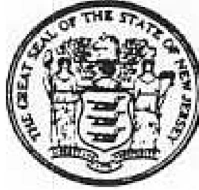

Agenda Date: 8/22/07 & 9/12/07
Agenda Item: 2E & 2D

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY SEEKING APPROVAL OF THE SALE OF THE FORKED RIVER GENERATING STATION PURSUANT TO N.J.S.A. 48:3-7 AND A WAIVER OF THE ADVERTISING REQUIREMENT OF N.J.A.C. 14:1-5.6(b)	))	DECISION AND ORDER DOCKET NO. EM07010026

(SERVICE LIST ATTACHED)

BY THE BOARD[1]

On January 17, 2007, Jersey Central Power and Light Company ("JCP&L" or "the Company") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board") seeking approval of the sale of the Company's Forked River Generating Station ("Forked River") to Forked River Power LLC ("FRP"), pursuant to N.J.S.A. 48:3-7; a waiver of the advertising requirements of N.J.A.C. 14:1-5.6(b); and other related approvals. The proposed purchase price for Forked River is $20 million. In the Petition, JCP&L also proposes that the net proceeds of the sale of Forked River be credited to reduce JCP&L's Market Transition Charge/Non-Utility Generation Charge ("MTC/NGC") deferred balance, which the Company states is in accordance with the April 14, 1999 Stipulation of Settlement that was approved by the Board in a Summary Order dated May 24, 1999 and a Final Decision and Order ("Restructuring Order")[2] dated March 7, 2001 in connection with JCP&L's restructuring proceedings.

PROCEDURAL HISTORY

The Parties participating in this proceeding included the Company, Board Staff ("Staff"), and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties").

Both Staff and Rate Counsel propounded discovery on the Company. The Company responded. On March 23, 2007, the Parties convened for a procedural conference, at which time it was agreed that JCP&L would submit pre-filed testimony. On April 13, 2007, JCP&L filed the direct testimony of Michael S. Hyrnick and Susan D. Marano.

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[1] Due to a potential conflict of interest, Commissioner Christine V. Bator did not participate in the vote or deliberations in this matter.
[2] In the Matter of Jersey Central Power and Light, d/b/a GPU Energy-Rate Unbundling, Stranded Cost and Restructuring Filings, Docket Nos. EO97070458, EO97070459, and EO97070460

The March 23, 2007 procedural conference resulted in a preliminary procedural schedule, which was finalized on May 21, 2007 as an understanding among the Parties. Pursuant to said schedule, Rate Counsel filed the direct testimony of Matthew I. Kahal on May 25, 2007. On June 6, 2007, JCP&L filed rebuttal testimonies of Mr. Hyrnick and Ms. Marano. On June 12, 2007, Commissioner Joseph L. Fiordaliso presided over an evidentiary hearing wherein Mr. Hyrnick and Ms. Marano testified on behalf of JCP&L, and Mr. Kahal testified on behalf of Rate Counsel. On June 28, 2007 the Parties submitted Initial Briefs on the proceeding. Reply Briefs were filed by the Parties on July 12, 2007.

BACKGROUND

Forked River consists of two dual-fueled (fuel oil and natural gas fired) combustion turbine power plants with nameplate ratings of 44 MW and 42 MW, respectively, or a combined rating of 86 MW, together with certain related assets and real estate, located in Lacey Township and Ocean Township, New Jersey. Forked River was constructed by the Company and placed into service in 1989. It is essentially a peaking plant that operates a limited number of hours per year, primarily due to its relatively high operating costs. According to the Company's witness Mr. Hyrnick, the plant operated on average only fourteen percent of the total annual hours between 2002 and 2006.

Prior to discussions with FRP, JCP&L had sought to sell Forked River when it divested all of its generation assets as part of the Restructuring Order. Forked River was initially included in the non-nuclear generating assets to be sold to Sithe Energies, Inc. ("Sithe"), but prior to closing, Sithe decided not to purchase Forked River and ownership remained with the Company.[3] Since the closing of the sale with Sithe, JCP&L continued its attempt to sell the plant. AmerGen Energy Company, LLC ("AmerGen"), a company under the parent Exelon Corporation, was one of the potential buyers contacted by JCP&L. AmerGen owns the Oyster Creek Nuclear Generating Station ("Oyster Creek"), which it purchased from JCP&L in 2000 and is party to a Station Blackout Agreement ("Blackout Agreement") with the Company, dated April 14, 2000, pursuant to which Forked River provides blackout service to Oyster Creek.[4] According to the Company, however, an acceptable transaction was not negotiated. The subsequent purchase of Forked River was not an attractive alternative to AmerGen and Exelon, according to the Company, because the Blackout Agreement provided adequate support to Oyster Creek at a good value to AmerGen.

JCP&L stated that Forked River's operating characteristics and the Station Blackout Agreement limit the plant's value as a merchant facility. According to Mr. Hyrnick, witness on behalf of the Company, "black-start" service was required to be in place to satisfy Nuclear Regulatory Commission ("NRC") requirements for an operating license for a nuclear generating station.

[3] I/M/O the Verified Petition of Jersey Central Power & Light Company, doing business as GPU Energy, seeking (a) Approval of the Sale of Its Non-Nuclear Generation Assets and Certain Additional Real and Personal Property, and the Sublease of Other Certain Interests, Pursuant to N.J.S.A. 48:3-7, (b) Specific Determination Allowing the Non-Nuclear Generation Assets of Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company To Be an Eligible Facility Pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and (c) a Waiver of the Advertising Requirements of N.J.A. C. 14:1-5.6(b), Docket No. EM99020067, (November 4, 1999).
[4] I/M/O the Verified Petition of Jersey Central Power and light, Company, Doing Business as GPU Energy, seeking approval of the sale of the Oyster Creek Nuclear Generating Station pursuant to N.J.S.A.48:3-7, a specific determination allowing the Oyster Creek Nuclear Generating Station to be an Eligible facility pursuant to section 32 of the Public Utility Holding Company Act of 1935 and a waiver of the advertising requirements of N.J.A.C. 14:1-5.6(B), Docket No. EM99120917, (November 21, 2003).

