

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: April 29, 2010

AT (OFFICE): NHPUC

SEM

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

SUBJECT: DE 10-042, Joint Application of Florida Power & Light Company and New Hampshire Transmission, LLC for Approval of Transfer of Assets

TO: Commissioners
Debra A. Howland, Executive Director



On March 1, 2010, Florida Power & Light Company (FPL) and New Hampshire Transmission, LLC (NHT) (together, the “Joint Applicants”) filed a joint application requesting approval, as part of a corporate restructuring, of the transfer of the Seabrook transmission substation (Substation) from FPL to NHT. In the alternative, the applicants were seeking a determination, pursuant to RSA 369:8, II, that the corporate restructuring is exempt from approval requirements. In support of the application, the applicants included a copy of the Transfer Agreement, the prefiled testimony of William C. Locke, Manager of Transmission Services for FPL, and other relevant documentation. FPL and NHT plan to complete the transfer on or about June 1, 2010, provided that all regulatory approvals have been received by that time.

Background

The Substation connects three major 345 kilovolt (kV) transmission lines as well as the 1,318 megawatt Seabrook Nuclear Generating Station (Seabrook Station) to the New England electric grid. In 2002, FPL Energy Seabrook (FPLE) acquired 88.23% of both Seabrook Station and the Substation. In 2004, the New Hampshire Public Utilities Commission approved the transfer of the ownership of the Substation from FPLE to FPL’s New England Division (FPL-NED). (See Order No, 24,258, 89 NH PUC 267 (May 7, 2004)). As part of the settlement agreement approved by the Commission in that proceeding, as long as FPL’s operations in New Hampshire are limited to owning and operating the Substation, the Commission’s regulatory oversight is limited. According to FPL, it maintains separate accounting books and records for FPL-NED as if FPL-NED were a separate entity, including listing separate costs for FPL-NED in the annual FERC Form 1.¹

According to the application, NHT is a Delaware Limited Liability Company (LLC) registered to conduct business in New Hampshire and was founded specifically to own the Substation. NHT is a wholly-owned subsidiary of U.S. Transmission Holdings,

¹ It is through this separate reporting that the Commission is able to ascertain the appropriate New Hampshire revenues for purposes of the regulatory assessment pursuant to RSA 363-A.

LLC (USTH). USTH is a wholly-owned subsidiary of FPL Group Resources, LLC, which is a wholly-owned subsidiary of FPL Group Capital, Inc., which is a wholly-owned subsidiary of FPL Group. An organization chart was included as Exhibit D to the application.

FPL's Corporate Restructuring and the Proposed Transfer

As explained in the application, FPL and NHT have negotiated and entered into a Transfer Agreement under which NHT will assume ownership of the Substation along with all the rights and obligations of FPL pertaining to the Substation. According to FPL and NHT, the transfer

...preserves the existing arrangements for operations of the Seabrook Substation, but transfers its ownership to a new utility within the FPL Group corporate family. This will make for a more directed ownership structure for the Seabrook Substation, as the Seabrook Substation will no longer be owned by a utility that otherwise has transmission assets only in Florida, and provide for continued regulation pertaining to the Seabrook Substation by the Commission. The corporate restructuring will be transparent and seamless, and cause no adverse effect, for the customers of NHT or other ratepayers in the region. Joint Application at 2.

Following the transfer, the Substation will be owned by NHT and will end what the Joint Applicants described as "the unusual situation of FPL, a public utility in Florida, owning transmission assets outside Florida." As mentioned, NHT is a subsidiary of USTH. USTH is a transmission holding company that will own rate regulated transmission companies and assets located outside of Florida. According to the Joint Applicants, "[t]he transfer should make for more straightforward regulation of the facility's operations by all of the regulatory commissions, including the NHPUC, as NHT will be a stand-alone New England Utility and Transmission Owner." In addition, the application states that the Florida Public Service Commission has indicated a preference for such a transaction so that FPL no longer owns the Substation.

