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July 28, 2022

Via Electronic Mail

Ms. Carmen Diaz, Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: I/M/O the Verified Petitions of Jersey Central Power & Light Company For Approval of the Sale and Conveyance of the following properties in Sea Isle City, Cape May County, New Jersey, Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6:

**Nine (9) unimproved/vacant property lots, BPU Docket No. EM22050330;
Improved property at 207 40th Street, BPU Docket No. EM22050329;
Improved property at 220 40th Street, BPU Docket No. EM22050335;
Improved property at 214 39th Street, BPU Docket No. EM22050331;
Improved property at 218 39th Street - East and 218 39th Street - West, BPU Docket No. EM22050334.**

Dear Acting Secretary Diaz:

Please accept this letter setting forth the reply of the Division of the Rate Counsel ("Rate Counsel") to the response of Jersey Central Power & Light Company ("JCP&L" or the "Company") to Rate Counsel's June 10, 2022 comment letters in the above-captioned matters.

Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities ("Board") in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, copies of this comment letter are being filed with the Secretary of the

Board and provided electronically to each person on the service list by electronic mail only. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you for your consideration and attention in this matter.

Brief Conclusion

Under the facts presented in the above-referenced Verified Petitions, Rate Counsel does not object to the sales proposed by JCP&L, but asks the Board to approve them with the eight conditions requested in our June 10 comment letters. The purpose of those conditions is to bring closure to these matters, and certainty for ratepayers. In the alternative, if the Board accepts JCP&L's new contention that the remediation of any of these properties is incomplete and the associated future costs are unknown, Rate Counsel asks the Board to deny approval of the proposed sale until JCP&L has completed the required remediation and a sale to a third party is appropriate. However, to the extent that JCP&L merely speculates about future uncertainties, Rate Counsel asks that the Board disregard such and approve these sales with all eight of the requested conditions.

Background

Rate Counsel's June 10, 2022 comment letters did not object to the sales proposed by JCP&L, but asked the Board to include certain conditions in its Order approving the sales. The purpose of those conditions is to bring closure and certainty to ratepayers' obligations to pay for the remediation of the Company's former Sea Isle City manufactured gas plant ("MGP") site. That MGP site encompasses the fourteen lots proposed for sale in these five Verified Petitions. Each of JCP&L's Verified Petitions in these matters represented that it had completed the remediation and retained only monitoring obligations, and proposed to sell each of the fourteen

lots to third parties who accepted applicable environmental conditions.¹ Rate Counsel proposed conditions that would safeguard ratepayers from an open-ended commitment that JCP&L may seek recovery for the costs of claims that may, or may not, occur years in the future. JCP&L has remediated this MGP site over the past 20 years, and has recovered its costs through its annual RAC filings. JCP&L has also recovered its costs of additional work that it says was necessary for the remediation, including moving, building and rebuilding several residential buildings located on these lots. At some point there must be closure. JCP&L's July 19 objection letters undermine that goal.

In each Verified Petition, JCP&L represented that each of the fourteen Sea Isle City Properties was remediated for soils and that the properties are no longer part of, or required for, ongoing groundwater remediation.² JCP&L also represented that it had obtained a Remediation Action Outcome ("RAO") on all 14 lots, with certain terms, conditions or restrictions associated with each.³ JCP&L singled out the 220 40th Street parcel as having been remediated to restricted standards, with a recorded deed notice and remedial action permit that would apply to it, but described its obligations as periodic inspection and reporting to the DEP.⁴

¹ Each Verified Petition, ¶ 27 (purchaser accepts Post-Closing Conditions including but not limited to restrictions on future use of the property, binding effect upon all future owners and users, consent to JCP&L's monitoring and inspections, accepting continued presence of MGP materials, providing JCP&L with access for work, assisting JCP&L in exercising its rights, agreeing that JCP&L may control any MGP-related work and need not meet DEP's unrestricted use standards, agreeing to honor all Post-Closing Obligations in all future sales or leases of the property, paying its own expenses, agreeing to these terms in perpetuity, waiving and releasing any MGP-related claims against JCP&L other than claims by third parties or for JCP&L's own post-closing use of the property.)

