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

FINAL REPORT AND ORDER

Concord, New Hampshire
February 24, 2009

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I. SUMMARY OF FINDINGS

The Nuclear Decommissioning Financing Committee (NDFC or Committee) conducted the annual review of the Decommissioning Trust Fund (Decommissioning Trust or Trust) as required by RSA 162-F:22.[1] The Committee considered the evidence presented and made the following findings to ensure that prompt, safe, and orderly decommissioning of Seabrook Station can occur.

1. The funding date will remain 2030.
2. The projected cost of decommissioning is $924 Million, when expressed in 2008 dollars.
3. The plan for the interim on-site storage of low-level radioactive waste should not have an effect upon the decommissioning costs.
4. On-site storage of spent nuclear fuel and Greater-Than-Class C (GTCC) radioactive waste in the Independent Spent Fuel Storage Installation (IFSI) shall continue to be assumed to be required until 2100, with the ISFSI dismantled in 2101.
5. The inflation adjustment applied to the schedules of payments will remain 3.0%, as set in NDFC Docket 2007-1.
6. The escalation adjustment applied to the cost of decommissioning will remain 4.2%, as set in NDFC Docket 2007-1.

[1] The NDFC attempts to complete the annual review within the calendar year in which it is commenced. Due to the unprecedented turmoil in the financial markets during the fourth quarter of 20008, the NDFC required additional review of the Trust Fund before providing this Final Report and Order.

7. For calculation of the 2009 schedules of payments, the earnings assumptions on the Trust and Escrow investments shall be as approved in NDFC Docket 2007-1, except that the rate of return on equities shall be assumed to be zero in 2009 and 2010. For years after 2010, the assumed return on equities shall be 9.5%. The NDFC will consider resetting the assumed return on equities in NDFC Docket No. 2009-1.

8. Use of the Investment Guidelines, as approved by the State Treasurer on February 29, 2008, is authorized for purposes of determining the owners' annual funding obligations, except that the assumed rates of return on equities shall be as described in Section I.7 above.

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

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

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

The Committee's findings are discussed in detail below.

II. PARTIES AND THEIR POSITIONS

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

The parties produced a Stipulation of the Parties (Stipulation) addressing all issues (Exhibit 2). The Stipulation identified all of the exhibits that the full parties presented at the October 8, 2008, public hearing (Exhibits 1 through 10). FPLE supported all provisions of the Stipulation. MMWEC supported all provisions of the Stipulation except the recommendation that FPLE's current funding assurances are sufficient (Exhibit 2 at 9 and Exhibit 25). Prior to the October 8, 2008, hearing, the Managing Agent submitted information at the request of NDFC counsel (Exhibit 17). At the October 8, 2008, public hearing, the Committee issued hearing requests that resulted in the submission of additional exhibits by the Seabrook Station owners (Exhibits 11 through 14). The parties also submitted two additional exhibits not required by the Committee (Exhibits 15 and 16).

III. PROCEDURAL HISTORY

On April 14, 2008, the Seabrook Station 2008 Annual Report (2008 Annual Report) was filed (Exhibit 1). The Order of Notice for this docket was issued on May 30, 2008. Timely notice of the Docket was provided to the public by publication in newspapers on June 6, 2008, and June 10, 2008, and filed with the Town of Seabrook Selectmen's Office on June 5, 2008. The first pre-hearing conference was held on June 25, 2008. On July 14, 2008, the NDFC issued Order No. 1 adopting the procedural schedules and scope suggested by the parties. The parties held pre-hearing conferences prior to the public hearing for the purpose of identifying areas of agreement. The

Stipulation of the Parties was filed on October 3, 2008, and the signed Stipulation (Exhibit 2) was presented at the hearing on October 8, 2008. Exhibits from FPLE and MMWEC, in response to requests of the Committee at the hearings, were submitted on October 24, 2008 (Exhibit 14), October 27, 2008 (Exhibit 13), and October 29, 2008 (Exhibits 11 and 12).

