

October 25, 2002

Mr. Ted C. Feigenbaum
Executive Vice President and
Chief Nuclear Officer
North Atlantic Energy Service Corporation
c/o Mr. James M. Peschel
P.O. Box 300
Seabrook, NH 03874

SUBJECT: ORDER APPROVING TRANSFER OF LICENSE FOR SEABROOK STATION,
UNIT NO. 1 TO THE EXTENT HELD BY NORTH ATLANTIC ENERGY
SERVICE CORPORATION, ET AL., TO FPL ENERGY SEABROOK, LLC, AND
APPROVING CONFORMING AMENDMENT (TAC NO. MB5097)

Dear Mr. Feigenbaum:

The enclosed Order is in response to your application dated May 17, 2002, as supplemented by submittals dated June 28, July 1, July 24, August 29, and October 11, 2002, requesting approval of the transfer of the license for Seabrook Station, Unit No. 1, to the extent held by North Atlantic Energy Service Corporation (NAESCO), as the licensed operator of the facility, and certain co-owners of the facility, on whose behalf NAESCO is also acting, to FPL Energy Seabrook, LLC, and approval of a conforming amendment pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order provides consent to the proposed license transfer. It also approves amending the license to reflect the transfer of interests in the facility at the time such transfers occur, whether in one or more phases. Approved changes are indicated in Enclosure 2. Enclosure 3 contains the staff's safety evaluation (SE) related to the preceding actions. The SE will be placed in the Nuclear Regulatory Commission's Public Document Room and added to the Agencywide Documents Access and Management System's Publicly Available Records System (ADAMS PARS) library.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA RPulsifer for/

Robert D. Starkey, Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-443

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation

cc w/encls: See next page

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Chief Nuclear Officer
North Atlantic Energy Service Corporation
c/o Mr. James M. Peschel
P.O. Box 300
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The enclosed Order is in response to your application dated May 17, 2002, as supplemented by
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approval of the transfer of the license for Seabrook Station, Unit No. 1, to the extent held by
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cc w/encls: See next page

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PUBLIC	PDI-2 R/F	SRichards	JAndersen	D. Starkey	MDusaniwskyj
S.Little	GTracy	TQuay	CCarpenter	OGC	
OPA	GHill (2)	WBeckner	ACRS	BMcDermott, RI	
JShea	SCollins/JJohnson	RMoody	RPelton		

DOCUMENT NAME: **ML022320181**

*See previous concurrence

OFFICE	PDI-2/PM	PDI-2/LA	TECH ED*	RPRP*	IOHS *	PDI-2/SC(A)
NAME	RPulsifer for DStarkey	SLittle	PKleene	BThomas	DTrimble	JAndersen
DATE	10/24/02	10/23/02	9-6-02	10/15/02	10/17/02	10/24/02

OFFICE	OGC	PDI/D	DLPM/D	ADPT	NRR/D
NAME	SHom	SRichards	JZwolinski	BSheron	SCollins
DATE	10/25/02	10/24/02	10/25/02	10/25/02	10/25/02

OFFICIAL RECORD COPY

Seabrook Station, Unit No. 1
cc:

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cc:

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President and Chief Executive Officer
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Hartford, CT 06141-0270

Mr. Steve Allen
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Boston, MA 02110

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NORTH ATLANTIC ENERGY SERVICE) Docket No. 50-443
CORPORATION, ET AL.)
)
(Seabrook Station, Unit No. 1))

ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Facility Operating License No. NPF-86 authorizes the operation of Seabrook Station, Unit No. 1 (Seabrook Station or the facility), at steady-state power levels not in excess of 3,411 megawatts thermal. The facility is located in Seabrook Township, Rockingham County, New Hampshire, on the southeast coast of the State of New Hampshire. The license authorizes North Atlantic Energy Service Corporation (NAESCO) to possess, use, and operate the facility, and certain other entities discussed below to possess the facility.

II.

Under cover of a letter dated May 17, 2002, NAESCO, on its own behalf and on the behalf of certain licensees owning interests in Seabrook Station - North Atlantic Energy Corporation (NAEC), The United Illuminating Company, Great Bay Power Corporation, New England Power Company, The Connecticut Light and Power Company, Canal Electric Company, Little Bay Power Corporation, and New Hampshire Electric Cooperative, Inc. - and FPL Energy Seabrook, LLC (FPLE Seabrook) jointly submitted an application requesting approval of the transfer of Facility Operating License No. NPF-86 for Seabrook Station, to the extent held by the foregoing licensees, to FPLE Seabrook. The applicants also requested approval of a conforming amendment to reflect the transfer. The application was supplemented

by submittals dated June 28, July 1, July 24, August 29, and October 11, 2002 (collectively referred to as the “application” herein unless otherwise indicated).

FPLE Seabrook is an indirect, wholly owned subsidiary of FPL Energy, LLC (FPLE), which is a wholly owned subsidiary of FPL Group Capital Inc., which, in turn, is a wholly owned subsidiary of FPL Group Inc. (FPL Group). According to the application, the current licensees owning interests in the facility listed above will sell their ownership interests in Seabrook Station to FPLE Seabrook. In addition, NAESCO will transfer its operating authority under the license to FPLE Seabrook which will assume title to the acquired interests in the facility and operate and maintain Seabrook Station. While the transfer of operating authority and the ownership interests identified in the application is expected to occur at one time, it is possible that certain ownership interests proposed to be transferred will be transferred in a second phase, depending upon the timing of the receipt of other regulatory approvals. Current licensees which own interests in Seabrook Station but are not involved in this license transfer are Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light and Power Department, all of which will remain licensees.

The conforming license amendment would remove from the license references to NAESCO and the licensees transferring their interests in the facility and add references to FPL Energy Seabrook, LLC, as a licensee, and make other administrative changes to reflect the proposed transfer.

