

THE STATE OF NEW HAMPSHIRE  
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE  
DOCKET NO. NDFC 2002-2

FINAL REPORT AND ORDER

I. SUMMARY OF FINDINGS

FPL Energy Seabrook, LLC (FPLE or Company) has contracted to purchase approximately 88.2% of Seabrook Station. Because FPLE Seabrook will be a non-utility, as defined by RSA 162-F:15,VIII, the Nuclear Decommissioning Financing Committee (NDFC or Committee) must establish an appropriate funding assurance for FPLE Seabrook, before the company may acquire an ownership interest in Seabrook Station. RSA 162-F:21-a.<sup>1</sup>

The NDFC finds the funding assurance for by FPLE Seabrook, as enhanced by the terms of the Stipulation Agreement of the parties (Stipulation) (Exhibit No. 1) and the conditions set forth in this Report and Order, to be sufficient to meet the requirements of RSA 162-F:21-a.<sup>2</sup> Further, the NDFC finds the schedule of payments, as detailed in the Stipulation Agreement, to be appropriate for 2003. The conditions to be met are set forth in Section F (Conditions).

II. PROCEDURAL HISTORY

Before the announcement of the selection of FPLE Seabrook as the winning bidder, and in anticipation of an application, the Committee issued an Order of Notice on January 24, 2002, opening this docket. On May 9, 2002, FPLE Seabrook filed its

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<sup>1</sup> The Purchase and Sale Agreement for the sale to FPLE Seabrook is included as Attachment 1 to Exhibit 2. The NDFC's jurisdiction is limited to decommissioning-related matters and does not extend to consideration of whether the sale is in the public interest. Accordingly, the Committee takes no position on the terms of the Purchase and Sale agreement and does not approve or adopt its terms for any purpose.

<sup>2</sup> In this Report and Order documents are referenced by the Exhibit number assigned during the public hearing. For ease of future reference certain documents will be attached to the final Report and Order.

application for approval of a certain funding assurance method and a schedule of payments. On May 15, 2002, counsel to the Committee held a pre-hearing conference to accept appearances and reach agreement on the scope and schedule for this docket. On June 3, 2002, the NDFC issued Order No. 1 setting the scope and schedule for the docket. By agreement of the full parties the schedule was amended to permit the completion of a comprehensive stipulation by the full parties. All parties received actual notice of the schedule change. The NDFC conducted a public meeting on June 14, 2002 to receive views on funding assurance methods from William Cobbs, Chairman, Public Resources Advisory Group, the financial advisor to the State of New Hampshire. A stipulation of the full Parties was filed on June 24, 2002. On July 1 and 2, 2002, the Committee held public hearings to receive evidence and testimony, and to examine the witness for FPLE Seabrook, Mr. Moray Dewhurst, Chief Financial Officer of FPL Group, Inc.

On July 26, 2002, the Committee released its Preliminary Report and Order, providing the summary of findings as required by RSA 162-F:21,IV (PRO). The record relied upon by the Committee was available for public inspection at the New Hampshire Public Utilities Commission and in the offices of the Seabrook Town Clerk as of July 29, 2002. Comments were filed by FPLE Seabrook and the Massachusetts Municipal Wholesale Electric Company (MMWEC) on August 14, 2002.

On September 4, 2002, the Committee held a public hearing at the Seabrook Town Hall starting at 7:00 p.m., pursuant to RSA 162-F:21,IV. The hearing was noticed by publication and public posting, in compliance with RSA 162-F:21,IV. At the public hearing on September 4, 2002, representatives of all the full parties were present. No

new issues were raised by any party or member of the public at the public hearing on September 4, 2002.

### III. PARTIES AND THEIR POSITIONS

The following entities were granted full-party intervenor status: North Atlantic Energy Service Corporation (NAESCO) with Counsel for NAESCO representing the United Illuminating Company, Great Bay Power Corporation, New England Power Company, Canal Electric Company, Little Bay Power Corporation, New Hampshire Electric Cooperative, Inc., the Connecticut Light and Power Company, and North Atlantic Energy Corporation (the Selling Joint Owners). Also granted full intervenor status were: MMWEC with counsel for MMWEC also representing the Towns of Hudson and Taunton (Non-Selling Owners); the Seacoast Anti-Pollution League (SAPL); the Public Utilities Commission Staff; and, the Office of Consumer Advocate.

The Selling Joint Owners joined in the Stipulation and support FPLE Seabrook in its filing with the Committee. The Office of the Consumer Advocate entered into the Stipulation without reservation. The Commission Staff participated in settlement discussions but neither supported nor opposed the Stipulation.

The Non-selling Owners supported the Stipulation. However, the Non-Selling Owners argued that due to the risks of the non-utility business model, the NDFC should require FPLE Seabrook to provide additional funding assurance. Specifically, the Non-Selling Owners urged the NDFC to require FPLE Seabrook to include an additional \$110 million of support as part of the Support Agreement (Exhibit No. 7), and to include the Support Agreement as part of the FPL Group Capital Guarantee. Further, the Non-Selling Owners requested that the NDFC require FPLE Seabrook to maintain a specified

cash flow compared to decommissioning expense or failing that, to make payment into escrow. Exhibit No. 18 SAPL supported the Stipulation and requested that the NDFC expand the agreement to also require that any disputes regarding the parental guarantees be litigated solely in the Courts of New Hampshire. FPLE Seabrook supported the Stipulation at the July public hearings.

On August 14, 2002, FPLE Seabrook filed written comments requesting that the Final Report and Order not require the New Hampshire State Courts to be recognized as the proper forum concerning the FPL Group Guaranty (discussed herein). FPLE Seabrook raised no other objection concerning the PRO. Also on August 14, 2002, the Non-Selling Owners filed comments requesting that the NDFC require additional funding assurance from FPLE Seabrook, by having the FPL Group Capital Guarantee (Exhibit No. 18) amended to guaranty payments under the provisions of the Support Agreement (Exhibit No. 7), as modified by the Stipulation of the Parties (Exhibit No. 1) and the FPL Group Capital Letter to the NDFC (Exhibit No. 8).

