



Agenda Date: 10/28/20
Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE VERIFIED PETITION)	ORDER APPROVING SALE OF
OF JERSEY CENTRAL POWER AND LIGHT)	GENERATION STATION
COMPANY SEEKING (a) APPROVAL OF THE)	
SALE OF ITS OWNERSHIP INTEREST IN THE)	
YARDS CREEK GENERATING STATION)	
PURSUANT TO N.J.S.A. 48:3-7, (b) WAIVER OF)	
THE ADVERTISING. REQUIREMENT OF N.J.A.C.)	
14:1-5.6(b), (c) A SPECIFIC DETERMINATION)	
ALLOWING THE YARDS CREEK GENERATING)	
STATION TO BE AN ELIGIBLE FACILITY)	
PURSUANT TO SECTION 32 OF THE PUBLIC)	
UTILITY HOLDING COMPANY ACT OF 1935)	
UNDER THE PUBLIC UTILITY HOLDING)	
COMPANY ACT OF 2005, (d) TO THE EXTENT)	
NECESSARY, A DETERMINATION OF)	
COMPLIANCE WITH, OR THE NON-)	
APPLICABILITY OR WAIVER OF, THE AUCTION)	
STANDARDS UNDER THE BOARD'S 1998)	
ORDER ADOPTING AUCTION STANDARDS)	
UNDER N.J.S.A. 48:3-59(b)., AND (e) OTHER)	
RELATED RELIEF)	DOCKET NO. EM20050343

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Michael J. Connolly, Esq. on behalf of Jersey Central Power and Light Company

BY THE BOARD:

On May 6, 2020, Jersey Central Power and 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 its 50% undivided ownership interest (“JCP&L Interest”) in the Yards Creek Generation Station (“Yards Creek Facility”) to Yards Creek Energy, LLC (“YCE” or “Buyer”) for a purchase price of \$155 million (“Petition”).

BACKGROUND

The Yards Creek Generation Station, located in Blairstown and Hardwick Townships in Warren County, is a 420 megawatt (“MW”) pumped-storage hydro facility that began commercial operation in 1965. Pursuant to a Board Order dated March 4, 1965, as amended on March 10, 1965 in BPU Docket No. 651-55, the Company and Public Service Electric and Gas Company (“PSE&G”) were the owners of 50% undivided interests in the Yards Creek Facility.¹ The ownership arrangement between JCP&L and PSE&G is governed by an agreement entered into by JCP&L and PSE&G in 1964 (“1964 Agreement”).

Section 5 of the 1964 Agreement contains a preferential right such that in the event either party desired to sell its interest or any part thereof, the other party has a preferential right to purchase the interest of the other party at the depreciated original cost thereof (“Preferential Right”).

Between 1997 and 2020, the parties to the 1964 Agreement had been in dispute regarding the Preferential Right. The dispute led to a December 15, 1998 filing by JCP&L of a Supplemental Petition in BPU Docket No. 651-55, and a Verified Petition in BPU Docket No. EM98121463.² In the 1998 Proceeding, JCP&L requested that the Board enter a declaratory order pursuant to N.J.S.A. 52:14B-8 regarding certain issues in dispute between JCP&L and PSE&G regarding the Preferential Right to purchase JCP&L’s interest contained in the 1964 Agreement. JCP&L requested that the Board determine that (i) absent the approval of the Board, PSE&G may not purchase JCP&L’s interest in Yards Creek at depreciated original cost, (ii) if such approval were to be sought, the Board would not grant it, and (iii) any purported Preferential Right to purchase JCP&L’s interest contained in the 1964 Agreement is null and void, as against public policy and contrary to the best interest of JCP&L’s customers. On February 4, 1999, PSE&G filed a Verified Answer in the 1998 Proceeding, admitting some, denying some, and taking no position on some of the assertions in JCP&L’s Verified Petition, and asserting several affirmative defenses.

