

1 THE STATE OF NEW HAMPSHIRE
2 NUCLEAR DECOMMISSIONING FINANCING COMMITTEE
3 DOCKET NO. NDFC 2005-1
4

5 ORDER NO. 5
6

7 This Order authorizes the transfer of money from the Seabrook Nuclear
8 Decommissioning Financing Fund (Trust) to the funding assurance escrow fund
9 established pursuant to NDFC Docket 2003-1 Final Report and Order, (December 7,
10 2003), and accepted by the Nuclear Decommissioning Financing Committee (Committee
11 or NDFC) in NDFC Docket 2003-1 Order No. 4 (April 25, 2004). This Order also
12 acknowledges receipt by the Committee of an executed First Amended and Restated
13 Escrow Agreement (Escrow)(Attachment B) and the companion Custody Agreement
14 (Attachment C), which are binding on the signatories.

15 In 2005, the Seabrook Station Joint Owners (Seabrook Station Owners) paid the
16 contributions required by NDFC Docket 2004-1, Order No. 2, but certain monies that
17 should have been deposited in the Escrow were erroneously deposited in the Trust and
18 vice versa. See: Attachment A. The Committee deferred correction of the mistake until
19 after the Escrow was transferred to Mellon Trust (Mellon), and until additional
20 information was received from FPL Energy Seabrook, LLC, Managing Agent of
21 Seabrook Station Plant (FPLE Seabrook or Managing Agent) detailing the numerous
22 erroneous transactions. NDFC Docket 2005-1 Order No. 2.

23 On February 22, 2006, the Committee issued Order No. 4 in this Docket directing
24 the Seabrook Station Owners to file a fully executed First Amended and Restated Escrow
25 Agreement, the purpose of which was to authorize the transfer of the Escrow from
26 Citizens Bank (Citizens) to Mellon, with Mellon as the new Custodian for the Escrow.

1 The Seabrook Station owners met that requirement in a timely manner, and also
 2 completed the Custody Agreement with Mellon detailing the management of the Escrow.
 3 These documents were fully executed on May 8, 2006. With the execution of these
 4 agreements, including by the Committee and the approval by the New Hampshire
 5 Attorney General as to form and substance, the documentation necessary to transfer the
 6 Escrow to Mellon is complete.

7 The deposit errors referenced above occurred in a number of months in 2005, and
 8 included deposits that should have been made to the Trust, but were deposited in the
 9 Escrow, and vice versa. Also, reverse transfers were made in most cases once the
 10 mistakes were identified. See: Attachment D. As reflected below, the largest deposit
 11 error (involving approximately \$800,000) occurred in October 2005. This erroneous
 12 deposit was not reversed by Citizens, but instead, FPLE Seabrook requested that the
 13 Committee authorize the corrective transfer.

14 **2005 ERRONEOUS DEPOSITS**
 15 **(all figures in \$)**
 16

	Trust Deposit Erroneously Made to Escrow	Escrow Deposit Erroneously Made to Trust	Amt. Transferred from Escrow to Trust	Amt. Transferred from Trust to Escrow	Amt. In Trust to be Transferred to Escrow
FPLE					
October		659,227.56			659,227.56
MMWEC					
March		105,215.25		105,215.25	-0-
September	140,284.67		140,284.67		-0-
October		140,284.67			140,284.67
HUDSON					
May	1,230.11		1,230.11		-0-
October		1,230.11		1,230.11	-0-
November	1,217.45		1,217.45		-0-
TAUNTON					
October		1,604.11		1,604.11	-0-
TOTAL					799,512.23

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1 As shown above, there remain two transfers that need to be made to finish
2 correcting the errors of 2005. These transfers will be authorized by this Order. The
3 Committee is satisfied that the \$799,512.23 comprised of the October contributions from
4 FPLE Seabrook (\$659,227.56) and MMWEC (\$140,284.67) was deposited in the Trust by
5 mistake and should be transferred to the Escrow. The Committee is also convinced that,
6 at all times, the monies were secure and accounted for. Completing the corrective actions
7 does not, however, end the concern of the NDFC for the actions taken, both in the
8 repeated misdirection of funds, and with the transfer of monies from the Trust to the
9 Escrow without authorization from the NDFC.

10 The Committee is concerned both by the errors, and that the former escrow
11 custodian and Trustee acted outside of its authority once the errors were discovered by
12 transferring monies between the Trust and the Escrow without authorization from the
13 NDFC. Also, it is apparent that personnel at Seabrook Station, acting as the Seabrook
14 Managing Agent, directed the Trustee to make certain transfers from the Trust, also
15 without authorization from the NDFC. Although there is no evidence to suggest that the
16 transfers between the Trust and Escrow were made for an improper purpose, those
17 transfers nonetheless were not authorized. Accordingly, with the transfer of the Escrow to
18 Mellon, we set forth below guidance to the Managing Agent and Mellon to ensure that all
19 are clear on the limited circumstances under which monies may be transferred out of the
20 Trust or the Escrow.

