

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Florida Power & Light Company-
New England Division

Docket No. ER04-714-002

Bangor Hydro-Electric Company, *et al.*

Docket No. ER04-157-006

ORDER GRANTING REHEARING

(Issued September 22, 2004)

1. In this order, the Commission grants rehearing of its May 26, 2004 Order,¹ which accepted the Local Network Service (LNS) Tariff of Florida Power & Light Company-New England Division (FPL-NED) and suspended it for a nominal period, subject to refund. The Connecticut Department of Public Utility Control (CDPUC) requests rehearing of the May 26 Order with respect to adders to the return on common equity (ROE) for LNS and Regional Network Service (RNS) facilities. The Northeast Utilities Service Company (NUSCO) requests rehearing of the May 26 Order with respect to FPL-NED's recovery of certain transmission costs through New England Power Pool (NEPOOL) transmission customers, which is currently the subject of ongoing NEPOOL proceedings.

¹ Florida Power and Light Co.-New England Division, 107 FERC ¶ 61,186 (2004) (May 26 Order).

Background

2. On November 4, 2003, as amended on November 18, 2003, in Docket Nos. ER04-157-000 and ER04-157-001, the New England transmission owners,² joined by Green Mountain Power Corporation and Central Vermont Public Service Corporation (jointly referred to as the ROE Filers), submitted a section 205 filing seeking approval for the ROE component recoverable under the regional and local transmission rates charged by RTO-New England (RTO-NE). Specifically, the ROE Filers proposed a single ROE applicable to all regional and local transmission rates, which would consist of a base ROE (12.8 percent), as well as incentive adders of 50 basis points to reward RTO participation and 100 basis points to reward future transmission expansions. By order issued March 24, 2004, the Commission accepted the ROE Filers' proposed 50 basis point adder for RNS but rejected this proposed adder as it related to LNS.³ The Commission also rejected the ROE Filers' 100 basis point adder as it would relate to LNS, but set for hearing, subject to suspension and refund, the ROE Filers' proposed 100 basis point adder as it related to RNS. Finally, the Commission set for hearing, subject to suspension and refund, the ROE Filers' proposed base level ROE.

3. Prior to making the filing at issue in this proceeding, FPL-NED applied for membership in NEPOOL and requested that NEPOOL deem FPL-NED to be a Transmission Provider. Subsequently, on April 1, 2004, in Docket No. ER04-714-000 (April 1 filing), FPL-NED submitted its LNS tariff for filing with the Commission. At the time FPL-NED filed its Tariff with the Commission, NEPOOL had not reached an ultimate determination on the issue. In contemplation of this, the Commission, in the May 26 Order, accepted FPL-NED's LNS Tariff subject to refund in the event that FPL-NED's request to NEPOOL is ultimately denied.

4. In its April 1 filing, FPL-NED stated that the Commission's actions in this proceeding will determine the ROE for FPL-NED for its LNS Tariff as well as its NEPOOL and/or RTO-NE RNS rates and requested that the Commission rule on FPL-NED's RNS issues. FPL-NED requested that the Commission, consistent with the March 24 Order,⁴ grant it a 50 basis point incentive adder to whatever ROE is ultimately

² Bangor Hydro Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation; New England Power Company; Northeast Utilities Service Company; The United Illuminating Company; and Vermont Electric Power Company.

³ ISO New England, Inc., *et al.*, 106 FERC ¶ 61,280 at 62,056-57 (2004) (March 24 Order).

⁴ *Id.*

determined appropriate for FPL-NED, applicable to RNS rates, when FPL-NED transfers operational control of its facilities to RTO-NE. In addition, FPL-NED requested that the Commission grant it a 100 basis point adder attributable to new transmission investment on the same basis as granted to the other Transmission Owners in the March 24 Order.

5. In the May 26 Order, the Commission set for hearing matters regarding FPL-NED's formula rate calculation for each year's LNS Annual Transmission Revenue Requirements (LNS-ATTR) and the LNS Tariff itself. The issue of the ROE component was consolidated with the ongoing proceeding in Docket Nos. ER04-157-000 and ER04-157-001.

Requests for Rehearing

6. CDPUC and NUSCO filed timely requests for rehearing. CDPUC requests that the Commission clarify that FPL-NED is not entitled to any adders to its return on ROE for its LNS facilities. The CDPUC states that allowing an adder to LNS facilities would be inconsistent with the March 24 Order which rejected a proposed 50 basis point incentive adder for participation in RTO-NE and a proposed 100 basis point adder for future transmission expansions. The CDPUC states that the Commission rejected the adders in the March 24 Order and stated that the

adder was intended as an incentive for transmission owners to turn over operational control of their transmission facilities to an entity responsible for providing regional transmission service under the terms and conditions of a regional tariff. While the rationale for this incentive applies for facilities that are part of the Regional Network Service, it does not apply for the facilities that are subject to Local Service Schedule.⁵

7. The CDPUC states that the Commission's acceptance in the March 24 Order of the 50 and 100 basis point adders does not apply to facilities that operate under Local Service Schedules. CDPUC states that FPL-NED filed an LNS Tariff that establishes the rates for local service, *i.e.*, FPL-NED's non-PTF located within the NEPOOL control area, and if the Commission permitted FPL-NED to recover the basis point adders in its ROE for LNS facilities, the May 26 Order would be inconsistent with the March 24 Order.

