which the growth rates average analyst consensus growth rates (at two-

thirds weight) and the long-term GDP growth rate (at one-third weight). This model is consistent

with the Commission's longstanding recognition that utility companies cannot persistently grow

their earnings faster than the economy they serve,[14] and has been applied to natural gas and oil

---

[12] The "Briefing Orders" as referenced in Mr. McKenzie's affidavit and herein are *Coakley v. Bangor Hydro-Elec. Co.*, Order Directing Briefs, 165 FERC ¶ 61,030 (2018) ("*Coakley* Briefing Order"); *Ass'n of Buss. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Order Directing Briefs, 165 FERC ¶ 61,118 (2018) ("MISO Briefing Order") (together, "Briefing Orders"). JCP-200 at 15:12 ("Consistent with the Briefing Orders, I rely on the results of four separate financial models to evaluate a just and reasonable ROE for JCP&L").

[13] JCP-200 at 14:1-3.

[14] *See, e.g.*, Opinion No. 554, 158 FERC ¶ 61,050 (2017); *Williston Basin Interstate Pipeline Co.*, 88 FERC ¶ 61,301, at 61,928 (1999) ("*Williston*") ("The consequence of such a forecast is that corporate profits will enjoy an increasing share of the U.S. economy. The increasing share will not be just for three to five years, but for the

pipelines for decades.[15] The Briefing Orders propose to continue applying this limitation to

electric utilities. Witness McKenzie is well aware that what he has elsewhere termed the

"Briefing Order Methodology" requires the one-third-weighted averaging in of long-term GDP

growth, and his presentations in multiple prior dockets apply that aspect of the Briefing Orders'

contemplated DCF method.[16] Nonetheless, Mr. McKenzie eschews such an analysis here,

presenting an implausible DCF model in which analysts' projected rates of earnings growth over

the next three-to-five years are assumed to continue forever.[17] It thus assumes that (for example)

Sempra Energy's earnings and dividends will grow perpetually at the 11.9% rate that IBES-

contributing sell-side analysts projected for the next three-to-five years[18]—even though, as of

this writing, that projection has already fallen to 9.75%.[19]

---

indefinite future. The implication is that a change in the underlying relationships in the economy is expected, which, as stated in the June 1, 1999 order, the Commission is reluctant to assume."); *Generic Determination of Rate of Return on Common Equity for Pub. Utils.,* Order No. 420, FERC Stats. & Regs. ¶ 30,644 at 31,362, *on reh'g*, 32 FERC ¶ 61,073, *reh'g denied*, Order No. 420-A, 32 FERC ¶ 61,257 (1985) ("analyst forecasts . . . should be viewed as short-term expectations, which is what they in fact purport to be, and . . . overstated investors' long-term growth expectations"); *Nw. Pipeline Corp.*, 87 FERC ¶ 61,266, at 62,060 (1999), *on reh'g*, 92 FERC ¶ 61,287 (2000), *denied in part and dismissed in part sub nom. Canadian Ass'n of Petroleum Producers v. FERC*, 308 F.3d 11 (D.C. Cir. 2002) ("[I]n the later years of an industry's life, fewer technological advances and increased product saturation begin to reduce the growth rate for all companies, and profit margins come under pressure. . . . In the mature phase, a company's growth and return on equity have stabilized in line with the long-term growth of the economy as a whole and are expected to grow at that rate indefinitely.").

[15] *See, e.g.*, Coakley Briefing Order Appendix ("Under the Commission's two-step DCF methodology, the input for the expected dividend growth rate, 'g', is calculated using both short-term and long-term growth projections. Those two growth rate estimates are averaged, with the short-term growth rate estimate receiving two-thirds weighting and the long-term growth rate estimate receiving one-third weighting.").

[16] *See, e.g.,* Florida Power and Light Company, Tariff Filing, Exhibit No. FPL-402, Summary of Results, Briefing Order Methodology, *Fla. Power & Light Co*., Docket No. ER19-2585-000, eLibrary No. 20190813-5126 ("FPL Tariff Filing").

[17] JCP-200 at 16 ("I believe the constant growth form of the DCF model provides a superior basis to evaluating a just and reasonable ROE for JCP&L").

[18] JCP-204 at 1.

[19] *See Sempra Energy (SRE) Analyst Ratings, Estimates and Forecasts*, https://finance.yahoo.com/quote/SRE/analysis?p=SRE (last visited Nov. 19, 2019).

The Commission has always rejected this approach to DCF modeling of electric utility stocks. Even during the limited period between Opinions Nos. 445 and 531, when the Commission viewed the advent of retail choice as supporting an electric-only exception to the use of GDP growth as a weighted-average component of the constant growth rate for electric utilities,[20] the Commission used br + sv sustainable growth to temper analysts' short-term growth rates.[21] And it did so for a sound reason: investors do not expect utilities to perpetually grow their earnings and dividends faster than the economy they serve. Mr. McKenzie's contrary assumption flies in the face of both common sense and Commission precedent.[22]

Mr. McKenzie seeks to overcome this precedent by asserting that "there is little to no evidence to suggest that investors share the view that growth in GDP must be considered a limit on earnings growth over the long-term."[23] To the contrary, and consistent with Commission precedent, that must be the view of *any* rational investor. There is ample evidence that investors hold it. For the present preliminary purposes, it suffices to quote Warren Buffet, who may well be the single largest and most-followed individual investor in U.S. electric utilities:[24]

> When you begin to expect the growth of a component factor to forever outpace that of the aggregate, you get into certain mathematical problems. In my opinion, you have to be wildly

[20] *See Coakley v. Bangor Hydro-Elec. Co.*,, Op. No. 531, 147 FERC ¶ 61,234, P 35, *on paper hearing*, Op. No. 531-A, 149 FERC ¶ 61,032 (2014), *on reh'g*, Op. No. 531-B, 150 FERC ¶ 61,165 (2015), *rev'd sub nom. Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017). ("When, in 2000, the Commission nevertheless decided not to adopt the two-step DCF methodology in the Opinion No. 445 proceeding, an important consideration was the fact that Southern California Edison Company and other public utilities were only just beginning the process of restructuring."); *S. Cal. Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070, at 61,261 (2000) (same).

[21] *See* Op. No. 531-B, 150 FERC ¶ 61,165, P 77 (2015) ("By seeking to estimate a 'sustainable growth rate,' the 'br+sv' growth formula also contains some elements of a long-term growth projection, in addition to a short-term growth projection . . . . Thus, the Commission's adoption of the two-step DCF methodology accomplishes what the use of the 'br+sv' formula was intended to accomplish.").

[22] *See supra* note 14.

[23] JCP-200 at 30.

[24] Warren Buffet, *Mr. Buffet on the Stock Market*, Fortune (Nov. 22, 1999).

optimistic to believe that corporate profits, as a percent of GDP can, for any sustained period, hold much above 6%. One thing keeping the percentage down will be competition, which is alive and well. In addition, there's a public-policy point: If corporate investors, in aggregate, are going to eat an ever-growing portion of the American economic pie, some other group will have to settle for a smaller portion. That would justifiably raise political problems—and in my view a major reslicing of the pie just isn't going to happen.

Mr. McKenzie also offers purportedly contrary evidence, cherry-picking past Value Line reports in which "CMS Energy Corporation, NorthWestern Corporation, and DTE Energy Company—all mature, long-lived electric utilities—achieved earnings growth over the last 10 years of 10.0%, 8.5%, and 8.0%, respectively."[25] It is easy to cherry-pick stocks that achieved faster-than GDP earnings growth for a short time, especially when one starts, as Mr. McKenzie did, with the low earnings period of the Great Recession. But if one starts earlier—in 2005, the earliest year for which Value Line reports positive earnings for all three of Mr. McKenzie's cherry-picked companies—their compound annual growth rates were all below 6%.[26] The same statistic shows that JCP&L's parent FirstEnergy—another mature, long-lived electric utility sector stock—achieved negative earnings growth over the past ten years.[27] In any case, the Commission's standard DCF method models earnings growth constrained by GDP growth over the *long* term—as has been true in the past, logically must be true in the future, and is therefore expected by investors to be true in the future. Mr. McKenzie fails to provide any compelling reason why that method should be ignored when evaluating JCP&L's ROE.

In addition to using unsustainable growth rates, Mr. McKenzie further inflates his DCF results through three inter-related alterations of the Briefing Orders' methodology.

---

[25] JCP-200 at 33 & n.66.

[26] *See* Exhibit B at 27.

[27] *See* August 16, 2019 Value Line report for FirstEnergy.

First, Mr. McKenzie says that the threshold for retaining low results should be raised to

6.66%. This rise enables him to discard proxy results of 6.52%, 6.43%, and 5.65%, and thereby

raise the bottom of his DCF range by 122 bp. But his threshold is out of line with precedent.

Each of the proxy results Mr. McKenzie would discard amply clears the standard low-end test—

100 basis points above the bond yield corresponding to the proxy's rating. *See S. Cal. Edison

Co.*, 131 FERC ¶ 61,020, PP 54-56 (2010), *clarified*, 137 FERC ¶ 61,016 (2011), *aff'd in

relevant part sub nom. S. Cal. Edison Co. v. FERC*, 717 F.3d 177 (D.C. Cir. 2013). That standard

points to a low-end test no higher than 100 basis points above the study-period average yield on

Baa-rated utility bonds, here 4.13% + 100 bp = 5.13%.[28]

Mr. McKenzie's argument for his higher test is the claim that a 100 bp margin is a "risk

premium" that originated in and was appropriate only for four cases that referenced study periods

ending in November 2007 or September 2008.[29] In reality, the 100 bp margin has never been and

should not be applied as a "risk premium" that expands as interest rates fall.[30] Rather, it is a

static margin sufficient to ensure that the retained proxy result is minimally distinguishable from

return on debt, and was applied as a 100 bp margin both before and after Mr. McKenzie's four

cases (beginning with a study period of June-November 2005[31]), across a wide range of bond

---

[28] *See* JCP-207 at 1 & source note b. Only one of the 39 issuer credit ratings that Mr. McKenzie identifies for his 20 proxy companies exceeds Baa1 or its S&P equivalent. Accordingly, for present purposes and *arguendo*, we set aside the question whether a lower test, of 100 bp above a lower average utility bond yield associated with higher-rated bonds, should apply to proxies rated higher than Baa.

[29] *See* JCP-200 at 42 & nn.92-95 (citing *Atl. Path 15, LLC*, 122 FERC ¶ 61,135 (2008), *Startrans IO, LLC*, 122 FERC ¶ 61,306 (2008), *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009), and *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 (2010)).

[30] Mr. McKenzie acknowledges that "The Commission has historically relied on a 100 basis point spread over public utility bond yields as a starting place in evaluating low-end values,"), JCP-200 at 41, while asserting that the Commission's use of a "static test" is wrong. *Id.* at 41-42.

[31] *See Golden Spread Electric Cooperative, Inc., v. Sw. Pub. Serv. Co.*, 115 FERC ¶ 63,043 (2006), *aff'd in relevant part*, Op. No. 501, 123 FERC ¶ 61,047 (2008). The 100 bp specification of the required margin originated in Staff Witness Green's testimony in that case, Prepared Direct and Answering Testimony of Douglas M. Green at 10:4,

yield conditions. Moreover, Mr. McKenzie's adjustment is self-contradictory. Within the four

cases on which he relies, the average study-period Baa utility bond yield was sometimes 6.44%

and sometimes 6.94%.[32] Yet in all of these cases, the low-end test applied the same 100 bp

margin.[33] If Mr. McKenzie were right, then the Commission would not have treated the 100 bp

margin as constant even in the four cases on which he selectively relies.

Next, Mr. McKenzie raises the test for retaining high results. Under the test proposed in

the Briefing Orders, results exceeding 150% of the median of the full DCF distribution would be

discarded.[34] As applied to JCP-204, where the median among all DCF results is 7.39%, that test

would require the exclusion of the three highest results (14.93%, 12.55%,[35] and 11.84%), all of

---

17-18, *Golden Spread Coop.*, Docket Nos. EL05-19-002, ER05-168-001 (Mar. 1, 2006), eLibrary No. 20060525-0188. The six-month average Baa-rated bond yield to which Mr. Green applied the 100 bp margin dated to June-Nov. 2005, and was then 5.83%. *See* Exhibit No. S-2, *Golden Spread Coop.*, Docket No. EL05-19-002 (Mar. 1, 2006), eLibrary No. 20060575-0190. The Initial Decision in that case adopted Mr. Green's DCF analysis, including that parameter. *See Golden Spread Elec. Coop. v. Sw. Pub. Serv. Co.*, 115 FERC ¶ 63,043, PP 97, 104-05 (2006). No exception was taken on that point, and the Commission affirmed reliance on Mr. Green's DCF results.

[32] Mr. McKenzie hides this disparity beneath the 6.69% "average" that he presents at JCP-200 at 44, Table JCP-2, but it is apparent in his workpapers in multiple other proceedings, such as Docket No. EL16-64, Exhibit No. CAP-001, Tab "Table NET-18," wherein another participant filed Mr. McKenzie's live Excel workpapers associated with the same "6.69%" average.

[33] *See* cases cited *supra* note 29. We refer here to the margin prior to application of any "natural break" flexibility. Mr. McKenzie neither supports nor applies a "natural break" test.

[34] *See, e.g., Coakley v. Bangor Hydro-Elec. Co.*, 166 FERC ¶ 61,013, Appendix A (2019) (excluding a high DCF proxy result from the illustrative result for Docket No. EL16-64 "because its ROE was more than 150% of the proxy group [DCF] median").

[35] The 12.55% result is for Algonquin Power & Utilities ("Algonquin"), which should be excluded from the proxy group in any event. Algonquin is not classified by Value Line as an electric utility—a traditional bright-line test for proxy group formation, which is reiterated in the Briefing Orders and should be retained. *See, e.g., Coakley* Briefing Order, P 49 (first criterion that candidate proxies must meet is falling within "a national group of companies considered electric utilities by Value Line"), Mr. McKenzie states artfully that Algonquin has "not yet" been included in Value Line's electric utility proxy groups, JCP-200 at 25, thus suggesting that such inclusion is only a matter of time. But there is no basis for any such assumption. The inference to be drawn from Algonquin's absence is that circa year-end 2016, when Value Line terminated coverage of Empire District Electric upon its acquisition by Algonquin, Value Line contemporaneously determined that Algonquin's natural gas, non-utility generation, and non-U.S. lines of business are too sizeable to warrant classifying Algonquin as predominantly a U.S. electric utility company. Relatedly, Algonquin has no Value Line beta and no Value Line forecast E/B ratio, and therefore has no result in Mr. McKenzie's other (non-DCF) studies. Moreover, Algonquin has been engaged in a series of substantial acquisitions, including acquisitions during Mr. McKenzie's six-month study period (April–September 2019) of Enbridge St. Lawrence Gas, Enbridge Gas New Brunswick, and Ascendant Group Limited (the parent of Bermuda

which substantially exceed 150% x 7.39% = 11.08%. But Mr. McKenzie substitutes his own

15.98% high-end test, arguing that DCF results should be tested against 150% of the highest

median found using his three proxy-based methods—that of the *E/B* method.[36]

The purpose of outlier testing, however, is to exclude proxy results that should not be

relied upon in estimating what the model would indicate if it could be applied to JCP&L directly.

