July 22, 2003

By Hand Delivery
Honorable Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07101

RE: **I/M/O the Petition of Jersey Central Power and Light Company For Approval of an Increase in Base Rates, Deferred Balance and 2002 CED Filing**
BPU Docket Nos.: ER02080506, ER02080507, ER02070417
OAL Docket Nos.: PUC 07894-02, 07984-02, and 07983-02

Dear Secretary Izzo:

Kindly accept, in lieu of a more formal brief, an original and ten copies of this letter reply exceptions on behalf of the Division of the Ratepayer Advocate ("Ratepayer Advocate") in the above captioned matter. We are enclosing one extra copy, please date stamp the extra copy as "filed" and return it to our messenger.

In the Ratepayer Advocate's Exceptions to the Initial Decision, exceptions to the ALJ's findings and conclusions were discussed at length. In this Reply to Exceptions, the Ratepayer Advocate will only address those issues raised by the Company in its filed Exceptions.

I. INTRODUCTION

The Company recognizes that "the lack of unanimity" is "sufficient to defeat the proposal's status as a 'settlement' . . . ." and yet continues to refer to it as such. Petitioner's Comments to the Initial Decision at p. 6, quoting *I/M/O Public Service* 304 *N.J. Super*. 247, 269 (App. Div.) certif. denied 152 *N.J.* 12 (1997). The Ratepayer Advocate more properly referred to this document as a "Joint Position" in our Exceptions to the Initial Decision and will continue to do so in these Reply Exceptions. In the Ratepayer Advocate's Exceptions to the Initial Decision, exceptions to the Joint Position were discussed at length. In this Reply to Exceptions, the Ratepayer Advocate will focus on those issues raised by the Company in its filed Exceptions. None of the other parties to the Joint Petition filed Exceptions in support of the Joint Position.

II. STANDARD OF REVIEW

The Company suggests that there are two factors the Board should consider when reviewing a "stipulation," the nature of the negotiation process and the parties executing the stipulation. Unfortunately, by their very nature, negotiations are confidential, there is nothing in this record to help the

Board review the "nature of the negotiation process." The Board has only the self serving, unsubstantiated description offered by the Company of "intense, good-faith, arms-length negotiations." Petitioner's Comments at 7.

On the other hand, the Board can consider the parties executing the Joint Position and their positions taken during these proceedings because there is record evidence to show the degree of participation for the various parties, both the signers and the non-signers. Despite the Company's facile statement to the contrary, the "nature of the signatory Parties and their level of involvement in these proceedings" do not compel Board approval of the Joint Position. Indeed, quite the opposite. The record evidence in this proceeding overwhelmingly shows that the Intervenors[1] focused almost exclusively on the one narrow issue driving their limited participation in this proceeding. An issue by issue review of the record evidence shows that other than the Company, it was only Board Staff and the Ratepayer Advocate that actively participated in all of the many issues that were a part of this consolidated proceeding and that were "resolved" in a Joint Proposal. For the Company to say "all but two" of the parties have in fact executed the "Settlement" is ignoring this crucial fact.

The following is a summary of the litigated positions and the extent of the participation taken by the Intervenors who signed the Joint Position. As highlighted below, the Intervenors' participation in these consolidated proceedings was narrow in scope, focusing on specific issues unique to each

[1] For ease of reference, the non-Company signatories to the Joint Position will be referred to as the Intervenors. Specifically, the Intervenors are Gerdau Ameristeel Sayreville, Inc. ("Co-Steel"); New Jersey Transit Corporation ("NJT"); The United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA"); the New Jersey Commercial Users ("NJCU"); and the Independent Energy Producers of New Jersey ("IEPNJ").

individual Intervenor. As a thorough review of the record will indicate, a "well balanced" stipulation is impossible without the participation of Board Staff and the Ratepayer Advocate.

Co-Steel

The Company points specifically to Co-Steel who "played an active role in the proceedings; its counsel and other representatives appeared at hearings during the case; sponsoring corporate and expert witnesses who were subject to cross examination, and provided extensive briefing." *Petitioner's Comments to the Initial Decision*, p.7.