² Each Verified Petition, ¶ 6.

³ Each Verified Petition, ¶ 7.

⁴ Verified Petition, BPU Docket No. EM22050335, ¶ 7.

JCP&L also disclosed that groundwater under these properties remains contaminated,⁵ but described its long-term obligations as sampling the groundwater monitoring wells and inspecting for deed notice and permit compliance.⁶ Those conditions included the agreements by each Purchaser not to pump the groundwater or to excavate deeper than five feet.⁷

The Company's July 19 objection letters now present a different picture. The Company now says that it has not yet received an RAO for the 220 40th Street property and suggests that the remedial action permit for that parcel may require further remediation.⁸ With regard to the 220 40th Street property, JCP&L asserts that "it is certain that future remediation will be required."⁹

JCP&L now also claims that it anticipates potential additional remediation costs on all of the fourteen lots, based on two speculative claims: 1) at some future time, the DEP may change its remediation standards,¹⁰ and 2) the DEP may require further remediation after auditing the work of the Company's own LSRP.¹¹ JCP&L's threat to cancel these proposed sales for these reasons suggests that the Company anticipates a risk of significant additional costs.¹² Accepting these assertions would materially change the balancing of factors presented in the Verified Petitions.

⁵ Each Verified Petition, ¶ 27(c).

⁶ Id.

⁷ Each Verified Petition, ¶¶ 27(a) and 27(f).

⁸ July 18, 2022 Affidavit of Frank Lawson, Supervisor for Environmental and Site Remediation for FirstEnergy Service Company on behalf of JCP&L ("Lawson Aff."), ¶ 6 and fn. 1.

⁹ 7/19/22 JCP&L letter, BPU Docket No. EM22050335, p. 7 (emphasis in original). Although JCP&L's July 19 letter claims that the certainty of future additional remediation is supported by paragraph 7 of the Verified Petition, the facts alleged by JCP&L's letter contradict its Verified Petition.

¹⁰ Lawson Aff., ¶¶ 4 and 5.

¹¹ Lawson Aff., ¶ 6.

¹² See each 7/19/22 JCP&L letter, p. 9.

Legal Argument

JCP&L objects to two of the eight conditions that Rate Counsel requested as a condition of its non-objection to the approval of these sales:

- 1) “JCP&L may no longer seek, either through the RAC or any other rate recovery mechanism, any environmental costs incurred in relation to [the subject property].”¹³
- 2) “Nothing in this comment letter shall be construed to affect JCP&L’s liability for Natural Resource Damages or other responsibilities arising from its activities at any site or JCP&L’s responsibilities or claims in any other matter arising from environmental investigation and remediation of any of its properties.”¹⁴

The Company claims that the first condition is contrary to law and that the Board lacks jurisdiction to impose the second condition. The Company further claims that neither of these conditions is germane to its petitions to sell these properties, since these proceedings will not set rates.

The Company’s objections lack any merit. Entertaining them would effectively divest the Board of its statutory jurisdiction to allocate costs related to the remediation and sale of utility property, unfairly impose open-ended obligations upon ratepayers, and deprive both ratepayers and the Board of the finality necessary upon the closing of utility property sales.

JCP&L’s objection letters undermine confidence in certain facts asserted in the Verified Petitions, and the prudence of the proposed transactions upon which Rate Counsel commented. Regardless, speculation as to DEP actions in the indeterminate future should be rejected.

¹³ This was condition #4 in each of Rate Counsel’s comment letters.

¹⁴ This was condition #8 in each of Rate Counsel’s comment letters.

DISCUSSION

1. JCP&L may no longer seek, either through the RAC or any other rate recovery mechanism, any environmental costs incurred in relation to the subject property.