Consistent with that purpose, the high-end test should exclude proxy results that are so disparate

from other proxy results under the same model as to indicate that the inputs to that model for that

proxy do not represent those that would apply to JCP&L itself if it were publicly traded.

Accordingly, outlier tests should be applied model-by-model. Moreover, if a single high

threshold were to be applied across models, it would be arbitrary and unreasonable to base it on

the *highest* of the three models' medians. Using the average of the initial medians found in Mr.

McKenzie's three proxy-based exhibits, for example, the high test for all three proxy-based

models would be 14.01%, which would result in exclusions and median reductions under both

the one-stage DCF (JCP-204) and E/B (JCP-206) models.

By unjustifiably discarding low results and unjustifiably retaining high results, Mr.

McKenzie creates a 10.90% midpoint.[37] But the midpoint of the range that results from applying

the low and high tests in the Briefing Orders is much lower—7.83%.[38] And in any case, the

midpoint is a statistically unsound measure that the applicable precedent rightly rejects. The

---

Electric Light Company). These acquisitions collectively represented more than 10% of Algonquin's market capitalization. We relegate this issue to this footnote, however, because Algonquin's inclusion in Mr. McKenzie's proxy group does not affect his midpoint-based results, and increases his median-based, four-methods overall result by only 3 bp. With Algonquin properly excluded and no other change, the median result of JCP-204 would be 8.88% rather than 9.01%, and the four-method-average result in the "median" column of JCP-202 would therefore be 10.00% rather than 10.03%.

[36] *See* JCP-200 at 17:6.

[37] *See* JCP-202 at 1 (citing the 10.90% midpoint of the upwardly-truncated JCP-204 range).

[38] *See* Exhibit B at3. This is the midpoint *before* factoring in the GDP constraint on growth.

Commission's well-established policy in single-utility cases such as this is to rely instead on the median. *See S. Cal. Edison Co. v. FERC*, 717 F.3d 177, 181 (D.C. Cir. 2013). Both before and after excluding values that fall outside the low and high tests proposed in the Briefing Orders, the median of the DCF results presented in JCP-204 is 7.39%.

Briefing-Orders-Style CAPM. The second method proposed in the Briefing Orders is the Capital Asset Pricing Model ("CAPM"). The CAPM methodology illustrated in the Briefing Orders, and the CAPM formula they recite, require that the equity market risk premium (representing the difference between a risk-free return and the expected return on a broad, market-wide equity portfolio) be multiplied by each proxy's "beta" (relative volatility measure of risk), with the *entire* equity market risk premium multiplied by each proxy's beta.[39] Mr. McKenzie is well aware of this aspect of the Briefing Orders' contemplated CAPM method; his presentations in multiple prior dockets apply it.[40] Nonetheless, he has elected not to present that method here. Instead, he applies what he terms the "Empirical" CAPM ("ECAPM"), in which the proxies' implied costs of equity are forced closer to the returns indicated for companies with betas of 1.0, thus diluting the effect of their low betas and raising the study result. Dr. Bradford Cornell, a leading academic and forensic expert on corporate finance, recently explained that this model "has not received support in the academic literature in decades," and cannot be used without, at minimum, resetting the size of this adjustment based on contemporary data.[41]

---

[39] *See, e.g., Coakley* Briefing Order, Appendix ("Specifically, the CAPM methodology estimates the cost of equity by taking the 'risk-free rate' and adding to it the 'market-risk premium' multiplied by 'beta.'").

[40] *See, e.g.,* FPL Tariff Filing, Exhibit No. FPL-405 at 1.

[41] Reply Comments of the Associations, Supplemental Statement of Bradford Cornell, Ph.D, Exhibit No. A-7 at 5, *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, Docket No. PL19-4-000 (July 26, 2019), eLibrary No. 20190726-5132 ("Cornell Affidavit").

Mr. McKenzie quantifies the adjustment so as to multiply one-quarter of the equity risk premium by 1.0 rather than by each proxy's beta. The sole source for that specification of this upward adjustment is a citation (at JCP-200 at 55 n.109) to Roger A. Morin, *New Regulatory Finance* at 189, which in turn rests on testimony that its author submitted in an Arizona Corporation Commission telephone rate proceeding in 1989. Using inputs that are not disclosed in his book nor otherwise available, Dr. Morin estimated that a 25% ECAPM factor fit that 1989 data.[42] On the next page, however, Dr. Morin acknowledged that this estimate was time-bound, stating that "the lowering of the tax burden on capital gains and dividend income enacted in 2002 may have decreased the required return for taxable investors, steepening the slope of the ECAPM risk-return trade-off and bring[ing] it closer to the CAPM predicted returns."[43] He also conceded that "the use of a long-term risk-free rate rather than a short-term risk-free rate already incorporates some of the desired effect of using the ECAPM"[44]—i.e., that his one-quarter ECAPM adjustment does not fit with a CAPM model that reflects subsequent financial market conditions and uses a long-term risk-free rate. Despite the warnings of Drs. Cornell and Morin, Mr. McKenzie provides no evidence that the one-quarter factor used in his ECAPM is fit for use with that model's other components.[45] Accordingly, Mr. McKenzie's supposedly "empirical" adjustment lacks any current empirical basis, and should be rejected.

Mr. McKenzie further departs from the CAPM method contemplated in the Briefing Orders by basing half of his ECAPM result on projected rather than actual treasury bond yields.

---

[42] Roger A. Morin, Ph.D, *New Regulatory Finance* (Public Utilities Reports, Inc., 2006) at 190 n.12.

[43] *Id*. at 191.

[44] *Id*. at 190.

[45] Mr. McKenzie makes a generalized assertion that *some* level of ECAPM adjustment is compatible with the "Blume" adjustment that is baked into Value Line betas. *See* JCP-200 at 56. But he provides no evidence that multiplying a full quarter of the equity risk premium by 1.0 rather than the applicable beta is a correctly quantified adjustment for use with Blume-adjusted beta.

Mr. McKenzie is well aware that the CAPM models on which the Briefing Orders illustratively relied used only *actual* treasury bond yields. That is why, for example, Mr. McKenzie's "Summary of Results" for his "Briefing Order Methodology" in his recent testimony in Docket No. ER19-2585 used only the "CAPM-Historical" version of his CAPM results, and relegated his "ECAPM…Projected" results to what he termed his "Modified Methodology."[46] Indeed, in Opinion No. 551, the Commission specifically rejected reliance on projected bond yields. *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Op. No. 551, 156 FERC ¶ 61,234, P 194 (2016) ("The Presiding Judge held that projected yields used in risk premium analyses are speculative and less reliable than historical yields, and rejected Dr. Avera's use of projected Baa-rated bond yields . . . [W]e agree with the Presiding Judge . . ."); *cf. Potomac-Appalachian Transmission Highline*, *L.L.C.*, 122 FERC ¶ 61,188, P 102 (2008), *on reh'g*, 133 FERC ¶ 61,152 (2010) (rejecting "speculative forecasting of th[e] indexed cost of debt" as a basis to raise the low-end test used to filter proxy results).

Moreover, Mr. McKenzie's use of a 3.40% projected yield on 30-year treasuries as a "Risk-Free Rate"[47] is inherently self-contradictory: there is no such thing as a risk-free yield projection. Mr. McKenzie's proposal to substitute a speculatively-projected 3.40% for an actual 2.53% study-period yield on 30-year treasuries as the CAPM (or ECAPM) risk-free rate, can be refuted by reviewing a comparison between treasury yield predictions in the 2019 Energy Information Administration, Annual Energy Outlook ("AEO") and the reality to date. Mr. McKenzie's 3.40% relies in part on the yield on 10-year treasuries as projected by EIA for calendar year 2019 (and several later years) in the macroeconomic forecasts utilized by EIA in

---

[46] *See* FPL Tariff Filing, Summary of Results Briefing Order Methodology, Exhibit No. FPL-402 at 1-2.

[47] *See* JCP-205 at 2.

its January 2019 publication of the AEO.[48] That near-term projection was 3.57%.[49] But calendar year 2019 is now almost over, and the reality has been that, year to date, yields on 10-year treasuries have averaged 2.18%.[50] Investors are well aware that past projections of increasing treasury yields, although persistently made, have been persistently wrong.

Briefing-Orders-Style E/B. The third method proposed in the Briefing Orders imputes to operating electric utilities the projected Earnings/Book ("E/B") ratios of parent-level utility holding companies. As discussed in *infra* Part II.A.3.a, this accounting-based method should not be used because it is disconnected from the cost of equity required to attract capital. Alternatively, if utilized, the E/B ratio should be based on JCP&L's own E/B ratio rather than those of proxies with elevated Market/Book ratios. Here, we address a secondary issue: the discrepancy between Mr. McKenzie's application of the E/B method and that proposed in the Briefing Orders. Mr. McKenzie excludes Avangrid's 6.05% forecast E/B ratio because it falls below the 6.66% "Low-End Test" that Mr. McKenzie contrives, as discussed above.[51] Without that ill-founded[52] exclusion, the JCP-206 median would be 10.65% (rather than 10.75%), and the JCP-206 midpoint (if deemed relevant) would be 10.33% rather than the 10.75% on which Mr. McKenzie relies.

Briefing-Orders-Style RP. The fourth method proposed in the Briefing Orders—Risk Premium ("RP")—infers a linear relationship between past allowed ROEs and past bond yields,

---

[48] *See* JCP-205 at 2, source note c. Presumably, Mr. McKenzie used projected yields on 10-year treasuries and adjusted them to project yields on 30-year treasuries, as EIA uses the former.

[49] *See* U.S. Energy Information Administration, Energy Outlook 2019, https://www.eia.gov/outlooks/aeo/data/browser/#/?id=18-AEO2019&cases=ref2019&sourcekey=0.

[50] *See* Exhibit B at 12.

[51] *See supra* p. 4.

[52] Ironically, there is a different, valid reason to exclude Avangrid: the fact that more than 80% of its stock is owned by a single entity, Iberdrola. If Avangrid were excluded on that ground, however, it would also be excluded from the other study methods, thereby eliminating a relatively high DCF result.

and then carries that relationship forward to recent (study-period) bond yields. Setting aside

numerous other unreasonable aspects of Mr. McKenzie's application of this method (*see infra*

Part II.A.d), we address here the discrepancy between Mr. McKenzie's application of the RP

method and the RP method proposed in the Briefing Orders. It involves the use of projected bond

yields, and echoes the projected-bond-yield issue discussed earlier (addressing Mr. McKenzie's

projection-based ECAPM). By adding his inferred spread between 2006-2018 allowed ROEs and

contemporaneous actual bond yields to actual study-period bond yields, Mr. McKenzie finds a

9.86% RP result. But by retaining the same spread and adding it to projected bond yields, Mr.

McKenzie obtains a higher RP result of 10.46%.[53]

This so-called "Projected" Risk Premium relies on projections of future bond yields that

are both speculative and detached from the study period cost of capital. Their use is also

internally inconsistent. Mr. McKenzie's method identifies the spread between past allowed

ROEs and contemporaneous bond yields through a comparison to past actual bond yields rather

than past projections. But it adds the resulting spread to a projection-based yield. This

mismatched approach violates a fundamental rule of the Risk Premium method:

> [T]he debt instrument used to estimate the risk premium [must] match[] the debt instrument used to calculate the interest rate component of the risk premium approach. To illustrate, if the equity risk premium is calculated by comparing stock returns with A-rated utility bond yields, consistency requires that the yield on A-rated utility bonds be used to estimate the interest rate component of the risk premium approach

Roger A. Morin, *New Regulatory Finance* at 113 (2006).

Mr. McKenzie claims that his reliance on speculative and mismatched future bond yields

for the "interest rate component" is "consistent with the Commission's proposed findings for the

---

[53] *Compare* JCP-207 at 1 *with id.* at 2.

Risk Premium method in the *Coakley* Briefing Order, which relied on an average of the results

based on historical and projected interest rates."[54] This claim is misleading. The *Coakley*

Briefing Order included illustrative results for the RP method for four distinct study periods (one

for each of the four pending New England transmission ROE complaint dockets), and the MISO

Briefing Order did so for two additional study periods. Moreover, in all six of these study

periods, the actual vs. projected bond yield issue arose in connection with both the CAPM and

the RP methods. Thus, there are twelve distinct data points identified in the Briefing Orders for

which the Commission could have relied illustratively on projected bond yields. For eleven of

them, the Commission's illustrative results rely exclusively on actual bond yields, and thus

match the Commission's narrative discussion of the issue in Opinion No. 551.[55]

Mr. McKenzie ignores that background, and seizes on the fact that in the vacated Opinion

No. 531 results for Docket No. EL11-66, which the *Coakley* Briefing Order recites, the

Commission used for illustration the average of two RP results, one which was based on

projected bond yields. But the two risk premium results cited there were only 10 basis points

apart, and given the context (in which non-DCF results did not factor directly into the resulting

ROE, and were used only to select between two different points in the DCF range), that

difference was immaterial. In briefing this point, the New England transmission owners obscured

their reliance on projected bond yields,[56] and nothing in Opinion No. 531 indicates that the

---

[54] JCP-200 at 65 (citing *Coakley* Briefing Order P 59 n.115).

[55] *See supra* p. 8.

[56] *See* Op. No. 531, P 147 & n.291 (stating that "[t]he NETOs' risk premium analysis indicates that the NETOs cost of equity is between 10.7 percent and 10.8 percent, which is higher than the 9.39 percent midpoint produced by our DCF analysis," and sourcing those figures in "NETOs Brief on Exceptions at 44"); Brief on Exceptions of the New England Transmission Owners at 44, *Coakley v. Bangor Hydro-Elec. Co.*, Docket No. EL11-66-001 (Sept. 20, 2013), eLibrary No. 20130920-5115 (stating that both risk premium results "directly estimate[d] investors' required rate of return by adding an equity risk premium to *observable* bond yields") (emphasis added).

Commission intended to reference them. Moreover, the referenced Docket No. EL11-66 results were *not* associated with the Risk Premium model that Mr. McKenzie now presents. The EL11-66 study calculated its risk premium/interest rate relationship regression by treating each referenced case result data point as a separate scatterplot point rather than annually aggregating them, and it referenced 10-year treasury yields, not only utility bond yields. Thus, *none* of the twelve relevant data points quantified in the Briefing Orders applies the projection-based method Mr. McKenzie now advocates.

