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Governor

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Lt. Governor

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Kristi Izzo  
Secretary of the Board  
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## **NOTICE<sup>1</sup>**

The New Jersey Board of Public Utilities hereby provides notice and posts the stipulation for public comments regarding the following matter:

Docket No. EM11010012 - In the Matter of the Business Combination of FirstEnergy Corp., Parent Company of Jersey Central Power and Light Company, and Allegheny Energy, Inc.

Comments must be received no later than 5:00 p.m. on January 24, 2011. Public Comments shall be submitted to the Board Secretary at [board.secretary@bpu.state.nj.us](mailto:board.secretary@bpu.state.nj.us).

A handwritten signature in black ink, appearing to read "Kristi Izzo", written over a horizontal line.

Kristi Izzo  
Secretary of the Board

Dated: January 19, 2011

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<sup>1</sup>Not a Paid Legal Advertisement



## BACKGROUND

a. Pursuant to an Agreement and Plan of Merger, dated as of February 10, 2010, as amended as of June 4, 2010, Allegheny Energy will merge with Element Merger Sub, Inc., a new wholly-owned subsidiary of FirstEnergy created for this purpose. As the surviving corporation of that merger, Allegheny Energy will then become a wholly-owned subsidiary of FirstEnergy. FirstEnergy will remain the corporate parent of JCP&L and of all of the other FirstEnergy subsidiaries, and will become the ultimate corporate parent of Allegheny Energy and all Allegheny Energy subsidiaries.

b. Following the Transaction, the existing shareholders of FirstEnergy will own approximately 73%, and the former shareholders of Allegheny Energy will own approximately 27%, of the outstanding shares of the post-Transaction FirstEnergy. After the closing, FirstEnergy will increase the size of its board of directors from eleven to thirteen, and will fill the two new positions by the appointment of two of the current Allegheny Energy directors. Anthony J. Alexander, President and Chief Executive Officer of FirstEnergy, will serve as President and Chief Executive Officer of the combined company, and Paul J. Evanson, Chairman, President and Chief Executive Officer of Allegheny Energy, will serve as Executive Vice Chairman of the combined company and report to Mr. Alexander.

c. JCP&L asserts that JCP&L itself is not a party to the Transaction, that there will be no direct or indirect change in control of JCP&L as a result of the Transaction, no sale or transfer of any shares of capital stock on JCP&L's books, and no disposition of assets by, or merger or consolidation of the property, franchises, privileges or rights of, JCP&L. Therefore, JCP&L asserts that none of the explicit New Jersey statutory provisions relating to mergers or

other structural transactions involving New Jersey public utilities is implicated by this Transaction. Board Staff asserts that the Board has discretion to review the Transaction to determine its impact on JCP&L's ratepayers.

d. Notwithstanding JCP&L's asserted position and New Jersey's statutory provisions, JCP&L recognizes that the Board has expressed an interest in transactions that bear certain similarities to the Transaction. Consequently, JCP&L has submitted a letter to the Board describing the Transaction, including any aspects that may be directly relevant to JCP&L and its customers.<sup>1</sup> JCP&L has also provided other information to Board Staff and Rate Counsel and has met with Board Staff and Rate Counsel and responded to both oral and written questions about the Transaction and its impact on JCP&L and its customers.

e. JCP&L asserts that the Transaction will have no impact on JCP&L's day-to-day operations and that, following consummation of the Transaction, JCP&L will continue to operate its New Jersey utility business in essentially the same manner as it has been operating heretofore. Also, JCP&L asserts that the ownership, control, or management of JCP&L will not change as a result of the Transaction, nor will the Transaction result in any increase in JCP&L's rates. JCP&L asserts that, after the Transaction, the Company will be part of a larger, more diverse holding company system with greater financial resources and more financial stability and flexibility. JCP&L further asserts that it will also have access to additional, affiliated sources of mutual aid in the event of storms and other emergencies.

f. In light of the foregoing and entering into this Stipulation, the Parties agree that this Stipulation satisfies any review of the Transaction that may have been deemed appropriate.

