

THE STATE OF NEW HAMPSHIRE  
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE  
DOCKET NO. NDFC 2008-1

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**PRELIMINARY REPORT AND ORDER**

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Concord, New Hampshire  
January 16, 2009



1           2007-1, except that the rate of return on equities shall be assumed to be zero  
2           in 2009 and 2010. For years after 2010, the assumed return on equities  
3           shall be 9.5%. The NDFC will consider resetting the assumed return on  
4           equities in NDFC Docket No. 2009-1.

5           8. Use of the Investment Guidelines, as approved by the State Treasurer on  
6           February 29, 2008, is authorized for purposes of determining the owners'  
7           annual funding obligations.

8           9. The funding assurances from FPLE Seabrook, LLC (FPLE), as established  
9           in NDFC Docket 2002-2, will remain unchanged

10          10. The Funding Assurance Escrow account (Escrow) established in NDFC  
11          Docket 2003-1 will continue to be used for some Seabrook Station owners,  
12          with the contributions in 2009 to be as set forth in this Order.

13          11. The schedules of payments beginning in 2009 into the Trust and the Escrow  
14          shall be calculated in accordance with this order.

15          The Committee's findings are discussed in detail below.

## 16    II. PARTIES AND THEIR POSITIONS

17          The entities granted full party status were the Massachusetts Municipal  
18    Wholesale Electric Company (MMWEC), and FPL Energy Seabrook, LLC as  
19    managing agent of Seabrook Station (FPLE or Managing Agent). Taunton Municipal  
20    Lighting Plant (Taunton) and Hudson Light and Power Department (Hudson), both  
21    owners of minority interests in Seabrook Station, were notified of the Docket by the  
22    Order of Notice and NDFC Docket 2008-1 Order No. 1. The Managing Agent for  
23    Seabrook Station represented Taunton and Hudson.

1           The parties produced a Stipulation of the Parties (Stipulation) addressing all  
2 issues (Exhibit No. 2). The Stipulation identified all of the exhibits that the full parties  
3 would present at the October 8, 2008, public hearing. (Exhibits 1 through 10) FPLE  
4 supported all provisions of the Stipulation. MMWEC supported all provisions of the  
5 Stipulation except the recommendation that FPLE's current funding assurances are  
6 sufficient. Exhibit No. 2 at 9. Prior to the October 8, 2008, hearing, the Managing  
7 Agent submitted information at the request of NDFC counsel. (Exhibit 17) At the  
8 October 8, 2008, public hearing, the Committee issued hearing requests that resulted in  
9 the submission of additional exhibits by the Seabrook Station owners. (Exhibits 11  
10 through 14) The parties also submitted two additional exhibits not required by the  
11 Committee. (Exhibits 15 and 16)

### 12     III.    PROCEDURAL HISTORY

13           On April 14, 2008, the Seabrook Station 2008 Annual Report (2008 Annual  
14 Report) was filed (Exhibit 1). The Order of Notice for this docket was issued on May  
15 30, 2008. Timely notice of the Docket was provided to the public by publication in  
16 newspapers on June 6, 2008 and June 10, 2008, and filed with the Town of Seabrook  
17 Selectmen's Office on June 5, 2008. The first pre-hearing conference was held on June  
18 25, 2008. On July 14, 2008, the NDFC issued Order No. 1 adopting the procedural  
19 schedules and scope suggested by the parties. The parties held pre-hearing conferences  
20 prior to the public hearing for the purpose of identifying areas of agreement. The  
21 Stipulation of the Parties was filed on October 3, 2008, and the signed Stipulation  
22 (Exhibit 2) was presented at the hearing on October 8, 2008. Exhibits from FPLE and  
23 MMWEC in response to requests of the Committee at the hearings were submitted on

1 October 24, 2008 (Exhibit 14), October 27, 2008 (Exhibit 13), and October 29, 2008  
2 (Exhibits 11 and 12).

3 At the October 8, 2008, public hearing, James C. Peschel, FPLE Regulatory  
4 Programs Manager, provided testimony regarding the status of the storage of low-level  
5 radioactive waste at Seabrook Station and its potential impact on decommissioning  
6 costs as well as the operational performance of Seabrook Station. Mr. Peschel  
7 testified that there are no planned staffing reductions that would adversely impact the  
8 operation or maintenance of Seabrook Station. (TR. at Page 9) Paul I. Cutler, FPL  
9 Group Treasurer testified regarding FPLE's funding status, the financial strength of  
10 FPL Group, current market performance and long-term earnings assumptions. Mr.  
11 Cutler also testified regarding FPL Group's program to develop additional nuclear  
12 assets and the program's potential impact on FPL Group's ability to assure payment of  
13 FPLE's decommissioning obligation. Mr. Cutler addressed questions regarding the  
14 impact of the financial crisis on decommissioning funding, and other financial issues.  
15 James Kline, Treasurer and Commodity and Treasury Department Manager for  
16 MMWEC, testified regarding MMWEC's progress towards its equity allocation  
17 targets, long-term earnings assumptions, and MMWEC's and FPLE's Escrow  
18 accounts. Ramelle Hieronymus, Principal at Prime Bucholz, the Investment Consultant  
19 for the Seabrook Decommissioning Trust, testified in support of her affidavit and  
20 report regarding the impact of the current financial situation on the Decommissioning  
21 Trust (Trust).

