

July 28, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matters of

NEXTERA ENERGY SEABROOK, LLC
(Seabrook Station, Unit 1)

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Docket No. 50-443-LR

**MOTION TO WITHHOLD OR WITHDRAW FINAL ENVIRONMENTAL IMPACT
STATEMENT PENDING RENEWED OPPRTUNITY FOR COMMENT**

I. INTRODUCTION-

Friends of the Coast and New England Coalition, joint interveners in the above captioned matter, through their pro se representative, Raymond Shadis, respectfully move the Commission to order that the issuance of the Final Environmental Impact Statement in the above captioned matter be withheld pending its release as a draft or supplement and the gathering and consideration of public comment. In the alternative, if the Final Environmental Impact Statement in the above captioned matter has been issued before the Commission has had an opportunity to act upon this motion, the Commission should order withdrawal of the Final Environmental Impact Statement pending its re-release as a draft or supplement and gathering and consideration of public comment. NRC Staff has, as of July 17, 2015 informed movants that the Final Environmental Impact Statement (herein after "FEIS") for Seabrook Unit 1 license renewal will be issued "...on or within a few days of July 31, 2015". Thus close to four years will have elapsed since the public comment period ended in September 2011. Movants contend that the extraordinary delay in incorporating public comment and producing this environmental report have altered its material substance and nature in such a way as to nullify much of its utility for both the NRC and

the concerned public. This extraordinary delay, the movants contend, is most certainly a challenge to the integrity of the NRC and NEPA process, integrity that can best be reaffirmed by the simple remedy of revisiting consultation with the affected and concerned public.

II. DESCRIPTION OF MOVANTS

- Friends of the Coast is an Intervenor in the above captioned Seabrook Unit 1 license renewal proceeding. Friends of the Coast (herein after, "Friends") was incorporated as Earth Day Commitment in the State of Maine in 1995 and maintains an office in Edgecomb, Maine. Friends was the sole NGO intervener in the *Maine Yankee License Termination Plan*.
- New England Coalition is an Intervenor in the above captioned Seabrook Unit 1 license renewal proceeding. New England Coalition (herein after "NEC") was incorporated in the State of Vermont in 1971 under the name of New England Coalition on Nuclear Pollution. NEC is maintains offices in Brattleboro, Vermont. NEC has been an intervener in numerous NRC adjudicatory proceedings including Seabrook original license proceedings and , more recently, Vermont Yankee *Extended Power Uprate and License Renewal*.
- Friends of the Coast and New England Coalition are joint interveners in the above captioned *Seabrook Unit 1 license renewal proceeding*.

III. FACTUAL BACKGROUND

A. The subject Environmental Impact Statement concerns a License Renewal for Seabrook station Unit I .The original operating license for Seabrook Station does not expire until 2030. NextEra, Inc., Seabrook owner-operators, filed their License Renewal Application on May 25, 2010. The draft site-specific environmental impact statement was published in the Federal

Register and noticed as available for public comment on July 31, 2011, just one year in the making following the issuance of the Environmental Assessment on 2010. The draft EIS or "DEIS" is the base document upon which, presumably without major modification, a final EIS is to be built. NRC scheduled a public meeting in Hampton, N.H. for the purpose of taking (oral) public comment on Sept 2011.

B. NRC Staff has so far been unable to accurately predict a date for completion and issuance of the FEIS.

- On **June 9, 2011** NRC Staff filed its Projected Schedule for Completion of the Safety and Environmental Evaluations showing the final Site-specific Environmental Impact Statement set for release in **March 2012**[emphasis added].
- On **March 26, 2012**, NRC Staff filed a letter with the ASLB including the following:

On March 19, 2012, NextEra submitted a supplement to the Seabrook license renewal application (LRA) Environmental Report detailing updates to the Severe Accident Mitigation Alternatives analysis. As a result of this additional information, the NRC will not be able to issue the final supplemental environmental impact statement (FSEIS) regarding the Seabrook LRA in March 2012, as was previously scheduled. In order to allow sufficient time to assess the impact that the additional submittal will have on the Seabrook LRA environmental review schedule, the NRC will revise the current schedule to indicate the date of issuance for the Seabrook FSEIS as "**to be determined.**"[emphasis added] Once the impact to the Seabrook LRA environmental review schedule has been assessed, the NRC will issue a revised schedule letter, detailing the revised FSEIS issuance date.