The application requested approval of the subject transfer of the license and a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and an opportunity to request a hearing or submit written comments was published in the FEDERAL REGISTER on June 14, 2002 (67 FR 40972). The Commission received no requests for hearing or written comments.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that FPLE Seabrook is qualified to be the holder of the license to the extent proposed in the application, and that the transfer of the license to FPLE Seabrook is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated October 25, 2002.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY

ORDERED that the transfer of the license as described herein to FPLE Seabrook is approved, subject to the following conditions:

- (1) Before the transfer of operating authority and completion of the sale and transfer of any interest in Seabrook Station to FPLE Seabrook, FPLE Seabrook shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that FPLE Seabrook has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.
- (2) On the closing date(s) of the transfer of any ownership interests in Seabrook Station covered by this Order, FPLE Seabrook shall obtain from each respective transferring owner all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds and additional funds, if necessary, into a decommissioning trust or trusts for Seabrook Station established by FPLE Seabrook, such that the amount of funds deposited meets or exceeds the amount required under 10 CFR 50.75 with respect to the interest in Seabrook Station FPLE Seabrook acquires on such dates(s).
- (3) With respect to the decommissioning trust(s) established by FPLE Seabrook,
 - (i) The decommissioning trust agreement must be in a form acceptable to the NRC.
 - (ii) Investments in the securities or other obligations of FPL Group Inc. or its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

- (iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust(s), other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further provide that no disbursements or payments from the trust(s) shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
 - (iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
 - (v) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust(s) shall adhere to a “prudent investor” standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations.
- (4) FPLE Seabrook shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.
- (5) FPLE Seabrook shall take no action to cause FPL Group Capital, Inc. or its parent companies to void, cancel, or modify the Support Agreement to provide funding of up to \$110 million for FPLE Seabrook as represented in the

application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

- (6) After receipt of all required regulatory approvals of the transfer of the subject interests in Seabrook Station, NAESCO and FPLE Seabrook shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date(s) of the transfer no later than 2 business days prior to the date of closing. If the transfer of the license as approved by this Order is not completed by October 31, 2003, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), changes to the license, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer are approved. An amendment, or amendments should the transfer of the interests in Seabrook Station occur in more than one phase, incorporating the approved changes as appropriate to reflect the transfer of interests occurring, shall be issued and made effective at the time the proposed transfer of interests in the facility occurs.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 17, 2002, the supplemental letters dated June 28, July 1, July 24, August 29, and October 11, 2002, and the safety evaluation dated October 25, 2002, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North,

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11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 25th day of October 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

NORTH ATLANTIC ENERGY SERVICE CORPORATION, ET AL.

DOCKET NO. 50-443

SEABROOK STATION, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-86

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment filed by the North Atlantic Energy Service Corporation (the licensee) dated May 17, 2002, as supplemented by letters dated June 28, July 1, July 24, August 29, and October 11, 2002, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance: (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. NPF-86 is hereby amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. NPF-86

DOCKET NO. 50-443

Replace the following pages of the Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove

Facility Operating License pages 1 through 6
Cover page for Appendix B
Page 1 of Appendix C

Insert

Facility Operating License pages 1 through 7
Cover page for Appendix B
Page 1 of Appendix C

FPL ENERGY SEABROOK, LLC, ET AL.*

DOCKET NO. 50-443

SEABROOK STATION, UNIT NO. 1

FACILITY OPERATING LICENSE

License No. NPF-86

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for a license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I; and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Seabrook Station, Unit No. 1 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-135 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);
 - E. FPL Energy Seabrook, LLC, is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. The licensees have satisfied the applicable provisions of 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

*FPL Energy Seabrook, LLC, is authorized to act as agent for the: Hudson Light & Power Department, Massachusetts Municipal Wholesale Electric Company, and Taunton Municipal Light Plant and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

AMENDMENT NO.

- G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
 - H. After weighing the environmental, economical, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-86 subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR 51 of the Commission's regulations and all applicable requirements have been satisfied; and
 - I. The receipt, possession and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR 30, 40, and 70.
2. Based on the foregoing findings and the Commission's Memorandum and Order, CL1-90-03 (March 1, 1990), Facility Operating License No. NPF-67 is superseded by Facility Operating License No. NPF-86, which is hereby amended to read as follows:
- A. This license applies to the Seabrook Station, Unit 1, a pressurized water nuclear reactor and associated equipment (the facility), owned by the licensees. The facility is located in Seabrook Township, Rockingham County, on the southeast coast of the State of New Hampshire, and is described in the licensees' "Final Safety Analysis Report," as supplemented and amended, and in the licensees' Environmental Report, as supplemented and amended.
 - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
 - (1) FPL Energy Seabrook, LLC, pursuant to Section 103 of the Act and 10 CFR 50, to possess, use and operate the facility at the designated location in Rockingham County, New Hampshire, in accordance with the procedures and limitations set forth in this license;
 - (2) Hudson Light and Power Department, Massachusetts Municipal Wholesale Electric Company, and Taunton Municipal Light Plant to possess the facility at the designated location in Rockingham County, New Hampshire, in accordance with the procedures and limitations set forth in this license;
 - (3) FPL Energy Seabrook, LLC, pursuant to the Act and 10 CFR 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;

AMENDMENT NO.

- (4) FPL Energy Seabrook, LLC, pursuant to the Act and 10 CFR 30, 40, and 70, to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
- (5) FPL Energy Seabrook, LLC, pursuant to the Act and 10 CFR 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components;
- (6) FPL Energy Seabrook, LLC, pursuant to the Act and 10 CFR 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility authorized herein; and
- (7) DELETED

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

FPL Energy Seabrook, LLC, is authorized to operate the facility at reactor core power levels not in excess of 3411 megawatts thermal (100% of rated power).

(2) Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment No. * and the Environmental Protection Plan contained in Appendix B are incorporated into Facility License No. NPF-86. FPL Energy Seabrook, LLC, shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) License Transfer to FPL Energy Seabrook, LLC

- a. On the closing date(s) of the transfer of any ownership interests in Seabrook Station covered by the Order approving the transfer, FPL Energy Seabrook, LLC, shall obtain from each respective transferring owner all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds and additional funds, if necessary, into a decommissioning trust or trusts for Seabrook Station established by FPL Energy Seabrook, LLC, such that the amount of such funds deposited meets or exceeds the amount required under 10 CFR 50.75 with respect to the interest in Seabrook Station FPL Energy Seabrook, LLC, acquires on such dates(s).

