

August 7, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
NEXTERA ENERGY SEABROOK, LLC	)	Docket No. 50-443-LR
	)	
(Seabrook Station, Unit 1)	)	

NRC STAFF'S ANSWER TO MOTION  
TO WITHHOLD OR WITHDRAW FINAL ENVIRONMENTAL IMPACT  
STATEMENT PENDING RENEWED OPPORTUNITY FOR COMMENT

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the staff of the U.S. Nuclear Regulatory Commission (Staff or NRC Staff) hereby files its answer to Friends of the Coast and New England Coalition's (Friends/NEC) July 28, 2015, motion to withhold or withdraw the Staff's Final Supplemental Environmental Impact Statement (FSEIS)<sup>1</sup> pending a renewed opportunity for comment (Motion).<sup>2</sup> Specifically, Friends/NEC asks the Commission to order that the issuance of the FSEIS "be withheld pending its release as a draft or supplement and the gathering and consideration of public comment."<sup>3</sup> In the alternative, if the FSEIS has been issued, Friends/NEC requests that the Commission order the withdrawal of the FSEIS "pending its re-

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<sup>1</sup> NUREG-1437, Sup. 46, Vol. 1 – Vol. 2, Final Report, *Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants Regarding Seabrook Station* (July 2015) (ADAMS Accession No. ML15209A575 and ML15209A870) (FSEIS). The FSEIS was issued on July 29, 2015, and the Staff informed the Board and Parties that it would be responding to Friends/NEC's Motion. Letter from Anita Ghosh, Counsel for NRC Staff, to the Board (July 29, 2015) (ADAMS Accession No. ML15210A647) (July 2015 Letter to the Board).

<sup>2</sup> See Motion to Withhold or Withdraw Final Environmental Impact Statement Pending Renewed Opportunity for Comment (Jul. 28, 2015) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15209A743) (Motion).

<sup>3</sup> *Id.* at 1.

release as a draft or supplement and gathering and consideration of public comment.”<sup>4</sup> The basis for Friends/NEC’s Motion is its assertion that nearly four years have elapsed since the public comment period ended in 2011, and that the extraordinary delay in preparing the FSEIS has compromised the Staff’s review process.<sup>5</sup>

As discussed below, the Staff opposes Friends/NEC’s motion on the grounds that: (1) the FSEIS was issued after substantial public involvement, including public comments received on a supplement to the Staff’s draft SEIS issued in 2013; and (2) Friends/NEC has not demonstrated that a supplement to the FSEIS is required under the Commission’s regulations and the National Environmental Policy Act of 1969 (NEPA). For these reasons, and as explained in detail below, Friends/NEC’s Motion should be denied.

## BACKGROUND

### A. Procedural Background

This proceeding concerns the May 25, 2010 application of NextEra Energy Seabrook, LLC (NextEra) to renew its operating license for Seabrook Station, Unit 1 (Seabrook) for an additional 20 years from the current expiration date of March 15, 2030.<sup>6</sup> On October 20, 2010, Friends/NEC filed a petition to intervene.<sup>7</sup> NextEra and the Staff filed answers opposing the petition to intervene on November 15, 2010.<sup>8</sup> On February 15, 2011, the Atomic Safety and Licensing Board (Board) determined that Friends/NEC has standing, found that Friends/NEC

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<sup>4</sup> Motion at 1.

<sup>5</sup> *Id.* at 1-2, 6.

<sup>6</sup> Letter from Paul O. Freeman, Site Vice President, NextEra, to NRC, Seabrook Station Application for Renewed Operating License (May 25, 2010) (ADAMS Accession No. ML101590099) (LRA).

<sup>7</sup> See Friends of the Coast and New England Coalition Petition for Leave to Intervene, Request for Hearing, and Admission of Contentions (Oct. 20, 2010) (ADAMS Accession No. ML102940558).

