

131 FERC ¶ 62,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company
New Hampshire Transmission, LLC

Docket No. EC10-58-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued May 13, 2010)

On April 1, 2010, as supplemented on May 5, 2010, Florida Power & Light Company (Florida P&L), and New Hampshire Transmission, LLC (New Hampshire Transmission) (collectively, Applicants) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the transfer by Florida P&L to New Hampshire Transmission of Florida P&L's 88.22889 percent undivided ownership interest in the Seabrook Substation located adjacent to the Seabrook Nuclear Generating Station in Seabrook, New Hampshire. Applicants state that the proposed transaction is being undertaken for the purposes of regulatory efficiency and to rationalize the geographic operations of Florida P&L, a traditional franchised utility that, but for the Seabrook Station, only owns and operates utility assets in and around the state of Florida. The jurisdictional facilities involved in the proposed transaction include the Seabrook Substation's assets associated with the transmission of electrical power² and Florida P&L's Local Network Service Tariff.

The Seabrook Substation is a Pool Transmission Facility under the Open Access Transmission Tariff (OATT) of the ISO New England (ISO-NE), a part of the New England Bulk Power System, and one of the more critical substations in New England. The Seabrook Substation interconnects the 1,318 megawatt (MW) Seabrook Nuclear Generating Station, the largest single electric generation resource in New England, with the New England electric grid. In addition, the Seabrook Substation connects three major 345 kilovolt transmission lines.

Florida P&L owns 88.22889 percent undivided interest in the Seabrook Substation. The remainder of the substation is owned by Massachusetts Municipal

¹ 16 U.S.C. § 824b (2006).

² *E.g.*, Exhibit G of the application provides a list of the Seabrook Station's 345 kilovolt assets.

Wholesale Electric Company (approximately 11.59 percent), Taunton Municipal Lighting Plant (approximately 0.10 percent) and the Hudson Light and Power Department (approximately 0.08 percent) (collectively, Co-owners). The Co-owners also own identical percentages of the Seabrook Nuclear Generating Station, but the remaining 88.22889 percent share in the generating plant is owned by Florida P&L's affiliate, NextEra Energy Seabrook, LLC (NextEra Seabrook), rather than Florida P&L. The proposed transaction does not affect or involve the Co-owners.

Florida P&L is a wholly-owned direct subsidiary of FPL Group, Inc. (FPL Group). Florida P&L is one of the largest rate-regulated electric utilities in the nation, serving approximately 4.5 million customer accounts with approximately 21,000 MW of generation along the eastern Seaboard and southern portion of Florida. Other than the Seabrook Substation, Florida P&L's transmission facilities are located primarily within the state of Florida and are administered pursuant to Florida P&L's OATT, which is on file with the Commission.

In addition to being regulated as a traditional utility in Florida, Florida P&L is regulated as a public utility under New Hampshire law pursuant to a 2004 settlement (2004 Settlement) entered into with the New Hampshire Public Utilities Commission (New Hampshire PUC). Under the settlement agreement, so long as Florida P&L's operations in New Hampshire are limited to owning an interest in and operating the Seabrook Substation, the New Hampshire PUC's regulatory oversight is limited.

Florida P&L holds its interest and operates the Seabrook Substation through its operating division FPL-New England Division (FPL-NED). FPL-NED operates the Seabrook Substation on behalf of itself and the Co-owners. The regional facilities associated with the Seabrook Substation are under the operational control of ISO-NE and subject to ISO-NE's OATT. In addition, FPL-NED has published a Local Network Service Tariff on file with the Commission pursuant to which it provides local service to NextEra Seabrook. To accurately reflect the cost and revenues of the Seabrook Substation, Florida P&L 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 Florida P&L's FERC Form 1.

Florida P&L and NextEra Seabrook have previously entered into an Operation, Maintenance and Administrative Services Agreement (OM&A Agreement) under which NextEra Seabrook's maintenance personnel and contractors currently perform most of the operations, maintenance, and related functions at the Seabrook Substation. Florida P&L provides other management and oversight functions needed for the operation of the Seabrook Substation. The services that Florida P&L provides for the Seabrook Substation are directly charged to FPL-NED at the applicable fully loaded cost.

New Hampshire Transmission has been formed specifically to acquire Florida

P&L's interests in the Seabrook Substation. New Hampshire Transmission is a wholly-owned subsidiary of U.S. Transmission Holdings, LLC (U.S. Transmission Holdings), which in turn is a wholly-owned subsidiary of FPL Group Resources, LLC (FPL Group Resources). FPL Group Resources is a wholly-owned subsidiary of FPL Group Capital Inc. (FPL Group Capital), which in turn is a wholly-owned subsidiary of FPL Group.