This statement is a slight exaggeration on the part of the Company. In fact, Co-Steel filed testimony of two witnesses: Darren McDonald, the Corporate Energy Manager for Co-Steel who testified regarding Co-Steel's New Jersey operations and was not subject to cross examination (*CS-1*) and Howard S. Gorman who testified regarding "the tariff proposed by JCP&L in this proceeding and . . . . certain changes to the proposed tariff." *CS-2, p. 1.*

Co-Steel appeared at four out of fourteen evidentiary hearings and cross examined three witnesses, the Company's cost of service witness, Mark Hayden, the rate design witness for NJT, and the Ratepayer Advocate's rate design witness Dr. John Stutz.

Further, Co-Steel in its "extensive" Initial Brief, stated that Co-Steel did not present evidence or take a position in this proceeding and accordingly would not be addressing the following issues: Cost of Capital, Revenue Requirement, Depreciation, Service Reliability, BGS Prudence Review, Demand Side Management, Consumer Education, Remediation Adjustment Clause, Other SBC Deferred Balances, or Appropriate Interim Or Transitional Deferral Recovery. CS-IB at 6-7.

The Company's representation notwithstanding, Co-Steel's participation in this case was not indicative of an interested party "fully-engaged throughout these proceedings." Co-Steel represented the interests of one of the two JCP&L customers taking electric service at 230kV. While this narrow focus

on cost of service and rate design may have adequately served Co-Steel's interests, residential and small commercial interests were not represented by Co-Steel nor any other Intervenor.

NJT

NJT represented the interests of the other of the Company's two customers who take GT service at 230kV. NJT filed the Direct Testimony of Theodore S. Lee, "to present two proposals by NJ TRANSIT regarding the proposed Jersey Central Power & Light Company ("JCP&L") tariff." First NJT requested that the hours from 5:00 p.m. through 8:00 p.m. weekdays once again be considered an off-peak period for the purpose of determining demand for Commuter Rail Service and NJT proposed specific tariff language regarding load shifts at the Summit substation. *NJT-1* p. 1. NJT appeared only at the cost of service/ rate design hearing on March 17, 2003. NJT filed a letter brief in this case only addressing the "two issues that NJ TRANSIT asks the Court to address." Somehow, the Company's representation that most of the parties who signed the Joint Position were "fully engaged throughout these proceedings" does not seem to fit NJT either. Again, NJT's narrow interests were fully represented, leaving other customer classes without representation at this negotiation.

DOD/FEA

The DOD/FEA witness Kenneth Kincel testified regarding the Company's return on equity and capital structure but admitted that "the heart of [his] testimony" is rate design. T:74:L9-10 (3/18/03). Mr. Kincel recommended that "delivery and overall rates to GT customers be reduced . . . . " DOD-1, p. 3. As discussed in the Ratepayer Advocate's Exceptions to the Initial Decision, the Joint Position

gave to the DOD/FEA the requested special treatment based on its "unique status." Exceptions to the Initial Decision, p.66. The DOD/FEA only appeared at the evidentiary hearings on cost of service/rate design and extensively briefed only this issue. Presumably then, DOD/FEA also cannot be one of those parties described by the Company as "fully engaged throughout these proceedings."

NJCU

NJCU represents the interests of the New Jersey Food Council, a trade association for the food distribution industry representing about 1200 supermarkets and convenience stores throughout New Jersey, and the New Jersey Retail Merchants Association a trade association representing the interests of about 2000 retail businesses in the State. NJCU filed the testimony of Dr. Dennis Goins who recommended an adjustment to the Company's proposed rates that would "mitigate the unreasonable intraclass rate impacts of higher load factor GS and GST customers . . . ." NJCU2 at 5-6. NJCU did not participate in, either through testimony, cross examination, or briefing, any other aspect of these consolidated hearings. Certainly this is not indicative of "fully-engaged throughout these proceedings."