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

The exhibits accepted at the hearing were:

Exhibit 1. FPL Energy Seabrook Station 2008 Annual Filing

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

Exhibit 3. Proposed schedules of payments provided by the parties

Exhibit 4. Illustrative Schedules of Payments using a funding date of 2050

Exhibit 5. Affidavit of Paul Cutler

Exhibit 6. Affidavit of James Peschel

Exhibit 7. Affidavit and report of Ramelle Hieronymus

Exhibit 8. Affidavit of James Kline

Exhibit 9. N.H. Treasurer Letter approving revised Investment Guidelines

Exhibit 10. Approved revised Investment Guidelines

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

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

- Schedules of payments starting with the fund balance as of September 30, 2008, with a funding date of 2030 and the assumption that earnings on equities are zero through 2011 and at rates approved by the Committee in NDFC Docket 2007-1 thereafter (Exhibit 11).

- Schedules of payments with the same assumptions as above, but with a funding date of 2050 (Exhibit 12).
- A memorandum of law from counsel to MMWEC regarding the obligation of MMWEC participants to pay their proportional share of their decommissioning costs, even in the event of premature cessation of operation; authority for the position taken during the hearing that each MMWEC participant cannot avoid their decommissioning obligation through bankruptcy or other means; authority confirming that in the event that an MMWEC participant defaults, the other MMWEC participants will be obligated to assume the decommissioning obligation of the defaulting participant; and the identity of each MMWEC Participant (Exhibit 13).
- A memorandum of law from counsel for the Managing Agent, similar to the one above, addressing the obligations of Taunton and Hudson to complete their decommissioning obligations, even in the event of a premature cessation of operation (Exhibit 14).

On October 29, 2008, FPLE responded to the requests for the schedules of payments with funding dates of 2030 and 2050 assuming no return on equities through 2011. The 2030 and 2050 schedules of payments are designated Exhibits 11 and 12, respectively. This submittal also included two additional funding schedules with funding dates of 2030 and 2050 assuming zero return through 2009 and reverting to the currently approved returns thereafter.[2] These schedules are designated Exhibits 15 and 16. In a letter dated October 27, 2008, counsel for MMWEC provided the requested

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

memorandum regarding MMWEC participants' decommissioning obligations (Exhibit 13). Counsel for FPLE submitted a letter to the NDFC counsel on October 24, 2008, that included, as an attachment, a memorandum of law from counsel for Taunton and Hudson addressing the Committee's request regarding their decommissioning obligations (Exhibit 14). The NDFC considered the positions of the parties and the record on each issue, including responses to the hearing requests, before rendering a decision.

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

In December, 2008, FPLE produced updated schedules of payments, based on Trust Fund balances as of November 30, 2008. The schedules were prepared at the request of the NDFC. The schedules were introduced as an exhibit at the Seabrook public hearing.[4]

The Preliminary Report and Order (PRO) was issued on January 16, 2009. MMWEC submitted written comments on February 6, 2009. MMWEC took exception to the determination the funding assurances for FPLE are adequate. [5] On February 24, 2009, the Committee held a public hearing at the Seabrook Community Center.

IV. DISCUSSION

Each year the Committee must review the Decommissioning Trust Fund performance, and the adequacy of funding assurances. As a result of this review the

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[3] See Exhibit 21.
[4] The schedule assumed zero equity earnings in 2009 and 9.8% equity earning in all subsequent years. See Exhibit 18.
[5] See Exhibit 25.

Committee may alter the payment schedule or require a change in any funding assurance to ensure adequate funding for decommissioning as provided for by RSA 162-F:22, II. During this annual review the schedules of payments are adjusted to ensure full funding of the decommissioning obligation for the prompt decommissioning of Seabrook Station at the end of its operating life. Ibid. During the current year, a wide ranging financial crisis developed, resulting in a dramatic reduction in the value of the Trust. Responding to this development became of paramount concern to the Committee members. Each of the areas reviewed is discussed in the following sections.