#### IV. FPLE SEABROOK

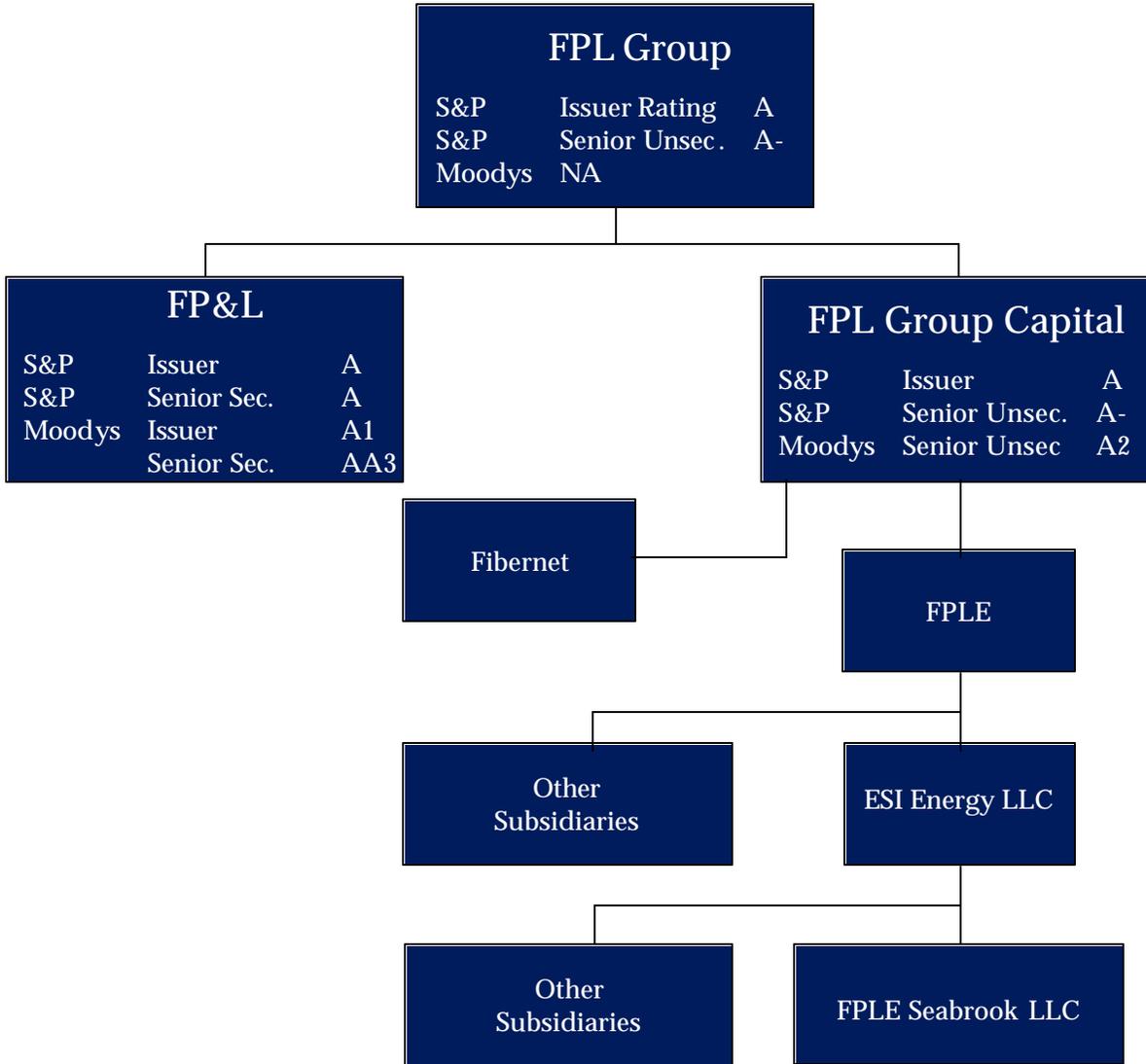
##### A. Corporate Overview

FPLE Seabrook, the corporation that will own approximately 88.2% of the Seabrook Station is a 100% owned subsidiary of FPL Energy, Inc., which is a 100% owned subsidiary of FPL Group Capital which, in turn, is a 100% owned subsidiary of FPL Group, Inc. FPL Group, Inc. is one of the largest companies in the United States. Backed by the financial resources of FPL Group, Inc., a large, viable energy corporation, FPLE Seabrook proposes to operate the plant as a merchant facility, selling its output at competitive prices.

FPL Group is the holding company owning 100% of Florida Power & Light Company (FP&L), which is a regulated utility with a service territory covering nearly all of Florida's eastern seaboard as well as the southern part of the state, and for FPL Group Capital, which owns and funds FPL Group's non-utility operations. Tr. I at 13.

FPL Energy, a subsidiary of FPL Group Capital, manages FPL Group's non-regulated generation investments and pursues new investments in the domestic and international energy markets. Through a subsidiary FPL Energy will own FPLE Seabrook. FPL Energy has ownership interests in operating independent power projects in 18 states with a net generating capacity of approximately 5100 megawatts. Fuel sources for these projects include: natural gas, oil, wind, hydro, and other (Exhibit No. 13). The FPL Group corporate structure is as follows:

Corporate Ownership of FPLE Seabrook



In 2001, FPL Group reported approximately \$8.5 billion in operating revenues and \$781 million of net income. FPL Group has approximately \$10 billion in equity capital. Tr. I at 33. FPL Group’s balance sheet reflects total consolidated assets of approximately \$17.5 billion and total consolidated capitalization of \$11.1 billion (Exhibit No. 12). FPL Group’s capital expenditures and investments for 2001 amounted to

approximately \$3.3 billion. In 2001, approximately \$2 billion was invested in FPL Group Capital (Exhibit No. 14 at 45).

FPL Group Capital reported almost \$1 billion in operating revenues and net income of \$113 million in 2001. Its balance sheet for the year ending 2001 reflects over \$6 billion of assets and a capitalization of over \$3.3 billion (Exhibit No. 12). FPL Group projects that it will continue to grow earnings per share at approximately 6% to 8% annually fueled in part by average annual growth at FPL Energy of 20% to 30% (Exhibit No. 13).

The record before us reveals no evidence of an energy company that engages in the practices that have troubled the industry in recent months. Tr. I at 39. FPL Group Capital's trading business is focused on marketing energy from assets in which it has an ownership interest. Tr. II at 22. FPL Group is subject to FAS 133 which is known as "mark to market" accounting. Tr. I at 40. This accounting applies to derivative investments. Tr. II at 19. However, because FPL Energy is asset-based with respect to its transactions, there is relatively little "mark to market" affect on its income statement. Tr. II at 22. Consequently, FPL Group uses "mark-to-market" accounting in limited circumstances in compliance with Generally Accepted Accounting Principles of FASB. Id. FPL Group appears to be forthcoming in disclosing off-balance sheet obligations. Tr. II at 55-58. The NDFC has not attempted to audit FPL Group, but relies on public records and sworn testimony. See e.g., Exhibits 14, 15. At a time when other energy companies are experiencing difficulties, FPL Group appears to be strong financially. Exhibit No. 12. The financial health of FPL Group is one significant reason why the NDFC is willing to accept parental guarantees as part of the funding assurance. Another

reason is the apparent conservative accounting practices of the FPL Group, which provide a measure of confidence that unwanted surprises are unlikely.

B. Proposed Funding Assurances

FPLE Seabrook, in its application (Exhibit No. 2) and as supplemented by the Stipulation (Exhibit No. 1), has proposed a package of financial supports and parental guarantees that require little enhancement to satisfy the requirements of RSA 162-F:21-a, RSA 162-F:21-c and this Committee's prior orders. To that end, FPLE Seabrook's witness, Mr. Dewhurst, testified that FPLE Seabrook would provide funding assurance comprised of three parts. The first part is the cash flows forecasted for FPLE Seabrook operations (Exhibit Nos. 5 & 6). The second is a Support Agreement which provides access to resources from FPLE Seabrook's indirect parent, FPL Group Capital. The third part is a Guarantee from FPL Group Capital to the NDFC, backed by a guaranty from FPL Group (FPL Group Capital's parent)<sup>3</sup> to support FPLE Seabrook's decommissioning obligations and ultimately the safe decommissioning of the Station (Tr. I at 14-15). Each part of FPLE Seabrook's proposed funding assurance will be discussed later in this Report and Order under separate headings.

As an enhancement to its proposed funding assurance, the Company agreed with the full parties that, in the event that certain changes in business conditions occur, the Company will provide to the Committee notice of the changes and will make additional payments into the decommissioning fund or into an escrow fund both to mitigate the risk of under-funding and to provide the Committee with ample time to determine whether a changed business condition warrants changes in funding assurances. Briefly, those

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<sup>3</sup> FPL uses "guaranty" and "guarantee" interchangeably and no significance is ascribed to this drafting anomaly. The title assigned to this FPL Group Capital Guaranty and the FPL Group Inc. Guarantee will be used when discussing those documents.

changes include: changes in FPL Group’s ratio of Funded Debt to total capitalization (Exhibit 16); significant changes in the operating income of FPL Group, consolidated (Exhibit 1, IV G (2) and (3)); the divestiture by FP&L, the regulated utility owned by FPL Group, of a majority of its generating assets (Id. (4)); or the failure to make a timely payment into the decommissioning fund (Exhibit No. 1 p. 10-13) (Tr. I at 49-53). Occurrence of these events automatically will trigger actions by FPLE Seabrook, even before the Committee initiates formal proceedings.

Event	Result
FPLE Seabrook fails to make a scheduled payment to the decommissioning fund (Stipulation IV, G,5)	<ul style="list-style-type: none"> <li>➤ In addition to schedule payments, payment equal to 6-months of payments paid into the fund</li> <li>➤ All decommissioning payments will also be made as scheduled by NDFC</li> </ul>
FPL Group sells 80% FP&L (FL utility) generation assets (Stipulation IV, G,4)	<ul style="list-style-type: none"> <li>➤ 12-months of decommissioning payments paid into escrow</li> <li>➤ FPLE Seabrook must show cause why funding assurance should not be changed</li> <li>➤ All decommissioning payments will also be made as scheduled by NDFC</li> </ul>
FPL Group’s Funded debt to total Capitalization exceeds 0.65:1.00 (Stipulation IV, G,1)	<ul style="list-style-type: none"> <li>➤ FPLE Seabrook will not pay any cash dividends or other transfers to FPL Group, /or/</li> <li>➤ FPLE Seabrook may make payment equal to 6-months of payments paid into the decommissioning fund, in addition to all other scheduled payments</li> <li>➤ All decommissioning payments will also be made as scheduled by NDFC</li> </ul>
FPL Group’s operating income falls below \$800 million (Stipulation IV, G,2)	<ul style="list-style-type: none"> <li>➤ FPLE Seabrook must show cause why funding assurance should not be changed</li> <li>➤ All decommissioning payments will also be made as scheduled by NDFC</li> </ul>
FPL Group’s operating income falls below \$600 million(Stipulation IV, G,3)	<ul style="list-style-type: none"> <li>➤ 12-months of payments paid into escrow</li> <li>➤ FPLE Seabrook must show cause why funding assurance should not be changed</li> <li>➤ All decommissioning payments will also be made as scheduled by NDFC</li> </ul>

The parties stipulated that, on an ongoing basis, FPLE Seabrook will provide the Committee with information relating to the operations of FP&L Group's nuclear facilities, certain filings made to the United States Securities and Exchange Commission (SEC), notice of the enactment of Florida statutes or Florida Supreme Court orders mandating the restructuring of utility service in Florida, and failure by FPL Group Capital to maintain any of the representations or warranties made to the NDFC (Exhibit 1F, p 10). The reporting requirements will be discussed in detail in this Report and Order.

