

THE STATE OF NEW HAMPSHIRE
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE
DOCKET NO. NDFC 2013-1

PRELIMINARY REPORT AND ORDER

Concord, New Hampshire
November 12, 2013

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PRELIMINARY REPORT AND ORDER

1 **I. SUMMARY OF FINDINGS**

2 In this Docket No. NDFC 2013-1 (NDFC Docket) the Nuclear Decommissioning
3 Financing Committee (“NDFC” or “Committee”) conducted the annual review required
4 by RSA 162-F: 22. The Committee made the following determinations to ensure that the
5 Joint Owners (“Seabrook Owners”) of the Seabrook Nuclear Station (“Seabrook Station”)
6 provide sufficient funding to ensure the prompt, safe, and orderly decommissioning of
7 Seabrook Station pursuant to the requirements of RSA 162-F.

- 8 1) The projected cost of decommissioning will be \$1,103,451,280, when expressed in
9 December 31, 2013 dollars, which is the TLG Services, Inc. estimate in the 2011
10 Seabrook Station Decommissioning Cost Analysis approved by the Committee in
11 Docket NDFC 2012-1, escalated at 3.85%.
- 12 2) Onsite storage of spent nuclear fuel and Greater-Than-Class C (“GTCC”) radioactive
13 waste in the Independent Spent Fuel Storage Installation (“ISFSI”) shall be assumed
14 to be required until 2100, with the ISFSI dismantled in 2101.
- 15 3) The escalation adjustment applied to the schedules of payments will continue to be
16 3.85%.
- 17 4) The funding date will be 2030.
- 18 5) The inflation adjustment applied to the schedules of payments will continue to be 3%.
- 19 6) The assumed rates of return on the Trust and Escrow funds shall be as follows:
20 a. Equities = 8.5%

- 1 b. Bonds = 6.0%
- 2 c. Cash and cash equivalents (long-term) = 3.5%
- 3 d. Escrow = 0.25%
- 4 e. Opportunistic Strategy asset class (“Opportunistic Fund”) = 7.5%
- 5 7) For purposes of calculating the funding schedules, the stated targeted equity
- 6 allocations of each Seabrook Owner shall be assumed to be the targeted allocations,
- 7 provided they are within the Investment Guidelines as approved by the State
- 8 Treasurer and were within 3% of the actual allocations as of the end of the month
- 9 preceding issuance of the Final Report and Order in this Docket. Otherwise the lesser
- 10 of the targeted or actual allocation as of that date shall be assumed.
- 11 8) For purposes of calculating the funding schedules, the allocation of NextEra Energy’s
- 12 share of the total Trust to the Opportunistic Fund approved by the State Treasurer
- 13 shall be assumed to be 10% as of December 31, 2014. The allocation to the fixed
- 14 income asset class for purpose of calculating the funding schedules shall be 100%
- 15 minus the allocations assumed for equity and Opportunistic Fund allocations.
- 16 9) The coverage ratio shall be not less than 3.3 times the projected decommissioning
- 17 cost in each year from 2030 through 2036, which would be the actual
- 18 decommissioning period after the surrender of the operating license for Seabrook
- 19 Station. The coverage ratio is defined as the amount held as cash, cash equivalents,
- 20 and high-quality fixed income instruments compared to the total expenses to be paid
- 21 from the Decommissioning Trust in the following year. NDFC Docket No. 2005-1
- 22 Final Report and Order at 13.
- 23 10) The funding assurances from each Seabrook Owner will remain unchanged.

- 1 11) Contributions required to be made to the Seabrook Station Decommissioning
2 Financing Fund shall be made to the Escrow in 2014.
- 3 12) All of NextEra's Escrow Funds (Escrow) shall be retained in the Escrow account at
4 this time. The Committee will consider the return of all or a portion of the Escrow
5 balances to the Seabrook Owners in the Docket following issuance of a Renewed
6 License for Seabrook Station, taking into consideration the financial health of the
7 fund and decommissioning obligations at that time.
- 8 13) For purposes of calculating the schedules of payments, the funds held in the Escrow
9 for each Seabrook Owner shall be treated in the following manner. If a Seabrook
10 Owner is projected to have a balance remaining in its portion of the Trust after
11 decommissioning is completed in 2101 ("Overfunded"), the 2014 schedules of
12 payments should assume that Seabrook Owner's Escrow balance is returned to the
13 Seabrook Owner in 2016. If the Seabrook Owner is not projected to be overfunded,
14 the Seabrook Owner's funds held in the Escrow shall be assumed to be transferred to
15 the Seabrook Owner's Trust in 2016. These assumptions are only for the purposes of
16 establishing the funding schedules of payments for 2014. Any actual transfers of
17 Escrow funds shall be determined separately.
- 18 14) Any compensation and expenses associated with services related to the
19 Decommissioning Trust performed by employees of the Seabrook Owners shall not
20 be reimbursed from the Trust.
- 21 15) The schedules of payments beginning in 2014 shall be calculated in accordance with
22 this order as supplemented and/or revised by the Final Report and Order to be issued
23 following the public hearing in the Town of Seabrook.