IEPNJ

IEPNJ is an organization representing New Jersey's NUG community. *Petitioners Comments to the Initial Decision* at p. 8. IEPNJ propounded four discovery questions in these consolidated proceedings and responded to questions from the Company. With no filed testimony, no appearances at hearings and with no briefs, Initial or Reply, IEPNJ cannot be even remotely described as "fully engaged throughout the proceedings."

As the above summary clearly illustrates, the Intervenors represented their own narrow interests focusing primarily on rate design issues. Issues regarding the level of Deferred Balance, estimated to be approximately $618 million, the revenue requirement, depreciation, and service reliability in the face of prolonged blackouts and poor service were not addressed by the Intervenors. There are approximately 925,000 residential customers not represented in the Joint Position. The Board should not consider such a poorly balanced document that fails to take into consideration major customer classes such as residential and small commercial as a well balanced document worthy of consideration.

POINT I

DELIVERY REVENUE REQUIREMENTS

A. Rate Base

The Joint Position gives to the Company a rate base of $2.017 billion, only $37 million less than the Company's litigated position. *Petitioners Comments to the Initial Decision*, p. 10. The Ratepayer Advocate filed the Direct and Surrebuttal Testimony of David Peterson regarding adjustments to the Company's proposed rate base that totaled $102,596,000 for an adjusted rate base of $1,914,875,000. *R-38,* Sch 2, p.1 of 3, *R-39.* Of the Intervenors, only Mr. Kincel for the Department of Defense mentioned the Company's rate base. In his schedule KLK-6, attached to his Direct Testimony, Mr. Kincel specifies a rate base of $2,097,958. How he arrived at that number is not stated. Evidentiary hearings on rate base issues were held on February 25 and February 26, 2003. Only the Company, Board Staff and the Ratepayer Advocate appeared at these hearings, cross examined witnesses and addressed rate base issues in Initial and Reply briefs. *See*, SIB pp 35-48, RAIB, Vol. 1, pp 26-41. RARB pp 11-20. Without the participation of Board Staff and the Ratepayer Advocate the issue of rate base could not be throughly explored with relevant evidence introduced into the record for the Board's final determination.

B. Capital Structure and Cost of Capital

The Settlement provides for a return on equity of 10.6% with a stipulated common equity of 54%. Again, only the Ratepayer Advocate and the DOD presented Direct Testimony on this issue. None of the Intervenors appeared at the Capital Structure / Return on Equity evidentiary hearings on

March 3, 2003. And only the Company, Board Staff, the Ratepayer Advocate and the DOD/FEA briefed this issue. The other Intervenors "took no position." CSIB at 6. In fact, the Company's "lower than average" proposed return of 10.6% is excessive and contrary to current Board policy. See, RAIB, Vol 1, pp 6-24; SIB, pp 14-34; RARP, pp. 1-10 RA Exceptions, Vol 1, pp 5-25.

C. Operating Income

The parties to the Joint Position agreed that the Company's delivery rates should be reduced by $80 million. The only party that offered testimony regarding the Company's adjustments to operating income was the Ratepayer Advocate[2]. *R-38* (Direct Testimony and Schedules of David Peterson), *R-39* (Surrebuttal Testimony of David Peterson). Only the Ratepayer Advocate and Board Staff appeared at the evidentiary hearings and cross examined Company witnesses on the various operating income issues. None of the Intervenors appeared at the Revenue Requirement hearings and none of the Intervenors briefed operating income issues. There is no indication how the Parties to the Joint Position arrived at the $80 million reduction other than that the Company should receive over $70 million in "restructuring transition costs." As discussed by the Ratepayer Advocate in testimony, briefs and Exceptions, the inclusion of this amount into rates is a violation of EDECA and general rate making principles. It is unclear what other improper adjustments will now be included in the Company's rates if

[2] DOD/FEA witness proposed a $34.1 million reduction in revenue requirements but as admitted in the DOD/FEA Initial Brief, "Mr. Kincel's estimated surplus reflects only the impact on revenue requirements from his recommended overall return on the rate base of 9.16%. In contrast, Mr. Peterson provided a detailed critique of all the financial adjustments proposed by the Company . . . ." DOD/FEA Initial Brief at p. 14.

this Joint Position is adopted by the Board.

