

STATE OF NEW HAMPSHIRE



CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Susan S. Geiger
Nancy Brockway

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland

PUBLIC UTILITIES COMMISSION
8 Old Suncook Road
Concord, N.H. 03301-7319

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX No. 271-3878

Website:
www.puc.state.nh.us

June 21, 2002

Raymond W. Hepper
Pierce Atwood
One Monument Square
Portland, Maine 04101-1100

RECEIVED

JUN 26 2002

DEPARTMENT OF
ENVIRONMENTAL SERVICES

Re: FPL Energy Seabrook, LLC
Transfer of Certificate of Site and Facility

Dear Mr. Hepper:

The New Hampshire Site Evaluation Committee ("Committee") has received and reviewed your May 21, 2002 letter requesting a decision on whether Committee approval is required in order to effect a transfer to FPL Energy Seabrook, LLC ("FPLE Seabrook") of the Certificate of Site and Facility issued to Public Service Company of New Hampshire ("PSNH") for Seabrook Station ("Certificate").

As your letter notes, the Certificate was issued in January of 1974 under authority of RSA 162-F, the predecessor statute to the present RSA 162-H. The present statute provides that certificates issued prior to January 1, 1992 are subject to the provisions of the old law. RSA 162-H:5, II. Under the old law, Committee approval was not required to transfer a certificate. Therefore, the Committee concludes that, so long as there are no changed circumstances that would trigger the need for a new certificate under the current law, which appears to be the case based on the May 21, 2002 letter, it is not necessary for the Committee to approve the transfer of the Certificate in this case.

The Committee notes, however, that several of its member agencies retain jurisdiction, independent of the Certificate, over certain operational components of Seabrook Station. For example, the Department of Health and Human Services regulates industrial radiography (i.e., x-raying welds) under RSA 125-F. Significantly, the Department of Environmental Services has authority over air emissions under RSA 125-C and water discharges under RSA 485-A:13, as well as section 401 of the federal Clean Water Act, which enables the agency to impose conditions necessary to protect water quality. The provisions of the original

Raymond W. Hepper
Pierce Atwood
June 21, 2002
Page 2

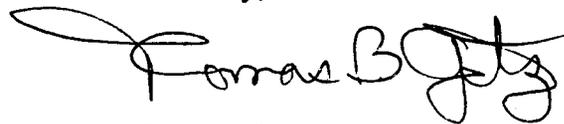
Certificate with respect to the plant's water discharges were expressly made nontransferable, so FPLE Seabrook should take appropriate steps to ensure transfer of its water discharge permit.

In addition, the Public Utilities Commission retains certain regulatory authority over the plant. For example, assuming that the plant will be exempt from regulation as a "public utility" pursuant to RSA 362:4-c, I, that provision also requires that "[g]eneral or facility-specific safety and reliability standards established by the [public utilities] commission for electric generation facilities" shall continue to apply to those facilities.

These examples are not intended to be an exhaustive list. FPLE Seabrook should carefully review federal and New Hampshire laws, rules and regulations to ensure compliance with permitting and regulatory requirements other than those addressed by the Committee.

I trust the information above is responsive to your inquiry. If you have further questions, please contact Jennifer Patterson, Senior Assistant Attorney General at 271-3679.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz". The signature is fluid and cursive, with a large initial "T" and "G".

Thomas B. Getz, Vice Chairman
Site Evaluation Committee

PIERCE ATWOOD

RAYMOND W.
HEPPER

DIRECT
207.791.1239

E-MAIL
RHepper@
PierceAtwood.com

May 22, 2002

BY OVERNIGHT MAIL

Helen Vezina
Administrative Assistant
Dept. of Environmental Services
6 Hazen Drive
Concord, NH 03302-0095

Re: Request for Finding that New Hampshire Site Evaluation Committee
Approval of the Transfer of the Certificate of Site and Facility for Seabrook
Station is Not Required Under RSA 162-H or, In the Alternative,
Application For Exemption From the Approval Requirements Pursuant to
RSA 162-H:4, IV.

Dear Ms. Vezina:

Pursuant to your telephone conversation today with Ray Hepper, enclosed
are 20 copies of the letter to Chairman Bisbee of the Site Evaluation Committee.

Please contact us if you need anything further.