Briefing-Orders-Style Combined Result. As recited above, despite his testimony that "the four quantitative approaches included in the Briefing Orders' ROE methodology should serve as an integral part of the decision-making underlying the determination of a just and reasonable ROE,"[57] the studies that Mr. McKenzie presents here do not actually apply those four approaches. But they are readily revised to conform to the Briefing Orders' ROE methodology. As shown below and in Exhibit B hereto, they collectively point to an ROE of 9.27% or less.

Method	Median
DCF	7.45%
CAPM	9.11%
E/B	10.65%
RP	9.86%
4-method Average	9.27%

[57] *See supra* note 12 and accompanying text (quoting JCP-200 at 14:1-3).

3.   An evidentiary hearing should be held to explore the differences between NJ Agencies' recommended 8.06% Base ROE and the 9.27% Briefing Order Methodology result.

The 9.27% four-method average shown in *supra* Part III.C.2, is prior to necessary further adjustments, which will reduce the indicated ROE even further below JCP&L's proposed 10.3% base ROE and 10.8% incentive-inclusive ROE. These necessary adjustments include (but are not limited to):

- Restricting the models used in estimating JCP&L's cost of equity to models that measure the return needed to offer a risk-comparable rate of return and thereby attract equity, thus eliminating the "thoroughly discredited"[58] reliance on earnings/book ratios;

- Basing the CAPM equity market risk premium on a reasonable long-term equity market return, instead of the grossly excessive (indeed, historically ludicrous) 12.13% used in JCP-205;

- Eliminating the unfounded "size adjustment" applied in JCP-205;

- Adjusting the Risk Premium model so as to avoid JCP&L's reliance on a list of past case outcomes that is riddled with inclusion errors, exclusion errors, and misdating;

- Constituting the proxy group such that it is risk-comparable and consistent with the reasonable standards embodied in Commission precedent, including exclusion of stocks that Value Line does not classify as electric utilities;

- Combining the proxy-based methods using an improved order of operations, whereby instead of averaging the DCF median, CAPM median, and (if used) E/B median, each proxy's DCF, CAPM, and E/B results are first averaged so as to produce a composite distribution, and thus a composite multi-method median, which is then combined with the risk premium result to identify the cost of equity—thereby recognizing that each proxy-based method is attempting to estimate the same underlying reality, namely each proxy's cost of equity;

- Filtering outlier proxy results using reasonable and objective standards, rather than the upwardly-biased filtering methods applied by JCP&L; and

- Updating the proxy group composition and study inputs.

---

[58] Eugene F. Brigham, Dilip K. Shome, and Steve R. Vinson, *The Risk Premium Approach to Measuring a Utility's Cost of Equity*, 14 Fin. Mgmt. 33 (Spring 1985).

Given that JCP&L bears the burden of proof in this Section 205 proceeding, Dr. Griffing's submission raises genuine issues of material fact that, at minimum, preclude reliance on Mr. McKenzie's analyses in these respects. Accordingly, the issues flagged by the above bullet-point list can and should be left for evidentiary hearing. Four of these issues, however, are sufficiently clear and consequential to warrant further discussion here, by way of reinforcing the conclusion that the reasonable JCP&L base ROE is no higher than 9.27%. These four issues are Mr. McKenzie's misuse of earnings/book ratios as if they indicated the capital attraction cost of equity; the long term equity-market-wide return component of Mr. McKenzie's supposedly "empirical" CAPM model; the generally upward "size adjustment" to that model; and the misleading recitation of past transmission ROE case outcomes through which Mr. McKenzie distorts his Risk Premium results.

a) The earnings/book ratios of Mr. McKenzie's proxies do not indicate the return that investors require from their market-priced investments in operating utility equity.

Mr. McKenzie maintains that because regulator-allowed ROEs apply to accounting-based, book value rate base, "the expected earnings approach provides a direct guide to ensure that the allowed ROE is similar to what other utilities of comparable risk will earn on invested capital."[59]

Even if taken at face value, this testimony speaks only to what utility *companies* earn on *their* book-valued equity, not what utility *investors* earn on their market-priced equity. That distinction is fatal to any contention that companies' E/B ratios indicate the capital attraction cost of equity. As Mr. McKenzie concedes, "The cost of capital is an opportunity cost based on the

---

[59] JCP-200 at 67.

returns that investors could realize by putting their money in other alternatives."[60] When the

market/book ratio of utility equity investments currently available on the market exceeds one—

as it does now—investors cannot realize the utility's E/B rate of return by buying the utility's

stock at its above-book market price, and it necessarily follows that "the rate of return investors

expect [the company] to earn on [book] common equity is greater than the rate of return

investors require from *their* investment in [the company's] common stock."[61] As one leading

treatise explained:[62]

> If a . . . stock is selling for two times its book value, and earning 20
> percent per year on book equity, it would be erroneous to suggest
> that a new or prospective investor in this stock would receive a
> return on his or her investment of 20 percent. The investor's
> "book" value is the purchase price, and that return, given the
> assumptions would be 10 percent. Thus, comparing book returns of
> companies with quite different market to book ratios is highly
> questionable at best.

Investors are well aware that E/B ratios do not indicate the returns that investors have the

opportunity to receive from any present new investment of their own capital. While Mr.

McKenzie maintains that "approaches other than the DCF model have earned widespread

acceptance with investment and finance professionals,"[63] those other accepted models do not

include reference to actual or projected E/B ratios. To the contrary, reference to E/B ratios has

been rejected by Commission precedent,[64] all academic experts,[65] all other federal agencies that

---

[60] JCP-200 at 17.

[61] *Orange & Rockland Utils., Inc.,* Op. No. 314, 44 FERC ¶ 61,253, at 61,952, *on reh'g*, Op. No. 314-A, 45 FERC ¶ 61,252 (1988), *reh'g denied,* 46 FERC ¶ 61,036 (1989) (emphasis added).

[62] James C. Bonbright, Albert L. Danielsen & David R. Kamerschen, *Principles of Public Utility Rates* 330 (2d ed. 1988). Although the full quoted statement refers at the ellipsis to "nonregulated" stock, its mathematical observation obviously applies also to the stock of publicly-traded utility holding companies.

[63] JCP-200 at 11.

[64] *See, e.g., Generic Determination of Rate of Return on Common Equity for Public Utilities,* Order No. 420, FERC Stats. & Regs. ¶ 30,644 at 31,367 (E/B ratios are "[a]ccounting rates of return [that] are not reliable measures of the

estimate equity costs,[66] other nations' utility regulators,[67] state commissions,[68] financial market practitioners,[69] and those utility-side ROE experts who proceed from empirical methods to recommendations rather than the reverse.[70]

Moreover, Mr. McKenzie's testimony on this point should *not* be taken at face value, as it is nothing more than misleading wordplay. First, the E/B ratios used in Mr. McKenzie's recommended "Expected Earnings" model are those of exchange-traded, parent-level companies, which almost universally means they are holding companies rather than operating utility companies. Second, the "book value" to which allowed ROEs apply represents the book value of specific operating utility *assets*, not the equity book value of the utility entity or its parent. Asset

---

current market cost of capital, since they do not reflect the current market prices that are determined in competitive capital markets").

[65] *See, e.g.,* Eugene F. Brigham, Dilip K. Shome, and Steve R. Vinson, *The Risk Premium Approach to Measuring a Utility's Cost of Equity*, 14 Fin. Mgmt. 33 at 24 (Spring 1985) (use of E/B ratios has "now been thoroughly discredited … and it has been replaced by three market-oriented (as opposed to accounting-oriented) approaches: (i) the DCF method, (ii) the bond-yield-plus-risk-premium method, and (iii) the CAPM, which is a specific version of the generalized bond-yield-plus-risk-premium approach."); Cornell Affidavit at 4-6.

[66] *See, e.g.,* Board of Governors of the Federal Reserve System, *Testimony Before the Surface Transportation Board*, Ex Parte No. 664 at 7 (Feb. 15, 2007) ("the weaknesses of the Comparable Accounting Earnings [method are]… widely recognized," and that method is "not [] in line with current practice"); *id*. at 8 ("[b]ecause we strive to use a private sector adjustment factor methodology that is consistent with private-sector practice and that the public can easily replicate, we elected to use the CAPM-only approach … to estimate the target return on equity for our priced services").

[67] *See* CAPS' Paper Hearing Reply Brief, Exhibit No. CAP-600, Reply Affidavit of Dr. J. Randall Woolridge at 37-46, *Coakley v. Bangor Hydro-Elec. Co.*, Docket Nos. EL11-66-001, et al. (Mar. 8, 2019), eLibrary No 20190308-5263.

[68] *See* Arkansas Public Service Commission, Exhibit No. SAM-0027, Prepared Rebuttal Testimony of S. Keith Berry at 96, Exhibit No. SAM-0050, *Ark. Pub. Serv. Comm'n*, Docket Nos. EL17-41-001, et al. (Aug. 22, 2019), eLibrary No. 20190822-5107 ("Berry Prepared Rebuttal Testimony").

[69] *See* Cornell Affidavit at 4-6.

[70] *See, e.g.*, Bente Villadsen, Michael J. Vilbert, Dan Harris, A. Lawrence Kolbe, *Risk and Return for Regulated Industries* at 129 (Brattle Group/Academic Press 2018) ("Are book rates of return estimates of the cost of equity? The chief problem with the comparable earnings approach is that the answer to this question is a resounding 'no.' This has long been recognized in the academic literature." (capitalization altered)); San Diego Gas & Electric Company, Fifth Transmission Owner Formula Rate Tariff Filing, Exhibit No. SD-0019, Testimony of Roger A. Morin at 16, *San Diego Gas & Elec. Co.*, Docket No., ER19-221-000 (Oct. 30, 2018), eLibrary No. 20181030-5125 ("there are three broad generic methods available to measure the cost of equity: DCF, Risk Premium, and CAPM").

and entity book values are markedly different for many reasons, such as accounting for goodwill,

taxes, depreciation, and inter-affiliate equity transfers.

JCP&L exemplifies both of these distinctions. The median of Mr. McKenzie's "Expected

Earnings" model is either 10.75% or 10.65%.[71] Backing out the adjustment for year-long

earnings on year-end book equity (in order to place the comparison that follows on a consistent

basis), that median is either 10.25% or 10.00%.[72] But JCP&L itself has a much lower E/B ratio,

of 4.83%.[73]

Because the E/B ratio of operating utility subsidiaries such as JCP&L are directly

observable (which is not the case for the DCF and CAPM methods), it would make no sense to

reference an E/B proxy group, even if the E/B method were otherwise valid. The Commission

rightly does not turn to a proxy group in identifying a utility's cost of debt, as the cost of debt is

directly observable. It would be arbitrary and capricious to turn to a proxy group's E/B ratios

when the subject utility's E/B ratio is visible.[74] The Virginia state-law reference to the lower half

of southeastern operating utilities' E/B ratios, on which Mr. McKenzie relies as if it supported

his method, is based on the E/B ratios of *operating* utilities, and therefore has recently pointed to

an average E/B ratio of 9.42%.[75]

---

[71] *See* JCP-206 at 1. As discussed in *supra* Part III.C.2, the median is 10.75% with Avangrid's 6.05% result excluded by Mr. McKenzie's inflated low-end test, and 10.65% with Avangrid's result included.

[72] *See* JCP-206 at 1, column a.

[73] *See* JCP&L, FERC Form No. 1: Annual Report for 2018 at page 112, line 16 (Proprietary Capital of $3,513,620,286, which equates to operating company entity equity book value as JCP&L has no preferred stock) and page 117, line 78 (Net Income of $169,756,951) (Apr. 4, 2019), eLibrary No. 20190410-8036 ("FERC Form 1" or "FF1"). Thus, JCP&L's 2018 Earnings/Year-End 2018 Book Value ratio was $169,756,951/$3,513,620,286 = 4.83%.

[74] Differences between projected and recent actual E/B ratios are generally not significant, and in any event could be accounted for by calibrating that difference over a proxy group and then applying it to an operating utility company's actual E/B ratio.

[75] *See Application of Appalachian Power Company for the Determination of the Fair Rate of Return on Common Equity to Be Applied to its Rate Adjustment Clauses*, No. PUR-2018-00048 at 7 n.17 (Va. State Corp. Comm'n Nov.

Moreover, at neither the parent nor the operating utility level does the equity book value correspond to asset book values. In the August 16, 2019 Value Line for FirstEnergy, FirstEnergy's Net Plant consistently and significantly exceeds its Total Capital, for every year since 2011 and every projected year. For example, in the 2022-24 forecast period used in Mr. McKenzie's model, FirstEnergy's Net Plant is $36.9 Billion, and thus 8.2% larger than its Total Capital of $34.1 Billion. (That same ratio holds, of course, if both figures are multiplied by the contemporaneous forecast equity ratio, 32.0%.) Likewise, at the operating utility level and with comparable rounding, JCP&L's year-end 2018 Net Utility Plant was $4.9 Billion[76]—which, even though associated with a company that claims its asset base is growing rapidly,[77] exceeds its filing's projected 2020 Company Total Rate Base of $ 4.7 Billion.[78]

Thus, as FirstEnergy and JCP&L exemplify, proxy company E/B ratios are not a direct guide, or even a meaningful guide, to the return that investors require from their market-priced investments in utility company equity.

> b) Mr. McKenzie's reliance on an inflated 12.13% long-term return on a market-wide equity portfolio discredits his ECAPM results.

In Exhibit No. JCP-205, Mr. McKenzie relies on a supposed 12.13% return on an economy-wide equity portfolio. He reaches this supposed portfolio return by summing the Value Line 2.41% dividend yield on dividend-paying members of the S&P 500 with the 9.72% near-term earnings growth forecast by Value Line and/or IBES-participating sell-side analysts. This growth component is both implausible and non-transparent.

7, 2018), http://www.scc.virginia.gov/docketsearch/DOCS/4cpc01!.PDF.

[76] *See* JCP&L's FERC Form 1 for 2018, at page 200, line 15 (Net Utility Plant of $4,875,305,540).

[77] *See* JCP&L Tariff Filing, Filing Letter at 3 ("Filing Letter").

[78] *See* Filing Statement BK, Attachment H-4A at 2 line 35 (Company Total Rate Base of $4,719,037,121).

Both history and reputable third-party forecasts provide far lower, and far more credible,

estimates of economy-wide equity return and earnings growth. Over the full, 120-year period for

which Nobel-Prize winning Yale economist Robert Schiller provides data, large-cap corporate

earnings per share have grown by an average of less than 4% per year.[79] Looking forward, even

J.P. Morgan's relatively optimistic forecast of long-term (20-year) EPS growth for U.S. large-cap

equities is only 4.8% EPS growth, resulting in forecast average returns on such equities of only

5.6%.[80] Duff & Phelps, a leading resource for corporate valuation practitioners (from which Mr.

