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November 30, 2022

VIA ELECTRONIC MAIL

Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
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**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. 10 to the Petition**

BPU Docket No. EF02030185

Dear Acting Secretary Diaz:

Please accept for filing the comments of the Division of Rate Counsel (“Rate Counsel”) regarding the above-referenced matter. 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.

Background

Jersey Central Power & Light (“JCP&L” or “the Company”) transmits and distributes electricity to 1.1 million customers in central and northern New Jersey under rates approved by the Board.

By Order dated July 24, 2002, the Board granted JCP&L’s original petition in this matter authorizing, with conditions, JCP&L’s participation in FirstEnergy Corp.’s Intra System Utility Money Pool (“Money Pool”) pursuant to an approved Money Pool Agreement. Subsequently, the Board has approved nine amendments to the original Money Pool Agreement, as follows:

	<u>Date Filed</u>	<u>Date Approved</u>
Original Petition	March 19, 2002	July 24, 2002
Amendment No. 1	June 25, 2002	July 24, 2002
Amendment No. 2	February 27, 2003	April 11, 2003
Amendment No. 3	January 13, 2005	April 30, 2005
Amendment No. 4	July 23, 2007	December 21, 2007
Amendment No. 5	August 18, 2009	December 17, 2009
Amendment No. 6	March 18, 2011	September 22, 2011
Amendment No. 7	January 29, 2013	March 20, 2013
Amendment No. 8	November 21, 2016	January 25, 2017
Amendment No. 9	June 26, 2019	December 6, 2019

Amendment No. 1 restricted JCP&L’s contributions to the Money Pool to internal funds. Amendment No. 1 also required borrowers from the Money Pool to maintain an investment grade or higher credit rating on senior secured debt.

Amendment Nos. 2 through 9 approved JCP&L’s requests to extend through December 31, 2022, the Company’s authorization to participate in the Money Pool,

subject to conditions specified in the Board Orders approving the requests enumerated above.

On March 25, 2021, JCP&L submitted a letter request to the Board seeking a waiver of Board regulations regarding loans to affiliates within the Money Pool.¹ Specifically, the Company requested a waiver of N.J.A.C. 14:4-4.7(f)(4) and 14:4-4.7(h), which restrict companies participating in a money pool arrangement from lending to the pool if any participating affiliate is assigned a credit rating below investment grade by one of the nationally recognized statistical rating organizations.² The Company requested the Board approve the waiver retroactively to November 23, 2020, the date when the violation of the lending standard first occurred.³ On June 1, 2021, Rate Counsel filed comments regarding the Company's Letter Request, which stated Rate Counsel's non-opposition to the waiver subject to five specific conditions. To date, the Board has yet to issue an order regarding the Company's waiver request, nor has the Board addressed the conditions detailed in Rate Counsel's June 1, 2021 comments.

On August 22, 2022, JCP&L filed a Verified Petition with the Board seeking approval of Amendment No. 10 to the Money Pool Agreement. Essentially, JCP&L's instant Petition seeks the following authorizations from the Board:

- Grant JCP&L a three-year extension of the time within which the Company may participate in the Money Pool from December 31, 2022 through December 31, 2025, and

¹ See Request for Waiver of Certain Provisions of N.J.A.C. 14:4-4.7 and Corresponding Provisions of the Board of Public Utilities' Order Authorizing Jersey Central Power & Light Company's Participation in the FirstEnergy Corp. Intrasystem Money Pool, BPU Dkt. No. EF02030185, dated March 25, 2021 ("Letter Request").

² Id. at 4-5.

³ Ibid.

- Authorize the Company's limitation on Money Pool borrowings to an aggregate principal amount not to exceed \$500 million outstanding at any one time.

Analysis

The statute under which JCP&L seeks Board approval for the relief requested in the Petition, N.J.S.A. §48:3-7.2, requires written Board approval before any utility loans money or property to any of its affiliates.

Rate Counsel has carefully reviewed the Company's petitions and prior Board authorizations in this matter. Rate Counsel has also conducted extensive discovery on the Company's requests in the instant petition. Based on Rate Counsel's understanding of the governing law, its careful review of the relevant facts presented in support of the instant petition and based on representations made in the Petition and in JCP&L's responses to discovery requests, Rate Counsel offers the following comments.

JCP&L's ability to contribute funds to the Money Pool is restricted to internally generated funds. While from time-to-time JCP&L invests its surplus funds into the Money Pool, by and large the Company is a net borrower from the Money Pool. Over the past several years the Company has relied extensively on borrowings from the Money Pool to meet its day-to-day working capital requirements. The following table shows the month-end balances of JCP&L's Money Pool borrowings over the period January 31, 2021 through September 30, 2022.

JCP&L Money Pool Borrowing (\$000)⁴
January 2021 – September 2022

January 2021	\$1,078
February 2021	\$8,988
March 2021	\$2,466
April 2021	\$28,282
May 2021	\$28,133
June 2021	\$40,875
July 2021	\$127,011
August 2021	\$71,624
September 2021	\$33,345
October 2021	\$159,538
November 2021	\$64,928
December 2021	\$70,851
January 2022	\$0
February 2022	\$0
March 2022	\$1,673
April 2022	\$0
May 2022	\$0
June 2022	\$83,808
July 2022	\$0
August 2022	\$43,551
September 2022	\$0

JCP&L’s corporate parent, FirstEnergy Corp., is a major contributor of funds that are available to JCP&L through the Money Pool. FirstEnergy Corp. has access to short-term funds through its significant revolving credit facility and through other credit facilities, which, together, enable it to make funds available in the Money Pool under terms that are more favorable to the participants than the individual participants otherwise could obtain on their own.

In addition to its participation in the Money Pool, JCP&L also has a revolving credit facility under which it can borrow up to \$500 million.⁵ JCP&L used its revolving

⁴ JCP&L’s response to RCR-13, Attachment.

⁵ JCP&L’s response to RCR-15.

credit facility to borrow \$450 million during the period November 2020 through May 2021.⁶

While JCP&L is obligated to meet its short-term cash requirements with non-Money Pool funds if that represents the least cost method of obtaining such capital, Money Pool borrowing costs traditionally have been lower than interest rates charged by unaffiliated lenders. JCP&L claims that Money Pool borrowings currently save the Company (and ratepayers) approximately 100 basis points when compared with borrowing costs associated with its line of credit with commercial banks.⁷

It is clear from the review of JCP&L's daily Money Pool borrowings over the past several years that when additional cash is needed the Company has extensively relied on funds available through the Money Pool to meet its day-to-day cash requirements.⁸ Information provided by the Company shows that Money Pool funds are available to the Company at a lower cost than funds that would be provided by non-affiliated, external providers. That is, JCP&L's participation in the Money Pool has been beneficial to New Jersey Ratepayers. Thus, Rate Counsel does not object to the Board extending through December 31, 2025 the time within which the Company may participate in the Money Pool. Consistent with prior authorizations, however, the Board should continue to require JCP&L to obtain short-term funds from external sources if such external sources represent the least cost alternative to the Company and to New Jersey ratepayers. This condition and Rate Counsel's other recommended conditions to Board approval in this proceeding are itemized later in these comments.

⁶ JCP&L's response to RCR-15, Attachment.

⁷ Petition, page 3.

⁸ See JCP&L's response to RCR-13, Attachment.

In the past, the Board has conditionally approved JCP&L’s participation in the Money Pool so long as overall Money Pool participation is restricted to FirstEnergy subsidiaries that are classified as public utilities. JCP&L claims that this restriction is being met⁹ and that there are no plans to add any new participants.¹⁰ All FirstEnergy utility subsidiaries, except Allegheny Generating Company, are either participants in or signatories to the Money Pool Agreement.¹¹

The Board also has required all borrowers in the Money Pool to have, at a minimum, investment grade credit ratings from all applicable nationally recognized statistical ratings organizations.¹² Presently, this restriction is being met by all Money Pool borrowers.¹³ However, as noted in the Petition, “for a period of time between November 23, 2020 and March 21, 2021, JCP&L was in non-compliance with [N.J.A.C. 14:4-4.7(h)].¹⁴ Further, while JCP&L states that “the Company has added the restriction on money pool lending into its debt compliance database to help protect against future occurrences”¹⁵ the Company has not specifically explained this restriction or why such a restriction was not already in place. To date, the Board has not issued sanctions for this violation, nor has the Board issued an Order in response to JCP&L’s March 25, 2021 Letter Request.

⁹ JCP&L’s response to RCR-1.

¹⁰ JCP&L’s response to RCR-4.

¹¹ JCP&L’s response to RCR-3. Allegheny Generating Company is a participant in FirstEnergy’s Non-Utility Money Pool.