One Monument Square
Portland, ME 04101-1100
207.791.1100 v
207.791.1350 f

77 Winthrop Street
Augusta, ME 04330-5552
207.622.6311 v
207.623.9367 f

115 Court Street
P.O. Box 1009
Portsmouth, NH 03802-1009
603.433.6300 v
603.433.6372 f

Six Harris Street
Newburyport, MA 01950
978.465.9599 v
978.465.9945 f

EMAIL
info@pierceatwood.com

WEB SITE
www.pierceatwood.com
(70020040.1)

Sincerely,



Deborah Smart
Secretary to Raymond W. Hepper

RWH/djs
Enclosures



May 21, 2002

RAYMOND W.
HEPPER

DIRECT
207.791.1239

E-MAIL
RHepper@
PierceAtwood.com

BY OVERNIGHT MAIL

Chairman G. Dana Bisbee
Site Evaluation Committee
c/o Dept. of Environmental Services
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Re: Request for Finding that New Hampshire Site Evaluation Committee Approval of the Transfer of the Certificate of Site and Facility for Seabrook Station is Not Required Under RSA 162-H or, In the Alternative, Application For Exemption From the Approval Requirements Pursuant to RSA 162-H:4, IV.

Dear Chairman Bisbee:

By this letter, FPL Energy Seabrook, LLC ("FPLE Seabrook") respectfully requests a written decision from the New Hampshire Site Evaluation Committee (the "Committee") that, pursuant to RSA 162-H, Committee Approval of the transfer to FPLE Seabrook of the Certificate of Site and Facility issued to Public Service Company of New Hampshire ("PSNH") for Seabrook Station on January 29, 1974 (the "Certificate") is not required. In the alternative, and only if the Committee determines that the approval provisions are applicable to the transfer of the Certificate, FPLE Seabrook respectfully requests that the Committee determine that other existing statutes provide adequate protection of the objectives of RSA 162-H:1 and exempt FPLE Seabrook from the approval provisions of the statute.

One Monument Square
Portland, ME 04101-1100
207.791.1100 v
207.791.1350 f

77 Winthrop Street
Augusta, ME 04330-5552
207.622.6311 v
207.623.9367 f

115 Court Street
P.O. Box 1009
Portsmouth, NH 03802-1009
603.433.6300 v
603.433.6372 f

Six Harris Street
Newburyport, MA 01950
978.465.9599 v
978.465.9945 f

EMAIL
info@pierceatwood.com

WEB SITE
www.pierceatwood.com

Given the objectives of all of the Parties to the pending sale of a controlling interest in Seabrook Station and the State to close this transaction expeditiously, we request that the Committee take up this very important matter as soon as practicable and issue a ruling on this request at the earliest possible time but, in no event, later than June 21, 2002. To help the Committee in accomplishing this schedule, FPLE Seabrook and the Selling Owners stand ready to provide any information or other assistance that the Committee or its counsel deems appropriate.

I. Introduction and Summary

As part of electric industry deregulation in New Hampshire and other New England states, most parties with ownership interests in Seabrook Station either agreed, or were required, to divest their interests in the facility.¹ To accomplish this end, the New Hampshire Public Utilities Commission (the "NHPUC") and the Connecticut Department of Public Utility Control (the "CTDPUC") jointly retained J.P. Morgan Securities, Inc. to conduct a public auction of the Selling Owners' interests in Seabrook Station.² FPLE Seabrook emerged from that competitive auction as the winning bidder and entered into a Purchase and Sale Agreement (the "PSA") dated April 13, 2002, with the Selling Owners and North Atlantic Energy Service Corporation ("NAESCO") for an aggregate purchase price of \$836.6 million (subject to certain adjustments at

¹ See RSA 369-B:1, I&II; 369-B:3, IV(b)(13); 374-F:3, III; Chapter 29:15, II, Laws of 2001 (New Hampshire); C.G.S. § 16-244g (Connecticut).

² Included in the auction were the interests of North Atlantic Energy Corporation ("NAEC"), The United Illuminating Company ("UI"), New England Power Company ("NEP"), The Connecticut Light and Power Company ("CL&P"), New Hampshire Electric Cooperative, Inc. ("NHEC"), Canal Electric Company ("Canal"), Great Bay Power Corporation ("Great Bay") and Little Bay Power Corporation ("Little Bay") (collectively "Selling Owners") which, in the aggregate, own 88.22889% of Seabrook Station. For purposes of convenience, the remainder of this filing will refer to the sale of these interests as "the sale of Seabrook Station."

closing). Assuming that receipt of the necessary regulatory approvals and satisfaction of the other closing conditions are obtained, the parties to the PSA have targeted a late November 2002 closing date. To accomplish this target, the parties have adopted a tight schedule under which the vast majority of the state and federal regulatory filings have already been made.³ In accordance with that schedule, the NHPUC and New Hampshire Decommissioning Financing Committee ("NDFC") decisions related to the sale are currently expected by late August.