McKenzie cherry-picks other data) currently estimates forward-looking equity market returns of

8.5%, based on an upwardly-normalized treasury yield of 3.0% and a forward-looking equity risk

premium of 5.5%.[81] Professor Damodaran of NYU—a leading national expert on corporate

valuations, whose work is referenced in the *Coakley* Briefing Order[82]—estimates an equity

market risk premium (over treasury bonds) of 5.96%, as of year-end 2018.[83] The U.S.

Environmental Protection Agency ("EPA") relies on Duff & Phelps and on Dr. Damodaran's

data to find a CAPM-based cost of equity for U.S. electric utilities, which it uses in modeling the

---

[79] *See* the downloadable data for "U.S. Stock Markets – 1871 to Present" at
http://www.econ.yale.edu/~shiller/data htm. Using the first (calendar 1871) and last (April 2018 to March 2019)
twelve-month periods available in Dr. Shiller's data, per-share earnings (labelled "E" in Dr. Shiller's data) grew
from $0.40 to $128.33, i.e., at an arithmetic average rate of 3.98% per year. In real rather than nominal-dollars terms
(indexed by Consumer Price Index, and labelled "Real Earnings" in Dr. Shiller's data) historical growth has been
even slower: from $8.27 to $130.39, i.e., 1.88% per year.

[80] J.P. Morgan Asset Management, 24th Annual Edition, *Long-Term Capital Market Assumptions* at 68 (2019),
https://am.jpmorgan.com/gb/en/asset-management/gim/adv/ltcma ("In the U.S., our expected return [on equities]
increases to 5.60% from 5.25%, primarily due to the reduction in the drag from valuation normalization over the
forecast horizon."); *id.* at 71 (in table, building blocks to this 5.6% equity return estimate include 4.5% "EPS
growth").

[81] *See* Roger J. Grabowski and James Harrington, *Duff & Phelps' U.S. Normalized Risk–Free Rate Decreased from
3.5% to 3.0% Effective September 30, 2019*, Duff and Phelps (Oct. 16, 2019),
https://www.duffandphelps.com/insights/publications/valuation/us-normalized-risk-free-effective-september-30-
2019.

[82] *Coakley* Briefing Order P 42 n.84.

[83] *See* Aswath Damodaran, *Historical Implied Equity Risk Premiums*, Damodaran Online (2018),
http://pages.stern nyu.edu/~adamodar/New_Home_Page/datafile/histimpl.html (last visited Nov. 20, 2019).

effects of emissions regulations. EPA's CAPM cost of equity for U.S. electric utilities is 7.2%, based on an equity risk premium of 6.3%.[84] In the face of these independent estimates, Mr. McKenzie's claim as to what investors expect is simply not credible.

The sourcing and presentation of Mr. McKenzie's 9.72% growth estimate further undermines its credibility. While Mr. McKenzie always derives it using some version(s) of near-term growth estimates for specified dividend-paying members of the S&P 500, he cherry-picks his sources for those estimates—sometimes using IBES estimates alone,[85] sometimes using IBES in conjunction with Zacks,[86] and now, here, using IBES in conjunction with Value Line. Mr. McKenzie testifies that he incorporated Value Line growth rates here in order to "recognize[] the importance of examining multiple sources,"[87] but that does not explain why he dropped his prior use of Zacks, nor why he sometimes uses IBES alone. Mr. McKenzie does not break out how each source contributed to his combined estimate, nor what companies and growth rates were included. Instead, he merely reports 9.72% as his "Weighted average earnings growth rate from IBES and The Value Line Investment Survey for dividend-paying stocks in the S&P 500 based on data from http://finance.yahoo.com (retrieved Sep. 27, 2019) and www.valueline.com (retrieved Sep. 26, 2019)."[88] On this record, the Commission should draw the adverse inferences

---

[84] *See Documentation for EPA's Power Sector Modeling Platform v6 - November 2018 Reference Case,* EPA, 10-6 tbl. 10-2 (Mar. 21, 2019), https://www.epa.gov/airmarkets/documentation-epas-power-sector-modeling-platform-v6-november-2018-reference-case; *Clean Air Markets - Power Sector Modeling,* EPA (2019), https://www.epa.gov/airmarkets/clean-air-markets-power-sector-modeling.

[85] *See, e.g*., FPL Tariff Filing, Exhibit No. FPL-405, source note b ("Weighted average IBES growth rate for dividend-paying stocks in the S&P 500 based on data from http://finance.yahoo.com (retrieved Mar. 11, 2019).").

[86] *See, e.g*., System Energy Resources, Inc., Exhibit No. SER-0028, Cross-Answering Testimony of Adrien M. McKenzie, Exhibit No. SER-0039, source note b, *Ark. Pub. Serv. Comm'n*, Docket Nos. EL17-41-001, et al. (June 14, 2019), eLibrary No. 20190614-5216 ("McKenzie Cross-Answering Testimony") ("Average of weighted average earnings growth rates from IBES and Zacks for dividend-paying stocks in the S&P 500 based on data from www.zachs.com (retrieved May 29, 2019) and http://finance.yahoo.com (retrieved May 29, 2019).").

[87] JCP-200 at 59.

[88] JCP-205 at source note b.

that for the present filing's April-September 2019 study period, IBES and Zacks indicate lower

growth rates than Value Line, that Mr. McKenzie knew that, and that he chose to use Value Line

to boost his results.

However Mr. McKenzie arrived at his 12.13% equity market return, NJ Agencies are

prepared to demonstrate at a hearing that the reasonable, investor-held expectation as to the long-

term return on an economy-wide equity portfolio is significantly lower, and better represented

(as of current market conditions) by the 10.99% estimated by Dr. Griffing.

        c)   Mr. McKenzie's "size adjustment" further distorts his Capital
                 Asset Pricing Model.

Mr. McKenzie's supposedly "empirical" Capital Asset Pricing Model, JCP-205, modifies

each proxy result, mostly upwards, by adding or subtracting a "size adjustment" taken from Duff

& Phelps' Cost of Capital Navigator. As the authors of the Duff & Phelps adjustment explain,

however, they quantify this adjustment based on the difference between the high past returns

experienced by those small and generally *highly risky* companies that survived and the relatively

low returns predicted for them by Duff & Phelps' particular CAPM model.[89] Consequently, their

quantification does not fit low-risk electric utility proxies. Because it is quantified based on a

classic CAPM model, it is especially unfit for use in a ECAPM model that already includes a

largely duplicative boost to the returns attributed to low-risk electric utility proxies.

Furthermore, their quantification uses an historically realistic equity market risk premium—in

the recent version discussed by those authors, 7.07%, based on returns and treasury bond yields

over from 1926 through 2017.[90] Their calculated "size adjustment" is even more egregiously

---

[89] Roger Ibbotson and James Harrington, *Measuring the Relative Performance of Small Stock vs. Large Stock and the Cost of Equity* (Jan. 30, 2019), https://quickreadbuzz.com/2019/01/30/business-valuation-grabowski-harringtonsing-a-non-beta-adjusted-size-premium/.

[90] *See id.* at Exhibit 2 and accompanying source notes.

unfit for use in a CAPM or ECAPM model that uses Mr. McKenzie's grossly excessive equity market return.

     d)   Mr. McKenzie's Risk Premium study mischaracterizes past Commission rulings.

  Mr. McKenzie has collected Commission issuances that he characterizes as including 114 distinct "Authorized ROEs," each of which he treats as if it were the Commission's "best estimate[] of the cost of equity, however determined, at the time [it]…issued [its]… final order."[91] But as the Commission is well aware, in many of the collected orders, that is not what the referenced ROE represents.

  For example, consider the 10.32% ROE attributed to Next Era Transmission Midwest ("NEET Midwest") in November 2017 and the three 12.38% ROEs attributed to (respectively) Ameren in May 2011, DATC Midwest Holdings in June 2012, and ITC Holdings in June 2013. None of the four referenced orders can fairly be characterized as finding that equity cost those amounts on the day the order was issued. *NextEra Energy Transmission Midwest*, 161 FERC ¶ 61,140 (2017) referenced 10.32% only as having been MISO transmission owners' cost of equity as of the first half of 2015. It penciled in 10.32% as NEET Midwest's allowed ROE only because it found NEET Midwest "entitled to receive the then-current ROE that the Commission has approved for MISO transmission owners, as long as it remains a transmission-owning member of MISO." *Id*. P 34. Moreover, that order was issued after the Commission stated that *Emera Maine* had effectively vacated the opinion that had originally found 10.32% to be that past cost of equity,[92] and it was made expressly subject to the outcome of ongoing proceedings to consider a

---

[91] JCP-200 at 73; *see also* JCP-207 at 4-6 (listing 114 nominal ROEs).

[92] *See ISO New England Inc.*, 161 FERC ¶ 61,031, P 28 (2017).

lower ROE.[93] The three 12.38% ROE orders likewise merely extended to new MISO participants

the ROE that the Commission had previously approved for MISO transmission owners. That

extension did not represent any finding that equity still cost 12.38% as of the date of those

issuances. Instead, the issue of whether the previously-authorized 12.38% return has come to

exceed the current cost of equity was directed to other proceedings. *See, e.g., ITC Holdings*

Corp., 146 FERC ¶ 61,111, P 25 (2014), *reh'g denied*, 151 FERC ¶ 61,263 (2015), *review*

dismissed sub nom. Sw. Power Pool, Inc. v. FERC, No. 14-1053, 2016 WL 1272881 (D.C. Cir.

Mar. 2, 2016).

With no other changes, removing just the four aforementioned cases from Mr.

McKenzie's case collection (and adjusting accordingly his annual average allowed ROEs, annual

average risk premium, and "Risk Premium/Interest Rate Relationship" regression factor)

significantly reduces the Risk Premium result found using actual bond yields, to 9.68% instead

of 9.86%.

Consider also the "11.18%" result that Mr. McKenzie shows as having purportedly been

authorized in May 2014 in Docket No. ER14-1608—the highest authorized ROE that Mr.

McKenzie associates with any date since June 2013. The referenced order is *PJM*

Interconnection, L.L.C. and Public Service Electric & Gas Co., 147 FERC ¶ 61,142 (2014),

reh'g denied, 155 FERC ¶ 61,152 (2016). Mr. McKenzie maintains that in this decision, the

Commission found 11.18% to be its best estimate of the May 2014 cost of equity. Not so.

PSE&G had not requested any ruling or rate change concerning its allowed ROE (not even an

---

[93] *NextEra Energy Transmission Midwest*, 161 FERC ¶ 61,140, P 34 (2017) ("We grant NEET Midwest's request to use the MISO regional base ROE, *subject to the outcome* of the complaint proceedings in Docket Nos. EL14-12 and EL15-45." (emphasis added)).

incentive ROE adder, much less a change to its base ROE), and the Commission agreed that

ROE was not at issue:

> We deny PPANJ's and New Jersey BPU's request to reduce
> PSE&G's ROE because it is beyond the scope of this proceeding.
> PSE&G's ROE is not at issue in this proceeding, and a separate
> FPA section 205 proceeding or section 206 complaint would be
> necessary to change the ROE contained in PSE&G's formula rates.

Id. P 48. This case should not be used as a Risk Premium input.

A 2013 order that was recently added to Mr. McKenzie's risk premium case collection

further illustrates the cherry-picking that permeates Mr. McKenzie's Risk Premium case list.

Unlike his submissions of similar studies as recently as June, 2019,[94] Mr. McKenzie now

includes, as a purported February 2013 ROE authorization, a 10.5% ROE attributed to Cleco

Power LLC in Docket No. ER12-1378.[95] Review of that docket's eLibrary record shows that the

referenced issuance is (like many other entries in Mr. McKenzie's list) a non-precedential

settlement acceptance letter order, reported at 142 FERC ¶ 61,094 (Feb. 6, 2013). It makes no

reference to any specific ROE. Although the underlying settlement submission (eLibrary No.

20121221-5252) did include a nominal 10.5% ROE, it also specified, in the very same provision,

that all elements of the settlement rate were to be discounted by 10% upon taking effect and

potentially until the end of 2014.[96] Thus, the initial ROE authorized through acceptance of that

settlement (for both refund and prospective purposes) was not 10.5%, but 10.5% * 90% = 9.45%.

If the 10.5% is added as to the Risk Premium list of Authorized ROEs, then the 9.45% should be

---

[94] *See* McKenzie Cross-Answering Testimony, Updated Risk Premium Method (II), Exhibit No. SER-0041 at 5.

[95] JCP-207 at 5.

[96] *See id.* Attachment B at 5 (Article IV.1) ("The Settlement Formula Rate reflects a return on equity ("ROE") for use by Cleco of 10.5 percent, with an equity ratio of 53 percent and debt ratio of 47 percent. Cleco shall discount the charges produced by the formula rate by 10 percent until …").

added too.[97] In short, Mr. McKenzie's Risk Premium case list cannot reasonably be taken at face value.

Prior submissions to the Commission[98] have identified numerous generally similar mischaracterizations within Mr. McKenzie's case collection. As detailed therein, a corrected risk premium case collection should:

- Exclude 21 cases that merely referenced pre-existing base ROEs as having been previously accepted and in effect, but did not revisit their level — four that mentioned the pre-existing 11.18% PSE&G ROE, four that mentioned the pre-existing 12.38% or 10.32% MISO ROE, five that mentioned the pre-existing 11.14% New England ROE, and eight that mentioned pre-existing ROEs of Westar, BG&E, PHI Cos., or VEPCO.

- Add the 10.4% October 2006 result of Docket No. ER04-157 that applied for refund purposes, because that outcome also resulted from the referenced order (Opinion No. 489),[99] and for consistency with the other instances in Mr. McKenzie's data set where multiple values are taken from the same order because it led to different base ROEs for different periods.

- Add the 8.11% January 2017 litigated transmission ROE outcome for Potomac-Appalachian Transmission Highline ("PATH"),[100] for consistency with Mr. McKenzie's reliance on a "10.40%" value found in a February 2012 decision relating to the same entity. Although Mr. McKenzie tries to justify this different treatment on the ground that the later decision did not concern an operating utility, it is internally

---

[97] JCP&L cannot plausibly object to listing multiple ROEs resulting from a single settlement, where different ROEs apply at different times. Elsewhere in JCP-207, Mr. McKenzie attributes three different ROEs to a single settlement reached in Docket No. ER08-1457.

[98] *See, e.g.*, Berry Prepared Rebuttal Testimony at 103-114.

[99] *See Bangor Hydro-Elec. Co.*, Op. No. 489, 117 FERC ¶ 61,129, PP 2, 14, 80 (2006) (adopting "a base-level ROE of 10.2 percent" as "the rate effective [from] . . . March 1, 2004 . . . through the date of this order"), *on reh'g*, 122 FERC ¶ 61,265, P 22 (2008) (adjusting this base-level ROE to "10.4 percent").