1 Any additional written information that the parties may elect to place on the
2 record with respect to these matters must be submitted to the Committee by December
3 12, 2013. These determinations are discussed in detail in this Preliminary Report and
4 Order.

5 **II. PARTIES AND THEIR POSITIONS**

6 NextEra Energy Seabrook, LLC (“NextEra Energy Seabrook”) and the
7 Massachusetts Municipal Wholesale Electric Company (“MMWEC”) requested full party
8 status. Taunton Municipal Lighting Plant (“Taunton”), and the Hudson Light and Power
9 Department (“Hudson”) were recognized as being represented by the Managing Agent,
10 with the right of full participation at their choosing.

11 In NDFC Order No. 1, issued July 15, 2013, the NDFC granted full party status to
12 NextEra Energy Seabrook and MMWEC and recognized NextEra Energy Seabrook, in its
13 capacity as Managing Agent, as the representative of Taunton and Hudson. The full
14 parties produced a Stipulation of the Full Parties (“Stipulation”) (Exhibit 2) presenting
15 the positions of the full parties on each issue that the Committee must address. The
16 Stipulation identified the exhibits that the full parties would present at the public hearing.
17 One additional Exhibit (Exhibit 13) was presented at the public hearing. The executed
18 Stipulation was received at the public hearing in Concord, New Hampshire on November
19 4, 2013. The Managing Agent represented that it accurately stated the positions of each
20 Seabrook Owner.

21 **III. PROCEDURAL HISTORY**

22 The Managing Agent filed the 2013 Annual Report on May 30, 2013 (Exhibit No.
23 1). The Order of Notice for this Docket was issued on April 30, 2013. Timely notice of

1 the Docket was provided to the public by publication in newspapers. NextEra arranged
2 for a copy of the 2013 Annual Report to be available for public review at the Seabrook
3 Public Library. The first pre-hearing conference was held on June 3, 2013, during which
4 the parties prepared a proposed procedural schedule and Docket scope.

5 On July 15, 2013, the NDFC issued Order No. 1, adopting the proposed
6 procedural schedule and scope. The parties participated in several additional pre-hearing
7 conferences prior to the public hearings, and developed the Stipulation, which was
8 executed and presented to the Committee at the public hearing in Concord, New
9 Hampshire on November 4, 2013. At the hearing, Michael Ossing, NextEra Energy
10 Seabrook Licensing Manager, provided testimony regarding Seabrook Station's operating
11 performance, the status of the ISFSI, and the status of the license renewal application;
12 Alan Smith, NextEra Energy Business Director for Seabrook, provided testimony
13 regarding NextEra's nuclear operations, the status of the Nuclear Regulatory
14 Commission's ("NRC") Waste Confidence rule, an update on the status of high level
15 radioactive waste disposal, and NextEra Energy's financial status; Alex Weiss, NextEra
16 Energy Vice President and Chief Investment Officer, provided testimony regarding
17 NextEra Energy's financial status and the long-term earnings assumptions for the Trust;
18 and David Emerson, LCG Senior Vice President and Principal of LCG Associates,
19 provided testimony regarding the assumed rates of return for Trust and Escrow
20 investments. Ronald C. DeCurzio, the Chief Executive Officer and Secretary for
21 MMWEC, did not appear at the public hearing, but provided an affidavit on behalf of
22 MMWEC in support of the Stipulation of the parties. His affidavit also addressed
23 MMWEC's corporate structure; investment strategy and financial assurances that ensure

1 that MMWEC’s decommissioning obligations will be met; allocation of MMWEC’s
 2 payments between Trust and Escrow Accounts; assumed returns associated with
 3 Opportunistic Funds in establishing payment schedules; expense reimbursement from the
 4 Decommissioning Trust; and, NextEra Energy Seabrook funding assurances. The
 5 exhibits accepted at the hearing were:

6 **Chart 1**
 7 **HEARING EXHIBITS**

Exhibit Number	Description
1	2013 Annual Report
2	Stipulation of the Full Parties
3	Proposed Schedule of Payments, using balances as of August 31, 2013
4	Affidavit of Michael Ossing
5	Affidavit of Alan Smith
6	Affidavit of David Emerson
7	Affidavit of Alex Weiss
8	Funding Run summary reflecting current NDFC assumptions, proposed assumptions and 2050 funding date, using balances as of August 31, 2013
9	Audit of Trust
10	Audit of Escrow
11	LCG Report of NISA Investment Advisors comparative earnings survey
12	Affidavit of Ronald C. DeCurzio
13	Status of Opportunistic Investment as of September 30, 2013

8 During the hearing, two hearing requests were made of the Managing Agent.

9 Exhibit numbers have been reserved for the responses as follows:

1
2

Chart 2
HEARING REQUESTS

Exhibit Number (Hearing Request)	Description
14	Provide itemization and additional supporting information for the compensation and expenses of Alan Weiss that were reimbursed from the Trust. Include the specific nature of the services.
15	Provide a summary of the results of any radiological monitoring of surfaces outside of the Seabrook Owner-controlled area over the last 5 years with respect to any contamination that has the potential to impact the cost of decommissioning. Indicate whether any such contamination, if it occurred, necessitated reporting to regulatory agencies.