The "black start" service requirement referred to by Mr. Hyrnick calls for at least one combustion turbine to be available to provide electric service to Oyster Creek in the event of a station blackout to bring Oyster Creek to a safe shutdown condition. Because of this requirement and the lack of other potential electric power sources, Forked River is needed to provide "black start" service to Oyster Creek. The Company claimed that in order to satisfy the NRC "black start" requirement and sell Oyster Creek to AmerGen, it had to negotiate a station blackout agreement, which was signed on April 14, 2000 by AmerGen and JCP&L. The Company's witness Michael Hyrnick testified in the evidentiary hearing that the terms of the Station Blackout Agreement do not provide JCP&L with adequate value for the service it provides to Oyster Creek, and requires Forked River to operate when it is uneconomical to do so, which has led to operating losses and impaired the value of the plant. Any other purchaser of Forked River would be required to assume the obligations under the Station Blackout Agreement. As part of the Stipulation of Settlement dated November 8, 2006, in JCP&L's 2005 Non-Utility Generation Charge ("NGC") Filing, which was approved by the Board in its Order Adopting Stipulation dated December 6, 2006 in Docket No. ER05121018, JCP&L agreed to absorb, and to not include in its deferred balance for future recovery from customers, net annual operating losses associated with the Forked River generating station from and after January 1, 2006.[5] However, the Company is requesting it be allowed to recover operating losses incurred 90 days after the filing of the Purchase and Sales Agreement ("PSA"). Any operating losses that are allowed will be applied to the net proceeds from the transaction.

The Company decided that because of Forked River's limited value as a merchant facility, a targeted search for an interested buyer would be better than a general auction. The Company believed that if the auction failed, the failure of the auction would quell the market for the sale of the facility. According to the Company, the targeted search began with fifteen potential buyers ranging from large investment firms to well known developers and operators of which only one firm expressed any interest. However, that firm wanted the purchase structured as a long term power purchase agreement and an accord could not be negotiated. Consequently, the Company contacted an additional nine medium to small energy developers and operators as potential buyers. The Company indicated that of those potential buyers, only one, FRP, expressed any interest in purchasing the plant. FRP is a Delaware limited liability company and is indirectly owned by Maxim Power (USA), Inc. ("Maxim"), which has guaranteed the full and complete payment and performance by FRP of its obligations under the Purchase and Sales Agreement ("PSA") between FRP and JCP&L. Maxim is a small independent power producer that is interested in diversifying its project portfolio geographically and is interested in increasing the size of its eastern operations in order to develop economies of scale.

JCP&L is proposing to sell all of its right, title and interest in Forked River to FRP at a purchase price of $20 million. The Company proposes to credit net proceeds from the sale to the Company's MTC/NGC balance The Company states that according to the Restructuring Order, net proceeds are defined as the difference between the purchase price and the sum of 1) the net book value of Forked River (including deferred tax assets, investment tax credits relating thereto and the costs of all liabilities which would need to be booked) at the closing date, 2) the transaction costs incurred by the Company and 3) the GE turbine repair costs. Based on estimates of the total book value of Forked River after taxes as well as transaction and turbine repair costs, the Company believes the sale will result in a net loss of approximately $1.5 million. At closing, customers will cease to pay the return of, and the allowed rate of return on, the Company's investment in Forked River that is currently being charged to the NGC deferred balance. This charge amounted to approximately $3 million in 2006.

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[5] I/M/O the Verified Petition of Jersey Central Power & Light Company ("JCP&L") For the Review and Approval of an Adjustment of the Non-Utility Generation Charge Clause of Its Filed Tariff ("2005 NGC Filing"), Docket No. ER05121018, (November 27, 2006)

The Company is also requesting a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b). The Company states that this sale will not adversely affect the public and that there is no relationship between the Company and FRP except as buyer and seller. JCP&L further states that it has made extensive efforts to sell Forked River, making its desire to sell the plant common knowledge, and that the purchase price offered by FRP the fair market value. JCP&L also states that it is obligated to pay a termination fee of $750,000 if JCP&L enters into an agreement to sell Forked River to another purchaser as a result of advertising the sale or otherwise. The PSA may also be terminated if the sale does not close within 180 days after execution of the PSA, subject to the 90-day extension if necessary to obtain regulatory approvals.

TERMS OF THE PURCHASE AND SALE AGREEMENT

The sale includes all assets used or necessary for generation purposes and for the ownership, operation and maintenance of Forked River. However, the sale will convey only 43.53 acres of the total 600 acre site because JCP&L intends to retain ownership of the remaining land, approximately 566 acres. If the sale is approved, FRP will assume all responsibilities for the ownership, operation and maintenance of Forked River, including any future environmental liabilities or operating failures as well as all reliability and Station Blackout Agreement obligations. Pre-closing environmental liabilities will be the responsibility of JCP&L. In addition, JCP&L must comply with certain remediation obligations under the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., and Hazardous Discharge Site Remediation Act N.J.S.A. 58:10B-1 et seq. (collectively, "ISRA") and the contract provides for indemnification of FRP by the Company for up to $3 million, for, among other things, breaches of such representations and warranties by the Company. The Company also proposed that any new environmental liabilities will be recovered through the NGC deferred balance instead of the current method of including them in base rates.

