

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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NEW HAMPSHIRE TRANSMISSION, LLC)) DOCKET NO. DE 22-027
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**PETITION OF NEW HAMPSHIRE TRANSMISSION, LLC FOR AUTHORITY
TO CONSTRUCT, OWN, OPERATE, AND FINANCE ADDITIONAL
TRANSMISSION EQUIPMENT IN SEABROOK, NEW HAMPSHIRE**

New Hampshire Transmission, LLC (“NHT”) respectfully petitions the New Hampshire Public Utilities Commission (“the Commission”) for approval of authority to construct, own, and operate additional transmission equipment, including capacitor banks, breakers, switches, busswork, aboveground electric lines, control house, protection, control, communication, and other appurtenant infrastructure adjacent to the Transmission Substation in Seabrook, New Hampshire (the “Project”),¹ and to finance this Project out of a previously approved loan agreement, and to extend the term of its loan agreement with NextEra Capital Holdings, Inc. for one year.² In support of its petition, NHT states the following:

1. NHT is currently a public utility in New Hampshire for the purpose of owning and operating the transmission substation on the grounds of the Seabrook Nuclear Generating Station (“Seabrook Transmission Substation”) in Seabrook, New Hampshire, subject to the

¹ Public Service Company of New Hampshire d/b/a Eversource Energy will also construct and own a new short transmission line tap.

² On April 1, 2022, NHT submitted a separate filing with the New Hampshire Site Evaluation Committee (“SEC”) seeking an exemption from having to obtain a certificate, or a determination that this Project is not a “sizeable addition” to an existing facility requiring approval of the SEC, or a certificate based on an expedited review.

conditions set forth in the Settlement Agreement approved in Order No. 24,321 in DE 03-186, 89 NH PUC 267 (2004) (the “Settlement Agreement”). A copy of the Settlement Agreement is included as Appendix 1 to this Petition. *See also* Order No. 25,105 in DE 10-042, 95 NH PUC 235 (2010), approving the transfer of Seabrook Transmission Substation from NHT affiliate Florida Power & Light Company (“FPL”) to NHT. NHT is an 88.23% owner of the Seabrook Transmission Substation. The balance of the Seabrook Transmission Substation is owned by Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light & Power Department. NHT is an indirect wholly owned subsidiary of NextEra Energy Transmission, LLC.

2. The Seabrook Transmission Substation is a 345 kilovolt (“kV”) Pool Transmission Facility operated as part of the transmission network of ISO New England Inc. (“ISO-NE”). It interconnects the Seabrook Nuclear Generating Station, one of the largest electric generation resources in New England, with three major 345 kV transmission lines that are key elements of the backbone ISO-NE network. Even when the Seabrook Nuclear Generating Station is not operating, the transformer and interconnection facilities associated with the Seabrook Transmission Substation are essential to the reliable operation of the ISO-NE transmission network.

3. Section II, Paragraph 1 of the Settlement Agreement in DE 03-108 contained a list of commitments and conditions that gave NHT’s predecessor in interest, FPL, certain responsibilities and certain rights. Appendix 1, pp. 3-4. NHT agreed to assume those rights and responsibilities when the transfer was approved in 2010. 95 NH PUC at 239. Citing RSA 374:22 and RSA 374:26, the Settlement Agreement stated that it was “for the public good for FPL to be a public utility in New Hampshire for the purpose of owning and operating the

Seabrook Transmission Substation.” Appendix 1, p. 3. The Settlement Agreement also indicated that the parties did not object to a determination to this effect provided FPL’s operations in New Hampshire “were limited to the ownership and operation of the Seabrook Transmission Substation” *Id.* The Settlement Agreement also stated that in the event that NHT “voluntarily seeks to construct transmission beyond the existing Seabrook Transmission Substation” it “may seek all necessary regulatory approvals on a concurrent basis.” *Id.*, pp. 5-6. When it approved the Settlement Agreement, the Commission concluded that while the Agreement did not preclude FPL from expanding its New Hampshire operations beyond the substation, “no such authority is being granted or acceded to here.” 89 NH PUC at 272. Based on NHT’s reading of both the Settlement Agreement in DE 03-186 and the statutes noted above, NHT requires approval from the Commission to construct, own, and operate these additional transmission facilities in the state in order to proceed with the Project. The Commission’s statutory authority to provide NHT the requested approval is included in RSA 374:22 and 374:26.

4. RSA 374:22, provides:

No person or business entity, including any person or business entity that qualifies as an excepted local exchange carrier, shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main, or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

RSA 374:26 provides:

The commission shall grant such permission whenever it shall, after due hearing, find that such engaging in business, construction or exercise of right, privilege or franchise would be for the public good, and not otherwise; and may prescribe such terms and conditions for the exercise of the privilege granted under such permission as it shall consider for the public interest. Such permission may be granted without hearing when all interested parties are in agreement.