[100] *Potomac-Appalachian Transmission Highline, LLC,* Op. No. 554, 158 FERC ¶ 61,050, P 270 (2017); *c.f.* Ex. NET-02904 at 5 (including PATH's ROE in Docket No. ER08-386).

inconsistent to consider that difference while ignoring other risk differences between SERI and the utilities at issue in the risk premium data set cases.

- Add the other recent case outcomes identified in Exhibit B at 24. Note that while some of these cases involved relatively low-risk transmission owners, that is not a valid reason to exclude them, given the lack of risk-comparability screening in the other cases used.

- Either exclude, or include together, the two different effective Cleco settlement ROEs in Docket No. ER12-1378, as discussed above.

- For consistency with the timing attributed to all other case outcomes, date the study's three outcomes related to Southern California Edison by the date when they issued, not the rate collection period.

With these corrections, a Risk Premium study based on Commission ROE allowances would produce a significantly lower indication of the study-period cost of equity—as preliminarily estimated in Exhibit B at 21, the indication would be 8.90%.

4. Because JCP&L fails to justify its proposed 10.3% Base ROE, a five-month suspension is warranted.

Even with all the upward distortions discussed in *supra* Parts III.C.1-3, the four-method average presented in the median-based column of JCP-202 is 10.03%. To rationalize climbing the last part of the ascent to its proposed 10.3% base ROE, JCP&L advances five arguments, none of which can reasonably be credited for purposes of the preliminary evaluation that must be made to determine whether a five-month suspension is appropriate.

First, JCP&L relies on a midpoint-based distillation of its proxy group results.[101] As noted in *supra* Part III.C.2, the midpoint is a statistically unsound measure, and in single-utility cases such as this, it is well-established policy to rely instead on medians. *See S. Cal. Edison Co.*

_____

[101] *See* Filing Letter at 8; JCP-200 at 20.

v. FERC, 717 F.3d 177 (D.C. Cir. 2013). The past rationale for using the midpoint in RTO-wide

cases imputed a correspondence between the extremes of the proxy group range and the cost of

equity for an RTO's least- and most-risky participating transmission owners.[102] Even assuming

that rationale's validity,[103] it has no relevance to JCP&L's single-utility filing, and no relevance

to the national proxy group and four-method approach presented by JCP&L.[104] Moreover,

JCP&L's attempt to use midpoints to boost the indicated four-method result depends on its

gaming of the tests for low and high outliers, as discussed in *supra* Part III.C.2.

Second, Mr. McKenzie maintains that JCP&L must compete for capital with members of

the New England and Midcontinent Regional Transmission Organizations, and should therefore

receive a base ROE that is comparable in method (i.e., midpoint-based) or level.[105] But it would

not be just or reasonable to confer on JCP&L a base ROE that exceeds its own cost of equity. In

the other dockets where transmission ROEs for New England and the Midcontinent are at issue,

the Commission has the opportunity to set ROEs that tracks costs, for the relevant study periods

and level of risk. If it does so, any remaining difference between JCP&L's cost-based allowed

ROE and those of participants in other RTOs will reflect risk and timing differences, as is

appropriate. A regimen under which each utility applying for an ROE allowance under Federal

Power Act Section 205 is permitted to invoke higher ROEs allowed by FERC to other,

---

[102] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,143 (2003), *on remand*, 106 FERC ¶ 61,302 (2004) ("*MISO*"), *aff'd in part sub nom. Pub. Serv. Comm'n of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005) ("*PSCKY*").

[103] The rationale is at issue elsewhere, and has recently been questioned by the Commission itself. *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, 166 FERC ¶ 61,207 (2019).

[104] It would be illogical to posit that averaging the most extreme results found for a large, national proxy group distribution would produce a better representation of JCP&L's cost of equity than results from the thick of the proxy group distribution. And because E/B ratios are not market-based, the highest and lowest proxy group E/B ratios are unrelated to JCP&L's E/B ratio (as can be confirmed by observing that ratio directly), even if E/B ratios were deemed to indicate the cost of equity.

[105] *See* JCP-200 at 17-19.

differently-situated utilities would produce an unreasonable upward ratchet. Moreover, to the

extent a comparison to other utilities' allowed ROEs is deemed relevant, the more important

comparison would be to ROEs allowed by state regulators, as the lion's share of rate-regulated

utility revenues and capital cost return comes through retail rather than wholesale rates.

According to the most recent quarterly report by Regulatory Research Associates,[106] for

generation-divested electric utilities, "the industry average ROE authorized in the first nine

months of 2019 was 9.49%, versus 9.38% in 2018."[107] These include a 9.00% allowed return for

Orange & Rockland Utilities, which RRA lists as approved by the New York Public Service

Commission on March 14, 2019.[108]

Third, Mr. McKenzie presents a DCF study for a "Non-Utility Group," Exhibit No. JCP-

204, in which (as he did for his utility proxy group, and in the DCF study of S&P 500 dividend-

paying companies that underlies his ECAPM equity market risk premium) he again discards

long-term GDP growth as a growth constraint. Mr. McKenzie instead continues to assume that

investors expect the proxy companies to grow forever at the rate estimated by analysts for the

next three to five years. This approach is no more persuasive for the companies in Mr.

McKenzie's non-utility proxy group than for utility companies. Moreover, the criteria used in

forming this proxy group are designed to ensure a high result, because the requirement of a high

"Financial Strength" rating from Value Line selects for companies with growing near-term

---

[106] Regulatory Research Associates ("RRA") is a subsidiary of S&P Global Market Intelligence, and its reports are followed by investors.

[107] S&P Global Market Intelligence, *RRA Regulatory Focus Major Rate Case Decisions — January-September 2019* at 4 (Oct. 17, 2019).

[108] *See In re Orange & Rockland Utils.*, No. 18-E-0067, et al., Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan at 12 (N.Y. Pub. Serv. Comm'n Mar. 14, 2019), http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={AB70D04D-917A-40A2-8E88-2D2271AD2BD5}.

earnings, and thus a high "g" in the DCF equation.[109] In addition, Mr. McKenzie has selected

non-utility stocks whose average risk, as indicated by Value Line betas, is significantly higher

than that of the electric utility proxies.[110] Even so, the median proxy result using this upward-

biased method is either 9.69% or 9.43% (depending on whether one applies Mr. McKenzie's

further-biased tests for outliers or the outlier tests proposed in the Briefing Orders).[111] Both of

these results are far below JCP&L's requested 10.3% base ROE.

Fourth, Mr. McKenzie argues that if the 9.39% and 9.29% DCF midpoints found in

Opinions Nos. 531 and 551 were too low to be reasonable (as found in those opinions), his

9.01% DCF median must also be too low to be reasonable.[112] This argument fails at the outset

because Opinion No. 531 has been vacated, and the corresponding aspect of Opinion No. 551

depends on Opinion No. 531 and has therefore been effectively vacated as well. Moreover, the

midpoint discussed in those vacated Opinions, for different study periods and proxy groups

whose credit ratings extended down to Moody's Baa3 and S&P BBB-, cannot reasonably be

compared to the median at issue here. Mr. McKenzie's Table JCP-3 controls for differences in

study period timing, but does not control for differences in the proxy group composition, nor for

the fact the midpoints referenced in Opinions Nos. 531 and 551 were meant to reflect the risks of

the subject RTOs' riskiest members. Even without correcting for the second of these three

differences, a comparison to Opinions Nos. 531 and 551 shows that the 10.3% base ROE sought

by JCP&L is greatly excessive. The medians in Opinion No. 531 and 551 were, respectively,

---

[109] *See* Robert Mitowski, *Financial Strength*, Value Line (Jan. 27, 2012) (one factor in determining Financial Strength ratings is "the level and direction of profits").

[110] *See* JCP-200 at 78, Table JCP-6 ("Non-Utility Group" betas average 0.73; "Electric Group" betas average 0.63).

[111] The referenced 9.69% median is shown in JCP-208 where it represents the average of two mid-distribution proxy results, 9.94% and 9.43%. Restoring the 5.70% DCF result for Walmart to the bottom of the distribution moves the median down one half-notch in the distribution of proxy results, to the 9.43% result for Church & Dwight.

[112] *See* JCP-200 at 45:19–47:10.

9.11% and 8.69%.[113] Since their underlying study periods, as Table JCP-3 shows, Baa utility

bond yields have declined 49 bp and 52 bp, respectively. Thus, this comparison points toward a

cost of equity, for a utility riskier than JCP&L, of 8.17% to 8.62%.[114]

Fifth, Mr. McKenzie maintains that the lower ROE indicated by accepted market-based

models of the cost of equity would constitute "[u]nresponsive, mechanical decision-making."[115]

Yet he simultaneously maintains that transmission infrastructure investment requires "regulatory

certainty," meaning "confidence that prior regulatory decisions are predictive of future

regulatory actions under similar facts."[116] The way to instill such investor confidence is to apply

sound, market-based equity cost estimation techniques, distilled through sound statistical

measures—not to follow Mr. McKenzie's example of dropping the GDP growth component of

the utility proxy DCF study, switching from CAPM to "ECAPM," turning to projected rather

than actual bond yields, turning to midpoints, etc., until a desired finding is reverse-engineered.

Whether or not the Commission is persuaded on these five points (which can be left for

hearing), the difference between the 10.3% base ROE proposed by JCP&L and the 9.27%

"Briefing Order Methodology" result embedded in JCP&L's own (upward-biased) studies

suffices by itself to require a five-month suspension. "[U]pon a finding that there is substantial

question as to whether a filing complies with applicable statutory standards the Commission has

consistently imposed a five-month suspension."[117] JCP&L's filing of a 10.3% base ROE and

10.8% total ROE—amid conditions that the financial press summarizes as a financial market in

---

[113] *See Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. System Operator, Inc.*, 153 FERC ¶ 63,027 Appendix B (2015) (Initial Decision in Docket No. EL14-12).

[114] That is, 9.11% – 0.49% = 8.62%; 8.69% – 0.52% = 8.17%.

[115] JCP-200 at 20.

[116] *Id.* at 5.

[117] *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374 (1982) ("*West Texas*").

which "[g]lobal investors are essentially flinging money at any creditworthy entity that might wish to borrow"[118]—certainly meets that standard. The preliminary, suspension-determinative analyses conducted by the Commission must be "realistic and consonant with current economic trends."[119] JCP&L's proposed base ROE is neither.

B.   *JCP&L has not carried its burden of proof to justify a 50 bp adder for RTO participation.*

In addition to the 10.3% base ROE discussed in *supra* Part II.A, JCP&L deems itself "entitled" to a 50 basis points ("bp") ROE adder, "for its voluntary participation in PJM."[120] But JCP&L has failed to carry its FPA Section 205 burden to justify this adder. It has submitted no evidence that the adder will benefit ratepayers by inducing future voluntary conduct. Such a showing is an essential element of JCP&L's burden of proof. *See* Order No. 679, 116 FERC ¶ 61,057, P 331 (2006) ("[T]he basis for the incentive is a recognition that benefits flow from membership in such organizations and the fact that continuing membership is generally voluntary"), *on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *clarified*, 119 FERC ¶ 61,062 (2007). *See also CPUC v. FERC*, 879 F.3d 966, 978 (9th Cir. 2018) ("incentives should only be awarded to induce voluntary conduct"), *on remand, Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038 P 42 (2019) (evaluating, as a case-specific factual matter, whether a 50 bp adder is justified as an inducement for PG&E to remain in the California ISO).

---

[118] Neil Irwin, *Interest Rates Just Keep Falling. Economic Orthodoxy Is Falling With Them*, N.Y. Times (July 5, 2019), at B2.

[119] *West Texas* at 61,375.

[120] JCP-200 at 23.

The Commission has indicated a willingness to review its transmission incentives policy and recently sought comment on this particular adder.[121] Just as JCP&L does here, the PJM Transmission Owners asserted that the ROE adder should be applied regardless of their reason for participating in an RTO.[122] The NJ Agencies, and others, have challenged the position taken by the PJM Transmission Owners and the matter remains pending.

Accordingly, for present preliminary evaluation purposes and application of the *West Texas* test for suspension, the adder should be viewed as not yet justified for application to JCP&L.

>   D.   *JCP&L's capital structure is incorrectly computed based on net long-term debt rather than gross long-term debt.*

JCP&L's calculation of its capitalization ratio incorrectly reflects net long-term debt rather than gross long-term debt. Based on the reference in the populated formula,[123] it appears JCP&L utilizes the total long-term debt balance reported on its FERC Form 1 (at page 112.24.c) in calculating the debt portion of its capitalization ratios. As reported in the FERC Form 1, that balance includes: (i) the Unamortized Premium of Long-Term Debt – Debit (Account 225) and (ii) less Unamortized Discount of Long-Term Debt – Debit (Account 225). The inclusion of these two adjustments effectively results in the use of "net long-term debt" rather than "gross long-term debt" in the capitalization ratio computation.[124]

JCP&L's use of net rather than gross long-term debt violates Commission policy. For purposes of computing the debt portion of the capitalization ratio, long-term debt (Account 221)

---

[121] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, Docket No. PL19-3 (Mar. 21, 2019).

[122] Initial Comments of the PJM Transmission Owners, at 14, *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, at 14, Docket No. PL19-3 (June 26, 2019).

[123] *See* Statement BK, Exhibit No. JCP-402, Attachment H-4A, Attachment 8, Excel cell K9.

[124] *See id.*, Attachment 8, line 14, col. 7.

should only be adjusted to exclude Reacquired Bonds (Account 222), and should include

Advances from Associated Companies (Account 223) and Other Long-Term Debt (Account

224). This "gross long-term debt" methodology is the Commission's preferred approach for

ratemaking purposes.[125] As the Commission explained in *Portland Natural Gas*, use of a net rate

debt approach "would misrepresent [JCP&L's] total debt obligation and improperly weight the

overall return,"[126] resulting in a capital structure that is more heavily weighted to the common

equity component, which artificially inflates the rate of return. In contrast, "using the total

principal outstanding, or gross proceeds, accurately represents the amount of debt outstanding

and allows for a more accurate picture of a company's capital structure, and, in turn, results in

the correct calculation of a company's cost of capital."[127]

Accordingly, the Commission should reject JCP&L's proposal and require it to utilize

gross long-term debt in the derivation of its capital structure, consistent with long-standing

Commission policy.

In JCP&L's 2020-populated formula, this adjustment reduces the gross revenue

requirement by approximately $68,000.

