

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

ORDER NO. 1

On May 15, 2002, pursuant to an Order of Notice (OON) issued by the Nuclear Decommissioning Financing Committee (Committee) on January 24, 2002, counsel to the Committee held a prehearing conference at the Public Utilities Commission in Concord. The prehearing conference was held for the purpose of taking appearances from parties interested in participating in the proceeding, establishing a procedural schedule, and receiving the views of full parties to the proceeding concerning the issues to be addressed in the docket and the participation of Chairman Getz on the Committee.

APPEARANCES

Representatives of the following entities appeared and requested full-party intervenor status: North Atlantic Energy Service Corporation (NAESCO) with Counsel for NAESCO representing the United Illuminating Company, Great Bay Power Corporation, New England Power Company, Canal Electric Company, Little Bay Power Corporation, New Hampshire Electric Cooperative, Inc., the Connecticut Light and Power Company, and North Atlantic Energy Corporation. Also, the Massachusetts Municipal Wholesale Electric Company (MMWEC) with counsel for MMWEC also representing the Towns of Hudson and Taunton, the Seacoast Anti-Pollution League, the Public Utilities Commission Staff, and the Office of Consumer Advocate.

SCHEDULE

The procedural schedule proposed by the parties for the docket is:

1. Pre-hearing Conference	May 21
2. Pre-hearing Conference	May 29
3. Last initial interrogatories to be served on FPL	May 31
4. Pre-hearing Conference	June 4
5. Last initial interrogatories response from FPL	June 6
6. Intervenor pre-file testimony	June 10
7. Pre-hearing Conference	June 12
8. Last initial interrogatories served on intervenors	June 12
9. Last initial interrogatories response from intervenors	June 14
10. Pre-hearing Conference	June 17
11. Stipulation of Issues finalized & filed	June 18
12. Public hearing	June 25 - 27
13. Post-hearing briefs	July 2
14. Preliminary Report and Order	July 12
15. Parties file comments re Preliminary Report and Order	July 26
16. Final hearing (Seabrook public hearing)	August 13
17. Final Report and Order of Committee	August 14

The public hearing will be held at the Public Utilities Commission, 8 Old Suncook Road, Concord, New Hampshire, commencing at 10:00 A.M. Any change in date or location will be posted at least seven days before the hearing. The time and place for the final hearing in Seabrook, New Hampshire will be published after the preliminary Report and Order is issued, as required by RSA 162-F:21, IV. The prehearing conferences are intended for settlement discussion purposes with participation limited to the full parties, and as such those discussions are not subject to public disclosure or the public meeting requirements of RSA 541-A and RSA 91-A. The full parties will establish the date and location for each additional settlement meeting, with notice provided to each full member.

ISSUES

FPL Energy Seabrook, LLC (FPLE Seabrook), an indirect wholly owned subsidiary of FPL Energy, LLC, which is an indirect wholly owned subsidiary of FPL Group, Inc., proposes to purchase approximately 88.3% of Seabrook Station. Before the sale can occur the Committee must determine how FPLE Seabrook will meet its decommissioning funding obligation and the funding assurance requirements of RSA 162-F:21-a, and RSA 162-F:21-c.

At the prehearing conference the parties agreed to a procedural schedule for this docket and a scope of issues to be addressed. The procedural schedule provides for a full evidentiary hearing to address all issues in the docket, in the event an evidentiary hearing is needed. At the same time, the parties have indicated a willingness to pursue agreement on the evidence to be presented to the Committee. The full parties also agreed to stipulate as many issues as possible before the public hearing date in order to limit the matters in dispute.

The full parties agreed that the issues to be addressed in this docket are limited to the following list. These issues constitute the scope of the docket and the Committee does not anticipate expanding the scope.

In this docket the Committee will:

1. Establish the funding date(s) for FPLE Seabrook for the 2003 schedule of payments;
2. Establish the schedule of payments for FPLE Seabrook for 2003, including
 - a. Determine the assumptions to be used as a basis for calculation of the schedule of payments.

