

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-042

**FLORIDA POWER & LIGHT COMPANY and
NEW HAMPSHIRE TRANSMISSION, LLC**

**Joint Application for Approval of the Transfer
of Seabrook Transmission Substation**

Order *Nisi* Approving Transfer

ORDER NO. 25,105

May 26, 2010

I. BACKGROUND

On March 1, 2010, Florida Power & Light Company (FPL) and New Hampshire Transmission, LLC (NHT) (the Applicants) filed a joint application requesting approval, in connection with a corporate restructuring, of the transfer of FPL's 88.23 percent ownership interest in the Seabrook transmission substation (Substation) to NHT. In the alternative, the Applicants seek a determination, pursuant to RSA 369:8, II, that the corporate restructuring is exempt from approval requirements. FPL and NHT seek to complete the transfer on or about June 1, 2010, subject to the receipt of all necessary regulatory approvals. On May 14, 2010, FPL filed a letter with the Commission stating that, on May 13, 2010, the Federal Energy Regulatory Commission (FERC) issued an Order Authorizing Disposition of Jurisdictional Facilities approving the transfer of FPL's 88.23 percent ownership interest in the Substation to NHT.

The Applicants also filed a motion for confidential treatment of the Operation, Maintenance and Administrative Services Agreement (OM&A Agreement) that defines the duties of the signatories with respect to management, operation and maintenance of the

Substation. FPL-New England Division (FPL-NED) and NextEra Seabrook (NextEra)¹ are currently parties to the OM&A Agreement. As part of the transfer, FPL will amend and then assign the OM&A Agreement to NHT.

The Applicants made the filing pursuant to the terms of a settlement agreement approved by the Commission in Docket No. DE 03-186, *Florida Power & Light Company*, 89 NH PUC 267, Order No. 24,321 (May 7, 2004). In that docket, FPL Energy Seabrook, LLC transferred its 88.23% ownership interest in the Seabrook Substation to FPL-NED. In the settlement, FPL agreed, among other things, 1) to be subject to all laws and regulations applicable to the construction, operation and use of the 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) that any financing of FPL-NED's interest in the Seabrook substation would be subject to the provisions of RSA 369 and other applicable law.

The Substation is a pool transmission facility (PTF) under the FERC jurisdictional tariff of the Independent System Operator-New England (ISO-NE) and a part of the New England Bulk Power System. 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. The Substation comprises a 345 kV open air termination yard where the three 345 kV transmission lines convert from an open-air design to an SF6 Bus-enclosed design, approximately 900 feet of SF6 Bus-enclosed 345 kV transmission lines, and the Substation itself, which is a 345 kV SF6 gas insulated switchgear substation.

¹ NextEra Seabrook is the owner of 88.23% of the Seabrook nuclear generating station and was formerly known as FPL Energy Seabrook.

According to the filing, 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, LLC an FPL Group affiliate created for the purposes of owning FPL transmission investments that are sited outside of Florida. U.S. Transmission Holdings, LLC is a wholly-owned subsidiary of FPL Group Resources, LLC. FPL Group Resources is a wholly-owned subsidiary of FPL Group Capital, Inc, itself a wholly-owned subsidiary of FPL Group. *Id.* at 4.

The Applicants state that the corporate restructuring is in the public interest and preserves existing arrangements for operation of the Substation. By transferring its ownership interests in the Substation to NHT, FPL, a public utility in Florida, will no longer own transmission assets outside of Florida, a change which would be welcomed by the Florida Public Utilities Commission, according to the Applicants. As the filing details, at the time of the asset transfer to FPL in 2004, FPL was restricted from having an affiliate own the Seabrook Substation under the requirements of the Public Utility Holding Company Act of 1935, which was repealed in 2005. The Applicants further state that the transfer should make for more direct regulation of the facility's operation. According to FPL, NHT's operation of the Substation will be virtually unchanged. The current operation, maintenance, reliability, administrative, regulatory and business management functions will continue to be handled by FPL or NextEra personnel or divisions currently tasked with those responsibilities. The assignment of the OM&A to NHT will provide continuity in the performance of the operation and maintenance activities at the Substation with the same level of expertise currently provided. *Id.* at 9-11.