D. Depreciation Rates

The Parties to the Joint Position agree that the Company's existing depreciation rates, removal factors and annual update mechanism "should continue to be applied until changed prospectively by the Board following a full fledged depreciation study and review." Only the Company and the Ratepayer Advocate filed testimony regarding this issue, and only the Company, Board Staff and the Ratepayer Advocate cross examined witnesses on this issue. None of the Intervenors found the depreciation issue of enough interest to brief. Clearly, the only depreciation position at the settlement table was the Company's.

POINT II

MTC/BGS DEFERRED BALANCE RECOVERY

A. Prudence Review of MTC/BGS Deferred Balance

The Intervenors to the Joint Position conclude, without credible evidence, that the Company's entire MTC/BGS Deferred Balance has been reasonably and prudently incurred. And yet during the hearings the Intervenors did not address the MTC/BGS issues. Only the Company and the Ratepayer Advocate filed comprehensive Direct Testimony on this issue. *R-59* (Direct Testimony of Paul Chernick), *R-60* (Surrebuttal Testimony of Paul Chernick). Only the Ratepayer Advocate and Board Staff appeared to cross examine the Company's witnesses. Only the Company, the Ratepayer Advocate and Board Staff briefed this issue. And only the Ratepayer Advocate and Board Staff did not participate in these "settlement" discussions. Once again it appears that the Company's was the only voice at the negotiation table that had any opinion on the MTC/BGS issue during these proceedings.

Further, as it has done throughout these proceedings, the Company makes grandiose statements without providing a cite to the record in support of that statement. In the Comments to the Initial Decision, the Company declares "[t]his conclusion is fully supported by the overwhelming weight of the evidence in the record." *Petitioner's Comments*, p. 13. In fact, there is no support in this record for the conclusion that the Company's entire Deferred Balance has been reasonably and prudently incurred. As discussed at length in the testimony of Ratepayer Advocate witness Paul Chernick, (*R-59* and *R-60*); in the Initial Brief (RAIB vol 2, pp, 1- 46) and the Reply Brief, (RARB pp. 63-80) the Company's procurement strategy can best be characterized as haphazard. The Company simply failed to carry its

burden of proof, providing inadequate documentation indicating shifting procurement strategies applied in a flawed manner.

Moreover, the Ratepayer Advocate's testimony was not, as mischaracterized by the Company, based upon the "completely discredited notion" that the difference in price between FirstEnergy's New Jersey and Pennsylvania affiliates "should somehow lead to a disallowance of the differential cost." First, the notion that the New Jersey Company should have performed as well as the Pennsylvania affiliate was not "completely discredited." In fact, the Company's inability to adequately explain the difference in performance was pointed out in the Ratepayer Advocate's Initial and Reply Briefs. RAIB vol. 2, pp 23-26, RARB p. 67. Further, the performance of the Pennsylvania affiliate was offered into evidence as a standard against which the performance of the New Jersey Company could be measured. The Company rejects being held to this standard as it similarly rejects the Board Staff recommended benchmark of PJM spot prices. The Company offers the Board no standard against which its performance should be measured. It only argues that the money was spent and therefore the Company is entitled to reimbursement from New Jersey ratepayers.

B Recovery/Securitization and Related Carrying Costs

This issue was recalled by the Board and, as noted by the Ratepayer Advocate in our Exceptions to the Initial Decision, the Company's proposal appearing in the Joint Position has no support in the record.