---

[125] *El Paso Nat. Gas Co.*, 145 FERC ¶ 61,040, P 583 (affirming Presiding Judge's finding that the gross proceeds method must be used to compute the debt ratio for El Paso's capital structure), *stay denied*, 145 FERC ¶ 63,017 (2013), *on reh'g*, 154 FERC ¶ 61,120 (2016); *Portland Nat. Gas Transmission System*, 142 FERC ¶ 61,197, P 263 (2013) ("[I]t is the gross proceeds of a company's long-term debt, i.e., the total principal outstanding, that belong in the capital structure analysis because that amount reflects the company's total obligation with respect to long-term debt.") ("*Portland*"), *reh'g denied*, 150 FERC ¶ 61,107 (2015); *Sys. Energy Res., Inc.*, 92 FERC ¶ 61,119, at 61,448-49 (2000), *aff'd*, 96 FERC ¶ 61,165, at 61,740-41 (2001) (affirming rejection of a proposal to use net proceeds in calculation of the long-term debt ratio, noting that "[i]t is the gross proceeds of a company's long-term debt, i.e., the total principal outstanding, that belong in the capital structure because this reflects the company's total obligation with respect to long-term debt.") ("*SERI*").

[126] 142 FERC ¶ 61,197, P 264.

[127] *Id.* P 265 (citing *SERI*).

D. ***JCP&L's proposed depreciation rates have not been adequately supported and require further evaluation.***

JCP&L's filing includes new depreciation rates together with brief testimony and a study that purports to support them. Depreciation rates and depreciation studies are very complex and data driven. NJ Agencies require the opportunity afforded by hearing and settlement procedures to be able to propound discovery and conduct a careful review of JCP&L's proposal.

Based on the limited review opportunity we have had thus far, it appears that the information presented in the depreciation study prepared by JCP&L witness John J. Spanos, *see* Exhibit JCP-302 ("JCP&L Depreciation Study"), is insufficient to allow for proper evaluation of the proposed depreciation rates. There is judgment involved in arriving at many of the parameters that drive depreciation rates. For instance, considerable judgment must be applied in selecting which survivor curves best fit the asset life characteristics of a given plant asset. And, while Section VII (Service Life Statistics) of the JCP&L Depreciation Study contains voluminous historical plant retirement data, along with the apparent Iowa survivor curve chosen (see pages 49 through 130 of 186), none of those pages identify the specific FERC account for which the data are presented.

Even if the data were labeled as to FERC account, the presentation is not sufficient to conclude that the survivor curves chosen for each plant asset account are indeed the best fit. In some instances, the data, as plotted, bear no resemblance to the selected curve. For example, on page 85 of 186, the survivor curve chosen (Iowa 65-R2) is clearly not representative of the underlying historical data. Typically in depreciation studies, the "best fit" survivor curves are selected after performing a statistical analysis that determines "goodness of fit" (e.g., sum of squared deviations, or "SSD"). The JCP&L Depreciation Study does not include an assessment

of the fit of witness Spanos' proposed survivor curves as compared to the actuarial data associated with other survivor curves.

Likewise, there is significant judgment involved in arriving at net salvage values. Section VIII (Net Salvage Statistics) of the JCP&L Depreciation Study contains voluminous cost of removal and salvage value data for the various plant asset accounts (see pages 131 through 143 of 186). But the report does not include either an identification of the FERC account with which the various data are associated, or labels sufficient to identify what the numbers represent. Assuming the last column on those pages represents the net salvage values (in percentage) for a given plant assets account, there are a number of outlier data points that appear to skew the average results. For instance, on page 137 of 186, which is presumed to be data associated with Account 356 (Overhead Conductors and Devices), during the period of 2009 through 2014, the cost of removal averaged more than double the original investment, and in one instance was more than triple the original investment (2011 showing a negative 331% net salvage value). The five-year average (2014-18), which may have been the primary driver of the proposed negative 50% net salvage value, shows negative 58%. However, the 2014 value of negative 203%, an obvious outlier, was included in calculating the average. Excluding this outlier cost of removal would reduce the negative 58% average to a negative 40% net salvage value. Reflecting a negative 40% net salvage value in place of the proposed negative 50% on Account 356 assets would reduce the proposed depreciation rate from 2.45% to 2.24%. Because Account 356 makes up almost 20% of JCP&L's transmission assets, this one change would have a significant impact on the transmission depreciation expense allowed in the proposed formula rate. In JCP&L's 2020-populated formula, this adjustment reduces the gross revenue requirement by

approximately $689,000. This is just one example of potential outlier data, which, if excluded, would make a considerable difference in the proposed depreciation rates.

In summary, due to the voluminous nature of the JCP&L Depreciation Study, it is impossible at this juncture to evaluate thoroughly the analyses performed thereunder, and to determine whether the resulting depreciation rates are just and reasonable. In order to fully assess the reasonableness of the resulting depreciation rates, customers and the Commission must be afforded the opportunity to review comprehensively and conduct discovery regarding the study. Accordingly, at this time the Commission should find that JCP&L has not demonstrated that this aspect of its formula rate is just and reasonable.

E.   *JCP&L's treatment of Accumulated Deferred Income Tax is unsupported.*

JCP&L's filing does not demonstrate that all transmission-related Accumulated Deferred Income Taxes ("ADIT") balances are properly credited against transmission rate base, and its proposed formula will inhibit confirming such crediting in the future. In the populated version of Statement BK, Attachment H-4A, dollar amounts are filled in as purporting to represent various types of "Only Transmission Related" ADIT, and associated Instruction 3 states that "ADIT items related only to Transmission are directly assigned to Column E." [128] Associated column headers indicate that this directly-assigned transmission-related ADIT represents an estimated subset of the non-functionalized ADIT that will be reported at specified Form 1 page and line locations.[129] But JCP&L has not included any ADIT items that are considered to be "Plant related," "Labor related," "Retail related," or "Gas, Prod or Other Related." JCP&L's filing

---

[128] Attachment 6 Part 2 of JCP&L's filing, lines 19 – 22 Attachment H-4A, page 2 of 5; *id*. at sub-attachments 5 through 5c and Instruction 3.

[129] *See* header for column B of Attachment H-4A, sub-attachment 5a pages 2-6 (citing Form 1 "p234.18.c," "p275.9.k," "p277.19 k," "p273.8 k," and "p267.h").

nowhere explains this omission, and NJ Agencies have not identified any information in the JCP&L workpapers that support it.

Consequently, JCP&L has not provided an explanation for how it determined that only a subset of the total ADIT balances shown in the cited locations of its FERC Form 1 are deemed to be "transmission related" and directly assigned as such. The ADIT balances on Attachment 5a Statement BK (Attachment H4-A) purport to be the transmission-only portions, whereas the balances in the FERC Form 1 are total balances for the electric system. Stakeholders reviewing JCP&L's formula population, now and in the future, are in effect being asked to take it on faith that JCP&L has properly identified the transmission-related portion of the system-wide ADIT balances.

If the ADIT amounts included in the column "Only Transmission Related" of Attachment 5a are intended to be the amounts directly assigned to transmission, then JCP&L needs to explain the purpose of the other columns (e.g., "Plant related," "Labor related," "Retail related," or "Gas, Prod or Other Related"). JCP&L also needs to explain how it directly assigned ADIT that is related to labor and plant. Assuming JCP&L did so by using allocation factors equivalent to those produced by the template, it is unclear how customers are to be able to verify that JCP&L has properly applied those factors to the total unallocated electric ADIT balances.

Furthermore, if any adjustments are made to an annual update that impacts the transmission plant allocator and/or the wages and salaries allocator, the effect of such adjustment will not automatically flow to the ADIT components as the ADIT values on Attachment 5a have been hardcoded. A misalignment between the allocators utilized in the determination of the ADIT balances and those produced by the template could result in an over or under-recovery of the transmission revenue requirement.

- 44 -

In addition, JCP&L has attempted to identify a subset of items that will be excluded from ADIT. On Attachment 5 – ADIT Summary, Note A states that "Beginning/Ending Average with adjustments for FAS143, FAS106, FAS109, CIACs and normalization to populate Appendix H-4A, page 2, lines 19-23, col. 3 for accounts 281, 282, 283, 190, and 255, respectively." Since JCP&L has not included all items in each ADIT account and clearly functionalized each item, it is unclear what types of items JCP&L may try to include in the future that should be excluded. This footnote attempts to limit the items that should be excluded from ADIT. For transparency purposes, JCP&L should functionalize each ADIT item in order to avoid the inclusion of ADIT items in the future that are not applicable to transmission.

For these reasons, the Commission should require JCP&L to explain the basis for the transmission ADIT values reflected in its Proposed Formula Rate template, and, more specifically, direct JCP&L to provide a complete explanation in its Formula Rate Template for how it determines the ADIT balances allocated to transmission.

Based on a cursory review of the limited data included in JCP&L's populated template, it appears that there are several ADIT items that may have been inappropriately allocated to transmission. The table below lists some of these ADIT items:

Account/Row No.	ADIT Item	Issue with ADIT:
190/Row 56	Asset Impairment	JCP&L has not justified a finding that this asset impairment is associated with a transmission asset.
282/Row 98	Asset Impairment	JCP&L has not justified a finding that this asset impairment is associated with a transmission asset.
282/Row 104	Other	JCP&L has failed to identify what this line item represents; therefore, customers are unable to determine whether it is appropriate.
283/Row 146	GR&F Tax Audit	This ADIT item appears to be related to a Gross Receipts & Franchise Tax Audit shown on JCP&L's FF1 page 278 – Account 254 – Regulatory Liabilities, Line 5. As gross receipts are excluded from the formula rate template (per

		Attachment H-4A JCP&L, page 3 of 5, Line 24), an audit associated with Gross Receipts should also be excluded.
283/Row 148	PJM Payable/Receivable	This ADIT item appears to be related to a PJM Payable shown on JCP&L's FF1, Page 278 - Account 254 – Regulatory Liabilities, Line 21. There do not appear to be any revenues or expenses associated with this payable that are included in the formula rate; the item should therefore be excluded from ADIT per Order 144[130].
283/Row 149	PJM Unbilled Deferral	This ADIT item appears to be related to an Unbilled Revenue: PJM Unbilled Deferrals shown on JCP&L's FF1, Page 278 - Account 254 – Regulatory Liabilities, Line 21. There do not appear to be revenues or expenses associated with this unbilled deferral that are included in the formula rate, and it therefore should be excluded from ADIT per Order 144[131].
283/Row 155	Vegetation Management	This ADIT item appears to be related to a Vegetation Management – Distribution shown on JCP&L's FF1, Page 232 – Account 182.3 – Regulatory Assets, Line 28. To the extent that this asset is related to the distribution function and the associated expenses are excluded from the formula rate, the corresponding ADIT should also be excluded per Order 144[132].

---

[130] Order No. 144 in which the Commission stated "[t]he central rationale for tax normalization is that tax normalization matches the recognition in rates of the tax effects of the costs and revenues of utilities to the recovery in rates of the associated costs and revenues themselves. In terms of expenses only, tax normalization matches tax benefits with cost responsibility." (*Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,525-26 (1981)). The Commission also stated that, "[a]ll costs should be allocated among customers and over time in a manner that matches the burdens of costs with the benefits received." (*Id*. 31,526). The Commission further stated that "[t]ax normalization…reflects as income tax deductions or additions only those *expenses and revenues that are themselves reflected in the cost of service.*" (emphasis added). *Id.* at 31,530.

[131] *Id.*

[132] *Id.*

F. **_JCP&L's treatment of Excess Accumulated Deferred Income Tax is likewise unsupported._**

The issues raised above[133] concerning ADIT also apply to JCP&L's proposed functionalization of the *excess* accumulated deferred income taxes ("EDIT") that resulted from the 2017 Tax Cuts and Jobs Act ("TCJA") reduction in the federal income tax rate. JCP&L's proposed template includes Attachments 15 and 15a that purportedly support the calculation of EDIT. Attachment 15 summarizes the income tax adjustments for "Tax adjustment for Permanent Differences & AFUDC Equity," "Amortized Excess Deferred Taxes," and "Amortized Deficient Deferred Taxes." But JCP&L has provided no support or explanation for its derivation of the EDIT balances listed on Attachment 15a under the column labeled "EDIT Transmission Allocation." JCP&L's allocation and functionalization of EDIT is therefore unsupported.

Attachment 15a does include some limited detail for the "Amortized Excess Deferred Taxes" line item the amount that is reflected on Attachment 15, however, the amortization amount computed on Attachment 15a seems to include both the excess and deficiencies. This renders unclear the purpose of the Attachment 15 line that is labeled as "Amortized Deficient Deferred Taxes," which JCP&L has populated with a zero value.

The Commission should require JCP&L to provide all supporting workpapers showing how it computed each of the components of the EDIT. In addition, the Company should be directed to provide the basis for allocating such amount to the transmission function, and to implement formula improvements such that transparent reconciliation to Form 1 balances will be ongoing.

---

[133] *See supra* Part II.E.

G.   *JCP&L's use of quarterly balances for ADIT proration is unreasonable.*

The Commission's regulations show how future depreciation should be estimated for purposes of estimating a future income tax expense. They provide that the reserve for deferred tax liability should be measured as of the first day of the forecasted period, plus a pro-rata portion of any projected increase or decrease to the reserve expected during the forecasted period.[134] They further provide that the pro-rata portion of projected ADIT activity should be determined by multiplying the activity by a fraction, the numerator of which is the number of days remaining in the period when such activity is to be accrued, and the denominator of which is the total number of days in the period.[135]

In Attachment 5b of the populated formula rate template, JCP&L applies the proration method to ADIT activity as follows, applying quarterly measures:

Quarter	ADIT Activity	Days in Period Ratio	Pro-Rata
1st Quarter	(6,548,368)	276/365	(4,951,643)
2nd Quarter	(1,537,447)	185/365	(799,254)
3rd Quarter	(1,481,491)	93/365	(377,476)
4th Quarter	(1,458,274)	1/365	(3,995)
TOTAL	(11,025,580)		(6,132,368)

As shown, JCP&L's application of the proration method to quarterly ADIT activity yields a total annual ADIT activity of $(6,132,368).

However, this quarterly application of the proration method is unreasonable because JCP&L's formula uses (as it should) thirteen monthly balances. A monthly proration, consistent with the formula's use of monthly balances, produces a more accurate, and larger, forecast of

---

[134] *See* 26 C.F.R. §§1.167(l)-1(h)(6)(ii).

[135] *See id.*

estimation-period total ADIT. The following table illustrates this difference, by estimating

JCP&L's annual ADIT activity on a monthly basis:

Month	ADIT Activity	Days in Period Ratio	Pro-Rata
January	(2,182,789)	335/365	(2,003,382)
February	(2,182,789)	306/365	(1,829,955)
March	(2,182,789)	276/365	(1,650,548)
April	(512,482)	246/365	(345,399)
May	(512,482)	215/365	(301,873)
June	(512,482)	185/365	(259,751)
July	(493,830)	154/365	(208,356)
August	(493,830)	123/365	(166,414)
September	(493,830)	93/365	(125,825)
October	(486,091)	62/365	(82,569)
November	(486,091)	32/365	(42,616)
December	(486,091)	1/365	(1,332)
Total	(11,025,576)		(7,018,020)

As shown, JCP&L's application of the proration method to monthly ADIT activity yields

a total annual transmission ADIT activity of $(7,018,020). JCP&L's use of quarterly rather than

monthly ADIT activity for purposes of measuring ADIT activity causes total annual transmission

ADIT activity to be understated by $(885,652,652)[136], which artificially inflates JCP&L's

transmission rate base by the same amount. The Commission should reject this unreasonable

approach and require JCP&L to use monthly ADIT accrual for purposes of measuring prorated

annual transmission ADIT activity.

