

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

FPL Energy Seabrook, LLC and  
Florida Power and Light Company

Docket Nos. EC03-104-000 and  
ER03-1038-000

ORDER ACCEPTING INTERCONNECTION AGREEMENT  
AND AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued September 10, 2003)

1. On July 7, 2003, FPL Energy Seabrook, LLC (FPLE Seabrook) and its affiliate, Florida Power & Light Company (FP&L) (collectively, Applicants), filed with the Commission a request for authorization to engage in an intra-corporate transfer whereby FPLE Seabrook would transfer its interest in the Seabrook Substation to FP&L. Concurrently, FP&L filed an executed Interconnection and Operating Agreement (IA) with FPLE Seabrook. As discussed below, the Commission accepts for filing FP&L's proposed IA, and authorizes the intra-corporate transfer of the Seabrook Substation. The IA shall be effective on the closing date of the asset transfer. This order benefits customers because it allows the Applicants to agree on mutually acceptable terms and conditions for an interconnection agreement, and authorizes a disposition of assets that is consistent with the public interest.

**I. Background**

**A. Description of the Parties**

2. FPLE Seabrook is a subsidiary of FPL Group, Inc. (FPL Group), an exempt public utility holding company under the Public Utility Holding Company Act of 1935 (PUHCA). FPL Group's subsidiaries own, or have under construction, generating facilities in Maine, Massachusetts and Rhode Island in the ISO-New England market, and in the New York-ISO market.

3. Seabrook Station is a nuclear generating facility in Seabrook, New Hampshire. FPLE Seabrook owns an 88.23 percent interest in Seabrook Station and in the interconnecting transmission facilities (the Seabrook Substation) necessary to connect it

to the New England Power Pool (NEPOOL) transmission system. The transmission facilities interconnect Seabrook Station and three 345 kV transmission lines that are part of the NEPOOL transmission system.

4. FP&L is a public utility owned by FPL Group, the indirect parent of FPLE Seabrook. FP&L provides wholesale and retail electric service to customers in Florida. It owns approximately 18,000 MW of generation in peninsular Florida. Its transmission facilities are in Florida and are administered pursuant to the FP&L Open Access Transmission Tariff (OATT).

#### **B. Description of Applications**

5. Applicants filed, pursuant to Section 203 of the Federal Power Act (FPA),<sup>1</sup> requesting authorization of an intra-corporate transfer whereby FPLE Seabrook would transfer its interest in the Seabrook Substation to FP&L. As a merchant generator and a member of the Generator Sector of NEPOOL, FPLE Seabrook cannot recover the costs required to own, operate, and maintain the Seabrook Substation, as the recovery of such costs under the NEPOOL OATT is limited to entities designated as “Transmission Providers” or “Transmission Owners.” Applicants state that after the transfer of FPLE Seabrook’s interest in the Seabrook Substation to FP&L, FP&L will apply for membership in NEPOOL as a “Transmission Provider,” which it hopes will make it eligible to recover the costs associated with the substation in regulated NEPOOL transmission rates.<sup>2</sup> FPLE Seabrook’s interest in the assets being transferred includes all of the equipment in the 345 kV Seabrook Substation beyond the disconnect links on the low side of the generator step-up transformer and the disconnect links on the high side of each reserve auxiliary transformer for Seabrook Substation.

6. FP&L filed the executed IA with FPLE Seabrook pursuant to Section 205 of the FPA.<sup>3</sup> The IA sets forth the terms and conditions governing the already existing interconnection of the Seabrook Station to the Seabrook Substation. FP&L will assume all of FPLE Seabrook’s rights and obligations under another existing interconnection agreement with the Public Service Company of New Hampshire (PSNH). FPLE Seabrook, in turn, will provide assistance in meeting FP&L’s obligations under the PSNH IA.

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<sup>1</sup> 16 U.S.C. § 824b (2000).

<sup>2</sup> Section 203 Application at 6-7.

<sup>3</sup> 16 U.S.C. § 824d (2000).

