

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-164

FLORIDA POWER & LIGHT COMPANY

Petition for Approval of Financing for Seabrook Transmission Substation Upgrade

Order *Nisi* Approving Petition

ORDER NO. 24,935

January 30, 2009

On December 22, 2008, Florida Power & Light Company (FPL) filed a petition requesting approval of financing for certain planned improvements at its Seabrook, New Hampshire transmission substation. With the petition, FPL filed a motion for confidential treatment and an E-22 form. FPL, through Florida Power & Light-New England Division (FPL-NED) owns and operates the transmission substation located on the grounds of the Seabrook nuclear power plant in Seabrook, New Hampshire. 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 pursuant to the terms of a settlement agreement approved by the Commission in Docket No. DE 03-186, *Florida Power & Light Company*, Order No. 24,321, 89 NH PUC 267 (May 7, 2004). In that docket, FPL Energy Seabrook, LLC transferred its 88.23% ownership interest in Seabrook substation to FPL-NED. In that settlement FPL agreed, along with other provisions: 1) to be subject to all laws and regulations applicable to the construction, operation and use of the Seabrook transmission substation pursuant to RSA 374-A:7, II(b) (which addresses the authority of the Commission to regulate foreign utilities owning electric power facilities in New Hampshire), and 2) with respect to any financing of FPL-NED's

interest in the Seabrook substation, to be subject to the provisions of RSA 369 and other applicable regulatory laws of New Hampshire, unless FPL or FPL-NED files with the Commission a certification by another state or federal regulatory agency indicating that it has general supervision over FPL or FPL-NED, as set forth in RSA 374-A:7, II(c). The E-22 form was filed in conformance with the first provision noted above and in accordance with N.H. Code Admin. Rule Puc 308.07. FPL requested confidential treatment for the contents of a current balance sheet and income statement for FPL-NED adjusted for the financing as required by Puc 308.12.

With its petition, FPL filed the testimony of Kathy Beilhart, Assistant Treasurer of the FPL Group, Inc., FPL and FPL Group Capital, Inc. (FPL Group Capital), addressing the details of the financing, and William C. Locke, Jr., Manager of Transmission Services for FPL, describing the planned upgrades to the Seabrook substation to be funded by the proposed financing. FPL Group Capital, a wholly-owned subsidiary of FPL Group, Inc., holds the capital stock of or has equity interests in FPL Group's operating subsidiaries other than FPL and provides funding for those subsidiaries.

According to the petition, FPL Group Capital has agreed to make loans through a line of credit agreement to FPL in an aggregate principal amount outstanding at any one time not to exceed \$36 million. 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. In its filing, FPL anticipates that it will require cash in varying amounts through 2011, with the bulk of the cash required (approximately \$22.7 million) during calendar year 2009 to upgrade the substation.

FPL stated that the interest rate for the loans will be based on FPL Group Capital's weighted average cost of debt calculated on a monthly basis, with interest payable on the first day of each calendar quarter. With the exception of the asset additions of FPL-NED financed with the loan proceeds, the loans will be non-recourse to FPL and all of its assets. To obtain the financing, FPL said it will need to perfect a security interest in the new assets, obtain any necessary mortgage or other security document, and make the appropriate UCC filings or mortgage recordings. FPL estimates the cost of the financing as \$40,000 based on the closing costs, including the costs and expenses of FPL and FPL Group Capital in connection with the preparation, execution and delivery of the Line of Credit Agreement and related documents. FPL said that it is also responsible for any of FPL Group Capital's post-closing costs and expenses in connection with the administration or enforcement of the loans or recovering, protecting or enforcing its interest in the collateral.

With respect to the 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 during 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 those outages. According to FPL, although 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.

As stated in the petition, the planned improvements include relocating the reserve auxiliary transformers (RATs) to a dedicated terminal position. FPL said the RATs are now

directly connected to bus No. 2, which poses reliability concerns and operational limitations. Further, according to FPL, 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 indicated that the upgrades will improve the performance of a substation that: 1) is an integral and critical part of the New England power grid; and 2) is the interconnection to the electric grid for the largest base load electric generating plant in New England.

FPL plans to conduct the construction work in two phases and has scheduled the timing of the first phase of the work to coincide with a scheduled October 2009 refueling outage for the Seabrook Station nuclear plant. To accommodate this schedule, FPL said that the foundation work must begin by March 1, 2009 to allow the structural and electrical installation to begin by June 1, 2009. According to FPL, the cutover from the old to the new configuration and equipment will begin with reconnection of the RATs during the October 2009 outage. The timing of the second phase of the project, involving the reconfiguration of the GSU and installation of the remaining two new breakers, will be performed coincident with the next scheduled Seabrook plant refueling outage in April 2011.

