



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF 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 TO 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 ; AND )

DECISION AND ORDER  
APPROVING STIPULATION

BPU DOCKET NO. 651-55

IN THE MATTER OF JERSEY CENTRAL POWER )  
AND LIGHT COMPANY D/B/A GPU ENERGY, )  
PETITIONER VS. PUBLIC SERVICE ELECTRIC )  
AND GAS COMPANY, RESPONDENT )

BPU DOCKET NO. EM98121463

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Gregory Eisenstark, Esq.**, Cozen O'Connor on behalf of Jersey Central Power and Light Company  
**Matthew Weissman, Esq.**, on behalf of PSEG Fossil LLC

BY THE BOARD:

On February 21, 2020, Jersey Central Power and Light Company ("JCP&L" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") requesting Board review

and approval of a stipulation of settlement (“Stipulation”) related to JCP&L’s interests in the Yards Creek Generating Station (“Yards Creek”) (“February 2020 Petition”).

## **BACKGROUND**

Pursuant to a Board Order dated March 4, 1965, as amended 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 Yards Creek.<sup>1</sup> 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”).

On October 12, 1997, JCP&L announced that it intended to commence a process to divest non-nuclear generation facilities. Specifically, with respect to jointly owned stations such as Yards Creek, JCP&L stated in its initial divestiture plan report filed with the Board in December 1997 that it was assessing each such station for possible inclusion in the sale process in light of its consideration of specific issues, such as the contractual rights of the other joint owner(s). After JCP&L submitted its initial divestiture plan report to the Board in December 1997, PSE&G sought to exercise its right under Section 5 of the 1964 Agreement to purchase JCP&L's interest at depreciated original cost. It was JCP&L's position at that time that the fair market value of its interest in Yards Creek was substantially in excess of its depreciated original cost, and that if JCP&L was required to sell its interest to PSE&G at the depreciated original cost, JCP&L's ability to reduce its generation-related stranded costs in connection with the Board's electric restructuring policies would be materially impacted, to the detriment of JCP&L's customers.

Since 1997, the parties to the 1964 Agreement have 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.<sup>2</sup> 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

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<sup>1</sup> 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, Order dated 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.

<sup>2</sup> 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, (“1998 Proceeding”).

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. There were and are no intervenors to the 1998 Proceeding.

Pursuant to an Asset Transfer Agreement dated August 21, 2000, PSE&G transferred all of its rights, title, and interest in Yards Creek to PSEG, which took on all of PSE&G's liabilities, obligations, rights and responsibilities associated with ownership of its interest in Yards Creek. The transfer did not trigger JCP&L's right to purchase PSE&G's interest in Yards Creek at depreciated original cost because by the terms of Section 5 of the 1964 Agreement, that right did not arise where the transfer is to an affiliated entity. On March 7, 2001, the Board issued an Order pertaining to JCP&L's restructuring proceeding.<sup>3</sup> With respect to Yards Creek, the JCP&L Restructuring Order recognized that JCP&L's interest in Yards Creek had not yet been divested, addressed the disposition of net proceeds in anticipation of an eventual sale of JCP&L's interests therein, but did not address the then-pending 1998 Proceeding.

Despite attempts by the parties to the 1964 Agreement to resolve their differences, the 1998 Proceeding has remained open on the Board's docket and unresolved. According to JCP&L, over the ensuing years, both the 1964 Agreement and the lack of resolution to the 1998 Proceeding, have constrained the parties to the 1964 Agreement in their ability to sell their respective interests in Yards Creek at a reasonable price.

### **February 2020 Petition**

On January 17, 2020, JCP&L and PSEG arrived at a resolution and executed the Stipulation. On February 21, 2020, JCP&L filed the February 2020 Petition seeking Board review and approval of the Stipulation intended to remove the constraint on the alienation of the respective interests in Yards Creek of the parties under the 1964 Agreement.

JCP&L requested expedited review and approval of the Stipulation to facilitate discussions for potential transactions which the parties to the 1964 Agreement may wish to explore. JCP&L indicated that any disposition of JCP&L's undivided interest in Yards Creek would remain subject to the Board's approval under N.J.S.A. 48:3-7 and the Board's regulations under N.J.A.C. 14:1-5.6.

### **Terms of the Stipulation**

The Stipulation provides for the following salient terms:<sup>4</sup>

23. Without either party admitting or acknowledging any wrongdoing, or any liability by JCP&L to PSEG or anyone, by PSEG to JCP&L or anyone, or any violation of any rule, regulation or provision of law in connection with the 1998 Proceeding, the

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<sup>3</sup> In re Jersey Central Power and Light Company d/b/a GPU Energy - Rate Unbundling, Stranded Cost and Restructuring Filings, Final Decision and Order, BPU Docket Nos. EO97070458, EO97070459 and EO97070460, Order dated March 7, 2001, ("JCP&L Restructuring Order").

