

THE STATE OF NEW HAMPSHIRE  
NUCLEAR DECOMMISSIONING FINANCING COMMITTEE  
DOCKET NO. NDFC 2001-1

FINAL REPORT AND ORDER

**Summary**

The Nuclear Decommissioning Financing Committee (NDFC or Committee) initiated this docket to review the performance of the Nuclear Decommissioning Fund and determine whether adjustment in the schedule of payments is necessary, as provided in RSA 162-F:19. On June 12, 2001, the Legislature passed HB 740 (Chapter 193, Laws of 2001) amending RSA 162-F. The amended statute is effective September 4, 2001. In anticipation of the amended statute, the NDFC used this docket to meet the revised statutory requirements. Accordingly, this Report and Order establishes a new decommissioning cost estimate, a new schedule of payments, determines when the next full review of decommissioning cost will be made, and establishes a procedure for determination of the type and amount of funding assurance required before an ownership interest in Seabrook Station can be transferred to a new owner.

**Procedural History and Witnesses**

The NDFC initiated this docket by issuing an Order of Notice on April 3, 2001. The Order of Notice was published in two newspapers on April 12 and 19, 2001. The publications were affirmed by affidavit of Edward A. Haffer, Esquire, dated May 14, 2001, and filed with the NDFC on May 15, 2001.

As required by the Order of Notice, a pre-hearing conference was held on May 15, 2001, for the purpose of accepting appearances of those seeking to participate in the docket. On June 4, 2001, the NDFC issued Order No. 1 granting interventions, setting a

procedural schedule, and setting the scope of the docket. On June 12, 2001, the NDFC issued Order No. 2, revising the procedural schedule. At the request of the parties, the Committee subsequently dispensed with the requirement that testimony, responsive testimony, and pre-hearing statements be filed prior to the hearings.

Hearings were held on July 9, 11, and 20, 2001. Witnesses for the Seabrook Station owners were Anthony M. Callendrello, Chief Operating Officer of BayCorp Holdings, LTD, Brad A. Jacobson, Financial and Accounting Services Manager for North Atlantic Energy Service Corporation (NAESCO), and David C. Mercer, Supervisor-Industry Relations for NAESCO. Gregory C. DeSisto of Prime, Buchholz testified at the request of the Committee.

On September 4, 2001, the Committee issued a Preliminary Report and Order. On October 15, 2001, the Massachusetts Municipal Wholesale Electric Company (MMWEC) filed comments concerning the Preliminary Report and Order. The public hearing in the Town of Seabrook was held at the Town Hall on the evening of October 18, 2001, at which time three of the Seabrook Joint Owners requested and received leave to file replies to MMWEC's comments. By letter dated October 25, 2001, those Joint Owners and other parties informed the Committee that they believed the Preliminary Report and Order addressed all MMWEC's position adequately. On November 5, 2001, the Committee met in public and voted to approve the Preliminary Report and Order as the Final Report and Order without amendment. <sup>1</sup>

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<sup>1</sup> Seven Committee members voted to approve the Report and Order. Mr. James P. Fredyma, Assistant Commissioner, Health & Welfare Department abstained stating that because he had been unable to attend the hearings in this Docket, he was ill-prepared to participate in the final decision, but did not oppose the decision of the Committee.

## **Parties and Positions**

At the prehearing conference of May 15, 2001, representatives of the following entities appeared and were granted full-party intervenor status: North Atlantic Energy Service Corporation, New England Power Company, Seacoast Anti-Pollution League (SAPL), the Campaign for Ratepayers Rights (CRR), the NH Public Utilities Commission Staff (Staff), Great Bay Power Corporation (Great Bay) and Little Bay Power Corporation (Little Bay), , North Atlantic Energy Corporation (NAEC), MMWEC, Canal Electric Company, NH Office of Consumer Advocate (OCA), and the Town of Seabrook. Also, the following Seabrook Station owners requested joint intervention to be represented by North Atlantic Energy Service Corporation: Hudson Light and Power Department (Hudson), New Hampshire Electric Cooperative, Inc. (NHEC), Taunton Municipal Lighting Plant (Taunton), Connecticut Light and Power Company, and United Illuminating Company. Collectively, all of the Seabrook Station owners were represented and participated in the initial proceedings.<sup>2</sup>

On July 9, 2001, a majority of the parties<sup>3</sup> (Settling Parties) presented a Stipulation and Proposed Order on Findings and Determinations (Stipulation). The OCA provided an oral statement supporting the Stipulation (7/11/01 TR at 166) and encouraged the Committee to adopt a policy that physical demolition of the facility would not be commenced before 2015, even in the event of a premature permanent

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<sup>2</sup> At the May 15, 2001, pre-hearing conference, Taunton and Hudson were represented by NAESCO. Before the hearing began, Taunton and Hudson opted to represent their individual interest in the docket.

<sup>3</sup> The parties to the Stipulation & Proposed Order on Findings and Determinations are North Atlantic Energy Service Corporation, United Illuminating Company, Canal Electric Company, New Hampshire Electric Cooperative, Inc., Connecticut Light and Power Company, Great Bay Power Corporation, Little Bay Power Corporation, New England Power Company, the Town of Seabrook, New Hampshire, the Staff of the New Hampshire Public Utilities Commission, and the New Hampshire Office of Consumer Advocate.

cessation of operation. 7/20/01 TR at 129-130. The Staff provided an oral statement asserting that the Stipulation should be found to be in the public interest because it would provide adequate funding and represented a balance of the interests of the various parties to the Stipulation. 7/11/01 TR at 149-155, 162. The Town of Seabrook provided a letter and an oral statement in support of the Stipulation. Exhibit 10; 7/11/01 TR at 14-15. Of the Seabrook owners, the New Hampshire Electric Cooperative, Inc. (7/11/01 TR at 171-174), Great Bay and Little Bay (7/11/01 TR at 176-180) and New England Power Company (7/11/01 TR at 167-171) each provided statements in support of the Stipulation

Of the other parties, four<sup>4</sup> advised the NDFC that they neither supported nor opposed the Stipulation. The SAPL encouraged the Committee to retain the flexibility to respond to a decision by Seabrook Station owners to cease operation. 7/11/01 TR at 175. CRR expressed the view that there is less concern about an early shutdown for economic reasons than when the NDFC last examined the life expectancy of the Seabrook Station in Docket 98-1. 7/11/01 TR at 37. CRR urged the Committee to consider changes in the industry, when evaluating the terms of the Stipulation.

MMWEC opposed the adoption of the Stipulation because the Stipulation recognized the proposed schedule of payments as a form of funding assurance. 7/20/01 TR at 123-125; 7/20/01 TR at 128. Further, MMWEC reasoned that if the schedule of payments were a funding assurance, it could not be applied to a non-selling owner, and recognizing it as a funding assurance would result in having different funding dates for

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<sup>4</sup> Seacoast Anti-Pollution League and the Campaign for Ratepayers Rights addressed the Committee during the hearing days (7/11/01 TR at 34-41), with the Seacoast Anti-Pollution League providing both a written statement and oral comments. 7/11/01 TR at 174-176. Hudson Light and Power Department and Taunton Municipal Lighting Plant advised counsel to the Committee that they declined to participate in the hearings (7/11/01 TR at 7).

different owners, which MMWEC claims is not permitted. 7/11/01 TR at 126. MMWEC also asserted the Stipulation was inadequate because it did not address premature cessation of operation before 2015. 7/20/01 TR at 126. In comments filed October 15, 2001, MMWEC raised these same concerns in reaction to the Preliminary Report and Order. The Committee found, during deliberation on November 5, 2001, that the issues addressed in the comments of MMWEC were fully developed in the record of the Docket and, therefore, had been considered by the Committee when issuing the Preliminary Report and Order.

### **Terms of Stipulation**

The Settling Parties provided a Stipulation and Proposed Order on Findings and Determinations (Stipulation) in lieu of pre-filed testimony. Exhibit 1.<sup>5</sup> The Stipulation was supported through testimony at the hearings.

The Stipulation addresses the principal matters before the Committee, namely, the schedule of payments, the projected cost of decommissioning under the new Commercial/Industrial Standard, customer contributions, and the funding date. The Stipulation also provides recommendations on how the funding assurance should be calculated, and provides for future review of the projected cost of decommissioning. Finally, the Settling Parties invited the NDFC to adopt the Stipulation and all of its terms as the Final Order in this docket.

