

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-062

FLORIDA POWER & LIGHT COMPANY

Motion to Amend Financing Order

Order *Nisi* Amending Financing Order

ORDER NO. 25,138

August 12, 2010

I. PROCEDURAL BACKGROUND

On March 18, 2010, Florida Power & Light Company (FPL or Company) filed a motion to amend Order No. 24,935 (January 30, 2009). In Docket No. DE 08-164, FPL requested and received approval from the Commission to obtain loans from FPL Group Capital, Inc. (FPL Group Capital) in an aggregate principal amount not to exceed \$36 million for the purpose of making specific upgrades to the transmission substation (Substation) located in Seabrook, New Hampshire. In the instant filing, FPL asked that the Commission increase the authorized limit to allow the Company to borrow up to \$63 million from FPL Group Capital to finance the planned improvements at the Substation. FPL Group Capital, a wholly-owned subsidiary of FPL Group, Inc. (FPL Group), holds the capital stock of, or has equity interests in, FPL Group's operating subsidiaries other than FPL and provides funding for the subsidiaries. With the filing, FPL included the testimony of William C. Locke, Manager of Transmission Services for FPL, a copy of the approval of the Board of Directors and an amended E-22 form.

In its motion, FPL stated that the costs of improvements at the Substation may be as high as \$63.0 million and requested the Commission amend Order No. 24,935 to allow for an increase

in the financing necessary to fund the Substation upgrades. The motion stated that FPL, through FPL-New England Division (FPL-NED), owns and operates the Substation, which is located on the grounds of the Seabrook Station nuclear power plant in Seabrook, New Hampshire. FPL-NED was established as a separate division of FPL 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 *Florida Power & Light Company*, Order No. 24,321 (May 7, 2004) in Docket No. DE 03-186. In that docket, FPL Energy Seabrook, LLC, one of the co-owners of the Seabrook Station, transferred its 88.23% ownership in the Substation to FPL-NED. Among the provisions agreed to by FPL in the approved settlement agreement were:

- 1) being subject to and complying with all laws and regulations applicable to the construction, operation and use of the Seabrook Substation pursuant to RSA 374-A:7, II(b) or any successor statute; and
- 2) with respect to any financing of FPL-NED's interest in the Seabrook Substation, including any borrowing or 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.

FPL filed the E-22 in compliance with N.H. Code Admin. Rule Puc 308.07 and the first provision of the settlement agreement noted above.

According to Mr. Locke, upgrades at the Substation are being performed that involve replacing aging equipment and addressing certain design issues. At the time FPL filed the petition in Docket No DE 08-164, the Company expected that the costs related to the project would not exceed \$36 million. FPL later concluded that the original budget estimate of \$36

million would be insufficient to complete the improvements. FPL stated that a number of factors contributed to the increased costs as follows:

- 1) The construction contract had not been finalized at the time of preparing the preliminary \$36 million budget estimate;
- 2) The full impact of the design requirements, given the compact footprint of the Substation, was not fully contemplated nor factored into the estimate;
- 3) Federal Energy Regulatory Commission (FERC) Standards of Conduct that prohibit sharing of information between FPL and personnel at the Seabrook Station nuclear plant, resulted in costs related to nuclear oversight and coordinating activities with a Seabrook Station refueling outage not being fully incorporated;
- 4) Significantly more steel was required than originally anticipated; and
- 5) Contractor costs, technical changes and other necessary increases in time and labor.

FPL stated that the first phase of the construction work was completed during the October 2009 refueling outage and that the remaining work on the project had been timed to coincide with a scheduled refueling outage at Seabrook Station in April 2011.

As described in the motion, and the unanimous consent of directors in lieu of meeting provided with the filing, FPL Group Capital has agreed to make loans by increasing an existing line of credit agreement to FPL in an aggregate principal amount outstanding at any one time not to exceed \$63,000,000. Under the credit agreement, 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 Substation construction project. FPL asked that the borrowing limit be increased from \$36,000,000 to \$63,000,000. Except for the borrowing limit and except as further specified in Amendment No. 1 to the Line of Credit Agreement and Security Agreement, no changes to the terms and conditions are requested. Amendment No. 1 incorporates changes to the overall borrowing limit, a description of additional equipment and the identification of

certain equipment as “three-phase” where the earlier documents had not included that description.