In accordance with the provisions of the existing collective bargaining agreement between JCP&L and the Local Unions 327, 1289, 1298, 1303, 1309 (Clerical & Operating) of the International Brotherhood of Electrical Workers, System Council U-3 (collectively, the "Union"), which represents the Forked River bargaining unit employees, FRP must enter into a separate two-year agreement with the unions on the same terms as set forth in the existing collective bargaining agreement, dated March 15, 2005, covering those employees. In addition, JCP&L and FRP will enter into a service agreement pursuant to which JCP&L will provide personnel to provide certain operation and maintenance services for Forked River in order to implement certain provisions of a stipulation of settlement, dated November 9, 2006, with the Union, as clarified by letter dated December 18, 2006.

According to the Company, as part of the negotiations leading to the execution of the PSA, FRP sought assurances that it would receive a certain level of revenue from the plant following closing. As a result, FRP will enter into a 10 year tolling agreement ("Tolling Agreement") with FirstEnergy Solutions Corp. ("FE Solutions"), whereby FE Solutions agreed to make certain payments to FRP in exchange for the exclusive right to the capacity of Forked River and the right to provide fuel in exchange for Forked River's energy, subject to Forked River's reliability and Station Blackout obligations. JCP&L noted that it is not a party to the Tolling Agreement and therefore, no costs from this agreement will be added to the NGC deferred balance.

The Company and FRP will also enter into an Interconnection Agreement with PJM providing for the interconnection of Forked River with JCP&L's electric system. Maxim executed a Guaranty Agreement guaranteeing the full and complete payment and performance by FRP of its obligations under the PSA and other related agreements.

Waiver of the Advertising Requirement:

Company's Position:

The Company states that a targeted search for potential buyers of the plant was more appropriate than an auction process, because if the auction failed, it may quell the market for the sale of the facility. In support of its request for a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b), the Company asserts it has met each of the requirements of N.J.A.C. 14:1-5.6(i) for the following reasons. First, the waiver will not adversely affect the public interest because the plant will remain available to provide power since Maxim will assume all obligations under the Blackout Agreement. Second, in light of industry restructuring and the basic generation service auction process, the plant is no longer used or useful in JCP&L's regulated business. There is no prospective use of the plant for regulated utility purposes. Third, based on the fact that Maxim presented the only viable bid notwithstanding JCP&L's extensive marketing efforts, which JCP&L asserts was the functional equivalent of an auction process, there is no other likely prospective purchaser. Fourth, the sale will not affect the Company's ability to render safe, adequate and proper regulated service.

With respect to whether N.J.S.A. 48:3-59 applies, JCP&L claims that it applies only to assets with respect to which a utility is recovering stranded costs, ie., "generating assets subject to recovery pursuant to sections 13 and 14 of EDECA". The Company argues that the Board approved its restructuring stipulation by which the Company is deemed not to be recovering any stranded costs with respect to any of its owned generation other than Oyster Creek. Thus, JCP&L claims that N.J.S.A. 48:3-59 by its terms does not apply. Therefore, the Company requests that the Board waive the advertising requirement and approve the sale to FRP.

Rate Counsel's Position:

Rate Counsel argues that JCP&L failed to demonstrate that the $20 million sale price reflects the full market value of the asset because the Company did not rely on a competitive bidding process through a public auction or advertisement. Rate Counsel further argues that in recent sales, the Board was able to make a determination on whether the sale reflected full market value of the asset because in part it was based on the fact that the sale was the result of a publicly announced auction managed by an independent third party.[6]

Staff's Position:

Staff believes that JCP&L has met the standards of N.J.A.C. 14:1-5.6(i) for requesting a waiver of the advertising requirement. Staff maintains that the record shows that the waiver of the advertising requirement will not adversely affect the public interest; that the sale will not affect JCP&L's ability to provide safe, adequate and proper service; that Forked River will continue to provide energy and capacity after the sale since Maxim will assume the Blackout Agreement

[6]Decision and Order I/M/O the Petition of Atlantic City Electric Company For Approval of the Sale of its Keystone and Conemaugh Generation Station Assets, Docket. No. EM05121058, (July 21, 2006), at 7.

with Oyster Creek; that no relationship exists between Maxim and JCP&L, other than that of buyer and seller; and that the purchase price represents fair market value for Forked River. Staff also believes that the auction standards do not apply to the sale of Forked River because Forked River was already included as one of the assets in the sale of JCP&L's portfolio of non-nuclear generation assets previously approved by the Board, and JCP&L is not recovering stranded costs with respect to Forked River.