A. Earnings Assumptions

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

Chart 1
Approved Rates of Return on Trust Investments

Fund	Investments	Nominal	Real (Nominal minus Inflation)
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

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

The current economic crisis, however, raises the more fundamental question of whether the earning assumptions approved in NDFC Docket 2007-1 are still appropriate. Actual returns during the last few years have been lower than projected, with significant declines in Trust balances during the last two years. The Committee recognizes that the assumed rates of return are based on long-term performance and that short-term fluctuations are to be expected. The current crisis, however, has caused such a precipitous drop in earnings for equity investments and threatens the overall economy to such a degree that the Committee is no longer confident that it can be considered part of normal market volatility.

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

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

Chart 2
Comparison of Projected and Actual Fund Balances[6]

	Fund Balance
2007	
Projected Year End per 2007 Annual Report (March 2007)	$410.3 Million
Trust Projected Year End as of December 2007 Compliance Filing	$402.4 Million
Trust Actual Year End 2007	$395.6 Million
2008	
Projected Year End per 2008 Annual Report (March 2008)	$409.3 Million
Trust Actual Balance – June 30, 2008	$367.2 Million
Trust Actual Balance – September 30, 2008	$343.0 Million
Trust Actual Balance-October 31,2008	$299.0 Million
Trust Actual Balance – November 30, 2008	$290.0 Million
Trust Actual Balance – December 31, 2008	$297.8 Million

As shown, the fund balances have declined and this decline accelerated as the financial crisis became more acute during the latter half of 2008. Actual Trust balances decreased by approximately $98 Million in 2008.

The effect of these declines on contribution requirements and projected year-end Trust balances is apparent in Chart 3 which compares the proposed schedules of payments submitted with the 2008 Annual Report, based on the actual balance as of January 1, 2008, (Exhibit 3) with a schedules of payments based on the fund balances as of September 30, 2008[7] (Exhibit 17). The projected balance as of 2020 is also included because, in the event of premature permanent cessation of operation, 2020 is the earliest that decommissioning would be assumed to start (NDFC Docket 2007-1, Final Report and Order at 35). Both

[6] Source: November 30, 2008, Schedules of Payments to be entered as an exhibit at the Seabrook public hearing.
[7] The schedule of payments based on the September 30, 2008 fund balances is used in the comparison because it assumes the same rates of return as the schedule of payment in the 2008 Annual Report with the only variable being the starting balances. Since then, additional schedules of payments have been developed based on November 1, end-of-year and January 31 balances. These, however, use different assumptions for rates of return.

schedules incorporated the currently approved assumptions, including rates of return for all years.

Chart 3
Comparison of Proposed September 30, 2008 Funding Schedule Results

	2008 Annual Report (Exhibit 3)	9/30/2008 Funding Run (Exhibit 17)
9/ 30/2008 Balance	-	$343 Million
Projected 12/31/08 Balance	$415 Million	$355 Million
2009 Contributions to Trust and Escrow	$0.8 Million	$3.4 Million
2020 Balances as % of 2007 TLG Decommissioning Estimate	66%	60%
Ending Balance (2101)	$16,362 Million	0

The NDFC views the percentage of total decommissioning cost in the Trust by 2020 as one indicator of the sufficiency of the Trust to meet the requirement of prompt decommissioning in the event of premature cessation of operation. As shown on Chart 4, the percentage of the total decommissioning obligation that is projected to be in the Trust as of 2020 has decreased since 2007. While all of the referenced scenarios assume a 2030 funding date, instead of license extension to 2050, the NDFC has viewed that as the appropriate assumption when considering premature shut-down.

