



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PETITION OF RATE ) ORDER  
COUNSEL REQUESTING A BOARD ORDER )  
DIRECTING JERSEY CENTRAL POWER AND LIGHT )  
COMPANY TO FILE A BASE RATE CASE PETITION )  
AND ESTABLISHING A TEST YEAR OF 2010 ) DOCKET NO. EO11090528

**Parties of Record:**

**Stefanie Brand, Esq.**, Director, Division of Rate Counsel  
**Marc Lasky, Esq.**, Morgan, Lewis & Bockius LLP, for Jersey Central Power and Light  
**Tracy Thayer, Esq.**, New Jersey Natural Gas Company  
**Janine G. Bauer, Esq.** for AARP New Jersey  
**Stephen R. Kern, Esq.**, McNeese Wallace & Nurick LLC, for Gerdau Ameristeel Sayerville Inc.

BY THE BOARD<sup>1</sup>:

**BACKGROUND**

This matter comes before the Board of Public Utilities ("Board") on a petition ("Petition") filed by the Division of Rate Counsel ("Rate Counsel"), seeking an Order pursuant to N.J.S.A. 48:2-21(b)(1) directing Jersey Central Power & Light Company ("JCP&L" or "Company") to file a base rate case petition so that the Board may determine whether the Company's current rates for electric service are just and reasonable. Petition at 1. Rate Counsel asserted that it had reason to believe that JCP&L is earning an unreasonable return based on publicly available data, and that it would therefore be appropriate for the Board to require JCP&L to file a base rate case to address any doubts about the company's earnings. Id. at 3-4. Rate Counsel noted that over six years had elapsed since the company's last rate case, and that a base rate case would help ensure that JCP&L makes any needed capital investments necessary to allow it to provide safe, adequate and proper service. Id. at 5. Rate Counsel requested that the Board require JCP&L to file its petition using a 2010 historical test year, and submitted the testimony of its expert consultant, Mr. Robert Henkes, in support of the Petition.

<sup>1</sup> Commissioner Joseph L. Fiordaliso did not participate.

JCP&L, an electric public utility company of the State of New Jersey, subject to the regulatory jurisdiction of the Board, submitted a Verified Answer, dated September 28, 2011, in response. JCP&L maintained that Rate Counsel had neither demonstrated that the Company's rates were unjust and unreasonable nor provided sufficient reason for the Board to order JCP&L to file a base rate case at this time. Answer at 1. JCP&L asserted that Rate Counsel's analysis contained significant errors and inaccuracies, and inappropriately focused solely on the company's overall rate of return instead of on its achieved return on equity ("ROE"), which the company maintains is the primary factor considered in base rate cases. Id. at 2. The Company concluded that no basis exists for the Board to require the filing of a base rate case at this time. Id. at 4. The Company supported its Answer with the certification of Mr. Mark Mader, one of its senior advisors.

### **PROCEDURAL HISTORY**

The Board, by Order dated November 30, 2011, determined to retain jurisdiction over the question of whether the Company should be required to file a base rate case. The November 30 Order further appointed the President of the Board to serve as the presiding officer over the proceeding, with authority to set the schedule and control the conduct of the case subject to review and ratification by the Board.

On March 14, 2012, President Hanna issued a Scheduling Order, which was later revised by an Amended Scheduling Order dated March 21, 2012. The Amended Scheduling Order set dates for intervention requests and objections as March 22, 2012, and March 29, 2012, respectively, and directed the parties to file initial briefs by April 26, 2012, with reply briefs due by May 10, 2012.

By Order dated April 24, 2012, President Hanna granted the motion to intervene of Gerdau Ameristeel Corporation ("Gerdau"), and the motions to participate of AARP New Jersey ("AARP") and the New Jersey Natural Gas Company ("NJNG"). The April 24, 2012 Order also granted the motion for admission pro hac vice of Robert Weishaar, Jr. for Gerdau.

### **POSITIONS OF THE PARTIES**

#### **Rate Counsel**

Rate Counsel contends that it has submitted evidence showing a reasonable basis for the Board to find that JCP&L is earning in excess of its allowed rate of return<sup>2</sup>. RC IB at 3. Accordingly, Rate Counsel argues that the Board should order JCP&L to file a base rate case to determine whether JCP&L's present rates are "just and reasonable." Ibid.

Rate Counsel argues that over six years have elapsed since the Board set JCP&L's current base rates, a delay which has deprived JCP&L's customers of an opportunity to review the Company's revenues, expenses, and other aspects of its operations that are typically reviewed in a base rate case. Ibid. Rate Counsel points out that, in contrast, all of the State's other electric public utilities were subject to the scrutiny of a base rate case within the past two years.

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<sup>2</sup> Initial briefs are designed as "IB" and reply briefs as "RB."

(citing In re Public Service Electric and Gas Company, BPU Dkt. No. GR09050422 (Order dated 6/7/10); In re Atlantic City Electric Company, BPU Dkt. No. ER09006664 (Order dated 5/12/10); and In re Rockland Electric Company, BPU Dkt. No. ER09080668 (Order dated 5/12/10)).