3 **IV. STIPULATION**

4 In their Stipulation, the Seabrook Owners request that the Committee continue in
5 force the previously approved orders with respect to the cost of decommissioning, the
6 funding date, the assumed escalation and inflation rates, the rates of return on Trust and
7 Escrow investments with the exception of the Opportunistic Fund, and the use of 2101 as
8 the assumed end of the decommissioning period. The Seabrook Owners also request that
9 the Committee continue its practice of allowing any required contributions in 2014 be
10 made to the Escrow and not to the Trust. On these matters, the Committee has
11 extensively discussed its reasoning for the positions taken in prior Dockets. Because the
12 Seabrook Owners are not seeking changes from what the Committee approved in the
13 2012 Final Report and Order, and there are no special circumstances requiring the
14 consideration of any changes, the Committee will continue to use these assumptions for
15 calculation of the 2014 schedules of payments, without further discussion of these topics
16 in this report and order.

1 The Stipulation did not specifically address two other input assumptions of the
2 funding schedule: the coverage ratio and the equity allocation assumption requirements.
3 These requirements will also remain as set forth in the Final Report and Order of NDFC
4 2012-1. Until modified by the NDFC, the coverage ratio is the minimum ratio of cash
5 and cash equivalent investment balances to the following year’s decommissioning
6 expense that must be in the Trust in each of the first seven years during the prompt
7 decommissioning period, after the expiration of the operating license, as established in
8 NDFC Docket No. 2005-1. The equity allocation assumption refers to the requirement
9 that the targeted equity allocations be assumed for purposes of producing the funding
10 schedule, provided they conform to the Investment Guidelines as approved by the State
11 Treasurer and are within 3% of the actual allocations as of a date specified by the
12 Committee. For this docket, that date shall be the end of the month preceding issuance of
13 the Final Report and Order in this Docket. Otherwise the lesser of the targeted or actual
14 allocation as of that date shall be assumed. This standard was established in NDFC
15 Docket 2011-01. The coverage ratio will be reviewed as part of the next full review of
16 the cost of decommissioning, the so-called “four-year review”. The assumptions as to
17 equity allocations will remain unchanged at this time.

18 The four areas about which the Committee will provide additional discussion are:

- 19 • Escrow release. NextEra requested a release of a portion of its share of the Escrow
20 balance. MMWEC opposed the request.
- 21 • Employee expenses charged to the Trust. Although the NDFC was not aware of it,
22 NextEra requested and received reimbursement from the Trust for the compensation

1 of a NextEra employee. MMWEC urged the Committee to not permit NextEra to
2 charge such costs to the Trust.

- 3 • Assumed rate of return for the Opportunistic Fund. MMWEC requests that the
4 Committee lower the assumed rate of return.
- 5 • Funding assurances. MMWEC maintains its position enunciated in Docket 2002-2
6 that the funding assurances provided by NextEra are inadequate.

7 The Committee will also provide guidance, as requested by NextEra in the
8 Stipulation, for specific studies or subjects to be addressed to support the comprehensive
9 update in the 2015 filing.

10 V. DISCUSSION

11 As an introduction to a discussion of the areas in controversy in this Docket,
12 Chart 3 provides a recent breakdown and status of the Trust and Escrow.

13 **Chart 3**
14 **TRUST BALANCES AND CONTRIBUTIONS**

Fund	Investments	Year-End 2012		2013 Contributions	
		(\$Millions)	(%)	(\$Millions)	(%)
1A	Fixed Income	95.1	20.8	\$0.0	
1B	Core Equities	75.1	16.4	0.0	
2	Fixed Income	19.3	4.2	0.0	
3	Fixed Income	29.0	6.3	0.0	
5	Core Equities	202.1	44.1	0.0	
6	Core Equities	22.4	4.9	0.0	
7	Opportunistic	15.2	3.3		
	Trust Total	458.3	100.0	\$0.0	100
	Escrow Investments	29.3		\$0.984	
	Total including Escrow	487.6		\$0.984	

1 Since the end of 2012, the Trust balances have risen with the bull market and
 2 stand at \$519.2 million as of September 30, 2013. The Escrow balance, with its much
 3 more conservative investments, has risen to \$30.1 million as of that date.

4 Chart 4 compares what past funding schedules predict for a Trust balance at the
 5 end of 2012 with the actual year-end 2012 Trust balance.