Chart 4
PROJECTED 2020 FUND BALANCES (Trust and Escrow) AS A PERCENTAGE OF THE ESTIMATED COST TO DECOMMISSION

Schedule of Projected Payments	2007 Annual Report "NDFC Scenario"	2007 NDFC-Approved	2008 Annual Report Revised Investment Guidelines	September 30, 2008 Balances (Exhibit 17)	December 31, 2008 Balances
Date	March 2007	December 2007	April 2008	October 2008	January 2009
12/31/2008 Trust + Escrow Balance	443	434	415	355	303
2020 Trust + Escrow Balance	1113	1057	1012	912	884
2020 Balance as % of TLG Estimate	71%	70%	66%	60%	58%

With all other assumptions unchanged, the decline in projected year-end balances ($415 Million versus $355 Million) would increase the required contributions to the Trust and Escrow in 2009 from approximately $900,000 to $3.4 Million. Because of the long horizon for expenditure of these funds (2030 - 2101), the lower starting balances for the 2009 funding schedule would mean that there would be no balance in the Trust after all decommissioning is complete in 2101, instead of a $16 billion surplus as projected in Exhibit 3.

In the Stipulation, the parties recommended continued use of the earnings assumptions approved in NDFC Docket 2007-1 (Exhibit 2 at 7). The Trust's Investment Consultant, witness Hieronymus, acknowledged that the past ten years have been one of the worst periods for stocks since tracking of the S&P 500 began in 1926, but emphasizes that the return assumptions are long-term in nature (TR at Page 39). The Investment Consultant also offered evidence that the assumed returns may actually be conservative when compared to actual returns since World War II (Exhibit 7). FPLE and MMWEC offer similar testimony, making the case that the earnings assumptions on Trust equities should not be modified because of the long-term nature of these investments (Exhibit 5 at 5-6 and Exhibit 8 at 2). The Investment Consultant, FPLE and MMWEC also pointed out that the annual true-up of the schedules of payments and contribution requirements completed after the Seabrook hearing provide timely adjustment to the funding schedule to compensate for fluctuations in earnings. Id. (TR at Page 61). FPLE referred to the year-end true-up as the "ultimate backstop" (Exhibit 5 at 6).

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

The results of the schedules of payments with funding dates of 2030 and no earnings on equities over one and three year periods, submitted in response to the hearing requests (Exhibits 11 and 15), are summarized in Chart 5.

Chart 5
<u>Impact of Assuming "0%" Earnings on Equities</u>

	'0' Earnings on Equities through 2009 (Exhibit 15)	'0' Earnings on Equities through 2011 (Exhibit 11)
September 30, 2008 Trust Balance	$343 Million	$343 Million
Projected 12/31/08 Trust Balance	$345 Million	$345 Million
2009 Contributions to Trust	$0.7 Million	$0.9 Million
2009 Contributions to Escrow	$5.4 Million	$9.2 Million
2020 Balance as % of 2007 TLG Decommissioning Cost Estimate	59%	58%
Ending Balance (2101)	$0	$0

While Chart 3 shows the impact on required contributions in 2009 from the lower than originally projected end-of-year balances while still assuming a 9.8% return on equities,[8] Chart 5 demonstrates the effect of also temporarily holding the assumed rates of return on equities to zero. When held to zero for one year before reverting to 9.8%, the total contribution requirement increases to approximately $6.1 Million (Exhibit 15).

[8] In NDFC Docket 2007-1, 9.8% was approved as the assumed earning rate for equity investments starting in 2009.

If eliminated for three years, the required annual contribution grows to $10.1 Million for 2009 (Exhibit 11). In NDFC Docket 2007-1, the Committee established 2020 as the year when decommissioning would begin in the event of permanent premature closure of Seabrook Station before 2015. Accordingly, the projected fund balance in 2020, and in turn the ability to complete decommissioning if it were to begin in 2020, is a bellwether measurement. The current projections raise the concern that if the plant shuts down prematurely, prompt decommissioning could not be completed starting in 2020, absent significant infusion of cash after Seabrook ceased operation. Review of Exhibit 11 shows that the impact on the amount of money available in 2020 in the event of premature cessation of operations decreases from 67% of that required in the proposed funding schedule proposed in the Stipulation (Exhibit 2), to 58% if we assume there will be no equity earnings in 2009-2011.[9]