Regarding NHT's financial capability, the Applicants said 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. The filing indicated that 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 of certain upgrades at the Substation, and those loans will be assumed by NHT once it takes ownership.

Staff reviewed the financial, technical and managerial capability of NHT to own and operate the Substation, and on April 29, 2010 recommended that the Commission approve the transfer. Regarding the Applicants' request that the Commission approve the transfer pursuant to RSA 374:30 or, in the alternative make a determination pursuant to RSA 369:8, II that the transaction is exempt from Commission approval, Staff indicated that, whether RSA 369:8, II applies to the proposed transaction is irrelevant because FPL had previously agreed as part of the earlier settlement that any transfers of assets would be subject to review under RSA 374:30 or any successor statute. In addition, Staff noted that the Applicants did not request approval from the Commission for NHT to commence business as a public utility pursuant to RSA 374:22 or RSA 374:26 and recommended that the Commission consider the public interest as required by those statutes in reviewing the merits of the transfer.

II. ANALYSIS

A. Confidentiality

We first address the Applicants' motion for confidential treatment. The Commission applies the analysis set forth in *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106, 109 (2003) in evaluating the merits of motions for confidential treatment. The *Lamy* Court described a three-step analysis for determining whether disclosure of public records is required under RSA 91-A:5, IV. First, the court evaluates whether a privacy interest is at stake that would be invaded by disclosure. Next, it assesses the public's interest in disclosure, that is,

whether disclosure of the information informs the public about the conduct and activities of their government. In the final step, the Court balances the interests in disclosure and the interests in non-disclosure. The Commission uses the same three-step analysis in determining whether information it receives is subject to disclosure under the Right-to-Know law. *See, e.g.* Docket No. DG 08-048, *Unitil Corporation and Northern Utilities Natural Gas*, Order No. 25,014 (September 22, 2009).

First, we note that the Applicants have requested confidential treatment of the OM&A Agreement which defines the parties' respective duties concerning management, operation and maintenance of the Substation. In support of the motion, the Applicants state that they would be commercially harmed were this information to be made available to the public including its competitors, because the information is not general public knowledge or published elsewhere, measures have been taken to prevent dissemination of this information in the ordinary course of business, and the information pertains to the provision of competitive services. We find that these facts support a determination that the information is sensitive commercial and confidential information, which should be protected from disclosure under RSA 91-A:5, IV.

Second, we assess whether disclosure of the information will inform the public about the conduct of government activities. The Applicants state that because the filing involves the transfer of an interest in a transmission asset and the Commission does not regulate the rates associated with that asset, there is no overriding public interest in disclosing the terms of an agreement concerning the respective duties of the two parties, one of which is a public utility in New Hampshire for limited purposes. The Applicants argue that the limited benefits of disclosing the agreement are outweighed by the harm that will be done by disclosing it. We agree. The disclosure of this information does nothing more than reveal the terms of a service

contract. The disclosure of the terms of the contract will not enlighten the public about the operation of the Commission in its limited regulation of this transmission utility.

Finally, in balancing the interests between the public's right to know and the Applicants' right to non-disclosure of commercially sensitive information, we find that the balance in this case weighs in favor of non-disclosure. Therefore, we grant the motion for confidential treatment. Consistent with past practice, the confidential treatment provisions of this order are 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 this order should circumstances warrant.

B. Transfer

In the filing, the Applicants requested approval of the transfer pursuant to RSA 374:30, which requires the Commission to find that the transfer is in the public good. Alternatively, the Applicants requested that the Commission make a determination pursuant to RSA 369:8, II that the transaction is exempt from Commission approval. The filing states, among other things, that FPL seeks to transfer its ownership interest in the Substation to satisfy the concerns of the Florida Commission. The settlement agreement approved in DE 03-186, FPL provides that any transfer of assets is subject to review under RSA 374:30 or any successor statute.

