

May 6, 2020

**VIA ELECTRONIC MAIL**

**Michael J. Connolly**

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Office of the Secretary  
Attn: Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Street, 9th Floor  
P.O. Box 350  
Trenton, New Jersey 08625

**Re: 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. - CONFIDENTIAL DOCUMENTS ENCLOSED**

Dear Secretary Camacho-Welch:

This letter and the attachments are being sent electronically-only consistent with the New Jersey Board of Public Utilities ("**Board**") Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board or to the Division of Rate Counsel ("**Rate Counsel**"), of any kind, be submitted electronically.

On behalf of Jersey Central Power & Light Company ("**JCP&L**" or "**Company**"), please find enclosed for filing in the above-referenced matter a confidential version, and a redacted public version, of an electronic copy of the original Verified Petition requesting approval by the Board, pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, of the transfer and sale of JCP&L's 50% undivided ownership interest (the "**JCP&L Interest**") in the

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Yards Creek Generation Station (the “**Yards Creek Facility**”) to Yards Creek Energy, LLC (“**YCE**,” or “**Buyer**”) pursuant to the terms and conditions of an Asset Purchase Agreement dated April 6, 2020 (with all Exhibits, Schedules and any Amendments thereto, the “**Confidential APA**”), together with a separate letter containing the Company’s request for confidential treatment under the Board’s regulations at N.J.A.C. 14:1-12.1 et seq.

As explained in the Petition, in addition to the Board’s approval of the proposed sale pursuant to the Confidential APA, the Company additionally respectfully requests a Board order: (i) granting a waiver of the Board’s advertising requirements under N.J.A.C. 14:1-5.6(b); (ii) providing a specific determination by the Board that the JCP&L Interest in the Yards Creek Facility to be sold and conveyed to the Buyer qualifies as an Exempt Wholesale Generator, in accordance with Section 32(c) of the Public Utility Company Act of 1935; (iii) granting, to the extent deemed necessary, a determination that the Board’s Auction Standards under the Board’s 1998 Order Adopting Auction Standards applicable to the divestiture of generating assets by a New Jersey public utility have been substantially complied with, or do not apply to the proposed transaction, or are waived; (iv) approving in this proceeding the disposition of the net-proceeds of the sale of the JCP&L Interest in the Yards Creek Facility to reduce the Company’s deferred storm-related regulatory asset balance and directing such disposition to be implemented in the Company’s 2020 Base Rate Filing, and (v) approving the termination of the 1964 Agreement as described in the Petition.

With respect to addressing the need and request for confidential treatment, please note that a copy of the executed Confidential APA is Appendix A to the confidential

version of the Verified Petition (hereinafter, the “**Confidential Petition**”). In order to protect certain information claimed to be confidential, the redacted, public version of the Verified Petition redacts the confidential information within the Verified Petition providing certain details about the proposed transaction, and detailed descriptions of the terms and conditions of the APA, including the entirety of Appendix A, which is also claimed to be confidential. As discussed in the Company’s accompanying request for confidential treatment by the Board pursuant to N.J.A.C. 14:1-12.1 et seq., the Confidential Petition will only be made available to parties to the proceeding who execute the Company’s standard form non-disclosure agreement for use in Board proceedings.<sup>1</sup>

I hereby certify that, consistent with the Board’s Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board or Rate Counsel, of any kind, be submitted electronically, an electronic copy of this transmittal letter and the redacted, public version of the Verified Petition and Appendices, as enclosed herewith, have this day been transmitted to Stephanie Brand, Esq., Director of the Division of Rate Counsel, via electronic mail. Please kindly confirm receipt of same.

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<sup>1</sup> Please note that also enclosed with this transmittal is a copy of a letter and attachment providing the standard form of non-disclosure agreement for review and use in this proceeding in order to obtain the Confidential Petition. Such letter is directed to the Division of Rate Counsel, and to the Office of Attorney General, Department of Law & Public Safety, Division of Law, representing Board Staff.

Thank you in advance for your cooperation and courtesies in this matter. If you have any questions, please contact me.

Respectfully submitted,

COZEN O'CONNOR

A handwritten signature in blue ink, reading "Michael J. Connolly". The signature is written in a cursive style with a large, stylized initial "M".

By: Michael J. Connolly

MJC:lg  
Enclosures

cc: (w/enc.: Service List as indicated)

## Jersey Central Power and Light Company

*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.*

### BPU Docket No.

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**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

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In the Matter of the Verified Petition of **Jersey** :  
**Central Power & Light Company** Seeking (a) :  
Approval of the Sale of its Ownership Interest in : Docket No. \_\_\_\_\_  
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 : **VERIFIED PETITION**  
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.

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**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

Petitioner, Jersey Central Power & Light Company (“**JCP&L**,” the “**Company**,” or “**Seller**”), an electric public utility subject to the regulatory jurisdiction of the New Jersey Board of Public Utilities (the “**Board**” or “**BPU**”), and maintaining offices at 101 Crawford Corner Rd. Building #1, Suite 1-511, Holmdel, New Jersey 07733, and 300 Madison Avenue, Morristown, New Jersey 07962, in support of this Verified Petition, respectfully shows:

1. JCP&L, a wholly-owned subsidiary of FirstEnergy Corp. (“**FirstEnergy**”) is a New Jersey electric public utility primarily engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to more than 1,000,000 residential,



## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

commercial and industrial customers located within 13 counties and 235 municipalities of the State of New Jersey.

### **Summary of Relief Requested**

2. JCP&L respectfully seeks the Board's approval, pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, of the transfer and sale of JCP&L's 50% undivided ownership interest (the "**JCP&L Interest**") in the Yards Creek Generation Station (the "**Yards Creek Facility**") to Yards Creek Energy, LLC ("**YCE,**" "**Buyer**" or "**Transferee**") for One Hundred Fifty-Five Million Dollars (\$155,000,000) (the "**Purchase Price**") pursuant to, and subject to customary adjustments in accordance with, the terms and conditions of a confidential Asset Purchase Agreement dated April 6, 2020, as subsequently amended (the "**APA**") (attached hereto as Appendix A) as further described herein.

3. The Company also respectfully requests a waiver of the Board's advertising requirements under N.J.A.C. 14:1-5.6(b).

4. The Company further respectfully requests a determination that the JCP&L Interest in the Yard Creek Facility is an "eligible facility" under the Public Utility Holding Company Act of 2005.

5. While the Company does not believe, for the reasons stated herein, any approvals are required under the Board's Order Adopting Auction Standards (under N.J.S.A. 48:3-59 b.) in BPU Dockets Nos. EX94120585Y, EO97070457, EO97070460, EO97070463, and EO97070466 (June 16, 1998) (hereinafter, the "**Board's 1998 Auction Standards Order**"), JCP&L also respectfully requests, to the extent the Board deems necessary, a determination that the Company has substantially met the requirements of such Auction Standards, or that the Board's Auction

## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

Standards are not applicable, or that, the requirements of the Board's 1998 Auction Standards Order are waived.

6. Finally, JCP&L also respectfully requests the Board's approval to terminate the 1964 Agreement (as defined below) for the reasons set forth in this Verified Petition.

### **Buyer Information**

7. YCE is an indirect, wholly controlled subsidiary of LS Power Development, LLC ("*LS Power*"). LS Power develops, owns, and operates independent power projects in the United States and is, among other things, also developing merchant transmission projects in parts of the United States.

### **Background Information**

8. The Yards Creek Facility is a 420 MW pumped-storage hydro facility in Blairstown Township and Hardwick Township in Warren County, New Jersey that was initially placed in commercial service in 1965.

9. A property description of the Yards Creek Facility real property ("*Yards Creek Facility Real Property*") is attached hereto in accordance with N.J.A.C. 14:1-5.6(b)1 as Appendix B.

10. On December 30, 1964, JCP&L and Public Service Electric and Gas Company ("*PSE&G*"), another New Jersey electric public utility engaged in the distribution of electricity and gas service for residential, commercial, and industrial purposes within the State of New Jersey, entered into an agreement under which PSE&G acquired a 50% undivided ownership

## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

interest in the Yards Creek Facility, with JCP&L retaining the JCP&L Interest (the “**1964 Agreement**”). A copy of the 1964 Agreement is attached hereto as Appendix C-1.

11. This transfer was effectuated by a deed dated June 7, 1965, following a Board Order dated March 4, 1965 as amended March 10, 1965 (the “**1965 Order**”) approving the conveyance from JCP&L to PSE&G. A copy of the Board’s 1965 Order as amended is attached hereto as Exhibit 2 to Appendix C-2.

12. JCP&L has operated, and continues to operate, the Yards Creek Facility for itself on the one hand, and for PSE&G and, following the transfer discussed in ¶13 below, PSEG Fossil (as defined below), on the other hand, under an Operating Agreement dated October 6, 1965 (the “**1965 Operating Agreement**”), which is attached hereto as Appendix C-3.

13. The PSE&G 50% undivided ownership interest in the Yards Creek Facility was transferred to PSEG Fossil, LLC, a Delaware limited liability company (“**PSEG Fossil**”) an affiliate of, and as successor-in-interest to, PSE&G. The Board approved the transfer in 1999 as part of PSE&G’s restructuring proceeding.<sup>1</sup> The PSEG Fossil 50% undivided ownership interest in the Yards Creek Facility is hereinafter referred to as the “**PSEG Fossil Interest**.”

14. PSEG Fossil operates merchant power plants in New Jersey, New York, Connecticut, Maryland and Hawaii.

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<sup>1</sup> See I/M/O Public Service Electric and Gas Company’s Rate Unbundling, Stranded Costs and Restructuring Filings, Dkt. Nos. EO97070461, EO97070462, EO97070463, Final Decision and Order (N.J.B.P.U. August 24, 1999) (“**PSE&G Restructuring Order**”), aff’d, 167 N.J. 377 (2001). The PSEG Fossil Interest in the Yards Creek Facility was transferred by PSE&G to PSEG Fossil pursuant to an Asset Transfer Agreement dated as of August 21, 2000, wherein PSE&G transferred all its right, title, and interest in the Yards Creek Facility to PSEG, which took on all of PSE&G’s liabilities, obligations, rights and responsibilities associated with ownership of its interest in the Yards Creek Facility.

## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

15. On March 7, 2001, the Board issued its order pertaining to JCP&L's restructuring proceeding.<sup>2</sup> As to the JCP&L Interest in the Yards Creek Facility, the JCP&L Restructuring Order recognized that the JCP&L Interest had not been divested and addressed the disposition of net proceeds in anticipation of an eventual sale of the JCP&L Interest.<sup>3</sup>

16. Since 1998, prior to the closing of the sale of its other non-nuclear generation assets, JCP&L has been constrained in its ability to sell the JCP&L Interest in the Yards Creek Facility to any interested potential buyer due to a disputed matter between JCP&L and PSEG Fossil (as successor-in-interest to PSE&G) pertaining to the interpretation of a certain provision of the 1964 Agreement.

17. Recently, JCP&L and PSEG Fossil resolved their differences as reflected by the Stipulation of Settlement dated January 17, 2020 (the "**SOS**"), filed with the Board on February 21, 2020. A copy of the SOS is attached hereto as Appendix C-4.

18. The SOS was approved by the Board on March 27, 2020 in BPU Docket Nos. 651-55 and EM98121463 ("**March 27, 2020 Board Order**"), which March 27, 2020 Board Order became effective April 6, 2020 (a copy of which is attached hereto as Appendix C-5).

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<sup>2</sup> Final Decision and Order, March 7, 2001, IMO Jersey Central Power & 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**").

<sup>3</sup> The Yards Creek Facility was not included in the non-nuclear generation assets that were sold by JCP&L to Sithe Energies, Inc. ("**Sithe**") pursuant to the Board's authorization in Docket No. EM99020067 (Decision and Order dated November 4, 1999), and the Company retained ownership of the JCP&L Interest following the sale of its remaining non-nuclear generation assets to Sithe. JCP&L also retained its ownership of the Forked River Generation Station, which was subsequently sold in 2008. See, BPU Order issued January 17, 2007 in BPU Docket No: EM07010026 approving the subsequent sale of the Forked River Generation Station, which BPU Order was affirmed July 10, 2009 by the New Jersey Superior Court, Appellate Division in Docket No. NO. A-1073-07T21073-07T2 (*I/M/O The Verified Petition of [JCP&L] Seeking approval of the Sale of the Forked River Generating Station Pursuant to N.J.S.A. 48:3-7 and a Waiver of the Advertising Requirements of N.J.A.C. 14:1-5.6(b).* (Unpublished).

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19. The SOS, as approved by the Board, facilitates the ability of JCP&L to sell the JCP&L Interest and PSEG Fossil to sell the PSEG Interest in the Yards Creek Facility subject, in the case of the sale by JCP&L of the JCP&L Interest, to the Board's further review and approval as requested herein.

**JCP&L Interest Information<sup>4</sup>**

20. According to the Company's records, the JCP&L Interest in the Yards Creek Facility has a book value as of March 31, 2020 of \$44 million on JCP&L's books.

21. The Assessed Value and the annual taxes due in 2019 for the JCP&L Interest in the Yards Creek Facility was as follows:<sup>5</sup>

Assessed value of \$5,593,850, with Annual Taxes due and paid for 2019 in the amount of \$151,836, and \$46,194 so far in 2020 through March 31, 2020.

22. The Board of Directors of the Company has authorized the proposed sale of the JCP&L Interest as evidenced by the copy of the resolutions attached hereto as Appendix D.

23. As further explained herein, the sale of the JCP&L Interest in the Yards Creek Facility will not affect JCP&L's ability to render safe, adequate and proper service to its customers.<sup>6</sup>

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<sup>4</sup> This information is provided as required by N.J.A.C. 14:1-5.6(a)5.

<sup>5</sup> This information is provided as required by N.J.A.C. 14:1-5.6(a) 10, 11, and 13.

<sup>6</sup> This information is provided as required by N.J.A.C. 14:1-5.6(a) 5.

## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

### **Summary of the Transaction<sup>7</sup>**

24. Under the APA, Buyer agrees to purchase and Seller agrees to sell, free and clear of all liens other than permitted liens, all of Seller's right, title and interest in, to and under all assets, rights, business, claims and properties used exclusively in Seller's ownership of the JCP&L Interest and the operation and maintenance of the Yards Creek Facility and defined as "Purchased Assets" in the APA, including, among other things, the real property owned by Seller upon which the Yards Creek Facility is sited, all of Seller's rights as grantee, licensee of other rights-holders under certain easements, rights-of-way, licenses and other occupancy or use agreements; certain tangible personal property, certain transmission, switchyard, communication and interconnection facilities and equipment and related rights; electric capacity rights and obligations associated with any and all capacity of the Yards Creek Facility; all Assumed Contracts (as defined in the APA); transferable permits; certain books and records; and unexpired warranties, indemnities and guarantees made or given by third parties to the extent relating to the business or any of the other Purchased Assets (Section 2.01). The APA also includes customary covenants, representations and warranties regarding attendant liabilities (including environmental liabilities), title and insurance, tax matters, conditions of closing, among other commitments (Sections 3.01-3.25, Sections 4.01-4.11, Sections 5.01-5.05, Sections 6.01-6.03, Sections 7.01-7.20, Sections 8.01-8.02, Sections 9.01-9.03).

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<sup>7</sup> Please note that the APA has been submitted here with a request for confidential treatment due to the commercial sensitivity of the financial terms set forth therein. The full details of the transaction are set forth therein. The summary provided herein is a high-level summary of the terms with reference to the applicable provisions of the APA.

**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

25.

[REDACTED]

26.

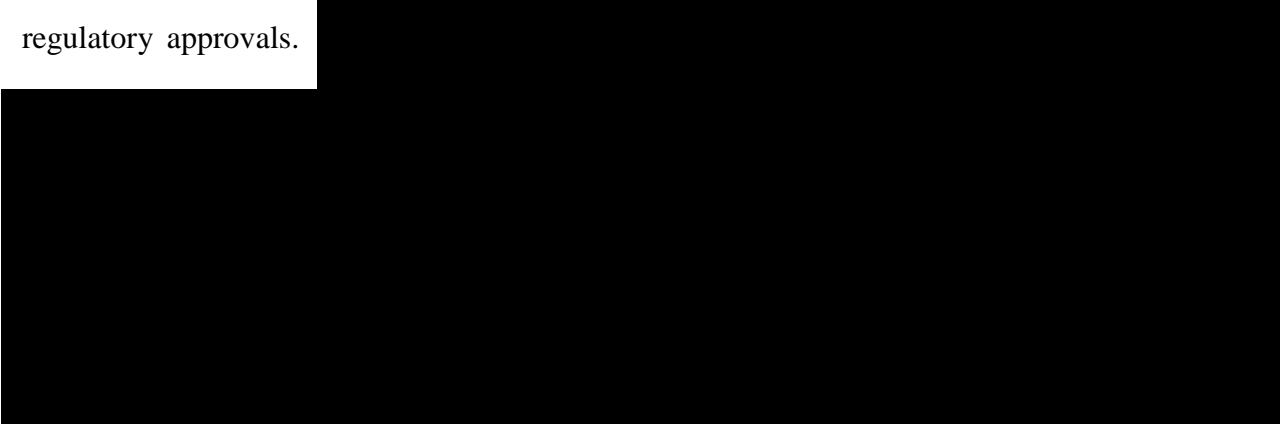
[REDACTED]

27.

[REDACTED]

**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

28. The APA may be terminated if the transaction has not closed prior to April 6, 2021, unless extended for an additional three months solely due to the pendency of required regulatory approvals.



29. JCP&L's participation in the 1964 Owners' Agreement with respect to the Yards Facility from and after the closing of the proposed sale of the JCP&L Interest would be terminated as further discussed herein upon consummation of the proposed sale.

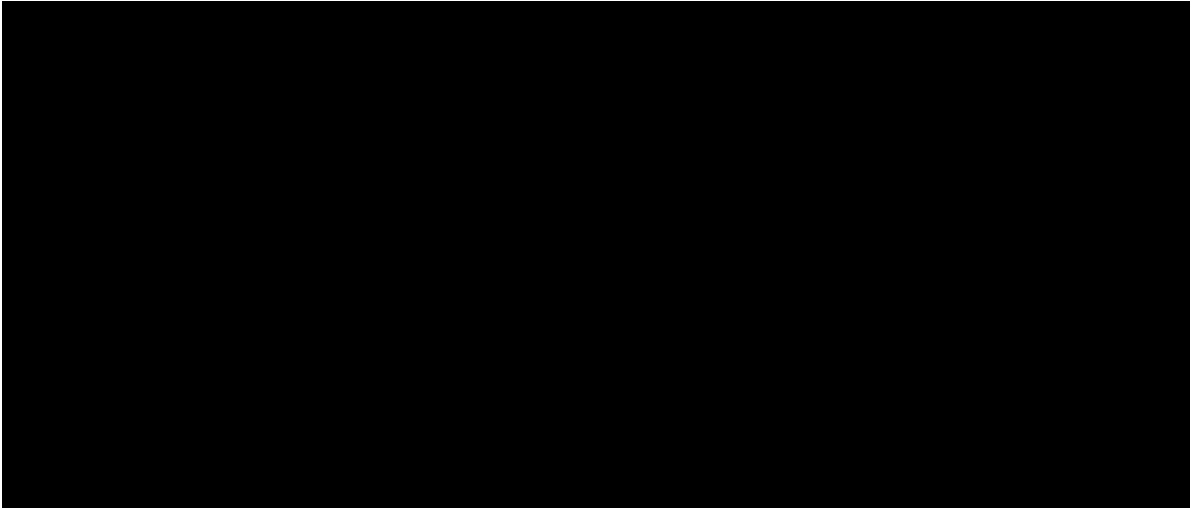
**Additional Detail Regarding The Terms of Sale**

30. In addition to the summary description of the APA as set forth above, more specifically, the APA:

a.








b.



c. provides for Seller to deliver at closing, among other things, and subject to certain exceptions: 

**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

[REDACTED]

[REDACTED]

[REDACTED] a transition services agreement<sup>8</sup>; [REDACTED]

[REDACTED] and, if Buyer has not closed with PSEG Fossil, amendments to the 1964

Agreement and the 1965 Operating Agreement [REDACTED];

d. provides for Buyer to deliver at closing, among other things, and subject to certain exceptions, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] a transition services agreement and, if

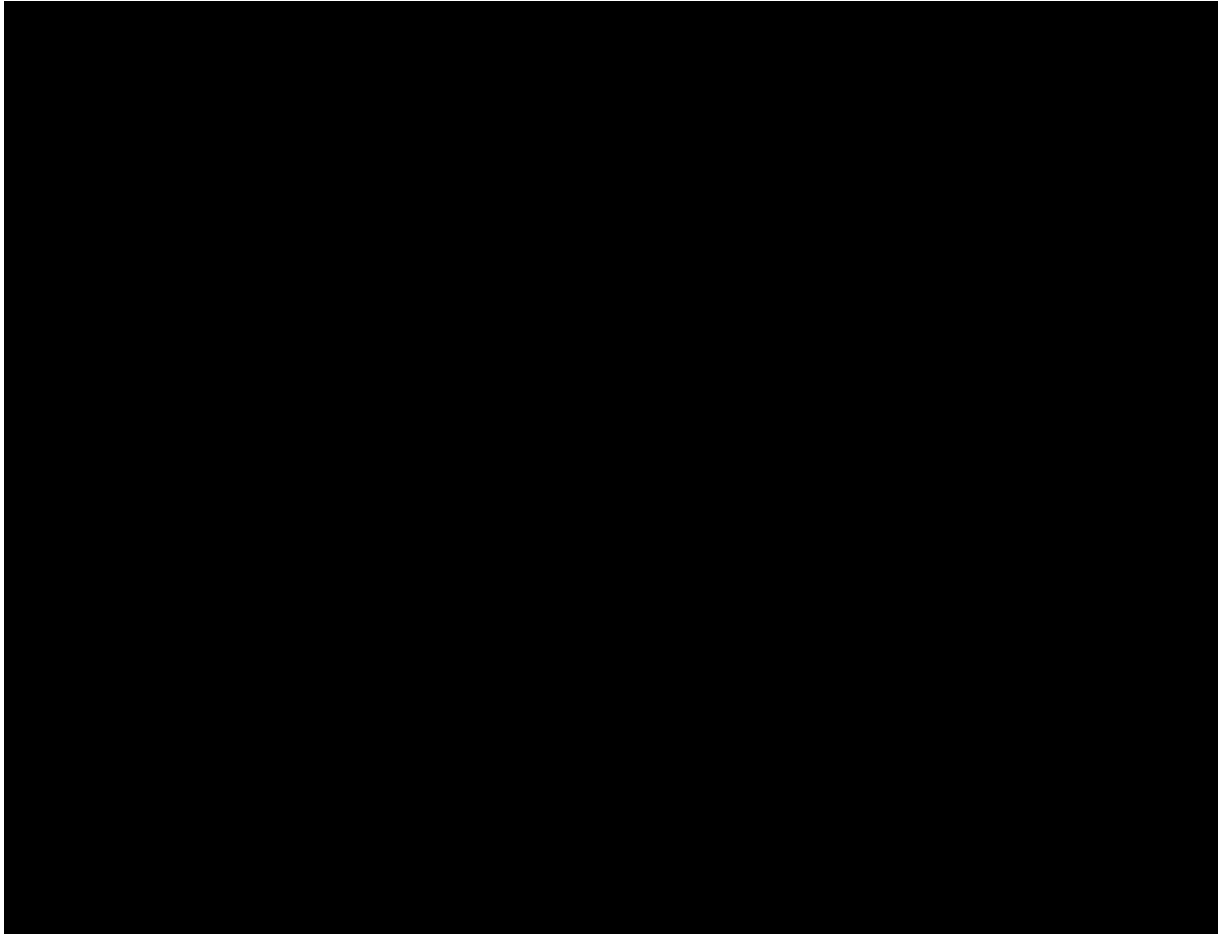
Buyer has not closed with PSEG Fossil, amendments to the 1964 Agreement and the

