

EXHIBIT C

COPY OF SETTLEMENT AGREEMENT

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**Docket No. DE 03-186
Florida Power & Light Company**

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") dated as of this 16th day of April, 2004 is jointly sponsored and presented to the New Hampshire Public Utilities Commission (the "Commission") by Florida Power & Light Company ("FPL"), FPL Energy Seabrook, LLC ("FPLE Seabrook"), Public Service Company of New Hampshire ("PSNH"), the Office of Consumer Advocate ("OCA"), the New Hampshire Electric Cooperative, Inc. ("NHEC"), and the Staff of the Commission ("Staff") (together, the "Settling Parties and Staff").

This Settlement is offered with the intent of resolving all issues in the above-captioned proceeding as specifically set forth below.

I. BACKGROUND

This proceeding concerns the proposed transaction in which FPL's affiliate, FPLE Seabrook, seeks to transfer its 88.23% ownership interest in the 345 kV Seabrook Transmission Substation ("Seabrook Substation") to FPL and requests that the Commission approve FPL's request to be a public utility in New Hampshire to own and operate the Seabrook Substation through FPL's New England Division ("FPL-NED"). In November 2002, FPLE Seabrook acquired an 88.23% undivided interest in the Seabrook Substation when it acquired an equal 88.23% undivided interest in the Seabrook Nuclear Power Station (Seabrook Nuclear Station).

This acquisition was approved by the Commission in Order No. 24,050, DE 02-075, *Final Order, Proceeding Regarding the Sale of Seabrook Station Interests* (Sept. 12, 2002). On July 7, 2003 FPLE Seabrook requested authorization from the Federal Energy Regulatory Commission ("FERC") to transfer its 88.23% undivided interest in the Seabrook Substation to its affiliate, FPL. FPL is a wholly-owned subsidiary of FPL

Group, Inc., which is also the indirect parent of FPLE Seabrook. FPL is a public utility that provides wholesale and retail electric service to customers in the state of Florida. The Seabrook Substation is located inside the fence of Seabrook Nuclear Station in Seabrook, New Hampshire. Pursuant to the terms and conditions of the Asset Transfer and Assignment of Rights Agreement between FPLE Seabrook and FPL, FPLE Seabrook will transfer to FPL its undivided interest in all of the equipment in the Seabrook Substation beyond the disconnect links on the low side of the Generator Step-Up transformer and the disconnect links on the high side of each reserve auxiliary transformer for Seabrook Nuclear Station.

FPL filed with the Commission the Petition for Declaratory Ruling ("Petition") that is the subject of this proceeding on September 23, 2003. The Petition asked the Commission to determine whether FPL should be exempt from regulation as a public utility in New Hampshire under RSA 362:4-c. In the alternative, if the Commission determined that the exemption did not apply and that FPL would be subject to regulation as a public utility, the Petition asked what specific form of regulation should apply to FPL. On December 31, 2003, the Commission issued Order No. 24,258, in which the Commission denied FPL's request for a declaratory order that it be exempt from Commission jurisdiction pursuant to RSA 362:4-c. In its decision, the Commission concluded that the Seabrook Substation "does more than merely interconnect Seabrook Station with the regional transmission grid," but instead "is an integral part of the regional transmission system that operates when Seabrook Station is not generating electricity and would need to continue to operate if Seabrook Station were to close." Order No. 24,258, pp. 14-15. The parties and Staff proceeded with the second phase of this docket, a phase which the Commission described as including two questions: whether FPL should receive authorization to become a public utility and if so, the extent of regulation to which FPL would be subject as a public utility. Order No. 24,258, p. 21. The parties ultimately reached agreement to resolve the issues as reflected in this Agreement.

