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**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2008-___

**RE: MOTION FOR DECLARATORY RULING
OF FLORIDA POWER & LIGHT COMPANY REGARDING TRANSMISSION
STATION RELIABILITY UPGRADE**

MOTION FOR DECLARATORY RULING

NOW COMES Florida Power & Light Company (“the Applicant” or “FPL”), the owner of the transmission substation in Seabrook, New Hampshire (“Seabrook Substation”) by and through its undersigned attorneys, and pursuant to N.H. Admin. Rule Site 203.01 respectfully requests that the New Hampshire Site Evaluation Committee (the “Committee” or “SEC”) issue a declaratory ruling that FPL’s proposed reliability upgrade (“Reliability Upgrade Project”) to the Seabrook Substation does not constitute a sizeable addition to an existing facility within the meaning of RSA 162-H:5,I. As explained below, the Reliability Upgrade Project will significantly enhance the reliability of an important transmission substation. Its construction will occur within the footprint of the existing substation, and the project will comply with all applicable federal, state, and local regulatory and permitting requirements. FPL asks that the Committee rule on this motion on an expedited basis, as the construction on this upgrade must begin in March of 2009 so that crucial cutover work can occur during the next scheduled outage of the Seabrook nuclear generating facility in October of 2009.

In support of this pleading, the Applicant states as follows:

I. Background

A. The Facility

FPL-NED's 345kV Seabrook Substation in Seabrook, New Hampshire interconnects the 1,318 MW Seabrook Nuclear Generating Station ("Seabrook Generator"), the largest single generating resource in New England, with the New England electric grid. The Seabrook Substation is also a Pool Transmission Facility under the Tariff of the ISO-New England, a part of the New England Bulk Power System, and one of the more critical substations in New England. The Seabrook Substation is an integral part of the North-South Interface and the Northern New England – Scobie plus Line 394 Interface. The Seabrook Substation serves to connect three major 345kV transmission lines: the Seabrook to Ward Hill/Tewksbury 394 Line, the Seabrook to Scobie 363 Line, and the Seabrook to Timber Swamp/Newington 369 Line.

B. The Applicant

FPL is a public utility in the State of New Hampshire for the limited purpose of owning and operating the Seabrook Substation. *New Hampshire Public Utilities Commission Order No. 24,321*, 89 NH PUC 267 (2004). FPL is an 88.2% owner of the transmission substation. The balance of the Seabrook Substation is owned by Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light & Power Department.

The construction of the transmission substation and the Seabrook nuclear electric generating station was originally certificated by the New Hampshire Site Evaluation Committee in January of 1974 pursuant to the provisions of RSA 162-F (which has been superseded by RSA 162-H). *Order No. 11,267 in D-SF6205*, 63-64 NH PUC 127 (1974). FPL's affiliate FPL Energy Seabrook, LLC ("FPL Energy") purchased an 88.2% share in the Seabrook Generator in 2002. FPL subsequently purchased

the Seabrook Substation from FPL Energy. *FPL Energy Seabrook, LLC and Florida Power and Light Company*, 104 FERC ¶ 61,258 (2003).

C. The Need for the Reliability Upgrade Project

FPL has concluded that it must complete a reliability upgrade to the 28-year old Seabrook Substation to ensure its continuing reliability for the New England grid. While FPL conducts a rigorous maintenance program for the Seabrook Substation, several equipment failures have occurred at the substation in the last two years. These incidents include, in February 2007, the failure of a graphite rupture disc in an SF6 gas bus enclosure, and, in January 2008, the failure of a drive rod in a 345 kV disconnect switch. These events have led to more than 26 days of unplanned outages since February of 2007, causing the unavailability of the Seabrook Generator during that time. While these breakdowns have been remedied, FPL believes that certain overall improvements are needed to the Seabrook Substation, including replacement or upgrade of aging equipment to reduce the risk of unplanned outages and other malfunctions. These reliability improvements will help improve the performance of a substation that is an integral and critical part of the New England power grid and acts as the interconnection to the electric grid for the largest base load electric generating plant in New England.

