



Agenda Date: 9/17/18
Agenda Item: 2E

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF)
JERSEY CENTRAL POWER & LIGHT COMPANY FOR)
APPROVAL OF THE SALE AND CONVEYANCE OF)
CERTAIN PORTIONS OF ITS PROPERTY IN THE)
BOROUGH OF ALLENHURST, MONMOUTH COUNTY,)
NEW JERSEY AND THE GRANTING AND TRANSFER)
OF CERTAIN EASEMENTS IN CONNECTION)
THEREWITH PURSUANT TO N.J.S.A. 48:3-7 AND)
N.J.A.C. 14:1-5.6)

ORDER APPROVING SALE
OF REAL PROPERTY

DOCKET NO. EM18020193

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Michael J. Connolly, Esq., Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central
Power & Light Company

BY THE BOARD:

On February 26, 2018, Jersey Central Power & Light Company ("JCP&L" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, seeking approval of the sale of certain portions of the Company's property located at Block 18, Lot 1, and Block 21, Lots 5, 6 and 7 in the Borough of Allenhurst, Monmouth County, New Jersey ("Allenhurst Property") to Power Station at Allenhurst, LLC ("Buyer") for a purchase price of \$5,238,095.24.

The Company also sought Board authorization to defer any costs relating to its Industrial Site Remediation Act ("ISRA") remediation obligations with respect to the Allenhurst Property for future recovery through JCP&L's Non-Utility Generation Clause ("NGC"). However, JCP&L withdrew this request during the discovery process in this matter, acknowledging that there are no post-closing cost responsibilities for any on-going environmental liabilities with respect to the Allenhurst Property.

According to the petition, the Allenhurst Property consists of a four (4) story masonry utility operations and maintenance office, work facilities and a garage building. The Allenhurst Property was used continuously from the 1930's to mid-2009. In May 2004, the Company relocated its regional headquarters from the Allenhurst Property to Middletown, New Jersey.

The petition states that thereafter, until approximately August 2009, the Allenhurst Property continued to be used for certain limited purposes, including being used as the JCP&L Allenhurst Business Office. The Allenhurst Property has essentially been unused since 2009 when the Company moved utility operations a short distance from 525 Main Street to leased space at 300 Main Street in Allenhurst, New Jersey, where it currently remains.

The Company states that the Allenhurst Property has been the subject of on-going environmental remediation and/or monitoring and maintenance by JCP&L since prior to 2004 and has been available for sale since then and, from time to time, the Company received expressions of interest in the Allenhurst Property, but they did not result in an agreement to purchase at any earlier time.

In August 2017, JCP&L engaged the services of Ten-X, which provides an online real estate transaction marketplace, in an attempt to maximize the pool of buyers and the sales price for the Allenhurst Property. The Allenhurst Property was advertised for sale on September 29, 2017 and on October 6, 2017, both in the Asbury Park Press and the Newark Star Ledger. The Company represents that "For Sale" signs were also placed on the Allenhurst Property on September 25, 2017, with additional "For Sale" signs being placed on the Allenhurst Property in October 2017. The Company indicates that more than fifteen (15) bids were received on November 6, 2017 at the Company's Morristown location. The bids were opened, and after review the Company accepted the highest sealed bid.

On November 7, 2017 the Company and Buyer entered into a purchase and sale agreement ("Contract") for the sale of the Allenhurst Property for \$5,238,095.24 to be paid at the closing. According to the petition, the Buyer will conduct a survey preparing a Subdivision Plan to the Planning and Zoning Board of Borough of Allenhurst. Block 21, Lots 5, 6 and 7 of the Allenhurst Property from adjacent Block 21, Lot 4, which JCP&L currently owns and intends to continue to own following the sale of the Allenhurst Property.

Certain provisions of the sale of the Allenhurst Property will be made for electrical distribution and transmission facilities located on Block 21, Lots 5, 6 and 7, as more fully described in the petition and the Contract. The Company represents that these assets will not be sold and the Company will have access to them through easements or licenses. The Company and the Buyer have also agreed to negotiate the grant of an access easement to the Buyer over a portion of Lot 4, according to the Future Access Easement included as an exhibit to the petition. The Contract further requires the Buyer to subdivide Block 21, Lots 5, 6 and 7 from Lot 4, if necessary following the results of the survey.