22 The exhibits accepted at the hearing were:

23 Exhibit 1. FPL Energy Seabrook Station 2008 Annual Filing

24 Exhibit 2. Stipulation of the Parties, Docket 2008-1

- 1 Exhibit 3. Proposed schedules of payments provided by the parties
- 2 Exhibit 4. Illustrative Schedules of Payments using a funding date of 2050
- 3 Exhibit 5. Affidavit of Paul Cutler
- 4 Exhibit 6. Affidavit of James Peschel
- 5 Exhibit 7. Affidavit and report of Ramelle Hieronymus
- 6 Exhibit 8. Affidavit of James Kline
- 7 Exhibit 9. N.H. Treasurer Letter approving revised Investment Guidelines
- 8 Exhibit 10. Approved revised Investment Guidelines

9 Prior to the hearing, NDFC Counsel requested and received from the Managing  
10 Agent, a funding schedule for 2009 based on the actual fund balances on September  
11 30, 2008, in order to reflect the dramatic declines in the equities markets that began in  
12 September. The responsive unaudited runs provided by FPLE are designated as  
13 Exhibit 17.

14 At the October 8, 2008, public hearing, the Committee requested the following  
15 additional information in the form of hearing requests:

- 16 • A schedule of payments starting with the fund balance as of September 30,  
17 2008, with a funding date of 2030 and the assumption that earnings on  
18 equities are zero through 2011 and at rates approved by the Committee in  
19 NDFC Docket 2007-1 thereafter. (Exhibit 11)
- 20 • A schedule of payments with the same assumptions as above, but with a  
21 funding date of 2050. (Exhibit 12)
- 22 • A memorandum of law from counsel to MMWEC regarding the obligation  
23 of MMWEC participants to pay their proportional share of their  
24 decommissioning costs, even in the event of premature cessation of  
25 operation; authority for the position taken during the hearing that each

1 MMWEC participant cannot avoid their decommissioning obligation  
2 through bankruptcy or other means; authority confirming that in the event  
3 that an MMWEC participant defaults, the other MMWEC participants will  
4 be obligated to assume the decommissioning obligation of the defaulting  
5 participant; and the identity of each MMWEC Participant. (Exhibit 13)

- 6 • A memorandum of law from counsel for the Managing Agent, similar to the  
7 one above, addressing the obligations of Taunton and Hudson to complete  
8 their decommissioning obligations, even in the event of a premature  
9 cessation of operation. (Exhibit 14)

10 On October 29, 2008, FPLE responded to the requests for the schedules of  
11 payments with funding dates of 2030 and 2050 assuming no return on equities through  
12 2011. The 2030 and 2050 funding runs are designated Exhibits 11 and 12,  
13 respectively. This submittal also included two additional funding schedules with  
14 funding dates of 2030 and 2050 assuming zero return through 2009 and reverting to the  
15 currently approved returns thereafter.<sup>2</sup> These schedules are designated Exhibits 15 and  
16 16. In a letter dated October 27, 2008, counsel for MMWEC provided the requested  
17 memorandum regarding MMWEC participants' decommissioning obligations. (Exhibit  
18 13) Counsel for FPLE submitted a letter to the NDFC counsel on October 24, 2008,  
19 that included, as an attachment, a memorandum of law from counsel for Taunton and  
20 Hudson addressing the Committee's request regarding their decommissioning  
21 obligations. (Exhibit 14) The NDFC considered the positions of the parties and the  
22 record on each issue, including responses to the hearing requests, before rendering a  
23 decision.

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<sup>2</sup> In NDFC Docket 2007-1, the assumed rate of earnings for equity investments was set at 9.5% through 2008, and 9.8% thereafter.

1           On October 29, 2008, FPLE advised the State Treasurer in her role as trustee,  
2 and the NDFC that the Company had suspended all trading of Funds. Confirmation of  
3 the action will be introduced as an exhibit at the Seabrook public hearing.

4           In December, 2008, FPLE produced an updated schedule of payments, based on  
5 Trust Fund balances as of November 30, 2008. The schedule was prepared at the  
6 request of the NDFC. The schedule will be introduced as an exhibit at the Seabrook  
7 public hearing.<sup>3</sup>

#### 8 IV. DISCUSSION

9           Each year the Committee must review the Decommissioning Trust Fund  
10 performance, and the adequacy of funding assurances. As a result of this review the  
11 Committee may alter the payment schedule or require a change in any funding  
12 assurance to ensure adequate funding for decommissioning as provided for by RSA  
13 162-F:22, II. During this annual review the schedules of payments are adjusted to  
14 ensure full funding of the decommissioning obligation for the prompt  
15 decommissioning of Seabrook Station at the end of its operating life. Ibid. During the  
16 current year, a wide ranging financial crisis developed, resulting in a dramatic  
17 reduction in the value of the Trust. Responding to this development became of  
18 paramount concern to the Committee members. Each of the areas reviewed is  
19 discussed in the following sections.

##### 20           A. Earnings Assumptions

21           In NDFC Docket 2007-1, the Committee approved the following rates of return  
22 on Trust investments:

23

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<sup>3</sup> The schedule assumed zero equity earnings in 2009 and 9.8% equity earning in all subsequent years.

1  
2

**Chart 1**  
**Approved Rates of Return on Trust Investments**

<b>Fund</b>	<b>Investments</b>	<b>Nominal</b>	<b>Real (Nominal minus Inflation)</b>
1A	Taxable bonds	6.0	3.0
1B	Core stocks (international)	10.0	7.0
2	Taxable Bonds	3.5	0.5
3	Tax-exempt bonds	4.8	1.8
5	Domestic stocks (only FPLE domestic)	9.7	6.7
6	Diversified stocks (domestic and international –owners other than FPLE)	9.7	6.7

3

4 FPLE established an equity allocation target of 65% by the end of 2008 in NDFC  
5 Docket 2007-1. The Committee ordered that until that target is reached, the overall  
6 assumed rate of return on FPLE’s Trust equity investments for purposes of calculating  
7 funding obligations will be held to 9.5%. In Docket 2007-1 the NDFC also held that  
8 once FPLE’s equity holdings equal 65% of the firm’s decommissioning trust, the  
9 assumed rate of return for FPLE’s equity holding will be 9.8%. (NDFC Docket 2006-  
10 1 Final Report and Order at 18) In the Annual Report FPLE stated that it expects to  
11 achieve the targeted equity mix by year-end 2008 or January 2009. (Exhibit 2 at 5)  
12 MMWEC also established an equity allocation target of 65% and reported the  
13 expectation of reaching this target by the end of 2010. (Exhibit 2 at 6)

