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BOARD OF PUBLIC UTILITIES

DEC 29 2016

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Governor

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Lt. Governor

December 28, 2016

**Via UPS Overnight Mail**

Ms. Irene K. Asbury, Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
Ninth Floor  
Trenton, New Jersey 08625

Re: In the Matter of the Verified Petition of Jersey Central  
Power & Light Company for Authorization Pursuant  
To N.J.S.A. 48:3-7.2 For Approval To Participate In  
The FirstEnergy Corp. Intra System Money Pool  
(Amendment No. 8 To The Petition)  
BPU Docket No. EF02030185

Dear Secretary Asbury:

Please accept for filing an original and ten (10) copies of these comments filed on behalf of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced Petition. Enclosed is one additional copy. Please date stamp the copy as "filed" and return it in the enclosed envelope. Thank you for your consideration and attention to this matter.

**A. Background on Petition**

On November 21, 2016, Jersey Central Power & Light Company ("JCP&L" or the "Company") submitted a Petition to the Board of Public Utilities ("BPU" or the "Board") requesting authority to extend its participation in the FirstEnergy Corp. Intra-System Utility

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Money Pool (“Money Pool”) through December 31, 2019, approximately a three-year extension. In addition, the Company requests a modification to its maximum Money Pool borrowing authority to \$500 million (a reduction from a current level of about \$600 million). That authority had been increased on a temporary basis to \$850 million due to the sudden and very substantial storm restoration costs due to Hurricane Sandy.<sup>1</sup> The Petition provides no explanation for the requested \$100 million reduction in borrowing authority from the Money Pool. Notably, the Company’s borrowing sublimit under the FirstEnergy Corp credit facility is \$600 million. (*Response to OE-20*) However, the Company does note that the current authorization from the Federal Energy Regulatory Commission (“FERC”) (which expires at the end of 2017) is \$500 million. (*Id.*) (Letter authorization of December 1, 2015 in FERC Docket Nos. ES-40-000 et. al.)

Since 2002, JCP&L has been authorized by the Board to participate in the Money Pool, both as an economical source of short-term debt and as a mechanism for investing on a temporary basis its surplus cash. Since the Board’s initial approval issued July 24, 2002, the Company has requested and received approval for seven amendments, the most recent being on March 20, 2013. In most instances, the main purpose of these amendments was to extend the period of authorized participation and in some instances to modify the borrowing cap. In 2011, the Money Pool authorization was modified to permit participation by the utility subsidiaries of Allegheny Energy, Inc., which was acquired by FirstEnergy Corp.

In each case, the Board has approved the Company’s Money Pool participation subject to certain conditions. The Board’s twelve approval conditions are listed on pages 4-5 of its March

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<sup>1</sup> By Petition dated January 29, 2013, JCP&L requested a temporary increase in the \$600 million borrowing limit to \$850 million to allow cost effective short time financing until the Company’s issuance of senior notes pursuant to the Board’s February 20, 2013 Financing Order in BPU Docket EF12111053.

20, 2013 Order approving Amendment No. 7. The Board's current authorization restricts the Company from lending through the Money Pool to any utility affiliate that is not rated investment grade by all national rating agencies, and limits its maximum level of borrowing to \$600 million and only permits borrowing from the Money Pool if that is JCP&L's lowest cost source of short-term borrowing.

As noted above, in addition to the Money Pool, JCP&L also has the ability to access short-term funds under the FirstEnergy Corp. Revolving Credit Agreement, with the Company's borrowing sublimit being \$600 million. The Company's discovery response to OE-6 indicates that it has been able to borrow funds from the Money Pool during January 2015 through October 2016 at interest rates ranging from 0.29 to 1.26 percent. The Company contends that the Money Pool provides savings relative to borrowing from the FirstEnergy Corp. Revolving Credit Agreement, with the savings at this time being 170 basis points. (*Response to OE-27*) Importantly, neither the Petition nor any data responses address the costs of other potential sources of short-term borrowing such as commercial paper. There is no indication that either FirstEnergy Corp. or JCP&L has a commercial paper program.

During the past two years, the Company's liquidity needs and therefore its Money Pool transactions have fluctuated considerably ranging from borrowings of \$253 million to a surplus position of \$217 million. (*Response to OE-1*). Previously, the Company made extensive use of the Money Pool to fund its Hurricane Sandy storm restoration efforts.

B. Rate Counsel's Position

In this Petition, the Company seeks a three-year extension for its Money Pool participation authorization and a significant but unexplained reduction in its borrowing authority. Rate Counsel finds that the Money Pool, with its own restrictions and the Board's approval conditions, provides a useful and reasonable source of short-term borrowing for JCP&L. We also note that the cost is generally less than taking draws under the FirstEnergy Corp. Revolving Credit Agreement. Consequently, Rate Counsel does not object to the Company's extension and borrowing limit requests, subject to the limitations enumerated in the Company's Petition and to the Board's twelve conditions (as updated by this Petition) set forth in its March 20, 2013 Order in this docket (issued in response to Amendment No. 7). These twelve conditions reflect Rate Counsel's reservation of rights, as discussed below.