FPL Group Capital also owns NextEra Resources, LLC (NextEra) (f/k/a FPL Energy, LLC). NextEra was formed in 1988 to aggregate FPL Group's existing merchant power business. NextEra owns, develops, constructs, manages, and operates independent power projects that sell energy, capacity, and ancillary services in a number of domestic electricity markets outside of Florida. Through its subsidiaries, NextEra indirectly owns and operates generating facilities that total over 18,000 MW in net generating capacity in 26 states and Canada including approximately 2,800 MW of generation in the ISO-NE market.

In the proposed transaction, Florida P&L will assign to New Hampshire Transmission and New Hampshire Transmission will accept all of Florida P&L's ownership interest in, and rights, obligations and liabilities with respect to, the Seabrook Substation.³ Following the transfer of the interests in the Seabrook Substation to New Hampshire Transmission, FPL-NED will cease to exist as a separate division of Florida P&L.

Applicants state that the proposed transaction is being undertaken to rationalize the holding of ownership interests in the Seabrook Substation within the FPL Group corporate family. U.S. Transmission Holdings, the parent of New Hampshire Transmission, is a new transmission holding company that will own traditional rate regulated transmission companies and assets located outside of Florida, including New Hampshire Transmission and certain transmission assets under development in Texas. The formation of U.S. Transmission Holdings allows for consolidation of the ownership of affiliated transmission assets outside Florida under a dedicated corporate holding company structure that is separate from NextEra and that will facilitate compliance with the Commission's conduct-related requirements (*e.g.*, Standards of Conduct, affiliate restrictions, and cross-subsidization rules). The proposed transaction will allow for more straightforward regulation of the Seabrook Substation's operations by the Commission and the New Hampshire PUC because New Hampshire Transmission will be a stand-alone transmission owner under the ISO-NE OATT.

³ The proposed transaction will be accomplished pursuant to the Asset Transfer and Assignment of Rights Agreement (Transfer Agreement) between Florida P&L and New Hampshire Transmission. A copy of the unexecuted Transfer Agreement, which Applicants state to be in a form similar to what the parties expect to execute, is included in Exhibit I of the application.

The proposed transaction will also end the unusual situation of Florida P&L, a traditional regulated utility in Florida, owning transmission assets outside of and unrelated to that state. Florida P&L originally acquired ownership in the Seabrook Substation partly as a means of satisfying integration standards under the Public Utility Holding Company Act of 1935 (PUHCA 1935) in conjunction with NextEra's acquisition of ownership interests in the Seabrook Nuclear Generating Station. As PUHCA 1935 has now been repealed, there is no longer a need for ownership interests in Seabrook Substation to reside within Florida P&L. In addition, Florida P&L has committed to the Florida Public Service Commission (Florida PSC) that it will transfer the FPL-NED assets to a separate entity.

In conjunction with the proposed transaction, New Hampshire Transmission will enter into an amended and restated OM&A Agreement with Florida P&L under which Florida P&L will: (i) provide to New Hampshire Transmission management and administrative services concerning regulatory and other matters that Florida P&L currently provides internally to itself with respect to the Seabrook Substation; and (ii) purchase from NextEra Seabrook and resell to New Hampshire Transmission the operating and maintenance services currently provided by NextEra Seabrook to Florida P&L under the existing OM&A Agreement. All services provided or resold by Florida P&L to New Hampshire Transmission under the amended and restated OM&A Agreement will be at cost, and the operating and maintenance services that Florida P&L purchases from NextEra Seabrook for resale to New Hampshire Transmission will be provided by NextEra Seabrook to Florida P&L at cost.⁴

As part of the proposed transaction, New Hampshire Transmission will assume the rights and obligations of Florida P&L under the 2004 Settlement and become a utility regulated by the New Hampshire PUC in the same manner as Florida P&L has been with respect to the Seabrook Substation. In addition, New Hampshire Transmission will either

⁴ Applicants state that as Florida P&L is a franchised public utility having captive customers and New Hampshire Transmission will be a transmission owning utility providing service at regulated rates, it appears that the Commission's rules on the pricing of non-power goods and services between affiliates will not apply to the amended and restated OM&A Agreement between Florida P&L and New Hampshire Transmission. See 18 C.F.R. § 35.44. However, under the same rules, NextEra Seabrook will meet the definition of a "market regulated power sales affiliate" and Florida P&L will consequently be prohibited from purchasing operating and maintenance services from NextEra Seabrook at a price above market. See 18 C.F.R. § 35.44(b)(2). Given the specialized nature of the services to be provided, the Applicants submit that the cost of such services will invariably be less than the market price and thus that the Commission's affiliate pricing rules for sales of non-power goods and services will be satisfied.

assume Florida P&L's existing jurisdictional and non-jurisdictional agreements with ISO-NE and other regional electric utilities relating to cost recovery and operation of the Seabrook Substation or enter into substantially identical new agreements with such parties.⁵ Applicants state that New Hampshire Transmission will file notices of succession or make other filings with the Commission to accomplish these steps.