D. Description of the Reliability Upgrade Project

The proposed upgrade will take place entirely within the existing footprint of the Seabrook Substation and will not result in any increase in the voltage carried by the transmission facilities. The upgrade will address certain design issues in the substation, including the direct connection of the Reserve Auxiliary Transformers (“RATs”) to Bus No. 2, which poses reliability concerns and operational limitations. Instead, the RATs will be relocated to connect to a dedicated terminal position. The Generator Step-up (“GSU”) Transformer connections will also be relocated from their current position where they share a breaker and a half bay with the Seabrook - Scobie 363 Line, to a dedicated

double breaker bay. Also in this upgrade, five new Gas Insulated Substation (“GIS”) breakers will be installed: two will be replacements for existing breakers, and three will be new breakers. These enhancements to the substation will improve the reliability of the interconnections with the 345 kV lines, reduce the risk of unexpected outages of the Seabrook Generator, and provide greater ability to perform maintenance or future upgrades as needed without a generator outage. See Exhibit A, showing one-line diagrams of the configuration at the substation before and after the Reliability Upgrade Project. The construction will involve erecting in a portion of the substation a structure that will be somewhat taller than the existing substation structure. Again, no expansion of the substation footprint will be necessary. Attached is a photograph with a three-dimensional visual overlay of the enhanced substation which has been marked as Exhibit B. FPL has sought confidential treatment for this Exhibit pursuant to an Un-Assented to Motion for Protective Order and Confidential Treatment filed on the same date as this Motion. The estimated cost of the Reliability Upgrade Project is \$38.2 – 43.6 million (which includes the shares of FPL and the co-owners).

E. Timing of Project Work

The timing of the Reliability Upgrade Project work is driven by the refueling outage that has been scheduled for the Seabrook Generator in October 2009. It is critical to schedule the preparation and pre-outage work in a manner that helps ensure that work can be efficiently performed during the outage. Under the schedule FPL has developed, certain steps will have to commence by given dates for the project to stay on schedule. Most critically, foundation work must commence by March 1, 2009. This will allow structural/electrical installation to begin by June 1, 2009. During the October 2009 scheduled outage, the cutover from the old configuration and equipment to the new configuration and equipment will begin with the configuration of the RATs reconnection. The second phase of the project will then be performed consistent with the next Seabrook Generator refueling outage scheduled for April

2011; during this outage the remaining two new breakers will be put in service and reconfiguration of the GSU will be completed.

E. Other Regulatory Permits and Compliance

FPL has reviewed the applicability of environmental, land use and energy-related approval and permitting requirements associated with the Reliability Upgrade Project and discussed these requirements with agency personnel. The potential impact of the Reliability Upgrade Project is minimal as a result of its limited scope, particularly because the construction is within the existing substation footprint. To the extent any federal, state and local authorizations are needed, FPL has concluded that they can be obtained expeditiously and well before commencement of construction in March 2009. This assessment is based, in part, upon discussions with federal, state and local regulators with potential jurisdiction over the Reliability Upgrade Project.

FPL further emphasizes that the Reliability Upgrade Project is intended to comport with all federal, state and local standards and best management practices and FPL has every intention of remaining in full compliance throughout all phases of the project. Thus, full SEC review of environmental and reliability factors would be duplicative and would be unnecessary to protect the public interest.

A brief review of the key regulatory issues follows:

- U.S. Environmental Protection Agency (“EPA”): FPL has confirmed that the Reliability Upgrade Project qualifies for a construction general permit under the National Pollutant Discharge Elimination System (“NPDES”) program for all stormwater discharges and dewatering activity discharges. An individual project NPDES permit will not be required. Instead, federal authorization to conduct the construction activities for the Reliability Upgrade Project would become effective

upon submission of a Notice of Intent to the EPA Region I water program and would be conditioned upon compliance with regulatory standards that accompany the construction general permit.

