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

Ms. Carmen Diaz, Acting Board Secretary
NJ Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

Re: JCP&L Sale of 14 Properties- Sea Isle City, Cape May County, NJ
BPU Dkt. Nos. EM22050329, EM22050330, EM22050331, EM22050334, EM22050335

Dear Acting Secretary Diaz:

On behalf of Jersey Central Power & Light Company ("**JCP&L**" or the "**Company**"), please find enclosed for filing with the New Jersey Board of Public Utilities (the "**Board**" or "**BPU**"), in the above-referenced matters, the Company's response to the Division of Rate Counsel ("**Rate Counsel**") reply comment letter, dated July 28, 2022 ("**Rate Counsel's Reply Letter**"). The above-referenced proceedings concern the Company's five (5) petitions seeking Board approval for the proposed sale of fourteen (14) parcels in Sea Isle City, Cape May County, New Jersey (each a "**Property**" and collectively, the "**Properties**") under the terms and conditions of certain purchase and sales agreements.

Notwithstanding Rate Counsel's Reply Letter, JCP&L continues to oppose Rate Counsel's suggested Condition No. 4. That condition acts as a disincentive to the prudent sales of the Properties, as proposed in the petitions, by imposing unnecessary and inflexible burdens on JCP&L with respect to transactions that otherwise completely benefit ratepayers. Rate Counsel's Reply Letter mainly reiterates the position taken in Rate Counsel's initial comment letters, that the BPU should approve the sales of the Properties, subject to JCP&L releasing ratepayers from any prospective remediation costs. Rate Counsel further asserts that if the BPU does not impose this

condition, then the BPU should deny JCP&L's request for approval to sell the Properties and, thereby, forgo the benefits to ratepayers of the proposed sales at this time and until such time as there is no further need or prospect for remediation of any sort (or other New Jersey Department of Environmental Protection ("**NJDEP**") mandated activities) at the Properties.

First, JCP&L continues to maintain that the requested condition is not necessary to the Board's approval of the transactions in these proceedings (as referenced above). Reasonableness and prudency of future remediation costs is more appropriately addressed in a subsequent Remediation Adjustment Clause ("**RAC**") Filing, or, if appropriate, in other future rate-related proceedings. As explained in JCP&L's Comment Letters, submitted on July 19, 2022 ("**JCP&L Comment Letters**"),[1] it would be illogical for JCP&L to sell these Properties subject to Condition No. 4. As proposed, the entire net proceeds of the sales, together with the elimination of the future carrying costs of ownership, would go to benefit ratepayers while Rate Counsel would have JCP&L remain obligated for any and all risk associated with future environmental remediation costs associated with the Properties. The Properties are part of the former MGP site, as to which the NJDEP maintains oversight. Rate Counsel is not prejudiced by and it may take any position it wishes regarding the Company's recovery of any environmental remediation costs in the next subsequent RAC Filing or rate proceeding, as appropriate. Under the long-established RAC Filing substantive and procedural process, JCP&L would be required to establish the prudence of any monitoring and remediation-related costs incurred before establishing a right to recovery in future RAC proceedings.

Second, Rate Counsel's suggested condition No. 4, is a significant obstacle to a sale insofar as it is in direct conflict with the structure and balancing of interests proposed by JCP&L

[1] JCP&L submitted a reply to Rate Counsel's comment letter in each of the above-referenced proceedings. Only the JCP&L Comment Letter pertaining to the Property at 220 40th Street, which Property is subject to a Deed Notice, differed in any substantial manner from each of the other JCP&L Comment Letters, due to the need to better describe or explain the issues pertaining to that particular Property.

and factored into the risk analysis and structure of the terms of the sale agreements. Whereas Rate Counsel would have the Board deny approval of the sales without Condition No. 4, JCP&L then would be forced to deem the imposition of the condition as effectively a denial of the Board's approval of the sales as proposed by the Company because Condition No. 4 would require JCP&L to renegotiate and restructure the transactions, with no certainty of success, to mitigate the risks that Rate Counsel would impose on the Company, if such mitigation can be effectively accomplished.

