



Agenda Date: 3/26/18
Agenda Item: 2K

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Energy

IN THE MATTER OF THE NEW JERSEY BOARD OF) ORDER
PUBLIC UTILITIES' CONSIDERATION OF THE TAX)
CUTS AND JOBS ACT OF 2017) DOCKET NO. AX18010001
)
JERSEY CENTRAL POWER & LIGHT COMPANY -) AND
REVISED RATES (EFFECTIVE ON AN INTERIM BASIS)
APRIL 1, 2018) TO REFLECT THE REDUCTION) DOCKET NO. ER18030226
UNDER THE 2017 ACT)
(SERVICE LIST ATTACHED)

Parties of Record:

Greg Eisenstark, Windels Marx Lane & Mittendorf, LLP on behalf of Jersey Central Power and Light Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Fox Rothschild, LLP, on behalf of New Jersey Large Energy Users Coalition

BY THE BOARD:

This Board Order addresses the interim rate changes to be effective April 1, 2018 that are proposed in the petition filed by Jersey Central Power & Light Company ("JCP&L" or "Company") in response to an order issued by the New Jersey Board of Public Utilities ("Board") on January 31, 2018 ("January 31, 2018 Order")¹, directing the affected utilities² to file petitions proposing new rates reflecting the impacts from the Federal Tax Cuts and Jobs Act signed into law on December 22, 2017 (the "2017 Act").

¹ See In re the New Jersey Board of Public Utilities Consideration of the Tax Cuts and Jobs Act of 2017, BPU Docket No. AX18010001 (Order dated January 31, 2018).

² The affected utilities are investor owned gas, electric, water and wastewater companies under the jurisdiction of the Board. In addition, affected utilities shall be those with 2017 revenues equal to or greater than \$4.5 million.

BACKGROUND

The effective date of the 2017 Act is January 1, 2018. The 2017 Act sets forth changes to the Federal Internal Revenue Tax Code ("Tax Code"), including a reduction in the maximum corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). The Board is charged with the authority to ensure that the regulated utilities' rates charged to ratepayers are just and reasonable. When the Board sets rates in base rate cases and in certain annual/periodic clauses, utilities are permitted to gross up their revenue requirement as well as set other rate factors, including, the accumulated deferred income tax, based on the then existing thirty-five percent (35%) corporate tax rate.

The Board issued the January 31, 2018 Order which set all affected utility rates as interim and established a proceeding to consider the implications of the 2017 Act. Based upon the Board's review of the 2017 Act, the Board found in its January 31, 2018 Order that the changes to the Tax Code will provide savings to the affected utilities and will result in an over-collection of tax revenue by the affected utilities that will not be paid in federal income taxes. The affected utilities were required to file amended tariffs reflecting a reduction in rates resulting from the reduction in the corporate tax rate effective April 1, 2018, as well as a plan to address other rate factors and to refund any over collection in rates.

On March 2, 2018, the Company filed its petition pursuant to the January 31, 2018 Order. According to the petition, the Company has re-calculated its base rates to incorporate the impact of the mandatory reduction in the federal corporate income tax ("FIT") rate from 35% to 21% effective January 1, 2018, in connection with the 2017 Act and the Board Order of January 31, 2018. The impact results in a revenue reduction of \$28.6 million annually. As per the January 31 Order, JCP&L has deferred on its books, with interest, the impact of the reduction in the FIT rate on its tax gross-up between January 1 and March 31, 2018 which the Company predicts will be \$6.3 million, including interest, and proposes to defer this amount as a regulatory liability until its next base rate case.

The Company calculated the change in the protected portion of its Accumulated Deferred Income Taxes ("ADIT") balance to be \$359.2 million as of December 31, 2017. This amount will be amortized using the Average Rate Assumption Method ("ARAM") in accordance with the IRS normalization rules for protected Excess Deferred Income Tax ("EDIT"). The net change in the ADIT balance (protected less unprotected) is \$268.3 million. Interest on the unamortized rate base-related EDIT balance will accrue at the Company's approved, overall post-tax weighted average cost of capital ("WACC"), which is currently 7.47%.