- U.S. Army Corps of Engineers (“USACE”): FPL understands that the Reliability Upgrade Project does not require any permits or other authorizations from the USACE, and has received confirmation of this conclusion from the USACE.
- New Hampshire Department of Environmental Services (“DES”): FPL has confirmed with officials in DES that no permits or approvals under the NH Comprehensive Shoreland Protection Act (“CSPA”), RSA 483-B, or the NH Wetlands law, RSA 482-A, are required. Because the Reliability Upgrade Project will not result in the creation of any additional impervious surface within the 250 foot area of CSPA jurisdiction, DES has determined that no permit, waiver or variance is required under the CSPA. Similarly, because there are no jurisdictional wetlands within the project area and it is located outside the 100 foot upland Tidal Buffer Zone (100 feet landward of the highest observable tide line), the project does not require a wetlands permit. Also, no Alteration of Terrain permit is required because the project will not involve excavation or earth moving with an impact of greater than 50,000 square feet.
- New Hampshire Public Utilities Commission (“PUC”): FPL has discussed the upgrade with PUC Staff and will take steps to comply with the certification process of RSA 374-A:7,II(c), a statutory alternative to obtaining PUC approval for financing for the Reliability Upgrade Project. At the suggestion of the PUC

staff, FPL will also apply for a waiver from the requirement that a report be filed before a utility undertakes a capital improvement costing \$100,000 or more.

- ISO-New England: FPL is in the process of securing approvals from ISO-NE for the Reliability Upgrade Project, consistent with the requirements of the ISO-New England Tariff.
- Town of Seabrook (“Town”): FPL will comply with local land use ordinances by applying for a building permit from the Town.

II. The Committee’s Authority for Declaratory Ruling

The Committee’s rules allow entities to submit a motion for declaratory ruling. N.H. Admin. Rule Site 203.01. Under the rules, the Committee has 90 days from the time a motion is submitted to rule on the motion. Site 203.02(b).

Under RSA 162-H:5,I, a “sizeable addition” to a facility, like the Seabrook facility, certificated prior to January 1, 1992 (under the provisions of the former site evaluation law, RSA 162-F, which was repealed in 1991) must also obtain a certificate pursuant to the current law, RSA 162-H, not the law that was in effect when the facility was originally certificated. RSA 162-H:5,II.

Because neither RSA 162-H, nor the Committee’s rules, N.H. Admin. Rules Site Chapters 100, 200 and 300, provide any further definition of what constitutes “sizeable” changes or additions, FPL hereby requests a declaratory ruling on whether the proposed upgrade constitutes a “sizeable addition”. *See* RSA 541-A:1,V (“declaratory ruling’ means an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency”). *See also* RSA 541-A:16,I(d) (requiring each agency to “[a]dopt rules relating to the filing of petitions for declaratory rulings and their prompt disposition”).

III. Prior Decisions of the Committee on
What Constitutes a Sizeable Addition to an Existing Facility

The Committee has approved other similar requests for a determination that a particular addition is not sizeable within the meaning of this statute. *Letter of Michael P. Nolin, Chairman NH Site Evaluation Committee, dated January 26, 2004 to Mitchell S. Ross of FPL Energy regarding proposed upgrade of Seabrook Station nuclear power facility; Letter of Michael P. Nolin, Chairman NH Site Evaluation Committee, dated January 29, 2004 to Christopher J. Allwarden of Public Service Company of New Hampshire regarding proposed replacement of coal-fired electric generating unit at Schiller Generating Station in Portsmouth.*

On June 25, 2003, FPL Energy (the separate, but affiliated entity, that owns 88.2% of the Seabrook Generator) sought a ruling from the Committee on whether “minor in-plant modifications and certain equipment changes” throughout Seabrook Station to accomplish a 6.7% increase in the output of the plant would constitute a sizeable addition (“FPL Energy June 2003 Request”). The project was estimated to cost approximately \$46 million. Even though the modifications would result in a fairly significant increase in the output of the plant, the request emphasized that internal modifications to the plant would not result in significant environmental impacts, that it was an alteration or modification of an existing facility rather than a large-scale project, and that the project would be reviewed by other agencies. FPL Energy June 2003 Request at 3.