As explained in more detail below, under the plain language of RSA 162-H:5, Committee approval of the transfer of the Certificate is not required. In 1992, when the State's two siting laws were integrated into a single statute, 162-H, the Legislature added the requirement to RSA 162-H:5 that the Committee must approve a transfer of certain certificates of site and facility. See RSA 162-H:5, I. However, RSA 162-H:5, II also provides that: "[f]acilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters." The Certificate was granted to PSNH pursuant to RSA 162-F prior to January 1, 1992 and is, therefore, subject to the prior provisions of RSA 162-F under which the Certificate was granted. Prior to 1992, RSA 162-F did not contain any provision requiring Committee approval of a transfer of a certificate of site and facility issued under that chapter. Indeed, while there were several transfers of Seabrook ownership interests during the 1970s and 1980s, none of these transfers were approved by the Committee. Since the prior provisions of

³ As discussed in greater detail below, these filings include approvals from the NHPUC, the Nuclear Decommissioning Financing Committee ("NDFC"), the New Hampshire Department of Environmental Services ("NHDES"), the Massachusetts Department of Telecommunications and Energy ("MDTE"), CTDPU, the Vermont Public Service Commission ("VPSC"), the New York Public Service Commission ("NYPSC"), the Environmental Protection Agency ("EPA"), the Nuclear Regulatory Commission ("NRC"), the Federal Energy Regulatory Commission ("FERC"), the Federal Trade Commission ("FTC") and the Federal Communications Commission ("FCC").

RSA 162-F to which the Certificate is subject do not require Committee approval of a transfer, the transfer of the Certificate to FPLE Seabrook is not subject to the Committee's approval. This proposition is further supported by the legislative history and purpose of RSA 162-F and RSA 162-H, as well as the precedent of transfers that have been made since 1992 and that have not undergone Committee review.

However, if the Committee concludes that its approval of the transfer of the Certificate is required, FPLE Seabrook requests that the Committee exempt this transfer from such requirement in accordance with RSA 162-H:4, IV. That section permits the Committee to grant an exemption where "other existing statutes provide adequate protection of the objectives of RSA 162-H:1." To determine if such protection is afforded, the statute sets forth a four-part test ensuring that the interests of the citizens of New Hampshire are examined and protected. As detailed in Part III below, this test is fully satisfied by, among other things, the rigorous and comprehensive review of this transaction by numerous state and federal agencies including, but not limited to, the NHPUC, the NDFC, the NHDES, the NRC and the EPA that has already commenced.

II. Committee Approval of the Transfer of the Seabrook Station Certificate is Not Required

On February 1, 1972, when PSNH filed an application for the Certificate for the construction of Seabrook Station with the NHPUC, RSA 162-F (Chapter 357 of the Laws of 1971), was the governing siting statute.⁴ Under the provisions of RSA 162-F in effect at that

⁴ *Order No. 11,267 Public Service Company of New Hampshire Seabrook Nuclear Power Plant Certificate of Site and Facility Report*, NHPUC Docket No. D-SF6205 (January 29, 1974) [hereinafter "Order No. 11,267"].

time, the purpose of the statute was to develop “a procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each site.”

RSA 162-F:1 (Chapter 357 of the Laws of 1971).⁵ Under the prior RSA 162-F, the Site Evaluation Committee did not issue certificates. Rather, under the statute:

The site evaluation committee, after having considered available alternatives and the environmental impact of the site or route, must find that the site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies and will not have an unreasonable adverse effect on the esthetics, historic sites, air and water quality, the natural environment, and the public health and safety, and shall send its findings to the commission within 14 months of the filing of an application for a certificate of site and facility.

RSA 162-F:8 (Chapter 357 of the Laws of 1971). On July 27, 1973, the Committee found that the above-quoted statutory criteria had been met for Seabrook Station. The NHPUC then further reviewed the application. RSA 162-F provided that the NHPUC:

[S]hall issue or deny a certificate and shall be bound by the findings of the site evaluation committee. In its decision, the commission must find that the construction of the facility:

- (a) will not unduly interfere with the orderly development of the region with due consideration having been given to the views of the municipal and regional planning commissions and municipal legislative bodies;
- (b) is required to meet the present and future demand for electric power;
- (c) will not adversely affect system stability and reliability and economic factors; and
- (d) will not have an unreasonable adverse effect on aesthetics, historical sites, air and water quality, the natural environment and the public health and safety.

RSA 162-F:8 (Chapter 357 of the Laws of 1971). The NHPUC found that all of the statutory requirements had been fulfilled and the construction of Seabrook Station would be “consistent

⁵ This provision is similar to the Declaration of Purpose in the current RSA 162-H:1, II.

with the public good” and hence, granted PSNH the Certificate on January 29, 1974.⁶ Hence, the Site Evaluation Committee would hold hearings and make findings, but it was the NHPUC that issued the Certificate. Although the NHPUC was bound by the Committee’s findings, the NHPUC was charged with making additional findings and actually issuing certificates. Thus, it would appear that if any agency had jurisdiction with respect to transfers, it was the NHPUC.