The transmission facility subject to the proposed transfer, an 88.23 percent interest in the Substation, is located in New Hampshire, but the proposed owner, NHT, is not organized under the laws of New Hampshire. NHT, therefore, is a foreign business entity, which is prohibited from doing business as a public utility in this state pursuant to RSA 374:24. However, RSA 374:25 provides an exception for a business entity "doing or desiring to do an interstate business." In this instance, the business NHT would be doing concerns the operation of a FERC-regulated facility, which qualifies for the exception. In the alternative, NHT is arguably a domestic electric

utility within the meaning of RSA 374-A:1, II, insofar as it is registered to do business in New Hampshire and its purpose is to own and operate its sole physical asset, an electric power facility located in New Hampshire. In either case, the transfer requires Commission approval.

NHT proposes to remain an affiliate of FPL, a foreign public utility. In addition, NHT has agreed to assume the rights and responsibilities of FPL pursuant to the settlement agreement approved in Docket No. DE 03-186, which provides for limited regulation of FPL. We will continue to regulate NHT pursuant to the terms of the settlement agreement approved in Docket No. DE 03-186.

The transfer of the 88.23 percent ownership interest in the Substation from FPL to its new affiliate, NHT, is part of a corporate restructuring designed to simplify the ownership of transmission investments outside of Florida by the FPL Group. We find that the transfer is in the public good as there will now be a single identifiable entity owning a majority interest in the Substation, which will be directly subject to our regulation. We will therefore approve the transfer pursuant to our authority under RSA 374:30.

NHT has not specifically sought permission to operate a public utility in New Hampshire pursuant to RSA 374:22 and RSA 374:26. NHT has agreed to assume the terms the OM&A Agreement with NextEra which will continue the required managerial and technical support to run the Substation. In addition, NHT will assume FPL's line of credit agreement with FPL Group Capital for improvements to the Substation, and NHT will collect transmission revenue, thus comprising adequate financial means to operate and maintain the Substation. Therefore, we find that NHT has the managerial, technical and financial capabilities to own an interest in and operate the Substation and grant permission for NHT to engage in the business of owning and operating the Substation pursuant to RSA 374:22. Pursuant to RSA 374:26, we may grant NHT

permission to operate a public utility provided that we find that such action is in the public good after a hearing or without a hearing if all interested parties are in agreement. In this instance, we find that it is in the public good to grant NHT the authority to operate as a public utility in New Hampshire. We will grant the permission on a *nisi* basis to allow any party to request a hearing.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the joint application of Florida Power & Light Company and New Hampshire Transmission, LLC to transfer of an 88.23 percent ownership interest in the Seabrook Substation from Florida Power & Light Company to New Hampshire Transmission, LLC is hereby APPROVED; and it is

FURTHER ORDERED, that New Hampshire Transmission, LLC is granted permission to engage in the business of owning and operating the Seabrook Substation pursuant to RSA 374:22 and RSA 374:26; and it is

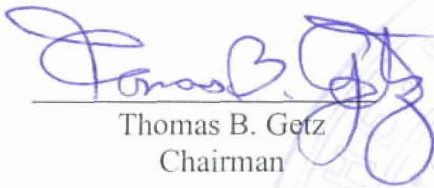
FURTHER ORDERED, that the Motion for Confidential Treatment is hereby GRANTED; and it is


FURTHER ORDERED, that the Executive Director shall cause a copy of this Order *Nisi* to be posted on the Commission's website and e-mailed to the Commission's list of persons interested in electric matters and the Town of Seabrook no later than May 26, 2010; 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 May 28, 2010 for the Commission's consideration; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 1, 2010, 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.

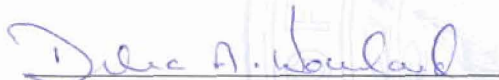
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of May, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