## II. Public Notice and Pleadings

7. Notices of the Section 203 filing<sup>4</sup> and the Section 205 filing<sup>5</sup> were issued on July 14, 2003, and July 10, 2003, respectively, with interventions, comments, or protests due on or before July 28, 2003.

8. The parties mentioned below filed timely motions to intervene in Docket No. EC03-104-000. While New Hampshire Public Utilities Commission (NHPUC) filed a timely notice of intervention in Docket EC03-104-000, it submitted late-filed comments on August 11, 2003. In Docket No. ER03-1038-000, Northeast Utilities Service Company filed a motion to intervene, and National Grid USA (National Grid) filed comments that raise the same issues as its comments in Docket No. EC03-104-000, which are discussed below.

9. Northeast Utilities Service Company (NUSCO) argues that the Applicants' proposed asset transfer should be denied because it will have an adverse effect upon transmission customers by increasing rates, with no countervailing benefits to customers. Moreover, NUSCO maintains that the Commission need not act on this application until the Applicants have received the required approval from the NHPUC for FP&L to operate as a public utility in New Hampshire. Finally, NUSCO argues that FP&L's acquisition of the Seabrook Substation might raise issues under PUHCA.

10. National Grid comments that it may not be appropriate for FP&L to seek the inclusion of the Seabrook Substation costs in regional transmission rates. However, National Grid does not oppose the Section 203 and 205 applications at issue here, based on two understandings: first, that Commission approvals of the asset transfer and the IA will not prejudice the debate over the appropriateness of FP&L's recovery of the Seabrook Substation costs in regional transmission rates; and second, that the specific circumstances of the Seabrook Substation interconnection facilities are unique and therefore the Commission's approval would not create precedent for other generators to nullify the allocation of generator interconnection-related upgrade costs in the NEPOOL OATT.

11. In its late-filed comments on the proposed asset transfer, NHPUC points out that it is unresolved whether Seabrook Substation, described as an integral part of the wholesale transmission system, as well as the means of interconnection of Seabrook Station to the electric grid, is exempt from regulation as a public utility under New Hampshire law. NHPUC notes that an entity is not a public utility for purposes of New Hampshire law

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<sup>4</sup> 68 Fed. Reg. 42,693 (2003).

<sup>5</sup> 68 Fed. Reg. 42,697 (2003).

“solely by virtue of owning, operating or managing any plant or equipment or any part of the same” that is “sold after July 1, 1998, for the generation or sale of electricity or for transmission of electricity from such a plant to an interconnection with the transmission grid.”<sup>6</sup> The effect of the asset transfer on state regulation centers on the proper interpretation of the term “solely” in the New Hampshire statute.

12. ISO New England Inc. (ISO) filed comments supporting the proposed asset transfer. On August 12, 2003, FPLE Seabrook and FP&L filed a joint answer to the protests and comments of NUSCO and National Grid.

### **III. Discussion**

#### **A. Procedural Issues**

13. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>7</sup> NUSCO, ISO, National Grid and NHPUC’s timely, unopposed motions to intervene make them parties to this proceeding. While answers generally are not permitted, pursuant to Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure,<sup>8</sup> we find good cause to allow the Applicants’ answer because it aids the Commission in understanding the issues.

#### **B. Section 205 and Section 203 Analysis**

14. We find that the terms and conditions of the executed IA are just and reasonable. The Commission accepts FP&L’s IA for filing, to be effective on the closing date of the asset transfer.

15. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition “will be consistent with the public interest.”<sup>9</sup> The Commission’s analysis of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>10</sup> As discussed

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<sup>6</sup> Comments of NHPUC at 2, citing the New Hampshire Revised Statutes Annotated (NHRSA) § 362:4-c (2002).

<sup>7</sup> 18 C.F.R. § 385.214 (2003).

<sup>8</sup> 18 C.F.R. § 385.213(a)(2) (2003).

<sup>9</sup> 16 U.S.C. § 824b (2000).

