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June 10, 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 Petition of Jersey Central Power & Light Company For Approval of the Sale and Conveyance of the improved property at 220 40th Street, 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
BPU Docket No. EM22050335**

Dear Acting Secretary Diaz:

Please accept this letter setting forth the position of the Division of the Rate Counsel ("Rate Counsel") in the above-captioned matter. Because certain attachments referenced in this letter are designated as Confidential by the Petitioner, we are providing both a public and a Confidential version of this filing.

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

Rate Counsel does not object to the sale proposed by Jersey Central Power & Light Company (“JCP&L” or the “Company”). JCP&L states that the proposed sale price approximates the fair market value, and that it has adequately addressed and will continue to manage environmental concerns on the subject property. JCP&L states that it will return the net proceeds from the sale of the improved lot known as 220 40th Street to ratepayers, as explained in detail below. Rate Counsel recommends that the gain on this sale, along with the costs of acquisition, management and remediation, be fully reviewed in the Company’s next annual filing on its Remediation Adjustment Clause tariff rider (“RAC Filing”), base rate case or other appropriate proceeding.

Background

JCP&L filed a Petition on May 6, 2022 requesting approval from the Board for the sale and transfer of certain property in the City of Sea Isle City, Cape May County to Howard F. House, III (“Buyer”), for a purchase price of \$1,450,000. *Petition*, ¶ 2; *JC-9*.

JCP&L provided redacted versions of advanced discovery on May 12 and, under the terms of a Non-Disclosure Agreement executed by the parties, provided Confidential unredacted versions of advanced discovery and Confidential appraisals on May 17. The appraised value of the subject property, as of June 18, 2021, was [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. *Petition, Appendix D; JC-9*.

There is no relationship between JCP&L and the Buyer other than seller and buyer.

Petition, ¶¶ 10(e) & 12. JCP&L and the Buyer have agreed that closing of this sale is contingent only upon Board approval. *Petition*, ¶ 16.

The property that is the subject of this Petition consists of a single improved parcel, Block 40.04, Lot 20, known as 220 40th Street (“220 40th Street”), one of fourteen parcels owned by JCP&L in Sea Isle City. *Petition*, ¶ 3. JCP&L intends to request Board approval to sell the other thirteen parcels it owns in Sea Isle City in four separate petitions. *Petition*, ¶ 6, *fn. 1*. JCP&L states that it owns these fourteen Sea Isle City parcels because “they were included as, were considered to be, or were acquired in connection with,” part of the former Sea Isle City manufactured gas plant (“MGP”) site, which JCP&L is continuing to remediate. *Ibid.*; *Petition*, ¶ 16. None of the fourteen Sea Isle City Properties are located within JCP&L’s service territory and JCP&L does not use them or plan to use them for any of its utility operations. *Petition*, ¶¶ 10(b) & 16.

The scope of remediation that has been completed on the fourteen Sea Isle City parcels, including the terms, conditions or restrictions on each, is set forth in a Response Action Outcome (“RAO”) letter for each parcel, from the Licensed Site Remediation Professional (“LSRP”) it hired.¹ *Id.*, ¶ 7. Although all fourteen Sea Isle City parcels have been remediated for soil, groundwater remediation related to the former Sea Isle City MGP site continues. *Petition*, ¶ 6. While JCP&L states that none of the fourteen Sea Isle City parcels remain a part of, or required

¹ The Sea Isle City MGP Site is designated on the DEP’s Known Contaminated Site List as Number NJD 982187460, Program Interest Number #G000006130. *Petition, Appendix B, Post-Closing Obligations Agreement and Release, Statements of Fact*, ¶ B. Remediation of the 14 parcels associated with the former Sea Isle City MGP site is currently ongoing, under the supervision of JCP&L’s LSRP. *Ibid.*

for, that ongoing groundwater remediation, *id.*, all of them remain subject to a recorded Classification Exception Area/Well Restriction Area (“CEA/WRA”) due to groundwater contamination. *Site Status Summary and Sept. 6, 2016 RAO letter, prepared by Robert P. Blauvelt, LSRP, of GEI Consultants, Inc., Petition, Appendix D, addenda, pp. 42-45.* After the closing, JCP&L will retain its responsibility to complete all remediation in accordance with New Jersey Department of Environmental Protection (“DEP”) regulations. *Petition, Appendix B, PSA, Ex. B, Anticipated Work.*