1965 Operating Agreement [REDACTED];

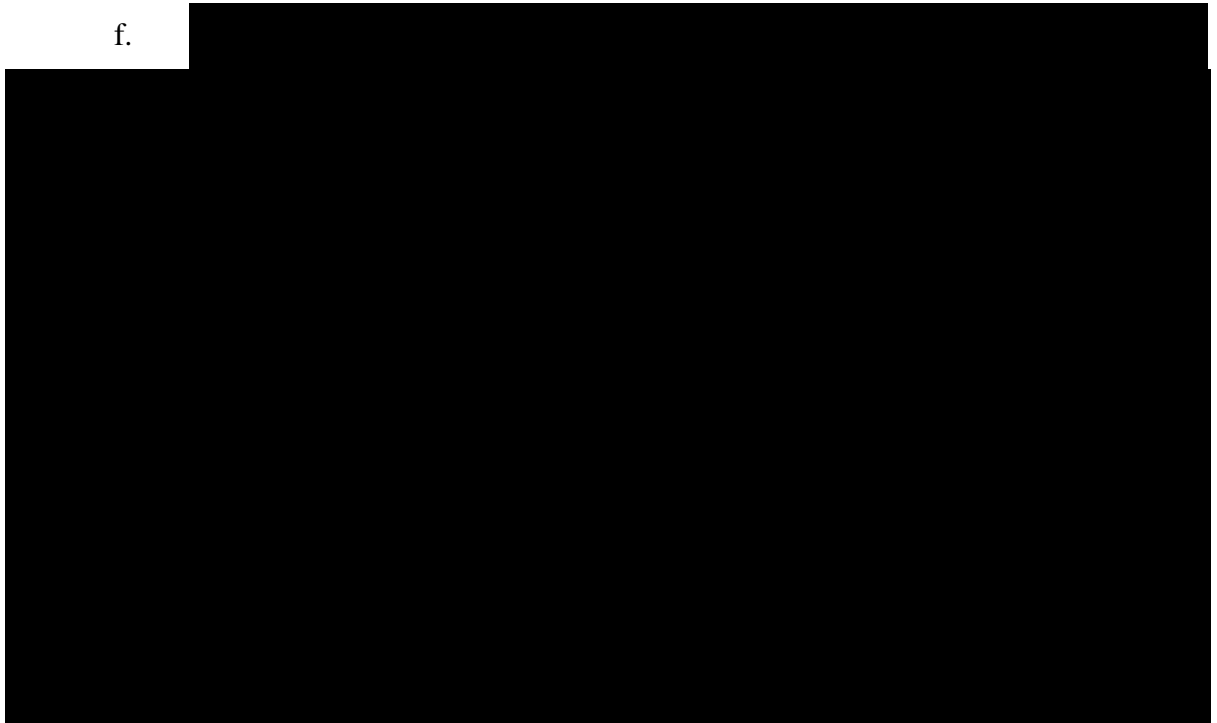
e.

[REDACTED]

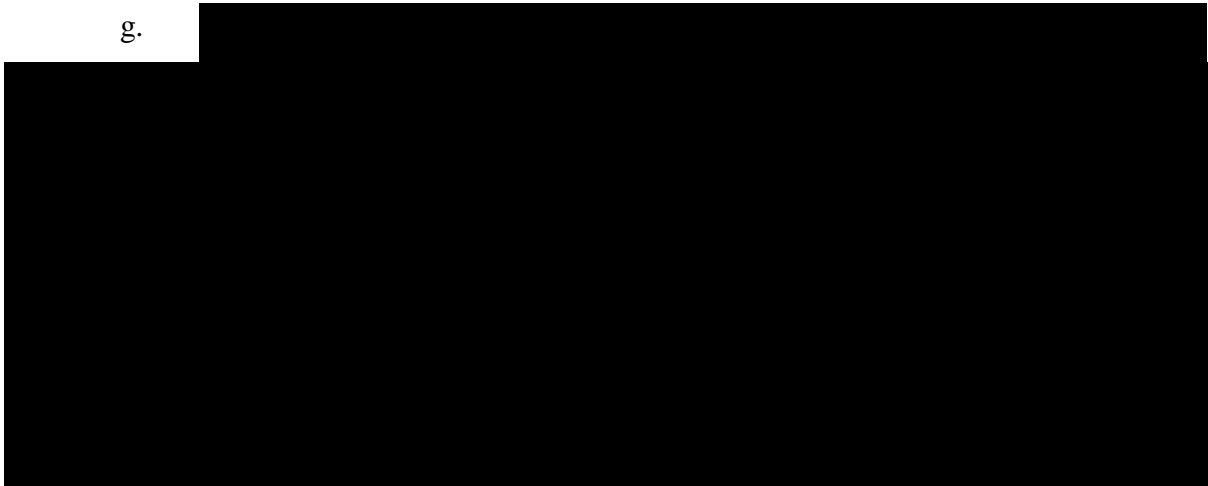
<sup>8</sup> The transition services agreement refers to an agreement to address the transitioning of operational control of the Yards Creek Facility to the Buyer including the use of Seller's computer and related IT network and accounting systems in connection with such transition (Exhibit F to the APA).



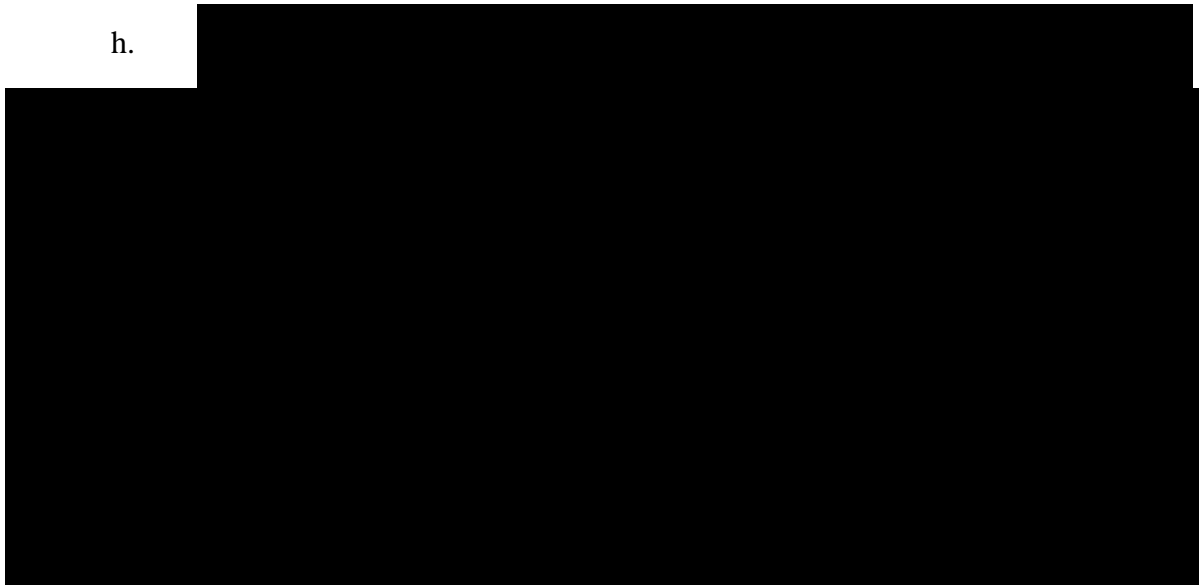
f.



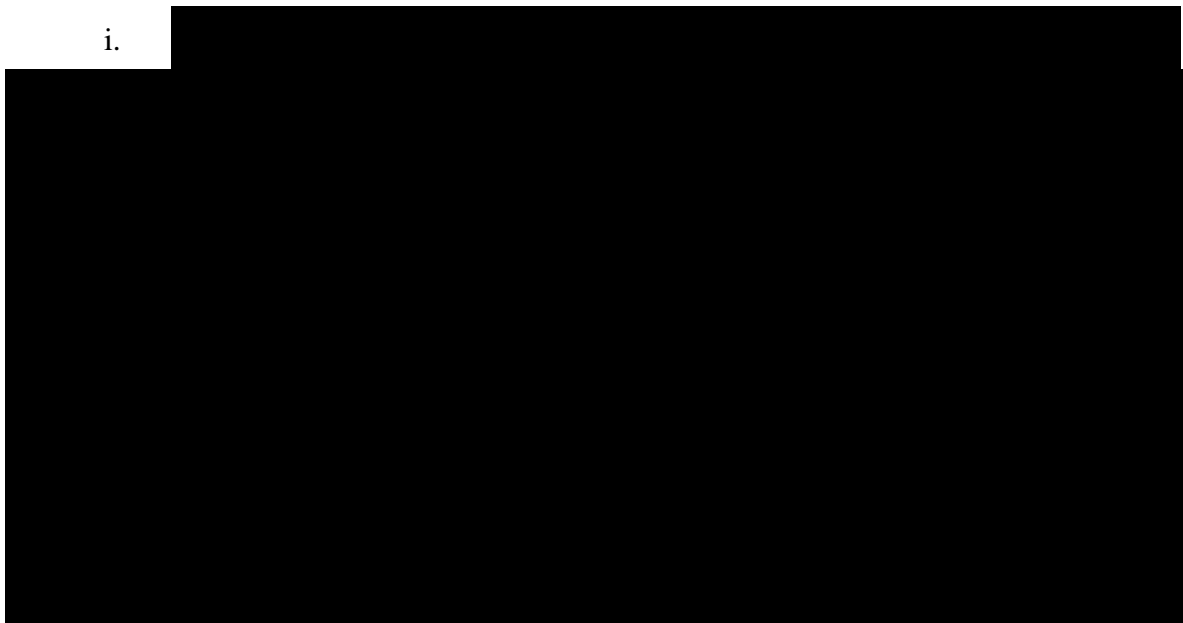
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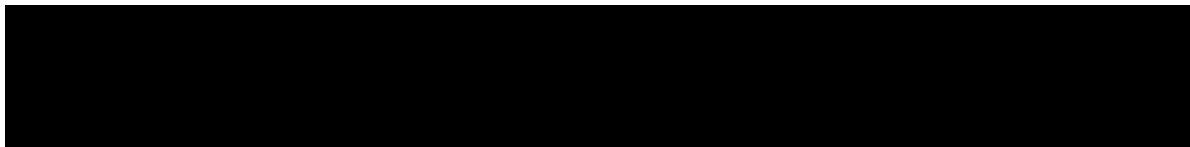


h.



i.





**Benefits of Sale**

31. Based on the information provided herein pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, and for the reasons set forth herein, the Company represents that:

a. The transfer and sale of the JCP&L Interest in the Yards Creek Facility under the APA will not adversely affect the public interest;

b. The proposed sale of the JCP&L Interest in the Yards Creek Facility under the APA is consistent with the JCP&L Restructuring Order, which is, in turn, consistent with the Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 et seq. (“*EDECA*”), generally, and N.J.S.A. 48:3-59, in particular;

c. The sale of the JCP&L Interest in the Yards Creek Facility under the APA will not compromise the ability of the Company to render safe, adequate and proper service to its customers;

d. The proposed transaction as set forth in the APA involving the sale and transfer to the Buyer of the JCP&L Interest in the Yards Creek Facility for the Purchase Price is the full fair market value for the JCP&L Interest; and

e. There is no current relationship between the Company and Buyer, other than that of transferor and transferee.

32. The proposed sale for the Purchase Price reflects the full market value of the JCP&L Interest in the Yards Creek Facility, in accordance with N.J.S.A. 48:3-59(c)(1). Notwithstanding the uniqueness of the sale of an interest in a jointly-owned generating facility,

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the Company's assessment of comparable pumped storage generating facility sales, [REDACTED] led JCP&L to conclude that the proposed sale price represents full market value.

33. The proposed sale of the JCP&L Interest in the Yards Creek Facility is in the best interest of the Company's ratepayers, in accordance with N.J.S.A. 48:3-59(c)(2). The proposed sale results in net proceeds that will flow to the benefit of ratepayers as proposed herein. Moreover, the sale of the JCP&L Interest in the Yards Creek Facility will remove future risks to ratepayers regarding the all-in costs of the JCP&L Interest, and any risks associated with the energy, capacity and ancillary services marketplace and any changes thereto.

34. The proposed sale of the JCP&L Interest in the Yards Creek Facility will not jeopardize the reliability of the electric power system, in accordance with N.J.S.A. 48:3-59(c)(3). The proposed sale of the JCP&L Interest in the Yards Creek Facility results in no change in the availability of the facility as a capacity and energy resource in PJM for the foreseeable future. The APA and, if applicable, the Transition Services Agreement ensure a seamless transition so that there is no disruption in the reliable operation of the Yards Creek Facility.

35. The proposed sale of the JCP&L Interest in the Yards Creek Facility, must also be approved by the FERC, and, when approved by the FERC, will not result in undue market control by the prospective Buyer. LS Power, with which Buyer is affiliated, owns and operates independent generation projects throughout the United States and directly or indirectly owns or controls approximately 11,000 MW of generation capacity in the PJM control area.

36. The APA reasonably mitigates the impacts of the sale on JCP&L's Yards Creek Facility workers, in accordance with N.J.S.A. 48:3-59(c)(5), (c)(7), (c)(8), and (c)(9). Under [REDACTED] of the APA, effective at the time of closing, Buyer shall offer, or cause to be

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offered, to all of Seller's employees who (i) work at or whose principal work activities relate to the ownership, operation and maintenance of the Yards Creek Facility, (ii) remain employed by the Seller at the Yards Creek Facility immediately prior to the closing date and (iii) as of the closing date, are actively at work or are on a previously scheduled and approved paid time-off or other paid or unpaid leave of absence, employment by Buyer or Buyer's designee, in substantially similar positions on terms and conditions substantially similar, in the aggregate to each such employee's employment immediately prior to the closing date [REDACTED]

[REDACTED]

a.

[REDACTED]

b.

[REDACTED]

c.

[REDACTED]

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37. Undertaking the proposed transaction now also aligns with the currently still-available legacy knowledge and experience in the Company's workforce regarding the Yards Creek Facility. Furthermore, the proposed transaction provides better alignment with FirstEnergy's strategic direction as a premier regulated transmission and distribution enterprise. The proposed transaction also alleviates JCP&L's and its customers' exposure to any future changes in law or regulation that could affect generation and generation capacity, and which could increase costs to ratepayers.

### **Sales Process<sup>9</sup>**

38. The Company's decision to sell the JCP&L Interest in the Yards Creek Facility to Buyer arose in the context of the circumstances surrounding and coincident with the negotiations with PSEG Fossil at which time Buyer also expressed its desire to purchase the JCP&L Interest in the Yards Creek Facility [REDACTED] (taking into account that JCP&L is the operator of the Yards Creek Facility and that PSEG Fossil is the non-operating partner) and as to which separate, confidential negotiations commenced between PSEG Fossil and Buyer on the one hand, and the Company and Buyer, on the other hand.

39. Given the dispute recently resolved by the SOS, as discussed above, JCP&L had not been engaged in any recent active marketing of the JCP&L Interest in the Yards Creek Facility.

40. However, in 2014 and 2017, other JCP&L FirstEnergy affiliates sold interests in hydroelectric facilities to affiliates of the Buyer. For instance, JCP&L affiliates have had previous sale transactions with affiliates of LS Power for pumped-storage generation; namely for

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<sup>9</sup> This information is provided as required by N.J.A.C. 14:1-5.6(a) 8.



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the Seneca and Bath County pumped storage facilities in Warren County, Pennsylvania and Bath County, Virginia, respectively. FirstEnergy's experience indicated that in two competitively bid transactions of relatively recent vintage, the LS Power affiliates' offers were the most attractive versus offers from other potential buyers for pumped-storage generation. Additionally, the transactions for Seneca and Bath County provided JCP&L with confidence in the ability to work together to close significant asset sales transactions with LS Power and its affiliates.

41. JCP&L also concluded that, given the provisions of the 1964 Agreement, the SOS and the Board's approval thereof, and given the relative uncertainty in the capacity market, regarding, among other things, intermittent capacity resources, engaging in a process to solicit further interest in the JCP&L Interest in the Yards Creek Facility was not likely to yield a better financial outcome and could risk obtaining the benefits of the proposed transaction.

42. On February 28, 2020, PSEG Fossil announced that it had reached an agreement to sell the PSEG Fossil Interest in the Yards Creek Facility to Buyer.

43. Based on the foregoing, among other things, the Company determined that the proposed sale to Buyer represents full market value (consistent, as indicated above, with N.J.S.A. 48:3-59(c)(1)), and, as indicated above, after concluding negotiations with Buyer, the APA for the JCP&L Interest was executed on April 6, 2020.

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### **Rate Matters**

44. Post-restructuring (i.e., since July 1, 2003), JCP&L has been recovering its costs for the JCP&L Interest in the Yards Creek Facility through its Non-Utility Generation Charge (Rider NGC, formerly MTC), including rate base-like treatment of its investment.

45. JCP&L sells the energy, capacity and ancillary services associated with the JCP&L Interest in the Yards Creek Facility into the applicable PJM markets, and all net revenues from these sales are credited to the NGC as previously directed by the Board (in BPU Docket No. EX01050303 dated December 11, 2001). These net revenues offset JCP&L's revenue requirement for the JCP&L Interest in Yards Creek, which is recovered via the Company's NGC.<sup>10</sup>

46. After these net revenues offset JCP&L's revenue requirement<sup>11</sup> for the JCP&L Interest in the Yards Creek Facility, the Company's effective and efficient operation of the Yards Creek Facility has produced credits to the NGC averaging \$11 million per year for the period July 1, 2003 through March 31, 2020 for a total of over \$185 million.

47. These credits, together with the \$300 million reduction in JCP&L's deferred balance as a result of the Stipulation of Settlement adopted by the Board in the GPU, Inc. merger with FirstEnergy (see Board Order dated October 9, 2001 in BPU Docket No. EM00110870), have offset or reduced other stranded and transition costs collected through the NGC, including restructuring-related stranded costs, such as those associated with the Oyster Creek Nuclear Generating Station (sold in 2000) and Basic Generation Service ("**BGS**") transition bonds.

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<sup>10</sup> The JCP&L Interest in the Yards Creek Facility has been, and is currently, considered "Committed Supply" for purposes of the provision of Basic Generation Service that can be retained to meet requirements of the "Contingency Plan" under certain circumstances.

<sup>11</sup> For reference, the annual revenue requirement for the Yards Creek facility was \$14,341,435 for 2019.

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48. According to ¶15 of the JCP&L Restructuring Order (at p. 105-107) “net proceeds” are defined as:

... the difference between the selling price(s) of the generation assets and the sum of (i) the net book value of the divested assets (including deferred tax assets, investment tax credits relating thereto and the costs of all liabilities which would need to be booked) as of the closing dates of the sales, and (iii) the transaction costs incurred by the Company. The transaction costs shall be reasonable, verifiable and necessary, and shall include (but not unnecessarily be limited to) sales and transfer taxes, local taxes, consultants fees, broker, legal fees, title transfer fees, real estate and related costs, mortgage and financing costs, real estate taxes, transportation and system-separation costs (including outside contractor, engineering, purchased materials and labor costs) associated with the divestiture activities, paid overtime and out-of-pocket expenses for Company employees associated with the divestiture activities, and any arrangements to address direct and indirect employee impacts from the divestiture including enhanced retirement, severance and any other employee-related benefit costs.

49. According to ¶20 (at p.107) of the JCP&L Restructuring Order:

... If the Company ultimately realizes net proceeds (as defined in [¶15] above) from the sale of [the JCP&L Interest in the Yards Creek Facility] in an amount that exceeds the difference between the TMI-1 net loss and the net gain from the sale of the non-nuclear generation and related assets (the “Divestiture Differential”), such excess, as definitively determined in the individual divestiture dockets as contemplated by [¶16] above, shall be applied to reduce the Deferred Balance or any other under[-]recovered balances or, if there are no under[-]recovered balances, to the benefit of ratepayers in a manner approved by the Board....

50. In fact, the Divestiture Differential was a net gain of approximately \$20.2 million, which also reduced stranded costs, which when combined with the Company’s other efforts and

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contributions (as described above) to mitigate deferred stranded and transition costs have totaled more than \$505 million.

51. The provisions of the JCP&L Restructuring Order recognized: (i) that the JCP&L Interest in the Yards Creek Facility would not be sold immediately, and (ii) the then-pending dispute between the joint-owners in a docketed BPU proceeding acknowledging, in effect, that the net-proceeds from a sale of the JCP&L interest in the Yards Creek Facility could be approximately \$99 million on a projected sale value of \$121 million (and a book value of \$22 million).<sup>12</sup>

52. However, it is doubtful that the JCP&L Restructuring Order foresaw (i) the passage of some 19 years before an ultimate sale of the JCP&L Interest in the Yards Creek Facility, or (ii) the significant contribution of approximately \$185 million that the operation of the JCP&L Interest in the Yards Creek Facility would make to the reduction of stranded costs and the Transition Period-related Deferred Balances prior to its sale. Nor did it foresee the \$300 million contribution later in 2001 from the merger stipulation to reduce further the JCP&L's deferred balance.

53. JCP&L currently estimates net proceeds of approximately \$111 million from the proposed sale of the JCP&L Interest in the Yards Creek Facility. The estimate is based on the difference between (i) the Purchase Price (subject to [REDACTED] adjustments to

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<sup>12</sup> In this regard, in its discussions and findings in the JCP&L Restructuring Order, the Board (at p. 97) noted that the Company "has a petition pending before the Board for a ruling" in the very same manner which was just resolved by the Board's approval of the SOS. Earlier (at p. 67), the Board recited the Company's description of the petition relative to the projected value of Yards Creek as follows: "however, in a separate petition, GPU has estimated proceeds from such sale at \$120 million, with a book value of \$22 million...", again referring to the same matter recently resolved by the SOS.