- b. With respect to the decommissioning trust(s) established by FPL Energy Seabrook, LLC,
 - (i) The decommissioning trust agreement must be in a form acceptable to the NRC.
 - (ii) Investments in the securities or other obligations of FPL Group Inc. or its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.
 - (iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust(s), other than for ordinary administrative expenses, shall be made by the trustee until the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further provide that no disbursements or payments from the trust(s) shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.
 - (iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
 - (v) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust(s) shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.
- c. FPL Energy Seabrook, LLC, shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the license transfer application and the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting the Order.
- d. FPL Energy Seabrook, LLC, shall take no action to cause FPL Group Capital, Inc. or its parent companies to void, cancel, or modify the Support Agreement to provide funding of up to \$110 million for FPL Energy Seabrook, LLC, as represented in the license transfer application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

AMENDMENT NO.

D. Exemptions

FPL Energy Seabrook, LLC, is exempted from the Section III.D.2(b)(ii) containment airlock testing requirements of Appendix J to 10 CFR 50, because of the special circumstances described in Section 6.2.6 of SER Supplement 5 and authorized by 10 CFR 50.12(a)(2)(ii) and (iii) (51 FR 37684 October 23, 1986).

NRC Materials License No. SNM-1963, issued December 19, 1985, granted an exemption pursuant to 10 CFR 70.24 with respect to requirements for criticality alarms. FPL Energy Seabrook, LLC, is hereby exempted from provisions of 10 CFR 70.24 insofar as this section applies to the storage and handling of new fuel assemblies in the new fuel storage vault, spent fuel pool (when dry), and shipping containers.

These exemptions, authorized by law, will not present an undue risk to the public health and safety and are consistent with the common defense and security. These exemptions are hereby granted pursuant to 10 CFR 50.12. With the granting of these exemptions, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

E. Physical Security

FPL Energy Seabrook, LLC, shall fully implement and maintain in effect all provisions of the physical security, guard training and qualification, and safeguards contingency plans, previously approved by the Commission and all amendments and revisions to such plans made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p) including amendments and revisions made pursuant to provisions of the Miscellaneous Amendments and Search Requirements of 10 CFR 73.55. The plans which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Seabrook Station Physical Security Plan," with revisions submitted through June 9, 1988; "Seabrook Station Security Training and Qualification Plan," with revisions submitted through November 4, 1987; and "Seabrook Station Safeguards Contingency Plan," with revisions submitted through May 19, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

F. Fire Protection

FPL Energy Seabrook, LLC, shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report, the Fire Protection Program Report, and the Fire Protection of Safe Shutdown Capability Report for the facility, as supplemented and amended, and as approved in the Safety Evaluation Report, dated March 1983; Supplement 4, dated May 1986; Supplement 5, dated July 1986; Supplement 6, dated October 1986; Supplement 7, dated October 1987; and Supplement 8, dated May 1989 subject to the following provisions: FPL Energy Seabrook, LLC, may make changes to the approved fire protection program without prior approval of the Commission, only if those changes would not adversely affect the ability to achieve and maintain shutdown in the event of a fire.

G. Reporting to the Commission

Except as otherwise provided in the Technical Specifications or Environmental Protection Plan, FPL Energy Seabrook, LLC, shall report any violations of the requirements contained in Sections 2.C.(1) and 2.C.(2) of this license in the following manner: Initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System, with written follow-up within 30 days in accordance with the procedures described in 10 CFR Part 50.73(b), (c), and (e).

H. Financial Protection

The licensees shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

I. DELETED

J. Additional Conditions

The Additional Conditions contained in Appendix C, as revised through Amendment No. 50, are hereby incorporated into this license. FPL Energy Seabrook, LLC, shall operate the facility in accordance with the Additional Conditions.

3. This license is effective as of the date of issuance and shall expire at midnight on October 17, 2026.

FOR THE NUCLEAR REGULATORY COMMISSION

(Original signed by:
Thomas E. Murley)

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Attachments/Appendices:

1. Appendix A - Technical Specifications (NUREG-1386)
2. Appendix B - Environmental Protection Plan
3. Appendix C - Additional Conditions

Date of Issuance: March 15, 1990

AMENDMENT NO.

APPENDIX B
TO FACILITY OPERATING LICENSE NO. NPF-86
SEABROOK STATION, UNIT 1
FPL ENERGY SEABROOK, LLC
DOCKET NO. 50-443
ENVIRONMENTAL PROTECTION PLAN
(NONRADIOLOGICAL

AMENDMENT NO.

APPENDIX C

ADDITIONAL CONDITIONS
OPERATING LICENSE NO. NPF-86

FPL Energy Seabrook, LLC, shall comply with the following conditions on the schedules noted below:

Amendment Number	Additional Condition	Implementation Date
50	NAESCO is authorized to relocate certain technical specification requirements to licensee-controlled documents. Implementation of this amendment shall include the relocation of these technical specification requirements to the appropriate documents, as described in the licensee's application dated October 17, 1996, and evaluated in the staff's Safety Evaluation attached to this amendment.	The amendment shall be implemented within 60 days from March 12, 1997

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED TRANSFER OF OPERATING LICENSE FOR

SEABROOK STATION, UNIT NO. 1

FROM NORTH ATLANTIC ENERGY SERVICE CORPORATION, ET AL. TO

FPL ENERGY SEABROOK, LLC, AND

CONFORMING AMENDMENT

DOCKET NO. 50-443

1.0 INTRODUCTION

By application submitted under cover of a letter dated May 17, 2002, North Atlantic Energy Service Corporation (NAESCO), on behalf of itself and certain co-owners described below of the Seabrook Station, Unit No. 1 (Seabrook Station), and FPL Energy Seabrook, LLC (FPLE Seabrook), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of Facility Operating License No. NPF-86 for Seabrook Station from NAESCO and the subject co-owners to FPLE Seabrook.

The application also requested the approval of a conforming license amendment to reflect the proposed transfer and was filed pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR). Supplemental information was filed by the applicants by submittals dated June 28, July 1, July 24, August 29, and October 11, 2002. The supplements to the initial application that were not specifically referenced in the *Federal Register* notice of the transfer and amendment request did not expand the application beyond the scope of the notice.

