



Agenda Date: 9/11/19
Agenda Item: 2B

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)
OF JERSEY CENTRAL POWER AND LIGHT)
COMPANY FOR APPROVAL OF THE SALE AND)
CONVEYANCE OF CERTAIN PORTIONS OF ITS)
PROPERTY IN SOUTH BRUNSWICK)
TOWNSHIP, MIDDLESEX COUNTY, NEW)
JERSEY AND THE TRANSFER OF A CERTAIN)
LICENSE 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. EM19030357

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Michael J. Connolly, Esq., Cozen O'Connor, on behalf of Jersey Central Power & Light Company

BY THE BOARD:

BACKGROUND

On March 19, 2019, 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 property in South Brunswick Township, Middlesex County, New Jersey, (the "South Brunswick Property") to BH of South Brunswick, LLC ("Buyer") for a purchase price of \$7,500,018.

The South Brunswick Property is a 15.24 acre property situated at 351-369 Deans Rhode Hall Road and is designated as Block 21.01, Lot 38.01 on the municipal tax map. The South Brunswick Property was originally acquired on September 19, 1973 for \$240,000 for the purpose of siting, constructing, operating, and maintaining a 500 kV transmission line, which has been utilized continuously since 1978. The South Brunswick Property is not income producing except for the relatively minimal income derived from a tree farm license agreement.

The closing of the sale of the South Brunswick Property is contingent upon JCP&L's reservation of certain easements including the right to perform vegetation management and maintain facilities within these easements.

Pursuant to N.J.A.C. 14:1-5.6, JCP&L asserts that the South Brunswick Property is not used or useful to the Company and the transaction will not compromise the ability of the Company to render safe, adequate and proper service.

In May 2018, 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 South Brunswick Property. "For Sale" signs were placed on the South Brunswick Property beginning on October 17, 2018. In addition, the South Brunswick Property was advertised for sale on November 1, 2018 and on November 8, 2018 in both the Home News Tribune and the Newark Star Ledger. The Company indicated that seven (7) bids were received by the due date of November 29, 2018 and the highest bid was accepted.

On December 7, 2018, the Company and Buyer entered into a purchase and sale agreement ("Contract") for the sale of the South Brunswick Property for \$7,500,018 to be paid at the closing. The purchase price is considered more than fair market value based on the results of the marketing, advertising, and sales process and is in excess of the appraised value.

JCP&L will retain several easements on the South Brunswick Property for continued unimpeded transmission, communications, and other utility operations on and over the South Brunswick Property so that it may continue to provide safe, adequate and proper service to customers. The easements that will be retained by the Company are as follows:

1. An exclusive 200 foot wide easement over the portion of the South Brunswick Property used to operate and maintain a 500 kV transmission line;
2. A non-exclusive 15 foot wide easement along the southern border of the South Brunswick Property for future use, including communication purposes to support JCP&L utility system operations;
3. A non-exclusive 20 foot wide easement extending from the southern border of the South Brunswick Property and running in a northern direction ending at, and including a 50 foot x 52 foot segment along the western portion of the South Brunswick Property for communication purposes to support JCP&L utility system operations.

By correspondence dated July 15, 2019, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the petition. In its comments, Rate Counsel did not object to the sale of the South Brunswick Property. However, Rate Counsel stated that it was not convinced that there was adequate justification to permanently deny ratepayers a share in the gains. As such, Rate Counsel requested that the Board order JCP&L to treat the gains from the sale of the South Brunswick Property as a regulatory liability that can be addressed in the next rate case before the Federal Energy Regulatory Commission ("FERC"). Rate Counsel further reserved its rights in proceedings before FERC concerning the rate treatment of the sale proceeds.

By correspondence dated July 17, 2019, JCP&L submitted a reply to the comments made by Rate Counsel. JCP&L agreed with Rate Counsel that FERC is the appropriate jurisdiction for addressing the rate treatment of the sale proceeds. For that reason, JCP&L did not object to Rate Counsel's reservation of rights before FERC, where FERC's rules and regulations would control. However, JCP&L stated that the condition set forth in the comments regarding the gains from the sale is unnecessary and inappropriate because the Board does not have jurisdiction to create regulatory liabilities relative to utility plant, property, and equipment that is classified as transmission for ratemaking purposes. JCP&L also expressed concern that Rate Counsel was effectively asking the Board to interfere with FERC's exclusive ratemaking authority relative to transmission by creating a regulatory liability for the proceeds from the sale.

