



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

ENERGY

IN THE MATTER OF THE LETTER PETITION OF)
JERSEY CENTRAL POWER AND LIGHT COMPANY) ORDER
RE: MERRILL CREEK RESERVOIR PROJECT –)
JCP&L SUBLEASE OF A PORTION OF ITS WATER)
STORAGE AND RELEASE ENTITLEMENTS TO)
GRANITE WATER SUPPLY COMPANY) DOCKET NO. EM15070855

Parties of Record:

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

BY THE BOARD:¹

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) is considering a letter petition (“Letter Petition”) filed by Jersey Central Power and Light Company (“JCP&L” or “Company”) requesting approval of a renewal with modifications of an existing sublease agreement between JCP&L and Granite Water Supply Company, Inc. (“Granite”).

BACKGROUND AND PROCEDURAL HISTORY

JCP&L is a co-owner with six other electric utilities of the Merrill Creek Reservoir Project (“Merrill Creek”).² Merrill Creek was built in the mid-1980s by the utilities to supply make-up water to the Delaware River pursuant to the requirements of the Delaware River Basin Commission, to compensate for Delaware River Basin water used by electric generating stations in times of drought. The Merrill Creek water storage and release operations were made possible by a dam, dikes, a pump house, pumps, a pipeline, water intake/outlet facilities and related works and appurtenant equipment and facilities. JCP&L currently holds an 8.37 percent leasehold interest in the reservoir area of Merrill Creek, along with related water storage and release entitlements of approximately 4,000 acre-feet of storage capacity (the “Lease”).

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

² Current owners of the Merrill Creek Project include the following: Atlantic City Electric Company, Delmarva Power and Light Company, Jersey Central Power and Light Company, Metropolitan Edison Company, Realty Company of Pennsylvania, Philadelphia Electric Company and PSEG Fossil LLC as of 2013 (replacing Public Service Electric & Gas Company, a signatory in 1988).

By Order dated June 2, 1988 in Docket Number EM88070588, the Board authorized JCP&L to sell and lease back its 8.37% undivided interest in Merrill Creek. Board approval for this transaction was required pursuant to N.J.S.A. 48:3-7 and 48:3-9 and N.J.A.C. 14:1-6.10 because the transaction was not in the ordinary course of business.

When JCP&L entered into the Merrill Creek Reservoir Project with the other co-owners, JCP&L planned to construct approximately 800 megawatts of additional base load capacity in the Delaware River Basin. But in the early 1990s, JCP&L determined that its entitlements to Merrill Creek Reservoir Make-Up Water releases were substantially in excess of its current and projected requirements over the course of the ensuing twenty years. Consequently, JCP&L subleased a portion of its excess water storage capacity to Granite ("Original Sublease") which was approved by the Board by Order dated December 30, 1992 in BPU Docket No. EF92111065 ("December 1992 Order").³ Among other things, the December 1992 Order directed JCP&L to "file with the Board a copy of any new agreements or amendments at least ten days prior to their proposed effective date." December 1992 Order at 4.

ORIGINAL SUBLEASE

The Original Sublease commenced on July 30, 1995, and expired on July 30, 2015. The Original Sublease allowed JCP&L to sublease to Granite 135 acre-feet of storage capacity ("Committed Capacity") to provide Make-Up Water to the Delaware River, to be utilized by an affiliate of Granite with respect to a cogeneration project then to be constructed in Logan Township by Keystone Energy Service Company. In the event the cumulative volume of releases of Make-Up Water allocated to Granite exceeded the Committed Capacity in any calendar year of the term, Granite was also obligated to sublease an additional 135 acre-feet, regardless of the amount that the allocation exceeded the Committed Capacity.

The rent payments under the Original Sublease were set in a schedule attached to the December 1992 Order. Annual rental amounts for the Committed Capacity commenced at \$122,000.00 in 1996, and reached a maximum of \$296,000.00 in 2014 (with a final rental payment of \$154,000.00 for the partial sublease year of 2015).

