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A FirstEnergy Company

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VIA ELECTRONIC MAIL ONLY

Sherri L. Golden, Secretary
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Re: I/M/O An Audit of the Affiliated Transactions between Jersey Central Power and Light Company, First Energy Corp. and its Affiliates Pursuant to N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 and N.J.A.C. 14:4-3.7(e) and (f).
BPU Docket No. EA20110733

Dear Secretary Golden:

In 2020, the New Jersey Board of Public Utilities (the "Board" or "BPU") initiated a comprehensive Audit of the Affiliated Transactions and a Management Audit (the "Audit") of Jersey Central Power & Light Company ("JCP&L" or "Company"). The Audit was conducted by Liberty Consulting Group ("Liberty") on behalf of the Board and consisted of two phases.

In May 2021, Liberty began to conduct a series of interviews and issued requests for information as part of the Phase I examination. On September 1, 2021 Liberty's initial Phase I effort was completed. On or around September 1, 2021, Liberty commenced its Phase II examination as part of the Audit and completed the investigative work on the topics of the Phase II report on March 31, 2022.

On September 15, 2021, a draft of the Liberty Consulting Group's Phase I report was released to Jersey Central Power & Light Company in the Audit of the Affiliated Transactions and a Management Audit of JCP&L in BPU Docket No. EA20110733 (RFP: 13-X-2219)

("Draft Phase I Audit Report"). The release of the Draft Phase I Report marked the end of the Phase I audit period. At that time, the Company was provided with the opportunity to review and comment regarding factual inaccuracies in, and to identify confidential information that should be redacted from, the Draft Phase I Audit Report. On October 15, 2021, JCP&L completed its review and returned a mark-up of the Draft Phase I Audit Report to Liberty, along with an Excel file that also listed the proposed corrections and redactions.

On September 15, 2022, a draft of the Liberty Phase II report was released to JCP&L ("Draft Phase II Audit Report"). The release of the Draft Phase II Report marked the end of the Phase II audit period. At that time, the Company was provided with the opportunity to review and comment regarding factual inaccuracies in, and to identify confidential information that should be redacted from, the Draft Phase II Audit Report. On October 15, 2022, JCP&L completed its review and returned a mark-up of the Draft Phase II Audit Report to Liberty.[1]

On April 12, 2023, a final version of the Phase I and Phase II Audit Reports (the "Final Phase I Report" and "Final Phase II Report" and collectively the "Final Reports") were accepted by the New Jersey Board of Public Utilities (the "Board" or "BPU") for "filing purposes only." *See* Board Secretary's letter dated April 12, 2023. The Secretary's letter also noted that the deadline to file comments on the Final Reports was May 22, 2023.Based on two requests from the Division of Rate Counsel, the deadline for comments was extended to June 30, 2023, and then to July 31, 2023. Accordingly, JCP&L hereby provides its substantive comments with respect to both the Final Phase I and Phase II Reports.

[1] Additional exchange of drafts between Liberty and JCP&L, focused on limited cleanup and redaction questions, followed October 2022 for both phase drafts until the publication on April 12, 2023.

As described by Liberty, Phase I was to provide "[e]xpedited treatment of a focused series of topics grouped together to comprise a "Utility Operations" component." Phase I Report at Executive Summary, p. ES-1. As to Phase II, that phase was described as a

> [s]ubsequent treatment of functions remaining to be addressed as part of a comprehensive management audit of JCP&L and an audit of the affiliated transactions among JCP&L, FirstEnergy, and its affiliates.

Id. (emphasis added).

As of October 8, 2021, JCP&L had produced over 6,200 documents and had responded to 977 data requests as part of Phase I and the commencement of Phase II. By the end of the Phase II audit period in June 2022, JCP&L had responded to 1,686 data requests (as well as provided supplemental responses as necessary), produced over 66,000 documents and engaged in approximately 144 interviews -- predominantly of employees but also of some members of the JCP&L and FirstEnergy Corp. ("FirstEnergy") boards of directors. Many of these data requests were in multiple parts, with some requiring studies and/or analysis to produce information in specified formats that were otherwise not readily available and, in some cases, for time periods of up to ten years. Throughout the entire timeframe of the audit, which lasted for approximately two years, the Company engaged with Liberty in good faith and demonstrated best efforts in responding to the auditors' requests. Although Liberty and JCP&L have had differing perspectives on certain matters related to the conduct of the audit, the Company understood and understands Liberty's role in the process and welcomes the conclusion of this matter. JCP&L reserves the right to respond to the comments of others with respect to both the Phase I Report and the Phase II Report.

However, at the outset of these comments, JCP&L is compelled to respond to statements in both the Phase I and Phase II audit reports in which Liberty criticizes the Company as being "unresponsive" or "uncooperative" or failing to provide requested information during the audit.

Liberty's statements are false, without basis, and completely misguided, and JCP&L urges the Board to disregard them.

Most of Liberty's allegations in this regard appear to be centered on the Company's exercise of the attorney-client privilege with respect to issues related to the House Bill 6 / Department of Justice ("DOJ") investigation and related matters (including the deferred prosecution agreement ("DPA") between FirstEnergy and the DOJ). The rest were predominantly, if not exclusively, with respect to certain internal audits or internal investigations requested and/or led by counsel. Indeed, Liberty has gone so far as to dismiss the use of such legitimate legal protections such as the attorney-client privilege (which has been recognized in this country for more than a century) to an institutional failing at FirstEnergy. The basis for this claim is, apparently, a Liberty anecdote that it has not run into the same level of privilege usage amongst other entities that it has audited.

JCP&L is aware of no legal precedent that requires a regulated utility to waive the attorney-client or attorney work product privileges during a BPU management audit. Moreover, in the case of the House Bill 6/DOJ investigation and the DPA, Liberty received virtually all documents that were shared with or disclosed to other regulators or adverse parties. In fact, in an effort at transparency and cooperation, FirstEnergy provided the auditor with every single document produced to the DOJ. FirstEnergy also provided SAP detail of payments referenced in the DPA requested by the auditor to allow for confirmation. In total, FirstEnergy provided voluminous document productions to the auditor totaling over 926,500 pages, including: all documents produced to the DOJ; all documents produced to the SEC; and documents concerning FirstEnergy's New Jersey operations (including JCP&L) produced to FERC as part of the FERC Audit, captioned Docket No. FA19-1-000. With respect to internal audits and certain internal investigation, the Company saw no need to waive its claim of privilege since it was otherwise able to provide responses to follow-up questions (when asked) intended to add clarity and substance to such matters without such waivers.

Beyond the fact that Liberty's allegations are factually inaccurate, they overlook the important reasons for a company's assertion of appropriate privileges during ongoing criminal investigations, civil litigation and regulatory investigations. For example, the disclosure of non-public information underlying the DOJ's ongoing investigation could materially interfere with that investigation (or the investigations of other federal regulators). In addition, federal and state regulations protect from disclosure information provided to certain regulators during the course of an audit or investigation. Exercising rights under federal and state law or applicable privileges cannot reasonably be labeled a "lack of transparency."

For all of the foregoing reasons, JCP&L urges the Board to reject and disregard Liberty's unfounded contention that the Company was uncooperative during the audit process.

Summary of JCP&L's Responses to Liberty's Recommendations

As set forth in more detail herein, the Company has determined to respectfully recommend to the Board that it accept, accept in part or with modifications, not accept, or defer to a base rate case and order implementation of certain of Liberty's recommendations. For the Board's ease of reference, JCP&L has summarized its responses to the Phase I and Phase II recommendations in the following chart:

Total Recommendations	Accepted	Accepted with Clarifications/Modifications	Accepted in Part	Base Rate Case Matter	Not Accepted
Phase I - 32	19*	7	2	0	4
Phase II - 73	38**	17	4	5	9
Phase I and II 105	57	24	6	5	13

*Of the nineteen "Accepted" recommendations from the Phase I Report, seven are considered already to have been implemented.

**Of the thirty-eight "Accepted" recommendations from the Phase II Report, ten are considered to already be implemented (in whole or in part), and eight are considered to be in-process.

In addition, a comprehensive summary of each recommendation and the Company's position is provided as Attachment A to these comments.

JCP&L'S COMMENTS ON THE PHASE I REPORT

Chapter I – Introduction/Executive Summary

At the outset, the Company wishes to emphasize that notwithstanding its differences of opinion regarding particular factual findings, conclusions and recommendations in whole or in part, JCP&L has accepted 28 of the Liberty recommendations in the Final Phase I Report, with a part of one of these recommendations believed by the Company to be a ratemaking matter to be addressed during a base rate proceeding. This leaves only 4 remaining recommendations that the Company has not accepted. In some cases, the acceptance is outright and in other instances the Company's acceptance has been contextualized to foreshadow its understanding of the recommendation in terms of the Company's actual experience. The Company's decision-making in this regard is informed by the noted context and also by the principle that "under proper regulation, utility management has the recognized prerogative of running its business, providing that in doing so it does not violate the law." *Watkins v. Atlantic City Electric Company*, 60 PUR 3d 483 at 490 (1965); *see State of Missouri ex rel. Southwestern Bell Telephone Co. v. Public Serv. Comm'n*, 262 U.S. 276, 289 (1923)("It must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership.”).

Chapter II - Operations Organization

The Company appreciates Liberty’s description and assessment of the Operations Organization, in general, as to which Liberty makes no recommendations following its findings and ten complementary conclusions[2] with which JCP&L also does not take issue. Those conclusions are effectively summarized in the words of Conclusion No. 1 from Chapter II of Liberty’s Phase I Report:

> The FirstEnergy and JCP&L Operations organizations working in cooperation <u>have a structure, alignment and level of experienced resources and they use methods, practices, and systems sufficient to identify and plan comprehensively and appropriately for meeting system needs unique to JCP&L</u>.

at p. 23 (emphasis added).

The Chapter II conclusions of the Liberty Phase I Report provide more specific Liberty assessments regarding the sufficiency of the FirstEnergy centralized and JCP&L local organizations, to (i) ensure “safe, reliable, and economical service” (Conclusion No. 2), and (ii) provide “timely completion of” operational work (Conclusion No. 3). These organizations are “effectively structured” to assist JCP&L in its inspection and maintenance activities (Conclusion No. 4), and to provide JCP&L with:

> (a) “vegetation management standards and program management tools and practices” and are appropriately staffed to provide transmission vegetation management and distribution vegetation management support (Conclusion Nos. 5 and 10);
> (b) “reliability engineering and reporting assistance” (Conclusion No. 6);
> (c) “system planning assistance and load flow software technologies” (Conclusion No. 7);

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[2] There were eleven conclusions in Chapter II, but one of them (Conclusion No. 11) was merely an acknowledgement that JCP&L no longer owned generation, and, therefore, no fuels organizational or functional capabilities or responsibilities that were relevant to the Audit. Final Phase I Report at p. 27.

(d) supply chain assistance (Conclusion No. 8); and
(e) appropriate shared and executed planning, scheduling and tracking crew work scheduling and completion (Conclusion No. 9).

Final Phase I Report at pp. 24-26.

The Company acknowledges that during the course of Phase II of the Liberty Audit, FirstEnergy began implementation of a significant reorganization initiative called "FirstEnergy Forward"[3] intended to make the FirstEnergy organization in general, including the organization of JCP&L and its other operating companies, even more customer-focused and capable of delivering technologically-driven superior customer service. In large measure, the Phase II Audit Report has appropriately reserved judgment about this reorganization because it was not in place during the actual audit period. The Company assures the Board that the new organizational structure does not dismantle the prior organization or reduce the staffing levels for JCP&L in New Jersey, as to which much of Liberty's review and favorable conclusions pertain, but rather, and for the most part, realigns reporting relationships and is expected and anticipated to enhance the prior organizational strengths generally identified in the Final Phase I Audit Report.

Chapter III – System Planning and Load Management

The Company appreciates Liberty's general description and assessment of the FirstEnergy and JCP&L System Planning and Load Management function, as to which Liberty makes no recommendations following its findings and nine complementary conclusions, with which JCP&L does not take issue other than to provide below a limited clarification to one of them in the interest of accuracy.[4] Read together, those conclusions provide an effective general summary and a

[3] FirstEnergy Forward was a comprehensive project begun in early 2021 focused on improving business practices and policies; fostering trust, transparency and integrity; and enabling FirstEnergy to become a more nimble organization.
[4] With respect to Conclusion No. 1, the Company notes, in the interest of accuracy, that JCP&L clarified to Liberty during the factual comment phase that while the Company's distribution does meet N-1 redundancy on a fair amount of its distribution circuits through the use of automatic flop-overs, automatic tie schemes and manual ties, except for

positive assessment of JCP&L's system planning and load management. For instance, JCP&L's distribution system design provides substantial intrinsic reliability (Conclusion No. 1), its design criteria meet or exceed applicable standards (Conclusion No. 2), and circuit and substation loads are appropriately managed by FirstEnergy and JCP&L (Conclusion No. 3). In addition, FirstEnergy's forecasting organization uses appropriate methodologies for forecasting system energy and demands and its forecasts have been reasonably accurate (Conclusions Nos. 4 and 7). Moreover, JCP&L's system planning process includes comprehensive, data-driven, bottoms-up, and appropriate methods (Conclusion Nos. 5 and 6). Finally, Management makes considered decisions about prudent spending regarding New Jersey operations and system performance (Conclusion No. 8) and the capital spending for distribution system construction has been appropriate compared to budgets (Conclusion No. 9). *Final Phase I Report* at pp. 41-44.

Besides the accuracy clarification provided in the above footnote in regard to Conclusion No. 1, JCP&L is satisfied that Liberty reached reasonable and largely positive findings and conclusions regarding its system planning and load management. JCP&L is also confident that the recent reorganizational efforts described as FE Forward displays appropriate sensitivity to the importance of these functions for effective operations that provide safe, reliable and proper service to customers. The Company is also confident that FE Forward further enhances, and does not detract from, the organizational strengths found by Liberty in the Final Phase I Report.

<u>Chapter IV – Asset Management</u>

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specific areas such as the Morristown Network, the entire JCP&L distribution system is not designed to N-1 standards with distribution circuit tie capability for all of its circuits. Because Liberty was aware of this comment but did not make any changes indicates that Liberty believed its descriptions and conclusions were not inconsistent with JCP&L's perspective about its own system in this regard. Nevertheless, the Company wanted to underscore this clarification.

In general, the Company also appreciates Liberty's general description and assessment of the Company's Asset Management as to which Liberty reaches seven conclusions and makes two recommendations.

Liberty Recommendations:

1. **Develop, track and be accountable to annual T&D maintenance budgets based on the spending actually required to comply with inspection and maintenance program requirements.** (*See Conclusion No. 6*)
2. **Develop a system-wide programmatic approach to mitigating the negative reliability impacts resulting from the failure of aging equipment.** *(See Conclusion #7)*

Final Phase I Report, at p. 67.

Accepted. As discussed below, subject to reaching agreement with Staff as to an implementation plan and schedule, the Company accepts both Recommendation Nos. 1 and 2 from Chapter IV of the Final Phase I Report. However, the Company offers clarification as to both below.

With regard to Conclusion No. 6 and associated Recommendation No. 1, JCP&L believes better context is necessary to understand the Company's acceptance of the recommendation. In general, Liberty concludes that the Company's asset management philosophy comports with good utility practices and its asset management life cycle process is appropriate (Conclusion Nos. 1 and 5). In addition. the FirstEnergy/JCP&L inspection and reliability-centered maintenance programs and practices are appropriate (Conclusion No. 2), and all inspections and maintenance tasks are completed consistent with programs and priorities (Conclusion No. 3). Moreover, the prioritization of corrective maintenance ("CM") is appropriate and CM tasks have been completed consistent with prioritization (Conclusion No. 4). Finally, "FirstEnergy and JCP&L timely complete inspection and maintenance work even though" maintenance operations and maintenance ("O&M") budgets are consistently exceeded (Conclusion No. 6). *Final Phase I Report* at pp. 63-66. JCP&L appreciates Liberty's overall views regarding the Company's approach to asset management. The Company also recognizes Recommendation No. 1 in Chapter IV as emphasizing the opportunity within the Company's otherwise robust budgeting process to address annual inspection and maintenance program costs more specifically and, therefore, more accurately, as well as to manage these programs consistent with the annual budgets. Indeed, the Company has already recognized that there is a need to strive to more closely balance the benefits of: (i) budget and spending decision flexibility through its use of blanket budget categories, which provide room within an overall budget target to adapt to unanticipated needs and emergent developments while staying within the overall budget for any given year, on the one-hand, with (ii) the data-driven benefits and discipline of less-flexible, more specific, budget categorization.

The Company intends to achieve a closer balance. Indeed, the Company is already taking steps intended to improve this aspect of its annual inspection and maintenance program budgeting as it adapts the budgeting process to the new FE Forward reorganization initiative within JCP&L. This adaptation is anticipated to include a phased-in decreased reliance on general blanket budget categories for inspection and maintenance programs with more specific categorization of its budget and spending in this area. As indicated above, the Company is willing to accept Recommendation No. 1 of Chapter IV from the Final Phase I Report.

With respect to Recommendation No. 2 in Chapter IV, the Company notes that this is a new recommendation that was not part of the draft Phase I Report. Also, Conclusion 7, upon which the recommendation is based, has no underlying additional finding and, indeed, does not reference any existing finding within the Report. Moreover, despite finding that JCP&L's highest priority feeder and Customers Experiencing Multiple Interruptions ("CEMI") programs include the replacement of specifically identified equipment, without any additional finding, Liberty now concludes that JCP&L lacks any program with a proactive and holistic focus on equipment replacement based on “aged failure prone equipment” on a system-wide basis. As such, this conclusion appears to be somewhat at odds with Liberty’s findings and conclusions that the Company’s asset management philosophy comports with good utility practices and its asset management life cycle process is appropriate (Conclusion Nos. 1 and 5). In addition, the FirstEnergy/JCP&L inspection and reliability-centered maintenance programs and practices were found to be appropriate (Conclusion No. 2), and all inspections and maintenance tasks are completed consistent with programs and priorities (Conclusion No. 3). In addition, Conclusion No. 7 is diametrically opposed to the very Company asset management approach, found acceptable by Liberty, which emphasizes performance and condition over age-alone, as a prudent and data-driven approach to equipment replacement decisions in the vast majority of instances. The Company acknowledges that the Final Phase I Report continues to state that:

> Maintaining aged line and substation equipment and minimizing outage-causing equipment failures proves challenging for all electric distribution companies. Management must balance maintenance with replacement costs. Efforts to prevent outages or to shorten them must be balanced to provide acceptable reliability at a manageable cost.

Final Phase I Report at p. 56.

JCP&L has taken efforts to employ an approach to asset management with the goal of striking this very balance and does not find anything in the Report to undermine that perception other than the newly-added (but largely unsupported) Conclusion No. 7 and Recommendation No. 2 in Chapter IV. However, rather than reject such Conclusion and Recommendation as unfounded and unnecessary, JCP&L respectfully recommends that Recommendation No. 2 be modified to take account for an evolution in the Company’s technological capabilities in this regard.

Accordingly, JCP&L proposes to modify this recommendation to not only account for age of equipment in determining the need for replacement but also to account for equipment condition and criticality. Management has begun deploying a predictive machine learning model, which can be described as a health and criticality analytics tool that considers multiple inputs to make a recommendation for potential replacement. This Distribution Asset Analytics model will forecast the health and criticality of assets and recommend proactive replacement of failure prone equipment system wide to remove the highest risk equipment from the system in a rational manner. Lessons learned from the successful implementation of the highest priority feeder and CEMI programs will assist a system-wide approach using the predictive machine learning model to proactively replace failure prone assets that pose the highest risk to the system. This approach to the subject matter focused upon by Recommendation No. 2 offers a data-driven analysis to reaching conclusions with respect to certain types of equipment. It is an evolution in the Company's historic approach to age and condition issues such as it has already done with direct buried residential distribution cable, which is slated for replacement after three failures on a particular circuit, notwithstanding its age.[5] Therefore, the Company respectfully requests that the Board support the Company's proposal to modify this recommendation as the Company has proposed, subject to discussion with Board Staff as to the implementation process and related matters when appropriate.

Chapter V – Vegetation Management

The Company appreciates Liberty's general description and assessment of the Company's Vegetation Management programs, as to which Liberty made findings, four conclusions, and only

[5] The Company also notes that a later recommendation in Chapter VII (*Reliability and Smart Grid Operations)* would require the Company to "[s]ystematically address the reduction of outages attributed to aerial cable and open bare wire failures." The later recommendation appears to be an equipment-specific program approach that is more consistent with the Company's traditional approach to performance and condition (and not age-alone). Although the Company has separate views on that added recommendation, the Company raises it here as an example that is more consistent with the Report's findings and conclusions regarding asset management than Conclusion No. 7 and Recommendation No. 2 in Chapter IV.

one recommendation. Before reaching the recommendation, however, the Company first provides some clarifying comments.

Liberty concludes that Company management "enhanced its vegetation management programs to provide more acceptable reliability, by adding Zone 1, and later Zone 2, removal of overhanging branches to its cycle trims" (Conclusion No. 1). Also, JCP&L has been conducting its vegetation management in accord with program requirements (Conclusion No. 2) and its vegetation management spending has slightly exceeded budgets (Conclusion No. 3). Finally, Liberty concluded that the reliability results of the Company's enhanced efforts remain unclear (Conclusion No. 4). *Final Phase I Report* at pp. 75-76. Given these conclusions, the Company believes that the following observations provide useful context:

- JCP&L piloted an enhanced Zone 1 program to address overhanging vegetation for several years prior to 2015 in the lock-out zone (*i.e.*, Zone 1)[6] before the advent of the BPU's overhang trimming requirement having been established in its regulations (N.J.A.C. 14:5-9.8, adopted August 17, 2015, "Starting on January 1, 2016 …").
- The focus on Zone 2 overhang trimming was part of JCP&L's Infrastructure Investment Program ("Reliability Plus"), approved by the Board in Docket No. EO18070728 on May 8, 2019. The Reliability Plus program was subject to specific reporting obligations, with ongoing rate recovery to be addressed in a base rate proceeding filed no later than June 1, 2024. Board Order of May 8, 2019 at pp. 11-12.
- Annual reporting has already been provided for by the vegetation management circuit performance program ("VMCP"), which has specific reporting requirements that include annual review of the results of the enhanced Zone 2 overhang removal that was part of

[6] "'Lock out zone'" refers to the portion of the EDC's distribution circuit, which begins at the substation or switching station and continues to the first connective device." N.J.A.C. 14:5-1.2 (Definitions).

Reliability Plus for one four-year cycle through 2024. JCP&L 2020 Base Rate Filing Order at pp. 9-10.[7]

In addition, JCP&L would like to provide a comment on Liberty's finding related to planning and budgeting for the removal of hazard trees for distribution and sub-transmission in the Final Phase I Report at p. 72 and related to transmission priority tree removals on page 75. In this regard, four additional observations are helpful to provide perspective:

- JCP&L management does not currently pre-plan hazard tree removals for distribution and sub-transmission, but it does budget for hazard tree removals. JCP&L will remove hazard trees as identified and once all required approvals are obtained. Hazard trees are not a static number identified years in advance that can be accurately budgeted for, due to changing environmental conditions. Hazard trees may increase due to insect infestation, such as with the Emerald Ash Borer, tree disease, storm damage, etc. (page 72).
- FirstEnergy transmission undertakes annual pre-planning for priority tree removals. However, this does not lead to a static number that can be identified years in advance for accurate budgeting. The number of priority trees actually removed may increase depending on the field conditions at the time of maintenance.
- JCP&L's Northern territory is among the highest volume tree density territories in all of New Jersey, rendering it very vulnerable to tree-related outages.
- JCP&L crews continue a multi-year effort to identify and remove deteriorated ash trees that have been affected by the Emerald Ash Borer. Nearly 20,000 dead and dying ash trees

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[7] Indeed, the analysis for the complete year of 2021 reflects that SAIDI (the sum of customer interruption durations/total number of customers served) performance improved on 196 of the 221 circuits (88%) that received Zone 2 Overhang Removal Under the JCP&L Reliability Plus Program when compared with prior 4-year average (2017 – 2020) Tree Performance for those circuits. **See** JCP&L 2021 Annual System Performance Report pursuant to N.J.A.C. 14:5-8.8, filed with the Board on May 27, 2022, at p. 34.

have been removed in JCP&L's service area, primarily in northern New Jersey, since the initiative began in 2017.

Three times in Chapter V, Liberty refers to the Company's planning for hazard trees (*Final Phase I Report* at pp. 72, 75 and 76). In one of those references, Liberty states, as a part of its findings, that "[m]anagement does not plan <u>and budget</u> hazard tree removals for distribution and sub-transmission." <u>Id.</u>, at p. 72 (emphasis added). The other two references by Liberty, as part of its conclusions (at pp. 75-76), only refer to a failure "to annually plan." Although Liberty was generally correct when it restated the information provided to it in the Company's response to NJ-ADR-50 and in an associated interview, the Company believes that Liberty's adding the words "budget" and "nominally" to its findings was incorrect. <u>Id.</u> The Company believes that Liberty misunderstood JCP&L's response to NJ-ADR-50, and the discussion thereof in a related interview discussion, where the response stated, "[d]istribution and sub-transmission do not plan hazard tree removals and will remove them as identified after all required approvals are obtained."

It should be clear that there is a difference between not having a specific work plan and not budgeting for an anticipated level of such work. JCP&L contends that, because of the difficulty of predicting the largely unknown facts and circumstances of particular hazard trees years in advance of field identification, a specific work plan is not practical. This is why the Company's response to NJ-ADR-50 (and, JCP&L believes, in its related interview), the Company said that it did not perform the kind of specific work planning that the data request seemed to seek. However, the response was silent on the issue of budgeting, which was not the central thrust of the request. In fact, the JCP&L annual O&M budget, which is not specific as to any particular number of trees in this category, does assume a normalized level of spending activity in this category of vegetation management work each year.

With respect to work planning, to the extent Liberty is critical of the Company's approach, the Company wants to emphasize the dynamic nature of the hazard tree removal process and its impact on the specificity of budget planning. The hazard tree removal process often requires the cooperation of third parties, and is not easily predictable as to the impacts of tree damage being done by natural agents, including but not limited to the emergent Emerald Ash Borer, the unpredictability of the number, nature and extent of storms and their impacts on trees, and the unique characteristics of the Company's northern region within the State of New Jersey relative to the density of trees as mentioned above.

With the foregoing as helpful context and background, the Company now addresses the recommendation.

Liberty Recommendation:

1. **Demonstrate that enhanced Zone 2 vegetation work conducted as part of IIP Reliability Plus was as effective in reducing SAIFI and CAIDI as predicted.** *(See Conclusion #4)*

Phase I Report, at p. 74.

Accepted and implemented. This recommendation is followed by an explanation that appears not well-grounded in fact. First, 221 circuits, not 277,[8] had been subjected to Zone 2 treatment during 2020 as part of the Reliability Plus program. The data regarding those circuits was to be measured according to metrics developed during the 2020 Base Rate Filing proceeding. These metrics were being used for the first time in 2021. When Liberty concluded its Phase I review in September 2021, there was less than a full year of data available, yet Liberty states that the

[8] In JCP&L's 2020 base rate filing, which was resolved by a stipulation of settlement approved by the Board on October 28, 2020 ("JCP&L 2020 Base Rate Filing"), the VMCP was agreed upon. The VMCP commenced on January 1, 2021 as set forth in the stipulation of settlement adopted by the Board. Please further note that the Final Phase I Report incorrectly refers on three occasions to 277 circuits, instead of the 221 circuits addressed under the Company's Reliability Plus IIP, at p. ES-6, and in the Report at pp. 76-77.

performance data "remains surprisingly unclear" (id.) and goes on to recommend additional analysis, reporting, and proofs that are inconsistent with the reporting and criteria established in the Reliability Plus proceeding, the base rate proceeding, and the Board Orders adopting stipulations of settlement associated with each.[9]

As discussed above, JCP&L believes that the recommendation made in Chapter V may be based on a misunderstanding and is otherwise redundant and unnecessary. Nevertheless, the above discussion provides (i) added perspective to the overview and findings in Chapter V of the Final Phase I Report, and (ii) pertinent reasons and reasonable grounds for JCP&L's position that the sole recommendation in Chapter V of the Report should be viewed by the Board as not only accepted by the Company, but as fully implemented because the Company is in compliance with its reporting responsibilities with respect to the Reliability Plus vegetation management performed on the targeted circuits through its reporting in the VMCP. Moreover, as can now be shown in the table below, the Company can demonstrate, and has demonstrated, that through 2022, both subsets of tree-related outages have improved in recent years as well as the total tree-related SAIFI for these 221 circuits with nearly 84% of all tree-related outages attributed to off-ROW trees and trees falling on secondary wires.

[9] The use of a Customers Interrupted ("CI") metric may provide a more direct correlation to vegetation caused outages than SAIDI and CAIDI metrics, which includes duration minutes, which are based on factors outside the control of vegetation management. For instance, restoration times are a key factor in SAIDI and CAIDI, which includes the time for line crews to arrive on site and make repairs. To focus on vegetation reliability for these circuits, to clarify their performance within Reliability Plus, CI provides additional insight into the effects of earlier vegetation management. Considering the Reliability Plus focus on overhanging vegetation in Zone 2, the CI data indicates a decreased number of CI in each of the last 3 years for vegetation-related reliability. Although the "excluding Major Events" metric increased in 2022, the 221 circuits within the Zone 2 Reliability Plus program performed very well during "Major Events." Overall, the tree caused reliability has improved each of the last 3 years for the Reliability Plus Circuits in Zone 2.

221 Circuits for IIP displaying Zone 2 Reliability Only[10]					
TREE Caused System SAIFI	**2018**	**2019**	**2020**	**2021**	**2022**
TREES - SEC/SERVICE	0.0009	0.0013	0.0002	0.0014	0.0002
TREES OFF ROW-LIMB	0.0141	0.0140	0.0089	0.0061	0.0038
TREES OFF ROW-TREE	0.0924	0.0609	0.0470	0.0338	0.0252
TREES ON ROW	0.0235	0.0103	0.0099	0.0028	0.0040
TOTAL SAIFI	**0.1309**	**0.0867**	**0.0660**	**0.0440**	**0.0332**

Based on the foregoing, the Company, again, respectfully urges the Board to consider this recommendation in Chapter V to be accepted and implemented.