Third, Condition No. 4 not only poses a major disincentive to any sale, it is also unnecessarily inflexible. The proposed condition unnecessarily predetermines that there will be no cost recovery and, at the same time, also deprives ratepayers of (i) the benefit of current, but potentially fleeting, real estate market opportunities and (ii) reduced ongoing carrying costs associated with ownership of the Properties. As JCP&L has explained, such ownership is no longer necessary to facilitate any action on its part necessary to address ongoing monitoring and future MGP environmental obligations. To be clear, in the case of thirteen of the fourteen Properties, the risk of exposure is associated with the possibility of future NJDEP regulatory requirements (whether as a result of new or amended statutory mandates, new or amended regulations, or new or amended agency dictates or orders) pertaining to the Properties. In the case of the Deed Noticed Property at 220 40th Street, there is the additional certainty of the actions to be taken associated with obtaining the final RAO and RAP, and the ongoing monitoring and reporting of the Property. Not only will there be some costs associated with such actions, but there also remains an uncertain risk of possible remediation costs triggered, if at all, by the results of such monitoring or changes to mandates or standards. There is no logical, necessary, legal or equitable reason or requirement to deny recovery of these costs if they are prudently and reasonably incurred, when the only variable that will have changed is property ownership. Rate Counsel's reasoning is if the Company chooses to continue to own the Properties, cost recovery

may continue, but if the Company chooses to sell the Properties while retaining any real or potential liability, cost recovery must end – regardless of price, opportunity, the benefits to ratepayers, and practicality. Rate Counsel's reasoning is flawed and should be rejected. Such reasoning does not provide a reasonable basis upon which to deprive JCP&L of its ordinary expectation that it will be entitled to recovery for such MGP-related remediation costs if they are established as prudent and reasonable in a subsequent RAC Filing or rate-related proceeding.

Fourth, Rate Counsel's continued insistence on Condition No. 4, leaves JCP&L with no choice but to respectfully ask the Board in rejecting Condition No. 4 to also explicitly clarify, what is or should be implicit under law, that not only will the Company not be precluded from seeking cost recovery in a subsequent RAC or rate-related proceeding, but that the Board's approval of such sales means that the sales are prudent and that the Company will not be denied cost recovery merely because it sold the Properties as proposed in its petitions in these proceedings.

Fifth, Rate Counsel's citation to, and reliance on, a prior proceeding in which the Board included a similar condition is misplaced. (Rate Counsel Reply Letter p. 8 n. 22 (citing 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)). Simply stated, in the case of the Allenhurst property, (1) it was not an MGP property under and subject to N.J.S.A. 48:3-60 providing, among other things, for cost-recovery under the RAC; (2) it was a JCP&L-owned real estate asset that had been in the Company's rate base; (3) subject to a limited but certain post-closing escrow arrangement, JCP&L was able to negotiate away its liabilities in connection with that sale; and (4) the gain on the sale was split 50/50 with ratepayers in accordance with Board policy on such matters and as a result of the outcome of the Company's subsequent base rate filing in 2020.

In contrast, the Sea Isle City Properties, (A) are part of a former MGP Site; (B) are not Company rate-based assets, (C) have been subject to ongoing remediation and cost recovery in prior RAC proceedings; and (D) while remediated to allow for residential uses and able to be marketed and sold, there are, (i) for all of the Properties, which remain subject to NJDEP regulation and oversight, a potential for future environmental remediation costs due to future NJDEP regulatory requirement changes pertaining to Properties (as described above), and (ii) for one of the Properties – the Deed Noticed Property at 220 40th Street – certainty of costs associated with obtaining the final RAO and RAP, monitoring activities and associated costs will be required, and remediation activities associated with the results of such monitoring may be required. Moreover, JCP&L will apply all of the net proceeds of the sales to the benefit of ratepayers through the RAC and ratepayers will also obtain the ongoing cost savings associated with the foregone future carrying costs of ownership.

As can be seen from the above comparison, the 2018 Allenhurst Order and associated circumstances provide only an inapposite example without precedential or persuasive value in these proceedings. The example and Rate Counsel's use of it should be entirely disregarded with respect to the proposed sales of the Properties in the current docketed proceedings, which entail entirely different facts and circumstances as set forth in the petitions for the Properties.