¹ In re the Petition of Jersey Central Power and Light Company: (1) Grant and Convey to Public Service Electric and Gas Company a Certain Right of Way and Easement for Electric Transmission Lines Affecting Certain Lands in the Township of Blairstown, Warren County, New Jersey, for the Sum of \$13,574; and (2) to Transfer and Convey to Public Service Electric and Gas Company an Undivided Interest in and Certain Property, Rights and Interests for a Pumped Storage Electric Generating Project Adjacent to the Delaware River Near Tocks Island, Pahaquarry Township, Warren County, New Jersey, and Adjacent to yards Creek in the Township of Blairstown and in the Township of Pahaquarry, Warren County, New Jersey for a Base Price of \$10,735,237.78 Plus Additions and Interest During Construction from December 1, 1964 to the Date of Conveyance, BPU Docket NO. 651-55, (March 4, 1965; amended March 10, 1965), (“1965 Order”). PSE&G subsequently transferred its generation assets to PSEG Fossil LLC (“PSEG”). The transfer of PSE&G’s generation assets to PSEG was approved by the Board in 1999, in a decision upheld by the Supreme Court of New Jersey in 2001. PSEG is the successor in interest to the 1964 Agreement. The transfer of PSE&G’s generation assets to PSEG was approved by the Board in 1999, in a decision upheld by the Supreme Court of New Jersey in 2001.

² In re Jersey Central Power & Light Company d/b/a GPU Energy, Petitioner vs. Public Service Electric and Gas Company, BPU Docket No. EM98121463, (“1998 Proceeding”).

On January 17, 2020, JCP&L and PSEG arrived at a resolution and executed a stipulation of settlement (“SOS”), which JCP&L filed with the Board on February 21, 2020. By Order dated March 27, 2020, the Board approved the SOS which allowed JCP&L the ability to seek to sell its interest in the Yards Creek facility.³ PSEG announced that it had reached an agreement to sell the PSEG interest on February 28, 2020.

Petition

On April 6, 2020, the Company and Buyer entered into an Asset Purchase Agreement (“APA”) for the transfer and sale of the JCP&L 50% undivided ownership interest (“JCP&L Interest”) in the Yards Creek Facility. In the Petition, JCP&L sought approval to sell the JCP&L Interest to YCE for a purchase price of \$155 million. JCP&L asserted that, based upon the sale benefits and process, the purchase price is the full fair market value for the JCP&L Interest. Additionally, due to the relative uncertainty in the capacity market, JCP&L concluded that engaging in an advertising process to solicit further interest in the JCP&L Interest in the Yards Creek Facility will not likely yield a better financial outcome and rather risk the proposed transaction. Accordingly, JCP&L also requested a waiver of the advertising requirements, pursuant to N.J.A.C. 14:1-5.6(b), asserting that a waiver will not compromise the ability of the Company to render safe, adequate, and proper service.

On its balance sheet, through March 31, 2020, JCP&L currently has an outstanding under recovered deferred storm-related regulatory asset balance for storm costs of approximately \$305 million. As an alternative to splitting the gain between ratepayers and shareholders, JCP&L requested that the Board apply the entire net proceeds of approximately \$109.1 million from the proposed sale to reduce the deferred storm-related regulatory asset balance consistent with the directives of the JCP&L Restructuring Order⁴. The Company proposed to add the \$0.3 million net income tax obligation to the amounts to be deducted from the net purchase price.

The APA requires JCP&L to obtain an order from the Board determining that the JCP&L Interest qualifies as an Exempt Wholesale Generator (“EWG”) which will benefit customers, is in the public interest, and does not violate State law. JCP&L requested a determination that the JCP&L Interest in the Yards Creek Facility is an “eligible facility” under the Public Utility Holding Company Act of 2005. Certain electricity generators may apply to the Federal Energy Regulatory Committee (“FERC”) to qualify for EWG status. JCP&L and PSEG filed an application with FERC for approval and transfer of ownership of the Yards Creek Facility on May 6, 2020, with an anticipated approval date around July 2020.⁵

³ In re the Petition of Jersey Central Power and Light Company: (1) Grant and Convey to Public Service Electric and Gas Company a Certain Right of Way and Easement for Electric Transmission Lines Affecting Certain Lands in the Township of Blairstown, Warren County, New Jersey, for the Sum of \$13,574; and (2) to Transfer and Convey to Public Service Electric and Gas Company an Undivided Interest in and Certain Property, Rights and Interests for a Pumped Storage Electric Generating Project Adjacent to the Delaware River Near Tocks Island, Pahaquarry Township, Warren County, New Jersey, and Adjacent to yards Creek in the Township of Blairstown and in the Township of Pahaquarry, Warren County, New Jersey for a Base Price of \$10,735,237.78 Plus Additions and Interest During Construction from December 1, 1964 to the Date of Conveyance, BPU Docket No. 651-55 AND In re Jersey Central Power and Light Company d/b/a GPU Energy, Petitioner vs. Public Service Electric and Gas Company, BPU Docket No. EM98121463, Order dated March 27, 2020.