<sup>8</sup> NextEra Energy Seabrook, LLC’s Answer Opposing the Petition to Intervene and Request for Hearing of Friends of the Coast and the New England Coalition (Nov. 15, 2010) (ADAMS Accession No. ML103190494); NRC Staff’s Answer to Petitions to Intervene and Requests for Hearing Filed By (1) Friends of the Coast and New England Coalition and (2) Beyond Nuclear, Seacoast Anti-Pollution League, and New Hampshire Sierra Club (Nov. 15, 2010) (ADAMS Accession No. ML103190764).

raised at least one admissible contention, and admitted Friends/NEC as a party to this proceeding.<sup>9</sup> On March 8, 2012, the Commission affirmed in part, and reversed in part, the Board's decision, leaving two admitted contentions in this proceeding – Contention 4B and Contention 4D.<sup>10</sup>

On August 8, 2013, NextEra, Friends/NEC, and the NRC Staff (collectively, the Parties) moved the Board for an order approving settlement of Contention 4D, and for a second Order, to be issued seven days after publication of the Staff's Final Supplemental Environmental Impact Statement without further motion, dismissing Contention 4D.<sup>11</sup> The Board issued a Memorandum and Order on August 12, 2013, granting the Parties' joint motion and approving the settlement of Contention 4D.<sup>12</sup> In a separate order issued on the same day, the Board granted NextEra's motion for summary disposition of Contention 4B and dismissed the contention.<sup>13</sup> In accordance with the Settlement Agreement, on July 29, 2015, the NRC Staff submitted a letter informing the Board and the parties of the issuance of the FSEIS and identifying the portions that address Contention 4D.<sup>14</sup> On August 5, 2015, the Board issued a Memorandum and Order dismissing Contention 4D and terminating the proceeding.<sup>15</sup>

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<sup>9</sup> See *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-2, 73 NRC 28 (2011), *aff'd in part and rev'd in part*, CLI-12-5, 75 NRC 301 (2012).

<sup>10</sup> See *Seabrook*, CLI-12-05, 75 NRC 301 (2012), *petition for review denied sub nom. Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013).

<sup>11</sup> Joint Motion for Approval of Settlement and Dismissal of FOTC/NEC Contention 4D at Ex. A, Settlement Agreement Among Friends of the Coast/The New England Coalition, NextEra Entergy Seabrook, LLC, and the Staff of the U.S. Nuclear Regulatory Commission Regarding Contention 4D (Aug. 8, 2013) (ADAMS Accession No. ML13220B047) (Settlement Agreement).

<sup>12</sup> See Memorandum and Order (Approving Settlement Agreement of Contention 4D) (Aug. 12, 2013) (ADAMS Accession No. ML13224A089).

<sup>13</sup> See Memorandum and Order (Granting Summary Disposition of Contention 4B) (Aug. 12, 2012) (ADAMS Accession No. ML13224A101).

<sup>14</sup> See July 2015 Letter to the Board.

<sup>15</sup> See Memorandum and Order (Dismissing Contention 4D and Terminating the Proceeding) (Aug. 5, 2015).

B. The Staff's Environmental Review

NextEra submitted an Environmental Report (ER) as part of its May 2010 application.<sup>16</sup> On July 20, 2010, the Staff published a notice of intent to prepare an environmental impact statement and conduct the scoping process.<sup>17</sup> The Staff held two public meetings on August 19, 2010, to discuss the license renewal process and environmental scoping, and to accept public comments regarding environmental issues that the NRC should consider during its review.<sup>18</sup> On August 1, 2011, the Staff issued its Draft Supplemental Environmental Impact Statement (DSEIS),<sup>19</sup> which was made available for public comment.<sup>20</sup> In addition, the Staff held two public meetings on the DSEIS on September 15, 2011, to receive additional public comments on the DSEIS.<sup>21</sup>

On March 19, 2012, NextEra submitted a supplement to its Severe Accident Mitigation Alternatives (SAMA) analysis.<sup>22</sup> On April 26, 2013, the NRC Staff issued a supplement to the

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<sup>16</sup> LRA, Appendix E (ADAMS Accession Nos. ML101590092 and ML101590089).

<sup>17</sup> NextEra Energy Seabrook; Notice of Intent To Prepare an Environmental Impact Statement and Conduct the Scoping Process for Seabrook Station, Unit 1, 75 Fed. Reg. 42,168 (July 20, 2010).

<sup>18</sup> Summary of Public License Renewal Overview and Environmental Scoping Meeting Related to the Review of the Seabrook Station License Renewal Application (TAC NOS. ME3959 and ME4028) (Sept. 20, 2010) (Document Package available at ADAMS Accession No. ML102520286).