The Committee responded in a January 26, 2004 letter stating that based on the FPL Energy June 2003 Request it did not find that the project was a sizeable change or addition to the facility (“Committee January 29, 2004 Letter”). The Committee noted that all construction necessary to the proposed upgrade would occur within the footprint of the existing facility, that the project would not have any impact on the orderly development of the region and there would be no adverse impacts on

aesthetics, historic sites, air and water quality, the natural environment or public health and safety. *Id.* at 1. The Committee therefore found that the upgrade was not “a sizeable change or addition to the facility requiring the filing of a formal application.” *Id.* at 1-2.

Similarly, on September 3, 2003 Public Service Company of New Hampshire (“PSNH”) submitted a request to the Committee asking for a determination of no jurisdiction over the replacement of one of the existing 45 MW (net, 50 MW gross, output) dual capability (coal-fired with the capability to burn oil as a secondary fuel option) electric generating units at the Schiller Generating Station in Portsmouth, with a new dual capability unit (wood-fired with the capability to burn coal as a secondary fuel option) of the same size. The project involved the retirement of the existing boiler and its replacement with a similarly-sized boiler that would be installed and housed in a new structure adjacent to the existing units. The project also involved the installation of storage facilities and associated equipment within and adjacent to Schiller’s existing storage facilities, but within the confines of the existing Schiller property site. PSNH argued that this project, which cost over \$70 million, was not a “sizeable addition” because no new generation capacity would be added; it would only involve the replacement of an existing boiler with another similarly-sized one. PSNH also cited prior conversions of three units at Schiller to coal-burning capability in 1984, which were not subject to review and approval by the Committee, and the 1992 conversion of the 415 MW Newington Station to the capability to burn natural gas in addition to coal, which also was not subject to review and approval of the Committee, in support of its request for a statement of no jurisdiction.

The Committee responded in a January 29, 2004 letter in which it concluded that the generator replacement was not a sizeable addition to the facility (“Committee January 26, 2004 Letter”). The Committee took into account that “the facility will not sizably increase either in size or in generating capacity,” and that “any and all construction necessary to the proposed conversion will occur within the confines of the presently existing site.” *Id.* at 2.

IV. Analysis

Based on the precedent of the FPL Energy and PSNH cases discussed above, and the Reliability Upgrade Project's limited scope, the Reliability Upgrade Project should not be deemed to be a sizeable addition to an existing facility requiring full review under RSA 162-H.

The FPL Energy and PSNH cases show that the Committee has determined that a project involving construction within the existing footprint of a certificated facility or the confines of the existing site does not constitute a sizeable addition. Other criteria that the Committee has applied include that a project does not have any impact on the orderly development of the region, and that there would be no adverse impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety.

The Reliability Upgrade Project meets all these criteria. The project is an enhancement and upgrade of an existing substation. The purpose of the project is to enhance the reliability of a substation that is essential for the New England transmission grid and to the Seabrook Generator. The construction involves replacement of equipment, installing additional breakers, and making reconnections within the facility. All construction will take place within the substation's existing footprint, resulting in a taller structure, but one that still occupies the same area. The increased height of the substation will still be lower than the higher portions of the adjacent structures associated with the Seabrook Generator. See Exhibit B, for which FPL has sought confidential treatment pursuant to an Un-Assented to Motion for Protective Order and Confidential Treatment filed on the same date as this Motion. The project will not expand the footprint of the existing substation and will not result in any increase in the voltage or power being transported through the substation.