## V. DISCUSSION

### A. Funding Assurance Requirements

The NDFC is responsible for determining whether, prior to acquiring an ownership interest, a prospective acquirer of an interest in Seabrook Station has provided assurance of its ability to meet all of its decommissioning responsibilities. RSA 162-F:21-a, II. "Funding assurances shall be sufficient to fully fund the projected cost of decommissioning the facility by the funding date, including in the event of a premature permanent cessation of operation." RSA 162-F:21-c. The funding assurance must be sufficient to ensure full payment of the decommissioning costs for which that owner is responsible. RSA 162-F:21-c. The funding assurance will remain in effect until all decommissioning, as determined by the NDFC, is completed. RSA 162-F:21-c; RSA 162-F:15, I. A funding assurance may take many forms, with the NDFC having broad discretion in determining what is acceptable.

"Funding assurance" means any prepayment, external sinking funds, parental or self-guarantee, insurance, bonds, letters of credit, form of surety, long term power sales contract, or other method, or combination of methods approved by the committee, that, in the aggregate, meets or exceeds the decommissioning funding requirements established by the committee.

RSA 162-F:14,VI.

The NDFC must review the adequacy of each funding assurance each year, and may initiate a review of a funding assurance at any time. RSA 162-F:22, II, III.

The purpose of the funding assurance is to mitigate the risks to the State of New Hampshire of inadequate funding after the sale of an interest in Seabrook Station to a non-utility. At present, the risk to the state is minimized by all Seabrook Station owners, other than Great Bay and Little Bay, being utilities with franchised service territories. Once FPLE Seabrook becomes the majority owner of Seabrook Station it will be responsible for all decommissioning costs, for approximately 88.2% of Seabrook Station. The security of franchised service territories, with captive native load customers, will be lost and replaced by the less certain cash flows the plant may generate in the competitive marketplace and the funding assurance. The risks faced by the State include:

- The risk of premature permanent cessation of operation
- The risk of missed payments by FPLE Seabrook
- The risk of Seabrook Station failing, in a competitive market, to provide sufficient cash flow to meet decommissioning obligations
- The risk that the decommissioning fund's performance does not meet anticipated returns
- The risk that the actual cost of decommissioning exceeds the projected cost

The Committee is satisfied that the terms of the funding assurances to be provided by FPLE Seabrook are sufficient to appropriately mitigate each of these risks.

Based on the evidence in this Docket, the Committee expects that Seabrook Station will continue to operate well and that FPL Group will remain financially healthy. Under those circumstances, the schedule of payments, and the Committee's statutory flexibility to adjust the payments into the fund as it finds appropriate, provide sufficient means to achieve full funding of the decommissioning obligation. The additional

funding assurance, which is the topic of this docket, is required to provide protection in the event the future does not meet expectations.

The NDFC therefore finds the requirements of RSA 162-F:21-a will be met with the proposed funding assurance as modified by the Stipulation and this Report and Order. Each element of funding assurance is separately addressed in the following sections of this Report and Order.

B. FPLE Seabrook Cash Flows

One of the elements of the funding assurance proposed by FPLE Seabrook is the assertion that the economics of operating the plant will provide sufficient cash flows to adequately meet operating and maintenance expenses and to fund all decommissioning obligations as they are incurred Tr. I, at 17-18.

To support that claim, FPLE Seabrook has presented two Exhibits, Nos. 5 and 6, which purport to show projected income and cash flows. Exhibit No. 5 is based on Seabrook Station's existing business plan, adjusted for FPLE Seabrook's depreciation and decommissioning expense. It assumes a 97.5% capacity factor in years in which no outage occurs (Tr. I at 106). It also assumes market prices based on October 2001 price projections. According to Exhibit 5, FPLE Seabrook will be profitable from 2003 through 2007 and will generate positive cash flow in excess of its expenses, including decommissioning expenses, of more than \$220 million during that period.

Exhibit No. 6 is similar to Exhibit No. 5 but incorporates more conservative assumptions regarding plant operations and market pricing. According to Exhibit No. 6, FPLE Seabrook will be profitable beginning in 2004 and will have positive cash flow of approximately \$101 million during the 2003 through 2007 period after all expenses,

including decommissioning expense, are paid. Exhibit No. 6 was designed to produce “an extremely conservative assessment of what the future financial situation of FPLE Seabrook might be.” Tr. I at 22.

Based on these exhibits the Committee believes that, in the absence of any unforeseen market disruptions or a significant deterioration in the performance of Seabrook Station, it is likely that FPLE Seabrook will be financially sound and will be able to meet all of its obligations. However, the Committee is concerned that FPLE Seabrook is a single asset company and that on a stand-alone basis it may not be able to discharge its obligations, particularly in the event of a premature shutdown. Therefore, the guarantees and support facilities provided by FPL Group and FPL Group Capital are essential to the NDFC’s acceptance of the funding assurance offered.

#### C. FPL Group Capital Guaranty

FPL Group Capital will execute a direct guaranty to the NDFC assuring payment of FPLE Seabrook’s decommissioning obligation (Guaranty). The Guaranty will be executed in the form provided as Exhibit No. 9, and amended as required by this Report and Order.

By its terms, the FPL Group Capital Guaranty is absolute, unconditional and irrevocable. Exhibit No. 9, par. 2 and 3. The Guaranty will be in effect until FPLE Seabrook no longer has a funding assurance obligation and decommissioning is completed at Seabrook Station, (Exhibit No. 9, par. 2) even if the Committee imposes new funding assurance requirements in the future. Tr. II at 13. An officer of FPL Group Capital will execute the Guaranty once the NDFC issues an order setting forth a funding assurance arrangement for FPLE Seabrook. Tr. II at 37.

FPL Group Capital has significant assets and its Guaranty provides the foundation for meeting FPLE Seabrook's parental guaranty. As one part of the package of funding assurance, the Committee finds the FPL Group Capital Guaranty acceptable.

FPL Group Capital's assets and, more important to this Committee, its cash flows are not pledged to secure this Guaranty. FPL Group Capital routinely pays dividends to its parent, FPL Group. Exhibit 27. FPL Group Capital's board of directors is comprised entirely of FPL Group officers. Exhibit 27. While a separate corporation, the composition of the FPL Group Capital board of directors leads the Committee to conclude FPL Group Capital is not an independent entity. While this Guaranty is a direct commitment from FPL Group Capital to the NDFC, standing alone it would be inadequate funding assurance because of the risks inherent in FPL Group Capital's operations and its lack of a truly independent management structure. However, as part of a comprehensive package including the Guarantee from FPL Group (discussed in Section V, D), the FPL Group capital Guaranty becomes an acceptable and critical element of the funding assurance for FPLE Seabrook.

FPL Group Capital will be obligated to meet FPLE Seabrook's decommissioning obligations if FPLE Seabrook does not. In the first instance, FPL Group Capital will make FPLE Seabrook's monthly scheduled payment in the event FPLE Seabrook fails to pay that obligation. Tr. II at 29. This obligation of FPL Group Capital to pay for decommissioning exists regardless of FPLE Seabrook's ability to pay. Tr. II at 37. There will be no need to determine whether FPLE Seabrook can pay, only that it has not paid, in order for the FPL Group Capital payment to be made. In the event FPL Seabrook fails, in any way, to meet its obligations, the NDFC will have the ability to demand direct

payment from FPL Group Capital without first proceeding against FPLE Seabrook. Tr. II at 10, 72. This direct recourse against a parent with substantial assets, without the risk and delay associated with litigation, makes this component of the funding assurance package acceptable. At present, the prompt decommissioning standard requires decommissioning, other than shipment of spent nuclear fuel, to be completed within approximately ten years after Seabrook Station ends operation. In the event of premature cessation of operation, decommissioning is to begin no earlier than 2015. Funding for decommissioning must meet these expectations and the funding assurances must provide the means for FPLE Seabrook to pay its share of decommissioning costs as they are incurred. The parental guaranty structure provides sufficient assurance that FPLE Seabrook will meet this requirement.