Contrary to JCP&L's objection, this condition requested by Rate Counsel is consistent with law. JCP&L admits that the plain text of N.J.S.A. 48:3-60(a)¹⁵ authorizes the Board to permit each electric and gas public utility to recover "some or all" of its MGP remediation costs through the societal benefits charge ("SBC"). MGP remediation costs are determined initially in a manner consistent with mechanisms in the remediation adjustment clauses ("RAC") for the public utility as adopted by the Board. N.J.S.A. 48:3-60(a)(4).

The plain language of this statute of EDECA does not require the Board to allow a utility to recover every dollar it may ever expend remediating a property for all eternity. JCP&L represented in its Verified Petitions that it obtained an RAO for each of these properties, including excavating contaminated soil, and that it retained only monitoring and reporting obligations.¹⁶ The Board already reviewed and approved JCP&L's recovery of those remediation costs through its annual RAC filings over the past 20 years.¹⁷ In fact, the Board also approved JCP&L's recovery of the costs to relocate an existing building from one of the parcels and donate it to the City of Sea Isle City and to design and construct a new home for a private party on another of the parcels.¹⁸ Accordingly, based upon the facts asserted in the Verified

¹⁵ N.J.S.A. 48:3-60, a provision of the Electric Discount and Energy Competition Act ("EDECA"), established the Societal Benefits Charge and Universal Service Fund.

¹⁶ Indeed, Rate Counsel relied upon these verified facts in taking a no objection position. To the extent the facts have now changed, Rate Counsel may need to review its position.

¹⁷ Rate Counsel has not objected to JCP&L's recovery of its remediation costs necessary to obtain the RAOs.

¹⁸ JCP&L characterizes the amounts that ratepayers have expended to remediate the Company's former MGP plant as for ratepayers' "sole benefit." Each 7/19/22 JCP&L letter, p.t 6.

Petitions, any reasonably anticipated remaining remediation-related costs should be relatively minimal.

Evidently JCP&L believes that it should recover every dollar, into the indeterminate future. Despite proposing a final sale of these parcels to private third parties, the effect of JCP&L's objection is an open-ended commitment to recover from ratepayers all costs that may at any time relate to remediation of these parcels. Specifically, JCP&L would impose on ratepayers the risk that someday the DEP may change its cleanup standards or that a DEP audit may discover that JCP&L's own LSRP did not appropriately remediate one of these parcels. JCP&L is not requesting "some or all" of its costs but "all and more." This is too much.

Further review of the law shows that, contrary to JCP&L's objection, this condition requested by Rate Counsel is clearly germane to the above-referenced petitions. JCP&L's July 19 objection letters do not even mention the Board's authority to regulate utility property transactions under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, upon which the Company based its Verified Petitions. Board review of petitions for the approval of the sale or lease of property must consider, among other factors, the basis of the sale price, whether it is the best price attainable, the effect upon the public interest, and whether the development of the property for private use will require extensive environmental permitting due to an existing contamination condition. To consider these factors, the Board must evaluate and weigh the adequacy of the MGP site remediation, the remediation costs, the Company's post-closing obligations and costs, and the sale prices.¹⁹

¹⁹ The Company concedes the centrality of balancing these factors to evaluate these proposed sales. Each 7/19/22 JCP&L letter, pp. 6-7.

JCPL's Verified Petitions claim that in each of these proposed sales JCP&L has remediated these properties and received an RAO, and bears only residual monitoring obligations. JCP&L should thereby avoid incurring any further carrying costs for these properties. The purchasers have all agreed to accept the properties in an "as-is-where-is" condition, i.e., remediated but with some residual soil and groundwater contamination that JCP&L will monitor.²⁰ Each purchaser would thereby acquire a property in a desirable shore community at a discounted price. As presented in the Verified Petitions, Rate Counsel considered these factors to be reasonably balanced with the eight requested conditions included as safeguards. However, if a property is not in fact remediated as the Verified Petition claims, and significant remediation costs remain,²¹ then it is unclear whether that sale is for the best price attainable and in the public interest, and whether it is appropriate to sell it to a private party who will occupy a home on that lot.²² For any lot where the remediation has not yet obtained an RAO or otherwise differs from its Verified Petition, JCP&L should file an amended Verified Petition setting forth the current status of the remediation.