⁴ Final Decision and Order, March 7, 2001, IMO Jersey Central Power and Light Company d/b/a GPU Energy – Rate Unbundling, Stranded Cost and Restructuring Filings, BPU Docket Nos. EO97070458, EO97070459 and EO97070460 (the “JCP&L Restructuring Order”).

⁵ By Order dated July 30, 2020, FERC partially approved the transfer of license.

The Board's 1998 Auction Standards Order provided auction standards applicable to the asset sales "resulting from the planned divestitures" of New Jersey electric distribution companies' generation assets. The Yards Creek Facility was not part of the Company's divestiture process in the late 1990s. JCP&L stated that the Yards Creek Facility is the only remaining generation station owned by the Company and, given its joint ownership and the terms of the 1964 Agreement and the related dispute leading to the SOS therefore, it was never a reasonable candidate for an auction process. JCP&L asserted that the proposed sale is not a "planned divestiture" and therefore, the Company does not believe the Board's 1998 Auction Standards Order applies to the proposed sale. JCP&L requested that the Board make a determination of compliance with, or the non-applicability or waiver of, the auction standards.

The amended and restated Section 5 of the 1964 Agreement indicated that in the event either party, JCP&L or PSEG, decides to sell its interest, the other party shall have a preferential right to purchase at the depreciated original cost thereof at the effective date. In this case, from and after the sale of the JCP&L Interest, the 1964 Agreement would be on no further force or effect. Accordingly, JCP&L requested that the Board authorize the termination of the 1964 Agreement upon the consummation of the sale of the JCP&L Interest.

Rate Counsel Comments

By correspondence dated September 23, 2020, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the petition. In its comments, Rate Counsel indicated that it does not object to the sale and the Company's request for a waiver of the advertising requirements required by N.J.A.C. 14:1-5.6(b) and the Board's Auction Standard. Additionally, Rate Counsel does not object to the Board deeming the facility as an EWG. Further, Rate Counsel indicated that it agrees that the Yards Creek sale price represents fair market value. (Rate Counsel Comments at 6).

Rate Counsel noted that under the Board's regulations there are certain conditions that must be met by a public utility prior to the sale of property valued over \$500,000, including that the property must be advertised for sale, presumably to obtain the best price possible. (Ibid.) Rate Counsel further noted that waiver of the advertising requirement is permitted only for specific circumstances pursuant to the Board's regulations. Rate Counsel asserted that the Petition did not address the requirements regarding whether the subject property is no longer used or useful for utility purposes, and whether there is no prospective use of the property for utility purposes or no other likely prospective purchaser. (Id. at 7). Pursuant to N.J.A.C 14:1-1.2(b)1, the Board has the authority to relax or permit deviation from the Board regulation for good cause shown. Rate Counsel stated that although the subject property is used and useful for utility purposes, it recognizes the unique nature of the transaction. Due to the unique ownership structure of the Yards Creek Facility and the fact that the sales price for the property is reasonable and represents fair market value, Rate Counsel does not object to the waiver of the advertising requirement. (Id. at 7 to 8).

Similarly, with respect to the Board's Auction Standards, Rate Counsel stated that it does not agree that the standards do not apply in this case, but the Board can waive its applicability in the present proceeding. (Id. at 8). Rate Counsel agreed that the sales price appears to represent market price and may be the best offer that JCP&L can reasonable expect. (Id. at 9). However, Rate Counsel asserted that one requirement in the Auction Standards should be applied. Rate Counsel requested that the Board permit Rate Counsel and Board Staff ("Staff") to review the final accounting of the sale and the calculation of the net proceeds in order to ensure that the fees and costs netted from the sales price are reasonably managed. (Ibid.)

Additionally, Rate Counsel did not object to utilizing the net proceeds of this transaction to offset the storm-related regulatory balance, and recommends that the disposition of the proceeds be addressed in the JCP&L Base Rate Case currently before the Board in Docket No. ER20020146.⁶ (Id. at 14).

JCP&L Reply Comments

By correspondence dated September 25, 2020, JCP&L submitted reply comments. The Company noted Rate Counsel's request that the Board permit Rate Counsel and Staff to review the final accounting of the sale and calculation of the net proceeds in order to ensure that the fees, net plant and costs netted from the sales price are reasonably managed. (JCP&L Reply Comments at 3). Understanding the time frame for the true-up of trade accounts as set forth in the APA, JCP&L does not object to Rate Counsel's request. (Ibid.)

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 Yards Creek Generation Station 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.