14 The current economic crisis, however, raises the more fundamental question of  
15 whether the earning assumptions approved in NDFC Docket 2007-1 are still  
16 appropriate. Actual returns during the last few years have been lower than projected,  
17 with significant declines in Trust balances during the last two years. The Committee  
18 recognizes that the assumed rates of return are based on long-term performance and  
19 that short-term fluctuations are to be expected. The current crisis, however, has caused  
20 such a precipitous drop in earnings for equity investments and threatens the overall

1 economy to such a degree that the Committee is no longer confident that it can be  
2 considered part of normal market volatility.

3 The current economic crisis has also resulted in a precipitous reduction in the  
4 value of the Trust. As shown in Chart 2, the lost value since December 2007 is  
5 significant. The Committee is persuaded that the current financial climate is so severe  
6 that we cannot accept it as a typical, short-term market fluctuation. With FPLE and  
7 MMWEC already heavily invested in equities, it is prudent to consider whether  
8 adjustments or modifications to the funding model, particularly to the assumed rates of  
9 return on equities, should be made at this point.

10 The actual decline in fund balances is apparent in the following chart.

11 **Chart 2**

12 **Comparison of Projected and Actual Fund Balances**<sup>4</sup>  
13

	<b>Fund Balance</b>
<b>2007</b>	
Projected Year End per 2007 Annual Report (March 2007)	<b>\$410.3 million</b>
Trust Projected Year End as of December 2007 Compliance Filing	<b>\$402.2 million</b>
Trust Actual Year End 2007	<b>\$395.5 million</b>
<b>2008</b>	
Projected Year End per 2008 Annual Report (March 2008)	<b>\$409.3 million</b>
Trust Actual Balance – June 30, 2008	<b>\$367.2 million</b>
Trust Actual Balance – September 30, 2008	<b>\$343.0 Million</b>
Trust Actual Balance – November 30, 2008	<b>\$290.0 Million</b>

14  
15 As shown, the fund balances have declined and this decline accelerated as the financial  
16 crisis became more acute during the latter half of 2008. Actual Trust balances went  
17 down by approximately \$105.5 million over the first eleven months of 2008 and further  
18 declines may occur before the end of the year.

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<sup>4</sup> Source: November 30, 2008, Schedules of Payments to be entered as an exhibit at the Seabrook public hearing.



1 Consultant, witness Hieronymus, acknowledged that the past ten years have been one of  
2 the worst periods for stocks since tracking of the S&P 500 began in 1926, but  
3 emphasizes that the return assumptions are long-term in nature. (TR at Page 39) The  
4 Investment Consultant also offered evidence that the assumed returns may actually be  
5 conservative when compared to actual returns since World War II. (Exhibit 7) FPLE  
6 and MMWEC offer similar testimony, making the case that the earnings assumptions on  
7 Trust equities should not be modified because of the long-term nature of these  
8 investments. (Exhibit 5 at 5-6 and Exhibit 8 at 2) The Investment Consultant, FPLE and  
9 MMWEC also pointed out that the annual true-up of the schedules of payments and  
10 contribution requirements completed after the Seabrook hearing provide timely  
11 adjustment to the funding schedule to compensate for fluctuations in earnings. Id. (TR at  
12 Page 61) FPLE referred to the year-end true-up as the “ultimate backstop”. (Exhibit 5  
13 at 6)

14           The owners also offer the argument that FPLE will request an extension of  
15 Seabrook Station’s operating license from 2030 to 2050 and this will result in  
16 substantial projected surpluses for some owners when decommissioning is completed  
17 as assumed in 2101. The Committee, however, has always taken the position that this  
18 probability supports, in part, depositing part of the annual contributions in the Escrow  
19 as opposed to the Trust. A possible license extension does not enter into our  
20 considerations for the appropriate funding model assumptions under the current  
21 operating license.

22           The results of the funding runs with funding dates of 2030 and no earnings on  
23 equities over one and three year periods submitted in response to the hearing requests  
24 (Exhibits 11 and 15) can be summarized as follows:

1 **Chart 4**

2 **Impact of Assuming “0%” Earnings on Equities**

3

	‘0’ Earnings on Equities through 2009 (millions) (Exhibit 15)	‘0’ Earnings on Equities through 2011 (millions) (Exhibit 11)
September 30, 2008 Balance	\$343	\$343
Projected 12/31/08 Balance	\$345	\$345
2009 Contributions to Trust	\$0.6	\$0.9
2009 Contributions to Escrow	\$5.4	\$9.2
2020 Balance as % of 2007 TLG Decommissioning Cost Estimate	59%	58%
Ending Balance (2101)	\$0	\$0

4

5 Charts 2 and 3, taken together, show that the required contribution in 2009,  
6 assuming a 9.8% return on equities, increases from zero as originally proposed in the  
7 2008 annual report to \$3.4 million based on the September 30, 2008 actual Trust  
8 balances.<sup>5</sup> When the return on equities is held to zero for one year before reverting to  
9 9.8%, the contribution requirement increases to \$6 million. (Exhibit 15) If the return  
10 on equities is eliminated for three years, the annual contribution grows to \$10.1 million  
11 for 2009. (Exhibit 11) In NDFC Docket 2007-1, the Committee established 2020 as  
12 the year when decommissioning would begin in the event of permanent premature  
13 closure of Seabrook Station before 2015. Accordingly, the projected fund balance in  
14 2020, and in turn the ability to complete decommissioning if it were to begin in 2020,  
15 is a bellwether measurement. The current projections raise the concern that prompt  
16 decommissioning could not be completed starting in 2020, absent significant infusion  
17 of cash after Seabrook ceased operation. Review of Exhibit 11 shows that the impact  
18 on the amount of money available in 2020 in the event of premature cessation of

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<sup>5</sup> In NDFC Docket 2007-1, 9.8% was approved as the assumed earning rate for equity investments starting in 2009.

