



Agenda Date: 10/26/22
Agenda Item 2C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF)
JERSEY CENTRAL POWER & LIGHT COMPANY FOR)
APPROVAL OF THE SALE AND CONVEYANCE OF)
THE IMPROVED PROPERTY AT 214 39TH STREET SEA)
ISLE CITY, CAPE MAY COUNTY, NEW JERSEY)
PURSUANT TO N.J.S.A. 48:3-7 AND N.J.A.C. 14:1-5.6)

ORDER APPROVING THE
SALE OF REAL PROPERTY

DOCKET NO. EM22050331

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Michael J. Connolly, Esq., Cozen O’Conner for Jersey Central Power & Light Company

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a petition filed by Jersey Central Power and Light Company (“JCP&L” or “Company”) wherein the Company seeks approval of an agreement of sale and conveyance of real property located at 214 39th Street, Sea Isle City, Cape May County, New Jersey, Block 39.04, Lots 33 and 34 (“Property”).

BACKGROUND AND PROCEDURAL HISTORY

On May 6, 2022, JCP&L filed a petition with the Board, pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, seeking approval of an agreement of sale and conveyance of the Property to Susan Sempeles, and Michael and Cindy Semic (“Purchaser” or “Buyer”) for the sum of \$1,520,000 (“Purchase Price”) (“Petition”). The terms and conditions of the sale were provided in a Purchase and Sale Agreement dated March 2, 2022 (“PSA”).

THE PROPERTY

The Property is one (1) of 14 parcels that required environmental remediation due to the Sea Isle City Manufactured Gas Plant (“MGP”) site. JCP&L’s filed tariff includes a Remediation Adjustment Clause (“Rider RAC”), which is part of the Societal Benefits Charge (“SBC”), to provide recovery of the reasonable costs and expenditures related to the environmental remediation of its former New Jersey MGP sites.

THE PETITION

A. JCP&L's Representations and Marketing Efforts Regarding the Sale of the Property

Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, the Company represented that:

- a. The sale of the Property will not adversely affect the public interest;
- b. The Property is not in JCP&L's service territory and is not used or useful for JCP&L's utility purposes;
- c. The sale of the Property will not compromise the ability of the Company to render safe, adequate, and proper service to its customers;
- d. The Purchase Price for the Property represents the fair market value based upon the results of an advertising and marketing process as described further herein, and at a selling price consistent with an independent appraisal; and
- e. There is no relationship between the Company and Buyer, other than that of transferor and transferee.

In addition, the Company used the following to market, advertise, and sell the Property:

- a. The Property was listed with Long & Foster Real Estate, Inc., Sea Shore Team, Broker, Nick Preuhs;
- b. "Coming Soon" signs were placed on the Property on September 3, 2021;
- c. The multi-listing of the Property began on December 13, 2021 making the listing available for all agents in the Cape May County area to show the Property and submit offers thereon;
- d. A legal advertisement was published on January 12 and January 19, 2022, in the *Press of Atlantic City* and *Cape May County Herald*. The advertisement provided notice that the Property would be marketed for 75 days and offers would be accepted through February 24, 2022, before which no particular offer would be accepted;
- e. JCP&L also created a website to market the Property and all the due diligence documentation was available to all prospective buyers at: <https://www.firstenergycorp.com/corporate/jcpl-sea-isle-city-real-estate.html>
- f. The website was listed on the specification sheet and provided to all prospective buyers and agents.

B. Rate Counsel's June 9, 2022 Comment Letter

Via correspondence dated June 9, 2022, the New Jersey Division of Rate Counsel ("Rate Counsel") indicated that it did not object to the sale of the Property but reserved the right to examine the ratemaking and accounting treatment of the transaction in the Company's next base

rate case or other appropriate proceeding. Rate Counsel recommended that if the sale is approved by the Board, the following conditions should apply:

1. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the contract for sale of the Property.
2. JCP&L shall flow 100% of the net gain from this sale as a deferred credit to ratepayers in JCP&L's next Rider RAC Filing, base rate case, or other appropriate proceeding.
3. From the time of closing on the sale of the Property until JCP&L's next Rider RAC Filing, base rate case or other appropriate proceeding, JCP&L shall credit the proceeds from the sale to its cash account with interest to accrue for the account of ratepayers in the interim.
4. JCP&L may no longer seek, either through the Rider RAC or any other rate recovery mechanism, any environmental costs incurred in relation to the Property.
5. JCP&L shall set a date certain by which it will credit to ratepayers the net proceeds from this sale, including any amounts remaining in escrow after the closing.
6. Rate Counsel retains all rights to review all costs and proceeds related to the purchase and sale of the Property in JCP&L's next Rider RAC Filing, base rate case or another appropriate proceeding.
7. The Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Petitioner.
8. Nothing in the Order shall be construed to affect JCP&L's liability for Natural Resource Damages or other responsibilities or damages arising from its activities at any site or JCP&L's responsibilities or claims in any other matter arising from environmental investigation and remediation of any of its properties.

C. JCP&L's July 19, 2022 Response to Rate Counsel

Via correspondence dated July 19, 2022, JCP&L did not object to Rate Counsel's proposed Conditions 1 through 3, 5, 6, and 7. However, the Company objected to Rate Counsel's proposed Conditions 4 and 8, arguing that these conditions should not be applied to the Board's approval of the proposed sale.

JCP&L stated that Rate Counsel's proposed Condition 4 would prevent the Company from any future ability to recover or seek recovery of any costs incurred post-sale for environmental remediation of the Property. The Company argued that this condition is contrary to the Electric Discount and Energy Competition Act ("EDECA"), at N.J.S.A. 48:3-60, which provides for recovery. The Company asserted that challenges to the recovery of post-sale and remediation-related costs prudently and reasonably incurred should not give rise to a condition imposed on the sale of the Property in this proceeding, but procedurally and substantively should be addressed and disposed of in the context of a Rider RAC filing. According to JCP&L, if Condition 4 is adopted by the Board, it would likely result in an immediate appeal by JCP&L that would likely cause the loss of the sale. The Company argued that under the PSA, JCP&L maintains certain responsibilities with respect to environmental remediation of the Property due to the MGP site.

The Company stated that they believe Rate Counsel would improperly seek to reopen the Board's prior review and approval of the purchase and remediation costs for the Property, through 2019, as last evidenced in BPU Docket No. ER20100628 or as will be determined in the currently pending 2020 Rider RAC filing, or subsequent 2021 Rider RAC filing. Additionally, JCP&L argued that Rate Counsel's request to the Board would procedurally, substantially and unlawfully preclude JCP&L from seeking to recover from ratepayers under the Rider RAC or any other mechanism, and from recovering, the post-sale prospective environmental remediation and related costs associated with the Property.

JCP&L explained that the Petition did not provide that this sale is for the sole benefit of ratepayers, while voluntarily absorbing the costs of any ongoing monitoring or remediation requirements associated with the Property without any further recourse to recover from ratepayers through the Rider RAC. Additionally, JCP&L noted that despite the inclusion of a protective contract provision in the PSA, there is a legal risk that JCP&L would be required to address and incur costs for any future MGP site-related environmental remediation of, and about, the Property. JCP&L stated that Rate Counsel's proposed Condition 4 essentially, and unreasonably, asserts that any ongoing, or new future remediation costs, both certain (with respect to ground water related costs) and uncertain, will be solely for JCP&L's account and will not be subject to any future cost recovery under the Rider RAC or any other mechanism. The Company argued that this recommended condition was developed solely due to the change in ownership of the Property. However, JCP&L would still be required to carry out its responsibilities with respect to the MGP site of which the Property will remain a part and have ongoing reasonable and prudent costs that should be subject to recover through rates or the Rider RAC.

The Company argued that Rate Counsel provided no compelling reason or authority to support precluding JCP&L from recovering costs of continued environmental remediation which were not practically, or legally, transferable or marketable. JCP&L stated that if the costs of environmental remediation were transferable, it would be reasonable to expect that such transfers would only occur at a materially lower purchase price. The Purchase Price was at a fair market value on the condition that JCP&L would still be responsible for necessary environmental remediation caused by the MGP site. JCP&L argued that if the ability to recover future costs is removed as a condition of the Board's approval of the sale, then the Company would be disincentivized to sell the Property, against the best interests of ratepayers. If the Board were to approve the sale with this condition, then the Company would not be able to proceed with the sale and would continue to hold the Property per typical practice, and continue to recover its costs, including ownership carrying costs, through the annual Rider RAC filings until the New Jersey Department of Environmental Protection ("NJDEP") audit period expires.