The Joint Applicants further stated that:

As a result of the transfer, NHT will be regulated in the same manner as FPL has been with respect to the Seabrook Substation, including payment of applicable taxes and assessments, and assumption of all legal rights, responsibilities, and obligations of FPL for the Seabrook Substation. The corporate restructuring will not impede the Commission's ability to perform its regulate (sic), consistent with the Settlement Agreement, the ownership and operations of the Seabrook Substation, as the only change resulting from the transfer is what entity will own the facilities. Joint Application at 7.

NHT's Managerial, Financial and Technical Abilities

The joint application and the testimony of Mr. Locke state that NHT's operation of the Substation will be virtually unchanged from the way it is currently operated by

FPL, with the exception being that the President of NHT, as well as USTH, will be Edward F. Tancer, who was previously the Senior Vice President of Governmental Affairs for FPL and also served as General Counsel for FPL Group.² In the words of Mr. Locke,

FPL and NHT are working to ensure that there is a seamless transition in the operation of the Seabrook Substation in connection with the transfer. Almost all current O&M, reliability administrative, regulatory, and business management functions will continue to be handled by the FPL or NextEra Seabrook³ personnel or divisions that are currently tasked with these responsibilities. The only major difference is that these will be new executive oversight of the facilities due to its ownership by NHT.

In terms of financial resources, the Joint Applicants state that NHT is an indirect, wholly-owned subsidiary of FPL Group Capital which as of December 31, 2009 had total assets of \$21.6 billion, with a total net available liquidity of \$2.4 billion. According to the Joint Applicants, FPL Group Capital currently has a Line of Credit Agreement with FPL whereby FPL Group Capital will make loans to FPL to finance the construction by FPL of certain upgrades at the Substation, and that loan will be assumed by NHT once the ownership transfer is complete.⁴

Currently, operation and maintenance activities are performed by FPL and NextEra Seabrook personnel pursuant to an Operation, Maintenance and Administrative Services Agreement (OM&A Agreement), a copy of which was provided as confidential Exhibit F to the joint application. As part of the transfer, the OM&A Agreement will be amended and assigned from FPL to NHT which, according to the Joint Applicants, will provide continuity in the performance of operation and maintenance activities with the same level of expertise.

Future Reporting by NHT

Currently, FPL is assessed by the PUC based on its New Hampshire revenues associated with the operation of the Substation. The revenue information is obtained from FPL's FERC Form 1, but it is one small piece of information contained in that document that for the vast majority deals with activities outside of New Hampshire. As a result of the proposed transfer of the Substation to NHT, NHT will be a separate utility and, according to discussions Staff had with FPL, will file its own FERC Form 1.⁵ The filing of a separate FERC form by NHT will allow for a simpler, more transparent reporting process for New Hampshire regulatory purposes.

² Mr. Tancer's qualifications are contained in Exhibit E to the joint application.

³ NextEra Seabrook is the owner of 88.23% of the Seabrook nuclear generating station and was formerly known as FPL Energy Seabrook.

⁴ Locke testimony at 8.

⁵ NHT will file either a FERC Form 1 or Form 1-F depending on whether it is classified as a major or nonmajor utility pursuant to Title 18, Code of Federal Regulations § 141.1 and 141.2.

Joint Applicants' Alternative Request for Approval Pursuant to RSA 369:8, II

The joint application for approval of the transfer of the Substation from FPL to NHT was filed pursuant to RSA 374:30 which requires that the Commission find that the proposed transfer is in the public good. Alternatively, the Joint Applicants requested that the Commission make a determination pursuant to RSA 369:8, II that the transaction is exempt from Commission approval. In Staff's view, whether RSA 369:8, II applies to the corporate restructuring/transfer contemplated by the joint applicants is irrelevant in this instance as one of the conditions to which FPL previously agreed in DE 03-186 was "[r]equiring Commission approval to transfer any assets to another entity pursuant to RSA 374:30 or any successor statute."⁶ As FPL had previously agreed to this requirement, Staff believes that determination of the applicability of RSA 369:8, II to this transaction is not necessary.

