



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF)
 JERSEY CENTRAL POWER & LIGHT COMPANY)
 ("JCP&L") AND MID-ATLANTIC INTERSTATE)
 TRANSMISSION, LLC ("MAIT") FOR: (1) APPROVAL)
 OF THE TRANSFER OF ITS TRANSMISSION ASSETS)
 TO MAIT PURSUANT TO N.J.S.A. 48:3-7; (2))
 APPROVAL OF A LEASE OF JCP&L'S REAL)
 PROPERTY AND THE REAL PROPERTY RIGHTS)
 ASSOCIATED WITH ITS TRANSMISSION ASSETS TO)
 MAIT PURSUANT TO N.J.S.A. 48:3-7; (3) APPROVAL)
 OF A MUTUAL ASSISTANCE AGREEMENT)
 PURSUANT TO N.J.S.A. 48:3-7.1; AND (4) A)
 DECLARATION THAT MAIT WILL BE DEEMED A)
 PUBLIC UTILITY FOR, *INTER ALIA*, THE PURPOSES)
 OF SITING AUTHORITY UNDER N.J.S.A. 40:55D-19)
 AND EMINENT DOMAIN AUTHORITY PURSUANT TO)
N.J.S.A. 48:3-17.6 ET. SEQ.

ORDER ON MOTIONS TO
 INTERVENE OR
 PARTICIPATE

DOCKET NO. EM15060733

DOCKET NO. EF02030185

-AND-
 IN THE MATTER OF THE VERIFIED PETITION OF
 JERSEY CENTRAL POWER AND LIGHT COMPANY
 FOR AUTHORIZATION PURSUANT TO N.J.S.A. 48:3-7.2
 FOR APPROVAL TO PARTICIPATE IN THE
 FIRSTENERGY CORP. INTRASYSTEM MONEY POOL

Parties of RECORD:

- Gregory Eisenstark, Esq.,** Jersey Central Power and Light Co. Company
- Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel
- Steven Goldenberg, Esq.,** New Jersey Large Energy Users Coalition
- Joseph Accardo, Esq.,** Public Service Electric and Gas Company
- Margaret Comes, Esq.,** Rockland Electric Company, Participant
- Colleen Foley, Esq.,** Atlantic City Electric Company, Participant

BY PRESIDENT RICHARD S. MROZ:

On June 19, 2015, Jersey Central Power and Light Company ("JCP&L") and Mid-Atlantic Interstate Transmission ("MAIT") (collectively, "Joint Petitioners") filed a petition requesting the Board issue a decision and order:

- (1) approving the transfer of JCP&L's transmission assets to MAIT;
- (2) approving a ground lease between JCP&L and MAIT;
- (3) declaring that MAIT will be a New Jersey public utility subject to the Board's jurisdiction for certain, limited purposes and enjoying the rights and privileges of a public utility and approving MAIT's request to maintain its books and records out of State;
- (4) declaring that, for those transmission projects for which the Board has granted JCP&L siting approval pursuant to N.J.S.A. 40:55D-19 but which have not yet been placed in service, such authority will be transferred to MAIT;
- (5) approving the addition of MAIT to the Utility Money Pool pursuant to N.J.S.A. 48:3-7.1;
- (6) approving a Mutual Assistance Agreement between JCP&L and MAIT; and
- (7) granting such other and further relief as the Board deems just, lawful, and proper.

By Order dated August 19, 2015, the Board retained this matter for hearing, and designated me as the presiding officer with authority to establish and modify schedules, decide all motions and otherwise control the conduct of this case, subject to Board ratification. Additionally, the August 19 Order set Friday September 18, 2015 as the last day for filing motions to intervene or participate in this matter.

Pursuant to the authority granted under the August 19 Order, on October 7, 2015, I issued a Prehearing Order in this matter.

On December 7, 2015 the Division of Rate Counsel filed a motion requesting that I establish a briefing schedule on the issue of whether MAIT can be designated as a public utility

under New Jersey Law and suspend the procedural schedule pending that determination. Objections to the motion were filed by JCP&L and MAIT by letter dated December 8, 2015. On December 9, 2017 I suspended the October 7, 2015 Prehearing Order and Procedural Schedule and set a briefing schedule for this individual issue of whether MAIT can be designated as a public utility under New Jersey Law.

On February 24, 2016 the Board ordered that under the facts and circumstances presented that MAIT, holding only transmission assets, does not fall within the current statutory definition of a "public utility" under N.J.S.A. 48:2-13, nor does any other statute provide a basis to conclude that the legislature intended to convey authority for an entity, outside of N.J.S.A. 48:2-13(a), to operate as a "public utility" under the jurisdiction of the Board.