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the Purchase Price [REDACTED] ) and (ii) the net book value of the JCP&L Interest in the Yards Creek Facility (including deferred tax assets, investment tax credits relating thereto and the costs of all liabilities, which would need to be booked) as of the closing date (the book value which at March 31, 2020 was approximately \$44 million). The Company will also incur transaction costs, which will further reduce the net-proceeds from the sale as contemplated by the definition of “net proceeds” in the JCP&L Restructuring Order.<sup>13</sup>

54. As of March 31, 2020, JCP&L has no transition period Deferred Balance as defined in the JCP&L Restructuring Order.<sup>14</sup>

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<sup>13</sup> Regarding the transaction costs, they will be reasonable, verifiable and necessary, and shall include (but not necessarily be limited to) sales and transfer taxes, local taxes, consultants fees, broker commissions, legal fees, title transfer fees, real estate transfer and related costs, mortgage and financing costs, real estate taxes, transportation and system-separation costs (including outside contractor, engineering, purchased materials and labor costs) associated with the sale and paid overtime and out-of-pocket expenses for Company employees associated with the sale.

<sup>14</sup> Paragraph 29 (at p. 111) of the JCP&L Restructuring Order, which defined the term “Deferred Balances,” stated as follows:

The Company is entitled to full and timely recovery under the EDECA of the prudently and reasonably-incurred costs associated with the provision of BGS and utility PPA and NUG PPA costs. To the extent that these costs, as realized, exceed the recovery afforded by the regulated rates that GPU shall be authorized to charge during the Transition Period, GPU shall defer recovery of the net excess amount. This deferred amount, together with interest on the unamortized balance thereof at the applicable interest rate on seven-year constant maturity treasuries, as shown in the Federal Reserve Statistical Release on or closest to August 1 of each year, plus sixty basis points, shall be referred to as the “Deferred Balances”. The Deferred Balance shall be accumulated in a deferred account, and shall be carried on GPU’s balance sheet as a regulatory asset. Deferred accounting shall continue with respect to these types of costs following the Transition Period.

The transition period under EDECA referred to the four year period ending July 31, 2003. The Company believes that the Company’s securitization of BGS transition costs and the arrangements under which they are addressed through transition bonds takes them outside the scope of the waterfall provision of ¶20 of the Restructuring Order, which addresses the application of net-proceeds to Deferred Balances under the JCP&L Restructuring Order.

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55. As indicated by the “waterfall” part of paragraph 20 of the JCP&L Restructuring Order as described in ¶49 above, because JCP&L has no Deferred Balance, the net proceeds from the sale of the JCP&L Interest in the Yards Creek Facility must be applied to reduce any other under-recovered balances.

56. In sum, in the nineteen years since the JCP&L Restructuring Order, (i) the Company’s operation of the Yards Creek Facility has contributed approximately \$185 million to the reduction of transition period-related Deferred Balances (approximately \$86 million more than the estimated \$99 million on net proceeds mentioned in the JCP&L Restructuring Order, and \$74 million more than the net proceeds of the currently proposed sale of the JCP&L Interest in the Yards Creek Facility).

57. Therefore, it is clear that the Company has satisfied the expectations of the JCP&L Restructuring Order in regard to the JCP&L Interest in the Yards Creek Facility with respect to stranded and transitional cost mitigation. In turn, the Company believes that, in light of the foregoing history, and consistent with longstanding Board policy in other utility property sales proceedings to split the gain from the sale equally between ratepayers and shareholders acknowledging the respective contributions of each to this value, the net proceeds from this transaction could be shared equally between ratepayers and shareholders.

58. However, since JCP&L carries on its balance sheet an outstanding under-recovered deferred storm-related regulatory asset balance for storm costs of approximately \$305 million through March 31, 2020, in lieu of proposing to split the gain as described above, and following the “waterfall” aspect of paragraph 20 of the JCP&L Restructuring Order as discussed in ¶49 above, JCP&L respectfully requests the Board apply the entire net proceeds of approximately \$111 million from the sale of the JCP&L Interest in the Yards Creek Facility to

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reduce the deferred storm-related regulatory asset balance consistent with the directives of the JCP&L Restructuring Order. This deferred amount does not accrue interest and the storm amortization currently included in base distribution rates is not at a level sufficient to recover the regulatory asset balance within a reasonable period. Application of the net proceeds in this fashion would benefit ratepayers in a manner clearly consistent with the JCP&L Restructuring Order.

59. Assuming the Board approves the proposed sale of the JCP&L Interest in the Yards Creek Facility, the Board's disposition of the proceeds in this proceeding as requested herein could be implemented in the Company's currently pending rate filing made on February 18, 2020 to BPU Docket No. ER20020146 (the "**2020 Base Rate Filing**"). Application of the net proceeds from the sale of the JCP&L Interest in Yards Creek as JCP&L recommends herein would reduce the proposed rate increase in the pending base rate case by approximately \$38 million and the typical monthly residential bill impact would be reduced from 8.5% to 6.8%.

60. In addition, rate treatment for the JCP&L Interest in the Yards Creek Facility through the NGC will cease upon consummation of the sale.

### **Eligible Facility Request**

61. As a condition to the closing of the sale of the JCP&L Interest in the Yards Creek Facility to Buyer, the APA requires JCP&L to obtain an order from the BPU finding that qualifying the JCP&L Interest in the Yards Creek Facility as an Exempt Wholesale Generator ("**EWG**") in accordance with section 32(c) of the Public Utility Holding Company Act of 1935 will benefit consumers, is in the public interest, and does not violate State law, which will exempt Buyer from the Public Utility Holding Company Act of 2005 ("**PUHCA 2005**"). JCP&L

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respectfully asks the Board to make this determination in this proceeding. In this regard, Buyer intends to request EWG status from FERC contemporaneous with, or shortly after, the completion of this pending proceeding.

62. Under PUHCA 2005, certain generators of electricity may apply to FERC to qualify for EWG status. In general, EWGs must be exclusively engaged in the business of owning and/or operating "eligible facilities" and selling electric energy at wholesale. The purposes of this and related statutory provisions adopted in the Energy Policy Act of 1992 ("*EPAct*") were to use market forces instead of government regulation to advance energy security goals, to encourage investment in generation and to protect consumers. In *EPAct*, Congress amended the Public Utility Holding Company Act of 1935 (the predecessor to PUCHA 2005) to make it easier to invest in EWGs in order to develop a competitive market for wholesale electric power.

63. As noted above, under PUHCA 2005, the JCP&L Interest in the Yards Creek Facility must be found to be an "eligible facility" in order for Buyer to be accorded EWG status with respect to the JCP&L Interest in the Yards Creek Facility. Specifically, PUHCA 2005 defines an EWG as follows:

any person determined by the [FERC] to be engaged directly, or indirectly through one or more affiliates . . . , and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale . . . .

[15 U. S. C. §79z-5a(a)].

64. Because rates for the electric energy produced by the JCP&L Interest in the Yards Creek Facility were in effect under New Jersey law as of October 24, 1992 (the date of the



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enactment of Section 32 of the '35 Act), in order for the JCP&L Interest in the Yards Creek Facility to be considered an "eligible facility" under PUHCA 2005,

(c) every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law . . . .

[15 U. S. C. §79z-5a(c)].

65. 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 what is referred to herein as the PSEG Fossil Interest in the Yards Creek Facility. (The relevant portion of the PSE&G Restructuring Order is attached hereto as Appendix C-6).

66. The sale of the JCP&L Interest in the Yards Creek Facility will not adversely affect either the availability or reliability of electric supply to JCP&L's customers or any other electricity customer within PJM. The transfer of the JCP&L Interest in the Yards Creek Facility will add to the availability of competitive alternative electric supplies for the Company's customers and other electricity customers within PJM. Furthermore, Buyer will also be a party, and subject, to an Interconnection Agreement with PJM to assure that Buyer has access to the grid in order to sell the power generated by the Yards Creek Facility. The sale of the JCP&L Interest in the Yards Creek Facility and Buyer's offering of such interest at market-based rates in the PJM market, is consistent with EPAct and EDECA.

67. The Board's allowing the JCP&L Interest in the Yards Creek Facility to be designated as an "eligible facility" does not violate any New Jersey statute or Board regulation. If the JCP&L Interest in the Yards Creek Facility becomes an "eligible facility", exempting Buyer from PUHCA regulation, EDECA's objectives in favor of a competitive generation marketplace

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will be advanced, consumers will benefit and the public interest will be served. Accordingly, JCP&L respectfully requests the Board to make the requested determination.

### **Request for Waiver of Advertising Requirement**

68. By this Verified Petition, pursuant to N.J.A.C. 14:1-5.6(i), the Company is also hereby requesting a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b). Waiver of this requirement will not adversely affect the public interest.

69. In light of the history of the Yards Creek Facility set forth above, the proposed sale and transfer of the JCP&L Interest in the Yards Creek Facility will not affect the Company's ability to provide safe, adequate and proper service.

70. Based on the benefits of sale and the sales process described in ¶¶31-43 above, the Purchase Price to be paid by Buyer is the full fair market value for the JCP&L Interest in the Yards Creek Facility.

71. JCP&L seeks a waiver of the Board's advertising requirement. As discussed above, given the provisions of the 1964 Agreement, the SOS and the Board's approval thereof, and given the relative uncertainty in the capacity market, as well as the FirstEnergy experience discussed in ¶40 above, JCP&L concluded that engaging in a process to solicit further interest in the JCP&L Interest in the Yards Creek Facility was not likely to yield a better financial outcome and could risk the proposed transaction.

72. Under the circumstances described herein, the Company reasonably believes the terms of the proposed transaction are as good as, or better than, what could be expected from traditional advertising methods.

73. The APA ensures a seamless transition to the Buyer from the Seller, in coordination with a similar transfer of the PSEG Fossil Interest to the Buyer.

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74. JCP&L does not believe that there is any basis for concluding that formally advertising the JCP&L Interest in the Yards Creek Facility for sale would result in a more advantageous arrangement for the Company and/or its customers than that represented by the proposed transaction with Buyer.

### **Non-Applicability of the Board's 1998 Auction Standards Order**

75. In the Board's 1998 Auction Standards Order, the Board provided auction standards applicable to the asset sales "resulting from the planned divestitures" of New Jersey electric distribution companies' generation assets.

76. The Board's 1998 Auction Standards Order by its terms applied only to the "auction processes of those electric utilities in the State, [GPU Energy and Rockland Electric Company ], which have announced plans to divest of generating assets." (at p. 8).

77. Ultimately, the Yards Creek Facility was not part of the Company's divestiture process in the late 1990s (unlike the Forked River plant that was initially included in that process).<sup>15</sup>

78. The JCP&L Interest in the Yards Creek Facility is the only remaining generation owned by the Company and, given its joint ownership and the terms of the 1964 Agreement and the related dispute thereto (leading to the recent SOS and the approval thereof in the March 27, 2020 Board Order), was never a reasonable candidate for an auction process.

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<sup>15</sup> See, BPU Order issued January 17, 2007 in BPU Docket No: EM07010026 approving the subsequent sale of the Forked River Generation Station, which BPU Order was affirmed July 10, 2009 by the New Jersey Superior Court, Appellate Division in Docket No. NO. A-1073-07T21073-07T2 (*I/M/O The Verified Petition of [JCP&L] Seeking approval of the Sale of the Forked River Generating Station Pursuant to N.J.S.A. 48:3-7 and a Waiver of the Advertising Requirements of N.J.A.C. 14:1-5.6(b).*(Unpublished).

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79. JCP&L asserts that the proposed sale of the JCP&L Interest in the Yards Creek Facility is not a “planned divestiture.” Nor is the proposed sale being conducted pursuant to JCP&L’s restructuring-era divestiture plans. Therefore, JCP&L does not believe the Board’s 1998 Auction Standards Order applies to the proposed sale of the JCP&L Interest in the Yards Creek Facility some almost 22 years later, under the facts and circumstances set forth herein. Moreover, it is clear that the Board has the authority and good cause to waive, under the circumstances set forth herein, the application of the Board’s 1998 Auction Standards Order in the case of this proposed sale.

80. Moreover, even if the Board’s 1998 Auction Standards Order was deemed to apply, the Company believes that the circumstances described above, including with respect to (i) the unique nature and complexity of the history of the Yards Creek Facility described in ¶¶8-19 above, (ii) the benefits of the proposed sale and the sales process (including the concurrent sale of the PSEG Fossil Interest) as described in ¶¶31-43 above, (iii) the requested waiver of the Board’s advertising requirement as set forth in ¶¶68-74 above, and (iv) and the negotiated terms of the APA as described in ¶¶24-30 above, provide more than reasonable grounds for the Board to find that engaging in a formal bidding process was impractical and that the Company has, as demonstrated in this Verified Petition<sup>16</sup>, substantially met the Board’s 1998 Auction Standards Order, and, if deemed necessary to do so, the Company believes that the Board should so find.

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<sup>16</sup> Such demonstration includes, among other things, as discussed herein, that: (i) the Buyer is sufficiently qualified to own and operate the facility (financial capability, relevant experience and expertise and ownership or operation of generation facilities, industrial and labor relations, environmental management and community involvement); (ii) the Buyer will not have undue market power as a result of this transaction; (iii) the transaction will not jeopardize continued system reliability and the continued provision of safe, adequate and reliable service by JCP&L after the closing of this transaction; [REDACTED]

**Termination of 1964 Agreement**

81. The APA anticipates that if the sale of the PSEG Fossil Interest closes prior to the closing of the sale of the JCP&L Interest, then PSEG Fossil, JCP&L and Buyer will amend the 1964 Agreement (as approved by the Board in the 1965 Order) to reflect the ongoing arrangements between JCP&L and the Buyer solely with respect to the Yards Creek Facility from and after the close of the sale of the PSEG Fossil Interest and prior to the closing of the sale of the JCP&L Interest.

82. If the sale of the JCP&L Interest to Buyer occurs prior to the closing of the sale of the PSEG Fossil Interest to Buyer, the APA anticipates that a similar amendment to the 1964 Agreement will be necessary to reflect the ongoing arrangements among the three parties. However in such case, as between Buyer and JCP&L, from and after the sale of the JCP&L Interest to Buyer, the 1964 Agreement would be of no further force or effect. Further, any aspect of the 1964 Agreement relating to matters that are not solely related to the Yards Creek Facility are not contemplated to be formally terminated under the APA.

83. The form of amendments to the 1964 Agreement contemplated by the APA each include an amended and restated Section 5 of the 1964 Agreement (the “*PROFR Replacement*”), and such PROFR Replacement is intended to be effective upon the first closing to occur and to thereafter remain in full force and effect until the second closing occurs. The contemplated amendments of the 1964 Agreement do not address or change those aspects of the 1964 Agreement pertaining to projects or developments, other than the Yards Creek Facility, that were anticipated by the parties at the time of entering into the 1964 Agreement.

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84. More specifically, the 1964 Agreement also contemplated the transfer to PSE&G of an additional interest in a larger generation facility project ("*Kittatinny Mountain Project*"), of which the Yards Creek Facility was an element. Further development of the Kittatinny Mountain Project did not proceed and no additional interest in the Yards Creek Facility was conveyed to PSE&G. Consequently, once the sale of the JCP&L Interest to Buyer closes, there is no need for the continuation of the 1964 Agreement in any respect, including with respect to any provisions related to matters not solely pertaining to the Yards Creek Facility; *provided*, that if the sale of the JCP&L Interest to Buyer occurs prior to the closing of the sale of the PSEG Fossil Interest to Buyer, the 1964 Agreement shall remain in full force and effect solely with respect to the PROFR Replacement as between PSEG Fossil and Buyer.

85. Given the Board's approval of the 1964 Agreement in the 1965 Order, and the facts and circumstances set forth herein, JCP&L believes the 1964 Agreement should be terminated, and JCP&L respectfully requests that the Board authorize the termination of the 1964 Agreement upon the consummation of the sale of the JCP&L Interest to Buyer as part of its order in this proceeding approving the sale of the JCP&L Interest; *provided*, that if the sale of the JCP&L Interest to Buyer occurs prior to the closing of the sale of the PSEG Fossil Interest to Buyer, (i) the Board's authorization as to JCP&L shall have no effect on the 1964 Agreement as between PSEG Fossil and Buyer and shall remain in full force and effect solely with respect to the PROFR Replacement as between PSEG Fossil and Buyer to be executed at the closing of the sale of the JCP&L Interest, and (ii) following such partial termination, the 1964 Agreement shall not be subject to the regulatory jurisdiction of, and may be terminated without the consent of, the Board.

## **PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

### **Regulatory Approvals**

86. Besides the approval of the Board, under the APA, the closing of the sale of the JCP&L Interest in the Yards Creek Facility is subject to, among other conditions, FERC approval of the transfer of the JCP&L Interest in the Yards Creek Facility and its operating license to YCE.

87. Application to the FERC for its approval of the transfer of ownership and of the associated operating license with respect to the JCP&L Interest in the Yards Creek Facility is expected to be filed in May 2020, with an anticipated date for FERC approval around July 2020.

### **Appendices**

88. In support of this Verified Petition, the following appendices are provided as described below:

- a. Appendix A – A copy of the executed Confidential APA is part of the Confidential Verified Petition. The Redacted, Public version of the Verified Petition does not include a copy of the APA because it is claimed to be entirely confidential. The Confidential APA is comprised of the Asset Purchase Agreement, itself, and all Exhibits, Schedules and any Amendments thereto, which are provided with the Confidential Verified Petition as required by N.J.A.C. 14:1-5.6(a)3. The Confidential Verified Petition and the Confidential APA will be filed simultaneously, together with, and subject to, a request for confidential treatment by the Board pursuant to N.J.A.C. 14:1-12.1 et seq., and will only be provided within the proceeding subject to the execution of a non-disclosure agreement by the parties to the proceeding;
- b. Appendix B – A copy of the property description for the Yards Creek Facility real property (“*Yards Creek Facility Real Property*”), is provided as required by N.J.A.C. 14:1-5.6(a)1.i.;
- c. Appendix C 1 – A copy of the 1964 Agreement;

**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

- d. Appendix C-2 – A copy of the Board’s 1965 Order as amended
- e. Appendix C-3 – A copy of the 1965 Operating Agreement;
- f. Appendix C-4 - A copy of the Stipulation of Settlement (SOS), (without Exhibit 1 and 2 which are otherwise provided hereunder as Appendix C-1 and C-2);
- g. Appendix C-5 – A copy of the March 27, 2020 Board Order;
- h. Appendix C-6 - A copy of the relevant portion of the PSE&G Restructuring Order;
- i. Appendix D - A certified copy of the resolutions of the Company’s Board of Directors authorizing the transfer of the JCP&L Interest in the Yards Creek Facility under the APA is provided as required by N.J.A.C. 14:1-5.6(a)4;
- j. Appendix E – Copies of proposed *pro forma* journal entries to record the transaction described herein as required by N.J.A.C. 14:1-5.6(a)12 will be filed as a supplement to this Verified Petition;
- k. Appendix F - **None** - There is no mortgage on the Yards Creek Facility Real Property or the Yards Creek Facility. Accordingly, no mortgage description is necessary under N.J.A.C. 14:1-5.6(a)14; and
- l. Appendix G - **None** – As discussed above, JCP&L requests a waiver of the Board’s advertising requirements under N.J.A.C. 14:1-5.6(b).

**JCP&L Contact Information**

89. Copies of all correspondence and other communications relating to this proceeding should be addressed to:

**Michael J Connolly, Esq.  
Gregory Eisenstark, Esq.  
Cozen O’Connor  
One Gateway Center**



**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

**Suite 910  
Newark, New Jersey 07102**

**- and -**

**Mark A. Mader  
James O'Toole  
Jersey Central Power & Light Company  
300 Madison Avenue  
Morristown, New Jersey 07962-1911**

**-and-**

**Lauren Lepkoski, Esq.  
FirstEnergy Service Company  
Legal Department  
2800 Pottsville Pike  
Reading, PA 19612-6001**

**-and-**

**Karen A. Sealy, Esq.  
FirstEnergy Service Company  
Legal Department  
76 S. Main Street  
Akron, Ohio 44308-1890**

**WHEREFORE**, the Petitioner respectfully requests that the Board issue an Order (a) approving the transfer and sale of the JCP&L Interest in the Yards Creek Facility to Buyer pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6; upon the terms and conditions set forth in the APA attached hereto (Appendix A) and as otherwise described herein; (b) approving in this proceeding the disposition of the net-proceeds of the sale of the JCP&L Interest in the Yards Creek Facility to reduce the Company's deferred storm-related regulatory asset balance and directing such disposition to be implemented in the Company's 2020 Base Rate Filing; (c) granting the Petitioner a waiver of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b); (d) granting a

**PUBLIC, REDACTED, NON-CONFIDENTIAL VERSION**

determination that the JCP&L Interest in the Yard Creek Facility is an “eligible facility” under the Public Utility Holding Company Act of 2005; (e) to the extent deemed necessary, granting a determination that the Board’s Auction Standards under the Board’s 1998 Order Adopting Auction Standards applicable to the divestiture of generating assets by a New Jersey public utility have been substantially complied with, or do not apply to the proposed transaction, or are waived; (f) approving the termination of the 1964 Agreement as described herein; and (g) rendering such other and further relief as Board may deem just and equitable.

Respectfully submitted,

**COZEN O’CONNOR**  
Attorneys for Petitioner,  
**Jersey Central Power & Light Company**

Dated: May 6, 2020

By: \_



Michael J. Connolly  
One Gateway Center  
Suite 910  
Newark, New Jersey 07102  
(973) 200-7412

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

\_\_\_\_\_  
In the Matter of the Verified Petition of Jersey :  
Central Power & Light Company Seeking (a) :  
Approval of the Sale of its Ownership Interest in : Docket No. \_\_\_\_\_  
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 : **VERIFIED PETITION**  
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. :  
\_\_\_\_\_ :

**AFFIDAVIT**  
**OF**  
**VERIFICATION**

**Mark A. Mader**, being duly sworn upon his oath, deposes and says:

1. I am Director of Rates and Regulatory Affairs – New Jersey for Jersey Central Power & Light Company (“**JCP&L**”), the Petitioner named in the foregoing Verified Petition, and I am duly authorized to make this Affidavit of Verification on its behalf.

2. I have read the contents of the foregoing Verified Petition by JCP&L insofar as it relates to the transfer/sale and conveyance of the JCP&L Interest in the Yards Creek Facility, to the Buyer, and I hereby verify that the statements of fact and other information contained therein

are true and correct to the best of my knowledge, information and belief.

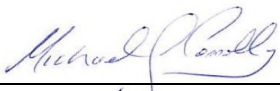


Dated May 6, 2020

---

Mark A. Mader

Sworn to and subscribed before me  
this 6<sup>th</sup> day of May, 2020.