II. SETTLEMENT TERMS

1. **Public Utility Authority.** The Settling Parties and Staff agree that pursuant to RSA 374:22 and 374:26, it is for the public good for FPL to be a public utility in New Hampshire for the purpose of owning and operating the Seabrook Transmission Substation, and that the public interest is satisfied through the additional commitments and conditions set forth herein. Staff and FPL agree, and the remaining Settling Parties do not object, to a determination by the Commission that so long as FPL's operations in New Hampshire are limited to the ownership and operation of the Seabrook Transmission Substation the Commission's regulation of FPL will likewise be limited to requiring FPL-NED to comply with the following requirements:

- The submission to the Commission of the FPL annual report pursuant to RSA 374-A:7, I or any successor statute;
- The submission to the Commission from time to time of such other information with respect to FPL's activities in New Hampshire, as the Commission may reasonably request pursuant to RSA 374-A:7, I or any successor statute;
- Filing with the New Hampshire secretary of state as a foreign corporation pursuant to RSA 374-A:7, II(a) or any successor statute;
- Consenting to service of process pursuant to RSA 293-A, RSA 374-A:7, II(a) and any successor statute or statutes;
- Being subject to and complying with all laws and regulations applicable to the construction, operation and use of the Seabrook Transmission Substation pursuant to RSA 374-A:7, II(b) or any successor statute;
- With respect to any financing of FPL-NED's interest in the Seabrook Substation, including any borrowing or the issuance of any notes, bonds or other evidence of indebtedness or securities of any nature, being subject to the provisions of RSA 369 and other applicable regulatory laws of New Hampshire unless FPL or FPL-NED files with the Commission the appropriate certification of another regulatory agency as set forth in RSA 374-A:7, II(c) or any successor statute;
- Being subject to the annual assessment pursuant to RSA 363-A or any successor statute;

- Paying (i) applicable New Hampshire real estate transfer tax associated with the transfer of the Seabrook Substation from FPLE Seabrook to FPL-NED, (ii) business profits taxes, and (iii) any other taxes lawfully imposed by the State of New Hampshire or any of its subdivisions;
 - Filing with the Commission of all schedules showing the rates and charges for any service rendered by the Seabrook Substation pursuant to RSA 378:1 or any successor statute;
 - Participating in New Hampshire's underground utility damage prevention program as set forth in RSA 374:49 or any successor statute;
 - Permitting FPL-NED to exercise the right of eminent domain pursuant to RSA 371, RSA 374-A:8 or any successor statute or statutes;
 - Permitting FPL-NED to seek Commission exemption from otherwise applicable local ordinances pursuant to RSA 674:30, RSA 374-A:9 or any successor statute or statutes;
 - Permitting FPL-NED to seek financing from New Hampshire Municipal Bond Bank pursuant to RSA 374-C or any successor statute;
 - Requiring FPL-NED to obtain a license to construct under or across public waters pursuant to RSA 371:17 or any successor statute;
 - Requiring Commission approval to transfer assets to another entity pursuant to RSA 374:30 or any successor statute;
 - Requiring compliance with the rules for underground utility damage prevention program as set forth in N.H. Code Admin. Rules Puc 800 or any successor rules or statute;
 - Complying with any request to inspect the property, works, system, plant, devices, appliances, methods, books, papers or records of FPL-NED pursuant to RSA 365:6 and RSA 365:7 or any successor statute, subject to the further requirement that FPL-NED produce any such books, papers or records within the State of New Hampshire upon request of the Commission or its authorized agents.
2. **Station service.** Should FERC or a court determine that FPLE Seabrook need no longer take delivery of retail generating station service from PSNH, as is provided for in the Interconnection and Operating Agreement by and between Public Service Company

of New Hampshire and FPL Energy Seabrook, dated April 13, 2002 ("PSNH Interconnection Agreement"), FPLE Seabrook agrees to make PSNH whole for its lost stranded costs through the approximate date PSNH projects the full recovery of its Part 1 stranded costs (June 30, 2013), via a payment by FPLE Seabrook to PSNH. Such payment shall be the net present value, based on an 8% discount rate, of \$28,500 per month (Twenty Eight Thousand Five Hundred Dollars) (which represents a liquidation of the monthly stranded cost payment obligation agreed upon by the Settling Parties and Staff) from the date that FPLE Seabrook ceases the taking of retail station service delivery from PSNH through June 30, 2013. The Settling Parties and Staff agree that if such a payment is made by FPLE Seabrook, it will be credited by PSNH to stranded cost recovery. If subsequent to such payment FPLE Seabrook recommences the taking of retail generating station service from PSNH, then PSNH will credit FPLE Seabrook's monthly retail bill for such delivery service by an amount equal to \$28,500 per month during all months through June 2013, in which FPLE Seabrook takes delivery of retail generating station service from PSNH. The Settling Parties and Staff agree that PSNH shall be allowed to recover all such monthly credits as a stranded cost.