FPL Group Capital currently has a \$63 million line of credit with Florida P&L under which FPL Group Capital has agreed to make loans to Florida P&L to finance Florida P&L's ownership share of the cost of ongoing capital upgrades of the Seabrook Substation (Line of Credit Agreement). Approximately \$36 million has already been borrowed by Florida P&L under the agreement pursuant to authorization from the New Hampshire PUC. As part of the proposed transaction, when New Hampshire Transmission acquires the interests in Seabrook Substation it will also assume the rights and obligations of Florida P&L under the Line of Credit Agreement and the related security agreement and mortgage deed. FPL Group Capital currently has a security interest and mortgage lien in Florida P&L's undivided ownership interests in capital upgrades to Seabrook Substation that have been or are acquired, in whole or in part, with proceeds of loans made under the Line of Credit Agreement in order to secure repayment of such loans. The security interest and mortgage lien will remain in place when ownership interests in the Seabrook Substation are acquired by New Hampshire Transmission.

In addition, Florida P&L's ownership interests in the Seabrook Substation (other than capital upgrades financed pursuant to the line of Credit Agreement) are currently subject to a first priority lien under Florida P&L's first mortgage indenture, and such capital upgrades are subject to a second priority lien under Florida P&L's first mortgage indenture. The lien on Florida P&L's ownership interest in the Seabrook Substation under the first mortgage indenture will be released shortly after consummation of the proposed transaction and the fair market valuation.

Florida P&L's ownership interests in the Seabrook Substation are planned to be transferred to New Hampshire Transmission for cash consideration equal to the net book cost of the interests. However, pursuant to an order of the Florida PSC, Florida P&L has been directed to retain an independent consultant to appraise the market value of the Seabrook Substation facilities. Florida P&L and New Hampshire Transmission believe

⁵ These agreements will include: (i) an interconnection agreement with Seabrook Nuclear Generating Station; (ii) the Local Network Service Tariff; (iii) Transmission Owner Agreement and other agreements with ISO-NE; (iv) interconnection, protection, and control and transmission support agreements with interconnected utilities; and (v) an agreement with Public Service Company of New Hampshire for electric system control center services.

that the market value of the Seabrook Substation interests is equal to the net book value under the circumstances of the proposed transaction. If the market value is found to be higher than the net book value, Applicants state that the proposed transaction price will be adjusted, and any amount over book value will be accounted for by New Hampshire Transmission as an acquisition adjustment. Any such adjustment would not be put into New Hampshire Transmission's rates without prior approval by the Commission and only as permitted by Commission precedent.

Applicants argue that the proposed transaction will not have an adverse effect on competition, rates, or regulation, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Applicants argue that the proposed transaction will not have any adverse effect on competition in the relevant market and does not raise any horizontal or vertical market power concerns. Regarding horizontal market power concerns, Applicants state that the proposed transaction does not involve any change in control over generation and that the Commission has ruled that a horizontal competitive analysis is not required where, as with the case here, the proposed transaction involves only the transfer of transmission facilities. Applicants also argue that no vertical market power concerns exist because the proposed transaction does not involve the combination of entities controlling generation with entities controlling transmission or other vertical inputs to generation. Applicants also note that, regarding the transmission facilities at issue in the in the proposed transaction that are subject to the operational control of ISO-NE, the Commission has ruled that turning over operational control of transmission facilities to an independent entity mitigates any concerns about transmission-related vertical market power.

Applicants state that the proposed transaction will not have an adverse effect on the rates charged to either wholesale sales or transmission services customers. New Hampshire Transmission is stepping into the shoes of FPL-NED, and the cost of transmission services provided by New Hampshire Transmission after consummation of the proposed transaction will be the same as they would have been if Florida P&L retained its ownership interests in the Seabrook Substation. Except in the unlikely event of an acquisition adjustment,⁶ the interests in the Seabrook Substation will be held on New Hampshire Transmission's books at the same net book cost levels as they would be held on Florida P&L's books. In addition, the operating, maintenance, and other management costs for the Seabrook Substation will be the same for New Hampshire Transmission as they were for Florida P&L.