The Stipulation proposes a definition for determining the cost of decommissioning, using the standard adopted by the Legislature at RSA 162-F:14, II, the so-called "C/I Standard." Exhibit 1, Attachment 3. The definition is supported by details

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<sup>5</sup> The Stipulation with all attachments is Exhibit 1. The Stipulation with composite signatures, but without attachments, is Exhibit 15.

of the changes in decommissioning activities, and resulting cost savings from no longer requiring full site restoration. Exhibit I, Attachment 4. The Stipulation uses the proposed C/I Standard to determine a projected cost of decommissioning of approximately \$556 million, in 2001 dollars.<sup>6</sup> Exhibit 1, Par. 20.

The Stipulation presents a methodology for determining the amount of Top-off to be deposited in the fund when the upcoming sale of Seabrook Station occurs. Exhibit 1, Par. 24. Further, the Stipulation proposes a schedule of payments in two phases: 2002-2006 and 2007-2026. The schedule of payments provides for full funding of the projected cost of decommissioning.

## **Background**

While the Seabrook Station was under construction, the State of New Hampshire enacted RSA 162-F, which required the creation of the Decommissioning Fund. The Fund was to be accumulated over the expected operating life of the plant so that the full cost of nuclear power in New Hampshire would be reflected in the electric rates, with the customers who receive the benefits paying their fair share of decommissioning costs as they receive electricity. RSA 162-F was enacted before the Nuclear Regulatory Commission (NRC) developed standards and regulations for decommissioning funding. When Seabrook Station was built, all of the joint owners were vertically integrated electric utilities. Consequently, payment of decommissioning expenses by each owner was secured by its franchised service territories with its captive customer base.

On June 12, 2001, the New Hampshire Legislature adopted HB 740, amending RSA 162-F. The Governor signed HB 740 on July 6, 2001, and the amended RSA 162-F

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<sup>6</sup> The projected cost of decommissioning of \$555,537,768 will be abbreviated as \$556 million throughout this Report and Order without further recognition that it is an approximation of the projected cost.

became effective September 4, 2001. Chapter 193, Laws of 2001. All of the parties to Docket 2001-1 participated in the collaborative process that prepared HB 740. The primary reason for amending RSA 162-F was to provide an appropriate framework for decommissioning funding, once Seabrook Station becomes a merchant plant as part of the electric industry restructuring in New Hampshire. It is anticipated that approximately 88.3% of Seabrook Station will be sold in an auction to be conducted by the New Hampshire Public Utilities Commission (NHPUC). This sale will eliminate the security of being able to recover decommissioning expenses from the customers of the New Hampshire electric utilities that have franchises service territories and also own shares of Seabrook Station.

The amended RSA 162-F provides alternative ways to ensure that funds will be available to meet all decommissioning costs as they are incurred. The amended RSA 162-F also ends the decommissioning surcharge for New Hampshire customers, once their utilities sell their ownership interests to a non-utility. The amended statute also reaffirms that the owners of Seabrook Station have full responsibility for decommissioning costs and that the State of New Hampshire is not responsible for any of those costs. The amended RSA 162-F further establishes the NDFC as the State entity responsible for determining what decommissioning activities are required and the associated costs. RSA 162-F:15.

The amended RSA 162-F imposes responsibilities upon the NDFC and provides discretion to meet them. The NDFC is charged with determining what decommissioning activities are required to be completed at Seabrook Station. RSA 162-F:15, I. The Committee must determine the projected cost of decommissioning using the new

definition of decommissioning (RSA 162-F:14, II), and must establish the schedule of payments for each owner. RSA 162-F:15, I. These three determinations are linked because the schedule of payments for each owner must “reach the projected cost of decommissioning, as determined by the committee,” for the corresponding ownership share. RSA 162-F:19, I, III. The Fund must have enough money to complete decommissioning as of the funding date. RSA 162-F:19, I. The NDFC must set a funding date and the assumed date for the start of decommissioning in order to calculate the schedule of payments and the projected cost of decommissioning. 7/20/01 TR at 31-35. Also, the NDFC must determine how much New Hampshire customers contributed to the Fund. RSA 162-F: 21-b.

When an interest in Seabrook Station is to be sold, the NDFC is responsible for approval of a funding assurance, prior to the sale. RSA 162-F:21-a, II, III; RSA 162-F:21-c. The NDFC must review the funding assurance at least once each year, and adjust it, as the Committee determines is necessary. RSA 162-F:22, III. The NDFC must also set the amount of any payment necessary to meet the cost of full NRC minimum decommissioning funding requirement, pursuant to RSA 162-F:21-a, I, the so-called “Top-off.”<sup>7</sup>

Once Seabrook Station ceases operation, the Committee is responsible for controlling withdrawals from the Fund to ensure the money is spent for legitimate decommissioning activities. RSA 162-F:23. The final responsibility of the NDFC will

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<sup>7</sup> This is consistent with responsibility of the NH Public Utilities Commission for auctioning NAEC’s Seabrook Station share, pursuant to RSA 369-B:3, IV (6)(13); Chapter 29 of the Laws of 2001, Section 15, II. The NHPUC will review the Top-off payment as part of selecting a winning bidder, including who will pay the Top-off, using the calculation methodology approved by the NDFC. Clearly, the Legislature intended that the NDFC would determine how the Top-off would be calculated because the NHPUC’s jurisdiction over Seabrook financial matters will end when the New Hampshire utilities sell their interests.

be to determine if a refund is due to NH customers (RSA 162-F:21-b, II(c)), and if not, release any final balance in the Fund to the Seabrook Station owners (RSA 162-F:23, III), after all decommissioning expenses are paid.

To meet these responsibilities, the Legislature provided the Committee with broad discretion. At its discretion, the NDFC may, at any time, meet and adjust the Decommissioning Fund requirements, the schedule of payments, the funding date, and any associated funding assurance. RSA 162-F: 22. III. The NDFC is not bound by any formula or methodology when meeting its responsibilities. Rather, it is charged with using its best judgment to ensure that the public health and safety is protected by ensuring the integrity of the Fund.

## **Discussion**

For the reasons articulated in more detail in the sections that follow, the NDFC believes the results that will be produced by the Stipulation are in the public interest. The Committee therefore approves the Stipulation, subject to the findings and holdings of this Report and Order.

### **I. Funding Assurance**

The availability of decommissioning funding assurances provides the NDFC with the tools it needs to make sure the Fund will be secure and adequate until decommissioning is completed. RSA 162-F:21-a, III (b). Today, customers in franchised service territories secure payment of approximately 85% of the decommissioning costs of Seabrook Station.<sup>8</sup> When, as proposed, all but approximately 12% of Seabrook Station is owned by a non-utility, decommissioning funding will be secured by the combination

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<sup>8</sup> The two non-utility owners, Great Bay Power Corporation and Little Bay Power Corporation, own a combined ownership interest of 15.03%.

of the balance in the Fund and the funding assurances approved by the NDFC. The combination of the Fund itself and the funding assurances is the foundation upon which the NDFC will build a decommissioning payment plan for a non-utility owner.

The NDFC will consider the amount, nature, and form of funding assurance when deciding the appropriate schedule of payments for a new, non-utility owner. RSA 162-F:19, III. The schedule of payments approved by this Report and Order will be available to a non-utility owner, if an adequate funding assurance is in place. Just as it is appropriate for the new owner to participate in the next comprehensive review of the decommissioning plan,<sup>9</sup> the new owner will be provided an early opportunity to affect the schedule of payments when the NDFC considers a funding assurance proposal.

The Committee will not establish a funding assurance in this docket. The NDFC will determine the sufficiency of a funding assurance only after a proposal is submitted by an entity selected to acquire an ownership interest in Seabrook Station. RSA 162-F:21-a, II, III. The Committee can only determine the value of a funding assurance proposal by evaluating the financial health of the prospective owner, along with the nature, character and amount of a funding assurance offered by that entity. After the NHPUC selects the winning bidder in the auction for NAEC's Seabrook Station interest, the NDFC will open a docket to consider a proposed funding assurance. In that proceeding the NDFC will closely and carefully examine any funding assurance proposal before making a decision, notwithstanding the selection by the NHPUC of a bid proposal that includes a funding assurance. The NDFC is required to make an independent evaluation, before a sale occurs. *Ibid.*

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<sup>9</sup> See: Projected Cost of Decommissioning.