---

Michael J. Connolly

An Attorney-at-Law licensed to practice in the State of New Jersey

Attorney ID: 035092001

**APPENDIX A**  
**Asset Purchase Agreement**

**[Appendix A, which contains the Confidential APA has been redacted from this version of the filing]**

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LEFT BLANK**

**APPENDIX B**  
**Property Description**

## EXHIBIT "A"

### Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWNSHIP OF BLAIRSTOWN AND TOWNSHIP OF HARDWICK, COUNTY OF WARREN, STATE OF NEW JERSEY AND IS DESCRIBED AS FOLLOWS:

#### PARCEL 1 – FEE SIMPLE

BEGINNING AT A CORNER COMMON TO LANDS OF JERSEY CENTRAL POWER & LIGHT COMPANY, LANDS FORMERLY OF WILLIAM R. CAIN, ET UX., NOW PUBLIC SERVICE ELECTRIC AND GAS COMPANY, AND LANDS OF CATHERINE M. BRENNAN IN THE BED OF A PUBLIC ROAD LEADING FROM MOUNT VERNON TO FRANKLIN GROVE; THENCE THE FOLLOWING TWO COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN LANDS OF JERSEY CENTRAL POWER & LIGHT COMPANY AND LANDS OF CATHERINE M BRENNAN;

1. S42°05'07"E, A DISTANCE OF 429.97 FEET;
2. THENCE, N48°31'34"E, A DISTANCE OF 26.99 FEET;
- THENCE, S09°23'46"E, A DISTANCE OF 799.19 FEET;
- THENCE, S33°45'38"W, A DISTANCE OF 4650.58 FEET;
- THENCE, S53°29'35"W, A DISTANCE OF 1157.23 FEET;
- THENCE, S17°51'13"W, A DISTANCE OF 465.81 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF CONRAD SMITH ROAD;
- THENCE, S89°37'59"W, ALONG THE NORTH RIGHT OF WAY LINE OF CONRAD SMITH ROAD, A DISTANCE OF 711.93 FEET;
- THENCE, 51°55'11"W, A DISTANCE OF 1440.34 FEET;
- THENCE, S42°14'03"E, A DISTANCE OF 1216.74 FEET;
- THENCE, S25°20'01"W, A DISTANCE OF 1353.80 FEET;
- THENCE, N38°42'18"W, A DISTANCE OF 1496.15 FEET;
- THENCE, S46°01'31"W, A DISTANCE OF 687.04 FEET TO A POINT IN MOUNT VERNON ROAD;
- THENCE, NORTHWESTERLY ALONG MOUNT VERNON ROAD THE FOLLOWING NINE COURSES AND DISTANCES:
  1. N41°20'23"W, A DISTANCE OF 174.41 FEET;
  2. THENCE, N55°29'50"W, A DISTANCE OF 253.95 FEET;
  3. THENCE, N68°53'10"W, A DISTANCE OF 154.95 FEET;
  4. THENCE, N38°42'18"W, A DISTANCE OF 34.00 FEET;
  5. THENCE, S45°13'00"W, A DISTANCE OF 27.86 FEET;
  6. THENCE, S87°15'52"W, A DISTANCE OF 87.60 FEET;
  7. THENCE, S82°53'53"W, A DISTANCE OF 187.95 FEET;
  8. THENCE, N79°12'55"W, A DISTANCE OF 316.97 FEET;
  9. THENCE, N51°27'03"W, A DISTANCE OF 459.43 FEET TO A POINT IN WALNUT VALLEY ROAD;
- THENCE ALONG WALNUT VALLEY ROAD THE FOLLOWING TWO COURSES AND DISTANCES:
  1. S42°14'54"W, A DISTANCE OF 100.39 FEET;
  2. THENCE, S55°08'27"W, A DISTANCE OF 46.30 FEET;

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## EXHIBIT "A"

### Legal Description

THENCE N53°12'40"W, A DISTANCE OF 217.51 FEET;  
 THENCE, S38°23'57"W, A DISTANCE OF 178.52 FEET;  
 THENCE, N34°57'58"W, A DISTANCE OF 1522.13 FEET TO A POINT BEING DESIGNATED AS  
 "POINT A"; THENCE S38°38'55"W, A DISTANCE OF 664.05 FEET;  
 THENCE, N39°42'22"W, A DISTANCE OF 923.08 FEET;  
 THENCE, N40°09'44"E, A DISTANCE OF 863.72 FEET TO A POINT BEING DESIGNATED AS "POINT B";  
 THENCE, N89°45'06"W, A DISTANCE OF 909.22 FEET;  
 THENCE, S53°43'32"W, A DISTANCE OF 2424.35 FEET;  
 THENCE, N62°32'47"W, A DISTANCE OF 1462.40 FEET;  
 THENCE, N89°50'27"W, A DISTANCE OF 2749.59 FEET;  
 THENCE, 61°20'21"W, A DISTANCE OF 796.08 FEET;  
 THENCE, N89°50'42"W, A DISTANCE OF 300.96 FEET TO THE SOUTHEAST CORNER OF LANDS  
 DESCRIBED IN DEED BOOK 507, PAGE 736, RECORDED IN THE WARREN COUNTY CLERK'S  
 OFFICE;  
 THENCE, N00°09'18"E, ALONG THE EAST LINE OF SAID DEED BOOK 507, PAGE 736, A DISTANCE  
 OF 1417.80 FEET;  
 THENCE, RUN EASTERLY ALONG LANDS DESCRIBED IN DEED BOOK 2182, PAGE 252,  
 RECORDED IN THE WARREN COUNTY CLERK'S OFFICE, THE FOLLOWING FOURTEEN COURSES  
 AND DISTANCES:  
 1. N67°09'15"E, A DISTANCE OF 1232.19 FEET;  
 2. THENCE, N18°15'09"E, A DISTANCE OF 409.36 FEET;  
 3. THENCE, N61°08'49"E, A DISTANCE OF 603.73 FEET;  
 4. THENCE, N71°19'18"E, A DISTANCE OF 801.06 FEET;  
 5. THENCE, N75°27'32"E, A DISTANCE OF 376.03 FEET;  
 6. THENCE, N85°50'45"E, A DISTANCE OF 88.03 FEET;  
 7. THENCE, N69°39'50"E, A DISTANCE OF 178.29 FEET;  
 8. THENCE, N47°36'17"E, A DISTANCE OF 79.54 FEET;  
 9. THENCE, N62°22'07"E, A DISTANCE OF 70.83 FEET;  
 10. THENCE, N75°26'06"E, A DISTANCE OF 231.70 FEET;  
 11. THENCE, S85°51'06"E, A DISTANCE OF 224.99 FEET;  
 12. THENCE, N87°50'45"E, A DISTANCE OF 57.36 FEET;  
 13. THENCE, S74°20'27"E, A DISTANCE OF 160.45 FEET;  
 14. THENCE, N67°09'15"E, A DISTANCE OF 1679.29 FEET;  
 THENCE S52°09'42"E, A DISTANCE OF 1850.70 FEET;  
 THENCE, S34°59'42"E, A DISTANCE OF 1810.15 FEET;  
 THENCE, S00°14'54"W, A DISTANCE OF 636.98 FEET TO A POINT LYING N38°23'11"E, A DISTANCE  
 OF 145.20 FEET FROM THE AFORESAID DESIGNATED "POINT B";  
 THENCE, N40°09'44"E, A DISTANCE OF 1180.92 FEET;  
 THENCE, S63°23'23"E, A DISTANCE OF 333.26 FEET;  
 THENCE, N00°25'35"W, A DISTANCE OF 1222.85 FEET;

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## EXHIBIT "A"

### Legal Description

THENCE, N27°51'00"E, ALONG THE NORTH LINE OF THAT CERTAIN EASEMENT FOR TRANSMISSION LINES RECORDED IN DEED BOOK 786, PAGE 188, RECORDED IN THE WARREN COUNTY CLERK'S OFFICE, A DISTANCE OF 2302.92 FEET;  
 THENCE, N81°10'30"E, A DISTANCE OF 467.75 FEET;  
 THENCE, N66°52'42"E, A DISTANCE OF 2210.00 FEET;  
 THENCE, S88°30'33"E, A DISTANCE OF 600.00 FEET;  
 THENCE, N60°19'08"E, ALONG THE SOUTH LINE OF PARCEL A AS RECORDED IN DEED BOOK 2850, PAGE 147 AND DEED BOOK 2850, PAGE 199, BOTH BEING RECORDED IN THE WARREN COUNTY CLERK'S OFFICE, A DISTANCE OF 3035.00 FEET;  
 THENCE, S58°50'48"E, A DISTANCE OF 1016.00 FEET;  
 THENCE, S17°33'56"E, A DISTANCE OF 573.56 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF GAISLER ROAD, SAID POINT BEING ON THE ARC OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 80.00 FEET, A CHORD BEARING AND DISTANCE OF S84°30'39"E, 113.14 FEET;  
 THENCE, RUN SOUTHERLY, EASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 270°00'00", AN ARC LENGTH OF 376.99 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF GAISLET ROAD AND TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 30.00, A CHORD BEARING AND DISTANCE OF N05°29'21"E, 42.43 FEET;  
 THENCE, RUN NORTHERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 47.12 FEET;  
 THENCE, N50°29'21"E, ALONG THE SOUTH RIGHT OF WAY LINE OF GAISLET ROAD, A DISTANCE OF 406.50 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PORTION OF THE LAND REFERENCED AS "PART G" THE "KITTATINNY SUBSTATION" RESERVED IN THAT CERTAIN DEED FROM JERSEY CENTRAL POWER AND LIGHT COMPANY, TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY DATED JUNE 7, 1965 AND RECORDED JUNE 8, 1965 IN THE WARREN COUNTY CLERK'S OFFICE IN DEED BOOK 467 AT PAGE 563 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE, RETURNING TO DESIGNATED POINT "A" AND RUNNING N82°08'11"E, A DISTANCE OF 700.64 FEET TO THE POINT OF BEGINNING;  
 THENCE, N75°12'34"E, A DISTANCE OF 862.97 FEET;  
 THENCE, S17°18'16"E, A DISTANCE OF 26.09 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1279.70 FEET, A CHORD BEARING AND DISTANCE OF S13°54'16"E, 98.89 FEET;  
 THENCE, RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 04°25'43", AN ARC LENGTH ON 98.91 FEET;  
 THENCE, S12°49'46"E, A DISTANCE OF 250.25 FEET TO THE POINT OF CURVEATURE OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 233.49 FEET, A CHORD BEARING AND DISTANCE OF S00°40'01"W, 108.89 FEET;

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## EXHIBIT "A"

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THENCE, RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°58'07", AN ARC LENGTH OF 109.90 FEET;  
 THENCE, S75°12'34"W, A DISTANCE OF 825.00 FEET;  
 THENCE, N14°47'26"W, A DISTANCE OF 480.00 FEET TO THE POINT OF BEGINNING

BEING AND INTENDED TO BE A PORTION OF THE LAND CONVEYED TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY, BY DEED FROM JERSEY CENTRAL POWER & LIGHT COMPANY, DATED JUNE 7, 1965 AND RECORDED JUNE 8, 1965 IN THE WARREN COUNTY CLERK'S OFFICE IN DEED BOOK 467 AT PAGE 563.

TOGETHER WITH THE LANDS CONVEYED TO JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, FROM WALTER J. LINABERRY AND EUNICE LINABERRY, HIS WIFE AND, PEARL LINABERRY, SINGLE AND BERTHA LINABERRY, SINGE, DATED APRIL 4, 1973, RECORDED APRIL 4, 1973 IN DEED BOOK 539, PAGE 135 .

EXCEPTING THEREOUT AND THEREFROM THAT PORTION OF THE LAND CONVEYED TO THE UNITED STATES OF AMERICA FROM PSEG FOSSIL, LLC AND JERSEY CENTRAL POWER & LIGHT COMPANY, DATED NOVEMBER 1, 2007, RECORDED NOVEMBER 27, 2007 IN DEED BOOK 2182 PAGE 252.

EXCEPTING THEREOUT AND THEREFROM THAT PORTION OF THE LAND CONVEYED TO THE STATE OF NEW JERSEY BY DEED FROM JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, DATED JUNE 25, 1969 AND RECORDED SEPTEMBER 17, 1969 IN DEED BOOK 507 PAGE 736 .

EXCEPTING THEREOUT AND THEREFROM THE FEE SIMPLE INTEREST IN AND TO THAT PORTION OF THE LAND CONVEYED TO THE GEORGE WASHINGTON COUNCIL, BOY SCOUTS OF AMERICA, BY DEED FROM JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, DATED 11/27/1981 AND RECORDED 12/24/1981 IN DEED BOOK 786 PAGE 188.

EXCEPTING THEREOUT AND THEREFROM THAT PORTION OF THE LAND CONVEYED TO THE UNITED STATES OF AMERICA FROM PSEG FOSSIL, LLC AND JERSEY CENTRAL POWER & LIGHT COMPANY, DATED NOVEMBER 1, 2007, RECORDED NOVEMBER 27, 2007 IN DEED BOOK 2182 PAGE 252.

#### PARCEL 2 – EASEMENT

TOGETHER WITH THE NON-EXCLUSIVE BENEFICIAL EASEMENT INTEREST RESERVED IN THAT CERTAIN DEED TO THE GEORGE WASHINGTON COUNCIL, BOY SCOUTS OF AMERICA, BY DEED FROM JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS

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**EXHIBIT "A"**  
Legal Description

COMPANY, DATED 11/27/1981 AND RECORDED 12/24/1981 IN DEED BOOK 786 PAGE 188 . AS MODIFIED BY THE DEED OF RELEASE TO CENTRAL JERSEY COUNCIL, BOY SCOUTS OF AMERICA THE SURVIVOR AND SUCCESSOR IN AND BY 1999 MERGER TO THE FORMER GEORGE WASHINGTON COUNCIL, BOY SCOUTS OF AMERICA FROM PSEG FOSSIL, LLC, SUCCESSOR TO PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND JERSEY CENTRAL POWER & LIGHT COMPANY, DATED OCTOBER 25, 2017 AND RECORDED APRIL 12, 2018 IN DEED BOOK 2850, PAGE 147. AS MODIFIED UNDER DEED OF DONATION TO THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, FROM CENTRAL JERSEY COUNCIL, BOY SCOUTS OF AMERICA THE SURVIVOR AND SUCCESSOR IN AND BY 1999 MERGER TO THE FORMER GEORGE WASHINGTON COUNCIL, BOY SCOUTS OF AMERICA, DATED APRIL 5, 2018 AND RECORDED APRIL 12, 2018 IN DEED BOOK 2850, PAGE 199

PARCEL 3 – FEE SIMPLE

BEING AND INTENDING TO BE THE LAND CONVEYED TO JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, FROM ROLAND W. CHAMBERLAIN AND CARRIE A. CHAMBERLAIN HIS WIFE, DATED OCTOBER 20, 1966, RECORDED OCTOBER 20, 1966 IN DEED BOOK 480, PAGE 513 AND BEING MORE PARTICULARLY DESCRIBED BELOW:

BEGINNING AT A CORNER FORMED BY THE INTERSECTION OF THE DIVIDING LINE BETWEEN LANDS OF ROLAND W. CHAMBERLAIN, et ux., AND THE LANDS NOW OR FORMERLY JOHN R. SWARTZ WITH THE PRESENT EASTERLY LINE OF WALNUT VALLEY ROAD, AS SAID WALNUT VALLEY ROAD IS RELOCATED; THENCE

(1) NORTHWESTERLY ALONG SAID EASTERLY LINE OF WALNUT VALLEY ROAD ON A CURVE TO THE RIGHT HAVING A RADIUS OF 925 FEET (CHORD OF WHICH BEARS NORTH 18°48' WEST, 198.33 FEET) AN ARC DISTANCE OF 198.71 FEET TO A CORNER IN THE DIVIDING LINE BETWEEN LANDS NOW OR FORMERLY OF ROLAND W. CHAMBERLIAN, et ux. AND LANDS NOW OR FORMERLY OF WILLIAM T. POSEY; THENCE

(2) NORTH 38°58' EAST ALONG THE LAST MENTIONED DIVIDING LINE BETWEEN LANDS, 91.80 FEET TO A CORNER COMMON TO LANDS NOW OR FORMERLY OF ROLAND W. CHAMBERLAIN, et ux., LANDS NOW OR FORMERLY OF WILLIAM T. POSEY, AND LANDS NOW OR FORMERLY OF JOHN R. SCHWARTZ; THENCE THE FOLLOWING TWO COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN LANDS OF ROLAND W. CHAMBERLAIN, et ux. AND LANDS NOW OR FORMERLY OF JOHN R. SCHWARTZ

(3) SOUTH 77°32' EAST, 120.02 FEET TO A CORNER

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

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**EXHIBIT "A"**  
Legal Description

(4) SOUTH 25°28' WEST, 258.33 FEET TO THE POINT AND PLACE OF BEGINNING.

BEING ALSO KNOWN AS (REPORTED FOR INFORMATIONAL PURPOSES ONLY):

Block 202, Lot 13, on the official tax map of the Township of Blirstown, County of Warren, State of New Jersey.

Block 301, Lot 3, on the official tax map of the Township of Blirstown, County of Warren, State of New Jersey.

Block 302, Lot 1, on the official tax map of the Township of Blirstown, County of Warren, State of New Jersey.

Block 406, Lot 16.02, on the official tax map of the Township of Blirstown, County of Warren, State of New Jersey.

Block 701, Lot 2, on the official tax map of the Township of Blirstown, County of Warren, State of New Jersey.

Block 1301, Lot 2.02, on the official tax map of the Township of Hardwick, County of Warren, State of New Jersey.

*This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.*

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**APPENDIX C-1**  
**Copy of the 1964 Agreement**

THIS AGREEMENT made this 30<sup>th</sup> day of December, one thousand nine hundred and sixty-four between Jersey Central Power & Light Company, a corporation of the State of New Jersey, hereinafter called "Jersey Central" and Public Service Electric and Gas Company, also a corporation of the State of New Jersey, hereinafter called "Public Service",

W I T N E S S E T H:

WHEREAS:

1. Jersey Central and Public Service have for several years planned the comprehensive development of the pumped storage electric generating potential which is physically, electrically and economically feasible at and near Kittatinny Mountain in the Townships of Blairstown and Pahaquarry, County of Warren, State of New Jersey. The comprehensive development planned by the companies involves the construction, in three coordinated and integrated stages, of several reservoirs, conduits and pumping-generating stations with a total estimated capacity of 1,320,000 KW using energy from fuel-fired generating

plants to pump water through conduits from lower to upper reservoirs and subsequently, when the water is released from the upper reservoirs through the conduits, using the energy of the falling water to generate electricity as it passes through the reversible pumping-generating units;

2. This comprehensive development, which is herein referred to as the "Kittatinny Mountain Project" or "Project", involves an estimated expenditure of more than \$100,000,000;

3. The Kittatinny Mountain Project will be of benefit (a) to the customers of Public Service and Jersey Central (and the latter's affiliate, New Jersey Power & Light Company, which is expected ultimately to be merged into Jersey Central) who comprise more than 90% of the electric consumers of the State of New Jersey, and (b) through interconnections, to the customers of utilities in adjacent states in the Delaware River Basin;

4. In addition to providing the power benefits described above, the Kittatinny Mountain Project will make non-power benefits available by (a) facilitating and making more economical the development of additional potable water supply for northern New Jersey communities, (b) facilitating and making more economical the construction of the Federal government's Delaware River Tocks Island Dam, and (c) providing additional recreation facilities;



5. The effective and economic utilization of the Kittatinny Mountain Project requires (a) a large supply of pumping energy, approximately 1-1/2 kilowatthours of pumping energy being required to provide one kilowatthour of pumped storage energy from the Project and (b) a customer load which is many times that of the peak capacity of the Project, and for that reason Public Service and Jersey Central have, from the inception, conceived the Project as one which would be integrated into the systems of both Companies and their applications to regulatory bodies and others have made this clear;

6. Jersey Central has, in the interest of both itself and Public Service and with the assistance and collaboration of Public Service, taken a number of steps to advance the Project, including (a) the acquisition of real property on which certain Project facilities are to be located, (b) an exchange of certain lands with the State of New Jersey, (c) the making of certain payments to the State of New Jersey, (d) the undertaking of certain obligations to, and acquisition of certain rights against, the State of New Jersey under an agreement, dated March 1, 1961, (e) the obtaining of the requisite consents, permits, approvals and licenses from regulatory agencies (including the New Jersey Division of Water Policy and Supply and its Water Supply Council,

the Delaware River Basin Commission and the Federal Power Commission) for the construction, maintenance and operation of the facilities comprising the first stage (generally known as the "Yards Creek" stage) of the Project, and (f) the undertaking of the construction and financing of the Yards Creek facilities which will have a capacity of 330,000 KW and are expected to be placed in service in 1965;

7. Public Service and Jersey Central have pending before the Delaware River Basin Commission an amendment and supplement to the application previously submitted to and approved by that Commission, whereby Public Service and Jersey Central seek the amendment of the permit granted by that Commission so as to authorize Public Service and Jersey Central to construct, maintain and operate (a) the second stage (generally known as the "Labar Island" stage) facilities of the Project which will add 240,000 KW and the construction of which will be undertaken as soon as all requisite approvals, consents, permits and licenses can be obtained, and (b) the third stage (generally known as the "Tocks Island" stage) facilities of the Project which will add 750,000 KW and the construction of which would be coordinated with the construction of the projected Tocks Island Reservoir of the Federal government; and

8. Public Service and Jersey Central have determined that the ownership, operation, maintenance and financing of the Project will be best integrated into their respective systems if they own the Project facilities as tenants in common pursuant to an arrangement whereby (a) Public Service and Jersey Central initially own undivided equal interests in the Project and (b) when the Labar Island stage facilities are authorized and approved by the appropriate regulatory agencies (but not earlier than July 1, 1967) Jersey Central transfers to Public Service an additional 15% undivided interest in the Project so that thereafter Public Service will own an undivided 65% interest, and Jersey Central an undivided 35% interest, in the Project:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Subject to the obtaining of all requisite regulatory approvals, Jersey Central agrees to sell and Public Service agrees to purchase an undivided 50% interest (1) in the Yards Creek facilities now owned by Jersey Central, more particularly set forth and described as Yards Creek Project No. 2309 in the license issued by the Federal Power Commission authorizing the construction, operation and maintenance of such facilities, and in the application for such license, and (2) in all other Kittatinny Mountain Project properties or interests therein owned by Jersey

Central on the date of the consummation of the sale of the Yards Creek facilities. It is agreed that such sale shall be consummated on or before February 1, 1965, or such later date as shall be mutually agreed upon by the parties, and that, upon the consummation of such sale, Jersey Central and Public Service shall own the said properties as tenants in common and, thereafter and until consummation of the sale provided for in the next paragraph, Jersey Central and Public Service shall share equally in the expenditures made in connection with the Kittatinny Mountain Project and shall own, in equal shares, as tenants in common all the Kittatinny Mountain Project properties.