1 operations decreases from 67% of that required in the proposed funding schedule  
2 proposed in the Stipulation (Exhibit 2), to 58% if we assume there will be no equity  
3 earnings in 2009-2011.<sup>6</sup>

4 The owners also offer the argument that FPLE will request a twenty-year  
5 extension of Seabrook Station's operating license, which would result in significant  
6 projected surpluses when decommissioning is completed as assumed in 2101.<sup>7</sup> The  
7 Committee recognizes that license extension is likely, but will not assume a longer  
8 operating life prior to the NRC revising the license. The Committee will continue to  
9 consider the likelihood of license extension when determining how much of the  
10 required contribution should go to Escrow as opposed to the Trust.

11 The projections of significant surpluses for some owners after  
12 decommissioning is completed are based on a rate of return of 9.8% on equities.  
13 Lower equity rates of return, as shown, rapidly reduce this surplus to zero. Lower than  
14 anticipated rates of return also reduces the funds available in the event of premature  
15 decommissioning. The parties and the Investment Consultant, however, have  
16 persuasively made the case during the last two dockets that these returns were justified  
17 in view of the long-term performance of the market and the long-term investment  
18 horizon for the Trust. However, the unprecedented events in 2008 require re-  
19 examination of our reliance on historic data when attempting to predict future  
20 performance of investments. Accordingly, we will examine the expected rate of return  
21 on equity investments in the NDFC Docket 2009-1. For the 2009 schedules of

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<sup>6</sup> Due to the volatility of financial markets, consideration was given to calculating schedules of payments with both zero equity earnings and continued loss of Trust balances. While that approach would reflect the negative earnings performance we have seen, the Committee believes additional speculation about when a financial recovery will occur is unnecessary at this time.

<sup>7</sup> To date the Nuclear Regulatory Commission (NRC) has approved every license extension application.

1 payment established in this docket, equity earnings in 2009 and 2010 are assumed to be  
2 zero and 9.5% for each year thereafter.

3 B. The Projected Cost of Decommissioning

4 The projected cost of decommissioning was established in NDFC Docket 2007-  
5 1 at the completion of a comprehensive review of the Seabrook Station  
6 decommissioning plan and cost estimate, pursuant to RSA 162-F:22,I. The projected  
7 cost of decommissioning is defined as the current best estimate of the cost to promptly  
8 decommission Seabrook Station at the end of its licensed operating life in 2030, as  
9 determined in NDFC Docket No. 2007-1. The decommissioning cost is escalated  
10 annually to maintain a current projected cost of decommissioning. In this docket, the  
11 Committee requested the parties to address two issues related to assumptions made in  
12 establishing the projected cost. They relate first to the plan for interim onsite storage  
13 of low-level radioactive waste (LLRW) and second to the interim onsite storage of  
14 spent nuclear fuel (SNF) and Greater-Than-Class C (GTCC) waste. They are discussed  
15 below.

16 1. Plan for Interim Storage of LLRW

17 As of July 2008, the LLRW facility at Barnwell, SC was closed to all non-  
18 compact states. The Barnwell facility was the only one that would take Seabrook  
19 Station's Class B and C LLRW. Anticipating this, the NDFC had requested, in Docket  
20 2007-1, that FPLE include a plan for the storage of Class B and C LLRW along with a  
21 firm estimate of the associated costs in the 2008 Annual Report. FPLE has provided  
22 that information through the 2008 Annual Report as supplemented with the affidavit of  
23 James Peschel. (Exhibit 6) Essentially, the amount of Class B and C LLRW generated  
24 during operations is relatively small and will be stored onsite using existing facilities.

1 These facilities are not expected to require any special treatment during  
2 decommissioning. FPLE also anticipates that market forces will make one or more  
3 additional facilities available long before the scheduled shutdown of Seabrook.

4 2. Duration of SNF and GTCC Onsite

5 The Final Report and Order in NDFC Docket 2007-1, at 39, required that the  
6 Annual Report provide the most recently available information on long-term storage of  
7 spent fuel and GTCC. The parties initially responded to this requirement in the Annual  
8 Report and supplemented their response in the Stipulation, Exhibit 2 at 8, and in the  
9 affidavit of James Peschel attached thereto. (Exhibit 6 at 3) The Department of  
10 Energy (DOE) submitted the license application for the proposed repository at Yucca  
11 Mountain in June. The Director, Office of Civilian Radioactive Waste Management,  
12 however, has testified before Congress that there would be three-year delay in the  
13 opening date for the repository, from 2017 to 2020, as a result of inadequate funding in  
14 2007 and 2008. The parties state that this would mean that the first shipment of spent  
15 fuel from Seabrook Station to the repository would be in 2035, assuming that the  
16 current capacity limit on the repository is removed. (Exhibit 2 at 8) If Seabrook  
17 Station receives a 20-year operating license extension until 2050, the parties do not  
18 anticipate final removal of all spent fuel until 2078. While the parties consider the  
19 current Committee-approved assumption that spent fuel is not removed until 2100 to be  
20 very conservative, they do not argue otherwise as a result of their own estimate that it  
21 cannot be removed until 2078 with a license extension. (Exhibit 2 at 9) The  
22 Committee also continues to believe that the 2100 assumption is reasonable. There is a  
23 chain of assumptions that must prove out even under the parties' 2078 scenario for  
24 complete removal of spent fuel from the site. First, there must be adequate funding for

1 the depository. It must then be licensed and start operating in 2020. Finally, the  
2 current limit of 70,000 metric tons of uranium (MTU) must be raised by 50% to  
3 105,000 MTU to even have the capacity to take receipt of all of the spent fuel that  
4 Seabrook Station would generate under the present operating license termination of  
5 2030. NDFC 2007-1 Final Report and Order at 11. For these reasons, the Committee  
6 will continue to require, for decommissioning funding assurance purposes, that the  
7 parties assume the spent fuel will remain on-site until 2100.