Notably, none of the provisions of RSA 162-F in effect in 1974 required approval for the transfer of an existing facility’s Certificate. Rather, the requirements for seeking approvals for a certificate stated that “[n]o certificate is required for bulk power facilities already under construction or in operation on said effective date, but such certificates are required for sizeable additions thereto as defined by the commission.” RSA 162-F:6, I (Chapter 357 of the Laws of 1971). Though there were subsequent transfers of ownership in the Seabrook facility throughout the 1970s and 1980s, it does not appear that the Committee ever reviewed or acted upon such transfers.⁷

In 1989, the Energy Facility Siting, Licensing, and Operation Study Committee (the “Study Committee”) was created by recommendation of the State Electrical Energy Needs Planning Committee in order to investigate the procedures within RSA 162-F and 162-H for “efficiency and fairness”. The Study Committee focused its attention on integrating the State’s

⁶ The issuance of the Certificate underwent tremendous public and administrative scrutiny. During the two-year process of issuing the Seabrook Station Certificate, the NHPUC and the Site Evaluation Committee conducted thirty-two (32) days of joint public hearings, participated in a review of the plant site, received over five thousand eight hundred (5,800) pages of testimony involving some one hundred twenty (120) witnesses, and reviewed approximately two hundred (200) exhibits before approving the certificate. *See* Order No. 11,267 at p. 2.

⁷ Notwithstanding the lack of Committee jurisdiction over prior transfers of Seabrook ownership interests, as discussed later, the NHPUC routinely reviewed and approved such transfers pursuant to RSA 374:30. Therefore, members of the Committee were clearly aware of these transfers because the NHPUC was approving them and NHPUC members were serving on the Committee.

two siting laws, RSA 162-F and 162-H into a single statute. In its Report, the Study Committee made nine other recommendations designed to “insure that the [siting] process is fair and relatively swift”.⁸ RSA 162-H now addresses both energy facilities and bulk power facilities and RSA 162-F was re-drafted to address only the decommissioning of nuclear electric power generating facilities.⁹ Since becoming effective January 1, 1992, several legislative amendments have been added to refine the applicability of RSA 162-H in an era of increased competition and deregulation of the energy marketplace. Under the current RSA 162-H, the powers of the Committee are described, in part, as to:

- (a) Issue any certificate under this chapter in the case of an energy facility, or forward its findings to the [NHPUC] in the case of a bulk power supply facility.
- (b) Determine the terms and conditions of any certificate or findings issued under this chapter, subject to RSA 162-H:10.
- (c) Monitor the construction and operation of any energy or bulk facility granted a certificate under this chapter.
- (d) Enforce the terms and conditions of any certificate issued under this chapter.

RSA 162-H:4, I. Notably, the only section that specifically addresses transfers or assignments of certificates is RSA 162-H:5 which provides, in relevant part:

- I. No person shall commence to construct any bulk power or energy facility within the state unless it has obtained a certificate pursuant to this chapter. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Such certificates are required for sizeable additions to existing facilities. Such a certificate shall not be transferred or assigned without approval of the committee.

⁸ See State of New Hampshire, *Report of the Energy Facility Siting, Licensing & Operation Study Committee* at 1-2 (Aug. 30, 1990) (hereinafter the “Committee Report”).

⁹ Specifically, the General Court amended RSA 162-F so that sections F:2 through F:13 were repealed and RSA 162-F:14 through F:26 were separated into a distinct statute to establish and guide the functioning of the nuclear decommissioning fund. See RSA 162-F (2001).

- II. Facilities certified pursuant to RSA 162-F or RSA 162-H prior to January 1, 1992, shall be subject to the provisions of those chapters; however, sizeable changes or additions to such facilities shall be certified pursuant to this chapter.
- III. The applications shall be governed by the applicable laws, rules and regulations of the agencies and shall be subject to the provisions of RSA 162-F or RSA 162-H in effect on the date of filing. Notwithstanding the foregoing, an applicant may request the site evaluation committee to assume jurisdiction and in the event that the site evaluation committee agrees to assert jurisdiction, the facilities shall be subject to the provisions of this chapter.

RSA 162-H:5, I; II; and III. The above-quoted subsections, which govern the Committee's power to rule on certificates, contemplate different Committee approval requirements for different energy facility projects.

To illustrate, subsection I applies to two types of certificate applicants: (1) those that "commence to construct" facilities; and (2) those that make "sizeable additions to existing facilities." *Id.* at I. Certificates *are* required for these applicants and "such a certificate shall not be transferred or assigned without approval of the committee." *Id.* Hence, Committee approval is required for the transfer or assignment of certificates issued to those commencing construction of a facility or making sizeable additions to existing facilities. For example, as an existing facility, if Seabrook Station seeks to undergo a sizeable addition to its facility, then the Committee would review the expansion under subsection I to approve the project. However, by its terms, subsection I *does not* address the transfer or assignment of a Certificate issued pursuant to another chapter (*e.g.*, RSA 162-F) for a completed facility. Therefore, because the transfer of Seabrook Station's Certificate involves an existing facility and a Certificate that was not issued pursuant to "this chapter" (that is, RSA 162-H), subsection I does not apply to the transfer of the Certificate.