The Company asserts that, except for the limited purpose addressed by the reservation or obtaining of these easements and access rights, the Allenhurst Property has been determined to be no longer used and useful for utility purposes, there is no prospective use of the Allenhurst Property for utility purposes and the sale of the Allenhurst Property will not affect JCP&L's ability to provide safe, adequate and proper service to its customers. In addition, the Company asserts that the closing of the sale of the Allenhurst Property is not subject to the receipt of any other regulatory approvals.

Through discovery, JCP&L withdrew its request to defer costs related to ISRA remediation obligations with respect to the Allenhurst Property. JCP&L acknowledged that there are no post-closing cost responsibilities for any on-going environmental liabilities with respect to the Allenhurst Property.

Rate Counsel Comments:

By letter dated July 25, 2018, the New Jersey Division of Rate Counsel ("Rate Counsel") stated that it does not object to the sale of Allenhurst Property. However, Rate Counsel recommends that the gain from the Allenhurst Property sale be fully reviewed in the Company's next base rate case. Specifically, Rate Counsel requests that the Board order JCP&L to flow through one-hundred percent (100%) of the Net Gain on Sale into Account 253, Other Deferred Credits, for appropriate disposition in the Company's next base rate case. Rate Counsel claims that this would allow an allocation of the gain that fairly accounts for the long-term contributions for the Allenhurst Property to JCP&L's ratepayers. Rate Counsel adds that any remediation costs included in the Company's next base rate case should include the amount of escrow funds spent by the Buyer to complete JCP&L's environmental obligations on the Allenhurst Property. Therefore, Rate Counsel recommends that the Company's accounting related to the Allenhurst Property should be fully reviewed in its next base rate case and any portion of the sale proceeds be fairly allocable to shareholders can be determined at that time.

Rate Counsel also requests the following additional conditions in the Board's Order approving the sale of the Allenhurst Property:

1. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the contract for sale of the Allenhurst Property;
2. JCP&L may no longer seek, either through the NGC or any other rate recovery mechanism, any environmental costs incurred in relation to the Allenhurst Property;
3. JCP&L shall set a date certain by which it will credit to ratepayers any amounts remaining in escrow after the closing, as part of the net gain from this sale;
4. Rate Counsel retains all rights to review all costs and proceeds related to the purchase and sale of the Allenhurst Property in JCP&L's next base rate case or another appropriate proceeding; and
5. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Company.

JCP&L Reply Comments

By letter dated August 2, 2018, JCP&L requested that the Board reject Rate Counsel's request to flow one-hundred percent (100%) of the net gain from the sale as a deferred credit to ratepayers in the Company's next base rate case through Account 253 – Other Considerations, as well as reject conditions three (3), four (4) and five (5) as set forth above and reiterated in Rate Counsel's comments. The Company states that Rate Counsel's conditions and arguments are inaccurate, unsupported, unnecessary and inconsistent with the Board's standard and long-standing approach to review and approve property sales under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6.

JCP&L asserts there is no reason to change the long-standing Board policy on the treatment of gains on the sale. JCP&L maintains that its proposal to share the gain equally with ratepayers is consistent with the Board's Order, dated November 14, 2005, approving the sale of JCP&L's

Bernardsville commercial office (BPU Docket No. EM04111473), the Board Order dated December 5, 2005 (BPU Docket No. EM04101073) approving the sale of a JCP&L property in Belford, and the Board's Order entered on December 21, 2005 (BPU Docket No. EM04040229) approving the sale of JCP&L property in Lakewood.

The Company confirms that it has withdrawn its request for additional relief for authorization to defer any costs relating to ISRA remediation obligations with respect to the Allenhurst Property for future recovery through the NGC. However, the Company maintains that there may be the potential for future environmental costs associated with the use of the easement, which is retained by the Company and is necessary to provide the Company with continuing access to operate and maintain certain electrical distribution and transmission facilities located on the Allenhurst Property, which are not being sold as part of the sale. The Company states these facilities and the retained easement property have been, are, and will continue to be, used and useful in connection with the provision of electric service to customers. JCP&L states that there is no need to address, and the Company does not waive, the right to seek recovery at the appropriate time of any future potential costs, including environmental costs, associated with these components of its current and ongoing operations.

