

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)	)	ASLBP No. 10-906-02-LR
	)	
(Operating License Renewal)	)	

**NextEra Energy Seabrook, LLC’s Answer Opposing  
Friends of the Coast and New England Coalition’s Motion to Withhold  
or Withdraw Final Environmental Impact Statement**

Pursuant to 10 C.F.R. § 2.323(c), NextEra Energy Seabrook, LLC (“NextEra”) submits this Answer opposing Friends of the Coast and New England Coalition (“Friends/NEC”)’s “Motion to Withdraw Final Environmental Impact Statement Pending Renewed Opportunity for Comment” (the “Motion”), filed July 28, 2015. In their Motion, Friends/NEC argue that the Nuclear Regulatory Commission (“NRC”, or the “Commission”) should not issue a Final Supplemental Environmental Impact Statement (“Final SEIS”) for the Seabrook Station (“Seabrook”) license renewal application now, four years after publication of the Draft Supplemental Environmental Impact Statement (“Draft SEIS”). Instead, Friends/NEC ask the Commission to order the Final SEIS to be withheld or withdrawn and reissued as a supplemental Draft SEIS.<sup>1</sup>

But Friends/NEC fail to acknowledge that the NRC in fact *already* issued a supplemental Draft SEIS (“Second Draft SEIS”) for public comment almost two years after issuing the initial

---

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

Draft SEIS. Thus, contrary to Friends/NEC's claims, the Seabrook Draft SEIS has had twice the normal number of opportunities for public comment for a license renewal SEIS and the time between the last public comment period and the issuance of the Final SEIS has been much less than four years. Regardless, even if the NRC had not issued the Second Draft SEIS, Friends/NEC failed to apply the NRC's regulatory standards applicable to their request to show why another supplemental Draft SEIS is necessary. Friends/NEC's Motion should be denied.

## **I. Procedural Background**

NextEra applied to the NRC for a renewed operating license for Seabrook in May 2010. Friends/NEC filed a Petition to Intervene and Request for a Hearing on October 20, 2010 raising four contentions, which included, *inter alia*, Contention 4, a multi-part challenge to the analysis of severe accident mitigation alternatives ("SAMA") contained in NextEra's Environmental Report.<sup>2</sup> On February 15, 2011, the Licensing Board admitted portions of Contention 4 and other contentions for hearing.<sup>3</sup> On appeal by NextEra, the Commission overturned the Board's decision to admit certain contentions, but deferred to the Board's decision to admit two aspects of Contention 4 (4B and 4D).<sup>4</sup>

On July 31, 2011, the NRC issued the Draft SEIS.<sup>5</sup> Four days later, it published a notice of the issuance of the Draft SEIS in the *Federal Register*, requesting public comments.<sup>6</sup> On

---

<sup>2</sup> Another group of intervenors no longer involved in the case also filed contentions challenging the Seabrook license renewal application. *See Beyond Nuclear v. NRC*, 704 F.3d 12 (1st Cir. 2013).

<sup>3</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-11-02, 73 NRC 28 (2011).

<sup>4</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301 (2012).

<sup>5</sup> Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 46 Regarding Seabrook Station, Draft Report for Comment, (July 31, 2011) (ADAMS Accession No. ML11213A024).

<sup>6</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).

September 15, 2011, the NRC held two public meetings in the vicinity of Seabrook to accept additional public comments on the Draft SEIS.<sup>7</sup>

Following the publication of the Seabrook Draft SEIS, a number of generic and site-specific circumstances arose that affected the pace of the NRC Staff's environmental review. First, on March 19, 2012, NextEra notified the NRC of changes that were made to its plant Probabilistic Risk Assessment ("PRA"), which impacted its SAMA analysis. Accordingly, NextEra submitted a supplement to its Environmental Report that incorporated the PRA updates into its SAMA analysis.<sup>8</sup> In this update, NextEra identified additional SAMA candidates, assessed the costs and benefits of these SAMA candidates, and reassessed the costs and benefits of the previously-identified SAMA candidates, which resulted in the identification of additional potentially cost-beneficial SAMAs. Soon thereafter, the NRC publicly announced that it would issue a supplemental Draft SEIS in accordance with 10 C.F.R. § 51.72(a)(2) and (b).<sup>9</sup>