All matters concerning the Guaranty will be interpreted under New Hampshire law (Exhibit No. 9, Par. 7), which the NDFC finds to be appropriate. The Guaranty, however, does not attempt to select the courts in which the obligations of FPL Group Capital would be enforced, should litigation be necessary. Exhibit No. 10. The NDFC can not accept the uncertainty of choice of forum that this omission creates.

In comments filed on August 14, 2002, FPLE Seabrook urged the Committee to leave the question of choice of forum unresolved. The Company reasoned that the likelihood of a dispute is remote, and that the matter should be resolved only after a dispute arises. FPLE Comments at 3.

The Committee agrees that disputes concerning enforcement of any FPLE Seabrook obligations, or those of its indirect parents, are not expected to arise. The NDFC would not find the funding assurance acceptable if the Committee had reason to

expect litigation would be required to enforce the terms. At the same time, the Committee recognizes the possibility that, one day due to circumstances currently unforeseen, either FPL Group Capital or FPL Group may be less able or less willing to meet FPLE Seabrook's obligations, and legal action could be necessary to enforce the funding assurance. The Committee is not persuaded that it should wait and only seek determination of the proper forum when the need arises. The Committee is not prepared to accept the inevitable delay that would occur as lawyers argue before various courts about jurisdiction. The Committee will require that FPL Group Capital and FPL Group submit to the jurisdiction of New Hampshire courts for resolution of any disputes that may arise from the guarantees and the commitments of these companies. As discussed in this section, precise language must be added to the letter commitments, (Exhibit Nos. 8 and 11) before this Final Report and Order will be issued.

This Guaranty is made by a foreign corporation to a state agency. Given its obligation to protect the public health and safety, the NDFC is unwilling to accept the Guaranty if it provides the prospect for protracted litigation to determine which court would resolve a dispute, even before the merits of any dispute are addressed. As stated before, the funding assurance must provide for prompt payment of decommissioning obligations when required by the NDFC. If a dispute arises concerning enforcement of the FPL Group Capital Guaranty, it will most likely mean a default has occurred or one is imminent. If that occurs, the NDFC will seek prompt enforcement of both the FPL Group Capital Guaranty and the FPL Group Guarantee and potential delay resulting from contested jurisdiction is unacceptable. Accordingly, approval of the FPLE Seabrook

funding assurance is conditioned upon a binding commitment from FPL Group Capital that the choice of forum will be the courts of New Hampshire for the litigation of any disputes concerning enforcement of the FPL Group Capital Guaranty. This condition will be met by insertion of the following language in the FPL Group Capital letter to the NDFC (Exhibit No. 8):

FPL Group Capital agrees that any dispute(s) between the Committee and FPL Group Capital arising out of the FPL Group Capital Guaranty, the Support Agreement, this letter agreement and/or the commitments contained herein, shall be resolved in the Courts of the State of New Hampshire.

Once the letter is modified, this Guaranty mitigates the risk of a missed payment by FPLE Seabrook. The Guaranty also mitigates the risk that if FPLE Seabrook is unable to sell electricity profitably in the competitive energy market the decommissioning funding obligation will not be met.

#### D. FPL Group Guarantee

FPL Group, the indirect parent of both FPLE Seabrook and FPL Group Capital, provides the ultimate guaranty that FPLE Seabrook's decommissioning obligation will be paid as required by the NDFC. If either FPLE Seabrook or FPL Group Capital fails, for any reason, to pay the decommissioning obligation imposed by the NDFC, FPL Group will make all payments ordered by the NDFC. Tr. II at 72. The FPL Group obligation is memorialized by an agreement executed on October 4, 1998 and presented as Exhibit No. 10 (Guarantee). As discussed above, the FPL Group Capital Guaranty has the weakness of being from a company that is under the control of another. It is only with the

Guarantee from FPL Group that the Committee receives sufficient assurance to accept a parental guaranty as a form of funding assurance.

Considerable attention was paid to the structure of the parental guaranty proffered by FPLE Seabrook. In particular, parties and Committee members expressed a concern regarding the enforceability of the FPL Group Guarantee and the necessity for the “two-step” approach. Clearly, a direct guaranty from FPL Group to the NDFC would be both simpler and preferable to the Guaranty from FPL Group Capital to the NDFC, which, in turn, is guaranteed by FPL Group. FPLE Seabrook’s witness testified that there is no legal barrier to a direct guaranty from FPL Group to the NDFC. Tr. II at 73. Rather, the Committee is presented with a structure designed, in the first instance, to conform to the corporate structure designed by FPL Group. Tr. II at 73.

The letter from FPL Group to the NDFC (Exhibit No. 11) eliminates most concerns about the two-step parental guaranty. The letter removes any ambiguity concerning whether the decommissioning payment requirements set by the NDFC will be guaranteed by FPL Group. As set forth in the Stipulation (Exhibit No. 1) and recognized by the FPL Group letter (Exhibit No. 11), the FPL Group Capital Guaranty to the NDFC is a contingent obligation included as debt of that company, making the NDFC a “holder” of debt. That debt in turn, establishes the obligation of FPL Group to assume FPLE Seabrook’s decommissioning funding obligations in the event FPL Group Capital fails to pay decommissioning costs of FPLE Seabrook. Tr. II at 72, Exhibit No. 10. FPL Group ultimately will have an absolute and unconditional obligation to pay for decommissioning if FPLE Seabrook fails to pay. Tr. II at 10. The NDFC will have the ability to proceed directly against FPL Group to recover decommissioning costs of FPLE Seabrook, without

first having to proceed against FPLE Seabrook or FPL Group Capital. Tr. II at 10. Also, the value of the FPL Group Guarantee is enhanced because it does not cover the obligations of its regulated utility in Florida, FP&L, and especially the decommissioning obligations of that utility. Tr. II at 38.

Unlike the FPL Group Capital Guaranty, the FPL Group Guarantee will be governed by Florida law. The Company maintains this election was made because it was originally executed as a guaranty from one Florida company to another Florida company. Tr. II at 7. At this time the Committee accepts the choice of Florida law, inasmuch as it is a pre-existing requirement in an agreement that extends to other FPL Group subsidiaries. Tr. I at 15. If an enforcement action against FPL Group becomes necessary, it will indicate a far greater problem with the health of the company. Consequently, choice of law challenges would likely be insignificant if such an event were to occur.

At the same time, the NDFC is unwilling to leave ambiguous the choice of forum for enforcement of the FPL Group Guarantee. Like the FPL Group Capital Guaranty, the FPL Group Guarantee is silent when it comes to which court jurisdiction should be used to enforce the guaranty. The NDFC applies the same reasoning for considering which court jurisdiction should be used when enforcing the FPL Group Guarantee, the ultimate parent, as it did for the more immediate indirect parent guaranty of FPL Group Capital. That is, New Hampshire courts are the proper forum for litigation concerning enforcement of the FPL Group Guarantee. Accordingly, as a condition of approving the funding assurance for FPLE Seabrook, FPL Group will need to agree to use New Hampshire courts for any litigation concerning enforcement of FPL Group's Guarantee of the FPL Group Capital Guaranty to the NDFC. The NDFC will not require that the

FPL Group Guarantee be revised, but rather this condition will be met by insertion of the following language in the FPL Group letter to the NDFC (Exhibit No. 11):

FPL Group agrees that any dispute(s) between the Committee and FPL Group arising out of the FPL Group Guarantee, this letter agreement and/or the commitments contained herein, shall be resolved in the Courts of the State of New Hampshire.

With the selection of New Hampshire courts, the Committee finds the FPL Group Guarantee, and the two-step parental guaranty structure acceptable in light of the current financial health and structure of FPL Group. As recognized by the Company, the NDFC can change the funding assurance requirements at any time and is not bound to maintain this funding assurance for all time by virtue of accepting the Stipulation and the proffered parental guarantees. Tr. II at 38. The FPL Group Guarantee and the FPL Group Capital Guaranty, as well as the letter commitments to the NDFC, (Exhibits 8 and 11) will remain in effect regardless of future changes the NDFC may make to the funding assurance required of FPLE Seabrook. Tr. II at 12-13.

The NDFC has the authority to modify the funding assurance requirement “to ensure adequate funding by each owner of its decommissioning obligation.” RSA 162-F:22, II. In a future review, the NDFC could require a direct guaranty from FPL Group. With the flexibility provided by statute and the expectation that FPL Group will remain a financially sound company, the NDFC finds the parental guaranty structure proposed by FPLE Seabrook acceptable to meet the requirements of RSA 162-F:21-a, provided New Hampshire courts are recognized as the forum for litigation.

