

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

National Grid plc and National Grid USA

Docket No. EC06-34-000

ORDER CONDITIONALLY AUTHORIZING ACQUISITION
OF SECURITIES AND OTHER TRANSACTIONS

(Issued February 7, 2006)

1. In this order, we conditionally authorize certain financing transactions involving acquisition of securities without requiring further filings under section 203 of the Federal Power Act (FPA).¹ National Grid plc (National Grid)² and National Grid USA (collectively, Applicants) request blanket Commission authorization to acquire securities under FPA section 203 and to make intra-family mergers and reorganizations at the intermediate holding company level. For the reasons discussed below, we find that conditionally authorizing these financing transactions is consistent with the public interest.

Background

2. National Grid USA, a subsidiary of National Grid, owns nine public utility subsidiaries that provide energy and distribution services in the Northeast. Through its subsidiaries, National Grid USA is engaged in the transmission and distribution of electricity and the marketing of energy commodities and services, serving customers in Massachusetts, Rhode Island and New Hampshire. National Grid, National Grid USA, and each of the intermediate holding companies in the chain of ownership between them

¹ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 § 1289, Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005) (EPAAct 2005).

² National Grid plc is a United Kingdom-based utilities company that operates in other countries, principally the United States.

(Intermediate Holding Companies) are registered holding companies under the Public Utility Holding Company Act of 1935 (PUHCA 1935).³

3. Applicants state that repeal of PUHCA 1935, as part of EAct 2005, removes some of the legal certainty provided by their financing orders issued by the Securities and Exchange Commission (SEC). Specifically, they state that the “savings clause”⁴ as part of the PUHCA 1935 repeal may not be adequate for those providing legal opinions for external financings going forward.⁵ Applicants are seeking Commission authorization for their financing transactions by February 8, 2006, the date on which PUHCA 1935 repeal is effective, to ensure that there is no interruption to their existing financing program.

4. On December 2, 2005, Applicants filed an application requesting blanket authorization, for a two-year period through February 8, 2008, for four categories of financing transactions under FPA section 203: (1) money pool transactions that involve acquisitions by public utility subsidiaries of each others’ securities valued in excess of \$10 million (Money Pool Transactions);⁶ (2) holding company transactions involving

³ 15 U.S.C. § 79a *et seq.* (2000). This statute was repealed, effective February 8, 2006, and replaced by the Public Utility Holding Company Act of 2005 (PUHCA 2005). *See* EAct 2005 §§ 1261-77, 119 Stat. 594, 972-78.

⁴ Section 1271(a) of EAct 2005, 119 Stat. 976, states, “Nothing in this subtitle, or otherwise in the Public Utility Holding Company Act of 1935, or rules, or regulations, or orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization, whether by rule or by order.”

⁵ Application at 10.

⁶ A money pool is a standing agreement under which specified members of a holding company family lend their surplus funds to a pool from which specified members of the holding company system may borrow at rates at or below market levels. In this case, Money Pool Transactions are engaged in by Applicants’ public utility subsidiary members, which include Granite State Electric Company, Massachusetts Electric Company, Nantucket Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Power Corporation, Niagara Mohawk Power Corporation, New England Hydro-Transmission Electric Company, Inc., and New England Hydro-Transmission Corporation.

acquisitions of any securities of the U.S. chain of holding companies⁷ or any securities of their public utility subsidiaries valued in excess of \$10 million; (3) reorganizations and mergers of Intermediate Holding Companies; and (4) transactions involving foreign utility companies (FUCOs)⁸ and holding companies outside the U.S. chain of holding companies. Applicants state that these financing mechanisms have been authorized by the SEC through September 30, 2007.⁹

5. On January 12, 2006, National Grid and National Grid USA withdrew their requests for authorization (1) for themselves and the Intermediate Holding Companies to acquire the debt securities of their direct and indirect public utility subsidiaries; and (2) for transactions involving FUCOs. Applicants stated that with the Commission's issuance of Order No. 669, the final rule governing transactions subject to section 203, as amended by EAct 2005,¹⁰ the requested authorizations are no longer necessary because the Commission has granted blanket authorization for those types of transactions.

6. Applicants state that they continue to seek blanket authorization for a two-year period, through February 8, 2008, for (1) Money Pool Transactions, (2) stock repurchases by National Grid from the open market in order to manage its capital structure and to

⁷ Applicants state that the U.S. chain of holding companies are National Grid, National Grid USA, the Intermediate Holding Companies, and Niagara Mohawk Holdings.

⁸ A foreign utility company or FUCO means any company that:

- (i) Owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:
 - (A) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and
 - (B) Neither the company nor any of its subsidiary companies is a public utility company operating in the United States.

18 C.F.R. § 366.1 (2005).

⁹ See *National Grid Transco*, Holding Company Act Release No. 27898, S.E.C. Docket 2653 (September 30, 2004); *National Grid Transco plc*, Holding Company Act Release No. 27950, 84 S.E.C. Docket 3577 (March 9, 2005).

