149 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Northern Pass Transmission LLC — Docket No. ES14-45-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued October 3, 2014)

1. On July 2, 2014, as supplemented on July 22, 2014, Northern Pass Transmission LLC (Northern Pass) filed an application pursuant to section 204(a) of the Federal Power Act (FPA)[1] (Application) seeking Commission authorization to issue short-term and long-term debt securities (collectively, Debt Securities) in an aggregate amount not to exceed $500 million outstanding at any one time. We will grant the authorization, as discussed below.

I. Background

2. Northern Pass is a New Hampshire limited liability company and an indirect wholly-owned subsidiary of Northeast Utilities. Northeast Utilities, a public utility holding company, directly or indirectly owns all of the outstanding common stock of certain other utility and non-utility companies.

3. Northern Pass is responsible for the development, ownership, construction, operation, and maintenance of a 1,200 MW high voltage direct current transmission line from the Canadian border to Franklin, New Hampshire and a radial 345 kV alternating current transmission line between Franklin and Deerfield, New Hampshire (collectively, the NPT Line). The NPT Line will connect at the Canadian border to a transmission line being developed by Hydro-Québec Trans-Énergie, a subsidiary of Hydro-Québec, in Canada. Northern Pass has entered into a transmission service agreement (Agreement) with Hydro Renewable Energy, Inc. (Hydro Renewable), a subsidiary of Hydro-Québec,

[1] 16 U.S.C. § 824c(a) (2012).

pursuant to which Northern Pass will provide firm transmission service to Hydro Renewable over the NPT Line at cost-based formula rates.[2]

4. At present, Northern Pass finances its operations through equity contributions and short-term debt financing from Northeast Utilities. Northern Pass states that under the terms of the Agreement, it has committed to finance the cost of development and construction of the NPT Line using 50 percent equity funds and 50 percent debt. It estimates that the NPT Line's total cost will be approximately $1.4 billion and that it will be operational by the second half of 2017. Northern Pass also estimates that it will incur approximately $110 million in costs through the end of 2014 and the remainder of the costs between 2015 and completion. While it acknowledges that it will have no operating revenues during this period, Northern Pass states that it will accrue allowance for funds used during construction.[3]

II. Application

5. Northern Pass requests authorization through December 31, 2016 to issue Debt Securities in an amount not to exceed $500 million at one time. The short-term debt securities will mature less than one year from the date of issuance and will consist of secured or unsecured promissory notes, demand notes, revolving credit facilities or bank term loans, and other evidence of indebtedness issued to banks or other financial institutions, to Hydro-Québec pursuant to a construction loan agreement, or to Northeast Utilities. Northern Pass states that the interest rate for the short-term securities will not exceed 7.0 percent per annum.

6. Northern Pass further states that the long-term debt securities will mature between one and 40 years from the date of issuance and will consist of secured or unsecured notes issued to banks or financial institutions, long-term borrowings from Northeast Utilities, or secured or unsecured construction loans from Hydro-Québec. Northern Pass states that the interest rate for the long-term securities will not exceed 7.0 percent per annum.

7. Northern Pass states that it will use the Debt Securities in connection with its development and construction of the NPT Line. More specifically, Northern Pass states that it will use the securities to refinance short-term debt outstanding as appropriate and

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[2] The Commission accepted the Agreement on February 11, 2011. *Northern Pass Transmission LLC*, 134 FERC ¶ 61,095, *reh'g denied*, *Northern Pass Transmission LLC*, 136 FERC ¶ 61,090 (2011). On January 13, 2014, an amendment to the Agreement was accepted by delegated letter order. *Northern Pass Transmission LLC*, Docket No. ER14-597-000 (Jan. 13, 2014) (delegated letter order).

[3] Northern Pass July 22, 2014 Supplement at 4 (Supplement).

to fund the projected costs associated with the NPT Line. It also states that the use of the Debt Securities to support working capital, development, and construction needs "will afford it maximum flexibility in meeting its overall financing requirements."[4] Finally, in this regard, Northern Pass states that the Debt Securities' issuance will not adversely affect it and is "necessary, appropriate for and consistent with" its proper performance of service as a public utility.[5]

8. Northern Pass requests waiver of the competitive bidding and negotiated placement requirements in sections 34.2(a) and 34.2(c)(1) of the Commission's regulations.[6] To assure the Commission that such waiver is appropriate, it asserts that it will issue the Debt Securities to commercial and investment banks, similar institutions, or sophisticated investors, including Hydro-Québec or Northeast Utilities with interest at rates "related to then current market conditions."[7] It further asserts that a cost advantage "would not be achieved by the imposition" of the requirements. Northern Pass commits to issuing securities with the best available rates and terms, taking into account the interests of its customer and its limited liability company member. Northern Pass further expresses its belief that Northeast Utilities Service Company, its service company affiliate, has implemented the necessary procedures to analyze the bank loan market in order to obtain the best rates at the lowest cost available.[8]

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[4] *Id.* at 12.