6 **CHART 4**
 7 **PROJECTED VERSUS ACTUAL BALANCES FOR YEAR-END 2012 (\$M)**

Annual Report –	Projected 12/31/2012 Balance	Actual 12/31/2012 Balance	Difference (Actual – Projected)
2007	628.5	487.6	-140.9
2008	601.8		-114.2
2009	448.3		39.3
2010	496.3		-8.7
2011	486.4		1.2

8 Chart 4 shows the recovery since the market collapse in 2008. It also shows that
 9 the high fund balance in 2007, before the 2008 market collapse, led to a projected balance
 10 at the end of 2012, which the fund is still far from reaching. In NDFC 2008-1, the
 11 Committee required that the funding schedule assume a rate of return on equities of 0%
 12 for 2009 and 2010. This had two primary effects. The low return assumptions led to a
 13 requirement for significant increase in contributions from the Seabrook Owners including
 14 NextEra for these years. Since the contributions went to the Escrow, it led to a
 15 substantial growth in the Escrow balances, which NextEra now seeks the Committee
 16 release to them. It also had the effect of significantly lowering the projected returns for
 17 December 31, 2012 in the 2009 and 2010 funding schedules which is why the actual

1 balances exceeded the projected balances for these years. The actual balance at the end of
2 September 2013 was \$519.5 million, showing a continued recovery of the losses in 2008.

3 **A. Escrow Release**

4 NextEra proposed that the Committee authorize the release of the lesser of (1)
5 50% of the amount (if any) by which NextEra's audited December 31, 2013 Trust
6 balance exceeds the amount projected for that date in the approved funding schedule
7 (\$447.2 million), or (2) all but \$10 million of NextEra's Escrow balance. NextEra argued
8 that this would be a reasonable exercise of the Committee's discretion in view of the
9 amount in the NextEra's share of the Escrow (\$23.5 million), and the fact that NextEra is
10 overfunded; that is, the current approved funding schedule projects NextEra will have a
11 balance of just over \$4 billion in its share of the Trust after decommissioning is assumed
12 to be completed and all spent fuel removed in 2101.

13 MMWEC opposes NextEra's request and contends that adoption of a formula
14 would remove the NDFC's discretion pursuant to statute and the terms of the Escrow.

15 In testimony and the Stipulation, NextEra recognized the NDFC's discretion and
16 responsibility with respect to the Escrow and characterized the proposal as non-binding
17 guidance. By the terms of the Escrow the NDFC has absolute discretion in determining
18 when, and whether, to release funds from the Escrow to Seabrook Owners or transfer the
19 monies to the Trust. The Escrow is a funding assurance and as such the Committee may
20 transfer funds after a determination of the NDFC in a public meeting, but without a
21 public hearing. The NDFC will not adopt a formulaic approach to management of the
22 Escrow. In the past the Committee identified benchmark performances that would be
23 used as guidance by the NDFC when considering release of monies from the Escrow, but

1 the Committee expressly rejected adopting a default methodology governing the
2 distribution from the Escrow.

3 The Committee previously used a benchmark in deciding whether to release
4 Escrow funds. In 2007, about \$5 million of the \$7.5 million balance was released to FPL
5 (now NextEra) when non-binding benchmarks were achieved. The benchmarks were (a)
6 NRC approval of license recapture¹ and (b) achievement of a Trust balance equal to
7 55.5% of projected decommissioning costs. In the 2011 Docket, NextEra requested that
8 all but \$10 million of the then \$23 million NextEra share be released, citing in support of
9 its request, the fact that license renewal was closer and that its share of the Trust was
10 overfunded at the time by an estimated \$1.7 billion. NDFC 20011-1 Stipulation at §8.1.
11 The Committee declined the request, citing the continued volatility of the investment
12 market and the delay in license renewal.

13 The application for license renewal was filed in June 2010 when the Managing
14 Agent presented the expectation that in 2012 the NRC would approve extension of
15 license termination by 20 years, from 2030 to 2050. NDFC Docket No. 2010-1 Exhibit 5
16 at 2. License renewal has been delayed by the suspension in issuance of NRC licenses
17 resulting from the Waste Confidence rule decision (see Exhibit 1 at 9), and the ongoing
18 Alkali Silica Reaction (“ASR”) concrete degradation problem at Seabrook. NextEra
19 states that the Waste Confidence issue should be resolved by the fall of 2014 and will not
20 impact Seabrook’s license renewal. NextEra now projects that the NRC will act on the
21 Seabrook license renewal application by late 2014 or early 2015. Exhibit 2 at §3.6.
22 NextEra witnesses testified that part of the ASR evaluation consists of a large-scale

¹ Not to be confused license renewal, license recapture was the NRC’s 2005 approval of extension of the operating license from 2026 until 2030 to “recapture” the period between issuance of the original operating license and the beginning of the normal 40-year commercial operating period.

1 testing program being conducted of beam specimens at the University of Texas, which
2 are scheduled for completion by 2015. NextEra witnesses expressed confidence that the
3 results of these tests will not adversely impact license renewal.