On June 8, 2012, the Court of Appeals for the D.C. Circuit overturned the NRC's Waste Confidence rule in *New York v. NRC*.<sup>10</sup> Following this ruling, Friends/NEC filed a new contention seeking to prevent the NRC from issuing a renewed license for Seabrook until it had addressed the issues identified by the Court in *New York*.<sup>11</sup> Ruling on this and other similar

---

<sup>7</sup> Transcript of Seabrook Station License Renewal Public Meeting Afternoon, September 15, 2011, Pages 1 -104 (ADAMS Accession No. ML11273A139). Transcript of Seabrook Station License Renewal Public Meeting - Evening Session on September 15, 2011, Pages 1-76 (ADAMS Accession No. ML11273A140).

<sup>8</sup> Letter from Paul O. Freeman, NextEra, to U.S. NRC Document Control Desk, "Seabrook Station, Supplement 2 to Severe Accident Mitigation Alternatives Analysis, NextEra Energy Seabrook License Renewal Application," (March 19, 2012) (ADAMS Accession No. ML12080A137).

<sup>9</sup> License Renewal Application for Seabrook Station, Unit 1; NextEra Energy Seabrook, LLC, 77 Fed. Reg. 35,079, 35,080 (June 12, 2012) ("The purpose of this document is to inform the public that the NRC will be preparing a supplement to the draft Supplemental Environmental Impact Statement (SEIS) to address information related to severe accident mitigation alternatives (SAMA) analysis").

<sup>10</sup> *New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2012).

<sup>11</sup> Intervenor's Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Seabrook Station, Unit 1" (July 9, 2012).

contentions, the Commission explained that it would not issue any renewed licenses until it had appropriately addressed the issues identified by the court in *New York*.<sup>12</sup> Further, the Commission directed affected Boards to hold all of the newly filed waste confidence/temporary storage contentions in abeyance pending further Commission order.<sup>13</sup>

In June 2013, the NRC published a revision to its environmental protection regulation, 10 C.F.R. Part 51, which governs environmental impact reviews of nuclear power plant operating license renewals. Through its rulemaking process, the NRC completed an update and re-evaluation of the potential environmental impacts associated with reactor license renewal.<sup>14</sup> A revised Generic Environmental Impact Statement (“GEIS”), which updated the 1996 GEIS, provided the technical basis for the revised rule.<sup>15</sup> The revised GEIS supports a revised list of environmental issues and associated environmental impact findings for license renewal contained in Table B-1 in Appendix B to Subpart A of Part 51. The revised rule consolidated similar Category 1 (generically addressed) and Category 2 (site-specific) issues, changed some Category 2 issues into Category 1 issues, and consolidated some of those issues with existing Category 1 issues. The revised rule also added new Category 1 and 2 issues.

The NRC issued the Second Draft SEIS for Seabrook in April 2013.<sup>16</sup> A notice seeking public comment was published in the *Federal Register*.<sup>17</sup> In addition to a significant update of

---

<sup>12</sup> *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63, 67 (2012).

<sup>13</sup> *Id.* at 67-69.

<sup>14</sup> Final Rule, Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 78 Fed. Reg. 37,282 (June 20, 2013).

<sup>15</sup> NUREG-1437, Revision 1, Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants-Final Report (June 2013) (ADAMS Accession No. ML13107A023).

<sup>16</sup> Generic Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 46 Regarding Seabrook Station, Second Draft Report for Comment, (April 26, 2013) (ADAMS Accession No. ML13113A174) (“Second Draft SEIS”).

the SAMA evaluation, the NRC took advantage of the opportunity to address the new Category 2 issues associated with the revised GEIS, as well as to address the D.C. Circuit's decision in *New York*.<sup>18</sup>

On May 10, 2013, NextEra filed motions for summary disposition of Friends/NEC Contentions 4B and 4D.<sup>19</sup> Friends/NEC offered no opposition to NextEra's motion for summary disposition regarding Friends/NEC Contention 4B and it was dismissed by the Board.<sup>20</sup> Friends/NEC also offered no opposition to NextEra's motion regarding Friends/NEC Contention 4D, except to second a concern regarding NextEra's uncertainty analyses that had first been identified in the NRC Staff's Answer. All three parties subsequently agreed to a settlement whereby the NRC Staff would address this uncertainty issue and additional conservatisms in its evaluation of NextEra's SAMA analysis in the Final SEIS, which would resolve the contention.<sup>21</sup> The Board approved this agreement on August 12, 2013.<sup>22</sup>

On March 1, 2014, Friends/NEC filed a petition seeking suspension of the license renewal proceeding pending resolution of a rulemaking proceeding involving the environmental review of spent fuel pool risks.<sup>23</sup> The Commission rejected this and other similar petitions in July 2014.<sup>24</sup>

---

<sup>17</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).