According to FPL, the co-owners of the remaining 11.77 percent interest in the substation – Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light & Power Department – will reimburse FPL for their shares of the costs related to the upgrade project. FPL will request monthly funding from those co-owners based on the monthly cash flow projections related to the project. With respect to the remainder of its costs, FPL-NED plans to seek recovery through its Regional Network Service (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 customer, FPLE Seabrook, LLC, through a combination of direct assignment charges and Local Network Service (LNS) rates pursuant to Schedule 21-FPL-NED of the Independent System Operator-New England (ISO-NE) tariff.

In its motion for confidential treatment, FPL asserts that the balance sheet and income statement (Exhibits 5 and 6, respectively) have not been provided to the Federal Energy Regulatory Commission (FERC), with respect to FPL-NED, and that the information will not be available to the public until FPL-NED files with FERC its 2008 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 this information, FPL said it filed the information in compliance with the requirements set forth in the Commission's administrative rules on electric service.

Staff filed its recommendation on January 27, 2009. Staff noted that this proceeding differs from a typical financing petition in that such petitions are usually 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, Staff pointed out that 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 because FPL-NED is a transmission utility. While FPL-NED is a public utility under New Hampshire law, it is a

foreign public utility subject to limited regulation by the Commission. Staff observed that FPL made its filing pursuant to the terms of the settlement agreement approved in Docket No. DE 03-186 and in accordance with 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 from a regulatory agency with general regulatory jurisdiction over FPL's financing that either approved or did not object to the financing proposed in FPL's petition. Staff noted that, because FPL did not submit such a certification, FPL was required to make the instant filing with the Commission, hence warranting Staff's review.

Having reviewed the specifics of the proposed financing, including the proposed uses of the funds, Staff opined that the terms and conditions of the line of credit agreement and the security agreement appear reasonable. In summary, Staff recommended 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 recommended the Commission grant FPL's motion for confidential treatment for FPL-NED's balance sheet and income statement included in the filing. Staff said whether or not the information is relevant, as suggested by FPL, is immaterial to the Commission's decision on FPL's motion. Based on its review of the information for which FPL requested confidential treatment, Staff noted that the information has not been disclosed elsewhere and could be deemed commercially sensitive. Given the fact that the information would be publicly disclosed when FPL-NED files its 2008 FERC Form 1, Staff recommended that the Commission grant confidential treatment to the balance sheet and income statement until the April 2009 FERC filing.

Pursuant to the settlement agreement approved in Docket No. DE 03-186 and RSA 374-A:7 and based on the information contained in the filing and Staff's recommendation, we

approve the proposed financing as in the public good on a *nisi* basis in order to provide any interested party the opportunity to submit comments or to request a hearing.

Next, we address FPL's motions for confidential treatment. The Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV, however, exempts from disclosure certain "confidential, commercial, or financial information." In order to rule on the motions, we have made an *in camera* review of the material which FPL asserts is confidential.

FPL seeks protective treatment of FPL-NED's balance sheet and current income statement from disclosure. FPL asserts that this information is sensitive commercial information and is not disclosed publicly until FPL-NED files its FERC Form 1 in April 2009. According to FPL, the disclosure of this information could cause harm to FPL-NED and the project to upgrade the Seabrook substation. In addition, FPL only requests confidential treatment until such time as FPL-NED files its FERC Form 1.

Inasmuch as disclosure in this instance could negatively affect FPL-NED and the Seabrook substation upgrades, and in light of the fact that the information will be publicly disclosed in FPL-NED's April 2009 FERC Form 1 filing, we do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the need for FPL-NED to maintain the confidentiality of this information. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997) (describing applicable balancing test). Therefore, we grant the motion for confidential treatment, but only until such time as FPL-NED makes its FERC Form 1 filing for calendar year 2008. Consistent with past practice, this determination is subject to the ongoing authority of the Commission, on its own motion or

on the motion of Staff, any party or other member of the public, to reconsider in light of RSA 91-A, should circumstances warrant.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the petition of Florida Power & Light Company for approval of financing to support the Seabrook transmission substation upgrade as set forth in its December 22, 2008 filing is hereby GRANTED; and it is

FURTHER ORDERED, that Florida Power & Light Company's motion for confidential treatment is hereby GRANTED as described above; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than February 6, 2009 and to be documented by affidavit filed with this office on or before February 20, 2009; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than February 13, 2009 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than February 16, 2009; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective February 20, 2009, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of
January, 2009.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director