Rather, subsection II *does* apply to the Certificate because Seabrook Station is a facility that was “certified pursuant to RSA 162-F or 162-H prior to January 1, 1992”¹⁰ and, therefore, the Certificate “shall be subject to the provisions of those chapters.” In other words, because Seabrook Station’s Certificate was issued prior to January 1, 1992 under RSA 162-F, the pre-1992 provisions of RSA 162-F (and not RSA 162-H) govern the transfer of the Certificate.

This reading of the statute is further supported by the first sentence of subsection III, which states that applications are governed by “applicable laws, rules and regulations . . . in effect on the *date of filing*.” RSA 162-H:5, III (emphasis added). Accordingly, the second (and last) sentence provides a *voluntary* procedure for a facility that prefers to have its application governed by laws, rules and regulations other than those in effect on the day it filed its application. This sentence states that these applicants “*may request* the site evaluation committee to assume jurisdiction and in the event that the site evaluation committee agrees to assert jurisdiction, the facility shall be subject to the provisions of this chapter.” *Id.* (emphasis added). As stated earlier, the application for Seabrook Station’s Certificate was filed by PSNH on February 1, 1972 pursuant to RSA 162-F¹¹ and the Certificate was granted by order of the NHPUC, pursuant to RSA 162-F, on January 29, 1974. Therefore, according to the terms of subsection II and III, unless Seabrook Station undergoes “sizeable changes or additions”, or the facility owners “request” that the Committee assert jurisdiction under 162-H, the Seabrook

¹⁰ As noted, the Certificate for Seabrook Station was issued by Order of the NHPUC, pursuant to RSA 162-F, on January 29, 1974. *See* Order No. 11,267.

¹¹ *See* Order No. 11,267 (“These proceedings were initiated on February 1, 1972 when Public Service Company of New Hampshire, . . . pursuant to RSA 162-F . . . filed an application for a certificate of site and facility for the construction of a nuclear electric generating station at Seabrook, New Hampshire, and associated transmission lines, with the Public Utilities Commission . . .”). *Id.*

Station Certificate shall be governed by the provisions of RSA 162-F in effect on the date the application for the Certificate was filed, February 1, 1972.

Because the transfer of the Seabrook Station Certificate is governed by the provisions of RSA 162-F in effect in 1972, one must refer to that 1972 statute in order to determine whether Committee approval is required to transfer the Certificate. As stated earlier, a transfer of a certificate did not require Committee approval. Hence, according to the statute, Committee approval is not required for the transfer of the Seabrook Station Certificate.

FPLE Seabrook's proposition that Committee approval is not required for the transfer of the Certificate is consistent with past practice within the State. For example, there have been several occasions where parties seeking to transfer ownership interests in Seabrook Station sought approval from state agencies, like the NHPUC, but did not seek approval from the Site Evaluation Committee. In 1979, the NHPUC authorized PSNH to transfer 14.03% of its ownership interest in Seabrook Station to several parties.¹² Similarly, also in 1979, the previously approved transfers were revised to reflect a PSNH transfer of 14.76496% and approved by the NHPUC.¹³ None of these transfers involved Site Evaluation Committee approval. Further, in 1990, the NHPUC approved the transfer by PSNH of its remaining ownership interest to NAEC; another transaction without approval by the Committee.¹⁴ Finally,

¹² The parties included Central Vermont Public Service Company, Green Mountain Power Company, Central Maine Power Company, Montaup Electric Company, Taunton Municipal Lighting and Hudson Light Power Department, and Massachusetts Municipal Wholesale Electric Company. Docket No. DF 79-100-6205, Order No. 13,759, 64 NHPUC Rep. 262, 269.

¹³ NHPUC Docket No. DF 79-100-6205, Order No. 13,970, 64 NHPUC 485.

¹⁴ The NHPUC found "the transfer by PSNH to NAEC of its [remaining 35%] ownership interest in the Seabrook plant, the land currently owned by PSNH surrounding the Seabrook site and Seabrook's nuclear fuel is for the public good and is hereby approved." Docket No. DR 89-244 Order No. 19,889, 75 NHPUC Rep 396, 475.

in 1999, over seven years after the effective changes to RSA 162-H had been made, the transfer of Montaup Electric Company, Inc.'s ownership interest in Seabrook Station to Little Bay Power Corporation did not receive Committee approval.¹⁵ Notably, in each case, the NHPUC, an agency represented on the Committee, approved the transfer without referring to the Committee for approval.