Moreover, Rate Counsel argues that JCPL's history of reliability problems warrants a base rate case review of the Company's capital spending and investments. RC IB at 18. According to Rate Counsel, a base rate case would help ensure that JCP&L makes, and has made, the necessary capital improvements required to provide safe, adequate, and reliable utility service. Rate Counsel contends that the service provided by a utility is a factor that may be considered by the Board in determining what is a reasonable rate of return. See Petition of Valley Road Sewerage Co. for Approval of an Increase in its Rates for Sewer Service, 285 N.J. Super. 202 (App. Div. 1995).

Rate Counsel maintains that the Board has the authority and sufficient support in the record to order JCP&L to file a base rate case. Rate Counsel notes that N.J.S.A. 48:2-21(b) specifically provides that the Board may initiate a base rate proceeding on its "own motion or after issue is joined through the filing of an answer to a complaint, when such proceeding is initiated by complaint." Rate Counsel notes that this matter was initiated by a Petition filed by Rate Counsel, to which JCP&L filed an answer. RC IB at 5. Rate Counsel notes that the initiation of a base rate case will not necessarily result in a decrease in JCP&L's rates, but will instead allow the Company's rate base, expenses service, rate of return, and other factors to be examined in the determination of just and reasonable rates. Id. at 5-6. Rate Counsel maintains that JCP&L may be earning a rate of return in excess of what may be considered the "zone of reasonableness" as defined by the Court in In re N.J. Power & Light Co., 9 N.J. 498, 534 (1952) (defining the "zone of reasonableness" as the zone between the lowest rate non confiscatory and the highest rate fair to the public).

Rate Counsel's expert consultant, Robert Henkes, examined the Company's overall earnings and rate base using information found in JCP&L's filings with the Federal Energy Regulatory Commission ("FERC"). RC IB at 8. Rate Counsel asserts that, based on Mr. Henkes' calculations, the Company has been earning in excess of its allowed overall rate of return of 8.50% for its regulated distributed operations, as was established in the Company's last base rate case. In re JCP&L, BPU Dkt. No. ER02080506 (Order dated 5/31/05).

While Mr. Henkes explained the potential inaccuracies attributable to the data limitations, he stated that he does not believe that those limitations affected his ultimate conclusion. RC IB at 3. Rate Counsel asserts that a base case would address any doubts as to whether JCP&L is earnings a return in excess of the authorized rate of return and whether its current rates for service are just and reasonable. Id. at 10.

Rate Counsel argues that JCP&L has failed to refute the calculations that show the Company is overearning. According to Rate Counsel, JCP&L's contention that Mr. Henke's analysis and his analytical approach are flawed is misplaced and unsupported. Specifically, Rate Counsel maintains that, contrary to JCP&L's claims, its earnings analysis properly relies on JCP&L's achieved rate of return on its rate base, a traditional rulemaking measure. Id. at 11. Furthermore, Rate Counsel asserts that JCP&L's criticism of Rate Counsel's calculation of Net Operating Income is also unsupported by any evidence. Id. at 12-13. Similarly, Rate Counsel argues that the return on equity ("ROE") analysis presented by JCP&L is not supported by any documentation, including source references, actual source documentation, or calculations in support of the many of the numbers used in the analysis. Id. at 17-18.

Rate Counsel argues that a historical test year<sup>3</sup> should be used if the Board orders JCP&L to file a base rate case. Id. at 19-20. Rate Counsel maintains that a historical test year would provide the Board with readily available actual data and would help expedite a base rate case review, and that the historical data would not suffer from the uncertainty inherent in a projected test year. Id. at 20. Rate Counsel clarifies that although the Petition requested that the Board order JCP&L to file a base rate case using a historical 2010 test year, Rate Counsel would not object to incorporating a more recent 12-month historical test year in a base rate case. Ibid.

In its Reply Brief, Rate Counsel reaffirms that there is reason to believe JCP&L is earning in excess of its allowed rate of return, that under its current base rates for service JCP&L is earning an unreasonable rate of return, outside of what may be considered the "zone of reasonableness," and that a base rate proceeding affords the Board the opportunity to address JCP&L's history of reliability problems that have adversely affected its electric customers. RC RB at 2. Rate Counsel maintains that JCP&L did not provide any relevant facts to refute Rate Counsel's recommendations and accompanying data and calculations. Rate Counsel continues to assert that a base rate case would help ensure that JCP&L charges rates that are reasonable, that the Company is allowed to earn a reasonable return, and that the Company has made and continues to make necessary capital improvements required to provide safe, adequate and reliable utility service. Id. at 2-3.

Rate Counsel argues that it has met its burden of proof for establishing that the Board should initiate a base rate case to review JCP&L's earnings. Id. at 3-4. Rate Counsel states that the burden of proof for establishing claims before state agencies in contested administrative matters is "a fair preponderance of the evidence." Matter of Polk, 90 N.J. 550 (1982). Rate Counsel disputes JCP&L's claim that in this matter Rate Counsel must satisfy the same burden of proof as the utilities when they seek rate increases. Ibid.

Rate Counsel contends that JCP&L's reliance on FERC rate making proceedings is fundamentally flawed because it fails to consider that Rate Counsel is not seeking a change in JCP&L's rates in the current proceeding; rather, Rate Counsel is merely attempting to initiate a base rate case. Rate Counsel contends that a rate case is necessary to give the Board and interested parties the opportunity to analyze information necessary to determine the reasonableness of JCP&L's current rates, which information is currently within the exclusive control of the Company.