<sup>18</sup> Second Draft SEIS at ix.

<sup>19</sup> NextEra's Motion for Summary Disposition of Friends of the Coast/New England Coalition Contention 4B (SAMA Analysis Source Terms) (May 10, 2013); NextEra's Motion for Summary Disposition of Friends of the Coast/New England Coalition Contention 4D (SAMA Analysis Atmospheric Modeling) (May 10, 2013).

<sup>20</sup> Licensing Board Memorandum and Order (Granting Summary Disposition of Contention 4B) (Aug. 12, 2013).

<sup>21</sup> Joint Motion for Approval of Settlement and Dismissal of FOTC/NEC Contention 4D (August 8, 2013).

<sup>22</sup> Licensing Board Memorandum and Order (Approving Settlement of Contention 4D) (Aug. 12, 2013).

<sup>23</sup> Petition to Suspend Reactor Licensing Decisions and Reactor Re-Licensing Decisions Pending Completion of Rulemaking Proceeding Regarding Environmental Impacts of High-Density Pool Storage of Spent Fuel and Mitigation Measures (Mar. 1, 2014) (but dated February 27, 2014).

<sup>24</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-14-7, 80 NRC 1 (July 17, 2014).

Then, in August 2014, following “a robust, two-year notice-and-comment process that was one of the most extensive in NRC history,”<sup>25</sup> the NRC published a new “Continued Storage of Spent Nuclear Fuel” rule and accompanying generic environmental impact statement (“GEIS”) addressing the issues identified in *New York*.<sup>26</sup> As a result, the Commission issued an order directing the Licensing Boards to dismiss pending contentions addressing the Waste Confidence/Continued Storage issue.<sup>27</sup> Following this ruling, Friends/NEC filed yet another petition seeking to suspend or stay issuance of the Seabrook license renewal pending further analysis regarding continued storage of spent nuclear fuel.<sup>28</sup> The Commission rejected this and other similar petitions in February 2015.<sup>29</sup> And the Commission recently ruled that the new Continued Storage of Spent Nuclear Fuel rule need not be formally addressed or incorporated into an EIS.<sup>30</sup>

Friends/NEC filed this Motion on July 28, 2015. Consistent with the Board-approved Settlement Agreement on Friends/NEC Contention 4D, the NRC Staff notified the Board of the issuance of the Final SEIS on July 29, 2015.<sup>31</sup> The public release of the Final SEIS had two near-term impacts. First, in accordance with the terms of its Order approving the settlement, the

---

<sup>25</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC \_\_\_, \_\_\_ (slip op. at 8) (Apr. 23, 2015).

<sup>26</sup> Final Rule, Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238 (Sept. 19, 2014); Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,263 (Sept. 19, 2014).

<sup>27</sup> *Calvert Cliffs 3 Nuclear Project, LLC & Unistar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-08, 80 NRC 71, 77-79 (2014).

<sup>28</sup> Petition to Suspend Final Decisions in All Pending Reactor Licensing Proceedings Pending Issuance of Waste Confidence Safety Findings (Sept. 29, 2014).

<sup>29</sup> *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC \_\_\_ (Feb. 26, 2015).

<sup>30</sup> *Fermi*, CLI-15-10, 81 NRC \_\_\_ (slip op. at 10) (“no additional procedural steps are necessary to add the impacts of continued storage to existing environmental impact statements because 10 C.F.R. § 51.23, by its terms, has already done so”).

<sup>31</sup> Letter from Anita Ghosh, Counsel for NRC Staff, to the Licensing Board (July 29, 2015).

Board dismissed Contention 4D and terminated the adjudicatory proceeding on August 5, 2015.<sup>32</sup>

And second, by the Motion's own terms, the public release of the Final SEIS transformed the Motion into a request to withdraw the Final SEIS and reissue it as a draft or supplement.<sup>33</sup>

## **II. Argument**

Friends/NEC identify three reasons why the Final SEIS should be withdrawn and reissued as a draft or supplement:

(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.<sup>34</sup>

None of these reasons justifies their request.

