

**THE STATE OF NEW HAMPSHIRE
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE
DOCKET NO. NDFC 2002-1**

FINAL REPORT AND ORDER

I. SUMMARY

The Nuclear Decommissioning Financing Committee (NDFC or Committee) initiated this docket to review the performance of the Nuclear Decommissioning Fund and determine whether adjustment in the schedule of payments is necessary, as provided in RSA 162-F:19. Accordingly, this Report and Order establishes a new schedule of payments for the existing owners of Seabrook Station, determines when the next full review of decommissioning cost will be made if the pending sale by a majority of the Seabrook Station owners does not occur in 2002, and addresses the Committee's review of the fund performance.

II. PROCEDURAL HISTORY AND WITNESSES

The NDFC initiated this docket by issuing an Order of Notice on January 24, 2002. The Order of Notice was published in two newspapers on January 31, 2002 and February 7, 2002. The publications were affirmed by affidavit of Edward A. Haffer, Esquire, dated February 21, 2002, and filed with the NDFC on February 22, 2002.

As required by the Order of Notice, a pre-hearing conference was held on February 22, 2002, for the purpose of accepting appearances of those seeking to participate in the docket. On March 8, 2002, the NDFC issued Order No. 1 granting interventions, setting a procedural schedule, and setting the scope of the docket. On May 1, 2002, the NDFC issued Order No. 2, revising the procedural schedule.

A public hearing was held on June 5, 2002. Witnesses for the Seabrook Station owners were Brad A. Jacobson, Financial and Accounting Services Manager for North

Atlantic Energy Service Corporation (NAESCO), and David C. Mercer, Supervisor-Industry Relations for NAESCO.

On July 1, 2002, the Committee released its Preliminary Report and Order, in compliance with RSA 162-F:21, IV and all parties were served with copies. On September 4, 2002, pursuant to RSA 162-F:21 the Committee held a duly noticed public hearing at the Seabrook Town Hall starting at 7:00 pm. Representatives of the Seabrook Station owners were present and the hearing was open to the public. No objections to the proposed findings, as previously published in the Committee's Preliminary Report and Order dated July 1, 2002, were expressed.

III. PARTIES AND POSITIONS

The following entities appeared at the pre-hearing conference and were granted full-party intervenor status by the NDFC: North Atlantic Energy Service Corporation, the Seacoast Anti-Pollution League (SAPL), the Campaign for Ratepayers Rights (CRR), the New Hampshire Public Utilities Commission Staff (Staff), the New Hampshire Office of Consumer Advocate (OCA), and Massachusetts Municipal Wholesale Electric Company (MMWEC). The following Seabrook Station owners requested joint representation by North Atlantic Energy Service Corporation: New England Power Company, Great Bay Power Corporation and Little Bay Power Corporation, Canal Electric Company, New Hampshire Electric Cooperative, Inc., Connecticut Light and Power Company, and United Illuminating Company.

On June 3, 2002, the parties presented a Stipulation and Proposed Order on Findings and Determinations (Stipulation) with an executed version of the Stipulation filed with the NDFC at the public hearing on June 5, 2002.

At the September 4, 2002, hearing Mr. Martin Cameron, a resident of Portsmouth, addressed the Committee. Mr. Cameron raised a number of questions about the possibility of under-funding of the decommissioning fund. In particular, he encouraged the Committee require the selling owners to “close out” their decommissioning responsibility by fully funding their portion of the amount projected in the NDFC Docket 2002-1 order to be in the fund on December 31, 2002. Further, he expressed the view that future owners might be over-burdened if projected fund balances are not met in 2003-2026.