Rate Counsel reasserts that the Board should initiate a base rate case proceeding in order for the Board and interested parties to examine the justness and reasonableness of JCP&L's current rates, with access to relevant current company data. Id. at 5. Rate Counsel maintains that without such a proceeding, the Company has exclusive access to the data necessary to determine the reasonableness of its rates. Rate Counsel alleges that the Company's analysis of its return on rate base is completely composed of projected data that is not validated with supporting documentation. Rate Counsel further asserts that, despite JCP&L's criticism of its analysis, the Company did not provide any substantive data to refute its position. Id. at 5-7. Rate Counsel alleges that JCP&L's updated ROE analysis suffers from the same flaws as its original analysis, as set forth in detail in Rate Counsel's Initial Brief.

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<sup>3</sup> The "test year," is a 12-month representative period used to establish rates.

Moreover, Rate Counsel argues that a base rate proceeding would afford interested parties an opportunity to address JCP&L's reliability issues. Rate Counsel alleges that the Board has recently noted JCP&L's service quality issues. Id. at 7-11. Specifically, Rate Counsel emphasized that the Board initiated its own investigation of JCP&L's, and the other three EDCs', reliability and service quality in response to Hurricane Irene in 2011. Ibid. Rate Counsel states that the Board's preliminary investigation and report, entitled "Hurricane Irene Electric Response Report" ("Hurricane Report"), made special note of JCP&L's poor performance, and that JCP&L's poor performance in recent years merited a special investigation of its underground system in Morristown. Id. at 9.

Rate Counsel disputes JCP&L's claim that the Company has maintained low rates while also maintaining its system-wide reliability indices since 2002. Ibid. Rate Counsel also challenges JCP&L's assertion that the Company's 10-year System Average Interruption Duration Index ("SAIDI") performance indicates that its overall reliability has improved since its last base rate case, contending that SAIDI is a limited measure of reliability that only measures system-wide duration outages. Id. at 10. Rate Counsel notes that the Company did not provide information on the frequency of the outages, either system-wide or by customer. Ibid.

Rate Counsel contends that even if JCP&L's rates are among the lowest in that State, as the Company claims, the appropriate standard is not necessarily the lowest rates possible, but rather the lowest just and reasonable rates that will provide ratepayers with safe, adequate and proper service. Id. at 10-11. Accordingly, Rate Counsel contends that without a base rate proceeding, the Board and interested parties will not have an opportunity to examine whether prudent levels of infrastructure investment have been made by the Company to ensure reliability and whether the money it collects has been spent effectively. Ibid.

### JCP&L

JCP&L argues that Rate Counsel has not established a reasonable basis to find that the Company's earnings are unreasonable. JCP&L IB at 1. JCP&L argues that this proceeding does "not require an analysis of the Company's financial statements in minutia," as this matter is distinguishable from a rate case. Ibid. JCP&L maintains that its Answer and supporting exhibit and schedule establish that the Company's rates are just and reasonable and, therefore, there is no reason for the Board to order the Company to file a rate case. Id. at 1-3.

JCP&L contends that its Answer established that the Company's achieved ROE for the twelve-month period ended June 30, 2011 was 10.1%, which is not unreasonable. Id. at 1-2. JCP&L further maintains that its achieved ROE for the twelve months ended December 31, 2011, calculated using the same methodology as in the Answer, is 9.29%, which is indicative of a declining trend in earn returns. Ibid. The Company states that it has seen a decline in its returns since the third quarter of 2010, largely due to recessionary pressures. JCP&L argues that the Board has traditionally used ROE as the metric for evaluating whether a utility is "overearning" in the host of rate-setting contexts. According to JCP&L, based on the Company's achieved 2011 ROE of 9.29%, there is no need for the Board to require it to file a base rate case. Id. at 2-3.

The Company takes issue with Rate Counsel's analysis that uses 2010 data from the Company's FERC Form 1 to calculate an overall rate of return or rate base ("ROR"). Ibid. While JCP&L continues to assert that ROE is the proper metric upon which the Board should render a decision in this matter, in response to Rate Counsel's ROR calculations, the Company

performed its own analysis. JCP&L's ROR analysis is based on data from the Company's 2012 budget, adjusted for a revised sales forecast and for known, actual results through March 31, 2012, including weather-adjusted revenues and pro-forma and post-test year adjustments. The Company argues that, based on this analysis, JCP&L's base rates are clearly just and reasonable and, therefore, there is no reason for the Board to direct JCP&L to file a base rate case. Id. at 3.

JCP&L further argues that the fact that it has not filed a base rate case for several years is not relevant to whether its base rates are just and reasonable. Id. at 3-4. JCP&L maintains that there is no legal or regulatory precedent or factual basis that correlates the length of time between rates cases with the reasonableness of a utility's base rates, and that the company should not be penalized for effectively managing its business to avoid the need for frequent base rate cases. Ibid.

