



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC)
GENERATION SERVICE ("BGS") PURSUANT TO) DECISION AND ORDER
THE ELECTRIC DISCOUNT AND ENERGY)
COMPETITION ACT—DETERMINATION ON)
CREDITWORTHINESS REQUIREMENTS FOR)
JERSEY CENTRAL POWER & LIGHT COMPANY) DOCKET NO. EO10020125

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BY THE BOARD:

This Order addresses the appropriate measures to be taken to protect the integrity of the Board-authorized auction process for the procurement of Basic Generation Service ("BGS"), as a result of the downgrading of Jersey Central Power & Light Company's ("JCP&L" or "Company") parent holding company, FirstEnergy Corp ("FirstEnergy") by Standard & Poor's Ratings Services ("S&P").

BACKGROUND

On February 17, 2010, JCP&L notified the New Jersey Board of Public Utilities ("Board") of a credit rating downgrade of FirstEnergy's senior unsecured debt to below investment grade, and offered a mitigation plan for the Board's consideration. The downgrade triggered a requirement in an Order issued by the Board on December 4, 2002 in I/M/O the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., Docket No. EX01110754 ("2002 Order") that the affected utility must notify the Board of any such downgrade and supply a plan to mitigate or remove the threat of the downgrade within three business days of the issuance of the report.¹ Further, the 2002 Order requires that the Board hold a public hearing on the mitigation plan within 10 business days of its receipt of the filing, and issue an Order on the matter within 30 days.

¹ While JCP&L submitted its notice and mitigation plan under the old docket number, a new docket number was issued for this review in the interests of clarity.

To meet the time frames set by the 2002 Order, public notice of a hearing to be held on March 1, 2010 was sent by electronic mail on February 19, 2010 to parties in JCP&L's BGS proceedings and was posted on the Board's website. The 2002 Order also required that parties who wished to be heard at the public hearing notify the Board three business days prior to it, and also submit comments by that date.

PROCEDURAL HISTORY

As previously stated, by letter dated February 17, 2010, JCP&L notified the Board that on February 11, 2010, S&P had lowered its corporate credit rating on JCP&L's parent holding company FirstEnergy from BBB to BBB-, and its senior unsecured credit rating on First Energy from BBB- to BB+.

Under the terms of the 2002 Order, a public hearing must be held to review the mitigation plan proposed by JCP&L which was attached to the February 17 letter, and consider the available options.

Specifically, the 2002 Order states:

If one of the nationally recognized statistical rating organizations (Fitch, S&P, or Moody's) issues a report indicating a prospect of downgrading a rating of an EDC² or its parent holding company below investment grade, the EDC shall, within 3 business days, file with the Board a plan to mitigate or remove the threat of such downgrade. Included therein should be an assessment of its present and future sources of liquidity necessary to assure continued payments for the BGS supply for its customers. The Board, within 10 days after such filing, shall hold a public hearing to review the plan and consider the available options, including assurances to the BGS suppliers of the affected EDC that their payments will continue. The affected suppliers may present their recommendation to the Board at this time by filing their positions no later than 3 business days prior to such hearing.

No later than 30 days after the public issuance of the negative report of the rating agency, the Board shall issue an order, which shall include assurances, in such form as shall be determined by the Board, to the suppliers of BGS to the affected EDC that their payments will continue in a prompt and timely fashion.

This procedure was triggered once before when S&P lowered FirstEnergy's senior unsecured credit rating from BBB- to BB+ on December 23, 2003. As in the current situation, only the rating of senior unsecured debt fell to "speculative grade" while FirstEnergy's S&P corporate credit rating remained investment grade at BBB-. At that time, JCP&L filed a mitigation plan on December 19, 2003, and affected BGS suppliers were given an opportunity to review the plan and submit recommendations.

² Electric distribution company.

In its January 30, 2004 Order³ ("2004 Order"), the Board found that: (1) JCP&L continued to be of investment grade and that remedial steps proposed by BGS suppliers could be costly and could impose additional burdens on JCP&L and its ratepayers, (2) there was no immediate need for JCP&L to modify payment schedules, post security or take other remedial actions proposed by BGS suppliers, and (3) JCP&L should take certain preliminary steps immediately and other measures should be implemented without further Board Order in the event of a downgrade of JCP&L to speculative grade. The Board ordered JCP&L to automatically begin twice-a-month payments to BGS suppliers in the event of a JCP&L credit downgrade below investment grade, and directed JCP&L to "take preliminary steps to enable it to expeditiously put into place a trust/escrow structure...that would only be activated upon further Board Order in the event that JCP&L's corporate credit rating from any major rating agency fell below investment grade." JCP&L drafted such a trust agreement and submitted it to the Board on March 31, 2004. No credit downgrade event has ever occurred to necessitate use of the trust mechanism.