21 Pursuant to RSA 162-F:23, II, monies in the Trust may only be used for
22 decommissioning activities and related expenses. The NDFC must “be provided with, and
23 must approve, a summary of decommissioning actions to be taken” before monies may be

1 released from the Trust. Similarly, the Master Trust Agreement provides for release of
2 Trust funds only for approved decommissioning costs, administrative expenses and taxes.
3 (See: Amended and Restated Seabrook Nuclear Decommissioning Financing Fund Master
4 Trust Agreement, December 29, 2005, Article IV, Section 4.03 at 7.) This means that
5 monies may be transferred out of the Trust only to pay administrative expenses and taxes.
6 Any other transfers, irrespective of the purpose, are prohibited unless explicitly authorized
7 by the Committee.

8 Similarly, only the NDFC may authorize release of money from the Escrow. The
9 Escrow is a funding assurance established at the direction of the NDFC to ensure
10 completion of decommissioning at Seabrook Station. By its terms, and as approved by the
11 NDFC, an order of the NDFC is necessary before *any* money may be released for *any*
12 purpose, including transfer to the Trust, other than for the administration of the Escrow.

13 The Committee has ended its inquiry into the conduct of the former escrow
14 custodian and Trustee and FPLE Seabrook. While RSA 162-F:25 provides that “[a]ny
15 person who willfully violates any order or determination of a committee shall be guilty of
16 a felony,” the NDFC does not believe there is evidence of willful conduct that would
17 warrant a referral to the Attorney General. At the same time, the Committee does not
18 view these errors as insignificant, and will not tolerate transfers of monies out of the Trust
19 or any cash funding assurance created by the NDFC or other unauthorized acts by the
20 Trustee or Managing Agent in the future. While the Managing Agent initially erred in
21 directing the reversal of deposits made in March, May and September of 2005, the
22 Managing Agent followed the proper procedure with respect to the October 2005 deposits
23 by bringing the error to the attention of the Committee and requesting authorization for

1 the corrective transfer. Any future errors that the Trustee believes will require transfers
2 from the Trust or the Escrow account, no matter the dollar amount, must be brought to the
3 Committee's attention with a request to authorize corrective transfers. The Trustee may
4 take necessary corrective actions only after such authorization is granted by the
5 Committee, and not before.

6 **Having completed its review of this matter, and based on the foregoing, it is**
7 **hereby**

8 **ORDERED**, that FPLE Seabrook is hereby authorized to direct Mellon to transfer
9 \$659,227.56 from the applicable FPLE Seabrook Trust account(s) to the applicable FPLE
10 Seabrook Escrow account to correct the erroneous deposit made in October, 2005, and it
11 is

12 **FURTHER ORDERED**, that FPLE Seabrook is hereby authorized to direct
13 Mellon to transfer \$140,284.67 from the applicable MMWEC Trust account(s) to the
14 applicable MMWEC Escrow account to correct the erroneous deposit made in October,
15 2005, and it is

16 **FURTHER ORDERED**, all interest and earnings accrued in the Trust related to
17 the Escrow funds mistakenly deposited in the Trust shall remain in the Trust, and it is

18 **FURTHER ORDERED**, that with the issuance of this Order the Chairman is
19 authorized to execute the Authorization to Transfer Funds (Attachment E).

1 **FURTHER ORDERED**, that with the execution of the Authorization to Transfer
2 Funds (Attachment E), Mellon is authorized to transfer the above-referenced amounts as
3 directed.

4 By order of the Nuclear Decommissioning Financing Committee this twenty
5 _____ day of May, 2006.

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11 Thomas B. Getz
12 Chairman Public Utilities Comm.

Rep. Robert E. Introne
State Representative

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15 _____
16 Michael A. Ablowich
17 State Treasurer

Bob Odell
State Senator

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19

20 _____
21 Scott Bryer
22 Department of Safety

Willard F. Boyle
Representative of the Town of
Seabrook

23
24
25

26 _____
27 Jack Ruderman
28 Governor's Office of Energy
& Planning

Brook Dupee
Assistant Director
Health & Human Services

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5 ORDER NO. 5 Attachments

6

7 Attachment A FPLE Seabrook's December 29, 2005, Notification of Errors

8 Attachment B First Amended and Restated Escrow Agreement

9 Attachment C Custody Agreement

10 Attachment D Memos from counsel and Prime Buchholz.

11 Attachment E Authorization to Transfer Funds