8 In summary, nothing in the record indicates the need to revisit the  
9 decommissioning plan or the assumptions underlying the projected cost of  
10 decommissioning established last year. Accordingly, the Committee will continue to  
11 use the decommissioning cost projection established in NDFC docket 2007-1, updated  
12 by the escalation rate of 4.2% approved in NDFC Docket 2007-1. When the 2007 cost  
13 of decommissioning is escalated and expressed in 2008 dollars, the projected cost of  
14 decommissioning Seabrook Station is \$924 million.

### 15 C. Inflation

16 The contribution requirements increase from year to year by the assumed  
17 inflation rate. In addition, the real rate of return on investments is calculated by  
18 subtracting the inflation rate from the nominal rate of return. Since NDFC 2003-1, the  
19 approved inflation rate has been 3%. The 2008 Annual Report notes that while  
20 inflation climbed to 4.1% in the latter half of 2007, the current rate of 3% is still higher  
21 than the post-World War II average. (Attachment B to Exhibit 1 at 6). The parties  
22 proposed that this rate be maintained. (Exhibit 2 at 3)

23 The experience of 2008 calls into question the appropriate inflation rate to be  
24 assumed for future years. In particular, the NDFC has concerns over the long-term

1 impact of energy prices on the overall rate of inflation. Accordingly, we require the  
2 parties to address the future rate of inflation in NDFC 2009-1. The rate of 3% for  
3 inflation shall be maintained for the 2009 funding schedule.

4 D. Escalation

5 Escalation is the rate at which the cost to decommission is assumed to increase  
6 from year to year. Last year, the parties requested that escalation be lowered from the  
7 then-approved rate of 4.5%. Their request was based on a TLG Study that concluded  
8 that a rate of 3.04% would have been appropriate going forward. In the interests of  
9 gradualism, the owners requested that the rate only be reduced to 3.75%. Because of  
10 concerns over uncertainties in the calculation, the NDFC approved a reduction to 4.2%.  
11 The owners recommend in the stipulation that this rate be maintained. (Exhibit 2 at 10)  
12 The NDFC finds it unnecessary to adjust the escalation rate at this time, and will  
13 continue to use a rate of 4.2%.

14 E. Investment Guidelines

15 The Committee's decision to use 2100 as the assumed date for final removal of  
16 spent fuel from the site and 2101 for completion of decommissioning extends the  
17 decommissioning period from about 20 to about 70 years, under a 2030 operating  
18 license. Under this scenario, the bulk of the decommissioning will have been  
19 completed within about the first nine years after final shutdown. The remaining 60+  
20 years would be associated with onsite storage of spent fuel. As a result, the Investment  
21 Consultant and the Managing Agent recommended a change to the Investment  
22 Guidelines that would allow up to 70% in equity investments during the long post-  
23 shutdown period after the bulk of the station has been dismantled and most of the  
24 decommissioning costs incurred. This would match the pre-shutdown limit on equity

1 investments. The limit on equities during the nine-year post-shutdown period when the  
2 station is undergoing prompt dismantlement would remain at 25%. (Exhibit 2 at 4)  
3 The Treasurer approved the revised guidelines. (Exhibit 9)

4 The Committee approves the use of the Treasurer-approved revised Investment  
5 Guidelines for purposes of determining the owners' annual decommissioning funding  
6 obligations. With reallocation of investments frozen, as noted earlier, when owners  
7 will achieve the permitted investments is uncertain. We will expect the 2009 Annual  
8 Report to present a status report regarding each owner's investments relative to the  
9 Investment Guidelines. Also, FPLE is directed to advise the NDFC, in writing, when  
10 security trading resumes.

11 F. Funding Date

12 The funding date is the day on which contributions into the Decommissioning  
13 Trust may end because the NDFC believes "the fund shall have sufficient monies to  
14 complete decommissioning" on the schedule approved by the NDFC. RSA 162-F:14,  
15 V. In NDFC Docket 2007-1 the Committee established 2030 as the funding date for  
16 Seabrook Station. No party requested any change to the funding date, and the  
17 Committee finds no reason to adjust the date at this time.

18 G. Funding Assurance Escrow

19 The Funding Assurance Escrow provides a means of ensuring adequate funding  
20 while giving the Committee the flexibility to return all or a portion of the Escrow funds  
21 to an owner if it appears that there is a likelihood of overfunding. In this docket, the  
22 parties request that the entire contribution required from FPLE be deposited in the  
23 Escrow, TR. At Page 58, and that MMWEC, Taunton, and Hudson be allowed to  
24 deposit 25% of their 2009 obligation into the Escrow, with the remaining 75% to be

1 held in Trust. (Exhibit 2, TR. at Page 29) MMWEC also requested that its current  
2 Escrow balance remain in the Escrow. (Exhibit 2, TR. at Page 29) The parties  
3 request this treatment of contributions due to their expectation that the operating  
4 license for Seabrook Station will be extended to 2050, and that earnings over that  
5 longer term will result in excess funds being held in the Trust at the end of  
6 decommissioning. TR. at Pages 41-42. FPLE intends to apply for the operating  
7 license extension in the second quarter of 2010, Exhibit 1 at 9, and the NRC typically  
8 acts on license extension applications in 2 years. TR. at Pages 23-24.