Staff filed its recommendation with the Commission on July 20, 2010. Staff said the financing is not a typical financing petition. In most circumstances, financing petitions are filed by a Commission-regulated distribution utility with resulting implications to the utility’s capital structure, cost of capital and, therefore, revenue requirements. Staff said that FPL will be reimbursed for some of its costs related to the Substation upgrade project by the various co-owners of the remaining 11.77% of the Substation. FPL will request monthly payments from those co-owners based on the monthly cash flow projections related to the project. FPL will seek recovery of the remainder of the costs through its Regional Network Service (RNS) rates for any of the new or upgraded facilities considered to be Pool Transmission Facilities (PTF). For those facilities not considered PTF, FPL will recover the related costs from its one local transmission customer, NextEra Seabrook through a combination of direct assignment charges and Local Network Services (LNS) rates pursuant to the Independent System Operator-New England (ISO-NE) tariff. NextEra Seabrook is the owner of 88.23% of the Seabrook nuclear generating station and was formerly known as FPL Energy Seabrook. Staff said that, although the addition of approximately \$27,000,000 of plant to rate base along with an additional \$27,000,000 of debt will obviously have some cost implications to those paying rates charged by FPL-NED, those rates are transmission rates that do not fall under the Commission’s jurisdiction.

Staff stated that the filing was made in accordance with the terms of the settlement agreement approved by the Commission in Docket No. DE 03-186 and with RSA 369 and RSA 374-A:7. After reviewing the detail in the motion, the requested changes to the Commission’s

Order No. 24,935 and the proposed use of the funds, Staff concluded that the request was reasonable and necessary for FPL to complete the necessary upgrades of the Substation and recommended approval of the motion.

In its recommendation, Staff also noted that the Commission recently approved a joint request by FPL and New Hampshire Transmission, LLC (NHT) to transfer the ownership of the Substation from FPL to NHT. *See* Order No. 25,105 (May 26, 2010) in Docket No. DE 10-042. In light of the fact that the instant motion to amend the financing order was filed while the request to transfer ownership of the Substation was pending in Docket No. DE 10-042, and the ownership transfer request was approved by the Commission in Order No. 25,105 (May 26, 2010), Staff recommended that the financing order in this proceeding reflect the change in ownership of the Substation from FPL to NHT.

II. COMMISSION ANALYSIS

RSA 365:28 authorizes the Commission to modify any of its orders after notice and hearing; however, a hearing is not required when the order sought to be modified was made under a provision of law that did not require a hearing and a hearing was not in fact held. Because a hearing was not required and was not held in Docket No. DE 08-164 in connection with the issuance of Order No. 24,935, the order sought to be modified, a hearing on the motion in this docket is not required as a matter of law.

RSA 365:28 does not contain a specific standard of review. Recently, based on the circumstances present in Docket No. 10-025, we applied a public interest standard in our review of a requested modification of an order. *FairPoint Communications, Inc.*, Order No. 25,129 (July 7, 2010) at 57. While the circumstances in the present docket are different, we nevertheless

find that it is appropriate to apply a public interest or public good standard here. Pursuant to the provisions of RSA 369:1, the statute under which the Commission approved the financing, public utilities may issue long term debt, *i.e.*, debt payable more than 12 months after issuance, only if the Commission finds the proposed issuance to be “consistent with the public good.” Ordinarily, analysis of the public good involves looking beyond the actual terms of the proposed financing to the use of the proceeds of those funds and the effect on rates. *See Appeal of Easton*, 125 N.H. 205, 211 (1984).

As we have previously noted, “certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.” *Public Service Company of New Hampshire*, Order No. 25,050 (December 8, 2009) at 14. We find that a limited review of the proposed loan modification is appropriate in this case. FPL-NED has operated as a public utility under New Hampshire law but it has been subject to limited regulation by the Commission. Order No. 24,935 at 5-6. NHT, the entity that is assuming FPL’s line of credit agreement with FPL Group Capital for improvements to the Substation, see Order No. 25,105 at 7, has agreed to assume the rights and responsibilities of FPL pursuant to the settlement agreement approved in Docket No. DE 03-186, which provided for the limited regulation of FPL. Our limited review in this case is consistent with limited regulation of FPL.