<sup>4</sup> Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Each paragraph is numbered to coincide with the Stipulation.

parties agree that the Stipulation is intended to resolve any and all differences between the parties that arose in the 1998 Proceeding.

24. The Parties agree that, subject to paragraph 28 in the Stipulation, they shall not appeal the Board Order adopting the Stipulation in its entirety.
25. The parties each agree to waive their respective Preferential Right to purchase the other party's interest at depreciated original cost under Section 5 of the 1964 Agreement. The parties agree that, notwithstanding anything else to the contrary in the 1964 Agreement and effective as of the Effective Date, the Preferential Right of either party to purchase the other party's interest under Section 5 of the 1964 Agreement (at depreciated original cost or at any other valuation) will be of no further force or effect and shall not be binding on either party.
26. The parties agree that, on the effective date of the Stipulation, the parties shall enter into a written waiver and amendment to the 1964 Agreement whereby each of the parties shall be free to sell its respective interests in Yards Creek at fair market value to any other interested non-affiliated third party without being subject to the other party's Preferential Right to purchase the other party's interest at depreciated original cost (or at any other valuation); provided, however, that in order to sell its interest to any specific non-affiliated third-party purchaser, either party, as selling party, shall be required to obtain the consent of the other party, as non-selling party, such consent not to be unreasonably withheld; and provided further, that such agreement shall not, and shall not be deemed to, otherwise relieve JCP&L of the requirements of applicable regulations to seek Board approval pertaining to the transfer of its property interests in Yards Creek.
27. The parties agree that neither of them shall commence any other litigation for damages, injunctive relief or otherwise, against the other regarding the Preferential Right set forth in Section 5 of the 1964 Agreement, or otherwise regarding or in connection with, the 1998 Proceeding and, subject to paragraph 28 of the Stipulation, in consideration of the agreements and undertakings of the parties under the Stipulation, each party:
  - (a) on behalf of itself and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors and permitted assigns (collectively, "Releasors") hereby releases, waives and forever discharges, in each case effective as of the effective date of the Stipulation, the other party and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors and permitted assigns (collectively, "Releasees") of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty or equity, which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter,

cause, or thing whatsoever from the beginning of time through the effective date of the Stipulation arising out of or relating to Section 5 of the 1964 Agreement or the 1998 Proceeding (collectively, "Claims"); and

- (b) Each party, on behalf of itself and each of its respective Releasors, understands that it may later discover Claims or facts that may be different than, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in the Stipulation, and which, if known at the time of signing the Stipulation, may have materially affected the Stipulation and such party's decision to enter into it and grant the release contained herein. Nevertheless, the Releasors intend to, effective as of the effective date of the Stipulation, fully, finally and forever settle and release all Claims that now exist, may exist or previously existed, as set forth in the release contained in the Stipulation, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive, effective as of the effective date of the stipulation, any right or Claim that might arise as a result of such different or additional Claims or facts.

### **Rate Counsel Comments**

On March 2, 2020, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the February 2020 Petition. In its comments, Rate Counsel indicated that it did not object to the requested relief, provided that JCP&L's interest in Yards Creek is valued the same as PSEG's interest, in the event JCP&L sells its share of Yards Creek. As JCP&L acknowledged that the sale of its interest in Yards Creek would be subject to the Board's approval under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, Rate Counsel indicated that its non-objection was limited to the specific issues raised in the filing and not the appropriate value of JCP&L's interest in Yards Creek.

### **DISCUSSION AND FINDINGS**

The Board reviewed the record in this proceeding, including the January 2020 Petition, the Stipulation and Rate Counsel's comments. The Board **HEREBY FINDS** the Stipulation to be reasonable and in accordance with the law. Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein, subject to any terms and conditions set forth in this Order.

All costs related to Yards Creek will 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.

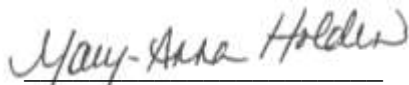
The effective date of this Order is April 6, 2020.

DATED: March 27, 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 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 TO 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 ; AND

IN THE MATTER OF JERSEY CENTRAL POWER AND LIGHT COMPANY D/B/A GPU ENERGY, PETITIONER VS. PUBLIC SERVICE ELECTRIC AND GAS COMPANY, RESPONDENT

BPU DOCKET NOS. 651-55 and EM98121463

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