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 South Brunswick 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 South Brunswick Property will reduce the Company's costs by eliminating the need for continued payment of taxes and maintenance on the South Brunswick Property and the Company will retain easements needed for access to electrical facilities.

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

The parties agree that rates for transmission assets are governed by FERC's rate regulatory authority. Nonetheless, the Board acknowledges the dispute between the parties regarding the rate treatment of the sale proceeds arising in this docket. Rate Counsel contends that ratepayers should share in the proceeds. JCP&L contends that the gains are assignable to shareholders, not ratepayers. As evidenced in other proceedings,¹ the gains from the sale of transmission-related property are not guaranteed to shareholders. Rate Counsel believes that the gains from the sale of the South Brunswick Property should be treated as a regulatory liability due to this dispute, while JCP&L contends that it is unnecessary, if not extra-jurisdictional, for the Board to take such action. As noted above, all parties concede that resolution of this dispute is appropriately within the jurisdiction of FERC. Therefore, in light of this dispute regarding the rate treatment, the Board finds that it is appropriate to preserve this issue for further review in JCP&L's next FERC rate case. The Board **HEREBY ORDERS** JCP&L to take all necessary steps to preserve this issue for FERC's review in the Company's next rate proceeding at FERC and to provide FERC a copy of this Order in that next rate

¹ See In re the Petition of Public Service Electric and Gas Company for Approval of the Sale and Conveyance of Real Property Located on 148 Upper Hibernia Road, Rockaway Township, New Jersey With a Municipal Tax Map Designation of Block 30201 Lot 31, in the Township of Rockaway, County of Morris and State of New Jersey, to Stephen and Laura Treutlein for the Sum of \$300,000, BPU Docket No. EM16060605 (August 24, 2016); see also Letter Order from FERC Chief Accountant to Old Dominion Electric Cooperative, Docket No. AC19-76-000 (June 18, 2019) (approving ODEC's proposal to recently account for gain on the sale of electric plant in Account 421.1 and amortize the return of that gain to ratepayers in ODEC's wholesale power rates).

proceeding. The Board also retains the right to challenge the treatment of the sale proceeds in any future FERC rate recovery proceeding. The Board notes that JCP&L does not object to Rate Counsel's reservation of rights to dispute this issue in proceedings before FERC.

Accordingly, the Board **HEREBY APPROVES** the Contract for the sale of the South Brunswick Property to the Buyer in the amount of \$7,500,018 with the net proceeds being accounted for in accordance with the applicable federal regulation.

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

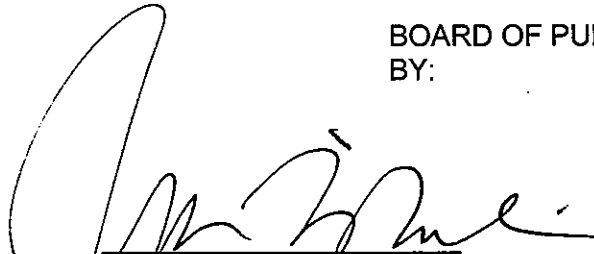
1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
2. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the Contract for sale of the South Brunswick Property.
3. The Board and Rate Counsel retain all rights to review all costs and proceeds related to the purchase of and sale of the South Brunswick Property in JCP&L's next base rate case or other appropriate proceeding, including before FERC.
4. 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.
5. 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.
6. 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.

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 21, 2019.

DATED: 9/11/19

BOARD OF PUBLIC UTILITIES
BY:



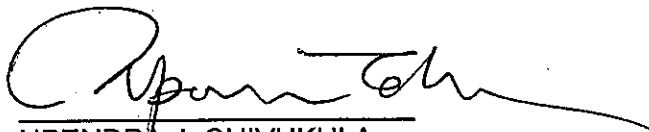
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



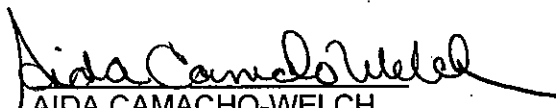
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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 SOUTH BRUNSWICK TOWNSHIP, MIDDLESEX COUNTY, NEW
JERSEY AND THE TRANSFER OF A CERTAIN LICENSE IN CONNECTION THEREWITH
PURSUANT TO N.J.S.A. 48:3-7 AND N.J.A.C. 14:1-5.6.
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