Finally, the Legislature's intent that the sale of Seabrook Station is not subject to the requirements of RSA 162-H are evidenced by the passage into law of RSA 369-B ("AN ACT relative to final authorization of electric rate reduction financing and commission action") and 2001 N.H. Laws Chapter 29 ("AN ACT relative to . . . the sale of generation assets by Public Service Company of New Hampshire.") These laws specifically address the sale of Seabrook Station, and detail the methodology to be used for such sale.

RSA 369-B:3, IV,(b),(13) requires the NHPUC to administer the sale of generating assets, including Seabrook Station:

(13) The commission shall administer the liquidation of any electricity generation assets required to be sold by the settlement. Any sale of assets located in the state of New Hampshire that are administered by the commission pursuant to this paragraph shall be conducted in this state. The commission shall select the independent, qualified asset sale specialist who will conduct the asset sale process. PSNH shall be allowed to comment prior to the selection of any such specialist;

2001 N.H. Laws Section 29:15 (enacted one year after RSA 369-B) provides:

29:15 Liquidation of Generation Assets. As part of the public utilities commission's administration of the liquidation of Public Service Company of New Hampshire's generation assets, the commission shall . . .:

¹⁵ Order No. 23,239 *Montaup Electric Company, Inc. Petition for Approval of Transfer of Interest in Seabrook Station on Order Approving Transfer*, NHPUC Docket No. DF 98-196 (June 21, 1999).

II. Expediently initiate and complete, in a manner consistent with RSA 374:30, the sale of nuclear generation assets located in New Hampshire required by the settlement in a manner that benefits all New Hampshire customers with stranded cost recovery obligations associated with such assets.

Combined, RSA 369-B and 2001 N.H. Laws 29 unequivocally demonstrate the legislature's intent that the NHPUC be the agency to administer, initiate, complete and review the sale of Seabrook Station in a manner consistent with RSA 374:30. Although it could have done so, the legislature did not include any reference to RSA 162-H in these enactments, nor did it otherwise reference any role for the Committee in the generation sale process.

Thus, in view of the plain language of RSA 162-H, the legislative history and purpose of the statute, and the past course of performance within the State concerning transfers, and the recent enactment of legislation that sets forth the process for the conduct and review of the sale of Seabrook Station, Committee approval of the transfer of the Seabrook Station Certificate to FPLE Seabrook is clearly not required.

Therefore, FPLE Seabrook respectfully requests that the Committee find that Committee approval of the transfer by the Selling Owners to FPLE Seabrook of the Certificate of Site and Facility issued to PSNH on January 29, 1974 is not required.

III. In The Alternative, The Committee Should Exempt FPLE Seabrook From the Approval Provisions of RSA 162-H Because the Requirements of RSA 162-H:4, IV are Satisfied

In the alternative, FPLE Seabrook requests that the Committee grant an exemption pursuant to RSA 162-H:4, IV from the provisions of RSA 162-H for the transfer of the Seabrook Station Certificate. RSA 162-H:4, IV provides:

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may, within

60 days of filing of the application, exempt the applicant from the approval and certificate provisions of this chapter, provided that the following requirements are met:

- (a) Existing state statutes, state agency rules or municipal ordinances provide adequate protection of the objectives of RSA 162-H:1;
- (b) A review of the application reveals that consideration of the application by only selected agencies represented on the committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H;
- (c) Response to the application from the general public indicates that the objectives of RSA 162-H:1 are met through the individual review processes of the participating agencies; and
- (d) All environmental impacts or effects are adequately regulated by other federal, state or local statutes, rules or ordinances.

RSA 162-H:4, IV. The above-cited requirements for exemption are clearly met in this case, the interests of the State of New Hampshire and its citizens are fully protected, both because of the tremendous administrative and public scrutiny that has already occurred and because of the additional review that will take place during multiple regulatory agency approval proceedings that are currently underway. As described below, each prong of the statute's four-part test to determine whether an exemption should be granted is fully satisfied and the exemption should be granted.

(a) Other Existing Statutes Provide Adequate Protection Of The Objectives Of RSA 162-H:1

The first prong of the test, set forth in both the introductory clause of RSA 162-H:4, IV and slightly expanded in subsection (a), is that State law "provide[s] adequate protection of the objectives of RSA 162-H:1." Thus, reference must be made to RSA 162-H:1 for an enumeration of the statute's objectives. In relevant part, that section provides:

I. The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The

legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities.

RSA 162-H:1, I. As already explained, these objectives were fully considered when the Certificate was issued in 1974. Under the terms of the Certificate, Seabrook Station was constructed in accordance with all applicable laws, taking into account the environmental, economic and technical interests of the State. Indeed, the plant has been operating for over ten years and is in compliance with applicable laws. None of these issues will change by virtue of the transfer of the Selling Owners' interests in Seabrook Station to FPLE Seabrook.