Further, upon the obtaining of all requisite regulatory approvals and authorizations for the construction, maintenance, and operation of the Labar Island stage (or Labar Island and Tocks Island stages, if approved and authorized simultaneously), Jersey Central agrees to sell and Public Service agrees to purchase an additional undivided 15% interest in all the Kittatinny Mountain Project properties, so that, after such sale is consummated, (a) Public Service will own an undivided 65% interest and Jersey Central an undivided 35% interest, as tenants in common, in all the Kittatinny Mountain Project properties, and (b) Public Service

shall bear 65% and Jersey Central shall bear 35% of all expenditures made in connection with the Kittatinny Mountain Project. Such sale and purchase shall be consummated on the last day of the second full calendar month following the date of the issuance of the last of the regulatory approvals required for such sale and purchase, or on such other date as may be mutually agreed upon between the parties, except that said sale and purchase shall not be consummated prior to July 1, 1967.

The term "properties" as used in this agreement includes all property, real, personal, and mixed, including land, interests therein, project works, structures, fixtures, equipment, riparian rights, licenses, permits, authorizations, contracts, engineering studies, surveys and all other property of any kind acquired for the purpose of or in connection with the comprehensive development, construction, operation, and maintenance of the Kittatinny Mountain Project or any stage thereof.

Public Service will assume, in connection with each such sale, that share of any obligation or liability of Jersey Central applicable to the property being acquired that is proportionate to the undivided interest in such property then being acquired by Public Service, including, without limitation, obligations under licenses, permits, authorizations, and contracts which

are part of the property being acquired, provided, however, that Public Service shall not assume any obligation or liability of Jersey Central under or by reason of Jersey Central's Indenture, dated as of March 1, 1946, to City Bank Farmers Trust Company, Trustee, as amended and supplemented (hereinafter called the "Jersey Central Mortgage"), and provided further, that Public Service's responsibility to Jersey Central pursuant to this paragraph shall not include any obligation or liability to Jersey Central with respect to any matter if, and to the extent that, such obligation or liability shall be covered by insurance obtained by Jersey Central the premium for which insurance coverage had been capitalized by Jersey Central and is included as a part of the selling price of the property being conveyed by Jersey Central to Public Service.

Section 2. The price to be paid to Jersey Central by Public Service in cash upon the conveyances of the undivided interests in the properties specified in Section 1 shall be the applicable portion of the costs to Jersey Central of the properties being transferred. Upon the execution of this contract Public Service shall pay to Jersey Central \$5,000,000.00 as part payment of the purchase price of the undivided 50% interest in the Yards Creek facilities and in the other Kittatinny Mountain Project

properties to be acquired by it from Jersey Central and the balance of said purchase price shall be paid at the consummation of the sale; but if, for any reason whatsoever, the sale with respect to the aforesaid properties shall not be consummated, the said part payment in the amount of \$5,000,000.00 shall be repaid by Jersey Central to Public Service with interest from date of payment to the date of the repayment at the prime interest rate for commercial loans prevailing in the City of New York.

Jersey Central has made available to Public Service all of its cost and other related records applicable to the Kittatinny Mountain Project properties and will continue to do so. If Public Service should question any item of cost, it will advise Jersey Central of that fact within six months after the pertinent records with respect to such cost shall have been made available to Public Service, and any dispute concerning the same shall be promptly resolved by agreement between the two parties or, if necessary, by an independent arbitrator jointly selected by them.

Section 3. The conveyances (which shall be by bargain and sale deeds with covenants against the acts of the grantor), transfers, assignments, releases, and other instruments and documents to be delivered under this agreement by Jersey Central to Public Service, including a release or releases from the lien of the Jersey Central Mortgage, in order to effectuate the sales

herein provided for, shall be in such form as shall be reasonably satisfactory to counsel for Public Service and, insofar as real property is concerned, shall be effective to convey title to Public Service free and clear of all encumbrances other than (a) those defined as "excepted encumbrances" in the Jersey Central Mortgage, and (b) easements for transmission power lines of the parties or their affiliates. Jersey Central agrees to cooperate with Public Service in taking such action (including the exercise of the power of eminent domain) as Public Service at any time or from time to time may request to remove any encumbrances or exceptions that may be required to be removed in order that the title of Public Service to its undivided interest in the properties (insofar as real property is concerned) will be insured by New Jersey Realty Title Insurance Company without material exception (other than as provided in this Section with respect to easements for transmission power lines of the parties or their affiliates) upon the payment of its normal fees. The conveyances shall contain mutual covenants running with the land which shall continue in effect so long as the Yards Creek stage and/or the Kittatinny Mountain Project, as the case may be, in the opinion of either party hereto is used or useful for the generation of electricity, which covenants shall provide that neither party shall have the



right to have any partition or sale for division as a tenant in common of the properties conveyed, and that said properties shall be restricted against any such partition or sale for division, either voluntary or involuntary, by either judicial or extra-judicial action, whether by the parties hereto or either of them or by their respective successors and assigns, mortgagees, receivers, trustees, or other representatives. Jersey Central will at any time, and from time to time after consummation of such sales, upon reasonable request of Public Service, make, execute, and deliver, or cause to be made, executed, and delivered, all and every such further and lawful conveyances, transfers, assignments, releases, and other instruments and documents as Public Service shall request for the better and more effectual vesting and confirming in Public Service the interests herein agreed to be conveyed. Jersey Central and Public Service will share the expenses of all conveyances, transfers, assignments, releases, and other instruments and documents provided for in this agreement, in the proportion of their respective undivided interests immediately following the execution and delivery thereof. The said expenses shall include, without limitation, such items as documentary transfer taxes, fees for searches, surveys, title insurance, costs of removing encumbrances and exceptions, recording fees, attorneys' fees, and like items. At the consummation

of such sales Jersey Central shall deliver to Public Service copies of all insurance policies obtained by Jersey Central the premiums for which insurance coverage have been capitalized by Jersey Central and are included as a part of the selling price of the property being conveyed by Jersey Central to Public Service, properly endorsed to name as assureds Jersey Central and Public Service.

Section 4. The consummation of the sales contemplated by this agreement and the construction, maintenance, and operation of the properties will require the approval of various regulatory agencies, and Jersey Central and Public Service will cooperate in promptly filing and prosecuting applications seeking such approvals as are necessary.

Section 5. In the event either party hereto desires to sell the interest of such party or any part thereof in the properties while they are used or useful in the generation of electricity, the other party shall have a preferential right to purchase the same at the depreciated original cost thereof at the effective date of such sale. In such event the party desiring to sell shall promptly communicate, by registered letter to the other party, the fact of its desire to sell, and the other party shall thereupon have an option for a period of 60 days after the

receipt of such notice to advise the notifying party of its intention to exercise such preferential right; provided, however, that the provisions of this Section shall not apply where any party hereto desires to dispose of its interest by a merger, reorganization or consolidation, or by a sale to any company in which such party (or its parent) owns a majority of the voting stock, or where any party desires to mortgage its interest.

Section 6. This agreement shall be and remain independent of and shall survive the giving of any deed or deeds pertaining to or involving any of the properties mentioned herein, and its terms and provisions shall not merge in any such deed or deeds.

Section 7. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Jersey Central Power & Light Company and Public Service Electric and Gas Company have caused this agreement to be duly executed under their respective corporate seals by their respective proper officers thereunto duly authorized, as of the date hereinabove first written.

JERSEY CENTRAL POWER & LIGHT COMPANY  
 By W. M. Swan  
 President

Attest: L. Swan  
 Secretary

PUBLIC SERVICE ELECTRIC AND GAS COMPANY  
 By Dwight C. Lee  
 President

Attest: W. Conington  
 Secretary

STATE OF NEW JERSEY )  
 COUNTY OF MORRIS ) ss.:

BE IT REMEMBERED, that on this *30th* day of *December*, 1964, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared *W. H. Mc Elwain* who, I am satisfied, is President of JERSEY CENTRAL POWER & LIGHT COMPANY, the corporation named in and which executed the foregoing instrument, and is the person who signed the said instrument as such officer for and on behalf of such corporation, and I having first made known to him the contents thereof, he did acknowledge that he signed the said instrument as such officer, that the said instrument was made by such corporation and sealed with its corporate seal, and that the said instrument is the voluntary act and deed of such corporation, made by virtue of authority from its Board of Directors.

*Somona W. Howard*

SOMONA W. HOWARD  
 Notary Public of New Jersey  
 My Commission Expires August 22, 1965

STATE OF NEW JERSEY )  
COUNTY OF ESSEX ) ss.:

BE IT REMEMBERED, that on this 30<sup>th</sup> day of December, 1964, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Donald C. Luce, who, I am satisfied is President of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, the corporation named in and which executed the foregoing instrument, and is the person who signed the said instrument as such officer for and on behalf of such corporation, and I having first made known to him the contents thereof, he did acknowledge that he signed the said instrument as such officer, that the said instrument was made by such corporation and sealed with its corporate seal, and that the said instrument is the voluntary act and deed of such corporation, made by virtue of authority from its Board of Directors.

*Shirley Burkhard*

SHIRLEY BURKHARD  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 21, 1968

**APPENDIX C-2**  
**A copy of the Board's 1965 Order as amended**

ENR.  
3/10/65



State of New Jersey

DEPARTMENT OF PUBLIC UTILITIES  
BOARD OF  
PUBLIC UTILITY COMMISSIONERS

IN THE MATTER OF THE PETITION OF JERSEY CENTRAL  
POWER & LIGHT COMPANY: (1) TO 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 \$13,754; 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 TOOKS 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  
\$10,785,237.75 PLUS ADDITIONS AND INTEREST DUR-  
ING CONSTRUCTION FROM DECEMBER 1, 1964 TO THE  
DATE OF CONVEYANCE.

ORDER  
AMENDING  
ORDER  
APPROVING  
SALE

Docket No. 651-55

Alfred A. Rochester, Esq., Morristown, N.J., for Jersey  
Central Power & Light Company.

J. Henry Mulhern, Esq., and Frederick M. Broadfoot, Esq.,  
Newark, N.J., for Public Service Electric and Gas  
Company.

Robert E. Frank, Esq., Law Assistant, for the Board of  
Public Utility Commissioners.

BY THE BOARD:

It is ORDERED that the Board's Order Approving Sale in the above  
entitled matter, dated March 4, 1965, be and is HEREBY AMENDED by the  
deletion of \$13,750.00 on Page 5, paragraph 6, line 5, and the addition  
of \$13,754.00 in its place.

Dated: March 10, 1965  
(SEAL)

BOARD OF PUBLIC UTILITY COMMISSIONERS  
BY:  
(SIGNED)

WILLIAM F. HYLAND  
PRESIDENT

ATTEST:

(SIGNED)

EDWARD F. HAMILL  
SECRETARY

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

Edward F. Hamill  
Secretary



ENGR.

3/4/65

**State of New Jersey**

**DEPARTMENT OF PUBLIC UTILITIES  
BOARD OF  
PUBLIC UTILITY COMMISSIONERS**

IN THE MATTER OF THE PETITION OF JERSEY CENTRAL  
POWER & LIGHT COMPANY: (1) TO 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 \$13,754; 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 YARD'S CREEK IN THE TOWN-  
SHIP OF BLAIRSTOWN AND IN THE TOWNSHIP OF PAHA-  
QUARRY, WARREN COUNTY, NEW JERSEY, FOR A BASE  
PRICE OF \$10,785,237.78 PLUS ADDITIONS AND  
INTEREST DURING CONSTRUCTION FROM DECEMBER 1,  
1964 TO THE DATE OF CONVEYANCE.

ORDER  
APPROVING  
SALE

Docket No. 651-55

Alfred A. Rochester, Esq., Morristown, N.J., for Jersey  
Central Power & Light Company.

J. Harry Mulhern, Esq., and Frederick M. Broadfoot, Esq.,  
Newark, N.J., for Public Service Electric and Gas  
Company.

Robert E. Frank, Esq., Law Assistant, for the Board of  
Public Utility Commissioners.

BY THE BOARD:

Jersey Central Power & Light Company (petitioner), in a petition  
filed January 29, 1965, applied to the Board for approval of the sale and  
conveyance of a permanent easement described in Schedule "A-1, Revised,"  
attached hereto, for construction, maintenance and operation of electric  
transmission and distribution facilities on and over lands of the peti-  
tioner to Public Service Electric and Gas Company (Public Service) for  
the sum of \$13,754; and the sale and conveyance of an undivided 50% interest  
in and to certain property, rights and interests for a pumped storage  
electric generating project (Kittatinny Mountain Project, or project), to



Public Service for a consideration of \$10,785,237.78, plus one-half of the expenditures for additions and one-half of additional accruals of interest during construction on all such property and additions (excluding interest on \$5,000,000 thereof from December 30, 1964, on which date Public Service made a down payment in such amount, as stated in Exhibit P-3) from December 1, 1964, to the date of conveyance. Further, upon obtaining all the required regulatory approvals and authorizations for the construction, operation and maintenance of the Labar Island stage (or Labar Island and Tocks Island stages, if approved and authorized simultaneously) the petitioner proposes to convey to Public Service an additional 15% undivided interest in all the Kittatinny Mountain Project properties. However, the agreement sets forth that this portion of the transaction shall not be consummated prior to July 1, 1967.

In its petition, the petitioner requested a waiver of the Board's Rule of Practice 14:6-10(b) relating to advertising, because the parties hereto are suppliers of electricity in approximately 50% of the State of New Jersey and because of the anticipated advantages to accrue to the public as a result of the proposed transaction.

An amendment to the petition submitted February 18, 1965, included Schedule "A-1, Revised" attached hereto, which sets forth a corrected description of the easement to be conveyed and Schedule "A-2," attached hereto, which sets forth the land to be conveyed. Schedule "A-2" is subject to minor changes which will not affect the description of the property.

Public hearing in this matter was held on February 19, 1965, before Hearing Examiner Charles W. Hilliard. The petition was unopposed. Preparation and service of the Hearing Examiner's Report and Recommendations were waived and the matter was certified directly to the Board for decision. Appearances are shown supra. The Board hereby takes official notice of the record in the proceedings before it in Dockets No. 631-38, 632-63 and 618-613, all of which relate to various stages of the project.

The record indicates that the proposed sale of the easement and right-of-way is necessary in order for Public Service to construct and maintain a transmission line which will enable it to connect the facilities of the project to its distribution system.

The record further indicates that the petitioner and Public Service have agreed to participate in the development of a pumped storage project known as the Kittatinny Mountain Project. The project is not a base load plant but is designed to provide additional generating capacity under peak load conditions. By adding Public Service's load to the project, a greater number of consumers of electrical energy will benefit from the output of the project. The project is to be constructed in three stages. The first stage, known as the "Yards Creek" stage, will have a capacity of 330,000 kw and is nearing completion. The second stage, known as the "Labar Island" stage, will have a capacity of 240,000 kw, construction of which will be undertaken as soon as all required governmental approvals are obtained. The third stage, known as the "Tocks Island" stage, will have a capacity of 750,000 kw, the construction of which would be coordinated with the construction of the projected Tocks Island Reservoir of the Federal government. Accordingly, the petitioner and Public Service have filed before the Federal Power Commission a Third Amendment of a Supplement to Application for License (Exhibit P-4) to include Public Service as a co-licensee with the petitioner. The Securities and Exchange Commission (S.E.C.) has jurisdiction over the sale of the interest in the properties. The petitioner has filed an application, Exhibit P-3, with the S.E.C. requesting approval of this transaction which is presently pending.

The negotiations between the petitioner and Public Service, during which it was agreed that Public Service would ultimately own a 65% undivided interest in the project, were consummated by an agreement (Exhibit P-3, attached to the Petition) dated December 30, 1964, which sets forth the conditions of the sale. To date the petitioner has assumed sole responsibility for the project.

A vice president (chief accounting officer) of the petitioner testified with respect to the sale price of the easement and right-of-way to be conveyed to Public Service. Exhibit P-2 sets forth the calculations that determined the sale price. He further testified relative to the sale price of the 50% undivided interest in the project, the details of which are set forth in Exhibit P-1. The witness also testified that he was familiar with the transactions and that the proposed journal entry will be adjusted to reflect the correct amounts at the completion of the transactions. In addition to acquiring an undivided interest in the project, Public Service will assume a proportionate share in the obligations of the petitioner in the project, including contracts for engineering, construction management, civil works, installation, materials and a remaining obligation to the State of New Jersey for the use and occupation of certain land.

The petitioner's chief mechanical engineer testified that from its inception, it was contemplated that Public Service would participate in the development of the project and would ultimately own a 65% undivided interest in the project. Accordingly, the design of the project was based on the load curve of both companies. The witness further testified that the Lebar Island stage may be modified or completely eliminated depending on the final location of the Tocks Island Dam. If the Lebar Island stage is eliminated, a different basis for determining the date on which the sale of the additional 15% undivided interest in the project will be consummated will be set forth at that time. The witness also testified that the transactions here under consideration will not affect the ability of the petitioner to furnish safe, adequate and proper service.

After consideration of the entire record herein, the Board FINDS that:

1. The sale and conveyance of the easement described in Schedule "A-1, Revised," attached hereto, and of the undivided interest in and to certain property, rights and interests for a pumped storage project as described in Schedule "A-2," attached hereto, to Public Service would not adversely affect the ability of the petitioner to render safe, adequate and proper service or prejudice the public interest.

2. Upon completion of the proposed sale and conveyance of the undivided interest in the project, Public Service will hold an undivided 65% interest in the pumped storage project and the agreement made in 1964 for Public Service to participate in the project will be consummated.
3. The proposed consideration is based on a distribution of costs in connection with the development of the project in proportion to percentage of ultimate ownership.
4. The completion of the proposed transactions will benefit the public and are therefore in the public interest since both the petitioner and Public Service will have available an additional source of electrical energy for peak demands.
5. The sale price of the right-of-way to be sold to Public Service is based on one-half of the average cost of the lands affected by the proposed easement.
6. Under the circumstances here, the waiver of the Board's Rule 14:6-10(b) relating to advertising would not adversely affect the public interest.

Therefore, the Board HEREBY GRANTS the petitioner's request for a waiver of the Board's Rule 14:6-10(b) with respect to advertising and HEREBY APPROVES: (1) the sale and conveyance of the easement described in Schedule "A-1, Revised" attached hereto, to public Service for the sum of \$13,750.00; (2) the sale and conveyance of an undivided 50% interest in and to certain property, rights and interests for a pumped storage project as described in Schedule "A-2," attached hereto, and Exhibit P-1 for the sum of \$10,785,237.78, plus one-half of the expenditures for additions and one-half of additional accruals of interest during construction on all such property and additions (excluding interest on \$5,000,000 thereof from December 30, 1964, on

which date Public Service made a down payment in such amount, as stated in Exhibit P-3) from December 1, 1964 to the date of conveyance, as well as contemplated sale and conveyance of an additional 15% undivided interest in all the Kittatinny Mountain Project properties upon the petitioner obtaining all of the required regulatory approvals and authorizations for the construction, operation and maintenance of the Labar Island stage (or Labar Island and Tecks Island stages, if approved and authorized simultaneously), to Public Service.

The petitioner is hereby directed to advise the Board, within ten days after final settlement, of the dates on which the transactions are completed.

Dated: March 4, 1965

(SEAL)

BOARD OF PUBLIC UTILITY COMMISSIONERS  
BY:

(SIGNED)

WILLIAM F. HYLAND  
PRESIDENT

ATTEST:

(SIGNED)

EDWARD V. HAMILL  
SECRETARY

**APPENDIX C-3**  
**A copy of the 1965 Operating Agreement**

## YARDS CREEK PUMPED STORAGE HYDROELECTRIC GENERATING STATION

OPERATING AGREEMENT  
between  
JERSEY CENTRAL POWER & LIGHT COMPANY  
and  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

This AGREEMENT made and entered into this 6th day of October, 1965, by and between JERSEY CENTRAL POWER & LIGHT COMPANY, hereinafter referred to as JC, party of the first part, and PUBLIC SERVICE ELECTRIC AND GAS COMPANY, hereinafter referred to as PS, party of the second part, both said Companies being corporations organized and existing under the laws of the State of New Jersey.

W I T N E S S E T H:

WHEREAS, each of the parties hereto (sometimes collectively called "Owners") owns, as a tenant in common with the other, an undivided 50% interest in the Yards Creek Pumped Storage Hydroelectric Generating Station in Pahaquarry and Blairstown Townships, Warren County, New Jersey, consisting of three reversible generating and pumping units with a nominal capacity of 110,000 Kw each, reservoirs, penstocks, dams, dikes and appurtenances, together with all neighboring lands and property owned as tenants in common by the parties hereto (all of which properties are hereinafter collectively referred to as "Yards Creek"); and

WHEREAS, Yards Creek is the first stage of a planned comprehensive pumped storage development known as the Kittatinny Mountain Project; and

WHEREAS, it is desirable and to the mutual advantage of the Owners of the respective interests that JC, for itself

and as an independent contractor for PS, operate and maintain Yards Creek under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of these premises, the parties hereto do hereby agree as follows:

#### ARTICLE 1

##### Capacity and Energy Entitlement

1.1 As tenants in common, each owning a 50% undivided interest in Yards Creek, JC and PS each are entitled to 50% of the installed capacity, available capacity, operating capacity and hourly energy generation of Yards Creek; and JC and PS shall each provide the pumping energy required to replace the water used from storage in supplying their respective shares of operating capacity and energy generation and 50% of the energy required for auxiliary power and lighting within the project.

#### ARTICLE 2

##### General

2.1 JC shall furnish on behalf of itself and PS all labor and supervision necessary for, and shall be solely responsible for, the operation and maintenance of and additions to and retirements from, Yards Creek in the same manner as if JC had the complete ownership interest in Yards Creek, except as otherwise specifically provided hereinafter. In performing the above activities on behalf of PS, JC shall be and act as an independent contractor responsible for the result to be attained, i.e., generation of power and energy at Yards Creek, and itself having sole responsibility for the specific manner of attaining that result.



In the exercise of such authority, JC is authorized and directed (a) to hire employees and contractors, to purchase materials, supplies and services, and to make all necessary payments related to the foregoing, and (b) to keep all necessary books of record, books of account and memoranda of all transactions. Additions to and retirements from Yards Creek, involving estimated costs in excess of \$10,000, are not within the scope of this agreement and shall not be undertaken by JC, as the independent contractor of PS, except upon the issuance of specific authorization therefor by PS.

2.2 The provisions of 2.1 shall be carried out by JC in such a manner as to enable each Owner to conform to the Uniform System of Accounts prescribed by the Federal Power Commission for Public Utilities and Licensees, to the rules and regulations of such Commission and to the rules, regulations and requirements of all regulatory agencies having jurisdiction over the owners, and JC agrees to perform all necessary functions on behalf of each Owner incidental to any of the foregoing.

2.3 PS shall have the right, during the term of this agreement and thereafter as long as the books, records and memoranda referred to in 2.1 hereof shall be preserved, to inspect all such items and to make audits thereof as it may deem necessary to protect its interests, provided, however, that annual audits shall be completed within six months after the end of each calendar year.

2.4 JC shall keep PS reasonably and timely informed concerning the operation and maintenance of Yards Creek. JC shall

immediately advise PS of any shutdown in whole or in part of Yards Creek and of the nature and probable cost of emergency repairs or maintenance. Such emergency repairs or maintenance may be ordered by JC if, in the sole opinion of its Superintendent of Electric Generation, continued operation would result in unwarranted physical damage to any component of the facilities comprising Yards Creek or damage to other property or persons.