RENEWAL SUBLEASE

As noted above, by letter dated June 19, 2015, JCP&L filed the Letter Petition seeking approval of a an Amended and Restated Sublease Agreement ("Renewal Sublease") to be entered into between JCP&L and Granite.

The Renewal Sublease provides for a new term commencing on the Commencement Date, which was anticipated to be July 31, 2015, and terminating on December 31, 2024 ("New Term"). In addition, the Renewable Sublease proposes to amend the rent and other consideration to be paid by Granite with the rent at a flat rate of \$150,000.00 per year for Committed Capacity throughout the New Term, plus an additional \$1,500.00 per acre-foot of additional capacity for any year in which Granite requests and is granted available additional capacity from JCP&L. In addition to the annual rental for Committed Capacity and the potential for payment in consideration of additional capacity, Granite will also pay, semi-annually on a pass-through basis, a fee (the "Renewal Sublease Fee") covering (i) a pro rata portion of JCP&L's actual operating and maintenance ("O&M") expenses and taxes associated with its

³ In re the Matter of Jersey Central Power and Light Company to Sublease a Portion of its Water Storage and Release Entitlements to Keystone Energy Service Company, BPU Docket No. EF92111065, Order dated December 30, 1992.

leasehold interest in Merrill Creek, and (ii) the actual pumping expense incurred for any Make-Up Water releases directly allocated to consumption by the Logan Generating Facilities.⁴ According to JCP&L, the Renewal Sublease reflects current and projected market circumstances, including Granite's understanding of its actual Make-Up Water needs at the Logan Generating Facilities⁵ (Letter Petition at 6).

With respect to the accounting treatment, JCP&L's current base rates, as approved by the Board's March 26, 2015 Order in Docket No. ER12111052, reflect approximately \$302,000.00 for annual O&M expenses and taxes associated with the Company's leasehold interest under the Merrill Creek Lease. The annual rental amounts under the Renewal Sublease for Committed Capacity and, if applicable, any additional capacity, together with the Renewal Sublease Fee, will be applied to reduce JCP&L's Merrill Creek Lease expenses going forward.

In addition, JCP&L has requested that the Board provide the Company with a waiver under N.J.A.C. 14:1-5.6(i), of the advertising requirement set forth in N.J.A.C. 14:1-5.6(b). In the Letter Petition, JCP&L states that waiver of the advertising requirement is consistent with the Board's prior determinations with respect to Merrill Creek subleases due to, among other things, what the Company describes as an "extremely limited" market for such rights (Letter Petition at 10 to 11). The Company asserts that waiver of this requirement will not adversely affect the public interest.

By Order dated August 19, 2015 the Board authorized an extension of the Original Sublease on a month-to-month basis pending completion of the Board's review of the Renewal Sublease.⁶

DISCUSSION AND FINDINGS

Before evaluating the Renewal Sublease, the Board must address JCP&L's request for a waiver of the advertising requirement in N.J.A.C. 14:1-5.6(b). The Board notes that in its November 8, 2001 Order in Docket No. EF01030142 ("November 2001 Order"),⁷ the Board determined that the sublease which was the subject of that docket, the same kind of sublease under consideration here, was unique in nature and represented a specialized need of a future generation facility for water storage and release entitlements along the Delaware River. The Board found that the market for this type of transaction was extremely limited at that time and waived the advertising requirements set forth in N.J.A.C. 14:1-5.6(b). While market conditions may have changed since the November 2001 Order, JCP&L still has significant entitlement rights to Merrill Creek which it does not need for utility purposes, and that remain uncommitted to present or proposed generation facilities. Having reviewed the record in this matter, including the Letter Petition and additional information submitted by JCP&L, the Board is persuaded that the Renewal Sublease was the result of an arms-length transaction between JCP&L and Granite, and there is no relationship between the parties other than that of lessor and lessee. Therefore, the Board **FINDS** a waiver of the advertising requirements will not adversely affect the public interest. Accordingly, the Board **HEREBY WAIVES** the advertising requirement set forth in N.J.A.C. 14:1-5.6(b).