Early in this docket, the Committee recognized the recent underperformance of the investments in the decommissioning trust relative to the actuarial (or projected) rates of return. The Committee encouraged the parties to propose strategies to mitigate this past underperformance. Indeed, Mr. Cameron identified the most important issue in the docket and expressed many of the same concerns raised by the Committee and addressed by the parties in the Stipulation. As discussed more fully below, the parties recommended a schedule of payments that recognizes that projecting performance of the investment market is not a precise science, and that there will be years when the fund will over perform and years when it will not meet projections. In the past, these variations from the projected performance have balanced out over a number of years and the decommissioning fund has continued to grow to meet projections. To ensure that the decommissioning fund does not deviate from the growth path established by the NDFC, the Committee established a “benchmark” for performance in the near term so that the fund is corrected before a serious problem develops. This benchmark approach is discussed below. As for the concern that selling owners should “true-up” their proportional share of the

decommissioning obligation, the Committee finds that the benchmark adjustment procedure, coupled with the additional payments to be made at the time of sale (see: Final Report and Order, NDFC Docket 2002-2 discussion of the Top-off) are sufficient to avoid any undue transfer of responsibility from one owner to the next.

IV. TERMS OF STIPULATION

The Stipulation was presented at the public hearing as Exhibit A. The Stipulation was supported by testimony at the hearings and agreed to by all of the full parties. The Stipulation incorporates a list of exhibits in support of the findings the Committee must make in this docket. Chief among these is that the schedule of payments proposed by the parties will provide for full funding of the decommissioning of Seabrook Station on the schedule approved by the NDFC. The Stipulation and its exhibits establish that there has been no significant change in the projected cost of decommissioning since the final Report and Order of the NDFC in Docket 2001-1 and propose using the same methodology for determining the schedule of payments as adopted by the Committee in that docket, namely using two phases for determination of the annual funding obligation: 2002-2006 and 2007-2026.

V. DISCUSSION

The NDFC believes the Stipulation of the parties is in the public interest and provide for full funding of decommissioning. The Committee therefore approves the Stipulation, subject to the findings and holdings of this Report and Order.

The Committee is concerned that the 2001 year-end fund balance was approximately \$14 million below the level projected just last year in NDFC Docket 2001. The Committee is mindful of the performance of investments in general in 2001, especially in the last two quarters of the year. The NDFC has consistently been assured

that the investment guidelines and investment options available to Seabrook Station owners are prudent and, therefore, designed, over time, to achieve the necessary financial goals by the time of the completion of the plant's energy-producing life. The investment guidelines and investment options are tailored to provide a predictable consistent level of return commensurate with a modest amount of risk. At the same time, the Committee remains concerned that projected market value of the fund balances and actual market value of balances are to date divergent and that market performance has remained lackluster during the first half of this year, relative to the assumed rate of return on fund contributions and balances.

In NDFC Docket 2001-1, the Committee established a series of benchmark valuation expectations. While a true-up that provides for immediate recovery of any underperformance of the fund is not required, variation from projected fund performance must be adjusted over the remaining life of the decommissioning fund. Accordingly, the Committee will continue to set a series of benchmarks for fund performance and adjust contribution levels to achieve those goals. Benchmarks will be established before 2026 to accommodate fluctuations in investment performance. In NDFC Docket 2001, the Committee identified 2006 and 2015 for reviewing the fund performance over time. In NDFC Docket 2001-1, the expectation was that the fund balance in 2006 would be \$416 million, and in 2015 balance would be \$916 million. For the present, the Committee will use these benchmarks to measure fund performance. The NDFC will revisit these benchmark dates and expected fund balances as part of the ongoing review process and may reset them in future proceedings.

The schedule of payments proposed by the parties would not meet these benchmarks. However, Exhibit No. 7 shows that by adjusting the funding date for

contributions starting in 2007 the Fund can achieve the benchmark objectives. That is, the proposed schedule of payments uses a 2015 funding date for contributions from 2003-2006, and a 2026 funding date for contributions from 2007-2026. Applying the 2015 funding date to 2007 contributions, and possibly 2008, would erase the \$14 million shortfall that occurred in 2001, and put the fund back on track to reach the 2015 benchmark objective.