- On **June 4, 2012**, the NRC Staff filed a letter with the ASLB including the following:

This letter informs the Board that the NRC Staff has revised the schedule for completion of the environmental and safety reviews in this proceeding. The attached letter from Brian Holian, Director, Division of License Renewal, Office of Nuclear Reactor Regulation, to Paul Freeman, Site Vice President, NextEra Seabrook, LLC, explains that the NRC Staff will issue a supplement to the draft supplemental environmental impact statement to address changes in the applicant's severe accident mitigation alternatives analysis. In addition, the letter

indicates that the NRC Staff will extend its schedule for completing the Safety Evaluation Report to review new information from the applicant related to the alkali-silica reaction open item. In light of these developments, the expected date for completion of the environmental review is **April of 2013** [emphasis added], and the NRC Staff will determine the date of the completion of the safety review, pending its review of the applicant's submittal on the alkali-silica reaction open item.

- On **March 11, 2013**, the NRC Staff filed with the ASLB as follows:

At this time, the Staff expects to issue a supplement to its draft supplemental environmental impact statement in **April of 2013** and a final supplemental environmental impact statement in **December of 2013**. [emphasis added]

- On **August 12, 2013**, the ASLB issued an Order approving a settlement agreement between NextEra, Friends/NEC, and NRC Staff. Execution of the agreement depends upon issuance of the FEIS.

MEMORANDUM AND ORDER (Approving Settlement of Contention 4D)

On August 8, 2013, NextEra Energy Seabrook, LLC ("NextEra"), Friends of the Coast and the New England Coalition ("FOTC/NEC"), and the NRC Staff (collectively, the "Parties") moved for an order approving settlement of Contention 4D, and for a second Order, to be issued seven days after publication of the FSEIS without further motion dismissing Contention 4D. In accordance with 10 C.F.R. § 2.338(g), the Parties forwarded the settlement agreement and proposed orders to this Board. Consistent with Commission policy to encourage resolution of contested issues in licensing proceedings through settlement, we find the settlement and eventual dismissal of Contention 4D in the public interest. Pursuant to our authority under 10 C.F.R. § 2.338(i), we grant the Joint Motion approving the settlement agreement. Pursuant to that Settlement Agreement, upon issuance of the Final Supplemental Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station (NUREG-1437, Supplement 46), the NRC Staff will submit a letter to the Board, identifying the portions of the FSEIS in which it analyzes the CALMET sensitivity, the treatment of uncertainty and off-setting conservatisms in NextEra's analysis. Seven days after receipt of this letter, the Board will issue a further order dismissing Contention 4D without further motion.¹

- On **October 3, 2013**, the NRC Staff filed with the ASLB as follows:

¹ If the FEIS is withheld or withdrawn and reissued as a supplement or draft for public comment, NEC commits to supporting dismissal of Contention 4D providing the issuance contains the analysis agreed upon and memorialized in the Board's Order of August 12, 2013.

Pursuant to the Board's March 11, 2013 Memorandum and Order (Requiring Update of Staff's Project Schedule) in the Matter of NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), the Staff informs the Board that there have been no changes to its safety and environmental review schedules for the Seabrook license renewal application. The Staff currently anticipates publication of the Final Supplemental Environmental Impact Statement in **November 2013** [emphasis added]

- On **March 6, 2014**, NRC Staff filed the following update with the ASLB:

Pursuant to the Board's March 11, 2013 Memorandum and Order (Requiring Update of Staff's Project Schedule) in the Matter of NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), the Staff informs the Board that there have been no changes to its safety and environmental review schedules for the Seabrook license renewal application. The Staff currently anticipates publication of the Final Supplemental Environmental Impact Statement in July 2014.

- On **July 2, 2014**, NRC Staff wrote to Entergy,

This letter is to inform you of a change in the environmental review schedule for the Seabrook license renewal review. In August 2013, the U.S. Nuclear Regulatory Commission (NRC) staff, NextEra, Friends of the Coast and the New England Coalition reached a settlement agreement regarding resolution of Contention 4D associated with the supplemental environmental impact statement (SEIS). Due to the intricacies of the review and analysis, NRC staff requires additional time to complete the final SEIS. The schedule for issuance of the final SEIS has been delayed from July to **October 2014**. [emphasis added] (ML14148A218)

- On **October 2, 2014**, NRC Staff filed the following with the ASLB:

The Staff currently anticipates publication of the Final Supplemental Environmental Impact Statement in **February 2015** [emphasis added] and publication of the Final Safety Evaluation Report in November 2015.