In addition, the Reliability Upgrade Project will not change how the existing land is being used and thus will not have any impact on the orderly development of the region. There will be no adverse

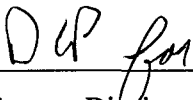
impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety. While the proposed upgrade will involve replacing an existing structure with one that is somewhat taller, as the attached drawings and simulations show, the new structure will still be shorter than the adjacent building and likely will be visible only to members of the public from limited locations outside the confines of the facility. Given these facts, FPL believes that this proposed upgrade is not a sizeable addition of the sort that the Legislature intended to be subject to a full review by the Committee. FPL submits, based on the precedent discussed above, and the scope of the Reliability Upgrade Project, that it would be entirely consistent with prior decisions of the Committee to determine that the Reliability Upgrade Project should be deemed to not be a sizeable addition to an existing facility and therefore not require an RSA 162-H certificate.

Finally, FPL wishes to add that it may, if deemed necessary, also submit to the Committee pursuant to RSA 162-H:4,IV a request for exemption from the requirements of RSA 162-H for the Reliability Upgrade Project. If at all possible, FPL wishes to avoid having to take this step, but will do so if necessary to secure the appropriate authorization from the Committee for the Reliability Upgrade Project so that it can stay on the schedule described above. With this in mind, if it is possible for the Committee to expedite consideration of this motion for declaratory ruling or to provide FPL with a preliminary indication of whether the Committee views this request for a declaratory ruling favorably within 30 days of filing, it could avoid the need for filing the request for an exemption. If FPL does not have such indication within the first 30 days of this filing, it is likely to submit a request for exemption, which the Committee by statute has 60 days to address, so that FPL can obtain a ruling on either the motion for declaratory ruling or the request for an exemption by mid January 2009.

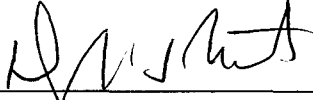
IV. Conclusion

Wherefore, FPL respectfully requests that the New Hampshire Site Evaluation Committee issue a declaratory ruling declaring that the proposed upgrade to the transmission substation is not a “sizeable addition” within the meaning of RSA 162-H:5,I, and grant such other relief as may be just and reasonable.

Respectfully submitted,
FPL
By Its Attorneys



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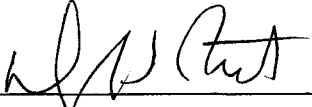


