



Agenda Date: 3/20/13

Agenda Item: 2G

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF	)	ORDER COMPELLING
JERSEY CENTRAL POWER & LIGHT COMPANY FOR	)	JCP&L TO FILE A NEW
REVIEW AND APPROVAL OF INCREASES IN AND	)	DEPRECIATION STUDY
OTHER ADJUSTMENTS TO ITS RATES AND CHARGES	)	
FOR ELECTRIC SERVICE, AND FOR APPROVAL OF	)	
OTHER PROPOSED TARIFF REVISIONS IN	)	
CONNECTION THEREWITH; AND FOR APPROVAL OF	)	
AN ACCELERATED RELIABILITY ENHANCEMENT	)	BPU DOCKET NO. ER12111052
PROGRAM ("2012 BASE RATE FILING")	)	OAL DOCKET NO. PUC16310-12

**Parties of Record:**

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**BY THE BOARD:**

In response to a Board Order dated July 18, 2012 in Docket No. EO11090528, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a base rate case petition which was transmitted to the Office of Administrative Law ("OAL") on December 10, 2012 for hearing as a contested matter. The case was referred to Administrative Law Judge ("ALJ") Richard McGill.

According to the Division of Rate Counsel ("Rate Counsel"), after realizing that JCP&L had failed to prepare and file a new depreciation study, and the Company subsequently refusing to do so voluntarily, Rate Counsel filed a Motion to Compel a New Depreciation Study ("Motion") at the OAL on January 10, 2013. In response, by letter brief dated January 22, 2013, JCP&L argued that there is no requirement that a depreciation study be filed with a base rate case submission, that the Company's depreciation rates have been updated annually since the year 2000, and that its depreciation rates were reviewed in the Company's 2002 base rate case, resulting in a change in the depreciation methodology and a decrease in the allowed

depreciation expense. Additionally, JCP&L asserted that it would need three months to complete a depreciation study. Rate Counsel filed a reply reiterating its position that the Board cannot set just and reasonable rates without a current depreciation study. By Order dated February 1, 2013, ALJ McGill denied the motion to compel, "...it appearing that the arguments against the motion are more persuasive...."

On February 7, 2013, Rate Counsel filed a request with the Board for interlocutory review of ALJ McGill's decision arguing, in part, that the Board cannot determine whether the Company's rates are just and reasonable relying on a depreciation study that was last prepared seventeen (17) years ago, and that excessive depreciation expenses result in an excessive cost of service which, in turn, results in unreasonable rates.

On February 20, 2013, the Board granted Rate Counsel's motion for interlocutory review of ALJ McGill's February 1, 2013 Order, so that the Board could determine if JCP&L should be compelled to file a new depreciation study during the pendency of the rate case. The Board requested an extension of time until April 1, 2013, for issuing a decision on the substance of Rate Counsel's motion as provided by N.J.A.C. 1:14-14.4(c). The Office of Administrative Law granted the requested extension of time on February 26, 2013.

### **JCP&L's Response**

JCP&L argues that it is not required to file a new depreciation study as part of a base rate case. JCP&L Reply Letter Brief at 3. JCP&L also states there is no specific regulation or case law precedent stating that a new depreciation study must be submitted as part of a base rate case, and essentially that if the Board wanted a depreciation study in the context of each and every base rate case, it would have adopted a regulation requiring such. *Id.* at 4.

Second, JCP&L argues that its filing of annual updates to the existing depreciation study in conjunction with the Board's review of JCP&L's depreciation rates in the 2002-2005 base rate case by using the depreciation rate determined by the Board in 1997, without a new depreciation study, fulfills any need for depreciation information. Therefore, the Board has sufficient information to determine accurate depreciation of the company's assets. JCP&L outlines that historically the Board approved a Stipulation that provides:

17. JCP&L's pending Depreciation Rates filing, made by Verified Petition on March 3, 1995 under BPU Docket No. EO95030098, shall be settled in accordance with the separate Stipulation of Settlement of even date herewith which the Parties hereto have executed and are submitting to the Board for final approval, a copy of which is annexed hereto. In addition, the Parties further agree that, effective January 1, 2000, JCP&L shall change its method of depreciation to remaining life depreciation, updated annually and booked in accordance with such annual updates commencing January 1, 2000.<sup>1</sup>

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<sup>1</sup> In re the Petition of Jersey Central Power & Light Company for Approval of Changes to its Rates of Depreciation, BPU Docket No. EO95030098 (Order dated March 24, 1997), approving "Stipulation of Final Settlement", at ¶ 17 (emphasis added).

The Company argues that since 2000 JCP&L's annual updated depreciation accrual rates, done in accord with the methodology that all parties, including Rate Counsel<sup>2</sup>, agreed to, are sufficient, and JCP&L's depreciation rates proposed in the current filing are based on the rates that were in effect as of January 1, 2012, not seventeen year-old depreciation rates.

The Company also argues that Rate Counsel's Interlocutory Request also failed to acknowledge that the Board can, and has, reviewed depreciation rates, expense, and methodologies in base rate cases without a complete new depreciation study. The Company reiterates that in the 2005 base rate case several depreciation issues were decided without JCP&L filing new full depreciation study.<sup>3</sup>

Lastly, JCP&L argues that Rate Counsel's demand for a depreciation study is untimely, and requiring one be filed now would cause delay in the pending case. According to the Company, Rate Counsel had 16 months to request a new depreciation study commencing with the September 2011 filing when it asked the Board to order JCP&L to file a base rate case. JCP&L argues that the three-month time necessary to prepare and file a new depreciation will significantly delay the base rate filing. *Id.* at 8.