A funding assurance can take many forms. RSA 162-F:14, VI. The Stipulation proposes recognizing a funding assurance obligation of \$125 million, based on a net present value calculation. Exhibit 1, Par. 26. The NDFC would consider a funding assurance of that value and based on that approach. However, that is only one of many approaches, and funding assurance amounts that could be proffered, and the NDFC will not rule out other methodologies or funding assurance amounts prior to having an actual proposal to consider. The NDFC will be especially careful in reviewing any funding assurance that includes a self-guarantee by a corporation. Parental guarantees will be considered, with the quality of the guarantee, the financial strength of the parent, and obligations of the parent subject to close scrutiny. The NDFC will expect a funding assurance to be based on the determinations made in this docket for the projected cost of decommissioning and the schedule of payments, along with any adjustments that may be made prior to the expected sale.<sup>10</sup> It will be the obligation of the prospective owner to convince the NDFC that a funding assurance is sufficient in amount, nature, form, and character.

## **II. Decommissioning Standard**

The revised RSA 162-F established a new standard for determining the activities to be included in the calculation of the cost of decommissioning. Prior to this change, the cost of decommissioning was estimated based on returning the site to its original, pre-construction condition. The new standard recognizes that the site will likely have a “non-nuclear commercial, industrial, or other similar use” after permanent cessation of nuclear operations. RSA 162-F:14 II(b). Also, decommissioning will be completed to the NRC

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<sup>10</sup> The NDFC will review the Fund performance each year and adjust the schedule of payments to maintain funding expectations. RSA 162-F:11, II.

radiological “unrestricted use” standard. RSA 162-F: 15, I.<sup>11</sup> This new standard requires a more involved review of the site than was the case under the prior, full-restoration standard. The Settling Parties, including the Town of Seabrook, agreed to a Commercial/Industrial Use Standard and provided it to the Committee as Attachment 3 to Exhibit 1. The C/I Standard was not opposed by any party. The suggested C/I Standard is comprehensive and detailed. In particular, it addresses the major determinations that must be made when deciding what must be removed, which, thus, translates into the cost of decommissioning. These determinations are:

1. A definition of the area of the Seabrook Station site which is the subject of decommissioning and site restoration.
2. Identification of buildings and improvements that are to be removed during decommissioning. In particular, the proposed Commercial/Industrial Standard correctly includes the Seabrook Unit I containment building as a structure that must be removed as part of decommissioning. This is consistent with the requirement of RSA 162-F:14, II(a) and recognizes that the NRC’s entombment option is not permitted. (See: Exhibit 30, at 3-A).
3. A recognition that non-radiologically contaminated buildings with possible future useful life will not be included in the calculation of decommissioning costs. In turn, their removal will not be paid from the Decommissioning Fund. Specifically, the C/I Standard recognizes that the transmission structures, turbine buildings, and infrastructure are no longer required to be removed when nuclear generation ends. 7/11/01 TR at 22. Attachment 1, page 4.

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<sup>11</sup> This will continue the assumption previously approved by the NDFC and, thus, will have no impact on decommissioning planning. The adoption of this standard by the Legislature provides regulatory certainty

4. A recognition of the important role of the Town of Seabrook when determining the future use of the Seabrook site. Chapter 193, Laws of 2001, Section 1, VI. The NDFC will consider and give weight to changes to the Master Plan for the Town of Seabrook, and its zoning laws, in any future reviews of the activities to be included when determining the projected cost of decommissioning. As noted before, the Town of Seabrook supports the C/I Standard. Exhibit 1.

5. The exclusion of demolition costs associated with Seabrook Unit 2 from the calculation of decommissioning costs.

Implicit in the C/I Standard is the expectation that the portion of the site not subject to decommissioning may be put to a non-nuclear commercial or industrial use while decommissioning is ongoing.

The current decommissioning schedule of activities includes the site specific planning, physical demolition, and the storage of spent nuclear fuel and greater-than-Class-C (GTCC) wastes. If decommissioning begins in 2026, it is assumed it will take approximately twenty years before the entire site will be released for unrestricted use. Exhibits 2, 28. As decommissioning, demolition and site restoration progresses, portions of the site will be released, until all spent nuclear fuel and GTCC wastes are transferred to dry casks and only the Independent Spent Fuel Storage Installation (ISFSI) remains. Exhibit 2 at 6. The ISFSI will be physically isolated from the rest of the site, permitting the rest of the site to be released for non-nuclear commercial and industrial uses. By defining the geographic area subject to decommissioning, the NDFC and the parties expect that a plan for non-nuclear use of the site will be in place well before decommissioning begins.

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to the Seabrook Station owners.

The adoption of the C/I Standard results in a reduction of the projected cost of decommissioning. Using the former full-site restoration standard as applied in Docket 98-1, the projected cost of decommissioning would be approximately \$612.3 million. Exhibit 2 at 6. Application of the C/I Standard, coupled with an assumed shutdown in 2026, results in a projected cost of decommissioning of approximately \$556 million in 2001 dollars. Exhibit 2, Seabrook Station Decommissioning Update, Supplemental Report, May 2001 at 10; Attachment 1. The reduction of the projected cost of decommissioning by approximately \$56 million is beneficial to all interests. The joint owners looking to sell their ownership interests will go to market with a reduced decommissioning obligation, which should increase the value of Seabrook Station. The buyer of these ownership interests will have a reduced decommissioning obligation. The State and its citizens benefit from a lower unfunded obligation, which reduces the risk of a future failure to meet decommissioning obligations by owners of Seabrook Station. In supporting the C/I Standard, the Town of Seabrook also recognizes the benefit of the future use of existing infrastructure for non-nuclear purposes.

The NDFC finds that the C/I Standard set forth in Attachment 1 is a reasonable and appropriate application of the decommissioning requirements of RSA 162-F:14, II.

Accordingly, the Committee adopts the Seabrook Station Commercial/Industrial Use Standard, as presented by a majority of the parties. The C/I Standard and the accompanying depiction of the site plan are attached as Attachment 1 to this Report and Order.

### **III. Projected Cost of Decommissioning**

The schedule of payments is proposed as part of the Stipulation based on this projected cost of decommissioning of \$556 million, in 2001 dollars. Exhibit 1, Attachment 1. This cost reflects the C/I Standard for decommissioning when adjusted for changes in escalation rates. RSA 162-F: 14, II (b); Attachment 1. The NDFC finds that the projected cost of decommissioning of \$556 million is appropriate. The projected cost of decommissioning is routinely adjusted to reflect changes in the NRC minimum requirements and escalation rates, typically as part of the NDFC's annual review of the Fund's performance.

### **IV. Review of Decommissioning Projections**

The NDFC must conduct a comprehensive review of the projected cost of decommissioning every four years. RSA 162-F:22, I. The Committee last conducted the comprehensive review as part of Docket 98-1, which was concluded in 1999. Ordinarily, the NDFC would require a comprehensive review of the projected cost of decommissioning be commenced in 2002. The Settling Parties in this docket suggest the NDFC conduct the next four-year review within one year after the expected sale of Seabrook Station ownership interests. Exhibit 15, Paragraph 31.

The NDFC finds this suggestion to be in the public interest and will delay the comprehensive review, with the expectation that it will be completed within one year of the expected sale of Seabrook Station shares. It is appropriate for the personnel at Seabrook Station to concentrate on the auction process rather than the preparation of a full review of decommissioning costs. Moreover, the new majority owner should have an opportunity to present any suggested modification of the existing decommissioning plan.

The NDFC may set a more definite date for the RSA 162-F:22, I comprehensive review as the Seabrook auction progresses.

For a variety of reasons, the transfer of Seabrook Station ownership interests could be delayed beyond the projected date of December 31, 2002, and the Committee believes it is obligated to conduct the four-year review in a timely fashion. Therefore, in the event the sale of Seabrook does not progress as expected, the Committee reserves the right to return to the original schedule for the four-year review.

