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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

July 17, 2019



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JUL 17 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**VIA ELECTRONIC MAIL AND HAND
DELIVERY**

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Verified Petition of Jersey Central Power and Light Company for Approval of the Sale and Conveyance of Certain Portions of its Property in South Brunswick Township, Middlesex County, New Jersey and the Transfer of a Certain License in Connection Therewith Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6
BPU Docket. No. EM19030357**

Dear Secretary Camacho-Welch:

On behalf of Jersey Central Power & Light Company ("*JCP&L*" or the "*Company*"), enclosed for filing in the above-referenced matter are the original and 11 copies of JCP&L's reply to the comment letter ("*Comment Letter*") submitted by the Division of Rate Counsel ("*Rate Counsel*") to the New Jersey Board of Public Utilities (the "*Board*" or "*BPU*") on July 15, 2019 in this proceeding regarding JCP&L's petition for approval (the "*Petition*") of the sale (the "*Sale*") of its South Brunswick property (the "*South Brunswick Property*") to the winning bidder (the "*Buyer*") for a purchase price Seven Million, Five Hundred Thousand, and Eighteen Dollars (\$7,500,018.00) ("*Purchase Price*").

The Company appreciates that the Rate Counsel Comment Letter finds the Company's proposed sale of the South Brunswick Property, including the reserving of

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easements under the Purchase and Sale Agreement (the "**PSA**") and the Board's approval of the Sale under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, to be "in accordance with the requirements of BPU regulations." Comment Letter at p.4. The Rate Counsel Comment Letter (i) recognizes that "rate treatment of the sale's proceeds will be determined by FERC" (Comment Letter at p. 3), and (ii) reserves Rate Counsel's "right in proceedings before [Federal Energy Regulatory Commission ("**FERC**")]" concerning the rate treatment of the sale proceeds" (id.).

The Company agrees with the Comment Letter observation that FERC is the appropriate jurisdiction for addressing the rate treatment of the sales proceeds. Therefore, the Company does not object to Rate Counsel's reservation of rights with respect to an appropriate proceeding concerning the rate treatment of the South Brunswick Property sale proceeds before FERC where Rate Counsel's "reservation" will be controlled by FERC's rules and regulations. However, the Rate Counsel Comment Letter request that "the Board order JCP&L to treat the gains from the sale of the property as a regulatory liability that can be addressed in the next stated rate case before FERC" (id.) is both unnecessary and inappropriate because it is FERC's accounting rules and jurisdiction — and not the Board's — that control the need for, and the definition of, a FERC-jurisdictional regulatory liability.

The Rate Counsel Comment Letter request is unnecessary and inappropriate because, as noted above, it is FERC's rules and regulations that govern the treatment of the FERC-jurisdictional land sale. The Board does not have jurisdiction to create regulatory liabilities relative to utility plant, property and equipment that is classified as

transmission for ratemaking purposes. This is the case for the sales proceeds for the South Brunswick Property the ratemaking for which is under the jurisdiction of FERC, which Rate Counsel concedes. Under the Federal Power Act, FERC has ratemaking jurisdiction over the JCP&L transmission property being sold. See 16 U.S.C. § 824d.

The Company explained during discovery that: (i) the South Brunswick Property is FERC-jurisdictional transmission-related property and has been and remains part of the Company's transmission rate base since the transmission line was placed into service in 1981 (in FERC Account 101 (Electric Plant in Service));¹ (ii) between 1973, when it was acquired, and 1981, when the transmission line was placed in service, the South Brunswick Property was held in a non-rate base account (in FERC Account 107 (Construction work in progress - Electric));² (iii) the accounting for the sale of the South Brunswick Property would be in accordance with applicable federal regulations (*i.e.*, the Uniform System of Accounts), including the gains from the sale of the South Brunswick Property (see 18 C.F.R. pt. 101 (2018) (Electric Plant Instruction 7 (Land and Land Rights) subsection E)), which provides that gains from the sale of any land held in Account 101 are recorded in Account 421.1 (Gain on Distribution of Property));³ and (iv) as a result, the gains are assignable to shareholders, not ratepayers.⁴

The Rate Counsel Comment Letter says that Rate Counsel is not convinced that the Company's classification of, or accounting treatment for, the South Brunswick

¹ Company's response to RCR-13.

² Company's response to RCR-14.

³ Company's response to RCR-16 and S-ENG-3.

⁴ Id.

Property (as described in discovery and about which Rate Counsel does not take any issue) is sufficient justification to permanently deny ratepayers entitlement to, or bar them from, a share in the gains from the sale. Comment Letter at p. 3. Presumably, this is why Rate Counsel has reserved its rights to address these concerns at FERC (id.), as it is entitled to do. But Rate Counsel provides no legal support for taking its concerns a significant step further in asserting that in order to “properly reserve this issue for final review at FERC” the Board must, effectively, interfere with FERC’s exclusive ratemaking authority relative to transmission by creating a regulatory liability for the proceeds from the sale of a FERC-related transmission asset (i.e., in this case, the South Brunswick Property). The extra-jurisdictional relief Rate Counsel seeks from the Board is unsupported and inappropriate and should be rejected by the Board.

Conclusion

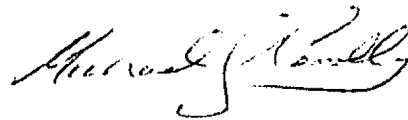
For the foregoing reasons, the Rate Counsel Comment Letter’s requested condition for creation of a regulatory liability should be rejected as beyond the Board’s jurisdiction and unsupported, unnecessary and/or inconsistent with the Board’s approach to the review and approval of utility property sales under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6.

For purposes of clarity, the Company also asks the Board to consider as filed: (i) the Appraisal, which was referred to as Appendix D in the Petition and provided as an attachment to the Company’s response to RCR-1 Confidential; and (iii) the *pro-forma* journal entries, which were referred to as Appendix E in the Petition and provided as an attachment to the Company’s response to RCR-2.

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Kindly stamp one of the enclosed copies as "filed" and return to the undersigned using the enclosed self-addressed stamped envelope. Thank you in advance for your cooperation.

Respectfully submitted,



COZEN O'CONNOR

By: Michael J. Connolly

MJC/LG

cc: (w/enc.: Service List as indicated)

JERSEY CENTRAL POWER & LIGHT COMPANY

In the Matter of the Verified Petition of Jersey Central Power & Light Company For Approval of the Sale and Conveyance of Certain Portions of its Property in South Brunswick Township, Middlesex County, New Jersey and the Transfer of a Certain License in Connection Therewith Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6.

BPU Docket No. EM19030357

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