- b. Determine how the RSA 162-F:21-a payment at closing, the so-called Top-off amount, is to be calculated when determining the schedule of payments;

If the sale of the Seabrook Station ownership interests occurs after December 31, 2002, the schedule of payments will be effective as of the date of sale in 2003.

3. Establish the schedule of payments for FPLE Seabrook from the date of sale of approximately 88% of the Seabrook Station ownership through December 31, 2002, if the sale occurs prior to the end of the year;
4. Establish the Funding Assurance terms necessary for FPLE Seabrook to meet the obligations of RSA 162-F: 21-a and RSA 162-F:21-c, in addition to the schedule of payments into the decommissioning trust sinking fund;
5. Establish the procedures to be used on the date of sale of ownership interests in Seabrook Station concerning the Top-off payment, including
 - a. Transfer procedure
 - b. Fund allocations among trusts
 - c. True-up of payment after the date of sale
 - d. Reporting requirements after transfers are completed
6. Establish the procedures for transfer of the decommissioning fund balances of selling owners to FPLE Seabrook, including
 - a. Transfer procedure
 - b. Fund allocations among trusts
 - c. True-up of payment after the date of sale
 - d. Reporting requirements after transfers are completed
7. Establish the decommissioning fund reporting requirements for the annual report to be submitted in March 2003;
8. Establish the date on which the RSA 162-F:22 initial submission (the so-called 4-Year review) will be filed with the Committee;
9. Establish any periodic reporting requirements for FPLE Seabrook, in addition to those to be incorporated in the Annual Report requirements;
10. Establish changes to be made to the Master Trust Agreement in response to the amendment of RSA 162-F, and in anticipation of the Seabrook Station transfer of a majority of the ownership interests.
11. Establish whether, in the event of a premature permanent cessation of operation, expenses associated with any SAFSTOR period are to be paid from the decommissioning fund.

DISCUSSION

The Committee directed its counsel to request the parties to consider whether there was any concern about Chairman Getz being involved in this docket at the same time the Public Utilities Commission, of which he is Chairman, is considering whether the sale of a majority interest in Seabrook Station to FPLE Seabrook is in the public interest. Chairman Getz originally raised this issue in order to make all parties aware that the Chairman and the Committee are sensitive to the potential for misperception of the dual roles of Mr. Getz. The transcript of the pre-hearing establishes that no party identified a basis for Mr. Getz not participating in this docket. The Committee, nevertheless, is aware of its obligation to render decisions based on the evidence before it, and not the product of evidence presented in another forum, unless administrative notice is taken and disclosed.

The Committee also instructed its counsel to advise the parties that the former Chairman of the Committee, Mr. Douglas Patch, had informed the Committee of his retention as counsel by FPLE Seabrook. Also, counsel was instructed to have the parties express any concerns or reservations they have about Mr. Patch appearing before the Committee. Prior to raising this matter with the parties, the Committee consulted the Attorney General and had its counsel research any ethical or statutory barriers to Mr. Patch representing a party in this docket. Counsel advised the Committee that there is no bar to Mr. Patch representing FPLE Seabrook. At the prehearing conference the parties agreed

that there was no bar to Mr. Patch's participation and indicated that there was no reason to object on the basis of an appearance of undue influence.

The Committee is satisfied that Mr. Patch is not prohibited from representing FPLE Seabrook. Further, the Committee recognizes that his institutional knowledge and familiarity with local practice should be helpful to a company seeking to begin business in New Hampshire. At the same time, it is important that the public have confidence in the impartiality of the actions taken by the Committee. The Committee notes in this regard that there are only two of the eight members of the Committee who were on the Committee when Mr. Patch was Chairman.

Mr. Patch was advised at the pre-hearing conference that it is his responsibility to avoid even the suggestion that his former association with the Committee provides him or his client undue influence with the Committee members. Similarly, all parties were reminded that the Committee members sit as administrative law judges and it is the responsibility of all parties to avoid *ex parte* contact, or any discussion of decommissioning matters with the Committee members outside of public hearings or public meetings.

The Committee finds the schedule proposed by the parties to be ambitious, but reasonable, and adopts it as the procedural schedule for the docket. The Committee grants the requests for intervention of those seeking full party status in this docket.