DISCUSSION AND FINDINGS

Based upon the characteristics of Forked River's operations, and the arguments presented by the Company and Staff, the Board finds that JCP&L'S request for a waiver of the advertising requirements in N.J.A.C. 14:1-5.6(b) meets the seven conditions for the granting of a waiver as set forth in the rules under N.J.A.C. 14:1-5.6(i) as follows. First, the sale of Forked River will not adversely affect the public interest. The Company and Staff have made a compelling argument that there will be immediate savings to ratepayers resulting from the sale. Ratepayers would no longer be responsible for the return of and on the Company's investment, which amounted to approximately $3 million in 2006 or approximately $25.5 million over the remaining depreciable life of the plant. This is a guaranteed ratepayer benefit that will not be subject to the whims of the capacity market that would occur if in the alternative, JCP&L chose to retain Forked River. Second, Forked River is no longer used and useful for utility purposes. Forked River is providing services directly to Oyster Creek and not directly to JCP&L or its customers. Third, with FRP assuming all responsibilities relating to operations and maintenance as well as those with respect to the Station Blackout Agreement, the Board finds that the sale will not affect the ability of the utility to render safe, adequate and proper service. Fourth, based upon JCP&L's extensive and varied efforts to sell Forked River over the last several years, the Board concludes that there is neither any prospective use of the property for utility purposes nor any other likely prospective purchaser. Fifth, the Board agrees with Staff and the Company that the targeted search by the Company as well as the previous attempts by the Company to sell Forked River to any interested buyer is the equivalent of advertising Forked River for sale for this particular plant. Furthermore, the Board is satisfied that the cash flow analysis conducted by the Company in support of the $20 million purchase price offered by FRP is reasonable and represents the fair market value for Forked River. Sixth, this is an arms length transaction given that there is no affiliate relationship between FRP and JCP&L. Seventh, JCP&L's decision to not advertise was based upon its concerns to not quell the market interest and that its targeted search was equivalent to an advertisement without the potential adverse effects of diminishing Forked River's market value.

Accordingly, the Board **HEREBY APPROVES** the waiver of the advertising requirement as set forth in N.J.A.C. 14:1-5.6(b) and N.J.A.C. 14:1-5.6(i).

The Sale of Forked River:

Company's Position:

According to the Company, JCP&L is for all intents and purposes out of the generating business, although it retains ownership of Forked River and an interest in the Yards Creek pumped storage station. JCP&L argues that its request for Board approval to sell Forked River to FRP and to waive the advertising requirement of N.J.A.C. 14:1-5.6(b) will provide substantial benefits to customers, and is consistent with its desire to exit the electric generating business as it and the other New Jersey electric utilities were encouraged to do during restructuring in order to foster competition in the generating business.

The Company argues that the sale will result in an estimated modest increase to the NGC deferred balance of approximately $1.5 million, and, once Forked River is sold, JCP&L will cease collecting its allowed return of and on its investment in the plant, which amounted to approximately $3 million in 2006 or approximately $25.5 million over the remaining depreciable life of the plant. Thus, the Company asserts that customers will benefit from the sale.

According to the Company, the targeted search resulted in only one viable offer, the $20 million purchase price submitted by FRP. In order to test the validity of the purchase price, JCP&L compared the purchase price to other similar transactions. According to the Company's witness Michael Hyrnick in Schedule MSH-7 of his direct testimony, the $232/kw price offered for the plant compares very favorably to the per kilowatt price in those other similar transactions, almost all of which were effected at prices below, and sometimes considerably below, the $232/kw price. Therefore, JCP&L argues that the agreed upon purchase price is reasonable and represents a fair market value for the plant.

The Company contends that Rate Counsel's suggestion that the Company retain Forked River and "play the market" primarily with respect to capacity values, based on a very recent, and possibly short-term, spike in capacity prices resulting from the recent auction in the new Reliability Pricing Model ("RPM") capacity market introduced by PJM Interconnection, LLC ("PJM"), would appear to be contrary to Board policy concerning the separation of the generation and delivery aspects of the utility business and represents a gamble that is not in customers' best interests. The Company asserts that there are uncertainties surrounding the level of prices that would be sustained in the capacity market, therefore diminishing any potential for a future increase in the value of Forked River.

To further validate the purchase price, the Company performed a discounted cash flow analysis (Schedule MSH-6 of JC-1) based on projections of capacity prices that are much higher than the historical capacity prices and that are modeled on expectations of higher capacity prices predicted by the new RPM auction that PJM implemented starting on June 1, 2007. The Company's analysis supported the $20 million purchase price submitted by FRP. Based on the targeted search conducted by the Company and this cash flow analysis, JCP&L contends that the purchase price offered by FRP is reasonable and that formally advertising Forked River for sale will not result in a higher purchase price. JCP&L points out that Rate Counsel's witness does not object to any aspect of the Company's cash flow analysis and even considered it to be not unreasonable (Tr. 84:17-18).

The Company further asserts that because of the Blackout Agreement, Forked River's ability to run as a merchant facility is limited. According to JCP&L, the Blackout Agreement along with the plant's operating characteristics and air permit limitations have reduced the value of the plant, which complicates JCP&L's attempts to sell the plant. A significant element of the success of the transaction with FRP is a 10 year Tolling Agreement that is being entered into between Maxim and JCP&L's affiliate, FE Solutions. The Tolling Agreement provides assurances to Maxim that it will receive a certain level of revenues from the plant. Under the Tolling Agreement, FE Solutions will assure a revenue stream to Maxim by making fixed monthly payments to Maxim. The Company states that Maxim was unwilling to rely on the market and its inherent uncertainties to generate sufficient returns. The Company further contends that FE Solutions only entered into such a Tolling Agreement to accomplish the sale.

The Company disagrees with Rate Counsel's position that the sale is governed by N.J.S.A. 48:3-59(c), and the Auction Standards. The Company argues that N.J.S.A. 48:3-59 applies only to assets with respect to which a utility is recovering stranded costs. The Company states that pursuant to paragraph 20 of the Restructuring Stipulation, as approved in the Final Restructuring Order, the Company is deemed not to be recovering any stranded costs with

respect to Forked River. Nevertheless, the Company asserts that the transaction in substance meets the requirements of N.J.S.A. 48:3-59.

Rate Counsel's Position:

Rate Counsel asserts that the proposed sale of Forked River is not in the best interest of ratepayers and requests that the Board reject the transaction. Rate Counsel argues that JCP&L has failed to demonstrate compliance with the statutory provisions. Rate Counsel contends that while selling Forked River will, based on current estimates, result in a net cost to ratepayers of approximately $1.5 million, ratepayers will, in the alternative, benefit from the continued ownership of Forked River in the amount of $31 million on a net present value basis over the next twenty years, from the results of the Company's discounted cash flow analysis.