## DISCUSSION AND FINDING

The question before the Board is whether the Company should be directed to file a new depreciation study as part of its pending rate case. After careful consideration of Rate Counsel's motion and supporting brief and the Company's response, the Board **FINDS** that the filing of a new depreciation study is warranted.

JCP&L makes two policy arguments against requiring it to submit a depreciation study. The first cites to a Board Order dated March 24, 1997 that directed JCP&L to change its method of depreciation to remaining life depreciation, updated annually and booked in accordance with such annual updates commencing January 1, 2000. The Company contends that under the terms of this Order, its depreciation rates remain current because it updates its depreciation rates annually in accordance with a methodology all parties agreed to at that time. Based on this, the Company contends a new depreciation study is not necessary. The Company also contends that in a subsequent 2002 rate case, the Board revised the Company's proposed depreciation expense. The Company had not submitted a depreciation study in that case, and asserts that this did not prevent the Board from determining just and reasonable rates.

The Board is not persuaded by the Company's arguments. The last depreciation study filed by the Company was done in connection with its 1995 rate case, over 17 years ago. The fact that the Company's current depreciation method requires it to update its accrual rates annually in no way takes the place of a thorough review of the depreciation methodology to be used and how it should be applied. The annual updates change the inputs into the previously determined formula. The adjustment adopted by the Board in its 2002 Order simply reflected the removal of a percentage value for net cost of salvage, replacing it with a cost of removal dollar amount. The Board is of the view that the appropriateness of the in force accrual rates needs to be

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<sup>2</sup> The Division of Ratepayer Advocate, Rate Counsel's predecessor, was a party to the Stipulations approved by the Board's "Global Settlement" Order of March 24, 1997.

<sup>3</sup> In re the Verified Petition of Jersey Central Power & Light Company for Review and Approval of an Increase in and Adjustments to Its Unbundled Rates and Charges for Electric Service, Docket No. ER02080506 (Order dated May 17, 2004).

independently scrutinized within the context of a rate proceeding, particularly when the time between rate cases exceeds five years, as it does with JCP&L.

Additionally, under N.J.S.A. 48:2-18, after notice and hearing, the Board can "fix proper and adequate rates of depreciation of the property of each public utility." The rates must be sufficient to allow the utility to maintain the property and keep it "in a state of efficiency corresponding to the progress of the industry." The allowance provided for depreciation can only be used "for depreciation, improvements, new construction, replacements, extensions or additions to the property of the public utility or for the retirement of debt incurred in connection therewith." Id.

Under the current circumstances, the determination of the appropriate depreciation rates requires more than a review of the annual updates proffered by the Company. As stated in In re the Cent. R.R. Co. of N.J., 10 N.J. 255, 266 (1952),

There must be proof in the record not only of the amount of the various accounts but also sufficient evidence from which the reasonableness of the accounts may be determined. *Public Service Coordinated Transport v. State*, supra (5 N.J., at pp. 218-219). On the depreciation factor, above adverted to, the burden of proof of the utility is not sustained by proof that its general accounting system has been correct for the mathematical calculations are based on underlying predictions which are matters of opinion and require examination of many variable elements, in which opportunities for excessive allowances even under correct accounting systems are always present. *Lindheimer v. Illinois Bell Telephone Co.*, supra, 292 U.S. 151, 54 S. Ct. 658, 78 L. Ed., at pages 1194-1197.

The Company's focus on a requirement to file a depreciation study as part of a rate base case is misplaced. The Board can order a utility to file a depreciation study in or out of a rate base case. Since the rate proceeding is already pending, it makes sense to thoroughly review the Company's depreciation rates within that case.

The Board is not persuaded by the Company's argument that requiring a new depreciation study to be done as part of the rate case will unduly delay the proceedings.<sup>4</sup> The procedural schedule agreed upon by all parties on or about March 6, 2013, contemplated the possibility that the Board would grant Rate Counsel's motion and require that the depreciation study be done, setting the due date as June 14, 2013. ALJ McGill adopted that proposed schedule in his prehearing order dated March 7, 2013. Hearings on depreciation are currently scheduled for November, adding approximately one month to the overall case schedule.

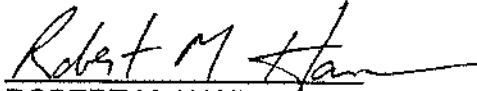
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<sup>4</sup> Rate Counsel has reserved the right to file its own depreciation study if the Board does not direct the Company to do so.




Therefore, the Board **HEREBY DIRECTS** that JCP&L file a new depreciation study as part of its pending rate case on or before June 14, 2013 or by such date as agreed upon by the parties and ALJ McGill.

DATED: 3/20/13

BOARD OF PUBLIC UTILITIES  
BY:



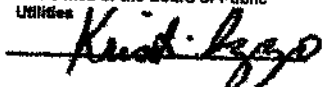
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ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
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**IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT  
COMPANY FOR REVIEW AND APPROVAL OF INCREASES IN AND OTHER  
ADJUSTMENTS TO ITS RATES AND CHARGES FOR ELECTRIC SERVICE, AND FOR  
APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION THEREWITH;  
AND FOR APPROVAL OF AN ACCELERATED RELIABILITY ENHANCEMENT PROGRAM  
(2012 BASE RATE FILING)**

**BPU DOCKET NO. ER12111052  
OAL DOCKET NO. PUC16310-12**

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