The current projections of significant surpluses for some owners after decommissioning is completed are based on a rate of return of 9.8% on equities, and no decrease in Trust balances. Lower equity rates of return, as shown, rapidly reduce this surplus to zero. Lower than anticipated rates of return also reduces the funds available in the event of premature decommissioning, although this is dampened somewhat by the increased contribution requirements. During prior dockets, the parties and the Investment Consultant persuasively made the case that these returns were justified in view of the long-term performance of the market and the long-term investment horizon for the Trust.

[9] 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.

However, the unprecedented events in 2008 require re-examination of our reliance on historic data when attempting to predict future performance of investments. Accordingly, we will examine the expected rate of return on equity investments in the NDFC Docket 2009-1. For the 2009 schedules of payment established in this docket, equity earnings in 2009 and 2010 are assumed to be zero and 9.5% for each year thereafter.

Since the Preliminary Report and Order was issued, FPLE has submitted schedules of payments based on actual balances on December 31, 2008 (Exhibit 19) and January 31, 2009 (Exhibit 24). Both schedules assume, as requested by the Committee in the Preliminary Report and Order, that equity earnings are zero in 2009 and 2010 and 9.5% thereafter. Summaries of these schedules of payments are provided in Chart 6.

Chart 6
Schedules of Payments Based on 12/31/2008 and 1/3/2009 Balances Assuming ‘0’ Return on Equities Through 2010

	Schedule of Payments Based on 12/31/2008 Balances (Exhibit 19)	**Schedule of Payments Based on 1/31/2009 Balances (Exhibit 24)**
Earnings on equities through 2010	0	0
Earnings on Equities after 2010	9.5%	9.5%
Actual Trust Balance – 12/31/2008	$297.8 Million	$297.8 Million
Actual Trust Balance – 1/31/2009	N/A	$289.8 Million
2009 Contributions to Trust	$0.9 Million	$1.0 Million
2009 Contributions to Escrow	$10.9 Million	$14.5 Million
2020 Balances as % of 2007 TLG Decommissioning Estimate	58%	58%
Ending Balances	0	0

As shown, the dramatic further decline in balances combined with an assumption of zero return on equities through 2010 increases the total required contributions to about $15.5 Million in the schedules of payments based on the 1/31/2009 balances. The Committee notes that FPLE also developed schedules of payments based on the January

31, 2009 balances and the same assumptions for rates of return on equities as above, but with license expiration extended to 2050. This results in essentially no contribution requirements and a large surplus at the end of decommissioning. As stated previously, however, the NDFC does not base its decision for the appropriate funding model assumptions on speculation about obtaining a license extension from the NRC in the future but will weigh this possibility in the apportionment of these contributions between the Trust and the Escrow account which is discussed in Section IV.G, Funding Assurance Escrow, below.

B. The Projected Cost of Decommissioning

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

1. Plan for Interim Storage of LLRW

As of July 2008, the LLRW facility at Barnwell, SC was closed to all non-compact states. The Barnwell facility was the only one that would take Seabrook

Station's Class B and C LLRW. Anticipating this, the NDFC had requested, in Docket 2007-1, that FPLE include a plan for the storage of Class B and C LLRW along with a firm estimate of the associated costs in the 2008 Annual Report. FPLE provided that information through the 2008 Annual Report, as supplemented with the affidavit of James Peschel (Exhibit 6). Essentially, the amount of Class B and C LLRW generated during operations is relatively small and will be stored on-site using existing facilities. These facilities are not expected to require any special treatment during decommissioning. FPLE also anticipates that market forces will make one or more additional facilities available long before the scheduled shutdown of Seabrook.