The Board additionally ordered that this matter proceed in accordance with the February 24, 2016 Order and that I continue to preside over this proceeding consistent with the Board's August 19, 2015 Order. The Board further directed the matter to proceed in accordance with an amended procedural schedule set by me.

On April 22, 2016, Joint Petitioners filed a Supplemental Petition in response to the Board's February 24, 2016 Board Order finding that, as proposed in the original petition, MAIT did not qualify as a public utility. Simultaneous with the Supplemental Petition, Joint Petitioners filed the supplemental testimony of Mark Mader, K. Jon Taylor, and Steven R. Staub. The supplemental testimony added five (5) distribution substations to the transmission assets being transferred from JCP&L to MAIT.

A prehearing conference was held at the Board's offices on June 20, 2016, and the parties were asked to submit proposed amendments to the Prehearing Order by June 27, 2016. Rate Counsel and the Joint Petitioners submitted comments on Monday June 27, 2016. After reviewing the comments, on July 18, 2016 I issued an Amended Prehearing Order and set a

new Procedural Schedule. Pursuant to that Procedural Schedule, I established a deadline for filing motions to intervene or participate of July 22, 2016.

THE MOTIONS:

LS Power Transmission Holdings, LLC Motion to Intervene

By motion dated July 22, 2016, LSP Transmission Holdings, LLC ("LS Power") moved for an Order granting it status as an intervenor pursuant to N.J.A.C. 1:1-16.6. LS Power states it is a corporation that develops and owns transmission projects around the country, including within the PJM Interconnection, LLC ("PJM") footprint which includes New Jersey. It states that PJM has prequalified LS Power and its affiliates to be assigned competitively bid transmission projects in the PJM footprint and to be a Designated Entity under PJM's Federal Energy Regulatory Commission ("FERC") Order No. 1000 process. LS Power also states that it and its affiliates were active participants in the FERC's Rulemaking proceedings leading up to FERC's decision to issue Order 1000 and was granted intervenor status in FERC Docket EC15-157-000 related to Pennsylvania Electric Company, Metropolitan Edison Company, JCP&L, First Energy Transmission, LLC and MAIT's proposed transaction which is the subject of the matter before the Board.

LS Power states that the decision in this matter potentially has far greater policy impacts on the nature and robustness of evolving competitive transmission markets in New Jersey.

LS Power further asserted that it will work cooperatively with other parties in the proceeding, and will not cause confusion or delay the conclusion of this proceeding. It argues that it will be able to clarify certain issues and contribute to the development of a complete record based on its unique and significant interest. LS Power agrees to take the record "as is", and will not ask for additional discovery or seek to delay the proceeding.

On August 3, 2016 JCP&L filed a letter brief in opposition to LS Power's motion to intervene stating that the motion was filed too late as the original deadline for motions to intervene,

pursuant to the Board's August 19, 2015 Order, was September 19, 2015 and the issue for intervention cited by LS Power existed at the time of the first deadline.

JCP&L argues that the main reason for establishing a second intervention deadline bar date was to allow entities impacted by the Supplemental Petition, specifically the five customers served by the five distribution substations now included in the assets to be transferred from JCP&L to MAIT, to become involved in the matter. JCP&L states that as LS Power does not base its motion to intervene on the changes made to the filing in the Supplemental Petition therefore it should be denied intervention. In addition JCP&L argues that, as this matter was filed over a year ago and extensive discovery has been exchanged between the parties along with various interim orders issued, LS Power should be denied intervenor status as it fails to state a justification, or a legitimate level of interest, as to why it should be allowed to intervene at this late date. JCP&L states that LS Power is now trying to interject issues not before the Board at this late date, and will therefore allowing them into the case now will cause delay and confusion. JCP&L requests that, alternatively, LS Power be limited to participant status instead of full intervenor status, and my July 18, 2016 Amended Procedural Schedule remain in effect so as to not further delay a resolution of this matter.

JCP&L continues its argument that LS Power should be denied intervenor status because it will not be substantially, specifically or directly affected by the outcome of the matter as the intervention standards found in N.J.A.C. 1:1-16.1(a) require. JCP&L point to LS Power's motion certification which states LS Power has no interest in the Board's decision on the actual relief that the Joint Petitioners have requested, specifically the transference of assets to MAIT. JCP&L argues that the issue of concern to LS Power, specifically the nature and robustness of an evolving competitive transmission markets in New Jersey, is an attempt to interject an issue into the proceeding which goes beyond the scope of the relief sought by the Petitioners.

