

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

National Grid plc and National Grid USA

Docket No. EL06-22-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued February 6, 2006)

1. On December 2, 2005, National Grid plc and National Grid USA (collectively, National Grid USA) filed a petition for declaratory order, requesting that the Commission eliminate one of the several conditions imposed by the Commission earlier when it issued a declaratory order authorizing the payment of dividends by the companies' New England public utility subsidiaries.<sup>1</sup> National Grid USA states that its original request for declaratory order, and the resulting declaratory order, were made necessary by the fact that the accounting for mergers involving those companies required them to restate their pre-merger retained earnings as capital, arguably rendering those retained earnings otherwise unavailable for dividends under section 305(a) of the Federal Power Act.<sup>2</sup> National Grid states that one of the conditions imposed is now no longer necessary. The Commission agrees, and so we will grant the petition for declaratory order.

**Background**

2. National Grid USA is a registered public utility holding company under the Public Utility Holding Company Act of 1935.<sup>3</sup> In 2000, National Grid USA acquired Eastern Utilities Associates (EUA) and New England Electric System. National Grid USA thus owns the following public utility subsidiaries: New England Power Company (NEPCO), Massachusetts Electric Company (Mass Electric), Narragansett Electric Company (Narragansett), New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, and New England Hydro-Transmission Electric Company,

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<sup>1</sup> See *New England Power Co. and Montaup Electric Co.*, 89 FERC ¶ 61,266 (1999) (December 15 Order).

<sup>2</sup> 16 U.S.C. § 825d(a) (2000).

<sup>3</sup> 15 U.S.C. §§ 79a *et seq.* (2000). This statute was repealed, effective February 8, 2006, and replaced by the Public Utility Holding Company Act of 2005. See Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261-77, 119 Stat. 594, 972-78 (2005).

Inc. (collectively, New England Subsidiaries). National Grid USA states that, in conjunction with its acquisition of its New England Subsidiaries, in Docket No. EL00-18-000 the Commission granted a petition for declaratory order authorizing those subsidiaries to pay dividends notwithstanding the fact that the accounting for the merger required the public utilities' substantial retained earnings to be restated as paid-in capital.<sup>4</sup>

3. In the December 15 Order, the Commission authorized the applicants in that proceeding, namely NEPCO and Montaup Electric Company, to pay dividends out of paid-in capital – relying on, among other things, assurances from the applicants that each applicant would not pay as dividends more than 80 percent of its earnings, calculated before the amortization of the acquisition premium, based on a rolling five-year average.<sup>5</sup>

### **Instant Filing**

4. In the instant proceeding, National Grid requests the Commission issue a declaratory order eliminating the 80 percent dividend payout limitation. National Grid states that (1) such a limitation is not necessary in light of the solid financial record of its New England Subsidiaries; (2) no other companies have been subject to an equivalent Commission-imposed dividend limitation; and (3) the Securities and Exchange Commission (SEC) dropped the same limitation when it approved National Grid USA United States financing program in 2004.

5. In support of its petition, National Grid USA explains that its New England Subsidiaries have enjoyed cash-flows post-merger that are similar to those enjoyed pre-merger. Specifically, National Grid states that, since it acquired its New England Subsidiaries in March 2000, the three largest of those companies, NEPCO, Mass Electric and Narragansett have accumulated retained earnings of approximately \$312 million, \$357 million and \$232 million, respectively. Therefore, National Grid USA requests the Commission issue a declaratory order eliminating the 80 percent dividend payout limitation.

### **Notice of Filing**

6. Notice of National Grid's filing was published in the *Federal Register*, 70 Fed. Reg. 74,799 (2005) with interventions or protests due on or before December 23, 2005. None was filed.

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<sup>4</sup> December 15 Order, 89 FERC at 61,780.

<sup>5</sup> *Id.*

## Discussion

7. We will grant National Grid USA's petition because we find that the concerns underlying section 305(a) of the FPA do not require the continued application of the 80 percent dividend payout limitation. Section 305(a) of the FPA reads:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.<sup>6</sup>

8. The concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies." A central concern thus "was corporate officials raiding corporate coffers for their personal financial benefit."<sup>7</sup>

9. In Docket No. EL00-18-000, the applicants agreed to certain conditions in order to allay any concerns regarding the payout of dividends. Among other things, each applicant agreed that it would not pay as dividends more than 80 percent of its earnings. Our December 15 Order premised our approval, in part, on applicants' commitment. National Grid USA contends that the 80 percent dividend payout limitation is no longer necessary. We agree. No other public utility is subject to such a dividend payout limitation. There is also no indication here that any dividends paid in the future will be excessive or that such payment will adversely affect National Grid's liquidity or financial integrity. Furthermore, the SEC dropped this limitation when it most recently authorized the United States financing program of National Grid USA.<sup>8</sup> For these reasons, we will grant the petition and not hold National Grid's New England Subsidiaries to the 80 percent dividend payout limitation.

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<sup>6</sup> 16 U.S.C. § 825d(a) (2000).

<sup>7</sup> *Citizens Utilities Co.*, 84 FERC ¶ 61,158 at 61,865 (1998); *accord*, *Entergy Louisiana, Inc.*, 114 FERC ¶ 61,060 at P 12 & n.10 (2006); December 15 Order, 89 FERC at 61,780.

<sup>8</sup> *See National Grid Transco*, SEC Release No. 35-27898 (September 30, 2004).

The Commission orders:

The petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.