2. Duration of SNF and GTCC On-site

The Final Report and Order in NDFC Docket 2007-1, at 39, required that the Annual Report provide the most recently available information on long-term storage of spent fuel and GTCC. The parties initially responded to this requirement in the Annual Report and supplemented their response in the Stipulation, Exhibit 2 at 8, and in the affidavit of James Peschel attached thereto (Exhibit 6 at 3). The Department of Energy (DOE) submitted the license application for the proposed repository at Yucca Mountain in June. The Director, Office of Civilian Radioactive Waste Management, however, has testified before Congress that there would be three-year delay in the opening date for the repository, from 2017 to 2020, as a result of inadequate funding in 2007 and 2008. The parties state that this would mean that the first shipment of spent fuel from Seabrook Station to the repository would be in 2035, assuming that the current capacity limit on the repository is removed (Exhibit 2 at 8). If Seabrook Station receives a twenty-year operating license extension until 2050, the parties do not anticipate final removal of all spent fuel until 2078. While the parties consider the current Committee-approved assumption that spent fuel is not removed until 2100 to be very conservative, they do not argue otherwise as a result of their own estimate that it cannot be removed until 2078 with a license extension (Exhibit 2 at 9). The Committee continues to believe that the 2100 assumption is reasonable. There is a chain of assumptions that must prove out even under the parties' 2078 scenario for complete removal of spent fuel from the site. First, there must be adequate funding for the depository. It must then be licensed and start operating in 2020. Finally, the current limit of 70,000 metric tons of uranium (MTU) must be raised by 50% to 105,000 MTU to even have the capacity to take receipt of all of the spent fuel that Seabrook Station would generate under the present operating license termination of 2030. NDFC 2007-1 Final Report and Order at 11. For these reasons, the Committee will continue to require, for decommissioning funding assurance purposes, that the parties assume the spent fuel will remain on-site until 2100.

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

C. Inflation

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

The experience of 2008 calls into question the appropriate inflation rate to be assumed for future years. In particular, the NDFC has concerns over the long-term impact of energy prices and the current financial crisis on the overall rate of inflation. Accordingly, we require the parties to address the future rate of inflation in NDFC 2009-1. The rate of 3% for inflation shall be maintained for the 2009 funding schedule.

D. Escalation

Escalation is the rate at which the cost to decommission is assumed to increase from year to year. In 2007, the parties requested that escalation be lowered from the then-approved rate of 4.5%. Their request was based on a TLG Seabrook Station Decommissioning Cost Analysis [10] that concluded that a rate of 3.04% would have been appropriate going forward. In the interests of gradualism, the owners requested that the rate only be reduced to 3.75%. Because of concerns over uncertainties in the calculation, the NDFC approved a reduction to 4.2%. The owners recommend in the stipulation that this rate be maintained (Exhibit 2 at 10). The NDFC finds it unnecessary to adjust the escalation rate at this time, and will continue to use a rate of 4.2%.

[10] Attachment B to Exhibit 1, NDFC Docket 2007-1.

E. Investment Guidelines

The Committee's decision to use 2100 as the assumed date for final removal of spent fuel from the site and 2101 for completion of decommissioning extends the decommissioning period from about twenty to about Seventy years, under a 2030 operating license. Under this scenario, the bulk of the decommissioning will have been completed within about the first nine years after final shutdown. The remaining 60+ years, referred to as the "tail period," would be associated with on-site storage of spent fuel. As a result, the Investment Consultant and the Managing Agent recommended a change to the Investment Guidelines that would allow up to 70% in equity investments during the tail period after the bulk of the station has been dismantled and most of the decommissioning costs have already been incurred. This would match the pre-shutdown limit on equity investments. The limit on equities during the nine year post-shutdown period when the station is undergoing prompt dismantlement would remain at 25% (Exhibit 2 at 4). The Treasurer approved the revised guidelines (Exhibit 9).