On August 4, 2016 the New Jersey Division of Rate Counsel ("Rate Counsel") filed a letter brief in support of LS Power's motions to intervene and in opposition to JCP&L's opposition of LS

Power's motion stating that LS power filed its motion timely as it filed its papers in accordance with my July 22, 2016 Board Order. Rate Counsel argues that no disadvantage should come from meeting the deadline for filing established by the Board's pre-hearing order.

On August 8, 2016 LS Power filed a letter brief in response to JCP&L's opposition to its motion. LS Power argues that it indeed has an interest in the relief sought by JCP&L specifically regarding the request that MAIT be deemed a public utility for the purposes of eminent domain. LS Power believes that if granted public utility status, that decision will have great impact on the evolving nature of the evolving transmission market in New Jersey and could materially impact LS Power's participation in the New Jersey market. LS Power submitted comments in the FERC proceeding which although not adopted by FERC established that LS Power has a sufficiently different interest as to the other parties. LS Power continues to argue that it will not cause undue delay or confusion as it already certified it will not seek to delay the proceedings to allow it to catch-up with prior filings and discovery and should be granted intervenor status.

HOVSONS, Inc. Motion to Intervene

On July 8, 2016 Hovsons Inc. ("Hovsons") moved for an Order to intervene in this matter. Hovsons states that it is the entity which owns the Heritage Minerals Site which is served by one of the electric distribution substations JCP&L has included in the supplemental petition to be transferred to MAIT if the petition is granted. Hovsons is concerned that the rates and service quality for its property will remain the same if transferred to MAIT, a new Company. Hovsons continues that as Hovsons is one of only a handful of parcels that will be impacted by the proposed changes, it should be afforded the right to be a party to the action. On July 14, 2016 Stephen Eiesdorfer, Esquire of Hill Wallack entered an appearance on behalf of Hovsons, Inc. No opposition was filed in regards to Hovson's motion to intervene.

DISCUSSION AND FINDINGS:

Motions to Intervene

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

After consideration of the papers, I **HEREBY FIND**, pursuant to N.J.A.C. 1:1-16.6(b), LS Power
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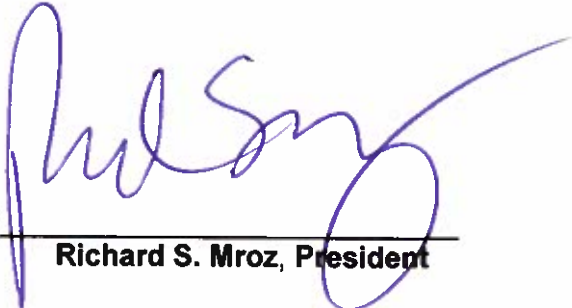
will be directly affected by the outcome of the this proceeding, and that LS Power has expertise electric transmission line policy and development that should contribute to the development of a full and complete record for review by the Board in its evaluation of the proposed JCP&L MAIT program. Therefore, I **HEREBY FIND** that LS Power has met the standards for intervention in the JCP&L MAIT proceeding, as it has an interest in this proceeding that is not represented by another party. Accordingly, I **HEREBY GRANT** LS Power's motion for intervention on the basis of its representation that it will take the record "as is", will not seek additional discovery or seek to delay the proceeding and will comply with the 2016 Amended Procedural Schedule, pursuant to the authority granted to me by the Board under the August 19, 2015 Order.

As Hovson's is a customer of JCP&L which will be directly affected by the Supplemental Petition file on April 22, 2016 and the final outcome of this proceeding, I **HEREBY FIND** that Hovson's has met the standards for intervention as it is an interest in this proceeding. Accordingly, having received no objections, I **HEREBY GRANT** the motion for intervention of Hovson's pursuant to the authority granted to me by the Board under the August 19, 2015 Order.

I **DIRECT** Staff to post this Prehearing Order on the Board's website and distribute this Order electronically to the e-service list.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: August 15, 2016

By: 
Richard S. Mroz, President

In the Matter of the Verified Petition of Jersey Central Power & Light Company (“JCP&L”) and Mid-Atlantic Interstate Transmission, LLC (“MAIT”) for (1) Approval of the Transfer of JCP&L’s Transmission Assets to MAIT Pursuant to N.J.S.A. 48:3-7;... -and- In the Matter of the Verified Petition of Jersey Central Power and Light Company for Authorization Pursuant to N.J.S.A. 48:3-7.2 for Approval to Participate in the Firstenergy Corp. Intrasystem Money Pool Docket No.s: EM15060733 & EF02030185

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