JCP&L argued that Rate Counsel's proposed Condition 8 can be interpreted to request that the Board grant its approval because the Board's approval and/or the sale does not "affect" the Company's "liability for Natural Resource Damages or other responsibilities or damages . . . at any site or . . . any other matter arising from environmental investigation and remediation of any of [the Company's] properties." Therefore, JCP&L urged the Board to reject this condition. JCP&L additionally argued that the Board lacks jurisdiction to determine the Company's environmental liabilities, and as such, this proceeding is not the proper forum to address cost recovery.

D. Rate Counsel's July 28, 2022 Response to JCP&L

Via correspondence dated July 28, 2022, Rate Counsel asked that the Board to either approve the sale with Rate Counsel's original 8 Conditions or if the Board agrees with JCP&L's contention that the remediation of any of these properties is incomplete and the associated future costs are unknown, deny approval of the proposed sale until JCP&L completes the required remediation and sale to a third party is appropriate.

Rate Counsel stated that the Company's objections lack any merit and strips the Board of its statutory jurisdiction to allocate costs related to the remediation and sale of utility property, unfairly impose open-ended obligations upon ratepayers, and deprive both ratepayers and the Board of the finality necessary upon the closing of utility property sales. Rate Counsel stated that JCP&L's objection letter undermines their confidence in certain facts asserted in the petitions, and the prudence of the proposed transactions.¹ Rate Counsel argued that speculation as to NJDEP actions in the indeterminate future should be rejected.

Rate Counsel provided that JCP&L's objection to proposed Condition 4 is wrong because the condition is consistent with N.J.S.A. 48:3-60(a). JCP&L explained that the plain text of the above statute authorizes the Board to permit each electric and gas public utility to recover "some or all" of its MGP remediation costs through the SBC. MGP remediation costs are determined initially in a manner consistent with mechanisms in the Rider RAC for the public utility as adopted by the Board.² Rate Counsel stated that the plain language of EDECA does not require the Board to allow a utility to recover every dollar it expends remediating a property. According to Rate Counsel, JCP&L represented in its Petition that it obtained a remediation action outcome on all 14 lots, with certain terms, conditions, or restrictions associated with each, and that it retained only monitoring and reporting obligations. Rate Counsel stated that based upon the facts asserted in the Petition, any reasonably anticipated remaining remediation-related costs should be relatively minimal.

Rate Counsel noted that JCP&L and Rate Counsel are in agreement on proposed Condition 8. Rate Counsel stated that nothing in its letter should impact JCP&L's liability for natural resource damages ("NRD") or other claims for any of these properties and that the Board would not assert jurisdiction to determine costs related to the NRD claims.

E. JCP&L's August 5, 2022 Response to Rate Counsel

Via correspondence dated August 5, 2022, JCP&L reaffirmed its opposition to Rate Counsel's proposed Condition 4, arguing that it imposes unnecessary and inflexible burdens on the Company regarding the sale that would otherwise benefit ratepayers. JCP&L maintained that this sale would not only provide ratepayers the proceeds from the sale, but also eliminate the future carrying costs of ownership. The Company asserted that it will remain obligated for any and all risk associated with future environmental remediation costs associated with the properties in connection with the MGP site.

¹ Rate Counsel submitted the same set of comments for each of the Sea Isle City petitions Docket Nos. EM22050329, EM22050330, EM22050331, EM22050334, and EM22050335.

² N.J.S.A. 48:3-60(a)(4).

The Company further argued that Rate Counsel's proposed Condition 4 is a significant obstacle to the sale due to the conflict with balancing JCP&L's interests with the risk and structure of the terms of the sale agreement. If proposed Condition 4 were imposed on the sale, the Company claimed that the imposition of the condition would effectively constitute a denial of the sale since JCP&L would have to attempt to renegotiate the terms of the sale with no certainty of success. JCP&L claimed that this condition poses a major disincentive to any sale as it is inflexible and removes any chance to recover any cost, while also depriving the ratepayers of the benefit of the current real estate market opportunities and the reduction of the ongoing carrying costs associated with ownership of the Property.

