

November 2, 2020

VIA E-MAIL (BOARD.SECRETARY@BPU.NJ.GOV)

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Ms. Aida Camacho-Welch
Secretary
NJ Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

Re: In the Matter of the Verified Petition of Jersey Central Power & Light Company Seeking Approval of the Transfer and Sale of the Company's 25% Interest in the Three Mile Island Unit 2 Nuclear Generating Facility, and the Transfer of its Associated Nuclear Decommissioning Trust, Pursuant to N.J.S.A. 48:3-7, and a Waiver of the Advertising Requirements of N.J.A.C. 14:1-5.6(B) BPU Docket. No. EM19111460 REDACTED VERSION

Dear Secretary Camacho-Welch:

On behalf of Jersey Central Power & Light Company ("**JCP&L**" or the "**Company**"), please accept for filing JCP&L's reply to the Division of Rate Counsel ("**Rate Counsel**") comments ("**Rate Counsel Comments**") submitted to the New Jersey Board of Public Utilities (the "**Board**" or "**BPU**") on October 28, 2020 in this proceeding. This reply letter is being filed with the Board Secretary, with copies to the service list sent, electronically only, consistent with the Board's Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board or Rate Counsel, of any kind, be submitted electronically. No paper copies will follow, and we would appreciate if the Board Secretary's office would please acknowledge receipt of this reply letter.

The Rate Counsel Comments concern JCP&L's November 12, 2019 petition for approval (the "**Petition**") of the transfer and sale of JCP&L's interests in (i) the Three Mile Island, Unit 2 non-operating, nuclear generating plant, located near Middletown, Dauphin

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County, Pennsylvania (“**TMI-2**”), which is jointly owned by JCP&L (25%), and its Pennsylvania affiliates, Metropolitan Edison Company (“**Met-Ed**”) (50%), and Pennsylvania Electric Company (“**Penelec**”) (25%) (collectively, the “**Joint Owners**”), (ii) certain parcel or parcels of real property (the TMI-2 Real Property) with easement rights related to adjoining parcels (the “**TMI-2 Site**”), and (iii) the TMI-2 nuclear decommissioning trust (the “**NDT**”) (collectively, the “**TMI-2 Assets**”) upon the terms and conditions set forth in an Asset Purchase and Sale Agreement (“**PSA**”). The PSA was entered into on October 15, 2019 by and among GPU Nuclear, Inc. (“**GPU Nuclear**”), JCP&L, Met-Ed, and Penelec on the one hand, and TMI-2 Solutions, LLC (“**TMI-2 Solutions**,” or “**Buyer**”) and EnergySolutions, Inc. (“**Parent Guarantor**” or “**EnergySolutions**”) on the other hand. The PSA provides for a nominal cash consideration of Ten Thousand Dollars (\$10,000.00) together with Buyer’s assumption of all of the Assumed Liabilities as defined in Section 2.3 of the PSA, including all Liabilities (as defined in the PSA) with respect to the Decommissioning (as defined in the PSA) of the TMI-2 plant and the TMI-2 Site excepting “the Excluded Liabilities” (as defined in the PSA).

The Rate Counsel Comments provide its review of the sales process, the terms of the PSA, the contributions to the NDT, environmental liabilities under the Comprehensive Environmental Response Compensation and Liability Act (“**CERCLA**”) and the need for protective conditions. The Company appreciates that while the Rate Counsel Comments reflect concerns regarding the proposed sale, Rate Counsel, ultimately, does not object to the proposed sale of the TMI-2 Assets, the Board’s approval under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, and the waiver of the Board’s advertising requirements as set forth in

N.J.A.C. 14:1-5.6(i) as set forth in the Company's Petition and as supplemented by the Company's responses to extensive discovery. Rather, Rate Counsel "recommends the Board condition its approval upon JCP&L insulating its ratepayers from potential liability related to the decommissioning and environmental remediation of [TMI-2 and the TMI-2 Site]" (Rate Counsel Comments at p. 4) and that "JCP&L must agree, as a condition of approval of the Petition, to not seek any future payments from customers for TMI-2 decommissioning liabilities." Id., at p. 12.

While JCP&L does not object to the ultimate recommendation of the Rate Counsel Comments (as discussed later herein), the Company does, however, feel it necessary to clarify some of the conclusions, and/or the basis for such conclusions, as set forth, and discussed, therein. For instance, the Rate Counsel Comments discount the measures agreed-upon under Section 6.16 of the PSA to convey the decommissioning obligations and protect against any further ratepayer liability once the TMI-2 Assets are conveyed. In this instance, the Rate Counsel Comments mischaracterize such measures as being "the best [the Joint Owners] could do" in their negotiations with Buyer. Rate Counsel Comments at p. 9. However, JCP&L explained in its response to RCR-REV-32, that these measures were:

designed to address contingencies that could arise following the closing, which could impact the decommissioning of the TMI-2 Site, by providing additional sources of capital to the Buyer in excess of the funds in the QDF [the Buyer's qualified decommissioning fund] and insulating (*i.e.*, ring-fencing) such resources in the event of a bankruptcy proceeding. ... Such financial assurance instruments represent a range of quality financial resources available to the Buyer in connection with this type of transaction and mirrors similar agreements and assurances provided in similar nuclear decommissioning transactions. (emphasis added).