¹² See Condition #8 in the Board’s Dec. 16, 2019 Order in BPU Dkt. No. EF02030185 requiring JCP&L to “comply with the requirements of N.J.A.C. 14:4-4.7(f), (g) and (h).”

¹³ JCP&L’s response to OE-4.

¹⁴ Petition at fn 2.

¹⁵ Ibid.

JCP&L's current limit on aggregate principal outstanding for borrowings from the Money Pool is \$500 million. The Company requests that the \$500 million limitation be extended through December 31, 2025. Rate Counsel has no objection to extending the same borrowing limitation for another three years.

Recommendation

Rate Counsel has carefully reviewed JCP&L's Petition, as well as the Company's responses to Rate Counsel and Board Staff discovery requests. Based on this review, and on the representations made by JCP&L in the Petition and in discovery responses, Rate Counsel is not opposed to the relief sought in the Petition, subject to certain conditions described below. The Company provides transmission, distribution and sale of electric energy services to approximately 1.1 million customers in central and northern New Jersey. With the aid of the requested authority sought in the Petition, the Company should have adequate short-term resources and financial capability to properly and adequately serve its New Jersey customers.

Approval of the Petition should not include authorization to include in rate base any specific assets that will be acquired as a result of the financings contemplated in the Petition. The determination of any assets to be included in rate base and the ratemaking impact of serving customers, including the impact of the transaction on the Company's capital structure and capital costs, should be addressed in a future base rate proceeding.

In its December 6, 2019 Order approving JCP&L's proposed Amendment #9 to the Money Pool Agreement, the Board granted approval subject to certain conditions. Those conditions remain relevant and significant in this instance as well. Therefore, Rate

Counsel recommends that if the Board approves Amendment No. 10, it should do so only with the following conditions:

1. Petitioner's borrowing through the Money Pool shall not exceed \$500 million.
2. Petitioner shall not make any bank borrowings or issue commercial paper for the sole purpose of lending the proceeds to the Money Pool.
3. Petitioner shall not borrow from the Money Pool if it is able to obtain funds at lower costs either through a direct bank borrowing or issuance of commercial paper.
4. Petitioner's chief financial officer or treasurer, or designee thereof, shall render Money Pool-related short term financing decisions based upon what is in the best interests of JCP&L's ratepayers.
5. Petitioner 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 investment instruments.
6. Petitioner shall not borrow any sum from the Money Pool for a period of greater than 364 days.
7. Petitioner shall file with the Board and Rate Counsel 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. Petitioners shall comply with the requirements of N.J.A.C. 4:4-4.7(f), (g) and (h), and the provisions of all other applicable statutes, regulations and Orders.
9. JCP&L shall inform the Board and Rate Counsel within three (3) business days of any participating subsidiary not meeting the applicable credit rating standard as described in the Money Pool Agreement.
10. The proceeds from the 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 this Order authorizes rate recovery from customers, or the capital structure to be used in any future 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.
13. Any petition requesting authorization to extend the time within which JCP&L may participate in the Money Pool (i.e., for Amendment No. 11) shall be filed no later than September 1, 2025.
14. Petitioner shall review the need for and merits of a commercial paper program as a supplement to or (on occasion) substitute for Money Pool borrowings based on the availability and costs of those borrowings, and provide such information to Rate Counsel and Board Staff on an annual basis and at the time of filing any future extension request.
15. Sanctions for JCP&L's violation of N.J.A.C. 14:4-4.7(f)(4) and N.J.A.C. 14:4-4.7(h) between November 23, 2020 and March 21, 2021 have yet to be determined and will be decided as part of the Company's next base rate case or other appropriate proceeding.

These provisions will satisfy the concerns of Rate Counsel that Board approval is limited to the transactions as herein described, does not indicate authorization to include any specific assets or amounts in rate base, does not indicate authorization for any other ratemaking treatment, including JCP&L's regulated capital structure and capital costs,

and does not establish precedent with respect to approval of future financing petitions. Furthermore, Rate Counsel respectfully reserves its right to examine this transaction in the context of any future rate cases.

Respectfully Submitted,

BRIAN O. LIPMAN, DIRECTOR
DIVISION OF RATE COUNSEL

By: /s/ Robert Glover
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RG /dl
c: Electronic Mail Distribution List

**I/M/O Jersey Central Power &
Light Company 2022 Money
Pool Filing**

BPU Dkt. No. EF02030185

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