9 We note that in the Annual Report FPLE requested release of its funds  
10 presently held in the Escrow, Exhibit 1 at 28, but withdrew that request before the  
11 public hearing. (Exhibit 2 at 3) The Committee also notes that in the event that  
12 FPLE's request to withdraw is not accepted, MMWEC has offered testimony opposing  
13 the release of any of FPLE's Escrow funds. (Exhibit 8 at 4)

14 The Committee recognizes that if the NRC approves a license extension to  
15 2050, the funding schedule will project FPLE and MMWEC to be overfunded when  
16 decommissioning is complete in 2101. The level of projected Trust balances for each  
17 owner is expected to change as we undertake additional review in 2009. At this time  
18 we will continue to hold the escrow funds of FPLE and MMWEC, and neither release  
19 any portion nor transfer the monies to the Trust. Further, FPLE is to deposit all of its  
20 2009 contribution in the escrow. MMWEC is to deposit 75% of its 2009 contribution  
21 in the Trust and 25% in the escrow.

22 The most recent schedules of Payments for Taunton and Hudson show that  
23 neither is expected to be over funded at the end of decommissioning, even if the  
24 operating license is extended to 2050. For this reason, we will transfer the funds held

1 in escrow for Taunton and Hudson to their respective Trusts. All of the 2009  
2 contributions by Taunton and Hudson will be deposited in the Trust.

3 H. Funding Assurances

4 Funding assurances are required of all non-utility owners of Seabrook Station.  
5 RSA 162-F:21-a, III. The NDFC may impose a funding assurance requirement to  
6 ensure recovery of decommissioning costs in the event there is a premature permanent  
7 cessation of operation. RSA 162-F:19, IV. In NDFC Docket 2002-2, the NDFC  
8 established funding assurance requirements for FPLE, which included a guaranty by its  
9 indirect parent company, FPL Group Capital, Inc., which in turn is backed by a  
10 guaranty by the holding company, FPL Group, Inc. The NDFC monitors the strength  
11 of all funding assurances to determine whether any of the “triggers” that would result  
12 in immediate payments by FPLE are likely to be activated. In addition, a Support  
13 Agreement was also established in NDFC Docket 2002-2 whereby FPL Group Capital,  
14 upon request by FPLE Seabrook, shall make available up to \$220 million in financial  
15 support in the event that an outage at Seabrook Station exceeds nine months. This  
16 support shall include contributions to the Trust. In NDFC Docket 2007-1, the parties  
17 stipulated to a change to the Support Agreement that now provides up to \$275 million  
18 for outages lasting more than nine months.

19 None of the triggers associated with the FPLE funding Assurance requirements  
20 have been approached. (Exhibit 2 at 9) FPLE has also provided testimony about the  
21 financial health of FPL Group, Inc. and its utility subsidiary, Florida Power and Light  
22 Company. The Committee is satisfied that the financial capability of FPLE, as backed  
23 by the funding assurances of FPL Group, remains sufficiently strong to fund FPLE’s  
24 decommissioning obligation, even in the event of permanent premature cessation of

1 operation. (TR. at Page 53) Similarly, Seabrook Station continues to perform better  
2 than the industry averages. (Exhibit 1 at 11, Exhibit 1 at Attachments 3 and 4)  
3 (Exhibit 5 at 3, TR. at Pages 51-52) Based on the record, the NDFC holds that the  
4 existing FPLE funding assurances will remain in place until next reviewed by the  
5 NDFC, and finds that the funding assurances are adequate to meet FPLE’s obligations,  
6 even in the event of a premature cessation of operation.

7 The dramatic drop in the value of the Trust prompted the NDFC to revisit  
8 whether additional funding assurances are required from MMWEC, Taunton and  
9 Hudson.

10 When funding assurances were first established in 2002 the Committee did not  
11 require MMWEC, Taunton or Hudson to provide assurances. The Committee noted  
12 that “[t]he security of franchised service territories, with captive native load customers”  
13 minimized the risk to the State of New Hampshire. NDFC 2002-2, Final Report and  
14 Order at 11. Current economic conditions prompted the Committee to reexamine  
15 whether these three owners could, by taking any legal steps in the future, avoid their  
16 decommissioning obligation, particularly in the event of premature cessation of  
17 operation. For this reason, the Committee requires these owners to support their  
18 contention that their decommissioning obligation cannot be avoided. See: Exhibits 13  
19 and 14.

20 In summary, Exhibits 13 and 14, respectively, reflect MMWEC’s, Taunton’s  
21 and Hudson’s representation that the Seabrook indebtedness is secured through  
22 binding contractual obligations and statutory provisions, and that the obligations of  
23 Taunton and Hudson and the municipalities with whom MMWEC contracts (“Project

1 Participants”) to pay their share of the costs of decommissioning cannot be discharged  
2 in bankruptcy.

3 A municipality can seek bankruptcy protection under Chapter 9 of the U.S.  
4 Bankruptcy Code, only if expressly authorized to do so under state law. 11 U.S.C. §  
5 109. MMWEC, Taunton and Hudson maintain that Massachusetts law does not grant  
6 that authority to municipalities. See: Exhibits 13 and 14. Further, MMWEC  
7 maintains that even if a municipality were permitted to file for bankruptcy protection  
8 under Chapter 9, the obligation for that municipality to pay MMWEC all Seabrook-  
9 related costs could not be stayed or discharged because the Seabrook obligations are  
10 “pledged special revenues...to payment of indebtedness secured by such revenues.”  
11 See: 11U.S.C.§ 922(d) (U.S. Bankruptcy Code); Exhibit 13 at 10. Special revenues  
12 are defined, in part, as “receipts derived from the ownership, operation, or disposition  
13 of projects or systems . . . primarily used to provide . . . utility [services]”. See: 11  
14 U.S.C. §902(1)(D); Exhibit 13 at 10. The U.S. Bankruptcy Code provides that a  
15 petition filed under Chapter 9 does not operate as a stay of the obligation to pay such  
16 revenues. See: 11 U.S.C. § 922(d); Exhibit 13 at 10.

