June 30, 1998 SECY-98-157

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: COMPLIANCE OF GREAT BAY POWER CORPORATION WITH THE NRC'S DECOMMISSIONING FUNDING ASSURANCE REQUIREMENTS

PURPOSE:

To inform the Commission of legislation that recently was enacted by the State of New Hampshire that, in the staff's view, enables Great Bay Power Corporation (Great Bay) to comply with both the NRC's existing and likely revised decommissioning funding assurance requirements at 10 CFR 50.75. Unless directed otherwise by the Commission, the staff intends to inform Great Bay that the staff considers Great Bay to be in compliance with the NRC's decommissioning funding assurance requirements.

BACKGROUND:

In an application dated May 8, 1996, the North Atlantic Energy Service Corporation, as agent for Great Bay, sought NRC's approval under 10 CFR 50.80 for the indirect transfer of the Seabrook license, to the extent held by Great Bay, that would result from the formation of a holding company over Great Bay. As a result of statements made in this application, the staff determined that Great Bay did not meet the definition of "electric utility" in 10 CFR 50.2 and, consequently, was required to obtain additional decommissioning funding assurance mechanisms as provided in 10 CFR 50.75. Great Bay is a non-operating, 12.1324 percent co-owner of Seabrook and sells its proportionate share (about 140 MWe) of the power from Seabrook on the wholesale electricity market. Additional background information on Great Bay was provided to the Commission in SECY-96-260 (December 19, 1996).

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Since the NRC's determination of Great Bay's status as a non-electric utility, Great Bay has sought unsuccessfully to obtain a surety bond as a means of providing the additional funding assurance that the NRC requires. In view of Great Bay's difficulty in obtaining this assurance on reasonable terms and conditions, and given the minimal impacts on protection of public health and safety over the near term that would result from the absence of additional assurance, the NRC issued a 6-month exemption to Great Bay, beginning January 22, 1997. This action exempted Great Bay from the requirement to provide additional funding assurance in order to allow Great Bay additional time to obtain such additional assurance. As a result of Great Bay's continued lack of success in obtaining additional assurance, the NRC issued an extension of the exemption on July 23, 1997. This extension will expire on July 23, 1998.

DISCUSSION:

The current estimated cost to decommission the Seabrook plant, as derived from the generic formulas in 10 CFR 50.75(c), is approximately $489 million. Great Bay's 12.1324 percent share of this cost is about $59 million. Great Bay currently deposits about $1.2 million annually in its external decommissioning trust fund and, by the end of 1998, will have accumulated about $9.95 million in it. In addition, as part of the bankruptcy settlement from which Great Bay emerged in 1994, Great Bay's former parent company, Eastern Utility Associates (EUA), has guaranteed an additional $10 million toward payment of Great Bay's share of Seabrook decommissioning costs.[1] Thus, Great Bay has nearly $40 million in decommissioning costs for which it must provide some additional assurance pursuant to 10 CFR 50.75 as a non-electric utility.

On June 11, 1998, the Governor of the State of New Hampshire signed legislation that requires the co-owners of Seabrook to "be proportional guarantors of the decommissioning obligations of any joint owner of the facility without a franchise territory." (Great Bay does not have a franchise territory and, unlike all of the other Seabrook co-owners, is not an "electric utility" under 10 CFR 50.2.) [2]

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[1] As part of its bankruptcy reorganization, Great Bay changed its name from EUA Power Corporation to Great Bay Power Corporation.

[2] The New Hampshire legislation provides that

> If a joint owner of the facility without a franchise territory defaults on its decommissioning obligations, the [nuclear decommissioning financing] committee shall require the remaining owners of the facility to submit for the committee's approval a plan for the fulfillment of the defaulting owner's decommissioning obligations. The plan shall be submitted within 30 days after the default. The plan may include the sale of the defaulting owner's share of the power generated by the facility, and the application of the proceeds of such sale to the defaulting owner's decommissioning obligations. For purposes of this section, "default" means the failure by an owner to make 2 consecutive payments to the fund required by RSA 162-F [New Hampshire statutes].

The staff believes that the guarantee mandated by New Hampshire in the legislation comes within the scope of "[an]other guarantee method" that NRC regulations in 10 CFR 50.75(e)(2)(iii) allow non-electric utilities to use. The staff also believes that the New Hampshire legislation will allow Great Bay to comply with final changes to the NRC's decommissioning funding assurance regulations that are scheduled to be submitted for the Commission's consideration on June 30, 1998, unless changed significantly by the Commission. By having New Hampshire State law require the other Seabrook co-owners to be liable for any default by Great Bay on its decommissioning trust fund deposits, the decommissioning obligation is shifted, when and if necessary, to electric utilities, which are allowed under current NRC regulations to pay decommissioning funds into external trusts over the expected life of Seabrook without providing additional assurance. Each of the other co-owners would be responsible for its proportionate share, based on its percentage ownership in Seabrook, of the payments in default. For example, the co-owner with the largest share of Seabrook, North Atlantic Energy Corporation, would be responsible for almost 36 percent of defaulted payments in addition to its own share of the decommissioning cost. In the worst case, this scenario would add about $14.4 million to the $176 million in Seabrook decommissioning costs for which North Atlantic Energy Corporation is currently responsible. The maximum current-dollar impact on other co-owners would, of course, be proportionately less.