Moreover, as JCP&L also explained in the same response, such measures must be viewed in the context of the operational flexibility that TMI-2 Solutions has to defer “Phase 2 activities in order to allow the funds in the QDF to accumulate further earnings” providing a “‘safety valve’ if shortfalls in funding levels present themselves. Thus, in this case, what Rate Counsel describes as the “best they could do” was consistent with industry standards and designed to comprehensively address known and unknown contingencies in a reasonable manner that aims to assure successful decommissioning. Indeed, the financial support agreements are consistent with other recent decommissioning transactions, and represent the spectrum of financial instruments that a commercial party can use to protect against a counterparty’s credit risk. Given the size of the NDT and the current estimates for the cost of decommissioning, JCP&L is confident that these financial assurances will adequately protect New Jersey ratepayers [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

The Rate Counsel Comments also criticize JCP&L’s NDT contributions and earning analysis, indicating that the Company “‘wants credit’ for the shareholder contributions.” *Id.*, at p. 10. While Rate Counsel acknowledges that “there are alternative perspectives on evaluating the JCP&L contributions to the total TMI-2 NDT amount, JCP&L thinks it necessary and fair to point out that the Company’s analysis and perspective, as explained in its response to RCR-REV-37, was consistent with the guidance provided in the BPU Order dated April 28, 2004,¹ where the BPU stated:

shareholder as well as ratepayer contributions, ... differences in fund performance and tax aspects ... should be taken into account before

¹ *In the Matter of the Request of Jersey Central Power & Light Company for a Waiver of Filing Requirements Under N.J.A.C. 14:5A, Nuclear Plant Decommissioning Cost and Trust Fund Review*, in BPU Docket No. EO03121014, 2004 N.J. PUC LEXIS 55 (Apr. 28, 2004).

definitively concluding that New Jersey ratepayers have contributed more than their fair share.

Rather than “wanting credit,” JCP&L was following the Board’s guidance, which promoted a balanced approach to addressing Rate Counsel’s questions about the Company’s relative share of the overall NDT balance that necessarily included an analysis of the sources of contributions and earnings thereon.

The Rate Counsel Comments also unnecessarily speculate regarding risks associated with the continued involvement of the Joint Owners in the decommissioning process through the independent manager -- also a protection for JCP&L -- on the TMI-2 Solutions’ Board of Managers. Id., at p. 13. Rate Counsel appears to misunderstand the facts and law applicable to the limited role of the Joint Owners’ independent manager on the TMI-2 Solutions Board of Managers. The authority of the independent manager is limited to certain consent rights over extraordinary matters and excludes the day-to-day management control that could give rise to, even arguably, CERCLA “operator” liability under well-established precedent. *U.S. v. Bestfoods*, 524 U.S. 51, 66-67 (1998).

Finally, with respect to the Rate Counsel Comments regarding Post Defueling Monitored Storage (“PDMS”) (Id., at p. 3), JCP&L also notes that as reflected in the Board’s order dated October 28, 2020 in the Company’s 2020 Base Rate Filing,² PDMS charges have been removed from the Company’s base rates.

² *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* (“2020 Base Rate Filing”)BPU Docket No. ER20020146.

As indicated earlier, notwithstanding these apparent differences in views, the Company does not object, consistent with Section 6.16 of the PSA, to Rate Counsel's request that the Board condition its approval of the proposed sale. First, by requiring:

the execution and delivery at closing of the EnergySolutions' Parent Guarantee, the Financial Support Agreement, the Back-up Trust, the Provisional Trust, Letter(s) of Credit, the Disposal Capacity Easement, and the Decommissioning Completion Agreement as described, as set forth in, and as required by the PSA, to protect New Jersey Ratepayers from any and all obligations related to the cost of the decommissioning of TMI-2 and the TMI-2 Site.

Second, regarding Rate Counsel's concerns pertaining to CERCLA, as explained in the RCR-ENG-33 (Confidential) discovery response: **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]** that the Buyer, which will be subject to the jurisdiction and monitoring of the Nuclear Regulatory Commission ("**NRC**") for all aspects of TMI-2 decommissioning, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END**

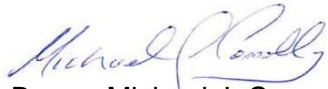
CONFIDENTIAL] However, with this understanding, in response to Rate Counsel's concerns, JCP&L would not object to the Board further conditioning its approval of the proposed sale by also requiring that:

In the event of any successful future CERCLA claim, if any, against JCP&L, as a former Joint Owner, for completion of decommissioning or for any other TMI-2 Site environmental liability, JCP&L shall not seek to recover from New Jersey ratepayers any remaining costs of TMI-2 decommissioning or any other TMI-2 Site environmental liability.

JCP&L believes that, as expressed above, the proposed conditions address Rate Counsel's concerns as set forth in the Rate Counsel Comments. Accordingly, JCP&L respectfully urges the Board to (i) approve the sale of TMI-2 to TMI-2 Solutions as requested in the Petition, under the terms and conditions of the PSA and subject to the conditions set forth herein; and (ii) grant a waiver of the Board's advertising requirement under N.J.A.C. 14:1-5(b).

Respectfully submitted,

COZEN O'CONNOR



By: Michael J. Connolly

MJC:lg
Enclosures

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

Jersey Central Power and Light Company

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BPU Docket No. EM19111460

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