As Staff points out, the filing in this proceeding is not a typical utility financing filing. In this instance, FPL has requested authority to issue financing pursuant to a settlement agreement approved in Docket No. DE 03-186. The settlement agreement requires FPL, now NHT, to

comply with certain statutory provisions, including RSA 369. In Docket No. DE 10-042, we determined that continued compliance with the settlement agreement and the associated parameters of the regulation of FPL/NHT is appropriate and in the public interest. *See* Order No. 25,105 (May 26, 2010) at 6-7. FPL's filing requesting amendment of our prior financing order is consistent with the terms of the parameters of that regulation.

Previously, in Docket No. DE 08-164, the Commission authorized FPL to obtain loans from FPL Group Capital, Inc. in the aggregate amount of \$36 million for purpose of making necessary upgrades to the Seabrook Substation. The instant petition requests an amendment to that order to increase that authority up to an aggregate amount of \$63 million for the same purpose, *i.e.*, to fund upgrades to the Seabrook Substation. We find that FPL presented a reasonable explanation for the need for additional borrowing and will approve the petition to increase the aggregate amount of the financing to \$63 million on a *nisi* basis in order to provide any interested party the opportunity to submit comments or to request a hearing. The need for the proposed upgrade, as well as the prudence and rate impact of improvements charged to LNS rates or RNS rates, are FERC jurisdictional issues and beyond our regulatory purview.

Finally, taking into account our recent decision in Docket No. DE 10-042 to approve the transfer of the ownership of the Substation from FPL to NHT and the fact that NHT is assuming FPL's line of credit agreement with FPL Group Capital for improvements to the Substation, this order shall be fully enforceable against NHT and any potential successor(s).

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, the motion filed by Florida Power & Light Company to amend the Commission's financing Order No. 24,935 by increasing

the authorized amount of long-term debt to an aggregate principal amount not to exceed \$63 million for purposes of completing necessary upgrades to the Seabrook Substation, is hereby GRANTED; and it is

FURTHER ORDERED, that all other terms and conditions of the financing approved in Order No. 24,935 shall continue to apply to Florida Power & Light Company and its successors, including but not limited to New Hampshire Transmission, LLC, with the exception of Amendment No. 1 to the Line of Credit Agreement and Security Agreement with the further proposed changes as described herein; and it is

FURTHER ORDERED, that the Petitioner shall, within ten (10) days of this Order, file a report with the Commission confirming the assumption by New Hampshire Transmission, LLC of Florida Power & Light Company's line of credit agreement with Florida Power & Light Group Capital for improvements to the Substation and detailing the terms of such assumption; and it is

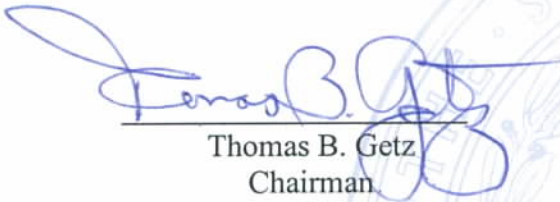
FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than August 23, 2010 and to be documented by affidavit filed with this office on or before September 10, 2010; and it is

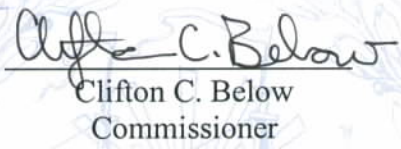
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than August 30, 2010 for the Commission's consideration; and it is

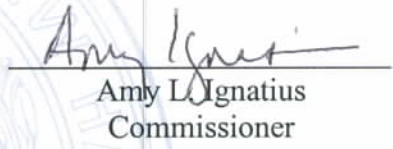
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 7, 2010; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 10, 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.

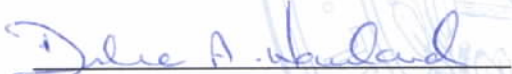
By order of the Public Utilities Commission of New Hampshire this twelfth day of August, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