The Committee adopts the statement of issues as the scope for this proceeding, finding it comprehensive and appropriately focused for what the

Committee must decide in this proceeding. The Committee limits the scope of the proceeding with the recognition that in 2003 the Committee will undertake the RSA 162-F:22 review, which will be a comprehensive consideration of the core assumptions and the calculation of the projected cost of decommissioning. For this reason, the Committee will not address in this docket the projected cost of decommissioning Seabrook Station or adjustments for cost escalations. The Committee will accept the decommissioning cost projections used in NDFC Docket 2002-1 and, to the extent necessary, consider further adjustments as part of the comprehensive review to be conducted in 2003, pursuant to RSA 162-F:22.

The Committee recognizes that the Nuclear Regulatory Commission (NRC) may issue revisions to the projected cost of radiological decommissioning before the sale to FPLE Seabrook is completed. As set forth in the Final Report and Order in NDFC Docket 2001-1, the RSA 162-F:21-a Top-off payment will be calculated within seven days after the date of sale using the most recent NRC calculation of radiological decommissioning costs. However, in order to complete this docket in a timely manner it is necessary to establish a schedule of payments for 2003 and close the docket. Because the Top-off payment will not be calculated until after the date of sale, the schedule of payments for FPLE Seabrook will be established in this docket using a projected year-end balance for the fund that includes \$58.7 million of Top-off payment, regardless of when NRC NUREG – 1307, Rev. 10 is issued. The basis for this figure is reported in the March 2002 Seabrook Station Decommissioning Update. Any adjustment to

the schedule of payments to reflect the actual Top-off payment will be made as part of the 4-year review undertaken in 2003, just as the actual fund balance at the end of the year is factored into the setting of the schedule of payments for the subsequent year. Therefore, the Committee will recalculate the schedule of payments to incorporate the actual Top-off payment in the next docket.

On June 18, 2002, the date by which any stipulation is to be finalized, the full parties will notify the Committee which issues identified above will be stipulated, in part or in total, and which parties support the stipulations. This notice is to be served on the full service list on June 18, 2002. If there are issues for which opposing testimony will be presented at the public hearing, each party is required to submit a prehearing statement by June 20, 2002. These statements are to identify which, if any, issues that party will address during the public hearing. In the event of a global stipulation by the parties, an executed stipulation with supporting affidavits and any other supporting evidence the parties will submit are to be filed by that date. Any prehearing statements or filings are to be served on the full service list.

All filings shall use the following structure:

1. Each filing will have pages numbered in sequence starting with the first page and including all exhibits and attachments.
2. All prefiled testimony will identify the issue(s) being addressed by reference to the issues set forth above and, to the extent possible, that testimony will be presented so the issues are addressed in the same order as set forth above.

3. The prehearing statements will identify the position of the party on each issue, including where the party takes no position on an issue. For each issue, the party will identify, in the order above and with citations, the testimony or document they rely upon to support the position advocated.
4. Each filing of prefiled testimony and prehearing statement will be accompanied by a copy of the filing on a floppy disc in MS Word format.

At the request of the parties, the Committee finds it appropriate to continue to conduct proceedings using the Model Rules promulgated by the Attorney General, instead of implementing new rules while this docket is pending. New rules that incorporate the changes to RSA 162-F will be adopted after the conclusion of this docket.

Based on the foregoing, it is hereby

ORDERED, that the procedural schedule noted above is adopted for the duration of this proceeding, subject to change as may be ordered by the Committee; and it is

FURTHER ORDERED, that the full-party interventions of the parties listed herein are granted; and it is

FURTHER ORDERED, that the issues set forth above are the only matters to be addressed in the docket and the parties are on notice that each of the issues is to be addressed; and it is

FURTHER ORDERED, that this order shall be served on the official service listed and posted on the NDFC page of the web page of the Public Utilities Commission; and it is

FURTHER ORDERED, as provided in RSA 541-A:30-a, adjudicative proceedings of the Committee shall be conducted pursuant to the model rules prepared by the Attorney General until Interim Rules for the Committee are in effect.

By order of the Nuclear Decommissioning Financing Committee this third day of June, 2002.

Thomas B. Getz
Chairman