

September 10, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Secretary

In the Matter of	)	
	)	
NextEra Energy Seabrook, LLC	)	Docket No. 50-443-LR
	)	
(Seabrook Station)	)	
	)	
(Operating License Renewal)	)	

**NextEra Energy Seabrook, LLC’s Opposition to the  
State of New Hampshire’s Request for Extension of Time**

For the reasons set forth below, NextEra Energy Seabrook, LLC (“NextEra”) opposes the request filed by the Attorney General of New Hampshire (the “State” or “New Hampshire”) dated September 9, requesting a 90-day extension of the Commission’s deadline for requests for hearing and petitions to intervene in the above-captioned proceeding (the “Request”).

The Request explains that the State “has not determined its position with respect to the License Renewal Application [(“LRA”)] at this time but requires additional time to evaluate the voluminous application of tremendous technical complexity in areas of both safety and environmental impacts.” Request at 2. The State argues that “[m]ore than sixty days is required” to complete its evaluation of the LRA, which “will require weeks of study and a large commitment of financial and human resources.” *Id.* Specifically, the State alleges that it “must identify and retain experts on nuclear engineering and environmental impacts,” who “will need time to review the Application, and make

recommendations to responsible State officials,” who will then need “time to assess the recommendations and determine whether to make contentions and seek a hearing.” *Id.*

In support of its Request, the State cites several examples of extensions of time granted by the Commission in the recent past. Request at 3. None of these examples support the State’s Request.

In *Salem* and *Hope Creek*, a citizens group which did “not have the staff and resources needed to review the extensive and complex application for relicensing in only 60 days” filed, more than a month prior to the deadline for requesting a hearing, a request for a 60-day extension.<sup>1</sup> The citizens group also noted that preparing a petition in the *Salem* and *Hope Creek* proceeding was made more difficult by the fact that it involved three units, including two pressurized water reactors and one boiling water reactor. The Commission in that proceeding granted only a 16-day extension of time.<sup>2</sup> The State of New Hampshire is certainly better equipped to review technical documents than the citizens group in *Salem* and *Hope Creek*, and must only review a license renewal application for a single reactor with a single design.

The State also cites to *Nuclear Fuel Services, Inc. (NFS)*, which is also inapposite. In *NFS*, a citizens group requested a 30-business day extension due to a lack of funding to hire an attorney.<sup>3</sup> The *NFS* petition also cited health concerns among its advisors. The Commission in that case granted the Petitioners a 14-day “discretionary extension” in

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<sup>1</sup> See Requests for Extension of Time in PSEG Nuclear, LLC (Hope Creek Generating Station, Unit 1, License Renewal Docket No. 50-354-LR; Salem Nuclear Generating Station, Units 1 and 2, License Renewal, Docket Nos. 50-272-LR and 50-311-LR), dated November 2, 2009.

<sup>2</sup> *PSEG Nuclear LLC* (Salem Nuclear Generating Station, Units 1 and 2) (CLI Nov. 13, 2009) (unpublished order); *PSEG Nuclear LLC* (Hope Creek Generating Station, Unit 1) (CLI Nov. 13, 2009) (unpublished order).

<sup>3</sup> See Request for Extension of Time to Petition for Hearing in the Matter of Nuclear Fuel Services (NFS) 40-Year License Renewal Application, dated November 27, 2009.

“light of the medical and health issues cited in the extension request.”<sup>4</sup> New Hampshire has not identified any similar justification related to retention of counsel (other than the potential need for consulting assistance to draft a hearing request) or health issues among its staff in this case.

The additional time sought by New Hampshire is inordinately long. The Commission has been willing to grant extensions of a week or two, for good cause shown, as New Hampshire’s cited cases demonstrate. But New Hampshire offers no justification or Commission precedent for a *three-month* extension. Nor does New Hampshire offer any reasoned explanation for why the Commission should consider its alternative suggestion—that the Commission set the intervention deadline for the Seabrook LRA 90 days after a generic rulemaking petition submitted by unrelated petitioners is “finally decided.” *See* Request at 2. The NRC has not yet published receipt of that rulemaking petition, and has not even indicated whether it would be docketed under 10 C.F.R. § 2.802(e).<sup>5</sup> Its final resolution could be months away, which, together with New Hampshire’s alternatively-requested additional 90 days could result in an extension of time of 6 months and likely longer. This would provide New Hampshire with at least 10 months to review the Application and prepare a Hearing Request. In any event, New Hampshire does not state whether the rulemaking petition has merit, which it does not, and provides no justification for why the filing deadline in this adjudication should be tied, in any way, to the result of that rulemaking proceeding. Further, New

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<sup>4</sup> *Nuclear Fuel Services, Inc.* (Erwin, TN) (CLI Dec. 4, 2009) (unpublished order).