Chapter VI - Contractors

The Company appreciates Liberty's general description and assessment of the Company's use of Contractors, as to which Liberty made findings, nine conclusions, and three recommendations.

Liberty Recommendations:

1. **Develop a standard process to inspect, evaluate, document and manage the quality and quantity of a contractor's performance when measured against the standards, terms and conditions of their contract with JCP&L.** *(See Conclusion #3 and #9)*

2. **Develop a formal contractor performance management process and a system of record to capture performance data and enable comparative analyses of the quality, efficiency and cost effectiveness of competing contractor and company resources, and support data-driven resource allocation decisions.** *(See Conclusion #4, #6, and #9)*

3. **Integrate the analysis of relative execution risks and the potential of reducing risk into JCP&L resource allocation decisions.** *(See Conclusion #5)*

[10] The table provides the cumulative total tree-related SAIFI in Zone 2 for the 221 IIP circuits for each of the previous five years. Please note that overhanging vegetation removal directly affects "TREES OFF ROW-LIMB" and "ON ROW" outages. Therefore, the table also provides a breakdown of those tree-caused outages.

<u>Accepted.</u> As discussed below: (i) JCP&L believes that the first two recommendations (Recommendation No. 1 and Recommendation No. 2), which JCP&L reads as recommending that JCP&L do more documenting of contracted line work, are already being addressed by the Company; and (ii) JCP&L agrees to continue those efforts. In addition, JCP&L accepts Recommendation No. 3 in this Chapter subject to the Company's contextual comments as set forth below that such recommendation pertains to only line contracting and the integrated risk analysis that the Company agrees to employ, taking into account the collective bargaining agreement in place at the time.

Initially, it is useful to understand that, in Chapter VI, Liberty concluded that JCP&L relies "predominantly on internal field resources" for its construction, operations and maintenance work "supplemented by a relatively small contractor force" (Conclusion No. 1). JCP&L conforms to "good utility practice" in qualifying and selecting contractors (Conclusion No. 2). The Company acts soundly in its approach to inspecting all contractor work, but does not support this practice with a systematic recordkeeping process, and, thus, "lacks a formal contractor performance management process," that includes "sufficient documentation, recordkeeping, or analysis of inspection data." (Conclusion Nos. 3, 4 and 9). JCP&L's planning process utilizes contractors as a "peak-shaving resource" and does not consider relative execution risks in resource allocation decisions between contractors or between contractors and internal resources (Conclusion Nos. 5 and 6). JCP&L has acted effectively to manage and improve performance related to underground damage prevention/One Call (Conclusion Nos. 7 and 8).

JCP&L utilizes contractors in many different aspects of its business, employing standard utility practices to evaluate, obtain and manage them. Indeed, in several places, the Report remarks favorably about the Company's approach to vegetation management, One Call, and other forms of contractor utilization related to specialized skills or discrete areas of work. JCP&L has, and believes it has demonstrated as much, effective practices in place to manage its line construction contractors as well – similar to how it manages its internal work force doing similar work, as Liberty acknowledges.

Read together, then, Liberty's Recommendations Nos. 1 and 2 (develop a formal contractor performance management process) in Chapter VI of the Report do not so much constitute a criticism of JCP&L's contractor performance management approach and results, but rather a criticism of the Company's lack of documentation, which Liberty asserts did not allow it to objectively and completely assess the effectiveness and results of the Company's approach. The Company has standard and formal contractor performance management processes, but it did not have the detailed documentation system of record that Liberty felt was necessary. Whether the increased documentation is necessary to obtain contractor performance results superior to the results being achieved may be subject to debate, but the Company agrees that more formal documentation would assist it in demonstrating those results. In this regard, JCP&L also notes that the Liberty Phase I Report does not property qualify, as the Company offered in its factual comments, that Conclusion No. 6, one of three conclusions used to support Recommendation No. 2, refers to the use of contractors as a peak shaving resource, which is undertaken <u>for planning purposes only, which</u> does not accurately describe the Company's use of contractors generally. Therefore, the Company contends that it does not forego "the potential of broader economic allocation of resources" as concluded in Conclusion No. 6. *Final Phase I Report* at p. 91.

Interestingly, Liberty seems to have also overlooked information provided during the audit explaining that the Company was already considering the need, and has, in fact, acquired and deployed a new tool to add to its database of information, which can be used in support of future sourcing activities. The Company's response to NJ-ADR-345, Attachment E refers to the Supply Chain's newly acquired tool, "Supply Hive," which is intended to improve contractor performance. Supply Hive "includes functionality for contractor performance management" such as quarterly surveys for internal business unit personnel to complete and external surveys for contractors related to different risk areas, to be used to generate contractor performance scorecards. Id., at pp. 8-9. Thus, the Company believes that the Final Phase I Report should have reflected that JCP&L is already acting to address the need for additional documentation, which is at the heart of Liberty's Recommendation Nos. 1 and 2 in Chapter VI. Furthermore, JCP&L agrees to continue its work to utilize the relevant features of Supply Hive to better document contractor performance together with the phased-in development of additional methods for capturing project supervisory and inspection data to the degree such capabilities do not, or cannot, reside in Supply Hive.

With respect to Liberty's Recommendation No. 3, related to integrating the analysis of relative execution risks into its resource allocation decisions as between contractor and internal resources (id., at p. 88), JCP&L reiterates that this recommendation is associated with its use of line contractors as indicated in the following sentence from the Phase I Report, "JCP&L should apply the same types of risk and economic analyses that guided their selection of vegetation management and jobsite traffic protection sourcing alternatives to other disciplines within their overall electric system operations workload." Id., at p. 88. Liberty failed to be specific about the limits of its findings and conclusions (Conclusion Nos. 1 and 2) that the Company deploys a "peak-shaving" philosophy or approach. Liberty did not make clear, as indicated above, that this philosophy and approach were and are limited to the Company's use of line construction contractors for planning purposes and not all contractors used by the Company. Indeed, Liberty acknowledges that JCP&L does use a different approach for work such as traffic management and flagging, asbestos remediation, subsurface directional boring and tree-trimming (*Final Phase I Report* at p. 82) and underground locating/One Call, id., but finds these to be limited exceptions. Id.

The contractor mix chart used by Liberty, id., does not specify that it pertains only to line contractors and that the 2019-2020 complement of contractors reflects planned utilization of additional contractor resources (not just peak-shaving utilization). These added contractors were planned resources to specifically address the specifics of the Reliability Plus program, which represented a specific incremental (i.e., added) investment in, and work to construct and install, new infrastructure under that program and the BPU's rules (N.J.A.C. 14:3-2A.1 – 2A.6) and the BPU's Order dated May 8, 2019 in BPU Docket EO18070728 pertaining to it, with negotiated timing and reporting criteria. The use of these contractors was eventually unwound such that before the end of 2021, JCP&L's complement of line contractors had returned to its pre-Reliability Plus levels. This approach allowed JCP&L to manage its typical year-to-year workload predominantly with internal labor as it had always done. The successful and timely implementation and completion of the Reliability Plus planned approach, which also incorporated the same management oversight as applied to internal resources, attests to the success of the approach. As indicated above, JCP&L believes that the Final Phase I Audit Report would have been more accurate if it had reflected that Liberty's contractor mix chart pertained only to line contractors and that the 2019-2020 complement of contractors reflected planned utilization of additional contractor resources.

Ultimately, the Company understands Liberty's Recommendation No. 3 to pertain to a specific area of contracting – that of line contracting. As discussed above, Liberty expresses satisfaction and praise about the Company's contracting approach and decisions in other areas.

The Company has no substantial objection to the recommendation as it relates to the analysis of relative execution risks or opportunities for risk reduction as among all contactors, which, as Liberty acknowledges, the Company already undertakes. As to the same analysis between line contractors and the Company's internal line work force, while it is clear that Liberty understands that JCP&L has a unionized workforce predominantly devoted to operations field work, and that the Company operates under a collective bargaining agreement with said unions, Liberty does not appear to acknowledge that execution risk and risk reduction decisions (as opposed to analysis) as between the use of contractors versus internal work force needs to be undertaken in a manner consistent and compliant with the terms and conditions of the collective bargaining agreement. In this context, the time, effort and costs to develop the analytics necessary to address incremental decisions regarding line resource allocation would not be justified where the ability to act may be contractually constrained. With that as an appropriate context, JCP&L does not object to reviewing additional opportunities for integrating this risk analysis into resource allocation decision-making for line work where a good business case can be made for doing so.

On the basis of the foregoing review and analysis, the Company respectfully requests the Board to recognize Recommendation Nos. 1, 2, and 3 as accepted by the Company as and in the manner set forth herein, and subject to discussion with Board Staff when appropriate regarding the documentation of implementation.

Chapter VII – Reliability Programs and Smart Grid Activities

The Company appreciates Liberty's general description and assessment of the Company's use of Reliability Programs and Smart Grid Activities, as to which Liberty made findings, nine conclusions, and the following three recommendations.

Liberty Recommendations:

1. **Implement formal process to improve field diagnoses of outage causes by troubleshooters and improve accuracy in capturing causes in the outage management system by troubleshooters and DCC personnel.** *(See Conclusion #7)*
2. **Expedite analyses to validate that sub-transmission improvement projects planned for 2022-2026 to adequately improve SAIFI and CAIDI performance.** *(See Conclusion #2 and 8)*
3. **Systematically address the reduction of outages attributed to aerial cable and open bare wire failures.** *(See Conclusion #9)*

Accepted. JCP&L accepts the three recommendations in Chapter 7 of the Final Phase I Report, as clarified and limited by the following discussion.[11]

Liberty's conclusions in this chapter largely agree that JCP&L is regularly and consistently focused on reliability measures and issues, uses appropriate cost benefits analysis and methodologies, appropriately applies technology to improve reliability and efficiency (Conclusion Nos. 1, 3, 4 and 5). The Company undertakes a base reliability program that comports with good utility practice with improvement initiative (Conclusion Nos. 2 and 6), but has not experienced marked reliability improvement since 2017 according to reliability indices (Conclusion No. 2). The Company has (i) an excessive number of "other/unknown" outages (Conclusion No. 7), and sub-transmission issues that obscure distribution system improvements (Conclusion No. 8), and

[11] Liberty has added this recommendation to the Executive Summary where it had not appeared during the factual comment phase of review. In addition, on pages 98-99 of the Final Phase I Report, Liberty appears to have misinterpreted some data pertaining to minor weather days and significant weather events, as to which JCP&L tried to clarify to no avail. JCP&L believes that Liberty misunderstood or misread the 2020 ASPR, where there were two sections related to the Northern Region SAIFI. It appears that Liberty only read or considered one section or conflated both sections and used the incomplete or misinterpreted information to summarily dismiss the concept of minor weather days, which is not appropriate. Indeed, one section of the ASPR referenced minor weather and a second section references significant outage events (both weather and other types of events), which stated, "[t]he JCP&L Northern Region experienced a significant reliability impact from non-excludable minor weather days in 2020, with 0.497 of SAIFI occurring on minor weather days. While this impact is a slight increase to that experienced in 2018 (0.431) and 2019 (0.449), it also represents a 77% increase in minor weather impact to SAIFI as compared to the 2015-2017 average (0.281)."

(ii) no formal program to address aerial spacer and open wire-caused outages (Conclusion No. 9). JCP&L does not take issue with the conclusions or most of the findings upon which they are based.

As to the recommendations, JCP&L agrees that it can address Liberty's Recommendation No. 1 to implement a formal process to improve field diagnoses of outage causes by troubleshooters and improve accuracy by adding additional training and processes for field personnel to the implementation of the Company's new advanced distribution management system ("ADMS") scheduled for implementation in 2023 (which will replace the existing outage management system ("OMS")), which will enable both outage management and distribution system management functionality. This will, among other things, provide a distribution-focused supervisory control and data acquisition ("SCADA") integrated platform. Such a platform is anticipated to allow for faster and more efficient system troubleshooting, which should, in turn, assist in improved causation identification and analysis.[12]

The Company also agrees that Recommendation No. 2, to expedite analyses to validate that sub-transmission improvement projects planned for 2022-2026 will adequately improve SAIFI and CAIDI performance, is consistent with its existing system planning. In this regard, JCP&L intends to continue to include this analysis in the next and subsequent (as necessary and appropriate) capital budgeting processes.

In Recommendation No. 3, Liberty seeks to have JCP&L "systematically address the reduction of outages attributed to aerial cable and open bare wire failures," specifically encouraging the Company to revisit an *ad hoc* approach that had been used in 2015 to provide

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[12] JCP&L notes that it has seen great improvement in reducing unknown outage causes since 2020 through a combination of leadership focus and employee engagement. This was accomplished by applying the existing sound principals for cause coding and data approval more rigorously. Reliability dashboards are available for tracking various reliability related items including outage cause and will continue to be used and refined as business needs dictate. 2020 - 17.78%, 2021 - 12.45%, 2022 - 12.09%, 2023 – 8.0%, (YTD as of June 2023). Weekly reliability meetings where outage causes are reviewed have also been implemented.

some level of attention to the issue. Also, the Company wishes to clarify that the condition of aerial cable and open bare wire are assessed and addressed as part of the Company's Worst-Performing Circuit program. At this juncture, the Company intends to propose a new IIP in 2023 for implementation beginning in 2024, which contemplates projects to address outages caused by line failures, which includes aerial cable. The Company believes that this will provide a process of systematic review and response that will include aerial cable in the context of line-failure caused outages.

In the interest of accuracy, the Company also wishes to clarify that JCP&L assumes that Liberty misunderstood or mistakenly described some components of the Reliability Plus program to include backlot loop schemes at the barrier islands as opposed to "Distribution Automation (Loop Schemes)" in its findings. *Final Phase I Report,* at p. 111. The Company had requested a change to this page of the Report, which Liberty made. However, the Company had incorrectly assumed that such change would also lead to the movement of a complete paragraph on page 112 describing backlot loop schemes in the Barrier Islands to separate it from the discussion of the Reliability Plus program so as to avoid creating an impression that backlot loop schemes associated with some post-Sandy Barrier Island work had anything at all to do with the Loop Scheme component of Reliability Plus.

The Company acknowledges that Liberty's conclusion (No. 2) about a lack of improvement in JCP&L reliability metrics since 2017 is borne out statistically. However, the Company also notes that Liberty dismisses the value of tracking "minor weather days" as questionable, doing so, largely, because Liberty believed it had discovered a problem in some of the Company's data collection and/or analysis. Id. at p. 99. However, notwithstanding that specific concern (and the possible misinterpretation of certain data), the Company believes that the concept of minor weather days provides a mechanism for better understanding the Company's weather experience and its possible connection to the phenomena of climate change. Over time, this data may reveal a broader and more accurate context for understanding the meaning of relatively stable statistical performance in the face of worsening natural conditions. The Company intends to continue collecting data about, and analyzing outages using, the concept of "minor weather days" and to consider the insights such data and analysis can provide.

The Company respectfully requests that the Board reflect the Company's acceptance of these three Liberty Recommendations as discussed and modified above, subject to discussion with Board Staff as to implementation and documentation thereof when appropriate.

Chapter VIII – Cyber Security and System Vulnerability

JCP&L is pleased that Liberty's Phase I Report found the Company's Cyber Security program and systems to be "comprehensive," "competent" and "consistent with industry standards." *Report*, p. 124. Accordingly, in this Chapter of the Phase I Report, Liberty made only one Recommendation:

Liberty Recommendation:

1. **Fill staffing vacancies promptly.** *(See Conclusion #2)*
   FirstEnergy should ensure that the Vice President position and any other key positions remain filled. *Report*, p. 127.

Accepted. JCP&L agrees with this recommendation, which stems from the Report's comment that "[d]uring the work leading to the preparation of this report, the VP of Cyber and Physical Security announced his departure, leaving a key vacancy requiring prompt filling." *Report*, p. 127. In that regard, FirstEnergy filled the position of VP of Cybersecurity and Chief Information Security Officer ("CISO") on June 5, 2022. There are currently no vacant key positions in this organization, and FirstEnergy agrees that it is important to maintain an appropriately staffed Cyber Security workforce.

Chapter IX – System Resiliency and Restoration

In Chapter IX, Liberty makes findings, eighteen conclusions and nine recommendations addressing seven distinct aspects of JCP&L's operations and FirstEnergy's practices related to system resiliency and restoration.[13]

A. Emergency Preparedness Plan (E-Plan)

Liberty Recommendation:

1. **Complete the update to the E-Plan and related documentation by year-end 2021, as scheduled.** *(See Conclusion #1)*

Accepted and implemented. In the case of the Company's E-Plan, which Liberty found to be comprehensive, widely and easily available and well-structured (Conclusion No. 1) and a sound and comprehensive tool (Conclusion No. 2), the version of the E-plan reviewed by Liberty, which was in a revision process when Liberty reviewed it, was found to be not current in many respects. The Company agrees with and has already complied with Recommendation No. 1 in this Chapter IX. Indeed, as of date of this comment letter, the updated E-Plan has been completed in satisfaction of this recommendation.

B. Event Forecasting

Liberty Recommendations:

2. **Complete the development of the new OVM-like model.** (*See Conclusion #4*)

[13] More specifically, Chapter IX addresses A. Emergency Preparedness Plan ("E-Plan") (pp. 131-133), B. Event Forecasting (pp. 133-139), C. Authority and Process of Securing Resources (pp. 140-143), D. Establishing, Updating, and Communicating Estimated Times of Restoration (pp.143-148), E. Liaison with Government Officials (pp. 149-156), F. Storm Order Compliance and Metrics (pp. 156-160), and G. Undergrounding to Improve Reliability and Resiliency (pp. 160-165).

3. **Ensure clear, timely and widespread communication of storm event classification.** (*See Conclusion #5*)

<u>Accepted.</u> With respect to outage event forecasting, the Company appreciates Liberty's general description, findings and conclusions (Conclusions Nos. 3, 4 and 5) with respect to its weather services, outage modeling, and event classification, including its appreciation of the breadth and ambition of the Company's undertaking to develop a new "storm impact model" with assistance from a "highly regarded team from the University of Michigan and The Ohio State University." *Final Phase I Report* at p. 129. JCP&L accepts the Liberty recommendation No. 2 in this chapter, which obliges it to complete development of a storm impact model that was already underway and, from JCP&L's perspective, has already been implemented.[14]

Liberty's recommendation No. 3 in Chapter IX seeks to have the Company "ensure clear, timely and widespread communication of storm event classification." JCP&L accepts this recommendation, which it believes is addressed in the updated E-Plan by requiring the Incident Commander (in practice, collaborating with the Planning and Analysis Section Chief) to determine and communicate the event level classification to the FirstEnergy and JCP&L emergency response

[14] As a matter of background, the new outage volume model ("OVM"), StormImpact ("SI"), was implemented and operational in New Jersey since early 2020. The SI model was created by a highly regarded team from the University of Michigan and The Ohio State University to provide daily predictions of weather-related customers interrupted, and orders for the current day, and the following second and third days, based upon JCP&L's historical outage data. Specifically, models have been developed to predict the number of customers interrupted, trouble orders, and outage orders. SI analyzes a number of variables, including storm threat, wind gust speeds, soil composition, the probability of damaging thunderstorm winds, snow amounts, quantitative precipitation, and temperatures. Model predictions are provided at the district level and at the operating company level. The SI scientists have worked with FE meteorologists, New Jersey and Corporate Emergency Preparedness, Analytics, and other subject matter experts (the SI team) to refine the model, and the SI team continues to meet on an ongoing basis to further refine and test the model, to improve accuracy and performance. The Company validates model performance monthly to continuously enhance the model's accuracy. SI incorporates additional reliability data on a quarterly basis to provide the models with more reference points to use for various types of events. FE has a contract with SI through 2025 to continue to develop, refine, and maintain the models, and provide support to the Company. JCP&L continued to use the traditional OVM, while referencing SI, as refinements continued on the SI model. JCP&L has been using the SI model as the primary source for determining customer outages since February 3, 2023.

organizations, while recognizing that the classification can change based on new information and revised analysis.

C. Authority and Process of Securing Resources

Liberty Recommendation:

4. **Ensure JCP&L resource requests are timely and consistent with Event Level classification declaration.** (*See Conclusion #7*)

Accepted and implemented. Recommendation No. 4 in Chapter IX regarding the authority and process for securing resources during storm events is based on Liberty conclusion that the Company "employs a reasonable process for identifying resources needed to respond to major storms," (*Final Phase I Report* at p. 143) but event classifications do not correlate to the number of resources requested and deployed for major storms (id.). Therefore, Liberty recommended that "JCP&L resource requests [be made] timely and consistent with event level classification declaration." Id. JCP&L believes that its response to Recommendation No. 3 above also addresses Recommendation No. 4, because by requiring the Incident Commander to determine and communicate the event level classification to the FirstEnergy and JCP&L emergency response organizations, this communication will trigger resource request discussions, collaboration, and planning that is more likely to lead to more refined resource requests and responses. JCP&L considers this recommendation to be accepted and implemented.

D. Establishing, Updating, and Communicating Estimated Times of Restoration

Liberty Recommendation:

5. **Continue to monitor and measure JCP&L's accuracy and success in creating, updating, and communicating ETRs.** (*See Conclusion #8*)

Accepted. With respect to estimated time of restoration ("ETRs"), Liberty concluded that (i) the FirstEnergy call centers appropriately manage the high call volumes associated with storms and large outage events (*Final Phase I Report* at. pp. 148-149); (ii) FirstEnergy regularly tests its customer-facing communications technologies (id., at p. 149); and (iii) the enhanced ETR process functioned well during 2021 storms but "has yet to operate during a large event." Id., at p. 149. As to this latter conclusion, Liberty's Recommendation No. 5 states that JCP&L should continue to monitor its "accuracy and success in creating, updating and communicating ETRs." Id. JCP&L agrees to continue to do so.[15]

E. Liaison with Government Officials

Liberty Recommendation:

6. **Continue to develop and improve communications with the public, elected officials and OEM staff based on feedback gathered following storm or outage events.** (*See Conclusion #11*)

Accepted and implemented. In the area of liaising with government officials, JCP&L agrees with Liberty's conclusion that having the same employees who interface with municipalities on a day-to-day basis do so during storms "strengthens relationships and builds familiarity." Conclusion No. 12, *Final Phase I Report* at p. 155. JCP&L also agrees with, accepts and believes that it has already implemented Recommendation No. 6 that it should and will "[c]ontinue to develop and improve communications with the public, elected officials and OEM staff based on feedback gathered following storm and outage events." Id.[16]

[15] Indeed, the Company has developed a new web-based training around ETRs. The goal of this training is to better ensure correct communications to customers. This objective is furthered by driving awareness and sensitivity to the downstream impacts to the customers. This training became available in June 2023.

[16] JCP&L notes that it plans to complete the implementation of a new ADMS in 2023, which, among other things, will provide opportunities for further enhancements in outage management. The advent of ADMS suggests that consideration of Liberty's findings and conclusions vis-à-vis an exploration of the capabilities of ADMS may be the next best focus for the Company rather than further updating to the E-Plan in the meantime.
Further, JCP&L continues to develop and improve communications with the public, elected officials, and Office of Emergency Management ("OEM") staff both before and after storm or outage events. Regional External Affairs Consultants ("REACs") have ongoing communications with elected officials and OEM staff, including attendance at municipal and County meetings and quarterly OEM meetings, as well as an annual County OEM meeting with the BPU. JCP&L continues to comply with all BPU Board Orders, including the requirements of Tropical Storm Isaias

F. Storm Order Compliance and Metrics

Liberty Recommendation:

7. **Provide in JCP&L Major Event reports for which the Major Event classification was based on sharing of its resources how the unavailability of those resources directly affected its ability to maintain targeted reliability levels in its operating region(s).** *(See Conclusion #15)*

Not accepted. JCP&L does not accept Recommendation No. 7. The Company asserts that this recommendation pertains to a matter already heavily regulated by the Board and one that was the subject of a very recent BPU rulemaking proceeding.

JCP&L appreciates that Liberty has confirmed the Company's compliance with applicable Board Orders (*Final Phase I Report*, at p. 159 (Conclusion No. 13)), and that JCP&L properly applied the Major Event classification to storms during the relevant period. Id. (Conclusion No. 14). However, in its Conclusion No. 15 and Recommendation No. 7, Liberty takes issue with the mutual assistance component of the Board's definition of a Major Event and seeks to place its own limits on how and whether the component should apply to mutual assistance major events by requiring an explanation about "how, and the degree to which, service was affected within JCP&L due to the sharing of resources." Id., at p. 160. As Liberty acknowledges, its recommendation is

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orders, specifically, the requirements to enhance communications on the storm restoration process and real time restoration activities. After a major event, JCP&L gathers feedback from all stakeholders through meetings and surveys and incorporates the feedback into its after action review and hotwash. JCP&L also continues to follow its Comprehensive Emergency Communications Plan, updated in 2022. During Major Events, JCP&L communicates with officials in a number of ways. The Company holds daily external conference calls with municipal officials and internal calls with Operations, provides real time restoration information, Countywide and municipal outage updates, and daily updates to municipal officials on storm restoration, including ETRs (referred to as "The Mayor's report"). JCP&L also frequently updates its external contacts, at least quarterly to ensure accurate contact information for communications. JCP&L has also improved its communications with the addition of new tools, "Dynamics," a broadcast email tool, and a "Territory Slicer," to quickly identify Operations and External Affairs personnel for each area, and "Sharepoint," interactive pages to efficiently communicate internally. These tools have improved efficient communications. Storm communications with customers include social media, press releases and active response to media inquiry. Customers are also notified of storm preparations, including what they can do to prepare, and major updates on restoration via email. As part of reporting their outages, customers also have the ability to opt-in to restoration updates via email and text message. External Affairs also continues to ensure sufficient staffing to assist with communications by acquiring necessary resources from FirstEnergy's other Operating Companies and has developed and trained employees to fill a new role, "Liaison Support" personnel, to further assist External Affairs.

not required by the BPU regulation defining a Major Event. JCP&L respectfully declines to accept a conclusion and a recommendation that are at odds with current regulatory requirements.[17] The Company suggests that addressing the definition of a Major Event should take place, if the Board thinks appropriate, in the broader context of a rulemaking proceeding where all stakeholders can participate. Indeed, during the Phase I audit review, and thereafter, until February 2023, such a rulemaking proceeding was underway. See I/M/O the Proposed Readoption N.J.A.C. 14:5 – Electric Service, BPU Docket No. EX21091121. Therefore, this is a recommendation that is industry generic and not specific to JCP&L. Accordingly, JCP&L does not accept Recommendation No.7[18]

G. Undergrounding to Improve Reliability and Resiliency

Liberty Recommendations:

8. **Conduct updates of analyses of the costs and benefits using selective undergrounding at least every two years.** (*See Conclusion #17*)
9. **Develop a pilot project for undergrounding a poorly performing line segment or a small group of them.** (*See Conclusion #18)*

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[17] Liberty states that the "logic for including all [mutual aid] events seems to be that release of Company resources to assist other utilities (or a JCP&L operating region) diminishes the capacity of JCP&L to meet its own internal reliability metrics during the period when those released resources are unavailable." *Final Phase I Report* at p. 160. JCP&L does not concede to the limits of Liberty's assumption about the logic of the mutual aid component of the definition of a major event. The Company posits that the inclusion of mutual aid is consistent with sound public policy that encourages the use of mutual assistance among and between utilities. Moreover, the provision of mutual aid requires an operational balancing calculus that should not be delayed or rendered more difficult by concerns about after-the-fact impact analysis. In addition, any degree of mutual aid creates practical but potentially serious concerns regarding a response to storm event during a period of mutual aid, including, but not limited to, impacts on call-out and call-out response. Finally, it should not be forgotten that under current regulations, as recently (February 2023) amended in several aspects including with respect to mutual assistance, the Board remains the ultimate arbiter of whether any given set of circumstances giving rise to a major event, including the provision of mutual assistance, qualifies for exclusion from a utility's reliability metric calculations.

[18] JCP&L will comply with the recently published requirements related to Major Events and Major Event Reports, as outlined in NJAC 14:5-1.2 and 14:5-8.9. When mutual aid is provided to another EDC or utility, the assisting EDC may apply to the Board for permission to exclude its sustained interruptions from its CAIDI and SAIFI calculations, if the aid provided affected the EDC's ability to respond to those interruptions. Interruptions occurring during a major event in one or more operating areas shall not be included in the EDC's CAIDI and SAIFI calculations of those affected operating area(s). However, interruption data for major events shall be collected, according to the reporting requirements outlined at N.J.A.C. 14:5-8.9 and 8.10.

Accepted with modifications. In connection with the subject of undergrounding to improve reliability and resiliency, JCP&L appreciates that Liberty found the Company's undergrounding analysis to be rigorous (Conclusion No. 16), *Final Phase I Report* at p. 164. The Company agrees that regular periodic review and more robust analysis might prove beneficial (Conclusion No. 17). Id. However, while JCP&L does not object to Recommendation No. 8 (p. 165), it believes the recommendation should be modified.

As a practical matter, the high cost/low benefit results of the Company's current analysis does not bode well for such an undertaking in the very near future, such as would be required by updates every two years as Liberty suggests. The Company would agree to periodically update its analysis but thinks requiring the update analysis every **five years** (rather than every two years), with the first update due in March 2027 is the most reasonable approach supported by the most recent analysis. Accordingly, the Company respectfully suggests that the Board treat Recommendation No. 8 as accepted as modified.

With respect to Recommendation No. 9 (id.), the Company does not agree with Liberty that undertaking unquestionably expensive actual projects, whether economic or not, is a reasonable and prudent approach to gaining "more robust insights into the benefits and costs of undergrounding" (id., at pp. 164-1655). However, JCP&L is willing to accept this recommendation in a modified form. As mentioned elsewhere, JCP&L intends to file a new IIP during 2023 in which the Company expects to propose some selective undergrounding and a demonstration of costs and benefits. For this reason, rather than develop a pilot project for undergrounding a poorly performing line segment or a small group of them, the Company proposes to assess a small list of locations for selective undergrounding in the anticipated new IIP, which will provide an appropriate cost-benefit analysis, which would further reinforce the Company's approach to recommendation No. 8 as discussed above. Accordingly, the Company proposes to accept Recommendation No. 9 as modified consistent with this approach.