On February 24, 2010, the Board Secretary received comments on JCP&L's proposed mitigation plan from the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"). The comments were circulated to the electronic service list. No other comments or requests to speak at the public hearing were received. On March 1, 2010, Commissioner Asselta chaired a public hearing at the Board's Newark Office. JCP&L gave a presentation on its proposed mitigation plan and responded to questions by Board Staff and Commissioner Asselta. No other comments were offered at the hearings.

At the public hearing, Commissioner Asselta notified those in attendance that the Board would consider the JCP&L mitigation plan at its next agenda meeting which had been changed from March 3, 2010 to March 17, 2010. Accordingly, Commissioner Asselta extended the 30 day period for Board review set in the 2002 Order to allow review at the rescheduled meeting. No one in attendance objected to that extension.

POSITIONS OF THE PARTIES

JCP&L

In its notice of downgrade letter and mitigation plan submitted on February 17, 2010, JCP&L stated that:

"...both Moody's Investors Service and Fitch Ratings took action to affirm FirstEnergy's corporate and senior unsecured credit ratings, all of which, therefore, remain investment grade. In addition, JCP&L's corporate and senior unsecured credit ratings from all three agencies remain investment grade."
[Mitigation Plan p. 2.]

In its mitigation plan, JCP&L provided its assessment of its present and future sources of liquidity, and asserts that this plan "demonstrates that JCP&L has ample resources available to it to assure continued payments for the BGS supply for its customers." JCP&L argues that no additional Board action is required.

³ I/M/O the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, et seq., I/M/O the Board's Determination on Increased Creditworthiness for Jersey Central Power and Light Company, Docket Nos. EX01110754, EF04010042.

At the public hearing on March 1, 2010, James F. Pearson, FirstEnergy Vice President and Treasurer, testified in support of JCP&L's proposed "mitigation plan," and responded to questions from Commissioner Asselta and Board Staff. Mr. Pearson asserted that the negative rating actions were a conclusion of only one of three rating agencies, and any consideration of S&P's actions must be balanced against the opinions of Moody's and Fitch. (Tr. at 7) Mr. Pearson stated that this balancing is already built into the structure of the BGS Supplier Master Agreements ("SMAs"), which provide that in the case of split ratings, the two higher ratings should be controlling for purposes of assessing credit for either suppliers or utilities. Ibid.

As to the proposed FirstEnergy-Allegheny Power merger as a cause for S&P's concerns, Mr. Pearson asserted that the merger "will result in a stronger company, with no material change to the immediate financial strength or viability of JCP&L, or FirstEnergy for that matter." (Tr. at 9). Mr. Pearson reaffirmed the company's position that JCP&L's mitigation plan demonstrates that it has ample resources available to assure continued payments for the BGS supply for its customers, and reassured those present that JCP&L possesses sufficient present and future sources of liquidity.

With regard to liquidity issues, Pearson described how the FirstEnergy companies maintain revolving credit facilities totaling \$2.75 billion and a bank line of \$100 million. As of January 31, 2010, \$1.29 billion had been drawn down and \$173 million in letters of credit had been issued under these facilities, leaving \$1.387 billion of available credit from these facilities. In addition, the FirstEnergy Ohio and Pennsylvania utilities maintain receivables financing facilities which would provide those utilities with additional liquidity of \$308 million as of January 31, 2010. Lastly, the FirstEnergy companies had \$764 million in cash investments bringing FirstEnergy's system wide available liquidity as of January 31, 2010 to \$2.459 billion. (Tr. at 10). When asked if the lower credit rating could have an impact on BGS prices, Pearson stated that all JCP&L's 2010 BGS contracts have been signed, and that this downgrade that occurred post-BGS auction could not, therefore, have caused any additional BGS costs. (Tr. at 13). Pearson also maintained that he did not think this downgrade would have a detrimental effect upon the utility, and emphasized that FirstEnergy "stress tests" its liquidity position to assure that it has sufficient cash even under various stress scenarios. (Tr. at 17).