<sup>10</sup> 18 C.F.R. § 2.26 (2003).

below, we will approve the proposed disposition of jurisdictional facilities as consistent with the public interest.

### **1. Effect on Competition**

16. Applicants state that the proposed intra-corporate transfer is wholly internal to FPL Group, and thus will not affect the relative market shares of any market participant. Moreover, Applicants state that the proposed transaction does not involve any generation assets, will not result in any increase in control over generating capacity by any party, and thus will have no impact on horizontal competition. Finally, Applicants state that use of the Seabrook Substation will continue to be under the NEPOOL OATT after closing of the transaction, so the transfer will have no impact on transmission.

17. The Commission finds that the intra-corporate transfer involves no change in the ownership or concentration of generation facilities. The Commission has consistently held that intra-corporate transfers that do not involve a change in the ownership or control of generation facilities will not change the concentration of generation assets in any relevant market, do not present any competitive concerns, and do not have an adverse effect on competition.<sup>11</sup> We also agree with Applicants that the transaction will not affect transmission. We find therefore that the proposed intra-corporate transfer will not adversely affect competition.

### **2. Effect on Rates**

18. Applicants state that the transaction will have no adverse effect on the rates paid by customers of FPLE Seabrook and FP&L or their affiliates. FPLE Seabrook sells power at market-based rates. Applicants state that FP&L will create a new division that will operate and maintain the transferred transmission facilities, will not sell power to any party in the relevant market, and will separate the costs and revenues from FP&L's other Commission- and Florida Public Service Commission-regulated rates. Therefore, Applicants assert that the proposed transaction will have no effect on FP&L's native load customers.

19. Applicants maintain that while the interconnecting transmission facilities associated with the proposed transaction are pool transmission facilities under NEPOOL, the intra-corporate transfer under the proposed transaction does not affect NEPOOL transmission rates. Applicants assert that FP&L commits to follow the terms and conditions of the NEPOOL OATT and to go through the NEPOOL Committee Process when submitting its costs to NEPOOL for determination of possible revenue recovery through the NEPOOL transmission rates.

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<sup>11</sup> See Idaho Power Co., et al., 102 FERC ¶ 61,213 (2003).

20. NUSCO, however, protests the proposed transfer, arguing that it is the first step of a plan to recover the costs of the Seabrook Substation through rates charged to NEPOOL transmission customers.<sup>12</sup> NUSCO argues that FP&L Seabrook should not be allowed to seek cost-based recovery for a portion of its merchant generating facility that it acquired through a competitive bidding process. NUSCO believes that Applicants' proposed transaction could raise rates to transmission customers with no countervailing benefits.

21. The Commission notes that in this application, Applicants have not proposed any increase in wholesale rates or requested the Commission to approve any recovery of costs under the NEPOOL Tariff. Approval of this application does not include approval of the recovery of costs through the NEPOOL wholesale rates. Whether or not FP&L will be able to recover some or all of its Seabrook Substation cost through the NEPOOL tariff will be determined by the terms and conditions of the NEPOOL OATT and NEPOOL proceedings.<sup>13</sup> If the Seabrook Substation is a facility that should be included in the NEPOOL tariff, the public interest does not require that we disapprove this transaction simply because that may result in raised rates. Therefore, the Commission finds that the proposed intra-corporate transfer will not adversely affect rates.

### 3. Effect on Regulation

22. NHPUC states that since Applicants describe the Seabrook Substation as an integral part of the wholesale transmission system in New England, as well as the means of interconnection of Seabrook Station with the New England grid, it is "unresolved" whether the substation is exempt from state regulation as a public utility.<sup>14</sup> NUSCO maintains that prior approval from the NHPUC is needed because FP&L will be a "public utility" under New Hampshire law.<sup>15</sup> Accordingly, NUSCO argues that the Commission should not act on this application until FP&L has received NHPUC's approval to operate as a public utility in New Hampshire. In any event, NUSCO urges the Commission to

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<sup>12</sup> Protest of NUSCO at 8.