Sixth, contrary to Rate Counsel's assertion, JCP&L's Comment Letters do not "present a different picture" or otherwise contradict the description of remaining environmental remediation cast in the petitions for the Properties.[2] While the petition in BPU Docket No. EM22050335 with

[2] JCP&L acknowledges that the petition for the 220 40th Street Property (in BPU Docket No. EM22050335) was not specific enough, and therefore, may have been confusing, in that it did not specify that, in addition to the Deed Notice, which was discussed in that petition, the final Response Action Outcome ("RAO") and final Remedial Action Permit ("RAP") had not yet been issued for that particular Property. However, both the affidavit of Frank Lawson attached to the JCP&L Comment Letters and the advanced discovery provided by the Company to Rate Counsel and Staff, with respect to this Property addressed this issue. The Company's response in JC-3 for this particular Property, and upon which Mr. Lawson's affidavit relies, specifically stated: "APPLICATION FOR SOILS REMEDIAL ACTION PERMIT. REMEDIAL ACTION

respect to the Deed Noticed Property (220 40th Street) could have been more clear, the five petitions acknowledge that the Properties were acquired in connection with the former MGP site, "which continues to be remediated by JCP&L," and they provide that ownership by JCP&L is no longer necessary to effectively monitor and, if necessary, remediate, any ongoing or future MGP-related environmental concerns with respect to the Properties. It remains the case that the remediation status of these Properties render them environmentally appropriate for sale as residential properties, as proposed by the Company's petitions and subject to the terms and conditions of the purchase and sales agreements.

The current real estate market provided favorable prospects for ratepayer benefits that could be achieved now as reflected by the terms of the proposed sales. The kind of future-ratepayer certainty that Rate Counsel seeks through its suggested condition remains elusive, while the benefits of the proposed sales for ratepayers are real and certain. The Company believes it would be unreasonable to reject those benefits for the sake of a currently elusive degree of certainty. JCP&L did not, and does not, believe it could have negotiated away these liabilities and still have achieved the purchase prices offered in each of the transactions placed before the Board in these proceedings and under such circumstances as the Properties present. In the Company's view, even if the proposed sales could not eliminate the potential future liability and MGP-related cost responsibilities as discussed herein, in the Comment Letter, the Lawson affidavit, the advanced discovery, and the petitions – the proposal to sell the ownership of the Properties where ownership is no longer necessary, is eminently prudent and reasonable. Therefore, JCP&L structured the transactions to obtain the purchase prices while maintaining

PERMIT FOR SOILS – Not yet issued by NJDEP (If issued before closing the RAP will be added). RESTRICTED RAO – Not yet issued by LSRP (If issued before closing the RAO will be added)." The response to JC-3 in BPU Docket No. EM22050335 is attached hereto and made a part hereof. JCP&L is sorry for any confusion this may have caused and respectfully requests that the Board consider the Petition in BPU Docket No. EM22050335 amended by the Company's response to JC-3 and as supported by Mr. Lawson's affidavit.

these liabilities as reflected in the pertinent purchase and sale agreements. Accordingly, the Company urges the Board to (i) reject Condition No. 4, (ii) clarify the Company's entitlement to cost recovery with respect to future reasonable and prudent costs, and (iii) otherwise approve the proposed sales as requested by the Company in these proceedings. However, if the Board does not outright reject Rate Counsel's Condition No. 4 as requested by the Company, and recognizing that the transactions may lapse or terminate of their own accord, then the Company respectfully requests that the Board:

(1) provide direction as to Board policy in these MGP-related matters as to the manner in which these types of transactions should be restructured;

(2) direct the Company to attempt to renegotiate the terms and conditions of the subject purchase and sales agreements to reduce, to the extent feasible under applicable law, future environmental risks and associated costs, consistent with the Board's policy;

(3) direct that, if the Company can successfully restructure such transactions as determined in the Company's sole discretion, and to its sole satisfaction, then the Company may resubmit the renegotiated transaction(s) to the Board for further review and approval under these dockets; and

(4) direct that, if the Company cannot do so within thirty (30) days of the date of the Board's Order, then upon notice from the Company to such effect, the Board's conditional approval of sale shall lapse and the dockets in these proceedings shall be closed, whereupon the Company may file a new petition with respect to any future proposed sale of the Property or Properties.[3]

[3] JCP&L maintains that Rate Counsel's suggested Condition No. 8 is unnecessary to adopt in connection with the property sales at issue in these proceedings and outside of the scope of the Board's purview. However, as clarified in Rate Counsel's Reply Letter, JCP&L does not object to a statement 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 in any other matter arising from environmental investigation and remediation of any of its properties, provided, however, that the Board does not approve and include Condition No. 4 as a condition of the Board's approval.

No paper copies will follow and we would appreciate if the Board Secretary's office would please acknowledge receipt of this submission. Thank you for your anticipated courtesy and cooperation.

Sincerely,

COZEN O'CONNOR

By: Michael J. Connolly
MJC:wl