

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on December 18, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 02-E-1417 - Petition of Jamaica Bay Peaking Facility, LLC
for (1) an Order Concerning Regulatory Regime;
(2) a Certificate of Public Convenience and
Necessity; and (3) an Order Approving Financing
for its Proposed 48 Megawatt Electric
Generating Facility in Far Rockaway, Borough of
Queens, New York City.

ORDER GRANTING A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

(Issued and Effective December 19, 2002)

BY THE COMMISSION:

INTRODUCTION

On November 14, 2002, Jamaica Bay Peaking Facility, LLC (Jamaica Bay or petitioner) filed a petition for (1) an order concerning regulatory regime as an electric corporation under the Public Service Law (PSL); (2) a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a 48 megawatt (MW) electric generator pursuant to PSL §68¹; and (3) an order approving financing for its proposed project pursuant to

¹ By letter of November 26, 2002, Jamaica Bay corrected a typographical error in its petition for a CPCN, which stated that the facility would have an output of 54 MW at 91° F and 75% RH. The corrected output under those conditions is 48 MW.

PSL §69. This order addresses Jamaica Bay's request for a CPCN along with its request for expedited approval of its application pursuant to 16 NYCRR §21.10(a). An order concerning the regulatory regime appropriate for Jamaica Bay and project financing for the facility will be issued subsequently.

To enable the facility to commence operation in time to supply energy in the wholesale market next summer, Jamaica Bay requested expedited approval of its application. Petitioner published a notice of its motion in the November 23, 2002 edition of The Wave and the November 22, 2002 edition of Newsday, both newspapers with general circulation in the area of the facility's proposed location. No objections were received by the comment deadline of December 3, 2002.

THE PETITION

The 48 MW, dual-fueled facility is being proposed to help meet the peak demand for electricity on Long Island, starting in the summer of 2003, a demand that has been increasing and is projected to continue to increase². Jamaica Bay expects to sell all of the facility's output to the Long Island Power Authority (LIPA) at fixed rates under a Power Purchase Agreement (PPA). It is expected that LIPA would then sell the facility's capacity and ancillary services in the wholesale generation market and use it to serve LIPA's retail customers.

Jamaica Bay is a limited liability company and a wholly-owned subsidiary of FPL Energy, LLC (FPL Energy), which owns and operates domestic power plants representing

² Long Island Power Authority Draft Energy Plan 2002-2011, pp.14-16 (October 17, 2002).

approximately 5,300 MW. Jamaica Bay filed with its petition its certificate of formation in the State of Delaware. Jamaica Bay contends that it will be able to finance the project, and notes that in 2001 its affiliate, FPL Group, had sales in excess of 8.4 billion dollars and a net income of 780 million dollars. Also, its current market capitalization is in excess of 9 billion dollars. Total financing raised for the facility is not expected to exceed 50 million dollars, with an expected term of no more than 18 years. Any financing obtained will cover the all-in capital cost of the project, will be funded with equity provided indirectly by Jamaica Bay's parent, FPL Energy, and will be collateralized by the facility.

DISCUSSION

Environmental Quality Review

By letter dated October 17, 2002, LIPA notified us and other potentially involved or interested agencies that it was proposing to serve as lead agency in a coordinated State Environmental Quality Review (SEQR) to evaluate the environmental impacts associated with the construction and operation of the generating facility proposed by Jamaica Bay. We have approval authority, pursuant to PSL §68, over the generating facility, and thus are an involved agency in its SEQR review. The Commission consented to LIPA's lead agency status by letter dated November 6, 2002.

The proposed representative facility, to be named the Jamaica Bay Energy Center, will consist of a simple-cycle dual-fueled 48 MW nameplate capacity Pratt & Whitney FT-8 Swift-Pac comprising of two combustion turbines with a single generator.

The facility site is located at Sunnyside and Bay 28th Streets in the Far Rockaway portion of Queens, and adjacent to two existing generating facilities - the Bayswater Peaking

Facility and the KeySpan Far Rockaway Generating Facility. The site is currently owned by LIPA and leased to Bayswater, also a wholly owned subsidiary of FPL Energy. Bayswater proposes to sub-lease approximately two acres of property to Jamaica Bay for the proposed project. Also, approximately three acres of land would be leased from KeySpan for use as a temporary staging and laydown site during project construction. The facility would interconnect to the Long Island electric system at the Far Rockaway substation owned by LIPA.

LIPA completed a comprehensive Environmental Assessment (EA) for the project. The EA analyzed potential environmental impacts of the facility on land use and zoning, neighborhood character, community facilities, cultural and visual resources, socioeconomic and environmental justice, traffic and transportation, air quality, noise, infrastructure, contaminated materials, soils, geology, seismology, natural resources, water resources, stormwater management, coastal zone management, and construction impacts. Based upon the EA, LIPA determined that the proposed project would not have any significant adverse impact on the environment and, accordingly, issued a Notice of Determination of Non-Significance (negative declaration) on November 14, 2002. According to 6 NYCRR §617.6(b)(3)(iii), LIPA's issuance of a negative declaration is binding upon the Commission as an involved agency.

Public Convenience and Necessity

We are authorized to grant approval to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of electric plant is

necessary and convenient for the public service.³ Our rules establish pertinent evidentiary requirements for a CPCN application (16 NYCRR §21.3). The rules require a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, evidence that the proposed plant is in the public interest and economically feasible, and proof that the applicant is able to finance the project and render adequate service.

Petitioner's proposed facility is needed to help meet growing peak demand and enhance competition in the wholesale power market and in the Long Island load pocket. On the basis of the facts presented in the petition, it appears that Jamaica Bay will be able to finance the project and render adequate service. Given the sale of its output to LIPA to serve Long Island consumers, the project appears to be economically feasible and in the public interest.

Petitioner satisfied the requirements of §68 by filing a copy of its certificate of formation on September 18, 2002. Because Jamaica Bay is a power-generator that will sell its output to LIPA, who will in turn sell the electricity in the wholesale market and serve customers via its transmission and distribution system, no municipal franchise is required before petitioner may receive a certificate.

CONCLUSION

A hearing having been held in this proceeding on December 18, 2002, we find, pursuant to PSL §68, that the construction and operation of the facility, as described in the

³ Jamaica Bay is an electric corporation, as defined in PSL §2(13).

petition, the supporting documents, and in this Order, is necessary and convenient for the public service.

The Commission orders:

1. The Motion for an expedited proceeding on a non-contested application of Jamaica Bay Peaking Facility, LLC is granted.

2. A Certificate of Public Convenience and Necessity is granted, authorizing Jamaica Bay Peaking Facility, LLC to construct and operate the electric plant described in its petition and in this Order, subject to the following conditions:

- (a) Jamaica Bay Peaking Facility, LLC shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals;
 - (b) the approved project shall be subject to inspection by authorized representatives of the Department of Public Service, pursuant to PSL §66(8); and
 - (c) within three days after commencement of commercial operation of the approved project, Jamaica Bay Peaking Facility, LLC shall so notify the Secretary in writing by filing an original and five copies of such notification.
3. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary