Agenda Date: 1/25/11
Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY DIVISION

IN THE MATTER OF THE BUSINESS COMBINATION OF FIRSTENERGY CORP., PARENT COMPANY OF JERSEY CENTRAL POWER AND LIGHT COMPANY AND ALLEGHENY ENERGY, INC.	))))	DECISION AND ORDER BPU DOCKET NO. EM11010012

Marc B. Lasky, Esq., Morgan, Lewis & Bockius LLP, Morristown, New Jersey, for Jersey Central Power & Light Company

Paul Flanagan, Deputy Rate Counsel, Ami Morita, Deputy Rate Counsel, Diane Schulze, Asst. Deputy Rate Counsel, for the Division of Rate Counsel (Stephanie A. Brand, Esq. Director)

Anne M. Shatto, Deputy Attorney General, and Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

On February 11, 2010, FirstEnergy, Corp. ("FirstEnergy"), parent company of Jersey Central Power & Light Company ("JCP&L") and Allegheny Energy, Inc. ("Allegheny") announced that their Boards of Directors unanimously approved an Agreement and Plan of Merger ("Agreement") involving an $8.5 billion stock-for-stock transaction to enable FirstEnergy to acquire Allegheny (the business combination is hereafter referred to as the "Transaction"). Pursuant to the Agreement, dated February 10, 2010, and amended June 4, 2010, Allegheny would merge with Element Merger Sub, Inc., a new wholly-owned subsidiary of FirstEnergy created for this purpose. As the surviving corporation of that merger, Allegheny will then become a wholly-owned subsidiary of FirstEnergy. FirstEnergy will remain the corporate parent of JCP&L and of all of the other FirstEnergy subsidiaries, and will become the ultimate corporate parent of Allegheny and all Allegheny subsidiaries.

The Agreement provides that Allegheny shareholders would receive 0.667 shares of FirstEnergy common stock in exchange for each share of Allegheny stock they own—an approximate value $4.7 billion--and FirstEnergy would also assume approximately $3.8 billion in Allegheny debt. The arrangement represents FirstEnergy paying a premium of 31.6 percent over Allegheny's February 10, 2010 stock price and a 22.3 percent premium over the 60-day average stock price. The merger would result in FirstEnergy shareholders owning approximately

73 percent and Allegheny shareholders 27 percent of the combined company. The combined companies would represent almost $16 billion in annual revenues and $1.4 billion in annual net income (using December 31, 2009 data). Anthony J. Alexander, President and Chief Executive Officer of FirstEnergy, will serve as President and Chief Executive Officer of the combined company, and Paul J. Evanson, Chairman, President and Chief Executive Officer of Allegheny, will serve as Executive Vice Chairman of the combined company and report to Mr. Alexander.

Currently, FirstEnergy generates revenues of $13 billion per year through subsidiaries and affiliates involved in electricity generation (14,000 MW of capacity), transmission and distribution, and the provision of energy management and other energy-related services. FirstEnergy operates seven electric utilities serving 4.5 million customers in Ohio, Pennsylvania, New Jersey and New York, making it the nation's fifth largest investor-owned electric system. In contrast, as of 2009, Allegheny generates $3 billion in revenues per year from owning and operating 9,700 MW of generating capacity and serving 1.6 million customers in Pennsylvania, West Virginia, Maryland and Virginia. The combined company would have ten regulated electric distribution companies serving six million customers throughout Pennsylvania, Ohio, Maryland, New Jersey, New York, Virginia and West Virginia with almost 20,000 miles of high-voltage transmission lines connecting the Midwest and Mid-Atlantic and 24,000 megawatts (MW) of generating capacity.

According to the companies, the post-merger combined company would retain the FirstEnergy name and Akron, Ohio headquarters, and customers will continue to be served by their current electric utility companies including: Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), Metropolitan Edison Company (Met-Ed), Allegheny Power (including: West Penn Power Company, Monongahela Power Company, The Potomac Edison Company), Ohio Edison Company, The Cleveland Electric Illuminating Company (CEI), The Toledo Edison Company, and JCP&L.