2.5 JC will consult with PS from time to time to determine the optimum operation of Yards Creek and in connection therewith employ data obtained in performance tests conducted by JC, as well as other data available from equipment manufacturers and other sources, which in its and PS's opinion are required for such a determination.

### ARTICLE 3

#### Working Fund

3.1 JC and PS shall jointly determine, from time to time, the amount of the Working Fund required to enable JC to make payments applicable to Yards Creek for the costs of its operation and maintenance, an adequate stock of materials and supplies, and for additions to and retirements from Yards Creek facilities. JC and PS shall each provide, as required, 50% of such Working Fund which shall be maintained separately in a bank mutually acceptable to JC and PS and shall be subject to withdrawal upon JC's order.

3.2 On termination of this agreement, JC and PS each shall have a 50% interest in any balance in the Working Fund and in any inventory of materials and supplies purchased therefrom for Yards Creek.

ARTICLE 4Charges, Financial Statements and Billing

4.1 In carrying out this agreement, JC shall, from time to time as agreed upon by it and PS, utilize certain services and/or materials supplied by PS for Yards Creek, and PS shall furnish to JC after the end of each calendar month, a statement (in reasonable detail) of the cost (including the cost of applicable overheads supported in detail) to PS of furnishing such services and/or materials for such prior calendar month, on a date mutually agreed upon. Such costs paid or to be paid by PS and properly chargeable to Yards Creek shall be promptly reimbursed by JC to PS.

4.2 Inasmuch as JC and its affiliate New Jersey Power & Light Company (hereinafter called "NJ") are operated jointly under one management and utilize employees of either company in accordance with such employees' abilities, training and location, with respect to Yards Creek, JC will make appropriate arrangements so that a statement (in reasonable detail) of all costs (including the cost of applicable overheads supported in detail) to NJ for services supplied by NJ for Yards Creek, during each calendar month shall be furnished by NJ to JC within 20 days after the end of such calendar month. Such costs paid or to be paid by NJ and properly chargeable to Yards Creek shall be promptly reimbursed by JC to NJ.

4.3 For the purpose of determining the actual capital and operating costs of Yards Creek, all joint costs (including the costs initially paid or to be paid by PS or NJ and reimbursed to them by JC in accordance with sections 4.1 and 4.2 above) shall be accumulated by JC in accordance with any applicable rules,

regulations and requirements of all regulatory agencies having jurisdiction thereof. The joint costs for Yards Creek shall be accumulated in a separate set of accounts and shall not be commingled with the operation, maintenance, additions or retirements applicable to any other project owned and operated by JC.

In determining such joint costs, there shall be included, in addition to direct salary costs, appropriate charges for the cost of such items as so-called "fringe benefits" supported in detail and for supervision, engineering, general and administrative costs. Wherever a direct charge originates in PS or NJ, the additional charges referred to in the preceding sentence shall be applied by either PS or NJ and no additional charge shall be applied by JC, to the end that there shall be no duplication of such additional charges.

4.4 The joint costs incurred or accrued by JC during each calendar month in operating, maintaining and making additions to and retirements from Yards Creek (including the costs reimbursed or to be reimbursed by it to PS or NJ in accordance with Sections 4.1 and 4.2), shall be borne 50% by JC and 50% by PS, and shall be paid out of the Working Fund.

4.5 JC shall render to PS written statements required by PS to correctly record and report the operations of the Yards Creek facilities, including additions and retirements of plant, and to provide funds as set forth under Article 3 hereof. The statements to be rendered, the form and content thereof, and the dates of delivery are to be mutually agreed upon by JC and PS.

4.6 In the event either party shall question any statement rendered according to the provisions hereof, it shall

nevertheless promptly pay the amount indicated on such statement, but such payment shall not be deemed to prevent either party from claiming an adjustment of any statement rendered. If it shall be determined that either Owner has paid more or less than its proper share of any costs applicable to Yards Creek for the period covered by any such statement, an appropriate correction shall be made by JC by proper credit or charge, as the case may be, on the statement next succeeding the date on which such determination was made. Except as the parties shall otherwise mutually agree, no adjustment of any payment made pursuant to this agreement shall be required unless a request for said adjustment shall be made within six months after the end of the calendar year with respect to which such payment was made.

4.7 It is the intent of the Owners that so far as possible all ad valorem, franchise, business or other taxes, except payroll and sales or use taxes, arising out of the ownership and operation of Yards Creek shall be separately levied and assessed against the Owners severally and that each Owner shall be responsible for and pay all such taxes so levied and assessed against or payable by it without any responsibility of the other Owner with respect thereto and without the amounts thereof being paid and apportioned between the Owners under this agreement. However, to the extent that such taxes may be levied on or assessed against Yards Creek, or its operation, or the Owners in such a manner as, in the opinion of PS and JC, to make impossible or inequitable the carrying out of said intent, then such taxes shall be deemed a part of the expense of operating Yards Creek to be apportioned between the Owners under this agreement.

ARTICLE 5Metering

5.1 The power generated by Yards Creek for delivery to the systems of JC and PS and the pumping power received at Yards Creek from the systems of JC and PS, as the case may be, shall be the sum of the amounts as measured by the metering installations on the 230-Kv connections to the three main power transformers at Yards Creek.

5.2 The gross power generated by each unit and the station auxiliary power and light requirements shall be measured by the metering equipment provided for each source.

5.3 The meters provided under 5.1 and 5.2 shall be tested and calibrated according to schedules arranged by JC at intervals not to exceed twelve months. Notice of such tests shall be given to PS so that it may have a representative present to witness them. Correction of inaccuracies found to exist in any meter shall promptly be made, and, if appropriate, such correction shall be retroactively applied to the extent necessary to carry out the intent of this agreement.

5.4 JC shall maintain records of the operation of Yards Creek by units with respect to available capacity, gross generation, station use, pumping load and other pertinent data, all being in a form and to the extent as may from time to time be deemed desirable by JC and PS.

ARTICLE 6Compliance with Provisions of Licenses and  
Permits and Requirements of Governmental  
Agencies

6.1 As joint licensees and permittees, the Owners shall cooperate in taking whatever action may be necessary to comply with the terms and provisions of the license and permits for Yards Creek and with all lawful requirements of any Federal or State agency or regulatory body having jurisdiction in the premises.

ARTICLE 7Miscellaneous

7.1 The following provisions shall be applicable to damage to the property of either or both of the parties hereto (including Yards Creek) or third parties, or injuries to or loss of life by any person, including employees of the parties hereto;

(a) Jersey Central and Public Service will jointly procure and maintain such physical damage, public liability and other insurance as they may deem appropriate with respect to all losses, damages, liability and claims arising out of their ownership and the operation of Yards Creek, and the premium costs thereof shall be a joint cost under Section 4.3 above.

(b) Claims cognizable under Workmen's Compensation Act or temporary disability benefits laws shall be borne or insured by each party separately as to its own employees and the cost of providing such coverage shall be included in the apportionment of labor overheads under Section 4.3 above; and

(c) In all other cases of losses, damages and claims, Jersey Central and Public Service shall share equally the cost

and expense thereof (including expenses of handling, investigating, settling and litigating claims) without regard to negligence of either party and without regard to whether any such claim is asserted as a third party claim by, or as a result of the acts or omissions of, an employee of either party and all such costs and expenses shall be charged monthly and paid as provided in Section 4.4 above.

7.2 Nothing in this agreement shall be deemed to create or constitute a partnership, joint venture or association between the parties, the sole purpose of this agreement being limited to provision for the orderly and efficient operation and maintenance of their respective separate undivided interests in Yards Creek.

7.3 PS and JC shall each notify the other in writing of the name and address of a person to whom written notices to, or demands upon, such designating party under this agreement may be sent and such designation shall continue in effect unless and until the party designating such person shall revoke the same by giving written notice of the designation of a successor person to whom such notices and demands may be sent.

7.4 The failure of either of the Owners to insist in any one or more instances upon strict performance of any of the provisions of this agreement or to take advantage of any rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.



ARTICLE 8Effective Date and Termination

8.1 Subject to any applicable rules and regulations of any regulatory authority, this agreement shall become effective as of the date first above written and shall remain in full force and effect until (1) all requisite regulatory approvals and authorizations for the construction, maintenance and operation of the Labar Island stage (or Labar Island and Tocks Island stages, if approved and authorized simultaneously) have been obtained and the provisions of Section 1 of the agreement dated December 30, 1964 between JC and PS relating to the sale by JC and the purchase by PS of an additional undivided 15% interest in all the Kittatinny Mountain Project properties have been consummated, or (2) terminated by mutual agreement, or (3) the parties, or either of them, shall cease to own an undivided interest in Yards Creek, or (4) Yards Creek shall no longer be used for the generation of electric power.

ARTICLE 9Successors and Assigns

9.1 This agreement and all of the terms and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any mortgage indenture trustee which shall foreclose the lien of such indenture on the undivided interest of either party in Yards Creek may, at its own election, be deemed to be a successor and assign of said party under this agreement.

IN WITNESS WHEREOF, Jersey Central Power & Light Company and Public Service Electric and Gas Company have caused this agreement to be duly executed under their respective corporate seals by their respective proper officers thereunto duly authorized, as of the date hereinabove first written.

JERSEY CENTRAL POWER & LIGHT COMPANY

By W. H. McElwain  
President

(CORPORATE  
SEAL)

Attest:

L. Sloan  
Secretary

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By E. H. Snyder  
President

Attest:

M. Carrington, Jr.  
Secretary

(CORPORATE SEAL)

**APPENDIX C-4**  
**A copy of the SOS**

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

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|   |   |                              |
|---|---|------------------------------|
| In The Matter of the Petition of Jersey Central | : |                              |
| Power & Light Company: (1) to Grant and         | : |                              |
| Convey to Public Service Electric and Gas       | : | <b>Supplemental Petition</b> |
| Company a Certain Right of Way and              | : | BPU Docket No. 651-55        |
| Easement for Electric Transmission Lines        | : |                              |
| Affecting Certain Lands in the Township of      | : |                              |
| Blairstown, Warren County, New Jersey, for      | : |                              |
| the Sum of \$13,754; 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                       | : |                              |

|                                |   |                           |
|--------------------------------|---|---------------------------|
| JERSEY CENTRAL POWER & LIGHT   | : |                           |
| COMPANY, doing business as GPU | : |                           |
| ENERGY,                        | : | <b>Verified Petition</b>  |
|                                | : | BPU Docket No. EM98121463 |
|                                | : |                           |
| Petitioner                     | : |                           |

vs.

|                                 |   |                                  |
|---------------------------------|---|----------------------------------|
|                                 | : | <b>STIPULATION OF SETTLEMENT</b> |
| PUBLIC SERVICE ELECTRIC AND GAS | : |                                  |
| COMPANY,                        | : |                                  |
|                                 | : |                                  |
| Respondent.                     | : |                                  |

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**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

This Stipulation of Settlement (“*Stipulation*”) is hereby made and executed by and among Jersey Central Power & Light Company (“*JCP&L*”) and PSEG Fossil LLC (“*PSEG*”), successor-

in-interest to Public Service Electric and Gas Company (“**PSE&G**”) (JCP&L and PSEG, collectively, the “**Parties**” and each of them, individually, is also referred to from time to time herein as a “**Party**”), in settlement of all factual and legal issues pertaining to and in connection with the above-captioned proceeding.

The Parties do hereby recommend that the New Jersey Board of Public Utilities (“**Board**” or “**BPU**”) issue a Final Decision and Order approving this Stipulation in its entirety in the above-captioned matter, based upon the following:

### **BACKGROUND**

1. JCP&L is a New Jersey electric public utility primarily engaged in the purchase, transmission, distribution and sale of electric energy and related utility services to more than 1,000,000 residential, commercial and industrial customers located within 13 counties and 236 municipalities of the State of New Jersey.

2. PSEG operates power plants in New Jersey, New York, Connecticut, Maryland and Hawaii. With respect to the power plant that is the subject of this Stipulation, PSEG is the successor-in-interest of PSE&G, a New Jersey electric public utility engaged in the distribution of electricity and the provision of electric Basic Generation Service, and engaged in the distribution of gas and the provision of Basic Gas Supply Service, for residential, commercial, and industrial purposes within the State of New Jersey. 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.<sup>1</sup>

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<sup>1</sup> See I/M/O Public Service Electric and Gas Company’s Rate Unbundling, Stranded Costs and Restructuring Filings, Dkt. Nos. EO97070461, EO97070462, EO97070463, Final Decision and Order (N.J.B.P.U. August 24, 1999) (“**PSE&G Restructuring Order**”), aff’d, 167 N.J. 377 (2001).

3. JCP&L is subject to the Board's jurisdiction for the purposes of setting its retail distribution rates and to assure safe, adequate, and proper electric distribution pursuant to N.J.S.A. 48:2-21, et. seq. and N.J.S.A. 48:2-23.

4. On December 30, 1964, JCP&L and PSE&G entered into an agreement under which PSE&G acquired a 50% undivided interest in the Yards Creek Generating Station ("***Yards Creek***"), with JCP&L retaining the other 50% (the "***1964 Agreement***"). This transfer was effectuated by a deed dated June 7, 1965, following a Board Order dated March 4, 1965 as amended March 10, 1965 (the "***1965 Order***") approving the conveyance from JCP&L to PSE&G. A copy of the 1964 Agreement is attached hereto as Exhibit 1. A copy of the Board's 1965 Order as amended is also attached hereto as Exhibit 2.

5. Section 5 of the 1964 Agreement provides for a preferential right (the "***Preferential Right***"), which, in pertinent part, reads as follows:

In the event either party hereto desires to sell the interest of such party or any part thereof in the properties while they are used and useful in the generation of electricity, the other party shall have a preferential right to purchase the same at the depreciated original cost thereof at the effective date of such sale ...

6. On October 12, 1997, following statements of Board policies as espoused in, among other things, the Energy Master Plan – Phase II Final Report dated April 30, 1997, Findings and Recommendations for Restructuring the Electric Power Industry in New Jersey, In the Matter of the Energy Master Plan – Phase II Proceeding to Investigate the Future Structure of the Electric Industry, Docket No. EX94120585Y ("***Final Report***"), JCP&L, doing business as GPU Energy, announced that it intended to commence a process to divest non-nuclear generation facilities.

7. Specifically with respect to jointly owned stations such as Yards Creek, GPU Energy 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).

8. 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. JCP&L resisted this effort.

9. 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.

10. The Parties engaged in discussions and sought to use an appraisal process to value JCP&L's interest in Yards Creek, with the appraisal taking into account the value attributable to the Parties' rights under Section 5. Such efforts were not successful.

11. On December 15, 1998, JCP&L commenced this matter, as described in paragraph 15 further below.

12. Subsequently, in the PSE&G Restructuring Order, which concluded the restructuring proceeding of PSE&G (which was conducted in response to the Final Report described in paragraph 6 above), the Board directed that PSE&G transfer its generation assets, generation-related assets like materials, supplies and fuel, and the contracts associated with its electric generation business, to separate entities owned directly by Public Service Enterprise Group Incorporated, PSE&G's parent holding company.<sup>2</sup>

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<sup>2</sup> See PSE&G Restructuring Order.

13. Thereafter, pursuant to an Asset Transfer Agreement dated as of August 21, 2000, PSE&G transferred all its right, 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. This 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.

14. On March 7, 2001, the Board issued its order pertaining to JCP&L's restructuring proceeding (which was also conducted in response to the Final Report described in paragraph 6 above).<sup>3</sup> As 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 acknowledge or address the then-pending 1998 Proceeding.

#### **PROCEDURAL HISTORY OF THIS MATTER**

15. On December 15, 1998, JCP&L filed a Supplemental Petition in BPU Docket No. 651-55 and a Verified Petition in BPU Docket No. EM98121463 (hereinafter referred to as the "**1998 Proceeding**"), copy attached as Exhibit 3, requesting the Board enter an Order pursuant to N.J.S.A. 52:14B-8 declaring 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 (and which was not within the scope of the

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<sup>3</sup> Final Decision and Order, March 7, 2001, *IMO Jersey Central Power & 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**").



1965 Order) is null and void, as against public policy and contrary to the best interests of JCP&L's customers.

16. On February 4, 1999, PSE&G filed a Verified Answer in the 1998 Proceeding (copy attached as Exhibit 4), admitting some, denying some, and taking no position on some of the assertions in JCP&L's Verified Petition, and asserting several affirmative defenses. Among other things, the Verified Answer disputed: JCP&L's characterization of the intent of Section 5 of the 1964 Agreement; the public policy implications of the Board's enforcement, or invalidation, of Section 5; the scope of the Board's 1965 order approving the 1964 Agreement; and the nature of the appraisal process described in paragraph 10 above.

17. There were no intervenors in the 1998 Proceeding.

18. For over 20 years, the 1998 Proceeding has not been addressed by the Board nor further prosecuted by the Parties. Although the Parties have engaged in discussions from time to time to attempt to resolve their differences, the Parties have not engaged in discovery in the 1998 Proceeding and there have been no hearings or Board determinations in such proceeding.

19. Over the ensuing years, both the 1964 Agreement and the lack of resolution to the 1998 Proceeding, have constrained the Parties in their ability to sell their interests in Yards Creek at a reasonable price.

20. The Parties believe that the settlement of the 1998 Proceeding as set forth in this Stipulation would remove the constraint and otherwise serve their respective interests.

**STIPULATION**

Based upon the Parties' review of JCP&L's Supplemental and Verified Petition, and the attachments thereto, the Verified Answer and the attachments thereto, and in consideration of the passage of time and changing circumstances, subject to paragraph 28 below, the Parties have agreed upon the following terms of settlement regarding the 1998 Proceeding:

21. The Parties agree to recommend that the BPU issue an order ("**Board Order**"), on an expedited basis, adopting the terms of this Stipulation as the full and complete resolution of the 1998 Proceeding, and that the Board's approval hereof satisfies, to the extent necessary and without further action by JCP&L, the requirements of N.J.S.A. 48:3-7 and the Board's regulations under N.J.A.C. 14:1-5.6, with respect to JCP&L's entering into the Stipulation and providing the waivers contained herein.

22. The Parties agree that if the Board approves this Stipulation in its entirety, the Effective Date of this Stipulation shall be the first day of the first full month following forty-five (45) days from the effective date of the Board Order under N.J.S.A. 48:2-40, unless and until each Party notifies the other, in writing, that it will not appeal the Board Order, in which case the Effective Date of this Stipulation shall be the date of the last such notice to be provided by the Parties.

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 Parties agree that this 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 below, they shall not appeal the Board Order adopting this 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. In furtherance thereof, 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, 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 below, in consideration of the agreements and undertakings of the Parties under this 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, 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 this 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 this Stipulation, and which, if known at the time of signing this Stipulation, may have materially affected this 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, 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 this 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, any right or Claim that might arise as a result of such different or additional Claims or facts.

28. Entirety of Stipulation; Binding Effect. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then either Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right (but not the obligation), upon written notice to be provided to the other Party within ten (10) days after receipt of any such adverse decision, to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in the Board Order in this matter, then either Party hereto is free (but not required), upon the timely provision of such written notice, to pursue its then-available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed, and each Party shall be returned to their respective positions as of immediately before this Stipulation was signed. The Parties agree that as of the Effective Date, this Stipulation shall be binding on them for all purposes herein.

29. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:

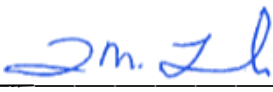
EXECUTION VERSION

(a) By executing this Stipulation, neither Party waives any rights it possesses under any prior stipulation, except where the terms of this Stipulation supersede such prior stipulation.

(b) The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of either Party's position on any related matter or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.


**WHEREFORE**, the Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and request that the Board issue a Final Decision and Order adopting and approving this Stipulation in its entirety in accordance with the terms hereof.

**JERSEY CENTRAL POWER & LIGHT COMPANY**

By:   
\_\_\_\_\_  
Lauren M. Lepkoski, Esq.  
Attorney for JCP&L

Dated: January 17, 2020

**PSEG FOSSIL LLC**

By:   
Matthew M. Weissman, Esq.  
Attorney for PSEG

Dated: January 17, 2020

**EXHIBIT 1**

**EXHIBIT 2**



**EXHIBIT 3**

BERLACK, ISRAELS & LIBERMAN LLP  
A NEW YORK LIMITED LIABILITY PARTNERSHIP

GERALD W. CONWAY  
MARC B. LASKY\*  
COUNSEL  
AMY P.K. MOTZENBECKER  
JULIE L. FRIEDBERG  
PAULINE FOLEY

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NEW YORK OFFICE  
120 WEST 45TH STREET  
NEW YORK, N.Y. 10036  
(212) 704-0100  
FACSIMILE: (212) 704-0196

\*ALSO ADMITTED IN NEW YORK

December 15, 1998

BY HAND DELIVERY

Mark W. Musser, Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Re: In The Matter Of The Petition Of Jersey Central Power & Light Company: (1) To 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 \$13,754; 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  
Docket No. 651-55

Jersey Central Power & Light Company, doing business as GPU Energy, Petitioner, vs. Public Service Electric and Gas Company, Respondent  
Docket No.

Dear Secretary Musser:

On behalf of the Petitioner, Jersey Central Power & Light Company, doing business as GPU Energy (the "Company"), enclosed herewith for filing with the Board of Public Utilities (the "Board") are the original and eleven copies of the Company's

Mark W. Musser, Secretary  
December 15, 1998  
Page 2

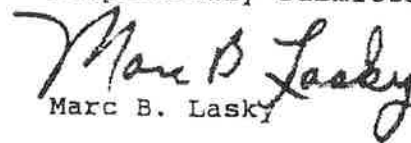
Supplemental Petition and Verified Petition in connection with the above-captioned matter.

A true copy of the Supplemental Petition and Verified Petition is being served upon the Respondent, Public Service Electric and Gas Company, by hand delivery, addressed to Harold W. Borden, Jr., Vice President - Law, Public Service Electric and Gas Company, 80 Park Plaza, P.O. Box 570, Newark, NJ 07102.

Would you kindly stamp the enclosed additional copy of this letter with the date of filing and the assigned docket number, and return same to the undersigned in the enclosed self-addressed envelope.

Thank you for your anticipated courtesy and cooperation.

Respectfully submitted,

  
Marc B. Lasky

MBL/kl

Enclosures

cc: (w/enclosure - via hand delivery)  
Elizabeth A. Murray  
Robert S. Chilton  
Peter Yochum  
Frank Perrotti  
Blossom A. Peretz (3 copies).

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF JERSEY  
CENTRAL POWER & LIGHT COMPANY: (1) TO  
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 \$13,754; 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.

SUPPLEMENTAL PETITION

Docket No. 651-55

JERSEY CENTRAL POWER & LIGHT COMPANY,  
doing business as GPU ENERGY,

Petitioner,

vs.

PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY,

Respondent.