The transfer of the Selling Owner's interests in Seabrook Station to FPLE Seabrook, which will include the transfer of all licenses, permits and other regulatory authorizations to operate the plant, will be subject to review by multiple governmental agencies. With respect to ongoing operational regulation, the same agencies that regulate Seabrook's current operation will continue to regulate Seabrook Station: the NRC will oversee nuclear operation, the NHDES and EPA will police environmental compliance, the FERC will oversee the marketing of the output and numerous other agencies will ensure compliance with all operational aspects of the plant. The only material difference is that 88.2%, rather than the current 15%, of the plant energy and capacity will be sold in an unregulated energy market, a policy decision already made by the New Hampshire Legislature. Further assurance that FPLE Seabrook is a qualified owner and

operator of Seabrook Station will be evidenced by the receipt of the numerous regulatory approvals being sought in connection with the sale transaction. Regulation and regulatory oversight of the safety and environmental aspects of plant operation will not change. Therefore, the first prong of RSA 162-H:4, IV, is satisfied because the objectives of RSA 162-H:1, I, continue to be met.

(b) The State's Interests Will Be Fully Protected Without Review By The Committee

The second requirement under RSA 162-H:4, IV(b) states that an exemption may be granted if a "review of the application reveals that consideration of the application by only selected agencies represented on the Committee is required and that the objectives of RSA 162-H:1 can be met by those agencies without exercising the provisions of RSA 162-H." RSA 162-H:4, IV(b). In other words, this requirement focuses on whether agencies that are represented on the Committee will review the Seabrook Station ownership transfer in their capacities as part of other state agencies.

This requirement is clearly met. In fact, eleven of the fifteen members of the Committee represent a state agency that will be reviewing some aspect of the Seabrook Station sale as follows:¹⁶

Three members of the Department of Environmental Services ("DES") serve on the Committee.¹⁷ The DES will oversee the transfer of numerous permits, licenses and

¹⁶ The agencies that are represented on the Committee that will not separately review the Seabrook transfer are the Department of Resources and Economic Development, of which the Division of Parks and Recreation and the Division of Forests and Lands are a part, and the Department of Transportation. Given that the nature of the transaction is a transfer of ownership interests rather than the construction of a new facility, and in light of the numerous other agencies reviewing the transaction, separate review by these agencies is not necessary.

¹⁷ The Commissioner of the DES serves as the Chairperson of the Committee. Other Committee members under the authority of the DES are the Director of the Division of Water and the Director of Air Resources.

certifications. Among these include approvals to transfer the Title V Air Permit, the NPDES/State Surface Water Discharge Permit, Hazardous Waste Limited Permits for elementary neutralization, Above Ground Storage Tank registrations and Hazardous Waste Identification Number transfers, to name a few.¹⁸

Four members of the Committee come from the NHPUC, one of whom is also a member of the NDFC.¹⁹ The NHPUC's jurisdiction over the sale of Seabrook includes the requirement to review the sale of Seabrook Station, using a "public good" standard". RSA 374:30 (requiring utilities to obtain NHPUC authorization to transfer utility assets).²⁰

Three agencies represented on the Committee are also represented on the NDFC (the Governor's Office of Energy and Community Services, the NHPUC and the Department of Health and Human Services²¹). RSA 162-F grants the NDFC the authority to establish the projected cost of decommissioning and the schedule of payments necessary for FPLE Seabrook to meet those projected costs by the funding date. *See* RSA 162-F:15, I; RSA 162-F:14, II. The NDFC is also charged with approving an appropriate funding assurance which, along with the balance in the decommissioning fund, will secure the ongoing payments and the ultimate liability previously secured by the New Hampshire ratepayers and the ratepayers of other owning

¹⁸ On May 20, 2002, an administrative permit amendment to Clean Air Act Amendment Title V Operating Permit No. TV-OP-017 was filed with the New Hampshire DES. In addition, on May 17, 2002, a reissuance of transfer of Hazardous Waste Limited Permit for Elementary Neutralization Unit No. DES-HW-LP-97-011 for Lab Drains in Radiological Control Area (Structure No. 5) was filed with the New Hampshire DES.

¹⁹ The Chairperson of the NHPUC also serves as the Vice Chairperson of the Committee and serves as the Chair of the NDFC.

²⁰ The Application of approval of the Seabrook Station sale was filed on May 17, 2002. *See Application of North Atlantic Energy Corporation, the United Illuminating Company, New England Power Company, the Connecticut Light and Power Company, New Hampshire Electric Cooperative, Inc. and Canal Electric Company For Approval of the Sale of Seabrook Station Interests*, Docket No. DE 02-075 (filed May 17, 2002).

²¹ HHS will also review the Certification of Registration for Radiation Machines on the Seabrook facility.

utilities. Approval of a funding assurance is necessary before any sale may be completed. RSA 162-F:21-a. FPLE Seabrook filed its application with the NDFC for approval of funding assurance and the schedule of payments into the decommissioning trust funds on May 9, 2002.

