


# STATE OF NEW HAMPSHIRE

## Inter-Department Communication

**DATE:** January 27, 2009  
**AT (OFFICE):** NHPUC

**FROM:**  Steven E. Mullen, Assistant Director – Electric Division

**SUBJECT:** DE 08-164, Florida Power & Light – Petition for Approval of Financing

**TO:** Commissioners  
Debra A. Howland, Executive Director



On December 22, 2008, Florida Power & Light Company (FPL) filed a Petition for Approval of Financing related to certain planned improvements at its transmission substation located in Seabrook, NH. Included with its petition was a Motion for Confidential Treatment and an E-22 form. FPL, through its affiliate, FPL-New England Division (FPL-NED), owns<sup>1</sup> and operates the transmission substation located on the grounds of the Seabrook Station nuclear power plant in Seabrook, NH. FPL-NED is a separate division of FPL created for the purpose of keeping the Seabrook transmission substation operationally and financially independent from FPL's other utility operations.

FPL made its filing in accordance with the terms and conditions of a settlement agreement approved by the Commission in Docket No. DE 03-186 (Order No. 24,321, May 7, 2004). In that proceeding, the 88.23% ownership share in the substation was transferred from FPL Energy Seabrook, LLC (one of the co-owners of Seabrook Station) to FPL-NED. Among the provisions agreed to by FPL in that settlement were:

- “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)<sup>2</sup> or any successor statute; and
- 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 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.”

<sup>1</sup> FPL owns 88.23% of the transmission substation and is one of several co-owners.

<sup>2</sup> RSA 374-A:7 addresses the regulation of foreign electric utilities.

The E-22 form was filed in compliance with the first provision noted above, and in accordance with NH Code Admin. Puc 308.07. The Petition for Approval of Financing was filed in compliance with the second above provision. The Motion for Confidential Treatment concerns a current balance sheet and income statement for FPL-NED adjusted for the financing, as required by NH Admin. Rule Puc 308.06.

Having reviewed the filing and issued discovery, Staff recommends the Commission approve FPL's financing petition for the reasons described below. To accommodate its planned construction schedule, FPL requested approval by order *nisi* no later than January 23, 2009. However, the requested timeline can still be met by the issuance of an order *nisi* with something other than a 30-day *nisi* period, perhaps 20 days. Staff also recommends granting the Motion for Confidential Treatment, at least until the information is publicly available when FPL files its 2008 Form 1 with the FERC.

### ***Summary of FPL's Filing***

In support of its petition, FPL included testimony from Kathy Beilhart, Assistant Treasurer for FPL Group, Inc., FPL and FPL Group Capital, Inc.<sup>3</sup> and William C. Locke, Jr., Manager of Transmission Services for FPL. Ms. Beilhart's testimony described the details of the financing, while Mr. Locke's testimony described the planned upgrade of the transmission substation for which the proceeds of the financing would be used. In addition, FPL provided copies of the Line of Credit Agreement (Exhibit 1), the Security Agreement (Exhibit 2) and a copy of the Unanimous Consent of Directors in Lieu of Meeting (Exhibit 7).

As detailed in the filing, FPL Group Capital has agreed to make loans via a line of credit agreement to FPL in an aggregate principal amount outstanding at any one time not to exceed \$36,000,000. The loans are to be payable on demand with the funds to be used to acquire goods, equipment, fixtures and other property for use in connection with the Seabrook transmission substation. Related to the substation upgrade, FPL expects cash requirements through 2011 as follows:

	<u>(millions)</u>
2008	\$ 5.4
2009	\$ 22.7
2010	\$ 5.9
2011	<u>\$ 2.0</u>
Total	<u>\$ 36.0</u>

The loans will carry an interest rate based on FPL Group Capital's monthly weighted average cost of debt with interest payable on the first day of each calendar quarter. Except for FPL-NED's asset additions at the transmission substation, the loans will be non-recourse to FPL and all of its assets. Regarding the asset additions, FPL will perfect a security interest in the new assets. (See Exhibit 2 of the filing.) According to FPL, the

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<sup>3</sup> FPL Group Capital, Inc. is a wholly-owned subsidiary of FPL Group, Inc. that holds the capital stock of, or has equity interests in FPL Group's operating subsidiaries other than FPL and provides funding for those subsidiaries.

estimated closing costs of the transaction are \$40,000, with FPL also responsible for any post-closing costs and expenses of FPL Group Capital in connection with administration or enforcement of the loans or recovering, protecting or enforcing its interest in the collateral.