Rate Counsel further asserts that the Company accepted the $20 million offer from FRP without making a counter offer to try to obtain a better price for ratepayers. Instead, negotiations were conducted on the ten year Tolling Agreement between FRP and First Energy Solutions, an unregulated affiliate of JCP&L. Rate Counsel argues that the output from Forked River will be transferred from JCP&L, for the next ten years, to its unregulated affiliate, First Energy Solutions, at a loss of $1.5 million to JCP&L's ratepayers. Under this arrangement, First Energy Solutions will have exclusive rights to the capacity of Forked River and the right to provide fuel in exchange for Forked River's energy.

Rate Counsel also asserts that although the Company recognized that it would not be prudent to rely on a single set of assumptions about capacity prices when evaluating the benefits of the sale, it performed only one study with one set of assumptions. In order to justify the $20 million purchase price submitted by FRP, the Company performed a discount analysis on the value of Forked River over the next 30 years based on projected expenses and revenues. In its analysis, Rate Counsel calculated the projected value of JCP&L retaining ownership of the plant. Rate Counsel compared the cash flow from the Company's analysis to the costs of Forked River that, if retained, will be charged to ratepayers through 2019 when the plant is fully depreciated. Based on this analysis, Rate Counsel contends that ratepayers will receive a nominal benefit of approximately $72 million through the year 2027 or $31 million on a net present value basis compared to the estimated $1.5 million loss if the plant is sold now. Even under a more conservative calculation, Rate Counsel argues that ratepayers would benefit in the amount of $30 million nominally or $13 million on a present value basis.

Rate Counsel also observed that when comparing the sales price to sales prices for similar plants sold around the country, the Company's survey did not look at peaking plants in the Eastern PJM market where the PJM reliability pricing model produced the highest capacity prices. Most of the recently sold units in the Company's comparison were located in regions lacking formal capacity markets.

In addition, Rate Counsel claims that JCP&L did not comply with the Board's auction standards set pursuant to EDECA for the conduct of a sale of utility generation assets. Rate Counsel contends that because JCP&L has failed to comply with the Board's auction standards and demonstrate that the $20 million purchase price is full market value, the sale is not in the best interest of ratepayers and the Board should reject the sale proposal and have JCP&L retain ownership of the plant.

Staff's Position:

Staff recommends approval of the sale. Staff notes that since restructuring, JCP&L has been attempting to find a buyer for Forked River and, according to JCP&L, the Company's desire to sell Forked River was common knowledge in the industry. Staff agrees with JCP&L that its targeted search to niche buyers along with the attempt by the Company to sell Forked River to any interested buyer, such as Sithe Energy Solutions and Amergen Energy Company, are the equivalent of advertising Forked River for sale for this particular plant. Staff agrees with JCP&L's assertion that the underlying premise of Mr. Kahal's position as to plant valuation, viewed in light of real world market evidence, is wholly unreliable as it assumes consistent high RPM prices over the next 20 years. Moreover, the Board's goal of fostering energy efficiency, conservation, load management and renewables, as set forth in Section 2 of New Jersey's draft Energy Master Plan, may reduce congestion costs and the need for capacity, thus tending to reduce RPM capacity prices in accordance with the basic law of supply and demand.

Staff finds the Company's cash flow analysis used to justify the $20 million purchase price to be a reasonable approach to value Forked River. Although the Company's cash flow analysis was calculated before the results of the RPM auction were known, the Company did assume much higher capacity prices than historic levels. The Company's analysis utilized increasing capacity prices that exceed the results of the current auction in the near future and then remain stable thereafter.

Staff submits that although it is possible that in the future ratepayers may attain greater benefits from forcing JCP&L to retain ownership of Forked River, this is highly speculative as this will only occur if capacity prices remain much higher into the distant future than historic prices. The proposal, however, will provide guaranteed savings to ratepayers immediate with the consummation of the sale. As currently measured, ratepayers will pay approximately $25.5 million in cumulative annual charges through 2019 for the Forked River plant reflecting the return of and return on the balance of investment in the plant. By the Company's estimates, based on tax considerations and other transaction costs, the sale will result in an estimated net loss of $1.5 million to ratepayers. However, the sale of the plant will eliminate approximately $24 million of the remaining cumulative charges for Forked River currently recoverable in the NGC, thus providing a net benefit of the same amount to ratepayers. Thus, Staff maintains that ratepayers will not be exposed to the uncertainties and volatility in the capacity and energy markets that the retention of the plant will entail. Staff also asserts that the ratepayers will avoid the financial risk associated with the Station Blackout Agreement and other risks, such as changes in environmental standards and unforeseen costs associated with the maintenance and operation of the plant.

Staff further asserts that although market risk is critical in this analysis, Staff is also concerned about forcing JCP&L to retain ownership of a plant that it does not want to operate. Under the sale, FRP will assume the Station Blackout Agreement obligation, relieving JCP&L of this obligation and associated potential losses.

With regard to whether the sale is governed by N.J.S.A. 48:3-59(c) and the Auction Standards, Staff agrees with the Company that neither applies because the Company is not recovering stranded costs on the sale of Forked River. Staff also notes that Forked River was a part of the JCP&L generating assets whose sale the Board had approved by its Decision and Order dated November 4, 1999 in Docket No. EM99020067.[7] Further, Staff argues that Forked River was initially included in the non-nuclear generating assets to be sold to Sithe Energies, Inc.

[7] In re Verified Petition of Jersey Central Power & Light Comp[any, doing business as GPU Energy, BPU Docket No. EM99020067, Decision and Order, November 4, 1999.