The NDFC will monitor the auction and sale process to be conducted by the NHPUC, and will require the Seabrook Station joint owners to provide a status report on that process as part of the annual Seabrook Station Decommissioning Update in March 2002. The decision to postpone the four-year comprehensive review, and the expectation that a new majority owner will suggest a revised plan for decommissioning, does not change the NDFC's decision to require decommissioning funding be based on prompt dismantlement after the permanent cessation of operation, in accordance with the current approximate ten-year planning and demolition schedule. Likewise, the NDFC remains committed to the removal from the site of spent nuclear fuel and GTCC wastes at the earliest practical date. When the NDFC meets in 2002 for its annual review of the cumulative Fund performance, the Committee will determine whether adjustments to the schedule of payments, or other changes, including the decision to postpone the comprehensive review, are in order, pursuant to RSA 162-F: 22.

## **V. Schedule of Payments**

Pursuant to amended RSA 162-F, the NDFC must establish a schedule of payments to ensure that the Decommissioning Fund will be sufficient to meet all costs of

decommissioning in a timely way. RSA 162-F:19. The Settling Parties proposed a schedule of payments as part of the Stipulation. Exhibit 1, Attachment 1. The proposed schedule of payments is premised on a number of assumptions, including the 2002 sale of a majority interest in the Seabrook Station, an estimated Top-off amount, and some assumed cost escalation factors. 7/11/01 TR at 18-19, 48, 88, 92. Subject to the following discussion, the NDFC finds the proposed schedule of payments to be consistent with the requirements of amended RSA 162-F and to be in the public interest. The new schedule of payments for Seabrook Station owners is Attachment 2 to this Report and Order.

When compared with the current schedule of payments, the new schedule will produce a larger Fund balance through 2006. 7/11/01 TR at 48. Exhibit 8. By 2015, the date when the Fund would be fully-funded by the current schedule of payments, the Fund will have less than would be in the Fund using the current schedule. Exhibit 8. In light of the adoption of the C/I Standard, the Top-off payment, and the funding assurance provisions, however, this change in the Fund expectations is in the public interest. The following chart illustrates the differences that are projected to result from different schedules of payment.<sup>12</sup>

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<sup>12</sup> This chart is provided for illustrative purposes only, acknowledging it is imperfect. As discussed elsewhere, changing the expected date of decommissioning, and the decommissioning standard will change underlying assumptions.

**Decommissioning Fund Balance**  
(000,000) \*/

End of Year	March 2001 Update (a)	May 2001 Update (b)	Stipulation (c)
	Full site restoration; Funding date of 2015; Decommissioning begins 2015	C/I Standard; Funding date of 2015; Decommissioning begins 2026	C/I Standard; Funding date per Report and Order; Decommissioning begins 2026
2006	409	367	416
2015	1,084	1,018	916

\*/ All numbers are rounded upward.

- (a) Exhibit 3
- (b) Exhibit 2
- (c) Exhibit 1

As this chart shows, moving to the C/I Standard alone requires fewer dollars to be put into the Fund because the projected cost of decommissioning is reduced. Further, by recognizing that decommissioning is to begin in 2026, as opposed to 2015, the need to have more money in the fund by 2015 is reduced. Indeed, if the current schedule was continued through 2015, but the facility operated until 2026, the Fund would be over-funded when decommissioning was completed. Exhibit 3 at 85.

The NDFC is willing to adopt the schedule of payments because of the many safeguards that will be in place. The increase in the Fund balance through 2006 provides ample time for the Committee to adjust the schedule of payments in reaction to changed circumstances, as part of a funding assurance, or for other reasons. Indeed, as a witness for the Settling Parties observed, having higher Fund balances for a number of years provides “a pretty good trial period to evaluate the new owner, to see whether they’re living up to their financial obligations.” 7/11/01 TR at 135. Money in the Fund is the

greatest form of security, and this approach increases the Fund more than the existing schedule of payments. Also, the funding assurance, once in place, will provide the ability to meet a funding shortfall, should the need arise. The NDFC is confident that it can respond promptly should there be a need to adjust the schedule of payments, or otherwise increase the Fund balance, even after 2006. `

By adopting the schedule of payments proposed in the Stipulation, the Committee establishes the payments required in 2002 and sets forth a schedule of payments that, if all assumptions are met, would produce a sufficient balance in the Decommissioning Fund in order to complete decommissioning in a timely manner. Because the schedule of payments is based upon various supportable assumptions, it is reasonably certain that the schedule of payments adopted here will ensure that the Decommissioning Fund will accumulate sufficient money to complete all decommissioning. However, the NDFC may change this determination at a future date, as provided for in RSA 162-F:22, and recognized by the Settling Parties. 7/11/01 TR at 24, 106; 7/20/01 TR at 56-57.

It is the responsibility of the NDFC to see that the Decommissioning Fund has enough money to pay decommissioning costs, as these costs are incurred. RSA 162-F:23. The NDFC must determine what decommissioning actions are required (RSA 162-F:15), and approve all decommissioning expenditures. RSA 162-F:23. To meet these obligations, the NDFC must make a number of determinations. Over time, these determinations will likely be adjusted. The schedule of payments approved by this Report and Order is premised on assumptions that, when changed, may require a revised schedule of payments.

The NDFC will establish the schedule of payments into the Fund, review the Fund performance, and adjust the schedule of payments to meet the funding goals. RSA 162-F:22. Review of the Fund performance must occur at least once each year, and the NDFC has the discretion to meet and reset the schedule of payments at any time. RSA 162-F:22 II, III. As part of the periodic review and adjustment, the NDFC will re-visit the core assumptions that produced the schedule of payments. The principal assumptions underlying the schedule of payments that will be reviewed are as follows:

A. Assumed Date of Decommissioning.

The schedule of payments is determined by the date decommissioning is assumed to begin. The schedule of payments approved by this Report and Order is premised on Seabrook Station operating until the end of its NRC operating license, currently October 17, 2026. The NDFC accepts the assumption that the Seabrook Station will operate until October 17, 2026, as an appropriate basis for calculating the schedule of payments, given the funding assurance and other contributions to the Fund, including the Top-off payment, and the schedule of payments in 2002-2006.<sup>13</sup>

For purposes of Docket 98-1, the NDFC established funding expectations for a 2015 end of operating life. That determination was made in light of conditions existing at that time. The record in Docket 98-1 recognized that the economic outlook for the nuclear industry was uncertain. Today, however, the economic outlook has significantly improved, such that many nuclear power stations are now seeking license extensions. Exhibit 23. In addition, many nuclear stations have become attractive assets and are selling at higher prices than in 1998. Exhibit 27. Seabrook Station has a good operating

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<sup>13</sup> The NDFC adopts this assumption for purposes of establishing a projected cost of decommissioning and a schedule of payments. The Committee can adjust this date in a future proceeding. RSA 162-F:22, III.

record, and as such should be an attractive “merchant plant” acquisition for prospective buyers. Exhibits 24, 25. In turn, this should produce value for customers through reduction of stranded costs. These changed conditions, together with the Top-off and funding assurance requirements, provide a sufficient basis for the NDFC to establish October 17, 2026, as the assumed date of decommissioning for Seabrook Station. As with other features of the Stipulation approved by the NDFC, the Committee finds the change of the assumed date of decommissioning from 2015 to 2026 to be in the public interest.

The assumed date of decommissioning is important, in that it establishes the measuring period over which a schedule of payments will be spread. In addition, it impacts specific Fund projections. For example, as witness DeSisto explained, the investment assumptions require moving funds into conservative investments starting five years before the projected end of operation. 7/20/01 TR at 19-21. See also 7/11/01 TR at 29. Also, required pre-shutdown activities, including the associated expenditure from the Decommissioning Fund, are assumed to begin approximately three years before the end of operations. Attachment 1 at 5; Exhibits 28, 29. Most importantly, the actual calculation of the projected cost of decommissioning changes depending on the assumed date for the start of decommissioning. 7/20/01 TR at 31-33, 38-42, 45, 52, 56-57.

B. Escalation Factors.

The schedule of payments is based on assumed cost escalation factors. These escalation factors reflect projected cost increases over time, due to both core inflation and inflation in the cost of specific decommissioning activities. 7/20/01 TR at 17-25, 37-39, Attachment 2. The inflation adjustment for the cost of decommissioning is wholly apart from any re-calculation of the estimated cost of decommissioning, as it reflects changes in energy, labor, materials and the like, which are unique to nuclear decommissioning. 7/11/01 TR at 97, 105; 7/20/01 TR at 39. The impact of different escalation factors on the schedule of payments can be significant. Exhibit 17. Due to the significance of cost escalations, (7/11/01 TR at 98; 7/20/01 TR at 39), a failure to adjust the escalation factors on a regular basis would likely result in the Fund being either over or under funded. Accordingly, the NDFC reserves the right to adjust the schedule of payments in the future to reflect any changes in the best estimates of applicable inflation and decommissioning costs. Nonetheless, the Committee finds that the proposed escalation factors that are utilized to arrive at the schedule of payments are reasonable and will, therefore, be approved.