²⁰ Each Verified Petition, ¶ 22.

²¹ JCP&L's threat to cancel the proposed sales due to its monitoring costs, potential changes in DEP remediation standards or the quality of its LSRP's work suggests that the Company anticipates a risk of significant additional costs. See each 7/19/22 JCP&L letter, p. 9.

²² The Board included a similar condition, foreclosing JCP&L from recovering further costs of environmental remediation for which JCP&L had received an RAO, in its Order approving the sale of another real property. I/M/O Verified Petition of JCP&L for Approval of the Sale and Conveyance of Certain Portions of its Property in the Borough of Allenhurst, Monmouth County, New Jersey and the Granting and Transfer of certain Easements in connection therewith pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, BPU Docket No. EM18020193, Order Approving Sale of Real Property, Sept. 17, 2018 (condition #7).

2. Nothing in this comment letter shall be construed to affect JCP&L's liability for Natural Resource Damages or other responsibilities arising from its activities at any site or JCP&L's responsibilities or claims in any other matter arising from environmental investigation and remediation of any of its properties.

Despite JCP&L's objection, it appears that Rate Counsel and the Company are in fact in agreement on this issue. Rate Counsel believes that nothing in its letter should impact JCP&L's liability for NRD or other claims for any of these properties. JCP&L believes that these issues are outside the scope of this proceeding. Essentially, both Rate Counsel and the Company agree that the Board's Order in this matter should not impact any other claims. More precisely, through this condition the Board would not assert jurisdiction to determine JCP&L's liability for NRD costs and would not take a position on whether, and to what degree, NRD claims may be recovered. As noted by JCP&L, that question remains unresolved in the RAC proceedings.²³ While the Verified Petitions did not allege that any natural resources trustee had asserted an NRD claim for the Sea Isle City MGP site, the July 19 objection letters state that JCP&L has settled DEP's NRD claim but faces a potential federal NRD claim.²⁴ It would appear a more appropriate condition is that nothing in the Board's approval of these sales should be construed to affect JCP&L's liability for Natural Resource Damages or other responsibilities arising from its activities at any site or JCP&L's responsibilities or claims in any other matter arising from environmental investigation and remediation of any of its properties.

²³ Nevertheless, JCP&L perceives a "darker hue" in this clarification. Each 7/19/22 JCP&L letter, p. 11.

²⁴ Each 7/19/22 JCP&L letter, p. 10.

CONCLUSION

Accordingly, Rate Counsel does not object to the sales proposed by JCP&L in the above-referenced petitions, subject to the eight conditions requested in our June 10 comment letters. After 20 years and paying millions of dollars, ratepayers deserve some regulatory certainty and finality. The Board has imposed the same conditions in the past and a change in policy is not warranted based on the facts here. In the alternative, if JCP&L contends that the remediation of any or all of these properties is incomplete and the associated future costs are unknown, Rate Counsel asks the Board to deny approval of these proposed sales until JCP&L has completed the remediation and the closure of these matters by sales to third parties is appropriate. JCP&L may then file an amended Verified Petition so the Board and Rate Counsel may review the proposed sale based upon the facts that are current at that time. However, to the extent that JCP&L merely speculates about future uncertainties, Rate Counsel asks that the Board disregard such and approve these sales with the requested conditions.

Respectfully submitted,

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DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ Brian Weeks
Brian Weeks, Esq.
Deputy Rate Counsel

c: Service List (via electronic mail)

**I/M/O Jersey Central Power & Light
Co. For Approval of the Sale of
Properties in Sea Isle City, Cape May
County, New Jersey
BPU Dkt. Nos. EM22050329,
EM22050330, EM22050331,
EM22050334, EM22050335**

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