3. **New substation.** FPL recognizes and agrees that pursuant to the terms and conditions set forth in Section 36 of the PSNH Interconnection Agreement and other agreements referenced therein, PSNH has received the right to construct a new substation that would be the functional replacement of the existing 345 kV Seabrook Transmission Substation. FPL commits that it will not in the future exercise any public utility authority obtained in this proceeding, as set forth above in Paragraph II(1), that would interfere with PSNH's aforementioned rights to construct a new substation.

4. **Scope.** FPL's Petition requested that FPL receive the right to exercise eminent domain. FPL agrees that the exercise of such a right in New Hampshire by FPL-NED is limited to requests pursuant to a FERC-approved LNS Tariff, or directives from ISO-NE (or its successor organization), or regulatory and other state or federal government agencies with appropriate jurisdiction (e.g., FERC, the NRC, the Commission or Site Evaluation Committee ("SEC")). In the event that FPL-NED voluntarily seeks to construct transmission beyond the existing Seabrook Transmission Substation, the

Settling Parties and Staff agree that FPL may seek all necessary regulatory approvals on a concurrent basis.

5. **Campus Power.** This Agreement shall not in any way affect or modify the obligations of FPLE Seabrook to take campus power from Unitil Energy Systems, Inc. in accordance with the terms and conditions set forth in the agreement entitled "Ferrying Agreement [between] Public Service Company of New Hampshire and Exeter & Hampton Electric Company, dated January 1, 1978."

6. **FPL-NED LNS Tariff.** FPL acknowledges that the Settling Parties have relied upon its representation that while the FPL-NED LNS Tariff filed in Docket No. ER04-714-000 on April 1, 2004 is one of general applicability, with regard to charges associated with the delivery of generating station service energy to FPLE Seabrook, under the terms and conditions of the FPL-NED LNS Tariff, such charges would not apply to jurisdictional New Hampshire utilities nor any retail customers of such utilities other than FPLE Seabrook; *provided, however*, that with regard to LNS Tariff charges associated with the delivery of generating station service energy to FPLE Seabrook, this representation would not apply if, for example, a jurisdictional New Hampshire utility were to voluntarily agree to assume paying the LNS Tariff charges as part of a sale of generating station service energy to FPLE Seabrook or otherwise requests service over FPL-NED's LNS facilities not related to the delivery of generating station service energy to FPLE Seabrook.

III. MISCELLANEOUS PROVISIONS

A. This Agreement shall not be deemed in any respect to constitute an admission by any of the Settling Parties and Staff that any allegation or contention in this proceeding other than those expressly set forth herein is true or false, or that any particular agreement herein creates a precedent for future decisions.

B. Other than as expressly stated herein, the acceptance of this Agreement by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions.

C. This Agreement is expressly conditioned upon the Commission's approval of all provisions herein, without change or condition.

D. The discussions (including workpapers, documents, etc. produced in connection therewith) that have produced this Agreement have been conducted on the explicit understanding that all offers and discussions relating thereto (i) are and shall remain privileged, (ii) shall be without prejudice to the position of any of the Settling Parties presenting such offer or participating in any such discussion and (iii) are not to be used in any manner in connection with these or other proceedings involving any of the parties to this Agreement or otherwise.

E. This Agreement is agreed to on the condition that, in the event the Commission does not approve of it in its entirety, it must be acceptable, in a Party's reasonable business judgment, to a Party whose rights or obligations under the Agreement are materially adversely affected by such modification. If the modification is unacceptable, the Agreement shall be deemed withdrawn and void and shall not constitute any part of the record in this or any future proceeding or be used for any other purpose.

F. This Agreement constitutes the entire agreement among the Settling Parties and Staff regarding the subject matter hereof. All previous agreements, discussion, communications, and correspondence regarding the subject matter hereof are superseded by the execution of this Agreement.

G. The Commission shall have continuing jurisdiction to enforce the terms of this Agreement.

IV. CONCLUSION

Wherefore, the Settling Parties and Staff jointly recommend that the Commission approve this Agreement.

Respectfully submitted,

FPL

By: _____

FPLE Seabrook

By: _____

PSNH

By: _____

NHEC

By: _____

OCA

By: _____

STAFF

By: _____

Dated: April 16, 2004