JCP&L further asserts that the Board should not order a base rate case because JCP&L's rates have decreased significantly since 2002, and are the lowest electric rates among the four New Jersey Electric Distribution Companies ("EDCs"). Id. at 4-6. All of the State's EDCs were required to file post-restructuring base rate cases in 2002. JCP&L states that since that time, its delivery rates have decreased significantly, and that as a result of its 2002 base rate case, the Company's distribution rates were decreased by approximately \$163 million on an annual basis, as opposed to the increases to the distribution rates the other EDCs have had since that time. JCP&L notes that its distribution, delivery, and total rates are lower than the rates of the State's other EDCs. Ibid.

Moreover, JCP&L contends that the length of time since the Company's last rate case has not adversely affected its system-wide reliability, and that despite being impacted by two severe weather events in 2011, the Company's system reliability, as reported to the Board in the Company's Annual System Performance Reports, has shown an overall positive trend since 2002. Id. at 6-7. JCP&L argues that as part of the Company's 2005 rate case, the parties agreed that JCP&L's SAIDI was the appropriate metric to measure system performance. JCP&L notes that the parties agreed that the Company's SAIDI should not exceed 195 starting on June 30, 2005, with the maximum decreasing to 185 by December 31, 2006. JCP&L states that its SAIDI has shown a downward trend of improvement over the ten-year period from 2002-2011. Ibid.

JCP&L argues that Rate Counsel has not satisfied its burden of establishing that JCP&L's rates are unjust or unreasonable. Id. at 8-9. JCP&L argues that when a third party challenges the justness and reasonableness of a utility's rates, that party bears the initial burden of proof but concedes that no reported New Jersey cases exist regarding the burden of proof in a case in which a third party files a petition challenging a utility's Board-approved rates. Ibid. However, JCP&L asserts that cases arising under Section 206 of the Federal Power Act ("FPA"), 16 U.S.C. §824(e)(b), are informative. Under the FPA, when a party challenges a utility's rates, the burden of proof shall be upon the Commission or the complainant to "establish that the current rate is unjust and unreasonable." Id. (citing 16 U.S.C. § 824(e)(b); see Interstate Power & Light Co. v. ITC Midwest, LLC, 127 FERC ¶ 61,043, at P 42 (2009)). JCP&L argues that FERC's rationale in requiring a complainant to satisfy a standard of proof is analogous here, where Rate Counsel has alleged that JCP&L's current rates are unreasonable. JCP&L IB at 8-9.

Furthermore, JCP&L maintains that the Petition failed to satisfy that burden because it is based on stale 2010 data and contained numerous manifest errors. JCP&L asserts that the Company's 2010 FERC Form 1 data was stale when Rate Counsel used it in 2011 and, consequently, even more dated at this time. JCP&L argues that using 2010 data to determine whether a utility's rates are just and reasonable in 2012 would be akin to retroactive ratemaking. JCP&L maintains that any analysis of whether JCP&L's earnings are reasonable must be based on the most recent data available. Id. at 9.

Similarly, JCP&L argues that Rate Counsel's Petition is based on numerous errors and omissions, and failed to make standard ratemaking adjustments. Id. at 10. JCP&L maintains that the normal focus of an "earnings review" is on a utility's achieved ROE, as opposed to Rate Counsel's analysis that focused on the Company's ROR in 2010, and that Rate Counsel has failed to demonstrate that the company's rates are unjust or unreasonable.

In its Reply Brief, JCP&L reaffirms its position that the Company has demonstrated that its current rates are within the zone of reasonableness, and, therefore, filing a base rate case at this time is unnecessary. JCP&L RB at 1. JCP&L claims that Rate Counsel's arguments that the Company had a high rate of return on rate base in 2010 and that the Company's "alleged reliability issues somehow give rise to the need for JCP&L to file a base rate case now . . . are completely without merit." Ibid.

JCP&L argues that it has demonstrated that its current rates are not unjust or unreasonable, and that its ROE analysis included in its Answer, its updated ROE analysis included with its Initial Brief, and its return on rate base/revenue requirement analysis, using a 2012 test year, on the "whole demonstrates that JCP&L's rates are within the zone of reasonableness and there is no need for a base rate proceeding." Id. at 1-2. JCP&L claims that its rate base/revenue requirement analysis is conservative because it includes many ratemaking adjustments with which the Company disagrees and which it would not necessarily include in a rate filing, but which Rate Counsel and Board Staff usually propose in a base rate case. Ibid.

JCP&L argues that even with the conservative comprehensive return on rate base/revenue requirement analysis using a 2012 test year, the analysis, as corrected in its Reply Brief, shows an inconsequential income surplus of only \$14.8 million (representing \$25 million in revenue requirement or approximately 1.0% of overall electric service revenues of \$2.2 billion). Id. at 2. JCP&L maintains that this analysis indicates that the Company's current rates, based on a rate base of more than \$2.3 billion, are not unreasonable.

JCP&L asserts that the Company's Initial Brief and exhibits anticipated and addressed the points raised in Rate Counsel's Initial Brief. Id. at 2-4. JCP&L states, as an example, that it addressed Rate Counsel's argument regarding the amortizations, approved in the Company's previous 2005 base rate case, given that the Company removed the amortization for regulatory assets that have been fully recovered from its revenue requirement analysis submitted with its Initial Brief.

With regard to the burden of proof to establish the need for a base rate case, JCP&L argues that Rate Counsel admits it has the burden of proof. Id. at 4. JCP&L asserts that Rate Counsel failed to satisfy its burden of proof by failing to introduce any credible evidence that the Company's existing rates are outside the zone of reasonableness.