("Sithe"), but for various reasons Sithe decided not to purchase Forked River and ownership remained with JCP&L. Although the original purchase and sale agreement with Sithe did not ascribe values to the individual plants, $15 million was deducted from the overall purchase price to reflect the removal of Forked River, which then had a net book value of $28.6 million.

DISCUSSION AND FINDINGS

Based on its review of the petition, discovery, testimonies, briefs, and evidentiary hearings, the Board is satisfied that an extensive record has been developed and that all parties to this proceeding have had a full and fair opportunity to review and explore the underlying facts regarding the Company's proposal, and to present their factual, policy and legal concerns to the Board regarding the proposed sale, as well as other related issues of concern.

With regard to whether the sale meets the requirements of N.J.S.A. 48:3-59(c) and the Auction Standards, as explained below, the Board FINDS that JCP&L has substantially met the requirements of both N.J.S.A. 48:3-59(c) and the Auction Standards. For the reasons set forth below, the Board approves the sale of Forked River.

The Auction Standards established by the Board in the 1998 Board Order[8] set forth review criteria under which the Board would evaluate the divestiture of a utility's non-nuclear generation assets. Forked River had been included in the sale of the non-nuclear generation assets previously approved by the Board. The sale of Forked River complies with the Board's goal in the Restructuring Order of utility divestiture of generation assets and will provide a net benefit to ratepayers. In compliance with the Restructuring Order, JCP&L has sold off most of its generation assets and is no longer in the generation business except for ownership in Forked River, an interest in the Yards Creek pumped storage station and a minor investment in Three Mile Island 2 (TMI-2) which is not operational, and is permanently shut down and de-fueled.

With regard to bidding requirements, As noted above, Forked River was included in the portfolio of non-nuclear generating assets to be sold to Sithe Energies, Inc. At that time, JCP&L used an auction approach to receive bids from interested purchasers. In that Order, the Board found that the sale of the Company's non-nuclear generation assets to Sithe reflected the full market value of the assets and was in the best interest of the Company's customers and thus approved the sale. However, after the approval but prior to the closing of the Purchase and Sales Agreement, Sithe decided to not include Forked River in the mix of non-nuclear assets it intended to purchase and made a corresponding adjustment to the sale price of $15 million.

The Board is persuaded by JCP&L's argument that the operating characteristics of Forked River along with its commitment under the Station Blackout Agreement and air permit limitations have limited the value of the plant in the market. Sithe's decision to not purchase Forked River may have been based upon concerns related to the ongoing "black-start" service obligations, access to the transmission grid and certain property subdivision matters. Thus, trying to sell Forked outside of a portfolio of other assets made the task very difficult. It was widely known that Forked River was available for sale. Even under JCP&L's exhaustive search for a buyer through a targeted approach, only one interested and viable buyer, FRP, responded. Moreover, when compared to the original $15 million price (as set in 1999), based on a 1999 market, the $20 million sale price offered by FRP in this Purchase and Sales Agreement appears

[8] I/M/O the Matter of the Electric Restructuring Plans Filed by Atlantic City Electric Company, Jersey Central Power & Light Company, D/B/A GPU Energy, Public Service Electric and Gas Company, and Rockland Electric Company – General Auction Standards and Review Criteria, Docket Nos. EX94120585Y, EO97070457, EO97070460, EO97070463, EO97070466, (June 16, 1998)

reasonable. Further, when compared to other similar assets recently sold around the country the sale price also appears to reflect the full market value of the assets.

The sale is in the best interest of JCP&L's customers. Ratepayers are currently responsible for the return of and return on the investment in Forked River of approximately $25.5 million recoverable through the NGC charge until 2019, when the plant is fully depreciated. Upon approval of the sale, ratepayers will no longer be responsible for these costs. Although Rate Counsel contends that there is potentially greater ratepayer savings from JCP&L retaining ownership of the plant, this is highly speculative. The cash flow analysis provided by the Company is based on projections of capacity prices over the next 30 years. As no one can predict the results of the next RPM auction, it is impossible to predict with any certainty the results of the auction in 10, 15 or 30 years. In addition, there is also the risk of any unforeseen operating or maintenance costs that may be incurred while JCP&L retains ownership of Forked River. Moreover, the Board does not find cause to reconsider its previous authorization allowing the divestiture of Forked River and require that JCP&L retain ownership. The Board concludes that the guaranteed savings from instant sale of the Forked River plant is in the best interest of ratepayers compared to the potential speculative benefit from forcing JCP&L to retain ownership of the plant.

The sale of Forked River will not jeopardize the reliability of the electric power system. FRP will assume all obligations under the Station Blackout Agreement. Also, the sale will not result in undue market control by either Maxim or FRP, as the only generating assets owned by Maxim in the Eastern Part of the United States are in Connecticut, which is not part of PJM. In fact, the addition of Maxim as a new operator of generation into the region has the effect of improving supplier diversity.

Additionally, the impact of the sale on the utility's employees has been reasonably mitigated. FRP will honor and abide the existing collective bargaining agreement for the duration of the agreement. Maxim will enter into a service agreement pursuant to which JCP&L will provide or cause to be provided the personnel to provide certain operation and maintenance services for Forked River in order to implement certain provisions of the settlement with the union.

With regard to the environmental performance records required under Auction Standard number eight, the Board will require as a condition of the sale that FRP disclose any formal notices of violation of any local, state, and/or federal environmental permits applicable to the ownership or operation of electric generating facilities for the past five year period.