⁴ Granite Water Supply Company is owned by Granite Generating Company L.P. who in turn is an affiliate of Logan Generating Facility.

⁵ The Logan Generating Facility has a water supply agreement with Granite Water Supply Company, Inc. to provide water to the Facility.

⁶ Rate Counsel indicated to Staff that it is not taking a position on the petition.

⁷ In re GPU Energy's Assignment of an Interest in a Portion of its Merrill Creek Water Storage and Release Entitlements to FPL Energy Marcus Hook, L.P., BPU Docket No. EF01030142, Order dated November 8, 2001.

Turning to the terms of the proposed Renewal Sublease, while the annual rental payments are less than under the Original Sublease, the Board **FINDS** that the Renewal Sublease reasonably reflects current and projected market circumstances, as discussed above. In addition, the Board notes that the Renewal Sublease includes a Renewal Sublease Fee, which was not part of the Original Sublease, to cover a pro-rata share of JCP&L's actual operating and maintenance expenses and taxes associated with its leasehold interest in Merrill Creek, and the actual pumping expenses incurred for any Make-Up Water releases directly allocated to consumption by Granite consistent with the other sublease arrangements which contain a separate O&M recovery provision.⁸ Accordingly, the Board **HEREBY APPROVES** the Renewal Sublease.

The Board **HEREBY DIRECTS** JCP&L to file with the Board for administrative review a signed copy of the final executed agreement between JCP&L and Granite within ten days of the agreement's execution date.

The Company's costs and accounting treatment of costs and revenues under the sub-leases remain subject to audit by the Board, and will be reviewed in the context of its next base rate proceeding. This Decision and Order shall not preclude the Board from taking any actions deemed to be appropriate as a result of a Board audit or other review.

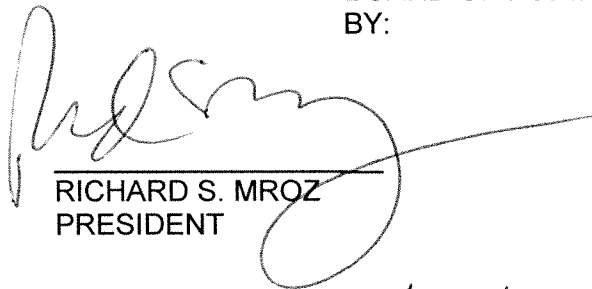
The effective date of this Order is November 26, 2015.

DATED: 11-16-15

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
COMMISSIONER



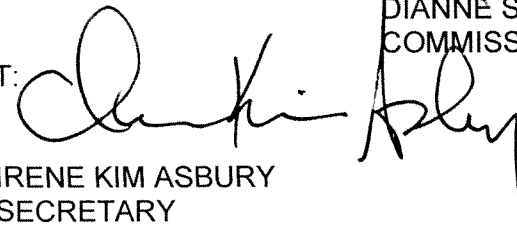
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MARY-ANNA HOLDEN
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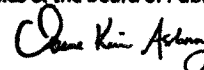


DIANNE SOLOMON
COMMISSIONER

ATTEST: 

IRENE KIM ASBURY
SECRETARY

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



⁸ The following Board approved subleases contained provisions to recover O&M related expenses: 1) Northampton Sublease approved by Order dated December 6, 1993 in Docket No. EM93090386; 2) the Sublease approved by the Order dated November 4, 1999 in Docket No. EM99020067; and 3) FPL Sublease approved by the November 2001 Order.

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COMPANY RE: MERRILL CREEK RESERVOIR PROJECT – JCP&L SUBLEASE OF A
PORTION OF ITS WATER STORAGE AND RELEASE ENTITLEMENTS TO GRANITE
WATER SUPPLY COMPANY - DOCKET NO. EM15070855

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