Furthermore, JCP&L argues that the Company's initial brief and exhibits refute any notion that its rates are excessive. JCP&L states that using 2012 dates, and a very conservative approach, JCP&L would have a very small (\$25 million) revenue surplus under its current rates, which would equate to an electric service rate decrease of approximately 1%. Id. at 4-5. JCP&L argues that this analysis establishes that the Company's rates are within the zone of reasonableness; therefore, a base rate case would be a waste of time and resources.

Moreover, JCP&L argues that it has improved system reliability since its last base rate case and that recent reliability investigations do not warrant a forced base rate case filing. Id. at 7-8. JCP&L states that the Company's SAIDI has shown an improving reliability trend over the last ten years. JCP&L argues that Rate Counsel attempts to tie reliability issues to a need for base rate case filings by including incidents that have been concluded, namely the 2002-03 incidents and the service issues in the Morristown underground network. JCP&L states that the pending storm-related investigation involves all of the State's electric utilities, not just JCP&L.

JCP&L argues that Rate Counsel has attempted to prop up its rate case arguments with references to unrelated service issues which serves to highlight its misunderstanding of the utility business. JCP&L argues that forcing the Company to file a base rate case will have no impact on system performance, particularly given the likelihood that Rate Counsel would argue that the Company's distribution rates should be further reduced. JCP&L states that Rate Counsel's reliability-related arguments have no basis in fact and are self-contradictory with Rate Counsel's argument that the Company's rates are too high. Id. at 8-9.

Furthermore, JCP&L asserts that Rate Counsel's argument that a purely historical test year should be used is inconsistent with the Board's practice and precedent. Ibid. JCP&L argues that the Board need not decide on an appropriate test year because the Company's rates are not unjust or unreasonable and because the Board has a long-standing precedent is for a utility filing a rate case to use a test year that reflects the most recent 12-month period prior to new rates becoming effective. According to JCP&L, utilities file base rate cases with a few months of actual data and the remainder of the test year populated with projected data, which is then updated during the case. Ibid.

Finally, JCP&L argues that Gerdau's request that the Board direct the Company to file a base rate case so Gerdau can raise rate design issues should be rejected. JCP&L maintains that Gerdau's intervention suggests though its reference to cost allocation and rate design that the Board should direct the Company to file a base rate case so Gerdau can seek further rate discounts. JCP&L argues that there is no legal, ratemaking, or policy basis that warrants directing a utility to file a base rate case to afford a single customer the opportunity to seek discounted rates. Id. at 9—10.

### Gerdau

Gerdau supports the Petition requesting that the Board direct JCP&L to file a base rate case. Gerdau IB at 1. Gerdau states that neither JCP&L nor the Board disputes the Board's legal authority to issue an order directing the initiation of a base rate case. Id. at 1-2. Gerdau argues that the Board should order JCP&L to file a base rate case because material issues exist regarding JCP&L's current earnings, current revenue requirements, and the appropriate level of an allowed return. Ibid.



Gerdau asserts that material issues also exist regarding the continuing justness and reasonableness of the cost allocation and rate design of JCP&L's distribution rates. Gerdau argues that a rate case is necessary to address cost allocation and rate design of JCP&L's distribution rates, given that these issues are typically addressed only in the context of a full base rate case proceeding to avoid any concerns regarding single-issue ratemaking and to minimize the unintended consequences for other customers of bringing rates for certain customer classes into close alignment with actual costs. Id. at 2.

In its Reply Brief, Gerdau argues the Board should direct JCP&L to file a base rate case to allow it to determine whether the Company's rates are just and reasonable. Gerdau maintains that the record establishes that JCP&L's rates should be adjusted downward. Gerdau RB at 1.

Gerdau argues that New Jersey law does not support JCP&L's contention that the burden of proof is on Rate Counsel to prove the Company existing rate levels are just and reasonable. Gerdau stated that JCP&L concedes that "there are no reported New Jersey cases regarding the burden of proof in a case in which a third party files a petition challenging a utility's Board-approved rates . . ." Id. at 2 (citing JCP&L IB at 8). Gerdau further argues that JCP&L's reliance on the Federal Power Act and citations to several FERC decisions is inapposite to the question before the Board.

In addition, Gerdau objects that JCP&L does not explain why the Company used 2012 budget information to calculate its overall rate of return, rather than the actual end-of-year 2011 information reported in its FERC Form 1, which included detailed information regarding JCP&L's revenue and expenses. Id. at 3. Gerdau notes that JCP&L's calculations used data from the Company's 2012 budget, adjusted for revised sales forecast for known, actual results through March 31, 2012, and that JCP&L's FERC Form 1 shows New Utility Operating Income of \$248 million, as opposed to the Company's Schedule MAM-2 that shows Normalized Income of only \$207 million. Ibid.

Moreover, Gerdau argues that JCP&L's comparison to other utilities' rates is irrelevant to the Board's consideration of whether JCP&L's revenues are in line with its own actual costs, and that JCP&L's rates for the provided service compares unfavorably to the rates that Gerdau previously received from Public Service Electric & Gas Company for comparable service to Gerdau's now-retired Perth Amboy facility. Id. at 3-4.