- On **April 2, 2015**, NRC Staff updated its FEIS publication date estimate:

The Staff currently anticipates publication of the Final Supplemental Environmental Impact Statement in **May 2015** [emphasis added] and publication of the Final Safety Evaluation Report in November 2015.

- NRC Staff on **May 5, 2015**:

The Staff currently anticipates publication of the Final Supplemental Environmental Impact Statement in **June 2015**. [emphasis added]

Staff also filed a same-day correction:

The corrected document corrects the Staff's anticipated date for publication of the Final Supplemental Environmental Impact Statement to July 2015 from June 2015.

- On **July 17, 2015**, in an e-mail NRC Staff Counsel Brian G. Harris advised NEC as follows:

...We are anticipating that the FSEIS will be published **on or within a few days of July 31, 2015** [emphasis added] and we will provide a Board notification served on the all the parties that the Staff has completed its portion of the settlement agreement. In the notification, the Staff will provide a reference to the completed FSEIS.

IV. DISCUSSION

A. PROCESS DELAYED IS PROCESS DENIED.

NEC is concerned that extraordinary delays in preparing and issuing the FEIS signal the likelihood that the environmental review process may have been compromised in three ways:

(1) NRC is deprived of the benefit of public comment (input) on significant portions of the DEIS now containing new information, (2) because the DEIS is a departure from what the public was given the opportunity to review back in 2011, the public cannot reasonably sustain confidence in the NRC review process, (3) the extraordinary length of time required for updating the DEIS to include response to public comments from 2011 and the number of DEIS scheduling resets by NRC Staff all betoken a lot a difficult and complex work even exceeding that of producing the original DEIS. If NRC Staff's review is in conformance with NEPA, NRC Regulation and both CEQ and NRC Guidance then its assumptions, analyses, and conclusions, having taken so long, are substantial and material to findings and decisions that the Commission must make in its role of NEPA administrator and environmental protector.

B. NRC'S REGULATIONS CONTEMPLATE SUPPLEMENT OF, AND PUBLIC COMMENT ON, A SUPPLEMENT TO A FEIS

1. § 51.92 Supplement to the final environmental impact statement

(a) If the proposed action has not been taken, the NRC staff will prepare a supplement to a final environmental impact statement for which a notice of availability has been published in the **Federal Register** as provided in § 51.118, if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(c) The NRC staff may prepare a supplement to a final environmental impact statement when, in its opinion, preparation of a supplement will further the purposes of NEPA.

(d) The supplement to a final environmental impact statement will be prepared in the same manner as the final environmental impact statement except that a scoping process need not be used.

(e) (1) – (7) *This sub-section (e) relates to early site permits and not license renewal*

(f)(1) A supplement to a final environmental impact statement will be accompanied by or will include a request for comments as provided in § 51.73 and a notice of availability will be published in the **Federal Register** as provided in § 51.117 if paragraphs (a) or (b) of this section applies.

(2) If comments are not requested, a notice of availability of a supplement to a final environmental impact statement will be published in the **Federal Register** as provided in § 51.118.²

2. A confusion of terminology should not stay action on this motion.

As evident in the NRC Staff's various communication regarding scheduling of a *final* environment impact statement in the foregoing Section III, B of this Motion, NRC Staff itself is not well-grounded or settled on a designation for the anticipated *final* EIS("FEIS"). The Staff variously refers to the anticipated document as; (June 2011) "**final Site-specific** Environmental

² 72 FR 49515, Aug. 28, 2007

Impact Statement" [emphasis added], (March 26, 2012) "**final supplemental** environmental impact statement" [emphasis added], (June 4, 2012) *separately in a letter to NextEra, " a supplement to the draft supplemental environmental impact statement," (July 2, 2012), "supplemental environmental impact statement (SEIS)" or "final SEIS" and* (October 2, 2014), "Final Supplemental Environmental Impact Statement". It is not clear at times if the NRC Staff is referring to a supplement to NUREG -1437, the Generic Environmental Impact Statement (GEIS) or NUREG-1550- the Site-specific Environmental Impact Statement (SEIS) or the draft EIS (DEIS) or the draft SEIS ("DSEIS"). Friends/NEC apologizes if our Motion reflects any of this confusion.