Based on the cash flow analysis conducted by the Company and the poor response by the market to varying attempts by JCP&L to sell Forked River, the Board **FINDS** the Company's targeted sale approach was reasonable and the $20 million purchase price submitted by FRP reflects the fair market value of Forked River. Accordingly, the Board **HEREBY APPROVES** the sale of Forked River to FRP conditioned upon the submission and review of the environmental performance record information referenced above[9].

The sale of the Forked River plant only includes approximately 10 percent of the total land owned by JCP&L. The Board **HEREBY DIRECTS** the Company to work with Staff and Rate Counsel in evaluating the best strategy for maximizing the value of the remaining land for the benefit of ratepayers.

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[9] By letter dated August 24, 2007, Maxim Power, parent company of FRP, provided the Board with notice of five environmental violations incurred by the Company over the last five years. The Board considered the submission at its September 12, 2007 agenda meeting and the Board finds the information satisfactory and accordingly, the sale may proceed as authorized herein.

Operating Losses:

Company's Position:

JCP&L requests that its obligation to absorb Forked River's operating losses cease during the period commencing 90 days after the filing of the Verified Petition and ending on the date the Board issues a final order approving the sale, unless such order is appealed, at which point JCP&L shall again cease to absorb such operating losses until the definitive resolution of such appeal. In paragraph 6 of the Stipulation of Settlement dated November 8, 2006, in JCP&L's 2005 NGC Filing, which was approved by the Board in its Order Adopting Stipulation dated December 6, 2006 in Docket No. ER05121018, JCP&L agreed to absorb, and to not include in its deferred balance for future recovery from customers, net annual operating losses associated with the Forked River generating station from and after January 1, 2006. However, JCP&L argues that it entered into this settlement when the Board and Rate Counsel were encouraging the Company to sell Forked River. JCP&L contends that they have submitted a reasonable sale proposal and should therefore be allowed to recover operating losses if they occur 90 days after the filing of the petition. In addition, if the Board were to reject the sale and order JCP&L to retain ownership, the Company argues that it must be allowed to recover operating losses. The Company argues that if the sale is not approved, it must be because the Board believes that Forked River has a greater value than the purchase price submitted by FRP and will not incur operating losses in the future. The Company argues that if it is forced to retain ownership of Forked River for the benefit of ratepayers, then ratepayers should also bear the risk and consequences of retained ownership.

Rate Counsel's Position:

Rate Counsel points out that the Company voluntarily signed a stipulation with Board Staff and Rate Counsel in November 2006 agreeing to absorb all net losses for Forked River from and after January 1, 2006. The stipulation does not state that the sale or attempted sale of Forked River would have any effect on the agreement, even though JCP&L was engaged in negotiations to sell the facility when the stipulation was approved by the Board. Furthermore, this provision was part of a comprehensive settlement of the case and reflects a balancing of interests and trade-offs from the Parties.

Staff's Position:

Staff opposes the Company's request for ratepayers to absorb the operating losses incurred from Forked River 90 days after the filing of the sale petition. Staff maintains that, as noted by Rate Counsel, JCP&L voluntarily agreed to absorb all operating losses for Forked River as part of a comprehensive settlement in the Company's last NGC filing. JCP&L has not alleged that the agreement is impairing the Company's ability to provide safe, adequate and proper service or provided any other reasonable argument for the Board to reverse its decision.

DISCUSSION AND FINDINGS

The Board agrees with the position of Staff and Rate Counsel that the Company not be allowed to recover operating losses incurred 90 days after the filing of the sale petition. JCP&L agreed to absorb all operating losses incurred from Forked River in the 2005 NGC Stipulation which was adopted by the Board. There is no language in the Stipulation which eliminates the

Company's obligation to absorb operating losses if it files a petition for the sale of the plant. In addition, the Company has not provided any evidence that this provision will impair its ability to provide safe, adequate and proper service to ratepayers. Therefore, the Board **HEREBY DENIES** the Company's request to recover operating losses incurred 90 days after the filing of the petition.

Environmental Remediation Cost Recovery:

Company's Position:

JCP&L requests that certain costs related to the closing of the sale with FRP be included in the NGC deferred balance. In the PSA, JCP&L agreed to assume any future environmental remediation costs for Forked River incurred as a result of the ISRA investigation, if they arise. The Company is proposing that these costs be considered a cost related to the closing of the sale and therefore to be recovered through the NGC charge instead of the current recovery methodology through base rates.

Rate Counsel's Position:

Rate Counsel objects to the Company's request to recover environmental remediation costs associated with the Forked River facility under the ISRA investigation through the NGC charge instead of base rates under which such costs are currently recovered. Rate Counsel further objects to the Company's proposal to use the NGC charge, which it characterizes as a never-ending catchall charge for cost recovery without the scrutiny of a base rate case proceeding. According to N.J.S.A. 48:3-61, the Market Transition Charge ("MTC") was designed as a limited duration non-bypassable charge for stranded cost recovery. EDECA states in N.J.S.A. 48:3-61(i) that the market transition charge shall be limited to a term not to exceed eight years. The Board may extend the MTC charge to recover costs associated with a generating asset, the costs of which represent at least twenty percent of the utility's stranded costs and to achieve mandatory rate reductions. Rate Counsel contends that the Company's environmental costs associated with Forked River do not qualify for recovery under the MTC/NGC. Therefore, Rate Counsel argues that the Company's proposal to use the NGC to collect these environmental remediation costs is prohibited under EDECA and should not be condoned. Rate Counsel requests that the Company continue to seek recovery of its prudently incurred and reasonable environmental remediation costs as part of a base rate proceeding.