Gerdau further argues that JCP&L's assumed ROE of 10.3% is unreasonable because it is based on stale data, and the only justification JCP&L provided for assuming a higher ROE than its current ROE is two previous Board cases. Gerdau argues that the Company's assumption that its allowed ROE will automatically increase is unreasonable because those cases are based on information and data that is nearly three years old. Id. at 5. Gerdau argues that JCP&L's appropriate allowed ROE would be an issue that must be examined in a rate case proceeding. Furthermore, Gerdau argues that JCP&L's adjustments for Storm Damage Cost Amortization and Pension Costs and Other Post-Employment Benefits ("OPEB") are not substantiated. Id. at 5-6. Gerdau claims that absent these two adjustments, JCP&L's own calculations would show that the Company could reduce its rates by more than \$50 million annually. Id. at 6.

Finally, Gerdau argues that a cost-benefit analysis from a ratepayer perspective favors requiring JCP&L to file a rate case. Gerdau maintains that, based on JCP&L's data, rate case expenses are approximately \$293,500 annually. Gerdau claims that, assuming a rate case were to yield a rate reduction of \$50 million annually, ratepayers would experience of return on investment ("ROI") of 17,000% annually once the new rates take effect. Id. at 6.

## AARP

In its reply brief, AARP requests that the Board order JCP&L to file a base rate case expeditiously. AARP maintains that Rate Counsel has set forth sufficient credible evidence to question the justness and reasonableness of JCP&L's current base rates which support a Board Order requiring the Company to file a base rate case. AARP RB at 2. AARP argues that the seriousness of the harm to ratepayers from unjust and unreasonable rates supports the Board ordering JCP&L to file a base rate case. AARP maintains that a base rate proceeding will allow the parties access to all the relevant information and give the Board the opportunity to examine the evidence to determine the overall justness and reasonableness of JCP&L's rates. Id. at 2-3.

AARP disputes the proposition that JCP&L's rates being lower than the State's other three EDCs is evidence of the reasonableness of the Company's rates. Id. at 3. AARP argues that the State's residential rates of all four electric distribution companies are, on average, among the highest in the nation, and that New Jersey's high electricity rates already inflict a substantial hardship on the State's residents and the State's economy. AARP argues that ratepayers cannot afford to pay rates above what are just and reasonable, and that ratepayers are entitled to know whether the rates they are paying are just and reasonable. AARP asserts that ratepayers should not have to rely solely on a company's desire for a base rate case in order for the Board to examine the reasonableness of its base rates. Id. at 3-4.

## DISCUSSIONS AND FINDINGS

The Board is empowered to ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey. N.J.S.A. 48:2-23. Pursuant to N.J.S.A. 48:2-13, the Board has been vested by the Legislature with the general supervision and regulation of and jurisdiction and control over all public utilities, "so far as may be necessary for the purpose of carrying out the provisions of [Title 48]." The courts of this State have held that the grant of power by the Legislature to the Board is to be read broadly, and that the provisions of the statute governing public utilities are to be construed liberally. See, In re Public Service Electric and Gas Company, 35 N.J. 358, 371 (1961); Township of Deptford v. Woodbury Terrace Sewerage Corp. 54 N.J. 418, 424 (1969); Bergen County v. Dep't of Public Utilities, 117 N.J. Super. 304 (App. Div. 1971). The Board is also vested with the authority, pursuant to N.J.S.A. 48:2-19, to investigate any matter concerning a public utility, and, pursuant to N.J.S.A. 48:2-16 and 48:2-40, to issue orders to public utilities.

When the issue raised involves rates, the Board must balance the interests of utility investors and ratepayers in determining what is "just and reasonable." Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). A utility should earn a rate of return that is "reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

Bluefield Waterworks and Imp't. Co. v. Public Svc. Comm., 262 U.S. 679, 693 (1923). A utility's rate of return must fall "within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public." In re N.J. Power & Light Co., 9 N.J. 498, 534 (1952). In a base rate proceeding, rates can be set based only on "sufficient or substantial competent and relevant evidence." Central R. Co. of N.J. v. Dep't of Public Utilities, 7 N.J. 247, 260 (1951).

As discussed more fully below, the Petition raises three general issues: JCP&L's earnings, the lapse of time since the Company's last base rate case, and reliability / infrastructure issues. Any one of these items could be adequately evaluated independent of a base rate case. However, given the complexity of the individual issues, the number of issues, and the fact that the issues may very likely be inter-related, the Board HEREBY FINDS that directing JCP&L to file a base rate case is the most efficacious method to address a number of regulatory concerns.

Rate Counsel has alleged that JCP&L is earning more than its authorized rate of return. However, based on the information filed by Rate Counsel and the Company, it is not possible to determine the validity of the allegation. Not only did the respective parties perform their calculations on different bases (return on rate base compared to return on equity), the data contained certain revenues and expenses for the non-regulated parts of the business, and thus included below-the-line earnings and expenses that are not part of the ratemaking process. It is for this very reason that the Board cannot, at this time, properly evaluate any claims that JCP&L is overearning. In addition, as a result of the merger of Allegheny Energy, Inc. with JCP&L's parent company, FirstEnergy Corp., other adjustments may come into play. In re the Business Combination of FirstEnergy Corp., Parent Company of Jersey Central Power and Light Company, and Allegheny Energy, Inc., BPU Docket No. EM11010.