In addition, the Director of the Fish and Game Department, a member of the Committee, oversees the agency which issues the Finfish and Invertebrate Permit that must be transferred to FPLE Seabrook. Finally, another Committee member, the Director of the Office of State Planning, supports the municipal bodies,²² including the Town of Seabrook, which will review numerous applications for the transfer of permits and licenses, such as the Industrial Wastewater Discharge Permit, and the Town of Seabrook Business License.

With the extensive oversight and review from various state agencies, most of which are represented by Committee members, any additional oversight by the Committee would be duplicative. Accordingly, the objectives of RSA 162-H:4, IV (b) are met through the oversight and review by other state agencies.

(c) The Public Will Have The Opportunity For Significant Input In The Individual Review Processes

The third prong of the test, set forth in RSA 162-H:4, IV (c), is that the general public is satisfied that the objectives of the statute are met through the individual review processes. In this regard, eliminating the review provided under RSA 162-H will not deprive the public of their right to participate in the review of the sale of Seabrook Station to FPLE Seabrook. In fact, both the NHPUC and the NDFC have already noticed their formal proceedings to consider the sale of Seabrook Station and provided an opportunity for interested parties to intervene. Each of these

²² This individual, however, has no direct jurisdiction over such municipal entities.

agencies will hold public hearings during which interested persons can express their views on the transfer. Additionally, the NDFC is also required to hold a meeting to take public comment in Seabrook.²³ Furthermore, in certain other proceedings, hearings may be held if interested parties identify a material issue in dispute. Therefore, the general public's views on the transfer will be considered without this Committee's review of the transfer.

(d) Environmental Impacts Are Adequately Regulated

The final prong of the test, set forth in RSA 162-H:4, IV (d), seeks to ensure that all environmental impacts are adequately regulated by other federal, state or local laws. The NHDES is the primary State regulatory agency that will review the environmental aspects of transfer of ownership of Seabrook Station. The FPLE Seabrook acquisition requires NHDES approvals to transfer certain environmental permits and licenses, primarily because the transfer of ownership of the Seabrook Station does not involve a request for approval of any physical changes to the unit, or any changes to the conduct of operations. There will not be any requests for any amendments to the substantive requirements, standards or limits in the facility's environmental permits or licenses, other than those administrative amendments necessary to reflect FPLE Seabrook as the new operator and as an owner. After the transfer of environmental permits and licenses, Seabrook Station will continue to be operated and maintained in accordance with the current practice. Likewise, the EPA and the Army Corps of Engineers regulate federal environmental aspects of the plant and, as with the State permits, no modifications to the permits (other than the administrative changes for ownership) will be

²³ The NDFC has scheduled a date of hearing for August 13, 2002. *Order No. 2*, NDFC Docket No. 2002-1.

requested. Finally, the NRC will obviously retain complete jurisdiction over the nuclear aspects of the plant.²⁴ Hence, there are no environmental issues raised by the Seabrook Station transfer that are not regulated by other governmental agencies that would necessitate separate Committee review.

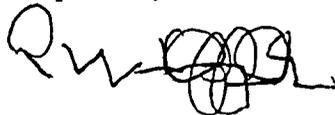
IV. Conclusion

In sum, according to the terms of RSA 162-H:5 and RSA 162-F, Site Evaluation Committee approval of the transfer of the Seabrook Station Certificate is not required because the Certificate was issued prior to 1992 under RSA 162-F. Therefore, we respectfully request that the Committee find that its approval is not required in connection with the transfer of the Certificate.

In the alternative, all prongs of the statutory test for granting an exemption from the approval requirements are met, because, among other reasons, the sale of Seabrook Station is receiving a complete and thorough review by numerous federal, state and local authorities; and thus, at a minimum, FPLE Seabrook is entitled to an exemption pursuant to RSA 162-H with respect to the transfer of the Certificate.

Thank you for your time and attention to this important matter. Please contact me should you have questions concerning this request.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. W. Hepper', with a stylized flourish at the end.

Raymond W. Hepper
Attorney for FPL Energy Seabrook, LLC

²⁴ The NRC retains full regulatory authority over radiological materials for the protection of public health and safety. 42 U.S.C. § 2021 (2001).

Chairman G. Dana Bisbee

Page 20

May 21, 2002

RWH/djs

cc by overnight mail: Timothy Drew

cc by e-mail:

Mitchell Ross
Gerald Garfield
Anthony Callendrello
Robert Bersak
Cynthia Brodhead
Edward Haffer
Stephen Kaminski
Laura Olton

Mark Dean
Robert Martin
Richard Samuels
Timothy Cronin
William Quinlan
Seth Shortlidge
Fred Coolbroth