The Committee accepts this approach for a number of reasons. First, the NDFC has the ability to revisit the method for calculating the schedule of payments at any time. (RSA 162-F:22). Second, the committee believes it is likely that the sale of Seabrook will be consummated by year-end and the fund balance will be adjusted by an anticipated Top-off payment of approximately \$58 million. Finally, the projected cost of decommissioning may be adjusted in 2003 as part of the comprehensive review of the decommissioning plan required by RSA 162-F:22. Additionally, the NDFC expects Seabrook Station to operate for its license life, which provides time during which additional adjustments to both the projected cost of decommissioning and the timing for contributions into the fund can be ordered. With these safeguards, the Committee will have the schedule of payments for 2003 calculated using a funding date of 2015 for the period 2003-2006, and a funding date of 2026 for the period 2007-2026 and revisit funding levels as part of the comprehensive review in 2003. In making this determination, the Committee expressly notes that permitting the \$14 million under-performance to be projected for recovery over the next 25 years is not precedent for how the Committee will treat any future failure of the fund to meet established projections, or for how the current shortfall will be recouped.

A. Schedule of Payments

Pursuant to RSA 162-F, 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. The schedule of payments proposed by the Stipulation uses the same methodology as approved by the NDFC in 2001, with the following changes:

- a. Update of the fund performance to reflect 2001 year-end fund balance.
- b. Update of the projected fund performance to reflect the most recent investment elections of the Seabrook Station owners.
- c. Exclusion of any Top-off payment from the 2001 year-end fund balance.

The schedule of payments proposed by the parties (Exhibit No. 6) provides for full funding of decommissioning by the existing Seabrook Station owners starting on January 1, 2003. The schedule of payments for FPL Energy Seabrook LLC, if the sale of Seabrook Station ownership interests is completed, is the subject of NDFC Docket 2002-02. The schedule of payments established in this proceeding will apply to MMWEC, Taunton Municipal Lighting Plant (Taunton) and Hudson Light and Power Department (Hudson) regardless of whether any of the other owners sell their ownership interests. If the sale of Seabrook Station ownership interests for an owner is not completed by December 31, 2002, that owner will be responsible for its contribution under the revised schedule of payments for the period of 2003 that they continue to be an owner of Seabrook Station.

The schedule established in 2001 included the assumption that the sale of a majority of Seabrook Station would occur in 2002 and, in turn, the “Top-off” payment required by RSA 162-F:21-a. In setting a schedule of payments for the existing Seabrook

Station owners, the NDFC must exclude Top-off payments from the year-end balance for 2002, because the schedule of payments for most of the Seabrook Station owners will only be operative if the sale does not occur. The calculation of the Schedule of Payments is to be based on the best available historic data combined with reliable predictions of future fund performance and costs. Accordingly, the schedule for the existing owners will be calculated without any credit for the Top-off payment. For this reason, the Committee will approve the schedule of payments presented as Exhibit No. 6, with the requirement that the Schedule be updated by December 16, 2002, using the decommissioning fund market value as of November 30, 2002, plus the trust fund contributions scheduled to be made in December 2002. NAESCO will be expected to file the updated schedule of payments with the NDFC on or before December 16, 2002, so that it may be reviewed before the first day for contributions under the new schedule.

The schedule of payments in Exhibit No. 6 was calculated using the fund balance as of year-end 2001, which is consistent with the methodology employed by the NDFC in prior calculations. As shown on Exhibit 1 to the Seabrook Station Decommissioning Update 2002, the fund projections and fund performance have been very close over time. Exhibit No. 4 at 120. However, that trend has not continued in the most recent years and the Committee finds it necessary to refine the method by which the schedule of payments is determined in order to moderate the effect of swings in the performance of fund investments. One way to better regulate the fund is by using more current data when setting the contribution requirements for each year. Rather than using the 2001 year-end fund balance in calculating the schedule of payments to begin on January 1, 2003, the fund balance near the end of 2002 will be employed. More specifically, the schedule of payments will be recalculated in December using the Decommissioning Fund market

value as of November 30, 2002, plus the trust fund contributions scheduled to be made in December 2002. In this way the schedule more closely aligns fund performance with the contribution requirements for 2003.

The Stipulation provides two funding periods for the schedule of payments: (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.