POINT III

SBC COMPONENTS

The parties to the Joint Position agree that all the Company's proposals for collection of SBC components, for full recovery of CEP costs, and guaranteed recovery of all so called lost revenues are reasonable. The Company in the Comments in Support of the Initial Decision states that the "proposed SBC changes were not materially opposed by any party." This statement is incorrect and misleading. The Ratepayer Advocate, a party to this proceeding, has certainly objected to the recovery of CEP costs that have not been shown to be reasonable and prudently incurred. RAIB Vol. 2, pp. 47-53, RARB pp. 81-82, RA Exceptions, Vol 2 p. 28-29. Moreover, as explained in the Ratepayer Advocate's Exceptions, the provision which improperly guarantees the Company full recovery of "lost revenues" should be rejected as a violation of the Board Order governing the utilities claim for "lost revenues." RA Exceptions, p.18-27; See also, RAIB at Vol. 1, pp. 45-52; RARB pp. 22-24.

POINT IV

COST OF SERVICE/RATE DESIGN

The Intervenors agree that all the Company's proposals with respect to rate design are reasonable and, with some modifications, should be implemented. As addressed in the Ratepayer Advocate's Exceptions, and as evidenced above by the demonstrated lack of interest in other issues, all the non-Company parties to this Joint Position were focused almost exclusively on the issue of cost of service/rate design. The Company, in the Comments in Support of the Initial Decision, argues that the

Board must consider the representative nature of the parties to the Joint Decision, the fact that they were knowledgeable and well informed, and their level of involvement in these proceedings. The Ratepayer Advocate in our Exceptions to the Initial Decision focused on how the litigated positions of the Company and the various Intervenors translated almost directly, into the "Joint Position," offered to the Board as a "reasoned compromised." The Joint Position is not a "reasoned compromise." Rather, each Party agreed to minimize its own share of the expenses associated with delivery service to the detriment of the unrepresented Parties. While this may be understandable, it is not a reasonable resolution of all the issues in this consolidated proceeding.

POINT V

OTHER TARIFF CHANGES AND TARIFF REVISIONS

The parties to the Joint Position "approve as reasonable the cost-based fee increases proposed by the Company." These fee increases translate into a more than 50% increase to the customers subject to these charges, overwhelmingly residential customers. Not surprisingly, not one of the parties to the Joint Position represented the interests of the residential customer. Perhaps that is why the Court in *Public Service* stressed the importance of the participation of all active parties in a settlement negotiation. *I/M/O Public Service* 304 *NJ Super*. at 270.

POINT IV

SERVICE RELIABILITY

The parties to the Joint Position "have agreed that all issues relating to JCP&L's service reliability and performance standards, . . . , should properly be dealt with in the context of the Board's separate generic and other rulemaking proceedings . . . ."

The recent outages in Seaside Heights and the re-appearance of stray voltage problems make it almost impossible for JCP&L to further delay addressing this issue by waiting for a generic proceeding. Immediate action is necessary and this proceeding is the appropriate venue in which to address reliability issues specific to JCP&L. The problems of JCP&L are unique within this state and must be directly addressed by the Board. The Ratepayer Advocate once again, as it has throughout these proceedings, urges the Board to set reliability and customer service standards for JCP&L and to impose financial penalties against the Company when these standards are not met.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Joint Position is not a fair and reasonable resolution for all JCP&L's customers and should not be approved by the Board. The Ratepayer Advocate and Board Staff, the only two parties who fully participated in all aspects of these consolidated proceedings were not involved in these "negotiations" leaving most of the Company's ratepayers unrepresented.

The Joint Position arrived at a result that is excessive and unfair to the vast majority of the Company's ratepayers. As discussed more fully in the Ratepayer Advocate's Initial and Reply Briefs,

and in the Exceptions to the Initial Decision, the agreed upon result is not supported by the record and should be summarily rejected by the Board. The Company has placed the interest of shareholders and a few large energy users over the interest of other New Jersey consumers. The New Jersey Board must not do the same.

For all the foregoing reasons, as well as those set forth in the testimony of the Ratepayer Advocate's witnesses, the Ratepayer Advocate respectfully requests that the Board reject the Joint Position and adopt the recommendations of the Ratepayer Advocate in this matter.

Respectfully submitted,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: _____
Diane Schulze, Esq.
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c: Jeanne M. Fox, President *via hand delivery*
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