Chapter X – Customer Service

The Company has reviewed Liberty's general description and assessment in this Chapter regarding the Company's Customer Service, as to which Liberty made findings, eleven conclusions, and four recommendations. In general, while the Company has different perspectives on some items, the Company does not take issue with Liberty's findings or conclusions. Liberty's report has shown appropriate sensitivity to some of the impacts of the pandemic, the moratoriums and the prohibitions on collection activity and discontinuance of service that were in place during most of the period Liberty was conducting the audit.

As both the Board Liberty and Liberty also aware, the Board has an open docketed proceeding in Docket No. AO20060471, which initially authorized the State's utilities, including JCP&L, to create a regulatory asset for purpose of deferring for future recovery the prudently incurred incremental costs related to the pandemic and, subsequently, to examine pandemic issues. The Board continues to conduct, and JCP&L continues to participate in, stakeholder meetings and to otherwise address pandemic-related issues in the context of that proceeding.[19] Accordingly, with respect to Liberty's Chapter X recommendations, the Company has several comments thereon as follows:

[19] For instance, most recently, on July 17, 2023, JCP&L filed a Petition *I/M/O JCP&L's Verified Petition Seeking Review and Approval of the Net Deferred Costs Included in Its COVID-19 Regulatory Asset and Establishment of a COVID-19 Recovery Charge ("JCP&L Initial CRC-Filing")*, in BPU Docket No. ER23070453 as required by the BPU.

Liberty Recommendation:

1. **Pursue cost efficiencies and customer experience improvement opportunities, including those offered by FE Forward Customer Service recommendations.** *(See Conclusion #1)*

<u>Accepted.</u> The Company agrees with this recommendation insofar as it is consistent with FirstEnergy's current business strategy and operating model -- now laser-focused on the Customer Experience, which includes pursuing cost efficiencies and customer improvement opportunities. This is the responsibility of the Customer Experience organization and will be measured by the customer experience metric included in the Key Performance Indicators ("KPIs") that are/will be reported monthly to the FirstEnergy and JCP&L leadership team, together with an employee incentive program goal.

Customers' expectations are continuing to evolve rapidly, including a growing expectation for newer technology and more effortless transactions in all engagements with the Company. By taking a holistic approach to the customer experiences – and improving in service interactions, brand trust and product experiences – the Company believes it can better meet customer current needs as well as anticipate future ones, while continuing to prioritize operational excellence through continuous improvement, operational excellence and process and technology innovation based on, among other things, customer insights, goals, and priorities.

Liberty Recommendation:

2. **Staff functions sufficiently to address backlog and transaction deficits.** *(See Conclusion #4, #5, #6 and #7)*

<u>Accepted and implemented.</u> In the months since the issuance of the Draft Phase I Report, the Company has prioritized addressing meter reading rates, estimated and delayed billing. The

Company, effectively, has embraced already the thrust of this Recommendation No. 2 and has nearly completed the work associated with meeting the objective as discussed with BPU Staff.

As part of this effort, the Company has been in close communication with BPU Staff to keep Staff appraised of progress towards addressing these pandemic-related areas of concern. As of July 31, 2022 (the time period addressed in the Company's last report to BPU Staff in August 2022), the Company had managed these issues almost entirely back to pre-pandemic levels or was on track to do so with the exception backlog addressed and a return to normal staffing. Flexible and creative approaches to increasing the complement of employees available to undertake and support the work necessary to address backlogged bills due, predominantly to estimated bills, has achieved normal pre-pandemic backlog levels. Accordingly, JCP&L believes it is already in compliance with this recommendation and requests that the BPU so find.

Liberty Recommendation:

3. **Investigate options to address issues and develop and implement an action plan to address declining Customer Service employee ratings.** *(See Conclusion #10)*

Accepted. Diversity, equity, and inclusion ("DEI") are Company-embedded core values that allow FirstEnergy and its utilities to better serve customers and provide a rewarding and inclusive work experience for all employees. FirstEnergy strives to develop a workforce where employees feel a strong sense of belonging, are enabled to confidently express opinions, seek various perspectives, take risks, solve problems creatively, learn from failures and turn challenges into opportunities. In fact, FirstEnergy has a DEI annual process involving an annual Employee Engagement survey (the "DEI Survey"). The results of the DEI Survey are analyzed and shared with leaders and all employees at the beginning of the year.

The DEI survey measures employee satisfaction and results are utilized to identify strengths and areas of opportunity for improvement. The Customer Service area, along with all FirstEnergy business units, use the results to set key priorities and specific action plans that also support companywide DEI priorities. In March through May, DEI implementation teams within each business unit develop and communicate action plans to address areas of opportunities identified from the survey results. In fact, implementation teams execute action plans throughout the year.

Relative to this Chapter X, Recommendation No. 3, which JCP&L accepts, the Company's Customer Service function will continue to utilize the annual DEI Survey program to investigate options that address employee ratings utilizing the FirstEnergy DEI team, which is responsible for sharing survey results with employees, seeking employees' input on ways to address areas of opportunities, holding periodic meetings to ensure alignment across departments, measuring progress of action plans, and keeping leaders engaged and updated. The three areas of focus that emerged from FirstEnergy's 2022 DEI Survey results with higher neutral and/or unfavorable ratings for Customer Service are growth and development, future vision, and employee well-being. Action plans are currently being finalized, but priorities include providing tools for employees to aid growth and development, ensuring employees understand where the Company's direction is headed and hear directly from leaders, and providing employees with the tools to improve overall wellness and create an environment of continuous, open communication that balances the needs of the business and an employee's well-being.

Liberty Recommendation:

4. **Dedicate resources to develop a strategy and concerted approach to identifying and pursuing potential service theft.** *(See Conclusion #11)*

<u>Accepted with modifications.</u> JCP&L will accept Recommendation No. 4, as discussed and modified herein. The Company intends to continue to pursue potential theft of service using existing personnel throughout Revenue Operations, Meter Services, Meter Reading, ED Operations Support, Customer Management, and Contact Center. However, as JCP&L implements its planned Smart Meters program, it is expected that the theft of service process will evolve from one heavily dependent upon theft tips received from field-personnel and customers to a process built on data analytics driven by smart meter capabilities. To the extent this Liberty recommendation proposes that the Company revert to operations that were in place prior to 2018, JCP&L does not agree with that approach, which would fail to take advantage of both the efficiencies and the capabilities of the smart meters as they are deployed.[20]

These capabilities will allow for digitized collecting and tracking of tips, case progress, billing, collections, dispositioning, training and incentives, which can be established as measurable objectives. This evolution will be best served by allowing it to unfold as smart meter deployment has been completed and experience can be gained with the new smart meter technological environment within JCP&L.

<u>Chapter XI -- Financial Risks and Consequences of Parent and Affiliate Operations</u>

As a threshold matter, much of Liberty's narrative in Chapter XI of the Phase I Report is based on information from 2019 through 2021 and is, therefore, somewhat outdated. While this chapter contains detailed discussions of FirstEnergy's and JCP&L's credit ratings downgrades that

[20] The Company prudently chose to curtail those efforts because the cost inefficiencies outweighed the benefits. Since Liberty released this audit recommendation, JCP&L has received approval from the New Jersey BPU to implement 1.15 million smart meters in the Company's territory. The implementation began in March 2023 and will continue through 2025. The Company prefers to utilize the technology that is available with smart meters to manage theft of service in New Jersey in a manner that will be similar to the program currently used in FirstEnergy's Pennsylvania service territories, where smart meters already have been deployed.

took place in 2020, it does not acknowledge efforts and actions by the Company to restore FE and JCP&L's credit ratings and, as a result, the subsequent ratings upgrades. For example, the Report discusses (and criticizes) the former FirstEnergy $2.5 billion short-term revolving credit facility under which JCP&L had a $500 million borrowing sub-limit, but only belatedly acknowledges that this facility was replaced in late 2021 with a $500 million stand-alone credit facility for JCP&L. *Report,* p. 225. But despite this acknowledgement, Liberty did not revise any of its recommendations or conclusions in Chapter 11, even though they are based on now-outdated facts. *Id.* In sum, many of Liberty's Conclusions and Recommendations in Chapter XI are based on stale information and no longer relevant events. Of the nine (9) Conclusions, five are premised on facts that are no longer accurate and/or events that, due to the passage of time and subsequent remedial action, are no longer relevant. Accordingly, JCP&L is providing substantive comments on the following Recommendations and Conclusions in Chapter XI of the Phase I Report.

Liberty Recommendation: *(see also Conclusion 8)*

1. Create for FirstEnergy and JCP&L lasting and enforceable ring-fencing measures sufficient for JCP&L to make the utility an "insulated entity" by Standard & Poor's, and to be rated on its own credit characteristics by all three credit rating agencies.

Not accepted. Prior to the events of 2020, FirstEnergy and JCP&L already had substantial ring-fencing measures in place. Ring-fencing measures in place for JCP&L include, but are not limited to:

1. A stand-alone $500 million short-term credit facility.
2. Separate money pools are maintained for regulated and unregulated operations.
3. JCP&L issues its own debt, after obtaining the appropriate regulatory authorization(s), and maintains its own credit ratings with the largest rating agencies.
4. Each operating company, including JCP&L, maintains its own capital structure, which is a function of its own debt and equity.
5. No individual operating company, including JCP&L, will assume liability for debts issued by the holding company or any other affiliate, nor will any operating company pledge its assets to secure the debt of the holding company or any other affiliate, nor are there any cross-default provisions impacting any operating company in any loan documents.
6. Each operating company, including JCP&L, maintains its own separate financial statements reflecting its own assets and liabilities, which are audited by an independent auditor.
7. Regulated and unregulated operations are structured as separate businesses with separate managements, each reporting up to the same corporate leadership team.
8. Including and in addition to these specific measures, JCP&L complies with applicable New Jersey Statutes, BPU regulations and JCP&L BPU Orders with respect to ring-fencing measures.

The 2015 KPMG study of JCP&L's ring-fencing measures concluded that they were sufficient and in some respects superior those of regulated utilities in other states within a holding company structure. As KPMG found:

> *Based on our comparative evaluation of 30 ring-fencing measures in place across a representative sample of 16 states that were selected for study purposes, the State of New Jersey's existing ring-fencing measures are the most comprehensive and robust in terms of the actual number of measures deployed (28 of 30), the portfolio and composition of the measures (which include measures pertinent to oversight and authority; financial restrictions, limitations, or requirements; and utility holding company/affiliate company structural separation), applicability to all utility holding companies and/or affiliate companies that operate within the State of New Jersey, and unilateral enforceability.*
>
> *The remaining 2 measures that the State of New Jersey has not deployed are not commonly used within the comparison states and not enforceable under general legislation or regulation, but instead are the result of negotiated settlements resulting in specific regulatory orders applicable only to the settling utilities.*

The Company notes that since the completion of the KPMG study, Exelon agreed to the remaining two measures in a stipulation to resolve the Exelon/PHI merger, so now, all 30 measures have been deployed in New Jersey.

In a further effort to strengthen ring-fencing at JCP&L, in October 2021, FirstEnergy restructured its short-term credit facilities, which resulted in JCP&L having a stand-alone revolving $500M short-term credit facility. Given the measures in place, S&P already denotes JCP&L as having "Insulated" group status.[21] This "insulation" is evidenced by the fact that JCP&L's credit ratings, including its SACP under the S&P ratings methodology, are higher than its parent FE Corp. JCP&L's S&P senior unsecured credit rating is presently two notches above that of FirstEnergy Corp., under the S&P Group Credit Rating ("GCR") Methodology. This "insulation" is demonstrated in the table below, which shows that JCP&L's credit ratings are above those of FirstEnergy in all cases.

[21] S*ee* FirstEnergy Corp. Outlook Revised To Positive From Stable On Asset Sale; Actions Taken On Subsidiaries, February 10, 2023, p. 9.

Credit Ratings as of 7/31/2023

	Issuer			Senior Unsecured		
Company	**S&P**	**Moody's**	**Fitch**	**S&P**	**Moody's**	**Fitch**
FirstEnergy	BBB-	Ba1	BBB-	BB+	Ba1	BBB-
JCP&L	BBB	A3	BBB	BBB	A3	BBB+
Notches of Insulation	1	4	1	2	4	2

JCP&L questions whether the measures that would have to be put in place for JCP&L to achieve a "fully insulated" status under S&P's ratings methodology would be beneficial for either the utility or its customers. In regard to Liberty's suggestion that it require JCP&L to achieve the "fourth level" of insulation under the S&P criteria, the Company is not aware of any regulated utilities within a holding company structure in New Jersey that have achieved fourth level insulation. As the Company understands Liberty's suggestion, a "fourth level" of insulation would result in JCP&L being completely "de-linked" from FirstEnergy for credit rating purposes. As Liberty should have known, without a legitimate strategic transaction involving JCP&L and a third-party (i.e., as was the case of the Exelon/PHI merger), JCP&L cannot achieve fourth level insulation from FirstEnergy or the GCR of the FirstEnergy holding company group. Further, that level of insulation would require JCP&L to withdraw from the FE Utility Money Pool, which is a low-cost and dependable source of liquidity. The FE Utility Money Pool rates have historically been at least ~25 basis points and as much as ~100 basis points lower than external short-term borrowing rates. As discussed, whether JCP&L can practically achieve "fully insulated" status is questionable; however, JCP&L also questions whether achieving fully insulated status is in the interest of the Company or its Customers.

The Company acknowledges that FirstEnergy's credit metrics will have some influence on those of JCP&L. With this understanding, for JCP&L and the other utility subsidiaries, recent actions taken by FirstEnergy are credit supportive for FE Corp and its subsidiaries. In 2020, FirstEnergy exited the competitive generation business and has unwound other competitive operations (Suvon). These actions serve to reduce FirstEnergy's overall financial and business risk profiles. Evidenced by two recent transactions, FirstEnergy is committed to balance sheet improvement for the purpose of achieving investment-grade (and eventually mid-BBB) credit ratings. Recent credit-supportive actions to strengthen its balance sheet, including the sale of $1 billion of common stock, closing on the sale of a minority interest in FirstEnergy Transmission, LLC, and the repayment of nearly $2.6B of FirstEnergy long-term debt in 2022. FirstEnergy was upgraded to investment grade (BBB- rating) at Fitch on 7/22/2022. Further, FirstEnergy was put on positive outlook towards an upgrade to investment grade by S&P on 2/10/2023 and has been on positive outlook towards an upgrade to investment grade by Moody's since 11/8/2021.

Because the measures required to achieve fully insulated status are, as Liberty knows or should have known, nearly impossible and not in the interest of the Company nor its customers and, given the reduction in FirstEnergy's overall financial and business risk profile and demonstrated balance sheet improvement, JCP&L does not accept Chapter XI, Recommendation 1.

Liberty Recommendation: (see also Conclusions 2 and 5)

2. **Give JCP&L full governance and operational control over all of its financing facilities.**

Not accepted. Liberty's Recommendation 2 appears to be taking issue with the FirstEnergy Service Company ("FESC") structure and the way it functions. Like nearly every other utility service company, FESC provides central services in the conduct of treasury and finance functions. There are many benefits of the centralized management of treasury and finance functions. On the other hand, Liberty has not identified any concrete benefits or cost savings from their recommendation that JCP&L separately negotiate its "financing facilities." A centralized treasury department offers several tangible and intangible benefits to JCP&L, including:

1. Improved working capital management with increased access to cash through participation in the Regulated Money Pool. Money pool lenders can earn higher returns than rates offered by a bank; money pool borrowers can pay less interest expense than rates charged by a bank. The money pool also improves management of liquidity by way of a reduced number of cash flows and reduces bank fees due to a reduced number of bank accounts.

2. Standardized cash management across all legal entities allowing for consistent treasury policies and procedures (allows for better SOX compliance).

3. Increased productivity by leveraging treasury activities and technologies with fewer resources.

Liberty Conclusion 2:

> **FirstEnergy's joint negotiation and operation of liquidity facilities for the holding company and all of its regulated and unregulated subsidiaries comprise a primary contributor to credit linkage.**

This conclusion is closely linked to Liberty's Recommendation 2. For the reasons discussed above, separate "negotiation" of JCP&L's short-term credit facilities is not an efficient or beneficial approach and would have little impact on "credit linkage." In addition, JCP&L already has its own short-term credit facility and issues its own long-term debt.

FESC's Treasury and Finance group negotiates short-term credit facilities on behalf of the FirstEnergy operating utilities, including JCP&L. This is a common practice among utilities that are part of a holding company structure. By negotiating pricing for a group of entities at the same time, FESC is able to gain efficiencies and economies of scale. JCP&L, in turn, benefits by having access to a larger bank group, resulting in pricing efficiencies that likely would not result if, instead, it had to negotiate with a smaller group of banks for a smaller facility. This approach also results in reduced credit risk because several banks are involved in a bank group versus one or two banks that might participate if JCP&L negotiated the facility on a standalone basis. In addition, JCP&L's external credit facility is subject to a pricing grid-based exclusively on JCP&L's standalone credit ratings.

Liberty's recommendation, in contrast, would result in no benefits but would lead to higher costs, since JCP&L would lose all of the above-discussed economies of scale if it had to negotiate all of its credit facilities individually. This would result in higher costs for JCP&L and its customers; JCP&L would lose buying power acting as an "independent"; the quality and diversity of available banks would be impaired; and such approach would have little impact on "credit linkage."

For all these reasons, Liberty's Conclusion 2 is misplaced, and JCP&L does not accept it or the related Chapter XI, Recommendation 2.

Liberty Conclusion 3:

> **Holding company debt and its unregulated businesses have produced FirstEnergy's elevated business and financial risks.**

JCP&L does not disagree with Conclusion 3. However, FirstEnergy has already taken steps to reduce holding company debt and reduce involvement in unregulated businesses. FirstEnergy has recently raised additional equity and has sold a minority interest (19.9%) of FirstEnergy Transmission, LLC ("FET"). These steps have facilitated the repayment of nearly $2.6B of FirstEnergy Corp. long-term debt in 2022. In addition, on February 2, 2023, FirstEnergy announced a planned sale of an additional 30% equity interest in FET. Proceeds from that $3.5 billion, all-cash transaction will further strengthen FirstEnergy's financial position, positioning FirstEnergy for a potential upgrade to its credit rating after the cash from this transaction is fully deployed. Accordingly, FirstEnergy has already taken action that addresses Liberty's Conclusion 3 and will continue to look for other means to return FirstEnergy Corp. to investment grade credit ratings.

Liberty Conclusion 4:

> **JCP&L experienced a liquidity crisis in late 2020 and 2021 due to restricted access to both the Revolving Credit Facility and the Money Pool.**

JCP&L disagrees with Liberty's characterization that the events of late 2020 into early 2021 resulted in a "liquidity crisis" for the Company. As a result of a violation of the "anti-corruption" covenant in the revolving credit facility, JCP&L was unable to access the facility between November 11 and November 17, 2020. As Liberty's recognizes, during that time FirstEnergy was negotiating with the lenders for a waiver of that covenant. On November 17, 2020, FirstEnergy reached an agreement on a waiver, and JCP&L's access to the revolving credit facility was restored.

At no time did JCP&L lose access to the Money Pool and the revolving credit facility at the same time. During the time period in question, JCP&L could be a borrower, but not a lender in the money pool, since not all money pool members had adequate credit ratings under the BPU's regulations. Thus, while the situation was temporarily constraining, it did not result in a liquidity crisis for JCP&L. JCP&L had sufficient cash and access to short-term borrowings, at all times, to meet the working cash requirements of its operations.

To address the restriction on Money Pool lending, on March 22, 2021, the Company implemented a process under which surplus JCP&L funds from the Money Pool are moved into a separate external investment account to minimize the instances where JCP&L would be a Money Pool lender, as Liberty has acknowledged. *Report*, p. 208. Also in March of 2021, JCP&L filed a petition with the BPU to self-report the temporary violations of the BPU's money pool regulations and request a waiver of said regulations. In addition, the Company added the separate external investment account, described above, and also included the restriction on money pool lending in its debt compliance database to mitigate future occurrences. Moreover, with the subsequent upgrades in the S&P credit ratings (as discussed above), there is no current issue with JCP&L's compliance with the BPU's money pool regulations.

<u>Chapter XII -- The "DOJ Investigation"</u>

JCP&L recognizes that the circumstances surrounding Ohio House Bill 6 and the extent to which misconduct, misallocations, or controls deficiencies may have affected New Jersey ratepayers are a chief concern for the BPU. FirstEnergy and JCP&L take seriously their obligations to be responsive to the requests of regulators. Over the course of the Management Audit, JCP&L responded to 1,686 data requests (not including 93 supplemental responses), conducted 144 interviews, and estimates that it produced over 66,000 documents, totaling more than 900,000 pages. Regardless, the Audit Report repeatedly accuses JCP&L or FirstEnergy of a "lack of transparency,"; however, in doing so fails to acknowledge ongoing federal investigations by the DOJ and the Securities and Exchange Commission (the "SEC"). Nor does the Audit Report meaningfully acknowledge JCP&L's and FirstEnergy's right to protect information subject to the attorney-client privilege or work product doctrines, or to raise jurisdictional arguments that have been reserved related to these materials.

Ultimately, JCP&L accepts Recommendations 1 and 4 of Chapter XII and appreciates the auditor's constructive feedback. JCP&L accepts Recommendation 2 in part. As to Recommendation 3 of Chapter XII, JCP&L will accept the recommendation with a modification to ensure that FirstEnergy does not run afoul of its obligations to DOJ under the Deferred Prosecution Agreement ("DPA"). To the extent the auditor seeks information provided to DOJ pursuant to the Reporting Requirements described in the DPA, FirstEnergy has agreed with DOJ that any such reports and their contents will remain non-public, except as otherwise agreed upon in writing by DOJ and FirstEnergy, or as DOJ deems appropriate. In light of these obligations, while FirstEnergy may not provide the reports it submits to DOJ, to address the BPU staff's interest in "DOJ remediation measures," JCP&L proposes that it meet with the BPU staff on a semi-annual basis to discuss FirstEnergy's compliance program enhancements and answer any questions the BPU staff may have regarding such enhancements.

a. JCP&L Provided Voluminous Information Related To Costs Allocated To JCP&L.

The Audit Report emphasizes the importance of examining costs allocated to JCP&L in light of: (1) FirstEnergy's February 18, 2021 10-K disclosure that certain vendor payments were determined to be misallocated, misclassified, or lacked supporting documentation (referred to in the Audit Report as the "Vendor Invoice Examination"); and (2) payments referenced in the Statement of Facts attached to the DPA between FirstEnergy and the United States Attorney's Office for the Southern District of Ohio.

First, with respect to the Vendor Invoice Examination, JCP&L disclosed to the BPU at the very outset of this audit the vendor payment costs that were misallocated or misclassified to JCP&L. That presentation detailed the list of vendors, the amount allocated, and the impact on rates.[22] In response to follow-up data requests, JCP&L provided payment and SAP detail on these costs and explained the calculations concerning the New Jersey rate impact, if any.[23] And beyond these specific payments, JCP&L provided line-item details about costs allocated to JCP&L—including costs allocated to JCP&L that were recorded in cost centers associated with former executives.[24] As JCP&L represented throughout the audit, should JCP&L or FirstEnergy discover

[22] *See* NJ ADR-169-Attachment A – Confidential.
[23] *See* responses to NJ ADR-169, 368, 467, 468, 469, 470, 839, 840, 841, 856, 857, 858, 860, 936, 1079, 1098, 1099, and 1157.
[24] *See* response to NJ ADR-884.

any further misallocated or misclassified costs to JCP&L, it will promptly disclose such costs to the BPU.[25]

Second, as to payments referenced in the DPA, JCP&L disclosed whether any of those costs were allocated to JCP&L and the corresponding New Jersey rate impact, if any.[26] Moreover, FirstEnergy provided SAP detail of payments referenced in the DPA requested by the auditor to allow for confirmation. In addition to this information, FirstEnergy provided voluminous document productions to the auditor, totaling over 230,000 pages, including: all documents produced to the DOJ; all documents produced to the SEC; and documents concerning FirstEnergy's New Jersey operations (including JCP&L) produced to FERC as part of the FERC Audit, captioned Docket No. FA19-1-000.

With all of this detail, and despite its claims to the contrary, the auditor was, in fact, well-positioned "to state whether FirstEnergy has assigned or allocated to JCP&L costs for improper activities" related to the DPA.[27] And, as shown above, the Audit Report is misguided in its claim that "[m]anagement will not even provide to us in carrying out an engagement on behalf of the BPU, what it has provided to other agencies on related matters."[28]

b. Certain Information Is Protected From Disclosure.

JCP&L and FirstEnergy both appreciate the auditor and BPU's need to understand the impact on JCP&L and New Jersey customers stemming from any matters related to the DPA and the ongoing federal investigations. And—as explained above—both JCP&L and FirstEnergy have been forthcoming and cooperative in providing information regarding costs allocated to JCP&L.

[25] *See* response to NJ ADR-474.
[26] *See* responses to NJ ADR-844, 884, 903, 906, 910, 1079, and 1093.
[27] Audit Report, at ES 20.
[28] Audit Report, at ES 20, 227.

Yet, the Audit Report accuses FirstEnergy "management" of failing to be "transparent"—in particular, with respect to the ongoing DOJ investigation. That accusation fails to take into account: (1) disclosure of non-public information underlying the DOJ's ongoing investigation could materially interfere with that investigation; (2) the well-established protections afforded by the attorney-client privilege and work product doctrines; and (3) federal and state regulations that protect from disclosure information provided to certain regulators during the course of an audit or investigation. Exercising rights under federal and state law or applicable privileges cannot reasonably be labeled a "lack of transparency."

First, the DPA does not mark the conclusion of the DOJ's investigation relating to HB 6. *See* February 22, 2023 Letter from Department of Justice to PUCO in Case Nos. 20-1502-EL-UNC, 17-974-EL-UNC, 17-2474-EL-RDR, 20-1629-EL-RDR ("[a]s you are aware, the United States is conducting an ongoing investigation into corruption relating to Ohio House Bill 6 and action through the [PUCO]."). And, as courts across the country recognize, information that could interfere with an ongoing criminal investigation is protected from disclosure.[29] The Audit Report's complaints of FirstEnergy's supposed failure to provide non-public information about the "DOJ Investigation" are therefore misplaced.[30] Disclosure of non-public information about the DOJ's ongoing criminal investigation threatens the integrity of that investigation.[31] Indeed, in other state

[29] *Flagg ex rel. Bond v. City of Detroit*, 268 F.R.D. 279, 294 (E.D. Mich. 2010) ("[T]o date, the Court's first and foremost concern in restricting public access to certain discovery materials and processes has been to ensure that the parties' discovery efforts do not interfere with the active and ongoing investigation . . . ."); *Shelley v. Cty. of San Joaquin*, No. 2:13-CV-0266 MCE DAD, 2015 WL 2082370, at *3 (E.D. Cal. May 4, 2015); *United States v. Smith*, 985 F. Supp. 2d 506, 531 (S.D.N.Y. 2013) ("As a general proposition, courts have repeatedly recognized that materials, including even judicial documents which are presumptively accessible, can be kept from the public if their dissemination might 'adversely affect law enforcement interests.'") (collecting cases).

[30] The auditor claims it has "faced repeated management refusals to provide significant, meaningful information not already made public" related to the DOJ investigation and that "management has failed to provide requested information on multiple occasions . . . related to or arising from our attempted examination of the DOJ Investigation." (Page 230).

[31] *See supra* fn. 7.

regulatory investigations stemming from Ohio House Bill 6, discovery related to certain aspects of the ongoing criminal investigation have been stayed altogether. *See* Case No. 20-1629-EL-RDR, Entry, at ¶ 14 (Public Utilities Commission of Ohio ("PUCO"), Dec. 15, 2021) (noting that it is of the "utmost importance that [the Commission's] investigations do not interfere with the criminal investigation"). And the DOJ itself has commented on the PUCO's policy of "non-interference for matters that overlap with [the DOJ's] criminal investigation and prosecution," noting that "information will become public in due course."[32]

Certain of the topics the auditor sought to investigate are ones FirstEnergy cannot address without risking interference with the ongoing criminal investigation, or are already described in the Statement of Facts of the DPA, including: "U.S. Department of Justice . . . investigations of conduct surrounding external affairs associated with what we knew publicly about events and charges involving activities in Ohio"; "[w]hat events transpired and who led and participated in them"; "[h]ow those events came to happen."[33] Moreover, this is a ***regulatory*** audit of JCP&L, and the BPU lacks statutory authority to conduct a ***quasi-criminal*** investigation of FirstEnergy.[34]

Without acknowledging these jurisdictional limits or respecting that certain information, even if disclosed confidentially, could materially interfere with ongoing federal investigations, the Audit Report unjustly accuses FirstEnergy "management" of not being cooperative or transparent.

Second, FirstEnergy and JCP&L have not waived any attorney-client privilege or work product protection, in this or any other proceeding. JCP&L and its parent have produced voluminous non-privileged information covering an extraordinarily broad range of topics that

[32] Ohio Capital Journal, "Regulators block deposition of FirstEnergy's former ethics chief," Jake Zukerman (July 29, 2022), available at https://ohiocapitaljournal.com/2022/07/29/regulators-block-deposition-of-firstenergys-former-ethics-chief-watchdog-doj-clash/.
[33] Audit Report, at 220.
[34] *Jersey City Incinerator Auth. v. Dep't of Pub. Utilities of N. J.*, 369 A.2d 923, 930 (App. Div. 1976) (The BPU "has only such jurisdiction as is conferred upon it. It does not have all-inclusive jurisdiction, with the exception of that specifically exempted.").

provides sufficient and necessary information to enable a meaningful review. It is unreasonable to assert that FirstEnergy and JCP&L are not forthcoming simply because the entities are asserting a right long held to be an "indispensable ingredient of our legal system." *Hedden v. Kean Univ.*, 434 N.J. Super. 1, 11, 82 A.3d 238, 244 (N.J. App. Div. 2013). "The importance of the attorney-client relationship and the need to protect confidentiality have similarly long been recognized by both the United States Supreme Court and [New Jersey's] highest court." *Matter of Grand Jury Subpoenas Duces Tecum Served by Sussex Cnty. Grand Jury on Farber*, 241 N.J. Super. 18, 27, 574 A.2d 449, 454 (N.J. App. Div. 1989); *see also Hedden*, 82 A.3d at 244 ("It is well-settled under New Jersey law that communications between lawyers and clients 'in the course of that relationship and in professional confidence' are privileged and therefore protected from disclosure) (citing N.J.S.A. 2A:84A–20(1); N.J.R.E. 504(1)).