17 Taunton and Hudson maintain that the Seabrook-related obligations are direct  
18 obligations, which cannot be avoided via the Bankruptcy Code. Pursuant to G.L. c.  
19 164, municipal light plants such as Taunton and Hudson must set rates to cover  
20 expenses associated with operating the plant, which include contract costs related to its  
21 ownerships interests in Seabrook, including decommissioning costs, G.L. c. 164, § 58.

22 MMWEC’s ownership of Seabrook, and the contractual obligations and  
23 statutory provisions securing MMWEC’s payments, are more complex, but for the  
24 reasons that follow, MMWEC likewise represents that its obligation to fund its share of

1 the cost to decommission Seabrook Station is absolute and cannot be discharged in  
2 bankruptcy.

3 MMWEC issues bonds, pursuant to authority granted by the Massachusetts  
4 Legislature and approval from the Massachusetts Department of Public Utilities, the  
5 proceeds of which are used to finance its ownership share in Seabrook. MMWEC's  
6 bonds are revenue bonds, issued pursuant to MMWEC's General Bond Resolution  
7 (GBR). The GBR is an agreement between MMWEC and the bondholders that  
8 requires MMWEC, among other obligations, to collect revenues from the Project  
9 Participants pursuant to Power Sales Agreements (PSAs) between MMWEC and the  
10 Project Participants. The GBR also obligates MMWEC to pledge MMWEC's  
11 revenues, derived primarily from the PSAs, as the security to pay the principal and  
12 interest on the bonds, as well as MMWEC's share of Seabrook costs, including the cost  
13 to decommission Seabrook. As such, the bonds MMWEC issued to finance its  
14 ownership interest in Seabrook are secured primarily by the revenues MMWEC derives  
15 from the PSAs.

16 The Project Participants must make their payments to MMWEC under the  
17 PSAs regardless of whether Seabrook operates or not. This obligation is known as a  
18 "take or pay" contract. Additionally, the PSAs obligate the Project Participants to raise  
19 their rates and collect revenues sufficient to make all payments due to MMWEC under  
20 the PSAs, including the cost to decommission Seabrook. The Project Participants have  
21 the authority and obligation, pursuant to Massachusetts law, to raise their rates  
22 sufficient to meet their costs, without rate regulation. The Massachusetts Supreme  
23 Judicial Court has affirmed that the obligations of Project Participants to raise their  
24 rates and pay their share of Project Monthly Power Costs, which include the cost to

1 decommission the Seabrook Station, under the PSAs to MMWEC are binding  
2 obligations.

3 MMWEC maintains that the revenues the Project Participants are obligated to  
4 raise from their captive customers and pay to MMWEC are “pledged special  
5 revenues,” as defined by the U.S. Bankruptcy Code, because they are derived from the  
6 operation of the Project Participants’ utility systems “ to payment of indebtedness  
7 secured by such revenues.” See: 11 U.S.C. §922(d); Exhibit 13 at 10. As such,  
8 MMWEC maintains that the Project Participant obligations under the PSAs cannot be  
9 avoided through a bankruptcy proceeding, even if the Commonwealth of  
10 Massachusetts granted the Project Participants the right to file for Chapter 9  
11 bankruptcy protection, which, as noted, currently does not exist.

12 If MMWEC failed to satisfy its obligations to pay decommissioning costs,  
13 Sections 10 and 14 of St. 1975, c. 775 provide that MMWEC’s bond fund trustee, or a  
14 court-appointed receiver, would have the authority to take possession and control of  
15 MMWEC’s business and “fix, revise, and collect fees and charges to satisfy  
16 MMWEC’s obligations.” MMWEC’s General Bond Resolution, in fact, provides that  
17 the bond fund trustee must exercise those rights, among other rights, to fix, revise and  
18 collect fees and charges, if MMWEC’s failure to satisfy its obligations results in an  
19 event of default. Further, if MMWEC sought bankruptcy protection, the provisions of  
20 the U.S. Bankruptcy Code applicable to the Project Participants, described above, also  
21 would apply to MMWEC.

22 We find the explanation of the obligations to meet the decommissioning costs  
23 for the municipal owners, as set forth in Exhibits 13 and 14, to be sufficient to address

1 our concerns at this time.<sup>8</sup> The NDFC may choose to revisit this issue, should the long  
2 term operational viability of Seabrook Station become in doubt.

3 I. Schedules of Payments: December Re-set and Earnings Assumptions

4 In NDFC Docket 2002-2, the NDFC established the practice of setting the  
5 schedules of payments beginning on January 1 of the following year based on a  
6 November 30 actual Trust balance, adjusted to estimate the end-of-year balance as  
7 closely as possible. In NDFC Docket 2004-1, the year-end calculation was further  
8 refined. This approach permits the best full-year estimate of earnings and expenses  
9 during the year to be recognized when setting contribution requirements for the next  
10 year and the NDFC will continue this practice with an adjustment as described below.

11 The calculation of the 2009 funding schedules will be based on the Trust and  
12 funding assurance Escrow balances as of January 31, 2009, with earnings for equity  
13 investments set at zero for 2009 and 2010, and at 9.5% for years thereafter. Normally  
14 assumed earnings, other than for equity investments, minus the estimated expenses for  
15 January 2009 on both the Decommissioning Trust and Escrow balances would be  
16 added.

17 V. CONCLUSION

18 Based on this Preliminary Report and Order, the Committee finds that the  
19 requirements of RSA 162-F for funding decommissioning will be met by implementing  
20 the requirements set forth in this order.