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<sup>1</sup> JCP&L does not concede that the Board has jurisdiction or authority over the Transaction notwithstanding its submission of the letter referred to in the text or its execution of this Stipulation.

Based on the foregoing, it is hereby STIPULATED AND AGREED by the Parties as follows, which stipulations and agreements are contingent upon consummation of the Transaction:

**STIPULATED MATTERS**

1. JCP&L will make no attempt to recover through rates transaction costs related to the business combination, which are purchase price, goodwill, consultant fees, fees for investment services, legal fees, regulatory fees, or lender consents; costs associated with the shareholders' meetings and proxy statement/registration statement related to the Transaction, tail insurance, change in control payment, or retention payment resulting from completion of the Transaction and costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions (collectively, "Transaction Costs"). JCP&L believes that this reflects an exhaustive list of Transaction Costs; however, Board Staff and Rate Counsel reserve the right to see whether there may be other incurred costs that might fit within such category and advocate that such costs should be disallowed as non-recoverable Transaction Costs. JCP&L reserves its right to seek to recover through rates costs incurred to achieve merger synergy savings or to integrate the two organizations following the consummation of the Transaction (collectively, "Transition Costs") and Board Staff and Rate Counsel reserve the right to challenge any Transition Costs.

2. Nothing herein shall constitute approval of any cost deferrals or pre-approval of any costs associated with the Transaction or authorization for rate recovery of any costs associated with the Transaction.

3. There will be no net reductions due to involuntary attrition as a result of the Transaction integration process in the JCP&L utility and FirstEnergy Service Company

employment levels in New Jersey for a period of two years after consummation of the Transaction; provided that this commitment will apply to the employment levels of bargaining unit employees at the Red Bank billing center for a period of one year after consummation of the Transaction. This commitment shall not apply to employees who leave due to voluntary attrition or termination for cause.

4. Unless otherwise expressly authorized by the BPU, JCP&L will maintain a regional headquarters in its northern region with functions generally comparable to the existing General Office in Morristown and a regional headquarters in its central region with functions generally comparable to the existing office in Red Bank. Without limiting the foregoing, JCP&L commits that an adequate number of positions staffed with people familiar with New Jersey's and JCP&L's rates, regulatory, reliability, engineering and labor relations matters will be maintained. JCP&L also commits to maintain an adequate amount of equipment and facilities to support its continued provision of safe, adequate and proper service. These commitments shall remain in effect for five years after consummation of the Transaction.

5. For a period of at least five years after consummation of the Transaction, the FirstEnergy system will continue to be operated in accordance with its overall management philosophy, which places authority and accountability at the local level. As a result of the continuation of this regional structure, which places authority and responsibility for ensuring system performance with local hands-on leadership, the process for allocating capital to meet utility infrastructure needs will not change as a result of the Transaction. The President of JCP&L will retain the same authority over determinations as to the need for investments in the utility infrastructure as they had prior to the Transaction. For a period of at least three years after consummation of the Transaction, JCP&L will provide Board Staff and Rate Counsel with

information as to annual capital expenditures by JCP&L and other FirstEnergy utilities similar to the information contained on page 13 of the FirstEnergy Annual Report on Form 10-K for 2009.

6. JCP&L will honor all collective bargaining agreements with its bargaining unit employees, including, without limitation, recent agreements extending the term of the collective bargaining agreement.

7. JCP&L will comply with all applicable statutory and regulatory provisions, including, without limitation, provisions addressing transactions with affiliates (N.J.S.A. 48:3-7.1 and 48:3-7.2 and N.J.A.C. 14:4-3.1 et seq.) and public utility holding company standards (N.J.A.C. 14:4-4A.1 et seq.).

8. Former utility subsidiaries of Allegheny Energy will not be permitted to participate in the same utility money pool in which JCP&L has been authorized to participate unless and until any requisite BPU approval is sought and obtained.

9. Unless otherwise expressly authorized by the BPU, JCP&L (i) will issue its own debt; (ii) maintain its own credit rating so long as it has debt outstanding and credit rating agencies are willing to provide such rating; and (iii) maintain a separate set of books and records, including but not limited to separate financial statements.