Other Issues not Mentioned in the Joint Application

During its review of the joint application, certain other issues that Staff believes warrant the Commission's attention. First, the Settlement Agreement in DE 03-186 contained several references to RSA 374-A:7 which concerns the regulation of foreign electric utilities. While FPL met the definition of a foreign electric utility, Staff questions whether the same definition would apply to NHT. Pursuant to RSA 374-A:1, V, a "foreign electric utility" is "any electric utility other than a domestic electric utility" which, in accordance with RSA 374-A:1, II is "an electric utility resident in, or organized under the laws of this state." NHT is a Delaware LLC, so it could qualify as "foreign" under that part of the definition, but Staff questions what the meaning of "resident in" is for purposes of a utility being classified as foreign or domestic. While this may appear to be a minor point for a transaction that on its face is nothing more than a simple ownership transfer, there are several references to statutes pertaining to foreign electric utilities in the DE 03-186 Settlement Agreement. If NHT is deemed a domestic rather than foreign electric utility, those references would essentially have no relevance to NHT. While the Joint Applicants have asserted that there would be no changes in NHT's duties, obligations and commitments as compared to FPL – and Staff has no reason to believe otherwise – Staff believes that it is necessary to clarify NHT's regulatory status to eliminate any potential future disagreements. As an example of the need for clarifying NHT's regulatory status, one of the requirements contained in the Settlement Agreement in DE 03-186 reads as follows:

With respect to the 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.*** (emphasis added) Joint Application, Exhibit C, Settlement Agreement in DE 03-186 at 3.

⁶ Joint Application, Exhibit C, Settlement Agreement in DE 03-186 at 4.

In Docket No. DE 08-164, FPL requested approval for financing of certain upgrades at the Substation. FPL made that filing after unsuccessfully attempting to obtain a RSA 374-A:7, II(c)-type of certification from the Florida Public Service Commission – an option it had as a foreign electric utility. NHT, on the other hand, does not appear to have another regulatory agency to which it could seek such a certification, so it appears that NHT's only option would be to file any future financing requests for Commission approval even though the Commission would not regulate the rates and terms of service of NHT.

One other issue relates to the fact that the joint application contains no requests for approvals pursuant to RSA 374:22 (prohibiting the commencement of business without obtaining the permission and approval of the Commission) or RSA 374:26 (regarding the granting of such permission if found to be in the public interest). Staff believes that these are necessary approvals for NHT to begin operations in New Hampshire and, although not included in the joint application, should be included in the Commission's decision.

Staff's Recommendation

Having reviewed the joint application and the supporting information, Staff believes that NHT has the necessary managerial, financial and technical abilities to own and operate the Substation. In Staff's view, the transfer of the Substation to NHT will provide for a clearer structure from a New Hampshire regulatory perspective as ownership of the Substation will be NHT's primary focus rather than the current situation where the Substation is one of many responsibilities of FPL, with the majority of those responsibilities outside of New Hampshire. Staff recommends that the application to transfer the ownership and operation of the Seabrook transmission substation from FPL to NHT be approved, but with necessary clarifications as to the regulatory status of NHT. Staff recognizes that the Joint Applicants have committed that "NHT will assume the duties, obligations and responsibilities of FPL under the Settlement Agreement approved by the Commission" in DE 03-186, but believes clarity as to regulatory requirements going forward is necessary to eliminate potential difficulties in the future. With all of the foregoing in mind, Staff recommends that the Commission issue an order *nisi* with an effective date that would allow for the approval to take effect on or before the Joint Applicants' planned date to complete the transfer "on or about June 1, 2010."

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

cc: Tom Frantz
Suzanne Amidon
Service List