Further, while the allowed rate of return is used for rate setting purposes, it should not be viewed as the maximum return that a utility can legally earn. It is widely recognized by the regulatory community that, when setting an allowed return, regulators think in terms of a "zone of reasonableness," a range on which experts can disagree. A base rate case will clarify the zone of reasonableness for this company under current economic conditions, and allow the Board to set just and reasonable rates on a prospective basis, and provide JCP&L with revenues necessary to attract capital on reasonable terms.

JCP&L has not filed a base rate case since its last rate Order issued in May 2005 while every other major electric, gas and water company has filed during this time period. In fact, the other three electric utilities have filed base rate cases within the past two years pursuant to their participation in accelerated infrastructure programs launched in 2009. See In re Public Service Electric and Gas Company, BPU Dkt. No. GR09050422 (Order dated 6/7/10); In re Atlantic City Electric Company, BPU Dkt. No. ER09006664 (Order dated 5/12/10); and In re Rockland Electric Company, BPU Dkt. No. ER09080668 (Order dated 5/12/10). JCP&L declined to participate in those programs. While not filing a base rate case for a long period of time is not an indication of mismanagement, and may in fact reflect good management, an absence as long as JCP&L's limited the opportunity to thoroughly examine the finances and operations of the Company.

The Board has recently addressed several JCP&L service related issues. In 2011, the Board initiated an investigation of all of EDCs' responses to Hurricane Irene and the snowstorm of October 29, 2011. On December 15, 2011, the Board accepted Board Staff's completed preliminary report and recommendations entitled "Hurricane Irene Electric Response Report." In

re the Board's Review of New Jersey's Utilities' Response to Hurricane Irene, BPU Dkt. No. EO11090543 (Order Accepting Staff's Report and Requiring Electric Utilities to Implement Recommendations, 12/15/11). While Staff's Hurricane Irene Report found that certain practices of all of the electric utilities need to be reexamined, it specified that JCP&L was deficient in its storm restoration process, and that the Company's planning and preparation in the areas of communications, estimating outage restoration, supplemental crew mobilization and mitigation of tree related damages particularly required review.

The Board ordered further investigation of the EDCs' inclement weather preparation, outage restoration, and response management, and authorized the hiring of an expert consultant to further review and evaluate the EDCs' preparation, response, and restoration to Hurricane Irene and the snowstorm of October 29, 2011. That report is due shortly.

Moreover, recent reliability and service quality concerns necessitated that the Board order a special investigation into JCP&L's underground electric system ("Network") following a series of incidents that occurred in and around Morristown in recent years, which caused residents, business people, and elected officials to voice concerns regarding the system. In re the Board's Investigation Into Reliability Issues Related to Jersey Central Power & Light Company's Morristown Underground Distribution System, BPU Dkt. No. ER11090526 (Order dated 9/22/11). The Board ordered the investigation into the reliability and safety of the Network and directed JCP&L to hire a Special Reliability Master ("SRM") to critique the system's design, assess the company's maintenance and operation of the system, determine the current status of the network, and make recommendations to increase the safety and reliability of the network.

The SRM's report was critical of JCP&L's performance with respect to preventive and corrective maintenance procedures on its underground network system. Report to the State of New Jersey Board of Public Utilities, In re the Board's Investigation Into Reliability Issues Related to Jersey Central Power & Light Company's Morristown Underground Distribution System, dated 2/3/12. The report found that, while the plan, design and construction of the Network are sound, JCP&L had not followed its own procedures for undertaking preventive maintenance; that JCP&L failed to appropriately prioritize corrective maintenance measures; and that the Company was deficient with respect to record keeping regarding corrective maintenance issues. The report also indicated that the Company needed to improve communications with local officials.

By Order dated March 12, 2012, the Board ordered JCP&L to implement all of the changes recommended by the SRM. The Board acknowledges that JCP&L has committed to implementing all of the recommendations presented in the SRM report, and has provided Staff with current action plans to address the Network's operations and safety. Given the extent of reliability concerns with JCP&L's system, questions of system performance and investment would be best investigated in the context of a base rate case where the financial impact of any additional investments can be determined as an aid in decision-making.

Therefore, as stated above, given the number and complexity of the issues raised as well as the fact that they may very likely be inter-related, the Board HEREBY FINDS that a base rate proceeding with appropriate data including an examination of rate base, expenses, operations and rate of return as required by N.J.S.A. 48:2-21 will assure that JCP&L's rates are just and reasonable, and that the Company is investing sufficiently to assure the provision of safe, adequate and proper utility service to its customers as required by N.J.S.A. 48:2-23. The rate case will include a review of financial integrity and adequacy of capital expenditures, and

provide valuable insight as to the company's operational efficiency and organizational effectiveness.

The Board emphasizes that the instant matter is not a base rate case, and, therefore, the Board is not making any determination as to whether JCP&L's current rates are just and reasonable. What the Board does find is that, at this time and given the circumstances, pursuant to N.J.S.A. 48:2-19 and 48:2-21, a rate case review is a reasonable course of action to allow a full investigation of the issues that have been raised.