### **A. Friends/NEC Ignore the NRC's Regulations Governing Supplementation of Environmental Impact Statements**

Friends/NEC would like the Final SEIS to be replaced with yet another supplemental Draft SEIS. But they have not shown that a supplement is necessary. The Motion mentions, but fails to apply, the NRC's standards regarding supplementation of Final Environmental Impact Statements, codified at 10 C.F.R. § 51.92. There, the NRC explains that it will issue a supplemental environmental impact statement ("EIS") if: (1) there are substantial changes in the proposed action that are relevant to environmental concerns; (2) there are new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, or (3) it would further the purposes of the National Environmental Policy

---

<sup>32</sup> Licensing Board Memorandum and Order (Dismissing Contention 4D and Terminating the Proceeding) (Aug. 5, 2015).

<sup>33</sup> See Motion at 10.

<sup>34</sup> Motion at 6.

Act (“NEPA”).<sup>35</sup> More appropriate for Friends/NEC’s requested relief, the NRC has similar standards for supplementation of a draft EIS at 10 C.F.R. § 51.72. The Commission made clear earlier this year that these standards govern supplementation, and that its decision whether to supplement an EIS “is not governed by the volume of information developed or the significance of the agency effort in developing the information.”<sup>36</sup> Because the Motion focuses on these irrelevant considerations and fails to address the NRC’s standards for supplementation, Friends/NEC cannot show that yet another supplemental Draft SEIS is necessary.

1. Friends/NEC Identify No Substantial Changes to the Proposed Action

Since NextEra submitted its license renewal application in 2010, there have been no substantial changes to the proposed action. As reflected in the Final SEIS, the NRC’s proposed action is the decision whether to renew the existing operating license for Seabrook, NPF-86, for an additional 20 years.<sup>37</sup> Friends/NEC allege no such change and so this standard for supplementation of a draft EIS in 10 C.F.R. § 51.72(a)(1) cannot be met.

2. Friends/NEC Identify No New and Significant Information

Though Friends/NEC insinuate that the Final SEIS includes substantially different information, the only new discussion referenced in the Motion is the NRC’s evaluation of NextEra’s CALMET sensitivity analysis and subsequent uncertainty assessment in its evaluation of NextEra’s SAMA analysis.<sup>38</sup> Of course, this discussion was the subject of litigation brought by Friends/NEC and was included in the Final SEIS under a settlement agreement (in which Friends/NEC demanded that this information be included in the Final SEIS). Certainly the

---

<sup>35</sup> *Fermi*, CLI-15-10, 81 NRC \_\_ (slip op. at 11).

<sup>36</sup> *Id.* (slip op. at 10).

<sup>37</sup> Final SEIS at 1-1. This paragraph in the Final SEIS has no revision bars in the margin, indicating no changes to the text.

<sup>38</sup> *See* Motion at 4.



public, particularly Friends/NEC, has had a full opportunity to comment on this issue. And while this evaluation may be new, by its very nature it cannot be *significant*, because it simply reflects the application of a sensitivity analysis confirming the reasonableness of NextEra's existing SAMA analysis.<sup>39</sup>

The rest of Friends/NEC's claim is baseless speculation that the Final SEIS will be seriously different from the Draft SEIS, an assertion made without having a chance to review the Final SEIS and without consideration of the intervening Second Draft SEIS. This cannot serve as a legal basis to withdraw the Final SEIS. Thus, the motion does not satisfy the "new and significant" standard for supplementation of a draft EIS in 10 C.F.R. § 51.72(a)(2).

**B. Publication of A Third Draft Supplemental Environmental Impact Statement Will Not Further the Purposes of NEPA**

Finally, in its discretion, the NRC *may* prepare a supplement to a draft EIS if it determines that it would further the purposes of NEPA.<sup>40</sup> Friends/NEC's Motion appears to make this type of argument - that by allowing four years to pass since the last opportunity for public comment, the NRC somehow circumvented NEPA's spirit of public participation.<sup>41</sup> But of course their underlying assumptions are simply incorrect. During that time, the NRC issued a *Second* Draft SEIS for Seabrook, which Friends/NEC ignore.<sup>42</sup> Like the original Draft SEIS, the Second Draft SEIS was made available for public consideration and comment. Thus, the Seabrook Draft SEIS has already had twice the number of opportunities for public comment as

---

<sup>39</sup> See Final SEIS at 5-12 – 5-13.