Several factors would serve to mitigate the potential impact on the other co-owners if they were required to make up Great Bay's defaulted share. First, the other Seabrook co-owners would be able to cover any defaulted payments over Seabrook's remaining operating life; thus the impact in any one year would be small. Because each of the other Seabrook co-owners meets the NRC definition of "electric utility" (i.e., is subject to traditional "cost-of-service" ratemaking), each would presumably be able to include any additional share of Seabrook costs in rates as long as New Hampshire engages in traditional rate regulation. Even if these additional payments were not allowed to be collected in rates, the annual impact of such payments on the other co-owners would be small. For example, the annual impact on the co-owner with the largest share of Seabrook would be under $500,000, an amount the staff considers to be minimal compared to that co-owner's historical cash flow and current asset levels. Moreover, under the provisions of the New Hampshire legislation, the co-owners would be entitled to Great Bay's share of Seabrook power output and would, presumably, be able to sell this power and obtain additional revenues to cover their shares of the default amount. Finally, as long as Seabrook operates at approximately its historical capacity factor, Great Bay should continue to be able to make its payments into its decommissioning trust fund without significant risk of default. As a "quid pro quo" for the other Seabrook co-owners' support of the New Hampshire legislation, Great Bay has agreed to accelerate its decommissioning fund payments so that Great Bay's share of decommissioning will be fully funded by 2015 rather than 2026.[3] The staff understands that this provision has been implemented contractually between Great Bay and the other Seabrook co-owners. As Great Bay continues to fund its decommissioning trust, the

[3] The staff believes that, although accelerated decommissioning funding is a positive development, the proportionate guarantee of any Great Bay default by the other Seabrook co-owners is adequate, in and of itself, to comply with 10 CFR 50.75(e).

other Seabrook co-owners become potentially liable for progressively smaller amounts for which Great Bay could be in default and thus would suffer progressively smaller adverse financial impacts.

One provision of the New Hampshire legislation of some potential concern is the stipulation that the legislation will automatically be repealed "30 days after the chairman of the nuclear decommissioning financing committee has certified to the secretary of state that comprehensive funding assurance for decommissioning has been implemented." New Hampshire enacted rate deregulation legislation in 1996 and the New Hampshire Public Utilities Commission (NHPUC) issued its Final Plan for Statewide Electric Utility Restructuring on February 28, 1997. Because of perceptions by some electric utilities doing business in New Hampshire that the NHPUC plan did not adequately address stranded cost recovery issues, these utilities sued NHPUC. Because the litigation is continuing, the restructuring of New Hampshire electric utilities remains deferred. Thus, it is not clear that any repeal of the proportionate guarantee provisions will occur in the near term. Moreover, the staff understands that New Hampshire is planning to address Great Bay's decommissioning cost recovery for Seabrook as part of whatever final restructuring plan is implemented. Thus, the repeal of the legislation may not materially affect Great Bay's continued ability to comply with NRC requirements.

Nevertheless, if New Hampshire's restructuring plan does not include some provision for Great Bay's decommissioning cost, Great Bay, at some future time, may again be unable to comply with the NRC's decommissioning funding assurance regulations. If that situation recurs, the staff will have to readdress Great Bay's compliance in light of the factual circumstances at that time. The staff will monitor the situation and take appropriate action.

In view of the foregoing, the staff believes that Great Bay complies with the provisions of 10 CFR 50.75(e). Consequently, because of the brief time left on the exemption and because the exemption has been rendered moot with enactment of the New Hampshire legislation, the staff intends to allow the exemption to lapse. Unless the Commission directs otherwise, the staff intends to inform Great Bay of the staff's view that Great Bay now complies with the existing requirements for decommissioning funding assurance in 10 CFR 50.75(e).

COORDINATION:

The Office of the General Counsel has no legal objection to this paper.

RECOMMENDATION:

That the Commission:

Note that it is the staff's view that, as long as New Hampshire legislation remains in effect requiring Seabrook co-owners to be proportionately liable for Great Bay's portion of Seabrook's decommissioning costs in the event of Great Bay's default, Great Bay is in compliance with

NRC's current and anticipated future decommissioning funding assurance requirements in 10 CFR 50.75(e). The staff intends to inform Great Bay that it considers Great Bay to be in compliance with existing decommissioning funding assurance requirements unless the Commission directs otherwise.

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NRC's current and anticipated future decommissioning funding assurance requirements in 10 CFR 50.75(e). The staff intends to inform Great Bay that it considers Great Bay to be in compliance with existing decommissioning funding assurance requirements unless the Commission directs otherwise.

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