Agenda Date: 6/18/12
Agenda Item: 2G

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 APPLICATION OF JERSEY CENTRAL POWER & LIGHT COMPANY, FOR THE APPROVAL OF AN AMENDMENT OF THE POWER PURCHASE AGREEMENT CURRENTLY EXISTING BETWEEN IT AND LAKEWOOD COGENERATION, L.P.	)	ORDER DOCKET NO. EM12040309

Parties of Record:

Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power and Light Company

BY THE BOARD:

On April 13, 2012, Jersey Central Power and Light Company ("JCP&L" or "Company") filed a petition (the "Petition") with the New Jersey Board of Public Utilities ("Board") seeking approval of a fifth amendment of a Power Purchase Agreement ("PPA") between JCP&L and Lakewood Cogeneration, L.P. ("Lakewood") as successor to CNG Energy Company ("CNG") which was originally dated as of April 26, 1988 and approved by Board Order dated December 8, 1988 in BPU Docket No. EM88050652. JCP&L currently purchases power from Lakewood under the PPA, which requires JCP&L to purchase all of the associated net generator output on an economic dispatch basis from the approximately 237 MW natural gas-fired plant owned and operated by Lakewood and located in the service territory of JCP&L in Lakewood, New Jersey ("Facility") at prices based upon a pre-established formula. The Facility was originally classified as a qualifying small power production facility under the Public Utilities Regulatory Policies Act of 1978, as amended ("PURPA") but has since been authorized to operate as an Exempt Wholesale Generator ("EWG") pursuant to the fourth amendment approved by the Board on August 3, 1993 under Docket No. EM88050652. The Facility entered commercial operation on November 8, 1994, and is anticipated to operate under the PPA through the PPA termination date of November 8, 2014.

The PPA has been amended over the years with Board approval. According to the Company, the prices that it pays under the PPA are well above current market prices for power, resulting in stranded costs for JCP&L that are recoverable from its customers. JCP&L estimates the stranded costs under the PPA at approximately $43.4 million on a net present value ("NPV") basis, over the remaining term of the PPA as of July 1, 2012, using a discount rate of 6.86%.

Following what the Company describes as extensive, good-faith, arms-length discussions, JCP&L and Lakewood have negotiated a Fifth Amendment to the PPA that would reduce the dispatching costs of the Facility, with the hope that the Facility will be dispatched more frequently and achieve greater annual generation run times in what is a high congestion area within the PJM market, and that the additional run time would generate additional revenues in that market. JCP&L asserts that the higher level of energy revenues will reduce the amount it recovers from its customers through the Non-utility Generation charge ("NGC"). The Company's economic analysis projects the savings generated from this Fifth Amendment are equivalent to approximately 46.22% of the estimated stranded costs on an after-tax basis which JCP&L will credit, after reduction for transaction and other expenses, to its NGC Deferred Balance.

THE PROPOSED FIFTH AMENDMENT

According to the Petition, the Fifth Amendment provides for lowering the variable cost level that JCP&L pays to Lakewood, when compared to the Locational Marginal Price ("LMP") for that same hour, to allow JCP&L to offer the unit for dispatch into PJM. The variable costs are comprised of several elements, including the cost of natural gas, variable Operations and Maintenance ("O&M"), and a Start Related Overhaul Allowance Charge which recovers the cost of major maintenance for the unit. In general, if the variable cost is less than the Day Ahead LMP at the JCP&L Zone, then PJM would clear the unit for dispatch, with the electric energy produced sold into the market at the Day Ahead LMP for a profit, which would benefit JCP&L's customers.

The Fifth Amendment proposes the following three changes to the variable cost:

1. The Variable O&M charge is currently set at $7.98 per MWh, and is escalated on an annual basis at the Gross Domestic Product ("GDP") Deflator. This Amendment proposes to reduce the Variable O&M for the duration of the contract.

2. Under the PPA, the Start Related Overhaul Allowance Charge, which recovers per (two-unit) cold natural gas start, the cost of maintenance to the Facility is comprised of three segments. Two of the segments are (a) the Long Term Service Agreement ("LTSA") charge which covers the current estimated cost of the maintenance contract and (b) the Non Long Term Service Agreement ("Non LTSA") charge which covers the ongoing replacement of parts at the facility. The LTSA and the Non LTSA charges will not be paid out unless the Facility is dispatched. The Fifth Amendment would revise the manner of calculating the charges which the Company represents would result in savings over the term.