The transfer is requested as a result of the Purchase and Sale Agreement (PSA) entered into by FPLE Seabrook, North Atlantic Energy Corporation, The United Illuminating Company, Great Bay Power Corporation, New England Power Company, The Connecticut Light and Power Company, Canal Electric Company, Little Bay Power Corporation, New Hampshire Electric Cooperative, Inc., and NAESCO, on April 13, 2002, for the purchase by FPLE Seabrook of Seabrook Station except for those ownership interests currently held by Hudson Light and Power Department, Massachusetts Municipal Wholesale Electric Company, and Taunton Municipal Lighting Plant. (See Exhibit B of the May 17, 2002, application.)

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly through the transfer of control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

2.0 BACKGROUND

Seabrook Station is a 3,411 megawatts thermal pressurized-water reactor located in Seabrook Township, Rockingham County, New Hampshire, on the southeast coast of the State of New Hampshire. On March 15, 1990, Seabrook Station was issued an operating license which expires on October 17, 2026. The application proposes that FPLE Seabrook will assume title to the acquired ownership interests in the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of Seabrook Station. FPLE Seabrook is a newly-formed limited liability company formed to acquire and operate Seabrook Station. FPLE Seabrook will be an Exempt Wholesale Generator. The transaction is part of the ongoing restructuring of the electric utility industry in New Hampshire and Connecticut, which is intended to foster a competitive generation market in New England.

The applicants state that upon closing, the following events will occur, as addressed in the PSA:

1. FPLE Seabrook will assume title to the acquired interests in the facility including all equipment, spare parts, fixtures, inventory, and other property necessary for the operation and maintenance of Seabrook Station, including the 345 kV substation located at the site. FPLE Seabrook will take title to the acquired interests in all spent nuclear fuel and other licensed materials at, as well as nuclear fuel procured for, Seabrook Station. FPLE Seabrook will also assume responsibility for the operation, maintenance, and eventual decommissioning of the unit. The assets to be transferred will include all records and documents necessary for operation, maintenance and decommissioning of Seabrook Station, including all documents comprising the current licensing basis of the unit.
2. FPLE Seabrook will make offers of employment to all employees of NAESCO (the current operator) who are employed in the operation of Seabrook Station at any time during the three months prior to the transfer.
3. The qualified and non-qualified decommissioning funds for each selling owner will be transferred to qualified and non-qualified decommissioning trusts established by FPLE Seabrook. FPLE Seabrook will be responsible for all Seabrook Station decommissioning activities, as well as the decommissioning costs associated with its ownership interest, and the decommissioning obligations of the selling owners shall be extinguished. The non-selling owners will remain responsible for their proportionate share of the decommissioning costs.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

3.1 Introduction

According to the application, NAESCO will no longer be the plant operator or a licensee after the proposed sale, and FPLE Seabrook will be both the majority owner and licensed operator. The following are the selling owners and their respective ownership shares:

<u>Selling Owners</u>	<u>Ownership</u>
North Atlantic Energy Corporation	35.98201%
The United Illuminating Company	17.50000%
Great Bay Power Corporation	12.13240%
New England Power Company	9.95766%
The Connecticut Light and Power Company	4.05985%
Canal Electric Company	3.52317%
Little Bay Power Corporation	2.89989%
New Hampshire Electric Cooperative, Inc.	2.17391%
Total Ownership included in Sale	88.22889%

The following are the current owners that are not included in this sale and their respective ownership shares:

<u>Non-Selling Owners</u>	<u>Ownership</u>
Massachusetts Municipal Wholesale Electric Company	11.59340%
Taunton Municipal Lighting Plant	0.10034%
Hudson Light and Power Department	0.07737%
Total Ownership not included	11.77111%

3.2 Background

FPLE Seabrook is an indirect wholly owned subsidiary of FPL Energy, LLC (FPLE), an independent power producer. FPLE is a wholly owned subsidiary of FPL Group Capital Inc. (FPL Capital), which, in turn, is a wholly owned subsidiary of FPL Group, Inc. (FPL Group). FPLE Seabrook is a newly formed limited liability company, established in the State of Delaware, formed to acquire and operate Seabrook Station. FPLE Seabrook will be an Exempt Wholesale Generator, not subject to any state public utility commission jurisdiction. FPLE Seabrook's principal place of business is the State of New Hampshire.

According to the application, in 1996, the New Hampshire Legislature adopted the Electric Utility Restructuring Act (EURA), RSA 374-F. The purpose of this legislation is to restructure the New Hampshire electric utility industry in order to possibly reduce electric prices for all state consumers of electricity by invoking the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing electric prices to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.

The application further states that in accordance with EURA, the New Hampshire Public Utilities Commission (NHPUC) issued Order No. 23,443, "PSNH [Public Service Company of New Hampshire] Proposed Restructuring Settlement" on April 19, 2000, requiring NAEC to sell its ownership share of Seabrook Station through a public auction, subject to NHPUC's approval.

In addition, NAEC was obligated to make reasonable efforts to include non-NAEC ownership shares in the Seabrook Station auction in order to offer a controlling interest in Seabrook Station to a potential buyer.

A comprehensive electric restructuring act in the State of Connecticut, P. A. 98-28, similarly required the Connecticut Light and Power Company, a wholly owned subsidiary of Northeast Utilities and an affiliate of Public Service Company of New Hampshire (PSNH), NAEC, and the United Illuminating Company (UI) to divest all of their electric generating assets, including their ownership interests in Seabrook Station. According to the application, as a result, in September 2001, the NHPUC, in coordination with the Connecticut Department of Public Utility Control (DPUC), appointed the investment banking firm of J. P. Morgan Securities, Inc. (J. P. Morgan) to act as their financial advisor, auction advisor and asset sales manager. J. P. Morgan, with oversight by designated members of NHPUC staff and staff specially appointed by the DPUC's Utility Operations and Management Analysis auction team, then conducted the sale of the Selling Owners' Seabrook Station ownership interests in accordance with New Hampshire and Connecticut law and the PSNH Settlement Agreement.