<sup>19</sup> NUREG-1437, Sup. 46, *Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants Regarding Seabrook Station, Draft Report for Comment* (July 2011) (ADAMS Accession Nos. ML11213A024 and ML11213A203) (DSEIS).

<sup>20</sup> NextEra Energy Seabrook, LLC; Notice of Availability of Draft Supplement 46 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of Seabrook Station, Unit 1, 76 Fed. Reg. 47,612 (Aug. 5, 2011) (noting that public comments should be submitted by October 26, 2011).

<sup>21</sup> Summary of Public Meetings Conducted to Discuss the Draft Supplemental Environmental Impact Statement Related to the Review of the Seabrook Station License Renewal Application (TAC No. ME3959) (Oct. 26, 2011) (ADAMS Accession No. ML11277A046).

<sup>22</sup> SBK-L-12053, Seabrook Station Supplement 2 to Severe Accident Mitigation Alternatives Analysis (Mar. 19, 2012) (ADAMS Accession No. ML12080A137).

DSEIS (DSEIS Supplement) which, among other things, considered the updated SAMA analysis.<sup>23</sup> The DSEIS Supplement was made available for public comment.<sup>24</sup>

Additionally, as explained above, on August 8, 2013, the Parties moved the Board for an order approving settlement of Contention 4D.<sup>25</sup> Pursuant to the Settlement Agreement, the Parties agreed that the FSEIS would include an analysis of NextEra's alternate meteorological model (the CALMET sensitivity model), treatment of uncertainty, and off-setting conservatisms in NextEra's updated SAMA analysis.<sup>26</sup> Following the Board's approval of the Settlement Agreement, the Staff directed Sandia National Laboratories (Sandia) to conduct a review of CALMET and of the conservatisms in NextEra's SAMA analysis. Sandia's report was completed on April 25, 2014.<sup>27</sup> The Staff reviewed the results of Sandia's report and incorporated the analysis into the FSEIS.

On July 31, 2015, the Staff issued the FSEIS.<sup>28</sup> The FSEIS incorporates the DSEIS and the DSEIS Supplement and considers the comments submitted on the DSEIS, and comments submitted on the DSEIS Supplement.<sup>29</sup> Pursuant to the Parties' Settlement Agreement, the FSEIS also includes an analysis of the CALMET sensitivity, treatment of uncertainty, and off-setting conservatisms in NextEra's SAMA analysis.<sup>30</sup> In addition, the FSEIS includes the Staff's

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<sup>23</sup> NUREG-1437, Sup. 46, *Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants Regarding Seabrook Station Second Draft Report for Comment* (Apr. 2013) (DSEIS Supplement) (ADAMS Accession No. ML13113A174).

<sup>24</sup> Draft Supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants; NextEra Energy Seabrook; Seabrook Station, Unit 1, 78 Fed. Reg. 26,662 (May 7, 2013) (noting that public comments should be submitted by June 30, 2013).

<sup>25</sup> See Settlement Agreement.

<sup>26</sup> *Id.*

<sup>27</sup> Review of Conservatism in the Seabrook Consequence Analysis (Apr. 25, 2014) (ADAMS Accession No. ML14225A156).

<sup>28</sup> See *generally* FSEIS.

<sup>29</sup> FSEIS at 1-3.

<sup>30</sup> FSEIS at Chapter 5, Appendix F.

updated analysis related to the revised License Renewal Generic Environmental Impact Statement (GEIS),<sup>31</sup> issued as part of the June 20, 2013, final rule revising 10 CFR Part 51.<sup>32</sup> Finally, the FSEIS also addresses the impacts from the Commission's Continued Storage Rule and associated GEIS for Continued Storage of Spent Nuclear Fuel.<sup>33</sup>

## DISCUSSION

### I. Friends/NEC's Motion Should be Denied

#### A. The Staff's FSEIS Was Issued After Substantial Public Involvement

Friends/NEC asserts the Staff's environmental review has been compromised because the public cannot reasonably sustain confidence in the NRC review process since the FSEIS is a departure from what the public was given the opportunity to review in 2011.<sup>34</sup> However, as discussed more fully below, the public was given ample opportunity to review and comment on the Staff's environmental review for Seabrook. In addition to publishing its DSEIS in 2011, the Staff also published for public comment, a supplement to its DSEIS in 2013 based on new and significant information – a fact Friends/NEC does not mention in its Motion.<sup>35</sup>

The 2013 DSEIS Supplement contains analyses of new and significant information not in the 2011 DSEIS, including: (1) NextEra's updated SAMA analysis;<sup>36</sup> (2) an updated discussion

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<sup>31</sup> FSEIS at 1-3 – 1-4, Chapter 4.