5. The need for the Project is clear in that ISO-NE identified a reliability need in the New Hampshire 2029 Solutions Study and selected NHT's Project as the preferred solution.³ See Appendix 2. The estimated cost of the Project is \$8.9 million, but the Project is still in an early stage of development and the cost could change. It is not anticipated, however, that the costs would increase to such an extent to require NHT to seek additional financing authority from the Commission except as noted herein. The cost of the Project is recoverable under ISO-NE's Federal Energy Regulatory Commission Open Access Transmission Tariff, Schedule 21-NHT, which provides the terms and conditions for local service from NHT.

6. NHT is filing this request with now having completed the reliability study and obtained the final approval from ISO-NE required under Section I.3.9 of the Tariff.

7. There is precedent that suggests that the authority to operate as a public utility should be obtained from the Commission prior to obtaining a certificate of site and facility.⁴ *See Re International Generation and Transmission Company, Inc.*, 67 NH PUC 478, 482 (1982), (under a predecessor site evaluation statute). However, as noted above, NHT is seeking an exemption from the SEC, or a determination that this Project is not a "sizeable" addition. Should the SEC grant either of these requests NHT will not have to obtain a certificate of site and facility. Nonetheless, given the ISO-NE requirements pertaining to the construction of the Project, NHT would respectfully request a final order from the Commission in this proceeding no later than September 1, 2022.

³ The New Hampshire 2029 Solution Study is a CEII document, which can be found at (<https://www.iso-ne.com/system-planning/key-study-areas/vt-nh/>) and accessed after obtaining the needed CEII clearance from ISO-NE.

⁴ NHT would accept as a condition of the Commission's approval of the additional authority being requested hering that NHT will not proceed with construction until it receives all necessary approvals for this Project.

8. It has been the longstanding policy of this Commission that the granting of public utility status “must be based upon a finding that the applicant is fit and able to carry out the function which it proposes.” *Id.* As the Commission noted in this order:

Decision upon decision in utility case law emphasizes the standard of fitness in fulfilling the public interest using such criteria as: (1) financial backing; (2) management and administrative expertise; (3) technical resources; and (4) the general fitness of an applicant. Simply stated, the company must be able to construct, operate and maintain its plant as well as to run its business. *Id.* at 484.

An affiliate of NHT, NextEra Energy Seabrook, LLC, a indirect, wholly-owned subsidiary of NextEra Energy Resources, LLC, has been recognized by the Commission as having the financial, technical and managerial capability to own and operate energy facilities in New Hampshire, including the Seabrook Nuclear Plant. *See* Order No. 24,050 in DE 02-075, 87 NH PUC 621 (2002). This Commission also recognized that the predecessor in interest to NHT had the financial, technical, and managerial capability to own and operate the Seabrook Transmission Substation, *see* Order No. 24,321 in DE 03-186, 89 NH PUC 267, 271 (2004), and that NHT has that capability. *See* Order No. 25,105 in DE 10-042, 95 NH PUC 235 (2010). Other affiliates of NHT have also been recognized as having these capabilities by the SEC. *See* Order and Certificate of Site and Facility with Conditions (Application of Chinook Solar, LLC) in SEC Docket No. 2019-02 (December 17, 2020) p. 2; and Decision and Order Approving Transfer of Membership Interests in Granite Reliable Power, LLC with Conditions in SEC Docket No. 2021-03 (August 17, 2021) p. 13.

9. The Commission has the authority to grant NHT’s requested approval. The New Hampshire Supreme Court, in its ruling that New Hampshire electric utilities’ franchises are not exclusive as a matter of law, concluded: “We hold that under the plain language of RSA 374:26 the Commission is both authorized and obligated to grant a competing electric

utility franchise when it determines that such grant would serve the public good.” *Appeal of Public Serv. Co. of N.H.*, 141 NH 13, 17 (1996). Also, under state law, when the definition of “public utility” in RSA 362:2, which includes an entity owning, operating, or managing plant or equipment used in the transmission of electricity ultimately sold to the public, is read in conjunction with RSA 374:22 and 26, these statutes are meant to encompass electric transmission authority. As a result, the Commission may grant an independent transmission company the authority to provide transmission services in New Hampshire when the Commission determines that it will serve the public good. *See, e.g., Vermont Electric Power Co., Inc.*, 55 NH PUC 522 (1970); *Re New England Hydro-Transmission Corp.*, 71 NH PUC 727 (1986); *Re Florida Power and Light Company*, 89 NH PUC 267 (2004). The Commission’s decision is therefore based on a public good analysis, not any consideration of whether transmission is an exclusive franchise. *See Appeal of Public Serv. Co. of N.H.*, 141 NH 13, 17 (1996). Over the years, the Commission has granted companies the authority to develop and operate transmission facilities, *see, e.g., Vermont Electric Power Co.*, 56 NH PUC 289 (1971), but it has not granted a franchise which would preclude the operation of another company, should that operation be in the public good. *See Exeter and Hampton Electric Co.*, 83 NH PUC 236, 237-238 (1998). Whether more than one transmission utility should be allowed to provide service in a particular service territory or to a particular customer in that service territory under particular circumstances is a question of fact and policy for the Commission’s resolution.