<sup>5</sup> The Rulemaking Petition, which is not yet publicly available on ADAMS, requests the NRC to revise 10 C.F.R. § 54.17(c), which allows reactor licensees to file an LRA after twenty years of licensed operation. NextEra has only had an opportunity to review a copy of the petition made available on a Petitioner’s website. The rulemaking petition asserts, incorrectly, that NextEra is the first licensee to file an LRA after only twenty years of operation and provides a baseless challenge to the NRC’s nearly twenty-year-old rule.

Hampshire offers no explanation as to why it should receive more time *after* the rulemaking petition is decided than the 60 days typically afforded to petitioners.

Instead of the cases it cites, New Hampshire's Request is more closely analogous to another recent request of a governmental body, the Board of Commissioners of Orange County, North Carolina, in the *Shearon Harris* Combined License application proceeding.<sup>6</sup> In that case, the Board of Commissioners requested a 60-day extension of time and asserted "that they ha[d] diligently pursued their interest in submitting a timely petition," but sought the extension of time to "allow them to hold a public hearing to get the views of voters . . . on whether [it] should hire counsel and inspect the application in order to file an intervention petition."<sup>7</sup> The Commission rejected this argument, noting that "[w]hile the hearing notice was published on June 4, 2008, the COL application itself was submitted on February 19, 2008. Consequently, Petitioners have had more than five months notice that the Applicant filed a COL application, sufficient time to determine whether they would like to investigate filing a petition to intervene."<sup>8</sup>

As in *Shearon Harris*, New Hampshire has had a sufficient amount of time to determine whether it should investigate filing a petition to intervene in the Seabrook license renewal proceeding. While the Hearing Notice was published on July 21, 2010, NextEra submitted the LRA on May 25, 2010 and the NRC published a Notice of Receipt and Availability in the Federal Register on June 16, 2010.<sup>9</sup> By September 20, the Application will have been available to New Hampshire for nearly four months. Notably,

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<sup>6</sup> *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3) (CLI Aug. 5, 2008) (unpublished order).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Nuclear Regulatory Commission, NextEra Energy Seabrook, LLC; Notice of Receipt and Availability of Application for Renewal of Seabrook Station, Unit 1 Facility Operating License No. NPF-86 for an Additional 20-Year Period, 75 Fed. Reg. 34,180 (Jun. 16, 2010).

the Request does not assert that New Hampshire was taken by surprise by NextEra's LRA. Prior to submitting the LRA to the NRC, NextEra kept pertinent state officials, including the Office of the Governor, informed of its plan to seek license renewal for Seabrook Station and of the schedule for the filing. Moreover, in accordance with 10 C.F.R. Part 51, NextEra consulted with various New Hampshire agencies while preparing its Environmental Report.<sup>10</sup> New Hampshire offers no reason why it could not be further along in the process than having merely "begun to map out a strategy for a careful and in-depth analysis of the [LRA]". Request at 2.

Further, New Hampshire provides no explanation as to why it waited until a mere ten days prior to the deadline to submit its Request, rather than the full month in *Salem* and *Hope Creek*. The deadline for filing hearing requests and intervention petitions in the Seabrook license renewal proceeding is Monday, September 20, 2010.<sup>11</sup> If New Hampshire needed 90 additional days to review the LRA and prepare a Hearing Request, presumably it knew that weeks, if not months, ago.

For the foregoing reasons, New Hampshire's Request for an extension of time to file a request for hearing should be denied in its entirety.<sup>12</sup>

In the event an extension of time is granted, NextEra respectfully requests that any Order granting such relief be limited only to New Hampshire.

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<sup>10</sup> See Applicant's Environmental Report, Operating License Renewal Stage, Seabrook Station, NextEra Energy Seabrook, LLC, at Attachments C and D.

<sup>11</sup> See Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-86 for an Additional 20-Year Period; NextEra Energy Seabrook, LLC; Seabrook Station, Unit 1, 75 Fed. Reg. 42,462 (July 21, 2010) ("Hearing Notice").

<sup>12</sup> The Request could also be denied in its entirety due to New Hampshire's failure to consult with NextEra prior to its filing. See *Entergy Nuclear Operations, Inc.*, (Indian Point Nuclear Generating Units 2 and 3), CLI-08-29, 68 NRC 899 n.12 (2008) (rejecting a motion due to its failure to include a certification of compliance with the 10 C.F.R. § 2.323(b) requirement to consult with opposing counsel).

Respectfully Submitted,

/Signed electronically by Steven Hamrick/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NextEra Energy Seabrook, LLC’s Response to the State of New Hampshire’s Request for Extension of Time,” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 10th day of September, 2010.

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