⁵ Citing March 24 Order at P 247.

8. Separately, NUSCO,⁶ requests that the Commission clarify that the May 26 Order did not rule on the question of whether FPL-NED may recover transmission related costs for its Seabrook facility through NEPOOL transmission rates. NUSCO states that FPL-NED submitted a LNS Tariff purportedly to set forth the terms and conditions of local network service over FPL-NED's non-PTF facilities located within the NEPOOL control area. NUSCO states that NU and other intervenors argued that the LNS Tariff should be rejected, or in the alternative, evaluated in the context of FPL-NED's overall effort to shift its Seabrook transmission related costs to NEPOOL transmission customers. NUSCO states that

the May 26 Order appeared to acknowledge the fact that the underlying merit of FPL's cost recovery proposal is currently being vetted through the New England Power Pool ("NEPOOL") committee process-- *i.e.*, whether FPL's request is consistent with the terms and conditions of the Restated NEPOOL Agreement and the NEPOOL Open Access Transmission Tariff. Specifically, paragraph 31 of the May 26 Order noted that the NEPOOL Review Board recently granted NU's appeal of the Participants Committee's actions to permit FPL-NED to recover costs related to the Seabrook Station, and remanded the matter to the Participants Committee for reconsideration. Thus, in accepting FPL-NED's LNS Tariff, the Commission stated that 'should the ultimate decision go against FPL-NED, FPL-NED would have to refund all charges collected.'⁷

9. NUSCO requests that the Commission clarify its intent in paragraph 31 of the May 26 Order. NUSCO states that one reasonable reading of the May 26 Order is that the Commission, in accepting the LNS Tariff, merely found the filing to have met the minimum filing requirements so that it could be accepted for filing and that the Commission did not rule on whether FPL-NED could pass on its Seabrook transmission costs to NEPOOL transmission customers. NUSCO requests that the Commission confirm its understanding that the Commission intended this issue be first addressed by NEPOOL. NUSCO states that if this is not the case, and the Commission meant the May 26 Order to be a ruling on FPL's overall cost recovery proposal, then rehearing

⁶ NUSCO states that it makes this request on behalf the following NU Operating Companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

⁷ *Citing* May 26 Order at P 31.

should be granted to address the argument that the LNS Tariff is a fictitious arrangement, the purpose of which is not to provide local network service but rather to provide FPL a platform to recover its Seabrook transmission related costs from New England's regional transmission customers. NUSCO asserts that FPL-NED appears to be proposing to offer transmission over facilities that traditionally have been considered to be generation-related facilities. NUSCO also argues that FPL-NED's proposal to recover transmission support payments is contrary to Commission precedent.

Discussion

10. We will grant CDPUC's request for rehearing of our May 26 Order. The proposed 50 basis point incentive adder and the 100 basis point adder for new investment do not apply to facilities under FPL-NED's LNS Tariff and are only applicable to FPL-NED's RNS rates, consistent with our March 24 Order. Indeed, FPL-NED specifically requested in its filing that the adders apply only to its RNS rates and it was to this request that the Commission responded in the May 26 Order.⁸

11. We will also grant NUSCO's request for rehearing. NUSCO is correct in its understanding that the May 26 Order did not rule on the question of whether FPL-NED may recover Seabrook transmission-related costs through NEPOOL transmission rates. In the May 26 Order, the Commission recognized that FPL-NED's proposal was currently being vetted through the NEPOOL Participants Committee process. The Commission recognized that the NEPOOL Participants Committee had deemed FPL-NED a Transmission Provider and able to receive recovery of ATTR under NEPOOL, but that NUSCO had appealed the decision, and the NEPOOL Review Board had granted the appeal and remanded the matter to the NEPOOL Participants Committee for further review.⁹ In recognition of that ongoing process, the Commission set the LNS Tariff for hearing, but provided that "[a]ny charges collected pursuant to FPL-NED's Tariff thus will be subject to refund, should the ultimate decision [in the NEPOOL Participants Committee process] go against FPL-NED."¹⁰ Thus, the Commission intended that the hearing established in the May 26 Order would address the proposed LNS rate and should

⁸ FPL-NED April 1, 2004 Application at 8.

⁹ May 26 Order at P 5.

¹⁰ May 26 Order at P 31.

FPL-NED collect any charges under FPL-NED's Tariff prior to the completion of the NEPOOL Participants Committee review process, such charges would be subject to refund should the ultimate decision in that review process go against FPL-NED.

The Commission orders:

The requests for rehearing are hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

Linda Mitry,
Acting Secretary.