⁶ Applicants have stated that an acquisition adjustment would not be put into New Hampshire Transmission's rates without prior approval by the Commission and only as permitted by Commission precedent.

Applicants state that the proposed transaction will have no effect on regulation by the Commission and the New Hampshire PUC. Applicants state that both bodies will continue to have the same jurisdiction with respect to New Hampshire Transmission and the Seabrook Substation after the consummation of the proposed transaction as they currently have with respect to Florida P&L and the Seabrook Substation.

Applicants also verify that based on facts and circumstances known to the Applicants or that are reasonably foreseeable, the proposed transaction will not result in, at the time of the proposed transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

Applicants provide an analysis of each of the elements required by the Commission's regulations to be explained in Exhibit M.⁷

☐ Disclosure of existing pledges and encumbrances of utility assets

Applicants state that Florida P&L has pledges and encumbrances of utility assets in an around the state of Florida that are not relevant to and will be unaffected by the proposed transaction. The pledges or encumbrances relevant to the proposed transaction are (i) the existing security interest and mortgage lien in Florida P&L's ownership interests in upgrades to the Seabrook Substation as held by FPL Capital Group to secure borrowings under its Line of Credit Agreement with Florida P&L; and (ii) the first priority lien under Florida P&L's first mortgage indenture on Florida P&L's ownership interests in the Seabrook Substation (other than capital upgrades financed pursuant to the Line of Credit Agreement, with respect to which the lien of Florida P&L's first mortgage indenture is a second lien). As discussed above, New Hampshire Transmission will assume the Line of Credit Agreement (and the related security agreement and mortgage deed) as part of the proposed transaction and Florida P&L will no longer have any liability under the Line of Credit Agreement (or the related security agreement and mortgage deed) following the consummation of the proposed transaction. Also, the lien on Florida P&L's ownership interests in the Seabrook Substation under Florida P&L's first mortgage indenture will be released upon consummation of the proposed transaction and a fair market valuation of such ownership interests.

⁷18 C.F.R. § 33.2(j).

- ☐ Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company?

Applicants state that the proposed transaction does involve the transfer of transmission facilities between a traditional public utility associate company that has captive customers (Florida P&L) to New Hampshire Transmission which is an associate company of Florida P&L. However, Applicants note that the proposed transaction is being pursued at the behest of the Florida PSC (which has principal responsibility for the protection of Florida P&L's captive customers) for reasons that are in the public interest (i.e. regulatory simplification). Applicants also state that, whereas the Commission's principal concern here is the transfer of facilities from entities with captive customers to associate companies having market-based rate authority, New Hampshire Transmission will have cost-based rates subject to Commission jurisdiction.

- ☐ Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company?

Applicants state that there will not be any new issuances of securities by a traditional public utility company as part of or in connection with the proposed transaction.

- ☐ Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company?

Applicants state that there will not be any new pledges or encumbrances of assets of a traditional public utility as part of or in connection with the proposed transaction. However, as discussed above, the proposed transaction will result in the transfer of assets that have an existing encumbrance upon them to New Hampshire Transmission.

- ☐ Any new affiliate contract between a non-utility associate company and a traditional public utility associate companies that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA?

Applicants state that, as explained above, Florida P&L, a traditional public utility associate company that has captive customers, will enter into an amended and restated

OM&A Agreement with New Hampshire Transmission as part of the proposed transaction and will enter into an agreement with NextEra Seabrook to obtain some of the services necessary for performing the amended and restated OM&A Agreement. However, New Hampshire Transmission, the principal beneficiary of these contracts, will be a utility associate company having its own captive ratepayers, rather than a non-utility. Moreover, all of the new affiliate contracts to be entered into as part of the proposed transaction will be subject to Commission review under Sections 205 and 206 of the FPA, and the provision of non-power goods and services between Florida P&L and NextEra Seabrook will continue to be subject to the Commission's affiliate pricing restrictions.

This filing was noticed on April 1, 2010. Comments, protests or interventions were due on or before April 22, 2010. None was received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301 (c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of this transaction is based on such examination ability.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market based rate authority timely report to the Commission any change in status that would reflect a departure from the

characteristics the Commission relied upon in granting market-based rate authority.⁸ The foregoing authorization may result in a change in status. Accordingly, Applicants are advised to make a change in status filing as required by Order No. 652, if necessary.

After consideration, it is concluded that the proposed transaction is consistent with the public interest, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the proposed transaction results in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicants shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction;
- (7) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the proposed transaction;
- (8) The Applicants shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. The Applicants shall submit their final accounting entries within six months of the date that the transaction is

⁸ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

- (9) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities under the proposed transaction has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Steve P. Rodgers
Director, Division of Electric
Power Regulation - West