The Audit Report's flippant assertion that these "privileges can be waived" is offensive and contrary to the sound and enduring policy inherent in the American legal system of protecting the trust and confidence shared between lawyers and their clients. JCP&L and FirstEnergy reserve their rights to assert privilege claims as and when appropriate. Otherwise, JCP&L has worked diligently to provide the auditor with hundreds of thousands of pages of non-privileged information in response to 1,686 data requests and in the conduct of ***144*** employee interviews.

Third, federal law and regulation protect information provided to regulators in the course of an ongoing audit or investigation. For example, when an audit request sought documents provided to FERC during its ongoing audit, JCP&L explained that such materials were protected from disclosure under the Federal Power Act, including 16 U.S.C § 825, 42 U.S.C § 16452(d), and FERC's regulations, including 18 C.F.R. Part 388. Consistent with these confidentiality protections, JCP&L was fully cooperative with the audit and produced a significant amount of responsive data.

c. Chapter XII Contains Factual Inaccuracies

Certain conclusions and "factual" statements included in Chapter XII are inaccurate or incomplete, as outlined below, and the record should be corrected.

Deferred Prosecution Agreement. Chapter XII attempts to summarize the Statement of Facts in the DPA. To the extent the Audit Report's description of the DPA conflicts with the DPA, the DPA speaks for itself.

Supporting Payment Detail. The Audit Report implicitly accuses JCP&L and FirstEnergy of hiding information—in particular for certain responses that provided supporting payment detail.[35] These statements are unsupportable, given the voluminous information provided throughout the audit, as outlined above. Further, that certain responses required clarification does not mean that JCP&L was anything but forthcoming, and it certainly does not mean that JCP&L (or FirstEnergy "management") somehow intentionally hid information. For example, the auditor claims that it "learned that management 'inadvertently did not include' two vendors from the detail supporting the presentation to us and previously to the BPU [and] one of them served as a principal conduit for the FirstEnergy conduct leading to the [Deferred Prosecution] [A]greement." (Audit Report, at p. 232.) The clear implication is that JCP&L's response was not "inadvertent." However, accusations such as this mischaracterize the record. First, JCP&L disclosed the "two vendors" referenced (Generation Now and Hardworking Ohioans) from the outset of this audit.[36] Second,

[35] *See, e.g.*, Audit Report, at 231-32 (questioning whether a response was actually "inadvertent[]"); 234 (questioning "the accuracy of the responses provided").
[36] *See* responses to NJ ADR-158 & 169 (discussing costs allocated to JCP&L from payments to Generation Now and Hardworking Ohioans).

as soon as JCP&L was alerted to the fact that ***additional payment detail and rate calculation information*** for these already-disclosed vendors was not included in a spreadsheet attachment to one audit response (out of over 1,600 audit responses and thousands of attachments), JCP&L corrected this immediately.

The Audit Report also questions the tracking of 501(c)(4) payments.[37] Numerous responses to audit requests explained that FirstEnergy's accounts payable vendor master data previously did not track vendors by tax exempt status; therefore, producing a complete list of all payments made to 501(c)(3) and 501(c)(4) organizations by FirstEnergy entities prior to 2021 would require extensive and burdensome manual review.[38] Pursuant to FirstEnergy's obligations under the DPA, FirstEnergy now lists on its website all payments made by FirstEnergy to entities incorporated under 26 U.S.C. § 501(c)(4), and to entities known by FirstEnergy to be operating for the benefit of a public official, either directly or indirectly, for January 1, 2021 going forward on a quarterly basis.

FirstEnergy Corp. v. Pircio. Chapter XII spends several paragraphs describing the pleadings and filings from *FirstEnergy Corp., et al. v. Pircio*, No. 1:20-CV-01966 (N.D. Ohio). That case is irrelevant to this audit. But to the extent any of Chapter XII's descriptions conflict with the record in *FirstEnergy Corp., et al. v. Pircio*, that docket speaks for itself. However, one statement in particular must be corrected. The Audit Report claims that the "law firm chided in the order continues to represent FirstEnergy and has provided an attorney at each of our interviews with FirstEnergy executives." (ES 22.) That is simply wrong. The law firm that filed the complaint in *FirstEnergy Corp., et al. v. Pircio* is not the same law firm that provided an attorney at interviews in this audit.

[37] *See*, *e.g.*, Audit Report, at 240.
[38] *See* response to NJ ADR-743.

Remediation and Enhancement Actions. The Audit Report makes several statements surrounding the remediation of the tone-at-the-top material weakness and the payment processing significant deficiency, but fails to acknowledge the difference between remediation and enhancement actions in this context. As explained during the audit, with respect to the significant deficiency, new controls that were put in place effectively remediated the significant deficiency.[39] As for the material weakness, remedial actions that were assessed to be critical in correcting the tone at the top material weakness were completed by the third quarter of 2021.[40] Enhancement actions, as opposed to remediation actions, remain ongoing. While FirstEnergy is confident that the tone-at-the top material weakness and the payment processing significant deficiency have been remediated, FirstEnergy's system-wide efforts remain ongoing to create a best-in-class compliance program. And JCP&L will continue to work constructively with BPU and Staff to proactively address issues affecting New Jersey ratepayers, if, and when, they should arise.

d. **Liberty Recommendations:**

1. **Follow developments in continuing federal criminal and administrative and other state proceedings.**

Accepted. The Company agrees with this recommendation.

2. **Establish means for precluding the inclusion in JCP&L rates FirstEnergy and JCP&L employee and outside costs associated with state reviews of the implications of conduct related or similar to that encompassed by the DOJ Investigation.**

Accepted in part. FirstEnergy has and will continue to classify all internal labor costs, external legal fees, and any related expenses associated with the investigation conducted by the U.S. Attorney's Office for the Southern District of Ohio to be expenses incurred by FirstEnergy.

[39] *See* response to NJ ADR-1090.
[40] *Id.*

Accordingly, all such costs were appropriately charged to order number 3004082, which settles 100% to cost center 700740 at FirstEnergy, with no such costs charged, allocated, or assigned to JCP&L. Expenses related to JCP&L's management audit for internal labor costs, external legal expenses for firms specifically supporting the management audit and other consulting expenses are being charged to JCP&L. Expenses related to JCP&L's Management Audit for external legal firms specifically supporting matters related to the investigations to address issues raised in the Management Audit are being charged to order number 3004082, which settles 100% to cost center 700740 at FirstEnergy, with no such costs charged, allocated, or assigned to JCP&L.

3. **Provide semi-annual reports and presentations to the BPU staff regarding DOJ Investigation remediation measures.**

Accepted with modification. As noted above, enhancement actions, as opposed to remediation actions, remain ongoing. Furthermore, as noted in the DPA, FirstEnergy's reports to DOJ "regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in [the DPA] … are intended to remain and shall remain non-public[.]" In light of these obligations, while FirstEnergy may not provide the reports it submits to DOJ, to address the BPU staff's interest in "DOJ remediation measures," and in furtherance of transparency and cooperation, JCP&L proposes that it meet with the BPU staff on a semi-annual basis to discuss FirstEnergy's compliance program enhancements and answer any questions the BPU staff may have regarding such enhancements.

4. **Provide validation of the completeness of management's Vendor Invoice examination or, failing that, require an independent review sufficient to identify and calculate all likely impacts to JCP&L and its customers.**

Accepted and implemented. JCP&L views this recommendation as complete. First, JCP&L validated the completeness of management's Vendor Invoice examination through its prior disclosures and discovery responses. As described above, JCP&L disclosed to the BPU at the very outset of this audit the vendor payment costs that were misallocated or misclassified to JCP&L. In response to dozens of follow-up audit requests, JCP&L provided payment and SAP detail on these costs and explained the calculations concerning the New Jersey rate impact, if any. These payments are also validated as a reflection of payments and entities associated with the DPA. Beyond these specific payments, JCP&L provided line-item details about costs allocated to JCP&L—including costs allocated to JCP&L that were recorded in cost centers associated with former executives. Furthermore, FirstEnergy retained Craig Energy & Financial Services ("CEFS") to review and confirm the results of the company's internal review, as well as to recommend and then review other potential areas of non-recoverable expenses. CEFS issued its finals report to FirstEnergy in the first quarter of 2023. CEFS examined the process that FirstEnergy used to capture the transactions that it disclosed as being misclassified, misallocated, or transactions that lacked sufficient supporting documentation. Based on the additional review, CEFS determined that the refund methodology followed the applicable tariff requirements and the FERC regulations at 18 C.F.R. Part 35.19a, and the refund methodology used by JCP&L was reasonable. Through the exhaustive discovery, in which JCP&L was fully transparent and cooperative, and the third-party review performed by CEFS, JCP&L views this recommendation as complete.

Chapter XIII – External Affairs Organizations

The Company notes that while Chapter XIII of the Phase I Report is lengthy, it ultimately only contains three recommendations. We discuss each in turn.

Liberty Recommendation:

1. **Return to JCP&L's lead officer responsibility for New Jersey external affairs.**

Accepted in Part. Liberty's recommendation follows a recurring request throughout its Report for more localized control and decision-making with respect to JCP&L operations. Specifically, Liberty concluded that the delegation of responsibility for management of local external affairs to JCP&L management has been effective. Liberty further states that it does not see a benefit in changing local external affairs reporting to FirstEnergy. *See* Conclusion 1. The Company respectfully finds that the reporting structure and organization of local external affairs has consistently been matrixed with a solid reporting line into FirstEnergy and a dotted line into JCP&L leadership. Further, this is a matter for management's discretion and outside the proper scope of this audit process. As the Company has stated herein, "under proper regulation, utility management has the recognized prerogative of running its business" so long as "in doing so [the Company] does not violate the law."[41]

At the core of External Affairs' mission is a commitment to the communities we serve. As such, while the Company rejects the basis for this recommendation and disagrees that it is within the scope of this audit, it nonetheless agrees to continue to consider organizational changes and opportunities that would advance more localized control and decision-making with respect to supporting JCP&L operations, including local external affairs. The Company commits to further discussions with the BPU and BPU Staff, as necessary, to provide additional background on recent organizational changes and rationale for the preference to maintain a centralized function that has and will continue to coordinate closely with JCP&L leadership and put our customers and the communities we serve at the forefront.

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[41] In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993), quoting Watkins v. Atlantic City Elec. Co., Docket No. 642-59, 67 PUR 3d 483, 491, 1967 N.J. PUC LEXIS 7, at *14 (BPU Mar. 8, 1967); see also Priest, Principles of Public Utility Regulation, p. 23 ("Business decisions are, however, the prerogative of management. Regulators are not the masters of public utility enterprises."). While the BPU may consider regulatory implications following Liberty's audit, the Board should resist Liberty's requests to the extent they would impede into management prerogatives of the Company.

Liberty Recommendation:

2. **Consolidate responsibility for rate and regulatory affairs under a senior legal executive.**

Not accepted. JCP&L does not accept this recommendation.[42] From the Company's perspective, Liberty's recommendation stems from two major factors: (1) Liberty's perception that FirstEnergy was unresponsive during the audit, which, as discussed elsewhere in these comments, is not accurate; and (2) FirstEnergy/JCP&L was undergoing a number of significant management reorganizations during Phase I of this audit, which may have led to confusion surrounding this topic. In this regard, a number of these organizational changes were still being implemented when Liberty released its draft Phase I report. JCP&L provided updates and corrections to these factual errors in its October 2021 comments back to Liberty and BPU Staff. However, Liberty's Recommendation 2 (formerly recommendation 1 in the draft Phase I report) appears unchanged in the final Phase I Report.

There are several reasons why Liberty's Recommendation 2 in Chapter XIII is not preferred. First, as discussed above, ultimately the organization and management of personnel is a prerogative of the utility, not the Board. *In re Jersey Central Power & Light Co*., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993), quoting *Watkins v. Atlantic City Electric Company*, 60 PUR 3d 483 at 490 (1965). Liberty's recommendation would require the Board to violate this long-established principle.

Second, consolidation of State Regulatory Affairs, Rates and Regulatory Affairs, and State Regulatory Legal under the same department, legal or otherwise, and/or reporting to a single legal executive is neither practical nor efficient. As the audit report notes, there is sometimes "tension"

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[42] In addition, JCP&L reiterates its comments on Chapter XIII, Recommendation 1, above, that corporate structure and management are the Company's prerogative and not subject to the Board's jurisdiction.

between financial and operating needs. That is an inherent reality for any corporation and to effectively balance those needs, applying different perspectives is imperative. FirstEnergy's current construct allows for that, and the Company's "speak-up" culture encourages such behavior. While the three departments frequently coordinate, they each bring different perspectives to regulatory strategy and their core responsibilities are vastly different. In short, they work closely together to support the Company's initiatives and relationship with the BPU and its Staff.

State Regulatory Affairs personnel serve as the company's liaison to the BPU and engage on a variety of matters to communicate and engage Commissioners and Staff regarding the company's positions and needs. Internally, State Regulatory Affairs is relied upon to advise the company on the expectations of Commissioners and Staff, changes in the BPU's views and policies. To effectively do so, State Regulatory Affairs personnel regularly engage the BPU Staff and industry stakeholders, monitor state and federal regulatory and legislative activity, track trends and shifts in state and federal policy dynamics, and coordinate with numerous business units within the company. As a result of those efforts, State Regulatory Affairs is able to develop and provide a distinctive perspective that the company's business units, including Rates and Regulatory Affairs and State Regulatory Legal, can consider in the development and execution of the rates and on regulatory strategies.

The Rates and Regulatory Affairs department also has a distinctive role. The primary function of this department is to prepare utility rate filings (both base rate cases and rate clause filings). The New Jersey Rates and Regulatory Affairs group prepares such rate filings for JCP&L and files them with the BPU. Of course, during the course of base rate cases and other rate filings, there is a need to interact with BPU Staff. It is in this vein that the "regulatory affairs" aspect of this department comes into play.

The preparation of rate case filings is a highly specialized activity. It requires work by accountants, rate design and revenue requirement experts and economists. Having this group report to a "senior legal executive" as Liberty recommends would therefore be problematic. While legal issues arise in utility rate proceedings (*see* discussion below in regard to the Legal department's regulatory attorney functions), they are rarely front and center. Therefore, having a lawyer in charge of the Rates and Regulatory Affairs department responsible for rate filings makes little sense.

Finally, there is no basis for the Board to be concerned with the fact that FirstEnergy has in-house lawyers within the Legal Department that work on BPU filings, or that such lawyers are in fact in the Legal Department (rather than in regulatory affairs or the rates department). It is common utility industry practice for all, or most, in-house lawyers to be part of a legal department and report to the General Counsel. FirstEnergy's Legal Department is appropriately organized by functional and geographic areas of practice.

In sum, Liberty's Recommendations 1 and 2 in Chapter XIII seek to manufacture a remedy for an issue that does not exist, and JCP&L urges the Board to reject it.

Liberty Recommendation:

3. **Conduct a focused study of means for cost effectively improving development program success in JCP&L's serving region. (*See Conclusion #4*)**

Accepted. JCP&L agrees that additional, cost-effective economic development initiatives would be beneficial in its service territory. JCP&L will continue to work together with community and State leaders on economic development efforts. In this regard, JCP&L President Jim Fakult is on the Board of Directors of Choose NJ, a leading non-profit economic development organization in the State. JCP&L is currently working with the State in an effort to bring business to New Jersey, even if not all new entrants choose the JCP&L Service Territory. As the Liberty Report recognizes, the State of New Jersey and the JCP&L service territory itself faces a number of fundamental challenges to attract new business or business relocations (high property taxes, lack of suitable commercial/industrial sites, high overall cost of living, etc.). Nonetheless, JCP&L accepts this recommendation.

JCP&L'S COMMENTS ON THE PHASE II REPORT

Chapter I – Introduction

The Company wishes to emphasize that, notwithstanding its differences of opinion regarding particular factual findings, conclusions and recommendations in whole or in part, JCP&L has accepted 59 of the Liberty recommendations in the Final Phase II Report, with 5 additional recommendations that the Company believes are ratemaking matters to be addressed during a base rate proceeding. This leaves 9 remaining recommendations that the Company has not accepted. In some cases, the acceptance is outright and in other instances the Company's acceptance is conditional based on certain factual corrections or modifications that are necessary to comport with the Company's actual experience and real-world practices. The Company's decision-making in this regard is informed by the noted context and also by the principle that "under proper regulation, utility management has the recognized prerogative of running its business, providing that in doing so it does not violate the law." *In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993) quoting Watkins v. Atlantic City Elec. Co., Docket No. 642-59, 67 PUR 3d 483, 491, 1967 N.J. PUC LEXIS 7, at *14 (BPU Mar. 8, 1967),* which went on to state: "In our opinion management is not only permitted but is under a duty so to manage the affairs of the utility that its actions will result in the provision of the best service at reasonable rates for the benefit of both its customers and its stockholders." Id. at 491.

Chapter II: Organization and Executive Management

In Chapter II, Liberty purports to have examined "the overall corporate structure in which JCP&L operates and the focus that structure provides for ensuring safe, continuous, reliable, and cost-effective service for New Jersey customers, in accord with requirements and stakeholder expectations." Phase II Report at p. 4. As a result of its examination, Liberty reached eight conclusions and made four recommendations. Unfortunately, the Company takes issue with Liberty's recommendations, in whole, or in part, as a matter of timeliness, undue interference with management prerogatives, privilege, duplication, and over-breadth. On closer look, it appears that Liberty has, at times, let unfounded opinion masquerade as fact-driven conclusions. For instance, in its first conclusion ("FirstEnergy substantially narrowed the scope of its operations with the departure of its commercial power and energy businesses, but unusual challenges remain, given the number of electric utilities it operates and the number of jurisdictions in which it does so"), Liberty pays lip service to the fact that FirstEnergy has operated as a ten-utility holding company operating in five states since 2011, while lamenting that its growth to its present size occurred over [only] fifteen years. Now in 2023, Liberty seeks to cast the strategic separation of the generation business as if it were due to organizational unwieldiness as opposed to a prudent business judgement in light of then-market conditions. Further, with its reference to unusual challenges, Liberty unnecessarily seeks to cast doubt on regulatory approvals that supported the formation and growth of FirstEnergy since at least 2011, if not 2001, when GPU was merged into FirstEnergy.

The source of these unusual challenges, as it turns out, is based on little more than a comparison to other holding company systems, which tend to be smaller. Interestingly, Liberty credits FirstEnergy in its second conclusion ("The bankruptcy of the commercial power and energy entities produced a properly controlled transition to their eventual departure from FirstEnergy and provided protection to the remaining FirstEnergy subsidiaries, including JCP&L"), in its third conclusion ("FirstEnergy has acted to restabilize its leadership team following the large dislocation occasioned by circumstances connected to the Deferred Prosecution Agreement"), and in its fifth conclusion ("We found the executive structure for providing common services sound overall, with the exceptions addressed in our Phase One Report"). However, in its fourth conclusion, Liberty appears to have undue anxiety to the point of concluding that organizational instability might result from "[a] recent litigation settlement pos[ing] uncertainty for an executive structure composition and structure that would benefit at the present time from stability. (*See Recommendation #1).*" The fact that a new, industry-experienced CEO was hired, effective June 1, 2023[43]should suffice to disabuse Liberty of its anxieties regarding its perceived uncertainties regarding executive level composition and structure. Similarly, based only on supposition, in its sixth conclusion ("Reductions in the authority of and resources directed by JCP&L executive leadership diminish the effectiveness of responsibilities important to keep at the local level. (*See Recommendation #2*)"), Liberty concludes that recent organizational changes under the FE Forward program result in diminished effectiveness at the JCP&L level. In fairness, Liberty had no evidence upon which to so conclude since the reorganization was only reaching its conclusion when the audit was ending. However, the conclusion remains little more than an unfounded prediction. At the level of opinion, JCP&L respectfully, but wholeheartedly, disagrees and looks forward to demonstrating the effectiveness of its exercise of management prerogatives in this regard in the years to come. At the level of concern, the Company can accept Liberty's observations as potential pitfalls to be

[43] Press Release can be accessed at: (https://d18rn0p25nwr6d.cloudfront.net/CIK-0001031296/77485def-5107-431e-a3a0-b21879049a7c.pdf)

guarded against. However, at the level of fact, it is an unwarranted and premature conclusion, which does not support the recommendation. With this background discussion, we now discuss the four recommendations arising from this Chapter.

Liberty Recommendation:

> **1. Provide to the BPU a full report explaining the purpose, scope, and methods employed in the C-suite review, a full description of and justification for any personnel or position changes made as a result, and a clear and comprehensive description of how they change the nature or level of service, support, or other assistance in the provision of service by the operating companies generally and by JCP&L specifically. (See Conclusion #3)**

Not Accepted. As indicated above, the Company contends that there is no basis for this recommendation and urges the Board to reject it as unnecessary in light of the fact that the FirstEnergy Board of Directors, as advised by its independent legal counsel, conducted the review of the executive team previously announced in connection with the settlement of derivative litigation, and the only announced change in executive level positions since September 2022 has been at the level of the CEO, where, in March 2023, a new industry-experienced executive, Mr. Brian Tierney, was appointed to lead FirstEnergy, effective June 1, 2023. Mr. Tierney was introduced to the BPU on June 20, 2023. There is no need for the report recommended by Liberty, which, as described, represents an unwarranted intrusion into confidential and privileged matters – matters that are also a part of the Company's management prerogatives – that are beyond the scope of a management audit. Moreover, the Liberty recommendation intrudes on personnel-related matters and decisions that are not typically, and should not be, subject to public discourse.

Liberty Recommendation:

> **2. Provide for JCP&L an organization structure and executive responsibilities necessary for promoting local responsibility and accountability for New Jersey distribution planning, engineering, asset management, operations, and operations support and for regional external affairs. (See Conclusion #6)**

Accepted in part. JCP&L believes that the structure that has emerged from the FE Forward reorganization process has delivered what the recommendation appears to target. However, Liberty has made several recommendations regarding more localized control and decision-making with respect to JCP&L operations as follows:

- Restoration of the New Jersey vice president for operations position.
- Restoration of the New Jersey vice president for regional external affairs, responsible for directing the regional affairs team in New Jersey.
- Return of day-to-day direction of HR Partner resources responsible for New Jersey matters to the JCP&L president, employing the previously provided direction from FirstEnergy HR.
- Assignment of a small, locally dedicated team under JCP&L executive direction for the performance of budgeting and of cost reporting and analysis, subject to direction from the FirstEnergy Chief Accounting Officer's organization to assure performance per corporate standards, methods, and formats, and with the full transparency necessary to permit corporate cost and performance oversight of and control.

The centralized services that came out of FE Forward for distribution planning, engineering, asset management, operations, and operations support and for regional external affairs will streamline the implementation of policies and initiatives, provide a consistent set of processes and practices across the organization that improves alignment, leverages economies of scale and reduces duplication of work. The centralized services are driven by jurisdictional needs in addition to industry standards, best practices, shared goals and objectives. The Company provided Liberty its thought process around FE Forward, through which the Company explained its business judgment that the FE Forward program and approach could make operations decision-making more local and closer to the customer. From that perspective, where and how the resources are located and structured is less important than that they are available and delivered as, when, and in the manner requested at the local level consistent with local needs, industry standards and best practices. These results are not the product of, or circumscribed by, direct versus dotted reporting lines, but rather by commitments to shared goals and objectives. When conflicts or disagreements ensue, resolutions must be driven by the efficient and effective fulfillment of the need consistent with the achievement of the shared goals and objectives no matter the reporting relationships.

Shared service companies have been recognized as legitimate centralized service entities within holding company structures going back to the Public Utility Holding Company Act of 1935 as well as the BPU's existing regulations. N.J.A.C. 14:4-4.2.

Liberty's recommendations should not reach the level of seeking to reverse Company management strategic decision-making.[44] If Liberty is recommending that JCP&L should have an understanding of the FirstEnergy corporate structure as well as the individuals in the centralized groups that are responsible for providing support to JCP&L, the Company can work with BPU Staff to make sure they are comfortable that JCP&L is receiving the support from the centralized service groups. Lastly, as the Company previously noted, it will agree to consider organization changes and opportunities to provide for more localized control and decision-making with respect to supporting JCP&L operations. The Company also commits to further discussions with the BPU and BPU Staff, as necessary, to provide additional background on recent organizational changes and rationale for any preference to maintain resources centralized. While the BPU may consider regulatory implications following Liberty's audit, the Board should resist Liberty's requests to the

[44] As previously noted, such recommendations are impermissible intrusions into management's prerogatives as to how to structure itself to deliver upon its obligations, including to New Jersey ratepayers.

extent they intrude into management prerogatives with respect to the functional organization of the Company.

Liberty Recommendation:

> **3. Upon the settling of responsibility, process, methods, and other changes associated with initiatives like FE Forward, assess opportunities for position restructuring and consolidation.** (*See Conclusion #7)*

Accepted with modification. The Company does not object to the sense of this recommendation to monitor and assess ongoing opportunities for structural refinement on a data-driven basis. To the degree Liberty may be fixated on spans of control or the need for small organizations, please note that the Company takes a balanced view that does not assume that small organizations should be consolidated, but rather that consolidation decisions should be made on the basis of efficient but effective goal and objective achievement, as well as reasonable and logical determinations relative to the nature of competencies and the manner of service delivery. From this perspective, this recommendation is a part of the FE Forward management philosophy and is already underway. See also the Company's response to Recommendation #2 above and the Company's willingness to preserve Liberty's recommendation as a component for consideration in the Company's ongoing review and assessment process.

Liberty Recommendation:

> **4. Provide twice-yearly reports regarding ethics and compliance progress for so long as the BPU requires them. (See Conclusion #8)**

Accepted with modification. The Company is subject to a reporting obligation under N.J.A.C. 14:4-4 (Access to Information) regarding investigations or audits by Federal or state agencies. That said, the Company will provide BPU Staff its annual report to the FirstEnergy Board of Directors on ethics and compliance progress under confidential cover. The Company proposes to do so until the filing of the Company's next base rate case (the timing of which has not yet been determined), at which time, the BPU can determine the need and the form of any ongoing reporting.

Chapter III: Governance

As a threshold matter, the Company's decision-making with respect to corporate governance and the recommendations made by Liberty is informed by the well-accepted legal principle that "under proper regulation, utility management has the recognized prerogative of running its business" so long as "in doing so [the Company] does not violate the law." In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993) quoting Watkins v. Atlantic City Elec. Co., Docket No. 642-59, 67 PUR 3d 483, 491, 1967 N.J. PUC LEXIS 7, at *14 (BPU Mar. 8, 1967). The sensitivity between proper regulatory oversight for public utilities and the business prerogatives of a company are heightened in the corporate governance context. While the Company has thoughtfully considered Liberty's governance analysis, the Company maintains that the composition and structure of its board and other corporate governance concerns remain business management decisions that are largely outside of the proper scope of Liberty's audit and review under New Jersey law. See also 1 Priest, Principles of Public Utility Regulation, p. 23 ("Business decisions are, however, the prerogative of management. Regulators are not the masters of public utility enterprises."). The Company nonetheless provides analysis below for each of Liberty's governance recommendations.

Liberty Recommendation:

1. **Restructure the JCP&L board and expand the scope and depth of its engagement in operations and customer service performance oversight.**

Accepted with modification. The Company appreciates that Liberty concluded that the FirstEnergy board and committee membership contain a sufficient number of independent members and that the membership of the JCP&L board contains the number of independent directors required by N.J.A.C. 14:4-4.6. As Liberty found, the size of the JCP&L board complies with New Jersey regulatory requirements. The Company understands that Liberty's recommendation stems from conclusions concerning the engagement of the JCP&L board in Company decision-making and related processes. For example, Liberty concluded that while the FirstEnergy board engaged significantly in planning, its structure and relationships with the JCP&L board do not optimize focus on the distinct needs of JCP&L (Conclusion No. 5). The Company appreciates the concern with board engagement and has already sought opportunities to bolster engagement of the JCP&L board. Specifically, the Company has focused on opportunities to foster engagement in operations and customer service performance oversight by the JCP&L board. The Company has also already made an effort to diversify the scope of internal directors through a recent board appointment of the FirstEnergy Vice President of Operations. Accordingly, the Company has already in part implemented Liberty's recommendation to expand the depth of engagement for JCP&L's board.

Therefore, while the Company does not object to this recommendation, the Company proposes certain modifications to better effectuate the desired goal to increase engagement in operations and customer service performance oversight. The Company agrees to consider and develop a process to achieve more engagement in operations and customer service performance oversight by the board, including through increased engagement with the FirstEnergy Vice President of Operations and the FirstEnergy Vice President of Customer Engagement. The Company does not agree that specific board restructuring action items are necessary or effective at this time in achieving the desired outcome. However, the Company will perform a measured and thorough analysis to consider increased engagement by the board.

Liberty Recommendation:

2. **Expand the operations and customer service metrics and trends regularly reported to and addressed by the JCP&L board of directors and by the FirstEnergy Corp. Safety and Operations Oversight Committee.**

Accepted/In Process. The Company understands that this recommendation reflects a more specific approach to the prior recommendation, namely, to increase engagement by the JCP&L board for operations and customer service performance oversight. This recommendation stems from Liberty's conclusion that "broadening and deepening the engagement of the Operations and Safety Oversight Committee" would be advisable (Conclusion No. 4). As stated above, the Company is committed to developing a process to increase engagement by the board, specifically for achieving more engagement in operations and customer service performance oversight. This includes, but is not limited to, increased engagement by the board with the FirstEnergy Vice President of Customer Engagement. The Company does not object to this recommendation and is already in the process of implementing it. In particular, the Company highlights that reporting to the JCP&L board and the FirstEnergy board's Safety and Operations Oversight Committee has already been expanded significantly to include additional customer performance and operations metrics, to bolster increased engagement by the board, and to better inform the Oversight Committee. The Company will continue to consider opportunities for increased engagement by the board in operations and customer service performance oversight, including through the expanded reporting of operations and customer service metrics and related trends.