¹⁰ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats & Regs. ¶ 31,200 (2005), *reh'g. pending*. The order implements the amendments to section 203 made by EAct 2005. See note 3, *supra*.

issue shares under stock plans; (3) loans by one company in the U.S. chain of holding companies to another through purchases of debt securities from their direct and indirect subsidiaries; (4) “open account advances”¹¹ to direct and indirect subsidiaries within the U.S. chain of holding companies; and (5) reorganizations and mergers at the Intermediate Holding Company level to take advantage of evolving tax and accounting considerations. Applicants state that the reorganizations and mergers would not directly affect the structure or control over the public utility subsidiaries.

7. Applicants state that the proposed transactions are consistent with the public interest and will have no adverse effect on competition, rates, or regulation. Applicants state that the financing program is designed to prevent any possibility of improper cross-subsidization through any of these transactions. They verify that there will be no pledges or encumbrances of utility assets with associate companies.

Notice of Application

8. Notice of National Grid’s application was published in the *Federal Register*, 70 Fed. Reg. 74,799 (2005), with interventions or protests due on or before December 23, 2005. None was filed.

Standard of Review Under Section 203

9. Section 203(a)(4) of the FPA, as amended, provides that the Commission must approve a transaction if it finds that the proposed transaction will be consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest. The Commission’s Merger Policy Statement provides that the Commission will generally take into account three factors in analyzing proposed section 203 transactions: (a) the effect on competition, (b) the effect on rates, and (c) the effect on regulation.¹² Order No. 669 provides

¹¹ An open account advance is an interest-free loan from an upstream company to a downstream affiliate. It is a financing mechanism only available within a holding company system. Open account advances are permitted without limitation under PUHCA 1935 pursuant to SEC Rule 45(b), 17 C.F.R., § 250.45(b)(2005).

¹² See *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, 65 Fed.

(continued...)

additional guidance for implementing the Commission's responsibilities, particularly with respect to the amendments to FPA section 203(a) in EAct 2005.

Discussion

10. The Commission grants Applicants' request for their public utility subsidiaries to acquire the securities of other public utility subsidiaries as part of Money Pool Transactions, subject to the same limits on National Grid's Money Pool Transactions imposed by the SEC under PUHCA 1935.¹³ The Commission understands the need for public utilities to quickly obtain or provide financing as part of a Money Pool Transaction and finds that, with the conditions discussed above on the proposed transactions, the transactions will not adversely affect competition, rates or regulation and will not result in cross-subsidization or a pledge or encumbrance of assets. However, we are in the early stages of implementing EAct 2005. For that reason, and in order to preserve the status quo of Applicants' activities permitted by the SEC under PUHCA 1935, the Commission concludes that it is appropriate to grant the authorization, to the extent it is not already granted under Order No. 669, for one year. The authorization expires one year from the effective date of this order without prejudice to requests to extend the authorization and subject to any relevant Commission action on rehearing of Order No. 669, including the imposition of any additional conditions, to be prospectively applied, that may be necessary for the protection of ratepayers.

11. Applicants also seek authorization for National Grid to repurchase its own securities in the open market. They state that FPA section 203(a)(2) could be read to require Commission authorization before a publicly traded utility holding company may repurchase its own stock. However, Applicants state that there is no legislative history for this interpretation.¹⁴ We conclude that the most reasonable interpretation of section 203(a)(2) is that a holding company is not required to obtain Commission authorization to repurchase its own stock. There is nothing in the legislative history to indicate that Congress intended such a result, and the better reading of the statutory language is that it applies to acquisitions by a holding company of another company's securities. Therefore,

Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

¹³ See *National Grid Transco*, Holding Company Act Release No. 27898, S.E.C. Docket 2653 (September 30, 2004); *National Grid Transco plc*, Holding Company Act Release No. 27950, 84 S.E.C. Docket 3577 (March 9, 2005).

¹⁴ Application at 42.

holding companies do not need Commission authorization to repurchase their own securities.

12. The remaining financing transactions for which authorization is sought include: (1) loans by one company in the U.S. chain of holding companies to another through purchases of debt securities from their direct and indirect subsidiaries; (2) open account advances to direct and indirect subsidiaries within the U.S. chain of holding companies; and (3) reorganizations and mergers at the Intermediate Holding Company level to take advantage of evolving tax and accounting considerations. These transactions were granted blanket authorizations by Order No. 669, effective February 8, 2006, so these requests are moot.

The Commission orders:

(A) Applicants' request to acquire securities pursuant to the Money Pool Transactions is hereby granted, subject to the same limits on National Grid's Money Pool Transactions and reporting requirements imposed by the SEC under PUHCA 1935.

(B) The foregoing authorization 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 costs, or any other matter whatsoever now pending or which may come before the Commission.

(C) 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.

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

(E) If the proposed transactions result in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(F) The approvals granted herein are subject to the outcome of Commission action on rehearing of Order No. 669, Docket No. RM05-34-000, including any additional conditions for ratepayer protections that the Commission may impose on any similar blanket authorizations granted in association with that docket.

(G) This order is effective February 8, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.