The Committee approves the use of the Treasurer-approved revised Investment Guidelines for purposes of determining the owners' annual decommissioning funding obligations, except for the assumed rates of return on equities as described above. With the suspension in trading of equity investments, as noted earlier, the date by which the owners will achieve the permitted investments is uncertain. We will expect the 2009 Annual Report to present a status report regarding each owner's investments relative to the Investment Guidelines. Also, FPLE is directed to advise the NDFC, in writing, when security trading resumes.

F. Funding Date

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

G. Funding Assurance Escrow

The Funding Assurance Escrow provides a means of ensuring adequate funding while giving the Committee the flexibility to return all or a portion of the Escrow funds to an owner if it appears that there is a likelihood of overfunding. In this docket, the parties request that the entire contribution required from FPLE be deposited in the Escrow, TR. at Page 58, and that MMWEC, Taunton, and Hudson be allowed to deposit 25% of their 2009 obligation into the Escrow, with the remaining 75% to be held in Trust (Exhibit 2, TR. at Page 29). MMWEC also requested that its current Escrow balance remain in the Escrow (Exhibit 2, TR. at Page 29). The parties request this treatment of contributions due to their expectation that the operating license for Seabrook Station will be extended to 2050, and that earnings over that longer term will result in excess funds being held in the Trust at the end of decommissioning (TR. at Pages 41-42. FPLE intends to apply for the operating license extension in the second quarter of 2010, Exhibit 1 at 9, and the NRC typically acts on license extension applications in 2 years (TR. at Pages 23-24).

We note that in the Annual Report FPLE requested release of its funds presently held in the Escrow, Exhibit 1 at 28, but withdrew that request before the public hearing

(Exhibit 2 at 3). MMWEC has offered testimony opposing the release of any of FPLE's Escrow funds in the event the FPLE's request to withdraw is not accepted (Exhibit 8 at 4).

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

The most recent schedules of payments for Taunton and Hudson show that neither is expected to be overfunded at the end of decommissioning, even if the operating license is extended to 2050. For this reason, we will transfer the funds held in the Escrow for Taunton and Hudson to their respective Trusts. All of the 2009 contributions by Taunton and Hudson will be deposited in the Trust.

H. <u>Funding Assurances</u>

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

None of the triggers associated with the FPLE funding Assurance requirements have been approached (Exhibit 2 at 9). FPLE has also provided testimony about the financial health of FPL Group, Inc. and its utility subsidiary, Florida Power and Light Company. The Committee is satisfied that the financial capability of FPLE, as backed by the funding assurances of FPL Group, remains sufficiently strong to fund FPLE's decommissioning obligation, even in the event of permanent premature cessation of operation (TR. at Page 53). Similarly, Seabrook Station continues to perform better than the industry averages (Exhibit 1 at 11, Exhibit 1 at Attachments 3 and 4), (Exhibit 5 at 3, TR. at Pages 51-52). Based on the record, the NDFC holds that the existing FPLE funding assurances will remain in place until next reviewed by the NDFC, and finds that the funding assurances are adequate to meet FPLE's obligations, even in the event of a premature cessation of operation.

MMWEC submitted timely comments concerning the PRO determination that FPLE's funding assurances are adequate (Exhibit 25). We appreciate MMWEC's diligence in reminding the NDFC of the concern that MMWEC has for the sufficiency of FPLE's funding assurances and that the concern has not abated since the public hearing in October 208. We find no reason to revisit the issue in this docket and expect the matter will be before the Committee in the NDFC Docket 2009-1.

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

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

In summary, Exhibits 13 and 14, respectively, reflect MMWEC's, Taunton's and Hudson's representation that the Seabrook indebtedness is secured through binding contractual obligations and statutory provisions, and that the obligations of Taunton and Hudson and the municipalities with which MMWEC contracts ("Project Participants") to pay their share of the costs of decommissioning cannot be discharged in bankruptcy.