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Dated: October 22, 2008

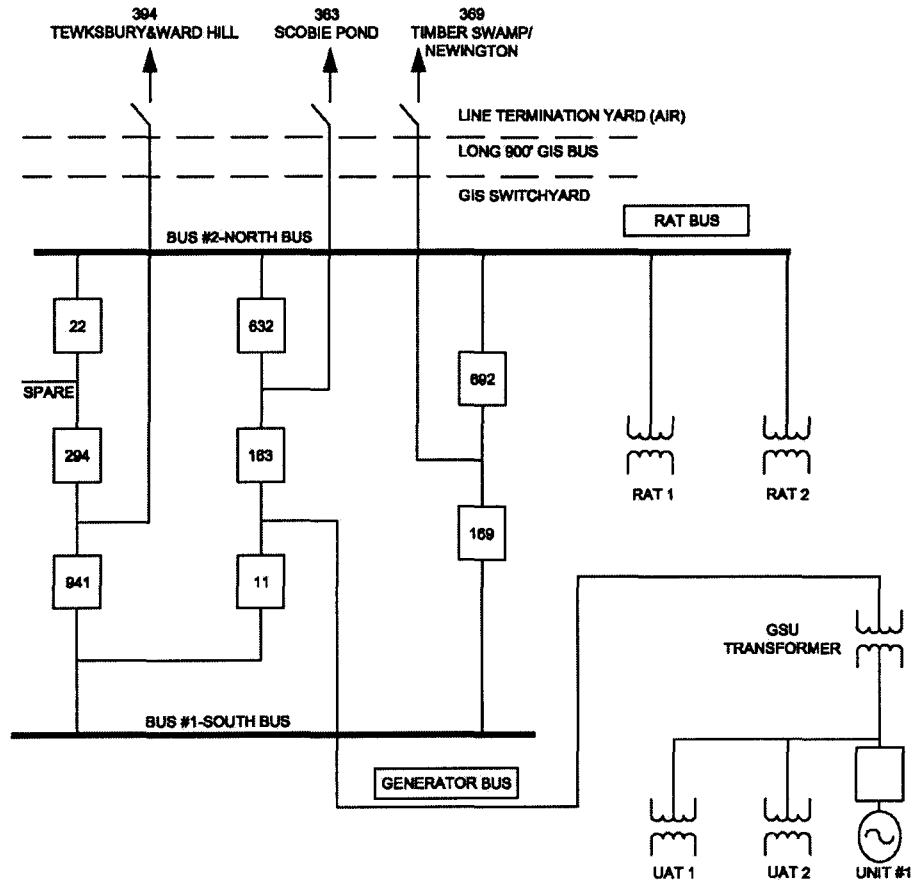
Certificate of Service

A copy of this Motion and Application has been served by email and first class mail this 22nd day of October, 2008 on the Counsel to the Site Evaluation Committee and the Office of the Attorney General.

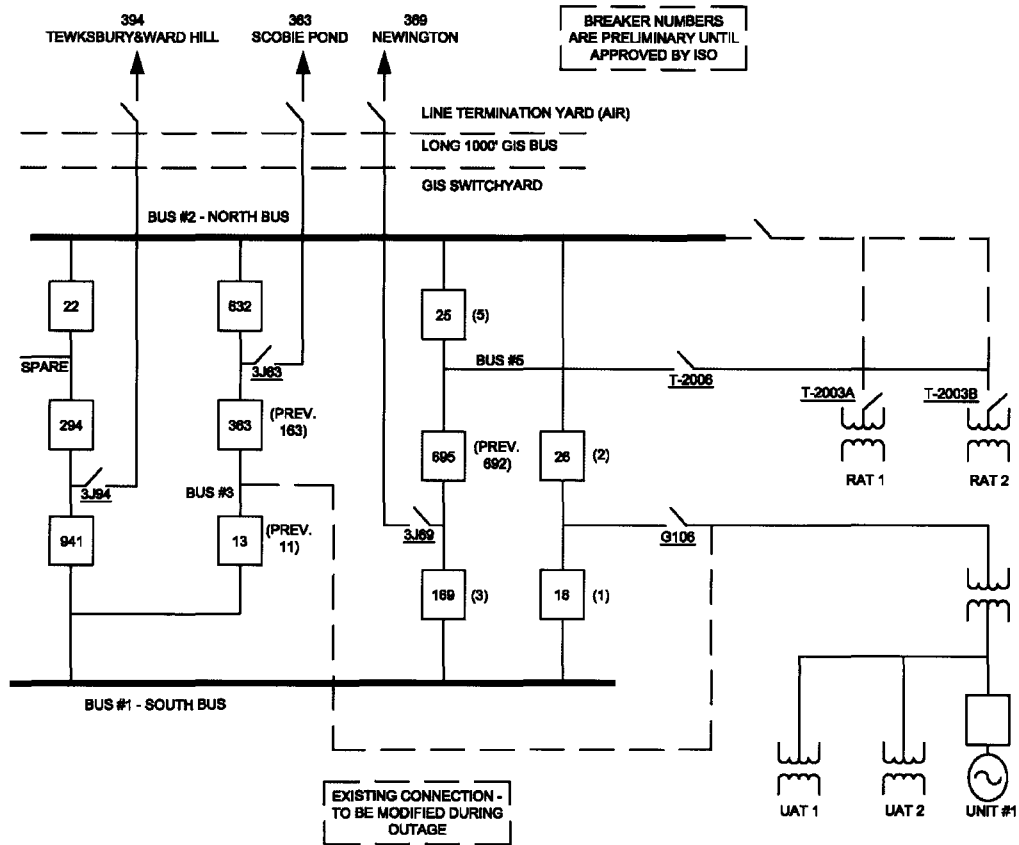


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EXHIBIT A



Current configuration of the Seabrook Substation.



Configuration of the Seabrook Substation upon completion of the Reliability Upgrade Project

[REDACTED]

EXHIBIT B