Liberty Recommendation:

3. **Embark upon a longer range plan to diversify the professional, business, and institutional backgrounds of the FirstEnergy Corp. board directors.**

Accepted and Implemented. This Recommendation is based on a conclusion in which Liberty asserts that the current make-up of the FirstEnergy board of directors "lacks the breadth of skills and experience one finds in other large U.S. utility holding companies" (Conclusion No. 6). Liberty expresses concern regarding the lack of diversity of professional, business, and institutional backgrounds of the member directors, finding that the current complement of directors while "not lacking in individual qualifications, [is] extraordinarily short in tenure … with an uncommon concentration in professional backgrounds" (p. 73). In this regard, Liberty concludes that legal and financial (predominantly investment-related) backgrounds are greater than typical and the variety of institutional backgrounds less than typical. Liberty indicates that this is an issue that requires time for tenure growth but nonetheless suggests a need for a longer-range plan to diversify the professional, business, and institutional backgrounds of the member directors.

The description of FirstEnergy's board members' qualifications and the commitment to diversity as found in its 2023 Proxy Statement (at pp. 19-23) qualifies as such a program, which is already in place. For instance, the Proxy Statement, among other things affirms that the board:

> recruits, screens, interviews and recommends prospective directors to provide [the] Board with an appropriate balance of knowledge, experience, diversity attributes and capability on [the] Board. Suggestions for potential Board candidates come to the Corporate Governance, Corporate Responsibility and Political Oversight Committee from a number of sources, including a third-party search firm, incumbent directors, officers and others. In connection with the Board's active director succession planning, the Corporate Governance, Corporate Responsibility and Political Oversight Committee regularly evaluates the addition of a director or directors with particular attributes with an appropriate mix of long-, medium-, and short-term tenured directors in its succession planning.

Id. at p. 19. The Proxy Statement also provides an overview of members' skills, diversity, and committee appointments (id., at p. 21) and reflects on its diversity focus in which it:

> regularly assesses the size and composition of [the] Board in light of the current operating requirements of the Company and the current needs of [the] Board, and is also committed to actively seeking out highly qualified candidates of diverse backgrounds – including gender, race, skills, and professional experience and other attributes that contribute in the aggregate to the optimal functioning of [the] Board – to include in the pool from which future Board nominees are chosen. The Company's Corporate Governance Policies also provide further opportunity for

> board refreshment by requiring directors who reach the age of 72 to tender their resignations to the Board to be effective upon acceptance by [the] Board.

Id. at p. 22. Moreover, as explained above with respect to the first recommendation in this section, the board contains a sufficient number of independent members. Any changes to the board structure and composition should be balanced to retain this objective.

As a result, and after review of Liberty's conclusions and recommendation, the Company suggests that Liberty's third recommendation in this chapter be considered accepted and implemented as discussed above.

Chapter IV: Finance and Cash Management

As a threshold matter, many of the issues that the Final Phase II Report discusses in Chapter IV are nearly identical to those discussed in the Final Phase I Report in Chapter XI (Financial Risks and Consequences of Parent and Affiliate Operations). In fact, the discussion, conclusions and recommendations all overlap between the two Chapters. Accordingly, while the Company will address each of the recommendations in Chapter IV of the Final Phase II Report here, it also draws the Board's attention to its comments on Chapter XI of the Final Phase I Report.

Liberty divided Chapter IV into five sections. JCP&L addresses the recommendations in each section in turn.

Dividend Policy and Capital Structure

Liberty Recommendation:

1. **Adopt for JCP&L ring fencing that includes new, strong "Equity Maintenance" provisions requiring ratemaking capital structure equity level not to fall below that informing the basis for New Jersey rates. (See Conclusion #4)**

Not Accepted. This recommendation follows a lengthy discussion of the dividend transactions and equity infusions as between FirstEnergy and JCP&L dating back more than a decade to 2011. Most of this discussion is now dated and does not reflect the current practices or policies for dividends and capital structure. In fact, as Liberty acknowledges in the Report, the equity percentage of JCP&L's actual capital structure has generally aligned with its ratemaking (i.e., Board-approved) capital structure for the last five years. The percentage of equity in the Company's current capital structure (as of March 31, 2023) is 50.3% excluding goodwill and the pro forma percentage of equity in JCP&L's pending base rate case is 51.9% excluding goodwill (projected as of September 30, 2023). This correlates well with the equity ratio of 51.44 % approved in JCP&L's most recent base rate case.

While Liberty's recommendation does not specify exactly what "ring fencing" measure it is encouraging the Board to adopt, it is clear that a minimum equity percentage threshold is neither necessary or advisable. In fact, such a minimum threshold is entirely inappropriate and not feasible. For example, if JCP&L's service territory suffered damage due to a major storm event, the Company might be required to issue additional long-term debt to finance the system restoration costs. In such a circumstance, the issuance of a large amount of long-term debt would likely cause the Company's equity percentage to decline. If, as Liberty apparently suggests, there were a minimum equity threshold, such a mechanism would prevent the Company from issuing the required amount of long-term debt.

Moreover, as the Board is well-aware, a utility's capital structure is nearly always a stipulated ratio within the context of an overall stipulation of settlement in a base rate. Many different "gives and takes" come into play in the settlement of a base rate case, and often impact the stipulated capital structure. In addition, the stipulated capital structure is rarely the utility's actual capital structure. Erecting a minimum equity percentage threshold based on a stipulated, hypothetical capital structure, as Liberty suggests, is particularly misguided.

Lastly, this is not the general practice of the BPU in New Jersey. While the Company does not support such a measure, the Company believes that if such measure were to be considered by the BPU, it would have to be done through a general rulemaking whereby the results would apply more broadly to all utilities in New Jersey.

For all of these reasons, JCP&L does not accept this recommendation and urges the Board to reject it as well.

Long-Term Debt Financing

Liberty Recommendation:

2. **Provide for JCP&L ring fencing that will produce for its credit ratings on a stand-alone basis, in order to eliminate debt interest cost premiums like those of the past decade. (See Conclusion #5)**

Not Accepted. In this section of Chapter IV, Liberty engages in a long and misleading description of JCP&L outstanding long-term debt securities and their coupon rates. Liberty identifies all the outstanding long-term notes and interest rates and then erects a series of strawmen in an attempt to: (1) argue that JCP&L's long-term debt was priced above-market; and (2) blame such alleged overmarket pricing on JCP&L's affiliation with FirstEnergy Corp. Liberty's arguments are severely flawed. For the reasons discussed below, and in the Company's comments on the corresponding recommendation in the Final Phase I Audit Report, JCP&L does not accept this recommendation.

As a threshold matter, in regard to the JCP&L long-term debt issuances that Liberty comments on: (1) all were approved by the Board; (2) the pricing fell within the Board-approved interest rate spreads; and (3) no party has challenged or questioned the Company's embedded cost of debt in the 2012, 2016 or 2020 base rate cases. Moreover, there is no legal basis for the Board to retroactively adjust the cost of debt embedded in the Company's rate structure. So, it is unclear what Liberty hopes to accomplish with this series of conclusions and recommendations.

Furthermore, the "comparison" debt issuances of other utilities that Liberty uses in this Chapter were amateurishly assembled and are so clearly distinguishable from the JCP&L issuances to the point that they provide no comparative value for the Board. In JCP&L's most recent long-term debt issuance, in May of 2021, JCP&L issued $500 million of unsecured notes due 2032 with a 2.75% coupon, the lowest coupon of JCP&L's outstanding debt portfolio and in line with investment grade electric utility pricing *at the time of issuance*.

<u>Cash Management</u>

Liberty Recommendation:

3. **Provide improved ring fencing for JCP&L to enhance protection of its money pool positions and access to its new revolving credit facility, and stand prepared to consider a commercial paper program under improved credit ratings. (See Conclusions #10, 11 and 14)**

<u>Accepted in part</u>. JCP&L can accept the recommendation that it "stand prepared to consider a commercial paper program under improved credit ratings." As Liberty acknowledges, the Company has periodically evaluated whether a commercial paper program was economic. In both 2017 and 2021, the evaluation revealed that a commercial paper program (including both the initial start-up costs and continuing administration fees) would be more expensive than the combination of the utility money pool and a short-term revolving credit facility. While the Company will continue to periodically evaluate a commercial paper program, it is important to emphasize that a short-term revolving credit facility is required for JCP&L to access the commercial paper market. A commercial paper program requires additional costs such as fees paid to rating agencies, bank(s) and internal administrative work. As such, the ongoing fees and administration expenses of the commercial paper program would be additive to the fees for not utilizing the revolving credit facility. Furthermore, the commercial paper market has tended to be an unreliable liquidity source during times of uncertainty in the financial markets.

JCP&L cannot accept the first portion of this recommendation related to “improved ring fencing . . . to enhance protection of its money pool positions and access to its new revolving credit facility.” As discussed elsewhere in these comments and in JCP&L’s comments on the Phase I Final Report, the Company has significant ring-fencing measures in place, including additional steps taken in 2021 to establish a standalone credit facility for JCP&L; any additional measures are either unnecessary, infeasible, or would come with burdens, including costs to achieve, that would outweigh any potential benefits to JCP&L’s customers. This particular recommendation is extremely puzzling, because the Company has beneficial access to the FirstEnergy utility money pool for its short-term borrowing needs, and the interest rates on the money pool are more flexible and attractive than any other commercially-available short-term borrowing option, as the Board has concluded by repeatedly approving JCP&L’s participation in the money pool (most recently in its Order dated December 21, 2022).[45]

Moreover, as Liberty acknowledges in the Report, in late 2021, JCP&L entered into a standalone $500 million short-term revolving credit facility. *Phase II Report* at p. 108. That action both resulted in a one-notch upgrade to JCP&L’s S&P credit rating and continued to provide an additional means of short-term borrowing for the Company. No additional ring-fencing is required to “enhance” JCP&L’s access to this credit facility.

[45] *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 Corporation Intra System Money Pool - Amendment No. 10 to the Petition*, Docket No. EF02030185.

<u>Chapter V – Planning and Budgeting</u>

Liberty provided eleven conclusions and five recommendations for this chapter. Overall, Liberty expressed some concern with the structure and processes for planning and budgeting, which the Company discusses in response to Liberty's recommendations below. Liberty concluded that "managing particular elements of risk management, such as credit, commodity, and insurance followed sound organizational, separation, resourcing, and execution concepts, process and tools"; that "JCP&L's risk identification, magnitude and likelihood assessment, and mitigation planning [is] effective"; and that there is "sufficient focus on and attention to the capital needs of JCP&L in planning and budgeting processes" (Conclusion No. 5). JCP&L's specific responses to Liberty's Planning and Budgeting conclusions follow.

Liberty Recommendation:

1. **Continue to develop FirstEnergy strategic and long-range planning development participants and processes.**

<u>Accepted/ In Process.</u> With respect to this recommendation, Liberty found that "FirstEnergy has moved back in the direction of more complete and regularly sequenced planning and more appropriately scoped strategic and long-term plans." This recommendation broadly requests that the Company continue this progress with respect to strategic and long-range planning development. The Company does not object to this recommendation and accepts it, as the Company is already on track to implement continued long-range planning and related processes.

FE Forward initiative #1194, Budget and Forecast Process, sought to enhance budget/forecast processes and improve efficiency with system automation. As part of this initiative through FE Forward, FirstEnergy implemented the following key components of the enhanced budget/forecast initiative: a revised planning calendar to better align with key forecast deliverables, which allows for greater analytics and scenario planning; a review and redesign of key reporting deliverables (Business Assumption Materials, Reports to both the FirstEnergy and JCP&L Boards, and FirstEnergy monthly management Financial Performance Review), which aligns with external view and drives performance through increased transparency; implementation of a forecast assumption accountability matrix, which drives transparency and ensures rigor of assumption inputs; a risk assessment framework to assess key forecast inputs (qualitative-based scorecard); and implementation of a new budgeting and forecasting tool, UIPlannerDash, which is planned to be used for the upcoming 10+2 forecast. FirstEnergy also clarified roles and responsibilities to drive focus and accountability throughout the planning and budgeting process, including through changes and rationalization to the UIPLannerDash user base. This has resulted in increased efficiency, with around 60% reduction implemented for the recent 4+8 forecast and approximately 65% total reduction planned by the 10+2 forecast. These components display strong progress through the FE Forward initiative in improving planning and budgeting objectives and increasing efficiency. While Liberty suggested a "holistic look at planning purposes, components, drivers, participants, and practices for planning and budgeting" (p. 166), this FE Forward initiative serves this purpose and provides a centralized approach to improving the planning and budgeting processes and increasing efficiencies. In comparison to the broad recommendation by Liberty, the FE Forward initiative represents specific improvements and objectives for the planning and budgeting processes.

Moreover, the Company annually refines its process to facilitate forecast needs with a focus on key deliverables, including the strategic plan, Projected Transmission Revenue Requirement ("PTRR") filings, and annual budget creation. Therefore, the Company has implemented a more formalized process for long-range planning and a structured strategic planning process. For these reasons, the Company considers its implementation of this recommendation in process, as it will continue to develop strategic and long-range planning processes, including through further implementation of the foregoing initiatives.

Liberty Recommendation:

2. **Mitigate pressures that starting capital spending targets and a preference for "formula rate" recovery have applied on optimization of JCP&L capital spending.**

Not Accepted. This recommendation follows Liberty's conclusions that "the capital planning process led by FirstEnergy introduces unsupportive pressures on JCP&L in the identification and approval of projects and programs planned and budgeted for New Jersey" (Conclusion No. 6), and that "the preference for investments in rider-recovered investments does not create a level playing field in allocating capital" (Conclusion No. 7). The Company objects to this recommendation based on the framing by Liberty. Importantly, with respect to Liberty's finding that the Company's approach to budgeting and planning "can leave JCP&L deprived of capital that would produce much greater value than projects that make the cut at other operating companies"—the Company submits that JCP&L receives the capital it needs to ensure service and reliability for its customers. The Company does not accept the underlying premise of the recommendation with respect to perceived "unsupportive pressures" resulting in JCP&L not receiving sufficient capital allocations.

Fundamentally, it is important to consider base capital and discretionary capital separately with respect to any impact that recovery has on these two separate categories of capital. The base capital allocation for JCP&L results from an extensive three-round review process (extensively described by Liberty on pp. 147-148 of the Phase II Report) that scores and prioritizes funding for proposed capital projects at JCP&L. For base capital, cost recovery is not a driving force; rather, service levels and utility needs are the driving forces impacting base capital for JCP&L. However, with respect to discretionary capital, recovery is a consideration with deployment of discretionary capital, although it is not the only consideration. Discretionary capital is deployed primarily for the purpose of accelerating future capital investments that otherwise would be made over time so as to bring forward the benefits for the Company and its customers. The extent to which the Company can deploy capital on an accelerated basis is, to some extent, dependent on the impacts on cash flow and debt levels, which are key factors in the determination of the Company's credit metrics. In short, the greater the efficiency of the recovery mechanism, the greater the opportunity to accelerate capital investments without negatively impacting the Company's credit metrics.

The base capital process is well-established and proven. The BPU's Infrastructure Investment and Recovery ("II&R") rules (N.J.A.C. 14:3-2A.1 through 2A.6) offer modest improvement in recovery efficiency, so they do provide opportunity for some acceleration of capital investments, which the Company has and plans to avail itself. For these reasons, the Company disagrees with Liberty's framing of its capital budgeting process and, therefore, rejects this recommendation.

Liberty Recommendation:

3. **Develop realistic budgets for capital costs and O&M expenditures related to storm costs.**

Accepted/In Process. This recommendation stems from Liberty's conclusions that "JCP&L has largely met capital budgets, with the important exception of capital work associated with storms" (Conclusion No. 8), and that "similar methods for treating [operations and maintenance ("O&M")] costs for storm work has also impaired the effectiveness of JCP&L's budgets and have proven the largest contributor to persistent and large excesses of O&M costs above budgeted amounts from 2017 through 2021" (Conclusion No. 9). The Company accepts this recommendation and is already in the process of implementing this recommendation. The Company has recently sought to develop budgets with a review of historical storm costs and proposed significant increases in the storm costs budgets.

From a capital budgeting perspective, JCP&L has taken adequate steps towards developing more representative storm budgets in its current budget cycle (2023-2027 Budget version). Five years' worth of historical capital storm spending was analyzed in preparation for the current budget cycle (excluding extraordinary events), and the capital storm budget for all five years was set at the 100% funding level matching the five-year historical average. JCP&L will continue to analyze storm spending in future budget cycles and propose appropriate changes to annual capital storm budgets as part of the FirstEnergy Capital Portfolio Planning process. Through YTD June 2023, JCP&L's capital storm expenditures are ~10% lower than the YTD Budget amount.

As it relates to budgeting for O&M storm expenditures, JCP&L considers small storms and major (deferred) storms separately when preparing O&M storm budgets during each budget cycle. For small storms, JCP&L's O&M storm budget is set at $20M annually, which is the amount that was approved for recovery in the Company's last approved base rate case in 2020. For deferred storms, JCP&L takes historical storm expenditures into consideration when budgeting for annual deferred O&M storm costs with a correlating offsetting amortization entry to reflect the deferral of these costs (there is no earnings impact associated with the deferred O&M storm budget).

The Company has taken a focused look at storm costs in the budgeting process and considered recent historical trends to create more realistic budgets that align the budgets with historical spend. Accordingly, the Company is already developing realistic budgets related to storm costs to fully implement this recommendation.

Liberty Recommendation:

4. **Complete the FE Forward Phase 3 work required to support achievement of the capital cost savings, reporting status, actions remaining, and results achieved every six months.**

<u>Not Accepted.</u> This recommendation follows Liberty's conclusion that "FE Forward has identified changes that can reduce annual JCP&L capital spending by a range of 10 to 15 percent"

(Conclusion No. 8). The Company appreciates Liberty's acknowledgment of the success of FE Forward in identifying opportunities to reduce spending. FE Forward represented a holistic approach to, among other things, identifying efficiencies and reduce spending where applicable. Many efficiencies in capital work have been realized as a result of FE Forward. However, FE Forward was never intended to be a permanent program and the Company has shifted away from measuring or tracking capital efficiencies. Accordingly, the Company cannot accept this recommendation.

The FE Forward transformation began in 2021 and was expected to reach full impact by 2024. Although FirstEnergy will always pursue a continuous improvement mindset, this transformational effort was not intended to extend beyond 2023. Post 2023, any benefits related to FE Forward will be embedded in the capital and O&M results and will no longer be tracked separately. All benefits of FE Forward will be realized and implemented during the duration of the program.

With regard to capital achieved savings and ongoing reporting, in Q4 2022, FirstEnergy assessed accomplishments and shortfalls, including the continuing challenges from inflation and supply chain disruptions, as it relates to FE Forward and transitioned away from measuring cash flow metrics and is no longer publishing an FE Forward forecast for capital. It is not that FE Forward initiatives do not support capital, rather, FirstEnergy is no longer tracking them to provide further reporting on capital cost savings.

Therefore, because FirstEnergy did not intend FE Forward to be a permanent program and because FirstEnergy has transitioned away from tracking or reporting on capital (while continuing to focus solely on reporting for O&M), the Company rejects this recommendation. The Company has endeavored to sparingly reject Liberty's recommendations in its review, and this recommendation is one the Company must reject because of the intended structure and duration of FE Forward and the transition in reporting practices for capital spending.

Liberty Recommendation:

5. **Reinstitute JCP&L strategic plans and give its board and leadership meaningful roles developing and overseeing performance in executing them.**

Accepted with modification. This recommendation follows Liberty's conclusion that "inclusion of JCP&L technical resources and leadership does not obviate the importance of separate JCP&L strategic plans integrated with and supportive long-range plans at a detailed level and addressing New Jersey-specific goals and objectives" (Conclusion No. 11). Liberty maintains that while there are benefits of a centralized approach to planning and budgeting, JCP&L would benefit from additional localized control and participation in the planning and budgeting processes. The Company does not object to this recommendation and accepts it, with conditional modifications. The Company will agree to engage the JCP&L board annually on strategic matters and to increase engagement with the JCP&L board with respect to planning and budgeting. As described herein, the Company will endeavor to consider opportunities for increased engagement by the JCP&L board. However, the Company plans to continue to develop strategic plans at the FE Utilities level, which capitalizes on the benefits of a centralized approach and ensures that strategic planning performs in a systematic and consistent manner. The Company agrees that strategic plans should consider JCP&L's needs and circumstances, in particular, and recent strategic plans specifically reference JCP&L and related initiatives and intended projects. The Company will seek to include JCP&L board input in the objectives of the strategic plan and a consensus of the objectives. Therefore, the Company will increase engagement by the JCP&L board in strategic matters, while recognizing that strategic plans will continue to be developed at the FE Utilities level as a matter of company management.

Chapter VI – Staffing

In this Chapter, Liberty arrives at nine conclusions and three recommendations in addressing "a number of aspects of planning for New Jersey-specific resources as well, considering the production, productivity, overtime, age, and other drivers of that planning, … without repeating the substantial underlying information presented in Chapter Two of [the] Phase One report." Phase II Report at p. 173. At the outset, the Company appreciates that the system-wide FE Forward reorganization process was underway during and, to some degree, after the Audit period and that this presented challenges to Liberty in terms of assessing, comparing and making recommendations about past, current, and changing functions and processes. The Company also appreciates that Liberty made an effort to understand such changes and the reasons for them, while also attempting to take them into account in the Phase II Report. Nevertheless, the Company believes that there were some misunderstandings. For instance, on several occasions, Liberty refers to potential "opportunities" based on work by McKinsey, but appears to have downplayed the potential aspect of those opportunities and the fact that the McKinsey analysis, which was part of the initial phase of FE Forward, was followed by business case reviews and analyses, which resulted in more realistic views as to what was actually possible. (***See***, for instance, the discussion on page 194 of the Phase II Report.)

More specifically, for example, Liberty did not appear to take account of the Company's suggestion that where Liberty stated "[t]he late 2020 analysis showed JCP&L overtime as a percentage of straight time as the lowest of the operating companies," the Company suggested adding the following to render the statement more accurate and balanced: "However, each operating company is unique with different challenges, including storm/other restoration work, trouble work, condition maintenance, and meter reading. These differences, among others, can contribute to variances in the late 2020 analysis potentially distorting the comparison among the operating companies." This explanation was an attempt to address the fact that the Liberty analysis, and the data upon which it was based, was not an "apples-to-apples" comparison because the McKinsey data contained only field workers and sub-craft lines employees and did not include storms. These small or even large discrepancies can lead to a number of conclusions that the Company does not accept; particularly regarding what appears to be an overstatement of the "outlier" characterization of JCP&L's performance compared to its affiliate operating companies. As the Company understood Liberty's ultimate concern, as expressed in its recommendations, Liberty wanted the organization to understand the reasons for such performance differences as it went forward to finalize new performance metrics to better suit the reorganized Company. Indeed, notwithstanding the misunderstandings alluded to above, it appears that Liberty was attempting to convey or emphasize the need for sensitivity to the drivers that might lead to aberrational results. The Company appreciates this perspective from Liberty as reflected in the Company's approach to the following recommendations.

Liberty Recommendation:

1. **Examine the reasons underlying outlying JCP&L measures of productivity and resource utilization and identify measures other than those contemplated by FE Forward to improve them where practicable.** (*See Conclusion # 3)*

Accepted. As indicated above, the Company understands the reasons for Liberty's somewhat inaccurate perception about JCP&L's performance within the FirstEnergy system. Despite this, as also suggested above, the Company appreciates the insight that Liberty has shared in this recommendation and in its supporting conclusions. Therefore, the Company accepts this recommendation and intends to implement it in a manner consistent with its understanding of individual company or state or local operational differences, whether by virtue of law, economic region, or practice. In this regard, the Company will explore the deployment of more refined measures or provide explanatory information, to better understand the individual company differences that may be at work in performance measurement results. The Company agrees to meet with Board Staff to discuss implementation and timing.

Liberty Recommendation:

2. **Re-examine the resource levels dedicated to transmission and large substation planning, design, and operation; change their alignment and number as appropriate; examine any such changes in connection with the recommendations of the FERC audit.** (*See Conclusion #4)*

Accepted. Based on this recommendation, it is clear that Liberty did not give sufficient weight to the explanations provided to it during the audit. In Conclusion #4, Liberty says that it did not find that the Company convincingly explained the resource levels with respect to construction and design and transmission, generally. However, Liberty does not specifically explain what it found unconvincing or why. The Company believes that its responses to data requests ADR-604 through 607 (and their supplements and to ADR-987 and its supplement), were complete and convincing if appropriately understood.[46] However, given Liberty's perception and conclusion, the Company further explains that the Construction & Design Services ("CDS") and transmission headcount support all of the FirstEnergy operating and transmission companies as stated in NJ-ADR-604 Supplemental A. It appears to the Company that Liberty arrives at an unfounded conclusion by comparing JCP&L capital and O&M investment (only) compared to the total headcount for CDS and transmission, which, as previously stated, supports all of the operating companies and transmission companies. Since 2017, the overall investment and headcount has increased, and; the

[46] Such understanding also includes a realization of timing issues that could have impacted Liberty's perceptions, including that the data may also have reflected the necessary preparations for anticipated work. The Company's review of post-2021 data reveals a better correspondence between resources and projects and expenditures than was the case at the time of Liberty's review, and underscores the dynamic nature of organizational shifts that may, as in this instance, be in anticipation or in preparation for changes in work processes of levels of work.

increased headcount is required to support the total FirstEnergy transmission investment. Finally, Liberty mentions the FERC audit, the report from which does not call for, or create any need for, alignment or number changes regarding the resources in this area. Accordingly, the Company believes that such portion of the recommendation is also complete.

Notwithstanding the failure to agree on the underlying conclusion, the Company thinks that it can reasonably be said that it has accepted this recommendation and is willing to meet with Board Staff to further discuss the explanation required by this Liberty recommendation. As mentioned above, the examination of the FERC audit as part of this recommendation has also been completed and results in no need of any action in this regard.

Liberty Recommendation:

3. **Track New Jersey performance in comparison to the other operating companies across a range of measures used in the industry for labor management performance.** (*See Conclusion #8)*

Accepted. The Company accepts this recommendation to track labor-management performance using a selection of metrics consistent with regional and industry-wide standards. The Company is beginning to develop useful metrics and is willing to meet with Board Staff to discuss the schedule for completion of developing such metrics and the implementation thereof.

Chapter VII – Compensation and Benefits

In this chapter, Liberty provides seven conclusions and three recommendations. As discussed below, two of the recommendations concerning compensation recovery are outside the proper scope of Liberty's management audit and would be more appropriately raised in the context of a pending base rate case before the Board. Liberty identified several positive conclusions for Compensation and Benefits, including "a sound organization structure and staffing manages compensation and benefits for all FirstEnergy organizations" (Conclusion No. 1); "FirstEnergy employs effective practices and methods to set compensation levels and keep them competitive with relevant markets" (Conclusion No. 2); and "benefits levels, values, and costs undergo regular analysis and have remained competitive, while adapting to changing market conditions and employee needs" (Conclusion No. 7). Liberty also recognized JCP&L's Long-Term Incentive Program ("LTIP"), which Liberty found to be a "reasonably typical LTIP program" (Conclusion No. 6). JCP&L's responses to Liberty's Compensation and Benefits recommendations follow.

Liberty Recommendation:

1. Determine the reasons for the large gap in performance ratings between corporate service groups versus FE Utilities and Operating Company performance levels and for high comp-ratios for the higher-level employees who participate in the LTIP.

Accepted/Implemented. This recommendation follows several conclusions by Liberty, including: (i) "FirstEnergy, service company, and JCP&L compensation levels compare favorably with the market generally, but appear comparatively high for LTIP participants" (Conclusion No. 3); (ii) "FirstEnergy comprehensively calibrates performance rankings and compensation, but a large gap exists between the measured performance levels of FE Utilities and operating company personnel and those performing corporate and service functions" (Conclusion No. 4); and (iii) "FirstEnergy employs a reasonably typical LTIP program, whose measures do not focus on utility service performance" (Conclusion No. 6). This recommendation asks the Company to determine the reasons for these conclusions that Liberty has reached. The Company has analyzed Liberty's conclusions and developed the following reasons, which may be supplemented to the BPU upon request.

As Liberty found, FirstEnergy comprehensively calibrates performance rankings and compensation. However, FirstEnergy performs this calibration within each individual group or department without cross-calibration. In other words, groups are calibrated by executive leaders within each organization and this occurs separately among different groups because each group will be calibrated against their own set of performance measurements. Calibration occurs by management and vice presidents, but the groups are calibrated differently because they perform different functions and are measured against different sets of performance metrics. Accordingly, any perceived gap or difference identified by Liberty is likely the result of calibration that occurs within individual groups without normalization occurring among different groups performing different functions. The Company contends that its calibration process for compensation and consideration of performance metrics within groups provides for a measured analysis that ensures relevant consistency for similar functions within the same organization.

With respect to Liberty's concerns for LTIP membership and participation, it is important to consider that every year there are separate budgets for compensation, one for vice presidents and equivalent status and another for other employees. The Company maintains separate budgets for compensation to avoid any comingling of funds, for example, to ensure that compensation for vice presidents is not being directed or enhanced from other employee compensation.

It also bears emphasis that the positions eligible for LTIP are more senior, meaning that these employees have typically been working longer and in their positions longer, resulting in higher compensation ratios. There is less movement at the vice president and equivalent level, while non-LTIP eligible employees tend to have more opportunity for job growth and accordingly move into different roles, different groups, and generally experience increased movement with less tenured stability in their respective positions. Therefore, the compensation ratios are moving more frequently for non-LTIP eligible employees. In addition, someone who is eligible for LTIP tends to be a top performer in order to serve in a more managerial and leadership position, which would result in a higher compensation ratio. Individual contributors (non-LTIP) tend to have more people performing the same role and would have a broader range for compensation ratios. This would explain some of the conclusions Liberty identified with respect to LTIP participants and any perceived disparity in compensation ratios.