4 The NDFC will not release monies from the Escrow at this time for a number of
5 reasons. The status of license renewal remains uncertain, and thus the need for the
6 Escrow funds for decommissioning as early as 2030 remains a possibility. Also, the
7 Committee notes that this is the first time that ASR degradation has been identified at a
8 nuclear power plant. The NDFC will not presume results of the testing, and the
9 determinations of the NRC, and the impact those actions will have on the license life of
10 Seabrook Station. The NDFC has consistently stated that decisions will be based on
11 actual knowledge and status, such as the NRC approval of license renewal, and not on
12 assumed results. Therefore, consideration of release of Escrow monies will be
13 considered after the ASR issue is resolved and the NRC makes a final decision on license
14 renewal.

15 **B. Reimbursement of Employee Expenses from the Trust**

16 In 2011 and 2013, NextEra was reimbursed from its Trust accounts for
17 compensation and expenses related to services provided by Alex Weiss, its Chief
18 Investment Officer (“CIO”) during the 2010-2012 time period. The amounts totaled
19 approximately \$85,000. In the Stipulation, NextEra states that this was appropriate
20 because the services fell within the specific parameters for reimbursement of ordinary
21 administrative expenses authorized by the Master Trust Agreement (“MTA”), and were
22 taken solely from the NextEra Trust accounts. The reimbursement was made by the

1 Trustee upon presentation by NextEra of an Officer's Certificate in accordance with
2 Section 4.03 of the MTA.

3 NextEra claimed that the services rendered were directly related to NextEra's
4 Trust investments, were for the benefit of the Trust, and would be performed regardless
5 of whether there was an NDFC process or not. According to NextEra, the expenses at
6 issue were for services that fall within the ordinary administrative expenses recognized in
7 the MTA, and are allowed to be reimbursed from the Trust. The activities identified by
8 NextEra included asset allocation, choice of outside managers, performance monitoring
9 and reporting. Exhibit 2 at §3.4.1. MMWEC opposed such reimbursement. Exhibit 2 at
10 §3.4.2 and Exhibit 12 at 8. MMWEC averred that although the MTA requires that the
11 Trust must be independent of the Seabrook Owners, NextEra selects the Investment
12 Consultant and the Fund Manager whose costs are allocated to the Seabrook Owners, and
13 now, according to MMWEC, NextEra charges expenses for the same type of services as
14 the Investment Consultant and/or the Fund Manager. MMWEC claims that this raises a
15 question as to whether the Trust is independent of the Managing Agent. Exhibit 12 at
16 §53 and 54. MMWEC also notes that not only is it unclear what authority the CIO has
17 over the individual from NextEra that signed the Officer's Certificate authorizing the
18 reimbursement from the Trust, but no itemization of services or explanation of how the
19 expenses were calculated has been presented. Exhibit 12 at §52. In MMWEC's view,
20 because the Managing Agent determines whether such expenses are reasonable or
21 reimbursable under the MTA while the CIO of its indirect parent is charging expenses to
22 the Trust, a significant measure of independence is removed from the Trust thereby
23 undermining the purposes of that required independence. Exhibit 12 at §54.

1 The MTA does not provide an exhaustive list of reasonable administrative
2 expenses that are reimbursable from the Trust. There is therefore room for interpretation
3 regarding what expenses fall within the MTA’s guidelines for reimbursement. That being
4 said, we are not aware of any other instance in the over quarter century of this Trust when
5 the compensation of a permanent employee of a Seabrook Owner for services related to
6 the Decommissioning Trust was reimbursed from the Trust. This is the first time the
7 NDFC was presented with the issue of reimbursement from the Trust for services of an
8 employee of one of the Seabrook Owners and the Committee finds it troubling that the
9 Trustee, when presented with the request for the first time, permitted the funds to be
10 released without demanding thorough documentation and explanation. Pursuant to New
11 Hampshire law the NDFC is charged with ensuring that sufficient funds are available to
12 complete prompt decommissioning at the end of the license life of Seabrook Station. To
13 ensure the necessary monies are available when needed, the Committee’s responsibility
14 includes the determination of payments into the Trust and the withdrawals from the Trust.
15 The record does not support finding that the CIO’s oversight duties are unique or
16 different from those that any prudent Managing Agent would exercise or had exercised in
17 past years. The Investment Consultant serves in an advisory capacity to the Managing
18 Agent and it would be expected that the Managing Agent would review and monitor the
19 performance of the fund.

20 After citing the MTA’s non-inclusive list of ordinary administrative expenses²,
21 NextEra claimed that the CIO’s services “plainly fall within this provision.”

² MTA Section 4.03 A: “ordinary administrative expenses include but are not limited to federal, state or local tax on the income or assets of the trust, withdrawal of excess contributions as defined in U.S. Treasury Regulations section 1.468A-5(c)(2)(ii), legal expenses of the trust, accounting expenses, investment and fund management fees and trustee compensation and expenses.”