<sup>32</sup> Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282 (June 20, 2013).

<sup>33</sup> FSEIS at 1-4, Chapter 6.1. Continued Storage of Spent Nuclear Fuel, 79 Fed. 56,238 (Sep. 19, 2014) (Final rule) (Continued Storage Rule); NUREG-2157, Vol. 1, *Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel* (September 2015) (ADAMS Accession No. ML14196A105).

<sup>34</sup> Motion at 6. Although Friends/NEC's assertions are regarding the "DEIS," the Staff assumes that the Intervenor intended to challenge the current environmental document which is the FSEIS.

<sup>35</sup> Friends/NEC notes that there is "confusion of terminology" but does not appear to recognize that the Staff issued a supplement to its DSEIS in 2013 for public comment. Motion at 7-8. To clarify any confusion, the Staff notes that, to date, it has issued three environmental review documents for Seabrook: (1) the 2011 DSEIS; (2) the 2013 DSEIS Supplement; and (3) the recently issued 2015 FSEIS.

<sup>36</sup> DSEIS Supplement at ix, Chapter 1, Chapter 5, Appendix F.

of the uranium fuel cycle in light of the June 8, 2010 U.S. Court of Appeals for the District of Columbia Circuit (*New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)) decision to vacate the NRC's Waste Confidence Decision Rule;<sup>37</sup> and (3) the Staff's analysis of new NEPA issues and associated environmental impact findings for license renewal arising from the NRC's rulemaking to revise the License Renewal Generic Environmental Impact Statement (GEIS).<sup>38</sup> Importantly, the 2013 DSEIS Supplement was made available for public comment,<sup>39</sup> and the Staff's FSEIS considers public comments received on the 2013 DSEIS Supplement.<sup>40</sup>

Friends/NEC also asserts that the Staff's environmental review has been compromised because the "NRC is deprived of the benefit of public comment (input) on significant portions of the [FSEIS] containing new information."<sup>41</sup> However, contrary to Friends/NEC's assertions, the public, particularly Friends/NEC, has been afforded the opportunity to comment on all of the substantive revisions in the FSEIS that were not addressed in the 2011 DSEIS. These substantive revisions in the FSEIS include: (1) NextEra's updated SAMA analysis;<sup>42</sup> (2) issues related to the revised GEIS for License Renewal issued as part of the June 20, 2013 final rule revising 10 CFR Part 51;<sup>43</sup> and (3) impacts from the Commission's Continued Storage Rule in 10 C.F.R. § 51.23 and associated GEIS for Continued Storage of Spent Nuclear Fuel.<sup>44</sup>

As explained above, the public was provided with an opportunity to comment on the Staff's 2013 DSEIS Supplement, which addressed each of these three issues, including the

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<sup>37</sup> DSEIS Supplement at ix, Chapter 1, Chapter 6.1.

<sup>38</sup> DSEIS Supplement at ix, xi, Chapter 1, Chapter 4.

<sup>39</sup> See 78 Fed. Reg. at 26,662 (noting that public comments should be submitted by June 30, 2013).

<sup>40</sup> FSEIS at 1-3, Appendix A.

<sup>41</sup> Motion at 6.

<sup>42</sup> FSEIS, at 1-3; Chapter 5; Appendix F.

<sup>43</sup> FSEIS at 1-3 – 1-4; Chapter 4.

<sup>44</sup> FSEIS at 1-4; Chapter 6.

rulemakings revising the License Renewal GEIS and promulgating the Continued Storage Rule even though the rules had not yet been finalized.<sup>45</sup> Further, the public has also had the opportunity to provide comments on the issues raised in both of these rulemakings.<sup>46</sup> Moreover, Friends/NEC was also able to provide comments on the updated SAMA analysis in conjunction with its contention in this proceeding, Contention 4D. Specifically, Friends/NEC entered into a Settlement Agreement with NextEra and the NRC Staff wherein the Parties agreed that the NRC Staff would supplement its SAMA analysis in the FSEIS.<sup>47</sup> Pursuant to this Settlement Agreement, the FSEIS includes an analysis of the CALMET sensitivity, treatment of uncertainty, and off-setting conservatisms in NextEra's analysis.<sup>48</sup> As part of the settlement agreement process, Friends/NEC had the opportunity raise any issues or concerns it had regarding the updated SAMA analysis within the scope of Contention 4D. Thus, Friends/NEC's assertions that the NRC has been deprived of the benefit of public comments on significant portions of the FSEIS are without merit.