The application states that pursuant to this process, FPLE Seabrook, the Selling Owners, and NAESCO have entered into a PSA under which the Selling Owners will transfer their respective interests in Seabrook Station to FPLE Seabrook. A copy of the PSA was attached as Exhibit B to the application. This transaction is part of the ongoing restructuring of the electric utility industry in the States of New Hampshire and Connecticut.

The ownership interests to be transferred by UI to FPLE Seabrook includes the 66.4% of UI's 17.5% direct total interest that was previously sold by UI to an institutional investor and leased back to UI under an NRC approved sale-leaseback transaction in 1990. Thus, UI remains the current licensee with respect to its entire 17.5% interest (share) of Seabrook Station. At the closing date of sale, UI will terminate the lease, and the owner-trustee of the leased interest (currently First Union Trust Company) will transfer ownership of this portion of the interest to FPLE Seabrook without encumbrances, while UI will transfer the remainder of its ownership interest to FPLE Seabrook. Thus, UI will simultaneously transfer to FPLE Seabrook its control of the entire 17.5% interest currently owned or leased by UI and extinguish the sale-leaseback arrangement with First Union Trust Company. Therefore, FPLE Seabrook will acquire ownership and control of this entire 17.5% interest currently held by UI,¹ in addition to the interests currently held by the other Selling Owners.

3.3 Financial Qualifications

Section 50.2 of 10 CFR defines an electric utility as "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates that are established by the entity itself or a separate regulatory authority." FPLE Seabrook does not qualify as an electric utility under 10 CFR 50.2.

¹Paragraph 2.B(7) of the Seabrook Station license requires that the NRC be given prior written notification of any change in any lease agreement entered into as part of a sale and leaseback transaction. The application expressly states that it constitutes written notification to the NRC of the change (i.e., termination) of the terms of the lease agreement between UI and First Union Trust Company.

Therefore, in accordance with 10 CFR 50.33(f), a non-electric utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought. The information must show the following:

- (1) The applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover the estimated operation costs for the period of the license. The applicant must submit estimated total annual operating costs for the first five (5) years of facility operations [following the proposed license transfer] and indicate the source of funds to cover these costs.
- (2) In the case of a newly formed entity organized primarily for the purpose of operating a nuclear power plant, the information must show: (a) the legal and financial relationships the applicant has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and (c) any information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

Also, 10 CFR 50.33(k)(1) requires that FPLE Seabrook must provide information as described in 10 CFR 50.75 indicating there is reasonable assurance that funds will be available to decommission Seabrook Station. The applicant's proposal for decommissioning funding assurance is discussed in Section 3.4 of this Safety Evaluation.

In accordance with 10 CFR 50.33(f) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1), a projected income statement for the 5-year period 2003 to 2007 was provided in Exhibit G of the application.² The projected income statement shows that with respect to FPLE Seabrook's proposed 88.23% interest, the anticipated revenues from sales of energy and capacity from Seabrook Station provide reasonable assurance of an adequate source of funds to meet FPLE Seabrook's anticipated expenses regarding that interest.

According to the application, the revenues in the projected income statement are based on estimates of generation provided by NAESCO as reflected in the current Seabrook Station strategic business plan and the October 2001 price forecast by PIRA, an entity which produces forecasts of forward market prices. Operating expenses, with the exception of depreciation and decommissioning, are based on forecasted generation costs developed by NAESCO, which are also included as part of the business plan. Depreciation expense is based on FPLE Seabrook's actual purchase price. Decommissioning expense is based upon the cost of decommissioning approved by the New Hampshire Decommissioning Financing Committee and application of Statements of Financial Accounting Standards (SFAS) 143. The staff finds that the projected

²In addition to the projected income statement, FPLE Seabrook provided as Exhibit H to the application, a projected opening balance sheet showing its anticipated assets, liabilities and capital structure expected as of the closing date.

income statement, which is summarized below, shows that there is reasonable assurance that FPLE Seabrook will have sufficient funds to cover its operating costs through the sale of electricity and capacity.³

The projected income statement set forth in Exhibit G corresponds to operations at an average capacity factor of approximately 92 percent. FPLE Seabrook believes it can achieve a 92 percent capacity factor, which is approximately eight percentage points higher than the historical 84 percent capacity factor for Seabrook Station, by relying on its ultimate parent company's experience at other nuclear plants that the parent company owns through other subsidiaries.

FPLE Seabrook
Projected Income Statement
(for 88.23% of Plant)
\$000s

<u>Fiscal Year</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Total Revenue:	\$252,795	\$295,230	\$291,259	\$289,486	\$306,529
Total Expenses:	\$220,617	\$198,965	\$212,751	\$214,346	\$199,302
Operating Income:	\$32,178	\$96,265	\$78,508	\$75,140	\$107,266
Other Deductions:	\$18,407	\$16,716	\$13,257	\$10,017	\$6,818
Income b/f Taxes	\$13,772	\$79,549	\$65,251	\$65,123	\$100,448
Taxes:	\$5,581	\$32,237	\$26,443	\$26,391	\$40,707
Net Income:	\$8,191	\$47,312	\$38,808	\$38,732	\$59,742

The staff requested that the applicants provide sensitivity analyses on the projected income statement in order for the staff to judge the financial resiliency of FPLE Seabrook to weaker than projected revenue. Specifically, these analyses evaluate the effects that variation in capacity factor and market prices might independently have on the revenue projections. For all

³The NRC staff (the staff) notes that the 5-year projected income statement set forth in Exhibit G has been stated by the applicant to be more conservative than the FPL Group's internal projections of generation, operating expenses and market prices over the next five years. Thus, Exhibit G of the application shows net income that is less than the publicly projected impacts of the Seabrook Station acquisition on FPL Group's earnings. The staff finds no fault in the use of a more conservative 5-year projected income statement as used in this application.

these analyses, the sensitivity analyses conservatively assumed that plant outputs remained constant at the maximum dependable capacity (MDC), 1161 Mwe-Net, as listed in NUREG-1350, Vol. 14., Nuclear Regulatory Commission Information Digest.

The first set of sensitivity analyses assumed that the capacity factor was reduced to the average historical capacity factor of 84 percent (as listed in NUREG-1350, Vol. 14, years 1996 to 2001), from the forecasted average capacity factor of 92 percent. The eight point reduction reduced annual net income by an average of \$25 million over the 5-year period. The staff notes that this reduction would still allow FPLE Seabrook to cover estimated operation costs with respect to its share of Seabrook Station over the 5-year period.