Accordingly, the Company accepts this recommendation and considers this recommendation fully implemented based on the above analysis, demonstrating a consideration of the conclusions Liberty identified. The Company would additionally agree to provide the BPU with more information or analysis upon request.

Liberty Recommendation:

2. Treat LTIP costs as indicated by BPU policy regarding incentive compensation awarded strictly based on shareowner-focused factors.

Base Rate Case Matter. The Company finds that this recommendation is outside the proper scope of Liberty's management audit and intrudes into the BPU's ratemaking powers and authority, which are properly raised and addressed in the context of a pending base rate case. Liberty acknowledges that its "scope does not include recommendations on policy," however, Liberty's recommendation concerning LTIP cost treatment is a matter of ratemaking. With respect to Liberty's assertion of a BPU policy regarding incentive compensation awarded strictly based on shareowner-focused factors, the Company maintains compliance with BPU policy insofar as the Company may only recover what the BPU finds is properly recoverable in a base rate case. The BPU ultimately determines the extent to which LTIP costs are recoverable and the Company consistently follows and complies with BPU policy as expressed through BPU action in Company base rate cases. Therefore, this recommendation is outside the proper scope of Liberty's audit and should not be addressed or resolved in an audit proceeding as opposed to a base rate case. The treatment of LTIP costs and any determinable BPU policy regarding incentive compensation cost treatment is a ratemaking concern, should be raised in a base rate case, is outside the proper scope of an audit, and therefore should not be resolved in the abstract without the benefit of a concrete, pending base rate case.

Liberty Recommendation:

3. **Recognize the compensation of the FirstEnergy Vice Chair and Executive Director as shareowner, not customer costs.**

Base Rate Case Matter. Similar to the prior recommendation, the recommendation to recognize the compensation of the FirstEnergy Vice Chair and Executive Director as shareowner, not customer costs, is a ratemaking issue and should be addressed in a base rate proceeding and not in this management audit. However, for the limited purpose of the subject position, the Company explains that the position of FirstEnergy Vice Chair and Executive Director was a temporary position that no longer exists. The position was intended to serve as a bridge or transition to a more permanent position, and it was always intended to be temporary. Moreover, there were no costs for compensation of the FirstEnergy Vice Chair and Executive Director included in the test year for JCP&L's pending base rate case currently before the Board. The Company has made no requests to recover this specific compensation in its pending base rate case, and because this position no longer exists, the Company will not make any requests to recover this specific compensation in any future Company base rate cases. Accordingly, while the Company submits that this recommendation is outside the scope of an audit and is more appropriately raised in a base rate proceeding, the Company considers this recommendation as unnecessary for all of the above reasons.

Chapter VIII – Accounting and Property Records

In Chapter VIII, Liberty presents its review of accounting and property records topics, which resulted in twelve largely positive and affirming Conclusions and three Recommendations. The Company appreciates Liberty's overall assessment that "all examined areas adequately structured and administered, with no significant policy or procedure control failures or errors." (Executive Summary, ES 15). Liberty explains that it made three recommendations, two of which it characterizes as "procedural in nature" and the third to deal with an "overlap between a FERC audit report released in February 2022 with this audit." Executive Summary, ES 15-16), which JCP&L addresses as follows.

Liberty Recommendation:

1. **Complete the planned, full review of all corporate accounting policies by June 2023 and set a schedule calling for periodic, continuing reviews.** *(See Conclusion #5)*

<u>Accepted/ In Process</u> JCP&L is pleased to report that a schedule calling for periodic, continuing reviews based on the risk rating of each policy has been established. Management identified 33 policies, procedures and processes for review. As of July 2023, 27 policy reviews have been completed, four policies are under review by management, and two are in the process of being updated. The Company expects the remainder of the policies under review to be completed by December 31, 2023. In this regard, the Company considers the Liberty recommendation as accepted.

Liberty Recommendation:

2. **Establish a reasonable timetable for elimination of the Account 106 backlog, and implement a process established for preventing backlog recurrence. (See Conclusion #9)**

<u>Accepted with modification</u>. As Liberty acknowledges, the Company management "expects an upcoming upgrade to PowerPlan to improve the unitization process. Indeed, the PowerPlan upgrade project was completed in 2022 and the new functionality that allows for more automated unitization was implemented in June of 2023 for certain work order types. Although there have not been reductions from the 2021 level noted in the report, the 106 backlog level has decreased by 15% year to date in 2023. The Company agrees to establish reasonable guidelines in which to target completion of the existing backlog in the unitization process, and to establish reasonable guidelines for the on-going timely completion of the unitization process. However, as the process of clearing the existing backlog is very manual and labor intensive, it is noted the Company intends to use cost and benefit analysis in determining the appropriate timeline for completion. The unitization process is a dynamic one and is influenced by variables in ancillary, but related processes, over which the accounting department has limited control. Additionally, it is the Company's view that delays in unitization do not have any significant financial impacts with respect to the depreciation of in-service assets. Liberty did not offer commentary on how it was determined that six months should be the metric used for backlog management and it is the Company's understanding that nine months is comparable and even less than the threshold used by others in the industry. Therefore, the Company does not believe that Liberty's recommendation of six months for triggering backlog status is reasonable under the circumstances and intends to retain nine months as such triggering point. With that modification, the Company accepts the recommendation and, as discussed, has begun to implement it.

Liberty Recommendation:

3. **Make a full accounting of resolution of the issues raised in the FERC audit for the BPU and account for the impacts on current revenue requirements related to rate base and O&M from the practices eventually changed.** *(See Conclusion #12)*

Accepted with modification. This Liberty recommendation arises because of a FERC Audit Report, which was issued late in the Liberty audit period and the results of which were part of an ongoing proceeding, which had not yet concluded at the time of Liberty's Phase II report drafting. Liberty's recommendation amounts to an expression of concern that the BPU "secure detailed information about the application of … overhead calculation methods" that the Company may be required to change as a result of the FERC Audit. The gravamen of this recommendation is that the BPU should not be precluded from considering the possibility of remedying "potential prior customer overcharges." The BPU is entitled to receive such information under N.J.A.C. 14:4-4.4 (Access to Information) upon request, or within designated time frames, upon receipt of notice from FERC or another Federal or state agency of a decision to perform an investigation or audit, and regarding the results thereof (***see*** sections (b), (c), (d) and (e) of N.J.A.C. 14:4-4.4). With respect to any potential need for revisiting past rate decisions, the BPU is aware (even if Liberty is not) of the prohibition on retroactive ratemaking and the impacts of the filed-rates doctrine in New Jersey. Accordingly, the Company intends to share the results of the FERC Audit with the BPU and will address any follow-up requests thereon from the BPU. However, the Company does not see any reasonable need for a calculation of "retail revenue requirement impacts … within six months." The Company is currently engaged in its 2023 Base Rate Filing wherein the Company seeks to establish its current revenue requirements on a test year basis, where rate implications, if any, can be addressed. Accordingly, the Company respectfully asks the BPU to treat this Liberty recommendation as accepted by the Company as modified herein.

Chapter IX: Controls, SOX, Auditing, and Listing Requirements

JCP&L is pleased that, on an overall basis, the Final Phase II Report found that the Company's policies and procedures for internal controls, SOX compliance and internal auditing were robust and satisfied the applicable requirements. Of the conclusions and recommendations in Chapter IX of the Phase II Report, most are directly related to the events that led to the DOJ investigation, which is also covered in Chapter 12 of the Phase I Report. The Company has responded to most of these issues in its comments on the Phase I Report and will not repeat these comments here. Chapter IX contains four recommendations, which JCP&L addresses in turn.

Liberty Recommendation:

1. **Adopt a more expansive conception and means of expression for addressing profound failings like those that produced the Deferred Prosecution Agreement for what federal criminal authorities consider wire fraud and that produced a payment of $230 million. (*See Conclusion #4*)**

<u>Not Accepted.</u> Based on Liberty's Report, the Company understands this recommendation to request that FirstEnergy use different terminology for future events like the "Tone at the Top" material weakness identified during the fourth quarter of 2020. First, the phrase "Tone at the Top" refers to an aspect of the Company's framework deemed appropriate by the SEC and Public Company Accounting Oversight Board. FirstEnergy, like most other companies, uses the framework in "Internal Control-Integrated Framework" (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, which describes internal control in five interrelated components: Control Environment, Risk Assessment, Control Activities, Information and Communication, and Monitoring. The control environment sets the tone of the organization, established by the board of directors and senior management, influencing the control consciousness of its employees and is viewed as the foundation for all other components of internal control as it provides discipline and structure. As publicly disclosed, the identified "Tone at the Top" material weakness refers to certain former members of senior management failure to maintain and promote a control environment with an appropriate tone of compliance in certain areas of FirstEnergy's business, nor sufficiently promote, monitor or enforce adherence to certain FirstEnergy policies and its code of conduct, creating a material weakness in the overall system of internal control.

Second, and contrary to the Liberty's conclusion associated with this Recommendation, the classification of the "Tone at the Top" material weakness, itself, has not limited visibility for Liberty or the Board respecting the issues within the scope of the audit. FirstEnergy and JCP&L

take seriously their obligations to be responsive to regulators. Indeed, FirstEnergy has worked cooperatively with Liberty to provide non-privileged information and documents related to the material weakness. The Company will continue working cooperatively with Board Staff and the BPU, subject to the traditional protections offered by the attorney-client privilege and work product doctrine.

Third, the Company has taken profound steps in disclosing and addressing the actions described as the "Tone at the Top" material weakness, consistent with all state and federal law and regulation. FirstEnergy, moreover, continues to cultivate and maintain a culture of integrity, safety, reliability, and operational excellence, focusing on ethics and compliance as cornerstones of its operations and as values critical to its growth and sustained performance. The Company has dedicated substantial resources to demonstrating its focus on compliance, including increasing the number of personnel responsible for programming and creating the Office of Ethics and Compliance (the "OEC") in October 2021 to oversee the development and implementation of all compliance-related policies and procedures, work that is integral to FirstEnergy's business strategy and governance framework. Since that time, the OEC has focused on building stronger compliance processes and controls, including by improving channels for concern reporting and increasing transparency. Similarly, the Company has enhanced its financial and accounting systems and internal controls to ensure that transactions are recorded in compliance with policy. The Company continues to evaluate its financial and accounting systems and internal controls to: (i) confirm the Company's compliance with applicable laws governing the maintenance of fair and accurate books, records, and accounts and (ii) ensure that the Company's financial statements are compliant with generally accepted accounting principles. The Company has a robust audit and risk mitigation process that includes an annual scoping and risk assessment exercise to identify accounts and transactions that pose the risk of creating material misstatements in financial statements, as well as the annual testing of approximately 500 Sarbanes-Oxley ("SOX") controls and quarterly attestation concerning those controls.

Liberty Recommendation:

2. **Move administrative reporting of FirstEnergy's top internal audit officer from the chief legal officer to the CEO. (See Conclusion #7)**

Not Accepted. As discussed in both the comments on the Final Phase I Report and elsewhere in these comments, utility regulatory commissions, including the Board, do not have jurisdiction to dictate personnel decisions, management structures, or the like. Such decisions, including to whom the Vice President of Internal Audits reports to, are wholly within management's discretion. *In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993) quoting Watkins v. Atlantic City Elec. Co., Docket No. 642-59, 67 PUR 3d 483, 491, 1967 N.J. PUC LEXIS 7, at *14 (BPU Mar. 8, 1967).* Moreover, this recommendation appears to be related to Liberty's inaccurate claims that the Company used "legal privilege" to be less than fully cooperative during the audit. *See, e.g.,* Final Phase II Report at pp. 256-257. As discussed elsewhere in JCP&L comments, such allegations are simply not true.

It should be noted that the Internal Audit department maintains its independence by reporting functionally to the Audit Committee of the Board of Directors who approve resources, the annual Audit Plan, and changes to the plan. The VP, Internal Audit meets regularly with senior leadership including the CEO. In addition, FirstEnergy's corporate structure with respect to the internal audit function aligns with industry practice.

Liberty Recommendation:

3. **Place greater weight on work identified through the risk assessment process in final audit plans. (See Conclusion #9)**

Accepted/ Implemented. Pursuant to the reorganization in January 2022, FirstEnergy increased staffing authorization to 35 (33 employees plus 2 full-time contractors) to allow for greater risk-based audit coverage.

Liberty Recommendation:

4. **End the predisposition to find ways to inhibit the flow of information (protected as required by legitimate needs for confidentiality) to the BPU. (See Conclusion #7)**

Accepted and implemented. As discussed in other sections of the Company's comments on both the Phase I and II reports, JCP&L objects to and disagrees with Liberty's premise that it "inhibits the flow of information . . . to the BPU." FirstEnergy and JCP&L take seriously their obligations to be responsive to regulators. Some of Liberty's requests relative to the Company's use of privilege pertained to House Bill 6 and related DOJ investigation, including the Deferred Prosecution Agreement ("DPA"). FirstEnergy, JCP&L's parent company, has not waived the attorney-client privilege and therefore continues to protect certain information under the attorney-client privilege and work product doctrine. While not subject to this audit, FirstEnergy has worked cooperatively with Liberty to provide non-privileged information and documents. As indicated in other parts of the Company's comments, Liberty's assertions regarding the Company's lack of transparency are incorrect; indeed, the Company's interests in ongoing litigation and other legal or regulatory processes have been recognized by the Board's own regulations at N.J.A.C. 14:4-4.4 (Access to Information). Notwithstanding the foregoing rejection of the Liberty's rationale for its Recommendation #4, JCP&L accepts this recommendation, and the Company will continue working cooperatively with Board Staff and the BPU, subject to the traditional protections offered by the attorney-client privilege and work product doctrine.

Chapter X -- Affiliate Relationships and Cost Allocation

In this chapter, the Phase II Report reaches twenty-two conclusions and makes thirteen recommendations. While the Company can accept many of the recommendations, it does not agree with all of the conclusions or recommendations in this Chapter. Of utmost concern are those conclusions and/or recommendations, which misunderstand, misconstrue or continue to complain unnecessarily or incorrectly about the issue of cooperation and transparency. Some issues or concerns were pointed out to Liberty in the factual review process and some were addressed by Liberty while others were not. In this aspect of the review process, it is clear that Liberty has misunderstood an important but perhaps subtle point. For instance, JCP&L attempted, apparently unsuccessfully, to distinguish between an allocation methodology and an allocation factor. While factors and the calculations associated with factors may change for a variety of necessary and appropriate reasons over time, the methodologies do not change and cannot change absent regulatory approval. Liberty's failure to distinguish between allocation methods and factors led it to conclude that the Cost Accounting Manual ("CAM") is out of date and/or inconsistent with current Company practice, which is simply incorrect. Liberty also misperceived that: (i) no subsequent review of cost allocation factors has occurred since 2014; and (ii) management did not expect any changes to allocation factors as part of its current CAM review process (Phase II Report at p. 273) as opposed to management's expectations that there would be no changes in allocation methodologies – a position totally supportable under current regulation.[47] Nevertheless,

[47] Other instances included: (i) the Financial Transformation Project was not about cost allocations/flows, but more around using technology to improve efficiency and effectiveness of finance and accounting processes; (ii) cost allocation "methodologies" are not reviewed annually, but cost allocation factors are reviewed/updated annually per the Company's SOX controls; (iii) references to 19 or 18 allocation factors should have referred to allocation methodologies (*e.g.*, Phase II Report, p.278); and (iv) no reviews changed methodologies as suggested by Liberty on page 273. The Company also disagrees with certain statements that it did not produce what was requested by Liberty. For instance, on page 274, when presented with the facts that the requested information was provided, instead of

notwithstanding differences in opinion or factual inaccuracies, the Company has examined the thirteen recommendations from Liberty and the supporting conclusions and has concluded that it can accept or adaptively adopt almost all of the recommendations, while asserting that two recommendations should be treated as matters to be addressed in a base rate case, as follows:

Liberty Recommendation:

1. **Update the CAM to match the factors currently in use and conduct an annual review thereafter to ensure continued applicability.**

Accepted/In Process. Although the Company disagrees with Liberty's concluding characterization of the cost allocation process as it explained in the factual comment phase,[48] JCP&L believes that Liberty reflected that the Company was underway with a CAM review and update process, which is still in progress as of the date of these comments. This process will address all concerns expressed by Liberty in this Recommendation.

Liberty Recommendation:

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acknowledging the facts, Liberty makes a mere insertion of the word "initial" so that it can preserve its petty complaint that it did not receive the information when it was first requested. Again, because of its confusion about allocation methodologies versus allocation factors, Liberty was also mistaken when it asserted that the Company did not provide all factor calculations (p. 279) despite the Company's factual comments referring to specific data requests where the data was provided. Similarly, the Direct Charge Ratio is not an allocation factor (pp. 281-282) but, rather, an allocation methodology, as to which a variety of factors might be used to tailor the methodology to the particular types of costs to be charged.

[48] As JCP&L explained, "Indirect FirstEnergy Service Company (FESC) costs are only allocated to the operating companies based upon the approved methods described in the Cost Allocation Manual (CAM). FESC costs are consistently allocated based upon the methods listed in the approved CAM. At issue is the administration and maintenance of the CAM and a disagreement regarding the interpretation of the verbiage for two of the listed CAM methods. First, for years the Number of Participating Employees-General cost allocation method has been referred to internally as the Headcount factor. The Number of Participating Employees-General (Headcount) calculation is defined as the number of participating employees for the respective subsidiary receiving the product or service divided by the total number of participating employees. That is the calculation being performed and how costs are allocated to the operating companies. The fact that the current language used to refer to the factor does not match the CAM language does not change the fact that the cost allocation factor is being calculated correctly and costs properly allocated. Second, the Direct Charge Ratio listed in the CAM was intentionally written to provide flexibility to allocate certain costs more precisely than a general allocator, when a direct causation could be identified. Examples of this would include allocating certain facilities costs based upon the square footage of the building, unit dispatch costs allocated based upon MWH's, and Environmental costs allocated based upon the direct labor hours spent on various projects. Liberty interpreted the Direct Charge Ratio listed in the CAM to be limited to direct charged labor hours, with no flexibility available. The Direct Charge Ratio factors have been consistently applied for years and are a very small component of the cost allocation process." JCP&L Factual Comments, October 2022.

2. Update the Service Agreement and Mutual Assistance Agreement to be consistent with the CAM and the annual cost center review process.

Accepted/In Process. The Company's review and revision process is already underway and will address all issues needed to improve or create consistency and to acknowledge and better align with the annual cost center review process. The Company respectfully requests that the Board consider this recommendation as accepted as explained herein, subject to confirming discussion with BPU Staff at the appropriate time.

Liberty Recommendation:

3. Explore what changes must occur to enhance SAP configuration to allow for the production of a monthly summary of transactions from one affiliate to another.

Accepted/Implemented/In Process. As of the Fall of 2022, the Company has made configuration changes to allow for the production of monthly summaries of FE Service Company ("FESC") charges to the utilities under the Service Agreement. The Company is reviewing whether and how a similar configuration might be rendered for utility-to-utility transactions under the Mutual Assistance Agreement.

Liberty Recommendation:

4. As part of the revision of the CAM, undertake, a thorough review to determine the most logical and cost causative factors for each cost center.

Accepted/Implemented. The Company notes that its acceptance of this recommendation is subject to the understanding discussed above that Liberty failed to properly distinguish between allocation methodologies and allocation factors. In addition to the earlier discussion, the Company further notes, as it had in its factual comments, that the Multi-Factor methodologies used as allocators contain many "sub-factors" for the allocation of costs to different combination of companies. As defined in the annual FESC cost center review, only the companies that are being served by a cost center will get dollars allocated to it. Liberty's Conclusions #5, 6, and 7 suggests that there is one "General Allocator," which may not be allocating costs appropriately. As the Company has indicated, this is decidedly not accurate.

Liberty Recommendation:

> **5. Revise allocation factor calculation worksheets to align with other changes in methods or language in the CAM and Service Agreement.**

Accepted/ In Process. As discussed earlier, methodologies do not change and any changes to methodologies require regulatory review and approval. Allocation factors, however, do change to accommodate the types of costs and other variables that may address cost causation or changes in system circumstances from time to time and over time. Subject to the understandings put forth in this comment document, the Company is already implementing this recommendation.

Liberty Recommendation:

> **6. Implement the enhancements committed to in the 2011 Management Audit regarding the identification of triggering events that would require a mid-cycle change to the allocation factors.**

Accepted. The Company intends to accept this recommendation by adding language to the Administrative & General ("A&G") accounting policy recently implemented as part of the FERC audit to document the annual allocation review practice. The Company will now also add a list of identifying events to the A&G policy, albeit likely to be rare (*e.g.*, mergers, acquisitions, divestitures), that would trigger a mid-cycle change to one or more allocation factors.

Liberty Recommendation:

> **7. Create a time reporting policy document that emphasizes the policy of direct charging and the reasons why it is the most appropriate way to charge time when possible and establish a formal, recurring training and communications program.**

<u>Accepted/Implemented</u>. This procedure exists as an attachment to the CAM. The Company has developed training, which all FESC employees will be required to take on an annual basis. The Company is currently working with HR to place this training in the new system "Empower" (a digital platform for employees to access training among other things), which went live in June 2023.

Liberty Recommendation:

> **8. Employ in the annual review of allocation factors a sampling selection method that ensures broader coverage of different allocation methods.**

<u>Accepted/Implemented.</u> The Company does not agree with Conclusion #13, upon which this recommendation is based. Indeed, JCP&L reported in its factual comments that Liberty had misunderstood the sampling process insofar as Liberty did not understand that the 10% test is to ensure that the new allocation percentages for the start of each new year have been keyed into SAP correctly (in addition, there is a test that all cost centers have allocation percentages that add up to 100%). Liberty's conclusion incorrectly presupposes that only 10% of the allocation factors are reviewed, which is not the case given that all of the allocation factors are reviewed as part of the annual update of the factors Despite the factual disagreement, the Company accepts the recommendation as implemented.

Liberty Recommendation:

> **9. Following a thorough review and modification of the CAM, strengthen the cost center review process to ensure that cost centers use only allocations detailed in the CAM.**

Accepted/In Process. The Company believes that this can be accomplished in conjunction with the CAM update process and intends to address it there. However, it is important to emphasis that the Company does not agree with a part of Conclusion #14, which states that "Cost centers have the ability to identify allocation details not necessarily consistent with the methods authorized." The Company believes that Liberty, has muddled the distinction between allocation factors and allocation methodologies leading it to an errant statement suggesting that the Company may act in a manner inconsistent with the authorized methodologies. This is incorrect. Cost centers cannot allocate via "unauthorized methods." The Company is limited to allocating costs based upon the methods the various regulators, including the BPU, have authorized. There are over 1,000 FESC cost centers that must use one or more of the authorized methodologies for which allocation factors exist or may be newly adopted or discarded given the cost causation forces at work over time. Factor changes within approved methodologies do not require any new regulatory review of approval. Notwithstanding the disagreements, the Company believes that the recommendation can be considered accepted and in process for implementation.

Liberty Recommendation:

> **10. There should be a review of the development and application of cost allocation factors and the resultant changes to JCP&L by someone whose focus is JCP&L costs and protection of New Jersey customers.**

Accepted with modification. In its Conclusion #16, Liberty assumes incorrectly that delegated responsibility within a centralized Service Company operation cannot act on behalf of JCP&L and that JCP&L requires an independent JCP&L review when there are allocation factor changes.

Rather than introduce the need for independent JCP&L review of the results rendered through delegated authority in this context where audits may also be performed from time to time, the Company suggests that the concerns highlighted in this recommendation and its supporting conclusion can be addressed through periodic reporting on changes affecting JCP&L by the JCP&L Controller to the JCP&L President and the JCP&L Board of Directors on an annual basis. The Company respectfully requests that the BPU accept this modification.

Liberty Recommendation:

> **11. Consider holding the depreciation and carrying charges associated with the portion of FirstEnergy SC assets previously charged to FES and FENOC at the parent company, rather than increasing the allocation to the regulated entities.**

Base Rate Case Matter. This issue is more appropriately addressed in the context of a base rate case. In this recommendation and its supporting conclusion, Liberty mistakenly seeks to introduce the notion that JCP&L was not protected from the generation-related separation and bankruptcy of FirstEnergy Solutions and, therefore, JCP&L's increased share of FirstEnergy system costs should be reduced to the extent that depreciation and carrying costs were previously shared by the separated entity(ies) but no longer are. Initially, there is no certainty that the entire $3 million increase in depreciation costs to JCP&L identified by Liberty is due to the separation of the commercial power and energy business. Other factors such as Service Company additions since 2019 (which would not have been designed with the commercial power business in mind) would also factor into the increase. As acknowledged by Liberty, FirstEnergy has acted in a timely and efficient process to reduce costs associated with servicing the separated entity(ies). The further relief that Liberty seeks to fashion is illogical and tantamount to saying that when new affiliates are added to a holding company system, they should only be responsible for depreciation and carrying costs they bring with them and should be protected from sharing in the costs of the system to which they were added. For instance, when the FirstEnergy system grew with the business combination with Allegheny Energy in 2011, individual fixed cost allocations for the existing companies decreased. If Liberty's logic were to be followed, those benefits would not have been shared. The FirstEnergy system costs are what they are and are allocated to system affiliates in accordance with the cost allocation methodologies authorized for use by the SEC and FERC (and the BPU in this instance). This recommendation is inconsistent with such authorizations and, furthermore, as indicated above, is subject matter more appropriately addressed in the context of a base rate case, as the Company proposes.

Liberty Recommendation:

12. Capture and hold all remediation costs and current management audit costs related to the DOJ, SEC, FERC, and internal investigations at the parent company.

Base Rate Case Matter. FirstEnergy has and will continue to classify all internal labor costs, external legal fees, and any related expenses associated with the investigation conducted by the U.S. Attorney's Office for the Southern District of Ohio to be expenses incurred by FirstEnergy, rather than JCP&L or its other subsidiaries. Accordingly, all such costs were appropriately charged to order number 3004082 which settles 100% to cost center 700740 at FirstEnergy, with no such costs charged, allocated, or assigned to JCP&L. Expenses related to JCP&L's management audit for internal labor costs, external legal expenses for firms specifically supporting the management audit and other consulting expenses are being charged to JCP&L. Expenses related to JCP&L's Management Audit for external legal firms specifically supporting matters related to the investigations to address issues raised in the Management Audit are being charged to order number 3004082 which settles 100% to cost center 700740 at FirstEnergy, with no such costs charged, allocated, or assigned to JCP&L.

The Company does not agree with Liberty that everything the Office of Ethics and Compliance ("OEC") is doing is primarily to satisfy the deferred prosecution agreement ("DPA"). The Company has dedicated substantial resources to demonstrating its focus on compliance, including increasing the number of personnel responsible for programming and creating the OEC in October 2021 to oversee the development and implementation of all compliance-related policies and procedures, work that is integral to FirstEnergy's business strategy and governance framework. Since that time, the OEC has focused on building stronger compliance processes and controls, including by improving channels for concern reporting and increasing transparency.

For example, as part of its emphasis on speaking up, from July through September 2022, the Company administered training to encourage all employees to report any potential violations of law or Company policy, including the Code of Conduct, and provided employees with information about the various channels through which they can raise concerns. There are several channels through which employees may raise concerns: supervisors, OEC, Human Resources, Legal, Internal Audit, Corporate Security, Executive Council, and the Board of Directors. Additionally, any employee may submit an anonymous concern electronically or by phone through EthicsPoint, a confidential and comprehensive third-party internal reporting tool. The Company remains committed to ensuring that all employees feel comfortable with raising potential ethics or compliance issues to Company leadership and do not fear retaliation when reporting their concerns.

While the DPA required specific reforms, as discussed above, the OEC has implemented extensive actions outside the requirements of the DPA. Furthermore, there is no factual or legal basis upon which to allocate a portion of this Liberty audit to JCP&L's parent company. This management audit is fundamentally about JCP&L irrespective of the fact that it may also examine affiliate transactions involving or affecting JCP&L. Furthermore, vis-à-vis recovery from customers, such issues are not germane to this proceeding, which is not a ratemaking proceeding (where the review of such matters is more appropriate). Therefore, the Company respectfully requests that the Board reject this recommendation.

Liberty Recommendation:

> **13. Defer consideration of the need for a detailed, comprehensive examination of allocations pending the results of current internally initiated examinations and the ultimate transparency FirstEnergy provides about them and previous ones.**

Accepted. In response to certain recommendations identified during the FERC audit, as well as part of a proactive corporate effort, FirstEnergy performed a review of certain non-operating or non-recoverable costs, including costs associated with advertising, sponsorships, competitive services, and lobbying, and identified certain costs that were recorded to utility operating accounts that were included in electric service rates. FirstEnergy retained Craig Energy & Financial Services ("CEFS") to review and confirm the results internal management had concluded, as well as investigate other areas of non-recoverable expenses. Liberty was aware that the internal review as well as the CEFS review was occurring during the management audit time-period; however, these reviews were still ongoing at the time Liberty concluded its review. CEFS issued its final report to FirstEnergy in the first quarter of 2023. JCP&L has provided CEFS final report to both BPU Staff and Rate Counsel. Indeed, the above-mentioned reviews are being addressed in JCP&L's current distribution base rate case.

Chapter XI: Cost Deferrals

JCP&L is pleased that the Final Phase II Audit Report concluded that the Company's handling of cost deferrals has been appropriate; therefore, Liberty made no recommendations in this Chapter of the Phase II Report.

<u>Chapter XII – EDECA</u>

Liberty's report regarding JCP&L's compliance with EDECA contains sixteen recommendations. Despite the large number of recommendations, most address the need for updates, additional documentation and consideration of Liberty's interpretive views with respect to aspects of the Board's Affiliate Standards. Without agreeing with all of Liberty's findings and conclusions with respect to the necessity of some recommendations, the Company has determined that it has already implemented some of the recommendations and can accept outright, or with modifications, the rest of the recommendations in this Chapter, the details of which are discussed below.