C. Seabrook Station Sale.

The schedule of payments assumes that approximately 88.3% of Seabrook Station will be sold to a non-utility on December 31, 2002. 7/11/01 TR at 48, 136; Exhibit 1, Par. 10. While it is necessary to include this projection, an exact sale date cannot be known with certainty at this time. Further, the specific ownership interest in Seabrook Station ultimately sold to a non-utility cannot be known today. A sale after December 31, 2002, would find a different Fund balance on the date of sale. If less than the

expected interest in Seabrook Station is sold, or if some ownership interest is sold to an electric utility,<sup>14</sup> the projected schedule of payments would require adjustment by the NDFC. Nonetheless, the Committee will approve the assumptions with regard to the sale of Seabrook as being reasonable.

#### D. NRC Minimum Requirement

The NRC minimum requirement is determined by a calculation that is contained in NRC regulations and guidance documents (7/11/01 TR at 115, 126, 128), and is annually adjusted in the autumn to account for changes in inflation, labor, energy and disposal costs. 7/11/01 TR at 109, 128-130. While the calculated amount does not represent an exact site-specific decommissioning cost, it does provide a reasonable estimate of costs associated with decommissioning the site to the NRC minimum radiological cleanup requirements for unrestricted use. At the time a non-utility acquires an ownership interest in Seabrook Station, the Top-off amount will be based upon the current NRC formula including the latest annual adjustment factors. 7/11/01 TR at 115-116, 124. The NRC adjustments are typically updated annually in August. The Committee considers the NRC minimum-decommissioning estimate utilized as a basis for the Stipulation to be reasonable.

#### VI. Top-off

Before a non-utility is permitted to acquire an ownership interest in Seabrook Station, the Fund balance associated with that ownership interest must be sufficient to equal or exceed the NRC minimum requirements by the funding date. RSA 162-F:21-a, I. The Top-off payment in the Stipulation is how the Settling Parties propose that this

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<sup>14</sup> RSA 162-F:14, III defines “electric utility” consistently with the definition used by the NRC. Electric utilities are not required to make the so-called Top-off payment required of non-utilities. See: RSA 162-

requirement will be met. The Top-off may be paid by either the selling joint owner or the acquiring entity. The Settling Parties support a Top-off of \$57.46 million, based on an assumed sale at the end of December 31, 2002. 7/11/01 TR at 78. Exhibit 1. This amount reflects a commitment by the Settling Parties to a specific methodology for calculating the Top-off, and is not an exact figure. 7/11/01 TR at 116–117. The amount of the Top-off paid into the Fund will be affected by how accurate the assumptions prove to be. As discussed elsewhere, the percentage of ownership interest of Seabrook Station transferred to a non-utility will affect the amount of the Top-off. It is likely a change in the sale date would have the greatest impact on the Top-off. Because the owners will continue to make payments under the schedule of payments, the Fund will have more money than assumed in the Stipulation if the sale date is later than December 31, 2002. 7/11/01 TR at 87. Similarly, the Top-off payment will be adjusted to reflect increases or decreases in the NRC minimum requirement, prior to the transfer of an ownership interest in Seabrook Station.

RSA 162-F:21-a requires that the Fund balance for the ownership interest being transferred to a non-utility meet or exceed the NRC minimum “by the funding date.” If the Top-off was calculated using a funding date of 2026, the Top-off requirement would be approximately \$9.4 million.. 7/11/01 TR at 117. Exhibit 14. The estimated Top-off payment of \$57.46 million exceeds the statutory requirement by \$48 million. 7/11/01 TR at 117.

When the Top-off is determined at the time of transfer of the ownership interests, the methodology agreed to by the Settling Parties will be used, including the following assumptions. Exhibit 14.

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F:21-a.

- Decommissioning start date of 2015
- Real rate of return on investment of 2% after inflation
- Decommissioning costs escalation rate of 4.5%
- Decommissioning cost will be the most recent approved by the NDFC
- Fund balance will be calculated as of the date of sale
- NRC minimum requirement will be calculated using the most recent NRC determination

The NDFC finds that the methodology for determining the Top-off for the sale of Seabrook Station majority ownership interests is in the public interest. In calculating the Top-off requirement for Great Bay and Little Bay, the NDFC approves treating them as one company because of their common ownership. Exhibit 1, Par. 24. To determine that the approved methodology was correctly applied and the appropriate Top-off was paid into the Fund, the Committee will require the new owner to file an accounting of the Top-off. The NDFC will review the Top-off filing to determine that the approved methodology was correctly applied. Based on the approved assumptions, the Committee expects the Top-off to add approximately \$57 million to the Fund.

The additional infusion of \$57 million into the Fund is a significant reason why the Committee finds the Stipulation to be in the public interest. Payment of less than \$57 million could be cause for the Committee to re-visit the schedule of payments, the funding assurance, and the funding date; and make any necessary adjustments so that assumed Fund balances are achieved. Any Top-off requirement associated with a subsequent transfer of Seabrook Station ownership interests may be determined by the NDFC using a different methodology.

## **VII. Spent Nuclear Fuel and Greater-than-Class-C (GTCC) Wastes**

For the purposes of this Report and Order, decommissioning cost calculations and the resulting schedule of payments have been determined assuming that the U.S. Department of Energy (DOE) would take possession of spent nuclear fuel and GTCC wastes starting in 2025. Until DOE takes possession, the approved decommissioning plan calls for on-site storage of spent nuclear fuel and GTCC wastes. It is expected that dry cask on-site storage will begin as early as 2010 because the existing spent fuel storage facility at Seabrook Station will be full. Exhibit 3 at 22. As part of decommissioning, the Independent Spent Fuel Storage Installation will be constructed as a temporary repository for spent nuclear fuel and GTCC wastes, until it is accepted by DOE. At present, there is no certainty that the DOE will meet that schedule, especially since the site and completion date for a high level nuclear waste repository is uncertain. Exhibit 3 at 20. Any delay in DOE's acceptance of the spent nuclear fuel and GTCC wastes will result in a corresponding extension in the on-site dry cask storage of these materials at the Seabrook Station, resulting in an unknown increase in the projected cost of decommissioning. The NDFC believes it is appropriate at this time for the cost calculations to include the assumption that DOE will start accepting waste from Seabrook Station in 2025. This will, however, require an adjustment in the decommissioning cost estimate as a more definite date becomes available. In turn, the schedule of payments will be adjusted to reflect any resulting change in the projected cost of decommissioning, including any change in the projection as a result of additional delays in the acceptance of waste by DOE.

### **VIII. Premature Permanent Cessation of Operation**

If Seabrook Station operates until 2026, the NDFC is confident the Decommissioning Fund will be adequately funded to meet all decommissioning expenses, as they are incurred. The schedule of payments contained in the Stipulation and approved by this Report and Order provides funding for the projected costs of decommissioning, and the twenty-five years that remain before 2026 provide ample time to adjust the schedule of payments to account for changed circumstances. But, the NDFC must also anticipate the possibility of a Premature Permanent Cessation of Operation, commonly referred to as a “premature shutdown.” This concern was shared by MMWEC, which requested that the NDFC reject the Stipulation, contending there was inadequate provision for a premature shutdown before 2015. 7/20/01 TR at 127. As the Fund grows, the risk of inadequate funding in the event of a premature shutdown is lessened. The enhancement of the Fund through the Top-off, the protection afforded by the funding assurances, and the protection provided through the insurance programs discussed in a later section are all factors that significantly reduce the risk to the Fund in the event of a premature shutdown. In Docket 98-1, the NDFC addressed the uncertainties surrounding premature shutdown by requiring full-funding of the projected cost of decommissioning by 2015. While the NDFC has the discretion to continue that practice, valid reasons exist for a different approach.