Staff's Position:

Staff supports Rate Counsel's position that all future environmental remediation costs that may arise from the ISRA investigation currently underway, continue to be recovered through base rates and not the NGC charge as requested by JCP&L. These environmental remediation costs are the result of a Remediation Agreement entered into with the New Jersey Department of Environmental Protection ("NJDEP") in February of 2001. Staff submits that the Company has not provided a reasonable argument for the Board to change the ratemaking methodology for these costs. Staff recommends that the Board reject the Company's request that future environmental remediation costs be recovered through the NGC charge.

DISCUSSION AND FINDINGS

The Board concurs with the position of Staff and Rate Counsel that the Company should continue to recover any future environmental remediation costs related to Forked River incurred as a result of the ISRA investigation conducted by the NJDEP through base rates. The Company has not provided any evidence that maintaining the current base rate recovery methodology will impact its ability to provide safe, adequate and proper service or impair the financial standing of JCP&L. Moreover, this method of recovery is consistent with EDECA. The Board **HEREBY DENIES** the Company's request to recover future environmental remediation costs related to Forked River's ISRA investigation through the NGC charge instead of base rates.

Closing Costs:

Company's Position:

The actual closing costs will not be known until after the Board renders a decision on the sale of Forked River. The Company claims that, because of this, a separate proceeding will be necessary to review the validity of the closing costs. The Company is proposing that these costs be reviewed as soon as they are known or, if delayed until the next NGC filing, include carrying charges on the balance.

Rate Counsel:

Rate Counsel objects to the Company's request to review closing costs in a separate proceeding. All of the Parties agree that, if the Board should approve this transaction, only reasonable, incremental and verifiable costs should be recovered from ratepayers. Pursuant to the stipulation entered into in November 2006, the Company has agreed to make annual NGC filings in the last quarter of each year. If the Board approves the sale, Rate Counsel presumes the closing will be sometime in September. The annual NGC filing can be made October 1, 2007. Rate Counsel asserts that the Company's "preference" is no reason to impose an additional drain on Staff and Rate Counsel's resources that would be necessary to review these charges outside of the annual NGC filing. This is especially true in light of the complexity of the unresolved issues surrounding the amount of net proceeds associated with the sale, such as, but not limited to, the ratepayer tax obligation on a sale that results in a loss to the ratepayers. Transaction costs also need to be carefully reviewed to ensure that the costs are reasonable, incremental and properly recovered from ratepayers. Rate Counsel argues that the Company has provided no reason to review these claimed expenditures on an accelerated basis. Rate Counsel asserts that reserving such cost review for an NGC proceeding does not harm the Company nor would it prejudice its claim of cost recovery in any way. Accordingly, Rate Counsel requests that the Board direct the Company to include review of the Forked River transaction costs in the Company's 2007 NGC filing if the Board approves the sale of the plant.

Staff's Position:

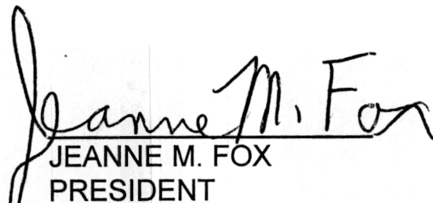
Staff recommends that the Board defer inclusion of the transaction and closing costs in the NGC deferred balance until the Company makes its next NGC filing. The Company is currently required to make an annual filing on the NGC deferred balance. At that time, the actual closing costs incurred from the sale of Forked River can be reviewed for reasonableness and prudence by Staff and Rate Counsel. Also, the Company should not receive any carrying charges on the closing costs before the NGC filing. Once the filing is reviewed, all NGC deferred costs deemed reasonable and prudent will be placed in the deferred balance and interest will be assessed on the total deferred balance.

DISCUSSION AND FINDINGS

The Board agrees with Rate Counsel and Staff that the closing costs for the transaction should be reviewed in the Company's next NGC filing. At that time, the Company will know the actual closing and transaction costs and the net proceeds of the sale. Whether carrying charges should be assessed and the amount can also be decided in the NGC filing. Therefore, the Board **HEREBY DIRECTS** JCP&L to file the actual closing and transaction costs incurred for the sale of Forked River in the Company's next annual NGC filing for review by Staff and Rate Counsel for reasonableness and prudence. The rate treatment and level of net proceeds from the sale, as well as the issue of carrying charges, will be determined at that time.

DATED: 9/17/07

BOARD OF PUBLIC UTILITIES
BY:



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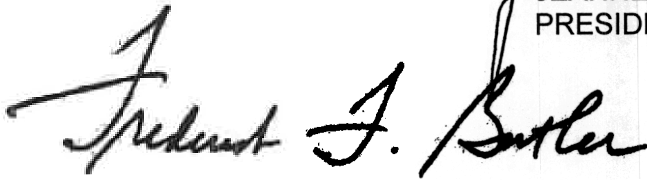

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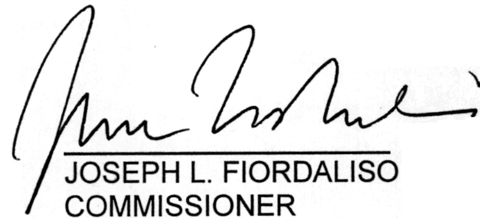

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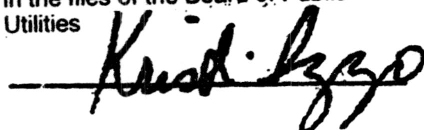
ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



SERVICE LIST

I/M/O the Verified Petition of **Jersey Central Power & Light Company** Seeking Approval of the Sale of the Forked River Generating Station Pursuant to N.J.S.A. 48:3-7 and a Waiver of the Advertising Requirement of N.J.A.C. 14:1-5.6(b)
Docket No. EM07010026

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