JCP&L has incurred significant costs related to the remediation of 220 40th Street. JCP&L acquired 220 40th Street for \$1,198,000 in 2012, *Petition, Appendix D, p. 14; JC-1*, and has incurred over \$124,000 in carrying costs since then, for landscaping, repair, taxes and utilities; and obtaining appraisals. *JC-2 & -5.* The Company has provided detailed expenses for the period from 2013 through 2021. *JC-5.* JCP&L also incurred significant costs to perform the remediation itself.²

220 40th Street has not been included in JCP&L’s rate base or carried as an asset on its books. *Petition, ¶ 18.* Instead, the purchase of JCP&L’s former Sea Isle City MGP site, including the fourteen Sea Isle City parcels, as well as their remediation and carrying costs, have been addressed through JCP&L’s RAC tariff rider and handled consistently with its other RAC expenditures, *i.e.*, reviewed for prudence and recoverability in JCP&L’s annual RAC Filings as part of its Societal Benefits Charge filing with the Board for the year in which such expenses

² See e.g., *I/M/O the Verified Petition of JCP&L for the Review and Approval of Costs Incurred for Environmental Remediation of MGP Sites pursuant to the Remediation Adjustment Clause of Its Filed Tariff (“2020 RAC Filing”), BPU Docket No. ER21101155.*

were incurred. *Petition*, ¶¶ 4 & 5; *JC-6*. The cost of purchasing 220 40th Street was charged to JCP&L's MGP site internal order and deferred within its RAC regulatory asset as a cost of remediating the former Sea Isle City MGP site. *Petition*, ¶ 18.; *JC-6*.

As noted above, JCP&L will return the net proceeds from the sale of 220 40th Street to ratepayers through the RAC. *Petition*, ¶ 18. The net proceeds will be credited to the same MGP site internal order, reducing the deferred RAC amount to be recovered from ratepayers. *Id.*; *JC-6 & -14*. If the sale of 220 40th Street closes during 2022, the net proceeds will be fully accounted for in JCP&L's 2022 RAC Filing made in 2023. *Petition*, ¶ 18. Rate Counsel recommends that, in its full accounting, JCP&L should provide all closing costs associated with calculating the net proceeds from this sale. Rate Counsel further recommends that, for such full accounting, JCP&L should provide current costs and estimated future costs to complete all of its outstanding environmental remediation obligations related to its former Sea Isle City MGP facility and 220 40th Street.

The sale of 220 40th Street is under the terms and conditions of a purchase and sale agreement dated March 2, 2022 and its Appendices, including a Post-Closing Obligations Agreement and Release (collectively, the "PSA"). *Petition*, ¶¶ 2 & 8 and *Appendix B*. Under the PSA, the Buyer has agreed to the following terms related to its purchase of 220 40th Street:

JCP&L has advised Buyer of the ongoing environmental remediation for materials remaining from the former MGP operations;

Buyer will purchase them in an "As-Is-Where-Is" condition;

Buyer will allow JCP&L and its agents continued access to complete the remediation;

Buyer will maintain any long-term engineering and institutional controls related to the remediation;

Buyer will use and develop them consistently with such long-term engineering and institutional controls;

Buyer will sign, deliver and record any remediation-related documents deemed necessary by JCP&L;

Buyer will grant JCP&L discretion to determine the scope of remediation activities and property use and development, subject to DEP regulations;

Buyer has waived its claims against JCP&L and released JCP&L from any claims, including any claims related to or arising from environmental conditions, except claims for any breach of the PSA by JCP&L;

JCP&L will defend and indemnify Buyer, its successors and subsequent purchasers against any claims related to the former MGP operations and JCP&L's remediation; and

JCP&L will determine when if ever any of these obligations terminates, absent breach of the PSA by JCP&L.

[Petition, ¶ 9; Petition, Appendix B, PSA, ¶¶ 7(a) & 8.2; Petition, Appendix B, PSA, Ex. F, Sections 3, 4, 5, 6, 7 & 8; Petition, Appendix B, Post-Closing Obligations Agreement and Release, Statements of Fact ¶¶ C, D & E.]