1 Unfortunately, it is not obvious to the Committee which of the listed expenses, the CIO's
2 services "plainly" fall under and NextEra does not specify which or otherwise explain
3 how or why this reimbursement might be covered by the "but are not limited to" qualifier
4 in the MTA's list of reimbursable expenses. In fact, as MMWEC correctly points out, no
5 itemization of services or calculation of expenses has been presented either to the Trustee
6 or to this Committee, apart from a very broad characterization that was only provided in
7 the Stipulation after the reimbursement became an issue in these proceedings.

8 To MMWEC's concern over the relationship and the authority of the CIO over
9 the signer of the Officer's Certificate and the whole issue of the independence of the
10 Seabrook Owners from the Trust required by the MTA, NextEra replies that the CIO is
11 "personally agnostic regarding the reimbursements." A simple statement of fact
12 regarding the actual organizational relationship between the signed and the CIO would
13 have been a more helpful response.

14 Although NextEra states in the Stipulation that it does not foresee requesting
15 reimbursement for any employee other than the CIO in the future, the Committee
16 believes that the longstanding precedent of not reimbursing permanent employees of the
17 Seabrook Owners for services performed in support of the Trust is sound and should be
18 maintained. Further, the Committee is not persuaded by NextEra's representation that
19 expenses related to the specific services provided by the CIO at issue are reimbursable
20 from the Trust in accordance with the MTA. In the Stipulation and in testimony NextEra
21 expressed the view that NextEra personnel would determine what expenses would be
22 recovered from the Trust. NextEra witnesses expressed the view that the Managing
23 Agent would determine whether other Seabrook Owners could similarly withdraw

1 monies from their respective Trusts. The Committee finds such an expression of broad
2 authority to be unwarranted. The Committee is also troubled by the cavalier behavior of
3 the Trustee in releasing the monies to NextEra, as the Trustee owes a fiduciary
4 responsibility to the Trust, and should act to preserve the Trust. When presented with a
5 novel claim for reimbursement, the NDFC would expect the Trustee to question the
6 request and demand justification before releasing funds. The NDFC received no
7 evidence that the Trustee did anything other than treat the request for release of funds as
8 if it were a check presented for payment.

9 At this time the Committee will not require NextEra to deposit into the Trust an
10 amount equal to the approximate \$85,000 previously withdrawn. The Committee accepts
11 that the Managing Agent interpreted the terms of the MTA in a broad and novel way, and
12 that the Trustee did not challenge the determination of the Managing Agent. The NDFC,
13 however, believes this practice should not continue and in the future will require any
14 Seabrook Owner to reimburse the Trust in the event the Seabrook Owner makes
15 withdrawals that are identified as being for the purpose of reimbursement for services or
16 expenses of employees or contractors other than the Investment Advisor, Trustee, and the
17 Fund Managers.

18 **C. Rate of Return on Opportunistic Investments**

19 The Committee reviewed this issue at length in the 2012 Docket and decided that
20 it would allow the assumption of a rate of return of 7.5% in this fund for purposes of
21 calculating the funding schedule. NextEra presented a status of these investments,
22 indicating that the returns expected by NextEra and LCG remain in the 12 to 15% range
23 as described in the 2012 Annual Report. MMWEC reiterated its opposition to

1 investments in this fund as presented in the 2012 Docket and stated that the 7.5% rate of
2 return should be lowered. MMWEC did not make a recommendation as to how low the
3 assumed return should be. The Committee will continue to monitor this investment
4 closely but because no new information has been presented that would support changing
5 the 7.5% assumption, it shall be retained.

6 **D. Funding Assurances**

7 Funding assurances are required of all non-utility Seabrook Owners of Seabrook
8 Station. (RSA 162-F: 21-a, III). The NDFC may impose a funding assurance
9 requirement to ensure recovery of decommissioning costs in the event there is a
10 premature permanent cessation of operations. (RSA 162-F: 19. IV). In NDFC Docket
11 2002-2, the NDFC established funding assurance requirements for NextEra, which
12 included a guaranty by its indirect parent company, NextEra Energy Capital Holdings
13 (formerly FPL Group Capital, Inc.), which in turn is backed by a guaranty by the holding
14 company, NextEra Energy, Inc. (formerly FPL Group, Inc.). To ensure full funding of
15 the decommissioning obligation, the Committee established “triggers” that would result
16 in immediate payments by NextEra in the event of a decline in the financial health of
17 NextEra Energy or NextEra Energy Capital Holdings.

18 None of the triggers associated with the NextEra Funding Assurance requirements
19 has been approached. NextEra remains financially strong. The rating agencies project a
20 stable outlook and its credit ratings are among the highest in the industry. Its Adjusted
21 Total Debt to Capital Ratio, which has been stable over at least the last 5 years and at
22 52.7% for 2012, is indicative of a strong financial position. Since the purchase of an 88%
23 share of Seabrook Station in 2002, NextEra Energy’s annual operating revenues have

1 increased from about \$8.2 billion reported in 2001 to over \$14 billion reported in 2012,
 2 with an increase in market capitalization from \$11 billion to \$29 billion from 2002 to
 3 2012.