The second set of sensitivity analyses assumed that the average price for energy and capacity is arbitrarily reduced by 10 percent. This reduced annual net income by an average of \$17 million over the 5-year period. The staff notes that this reduction would still allow FPLE Seabrook to cover its estimated operation costs for Seabrook Station over that period.

Based on the above information, the staff finds that FPLE Seabrook has fulfilled the requirements of 10 CFR 50.33(f)(2) in that it has provided information that demonstrates it has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. FPLE Seabrook has also provided the information required of a newly formed entity pursuant to 10 CFR 50.33(f)(3). In view of the foregoing, the staff concludes that FPLE Seabrook is financially qualified to hold the Seabrook Station license with respect to the 88.23% interest FPLE Seabrook proposes to acquire.

While FPLE Seabrook has demonstrated that projected revenues will cover estimated costs, as added assurance that it will be financially qualified to hold the license, FPLE Seabrook has represented in the application that FPL Group Capital will make funding of up to \$110 million available to FPLE Seabrook, which would cover pro rata the approximate Operations and Maintenance costs that Seabrook Station would be expected to incur over a 6-month outage. The staff finds that in the event of an extended shutdown, fixed operating expenses can be paid from retained earnings, as available, or by the \$110 million line of credit established with FPL Group Capital. In the case where all net earnings are retained by FPLE Seabrook, the application shows that the combination of retained net earnings and the line of credit are more than sufficient to pay the fixed operating costs of an extended outage of about 6 months.

Given the added financial assurance proposed in the application, approval of the license transfer to FPLE Seabrook should be subject to essentially the following as a condition of the order approving the transfer and a conforming license condition, consistent with the staff's practice:

FPLE Seabrook shall take no action to cause FPL Group Capital, Inc. or its parent companies to void, cancel, or modify the Support Agreement to provide funding of up to \$110 million for FPLE Seabrook as represented in the application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

3.4 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety. Section 50.33(k) of Title 10 of the *Code of Federal Regulations* requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility. Pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more, but not less, than the amount determined under the formulas in 10 CFR 50.75(c)(1) and (2).

As stated in the application, the qualified and non-qualified decommissioning funds of each Selling Owner will be transferred to FPLE Seabrook at closing. These funds will be held in external trust(s) segregated from FPLE Seabrook assets and outside its administrative control. Investment of the funds will be managed in accordance with applicable requirements and license conditions.

The application also states that State of New Hampshire's Nuclear Decommissioning Financing Committee (NDFC) has issued an order requiring that before a "non-utility" is permitted to acquire an ownership interest in Seabrook Station, the decommissioning fund balance associated with that ownership interest must be sufficient to be able to equal or exceed the NRC minimum requirements by the "funding date." The NDFC order further specifies a funding date of 2015, which means that in crediting the two percent real earnings on fund balances as permitted in NRC regulations, calculations to determine the current fund balance minimum must assume conservatively that the fund will grow by two percent real earnings only through 2015 rather than 2026 when the current license will expire.

The application states that a decommissioning funding closing amount of \$232 million is currently estimated. Exhibit I of the application shows the calculation of this estimated closing amount. When projected real earnings of two percent on the estimated closing amount are credited through 2026, the expiration year of the license, as permitted by 10 CFR 50.75(e)(1)(i), the adjusted value of the decommissioning funds at closing are estimated to satisfy the NRC minimum requirement for FPLE Seabrook's acquired 88.23% ownership interest, assuming pro rata responsibility for the purposes of this analysis. However, while the exact decommissioning funding closing amount will not be calculated and known until closing, the application has represented that the amount will not be less than \$200 million. When projected real earnings of two percent are applied to the \$200 million minimum closing amount and are credited through 2026, this adjusted value of the decommissioning funds at closing are also estimated to satisfy the NRC minimum requirement for FPLE Seabrook's acquired 88.23% ownership interest, again assuming pro rata responsibility for the purposes of this analysis.

In order to provide additional assurances to the NDFC beyond NRC requirements, FPL Group Capital has guaranteed that FPLE Seabrook will fully fund the projected cost of decommissioning in accordance with NDFC requirements, including meeting a schedule of additional deposits required by the NDFC after closing. The staff, however, notes that this guaranty is not being used in this application to meet NRC decommissioning requirements.

Because the Selling Owners are subject to differing regulatory approvals and possible delays in related transactions, the closing for NAESCO, NAEC and some of the Selling Owners could occur before the closings for other Selling Owners. If more than one closing date occurs, the qualified funds and non-qualified funds for each Selling Owner participating in a closing will be transferred to FPLE Seabrook when such closings occur.

In consideration of the above, and to ensure that FPLE Seabrook will have adequate decommissioning funding at the time of the license transfer, whether occurring in one or more phases, the staff concludes that essentially the following must be a condition of the transfer approval order and a corresponding license condition included as part of the conforming license amendment:

On the closing date(s) of the transfer of any ownership interests in Seabrook Station covered by this Order, FPLE Seabrook shall obtain from each respective transferring owner all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds and additional funds, if necessary, into a decommissioning trust or trusts for Seabrook Station established by FPLE Seabrook, such that the amount of funds deposited meets or exceeds the amount required under 10 CFR 50.75 with respect to the interest in Seabrook Station FPLE Seabrook acquires on such dates(s).

FPLE Seabrook will not be regulated by the New Hampshire Public Utilities Commission or the Connecticut Department of Public Utility Control, or any other rate regulator, with the result that there will be no rate regulatory oversight over the terms and provisions of the decommissioning trust(s). Consequently, the staff concludes that, to provide additional assurance regarding the decommissioning trust(s), essentially the following provisions must be made conditions to the order approving the transfer of the license for Seabrook Station and incorporated into the license as conditions included as part of the conforming license amendment(s).

- (a) The decommissioning trust agreement must be in a form acceptable to the NRC.
- (b) With respect to the decommissioning trust funds, investments in the securities or other financial obligations of FPL Group, or its affiliates, successors, or assigns are and shall be prohibited. Except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants are and shall be prohibited.
- (c) The decommissioning trust agreement must provide that no disbursements or payments from the trust(s), other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further provide that no disbursements or payments from the trust(s) shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

- (d) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- (e) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to a “prudent investor” standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission’s regulations.

