UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Canal Generating LLC

Canal 3 Generating LLC Docket No. EC22-71

Bucksport Generation LLC

Stonepeak Kestrel Energy Marketing LLC

**Protest of Public Citizen, Inc.**

On June 1, a joint application for authorization under Section 203 of the Federal Power Act was filed to sell three gas/oil fueled power plants in ISO-NE from the private equity firm Stonepeak to JERA Co. Inc. Our protest consists of four issues. First, the proposed transaction will result in significant concentration of power generation ownership by JERA in ISO-NE and NYISO that may threaten competition and rates. Second, the transaction involves assets that may qualify for special out-of-market payments administered by ISO-NE that require additional disclosure to assess the impact on competition and rates. To mitigate these two threats to competition and rates, approval of the transaction should be contingent on divestiture of JERA’s existing ISO-NE generation holdings. Third, we contest the privileged treatment of the purchase price of the power plants. Comparable sales information is widely available, and the public interest should require disclosure of basic information such as the purchase price of FERC-jurisdictional power plants. Fourth, more information is required on the transaction’s effect on concentration of voting in ISO-NE’s NEPOOL stakeholder process to determine whether it threatens rates.

Stonepeak proposes to sell to JERA two generation units with combined capacity of nearly 1,500 MW (the Canal facilities) located in the Southeast New England (SENE) sub-market of ISO-NE. JERA already owns two gas/oil power plants within the SENE market―Dighton Power, a 200 MW natural gas fueled power plant, and Milford Power, a 231 MW gas-fired unit. The sale also involves JERA acquiring Bucksport, a 160 MW gas/oil fired power plant in Maine within ISO-NE.

The national government of Japan controls 13.7% of JERA, along with a collection of Japanese-based utilities.

The proposed transaction results in an increase in ownership concentration within the SENE market relative to the status quo. The application acknowledges that JERA’s acquisition of the very large Canal power plants, when combined with its existing Dighton and Milford units, will result in JERA controlling 18.5% of the capacity within ISO-NE’s SENE submarket―an increase from 3.7% pre-transaction.[[1]](#footnote-1) Public Citizen is concerned that the acquisition will result in JERA serving as a pivotal supplier in future capacity auctions within SENE (and the energy market as well), potentially threatening competition and rates. Requiring JERA to divest both its Dighton and Milford power plants will help ensure that consumers are protected from potential threats to competition and rates, and will reduce the level of market concentration within SENE that existed prior to the transaction with Stonepeak.

In addition, the application lacks necessary detail to determine the capacity and energy market bidding of JERA’s generation assets in NYISO that could be sold into ISO-NE, particularly the nearly 1,200 MW Cricket Valley gas-fired power plant that is located less than 2 miles from the ISO-NE border at the 398 Intertie that directly connects NYISO and ISO-NE. Cricket Valley was designed for its ability to access both the NYISO and ISO-NE markets, yet neither the application nor the affidavit in Attachment 3 provide any detail on Cricket Valley’s potential to threaten competition and rates in ISO-NE in light of JERA’s proposed acquisition of significant additional generation capacity in ISO-NE. Indeed, JERA’s Cricket Valley filed a 206 complaint in October 2020 complaining that NYISO’s capacity market provides inadequate compensation and asked FERC to significantly boost payments for its natural gas facility.[[2]](#footnote-2) JERA’s dissatisfaction with financial returns in NYISO could be a motivating factor to invest in expanding its concentration of generation ownership in ISO-NE in order to maximize revenues, potentially at the expense of just and reasonable rates in ISO-NE.

Second, the joint application fails to address the potential for JERA to utilize the newly-acquired duel-fuel generation units (both Canal and Bucksport) to uncompetitively exploit certain ISO-NE out-of-market payments, such as pay-for-performance incentives. Additional detail on the current and expected out-of-market payments for the proposed acquired generation resources is required to assess the transaction’s impact on competition and rates.

Third, we object to the confidential treatment of the sales price of the transaction, and ask the Commission to release it per 18 CFR § 388.112(e). The purchase/sales price of power generation transactions reveal information essential to the public interest about the buyer’s expectation of economic return of the asset. Historically nearly all power generation sale transactions involved publicly-traded companies, and as a result such information has been routinely public. Section 201 of the Federal Power Act states “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest.”[[3]](#footnote-3) It is necessary for the public interest for the purchase price of the power plants to be made public.

Finally, the application is silent on the roles that JERA will have as a voting member of the ISO-NE stakeholder process administered by NEPOOL. The Commission has determined that voting rights within an ISO stakeholder process directly affects just and reasonable rates.[[4]](#footnote-4) NEPOOL, which currently bans the general public from being able to witness (let alone participate) in matters pertaining to electric rates, allows corporations with vested interests in the outcome of its deliberations to freely participate and vote upon market rule changes that directly impact their financial operations. JERA currently wields voting power in NEPOOL through the *Provisional Member Group*, of which its Cricket Valley Energy Center is a member. Stonepeak Kestrel Energy Marketing, LLC (along with its Bucksport Generation LLC subsidiary) are currently NEPOOL voting members under the *Supplier* section, rather than the *Generation* sector. Since NEPOOL membership conveys the ability to influence market design in ISO-NE (and therefore directly impacts rates), details on how exactly JERA plans to participate as a voting member in NEPOOL post-transaction is needed to determine whether the transaction is in the public interest. For example, will JERA affiliates have voting representation in the *Provisional Member*, *Supplier* and *Generation* sectors post-transaction? Applicants must disclose details of how the transaction will impact the concentration of voting rights in NEPOOL in order to determine its impact on rates.

Respectfully submitted,

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1. Joint Application, Attachment 3: Affidavit of Julie R. Solomon and Michael A. Kline, Table 6, at page 16. [↑](#footnote-ref-1)
2. FERC Docket No. EL21-7, www.citizen.org/article/our-protest-of-2-natural-gas-power-plants-seeking-market-rule-changes-to-disadvantage-renewables-in-ny/ [↑](#footnote-ref-2)
3. 16 U.S.C. § 824(a). [↑](#footnote-ref-3)
4. New England Power Pool Participants Committee, 166 FERC ¶ 61,062 at P 48. [↑](#footnote-ref-4)