According to JCP&L, the Transaction supports its strategy of being a leading regional energy provider, focused on both regulated utility operations and competitive generation business. It also claims the Transaction will increase operational flexibility, financial stability and the ability to leverage "best practices" across all of the utilities. JCP&L also asserts that the Transaction would result in enhanced customer service and reliability, as well as other synergies, efficiencies and cost savings over time.

JCP&L asserts that the Transaction will not initially impact its day-to-day operations or customer rates. It also claims that there will be no adverse impact on competition in the supply and distribution of electricity in New Jersey, and that the analysis performed to determine impacts on competition in the wholesale markets indicated that there are no competition concerns. Finally, JCP&L contends that the Transaction will have financial benefits as well, including: 1) stronger balance sheet for the combined company than JCP&L would have on a stand-alone basis, 2) more stable cash flow, 3) improved aggregate financial metrics recognizing a strong business risk profile, and 4) improved access to capital at competitive rates.

Shortly after the announcement of the Agreement, on February 17, 2010, JCP&L notified the Board that on February 11, 2010, Standard & Poors ("S&P") 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+. In addition, S&P lowered JCP&L's corporate credit rating and senior unsecured debt from BBB to BBB-. The downgrade triggered a Board requirement that the affected utility 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] This requirement stems from a December 4, 2002 Board Order 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"). The 2002 Order also required that the Board hold a public hearing on the mitigation plan within ten business days of its receipt of the filing. Due to this Board requirement, JCP&L's February 17, 2010 notification to the Board included a mitigation plan.

By way of background, this creditworthiness 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 and affected Basic Generation Service ("BGS") suppliers were given an opportunity to review the plan and submit recommendations. In its January 30, 2004 Order[2] ("2004 Order"), the Board found that: (1) JCP&L continued to be of investment grade, and 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 but 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"). No other comments or requests to speak at the public hearing were received. On March 1, 2010, Commissioner Asselta presided over a public hearing at the Board's Newark Offices. 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. On March 17, 2010, the Board considered the mitigation plan submitted by JCP&L, the comments submitted by Rate Counsel, and the testimony provided at the public hearing. The Board found there was no need to develop a separate payment mechanism to provide assurance to suppliers in the event that JCP&L's credit rating falls below the "Required Rating," as defined in section 9.1(c) of the Supplier Master Agreements ("SMAs"), and that there was no need for JCP&L to modify its payment schedules, post security or take any other remedial actions at that time.

While the Board determined it did not have to take additional measures with regard to impacts to BGS, the credit downgrade occurred as a direct result of the announcement of the Agreement and demonstrated that the Transaction had an effect on the underlying financial integrity of JCP&L.

[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.

[2] I/M/O the matter of 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.

The Transaction has been approved by other regulatory bodies. The Virginia State Corporation Commission approved the transaction on September 10, 2010. FirstEnergy secured Federal Energy Regulatory Commission (FERC) and West Virginia Public Service Commission approval on December 16, 2010. The Department of Justice cleared the transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 on January 7, 2011. The Maryland Public Service Commission approved a comprehensive settlement on January 19, 2011. In Pennsylvania, the Office of Administrative Law issued its Initial Decision in support of the merger transaction on December 14, 2010 and the Pennsylvania Public Utility Commission is expected to vote on the matter on January 27, 2011.

Following the announcement of the Agreement and resultant credit downgrading, Representatives of FirstEnergy, JCP&L, the Ratepayer Advocate ("Rate Counsel") and Board Staff participated in a number of discussions throughout 2010, which resulted in a Stipulation that addresses all issues pertaining to the Transaction. Throughout these discussions, FirstEnergy and JCP&L asserted that the Board did not have jurisdiction over the Transaction. Rate Counsel and Board Staff disagreed. Notwithstanding this disagreement, the parties were able to resolve any issues associated with the Transaction.