The staff concludes that, given the considerations discussed above and subject to the trust agreement containing provisions as previously discussed, FPLE Seabrook’s proposed decommissioning funding assurance meets the requirement of 10 CFR 50.75(e). The staff further concludes that in order to ensure that the decommissioning trust(s) are maintained consistent with the staff’s action on the application, essentially the following must be included as a condition of the transfer approval and as a condition in the license:

FPLE Seabrook shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application and the requirements of the Order approving the license transfer to FPLE Seabrook, and consistent with the safety evaluation supporting that Order.

3.5 Conclusion

Based on the foregoing, the staff has concluded, that with the appropriate conditions discussed above, FPLE Seabrook has fulfilled the requirements of 10 CFR 50.33(f) for financial qualifications to hold the license for Seabrook Station to the extent requested.

4.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the transfer application postdates the issuance of the operating license for Seabrook Station, no antitrust review is required or authorized.

Prior to *Wolf Creek*, the staff’s practice was to perform a “no significant changes” antitrust review in connection with license transfers. Thus, when operating authority under the Seabrook Station license was proposed to be transferred to NAESCO in 1990, a no significant changes review would normally have been performed. However, during the review of the 1990 transfer application, the staff proposed that a license condition be added, which was agreed to by NAESCO. This condition became paragraph I. of the license, which provides that:

NAESCO is prohibited from marketing or brokering power or energy from the plant. In addition, all licensees other than NAESCO are responsible and accountable for the actions of their agent to the extent said agent’s actions effect the marketing or brokering of power and energy from Seabrook Station, Unit 1.

With the imposition of this condition, issues that could have arisen with respect to antitrust considerations involving NAESCO were essentially foreclosed. Given this situation, and based on findings that NAESCO was qualified to be the licensed operator of the facility, the transfer to NAESCO was approved.

Against this background, the only antitrust related issue here is whether Condition I. of the license should be amended to substitute FPLE Seabrook for NAESCO as part of the conforming license amendment, or deleted in its entirety. The staff concludes that deletion of the condition is appropriate, since, *inter alia*, the addition of the condition was never based on any findings of a situation inconsistent with the antitrust laws, but rather was imposed by agreement between the staff and NAESCO to obviate the need for a no significant changes review (which are no longer performed and indeed are precluded under *Wolf Creek*), FPLE Seabrook and NAESCO are not and will not be affiliated companies, and FPLE Seabrook is not merely to be licensed to operate the facility, but will also be engaged in the sale of power. In sum, Condition I. of the license should be deleted as part of the conforming license amendment to reflect the transfer of the license to FPLE Seabrook.

5.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Section 103d of the Atomic Energy Act of 1954, as amended, prohibits the Commission from issuing a license for a nuclear power plant to “any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government.” The Commission’s regulation at 10 CFR 50.38 contains virtually identical language to implement this prohibition.

The application states that FPLE Seabrook is a limited liability company established in the State of Delaware. FPLE Seabrook’s principal place of business is New Hampshire. FPLE Seabrook is an indirect, wholly owned subsidiary of FPL Energy, LLC (FPLE), which is a wholly owned subsidiary of FPL Group Capital Inc., which, in turn, is a wholly owned subsidiary of FPL Group Inc. (FPL Group).

As a limited liability company, FPLE Seabrook has no directors or management committee. The application gives the names and addresses of the principal officers of FPLE Seabrook, and represents that all are citizens of the United States.

The application also states that FPLE Seabrook is not owned, controlled, nor dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe otherwise.

6.0 INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission’s regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect FPLE Seabrook as a new licensee of Seabrook Station.

In accordance with the Price-Anderson Act, the new licensee will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. It will also be

required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that FPLE Seabrook will be able to satisfy applicable insurance requirements.

Consistent with NRC practice, the staff will require FPLE Seabrook to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting the new licensee. Because the issuance of the amended license is directly tied to the consummation of the proposed transfer, the order approving the transfer must be conditioned essentially as follows:

Before the completion of the transfer of the Seabrook Station license, FPLE Seabrook shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

7.0 TECHNICAL QUALIFICATIONS ANALYSIS

7.1 Introduction

The purpose of this evaluation is to ensure that the corporate management of the proposed operator is involved with, informed of, and dedicated to the safe operation of the plant, and that sufficient qualified technical resources will be provided to support safe plant operation and maintenance, and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer.

7.2 Background

The staff used the following regulations and guidance documents during the technical qualifications evaluation: (1) 10 CFR 50.40(b), "Common Standards;" (2) Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, "Management and Technical Support Organization," and Sections 13.1.2-13.1.3, "Operating Organization;" (3) American National Standards Institute (ANSI) N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel;" (4) American Nuclear Society/American National Standards Institute (ANS/ANSI) 3.1-1981, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants," as endorsed by Regulatory Guide (RG) 1.8, Revision 2, April 1987, "Qualification and Training of Personnel for Nuclear Power Plants;" and (5) ANS/ANSI 3.1-1993, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants," as endorsed by RG 1.8, Revision 3, May 2000, "Qualification and Training of Personnel for Nuclear Power Plants."

7.3 Evaluation

7.3.1 Management, and Technical Support Organization

The staff reviewed the application to determine the acceptability of the corporate management and technical support organization for the proposed operator using the applicable acceptance criteria contained in the SRP, Section 13.1.1, "Management and Technical Support Organization."

In the June 28, 2002, supplement to the initial application, NAESCO stated “There is no new technical support organization....Note that the technical support functions provided by the current licensee, North Atlantic Energy Service Corporation (NAESCO), are currently performed by the on-site staff at Seabrook Station, and not by an offsite organization. NAESCO does not have an offsite technical support organization.”

In addition, NAESCO stated “The existing Seabrook staff and site organization will supply primary technical support for Seabrook Station. Substantially all of NAESCO's managers and employees, including those providing technical support functions, are expected to become employees [of FPLE Seabrook] after the license transfer. Additional support will be available from Florida Power & Light Company's Nuclear Division. Contracts with third parties (e.g., NSSS, AE) providing support services will be assigned to FPLE Seabrook.”