A municipality can seek bankruptcy protection under Chapter 9 of the U.S. Bankruptcy Code, only if expressly authorized to do so under state law. 11 U.S.C. § 109

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

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

MMWEC's ownership of Seabrook, and the contractual obligations and statutory provisions securing MMWEC's payments, are more complex, but for the reasons that follow, MMWEC likewise represents that its obligation to fund its share of the cost to decommission Seabrook Station is absolute and cannot be discharged in bankruptcy.

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

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

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

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

We find the explanation of the obligations to meet the decommissioning costs for the municipal owners, as set forth in Exhibits 13 and 14, to be sufficient to address our concerns at this time. [11] The NDFC may choose to revisit this issue, should the long term operational viability of Seabrook Station become in doubt.

[11] 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.

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

In NDFC Docket 2002-2, the NDFC established the practice of setting the schedules of payments beginning on January 1 of the following year based on a November 30 actual Trust balance, adjusted to estimate the end-of-year balance as closely as possible. In NDFC Docket 2004-1, the year-end calculation was further refined. This approach permits the best full-year estimate of earnings and expenses during the year to be recognized when setting contribution requirements for the next year and the NDFC will continue this practice in future years.

For 2009 the calculation of the schedules for payments will be based on the Trust and Funding Assurance Escrow balances as of January 31, 2009, with earnings for equity investments set at zero for 2009 and 2010, and at 9.5% for years thereafter. The schedules of payments are set forth in Exhibit 24. The difference between the contributions of the owners in 2009 required by this order and the contributions that each owner actually made to the Trust and Escrow before the effective date of the schedules of payments approved by this order shall be made in a single payment in March 2009, with all other contributions made as equal monthly payments and directed to either the Trust or the Escrow in conformance with this order.

V. CONCLUSION

Based on the record in this Docket, the Committee finds that the requirements of RSA 162-F for funding decommissioning will be met by implementing the requirements set forth in this order.

Based on the foregoing, it is hereby

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

FURTHER ORDERED, that the schedules of payments for 2009 will use the assumptions and terms identified in this Final Report and Order as calculated using the Decommissioning Fund and Funding Assurance Escrow account market values as of January 31, 2009; and it is

FURTHER ORDERED, that the contributions pursuant to the schedules of payments for 2009 shall be effective as of January 1, 2009, and the difference between the contributions of the owners in 2009 pursuant to Exhibit 24, and the contributions that each owner actually made to the Trust and Escrow before the effective date of that schedules of payments shall be made in a single payment in March 2009, with all other contributions made as equal monthly payments, to either the Trust or the Escrow as provided by this order; and it is

FURTHER ORDERED, that the schedules of payments approved by this order shall continue in effect until changed by order of the NDFC; and it is

FURTHER ORDERED, that MMWEC may deposit 25% of its 2009 contribution in the Funding Assurance Escrow; and it is

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

FURTHER ORDERED, that Taunton and Hudson shall deposit 100% of their 2009 contributions in their respective Trust accounts; and it is

FURTHER ORDERED, that by separate order all but $1.00 of the funds held in the Escrow for Taunton and Hudson, as determined on March 3, 2009, shall be transferred to their respective Trust accounts by the first work day of the month following the issuance of this Final Report and Order; and it is

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

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

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

FURTHER ORDERED, that FPLE shall notify the NDFC, in writing, when it resumes trading of securities for either the Trust or Escrow; and it is

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

This Report and Order is released on February 24, 2009.

_/s/____________________
Thomas B. Getz
Chairman Public Utilities Comm.

__/s/______________________
Rep. Robert E. Introne
State Representative

_/s/____________________
Catherine Provencher
State Treasurer

_/s/________________________
Jacalyn Cilley
State Senator

_/s/____________________
Scott Bryer
Department of Safety

_/s/________________________
Willard F. Boyle
Representative of the Town of Seabrook

_/s/____________________
Amy Ignatius, Esquire
Office of Energy & Planning

_/s/______________________
James Fredyma
Health & Human Services