Liberty Recommendation:

1. **Include in the next version of the Compliance Plan information stating where oversight, responsibility, and enforcement for each section of the Standards lie.**

<u>Accepted</u>. In light of the organizational changes as explained by the Company to Liberty, the Company accepts this recommendation as a reasonable request that is consistent with the Company's own plans and processes for updating existing written policies, plans and processes, materially affected by the reorganization. In this case, process documentation was completed in June 2023. In addition, pertinent information therefrom will also be reflected in the Compliance Plan. The next filing of the Compliance Plan is due by August 1, 2023, and the Company expects this update to be part of that version when it is issued.

Liberty Recommendation:

2. **Make additional elements of the Standards subject to Internal Audit review.**

<u>Accepted.</u> In its Conclusion No. 3 in Chapter XII, Liberty determined that while the Company "performs internal reviews of cost allocation and assignment, … and of the FERC Regulations and Affiliate Restrictions, … [n]evertheless, internal audits of the Non-Discrimination, Information

Disclosure, and Separation Standards would better support management's self-testing of compliance for areas outside of cost allocations or FERC rules." The Company does not object to this recommendation and will request that Internal Audits add these subject matters to its existing list of audit topics to be subject to periodic audits in future years.

Liberty Recommendation:

3. **Institute measures to secure regular, timely filing of EDECA reports and undertake a review designed to determine the root causes of failure to timely file reports, and to identify any gaps in compliance measures or rigor in executing them.**

Accepted. This recommendation arises from the observation that Liberty "encountered a repeat reporting gap in connection with the [Consumer Electronics Protection Services ("CEPS")] offering. The program is small and declining, having stopped accepting new entrants more than two decades ago." In fact, the reporting gap was not a total failure to report, but, rather, late reporting that sometimes combined multiple years. JCP&L does not argue that there should be no such gaps in meeting reporting requirements. As such, the Company agrees to add the specific CEPS reporting obligation to an existing reporting database with assigned responsibility and notice in order to facilitate timely reporting.

Liberty Recommendation:

4. **Provide to the BPU a full report of the findings and conclusions made in connection with all reviews and evaluations (regardless of the specific jurisdiction or operating company involved) of Suvon structural separation, common work assignments, and sharing of utility information, and address their implications for historical compliance with Section 14:4-3.3(o) and any other applicable standards.**

Accepted in Part. The formation of the Suvon entity was disclosed to the BPU in the 2018 Compliance Plan. Company also notes that it advised Liberty that Suvon, LLC ("Suvon") was formed as a wholly owned subsidiary of FirstEnergy on September 25, 2017. Suvon, LLC was registered as a New Jersey foreign limited liability company on October 24, 2017 (Company Response to ADR-1602 Confidential) and further explained that the Corporate Organization Section of its Compliance Plan was updated in August 2018 to include Suvon, LLC effective as of April 1, 2018 and that FESC began direct charging costs to Suvon in 2019; no indirect costs were allocated to Suvon as the cost allocation percentage rounded to zero based upon Suvon's size. (Company Response to ADR-1661). Given the relatively small size of the Suvon operation and scope, an attempt was made to organize both its operations and support within the existing service company consistent with the Affiliate Standards.

The foregoing makes clear that the period being addressed in the Liberty Report pertains to the audit period from no earlier than September 2017 up to December 30, 2020 (and to the degree pertinent data provided by the Company for post-audit periods, including parts of 2022 and the significant organizational changes addressed elsewhere). Throughout the second half of 2022, FirstEnergy evaluated the scope of this business, including whether this business should be discontinued. FirstEnergy ultimately determined to discontinue the Suvon business. This unwinding process has been completed and **is** not part of the FirstEnergy's business as of May 2023.

In light of the above, JCP&L does not agree that additional formal reporting is necessary under all of the circumstances and suggests that the Board reject this aspect of the Liberty recommendation. JCP&L proposes to continue to notify BPU Staff regarding changes in competitive service offerings that implicate, and in accordance with, applicable regulations. With such understanding, the Company accepts the recommendation as modified. See also the Company's response to Recommendation #16 below.

Liberty Recommendation:

5. **Update the next version of the Compliance Plan to include discussion of the potential for FERC rules records conformity as included in 14:4-3.3(s) of the Standards.**

Accepted. The Company appreciates that Liberty found no indication of JCP&L offerings of the type covered in this or related provisions of the Standards. Whether or not "inclusion of FERC rule conformity provisions of the Standards…" is actually necessary under the circumstances, the Company agrees that this recommendation is a request for a minor change in the Compliance Plan, which can be made in the next Compliance Plan due to be filed in August 2023.

Liberty Recommendation:

6. **Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards.**

Accepted. Liberty noted that the Company was able to provide third-party supplier lists for 95 of the 132 months that were reviewed by Liberty. Lists for 37 months (or slightly more than three years out of eleven years of requested data, could not be located. While this was regrettable, the fact that there was evidence before and after the gap in data tends to support the conclusion of compliance even though Liberty accurately reported that it could not review, and, therefore, "could not verify whether the lists provided presented suppliers in a manner that did not promote or highlight any." Beginning in September 2022, the Company updated its record retention instructions to assure that pertinent supplier lists are retained and remain accessible until the later of 5 years or the conclusion of the next BPU management audit. Any additional documentation needs will be identified and addressed prior to September 2023.

Liberty Recommendation:

7. **Change the Plan to align the reference to Section 14:4-3.4(e) to where the Plan provides a summation of and guidance regarding this provision.**

Accepted. The Company agrees to the suggested re-alignment of the Compliance Plan to clarify and combine the heading of Section 14:4-3.4(e) to Section 14:4-3.4(d) and (e) of the Standards, and to remove the reference of subsection (d) from the header for Section 14:4-3.4 (f) and (g). The Company appreciates that Liberty concluded that the Compliance Plan contains adequate guidance for personnel, but believes that relocation of the information would provide additional clarity.

Liberty Recommendation:

8. **Update the next version of the Plan to make clear management's understanding of the PUHC requirements included in Sections 14:4-3.3(h), (i), (j), and (k) of the Standards.**

Accepted with modification. The Company believes that Liberty has misread its Compliance Plan insofar as this recommendation (and the conclusion upon which it is based) is concerned. In footnote No. 3 of the Compliance Plan, JCP&L explains that "FirstEnergy Corp. does not itself provide or offer Competitive Services. **It is not, therefore, referenced in this Plan, where the Plan and the corresponding Standards address providers of Competitive Services**." (Emphasis added). For this reason, there would be no need to reference the Board's Public Utility Holding Company requirements and there would also be no need to clarify management's understanding of the limitations/restrictions imposed by these Sections of the Standards, which address the provision of competitive services. Nevertheless, in the interest of the efficiency of this comment process, the Company will make an adjustment to the next version of its Compliance Plan to accommodate this recommendation and to provide relevant training by the close of 2023.

Liberty Recommendation:

9. **Update the next version of the Compliance Plan to include acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.4(d) of the Standards.**

<u>Accepted with modification.</u> As in regard to Recommendation No. 8, JCP&L believes that Liberty has misread its Compliance Plan for the same reasons stated above. Nevertheless, in the interest of efficiency of this comment process, the Company will make an adjustment to the next version of its Compliance Plan to accommodate this recommendation and to provide relevant training by the close of 2023.

Liberty Recommendation:

10. **Deep-seated, corporate cultural barriers have prevented conformity to levels of transparency typical of other holding company/utility cases we have witnessed - - our interaction with FirstEnergy throughout this audit shows that major efforts remain to eliminate those barriers.**

<u>Accepted</u>. The Company disagrees with Liberty's characterization FirstEnergy's transparency during the audit, as discussed elsewhere in these comments. Notwithstanding the foregoing disagreement with Liberty's rationale for this recommendation, JCP&L accepts this recommendation in that it will continue working cooperatively with Board Staff and the BPU, subject to the scope of the audit and traditional protections offered by the attorney-client privilege and work product doctrine.

Liberty Recommendation:

11. **Update the next version of the Compliance Plan to acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.5(f) regarding joint product and joint services offerings.**

<u>Accepted.</u> While the Company has not historically engaged in, and has been careful to avoid the creation of, joint products and joint service offerings between itself and any [Related Competitive Business Segment ("RCBS")], the Company understands Liberty's conclusion and recommendation and will accommodate this recommendation to "address the particular concepts of joint products and services and joint purchases distinctly" in the next version of its annual Compliance plan due in August 2023 in order to provide employees with guidance on these topics.

Liberty Recommendation:

12. **Update the next version of the Compliance Plan to include direct discussion of the Section 14:4-3.5(m) of the Standards.**

Accepted. The Company notes that there are points of overlap in the Standards. In this case, the issue is that there should be no suggestion of a preference or advantage from a customer doing business with an RCBS that has an affiliated relationship with the utility company. JCP&L notes that this is mentioned at least twice in its Compliance Plan as follows:

> JCP&L will not unreasonably discriminate against any competitor in favor of its RCBS. Specifically, JCP&L will not represent that its RCBS or its RCBS's customers will receive any different treatment than JCP&L provides to any other, nonaffiliated entities or the customers thereof. JCP&L will not give its RCBS or its customers any preference over any nonaffiliated entities or their customers in the provision of goods or services offered by the Company.

[Pertaining to Section 14:3-3.3(a), (b) and (c) of the Standards].

> The JCP&L RCBS shall not be given a preference with respect to tariff provisions that provide for discretionary waivers of fees, penalties, etc., unless such discretionary waivers are offered to all others on a non-discriminatory basis.

[Pertaining to Section 14:3-3.3(j) and (k)].

These are largely similar to the restriction in Section 14:4-3.5(m) of the Standards, which provides:

> An electric and/or gas public utility, through actions or words, shall not represent that, as a result of its PUHC or a related competitive business segment of the public utility holding company's relationship with the electric and/or gas public utility, its affiliate(s) will receive any different treatment than other product and/or service providers.

Notwithstanding, the foregoing. The Company acknowledges that there is no cross-reference to Section 14:4-3.5(m) and that the Compliance Plan is not specific in addressing this particular section. Accordingly, the Company agrees to accommodate this recommendation through additional specificity in the next version of its annual Compliance plan due in August 2023

Liberty Recommendation:

13. **Create a plan to log and track joint JCP&L and RCBS attendance at the types of events described in Section 14:4-3.5(o) of the Standards.**

Accepted with modification. Liberty does not suggest that its recommendation No. 13 is required by the Standards, but rather that it would facilitate an auditor in reaching its conclusion regarding compliance with the requirements of Section 14:4-3.5(o)(3) related to joint participation in "trade shows, conferences, or other information or marketing events held in New Jersey. For the purposes of this paragraph, 'joint participation' includes any sharing of costs or facilities associated with the event, such as using the same signage, handouts, transport, advertising, booth or space, or presentation time."

First, subsection (3) of Section 14:4-3.5(o) prohibits the joint attendance that is accompanied by sharing of costs or facilities that Liberty wants the Company to track. Second, in the event of actual joint attendance with shared costs, the employees involved would be expected to report the matter as a potential concern under or violation of the Standards, whereupon the Company's books of account would be the first main source of information followed by additional managerial inquiries and action as appropriate.

JCP&L does not believe that such tracking is either required or reasonably necessary. Nevertheless, in the interest of facilitating the efficient resolution of this proceeding, the Company is willing to require JCP&L and RCBS employees to log attendance at trade shows, conferences, or other information or marketing events held in New Jersey that have been planned in advance with a JCP&L or RCBS employee, or when it is subsequently recognized that joint attendance has occurred. Such tracking shall be maintained for subsequent review in the next management audit.

Liberty Recommendation:

14. **Increase diligence in ensuring full conformity with Section 14:4-3.5(q) of the Standards.**

Accepted/Implemented. In this instance, Liberty has focused on a short-lived incident that occurred in 2012, to formulate an increased diligence recommendation. JCP&L contends that its subsequent compliant performance in the ensuing years since the isolated 2012 incident is a more than adequate demonstration of the Company's diligence, which has been actualized in a requirement for legal department review before finalizing new officer designations and making changes in cross-affiliate responsibilities. Under these circumstances, this recommendation appears gratuitous. Other than to say that the Company will continue to remain diligent in this regard, the Company does not see a need for a further response to the recommendation.

Liberty Recommendation:

15. **Institute measures for ensuring the timely public posting of employee transfers covered by Section 14:4-3.5(r) of the Standards.**

Accepted/ Implemented. The Company acknowledged to Liberty that there had been some failure to make required postings in the past. The Company appreciates that Liberty found the Company's commitment to address this gap "encouraging." Liberty recommends that Company "management should correct the situation with dispatch." In its related Conclusion (No. 82), Liberty noted that the new FESC executive responsible for such matters will review such transfers to ensure "timely tracking, posting, and reporting of" employee transfers. The Company accepts the recommendation and intends to implement, or has implemented, measures in the form of policy, processes and procedure to assure timely notice and appropriate posting and reporting as required by the Standards.

Liberty Recommendation:

16. **Treat all employees working on or for Suvon, except those providing Standards permitted shared services functions, as Suvon employees - - either organizationally or for Standards tracking and compliance purposes; apply similar treatment to any future RBCS which FirstEnergy may have.**

Accepted with modification. *See* the Company's response to Recommendation #4 above. As part of its ongoing assessment of strategic direction and related factors, FirstEnergy has unwound the Suvon business. Suvon is not part of FirstEnergy's business as of May 2023. If necessary, the Company can provide an update to Board Staff regarding such matters. In such modified fashion, the Company believes that this recommendation can be considered accepted.

Chapter XIII -- Human Resources Organization

In this chapter, Liberty reached six conclusions and suggested two recommendations. As discussed below, Liberty's conclusions regarding the structure and organization of Human Resources and the HR Partner are business management decisions, including the Company's decision to apply a more centralized approach to HR processes. JCP&L is pleased with Liberty's conclusions that "FirstEnergy has been effective in structuring and controlling HR resources, making substantial reductions with departure of the commercial power and energy entities and operations" (Conclusion No. 1) and that "HR operates under a sound and well communicated set of overall objective and priorities" Conclusion No. 3). JCP&L's responses to Liberty's recommendations for Human Resources Organization are below.

Liberty Recommendation:

1. **Give local leadership continuing direction of the HR Partner resources assigned to supporting JCP&L operations.**

Accepted in Part. Liberty's recommendation follows a recurring request throughout its Report for more localized control and decision-making with respect to JCP&L operations. Specifically, Liberty concluded that "changing the reporting and responsibilities of HR Partner resources engaged in support of JCP&L is not sound short or long term" (Conclusion No. 2). The Company respectfully finds that the decision of whether to have a centralized or localized approach to HR resources for JCP&L operations is a matter of business management and outside the proper scope of this audit process. As the Company has stated herein, "under proper regulation, utility management has the recognized prerogative of running its business" so long as "in doing so [the Company] does not violate the law."[49]

With that context in mind, the Company does not wholly reject this recommendation, but agrees to consider organization changes and opportunities for more localized control and engagement with respect to supporting JCP&L operations, including HR resources. The Company also commits to further discussions with the BPU and BPU Staff, as necessary, to provide additional background on organizational changes and rationale for any preference to maintain the HR Partner resources centralized. Essentially, the Company has and will continue to reexamine the local decision-making and control of the HR Partner with an aim to supporting JCP&L operations. The work of the HR Partner continues to be driven by the needs of JCP&L operations, its leadership, and its employees, notwithstanding the centralized approach and reporting practices. Centralized services are provided generally based on jurisdictional needs in addition to industry standards, best practices, and shared goals and objectives. Accordingly, any changes to the HR organizational structure should be driven by business needs and prudent Company practices. However, the Company does not agree that Liberty's audit may properly require JCP&L to change the structure of its HR Organization because such a decision is within JCP&L's business management prerogative and Liberty has not found that JCP&L is violating the law with respect to its HR composition and structure. JCP&L is not violating any laws through this centralized

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[49] In re Jersey Central Power & Light Co., Docket No. ET92040380, 1993 WL 561957 (N.J. Bd. Reg. Com. Oct. 19, 1993) *quoting* Watkins v. Atlantic City Elec. Co., Docket No. 642-59, 67 PUR 3d 483, 491, 1967 N.J. PUC LEXIS 7, at *14 (BPU Mar. 8, 1967); see also 1 Priest, Principles of Public Utility Regulation, p. 23 ("Business decisions are, however, the prerogative of management. Regulators are not the masters of public utility enterprises.").

structure, and FirstEnergy will continue to reexamine and consider the benefits of and opportunities for localized HR resources. While the BPU may consider regulatory implications following Liberty's audit, the Board should resist Liberty's requests to the extent they would impede JCP&L and FirstEnergy's management prerogatives.

Liberty Recommendation:

2. **Develop commensurate with the transition to new HRIS capabilities a much more comprehensive set of performance measures for gauging HR performance and attainment of workforce characteristics and expectations.**

Accepted. This recommendation stems from Liberty's conclusions that "HR made available to [Liberty] an unusually short set of performance metrics by which it gauges its performance and by which FirstEnergy measures broader measures of how effectively matters in which it engages get reflected in employee performance and attitudes" (Conclusion No. 4), and "management's planning of the transition to a new source of HRIS capabilities provides an occasion for development of a materially enhanced set of performance measures, regular reporting of their results, and analysis of measures to improve both HR and operational performance" (Conclusion No. 5). Liberty's recommendation reflects a desire to improve accountability and metrics for gauging HR performance and capabilities.

As Liberty identified, the new source of HRIS capabilities will have a better ability to compile reports and assess HR actions. However, the focus so far has been on the transition to the new system, without yet improving upon current performance metrics. That said, the Company does not object to this recommendation and accepts it as a means to improve metrics for gauging HR performance and attainment of workforce characteristics and expectations. The Company's HR Organization will assess current practices and consider ways in which to build upon and create more comprehensive metrics for tracking HR performance, utilizing new programming and systems for increased and improved reporting. The Company's experience will allow the Company to improve the metrics for HR performance in a flexible manner that achieves the desired outcome to improve performance measures for HR.

Chapter XIV: Corporate Services

In this Chapter of the Final Phase II Audit Report, Liberty examined the provision of real estate, facility and land management activities conducted in common by FirstEnergy's Corporate Services group. JCP&L is pleased that Liberty found that such services were "efficient" and "effective" and consequently made no recommendations.

Chapter XV – Information Technology

Overall, Liberty reported largely positive conclusions and only one recommendation with respect to Information Technology. Liberty found that the IT department performs effectively and discussed recent changes and initiatives with respect to Information Technology and new technology applications. As discussed below, the only recommendation with respect to Information Technology concerns reporting to the BPU to provide a sense of the outcomes that result from recent changes and initiatives. Below is JCP&L's response to Liberty's Information Technology recommendation.

Liberty Recommendation:

1. **Provide progress reporting to the BPU on IT-related plans made and progress achieved resulting from FE Forward or other programs, initiatives, or activities affecting IT plans, forecasts, and budgets.**

Accepted with modification. JCP&L is pleased that Liberty recognized that the IT department has worked to keep IT costs low and that efforts are underway to enhance IT effectiveness, better direct its expenditures, and provide for a focused review of ways to move the Company toward new and innovative technology applications. Liberty concluded that the Company's "centralized approach" to IT "has promoted efficiency and the application of common systems, applications, and planning and development" (Conclusion No. 1). Liberty additionally concluded that "IT takes an appropriate approach to identifying and prioritizing user needs" (Conclusion No. 2).

The Company's recent changes to IT, from a business outcomes perspective, are largely the result of the Company's FE Forward program, as identified by Liberty. As stated earlier, FE Forward was never intended to be a permanent program; rather, it has a limited duration and the results or objectives of FE Forward would be fully realized or implemented during the term of the program. Specifically, the FE Forward transformation began in 2021 and was expected to reach full impact by 2024. Although FirstEnergy will always pursue a continuous improvement mindset, this transformational effort was not intended to extend beyond 2023. Post 2023, any benefits related to FE Forward will be embedded in the capital and O&M results and will no longer be tracked separately. Further, with regards to capital achieved savings and ongoing reporting, in Q4 2022, FirstEnergy assessed accomplishments and shortfalls, including the continuing challenges from inflation and supply chain disruptions, as it relates to FE Forward, and transitioned away from measuring cash flow metrics and is no longer publishing an FE Forward forecast for capital.

Accordingly, the IT initiatives and programs that Liberty identified, particularly from a business outcomes perspective, are the result of FE Forward, meaning that continued reporting obligations to the BPU following the winding-down and conclusion of FE Forward would be unnecessary. The Company does not object to this recommendation and offers modifications, given the limited duration of FE Forward and the IT changes as a result of FE Forward. The Company proposes providing the BPU with a summary report at the conclusion of FE Forward with the business outcomes and progress achieved resulting from the FE Forward IT-related plans. Because of the decision to transition away from measuring cash flow metrics and related reporting identified above, the business outcomes report for FE Forward would not include forecasts or results for capital. However, the Company would submit a summary to the BPU with general business outcomes of the IT initiatives achieved through FE Forward. This satisfies the desired outcome of providing the BPU with reporting on the IT-related plans and progress achieved resulting from FE Forward. The proposed summary approach at the conclusion of FE Forward takes into account that FE Forward was never intended to be a permanent program and that the benefits and progress achieved would reach full impact before the conclusion of the program.

Chapter XVI: Insurance and Risk Management

JCP&L notes that Liberty generally found the Company's organization, management and efforts with respect to Insurance and Risk Management to be appropriate and robust. This Chapter of the Phase II Final Report contained only two recommendations. The Company addresses each in turn.

Liberty Recommendation:

1. **Adopt and continuously employ a structured approach to determining appetite for risk and use it to guide the establishment of objectives, the identification of and selection from among strategies to meet those objectives, and monitor performance and the external business environment to identify the need for strategy revision. (See Conclusion #3)**

Accepted. The Company accepts this recommendation. In 2022, FirstEnergy began a process to formalize a risk appetite program as recommended in the Phase II Report. The Company began a Risk Appetite Pilot and published its Pilot Risk Appetite dashboard to the Enterprise Risk Management ("ERM") committee in the first quarter of 2023. While the CRO position was filled on July 10, 2023, this work is still in progress and will not be concluded until 2024. JCP&L agrees to keep Board Staff apprised on the progress of implementing this recommendation.

Liberty Recommendation:

> **2. Restructure the basis for allocating D&O insurance costs to JCP&L to avoid charging it amounts arising from risks to which it does not contribute. (See Conclusion #6)**

Base Rate Case Matter. As the Company interprets this recommendation, it is suggesting what amounts to a ratemaking adjustment to the allocation of shared service costs. That is not an appropriate recommendation for a management audit – ratemaking adjustments can only be proposed and approved within a base rate case.

Second, JCP&L currently allocates Director's and Officer's ("D&O") insurance costs pursuant to its approved cost allocation manual ("CAM") as approved in prior New Jersey base rate cases. D&O insurance premiums are Service Company expenses, attributable to insurance costs for members of the FirstEnergy Board of Directors and FirstEnergy's senior officers. Such costs are allocated to all of FirstEnergy's operating companies and FirstEnergy via the Multi-Factor All allocation methodology. Nothing in the Phase II Final Report suggests that this is an inappropriate cost allocation formula for D&O insurance expense.

Rather, Liberty's comment in Chapter XVI infer that recent D&O insurance premiums have increased due to the events surrounding the DOJ investigation and deferred prosecution agreement. *See Phase II Final Report* at p. 458. Liberty then suggests the Board disallow (for ratemaking purposes) a portion of the D&O insurance premiums based on a poorly-defined "comparison" analysis. *Id.* at p. 459.

The directors and officers of FirstEnergy provide management services to all of the operating companies, including JCP&L. A portion of the costs for such services are appropriately allocated to JCP&L based on approved cost allocation factors. Any adjustments to such allocation may only be done in the context of a base rate case. Accordingly, JCP&L does not accept this recommendation. If the Board wishes to pursue the issue, it can be addressed in a JCP&L base rate case.

Chapter XVII: Legal Services

In this chapter, Liberty reaches seven conclusions and makes four recommendations regarding the rendering and management of legal services from the FE Service Company to JCP&L. The Company was pleased with Liberty's overriding view that:

> found the central approach to managing legal functions appropriate, and … responsive to the changes in needs occasioned by elimination of FirstEnergy Services' needs following [the] post-bankruptcy transfer from FirstEnergy Corp. We found due attention to the legal needs of JCP&L, given near-term plans for added resources to address state regulatory issues. Costs for internal resources and outside counsel (and the experts and other support they employ) have dropped since that transfer and JCP&L has experienced reasonably stable legal costs in recent years. We tested charges assigned and allocated for these resources, finding them reasonably well justified and associated with clear JCP&L interests and implications.
>
> Sound systems and methods, regularly applied control the recording, reporting, and analysis of internal time. Outside counsel retention, budgeting, billing, document management, and other important aspects of managing the relationships through in-house personnel also proceed under well-documented and monitored means, again using systems and tools commensurate with the practices of other large utility legal organizations.

Liberty Phase II Report at pp. ES 28-29.

While the Company finds some areas of mistaken perception or misunderstanding,[50] the Company does not find any reason to take issue with Liberty's initial four conclusions (*Id.* at pp.

[50] For instance, it is clear that Liberty did not correctly perceive how claims were handled (through centralized tracking and guidance administration within the Legal department, with decentralized claims handling at the local operations level), before the most recent re-organization effort, which has centralized both processes in the Legal department. Furthermore, with respect to performance feedback, it is apparent that Liberty discounted the Legal department's informal methods, which also inform the individual attorney performance evaluation discussion, and which Liberty does not specifically mention. In addition, Liberty, at times, appears to suggest a degree of strategic and legal independence by JCP&L from the holding company system within which it is a wholly-owned subsidiary that is not fully consistent with generally-accepted principles of common ownership. Notwithstanding these kinds of disagreements, as indicated above, the Company has sought to interpret and address Liberty's recommendations in a reasonable and practical light.

470-471), which are effectively summarized in the excerpt above. With respect to Liberty's four recommendations, the Company responds as follows:

Liberty Recommendation:

1. **Establish structured and regular means for engaging JCP&L, Legal, and Rates and Regulatory in reviews of prior performance, status and needs for current matters, and forward-looking needs and resources.** *(See Conclusion 5)*

Accepted. In Conclusion #5, Liberty, states, among other things, that

> No regular, structured process exists for soliciting from client departments feedback on either completed engagements or on important matters in progress. Certainly, the relationships existing at the working level between legal and client resources entail discussions of such matters, but not, it appears, in a way dedicated to performance improvement. We also found no regular, structured means for engaging JCP&L directly in determining its expected legal needs for planning purposes.

The Company reiterates that there is a formal attorney annual evaluation process, and that informal input has been gathered and is used in that context. Nevertheless, the Legal department is proceeding to establish a formal structure for the type of discussions contemplated by this recommendation (and the conclusion upon which it is based), as well as a schedule outline for implementation on an ongoing basis. The Company asks that the Board recognize this recommendation as accepted, subject to discussion of the details with Board Staff at the appropriate time.

Liberty Recommendation:

2. **Provide for system notation reflecting an in-house counsel opinion concluding that no conflict exists between the interests of JCP&L and any other FirstEnergy entity with whom JCP&L has common legal representation in any civil or regulatory proceeding. (See Conclusion #6)**

Accepted. In this area, the Company believes that there may have been some misunderstanding between the parties as to the issue of whether the concerns underlying this recommendation and the conclusion upon which it is based were given appropriate attention (the contents of which could be subject to attorney-client privileges), as opposed to the formalizing of a process for tracking that such attention has been provided and a determination made. The Legal department does not object to the formality of the proposed notation system, but in the context of current workloads, proposes that its efforts to implement this recommendation will take until the end of December 2024.

Liberty Recommendation:

3. **See Recommendation #2 from the Internal Controls, SOX, and Auditing Chapter of this Phase Two report regarding the change in administrative reporting of Internal Auditing from the Chief Legal Officer to the FirstEnergy Corp. CEO.**

Not accepted. Please refer to the discussion of Recommendation #2 from Chapter IX (Internal Controls, SOX, and Auditing) of the Liberty Phase II Report above. Insofar as the Company has seen fit to respectfully reject the referenced recommendation from Chapter IX, the Company must do the same in the case of this Recommendation #3 in Chapter and for the same reasons.

Liberty Recommendation:

4. **See Recommendation #3 from Chapter XIII, External Affairs Organizations of the Phase One report regarding the creation of a senior executive position to head a regulatory affairs department reporting to the FirstEnergy Corp. CEO and combining FE Legal resources now dedicated to state regulatory affairs and technical and liaison persons with state and local agencies now dispersed among a number of FirstEnergy senior executives.**

Not accepted. Please refer to the discussion of Recommendation #2 from Chapter XIII (External Affairs Organizations) in the Company's comment letter to the Liberty Phase I Report. Insofar as the Company has seen fit to accept the referenced recommendation from Chapter XIII of the Liberty Phase I Report with modification, the Company must do the same with respect to this Recommendation #4 in Chapter XXVII of the Liberty Phase II Report, and for the same reasons.

The Company notes that it believes the reference to Recommendation #3 here is really a reference to Recommendation #2 in the Phase I Report.

Chapter XVIII: Physical Security

The Company is pleased that the auditor identified no issues and made no recommendations with respect to the Company's provision of physical security.

Chapter XIX: Records and Information Management

The Company is pleased that Liberty found no significant issues and made no recommendations in regard to records and information management.

Chapter XX: Supply Chain

In this chapter, Liberty reached six conclusions and two recommendations. Liberty's conclusions concerning Supply Chain are largely positive, including that "the central organization that conducts procurement and materials management for the operating companies, including JCP&L, employs effective policies, procedures, approval limits, systems, and practices to control procurement, warehousing, and distribution, promoting competition and economy" (Conclusion No. 2); that "the numbers and values of single and sole source awards were at reasonable levels and performed under the procedures designed to manage their approval" (Conclusion No. 3); and that "consolidation of procurement at the FESC level provides reliable and economical access to materials and goods for JCP&L, while permitting the local utility to exercise effective control over securing what it needs to provide safe, reliable, and cost effective service to New Jersey customers" (Conclusion No. 4). JCP&L is overall pleased with Liberty's assessment of Supply Chain practices and processes. Below are JCP&L's responses to the two Supply Chain recommendations.