In connection with the direction to file a rate case, the question has been raised whether the Board shall order the use of an historic test year or whether it shall follow its usual policy for rate cases by large utilities. What kind of test year to use when the Board directs a utility to file a base rate case on the petition of a third party appears to be a case of first impression for the Board.

In In re Elizabethtown Water Company Rate Case, Docket No. WR850433085 (Order dated 5/23/58) ("Elizabethtown Water"), the Board found that a partly historic and partly forecasted test year "strikes a balance by enabling the parties to develop a substantive record based on sufficient actual data, but also providing petitioner with the opportunity to propose rates which should reflect conditions at the time the Board makes a determination in this matter and during the period of future rates." Id. at 2. The Board found that as a general guideline, rate case petitions should contain six months of actual data and six months of estimated data, or at a minimum, five months of actual data and seven months of estimated data. The Board further ordered that the petitioner be given the opportunity to propose adjustments to expenses for a period of nine months beyond the end of the test year, changes to rate base for a period of six months beyond the end of the test year, and capitalization for a period of three months beyond the end of the test year. Ibid. The Board stated that this Order established "the guidelines that should apply to the test years to be filed in the future by all major New Jersey Public Utilities." Ibid.

Rate Counsel has asked the Board to require JCP&L to use a recent historical test year while the Company advocates that the Board continue to follow the policy outlined above. Based on the specific circumstances of this matter, the Board HEREBY FINDS that it is appropriate for JCP&L to file a base rate case at this time using a historical test year of 2011 to better capture the Company's spending patterns and capital needs. With regard to any out-of-period adjustments, the Company shall have the opportunity to make a record with regard to "known and measurable" changes to the test year provided that the changes are 1) shown to be prudent and major in nature and consequence, 2) carefully quantified through proofs which 3) manifest reliable data. Elizabethtown Water at 2.

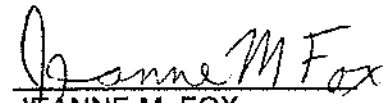
Therefore, the Board HEREBY ORDERS JCP&L to file a base rate case using a historical 2011 test year on or before November 1, 2012.

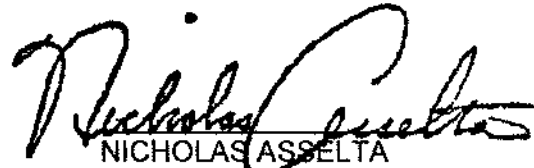
The Board **HEREBY RATIFIES** the decisions made by President Hanna as presiding commissioner in this matter for the reasons stated in his Orders.


DATED: 7/31/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

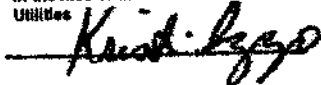
  
JEANNE M. FOX  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE PETITION OF RATE COUNSEL REQUESTING A BOARD ORDER  
DIRECTING JERSEY CENTRAL POWER AND LIGHT COMPANY TO FILE A BASE RATE  
CASE PETITION AND ESTABLISHING A TEST YEAR OF 2010

DOCKET NO. EO11090528

SERVICE LIST

Kristi Izzo, Secretary  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Jerome May, Director  
Division of Energy  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Mark C. Beyer, Chief Economist  
Office of the Economist  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Kenneth Sheehan, Chief Counsel  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Dennis Moran, Director  
Division of Audits  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Kristina A. Miller, Esq.  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Tom Walker  
Division of Energy  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Richard Jackson  
Executive Director  
Board of Public Utilities  
44 S. Clinton Ave  
P.O. Box 350  
Trenton, NJ 08625

Caroline Vachier, DAG  
Dept. Of Law & Public Safety, Division of  
Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Marc B. Lasky, Esq.  
Morgan, Lewis & Bockius LLP  
89 Headquarters Plaza North  
Suite 1435  
Morristown, NJ 07960

Donald M. Lynch  
Region President  
Jersey Central Power and Light  
Company  
300 Madison Avenue  
P.O. Box 1911  
Morristown, NJ 07962-1911

Arthur E. Korkosz, Esq.  
FirstEnergy Corp.  
76 S. Main Street, 18<sup>th</sup> Floor  
Akron, OH 44308

Babette Tenzer, DAG  
Dept. Of Law & Public Safety, Division of  
Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Steven S. Goldenberg, Esq.  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311

Stefanie A. Brand, Esq.  
Director  
Division of the Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Kurt S. Lewandowskj, Esq.  
Division of the Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Paul Flanagan, Esq.  
Division of the Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Ami Morita, Esq.  
Division of the Rate Counsel  
31 Clinton Street, 11th Floor

P.O. Box 46005  
Newark, NJ 07101  
Lisa Gurkas  
Division of Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101

David Wand, DAG  
Dept. Of Law & Public Safety, Division of  
Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Alex Moreau, DAG  
Dept. Of Law & Public Safety, Division of  
Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Gregory Eisenstark, Esq.  
Morgan, Lewis & Bockius LLP  
89 Headquarters Plaza North  
Suite 1419  
Morristown, NJ 07960  
[geisenstark@morganlewis.com](mailto:geisenstark@morganlewis.com)

Andy Levi  
Avon Capital Advisors  
650 Fifth Avenue  
New York, NY 10104  
[Andrewl@avoncap.com](mailto:Andrewl@avoncap.com)