Rate Counsel

Rate Counsel expressed its concern that the FirstEnergy downgrade could have a "negative impact on JCP&L's ratepayers," comments at 2, citing a potential for BGS bidders to perceive additional default risks triggering an increase in the bid price for serving the Company's customers. Rate Counsel believes that any additional costs incurred due to the downgrading of FirstEnergy, in BGS prices or in actions taken to mitigate the effects of the downgrade, should be borne by JCP&L's shareholders and not by ratepayers.

DISCUSSION AND FINDING

The Board has considered the mitigation plan submitted by JCP&L, the comments submitted by Rate Counsel, and the testimony provided at the public hearing, keeping in mind that the Board's role is to balance the goal of providing reasonable assurances to BGS suppliers and minimizing the costs to ratepayers. The Board developed the process detailed in the 2002 Order in light of the concerns raised by BGS suppliers at that time with respect to creditworthiness. The purpose of the expedited process was to provide assurances to BGS suppliers that their payments from the EDCs would continue in a prompt and timely manner.

In the 2002 Order, the Board specifically included a rating downgrade of an EDC's parent holding company as a trigger for the expedited review process because, in its experience, the EDC's credit status is inevitably linked to that of its parent, at least to some degree. While that Order recognized that the downgrade of an EDC's parent company could have a negative effect on the EDC's financial stability, it left the final determination as to the consequences of that downgrade to the Board. The Board finds that the process has continued validity now just as it did in 2002 and 2004.

However, since the issuance of the 2002 and 2004 Orders, procedures within the BGS proceeding have changed. In I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2007, Docket No. EO06020119, (December 22, 2006), the Board approved a revision to the SMA which is signed by each of the EDCs and BGS suppliers. The EDCs agreed to provide accelerated payments to BGS suppliers in the event that an EDC's credit rating drops below investment grade during the term of the SMA. As a result of this agreement, all FP- and CIEP- SMAs provide for twice-per-month payments if an EDC's credit rating drops below investment grade. Current BGS-FP and BGS-CIEP SMAs each reflect this provision under Article 9: Billing and Payment, section 9.1 (d), which substantially mirrors the twice-per-month payment mechanism that the Board directed the Company to develop in 2004. As the procedure is embedded in the contractual agreements that bind JCP&L and its BGS suppliers, the Board FINDS there is no need to develop a separate payment mechanism to provide assurance to these suppliers in the event that JCP&L's credit rating falls below the "Required Rating" as defined in section 9.1(c) of the SMAs.

JCP&L continues to have investment grade rating on all its secured and unsecured debt from the three rating agencies. Based on the information provided in both the mitigation plan and at the public hearing, there is nothing to suggest to the Board that JCP&L is in any imminent danger of missing or delaying payments to BGS suppliers. No BGS suppliers submitted comments in this proceeding. After considering both JCP&L's and FirstEnergy's ratings, and after reviewing the mitigation plan and responses provided at the public hearing, and representations that JCP&L has sufficient liquidity to meet its BGS obligations, the Board FINDS that there is no need for JCP&L to modify its payment schedules, post security or take any other remedial actions at this time.

The focus of the current proceeding is whether any additional actions are required to provide assurances to BGS suppliers that they will continue to be paid as required under the SMAs. However, the Board is mindful of the concern expressed by Rate Counsel that the downgrade of FirstEnergy might cause an increase in BGS prices for JCP&L customers. Mr. Pearson represented that the SMAs resulting from the recently completed BGS Auction have been signed. Therefore, since notice of the downgrade did not occur until after the BGS Auction was completed⁴, the Board is persuaded that notice of the S&P downgrade did not have an impact on the prices obtained in the 2010 BGS Auction.

The Board HEREBY DIRECTS JCP&L to provide timely notice to the Board of any further changes to its or FirstEnergy's credit ratings as required under the 2002 Order and the Board's rules at N.J.A.C. 14:4-4A.6.

⁴ The 2010 BGS Auctions began on February 5, 2010 and ended on February 9, 2010.

The Board HEREBY RATIFIES the extension of time to review JCP&L's mitigation plan granted by Commissioner Asselta at the March 1, 2010 public hearing.

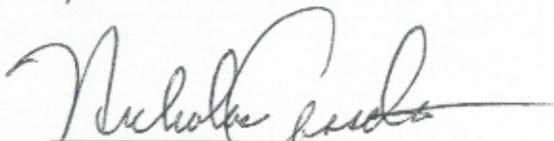
DATED: 3/17/10

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

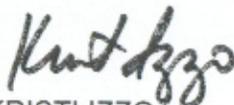

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