#### E. Support Agreement

As part of its funding assurance, FPLE Seabrook has offered a Support Agreement from its indirect parent, FPL Group Capital. As originally offered, that agreement between FPL Group Capital and FPLE Seabrook would provide up to a total of \$110 million of financial support over Seabrook's remaining license life in the event that FPLE Seabrook's available cash would not permit it to fund its ongoing operating expenses. That agreement is also being used to support FPLE Seabrook's application to acquire an interest in the Seabrook Station before the NRC and is typical of the support agreements approved by the NRC. Tr. I at 23. To secure the approval of this Committee, FPLE Seabrook has agreed to augment the Support Agreement pursuant to the terms of the Stipulation.

The Company agreed to stipulated adjustments to the Support Agreement that will make available to FPLE Seabrook an additional \$110 million in financial support if an outage at the plant lasts for more than nine consecutive months and FPLE Seabrook management determines that it requires support of more than \$110 million. In other words, in the event of an extended outage, FPL Group Capital will provide to FPLE Seabrook up to \$110 million during the first nine months of any such outage and up to a total of \$220 million if the outage is longer than 9 months. We note that while the Support Agreement and the additional support being offered in this proceeding are intended to provide funds to FPLE Seabrook to ensure safe operations during periods when sales from the plant are not being made, these support facilities are available to FPLE Seabrook at any time plant management determines a need for them. While the Support Agreement, by its terms, is only to provide support for expenses of Seabrook

during its “operating life”, FPLE Seabrook and FPL Group Capital have agreed that in the event that an extended outage results in the premature shutdown of Seabrook Station, any unused portion of the \$220 million available to FPLE Seabrook could be used to fund required expenses after the premature shutdown for a period of up to 15 months from the start of that outage.

FPLE Seabrook and FPL Group Capital have agreed that the \$220 million in support is not a single sum that, once drawn on, remains depleted. Rather, the \$220 million in support will be replenished automatically after any outage - except an outage leading to a premature shutdown. Exhibit 1 t IV, B, 4. In effect, the Support Agreement will be “evergreen”. That is, once Seabrook Station goes back into service after an outage, the full amount of the Support Agreement plus the additional \$110 million will be available for the next outage. Thus between outages FPLE Seabrook would have, on a consistent basis, up to \$220 million of committed support from its indirect parent to ensure that Seabrook Station could be operated and maintained in a safe and reliable fashion.

During the hearing and in subsequent comments, the Non-Selling owners urged the NDFC to require that the Support Agreement be recognized as part of the funding assurance and, in turn, be enforceable by the NDFC by the terms of the FPL Group Capital and the FPL Group guarantees. The Committee recognizes the Support Agreement as a means for preserving the value of Seabrook Station by providing money to cover operating costs during an extended outage. While it is not a funding assurance, the funds available through the Support Agreement are important to ensuring the asset is properly maintained. It is from the successful operation of Seabrook Station that the

Committee expects FPLE Seabrook to meet its decommissioning funding obligations. As its name suggests, the funding assurance is required to ensure payment of decommissioning costs. While the Committee will not, at this time, require that the NDFC have the authority to enforce the Support Agreement, the NDFC will monitor FPLE Seabrook's use of the Support Agreement, along with any instance when a request for funds is denied. The need for FPLE Seabrook to request money under the terms of the Support Agreement will indicate a weakening financial condition and prompt closer scrutiny by the Committee. This indicator of financial health will assist the NDFC in its continuing assessment of the adequacy of the funding assurance and the schedule of payments for FPLE Seabrook.

Similarly, the Committee will not establish cash flow requirements for Seabrook Station, as requested by some parties. The financial health of FPLE Seabrook will be tracked by monitoring the wholesale market, in New England, Seabrook Station's monthly operating reports, and exercise of the Support Agreement provisions. The Committee believes that, at this time, more detailed cash flow information for FPLE Seabrook is not needed in order to assess the likelihood that the decommissioning obligations will be met.

Recognizing that FPL Group Capital's commitment to provide support is based on an estimate of current projected operating expenses, the parties to the Stipulation agreed that commencing in 2007 the Committee should review the adequacy of the Support Agreement and the additional \$110 million support described above and, based on an average of FPLE Seabrook's share of Seabrook Station operating and maintenance expenses for the immediately preceding three (3) years and its share of Seabrook

Station's projected operating and maintenance expenses in the succeeding three (3) year period, adjust the amount available under the Support Agreement and the additional support.

It was noted at hearing that the NDFC is not a party to the Support Agreement. Tr. II at 8-9. The Committee will not, at this time, require that the Support Agreement recognize the NDFC as a third party beneficiary. FPLE Seabrook and FPL Group Capital have committed to notifying the NDFC of any proposed changes to the Support Agreement 30 days prior to making any changes. Further, there will be no amendment, modification or change to the agreement if the NDFC determines that the change would possibly diminish the quality of the funding assurances. Once notified, the Committee will decide whether a proposed alteration of the Support Agreement might diminish the quality of the funding assurance. If the Committee decides to commence a proceeding to investigate a proposed change, the Support Agreement will remain unaltered until the NDFC completes its review and the terms of any changes, as ordered by the NDFC in a final Report and Order, are met by FPLE Seabrook. Exhibit No. 1 at IV, C, 2..

While not sufficient as a sole means of satisfying the requirements of RSA 162-F:21-a to provide adequate funding assurance, the Support Agreement combined with the adjustments committed to by FPL Group Capital and the guarantees described in the previous sections, together, sufficiently mitigate the risk that FPLE Seabrook will be unable to fully meet its decommissioning obligations. Further, in the event of an extended outage it will provide FPLE Seabrook with necessary funding to ensure the public health and safe operation of the plant.

#### F. Schedule of Payments

The NDFC must establish a schedule of payments to ensure that the decommissioning fund will be sufficient to meet all costs of decommissioning in a timely way. RSA 162-F:19. In NDFC Docket 2002-1, the Committee established the scheduled payments for the existing Seabrook Station owners. That schedule remains in effect until an ownership interest is transferred to FPLE Seabrook.

The proposed schedule of payments for FPLE Seabrook (Exhibit No. 4) uses the same methodology as approved by the NDFC in Docket 2002-1. Additionally, the schedule of payments for FPLE Seabrook denominated in Exhibit No. 4 uses each of the assumptions adopted by the NDFC in Docket 2002-1, with two exceptions:

- (a) The 2002 year-end decommissioning fund balance includes \$58.7 million as the estimate of the RSA 162-F:21-a Top-off payment and the payment is assumed to be invested based on investment elections proposed by FPLE Seabrook (see Section VG, *infra*); and,
- (b) The 2003-2026 decommissioning fund schedule of payments for the Seabrook Station ownership interest to be acquired by FPLE Seabrook is assumed to be invested based on the investment elections proposed by FPLE Seabrook.

The schedule continues the use of two funding periods: (1) 2003-2006 based on a funding date of 2015, and (2) 2007-2026 based on a funding date of 2026. The Committee finds this structure appropriate due to the ability to adjust the funding dates and the schedule of payments at a future date in order to meet the benchmarked fund performance previously adopted by the Committee.

All parties to the Stipulation (Exhibit No. 1) have agreed that the proposed schedule of payments will be recalculated using the decommissioning fund market value as of November 30, 2002, plus the trust fund contributions scheduled to be made in December 2002. Once adjusted, the schedule of payments will be effective as of January 1, 2003, for all ownership interests purchased by FPLE Seabrook before that date. FPLE Seabrook will pay any unpaid 2002 decommissioning fund obligations for any ownership interest it acquires prior to January 1, 2003, using the schedule of payments for that ownership interest as set in NDFC Docket 2002-1. In other words, FPLE Seabrook will step into the shoes of a selling owner for any unpaid 2002 scheduled payment.

If FPLE Seabrook purchases a Seabrook Station ownership interest after January 1, 2003, FPLE Seabrook will assume the schedule of payments effective for such ownership interest as of the first business day of the month following the date of purchase of that ownership interest. The schedule of payments for an ownership interest acquired after January 1, 2003 will be determined from the schedule of payments approved in this Report and Order (Attachment 6). That is, any Selling Owner owning an interest in Seabrook Station as of January 1, 2003 will pay into the decommissioning fund pursuant to the schedule of payments approved in NDFC Docket 2002-1. If the Selling Owner's share is transferred to FPLE Seabrook after January 1, 2003, the schedule of payments for that Seabrook share will be determined using Attachment 6 to this Report and Order.

The NDFC approves the proposed schedule of payments as adjusted, based on the financial assurances and other safeguards that will be in place after FPLE Seabrook purchases its interest in Seabrook Station. The increase in the Fund balance resulting

from the Top-off payment of \$58.7 million strengthens the fund beyond what would otherwise have occurred, and maintaining the two-tier funding dates provides ample flexibility for the Committee to adjust the schedule of payments in reaction to changed circumstances, including changes in plant operations and decommissioning fund performance. Furthermore, the NDFC is confident that it can respond promptly should there be a need to adjust the schedule of payments, or otherwise increase the decommissioning fund balance, even after 2006.

