

THE STATE OF NEW HAMPSHIRE
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE
DOCKET NO. NDFC 2005-1

ORDER NO. 4

On January 27, 2006, the Nuclear Decommissioning Financing Committee (Committee) issued an Order *Nisi* (NDFC Docket 2005-1, Order No. 3). Notice was provided by publication on January 31, 2006. FPLE Seabrook provided a certificate of publication on February 6, 2006. Order No. 3 approved the use of an amended funding assurance escrow agreement, which was originally approved on April 16, 2004.

Order No. 3 required interested parties to submit comments, or to request a hearing, no later than February 6, 2006. Further, Order No. 3 stated that it would become effective on February 8, 2006, unless the Committee provided otherwise in a supplemental order.

On February 6, 2006, the Massachusetts Municipal Wholesale Electric Company (MMWEC), an owner of 11.59% of Seabrook Station, filed comments with the Committee objecting to certain of the proposed changes, but it did not request a hearing. Specifically, MMWEC objected to language clarifying that the State Treasurer, acting as Escrow Agent, would be indemnified against all claims, even those brought by a Joint Owner, except for willful and intentional acts of misconduct. Also, MMWEC objected to the removal of “gross negligence” as an exception to the required indemnification.

The Committee acknowledges that MMWEC raised concerns, but the Committee permitted Order No. 3 to take effect because the changes to the escrow

agreement are appropriate under the circumstances. The escrow agreement mechanism was created to aid in securing funding for the decommissioning of Seabrook Station, while permitting the release of potentially excess monies deposited with the Committee in the escrow account before decommissioning is completed forty or more years from now. The Committee finds that it is appropriate for the State Treasurer to be indemnified by the Seabrook Station owners, even from complaints brought by a joint owner because the State Treasurer is a public official performing a statutorily imposed responsibility without compensation therefor and, as such, indemnification, for all but willful and intentional misdeeds, serves the public interest. In addition, removal of the gross negligence exception to indemnity is consistent with RSA 99-D:2, which limits state indemnification of government officials to actions seeking relief or claiming damages for negligent or wrongful acts.

Accordingly, Order No. 3 has taken effect and the Seabrook Station owners are directed to provide a fully executed First Amended and Restated Escrow Agreement in the form provided to the Committee on January 26, 2006, within 30 days of the date of this Order.

By order of the Nuclear Decommissioning Financing Committee this twenty second day of February, 2006.

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Thomas B. Getz
Chairman