Friends/NEC wants nonetheless to be clear that what we are asking in this motion is re-designating the anticipated environmental impact statement as no longer "final," but rather as a supplement to the draft site-specific environmental impact statement issued on July 31, 2011 and published for public comment, including public comment to be gathered at a public meeting, scheduled for the purpose in the Seabrook Station area. Friends/NEC does not propose endless retuning of documents that according to CEQ and NEPA are supposed to be concise and readily understandable. Friends/NEC offers, however, that four years in supplementing a document that required only a little over a year to draft has broken the flow, timeliness, and continuity of the process, and frustrated NEPA, and the NRC's goals of meaningful public participation. Friends/NEC does respectfully move that NRC pick up its option, if not its mandate, to expeditiously re-involve the public and re-integrate refreshed public concerns in the environmental review process.

C. NO PARTY WILL BE PREJUDICED; ALL PARTIES AND THE COMMISSION WILL BENEFIT FROM GRANTING THIS MOTION.

This motion places no burden on any party, save for the NRC personnel involved in the environmental review and those responsible for placing Federal Register Notices and facilitating public meetings. Friends/NEC offers that they would be more than compensated by a fresh infusion of public input and a restoration of public confidence that the public's concerns will be expeditiously and thoroughly integrated in the process. In the public meeting, NextEra and Seabrook will be afforded yet another platform to outreach to the affected public. Friends/NEC has agreed herein to abide by a outstanding settlement agreement with NRC Staff and NextEra in a timely fashion regardless of whether the Commission grants this motion or not. The requested License Renewal would not be required for another 15 years; the current license expiration set for 2030. Any delay in the process would be trivial, a matter of some months, in the light time remaining until the license expires or even the almost four years that NRC Staff has taken for production of the FEIS.

D. ONLY THE COMMISSION IS EMPOWERED TO GRANT THIS MOTION.

Friends/NEC brought this motion before the Commission because the ASLB is not empowered to interfere with NRC Staff scheduling or administration of the Staff's application review procedures.

The Staff produces, among other documents, the SER and DEIS and FEIS. The studies and analyses which result in these reports are made independently by the Staff, and Licensing Boards have no role or authority in their preparation. The Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff.

Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 & 3), LBP-83-36, 18 NRC 45, 48-49 (1983), citing New England Power Co. (NEP Units 1 & 2), LBP-78-9, 7 NRC 271 (1978). See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978); Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-785, 20 NRC 848, 865 n.52 (1984); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 NRC 5, 56 (1985), citing Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), CLI-80-12, 11 NRC 514, 516-17(1980).

V. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)

FRIENDS OF THE COAST and NEW ENGLAND COALITION ("Friends/NEC") certifies that Friends/NEC made a good faith effort to reach accord and agreement of opposing counsel, NRC Staff and NextEra, regarding the status and content of this motion.

We were unable reach agreement. NRC Staff and NextEra wrote that they would oppose the motion; both offering no compromise or accommodation; nor anything further since the Friends/NEC outreach and their initial and only response on July 17,2015.

VI. CONCLUSION

For the foregoing reasons, this Motion should be granted. The Commission should issue an order withholding the Final Environmental Impact Statement in the above captioned matter pending its release as a draft or supplement and the gathering and consideration of public comment. If the Final Environmental Impact Statement has been issued before the Commission has had an opportunity to act upon this motion, then in the alternative the Commission should order withdrawal of the Final Environmental Impact Statement pending its re-release as a draft or supplement and gathering and consideration of public comment.

Respectfully submitted,

Signed (electronically) this day, July28,2015 by :

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Duly authorized representative of Friends of the Coast and New England Coalition in the Seabrook license renewal proceeding

July 28, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of

FPL Energy Seabrook, LLC (NextEra, Inc)

(Seabrook Station, Unit 1 – License Renewal Application)

Docket No. 50-443

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2015, a copy of Friends of the Coast and New England Coalition's Motion To Withhold Or Withdraw Final Environmental Impact Statement Pending Renewed Opportunity For Comment in the above captioned proceeding was filed by electronic filing and provided to the persons and parties identified for service in these matters and listed by NRC's electronic filing system.

Signed electronically,

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