Despite our general concurrence, Rate Counsel does have certain concerns with this Petition. First, contrary to its past practice, the Company filed its Petition on November 21, 2016, less than six weeks prior to its borrowing authorization expiring. This is simply not an adequate amount of time for Rate Counsel to do a thorough review of this request, including exploring the reasons for the \$100 million reduction in borrowing authority and alternatives to the Money Pool. In particular, while JCP&L has an obligation only to borrow from the Money Pool if doing so is the least cost source, it appears that JCP&L has not explored a commercial paper program as an alternative – just borrowings under the FirstEnergy Credit Facility. Indeed, JCP&L has removed from its proposed form of order for Amendment 8 references to commercial paper that were incorporated into the Board's March 20, 2013 Order.

A final concern with the proposed form of order supplied to the Office of the Economist is the Company's failure to include all of the protective conditions that were included in previous Board Orders. JCP&L's proposed form of order includes only eight of the twelve protective conditions adopted by the Board in its March 20, 2013 Order for Amendment 7. (*Response to OE-25*). JCP&L has provided no explanation for why these protective conditions were omitted from the proposed form of order but it is Rate Counsel's recommendation that all twelve protective conditions should be retained <sup>2</sup>

In light of these concerns, Rate Counsel recommends two requirements in a Board order in this docket in addition to the inclusion of all twelve conditions previously approved. First, the Company must be required to file its next extension amendment no less than 120 days prior to the expiration of the then current authority (presumably this would be no later than September 1, 2019). Second, JCP&L should consider whether a commercial paper program could provide savings relative to the Money Pool borrowings (either to supplement or replace) and provide this information with its next Petition. Neither the Petition nor data responses provide any evidence on whether there are cost-effective alternatives to the Money Pool. Moreover, the Petition notes that borrowings from the Money Pool are not guaranteed. JCP&L can only borrow from the Money Pool if the funds are available from its utility affiliates and repayment can be required at any time<sup>3</sup>. For this reason, it is reasonable for JCP&L to know what its borrowing alternatives are in the event the Money Pool is not available.

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<sup>2</sup> The proposed form of order did not include items 9, 10, 11, and 12 listed below.

<sup>3</sup> Money Pool Agreement, Exhibit 1, page 10 of 22.

Subject to the above recommendations and the Board's current protective conditions (as updated for the current Petition) from the Board's March 20, 2013 Order, Rate Counsel recommends approval of the proposed Amendment No. 8. As has been recognized by the Board, Rate Counsel supports the following standards and reservations of rights which are not fully recognized in the Company's recommended draft order supplied to the Office of Economist.<sup>4</sup> :

- 1) JCP&L's borrowing limit through the Money Pool shall be \$500 million.
- 2) JCP&L shall not make any bank borrowings or issue commercial paper for the sole purpose of lending the proceeds to the Money Pool.
- 3) The Company shall not borrow from the Money Pool if it will be able to obtain funds at lower costs through a direct bank borrowing or issuance of commercial paper.
- 4) JCP&L's chief financial officer or treasurer, or designee thereof, shall render Money Pool-related short term financing decisions based on what is in the best interests of JCP&L's ratepayers.
- 5) JCP&L shall only deposit such Internal Funds (i.e., surplus cash) in the Money Pool as it would otherwise have available for investment in short term money markets or other short term investments instruments.
- 6) The Company shall not borrow any sum from the Money Pool for a period of greater than 364 days.
- 7) JCP&L shall file with the Board quarterly comparative statements indicating the interest rate imposed for borrowing/investing with the Money Pool and the prevailing market rate at the time for similarly situated utilities.
- 8) JCP&L shall comply with the requirements of N.J.A.C. 14:4-4.7(f), (g) and (h), and the provisions of all other applicable statutes, rules and Orders.
- 9) JCP&L shall inform the Board within three (3) business days of any participating subsidiary not meeting the applicable credit rating standard as described in the Money Pool Agreement.

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<sup>4</sup> In addition to the omission of items 9, 10, 11 and 12, the proposed form of order also deleted references to commercial paper in the conditions for participation listed in the March 20, 2013 Order.

- 10) The proceeds from Money Pool borrowings shall be used only for JCP&L's utility operations and shall not be used for purposes of funding the Company's or its affiliates' non-regulated operations.
- 11) Nothing in the Board's Order of Approval in this docket authorizes rate recovery from customers or the capital structure to be used in the Company's next base rate case.
- 12) The Company is obligated to utilize a prudent and cost-effective capital structure and mix of capital to finance its utility operations at lowest reasonable cost.

These provisions, as properly recognized in the Board's 2013 Money Pool Order, as updated for Amendment No. 8, will address Rate Counsel's concerns that the Company's retail customers are not harmed by the requested authority and that the Board's approval (1) is limited to the transaction(s) as herein described, (2) does not indicate authorization to include any specific assets or amounts in rate base, (3) does not indicate any authorization for any ratemaking treatment, and (4) does not establish any precedent with regard to approval of future financing petitions. Rate Counsel also requests that the Board accept Rate Counsel's recommendations to require the next Petition for extension by filed by September 1, 2019 and to include a consideration of commercial paper program as a supplement to or (on occasion) substitute for Money Pool borrowings.

Notwithstanding our recommended conditions, Rate Counsel reserves all rights to take appropriate positions in current and future Board proceedings that involve Petitioner.

Respectfully submitted,

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

By:   
Diane Schulze, Esq.  
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c: Service list (via USPS regular mail)



I/M/O The Verified Petition of Jersey Central  
Power & Light Company For Authorization  
Pursuant to N.J.S.A. 48:3-7.2 For Approval To  
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