In each case, the Board directed the Company to account for fifty percent (50%) of the gain on the sale of property in Account 421.1 for immediate distribution to the Company's shareholders and book the other 50% of the gain to the suspense Account 253-other deferred credits. The deferred liability in Account 253 would be held for appropriate distribution to benefit ratepayers in the Company's next base case. JCP&L alleges that Rate Counsel does not provide any justification for its position, and JCP&L urges the Board to reject this recommendation.

Moreover, the Company points out that the Board typically inserts a provision in its Orders that this type of standard reservation by the Board provides adequate and appropriate protection of ratepayer interests without the need to abrogate the application of the Board's long-standing policy for the Company to account for the gain on an equal share basis. JCP&L states that Rate Counsel's unsupported conclusion also ignores the retained easement and the fact that the Company's substantial transmission and distribution facilities, which are not being sold or abandoned as part of the sale, have continuously been, and will continue to be, located, operated and maintained on the Allenhurst Property. These facts belie any unsupported suggestion that ratepayers have not benefited from the Company's continued use of the Allenhurst Property for these purposes.

The Company also believes the position taken by Rate Counsel in its comment letter may be based on a misunderstanding about the reasons for the post-closing escrow. JCP&L states that post-closing escrow is a transactional cost, and it appears that Rate Counsel inaccurately conflates the Buyer's assumption of biennial monitoring responsibilities under the purchase and sale agreement with the Buyer's own separate and distinct post-closing responsibilities which the post-Closing escrow was intended and created to address.

JCP&L states the Response Action Outcome ("RAO") discharged JCP&L of any going-forward environmental responsibilities for the Allenhurst Property relative to its use by JCP&L, besides the biennial monitoring, which the Buyer agreed to undertake under the Contract. JCP&L also points out that the Buyer has its own post-closing responsibilities associated with its planned or anticipated use of the Allenhurst Property following consummation of the sale. These responsibilities are separate and distinct from the responsibilities that JCP&L has already fulfilled as per the RAO, or transferred (i.e., the biennial monitoring) with respect to JCP&L's ownership and use of the Allenhurst Property. The Buyer's Post-Closing RAO relates only to

Buyer's responsibilities borne out if its plans for using the Allenhurst Property following closing. JCP&L claims it has nothing at all to do with the biennial monitoring under the final RAO. Instead, it is a form of conditional escrow, which is common in commercial real estate transactions involving industrial facilities, negotiated to lock-in (through the waiver of the right to terminate) the Buyer's commitment to its bid, the highest bid received by the Company through its thorough and diligent sales and marketing process.

JCP&L emphasizes that commercial real estate transactions include escrows, citing Moretran Realty, LLC v. Baldev Patel & Son, LLC, 2017 N.J. Super. Unpub. LEXIS 2121 (App. Div. 2017) (noting that \$100K was escrowed at closing for issues); Deforest Inv. Co., LLC v. Cushman & Wakefield of N.J., Inc., 2012 N.J. Super. Unpub. LEXIS 75 (App. Div. 2012) (mentioning the creation of an escrow of \$1 million for issues that reduced the amount of the purchase price upon which a real estate commission would be paid); and Nettles, L, and Cohen, A, Considerations in Business Transactions, American Bar Association Section of Energy, and Resources (43rd Spring Meeting, Salt Lake City, UT, March 20-22, 2014) ("indicating the parties may implement...through an escrow account that would be applied to any future liabilities; that account may include a hold-back,' which earmarks some of Seller's sale proceeds for costs"). Therefore, JCP&L asserts that post-closing escrow cannot be properly characterized as anything but a transaction cost of the sale, which effectively reduces the proceeds of the sale from which the gain is calculated, and to do otherwise would be inappropriate.