VERIFIED PETITION

Docket No. \_\_\_\_\_

Petitioner, Jersey Central Power & Light Company, doing  
business as GPU Energy ("GPU Energy"), an electric public utility  
subject to the regulatory jurisdiction of the New Jersey Board of

Public Utilities (the "Board"), and maintaining its principal Jersey offices at 300 Madison Avenue, Morristown, New Jersey 07962, by its undersigned attorneys, as and for its petition against Respondent Public Service Electric and Gas Company ("PSE&G"), hereby states as follows:

Preliminary Statement

1. By this Verified Petition, GPU Energy seeks a declaration that PSE&G has no right to acquire GPU Energy's 50% undivided ownership interest (the "Interest") in the Yards Creek Pumped Storage Project ("Yards Creek"), representing 200,000 kW of capacity, at a price equal to the depreciated original cost (i.e., book value) of such Interest. At September 30, 1998, the book value of the Interest was about \$22.3 million or, as discussed below, only about one-fifth of the Interest's appraised value. PSE&G has asserted that it has the right to acquire the Interest at book value pursuant to the provisions of an agreement dated December 30, 1964 between GPU Energy and PSE&G (the "1964 Agreement"). In fact, the referenced provisions of the 1964 Agreement, even if otherwise valid and enforceable, afford PSE&G no such right under the current circumstances. In any event, this Board should declare the referenced provisions of the 1964 Agreement null and void, regardless of the circumstances.

2. In furtherance of Board policies as espoused in, among other things, the Energy Master Plan - Phase II Final Report dated April 30, 1997, Findings and Recommendations for Restructuring the Electric Power Industry in New Jersey, In the Matter of the Energy Master Plan - Phase II Proceeding to

Investigate the Future Structure of the Electric Industry, Docket No. EX94120585Y ("Final Report"), at 49 and 117, on October 12, 1997, GPU, Inc. announced that it intended to commence a process to divest non-nuclear generation facilities. GPU Energy has committed, subject to certain conditions, to utilize the amount by which the net proceeds of such divestiture exceed the book value of the divested assets to offset stranded costs.

3. Specifically with respect to jointly owned stations, such as Yards Creek, GPU Energy stated in its initial divestiture plan report filed with the Board in December 1997 that it was assessing each such station for inclusion in the sale process in light of its consideration of specific issues, such as the contractual rights of the other joint owner(s). Ultimately, given the dispute that has arisen between GPU Energy and PSE&G involving PSE&G's rights under the 1964 Agreement, GPU Energy determined not to sell the Interest, but, instead, to seek proposals for the long-term lease or other acquisition of its entitlement to Yards Creek capacity and/or energy.

4. The fair market value of the Interest is substantially in excess of its book value. As a consequence, were GPU Energy required to sell the Interest to PSE&G at book value, GPU Energy's ability to reduce its generation-related and other stranded costs and thereby benefit its customers would be materially reduced. Concomitantly, and at the direct expense of GPU Energy's customers, all of the benefits of such a "bargain" purchase by PSE&G would flow to PSE&G's shareholders. Given these circumstances, the Board should declare that PSE&G cannot purchase

the Interest at its depreciated original cost. This will enable GPU Energy to offer the Interest for sale and thereby obtain fair market value for the Interest.

#### Background

5. GPU Energy is currently engaged as a New Jersey public utility in the production, generation, purchase, transmission, distribution and sale of electric energy and related utility services to more than 950,000 residential, commercial and industrial customers located within 13 counties and 236 municipalities of the State of New Jersey.

6. Respondent PSE&G is engaged as a New Jersey public utility in, among other things, the production, generation, purchase, transmission, distribution and sale of electric energy and related utility services to nearly 1,900,000 residential, commercial and industrial electric customers located within 13 counties and approximately 225 municipalities in the State of New Jersey. Taking into account its gas business, PSE&G serves approximately 2,200,000 customers in the State. PSE&G owns a total of approximately 10,000 MW of electric generating capacity.

7. The 1964 Agreement provided for, among other things, the sale by GPU Energy to PSE&G of a 50% undivided Interest in Yards Creek, which, at the time, was 100% owned by GPU Energy. Final settlement and conveyance of title of this 50% interest was effected by Deed dated June 7, 1965, after which each of GPU Energy and PSE&G owned a 50% undivided interest in Yards Creek. (The 1964 Agreement also (i) provided for the sale of an easement and right of way from GPU Energy to PSE&G and (ii)

contemplated the transfer to PSE&G of an additional interest in a larger generation facility project ("Kittatinny Mountain Project"), of which Yards Creek was an element. Further development of the Kittatinny Mountain Project did not proceed and no additional interest in Yards Creek was conveyed to PSE&G.)

8. The 1964 Agreement grew out of a joint effort of GPU Energy and PSE&G to develop a substantial block of peaking power designed to serve the growing demand in the State. The provisions of the 1964 Agreement here at issue were presumably intended to recognize that ownership of such capacity would remain with a New Jersey utility. However sensible that may have been in 1964, when utilities were the monopoly suppliers of electricity, with industry restructuring, the opening of the generation business to competition and utilities facing stranded cost liabilities, that objective is no longer consistent with stated public policy goals, as set forth, inter alia, in the Final Report.

9. Section 5 of the 1964 Agreement provides in pertinent part as follows:

In the event either party hereto desires to sell the interest of such party or any part thereof in the properties while they are used or useful in the generation of electricity, the other party shall have a preferential right to purchase the same at the depreciated original cost thereof at the effective date of such sale . . . .

(A copy of the 1964 Agreement is annexed hereto as Exhibit A.)

10. Pursuant to Section 1 of the 1964 Agreement, GPU Energy and PSE&G acknowledged that the parties' obligations



thereunder are "[s]ubject to the obtaining of all requisite regulatory approvals".

11. By Petition dated January 1965 and Amendment and Supplement thereto dated February 18, 1965 (collectively, the "Petition"), GPU Energy, among other things, sought approval of the initial sale of a 50% undivided interest in Yards Creek to PSE&G. (A copy of the Petition is annexed hereto as Exhibit B.) By Order Approving Sale dated March 4, 1965, as amended by Order Amending Order Approving Sale dated March 10, 1965 (collectively, the "Order"), the Board, among other things, approved the sale of such 50% interest by GPU Energy to PSE&G. (A copy of the Order is annexed hereto as Exhibit C.) Neither the Petition nor the Order explicitly described or referenced the purported "preferential right" set forth in Section 5 of the 1964 Agreement (see ¶9, above), nor did the Petition seek, or the Order grant, approval of the 1964 Agreement, as such. Accordingly, there is considerable doubt that the Board ever approved the preferential right of first refusal in its Order.

#### Current Dispute

12. After GPU Energy submitted its initial divestiture plan report to the Board in December 1997, in a letter dated January 9, 1998, PSE&G demanded that GPU Energy provide notice, pursuant to Section 5 of the 1964 Agreement, of GPU Energy's "intent to sell" the Interest and indicated its intention to seek to purchase the Interest at depreciated original cost pursuant to said Section 5. (A copy of PSE&G's January 9, 1998 letter is annexed hereto as Exhibit D.) PSE&G reiterated its intent to

"exercise its preferential right to purchase [the Interest] in accordance with Section 5 of the [1964] Agreement" in a further letter dated March 12, 1998. (A copy of PSE&G's March 12, 1998 letter is annexed hereto as Exhibit E.)

13. By letter dated March 17, 1998, GPU Energy advised PSE&G that it was GPU Energy's "current intention not to solicit bids to purchase [the Interest] but instead [to] seek proposals for the long-term lease, or other acquisition of [GPU Energy]'s entitlement to Yards Creek capacity and/or energy". GPU Energy reminded PSE&G that it had previously made clear that "it was seeking offers only to lease or acquire entitlements to" the Interest. (A copy of GPU Energy's March 17, 1998 letter is annexed hereto as Exhibit F.)

14. Not to be denied, PSE&G responded on May 1, 1998, stating that, in its view, a long-term lease or other acquisition of GPU Energy's entitlement to Yards Creek capacity and/or energy "would be tantamount to a sale" and that PSE&G still intended to exercise its alleged preferential right to purchase the Interest at book value. (A copy of PSE&G's May 1, 1998 letter is annexed hereto as Exhibit G.)

15. By letter dated May 18, 1998, counsel to GPU Energy advised PSE&G that GPU Energy rejected PSE&G's claimed right to purchase the Interest and stated that GPU Energy intended to proceed with its solicitation for offers to acquire GPU Energy's entitlement to Yards Creek output. (A copy of counsel's May 18, 1998 letter is annexed hereto as Exhibit H.)

16. Thereafter, the parties engaged in further discussions, which led to the signing of a Memorandum of Understanding dated June 18, 1998 ("MOU"). The MOU, among other things, contemplated that GPU Energy and PSE&G would attempt to enter into a definitive agreement, by July 31, 1998, for the sale of the Interest by GPU Energy to PSE&G at a purchase price to be "determined based on an appraisal process employing at least two qualified appraisers . . . with one such appraiser selected by each" of GPU Energy and PSE&G (MOU, ¶3). Although the parties were unable to reach definitive agreement by that date and the MOU has therefore automatically terminated by its terms, the parties have continued to attempt to reach agreement on the purchase price and other terms and conditions. (A copy of the MOU is annexed hereto as Exhibit I.)

17. GPU Energy selected Boston Pacific to appraise the value of the Interest. Boston Pacific has valued the Interest at \$121 million. The appraiser selected by PSE&G (Black and Veatch) determined such value to be \$53.5 million. Given the wide disparity in these values, the parties have not been able to reach agreement as to a purchase price for the Interest. GPU Energy has therefore concluded that it is necessary for the Board to determine the parties' rights under the 1964 Agreement in order to remove any remaining "cloud" on its ability to sell the Interest at fair market value.

Bases for the Relief Requested

18. Unless the Board now declares Section 5 of the Agreement to be null and void, GPU Energy and its customers will

suffer significant economic harm. In particular, GPU Energy should not be forced to sell the Interest to PSE&G at a price that is tens of millions of dollars below its fair market value. The public policies of this State would be confounded by such a result.

19. Subject to satisfactory resolution of the various elements of GPU Energy's restructuring filings pending in Docket Nos. EO97070458, EO97070459 and EO97070460, GPU Energy has committed to utilize the amount by which the net proceeds of generation asset divestitures exceed the book value of such assets to offset stranded costs. In the case of GPU Energy's Interest in Yards Creek, the book value at September 30, 1998 was \$22.3 million, while the appraised value determined by GPU Energy's appraiser was \$121 million.<sup>1</sup> Thus, something on the order of up to \$99 million (prior to transaction expenses) would appear to be available to mitigate GPU Energy's stranded costs, assuming that the Interest could be sold for its appraised value.

20. On the other hand, if the Board allows PSE&G to preclude GPU Energy from selling the Interest at fair market value, only limited proceeds would be available to offset GPU Energy's stranded costs and GPU Energy's customers would be deprived of the benefits of this potentially significant mitigation effort. And, if PSE&G somehow were able to force a sale to itself at depreciated

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<sup>1</sup> It should also be noted that, as a point of reference, FirstEnergy Corp. has agreed to purchase Pennsylvania Electric Company's 20% interest in the Seneca Pumped Storage Project, representing 87,000 kW of capacity, for \$43 million, or about \$494 per kW. By analogy, this would translate into a \$99 million price for the Interest (even without taking into account any possible premium for the Interest resulting from its location to the east of PJM's eastern interface).

original cost, the only beneficiaries of such an obvious windfall would be PSE&G's shareholders.<sup>2</sup>

21. Any attempt by PSE&G to force a sale of the Interest to it at book value could not, moreover, be consummated without express prior Board approval under N.J.S.A. 48:3-7. GPU Energy submits that such approval would be contrary to the public interest for the reasons set forth above.

22. Nor could PSE&G fairly argue that the Board already has approved such an acquisition. While the 1964 Agreement was attached as an exhibit to the Petition, the preferential right referred to in Section 5 thereof was not explicitly addressed in the Petition or the Order. Indeed, the Petition sought approval only of specified transfers and conveyances, not of the 1964 Agreement as such, and the Order in no way purported to approve the 1964 Agreement as such, but, instead approved only the specific immediate transfers and conveyances provided for therein.

23. Even if, notwithstanding the history of the Board's prior actions with respect to Yards Creek, as embodied in the Petition and the Order, it were to be argued that the Board should be deemed to have separately considered the preferential right in 1965, PSE&G's attempt to preserve any right to force a sale at book

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<sup>2</sup> Even if it were alleged, contrary to fact, that some or all of such benefit would somehow flow to PSE&G's customers, the Board has made clear that it is "cognizant of the long standing and time honored prohibition against discriminatory ratemaking which . . . is of equal concern where . . . the customers of one utility would be subsidizing the ratepayers of other utilities". Order Rejecting First Amendment to Power Purchase Agreement, Docket Nos. EM88010206, EC92040516 and EO8504373 (May 11, 1993), at 9.

value today or in the future should nonetheless be rejected. When the Board addressed the 1964 Agreement almost 35 years ago, the industry restructuring which is taking place today was simply not in the contemplation of the parties or the Board. No one in 1965 could have anticipated the deregulation of the generation business or the possibility of a transfer of Yards Creek to a non-utility and its use as a merchant plant. To the contrary, it was assumed that the plant would forever be used by a utility earning a regulated return based on depreciated original cost, an assumption which obviously is no longer valid.

24. Moreover, any such purported "approval" of the preferential right in 1965 would ultimately be eviscerated by the New Jersey Supreme Court's decision in Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418 (1969). In Deptford, the Court considered the enforceability of an option to purchase utility property which had been included in a municipal franchise. The Court reached two significant conclusions in Deptford, which are controlling in the current circumstances. First, the Court declared, under those analogous circumstances, that:

[W]e interpret N.J.S.A. 48:3-7 to apply to present transfers only, and not to an option which may or may not be exercised at any time in the future. [Deptford, 54 N.J. at 426.]

Thus, even if the Board could be deemed somehow to have approved the preferential right under the 1964 Agreement, according to Deptford the ultimate review on the merits under N.J.S.A. 48:3-7 would take place only at the time of the actual proposed transfer. And, for all of the reasons set forth herein, GPU Energy submits that the Board would be compelled to deny any such approval.

Second, and perhaps even more significantly, the Deptford Court also held, in reliance on N.J.S.A. 48:2-40, that "[t]he Board at any time may order a rehearing and extend, revoke or modify an order made by it" (54 N.J. at 425). As a consequence, the Deptford Court upheld the Board's invalidation of the option there at issue, even though it also found that the Board had previously approved it. Therefore, any prior approval that may have been granted to the preferential right here is subject to reconsideration -- a reconsideration that should result in a determination to declare the preferential right null and void.

25. The recent attempt by PSE&G to purchase the Interest at book value -- with the concomitant and negative impact on the energy costs of GPU Energy's customers in New Jersey -- has created an actual controversy requiring a declaration by this Board of the rights and obligations of the parties. Beyond this, a declaration is required in order to advance the policies underlying the Final Report and to enable GPU Energy to achieve the maximum stranded cost mitigation on behalf of its customers. In the absence of such a declaration, the "cloud" on GPU Energy's ability to sell the Interest to a third party would likely preclude any such sale or, at a minimum, have a material adverse impact on the consideration to be received.

26. Accordingly, and in light of GPU Energy's unsuccessful efforts to resolve this matter with PSE&G, GPU Energy petitions this Board for an Order pursuant to N.J.S.A. 52:14B-8 declaring (i) that, absent the approval of this Board, PSE&G may not purchase the Interest at book value, (ii) that if such approval

were to be sought, the Board would not grant it, and (iii) that any purported preferential right to purchase the Interest contained in the 1964 Agreement is null and void, as against public policy and contrary to the best interests of GPU Energy's customers.

27. GPU Energy has served a copy of this petition on PSE&G.

28. Correspondence and other communications relating to this proceeding should be addressed to:

Gerald W. Conway, Esq.  
 Marc B. Lasky, Esq.  
 Berlack, Israels & Liberman LLP  
 65 Madison Avenue  
 Morristown, NJ 07960

- and -

Douglas E. Davidson, Esq.  
 Berlack, Israels & Liberman LLP  
 120 W. 45th Street, 28th Floor  
 New York, NY 10036

- and -

David C. Brauer  
 Michael J. Filippone  
 GPU Energy  
 300 Madison Avenue  
 Morristown, NJ 07962

WHEREFORE, GPU Energy respectfully requests that the Board enter an order as follows:

- (i) declaring that PSE&G may not purchase the Interest at book value, without the express prior approval of the Board;
- (ii) declaring that if such approval were to be sought, the Board would not grant it;
- (iii) declaring that any purported preferential right to purchase the Interest contained in



the 1964 Agreement is null and void as against public policy and contrary to the interests of GPU Energy's customers; and

(iv) granting such other and further relief as the Board deems just and proper.

Dated: December 14, 1998  
Morristown, New Jersey

Respectfully submitted,

BERLACK, ISRAELS & LIBERMAN LLP

By: Marc B. Lasky  
Marc B. Lasky  
65 Madison Avenue  
Morristown, New Jersey 07960  
(973) 644-3400

Attorneys for Petitioner,  
Jersey Central Power & Light  
Company, doing business as  
GPU Energy

**NOTICE TO RESPONDENT, PUBLIC SERVICE ELECTRIC AND GAS COMPANY:** You are hereby directed to file and serve an Answer to this Verified Petition within 20 days of the date of its service upon you, in accordance with N.J.A.C. 14:1-6.1 et seq.

Dated: December 14, 1998

BERLACK, ISRAELS & LIBERMAN LLP

By: Marc B. Lasky  
Marc B. Lasky  
65 Madison Avenue  
Morristown, New Jersey 07960  
(973) 644-3400

Attorneys for Petitioner,  
Jersey Central Power & Light  
Company, doing business as  
GPU Energy

AFFIDAVIT  
OF  
VERIFICATION

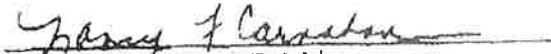
David C. Brauer, being duly sworn upon his oath, deposes and says:

1. I am Vice President - Corporate Restructuring of GPU Service, Inc., and in such capacity have primary responsibility for the sale or other disposition of the generation assets of Jersey Central Power & Light Company, doing business as GPU Energy, the Petitioner named in the above-captioned matter, and I am duly authorized to make this Affidavit of Verification.

2. I have read the contents of the foregoing Verified Petition and Exhibits attached thereto, and have reviewed the underlying documentation regarding the subject matter thereof. Based thereon, I hereby verify that the statements of fact and other information contained therein are true and correct to the best of my knowledge, information and belief.

  
David C. Brauer

Sworn to and subscribed before me  
this 14<sup>th</sup> day of December, 1998

  
Notary Public

NANCY F. CARNAHAN  
A Notary Public of New Jersey  
My Commission Expires 5/4/02

**EXHIBIT 4**

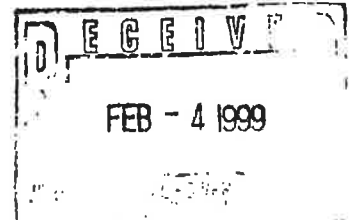


80 Park Plaza, Newark, NJ 07102 / 973 430-8058

Tamara L. Linde Assistant General Solicitor - T5G

MAILING ADDRESS / PO Box 570 Newark NJ 07102  
 Fax 973-430-5983  
 or 973-623-3261  
 Main No 973-430-7100  
 Internet TLINDE@PSEG.COM

February 4, 1999



via hand-delivery

Mark W. Musser, Esq.  
 Chief of Regulatory Policy/Board Secretary  
 Board of Public Utilities  
 Two Gateway Center  
 Newark, New Jersey 07102

Re: Jersey Central Power and Light Company,  
 vs. Public Service Electric and Gas Company  
 Docket No. EM98121463

Dear Mr. Musser:

Enclosed please find an original and eleven (11) copies of the verified answer of Public Service Electric and Gas Company ("PSE&G") to the above referenced contested case. Copies of the answer have been hand-delivered to the Petitioner and its respective counsel.

As set forth in PSE&G's verified answer, PSE&G requests that the BPU deny the relief requested by the Petitioner on the basis that the Petition fails to state a claim upon which relief may be granted. Should the BPU choose to not dismiss the petition at this time, PSE&G advises that due to the importance and complexity of this dispute, it will be necessary to engage in discovery and for each party to have an opportunity to present witnesses and arguments during a hearing.

Very truly yours,

Tamara L. Linde

TLL/kh  
 Encl.

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

|  |   |
|--|---|
| <p><b>JERSEY CENTRAL POWER &amp;<br/>LIGHT COMPANY, doing business<br/>as, GPU ENERGY</b></p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p><b>PUBLIC SERVICE ELECTRIC<br/>and GAS COMPANY</b></p> <p style="text-align: right;">Respondent.</p> | <p>VERIFIED ANSWER OF PUBLIC<br/>SERVICE ELECTRIC AND GAS<br/>COMPANY</p> <p style="text-align: right;">DOCKET NO. EM98121463</p> |
|--|---|

Public Service Electric and Gas Company, having an office at 80 Park Plaza, Newark, New Jersey, ("PSE&G" or "Respondent"), by way of Answer to the Verified Petition herein says:

PRELIMINARY STATEMENT

1. By this Answer, PSE&G complies with its obligation under the N.J.A.C. 14:1-6.2 to answer the verified petition filed by Jersey Central Power & Light Company, doing business as, GPU Energy ("GPU" or "Petitioner").
2. The subject matter of the dispute between PSE&G and GPU is a 1964 co-ownership Agreement. The 1964 Agreement provides for the joint ownership of the federally licensed hydro-electric generating facility known as the Yards Creek Pumped Storage Generating Facility ("Yards Creek").
3. Section 5 of the 1964 co-ownership Agreement provides that if either party desires to sell its one-half undivided interest in Yards Creek, then the remaining party would have the preferential right to purchase that interest at the depreciated original cost thereof.

4. GPU has repeatedly expressed its intent to voluntarily exit the electric generation business and has repeatedly expressed its desire to sell its undivided fifty (50%) percent interest in Yards Creek ("Interest"). Yet, after thirty-five years of doing business under the 1964 Agreement, GPU has refused to honor the Section 5 preferential right provision and sell its undivided fifty (50%) percent interest to PSE&G at the stipulated agreed upon price.