Friends/NEC also argues 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 concerned public."<sup>49</sup> The Staff recognizes that since the issuance of the 2011 DSEIS, the Staff's has taken additional time to complete its environmental review because of the need to give consideration to new and

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<sup>45</sup> See *supra* notes 36-38.

<sup>46</sup> Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 74 Fed. Reg. 38,117 (July 31, 2009) (Proposed Rule) (noting that public comments should be submitted by Oct. 14, 2009); Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 74 Fed. Reg. 51,522 (Oct 7, 2009) (Proposed Rule; Extension of Comment Period) (extending the comment period to Jan. 12, 2010); Waste Confidence—Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sep. 13 2013) (Proposed Rule) (noting that public comments should be submitted by Nov. 27, 2013).

<sup>47</sup> See Settlement Agreement at 2.

<sup>48</sup> FSEIS at Chapter 5; Appendix F.

<sup>49</sup> Motion at 1-2, 6.



significant information resulting in the publication of the 2013 DSEIS Supplement, comments received on the 2013 DSEIS Supplement, and the additional analysis the Staff agreed to undertake pursuant to the Parties' Settlement Agreement on Contention 4D.<sup>50</sup> Nevertheless, the public, and specifically Friends/NEC, has been afforded ample and timely opportunity to comment on the substantive revisions in Staff's FSEIS. Friends/NEC's assertions are without merit and its Motion should therefore be denied.

B. Friends/NEC Has Not Demonstrated That a Supplement is Necessary Under the Commissions Regulations or NEPA

Friends/NEC also asserts that the Commission's regulations contemplate the supplementation of an FSEIS and public comment on any such supplement.<sup>51</sup> As support, Friends/NEC points to 10 C.F.R. § 51.92 which requires the Staff to prepare a supplement to an FSEIS if, among other things, there are substantial changes in the proposed action that are relevant to environmental concerns, there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, or when the Staff believes that preparation of a supplement will further the purposes of NEPA.<sup>52</sup> However, Friends/NEC does not explain what substantial changes or new and significant information is present that would warrant supplementation of the FSEIS under 10 C.F.R. § 51.92 or NEPA.<sup>53</sup> Moreover, as explained above, the public, and specifically Friends/NEC,

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<sup>50</sup> After the Board approved the Parties' Settlement Agreement on August 12, 2013, the Staff directed Sandia National Laboratories to conduct a review of CALMET and of the conservatism in NextEra's SAMA analysis. Sandia's report was completed on April 25, 2014. See *supra* note 27.

<sup>51</sup> Motion at 6-7.

<sup>52</sup> See also *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989) (noting that under NEPA, "the decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance: If there remains 'major Federal actio[n]' to occur, and if the new information is sufficient to show that the remaining action will 'affect[t] the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared").

<sup>53</sup> The Staff notes that Friends/NEC has not submitted a new contention under 10 C.F.R. § 2.309 asserting that a supplement to the FSEIS is warranted.

have been afforded the opportunity to comment on the substantive revisions in the FSEIS. Friends/NEC has not demonstrated that there is new and significant information warranting a supplement and an additional public comment period. Accordingly, its Motion should be denied.

CONCLUSION

For the reasons set forth above, Friends/NEC's Motion should be denied.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 7<sup>th</sup> day of August 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
NEXTERA ENERGY SEABROOK, LLC	)	Docket No. 50-443-LR
	)	
(Seabrook Station, Unit 1)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF’S ANSWER TO MOTION TO WITHHOLD OR WITHDRAW FINAL ENVIRONMENTAL IMPACT STATEMENT PENDING RENEWED OPPORTUNITY FOR COMMENT,” dated August 7, 2015, have been served upon the Electronic Information Exchange, the NRC’s E-Filing System, in the above captioned proceeding, this 7<sup>th</sup> day of August, 2015.

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 7th day of August, 2015