<sup>13</sup> In response to National Grid's comments, the Commission notes that since this order does not address the appropriateness of incorporation of the substation costs in NEPOOL rates; it therefore does not prejudice future proceedings on this issue, nor does it create precedent for other generators not in the same position to avoid the allocation of generator interconnection related upgrade costs embodied in the NEPOOL OATT. See Comments of National Grid at 6.

<sup>14</sup> Comments of NHPUC at 3.

<sup>15</sup> Protest of NUSCO at 12-13, citing NHRSA §362:2, 362:4-c(I), and 374:22 (2002).

make clear that its approval of the transfer will not exempt FP&L from seeking the requisite approvals from NHPUC.

23. FP&L argues that it is exempt from New Hampshire regulation as a “public utility” since the Seabrook Substation consists of a plant or equipment sold after July 1, 1998, that is used for the transmission of electricity from a merchant generation plant to the transmission grid.<sup>16</sup> Nevertheless, FP&L states in its answer that it commits to resolve such jurisdictional issues and obtain any required approval by the NHPUC prior to closing, and will provide the Commission with documentation once a determination is made.

24. No state has indicated that it lacks jurisdiction to consider the transaction’s effect on state regulation. Moreover, Section 203 of the FPA does not require Applicants to obtain all prior regulatory authorizations before the Commission acts on the application.<sup>17</sup> Finally, while the NHPUC’s comments note the unresolved state law issue, it does not request that the Commission delay authorization of the asset transfer. Applicants’ committal to resolve this state jurisdictional issue with NHPUC prior to closing, and to provide the Commission with documentation once a determination is made, satisfies the Commission’s regulations.<sup>18</sup>

25. With regard to federal regulation, Applicants state that the proposed transfer will not result in the creation of a new public utility holding company, and that all jurisdictional facilities associated with the transaction will continue to be subject to the Commission’s jurisdiction. NUSCO argues that FP&L’s acquisition of the Seabrook Substation might raise issues concerning FPL Group’s status as an exempt intrastate holding company under Section 3(a)(1) of the PUHCA.

26. As explained in the Merger Policy Statement and Order No. 642, the Commission’s primary concern with the effect on regulation of a proposed merger involves possible changes in the Commission’s jurisdiction when a registered holding company is formed, thus invoking the jurisdiction of the Securities and Exchange Commission (SEC). If Applicants’ representations are correct that the transfer will not result in the creation of a new public utility holding company, then the Commission agrees that there will be no change in the Commission’s jurisdiction over the relevant facilities. However, because FPL Group’s status as an exempt holding company under

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<sup>16</sup> Answer of Applicants at 12 (citing NHRSA § 362:4-c(I) (2002)).

<sup>17</sup> See Utilicorp United Inc., et al., 92 FERC ¶ 61,067 (2000); Consumers Power Co., 52 FERC ¶ 61,023 (1990).

<sup>18</sup> 18 C.F.R. § 2.26(e)(2) (2003); 18 C.F.R. § 33.2(i) (2003).

PUHCA is unclear, we will condition approval of the proposed reorganization on Applicants agreeing to abide by our policies with respect to intra-corporate transactions if it is subsequently determined that FPL Group is a registered holding company. Applicants shall inform the Commission within 15 days of the date of this order whether this condition is acceptable.

27. Thus, we are satisfied that the proposed transfer of the Seabrook Substation will not adversely affect state or federal regulation.

The Commission orders:

(A) In Docket No. ER03-1038-000, the Commission accepts FP&L's filing of the proposed IA, to be effective on the closing date of the asset transfer, as discussed in the body of this order.

(B) In Docket No. EC03-104-000, the proposed disposition of jurisdictional facilities is hereby authorized, subject to the condition discussed in the body of this order.

(C) The foregoing authorization of the disposition of jurisdictional facilities is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matters whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under Sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall notify the Commission within 10 days of the date that the disposition of the jurisdictional facilities is consummated.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.