As noted in its comments, Rate Counsel recognizes the unique situation surrounding the sale, including the history of the Yards Creek facility and the benefits of the sale. Rate Counsel acknowledges that advertising the sale may not yield a higher price, and the attempt to obtain multiple bids has the potential to be detrimental to the sale ultimately harming ratepayers. The Board agrees. Good cause pursuant to N.J.A.C. 14:1-1.2 having been shown, the Board **HEREBY WAIVES** N.J.A.C. 14:1-5.6(b) which otherwise requires the property to be advertised for sale.

The Board further agrees with JCP&L that the proposed sale is not a planned divestiture or being conducted pursuant to JCP&L's restructuring-era divestiture plans as the facility was not included in those plans. The Board **HEREBY FINDS** that the 1998 Auction Standards Order does not apply to the Yards Creek Facility sale.

The Board recognizes that all parties acknowledge the Board's regulatory authority over the approval of this sale. Notably, Rate Counsel agrees that the sale is in accordance with Board regulations and will allow JCP&L to maintain proper service to its customers.

Accordingly, the Board **HEREBY APPROVES** the Contract for the sale of the Yards Creek Facility to the Buyer in the amount of \$155 million with the proceeds being applied to the under recovered deferred storm-related regulatory asset balance. Additionally, the Board **HEREBY APPROVES** the termination of the 1964 Agreement.

⁶ In re the Verified Petition of Jersey Central Power and Light Company for Review and Approval of Increases in and Other Adjustments to its Rates and Other Charges for Electric Service, and for Approval of Other Proposed Tariff Revisions in Connection Therewith ("2020 Base Rate Filing"), BPU Docket No. ER20020146.

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

1. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the Contract for sale of the Yards Creek Facility.
2. 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.
3. 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 Company.
4. 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.
5. Rate Counsel and Board Staff shall review the final accounting of the sale and the calculation of the net proceeds in order to ensure that the fees and costs netted from the sales price are reasonably managed and prudent. This review should occur in the context of the JCP&L Non-Utility Generation charge filings.

As part of the PSE&G Restructuring, the Board, among other things, approved the divestiture by PSE&G of its interest in Yards Creek to an affiliate, PSEG Fossil, and made a specific determination with respect to the eligible facility status of the PSEG interest in the Yards Creek Facility.⁷ Accordingly, the Board **HEREBY FINDS** that the Yards Creek Facility Facilities qualifies as an EWG which will benefit customers, is in the public interest, and does not violate State law. The Board **FURTHER FINDS** that the JCP&L Interest in the Yards Creek Facility is an “eligible facility” under the Public Utility Holding Company Act of 2005.

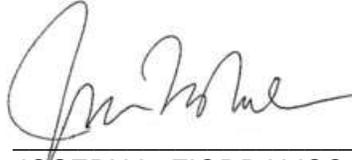
The Company’s costs remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

⁷ In re Public Service Electric and Gas Company’s Rate Unbundling, Stranded Costs and Restructuring Filings, BPU Docket. Nos. EO97070461, EO97070462, EO97070463, Final Decision and Order (August 24, 1999) (“PSE&G Restructuring Order”), aff’d, 167 N.J. 377 (2001) at page 124.

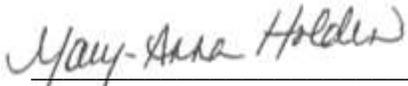
This Order shall be effective on November 7, 2020.

DATED: October 28, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

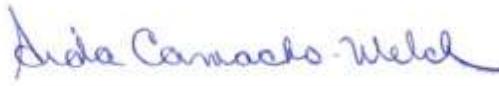


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY SEEKING (a) APPROVAL OF THE SALE OF ITS OWNERSHIP INTEREST IN THE YARDS CREEK GENERATING STATION PURSUANT TO N.J.S.A. 48:3-7, (b) WAIVER OF THE ADVERTISING. REQUIREMENT OF N.J.A.C. 14:1-5.6(B), (c) A SPECIFIC DETERMINATION ALLOWING THE YARDS CREEK GENERATING STATION TO BE AN ELIGIBLE FACILITY PURSUANT TO SECTION 32 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, (d) TO THE EXTENT NECESSARY, A DETERMINATION OF COMPLIANCE WITH, OR THE NON-APPLICABILITY OR WAIVER OF, THE AUCTION STANDARDS UNDER THE BOARD'S 1998 ORDER ADOPTING AUCTION STANDARDS UNDER N.J.S.A. 48:3-59 B., AND (e) OTHER RELATED RELIEF
DOCKET NO. EM20050343

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