Liberty Recommendation:

1. **Report New Jersey diversity spend regularly and develop and execute plans for bringing it to realistically achievable state levels, should it show persistent gaps from overall measures.**

Accepted. The Company is pleased with Liberty's conclusion that "FESC has established and met diversity supplier goals overall, increasing them moderately each year" (Conclusion No. 5). Management performance has exceeded the established targets for diversity spend in every year since 2019, with target percentages increasing each year from 2019 through 2021. Liberty also recognized that management established a development program in 2021 to enhance opportunities for participation in competitions by minority suppliers to increase growth in spend share.

At the outset, in response to Liberty's recommendation, the Company emphasizes that Liberty's recommendation represents an enhancement of current reporting practices for diversity spend. The Company already tracks diversity spend in New Jersey for several relevant categories, including minority-owned, women-owned, veteran-owned and service-disabled-owned businesses. Diversity spend is reported annually to the BPU. All companies regulated by the BPU with annual revenues in excess of $10M must file a "Report on Supplier Diversity" each year. If the company operates in jurisdictions in addition to New Jersey, annual revenue is measured using total company revenues. The "Report on Supplier Diversity" must be filed with the Chairperson of the Statewide Assessment Committee, and the data in the report shall apply to the immediately preceding calendar year. Liberty's recommendation would be a more formalized program for tracking diversity spend, which the Company does not object to and would require only modest changes to current reporting practices. With respect to Liberty's suggestion to develop and execute plans, the Company will work with Board Staff to understand the specific metrics and structure Staff would expect the Company to implement for such suggested plans and reporting. Moreover, the diversity spend tracking and reporting requirements vary among states and federally. For example, in Maryland, the Company tracks similar categories for diversity spend as in New Jersey, but the Company additionally tracks LGBTQ spend. And with respect to federal reporting, the Company tracks all small minority-owned, women-owned, veteran-owned, service-disabled-owned businesses and HUBZone businesses. Additionally, in the federal plan all small business dollars count once in the small business category and can count multiple times in the diverse subcategories. The Company respectfully submits that the ability to streamline tracking diversity spend in New Jersey and align with current practices and other jurisdictions would be preferrable to avoid unnecessary administrative burden in implementation.

Liberty Recommendation:

2. **Assign to the Business Services Groups responsible for the corporate, utility, and transmission sourcing the responsibility for ensuring periodic make/buy review by common service providers.**

Accepted with Modifications. This recommendation follows Liberty's conclusion that "Business Service Groups play useful roles in controlling the costs of common service providers who support JCP&L operations, but FirstEnergy does not employ a structured process for overseeing make/buy decisions of those serving entities" (Conclusion No. 6). While the Company does not object to this recommendation, it proposes modifications to the recommendation for JCP&L to accept and implement this recommendation consistent with its current practices and structure. Liberty's recommendation provides that the recommendation "neither calls for nor requires a major change in activities or resources" and Liberty's expressed concern is that a structured program for make/buy decisions regarding centrally supplied services does not exist. The Company's modifications to this proposal aim to achieve this desired outcome without requiring an overhaul in Company activities or resources, as reflected in current practices. Currently, each independent department performs its own periodic review to assess its own make/buy decisions, with the understanding that individual departments are better equipped and informed to make their own make/buy decisions as opposed to a more centralized approach that may not have the same expertise of the individual departments. Further, a centralized approach with normalization across groups or departments already exists in that Supply Chain is involved in serving as a checkpoint in assessing budgeted funds through the requisition process, in conjunction with Business Services. JCP&L will agree to work with BPU Staff regarding periodic make/buy review specific to JCP&L. In implementing this recommendation with the BPU and BPU Staff, JCP&L suggests developing specific metrics for the periodic make/buy review to apply for key areas or above certain monetary amounts in which this periodic review would be most useful.

Chapter XXI: Surface and Air Fleet Management

In this Chapter, Liberty arrives at six conclusions and three recommendations regarding its overall positive assessment of the Company's Surface and Air Fleet management. The main thrust of Liberty's concerns is the need to update the Company's assessment of the costs and alternatives available for some of the services provided, whether on a centralized or local basis. With respect to JCP&L's surface fleet performance metrics as compared to that of its affiliates, Liberty appears to have disregarded or largely discounted the Company's explanations regarding the geographic, market, or jurisdictional differences that tend to drive JCP&L's costs to be higher and, in some cases, performance to be lower, than that of its affiliates. Notwithstanding these differences, the Company accepts Liberty's recommendations, with certain modifications, as discussed below.

Liberty Recommendation:

1. **Conduct a focused examination of the reasons why JCP&L Fleet Services cost and performance metrics compare unfavorably with those of the other operating companies, accounting for differences among the operating companies.** (*See Conclusion #3)*

Accepted with modification. In its response to ADR-1562, JCP&L attempted to provide a detailed summary discussion regarding differences pertaining to New Jersey that make Fleet

Service performance comparisons difficult or unavailing. There, the Company, among other things, stated that:

> These metrics are, by design, a tool used to measure/monitor performance and improvement on an individual utility operating company basis. While they allow for rough comparisons between operating companies, the metrics are not normalized for the myriad inherent differences in variables affecting performance and, therefore, are not directly comparable among individual utility operating companies. As such, comparisons among the utility operating companies based on these metrics are less meaningful than their use for comparisons within an individual utility operating company of its own performance month-over-month and year-over-year.

See Company's Response to ADR-1562.

Several examples were provided pertaining to cost (such as labor, fuel, and licensing costs), the number type and relative age of the units, service territory differences (urban versus rural, for instance), and labor and maintenance requirements between states. Without having fully addressed the details of JCP&L's response, Liberty not only recommended additional focused analysis but also groundlessly speculated about a level of potential savings of $1 million or more as if to suggest that, notwithstanding the variables it cited, the Company was ignoring easy savings opportunities. The Company disagrees with these conclusions, but acknowledges that given organizational changes since 2017, there is an opportunity for further assessment of JCP&L's fleet management costs and performance, which it thinks would be most valuable after a full year of operating under the current structure. Accordingly, JCP&L accepts the need for a further assessment of its fleet services beginning in the 1st Quarter of 2024. With this modification, JCP&L respectfully requests the Board to modify this recommendation as suggested by JCP&L.

Liberty Recommendation:

2. **Include in the examination reportedly underway the option of reducing or eliminating the current air fleet.** (*See Conclusion #5)*

Accepted. As Liberty acknowledged, JCP&L had begun a COVID delayed study of the Company's air fleet, which it anticipated would be completed in 2022 or early 2023. The Company had an opportunity to add the consideration of further reduction and elimination of the air fleet. However, given the wide-ranging variability actual travel planning and in commercial options to address all or most variables, such analysis does not attempt to qualitatively and quantifiably assess the availability and costs of commercial options as Liberty suggested. With this understanding, the Company respectfully suggests that the Board consider this recommendation as accepted as explained herein, subject to confirming discussions with BPU Staff at the appropriate time.

Liberty Recommendation:

3. **The absence of a structured system for user feedback about vehicle performance, availability, and suitability for intended use misses an opportunity to manage the fleet more effectively. (See Conclusion #6)**

Accepted JCP&L accepts this recommendation and has commenced on a process for end users of Fleet Services to provide information and ideas and is considering the use of a routine survey on a per-use or periodic basis. JCP&L respectfully requests that the Board consider this recommendation as accepted as explained herein, subject to confirming discussions with BPU Staff at the appropriate time.

Chapter XXII: Power Supply and Market Conditions

This Chapter addresses the process by which JCP&L, like the other NJ EDCs, procures electricity supply for basic generation service ("BGS") and the staffing functions associated therewith. It also examines staffing related to FirstEnergy's positions on market issues PJM and the FERC. This Chapter contains a single recommendation:

Liberty Recommendation:

1. **Establish a formal process, supported by clear procedures, that gives JCP&L a forum for addressing its circumstances, issues, concerns, and**

recommendations on Market, PJM, and FERC matters on which FirstEnergy may or will take positions, whether publicly or in formal proceedings on matters in which PJM solicits member input. (See Conclusion #2)

Accepted with modification. FirstEnergy is a multistate utility holding company with regulated utilities that each have obligations to their respective customers, regulators and other stakeholders. FirstEnergy endeavors to balance many differing and, at times, competing interests as it allocates resources and priorities for capital investment, operations, and customer service. When participating in relevant federal regulatory policy proceedings that may have impacts to more than one utility and its customers within the FirstEnergy footprint, FirstEnergy similarly endeavors to strike a balance in its deliberations to determine the positions it will take on matters at hand. FirstEnergy appreciates that, at times, one or more stakeholders may have concerns that FirstEnergy's position does not align with that stakeholder's preferred outcome. However, FirstEnergy will have arrived at that position only after examining the issues closely, and weighing the many different factors that are relevant to the decision.

With respect to PJM matters, FirstEnergy has an established process for gathering stakeholder input, including bimonthly "preparation and debrief" meetings with a large cross-functional group of FE subject matter experts ahead of PJM standing committee and senior standing committee meetings where voting will take place. During these calls, the policy team reviews the upcoming agenda and voting items along with proposed voting positions that are discussed with the subject matter experts who offer input to validate or revise the positions. In addition to these regularly scheduled meetings, additional outreach to subject matter experts occurs on an ad hoc basis to allow for more robust discussion on topics that are impactful to FirstEnergy. Attending these meetings are NJ Rates and Regulatory Affairs and NJ Regulatory Affairs personnel, who are responsible for and focused on public and regulatory policy matters in New

Jersey, and in these roles, are charged to represent and speak on behalf of JCP&L in both internal and external facing settings on such matters. Matters that involve important policy decisions, or that go before FERC are vetted through this process, and then reviewed at the executive level.

To enhance FirstEnergy's understanding of New Jersey's priorities, the Company believes that it would be worthwhile to establish a process whereby FirstEnergy would meet semiannually with designated Staff of the BPU for the purpose of discussing PJM, FERC and other federal or multistate utility regulatory matters that are important to the Company and to the Board. These meetings would be at a time and place of the Board Staff's designation, and FirstEnergy would make available its team members who are engaged at PJM and FERC. These meetings would be an opportunity for candid conversation about issues that are important and timely, and agendas would be developed in advance of the meetings to ensure productive use of the time.

Accordingly, the Company accepts this recommendation as modified by the foregoing explanation.

Chapter XXIII: MGP Remediation

JCP&L is pleased that Liberty found that the Company's MGP Remediation program and staff are of the highest quality. Liberty concluded that "JCP&L has given the MGP Program appropriate visibility and emphasis; [t]he MGP program operates under a very well-qualified staff; Company staff have been assigned and take proper responsibility for project development and execution;" and that "Management has effectively addressed those elements of MGP liability that it can control," among other position conclusions. *Phase II Final Report* at pp. 54-543. This Chapter contains a single recommendation.

Liberty Recommendation:

1. **Consider changing the budget/actual comparisons to match the periods covered by each. (*See Conclusion #9)***

Accepted with modification. JCP&L does not disagree that providing additional comparisons between budgeted MGP costs and actual expenditures may be useful to the Board. However, the long-established timing and procedures for cost recovery through the Remediation Adjustment Clause ("RAC") require JCP&L to use the current format and structure. In addition, JCP&L notes that its annual RAC filings have been proceeding smoothly for many years without issue using the current budget/actual comparisons. Nonetheless, JCP&L agrees to work with Board Staff to determine the best way to implement this recommendation if that is the desired approach.

Chapter XXIV: Non-rate Related Revenues

JCP&L is pleased that the auditor did not identify and issues and made no recommendations in this Chapter of the Final Phase II Report.

Ch. XXV: Recommendations Made in Previous Examinations

The Company is pleased that Liberty made no recommendations with respect to this Chapter of the Final Phase II Report.

CONCLUSION

Throughout the lengthy audit process, the Company has engaged with Liberty and Board Staff in a good faith, cooperative manner. Despite the tensions that can arise during the conduct of this type of regulatory audit, on an overall basis JCP&L appreciates Liberty's efforts and, as discussed in these comments, accepts or accepts with modification the large majority of both the Phase I and Phase II recommendations.

The Company urges the Board to accept all of the proposed modifications to Liberty's recommendations, along with JCP&L's rationale for those recommendations it cannot accept. The Company looks forward to working with Board Staff to implement the results of the audit.

Respectfully submitted,

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c: Service List

PHASE	Chapter	Number of Recommendations	Actual Recommendation	Phase Total	Accepted; Accepted with Modification; Accepted in Part. Base Rate Case Matter, Not Accepted
1	Chap. IV - Asset Mgmt	1	Develop, track and be accountable to annual T&D maintenance budgets based on the spending actually required to comply with inspection and maintenance program requirements.		Accepted
		2	Develop a system-wide programmatic approach to mitigating the negative reliability impacts resulting from the failure of aging equipment.		Accepted with modification
1	Chap. V - Vegetation Mgmt	1	Demonstrate that enhanced Zone 2 vegetation work conducted as part of IIP Reliability Plus was as effective in reducing SAIFI and CAIDI as predicted.		Accepted/Implemented
1	Chap VI - Contractors	1	Develop a standard process to inspect, evaluate, document and manage the quality and quantity of a contractor's performance when measured against the standards, terms and conditions of their contract with JCP&L.		Accepted
		2	Develop a formal contractor performance management process and a system of record to capture performance data and enable comparative analyses of the quality, efficiency and cost effectiveness of competing contractor and company resources, and support data-driven resource allocation decisions.		Accepted
		3	Integrate the analysis of relative execution risks and the potential of reducing risk into JCP&L resource allocation decisions.		Accepted with modification
1	Chap VII - Reliability Programs and Smart Grid	1	Implement formal process to improve field diagnoses of outage causes by troubleshooters and improve accuracy in capturing causes in the outage management system by troubleshooters and DCC personnel.		Accepted
		2	Expedite analyses to validate that sub-transmission improvement projects planned for 2022-2026 to adequately improve SAIFI and CAIDI performance.		Accepted
		3	Systematically address the reduction of outages attributed to aerial cable and open bare wire failures.		Accepted with modification
1	Chap VIII - Cyber Security and System Vulnerability	1	Fill staffing vacancies promptly.		Accepted

1	Chap IX - Resiliency and Restoration		1	Complete the update to the E-Plan and related documentation by year-end 2021, as scheduled.		Accepted/Implemented
			2	Complete the development of the new OVM-like model.		Accepted
			3	Ensure clear, timely and widespread communication of storm event classification		Accepted
			4	Ensure JCP&L resource requests are timely and consistent with Event Level classification declaration.		Accepted/Implemented
			5	Continue to monitor and measure JCP&L's accuracy and success in creating, updating, and communicating ETRs.		Accepted
			6	Continue to develop and improve communications with the public, elected officials and OEM staff based on feedback gathered following storm or outage events.		Accepted/Implemented
			7	Provide in JCP&L Major Event reports for which the Major Event classification was based on sharing of its resources how the unavailability of those resources directly affected its ability to maintain targeted reliability levels in its operating region(s).		Not Accepted
			8	Conduct updates of analyses of the costs and benefits using selective undergrounding at least every two years.		Accept with modification
			9	Develop a pilot project for undergrounding a poorly performing line segment or a small group of them.		Accept with modification
1	Chap X - Customer Service		1	Pursue cost efficiencies and customer experience improvement opportunities, including those offered by FE Forward Customer Service recommendations.		Accepted
			2	Staff functions sufficiently to address backlog and transaction deficits.		Accepted/Implemented
			3	Investigate options to address issues and develop and implement an action plan to address declining Customer Service employee ratings.		Accepted
			4	Dedicate resources to develop a strategy and concerted approach to identifying and pursuing potential service theft.		Accepted with modification
1	Chap XI - Financial Risks & Consequences of Parent & Affiliate Operations		1	Create for FirstEnergy and JCP&L lasting and enforceable ring-fencing measures sufficient for JCP&L to make the utility an "insulated entity" by Standard & Poor's, and to be rated on its own credit characteristics by all three credit rating agencies.		Not Accepted

		2	Give JCP&L full governance and operational control over all of its financing facilities.		Not Accepted
1	Chap XII -DOJ Investigation	1	Follow developments in continuing federal criminal and administrative and other state proceedings.		Accepted
		2	Establish means for precluding the inclusion in JCP&L rates FirstEnergy and JCP&L employee and outside costs associated with state reviews of the implications of conduct related or similar to that encompassed by the DOJ Investigation.		Accepted in part
		3	Provide semi-annual reports and presentations to the BPU staff regarding DOJ Investigation remediation measures.		Accepted with modification
		4	Provide validation of the completeness of management' Vendor Invoice examination or, failing that, require an independent review sufficient to identify and calculate all likely impacts to JCP&L and its customers.		Accepted/Implemented
1	Chap XIII - External Affairs	1	Return to JCP&L's lead officer responsibility for New Jersey external affairs.		Accepted in part
		2	Consolidate responsibility for rate and regulatory affairs under a senior legal executive.		Not Accepted
		3	Conduct a focused study of means for cost effectively improving development program success in JCP&L's serving region.	32	Accepted
2	Chap. I- Introduction				

	Chap. II - Organization & Executive Mgmt		1	Provide to the BPU a full report explaining the purpose, scope, and methods employed in the C-suite review, a full description of and justification for any personnel or position changes made as a result, and a clear and comprehensive description of how they change the nature or level of service, support, or other assistance in the provision of service by the operating companies generally and by JCP&L specifically.		Not Accepted
			2	Provide for JCP&L an organization structure and executive responsibilities necessary for promoting local responsibility and accountability for New Jersey distribution planning, engineering, asset management, operations, and operations support and for regional external affairs.		Accepted in part
			3	Upon the settling of responsibility, process, methods, and other changes associated with initiatives like FE Forward, assess opportunities for position restructuring and consolidation.		Accepted with modification
			4	Provide twice-yearly reports regarding ethics and compliance progress for so long as the BPU requires them.		Accepted with modification
2	Chap. III - Governance		1	Restructure the JCP&L board and expand the scope and depth of its engagement in operations and customer service performance oversight.		Accepted with modification
			2	Expand the operations and customer service metrics and trends regularly reported to and addressed by the JCP&L board of directors and by the FirstEnergy Corp. Safety and Operations Oversight Committee.		Accepted/In Processs
			3	Embark upon a longer range plan to diversify the professional, business, and institutional backgrounds of the FirstEnergy Corp. board directors.		Accepted/Implemented
2	Chap. IV - Finance & Cash Mgmt		1	Adopt for JCP&L ring fencing that includes new, strong “Equity Maintenance” provisions requiring ratemaking capital structure equity level not to fall below that informing the basis for New Jersey rates.		Not Accepted

			2	Provide for JCP&L ring fencing that will produce for its credit ratings on a stand-alone basis, in order to eliminate debt interest cost premiums like those of the past decade.		Not Accepted
			3	Provide improved ring fencing for JCP&L to enhance protection of its money pool positions and access to its new revolving credit facility, and stand prepared to consider a commercial paper program under improved credit ratings.		Accepted in part
2	Chap. V - Planning & Budgeting		1	Continue to develop FirstEnergy strategic and long-range planning development participants and processes.		Accepted/In Processs
			2	Mitigate pressures that starting capital spending targets and a preference for “formula rate” recovery have applied on optimization of JCP&L capital spending.		Not Accepted
			3	Develop realistic budgets for capital costs and O&M expenditures related to storm costs.		Accepted/In Process
			4	Complete The FE Forward Phase 3 work required to support achievement of the capital cost savings, reporting status, actions remaining, and results achieved every six months.		Not Accepted
			5	Reinstitute JCP&L strategic plans and give its board and leadership meaningful roles developing and overseeing performance in executing them.		Accepted with modification
2	Chap. VI - Staffing		1	Examine the reasons underlying outlying JCP&L measures of productivity and resource utilization and identify measures other than those contemplated by FE Forward to improve them where practicable.		Accepted
			2	Re-examine the resource levels dedicated to transmission and large substation planning, design, and operation; change their alignment and number as appropriate; examine any such changes in connection with the recommendations of the FERC audit.		Accepted
			3	Track New Jersey performance in comparison to the other operating companies across a range of measures used in the industry for labor management performance.		Accepted

2	Chap. VII - Compensation and Benefits		1	Determine the reasons for the large gap in performance ratings between corporate service groups versus FE Utilities and Operating Company performance levels and for high compa-ratios for the higher-level employees who participate in the LTIP.		Accepted/Implemented
			2	Treat LTIP costs as indicated by BPU policy regarding incentive compensation awarded strictly based on shareowner-focused factors.		Base Rate Case Matter
			3	Recognize the compensation of the FirstEnergy Vice Chair and Executive Director as shareowner, not customer costs.		Base Rate Case Matter
2	Chap. VIII - Accounting & Property Records		1	Complete the planned, full review of all corporate accounting policies by the end of 2023 and set a schedule calling for periodic, continuing reviews.		Accepted/In Process
			2	Establish a reasonable timetable for elimination of the Account 106 backlog, and implement a process established for preventing backlog recurrence.		Accepted with modification
			3	Make a full accounting of resolution of the issues raised in the FERC audit for the BPU and account for the impacts on current revenue requirements related to ratebase and O&M from the practices eventually changed.		Accepted with modification
2	Chap. IX - Controls, SOX, Auditing & Listing Requirements		1	Adopt a more expansive conception and means of expression for addressing profound failings like those that produced the Deferred Prosecution Agreement for what federal criminal authorities consider wire fraud and that produced a payment of $230 million.		Not Accepted
			2	Move administrative reporting of FirstEnergy's top internal audit officer from the chief legal officer to the CEO.		Not Accepted
			3	Place greater weight on work identified through the risk assessment process in final audit plans.		Accepted/Implemented

			4	End the predisposition to find ways to inhibit the flow of information (protected as required by legitimate needs for confidentiality) to the BPU.		Accepted/Implemented
2	Chap. X - Affiliate Relationships & Cost Allocations		1	Update the CAM to match the factors currently in use and conduct an annual review thereafter to ensure continued applicability.		Accepted/In Process
			2	Update the Service Agreement and Mutual Assistance Agreement to be consistent with the CAM and the annual cost center review process.		Accepted/In Process
			3	Explore what changes must occur to enhance SAP configuration to allow for the production of a monthly summary of transactions from one affiliate to another.		Accepted/Implemented (in part)/In Process (in part)
			4	As part of the revision of the CAM, undertake, a thorough review to determine the most logical and cost causative factors for each cost center.		Accepted/Implemented
			5	Revise allocation factor calculation worksheets to align with other changes in methods or language in the CAM and Service Agreement.		Accepted/In Process
			6	Implement the enhancements committed to in the 2011 Management Audit regarding the identification of triggering events that would require a mid-cycle change to the allocation factors.		Accepted
			7	Create a time reporting policy document that emphasizes the policy of direct charging and the reasons why it is the most appropriate way to charge time when possible and establish a formal, recurring training and communications program.		Accepted/Implemented
			8	Employ in the annual review of allocation factors a sampling selection method that ensures broader coverage of different allocation methods.		Accepted/Implemented

			9	Following a thorough review and modification of the CAM, strengthen the cost center review process to ensure that cost centers use only allocations detailed in the CAM.		Accepted/In Process
			10	There should be a review of the development and application of cost allocation factors and the resultant changes to JCP&L by someone whose focus is JCP&L costs and protection of New Jersey customers.		Accepted with modification
			11	Consider holding the depreciation and carrying charges associated with the portion of FirstEnergy SC assets previously charged to FES and FENOC at the parent company, rather than increasing the allocation to the regulated entities.		Base Rate Case Matter
			12	Capture and hold all remediation costs and current management audit costs related to the DOJ, SEC, FERC, and internal investigations at the parent company.		Base Rate Case Matter
			13	Defer consideration of the need for a detailed, comprehensive examination of allocations pending the results of current internally initiated examinations and the ultimate transparency FirstEnergy provides about them and previous ones.		Accepted
	Chap. XI- Cost Deferrals			No recommendations regarding cost deferrals.		
2	Chap. XII - EDECA		1	Include in the next version of the Compliance Plan information stating where oversight, responsibility, and enforcement for each section of the Standards lie.		Accepted
			2	Make additional elements of the Standards subject to Internal Audit review.		Accepted
			3	Institute measures to secure regular, timely filing of EDECA reports and undertake a review designed to determine the root causes of failure to timely file reports, and to identify any gaps in compliance measures or rigor in executing them.		Accepted

			4	Provide to the BPU a full report of the findings and conclusions made in connection with all reviews and evaluations (regardless of the specific jurisdiction or operating company involved) of Suvon structural separation, common work assignments, and sharing of utility information, and address their implications for historical compliance with Section 14:4-3.3(o) and any other applicable standards.		Accepted in Part
			5	Update the next version of the Compliance Plan to include discussion of the potential for FERC rules records conformity as included in 14:4-3.3(s) of the Standards.		Accepted
			6	Ensure the archiving of all supplier lists to permit future reviews for compliance with Section 14:4-3.4(c) of the Standards.		Accepted
			7	Change the Plan to align the reference to Section 14:4-3.4(e) to where the Plan provides a summation of and guidance regarding this provision.		Accepted
			8	Update the next version of the Plan to make clear management's understanding of the PUHC requirements included in Sections 14:4-3.3(h), (i), (j), and (k) of the Standards.		Accepted with modification
			9	Update the next version of the Compliance Plan to include acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.4(d) of the Standards.		Accepted with modification
			10	Deep-seated, corporate cultural barriers have prevented conformity to levels of transparency typical of other holding company/utility cases we have witnessed - - our interaction with FirstEnergy throughout this audit shows that major efforts remain to eliminate those barriers.		Accepted
			11	Update the next version of the Compliance Plan to acknowledge management's understanding of the PUHC requirements included in Sections 14:4-3.5(f) regarding joint product and joint services offerings.		Accepted

			12	Update the next version of the Compliance Plan to include direct discussion of the Section 14:4-3.5(m) of the Standards.		Accepted
			13	Create a plan to log and track joint JCP&L and RCBS attendance at the types of events described in Section 14:4-3.5(o) of the Standards.		Accepted with modification
			14	Increase diligence in ensuring full conformity with Section 14:4-3.5(q) of the Standards.		Accepted/Implemented
			15	Institute measures for ensuring the timely public posting of employee transfers covered by Section 14:4-3.5(r) of the Standards.		Accepted/Implemented
			16	Treat all employees working on or for Suvon, except those providing Standards-permitted shared services functions, as Suvon employees - - either organizationally or for Standards tracking and compliance purposes; apply similar treatment to any future RBCS which FirstEnergy may have.		Accepted with modification
2	Chap. XIII - HR Organization		1	Give local leadership continuing direction of the HR Partner resources assigned to supporting JCP&L operations.		Accepted in part
			2	Develop commensurate with the transition to new HRIS capabilities a much more comprehensive set of performance measures for gauging HR performance and attainment of workforce characteristics and expectations.		Accepted
	Chap. XIV- Corporate Services			No recommendations in the corporate services (real estate and adminstrative services) areas		
2	Chap. XV- Information Technology		1	Provide progress reporting to the BPU on IT-related plans made and progress achieved resulting from FE Forward or other programs, initiatives, or activities affecting IT plans, forecasts, and budgets.		Accepted with modification

2	Chap. XVI - Insurance/Risk Mgmt		1	Adopt and continuously employ a structured approach to determining appetite for risk and use it to guide the establishment of objectives, the identification of and selection from among strategies to meet those objectives, and monitor performance and the external business environment to identify the need for strategy revision.		Accepted
			2	Restructure the basis for allocating D&O insurance costs to JCP&L to avoid charging it amounts arising from risks to which it does not contribute.		Base Rate Case Matter
2	Chap. XVII - Legal Services		1	Establish structured and regular means for engaging JCP&L, Legal, and Rates and Regulatory in reviews of prior performance, status and needs for current matters, and forward-looking needs and resources.		Accepted
			2	Provide for system notation reflecting an in-house counsel opinion concluding that no conflict exists between the interests of JCP&L and any other FirstEnergy entity with whom JCP&L has common legal representation in any civil or regulatory proceeding.		Accepted
			3	See Recommendation #2 from the *Internal Controls, SOX, and Auditing* Chapter of this Phase Two report regarding the change in administrative reporting of Internal Auditing from the Chief Legal Officer to the FirstEnergy Corp. CEO.		Not Accepted
			4	See Recommendation #3 from Chapter XIII, *External Affairs Organization* s of the Phase One report regarding the creation of a senior executive position to head a regulatory affairs department reporting to the FirstEnergy Corp. CEO and combining FE Legal resources now dedicated to state regulatory affairs and technical and liaison persons with state and local agencies now dispersed among a number of FirstEnergy senior executives.		Not Acccepted
	Chap. XVIII- Physical Security			No recommendations in the area of physical security.		

	Chap. XIX- Records and Information Management		No recommendations regarding records and information management.		
2	Chap. XX - Supply Chain	1	Provide for clear New Jersey-specific diversity spend targets, report against them regularly and in a documented manner, and develop and execute plans for bringing it to realistically achievable state levels, should it show persistent gaps from overall measures.		Accepted
		2	Assign to the Business Service Groups responsible for the corporate, utility, and transmission sourcing the responsibility for ensuring periodic make/buy reviews by common service providers.		Accepted with modification
2	Chap. XXI - Surface & Air Fleet Mgmt	1	Conduct a focused examination of the reasons why JCP&L Fleet Services cost and performance metrics compare unfavorably with those of the other operating companies, accounting for differences among the operating companies.		Accepted with modification
.		2	Include in the examination reportedly underway the option of reducing or eliminating the current air fleet.		Accepted with modification
		3	The absence of a structured system for user feedback about vehicle performance, availability, and suitability for intended use misses an opportunity to manage the fleet more effectively.		Accepted
2	Chap. XXII - Power Supply & Market Conditions	1	Establish a formal process, supported by clear procedures, that gives JCP&L a forum for addressing its circumstances, issues, concerns, and recommendations on Market, PJM, and FERC matters on which FirstEnergy may or will take positions, whether publicly or in formal proceedings on matters in which PJM solicits member input.		Accepted with modification
2	Chap. XXIII - MGP Remediation	1	Consider changing the budget/actual comparisons to match the periods covered by each.	73	Accepted with modification
	Chap. XXIV- Non-Rate-Related Revenues		No recommendations regarding non-related revenues.		
	Chap. XXV- Recommendations Made in Previous Examinations		No recommendations addressing implementation of recommendations from the 2011 and 2016 audits.		

Attachment A

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