B. Projected Cost of Decommissioning

Exhibit No. 6 presented at the public hearing shows the updated projected cost of decommissioning to be \$584,703,503 in 2002 dollars and \$615,400,437 in 2003 dollars. The projected cost calculation includes the most recent NRC minimum radiological decommissioning cost estimate. The escalation rates used in these calculations are unchanged from the last review by the NDFC.

The NDFC finds that the projected cost of decommissioning of approximately \$585 million in 2002 dollars and \$615 million in 2003 dollars is appropriate and will be used for determining the decommissioning funding obligation.

C. Review of Decommissioning Projections

As provided in NDFC Docket 2001-1, Final Report and Order, the NDFC will conduct the so-called “4-year review” of the projected cost of decommissioning required by RSA 162-F:22 during 2003 if no sale of the Seabrook Station occurs or within one year after the sale of Seabrook Station ownership interests. The Committee last conducted the comprehensive review as part of Docket 98-1, which was concluded in 1999. The Committee believes it likely that the sale will occur in 2002 and that the new

majority will submit the initial review of decommissioning activities and costs. However, a delay in the sale into 2003, or a termination of the current proposed sale, will not stay the operation of the controlling statute. Accordingly, the Seabrook Station owners will be required to notify the NDFC if the pending sale is not completed by June 1, 2003, and also will be required to file a comprehensive decommissioning study by August 1, 2003. A schedule for the filing of a comprehensive decommissioning study by FPL Energy Seabrook LLC will be addressed in NDFC Docket 2002-02.

Similarly, if no sale of Seabrook occurs prior to March, 2003, NAESCO will remain responsible for providing the annual update on the fund performance in March, 2003. The filing requirements will be those established as part of NDFC Docket 2002-03.

D. Assumed Date of Decommissioning.

The NDFC finds the existing assumed date of decommissioning in October, 2026 is reasonable and will not change that date at this time.

E. Adjustments.

The NDFC approves the adjustments proposed in the Stipulation for the escalation factors, inflation rates, and earnings projections. The Committee also accepts the representations of the parties that there have been no material changes in the expected method or cost of decommissioning that would require the Committee to revisit the cost issue before the comprehensive review in 2003.

VI. CONCLUSION

The NDFC finds that the terms of the Stipulation are in the public interest and, therefore, approves the Stipulation as submitted and explained in the record of the proceeding and as further explained by this Order.

Based on the foregoing, it is hereby

ORDERED, that the Stipulation is approved, subject to the explanations and clarifications of this Order; and it is

FURTHER ORDERED, that the projected cost of decommissioning Seabrook Station to be used in calculating the schedule of payments for Seabrook Station owners is \$584,703,503 in 2002 dollars and \$615,400,437 in 2003 dollars; and it is,

FURTHER ORDERED, that the schedule of payments presented as Exhibit No. 6 is approved, with the requirement that the Schedule be updated by December 16, 2002, using the decommissioning fund market value as of November 30, 2002, plus the trust fund contributions scheduled to be made in December 2002, and shall be effective as of January 1, 2003, for the existing Seabrook Station owners and continue in effect until changed by order of the NDFC; and it is

FURTHER ORDERED, that the existing Seabrook Station owners are hereby required to make monthly payments into the Nuclear Decommissioning Financing Fund, in accordance with the revised Exhibit No. 6 schedule, until further ordered by the Committee or until they sell their ownership interest; and it is

FURTHER ORDERED, that NAESCO shall continue to file Annual Decommissioning Updates in March of each year, 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 2002-2, including a report on the status of the sale of Seabrook Station shares to FPL Energy Seabrook LLC; and it is

FURTHER ORDERED, that NAESCO shall file with the NDFC, on or before December 16, 2002, a revised schedule of payment, 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

Agreed by the Nuclear Decommissioning Financing Committee this the 4th day of September 2002.

Thomas B. Getz
Chairman

Rep. Stephen Sloan
State Representative

Michael A. Ablowich
Commissioner of the Treasury

Thomas R. Eaton
State Senator

Scott Bryer
Department of Safety

Willard F. Boyle
Representative of the Town of
Seabrook

Kirk Stone
Governor's Office of Energy
& Community Services

Brook Dupee
Assistant Director
Health & Human Services