[5] *Id.*

[6] Section 34.2(a) of the Commission's regulations states, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers, or underwriters, and negotiated offers are obtained from at least three prospective dealers, purchasers, or underwriters. *See* 18 C.F.R. § 34.2(a) (2014). Section 34.2(c)(1) states that no securities "will be placed with any person" who has "performed any service or accepted any fee or compensation with respect to the proposed issuance of securities prior to submission of bids or entry into negotiations for placement of such securities." 18 C.F.R. § 34.2(c)(1) (2014).

[7] Supplement at 14.

[8] *Id.*

III. Notices of Filing, Interventions, and Protests

9. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 40,748 (2014), with interventions and protests due on or before July 23, 2014. Notice of the July 22, 2014 Supplement was published in the *Federal Register*, 79 Fed. Reg. 44,022 (2014), with interventions and protests due on or before August 1, 2014. None was filed.

IV. Discussion

10. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[9]

11. Typically, under FPA section 204, the Commission utilizes an interest coverage calculation in order to determine whether the undertaking "will not impair [a public utility's] ability to perform" service as a public utility.[10] And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant's ability to perform service as a public utility upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[11]

12. Northern Pass has filed, as Exhibits C, D, and E to the Supplement, actual and *pro forma* financial statements for the 12-month period ending March 31, 2014. Exhibit E shows that Northern Pass has a *pro forma* interest coverage ratio of 0.09, which is below the Commission's 2.0 times interest coverage test.[12]

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[9] 16 U.S.C. § 824c(a) (2012).

[10] *Id.*; *see, e.g.*, *Mississippi Power Co*., 145 FERC ¶ 61,218, at P 19 (2013); *Transource Missouri*, *LLC*, 145 FERC ¶ 61,146, at P 19 (2013) (*Transource Missouri*).

[11] *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[12] Supplement at Exhibit E.

13. Northern Pass requests that the Commission determine that the interest coverage ratio of 2.0 should not apply here. To justify this position, Northern Pass states that the approved formula rate under the Agreement provides for the recovery "of all costs associated with the investment in the NPT Line, including interest expense and financing costs, and that even if the NPT Line were to be abandoned . . . Northern Pass will have the right to recover costs it has already incurred" including allowance for funds used during construction.[13] Thus, Northern Pass states that its cash flows from its previously accepted formula rate[14] will be sufficient to meet the debt service payments under any debt issuances when such payments become due.[15] Therefore, we have an alternative basis to conclude that Northern Pass may reasonably be expected to service its debt and interest expenses without impairing its ability to provide service as a public utility.[16]

14. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[17] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the assets and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. Northern Pass acknowledges that any long-term debt obligation that it incurs pursuant to the authorization requested in the Application will be subject to the restrictions specified in *Westar*, and we will condition our authorizations granted here upon Northern Pass abiding by these restrictions.[18]

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[13] Supplement at 9.

[14] N. Pass Trans. LLC, FERC Tariffs, § 8.1.4(a) (1.0.0) (Schedule No. 1).

[15] Supplement at 9-10.

[16] *See, e.g., ITC Great Plains, LLC*, 147 FERC ¶ 61,005, at P 12 (2014); *Transource Missouri, LLC*, 145 FERC ¶ 61,146 at PP 21, 23.

[17] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21 (2003) (*Westar*).

[18] Supplement at 16.

15. We conclude that Northern Pass meets the standards of FPA section 204. We find, based on the statements set forth in the Application, that Northern Pass has demonstrated that the proposed issuance of securities sought in this Application: (1) is for some lawful object within the corporate purposes of Northern Pass and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by Northern Pass of service as a public utility and which will not impair Northern Pass' ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

16. Accordingly, we authorize the following:

a. Northern Pass is authorized to issue short-term and long-term debt securities in an aggregate amount not to exceed $500 million outstanding at any one time. Such short-term debt securities may consist of secured or unsecured promissory notes, demand notes, revolving credit facilities or bank term loans, and other evidence of indebtedness issued to banks or other financial institutions, to Hydro-Québec pursuant to a construction loan agreement, or to Northeast Utilities. The long-term debt securities may consist of secured or unsecured notes issued to banks or financial institutions, long-term borrowings from Northeast Utilities, or secured or unsecured construction loans from Hydro-Québec.

b. The interest rate for the short-term and long-term debt securities will not exceed 7.0 percent per annum.

17. Finally, we will grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

<u>The Commission orders</u>:

(A) Northern Pass is hereby authorized to issue short-term and long-term debt securities in an aggregate amount not to exceed $500 million outstanding at any one time, at the interest rates stated in the body of this order.

(B) The authorization is granted effective December 31, 2014 and terminates on December 31, 2016.

(C) The authorization granted in this order is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The requested waiver of the Commission's competitive bidding and negotiated placement requirements under 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2014) is hereby granted.

(E) Northern Pass must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2014), no later than 30 days after the sale or placement of the long-term debt securities or the entry into guarantees or assumption of liabilities.

(F) The authorization granted in Ordering Paragraphs (A) and (B) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.