10. Attached as Appendix 3 is the prefiled testimony of Richard Allen, President of NHT, which demonstrates NHT’s managerial, technical, and financial capability to construct and operate this Project. As this testimony shows, NHT, through its access to the resources of

NextEra affiliates, has the requisite financial, managerial, and technical capability to construct, own, and operate the transmission facilities that are a part of this Project, which will need to be constructed and operated in New Hampshire.

11. NHT submits, therefore, that Mr. Allen's prefiled testimony shows there is ample evidence to support a finding of public good for the Commission to approve NHT's request for additional authority as a public utility to allow it to construct, own, and operate the Project, which is located adjacent to the Seabrook Substation. Further, ISO-NE has determined that these facilities are necessary to maintain the reliability of the ISO-NE transmission system, which provides transmission of electricity ultimately sold to the public here in New Hampshire and throughout New England, as detailed in the New Hampshire 2029 Solutions Study. *See* RSA 362:2, I. Thus, it is in the public good for the Commission to approve the expansion of NHT's commitments and conditions as a public utility in New Hampshire to encompass this additional authority.

12. Section II, 1 of the Settlement Agreement in DE 03-186 contains a provision that requires:

With respect to any financing of FPL-NED's interest in the Seabrook Substation, including any borrowing or the issuance of any notes, bonds or other evidence of indebtedness or securities of any nature, being subject to the provisions of RSA 369 and other applicable regulatory laws of New Hampshire unless FPL or FPL-NED files with the Commission the appropriate certification of another regulatory agency as set forth in RSA 374-A:7, II(c) or any successor statute.

13. Pursuant to this provision of the Settlement Agreement, NHT has sought and obtained approval from the Commission for financings of equipment upgrades, capital costs and operating expenses at the Transmission Substation. These approvals have typically been provided by the Commission through an order "nisi" process or an order that avoids the need

for a hearing. In the most recent such approval was granted in Order No. 26,204 in DE 18-171 (December 21, 2018), which recognized that because NHT has no retail ratepayers in New Hampshire, the Commission's concluded it only need a limited review of the "routine financing request". Order No. 26,204, at 3.

14. The term of the loan agreement with NextEra Capital Holdings, Inc. approved by that order was later extended, at NHT's request, for a two-year period beginning on January 1, 2021. Order No. 26,432 in DE 18-171 (December 17, 2020). Given the timing of this submittal and the application being filed with the SEC, NHT in this filing is also requesting that the term of the loan agreement approved and extended in DE 18-171, be further extended until January 1, 2024, to accommodate the construction of the Project. The total amount of the long-term secured debt instruments approved in those orders were in an aggregate principal amount not to exceed \$59 million.

15. There are sufficient funds remaining in the previously approved financing to fund this Project. NHT is therefore requesting that the Commission also authorize it to use a portion of those financing proceeds for this new Project and that the term of the loan agreement be extended until January 1, 2024.

Wherefore, NHT respectfully requests that the New Hampshire Public Utilities Commission:

a) Find that it would be for the public good to modify NHT's existing authority to permit it to construct, own, and operate capacitor banks, breakers, switches, busswork, aboveground electric lines, control house, protection, control, communication, and other appurtenant infrastructure adjacent to the Seabrook Transmission Substation in Seabrook, New Hampshire;

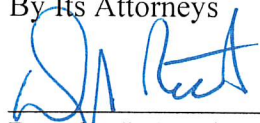
b) Authorize NHT to pay for this Project out of the proceeds of the previously approved financing;

c) Extend the term of the previously approved loan agreement until January 1, 2024;
and

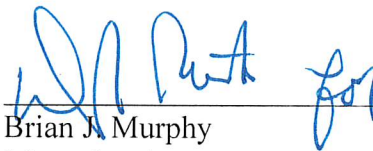
d) Grant such other relief as may be just and equitable.

Respectfully submitted,

New Hampshire Transmission, LLC
By Its Attorneys



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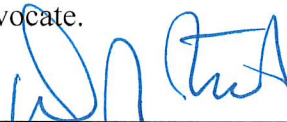


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Certificate of Service

A copy of this Petition has been served by email this 11th day of April 2022 on the Department of Energy and the Office of Consumer Advocate.



Douglas L. Patch