JCP&L has asserted that the sale of 220 40th Street will not adversely affect the public interest, is not and will not be required or useful for utility purposes, and produces no income. *Petition, ¶¶ 10(a), (b) & (c), 14 and 16; JC-4.* In 2021, JCP&L paid a total of \$8,811.98 in annual property taxes on 220 40th Street. *Petition, ¶ 15.*

The parties have each agreed to pay certain closing costs. *Petition, Appendix B, ¶ 11.* JCP&L anticipates that the total closing costs on 220 40th Street will be approximately \$80,865, including 4.5% real estate commission (\$65,250), New Jersey transfer tax (\$15,020), recording fee (\$475), city fire certificate (\$45) and final utility meter reading (\$75).³ *JC-10.* JCP&L's share of closing costs will reduce its net proceeds from this sale to approximately \$1,369,135.

³ JCP&L also anticipates legal fees and legal advertising costs associated with the closing, which will be accounted for with all other costs in the RAC Filing for the year of the closing. *JC-10.*

Applicable Board Statute and Regulations

The applicable law for utility sale of property is N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. The Company's petition claims that all legal requirements under the applicable statute and regulation have been met and Rate Counsel does not object to JCP&L's claim at this time. The Company states that the selling price represents the fair market value of 220 40th Street. *Petition*, ¶¶ 10(d) & 13. In support of this claim, JCP&L points to marketing efforts including newspaper ads and the use of an on-line real estate marketing service. *Petition*, ¶¶ 9(g), 10(d) & 13 and *Appendix G; JC-9*. As further support, the Company has shown that the accepted bid price was [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] than an independent appraisal performed for JCP&L by Mary F. Fox, MAI of Cape Island Appraisals, Inc. on June 18, 2021. *Petition*, ¶¶ 9(d), 10(d), 13 & *Appendix D*.⁴

The Purchase and Sale Agreement provides that the Buyer will grant to JCP&L an easement to allow the Company necessary access to perform any remediation work on 220 40th Street, including inspections and sampling and closing groundwater monitoring wells, and biennial inspection and reporting on another of the Sea Isle City parcels (220 40th Street ("Parcel J")). *Petition*, *Appendix B, PSA, Ex. B, Anticipated Work; Petition, Appendix C*. Rate Counsel does not object to these provisions.

⁴ The Company has claimed the independent appraisal performed on 220 40th Street is confidential. Rate Counsel takes no position on this claim. Pursuant to the terms of a Non-Disclosure Agreement, however, Rate Counsel has reviewed the appraisal and is satisfied that the sale price of \$1,450,000 is [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] of the [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] fair market value of 220 40th Street as found in JCP&L's appraisal.

Conclusion

In conclusion, Rate Counsel does not object to the sale of 220 40th Street. Rate Counsel concurs with JCP&L's proposal to return the entire net proceeds from the sale of 220 40th Street to ratepayers. However, it is Rate Counsel's recommendation that the accounting for the sale of 220 40th Street, as well as the costs of its environmental remediation, be fully reviewed in JCP&L's next RAC Filing, base rate case or other appropriate proceeding.

Rate Counsel reserves all rights to review the Company's accounting for all costs and revenues from the remediation and sale of 220 40th Street in JCP&L's next RAC Filing, base rate case or other appropriate proceeding for prudence, recoverability and allocation.

Accordingly, in any Order approving this Petition, Rate Counsel respectfully asks the Board to require JCP&L to meet the conditions set forth below:

1. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the contract for sale of 220 40th Street.
2. JCP&L shall flow 100% of the net gain from this sale as a deferred credit to ratepayers in JCP&L's next RAC Filing, base rate case or other appropriate proceeding.
3. From the time of closing on the sale of 220 40th Street until JCP&L's next RAC Filing, base rate case or other appropriate proceeding, JCP&L shall credit the proceeds from the sale to its cash account with interest to accrue for the account of ratepayers in the interim.
4. JCP&L may no longer seek, either through the RAC or any other rate recovery mechanism, any environmental costs incurred in relation to 220 40th Street.
5. JCP&L shall set a date certain by which it will credit to ratepayers the net proceeds from this sale, including any amounts remaining in escrow after the closing.
6. Rate Counsel retains all rights to review all costs and proceeds related to the purchase and sale of 220 40th Street in JCP&L's next RAC Filing, base rate case or another appropriate proceeding.

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7. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future Petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Petitioner.
8. Nothing in this comment letter shall be construed to affect JCP&L's liability for Natural Resource Damages or other responsibilities or damages 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.

Respectfully submitted,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

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

c: Service List (via electronic mail)

RPAPROD-#117761-v1-JCP&L_Petition_to_sell_220_40th_Street__Sea_Isle_City