<sup>40</sup> 10 C.F.R. § 51.72(b).

<sup>41</sup> See e.g., Motion at 6.

<sup>42</sup> Also during this time, the NRC completed a new Final GEIS for reactor license renewal and new license renewal environmental rule through notice-and comment rulemaking, and issued a new draft and final Continued Storage of Spent Nuclear Fuel Rule accompanied by Draft and Final GEISs, with historic opportunities for public participation.

anticipated by standard NRC environmental procedures and the time since the most recent opportunity is approximately half that claimed by Friends/NEC.

As Friends/NEC would have it, the mere *possibility* that there is *any* new information in a Final SEIS is sufficient to justify its reissuance as a supplemental Draft SEIS. But there is no requirement that the public be formally invited to comment on every piece of information considered in a NEPA review prior to publishing a Final EIS.<sup>43</sup> Friends/NEC are not entitled to another supplemental Draft SEIS and another public comment period just because time has elapsed and there may be new information in the Final SEIS. Instead, there must be new information that meets the standards for supplementation under 10 C.F.R. § 51.72, that is, information that presents “a seriously different picture” of the environmental impacts.<sup>44</sup> Friends/NEC suggest no such information.

While ideally all the information in a final EIS would have been circulated in a draft EIS, “to require such perfection under NEPA fails to recognize the reality that new and better information may become available.”<sup>45</sup> An administrative process can never come to an end if the process must begin again every time new information is available.<sup>46</sup> A ruling that the NRC must recirculate a draft EIS every time any new information is considered regardless of its significance, would “wreak havoc upon the administrative process.”<sup>47</sup> In any event, Friends/NEC offer no reason to think that the NRC Staff did not consider the information included in the Final

---

<sup>43</sup> See *Township of Springfield v. Lewis*, 702 F.2d 426, 439 (3rd Cir.1983) (citing *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430, 442 (5th Cir.1981)).

<sup>44</sup> *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-39, 60 NRC 657, 659 (2004) (citing *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-99-22, 50 NRC 3, 14 (1999)). See also *Marsh v. Oregon*, 490 U.S. 360, 373 (1989) (supplementation of an EIS is not necessary “every time new information comes to light after the EIS is finalized”).

<sup>45</sup> *Piedmont Heights*, 637 F.2d at 442. (To prohibit the inclusion of new and better information in a Final EIS would defeat the purpose behind NEPA of encouraging a full and fair consideration of environmental effects).

<sup>46</sup> *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 555 (1978).

<sup>47</sup> *Town. of Springfield*, 702 F.2d at 439.

SEIS to determine whether the issuance of another supplemental Draft SEIS was appropriate. And we know that the Staff takes this obligation seriously, as evidenced by the fact that it has already done so once in this very proceeding. Friends/NEC's Motion provides no reason to second guess the NRC Staff in its performance of these duties.

**III. Conclusion**

For all of the foregoing reasons, the Motion should be denied.

Respectfully Submitted,

Signed (electronically) by Steven C. Hamrick

William S. Blair  
NextEra Energy Seabrook, LLC  
700 Universe Blvd.  
Juno Beach, Florida 33408  
Telephone: 561-304-5238  
Facsimile: 561-691-7135

Steven C. Hamrick  
NextEra Energy Seabrook, LLC  
801 Pennsylvania Avenue, N.W. Suite 220  
Washington, DC 20004  
Telephone: 202-349-3496  
Facsimile: 202-347-7076

Counsel for NextEra Energy Seabrook, LLC

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)	)	ASLBP No. 10-906-02-LR
	)	
(Operating License Renewal)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NextEra Energy Seabrook, LLC’s Answer Opposing Friends of the Coast and New England Coalition’s Motion to Withhold or Withdraw Final Environmental Impact Statement” has been served through the E-Filing system on the participants in the above captioned proceeding, this 7th day of August 2015.

/Signed electronically by Steven Hamrick/

\_\_\_\_\_  
Steven C. Hamrick