21  
22 Based on the foregoing, it is hereby  
23

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<sup>8</sup> Through counsel the municipal owners were asked to confirm that their individual charters did not contain grant of the ability to seek bankruptcy protection, but the information could not be provided in a timely manner due to the complexity of gathering and verifying documents when some of which are over 100 years old. This issue could be revisited should the NDFC feel additional assurance is appropriate.

1           **ORDERED**, that the funding assurance provided by FPLE approved in the  
2 Docket 2002-2 Final Report and Order shall remain in place and unchanged; and it is  
3

4           **FURTHER ORDERED**, that the payments into the Decommissioning Trust  
5 and funding assurance Escrow from Seabrook Station owners for 2009 shall be  
6 calculated in accordance with this Report and Order, the total of which will be  
7 determined by the calculation of a revised schedules of payments; and it is  
8

9           **FURTHER ORDERED**, that the schedules of payments for 2009 will be  
10 established in February 2009 using the assumptions and terms identified in this  
11 Preliminary Report and Order as recalculated using the Decommissioning Fund and  
12 Funding Assurance Escrow account market values as of January 31, 2009; and it is  
13

14           **FURTHER ORDERED**, that MMWEC's 2009 contributions into the Funding  
15 Assurance Escrow shall be paid into the Funding Assurance Escrow only after all  
16 contributions to the decommissioning trust have been made for 2009; and it is  
17

18           **FURTHER ORDERED**, that FPLE shall deposit 100% of its 2009  
19 contribution into the Funding Assurance Escrow; and it is  
20

21           **FURTHER ORDERED**, that payments into the Funding Assurance Escrow  
22 are funding assurance obligations, and are not a schedule of payment obligations of the  
23 Seabrook owners. Payments into the Escrow are obligations imposed by the NDFC  
24 and fully enforceable by the Committee; and it is  
25

26           **FURTHER ORDERED**, that FPLE is to file, no later than March 1, 2009, an  
27 independent auditors' report on the Seabrook Nuclear Decommissioning Financing  
28 Fund and the Seabrook Escrow Fund as of December 31, 2008; and it is  
29

30           **FURTHER ORDERED**, that the 2009 Annual Report is to filed no later than  
31 March 31, 2009, and shall include all information previously required by the NDFC in  
32 annual updates and detail on the Decommissioning Fund performance through a date  
33 that is no less than 30 days prior to the filing of the annual report. Further, the Annual  
34 Report shall present the owners' position, with supporting data, regarding future  
35 projected rate of return on equity investments and the investment portfolio of each  
36 owner relative to the permissible investments under the Investment Guidelines. The  
37 Annual Report shall present the Seabrook owners' position regarding the future rates of  
38 inflation along with supporting data. Further, the Annual Report shall include the  
39 Annual Report shall present the Seabrook owners' position regarding the expected  
40 earnings on equity investments for all future years, along with supporting data. The  
41 2009 Annual Report should include a copy of FPLE's biennial report to the NRC,  
42 pursuant to 10 CFR 50.75; and it is  
43

44           **FURTHER ORDERED**, that FPLE shall file with the Committee, on or before  
45 February 16, 2009, revised schedules of payments and funding assurance schedules  
46 conforming to the requirements of this Report and Order with Trust Fund balances as  
47 of January 31, 2009; and it is  
48

1           **FURTHER ORDERED**, that any party to this proceeding wishing to comment  
2 on this Preliminary Report and Order shall file written comments with the NDFC no  
3 later than February 6, 2009, and provide a copy to all parties on the same date; and it is  
4

5           **FURTHER ORDERED**, that FPLE shall give notice causing a copy of the  
6 Notice of Public Hearing that is Attachment 1 to be published in a newspaper having  
7 general circulation in that portion of the State in which operations are conducted, and a  
8 newspaper having state-wide circulation, the last such publication to be not later than  
9 February 10, 2009. FPLE shall confirm publication by affidavit to be made on a copy  
10 of this notice and filed with the NDFC on or before February 24, 2009.  
11

12           This is a Preliminary Report and Order of the NDFC prepared in conformity  
13 with RSA 162-F:21, III. A Final Report and Order will be issued after the Committee  
14 has reviewed all comments received regarding this Preliminary Report and Order, and  
15 after the review of all comments submitted at the hearing to be held in the Town of  
16 Seabrook, New Hampshire.  
17

18           This Preliminary Report and Order is released on January 16, 2009.

**NDFC Docket 2008-1  
Preliminary Report and Order  
Attachment No. 1**

THE STATE OF NEW HAMPSHIRE  
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE  
NDFC 2008-1

Notice is hereby given that the Nuclear Decommissioning Financing Committee (“NDFC”), established pursuant to RSA 162-F:21, IV, shall, in accordance with the provisions of RSA 162-F, and RSA 541-A, et seq., hold a public hearing on February 24, 2009 at 7:00 P.M. at the Seabrook Town Offices. In the event of inclement weather, the public hearing will be held on March 3, 2009 at the same time and location. The purpose of the hearing will be to receive the views of the public on the Preliminary Report and Order of the NDFC, which establishes a new level of funding of the Nuclear Decommissioning Fund for the Seabrook Nuclear Power Station as of January 1, 2009.

The Preliminary Report and Order of the NDFC, the transcript of the public hearing and the record of the docket upon which the NDFC based its determinations are available for public review in the Seabrook Town Clerk’s office, starting on January 23, 2009.

A copy of this notice shall be published in a newspaper having general circulation in that portion of the State in which operations are conducted and a newspaper having state-wide circulation, the last such publication to be not later than February 10, 2009, and a copy of this notice shall be posted by that date in at least two places in the Town of Seabrook, New Hampshire.