

BPU Directs JCP&L to File Rate Petition

by Dennis C. Linken on September 28, 2012

In what is believed to be the first time ever, the New Jersey Board of Public Utilities has issued an Order directing a public utility to file a base rate case petition so that the BPU can determine whether the company's rates for service are just and reasonable.

The proceeding was initiated by the Division of Rate Counsel, which asserted that Jersey Central Power & Light Co. is earning an unreasonable rate of return. More than six years have elapsed since the Company's last base rate case, and Rate Counsel contended that a new rate proceeding would help ensure that necessary capital investments are made.

Arguing that Rate Counsel had failed to demonstrate that the Company's rates were unjust and unreasonable, JCP&L asserted that Rate Counsel's analysis was flawed and that it inappropriately focused on the Company's overall rate of return rather than its achieved return on equity, which the Company maintained is the primary factor considered in base rate cases.

Rate Counsel utilized data from JCP&L's filings with the Federal Energy Regulatory Commission, concluding that the Company has exceeded its allowed rate of return of 8.5%, as established in JCP&L's last base rate case. It further posited that JCP&L's service reliability problems necessitated a base rate case review of the Company's capital spending and investments.

JCP&L argued that Rate counsel failed to make appropriate adjustments and that the Board should examine data based upon the Company's 2012 budget, adjusted for a revised sales forecast and for known, actual results through March 31, 2012, including weather-adjusted revenues and *pro forma* and post-test year adjustments. Utilizing this approach, JCP&L stated that its return on equity for the 12-month period ended June 30, 2011, was 10.1%, a rate within a "zone of reasonableness."

Moreover, the Company contended that system reliability had improved since its last base rate case and that its Annual System Performance Reports have shown a positive trend over the last 10 years.

AARP also participated in the case and joined Rate counsel in arguing that JCP&L should be forced to file a base rate case.

The BPU noted its overarching mission to "ensure that regulated public utilities provide safe, adequate and proper service to the citizens of New Jersey." Issues involving rates, determined the Board, "must balance the interests of utility investors and ratepayers in determining what is 'just and reasonable.'" The Board concluded that "[a] utility's rate of return must fall 'within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public.'" It found that directing JCP&L to

file a base rate case would be “the most efficacious method to address a number of regulatory concerns.”

While the Board determined that, based upon the information before it, it could not properly evaluate Rate counsel’s claims of overearning, it also concluded that a base rate case would clarify the zone of reasonableness appropriate for JCP&L under current economic conditions.

Similarly, while recognizing JCP&L’s previous commitment to implement improvements in service and facilities, the BPU also decided that questions of system performance and investment would be best investigated in the context of a base rate case.

JCP&L’s filing is due by November 1, 2012.

For more information about this proceeding, please see Scarinci Hollenbeck’s Legal Update on the topic or contact me, Dennis Linken.