ANSWER

1. PSE&G admits that the depreciated original cost of GPU's fifty percent interest in Yards Creek is \$22.3 million as stated by GPU in Paragraph 1 of its Petition. PSE&G denies the allegations set forth by GPU in the last two sentences of Paragraph 1 of its Petition. By way of further answer, PSE&G neither admits nor denies the remaining statements set forth by GPU in Paragraph 1 of the Petition and leaves GPU to its proofs.
2. PSE&G neither admits nor denies the statements set forth in Paragraph 2 of the Petition and leaves GPU to its proofs.
3. PSE&G neither admits nor denies the statements set forth in Paragraph 3 of the Petition and leaves GPU to its proofs.
4. PSE&G neither admits nor denies GPU's allegations set forth in Paragraph 4 of the Petition. By way of further answer, PSE&G avers that the effects of GPU's decision to voluntarily divest its electric generation assets is currently the subject matter of an administrative proceeding in BPU Docket No. E097070459, OAL Docket No. PUC7308-97N. PSE&G avers that any issue concerning the recovery of stranded costs by GPU are appropriately addressed in that proceeding. PSE&G further clarifies that the BPU would have ample opportunity to address the allocation of stranded costs associated with the Yards Creek facility at such time that the BPU would review a proper petition filed by GPU to transfer GPU's fifty percent interest to PSE&G pursuant to N.J.S.A. 48:3-7. PSE&G denies the allegation set forth in Paragraph 4 of the Petition that PSE&G's stockholders would receive a bargain at the expense of GPU's regulated customers.

PSE&G admits the statements set forth by GPU in Paragraph 5 of the Petition.

6. PSE&G admits the statements set forth by GPU in Paragraph 6 of the Petition.

7. PSE&G neither admits nor denies the statements set forth by GPU in Paragraph 7 of the Petition as they refer to a document which speaks for itself.
8. PSE&G denies the allegations set forth by GPU in Paragraph 8 of the Petition that the intent of the 1964 Agreement right to purchase was intended to recognize that ownership of generation capacity would remain with a regulated utility. PSE&G avers that the right to purchase set forth in the 1964 Agreement was intended to reflect, among other things, the joint-venture relationship and financial agreement between the parties. Furthermore, PSE&G denies the allegation set forth by GPU in Paragraph 8 of the Petition that the sale of Yards Creek to PSE&G would be inconsistent with "public policy". The BPU has ample authority to address any issues concerning the recovery of stranded costs by GPU in other proceedings currently before the BPU as well as under N.J.S.A. 48:3-7. Furthermore, unilateral abrogation of a contractual right between two parties would in itself be contrary to "public policy" and would create tremendous uncertainty as to the ability of utility companies to enter into commercial transactions.
9. PSE&G neither admits nor denies the statements set forth by GPU in Paragraph 9 of the Petition as they refer to a document which speaks for itself.
10. PSE&G denies the allegations set forth by GPU in Paragraph 10 of the Petition that all obligations under the agreement are subject to regulatory approvals. PSE&G avers that GPU's reading is overly broad. Nonetheless, PSE&G avers that the 1964 Agreement was approved by the BPU and that ultimate transfer of Yards Creek will require the approval of the BPU, the Federal Energy Regulatory Commission as well as various other governmental agencies, whether such transfer is made to PSE&G or any other entity. By way of further answer, PSE&G neither admits nor denies the remaining statements set forth by GPU in Paragraph 10 of the Petition as they refer to a document which speaks for itself.
11. PSE&G neither admits nor denies the statements set forth by GPU in Paragraph 11 of the Petition as they refer to a document which speaks for itself.
12. PSE&G admits the statements set forth by GPU in Paragraph 12 of the Petition.
13. PSE&G admits the statements set forth by GPU in Paragraph 13 of the Petition.

14. PSE&G admits the statements set forth by GPU in Paragraph 14 of the Petition.
15. PSE&G admits the statements set forth by GPU in Paragraph 15 of the Petition.
16. PSE&G admits the statements set forth in Paragraph 16 of the Petition regarding the parties discussions and inability to reach a definitive agreement. PSE&G avers, however, that GPU's selective quote from the MOU mischaracterizes the intent of the parties. Specifically, PSE&G notes that Paragraph 3 of the MOU states that the "negotiations shall take into account, among other things, the value attributable to such factors as: ... (c) the respective claims of the Owners under Section 5 of the Owners Agreement including, without limitation, the preferential right to purchase an Owner's interest at its depreciated original cost..." Furthermore, PSE&G avers that Section 10 of the MOU clearly articulated the intent of the parties to maintain the confidentiality of the MOU. GPU has nonetheless ignored the confidentiality restrictions and is attempting to use PSE&G's good faith efforts of resolving this dispute against PSE&G.
7. PSE&G neither admits nor denies the allegations set forth in Paragraph 17 of the Petition but leaves GPU to its proofs. PSE&G further states that the appraisal figures referenced by GPU are subject to a confidentiality restriction which has been ignored by GPU in an attempt to sensationalize this matter. Furthermore, PSE&G avers that GPU's stranded cost recovery is being considered in a separate administrative proceeding under BPU Docket No. E097070459, OAL Docket No. PUC7308-97N. By way of further answer, PSE&G avers that a unilateral abrogation of the 1964 Agreement would be contrary to public policy and would be detrimental to the ability of public utility companies to enter into commercial contracts since parties would be unable to rely upon the authority of utilities to enter into contracts without regulatory authority.
18. PSE&G denies the allegations set forth by GPU in Paragraph 18 of the Petition that GPU's customers will suffer significant economic harm as the result of an approval of GPU's transfer to PSE&G pursuant to N.J.S.A. 48:3-7.
19. Except to admit that the depreciated original cost of GPU's fifty percent interest in Yards Creek is \$22.3 million, PSE&G neither admits nor denies the statements set forth in Paragraph 19 of the Petition but leaves GPU to its proofs.



20. PSE&G denies the allegations set forth by GPU in Paragraph 20 of the Petition, and leaves GPU to its proofs.
21. PSE&G admits that the ultimate transfer of GPU's fifty percent interest in Yards Creek to PSE&G or to any third party is subject to BPU approval under N.J.S.A. 48:3-7. PSE&G further avers that additional regulatory approvals will be necessary in addition to that required under N.J.S.A. 48:3-7, including an approval by the Federal Energy Regulatory Commission relating to the hydro electric license transfer. PSE&G denies GPU's allegation in Paragraph 21 of the Petition that such transfer would be contrary to the "public policy".
22. PSE&G neither admits nor denies the statements set forth by GPU in paragraph 22 of the Petition, but leaves GPU to its proofs.
23. PSE&G neither admits nor denies the statements set forth by GPU in Paragraph 23 of the Petition, but leaves GPU to its proofs.
24. Paragraph 24 of the Petition contains legal argument rather than an assertion of fact and as a result it would be inappropriate for PSE&G to respond at this time.
25. PSE&G denies the allegations set forth by GPU in Paragraph 25 of the Petition and avers that the dispute presented by GPU is not ripe and will not be ripe until such time as a proper petition to transfer its fifty percent interest in Yards Creek is filed by GPU under N.J.S.A. 48:3-7.
26. PSE&G avers that the relief requested by GPU in Paragraph 26 of the Petition is not only inappropriate on the basis of N.J.S.A. 52:14B-8, but that the BPU's regulatory review of this matter will not be ripe until such time as a proper petition to transfer its fifty percent interest in Yards Creek is filed by GPU under N.J.S.A. 48:3-7.

#### FIRST SEPARATE DEFENSE

GPU's Petition is defective in that it fails to demonstrate a proper basis upon which the BPU may exercise jurisdiction over this matter at this time.

#### SECOND SEPARATE DEFENSE

The Petition fails to state a claim upon which relief may be granted. GPU's Petition requests the BPU to issue an Order pursuant to N.J.S.A. 52:14B-8. Such

statute is not applicable to the dispute before the parties, since it is limited to situations involving a "statute or rule enforced or administered by the agency." The only other statute relied upon by GPU in its Petition is N.J.S.A. 48:3-7, yet GPU Petition does not request a present transfer of its fifty percent interest in Yards Creek which would invoke N.J.S.A. 48:3-7.

#### THIRD SEPARATE DEFENSE

The Petition fails to state an independent cause of action upon which relief may be granted. PSE&G's preferential right to purchase Yards Creek at original depreciated cost has been triggered by GPU's voluntary corporate decision to divest its electric generation assets. The basis set forth by GPU in the Petition for abrogation of the 1964 Agreement is that the sale at the stipulated price will cause economic harm to its ratepayers who will not benefit from full recovery of stranded costs. GPU's recovery of stranded costs is the subject matter of a separate proceeding in BPU Docket No. E097070459, OAL Docket No. PUC7308-97N. Claims and issues pertaining to GPU's recovery of stranded costs are appropriately addressed in those proceedings and do not represent an independent cause of action to be presented before the BPU at this time.

#### FOURTH SEPARATE DEFENSE

Unilateral abrogation of the 1964 Agreement would be contrary to public policy. If the BPU were to create a policy in favor of abrogation of commercial terms in agreements it would create a negative precedent for all commercial agreements entered into by public utilities. Such a policy would result in the need for pre-approval by the BPU of all commercial contracts entered into by a public utility in order for there to be certainty as to the effectiveness of terms. Such a policy would also create a disincentive to third parties who would be wary of entering into commercial contracts with public utilities if such contracts are subject to unilateral abrogation. Not only would such policy negatively impact utility stockholders, but it would have a negative impact on the ability of public utilities to efficiently serve the needs of their regulated ratepayers.

#### FIFTH SEPARATE DEFENSE

As a joint venturer with PSE&G in Yards Creek, GPU has fiduciary obligations to PSE&G which it is violating by seeking to nullify the contractual preferential right of purchase.

#### SIXTH SEPARATE DEFENSE

In reliance on the preferential right of purchase, PSE&G has invested more than \$14 million in Yards Creek and accordingly is entitled to the benefit of its bargain.

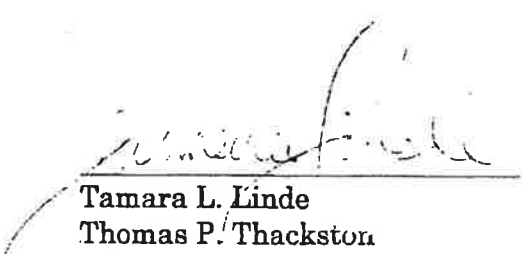
SEVENTH SEPARATE DEFENSE

It would be inequitable and contrary to fundamental joint venture principles for GPU to transfer its interest in Yards Creek to a stranger to the joint venture thereby foisting a new co-owner upon PSE&G.

EIGHTH SEPARATE DEFENSE

GPU's Petition seeks a windfall for GPU shareholders at the expense of PSE&G.

WHEREFORE, respondent respectfully requests that the petition in the instant matter be summarily rejected and the relief denied.



Tamara L. Linde  
Thomas P. Thackston  
Attorneys for Respondent,  
Public Service Electric and Gas  
Company  
80 Park Plaza T5G  
P.O. Box 570  
Newark, New Jersey 07101  
(973) 430-8058

Dated: February 4, 1999

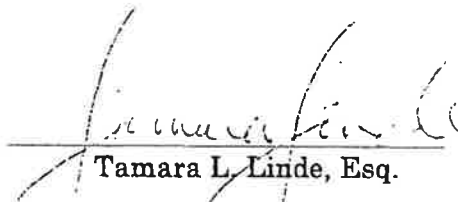
CERTIFICATION OF SERVICE

I hereby certify that a copy of this Answer has been served by hand-delivery upon Petitioner in this matter upon the following representatives as set forth in the Petition:

Gerald W. Conway, Esq.  
Mark B. Lasky, Esq.  
Berlack, Israels & Liberman, LLP  
65 Madison Avenue  
Morristown, NJ 07960

David E. Davidson, Esq.  
Berlack, Israels & Liberman, LLP  
120 W. 45<sup>th</sup> Street, 28<sup>th</sup> Floor  
New York, NY 10036

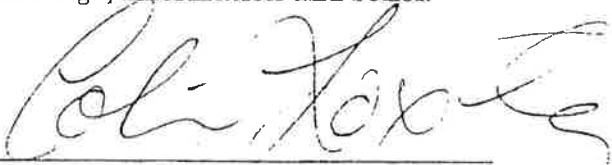
David C. Brauer  
Michael J. Filippone  
GPU Energy  
300 Madison Avenue  
Morristown, NJ 07962

  
\_\_\_\_\_  
Tamara L. Linde, Esq.


AFFIDAVIT  
OF  
VERIFICATION

Colin Loxley, being duly sworn upon his oath, deposes and says:

I am the Director of Resource Planning, Public Service Electric and Gas Company. In this capacity I am familiar with the subject matter of this contested case. I have read the contents of the foregoing Verified Answer and have reviewed the underlying documentation regarding the subject matter thereof. Based thereon, I hereby verify that the statements of fact and other information contained therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Colin Loxley

Sworn to and subscribed before me  
this 4<sup>th</sup> of February, 1999.

  
\_\_\_\_\_  
Notary Public  
DENISE MORENO  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES MAR. 6, 1999

**APPENDIX C-5**  
**A copy of the March 27, 2020 Board Order**



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0350  
[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.

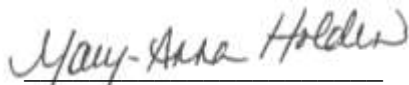
The effective date of this Order is April 6, 2020.

DATED: March 27, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

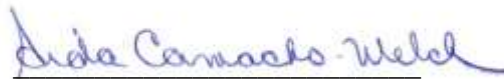


UPENDRA J. CHIVUKULA  
COMMISSIONER



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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**APPENDIX C-6**  
**A Copy of relevant portions of the PSE&G**  
**Restructuring Order**

Agenda Date: 4/21/99



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

**ENERGY**

**IN THE MATTER OF PUBLIC SERVICE )**  
**ELECTRIC AND GAS COMPANY-S RATE )**  
**UNBUNDLING, STRANDED COSTS AND )**  
**RESTRUCTURING FILINGS )** **FINAL DECISION AND ORDER**  
**BPU DOCKET NOS. EO97070461,**  
**EO97070462, AND EO97070463**

**(SERVICE LIST ATTACHED)**

**BY THE BOARD:**

This Decision and Order memorializes and provides the reasoning for the action taken by the Board of Public Utilities ("Board" or "BPU") in these matters, by a vote of three Commissioners, at its April 21, 1999 public agenda meeting, which action was summarized in our Summary Order dated April 21, 1999. The structure of this Decision and Order is set forth in the following Table of Contents.



[REDACTED]

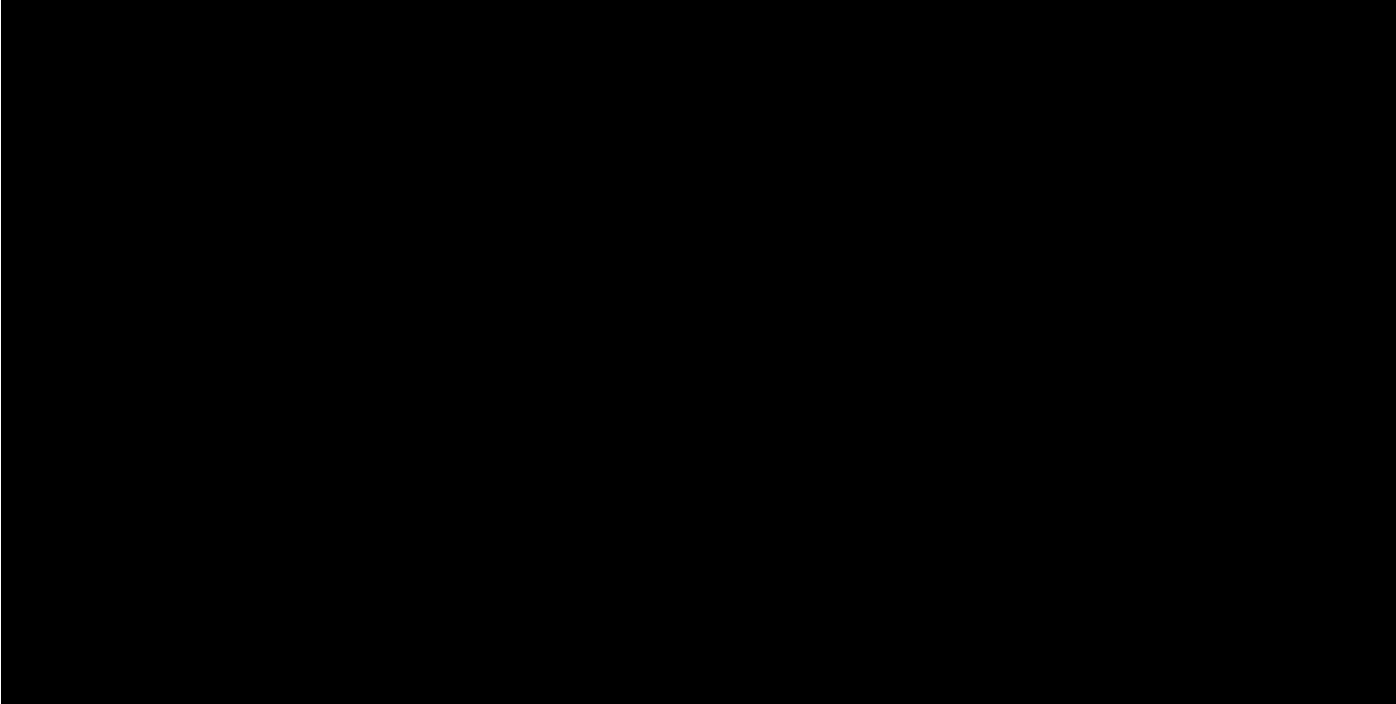
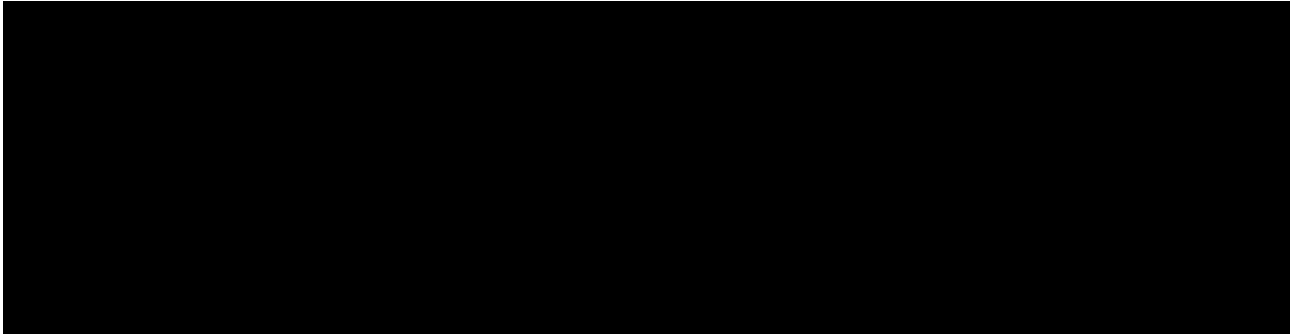
[REDACTED]

Based upon the foregoing, we **HEREBY FIND** and **DIRECT** as follows:

1) [REDACTED]

■ [REDACTED]

■ [REDACTED]

- 
- 24) The Board finds that qualifying the Generation Facilities being transferred, either separately or jointly, in accordance with section 32(c) of the Public Utility Holding Company Act of 1935 as Exempt Wholesale Generators will benefit consumers, is in the public interest, will not provide any unfair competitive advantage by virtue of the Genco's affiliation or association with the Company subject to compliance with affiliate relations and fair competition standards to be adopted by the Board, and does not violate State law. As an EWG, Genco shall not offer retail electric service.
- 25) The Board finds that, in accordance with section 32(k) of the Public Utility Holding Company Act of 1935, it has sufficient regulatory authority, resources and access to books and records of Public Service Electric and Gas Company and any relevant associate, affiliate or subsidiary company, to ensure that the BGS contract will (a) benefit consumers; (b) not violate any State law; (c) not provide Genco any unfair competitive advantage by virtue of its affiliation or association with the Company; and (d) is in the public interest.
- 



DATED: 8/24/99

BOARD OF PUBLIC UTILITIES  
BY:

SIGNED  
HERBERT H. TATE  
PRESIDENT

SIGNED  
CARMEN J. ARMENTI  
COMMISSIONER

SIGNED  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST: SIGNED  
MARK W. MUSSER  
SECRETARY

**APPENDIX D**  
**Certified Copy of the Resolutions of the Company's Board  
of Directors**

Extract from the Regular Meeting of the Board of Directors of  
Jersey Central Power & Light dated March 23, 2020

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**Approval of Purchase Agreement**

WHEREAS, the Company's management and legal counsel have presented the terms of an agreement for purchase and sale (the "Purchase Agreement") between the Company and Yards Creek Energy, LLC (the "Buyer") related to all or substantially all of the Company's undivided ownership interest, assets and associated liabilities at the Yards Creek Pumped Storage Hydroelectric Generating Station (the "Asset Sale");

WHEREAS, in connection with the Purchase Agreement, the Company may enter into further instruments, agreements, certifications, registrations, applications, filings and other documents contemplated or required by the Purchase Agreement (collectively and individually with respect to each further action, the "Ancillary Documents"); and

WHEREAS, the Board has considered and reviewed such matters as it deems necessary and appropriate in connection with the Asset Sale.

NOW THEREFORE, BE IT

RESOLVED: That the Board deems it to be in the best interests of the Company to approve the Purchase Agreement and the transactions contemplated thereby and by the Ancillary Documents; that the Asset Sale is the best alternative for the Company to choose among all potential alternatives that the Company may pursue; that the risks related to the proposed Asset Sale are outweighed by the potential benefits of the proposed Asset Sale; and that the Asset Sale is the best available alternative, as a whole, from a financial point of view;

RESOLVED FURTHER: That the Purchase Agreement, including all exhibits thereto and the Disclosure Schedules thereto, be, and hereby is, approved and adopted, with such changes as the Company's officers negotiating and executing the Purchase Agreement deem appropriate or advisable, as evidenced conclusively by their execution thereof;

RESOLVED FURTHER: That the officers of the Company be, and they hereby are, authorized, directed and empowered to take any and all actions as they may deem necessary or advisable prior to the signing of the Purchase Agreement;

RESOLVED FURTHER: That the officers of the Company be, and they hereby are, authorized, directed and empowered to take any and all actions and to execute such documents as they may deem necessary or advisable to consummate the proposed Asset Sale as contemplated by the Purchase Agreement;

RESOLVED FURTHER: That the Board and officers of the Company and any successors thereto be, and hereby are, authorized and directed to execute any applications, certificates, agreements or any other instruments or documents, or amendments or supplements to such documents, or to do or to cause to be done any and all other acts and things as such officer may deem necessary or advisable and appropriate to carry out the purposes of the foregoing resolutions (hereby ratifying and confirming any and all actions taken heretofore and hereafter to accomplish such purposes); and

RESOLVED FURTHER: That the Corporate Secretary and any other officer of the Company are, and each individually hereby is, authorized, empowered and directed to certify and furnish such copies of these resolutions as may be requested or necessary.

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I, Daniel M. Dunlap, Corporate Secretary of Jersey Central Power & Light Company, do hereby certify that the foregoing is a true and correct copy of resolution duly adopted by the Board of Directors of Jersey Central Power & Light Company, and that said resolution has not since been rescinded but is still in full force and effect.

Executed as of this 24<sup>th</sup> day of March 2020.



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Corporate Secretary

**APPENDIX E**  
***Pro Forma* Journal Entries**  
**(To Be Filed as a Supplement to the Petition)**