4 The following chart summarizes the status of the NextEra Funding Assurances
 5 with respect to the triggers.

6 **Chart 5**
 7 **STATUS OF NEXTERA FUNDING ASSURANCES AND TRIGGERS**

Event	Result	2012 Status
NextEra Seabrook fails to make a scheduled payment to the Decommissioning Fund	<ul style="list-style-type: none"> ➤ In addition to schedule payments, payment equal to 6-months of payments paid into the fund ➤ All decommissioning payments will also be made as scheduled by NDFC 	No payments have been missed.
NextEra Energy sells 80% FP&L (FPL utility) generation assets	<ul style="list-style-type: none"> ➤ 12-months of decommissioning payments paid into Escrow ➤ NextEra Energy Seabrook must show cause why funding assurance should not be changed ➤ All decommissioning payments will also be made as scheduled by NDFC 	A review of the 8K's and 10K's demonstrated that NextEra Energy did not sell any of FP&L's generation assets in 2012.
NextEra Energy's Funded debt to total Capitalization exceeds 0.65:1.00 or 65%	<ul style="list-style-type: none"> ➤ NextEra Energy Seabrook will not pay any cash dividends or other transfers to NextEra Energy, /or/ ➤ NextEra Energy Seabrook may make payment equal to 6-months of payments paid into the Decommissioning Fund, in addition to all other scheduled payments ➤ All decommissioning payments will also be made as scheduled by NDFC 	According to the Consolidated Statement of Income for NextEra Energy as reported in the 10K and the affidavit of Alex Weiss, NextEra Energy Chief Investment Officer (Exhibit 7), the adjusted total debt to capital ratio increased from 51.5% in 2011 to 52.7% as of December 31, 2012.
NextEra Energy's operating income falls below \$800 million	<ul style="list-style-type: none"> ➤ NextEra Energy Seabrook must show cause why funding assurance should not be changed ➤ All decommissioning payments will 	According to the Consolidated Statement of Income for NextEra Energy as reported in the 10K for

Event	Result	2012 Status
	also be made as scheduled by NDFC	2012 and the affidavit of Alex Weiss, NextEra Energy Chief Investment Officer (Exhibit 7), operating income in 2012 was \$14.3 billion.
NextEra Energy's operating income falls below \$600 million	<ul style="list-style-type: none"> ➤ 12-months of payments paid into Escrow ➤ NextEra Energy Seabrook must show cause why funding assurance should not be changed ➤ All decommissioning payments will also be made as scheduled by NDFC 	According to the Consolidated Statement of Income for NextEra Energy as reported in the 10K for 2012 and the affidavit of Alex Weiss, NextEra Energy Chief Investment Officer (Exhibit 7), operating income in 2012 was \$14.3 billion.

1 The Committee is satisfied that the financial capability of NextEra, as backed by
2 the funding assurances of NextEra Energy, Inc., remains sufficient to fund NextEra's
3 decommissioning obligation, even in the event of permanent premature cessation of
4 operations.

5 The Committee has previously determined that Taunton, Hudson and MMWEC
6 bear contractual and statutory obligations that cannot be voided, even through
7 employment of the Bankruptcy Code, and that additional funding assurances were not
8 required of those Seabrook Owners. NDFC Docket No. 2008-1, at 21–29. The
9 Committee is satisfied that those obligations remain sufficient at this time.

10 **E. Guidance for 2015 Comprehensive Filing**

11 NextEra will contract with an industry-recognized firm³ to develop two
12 decommissioning studies for the 2015 comprehensive review: one that assumes the

³ The decommissioning studies for Seabrook Station were previously performed by TLG, the industry leader in this field.

1 operating license terminates in 2030 and one that assumes license renewal is approved
2 and the license terminates in 2050. These studies will start in the spring of 2014 and be
3 complete by year-end 2014. As a result, NextEra requested timely guidance from the
4 Committee on any specific studies that should be included in these reviews. Exhibit 2 at
5 §3.18. Apart from the normal scope of the decommissioning studies, the Committee
6 requests that the areas enumerated below be addressed. The Committee recognizes that
7 some of these were included in the decommissioning estimate and accompanying studies
8 in the past and some no doubt would be included without their mention here.

- 9 1. Provide a study justifying the recommended escalation figure.
- 10 2. Include a discussion of insights or lessons learned applicable to the decommissioning
11 study and its inputs from recent and currently active nuclear power plant
12 decommissioning projects.
- 13 3. Provide a discussion that assesses Entergy's stated reasons for deciding to close
14 Vermont Yankee with their relevance to Seabrook Station's viability.
- 15 4. Because the depth below grade to which the structures at Vermont Yankee must be
16 removed in the course of decommissioning is controversial, explain why the
17 assumptions used in the Seabrook commercial-industrial decommissioning estimate
18 are appropriate.
- 19 5. State the assumptions in the Seabrook decommissioning estimate made with respect
20 to specialized workforce availability in the Seabrook decommissioning estimate and
21 discuss how much of a variable this can be on the estimate.
- 22 6. Discuss the ISFSI status and the potential for permanent offsite storage of spent
23 nuclear fuel.