3. The third segment of the Start Related Overhaul Allowance Charge is the True-Up Maintenance Charge which covers the cost of prior maintenance costs which have not been fully amortized. Currently, the True-Up Maintenance Charge would be collected by Lakewood even if it is not recovered through dispatching the unit through the end of the PPA. If there is a balance remaining at the end of the PPA, JCP&L will be obligated to make a final payment equal to the unamortized balance. The Fifth Amendment will convert this True-Up Maintenance Charge, to a Fixed Charge, and taken out of the dispatch decision process as compared to the existing PPA, where this charge is paid whether or not the balance is amortized due to dispatching the unit. In addition, $420,000 will be subtracted from the True-Up

balance, and the net balance will be amortized equally over 24 months, beginning with the first month after the closing of the Fifth Amendment.

In the Petition, JCP&L states that the increased dispatchability of the Facility enabled by the lower dispatch cost trigger will afford ratepayers additional savings.

JCP&L argues that the Fifth Amendment effectuates "a reduction in the pricing, or the restructuring of other terms to reduce the overall cost of the power contract, for the remaining succeeding period of the purchased power arrangement or arrangements," and thus constitutes a "buydown" of the PPA under N.J.S.A. 48:3-61 (a)(3). On this basis, JCP&L seeks a determination that the Fifth Amendment "will result in a substantial reduction in the total stranded costs of the utility, which resulting savings will be passed through to ratepayers on a full and timely basis," and urges the Board, upon approval of the Fifth Amendment, to order that all costs and charges to be paid by JCP&L for capacity and energy pursuant to the PPA, as amended by the Fifth Amendment, are reasonable and prudent and qualify for full and timely recovery by JCP&L throughout the term of the PPA. The Company further urges the Board to order that any such costs which are above market should be reflected in JCP&L's Deferred Balance, and ultimately recovered through the NGC in JCP&L's tariff as "stranded costs" under N.J.S.A. 48:3-61 (a) (3).

RATE COUNSEL'S COMMENTS

By letter dated May 17, 2012, Rate Counsel affirmed its support for New Jersey utilities' efforts to mitigate stranded costs through cost effective contract buyouts or restructurings. Rate Counsel supports the approval of the proposed amendment even though it finds the magnitude of JCP&L's expected savings to be uncertain and likely to be significantly less than the Company's estimate in the Petition. Rate Counsel also notes particularly, that it appears that the expected savings are obtained without increased pricing or additional fixed payments to Lakewood. However, while Rate Counsel recognizes that the Board has in the past approved the recovery of reasonable, incremental and prudently incurred, transaction costs associated with similar contract restructurings, it argues that approval of the transaction expenses in this instance should await further review in a future proceeding at which JCP&L demonstrates that the costs are reasonable. Rate Counsel further recommends that all benefits received by JCP&L as a result of the Amendment be promptly credited to ratepayers, and that the Company remain obligated to prudently manage and administer the amended PPA for the benefit of the ratepayers for the balance of the duration of the contract.

By letter dated May 30, 2012, JCP&L agreed that any transaction costs associated with the renegotiation of the contract, on the premise that the Board will rule that prudently-incurred transactions costs are recoverable, are subject to documentation and review in a future NGC rate filing.

DISCUSSION AND FINDINGS

The Board has reviewed the proposed Fifth Amendment to the PPA and the changes to the pricing structure and terms, and **FINDS** that the Fifth Amendment complies with applicable laws, and Board policy and is in the interest of ratepayers since the changes could result in a substantial reduction in the total stranded costs of the utility, which resulting savings will be passed through to ratepayers on a full and timely basis.

Accordingly, the Board **HEREBY APPROVES** the Fifth Amendment to the PPA between JCP&L and Lakewood. The Board continues to **FIND** that all costs and charges to be paid by JCP&L for capacity and energy pursuant to the PPA, as amended by the Fifth Amendment, will qualify for full and timely recovery by JCP&L throughout the term of the PPA, and that any such costs which are above market should be reflected in JCP&L's Deferred Balance and ultimately be recovered through the NGC, subject to review and Board approval. The Board **FURTHER FINDS** that reasonable, incremental and prudently incurred, transaction costs associated with this contract's restructuring are recoverable by JCP&L subject to full documentation and review in a future NGC rate filing.

In addition, the Board **HEREBY ORDERS** the Company to provide quarterly reports comparing achieved savings to projected savings supported by quantified explanations of the reasons for any differences.

DATED: 6/18/12

BOARD OF PUBLIC UTILITIES
BY:

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COMMISSIONER

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ATTEST:

KRISTI IZZO
SECRETARY

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

Jersey Central Power and Light Company- Proposed Amendment to Lakewood Cogeneration Facility
BPU Docket No. EM12040309

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