10. JCP&L will comply with N.J.S.A. 48:3-7 and/or N.J.S.A. 48:3-9, as applicable, and any applicable regulations, in connection with the disposition of any utility property or the issuance of long-term debt secured by utility assets. Unless otherwise expressly authorized by the BPU, JCP&L will not assume any debt issued by its parent company or any affiliate.

11. If in future rate proceedings involving determinations of return on equity ("ROE") JCP&L files ROE testimony that includes a "comparables" analysis as has been the

general practice in rate proceedings, JCP&L will, to the extent reasonable, include in the "comparables" group "distribution only" utilities or utilities with the majority of their assets under regulation, but may include other types of "comparables" as deemed appropriate by its expert ROE witness. FirstEnergy shall not subject JCP&L's customers through distribution rates to any direct financial costs from the post merger unregulated operations of FirstEnergy's or Allegheny's nuclear, fossil or other generation operations, including decommissioning costs for nuclear generation units and environmental remediation, compliance and mitigation costs (and any related penalties). Notwithstanding the foregoing, JCP&L may continue to seek recovery from its customers, in accordance with applicable BPU Orders, of reasonable and prudent nuclear decommissioning and environmental remediation, compliance and mitigation costs relating to its own prior and continuing operations, including, without limitation, its prior or continuing ownership of nuclear generating facilities and manufactured gas plant sites, and costs related to its procurement of power for basic generation service customers.

12. FirstEnergy has submitted evidence before the Federal Energy Regulatory Commission ("FERC") demonstrating that the Transaction will not have any adverse effect on competition in the supply and distribution of electricity in New Jersey, based primarily on the analysis Dr. William H. Hieronymus, Vice President of Charles River Associates. Dr. Hieronymus analyzed the Transaction for its possible impact on competition and concluded that the Transaction will not impair competition in wholesale electricity markets in PJM nor will it diminish retail competition in any state's retail electricity market. The FERC has approved the Transaction after conducting its own review of the competitive effects of the Transaction. In addition, the Antitrust Division of the U.S. Department of Justice has completed its review of the

Transaction and has closed its investigation without imposing conditions or requiring any mitigation.

13. FirstEnergy and JCP&L will continue to comply with paragraphs 1 through 11 of Attachment A to the Stipulation of Settlement dated August 24, 2001, which was approved by BPU Order dated October 9, 2001 in Docket No. EM00110870.

14. It is acknowledged that JCP&L's reliability metrics have improved since the 2001 acquisition of its former parent, GPU, Inc., by FirstEnergy Corp. While reliability metrics may vary from period to period, JCP&L remains committed to preventing any deterioration in its reliability metrics over the long term.

15. A portion of the JCP&L net merger synergy savings will be reflected in an adjustment to the NGC deferred balance, with the result that the NGC over-recovery at November 30, 2010, exclusive of interest, will be \$80,999,042. This amount and the underlying program costs will continue to be subject to review for reasonableness and prudence, with an opportunity for discovery, testimony or comments and an evidentiary hearing, in necessary.

16. FirstEnergy and JCP&L agree to provide notice to the Board, Board Staff and Rate Counsel of the following events within 48 hours of the making of the applicable filing with the Securities and Exchange Commission: (1) change of control; (2) material acquisition or disposition of assets other than in the ordinary course of business; (3) bankruptcy filing or appointment of receiver; or (4) change in independent accountants.

### **GENERAL PROVISIONS**

17. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and has been agreed to in its entirety. In the event this Stipulation or any particular provision hereof is modified by the Board or a court of competent jurisdiction, then

any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice, to be provided to the other Parties within two (2) business days after receipt of any such adverse decision, to declare this Stipulation to be void, after which the Parties will be placed in the same position as though this Stipulation had not been signed.

18. The Parties agree that this Stipulation shall be binding on them for all purposes herein.

19. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of the Transaction. Except as expressly provided herein, (i) no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation, and (ii) the Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item. The Parties further agree that this Stipulation is non-precedental and in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

20. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties.

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

MORGAN, LEWIS & BOCKIUS LLP  
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