Among other things, pursuant to the Stipulation, FirstEnergy/JCP&L agreed to the following: 1) that JCP&L would not to attempt to recover costs related to the Transaction in rates, 2) certain commitments regarding employment levels, as well as location and staffing levels at its two corporate headquarters in New Jersey, 3) that the FirstEnergy system will continue to be operated in accordance with its overall management philosophy, which places authority and accountability at the local level, 4) to provide Board Staff and Rate Counsel with information as to annual capital expenditures by JCP&L and other FirstEnergy utilities, 5) to honor all collective bargaining agreements with its bargaining unit employees, 6) that former utility subsidiaries of Allegheny will not be permitted to participate in the same utility money pool in which JCP&L has been authorized to participate unless and until any requisite BPU approval is sought and obtained, 7) that a portion of the JCP&L net merger synergy savings will be reflected in an adjustment to the NGC deferred balance, with the result that the NGC over-recovery at November 30, 2010, exclusive of interest, will be $80,999,042, and 8) to provide notice to the Board, Board Staff and Rate Counsel within 48 hours of making certain filings with the Securities and Exchange Commission.

On June 1, 2010, JCP&L submitted an initial document on the merger, and over the intervening time, responded to discovery requests by the Staff and Rate Counsel.

During the discussions between the parties, this matter was noticed and subsequently deferred from the Board's January 19, 2011 agenda meeting. On January 18, 2011, JCP&L submitted a letter, which was docketed and treated as a petition, detailing the Transaction and any impacts on New Jersey. Additionally, on January 19, 2011, the Board posted the executed Stipulation on its website for comment. No comments were received.

DISCUSSION

N.J.S.A. 48:2-51.1 describes specific issues to be reviewed and evaluated by the Board when considering a request to acquire or seek to acquire control of a public utility:

> ...In considering a request for approval of an acquisition of control, the Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or

> utilities, and on the provision of safe and adequate utility service at just and reasonable rates.
> [N.J.S.A. 48:2-51.1]

Thus, the current Board merger standard is the positive benefits test. As per N.J.A.C. 14:1-5.14(c), positive benefits must result from the transaction in order for the Board to approve a merger. While acknowledging that FirstEnergy and JCP&L assert that this statute and regulation do not apply to this Transaction, the Board will nevertheless conduct its review based upon this framework.

1. Impact on Competition

At the distribution level, there is no impact on the rate-regulated activities of JCP&L. In the wholesale market, the FERC accepted the company's filing and approved the transaction after conducting its own review of the competitive impacts. In addition, the Antitrust Division of the U.S. Department of Justice has completed its review of the transaction and closed its investigation without imposing conditions or requiring mitigation. Thus, the Board is satisfied that the Transaction will not have negative impact on competition.

2. Impact on Employees

Pursuant to the Stipulation, there will be no change in staffing levels or in collective bargaining agreements. The Company agreed there will be no net reduction due to involuntary attrition as a result of the Transaction integration process in the JCP&L utility and FirstEnergy Service Company employment levels for a period of two years after the consummation of the transaction. (A one year limitation applies to the Red Bank billing center to be consistent with a previously agreed to collective bargaining agreement).

3. Impact of Rates

Pursuant to the Stipulation, JCP&L agreed to adjust the Non-Utility Generation Charge ("NGC") deferred balance, with the result that the NGC over-recovery at November 30, 2010, exclusive of interest, will be $80,999.042.

4. Impact on Service Quality

Pursuant to the Stipulation, for a period of at least five years after the transaction, the FirstEnergy system will continue to be operated in accordance with overall management philosophy and allocation of capital will not change as a result of the transaction.

Positive Benefits

In addition to the items noted above, the Transaction is expected to provide a positive benefit by creating a strong, well-financed competitive entity with increased operational flexibility. The merged entity is also expected to result in enhanced customer service and reliability, as well as synergies, efficiencies and other cost savings over time.

Based upon the Stipulation and the Board's independent review of the record in this matter, and the review of N.J.S.A. 48:2-51.1, the Board HEREBY ACCEPTS the Stipulation as filed with the Board. The Board HEREBY FINDS that the Transaction is not likely to create any adverse impacts. In fact, as a result of the Stipulation, the Transaction is likely to produce positive benefits for New Jersey. As such, the Board HEREBY FINDS that the Transaction is in compliance with relevant law and regulations. Therefore, the Board HEREBY APPROVES the Stipulation filed with the Board and authorizes the Transaction to move forward without any further Board action.

DATED: 2/10/11

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

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

JERSEY CENTRAL POWER & LIGHT COMPANY,
I/M/O Business Combination of FirstEnergy Corp.,
Parent Company of Jersey Central Power & Light Company, and
Allegheny Energy, Inc.
BPU Docket No. EM11010012

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