In JCP&L's 2020-populated formula, as shown in Exhibit C at 1, this adjustment reduces

the gross revenue requirement by approximately $91,802.

---

[136] (7,018,020) – (6,132,368) = (885,652).

H. JCP&L has not accounted for rate base credits associated with customer-contributed capital.

The Commission has found that in determining transmission revenue requirements, customer-contributed capital should be offset against rate base, because shareholders should not receive a return on capital furnished by ratepayers. One form of cost-free capital, referred to as "unfunded reserves," reflects funds collected from customers for future contingencies. The Commission has found that:[137]

> Utilities may accrue monies through charges to operation and maintenance expense to fund contingent liabilities, and such accrued reserves should be deducted from rate base until they are used to fund the liabilities because such reserves represent a cost-free form of financial capital from customers to utilities, not unlike accumulated deferred income taxes (ADIT), which are deducted from rate base.

Unfunded reserves are typically recorded to several FERC accounts: (1) Account 228.1 – Accumulated Provision for Property Insurance; (2) Account 228.2 – Accumulated Provision for Injuries and Damages; (3) Account 228.3 – Accumulated Provision for Pensions and Benefits; (4) 228.4 – Accumulated Miscellaneous Operating Provisions; (5) Account 232 – Accounts Payable (6) Account 242 – Miscellaneous Current and Accrued Liabilities; and (7) Account 253 - Other Deferred Credits.

JCP&L's Formula Rate Template Attachment H-4A includes two line items that appear to be for the inclusion of unfunded reserves as rate base offsets: (1) the line item labeled as "Unfunded Reserve Plant-related (enter negative)" and (2) the line item labeled as "Unfunded Reserve Labor-related (enter negative)."[138] JCP&L does not explain the nature of the unfunded

---

[137] *Transource Wis., LLC*, 149 FERC ¶ 61,180, P 43 (2014), *reh'g denied*, 154 FERC ¶ 61,010 (2016); *see also NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009, P 125 (2016).

[138] *See* Attachment H-4A, Statement BK, page 2, lines 24 and 25.

reserves that are to be included in those designated line items other than through a vague reference to Attachment 14 of the Formula Rate Template.[139] That attachment appears to include an allocation of unfunded reserves from FERC Accounts 228.1, 228.2, 228.3, 228.4 and 242, with corresponding page references to FERC Form 1 for each account.

While JCP&L's Formula Rate Template does provide a placeholder to account for unfunded reserves as a rate base offset, it appears that, in practice, JCP&L is proposing to implement its own Formula Rate Template incorrectly. For example, the version of the Formula Rate Template included in JCP&L's Filing[140] that is populated with projected data for 2020 shows a zero balance for unfunded reserves. However, based on review of JCP&L's 2018 FERC Form 1, there were significant balances recorded to some of the accounts noted above that typically hold unfunded reserves. Specific balances are shown in the table below:

FERC Account	2018 End-of-Year Balance
Account 228.2 – Accumulated Provision for Injuries and Damages (Page 112, Line 28)	$4,773,214
Account 228.3 – Accumulated Provision for Pensions and Benefits (Page 112, Line 29)	$227,999,377
Account 232 – Accounts Payable (Page 112, Line 38)	$181,139,989
Account 242 – Miscellaneous Current and Accrued Liabilities (Page 113, Line 48)	$59,283,167
Account 253 – Other Deferred Credits (Page 113, Line 59)	$557,458,644
Total	$1,030,654,391

The Commission should require JCP&L to explain why none of the amounts contained in these accounts qualify as unfunded reserves that would have accrued from expenses recovered

---

[139] *See* JCP-100 at 8:7.

[140] *See* Attachment 6 Part 2.

under its formula rate template. Examples of the types of accrued expenses that would be recorded to these accounts and that could be considered as unfunded reserves include: (i) amounts charged to A&G or operation and maintenance ("O&M") expense accounts associated with year-end vacation accruals, sick pay accruals, incentive compensation accruals, severance accruals, and deferred compensation; (ii) amounts set aside for losses through accident, fire, flood, or other hazards to the utility's own property or property leased from others, not covered by insurance; and (iii) amounts charged to FERC Account 925 to fund probable liability for injuries and damages, such as workmen's compensation.

As the inclusion of unfunded reserves as an offset to rate base is clearly required by Commission policy,[141] JCP&L's failure to effectuate the requisite offset is unjust and unreasonable.

I. JCP&L's treatment of regulatory assets and liabilities lacks transparency.

The regulatory assets and liabilities included in JCP&L's FERC Form 1, pages 232 and 278 include numerous references to "Various" for amounts "Written off During the Quarter/Year Account Charged" or "Account Credited" without providing footnotes on the following pages to identify the FERC Account(s) and associated amounts charged or credited. JCP&L's reporting lacks transparency and does not allow customers to determine whether JCP&L has included amounts related to unapproved regulatory assets and liabilities in the formula rate template.

Such transparency is required by Commission Order No. 552, which states: [142]

---

[141] *See Xcel Energy Sw. Transmission Co., LLC,* 149 FERC ¶ 61,182, P 97 (2014) ("XEST"); *Transource Wis., LLC*, 149 FERC ¶ 61,180, P 43 (2014), *reh'g denied*, 154 FERC ¶ 61,010 (2016); *see also NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009, P 125 (2016) ("[I]n the past the Commission has directed entities to revise their formula rate templates to 'credit any unfunded reserves against rate base.'"). Working capital includes capital supplied by investors (i.e., cash working capital, prepayments, and materials and supplies) and capital supplied by customers (i.e., unfunded reserves).

[142] *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of*

> As proposed, Account 182.3 would include costs incurred and charged to expense which have been, or are soon expected to be, authorized for recovery through rates and which are not specifically provided for in other accounts. Regulatory assets would be recorded by charges to Account 182.3 and credits to Account 407.4. Amounts in Account 182.3 would be amortized to Account 407.3 over the appropriate rate recognition period.

Thus, the Commission has made clear that rate recovery from the operation of these accounts requires prior approval.

The lack of transparency is particularly troubling where the Board has ordered JCP&L to preserve a rate question for the Commission's review and provide copy of the Board Order to the Commission. In a proceeding before the Board, JCP&L and Rate Counsel both agreed that a question about rate treatment of the property sale proceeds would be best addressed by the Commission. JCP&L attached a complete copy of the Order to witness Michael Falen's testimony. However, Mr. Falen does not faithfully and transparently tee the relevant regulate issue up to the Commission. He states only that the Order is included among his testimony exhibits because, among other reasons, JCP&L was ordered to attach it.[143] He does not elaborate on what the issue in the Order was or further discuss how or why it is substantially connected to either his testimony or to the formula rate proceeding as a whole. Moreover, the section of testimony immediately preceding Mr. Falen's brief acknowledgement of the Board Order involves cost allocation of services, and does not appear to be related to the Board Order. NJ Agencies reserve their rights to pursue this issue further in this and other proceedings.

1990 and Regulatory-Created Assets and Liabilities and to Forms Nos. 1, 1-F, 2 and 2-A, Order No. 552, FERC Stats & Regs. ¶ 30,967 (1993).

[143] JCP-400 at 14-15 ("Q. IS THERE ANYTHING ELSE THAT YOU WISH TO COMMENT ON? A. Yes. Attached hereto as Exhibit JCP-407 is a copy of an order issued by the New Jersey Board of Public Utilities in NJ BPU Docket No. EM19030357. Q. WHY ARE YOU INCLUDING THIS ORDER AS AN EXHIBIT TO YOUR TESTIMONY? A. In the order, the New Jersey BPU directed JCP&L to, among other things, provide FERC a copy of this Order in that next rate proceeding.").

The Commission should require JCP&L to support its proposed formula rate template with the additional detail discussed above, and, more specifically, direct JCP&L to demonstrate transparently that the template and formula rate inputs do not include any unapproved regulatory assets or liabilities. The proposed formula rate template is unreasonable insofar as it imports values from this opaque accounting.

J.   JCP&L's proposed formula fails to transparently exclude inapplicable taxes.

JCP&L's proposed formula rate includes Attachment 7, "Taxes Other than Income Calculation," which provides calculations that purport to support the formula's collection of non-income taxes. It fails to provide expressly for the exclusion from transmission rates of taxes that are not levied on the provision of transmission service. For example, JCP&L's FERC Form 1 shows taxes such as New Jersey "Other/S&U" taxes (presumably meaning "sales and use" taxes), and Pennsylvania "Franchise Tax."[144] At least some of these taxes are then imported into the populated formula. Indeed, the "Other Taxes" section of Attachment 7 expressly includes "Sales & Use Tax."

To the extent these amounts taxes represent taxes or fees levied on services provided by JCP&L, they appear to be predominantly or entirely incident to the provision of retail service, which is an indication that they should be excluded from the transmission revenue requirement.[145] To the extent they represent taxes levied on an entity supplying goods or services to JCP&L, they should be excluded from the "other taxes" contribution to the formulaic revenue requirement on a different ground. When utilities record the purchase of goods and services, they typically also include the tax expense within the total amount of those goods and services. Where

---

[144] JCP&L FERC Form 1 at page 262.

[145] The "NJ Corp. Business Tax" shown there may also be excludable on that basis.

that is the case, a separate line item addition to the formulaic revenue requirement would result in double-recovery of the sales and use tax portion of these goods and services.

Relatedly, at Attachment 7 line 4a, "Gross Receipts Tax" is identified as if it were properly included in the revenue requirement. Attachment H-4A, Statement BK at page 3 (at line 24) then brings the Gross Receipts Tax amount forward into the principal revenue requirement formula, in an ambiguous fashion. A printed version of the formula seems to indicate that annual value of Gross Receipts Tax will be added to other non-income taxes to compute line 27, "Total Other Taxes." On the other hand, inspection of the Excel version of the formula at tab "Attachment H-4A JCP&L" (cell I160) reveals that that cell is hard-coded with a zero value, thereby excluding Gross Receipts Tax from the revenue requirement. That is the right result, because whether or not such taxes are collected in a given year, whatever Gross Receipts Taxes are collected presumably will relate entirely or predominantly to services other than unbundled transmission service furnished and priced under the PJM OATT. The formula's path to this correct end result should be more transparent.

The Commission should require JCP&L to include a new section within Attachment 7 showing "Currently Excluded" Taxes Other than Income Taxes (that are not properly recoverable in the transmission Formula Rate), and reflect those exclusions in the main body of Attachment H-4A. In addition, JCP&L should be required to insert additional footnotes that explicitly state:

A Other taxes that are incurred through ownership of plant including transmission plant will be allocated based on the Gross Plant Allocator. If the taxes are 100% recovered at retail, they will not be included.

B   Other taxes that are incurred through ownership of only general or intangible plant will be allocated based on the Wages and Salary Allocator. If the taxes are 100% recovered at retail they will not be included.

C   Other taxes that are assessed based on labor will be allocated based on the Wages and Salary Allocator. If the taxes are 100% recovered at retail they will not be included.

D   Except as provided for in A, B and C above, other taxes that are incurred and (1) are not fully recovered at retail or (2) are directly or indirectly related to transmission service will be allocated based on the Gross Plant Allocator; provided, however, that overheads shall be treated as in footnote B above.

E   Prior period adjustments will be excluded in the first year of the formula's operation and in the true-up reconciliation for the first year.

Items A through D will provide needed transparency; item E is needed for a reasonable transition from a stated to a formulaic revenue requirement.

K.   *JCP&L fails to account for revenue credits associated with distribution under-build facilities.*

JCP&L, like many investor-owned utilities, has distribution under-build facilities[146]— i.e., distribution facilities attached to its transmission poles and towers, often for economic, environmental or aesthetic reasons. From an economic perspective, a utility may avoid the need for the construction of additional distribution poles if it can readily utilize existing transmission facilities. JCP&L's distribution customers reap the benefits of avoiding having to make additional investments in the distribution system as a result of these under-builds. This benefit to JCP&L's distribution function is not recognized in its proposed Formula Rate Template—but

---

[146] *See, e.g., In the Matter of the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Montville-Whippany 230 kV Transmission Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public*, Petition at 7-8, No. E015030383 (N.J. Bd. Pub. Utils. Mar. 27, 2015) (discussing planned under-build configuration for pre-existing 34.5 kV circuits related to its Montville-Whippany Transmission Project).

should be. JCP&L should be required to impute the value of this benefit to the distribution

function and develop a revenue credit against the transmission function to reflect it.

Additionally, attaching distribution facilities to transmission poles and towers may result

in transmission customers incurring higher costs for its transmission investments. For example,

the transmission poles and towers may require certain sizing or configuration in order to

accommodate the additional distribution facilities to be attached to such poles and towers.[147]

This change to the construct of the transmission poles and towers would generally imply a higher

level of investments to be incurred by transmission customers. Unless these additional costs are

offset by revenue credits in the transmission formula, JCP&L transmission-only customers will

be subsidizing customers utilizing JCP&L's distribution facilities.

L.   JCP&L's proposed interest rate for true-up refunds and surcharges is unjustified.

JCP&L proposes that differences between projected and actual rates bear interest at a rate

equal to either: "(i) JCP&L's actual short-term debt costs capped at the interest rate determined

by 18 C.F.R. § 35.19a;" or, in the event that JCP&L does not have short-term debt "(ii) the

interest rate determined by 18 C.F.R. § 35.19a." Attachment H-4A, Attachment 13, page 1 of 1.

The result is that if JCP&L's short-term debt rate is lower than the rate established under Section

35.19a, any refunds to customers by JCP&L will bear a lower interest amount than the

Commission's regulations otherwise would provide.