JCP&L is proposing a new rate clause called the Rider Tax Act Adjustment ("Rider TAA"), to take effect July 1, 2018, which will include the amortizations of the EDITs both rate base-related (protected) and non-rate base-related (unprotected), including a gross-up to revenue requirement and any true-up amounts from the base rate adjustment for the change in current taxes. Interest on the non-rate base (unprotected) EDIT portion of the Rider TAA unamortized balance will accrue at an interest rate equal to the rate on ten-year constant maturity Treasuries plus 60 basis points and will be compounded annually in January. Because Rider TAA will not become effective until July 1, 2018, there will be a deferred regulatory liability of \$6.83 million associated with excess deferred taxes for the period of January 1 through June 30, 2018 which the Company proposes to continue to defer until its next base rate case. Rider TAA will result in annual revenues being reduced by an additional \$1.3 million, effective upon implementation of the Rider. The Company indicates that the total revenue requirement impact, encompassing Rider TAA, will be a reduction of \$29.9 million annually. JCP&L states that the reduced FIT will

not have any impact on the Company's rate clauses except for: (1) The Non-utility Generation Charge ("NGC") related to Yards Creek, which recovery includes a return on rate base which is computed using a revenue requirement (\$2.22 million) impacted by the lower FIT rate, effective January 1, 2018; and (2) The Market Transition Charge ("MTC") Tax, which would have a change in its federal income tax liability associated with \$182.4 million of BGS Deferred Transition Costs through June 2021, to be reflected in monthly tax amortization beginning January 1, 2018, such that the effects of these changes are captured in the deferred tax balances – a net Adjustment - \$13.7 million. JCP&L states that it will update its pending 2016 Rider NGC case (Docket No. ER17030306) to reflect the changes in these two clauses, rather than making the changes in this petition.

The Company's proposed tariffs, include an across-the-board rate reduction reflecting the reduction in the corporate tax rate from 35% to 21%. As a result, the typical residential electric customer using 925 kWh in a summer month and 9,212 kWh annually will see an annual bill decrease of \$15.12 or approximately 1.1%.

The January 31, 2018 Order set the deadline for the filing of motions to intervene or participate on February 20, 2018.

New Jersey Large Energy Users Coalition Motion to Intervene

By motion dated February 13, 2018, the New Jersey Large Energy Users Coalition ("NJLEUC"), moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC states that it was formed, in part, to monitor regulatory and rate proceedings involving the State's electric and natural gas utilities, and to intervene or participate in regulatory and rate proceedings to the extent necessary to represent its members' common interests. NJLEUC claims that its members are large end-use purchasers of electricity and natural gas distribution service from the State's regulated utilities and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to the implications of the Tax Act as it pertains to utility rates are unique from those of any other party. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric and natural gas customers, the utilities and stakeholders in this proceeding, as well as the potential impact of the issues to be addressed by the Board. The interests of NJLEUC's members as large end-use customers of the identified utilities are substantially different from those of any other party seeking intervention or participation. Therefore, it argues that NJLEUC's interests in this proceeding are unique on both a quantitative and qualitative basis.

Moreover, NJLEUC argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the cost of electric and natural gas distribution services received from the identified utilities by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically and directly affect NJLEUC within the meaning of these terms as used in the Uniform Rules, thereby making it appropriate for NJLEUC to intervene as a party.

NJLEUC points out that it has been granted intervenor status in the many regulatory that the issues to be decided in this proceeding.

In addition, NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers of the identified utilities. NJLEUC also claims that its entry as a party would promote an informed and balanced presentation of the issues. NJLUEC represents that where it is possible and practical for it to do so, it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

JCP&L Response

On March 16, 2018, the Company filed a response to NJLEUC's motion to intervene. JCP&L contends that NJLEUC's motion does not identify any NJLEUC members that are currently JCP&L customers; however, if NJLEUC's members do include JCP&L customers, the Company would not oppose the motion to intervene. JCP&L further requests that the Board require NJLEUC to file a list of members that are currently JCP&L customers.