One of the reasons for not requiring full-funding by 2015 is the improved outlook for nuclear power in general, and for Seabrook Station in particular. The Committee is persuaded by the record in this case that it is unlikely Seabrook Station will be shut down for economic reasons. The size of the Top-off payment is another important factor in the

Committee's decision. Cash in the Fund is the best security against a default in the case of a premature shutdown, and the Top-off provides a significant amount of it. 7/11/01 TR at 75. The \$57.4 million Top-off is three times the amount that will be paid into the Fund in 2001 under the schedule of payments currently in effect. Exhibit 3 at 85. If the Top-off is paid into the Fund in 2002 as projected, the Fund balance will be larger through 2006 than if the current requirement of full funding by 2015 were continued without any Top-off. Exhibit 8. With a longer time to grow through investment earnings, the value of the Top-off will likely be even greater. 7/11/01 TR at 102-103.

The funding assurance requirement in the recently amended RSA 162-F provides a new way for the Committee to ensure the viability of the Fund if the plant closes prematurely. The funding assurance requirement for a new owner significantly reduces the risk that any owner could escape its responsibility to meet all decommissioning obligations. RSA 162-F:21-c.

While these changed conditions and circumstances are sufficient for the NDFC to relax the current requirement of full-funding by 2015, the Committee remains committed to ensuring that the Fund is sufficient to meet decommissioning costs and provide for prompt decommissioning and site restoration after the permanent cessation of operations. The Committee's decision to move from requiring full-funding in 2015 and its adoption of the assumption that Seabrook Station will likely operate until October 2026, are both premised on the economics of accumulating sufficient money to complete decommissioning. This decision should not be construed as a commitment that decommissioning would not be required earlier than 2026.

The Committee is aware of the significance of the Seabrook Station plant to the Town of Seabrook and believes that the Town and the other local communities expect and deserve to have the facility decommissioned and as much of the site as possible available for non-nuclear commercial and industrial uses, in a timely fashion.<sup>15</sup> The Committee also recognizes the community expectation that decommissioning would likely begin in 2026, based on the NRC operating license life, or could begin as early as 2015, based on the NDFC's determination in Docket 98-1. At the same time, there has been no showing that there is a public benefit in commencing decommissioning before 2015. 7/20/01 TR at 129. Prompt decommissioning requires approximately ten years of planning, demolition and site restoration, followed by on-site storage of spent nuclear fuel and GTCC wastes until accepted by DOE. Exhibit 2 at 6. Exhibit 28. With a planned shutdown, the approximate three years of planning would be completed while the plant operated so that decommissioning and demolition could begin when the plant ended operation. Ibid. With a premature shutdown, however, that planning would likely only begin after shutdown, (7/11/01 TR at 134; 7/20/01 TR at 31-32, 74) postponing physical decommissioning and demolition for approximately three years.

The Committee sets the accumulation of money in the Fund so that the cost of decommissioning can be met at the assumed date of decommissioning. If the facility closes prematurely, creating a new and earlier decommissioning date, the Fund will not have all the money needed to complete decommissioning. While the funding assurance

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<sup>15</sup> Regardless of when decommissioning and site restoration begin, on-site storage of some spent nuclear fuel and GTCC wastes is expected through 2046, due to the delay in DOE meeting its obligation to provide a disposal site for these materials. The storage facility will be isolated, permitting unrestricted use of the rest of the site, once it is released by the NRC. Under no circumstances will spent nuclear fuel or GTCC wastes be received at Seabrook Station from any other location. RSA 127:77-b.

will protect against a default, the Committee believes it is appropriate to re-state the requirement of prompt decommissioning.

Clearly, the longer money is in the Fund and is permitted to grow, the more value that will be produced by it. In a sense, time is a form of assurance that the Fund will meet its goals. The investment strategy employed by the Fund provides for higher risk/higher yield investments to maximize growth, with conversion to cash or cash equivalents starting five years before decommissioning. 7/20/01 TR 19-21. Time is needed to adjust the Fund in the case of an unplanned shutdown. 7/20/01 TR at 33. The actual cost to begin decommissioning before 2015 would only be determined if and when a premature shutdown occurred. 7/11/01 TR at 132-133; 7/20/01 TR at 31-32. Again, time would be needed to determine the actual cost if Seabrook Station were to shut down in a year other than 2015 or 2026.

Weighing all of these considerations, the NDFC finds that there is no basis in the record for changing from the prompt dismantlement and site restoration requirement. In applying the prompt decommissioning requirement to a premature shutdown before 2015, the Committee now expects dismantlement and site restoration to begin no earlier than 2015.<sup>16</sup> Decommissioning on that schedule would be consistent with the public expectation. Depending on when a premature shutdown might occur, this schedule provides time for planning and adjustment of the Fund. Because decommissioning costs would vary, depending on the actual date of a premature shutdown (7/20/01 TR at 23-24), the NDFC would promptly address how the decommissioning obligations would be met. 7/11/01 TR at 132-133; 7/20/01 TR at 33-34. The record is convincing that through

adjustment of the schedule of payments (7/11/01 TR at 133), reset of the funding date, application of the funding assurance and not requiring demolition or site restoration before 2015, decommissioning could be completed in a timely manner. Further, the NDFC believes a reasonable cash flow obligation from the owners could be fashioned to reflect decommissioning expenditures over time. Exhibits 20, 21.

The NDFC finds the public interest is served by applying this approach to the issue of premature shutdown. This approach provides greater certainty about the treatment of a premature shutdown than the Stipulation. The Committee believes this approach makes it unnecessary to further explore MMWEC's concerns about how the Stipulation would address a premature shutdown. The NDFC establishes this standard for planning purposes, but advises all parties to recognize that the NDFC retains the authority, pursuant to RSA 162-F:22, to re-visit this determination if there are changed circumstances, including the actual shutdown of the facility. 7/11/01 TR at 26, 28; 7/20/01 TR at 56-57.

#### **IX. Funding Date**

The NDFC must set the funding date in order to establish the schedule of payments. RSA 162-F:19; 7/11/01 TR at 77. The funding date has never been set before because it is a new concept provided as part of the comprehensive amendment of RSA 162-F. Exhibit 30. The Settling Parties request a determination that the funding date be 2026. Exhibit 15.

Funding date is defined by RSA 162-F:14, VII as "the date established by the committee at which time the fund shall have sufficient moneys to complete

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<sup>16</sup> This in no way would relieve the owners from their obligations to respond to an accident that resulted in a premature shutdown, including calling on all available insurance proceeds to complete decommissioning

decommissioning.” The Explanation of the Intent and Meaning of House Bill 740 states this means that the present value of the projected cost of decommissioning is to be in the Fund by the funding date.<sup>17</sup> Exhibit 30 at 4-A. The funding date is necessary for setting the schedule of payments because it is the final date for contributions into the Fund by an owner. Without that date, an appropriate division of payments over the remaining years cannot be calculated. The NDFC has flexibility in setting the schedule of payments for each owner. RSA 162-F:19, III. Clearly, the NDFC has the authority to set a different schedule of payments for each owner. With an appropriate funding assurance in effect, the Committee may permit an owner to spread payments over a longer period of years. RSA 162-F:19, IV. “Any such schedule of payments shall be in lieu of a schedule of payments based on the funding date.” Ibid. From this the NDFC concludes that the statute permits the NDFC to set a funding date at any year up to the license expiration date, once the funding assurance is in place.

The schedule of payments included in the Stipulation and approved by this Report and Order, adopts a more rapid set of payments for the period of 2002-2006 with a more relaxed schedule to complete funding, once the funding assurances are approved. The schedule of payments included in the Stipulation, in effect, uses two funding dates. Payments in 2002-2006 are calculated using a funding date of 2015. 7/11/01 TR at 72. Payments in 2007-2026 use a funding date of 2026. Ibid. This approach is permissible and the NDFC finds it appropriate in this case, taking into consideration a Top-off

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activities necessary to make the facility safe and stable.

<sup>17</sup> The so-called “Annotations” were prepared by the NDFC, the Seabrook Station joint owners and the other parties to the collaborative process that produced HB 740. The Annotations were considered by the New Hampshire General Court and the New Hampshire Senate when HB 740 was before each body. The House recognized the Annotations as legislative intent. The Senate as a body made no comment on the Annotations. One Senator found the section on funding date ambiguous. Exhibit 31. The Committee finds

presumed to be approximately \$57 million. This is especially so since the Committee retains the ability to change the funding date in a future proceeding.