Regarding the proposed use of the funds, FPL-NED stated that it needs to complete a reliability upgrade to the 28-year old transmission substation to ensure its continued reliability for the New England power grid. In its petition, FPL described a number of equipment failures that occurred in the last two years and resulted in more than 26 days of unplanned substation outages. Due to those outages, the Seabrook Station nuclear plant was unavailable during that time. According to FPL, although the equipment failures have been remedied, certain improvements to the transmission substation are necessary to reduce the risk of unplanned outages and other malfunctions and to provide greater ability to perform future maintenance and upgrades without the need for a generator outage. Specifically, FPL plans to relocate the reserve auxiliary transformers (RATs) to a dedicated terminal position. The RATs are currently directly connected to bus No. 2 which, according to FPL, poses reliability concerns and operational limitations. In addition, the work will include relocating the generation step-up (GSU) transformer connections from their current position – where they share a breaker-and-a-half bay with the Seabrook - Scobie 345 kilovolt transmission line – to a dedicated double breaker bay. FPL also plans to install two replacement and three new gas insulated substation breakers. FPL stated that the upgrades will improve the performance of a substation that a) is an integral and critical part of the New England power grid and b) is the interconnection to the electric grid for the largest base load electric generating plant in New England.

The construction work will be performed in two phases. FPL intends to coordinate the timing of the first phase of the upgrade work with the October 2009 scheduled refueling outage for Seabrook Station. With that in mind, FPL stated that foundation work must begin by March 1, 2009 with structural and engineering work to commence by June 1, 2009 to allow for the configuration of the reconnection of the RATs to take place during the October 2009 refueling outage. The timing of the second phase of the project, involving the reconfiguration of the GSU and the installation of the new breakers, will coincide with the next Seabrook Station refueling outage in April 2011.

FPL will be reimbursed for some of its costs related to the upgrade project by the other co-owners<sup>4</sup> who collectively own the remaining 11.77% of the transmission substation. Monthly funding will be requested from those co-owners based on the monthly cash flow projections related to the project. As for the remainder of its costs, FPL-NED plans to seek recovery through its RNS rates for any of the new or upgraded facilities considered Pool Transmission Facilities (PTF). For those facilities not considered PTF, FPL-NED will recover the related costs from its one local transmission

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<sup>4</sup> The co-owners are Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant and Hudson Light & Power Department.

customer, FPLE Seabrook, through a combination of direct assignment charges and LNS rates pursuant to Schedule 21-FPL-NED of the ISO-NE tariff.

In its Motion for Confidential Treatment, FPL asserted that the balance sheet (Exhibit 5) and income statement (Exhibit 6) have not been provided to the Federal Energy Regulatory Commission (FERC) – with regard to FPL-NED – and that the information will not be available to the public until FPL files with FERC its Annual Report of a Major Electric Utility (Form 1) in April 2009. According to FPL, the balance sheet and income statement contain sensitive commercial information which, if disclosed, could cause harm to FPL-NED and the project. Further, FPL stated that since the Commission does not regulate any rates charged by FPL, the information is arguably not relevant to the Commission's consideration of the financing petition. Notwithstanding its position on the relevance of the information, FPL said it filed the information in compliance with the requirements set forth in the Commission's administrative rules.

### ***Staff Recommendation***

This proceeding differs somewhat from a "typical" financing petition to be considered by the Commission. Typically, such petitions are received from a Commission-regulated distribution utility, with resulting implications to the utility's capital structure, cost of capital and, therefore, revenue requirements. In this case, however, while there are the same implications to FPL-NED's cost of service, the resulting revenue requirements and customer rates fall under the purview of the FERC as FPL-NED is a transmission utility. While FPL-NED is a public utility in accordance with NH law, it is a foreign public utility subject to limited regulation by the Commission. The present filing is in accordance with the terms of the settlement agreement in DE 03-186 as well as RSA 369 and RSA 374-A:7. Pursuant to RSA 374-A:7, II (c), FPL could have been exempt from the requirements of RSA 369 related to the proposed financing if it had filed a

"certification...by a regulatory agency of the state of domicile or principal locus of such foreign electric utility, or of the United States, either that said regulatory agency has general regulatory jurisdiction over the financing of such foreign electric utility or that said regulatory agency has exercised jurisdiction over, or has reviewed and not objected to, a particular proposed financing or that said regulatory agency has general supervision of such foreign electric utility in the conduct of its electric business."

As FPL did not submit such a certification, the instant financing petition was necessitated. Having reviewed the specifics of the proposed financing including the proposed uses of the funds, in Staff's view, the terms and conditions of the line of credit agreement and the security agreement appear reasonable. Therefore, Staff recommends approval of the petition through an order *nisi*, with a *nisi* period appropriate to accommodate the requested timelines set forth in FPL's petition.

In addition, Staff recommends granting FPL's Motion for Confidential Treatment. Whether the information is or is not relevant – as FPL suggests – should have no bearing on the Commission's decision as to whether to grant FPL's motion. Rather, the decision should be based on the information contained in the documents and whether it should be deemed commercially sensitive. Given that the information has not been disclosed elsewhere and the relatively short period of time before the information is publicly disclosed, Staff recommends that the balance sheet (Exhibit 5) and income statement (Exhibit 6) only be granted protective treatment until such time as the information becomes publicly available, i.e., when FPL files its 2008 FERC Form 1.

Please let me know if you have any questions or would like to discuss this further.

cc: Tom Frantz  
Suzanne Amidon