By adopting the schedule of payments proposed in the Stipulation, the Committee establishes the payments required in 2003 for FPLE Seabrook and sets forth a schedule of payments that, if all assumptions are met, will produce a sufficient balance in the decommissioning fund in order to complete decommissioning in a timely manner, as required by RSA 162-F:19. Because the schedule of payments is based upon various supportable assumptions, it is reasonably certain that the schedule of payments adopted here will ensure that the decommissioning fund will accumulate sufficient funds to complete all decommissioning. However, the NDFC may change this determination at a future date, as provided for in RSA 162-F:22.

G. Top-off

Before FPLE Seabrook is permitted to purchase any ownership interest in Seabrook Station, the requirements of RSA 162-F:21-a must be met:

I. At the time a non-utility acquires an ownership interest in a facility, sufficient moneys shall have been paid into the fund, so that the balance of the fund for that ownership interest shall equal or exceed the minimum decommissioning funding requirements of the Nuclear Regulatory Commission for that ownership interest by the funding date.

This has come to be known as the “Top-off” requirement. Once the Top-off is made, the decommissioning funding requirements of the Nuclear Regulatory Commission (NRC) will be met as of the funding date for the share of Seabrook Station acquired by FPLE Seabrook. This will ensure that radiological clean-up will be completed after 2015, leaving the site restoration funding requirements imposed by state law as the primary focus of future schedules of payment.

In NDFC Docket 2001-1, the Committee established the manner in which the Top-off will be calculated. NDFC Docket 2001-1 Report and Order at 25. Of particular note are the following requirements:

- 2015 will be used as the funding date
- Decommissioning cost will be the most recent approved by the NDFC
- Decommission fund balance will be calculated as of the date of sale
- NRC minimum requirement will be calculated using the most recent NRC determination

As reflected in NDFC Order No. 1 in this docket, the most recent estimate of the Top-off is \$58.7 million. We note that the calculation was made during the first quarter of this year and that the financial markets have fluctuated since then. Also, it is unclear whether the NRC will issue NUREG-10 before the transfer of Seabrook Station ownership interests occurs. Either of these two factors may result in a significant change in the amount of the Top-off actually paid into the decommissioning fund.

Also in NDFC Docket 2001-1, the Committee required the transfer of the Top-off amount by wire transfer on the sale date, and a true-up of the Top-off calculation subsequent to closing. This true-up is necessary because the Trustee is unable to provide an accurate accounting of the balance in each account of the Selling Owners until approximately seven days after a specified date. To provide the means for a swift

transfer of any under-payment of the Top-off, the Selling Joint Owners have agreed to establish an escrow fund of \$10 million. Exhibit No. 25. The Commissioner of the Treasury has agreed to act as Escrow Agent for the decommissioning fund.

The Selling Joint Owners and FPLE Seabrook agreed on a methodology for determining the Top-off for the sale date, and the subsequent true-up. Exhibit No. 24. The methodology is consistent with the Final Report and Order in NDFC Docket 2001-1. That methodology is intricate but, broadly stated, its essential steps are as follows:

1. Prior to the closing date, NAESCO will calculate the estimated Top-off using the best available decommissioning fund balance information from the Trustee and the most recent NRC radiological decommissioning cost estimate.
2. At closing, the estimated Top-off payment will be made by wire transfer. Most of the estimated Top-off will be paid into the decommissioning fund, with \$5 million deposited in the escrow fund.
3. The escrow will be comprised of \$5 million from the estimated Top-off payment, and an additional \$5 million from the Selling Joint Owners. Exhibit No. 25.
4. Subsequent to closing, the Trustee will determine the final valuation of the fair market value of the fund of each Selling Owner on the closing date and the Top-off will be recalculated.
5. The NDFC will then determine if the final calculation of the Top-off complies with the requirements of RSA 162-F:21-a and notify the Commissioner of the Treasury how much, if any, additional Top-off should be paid into the decommissioning fund, and how much should be refunded to the Selling Joint Owners.
6. It is anticipated the true-up procedure will be completed within one month of the date of a closing, assuming there is no dispute of the final valuation or final calculation of the Top-off.

The Committee approves the Top-off methodology presented in detail in Exhibit No. 24, to the extent it does not conflict with the orders of the Committee in NDFC Docket 2001-1 and this Report and Order as providing a satisfactory means for ensuring that the Top-off requirement of RSA 162-F:21-a is met. Any dispute regarding the Top-off methodology will be resolved by the NDFC by applying its orders and considering Exhibit No. 24 as a guide.

#### H. Reporting Requirements

While the funding assurance described above satisfies the requirements of RSA 162-F:21-a and this Committee's prior orders, the NDFC remains responsible for assuring the adequacy of the decommissioning fund and the funding assurance provided by non-utility owners of Seabrook Station. In order to appropriately monitor the adequacy and quality of the funding assurance provided, the NDFC will require that information relating to FPL Group, FPL Group Capital and FPLE Seabrook finances and operations be provided to the Committee in a regular and timely manner.

In Exhibit 1 at paragraph F, FPLE Seabrook committed to provide the Committee with:

1. Copies of monthly operating reports filed with the NRC for each nuclear power unit owned or operated by FPL Group or any of its subsidiaries.
2. Copies of all Forms 8K, 10K and 10Q filed with the Securities and Exchange Commission.
3. Notification of any order of the Supreme Court of Florida on any statute enacted mandating the restructuring of electric utility service or the divestiture of generating assets.
4. Notice of the failure to maintain or fulfill any of the representations or warranties contained in FPL Group Capital's Guaranty to the NDFC.

At hearing, pursuant to requests by the NDFC, FPLE Seabrook also committed to provide the Committee with publicly available power supply market price forecasts from PIRA (Tr. I at 144, II at 51), and copies of all credit reports relating to FPL Group and FPL Group Capital (Tr. I at 144). To meet this commitment, the NDFC will require FPLE Seabrook to provide the following information as it becomes available:

1. Copies of all credit reports relating to FPL Group and its subsidiaries, by Moody's, Standards & Poors, Duff & Phelps and any successor agency reports of similar nature requested by the Committee.
2. Copies of each Securities and Exchange Commission Form U-3A filed, to be delivered to the NDFC within 5 business days of the date on which they are filed.
3. Notice of any request by FPLE Seabrook for resources from FPL Group Capital pursuant to the Support Agreement and adjustments to the Support Agreement. Such notice shall be given to the NDFC within two (2) business days of the date on which such request is made
4. Notice that FPL Group Capital has provided the requested support and, if denied, an explanation of why such request was not satisfied.
5. On a quarterly basis, identification of a total increase, from the prior quarter, in short term debt exceeding \$100 million, including any draw made on FPL Group Capital's \$2 billion line of credit (Exhibit No. 2 at 19), and an explanation of the purpose for which the debt was incurred. Any draw on the line of credit in excess of \$250 million shall be reported to the NDFC within 7 days.

The NDFC believes that having this data available to it in a timely manner is essential. The NDFC will monitor FPL Group on a regular basis so the Committee can

anticipate changing business conditions that might affect the adequacy and quality of the funding assurance established by this order. The Committee agrees that an on-going financial analysis of FPL Group is necessary (Tr. II at 87), because that entity is the ultimate guarantor of FPLE Seabrook's decommissioning fund payments. The only way the parental guaranty remains an adequate part of the funding assurance is for the Committee to be satisfied with the financial health of FPL Group. The Committee is not constrained by the NRC parental guaranty definition or requirements, and will make its own determination of the sufficiency of the parental guaranty, as required by RSA 162-F. Accordingly, the NDFC will monitor FPL's financial health on a continuing basis and make whatever change the Committee believes necessary, at any time, to ensure that FPLE Seabrook meets the decommissioning funding requirements set by the Committee. As RSA 162-F:22 provides, the NDFC "[a]t any time may meet to determine whether . . . any funding assurance in place pursuant to an order of the committee shall be increased, decreased or otherwise altered." The on-going monitoring will permit the Committee to respond quickly to any change in FPL Group's financial health, or any other change that may undermine the quality of the funding assurance.

It is the strength of the parent that convinces the Committee that detailed information on the operation of FPLE Seabrook is unnecessary at this time. It is the continuing financial health of the parent that will permit FPLE Seabrook to include a parental guaranty as part of its funding assurance. In the future the NDFC may require additional information regarding the operation of Seabrook Station as part of its on-going review of the continuing viability of the funding assurance, but detailed financial statements on FPLE Seabrook will not be required at this time.