1 7. The 2015 funding schedules with both the funding date of 2030 and 2050 should
2 include separate funding runs, one with the assumption that the Escrow is returned to
3 the Seabrook Owners in 2016, and the other that it is transferred into the Trust in
4 2016.

5 **F. Schedules of Payments and December Reset**

6 In Docket 2002-2, the NDFC established the practice of setting the Schedules of
7 Payments beginning on January 1 of the following year based on a November 30 actual
8 Trust balance in the docket year, adjusted to estimate the end-of-year balance as closely
9 as possible. In Docket 2004-1, the year-end calculation was further refined and was
10 again adjusted in Docket 2009-1 to include the Escrow balances and assumed expenses in
11 December in determining future annual contributions. This approach permits the best
12 full-year estimate of earnings and expenses during the year to be recognized when setting
13 contribution requirements for the next year. This practice is known as the “December
14 true-up.” Because the final determinations for all of the input assumptions used in
15 developing the funding schedule will not be made until the public hearing in the Town of
16 Seabrook that will be conducted in December 2013, the December true-up for the 2014
17 funding schedule will be made no later than December 31, 2013, and will be based on
18 balances as of November 30, 2013.

19 **G. 2012 Annual Report**

20 NextEra is to file, no later than May 31, 2014, an independent auditor’s report of
21 the Seabrook Nuclear Decommissioning Financing Fund and Escrow Fund as of
22 December 31, 2013. By May 31, 2014, NextEra shall also file the annual update required

1 in order for the Committee to perform the annual review of fund performance and fund
2 assurance as required by RSA: F-22, II. Additional filing requirements may be imposed
3 based upon comments on this preliminary order and the submission of the 2013 schedules
4 of payments as required herein.

5 **VI. CONCLUSION**

6 For the reasons set forth within this Report and Order, the Committee
7 finds that the requirements of RSA 162-F will be met by the decisions of the NDFC and
8 the resulting schedules of payment.

9 Based on the foregoing, it is hereby

10 **ORDERED**, that the funding assurance provided by NextEra Energy Seabrook
11 approved in the Docket 2002-2 Final Report and Order shall remain in place and
12 unchanged; and it is

13 **FURTHER ORDERED**, that the payments into the Decommissioning Trust and
14 Funding Assurance Escrow from Seabrook Station Owners for 2014 shall be calculated in
15 accordance with this Preliminary Report and Order and as supplemented and/or revised in
16 the Final Report and Order issued following the public hearing in the Town of Seabrook,
17 the total of which will be determined by the calculation of a revised schedules of
18 payment; and it is

19 **FURTHER ORDERED**, that expenses of employees and consultants of the
20 Seabrook Owners for services and expenses related to the Decommissioning Trust, other
21 than the Investment Advisor and Fund Managers shall not be reimbursed from the Trust;
22 and it is

1 **FURTHER ORDERED**, that each Seabrook Owner shall deposit 100% of its
2 2014 contribution into the Funding Assurance Escrow; and it is

3 **FURTHER ORDERED**, that payments into the Funding Assurance Escrow are
4 funding assurance obligations, and are not schedules of payment obligations of the
5 Seabrook Owners. Payments into the Escrow are obligations imposed by the NDFC and
6 fully enforceable by the Committee; and it is

7 **FURTHER ORDERED**, that NextEra is to file no later than May 31, 2014 an
8 independent auditor's report on the Seabrook Nuclear Decommissioning Financing Fund
9 and the Seabrook Escrow Fund as of December 31, 2013; and it is

10 **FURTHER ORDERED**, that the 2014 Annual Report is to be filed no later than
11 May 31, 2014, and it is

12 **FURTHER ORDERED**, that any party to this proceeding wishing to comment
13 on this Preliminary Report and Order shall file written comments with the NDFC no later
14 than December 5, 2013, and provide a copy to all parties on the same date; and it is

15 **FURTHER ORDERED**, that the date of the public hearing to be held in the
16 Town of Seabrook will be held on a date to be announced by separate notice of this
17 Committee and will be at least 30 days after this Preliminary Report and Order has been
18 made available for review in the Town of Seabrook and in the office of the public utilities
19 commission in accordance with RSA 162-F: 22, V.

20 This is a Preliminary Report and Order of the NDFC prepared in conformity with
21 RSA 162-F: 21, III. A Final Report and Order will be issued after the Committee has
22 reviewed all comment received regarding this Preliminary Report and Order, and after

1 the review of all comments submitted at the hearing to be held in the Town of Seabrook,
2 New Hampshire.

3 This Preliminary Report and Order is released on November 12, 2013.