JCP&L (Filing Letter at 4) asserts that its proposed formula "is similar to multiple other

forward-looking transmission formula rates employed by other transmission owners in the PJM

---

[147] *See, e.g., In the Matter of the Petition of Jersey Central Power & Light Company Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Montville-Whippany 230 kV Transmission Project is Reasonably Necessary for the Service, Convenience or Welfare of the Public*, Decision and Order at 19, No. E015030383 (N.J. Bd. Pub. Utils. Nov. 21, 2017) ("underbuild construction will increase structure height by approximately twenty (20) feet").

region," and cites three specific examples: the formulas addressed in *PJM Interconnection,
L.L.C. and Potomac Elec. Power Co.*, 167 FERC ¶ 61,192 (2019) ("*Pepco*"); *PJM
Interconnection, L.L.C. and Northeast Transmission Development, LLC*, 155 FERC ¶ 61,097
(2016) ("*NTD*"); and *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009 (2015)
("*NEET West*"). In all three examples, however, true-up refunds to customers bear interest at the
18 C.F.R. § 35.19a rate, not any lower company-specific short-term debt rate.[148] JCP&L also
makes a broader reference to Midcontinent ISO formula rate protocols.[149] As the Commission
may confirm by reviewing Attachment O of the Midcontinent Independent System Operator
tariff, the convention there is that true-up refunds to customers likewise bear interest at the rate
established under 18 C.F.R. § 35.19a.[150]

JCP&L controls its forward-looking estimates and therefore can control the direction in
which true-ups run. It will be impractical (if not impossible) for customers to timely demonstrate
that those estimates are unreasonable, so as to force a change to those estimates in advance of the
true-up. Consequently, interest rates for refunds set below the standard 18 C.F.R. § 35.19a rate
may provide JCP&L with an incentive to over-project costs in its "Projected Transmission
Revenue Requirement," and thereby compel customers to, in effect, loan funds to JCP&L at a
low interest rate.

A low interest rate on refunds is especially problematic because refunds would not be
paid to the specific customers who advance funds to JCP&L based on its projection. Rather, the
difference between the projected and actual annual revenue requirement would be credited

---

[148] *See Pepco* P 6; *NTD* P 131; NextEra Energy Transmission West, LLC, Tariff Filing, Filing Letter at 8, *NextEra Energy Transmission W., LLC*., Docket No. ER15-2239-000 (July 22, 2015), eLibrary No. 20150722-5051.

[149] Filing Letter at 4.

[150] Some MISO transmission owners also employ a lower interest rate based on their short-term debt rate, but only to limit true-up *surcharges* paid by customers. For refund to MISO customers, the 18 C.F.R. § 35.19a rate applies.

against a future year's overall transmission revenue allowance, two years later. *See* Filing Letter

at 5. This aspect of JCP&L's proposal introduces additional incentives and opportunities for

gaming, based on changing load ratios from the time when customers are billed projection-based

rates to the time when the true-up credit flows back.

JCP&L has not explained why it should be entitled to limit refunds by applying an

interest rate below that established under 18 C.F.R. § 35.19a, and thus has failed to demonstrate

that its proposal is just and reasonable.

M.   Aspects of JCP&L's Proposed Formula Rate Protocols are Unjust and Unreasonable

Based on NJ Agencies' preliminary review, JCP&L's formula rate protocols raise at least

two concerns, each addressed below.

1.   The Commission should reject JCP&L's proposal to single-issue rate filings.

The proposed protocols provide that "JCP&L may, at its discretion and at a time of its

choosing, make a limited filing pursuant to FPA section 205 to modify stated values in the

Formula Rate for (a) amortization and depreciation rates, (b) Post-Employment Benefits Other

Than Pensions rates, or (c) to make any changes required in a final FERC rulemaking associated

with excess/deficient deferred income taxes."[151] JCP&L attempts to limit the scope of those

potential future proceedings to "whether such proposed change(s) is just and reasonable, and it

shall not address other aspects of the Formula Rate."[152] The Commission should reject this

effort to limit the scope of the issues that can be addressed in future FPA section 205 filings.

---

[151] Attachment H-4B, Annual True-up, Information Exchange, and Challenge Procedures, Proposed Sec. IV.I

[152] *Id.*

The Commission generally disfavors single-issue ratemaking.[153] As it has previously explained, "[t]he Commission has an obligation to ensure the justness and reasonableness of the total rate and it would be improper to allow a utility to raise rates by selectively focusing only on particular elements of its costs, while avoiding scrutiny of other rate inputs."[154] Here, JCP&L seeks to do exactly that, while proposing to limit the issues to be considered in those single-issue filings. The Commission has already rejected similar attempts,[155] noting that "[its] policy will be to reject provisions in formula rate protocols that purport to limit the scope of Commission review of future filings under section 205 of the FPA in the absence of special circumstances that warrant departure from that policy on a case-by-case basis."[156]

As support for its proposal, JCP&L points to several cases in which the Commission has accepted single-issue filings in prior cases.[157] But those cases merely confirm that there may be exceptions to the general rule against single-issue rate filings where "special circumstances" warrant relief. And, in any case, NJ Agencies do not challenge JCP&L's ability to propose limited changes to its rates. Rather, NJ Agencies oppose JCP&L's attempt to constrain the scope

---

[153] *See, e.g., Indicated RTO Transmission Owners*, 161 FERC ¶61,018, P 13 (2017) ("The Commission generally does not permit single-issue ratemaking"); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, P 766, *order on reh'g and clarification*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (referencing the Commission's "long-standing policy concerning single-issue rate adjustments").

[154] Order No. 890, P 767.

[155] *ATX Sw.,* 152 FERC ¶ 61,193, P 85; *PJM Interconnection, L.L.C.*, 158 FERC ¶61,089, P 96 (2017) (rejecting a limited-issue ratemaking provision in Transource Maryland, LLC's and Transource Pennsylvania LLC's formula rate protocols), *reh'g denied*, 164 FERC ¶ 61,015 (2008); *NextEra Energy Transmission Midwest, LLC*, 161 FERC ¶ 61,140, P 52 (2017); *NextEra Energy Transmission N.Y., Inc.*, 161 FERC ¶ 61,138, P 68 (2017), *reh'g denied*, 162 ¶ 61,186; *NextEra Energy Transmission Sw., LLC*, 161 FERC ¶ 61,139, P 56 (2017), *reh'g denied*, 162 FERC ¶ 61,186 (2018); *NextEra Energy Transmission MidAtlantic,LLC*, 161 FERC ¶ 61,141, P 49 (2017); *see also Midwest Power Transmission Ark., LLC*, 161 FERC ¶ 61,051, P 18 (2017) (instituting section 206 proceeding concerning single-issue ratemaking provision); *S. Cent. MCN LLC*, 161 FERC ¶ 61,053, P 38 (2017) (similar).

[156] *Transource Kan., LLC* 163 FERC ¶ 61,176, P 16 (2018).

[157] *See* Filing Letter at 9-10 (collecting cases).

of those proceedings. Put simply, the scope of future section 205 filings should be addressed when such filings are made,[158] and single-issue filings should be permissible only where there has been a showing of special circumstances warranting departure from established policy. Here, no such circumstances have even been alleged—let alone proven. Accordingly, the Commission should direct JCP&L to strike this provision from its protocols.

> 2.   JCP&L's proposal does not provide sufficient time to review and examine its projected transmission revenue requirement.

JCP&L proposes to publish its projected transmission revenue requirement on or before October 31 of each calendar year, and asks that it take effect two months later, on the following January 1. JCP&L's proposal thus provides only a two-month window in which to review the projected formula rate, to challenge it (if necessary), and to obtain relief prior to the rate going into effect. JCP&L asserts that the budget process of its parent company, FirstEnergy, "makes it extremely difficult for JCP&L to complete the [projected transmission revenue requirement] any earlier than the end of October."[159] But this bare assertion is insufficient to justify JCP&L's proposal. Indeed, FirstEnergy subsidiaries Potomac-Appalachian Highline, LLC and American Transmission Systems Inc. use September 1 and October 15 publication deadlines, respectively, for their projected transmission revenue requirements. *See* PJM Interconnection, L.L.C., Open Access Transmission Tariff, Attachs. H-19, H-21B. . Moreover, Mr. McKenzie states that "JCP&L's plans call for additional transmission capital investment to address system needs, including $175 million in 2020."[160] JCP&L does not adequately explain how, given that it

---

[158] *See ATX Sw.*, 152 FERC ¶ 61,193, P 85 (2015).

[159] Filing Letter at 9.

[160] JCP-200 at 4.

already has a basis for such a specific forecast of annual rate base additions, it is unable to

provide a more timely projection of its next-year transmission revenue requirement.

Absent some further showing of a justification, NJ Agencies urge the Commission direct

JCP&L to publish its projected revenue requirement at an earlier date, preferably September 1,

but in any case, no later than October 15.

III. REQUEST FOR MAXIMUM FIVE-MONTH SUSPENSION AND A REFUND EFFECTIVE DATE

Under the well-established *West Texas*[161] rule, when 10 percent of a proposed rate

increase appears to be excessive on preliminary review, the rate increase is considered

"substantially excessive" and is suspended for five months. This rule is fully applicable to

proposals seeking to institute formula rates.[162] The purpose of this well-established rule is to

discourage utilities from over-reaching in their rate filings. *See West Texas* at 61,375-76 (in order

to provide a "strong incentive . . . for the filing of lower, cost justified rates," utilities should "file

substantially cost-justified rates from the outset if they wish to avoid a maximum suspension

period"). For this purpose to be served, utilities that overreach must face the intended

consequence.

---

[161] *West Texas* at 61,375.

[162] *See, e.g., Fla. Power & Light Co.*, 169 FERC ¶ 61,080 (2019); *S. Cal. Edison Co.,* 167 FERC ¶ 61,214 (2019); *Pac. Gas & Elec. Co.*, 165 FERC ¶ 61,194 (2018). JCP&L is misleading at best when it claims that "[t]he Commission typically has not imposed five-month suspensions of forward-looking transmission formula rates . . . that are based on calendar year projections and that are trued up to actual costs, with interest," Filing Letter at 11. In three of the four cases cited by JCP&L, no maximum suspension was requested. *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,192, P 1; *PJM Interconnection, L.L.C.,* 155 FERC ¶ 61,097, P 2 (2016), *clarified*, 158 FERC ¶ 61,060 (2017); *NextEra Energy Transmission, W., LLC*, 154 FERC ¶ 61,009, P 1 (2016). And in the fourth case, the Commission denied a request for a maximum five month suspension because its "preliminary analysis indicates that the proposed rates may not be substantially excessive." *Nw. Corp.*, 167 FERC ¶ 61,278, PP 99 & n.115 (2019).

As shown above and in Exhibit C hereto, JCP&L's proposed rate increase is more, indeed much more, than 10% excessive. While not exhaustive, the following adjustments suffice to show that JCP&L's requested rate increase exceeds the *West Texas* threshold:[163]

- With no other changes, modifying JCP&L's proposed revenue requirement formula to use a 9.77% ROE (i.e., the sum of a 50 bp ROE adder for PJM participation and the 9.27% "Briefing Order Methodology" result embedded in JCP&L's studies) reduces the proposed revenue requirement by $7,195,271, which by itself means the proposed formula yields rates that are 25.56% excessive. *See* Exhibit C at 1, Excel cell C18.

- With no other changes, modifying JCP&L's proposed revenue requirement formula to remove the 50 bp ROE adder that JCP&L has not supported reduces the proposed revenue requirement by $3,492,850. *See id.* at 1, Excel cell C26.

- With no other changes, modifying JCP&L's proposed revenue requirement formula to adjust the Account 356 net salvage and associated depreciation rate as discussed above reduces the proposed revenue requirement by $689,153. *See id.*

- Other, relatively minor changes quantified in Exhibit C indicate revenue requirement reductions of $67,915, $689,153, and $91,802. *See id.* at 1, Excel cells C32, C38, and C44.

- Making all of the adjustments quantified in Exhibit C together indicates a cumulative revenue requirement reduction (as compared to the as-filed formula result) of $10,825,071. *See id.* at 1, Excel cell C52.

---

[163] The provided calculations reflect that the existing JCP&L annual transmission revenue requirement is $135,000,000 and application of the proposed formula rate will increase the existing annual revenue requirement by $35,350,964 to $170,350,964. As JCP&L's unit rates already formulaically apply load divisors and billing determinants provided by PJM pursuant to Section 34.1 of the PJM OATT, the filed-for increase to JCP&L's unit rates is almost exactly proportionate to that proposed revenue requirement increase. The treatment of pole-attachment and similar revenues at Attachment H-4A, page 4, line 30 and Note R may have a very small effect on this proportionality, but is immaterial as it affects both sides of the comparison.

In sum, these adjustments alone (which are not meant to be exhaustive) demonstrate that JCP&L's proposed formula produces a rate increase that is 44.14% excessive. *See id.*, Cell C54. Accordingly, the Commission should suspend the JCP&L formula rate for the maximum five-month period.

NJ Agencies' review of JCP&L's filing is continuing, and the quantifications in Exhibit C and described above do not include all of the adjustments that should be made to the JCP&L formula rate. Several of the adjustments are difficult or impossible to quantify because JCP&L has not properly supported its proposed formula rate or because data has yet to be provided. The necessary conclusion is that the *West Texas* 10% test for substantial excess has been amply met. Were it a close call, however, the Commission should consider all issues identified in this Protest and recognize that JCP&L's proposed formula rate contains serious flaws that render it unjust and unreasonable. Accordingly, in addition to a maximum five-month suspension, the Commission should only accept the filing subject to refund.

IV. REQUEST FOR HEARING AND SETTLEMENT JUDGE PROCEEDINGS

NJ Agencies have had only limited time to review the JCP&L formula rate, and we have presented here our preliminary list of issues based on a review that is ongoing. In order to ensure that the formula rate will operate in a just and reasonable manner, NJ Agencies require an opportunity to seek discovery from JCP&L, and to assess the information that is produced in response to those requests, which may reveal additional flaws in the formula rate template. Accordingly, the Commission should set these proceedings for hearing. Consistent with past practice in numerous prior formula transmission rate proceedings, the Commission should hold that hearing in abeyance and establish settlement proceedings before an Administrative Law Judge.

NJ Agencies reserve their rights to raise additional issues as they may become apparent following discovery and additional review.

V.   CONCLUSION

For the reasons stated above, JCP&L's proposed rate is unjust, unreasonable, and substantially excessive. Accordingly, the Commission should suspend JCP&L's proposed formula rate for the maximum five-month period, establish a refund effective date, and set the entire rate proposal for hearing and settlement procedures.

Respectfully submitted,

FOR NEW JERSEY BOARD OF PUBLIC UTILITIES:

/s/ Cynthia L. M. Holland
Cynthia L. M. Holland
Director, Office of Federal and Regional Policy
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08609

s/ Paul Youchak
Paul Youchak
Alex Moreau
Deputy Attorneys General
New Jersey Office of the Attorney General
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex, 7th Floor West
Trenton, NJ 08625

FOR NEW JERSEY RATE COUNSEL:

/s/ Scott H. Strauss
Scott H. Strauss
David E. Pomper
Stephen C. Pearson
Amber L. Martin

Law Offices of:
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000

November 20, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be

served upon each person designated on the official service list compiled by the Secretary

in this proceeding.

Dated on this 20th day of November, 2019.

/s/ Amber L. Martin
Amber L. Martin

Law Offices of:
    Spiegel & McDiarmid LLP
    1875 Eye Street, NW
    Suite 700
    Washington, DC 20006
    (202) 879-4000