The NDFC must establish a schedule of payments that will permit the Fund to meet all projected costs of decommissioning. The approved schedule of payments in this docket does so. As crafted, the schedule of payments through 2006 meets the requirements of RSA 162-F, even though no funding assurance will be in place when this Report and Order is issued. The schedule of payments beyond 2006 is acceptable because it meets the statutory requirement of fully funding decommissioning, and the NDFC will use the schedule pending determination of funding assurances in the next docket. Most certainly, the NDFC will make a determination on funding assurance requirements before 2006, making it unnecessary for the Committee to commit to a funding date for payments to be made more than five years hence.

#### **X. Customer Contributions**

New Hampshire ratepayers will no longer pay a decommissioning surcharge once their utility sells its interest in Seabrook Station. RSA 162-F:21-b, II. The utilities subject to the jurisdiction of the NHPUC must calculate the amount paid by New Hampshire ratepayers as of the date of sale, plus accumulated interest and earnings, and report the amount to the NDFC. RSA 162-F:21-b, II(c). When calculating how much customers have contributed to the Decommissioning Fund, each of the New Hampshire utilities stated they will include any Top-off they pay at the time of selling their interest in Seabrook Station. 7/11/01 TR at 142-143; 7/20/01 TR at 11.<sup>18</sup> The treatment of decommissioning contributions by New Hampshire ratepayers for rate-making purposes;

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the Annotations a helpful guide to applying RSA 162-F, but will look to the language of the statute as controlling.

including any Top-off included in the calculation of the customer contribution will be controlled by individual utility reorganization plans approved by the PUC, and will be unaffected by this calculation. RSA 162-F:27. Rather, this calculation will be used to determine if New Hampshire customers are entitled to a refund from the Decommissioning Fund, after all decommissioning is completed. RSA 162-F: 21-b, II(c). The NDFC accepts the proposal of the Settling Parties (Exhibit 1 at Par. 29) and requires each utility with New Hampshire customers to file the calculation of the customer contribution with the NDFC within 90 days of the sale of its ownership interest in Seabrook Station.

#### **XI. Public Health and Safety**

The primary reason for requiring payment into the Decommissioning Fund is to protect the health and safety of New Hampshire's citizens by ensuring that sufficient monies will be available to meet all decommissioning expenses. Chapter 193, Laws of 2001, Section 1; RSA 162-F: 1. In setting the schedule of payments, the NDFC must ensure that all decommissioning expenses will be met commencing on or before the assumed date of permanent cessation of operation, and so that the public health and safety is protected.

In regard to the public health and safety, the NDFC must consider the possibility of an accident at Seabrook Station. If that were to occur, federally mandated insurance under the Price-Anderson Act would be available to satisfy liability claims for personal injury and property damage.<sup>19</sup> The Price-Anderson Act requires nuclear station licensees to provide financial protection to compensate those harmed by a nuclear incident. All

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<sup>18</sup> Any Top-off payment treated as a customer contribution shall be recognized as authorized by the NDFC.

licensees must participate in an indemnification program to provide funding to meet liabilities from a nuclear accident, including the cost of responding to the accident and any precautionary evacuations. The principal purpose of Price-Anderson is to cover, through an insurance program, the costs of off-site losses, such as citizen evacuations, relocation costs and off-site decontamination.<sup>20</sup> All licensees are required by the NRC to provide this insurance. Presently, the NRC expects the nuclear power industry to be able to provide a maximum of approximately \$8.84 billion of liability costs per incident.<sup>21</sup>

In addition to Price-Anderson, the Seabrook Station owners maintain two insurance policies with Nuclear Electric Insurance Limited (NEIL). Exhibit 22. These policies provide coverage of up to \$2.75 billion for property damage caused by an accident. Exhibit 22. In the first instance, NEIL insurance would be available to ensure that all necessary actions were taken following an accident to make Seabrook Station safe and stable, which could include decontamination activities. Exhibit 22. If an accident were so severe that the plant had to permanently cease operation, NEIL insurance would be applied to meet any difference between the Fund balance and the cost of decommissioning. The cost of decommissioning would be determined by the NRC-required post-shutdown decommissioning activities report (PSDAR).<sup>22</sup> 7/11/01 TR at 134. It is the expectation of the Seabrook Station owners that, in the event of a permanent shutdown due to an accident, NEIL would pay into the Fund the total

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<sup>19</sup>The Price-Anderson Act; Public Law 85-256, 71 Stat. 576, amending the Atomic Energy Act of 1954 to include Section 170 and related definitions in Section 11.

<sup>20</sup>NRC Report, SECY-98-160, NRC's 1998 Report to Congress on the Price-Anderson Act, July 2, 1998.

<sup>21</sup>Title 10, Code of Federal Regulations, Part 140 (sec. 140.11(a)(4)), based on 103 reactor units.

<sup>22</sup>Title 10, Code of Federal Regulations, Part 50 (sec. 50.82(a)(4)(i)). The PSDAR is the site-specific determination of planned decommissioning activities and costs. In preparing the PSDAR, the requirements of the NDFC for site restoration would be considered by the NRC, but would not necessarily be controlling, for purposes of the NRC determination of what must be done. Unlike the current NRC minimum requirements, costs associated with spent nuclear fuel and GTCC wastes would be included in the PSDAR.

difference between the Fund balance and the PSDAR decommissioning costs. 7/20/01 TR at 87-88, 100-101. Exhibit 22.

The NDFC is satisfied that Price-Anderson insurance will be sufficient to meet the off-site liabilities resulting from an accident, so that the cost of maintaining the public health and safety will be met by the nuclear power industry.<sup>23</sup> The NDFC is also satisfied that the cost of making the plant safe and stable after an accident will be met. It is less clear, however, whether the difference between the Fund balance and the full cost of decommissioning and site restoration, as required by the NDFC, would be provided by insurance. Because the NEIL insurance policies are not a part of the record, the NDFC has not reviewed their terms. At the least, the record suggests that the final determination of the amount of insurance coverage for decommissioning funding may be made by an insurance company, and not by the Seabrook Station owners, the NRC, or the NDFC. Exhibit 22. For this reason, the Committee is unwilling to determine that all decommissioning costs would be guaranteed by the NEIL insurance policies in the event of an accident at the Seabrook Station. In particular, it is unclear whether the terms of the NEIL insurance coverage would only fund decommissioning after many years elapsed following an accident, rather than NDFC-required prompt decommissioning. While the Committee does not view NEIL insurance as a form of funding assurance, this is an area that will be further examined when the NDFC considers the type and size of funding assurances for a new owner, prior to the transfer of any ownership interests.

However, it is clear that the money necessary to meet the immediate needs of containing radioactive contamination and making the Seabrook Station safe following an

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<sup>23</sup> The NDFC will complete a thorough review of insurance provisions and emergency response planning in light of recent events and pending federal legislation.

accident would be available from the combination of Price-Anderson and NEIL insurance. Combined, these policies are sufficient to ensure that the owners of Seabrook Station will meet the immediate costs of an accident, including cleanup and removal of any resulting radiological contamination. Accordingly, the NDFC is satisfied that in the event of a catastrophic accident, the public health and safety is protected by the overlapping provisions of the Fund, funding assurance, and the federally mandated nuclear insurance program.

The NDFC is also charged with providing for decommissioning if Seabrook Station simply ceases operation, either because it reaches the end of its useful life, or the owners close the facility prematurely. The Committee will use the NRC minimum decommissioning funding requirements as a benchmark for determining which activities are necessary to protect the public health and safety. Stated simply, the NRC minimum requirement is the estimated cost of removing radioactive contamination.

Currently, the NRC decommissioning requirements comprise approximately 65% of the total decommissioning funding required by the NDFC.<sup>24</sup> The NDFC decommissioning expense estimate is greater than the NRC's because RSA 162-F requires a more comprehensive estimate of the cost of decommissioning. In addition to the NRC minimum requirements, New Hampshire's cost estimate includes the cost of site restoration, as well as storage and removal of spent nuclear fuel and greater-than-Class-C (GTCC) wastes. 7/20/01 TR at 72; Exhibit 2 at 6. As discussed elsewhere, Attachment 1 is the new C/I decommissioning standard, reflecting the revised decommissioning definition. RSA 162-F:14. When considered in 2001 dollars with

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<sup>24</sup> Historically, this ratio has varied as the estimate of the cost to meet the NRC minimum decommissioning requirement has changed. It is expected that the NRC cost estimates will be adjusted annually.

decommissioning assumed to begin in 2026, the estimated decommissioning cost is approximately \$556 million under the C/I Standard. Presently, \$362 million is needed to meet the NRC minimum at year-end 2002. Exhibit 14.