In the June 28, 2002, supplement to the initial application, NAESCO stated “The only structural change [to the management organization] is that, at the time of closing, the Seabrook Station Site Vice President will report to J. A. Stall, Senior Vice President, and Chief Nuclear Officer of FPLE Seabrook.” Mr. Stall's responsibilities and qualifications were described in the May 17, 2002, initial application.

Based on the application, the staff finds that FPLE Seabrook has described the organization for managing and its means for providing technical support to the plant staff, and shown that the qualifications of FPLE Seabrook's management and technical support organization will be essentially equivalent to the qualifications of the current management and technical support organization, regarding which the staff is aware of no deficiencies. Accordingly, the staff concludes that the proposed FPLE Seabrook organization for managing and its means of providing technical support for the operation and maintenance of Seabrook Station, under both normal and off-normal conditions are in accordance with the SRP, Section 13.1.1, “Management and Technical Support Organization.”

7.3.2 Operating Organization

The staff reviewed the application to determine the acceptability of the proposed FPLE Seabrook operating organization and to evaluate any changes to the operating organization that would occur as a result of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization were required to have been evaluated with an appropriate methodology, and the staff is not aware of any deficiencies with the current operating organization. Consequently, the staff's review focused on evaluating any changes to the operating organization proposed as a result of the transfer. The staff evaluated the application using the applicable acceptance criteria contained in the SRP, Sections 13.1.2-1.3, “Operating Organization.”

The May 17, 2002, application stated “The plant staff, including senior managers, will remain essentially unchanged by the transfer. Similarly,...the organizational structure of the onsite organization, including lines of authority and communication, is not expected to be changed by the transfer. If...changes will be made contemporaneously with the transfer, FPLE Seabrook will ensure that new individuals meet all existing qualification requirements....”

The application also stated “Because NAESCO’s existing organization is being transferred into FPLE Seabrook, the technical qualifications of the organization operating Seabrook Station Unit 1 will be essentially unchanged.”

Based on the above, the staff finds that FPLE Seabrook organization for operating and maintaining Seabrook Station and the qualifications of the FPLE Seabrook personnel responsible for the operation and maintenance of Seabrook Station will be generally equivalent to the current operating organization, regarding which the staff is aware of no deficiencies. Accordingly, the staff concludes that the proposed FPLE Seabrook organization for operating and maintaining Seabrook Station, under both normal and off-normal conditions, is in accordance with the SRP, Sections 13.1.2-1.3, “Operating Organization.”

7.4 Conclusion

Based on the above discussion, the staff concludes that following the license transfer, FPLE Seabrook will have acceptable corporate level management and an acceptable organization and adequate resources available to provide technical support for the operation and maintenance of the facility under both normal and off-normal conditions in accordance with the SRP, Section 13.1.1, “Management and Technical Support Organization.” In addition, the proposed transfer will not materially change the current operating or maintenance organizations or the qualifications of personnel responsible for the operation and maintenance of Seabrook Station and the staff concludes that FPLE Seabrook’s onsite organization will be acceptable in accordance with the SRP, Sections 13.1.2 - 13.1.3, “Operating Organization.”

Accordingly, in light of the foregoing evaluation, the staff concludes that FPLE Seabrook will be technically qualified to hold the operating authority under the license.

8.0 CONFORMING AMENDMENT

8.1 Introduction

As previously stated, the applicants have requested approval of a proposed conforming amendment to Seabrook Station Facility Operating License No. NPF-86. Generally, the requested changes eliminate references to NAESCO and the Selling Owners in the license and replace them with references to FPL Energy Seabrook, LLC, to reflect the proposed license transfer. Also, certain license conditions tied to specific licensee transferors are also being proposed to be deleted. No physical changes to the facility have been requested. Supplemental information received after the initial *Federal Register* notice did not affect the applicability of the Commission’s generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

8.2 Discussion

The staff determined that it would be appropriate to make some minor modifications to the changes proposed in the application for clarification, and for consistency with prior staff practice regarding conforming amendment approvals. The changes to be made to the license, as indicated in Enclosure 2 to the cover letter forwarding the order approving the transfer, do no more than accurately reflect the approved transfer action, which is subject to certain conditions

set forth in the order approving the transfer, and that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature.

Since the current sale-leaseback condition of the license is specific to UI, which is one of the Selling Owners, the staff determined that it is appropriate to delete this condition from the license at the time UI completes the transfer of its interest in Seabrook Station to FPLE Seabrook. Also, as discussed earlier in the antitrust analysis, the staff has also concluded that it is appropriate to delete condition 2.I. (Marketing of Energy) from the license at the time NAESCO transfers operating authority under the license to FPLE Seabrook.

As mentioned earlier in this safety evaluation, it is possible that the closing of the transfer of the Selling Owners' interests to FPLE Seabrook may not occur simultaneously, due to the timing of the receipt of the different regulatory approvals necessary for each Selling Owner. Accordingly, while Enclosure 2 to the cover letter forwarding the order shows all approved changes reflecting the completion of the proposed transfer of all interests, the staff will issue amendments containing only the appropriate approved changes if the transfer occurs in more than one phase. For example, if UI is unable to close at the same time the other Selling Owners and NAESCO close, a conforming amendment will be issued at the time of the first closing, but UI will still be reflected as a licensee and the sale-leaseback condition in the license will remain until such time as a subsequent amendment is issued when the UI closing has been completed.

In consideration of the foregoing, the changes to the license, as indicated in Enclosure 2 to the cover letter forwarding the order, are acceptable.

8.3 State Consultation

In accordance with the Commission's regulations, the New Hampshire and Massachusetts officials were notified of the proposed issuance of the amendment. The State officials did not provide any comments.

8.4 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or the health and safety of the public.

9.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

10.0 CONCLUSION

The NRC staff has concluded, based on the information and representations contained in the application and on the considerations in the foregoing discussion, that with the appropriate conditions discussed above, FPLE Seabrook is qualified to hold the license for Seabrook Station to the extent requested, and the transfer of the license to FPLE Seabrook is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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