## I. Public Health and Safety

Payment into the decommissioning fund adequate to ensure that sufficient monies will be available to meet all decommissioning expenses is required in order to protect the health and safety of New Hampshire citizens. Chapter 193, Laws of 2001, Section 1; RSA 162-F:1. From the first enactment of decommissioning funding legislation in New Hampshire, the goal has been to ensure that there will be adequate funds provided by the owners of Seabrook Station to pay for all decommissioning costs.

The State, through the NDFC, establishes the extent of site restoration that will accompany completion of the NRC radiological clean up. RSA 162-F:15. The decommissioning fund, and the requirement of full funding on a schedule set by the Committee, is designed to protect the public from having an abandoned nuclear power plant and inadequate funds available to complete decommissioning. The Committee will remain vigilant to ensure that the deregulation of electric generation, and the transfer of a majority interest in Seabrook Station, will not increase the risk of the owners failing to pay all decommissioning costs in order to complete prompt decommissioning of Seabrook Station when its useful life ends.

In setting the schedule of payments, the NDFC must ensure that all decommissioning expenses will be met on or before the assumed date of permanent cessation of operation, thus protecting the public health and safety. When considering ownership by a non-utility, the Committee must also determine that the funding assurance is sufficient to ensure that all owners of Seabrook Station will meet the schedule of payments, as it has done in its review of the FPLE Seabrook funding assurance in this docket.

Consideration of the public health and safety concerns also requires ensuring that there will be sufficient funds available to respond to any accident at Seabrook Station. As discussed more fully in the Final Order of NDFC Docket 2001-1, federally mandated insurance under the Price-Anderson Act will be available to satisfy liability claims for personal injury and property damage.<sup>4</sup>

In addition to Price-Anderson, the Seabrook Station owners currently maintain insurance policies with Nuclear Electric Insurance Limited (NEIL). These policies provide coverage of up to \$2.75 billion for property damage caused by an accident. In the first instance, NEIL insurance would be available to ensure that all necessary actions were taken following an accident to make Seabrook Station safe and stable, which could include decontamination activities. Exhibit No. 22. If an accident were so severe that the plant had to permanently cease operation, NEIL insurance would be applied to meet any difference between the decommissioning fund balance and the cost of decommissioning. The cost of decommissioning would be determined by the NRC-required post-shutdown decommissioning activities report (PSDAR).<sup>5</sup> As included in the record of Docket 2001-1, it is the expectation of the current Seabrook Station owners that, in the event of a permanent shutdown due to an accident, NEIL would pay into the Fund the total difference between the decommissioning fund balance and the PSDAR decommissioning costs.

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<sup>4</sup>The Price-Anderson Act; Public Law 85-256, 71 Stat. 576, amending the Atomic Energy Act of 1954 to include Section 170 and related definitions in Section 11.

<sup>5</sup>Title 10, Code of Federal Regulations, Part 50 (sec. 50.82(a)(4)(i)). The PSDAR is the site-specific determination of planned decommissioning activities and costs. In preparing the PSDAR, the requirements of the NDFC for site restoration would be considered by the NRC, but would not necessarily be controlling, for purposes of the NRC determination of what must be done. However, the NDFC has the authority to require site restoration as part of decommissioning and will not release the fund balance to Seabrook Station owners until all requirements of the NDFC are met. RSA 162-F:23. Unlike the current NRC minimum requirements, costs associated with spent nuclear fuel and GTCC wastes would be included in the PSDAR.

FPLE Seabrook has assured the Committee that it will maintain NEIL insurance, including the business interruption insurance, “to the extent it’s commercially available.” Tr. II at 31. At the same time, FPLE Seabrook notes that it does not control NEIL and, therefore, cannot commit to maintain coverage for the remaining life of Seabrook Station. Tr. II at 31. The Committee accepts the commitment of FPLE Seabrook to maintain NEIL coverage so long as it is available, which is a position the Committee finds to be both prudent and necessary to protect the public interest. To ensure this aspect of public health and safety continues to be protected at its current level, the NDFC will require FPLE Seabrook to provide at least thirty days prior notice to the Committee any reduction in NEIL insurance protection for Seabrook Station.

#### J. Customer Contributions

Pursuant to RSA 162-F:21-b, II (c), the Committee must determine how much New Hampshire customers contributed to the decommissioning fund when a New Hampshire utility sells its interest in Seabrook Station. If more than the customer contribution is spent on decommissioning, the refund obligation to New Hampshire customers will be extinguished. RSA 162-F:21-b,II (c). As required by NDFC Docket 2001-1 Report and Order,

NAEC, NHEC and NEP shall submit to the Committee the final calculation of the amount their respective customers contributed to the decommissioning fund, including a separate identification of any Top-off paid at the time of sale. . . .

As part of the Top-off mechanics (Exhibit No. 24), NAEC, NHEC and NEP have agreed to meet this requirement in a manner that the Committee finds satisfactory to meet this statutory requirement. Once the filings are made by the three utilities, the Committee will determine the amount of the New Hampshire customer contribution to the

decommissioning fund and issue an order memorializing the determination for use when the issue of refunding excess monies from the decommissioning fund is addressed after decommissioning is completed. The NDFC review of customer contributions will be undertaken in NDFC Docket 2002-3.

K. 2003 Review of Decommissioning Projections

In 2003, the NDFC will undertake the comprehensive review of plans for decommissioning Seabrook Station as required by RSA 162-F:22, the 4-year review. That review will consider the timing and methods of decommissioning in light of the so-called Commercial and Industrial standard for decommissioning adopted last year (RSA 162-F:14, I (b)), and establish a projected cost of decommissioning, as required by RSA 162-F:22. It is anticipated that FPLE Seabrook will be the majority owner of Seabrook Station in 2003 and, thus, will have the responsibility to produce the decommissioning study.

FPLE Seabrook expects to produce a decommissioning study using the same resources NAESCO used to produce prior studies. Tr. II at 26. The Committee does not expect FPLE Seabrook to undertake a decommissioning study for Seabrook Station before acquiring an ownership interest in the plant, but will require that the 4-year review be undertaken in 2003. Accordingly, the filing requirements for the 4-year review will be established in NDFC Docket 2002-3 in order to have a comprehensive decommissioning study filed by August 1, 2003.

L. 2003 Filing Requirements

Assuming the sale to FPLE Seabrook proceeds as planned, the entire plant will be owned by companies that are not utilities regulated by the State of New Hampshire. The

annual filing requirements established by the Committee in NDFC Docket 93-1 must be revisited and updated to reflect this change. Also, these annual filings requirements need to be revised to accommodate the filing requirements set forth in the Stipulation and those included in this Report and Order. The full parties did not address the annual filing requirements in the Stipulation, leaving it to the NDFC to establish new requirements.

There are a number of matters that will need to be completed after the Report and Order is a final, non-appealable Order of the Committee. Those matters include the Top-off true up, recalculation of the schedule of payments, identification of the customer contributions as required by RSA 162-F:221-b, and the filing requirements for the 4-year review. To avoid any confusion concerning when the Final Report and Order in this docket is, in fact, final, a separate docket, NDFC Docket 2002-3, will be opened for the purpose of addressing these matters and to establishing the annual filing requirements for FPLE Seabrook.

## VI. RSA 162-F:21-a CONDITIONS

Prior to acquisition of any interest in Seabrook Station, FPLE Seabrook shall provide to the Committee the following:

1. FPL Group Capital's Support Agreement in the form of Exhibit No. 7, executed by a duly authorized officer of FPL Group Capital.
2. FPL Group Capital's letter to the NDFC in the form of Exhibit No. 8 and modified to acknowledge the New Hampshire courts as the forum for all disputes regarding the FPL Group Capital Guaranty, executed by a duly authorized officer of FPL Group Capital.
3. FPL Group Capital's Guaranty to the NDFC in the form of Exhibit No. 9 and executed by a duly authorized officer of FPL Group Capital.

4. FPL Group's letter to the NDFC in the form of Exhibit No. 11 and modified to acknowledge the New Hampshire courts as the forum for all disputes regarding the FPL Group, executed by a duly authorized officer of FPL Group.
5. A resolution of the Board of Directors of FPL Group Capital authorizing and empowering the officer who signs the documents identified in 1-3 immediately above to enter into such commitments.
6. A certified resolution of the Board of Directors of FPL Group authorizing and empowering the officer who signs the FPL Group letter commitment to enter into such commitment.
7. An escrow agreement approved by the Commissioner of the Treasury with the Commissioner as escrow agent to hold the \$10 million Top-off until such time as those funds are transferred to the decommissioning fund or returned to the selling joint owners.
8. An escrow agreement approved by the Commissioner of the Treasury with the Commissioner as escrow agent established to retain funds to be deposited pursuant to paragraphs IV G-3 and IV G-4 of Attachment 1 (the Stipulation).
9. A certificate of an FPLE Seabrook officer evidencing that FPLE Seabrook has obtained NEIL insurance for Seabrook Station.
10. An approved amended Master Trust Agreement.