Pursuant to RSA 162-F:21-a, the decommissioning funds accumulated for the ownership interests being sold are dedicated to meeting the NRC minimum decommissioning funding requirements, as are payments made in compliance with RSA 162-F:21-a I, the so-called "Top-off" payments. If approximately 88% of Seabrook Station is sold by year-end 2002, as expected, it is reasonable to project that the Decommissioning Fund will have approximately \$208 million at the time of that sale, prior to the Top-off. Exhibit 14. The projected Top-off of \$57.46 million proposed by the Settling Parties will be added to the Fund, further reducing the amount needed to complete the NRC minimum funding requirements. That amount will be secured by the funding assurance, the nature and character of which will be established by the NDFC, as discussed previously.

Accordingly, the NDFC is confident that public health and safety will continue to be protected. The combined insurance programs will ensure that sufficient money will be available to meet all costs of containing and removing radioactive contamination, and preventing or mitigating radiation exposures to persons, in the unlikely event of an accident at the Seabrook Station. Sufficient funding will also be on hand to accomplish necessary decommissioning, should the Seabrook Station cease operation early for any other reason, once the funding terms of the Stipulation and the funding assurances are in place. In addition, the combination of the Top-off and the insurance is expected to prevent any minority owner from being held responsible for a disproportionate share of

decommissioning costs, which further protects the public from the Seabrook Station failing to pay all decommissioning costs.

## **XII. Public Interest**

In addition to finding that the public health and safety is served, the Committee believes the terms of the Stipulation as described in this Report and Order are in the public interest. The sale of the Seabrook Station ownership interest held by New Hampshire electric utilities was found to be in the public interest by the New Hampshire Legislature. This Report and Order advances the sale process by providing regulatory certainty on decommissioning funding requirements. Also, the market value of the Seabrook Station will likely increase as a result of a reduced projected cost of decommissioning, an attractive schedule of payments, and the Top-off. The effect of a higher value and sale price will be to reduce stranded costs charged to New Hampshire ratepayers, consistent with the intent of the Legislature in revising RSA 162-F. Chapter 193, Laws of 2001, Section 1, III.

These immediate gains enhance the long-term benefits of the terms of the Stipulation, as embodied in this Report and Order. The Seabrook Station will be removed, including the abandoned Unit 2 containment structure, when Unit 1 ends its operating life. Exhibit 9. Prompt demolition and site restoration will be undertaken and the Seabrook Station will never be entombed. RSA 162-F:14, IV; Exhibit 30 at 3-A. Changed circumstances, discussed more fully elsewhere, support a change from the prior requirement of full funding by 2015. Of course, the NDFC retains the authority and flexibility to change funding requirements and all other terms in response to future changed circumstances, including a premature shutdown of the Seabrook Station. RSA

162-F:22, III. 7/11/01 TR at 26, 28. The record is replete with Committee members reminding the parties that, notwithstanding the phraseology of the Stipulation, the NDFC retains the authority to change the schedule of payments, the funding assurances and all other determinations (7/11/01 TR at 162), especially in reaction to a premature shutdown. 7/11/01 TR at 132-133; 7/20/01 TR at 56-57. The Settling Parties recognized this authority when presenting the Stipulation for NDFC approval. 7/11/01 TR at 24. With the Schedule of Payments approved herein, the Fund will have substantially all of the moneys that would have been collected under the prior funding requirements through 2006. Exhibit 8. After that, with the funding assurances approved by the NDFC, the Fund will continue to grow to meet decommissioning costs. As an added benefit to New Hampshire customers, the unfunded balance will no longer be secured by them; instead, a funding assurance from a new owner will provide for full funding of decommissioning obligations until decommissioning is completed. RSA 162-F:21-a, III.

The Stipulation is fair to the Seabrook Station owners seeking to sell their ownership interests and to any prospective new owner. Likewise, the Stipulation provides benefits to the Seabrook Station owners that are not selling their shares. For example, the reduced projected cost of decommissioning along with the revised schedule of payments dramatically reduces the annual obligations of MMWEC through 2015, in some years by as much as two-thirds. Exhibit 13. Moreover, the funding assurance requirement and the Top-off that will be paid when the other current owners depart, provide added protection for the remaining owners against the possibility of the NRC holding them responsible for more than their proportionate share of decommissioning expenses.

The Town of Seabrook participated in the docket as a full party and signed the Stipulation. The Town endorsed the Stipulation, while also supporting the NDFC's authority to act "to protect the interests of the Town." Exhibit 10. Moreover, the Town supports the Memorandum of Understanding requiring improvements in the appearance of Seabrook Unit II and the removal of Unit II when Unit I is demolished. Exhibit 9 at 3. Agreement on the ultimate disposition of Seabrook Unit II permits the site restoration to be comprehensive, which will enhance the ability of the site owners and the Town to coordinate the eventual transition to non-nuclear activities. The Town's participation is consistent with the intent of the RSA 162-F, Chapter 193, Laws of 2001, Section 1, VI. The Town's agreement with the new C/I decommissioning standard fulfills the requirement that the views of the Town be considered when setting the funding requirement for site restoration. RSA 162-F:14 (b). This Committee has given significant weight to the views and interests of the Town of Seabrook. The Committee will continue to solicit the views of the local communities in future proceedings, including the docket for establishing funding assurance obligations for a new owner.

**Conclusion**

The NDFC finds that the terms of the Stipulation are in the public interest and, therefore, approves the Stipulation as submitted and explained in the record of the proceeding and as further explained by this Order.

**Based on the foregoing, it is hereby**

**ORDERED**, that the Stipulation and Proposed Order on Findings and Determinations is approved, subject to the explanations and clarifications of this Order; and it is

**FURTHER ORDERED**, that the Commercial/Industrial Use Standard for determination of the projected cost of decommissioning, attached hereto as Attachment 1, is adopted; and it is

**FURTHER ORDERED**, that the projected cost of decommissioning Seabrook Station to be used in calculating the schedule of payments for Seabrook Station owners is \$555,537,768, in 2001 dollars; and it is,

**FURTHER ORDERED**, that the schedule of payments approved and attached as Attachment 2 shall be effective as of January 1, 2002, and continue in effect until changed by order of the NDFC; and it is

**FURTHER ORDERED**, that the Seabrook Station owners and all subsequent owners of the facility who acquire an interest hereafter, are hereby required to make monthly payments into the Nuclear Decommissioning Financing Fund, in accordance with the Attachment 2 schedule, until further ordered by the Committee; and it is

**FURTHER ORDERED**, that NAESCO shall continue to file Annual Decommissioning Updates in March of each year, in accordance with the provisions of the Committee's prior orders, and including a report on the status of the auction of Seabrook Station shares to be conducted by the NHPUC; and it is

**FURTHER ORDERED**, that all Top-off payments made under the terms of this Order and as part of the NHPUC liquidation of nuclear generation assets, shall be made by wire transfer to the Nuclear Decommissioning Fund on the date of sale, with a final true-up of the payments to be deposited in the Fund upon the subsequent notification by the Fund Trustee of the Fund balance on the date of sale; and it is

**FURTHER ORDERED**, that the buyer(s) of Seabrook Station ownership interests, as part of the NHPUC liquidation of nuclear generation assets, shall, within 30 days of the sale date, submit to the Committee an accounting of the amount of the Top-off and how it was calculated; and it is

**FURTHER ORDERED**, that the payment to the Decommissioning Financing Fund shall be calculated using the methodology approved herein, and NAEC, NHEC and NEP shall submit to the Committee the final calculation of the amount their respective customers contributed to the Decommissioning Fund, including a separate identification of any Top-off paid at the time of sale.

By Order of the Nuclear Decommissioning Financing Committee this 5<sup>th</sup> day of November 2001.

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Thomas B. Getz  
Chairman

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Jeb E. Bradley  
State Representative

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Georgie Thomas  
State Treasurer

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Beverly Hollingworth  
State Senator

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John Stephen  
Asst. Commissioner  
Department of Safety

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Willard F. Boyle  
Representative of the Town of  
Seabrook

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Kirk Stone  
Governor's Office of Energy  
& Community Services

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James P. Fredyma  
Asst. Commissioner, Health &  
Welfare Department