New Jersey Large Energy Users Coalition Response

On March 20, 2018 NJLEUC provided a list of its members that received electric and/or natural gas distribution services from JCP&L, but reserved the its right to object to the identification of some or all of its members in future proceedings.

New Jersey Large Energy Users Coalition Motion for Admission Pro Hac Vice

By motion dated February 13, 2018, NJLEUC, via Steven S. Goldenberg, Esq., NJLEUC also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay is a member in good standing admitted to the bar of the District of Columbia, has had significant experience representing the interests of large end-use customers and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing NJLEUC before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in regulatory matters and issues, with a particular emphasis on the litigation of utility rate cases and the regulatory treatment of rate-related issues. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. On February 15, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

DISCUSSION AND FINDINGS:

The Board has reviewed the proposed plan filed by the Company, and **HEREBY DIRECTS** that the plan will be reviewed in the instant proceeding, in accordance with the schedule set forth in the Board's January 31, 2018 Order.

The Company's proposed tariffs include an across-the-board rate reduction reflecting the decrease in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). As mentioned above, the typical residential electric customer using 925 kWh in a summer month and 9,212 kWh annually will see an annual bill decrease of \$15.12 or approximately 1.1%.

Having reviewed the proposed tariffs, the Board **HEREBY DIRECTS** new tariffs to be filed by the Company by April 1, 2018 relating to the across the board rate reduction for services to be rendered on or after April 1, 2018. The rates set forth in the tariffs are on an interim basis, subject to refund, pending the outcome this proceeding. The Board will address refunds and other proposed rider tariffs at a later date.

Motion 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.

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, 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 (Order dated June 8, 2005).

After consideration of the papers, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 1:1-16.6(b), the members of NJLEUC who are customers of JCP&L will be directly affected by the outcome of this proceeding, and that NJLEUC has met the standards for intervention, as it is an interested party in this proceeding. Accordingly, the Board **HEREBY GRANTS** the motion for intervention of NJLEUC. The Board **HEREBY DIRECTS** NJLEUC provides a complete list of all its members that are presently customers of JCP&L within fourteen (14) days of the entry of this Order.

Motion for Admission Pro Hac Vice

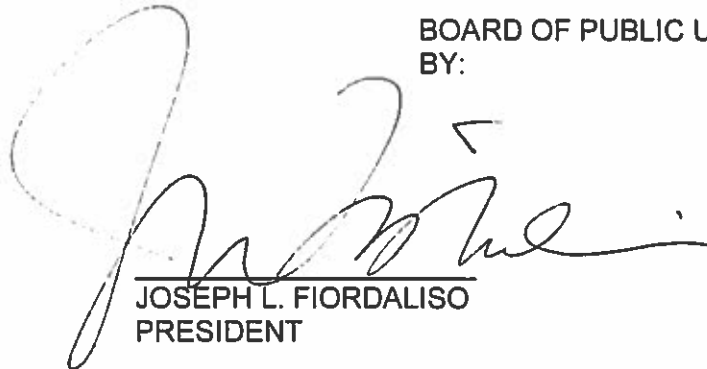
The Board has also reviewed NJLEUC's motion and the supporting affidavit of Mr. Forshay. This proceeding involves a complex field of law, and the Board is persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, the Board **FINDS** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that he shall:

1. Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
2. Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
3. Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
4. Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.


This Order shall be effective March 29, 2018.

DATED: 3/26/18

BOARD OF PUBLIC UTILITIES
BY:



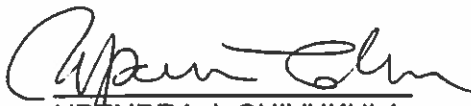
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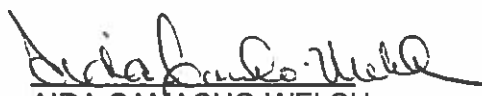
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ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES'
CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017
DOCKET NO. AX18010001

IN THE MATTER OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR APPROVAL OF
REVISED RATES (EFFECTIVE ON AN INTERIM BASIS APRIL 1, 2018) TO REFLECT THE
REDUCTION UNDER THE TAX CUTS AND JOBS ACT OF 2017
DOCKET NO. ER18030226

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