## VII CONCLUSION

The NDFC finds that the terms of the funding assurance provided by FPLE Seabrook, as modified by the Stipulation of the parties and the requirements of this Order, are in the public interest and meet the requirements of RSA 162-F:21-a. Therefore, once the conditions of this Order are met, FPLE Seabrook will fulfill the requirements of the NDFC and have the approval of this Committee to acquire shares of Seabrook Station.

**Based on the foregoing, it is hereby**

**ORDERED**, that the funding assurance provided by FPLE Seabrook is approved, subject to the explanations and clarifications of this Order; and it is

**FURTHER ORDERED**, that the schedule of payments for FPLE Seabrook will be established in December 2002 using the schedule provided as Exhibit No. 4 as recalculated using the decommissioning fund market value as of November 30, 2002, plus the trust fund contributions scheduled to be made in December 2002; and it is

**FURTHER ORDERED**, that upon acquiring an ownership interest in Seabrook Station FPLE Seabrook is hereby required to make monthly payments into the Nuclear Decommissioning Financing Fund, in accordance with the revised Exhibit No. 4 schedule, until further ordered by the Committee or until they sell their ownership interest; and it is

**FURTHER ORDERED**, that FPLE Seabrook shall file with the Committee, on or before December 16, 2002, a revised schedule of payments; and it is

**FURTHER ORDERED**, that, in the event FPLE Seabrook acquires ownership interests in Seabrook Station in more than one closing after December 16, 2002, FPLE Seabrook shall file with the Committee a revised schedule of payment within 5 business days after each closing after December 16, 2002; and it is

**FURTHER ORDERED**, that within five days of the NRC's approval of the transfer of the Seabrook Station license to FPLE Seabrook, but in no event less than twenty-four hours prior to acquiring an ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee FPL Group Capital's Support Agreement in the form of Exhibit No. 7 executed by a duly authorized officer of FPL Group Capital; and it is

**FURTHER ORDERED**, that before the Final Report and Order will be issued FPLE Seabrook shall file with the Committee FPL Group Capital's letter to the NDFC in the form of Exhibit No. 8 and modified to ensure that this agreement is not effective until the date on which FPLE Seabrook acquires an ownership interest in Seabrook Station and executed by a duly authorized officer of FPL Group Capital; and it is

**FURTHER ORDERED**, that within five days of the NRC's approval of the transfer of the Seabrook Station license to FPLE Seabrook, but in no event less than twenty-four hours prior to the date on which FPLE Seabrook acquires an ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee FPL Group Capital's Guaranty to the NDFC in the form of Exhibit No. 9 and executed by a duly authorized officer of FPL Group Capital; and it is

**FURTHER ORDERED**, that before the Final Report and Order will be issued FPLE Seabrook shall file with the Committee FPL Group's letter to the NDFC in the form of Exhibit No. 11 modified to ensure that this agreement is not effective until the date on which FPLE Seabrook acquires an ownership interest in Seabrook Station and to acknowledge the New Hampshire courts as the forum for all disputes regarding the FPL Group, executed by a duly authorized officer of FPL Group Capital; and it is

**FURTHER ORDERED**, that before the Final Report and Order will be issued FPLE Seabrook shall file with the Committee a certified resolution of the Board of Directors of FPL Group Capital authorizing and empowering the officer who signs the FPL Group Capital Support Agreement, the FPL Group Capital Guaranty, and the FPL Group Capital letter commitment to enter into such commitments; and it is

**FURTHER ORDERED**, that before the Final Report and Order will be issued FPLE Seabrook shall file with the Committee a certified resolution of the Board of Directors of FPL Group authorizing and empowering the officer who signs the FPL Group letter commitment to enter into such commitment; and it is

**FURTHER ORDERED**, that within five days of its execution by the final necessary approving entity, but in no event less than 30 days prior to the date on which FPLE Seabrook acquires an ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee an escrow agreement approved by the Commissioner of the Treasury with the Commissioner as escrow agent to hold the \$10 million Top-off until such time as those funds are transferred to the decommissioning fund or returned to the selling joint owners; and it is

**FURTHER ORDERED**, that within five days of its execution by final necessary approving entity, but in no event less than 30 days prior to the date on which FPLE Seabrook acquires an ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee an escrow agreement approved by the Commissioner of the Treasury with the Commissioner as escrow agent established to retain funds to be deposited pursuant to paragraphs IV G-3 and IV G-4 of Attachment 1 (the Stipulation); and it is

**FURTHER ORDERED**, that before acquiring an interest in Seabrook Station, FPLE Seabrook shall file with the Committee evidence that FPLE Seabrook will have NEIL insurance for Seabrook Station which is effective as of the time of such acquisition; and it is

**FURTHER ORDERED**, that before acquiring an interest in Seabrook Station, but no later than ten days after receiving final approval from the NRC and the Internal Revenue Service and at least 24 hours before acquiring any interest in Seabrook Station, FPLE Seabrook shall file with the Committee an approved amended Master Trust Agreement; and it is

**FURTHER ORDERED**, that before acquiring any ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee proof that the estimated Top-off payment has been paid into the decommissioning fund by wire transfer; and it is

**FURTHER ORDERED**, that before acquiring any ownership interest in Seabrook Station, FPLE Seabrook shall file with the Committee proof that the portion of the escrow fund associated with the ownership interest has been paid into the escrow account by wire transfer; and it is

**FURTHER ORDERED**, that after acquiring any share of Seabrook Station, FPLE Seabrook shall:

1. Provide the NDFC with written notice at least thirty days before it reduces NEIL Insurance for Seabrook Station.
2. Include the following as part of FPLE Seabrook's periodic reporting to the NDFC:
  - i. Copies of each SEC form U-3A filed, to be delivered to the NDFC within 5 business days of the date on which they are filed.
  - ii. Notice of any request by FPLE Seabrook for resources from FPL Group Capital pursuant to the Support Agreement and adjustments to the Support Agreement. Such notice shall be given to the NDFC with two (2) business days of the date on which such request is made
  - iii. Notice that FPL Group Capital has provided the requested support and, if denied, an explanation of why such request was not satisfied.
  - iv. Notice of any draw made on FPL Group Capital's line of credit of more than \$250 million with an explanation of the purpose for which the funds were drawn. Said notice to be provided within 7 days of any said draw.
  - v. On a quarterly basis, identification of a total increase, from the prior quarter, in short-term debt exceeding \$100 million, including any draw made on FPL Group Capital's \$2 billion line of credit (Exhibit No. 2 at 19), and an explanation of the purpose for which the debt was incurred. Any draw on the line of credit in excess of \$250 million shall be reported to the NDFC within 7 days.
  - vi. Copies of all credit reports relating to FPL Group and its subsidiaries, by Moody's, Standards & Poors, Duff & Phelps and any successor agency reports of similar nature requested by the Committee.
  - vii. Copies of monthly operating reports filed with the NRC for each nuclear power unit owned or operated by FPL Group or any of its subsidiaries.
  - viii. Copies of all Forms 8K, 10K and 10Q filed with SEC.

- ix. Notification of any order of the Supreme Court of Florida or any statute enacted mandating the restructuring of electric utility service or the divestiture of generating assets.
- x. Notice of the failure to maintain or fulfill any of the representations or warranties contained in FPL Group Capital's Guaranty to the NDFC.

**FURTHER ORDERED**, that, in the event FPLE Seabrook acquires ownership interests in Seabrook Station prior to March 30, 2003, FPLE Seabrook shall file the Annual Decommissioning Updates in March of 2003 in accordance with the provisions of the Committee's prior orders, and any adjustments required pursuant to the Final Report and Order in NDFC Docket 2002-3, including a report on the status of the sale of Seabrook Station shares to FPL Energy Seabrook LLC.

Agreed by the Nuclear Decommissioning Financing Committee this the 4<sup>th</sup> day of September 2002.

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Thomas B. Getz  
Chairman

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Rep. Stephen Sloan  
State Representative

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Michael A. Ablowich  
Commissioner of the Treasury

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Thomas R. Eaton  
State Senator

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Scott Bryer  
Department of Safety

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Willard F. Boyle  
Representative of the Town of  
Seabrook

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Kirk Stone  
Governor's Office of Energy  
& Community Services

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Brook Dupee  
Assistant Director  
Health & Human Services