Lastly, JCP&L claims that Rate Counsel's concerns with regard to the treatment and timing of the return of the unused post-closing escrow funds are unnecessary, as there are provisions in the Contract that addresses these issues. JCP&L states that since any remaining funds from the post-closing escrow related to the sale transaction would be treated in the normal course of business, as an adjustment to the proceeds of the sale, which, in turn, would cause an adjustment in the calculation of the gain on the sale, which would be treated in the same fifty-fifty (50-50) manner as the Company has proposed in its pro forma journal entries. This treatment is consistent with the Board's long-standing policy according to the Company.

DISCUSSION AND FINDINGS:

After careful review and consideration of the petition, exhibits, discovery and comments submitted in this matter, the Board **HEREBY FINDS** that the sale of the Allenhurst Property by JCP&L to the Buyer will not adversely affect the public interest and will not affect the Company's ability to render safe, adequate and reliable service. The sale of the Allenhurst Property will reduce the Company's costs by eliminating the need for continued payment of taxes and maintenance on the Allenhurst Property, and the Company will retain an easement needed for access to electrical distribution and transmission facilities located on Block 21, Lots 5, 6 and 7, which will be recorded and run with the land in perpetuity.

The Board has reviewed the positions of the parties and believes that under the circumstances of this case, it is appropriate to order JCP&L to credit one-hundred percent (100%) of the proceeds of the sale to Account 253 for review in the Company's next base rate case. The Board has used different treatments of the net proceeds of sales, which have included a fifty-fifty (50/50) split as well as crediting the entire sale amount to particular projects and accounts.

Accordingly, the Board **HEREBY APPROVES** the contract for the sale of the Allenhurst Property to the Buyer in the amount of \$5,238,095.24 with the net proceeds being credited to Account 253 for consideration and review in the Company's next base rate case.

The approval granted hereinabove shall be subject to the following provisions:

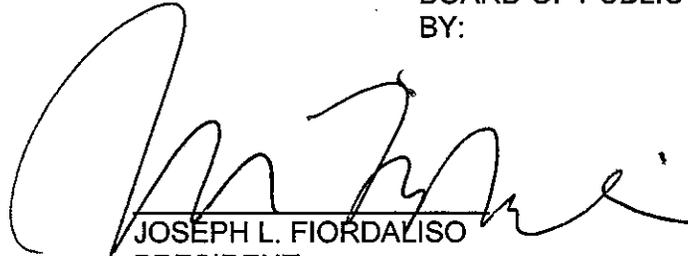
1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
2. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the Contract.
3. The Board and Rate Counsel retain all rights to review all costs and proceeds related to the purchase of and sale of the Allenhurst Property in JCP&L's next base rate case or other appropriate proceeding.
4. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by the JCP&L.
5. Within thirty (30) days of the date of the closing on this transaction, the Company shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses, of the sale.
6. JCP&L shall flow one-hundred percent (100%) of the net gain from this sale to Account 253 - Other Deferred Credits, for review in JCP&L's next rate base case.
7. JCP&L may no longer seek, either through the NGC or any other rate recovery mechanism, any environmental costs incurred in relation to the Allenhurst Property. This does not preclude JCP&L from seeking potential recovery of future environmental costs associated with the new easement required for access to the electrical distribution and transmission facilities on Block 21, Lots 5, 6 and 7 where the environmental concerns are a result of the easement and damages that occur on or after the closing of the sale of the property and recording of the easement.
8. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matters affecting JCP&L.

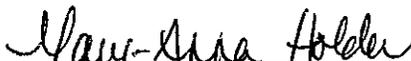
The Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

This Order shall be effective on September 27, 2018.

DATED: 9/17/18

BOARD OF PUBLIC UTILITIES
BY:

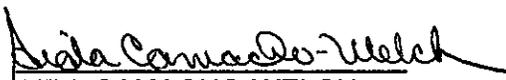

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COMMISSIONER


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COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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

IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT
COMPANY FOR APPROVAL OF THE SALE AND CONVEYANCE OF CERTAIN PORTIONS
OF ITS PROPERTY IN THE BOROUGH OF ALLENHURST, MONMOUTH COUNTY, NEW
JERSEY AND THE GRANTING AND TRANSFER OF CERTAIN EASEMENTS IN
CONNECTION THEREWITH PURSUANT TO N.J.S.A. 48:3-7 AND N.J.A.C. 14:1-5.6
DOCKET NO. EM18020193

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