The Company requested that the Board reject Rate Counsel's proposed Condition 4 because the Company may seek recovery in a subsequent Rider RAC or rate-related proceeding. In addition, the Company requested clarification that Board approval demonstrates prudence of a sale involving a MGP site environmental remediation, and it will not be denied cost recovery for environmental remediation activities involving a MGP site merely because they sold the Property. Lastly, the Company asserted that the remediation status of the MGP site renders the Property environmentally appropriate for sale as residential properties.

DISCUSSION AND FINDINGS

After careful review and consideration of the Petition, JCP&L's description of the proposed Terms of the Property sale, Rate Counsel's June 9, 2022 response thereto, the additional responses from the Company and Rate Counsel dated July 19, 2022 and July 28, 2022, respectively, and the Company's correspondence dated August 5, 2022, the Board **HEREBY FINDS** that the sale of the Property by JCP&L to the Purchaser is in accordance with N.J.A.C. 14:1-5.6 and will not adversely affect the public interest. The Board **FURTHER FINDS** that the sale of the Property will not affect the Company's ability to render safe, adequate, and reliable service.

Regarding Rate Counsel's proposed Condition 4, the Board **HEREBY FINDS** that this proceeding is not the appropriate forum for cost recovery actions, and as such, the Board **HEREBY ORDERS** that this issue be addressed in a future Rider RAC Filing regarding this Property.

Accordingly, the Board **HEREBY APPROVES** the PSA of the Property to the Buyer in the amount of \$1,520,000, with the net gain being returned to ratepayers through the Rider RAC, subject to the following conditions:

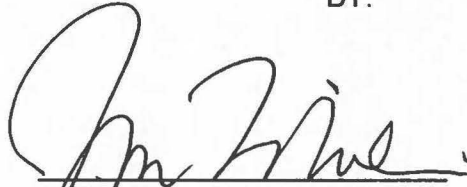
1. JCP&L shall notify the Board and Rate Counsel if it anticipates any material changes in the contract for sale of the Property.
2. From the time of closing on the sale of the Property until JCP&L's next Rider RAC Filing, base rate case or other appropriate proceeding, JCP&L shall credit the proceeds from the sale to its cash account with interest to accrue for the account of ratepayers in the interim.
3. JCP&L shall flow 100% of the net gain from this sale as a deferred credit to ratepayers in JCP&L's next Rider RAC Filing, base rate case or other appropriate proceeding.
4. Approval of the sale of the Property in no way guarantees recovery of any expenses submitted in future Rider RAC Filings associated with the Property, nor tacit acceptance of future liabilities on behalf of JCP&L ratepayers.

5. JCP&L shall include the following in future Rider RAC Filing if they are to seek recovery for environmental remediation expenses incurred after closing on the Property:
 - The remedial activity the Company has performed on the Property,
 - The costs incurred for each activity performed on the Property,
 - The actual or anticipated remediation activity completion date,
 - The estimated remaining costs for the completion of the remediation activity,
 - The anticipated completion date and costs involving long-term monitoring and/or reporting obligations,
 - JCP&L must provide a detailed explanation for the remediation costs on the Property after the sale,
 - JCP&L must report any and all measures it took to reduce liability for further remediation-related costs including but not limited to environmental insurance and/or third-party indemnification agreements,
 - A detailed explanation of the appropriateness of ratepayers assuming or continuing to pay JCP&L's remediation costs incurred after the sale of the Property,
 - A proposed sharing of remediation activity costs with JCP&L shareholders.
6. Rate Counsel and Staff retain all rights to review all costs and proceeds related to the purchase and sale of the Property in JCP&L's next Rider RAC Filing, base rate case or another appropriate proceeding.
7. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting the Petitioner.
8. Nothing in this Order shall be construed to affect JCP&L's liability for NRD or other responsibilities or damages arising from its activities at any site or JCP&L's responsibilities or claims in any other matter arising from environmental investigation and remediation of any of its properties.
9. Within 30 days of the date of the closing on this transaction, the Petitioner shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses, of the sale.


This Order shall be effective on November 2, 2022.

DATED: October 26, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER




DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
ACTING SECRETARY

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

In the Matter of the Verified Petition of Jersey Central Power & Light Company for Approval of the Sale and Conveyance of the Improved Property at 214 39th Street Sea Isle City, Cape May County, New Jersey Pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6

DOCKET NO. EM22050331

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