

September 14, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY TO THE COMMISSION

In the Matter of)	
)	Docket No. 50-443
FPL Energy Seabrook, LLC)	
)	
(Seabrook Station, Unit 1))	
)	

NRC STAFF'S ANSWER TO NEW HAMPSHIRE
ATTORNEY GENERAL'S REQUEST FOR NINETY-DAY EXTENSION

INTRODUCTION

On September 10, 2010, the Attorney General for the State of New Hampshire ("New Hampshire") filed a request for an extension of time for filing requests for hearing/petitions for leave to intervene ("hearing requests") until the later of ninety (90) days from September 19, 2010 or from the date on which a decision on the rulemaking petition filed August 18, 2010 seeking to amend 10 C.F.R. § 54.17 becomes final.¹ Recognizing New Hampshire's unique governmental interest as the representative of the State of New Hampshire and its residents, the Staff of the Nuclear Regulatory Commission ("Staff") would not oppose a reasonable extension to October 13, 2010, from the current September 20, 2010 deadline. However, New Hampshire's request for a 90-day extension from the date on which a decision on the August 18, 2010 petition for rulemaking becomes final is not justified. Further, if a 90-day extension from the current deadline were granted, the time for parties to respond to any hearing

¹ Letter from Michael A. Delaney, New Hampshire Attorney General, to Gregory B. Jaczko, Chairman, Nuclear Regulatory Commission (September 9, 2010) ("Extension Request"). Although the letter is dated September 9, 2010, the letter was filed via the NRC's electronic filing system September 10, 2010.

request New Hampshire chooses to file would fall squarely within the December 2010 holiday period. Finally, any extension granted should be limited to the State of New Hampshire. Any other potential party must separately request an extension and demonstrate good cause for such a request.

BACKGROUND

On June 16, 2010, the NRC published a notice in the *Federal Register* stating that the license renewal application for Seabrook Station was available on the Nuclear Regulatory Commission's ("NRC") public website.² On July 21, 2010, the Staff published a notice in the *Federal Register* stating that the license renewal application was acceptable for docketing and establishing September 20, 2010, as the deadline for filing Hearing Requests.³ On August 18, 2010, six organizations filed a joint petition for rulemaking ("Rulemaking Petition") under 10 C.F.R. § 2.802 requesting a rulemaking to amend 10 C.F.R. § 54.17 such that license renewal applications may not be submitted earlier than 10 years before expiration of the existing license and that the Commission suspend all license renewal reviews pending resolution of the Rulemaking Petition.⁴ New Hampshire was not among the rulemaking petitioners. The

² See 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. 34180 (June 16, 2010).

³ 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. 42462 (July 21, 2010).

⁴ See Earth Day Commitment/Friends of the Coast- Opposing Nuclear Pollution, Beyond Nuclear Beyond Nuclear, New England Coalition on Nuclear Pollution, Seacoast Anti-Pollution League; Pilgrim Watch, C-10 Research & Education Foundation Petition for Rulemaking Pursuant to 10 CFR § 2.802 Seeking to Amend 10 CFR § 54.17(c) (Aug. 17, 2010) (ADAMS Accession No. ML102380379) ("Rulemaking Petition").

Commission has not yet docketed or otherwise taken any action on the Rulemaking Petition.⁵

On September 10, 2010, New Hampshire filed the instant Extension Request via the NRC's electronic filing system. New Hampshire requested a 90-day extension of time from the later of ninety days from September 19, 2010, or from the date on which a decision on Rulemaking Petition becomes final. In support of its request for an extension, New Hampshire indicates that although it "has not determined its position with respect to the License Renewal Application," an evaluation of the technical and environmental aspects of the application "will require weeks of study and a large commitment of human and financial resources," including the need to identify and retain experts to review the application and make recommendations for state officials.⁶ New Hampshire asserts that state officials will then need "some time to assess the recommendations and determine whether to make contentions and seek a hearing."⁷

Furthermore, New Hampshire asserts that it would be a waste of New Hampshire's resources to undertake this assessment if the August 18, 2010, Rulemaking Petition is later granted and 10 C.F.R. § 54.17 is amended to preclude license renewal applications earlier than ten years before expiration, because Seabrook's current application would have to be withdrawn and a new application filed in accordance with the revised rule.⁸ Finally, because the

⁵ It is speculative to assume that such a rule would be applied retroactively to any and all applications for license renewal that are currently docketed and under review by the Staff. Seabrook is not the first nor the only application to have availed itself of seeking license renewal more than 15 years before expiration of its current license. See NUREG-1350 Vo. 22 "NRC Information Digest 2010-2011" (Aug. 2010) at Appendix A (listing operating commercial nuclear power plants including date of issuance construction permit ("CP"), date of issuance of operating license ("OL"), start of commercial operations, date of license renewal, and license expiration date).

⁶ New Hampshire Letter at 2.

⁷ *Id.*

⁸ *Id.*

application here is being made twenty years before the license expires, New Hampshire reasons that an extension will not prejudice the applicant or the public interest.⁹ New Hampshire refers to the Commission's orders in *Salem and Hope Creek* and *Nuclear Fuel Services* as precedent for granting an extension.

DISCUSSION

I. Legal Standards

Extensions of the time for filing a hearing request may be granted by the Commission or the presiding officer upon a showing of good cause.¹⁰ The Commission has stated that a showing of good cause requires more than showing the normal difficulties of participating in a hearing or even multiple hearings; there must be a showing of special circumstances unique to the requestor amounting to good cause.¹¹

The Commission has rejected requests for substantial filing extensions where the petitioners failed to demonstrate that special circumstances warranted such a significant extension of time. In *Fermi*, the petitioners requested a 90-day extension of the deadline to file hearing requests, petitions to intervene, and contentions, claiming difficulties in coordinating multiple organizations and insufficient resources to meet the burden of drafting contentions while balancing other obligations.¹² The Commission denied the petitioners' request, stating that "[p]etitioners have shown no special circumstances amounting to good cause for an extension," and stating that an extension was not warranted because the license renewal

⁹ *Id.*

¹⁰ 10 C.F.R. § 2.307(a).

¹¹ *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant Unit 3), CLI-09-4, 69 NRC 80, 82 (2009).

¹² *Fermi*, CLI-09-4, 69 NRC at 82.

application had been available to petitioners for five months.¹³

Similarly, in *Salem and Hope Creek*, the petitioner citizens organizations sought a 60-day extension of the deadline for filing hearing requests, claiming that coordinating the submission of contentions related to two reactor license renewal application involving three units—two pressurized reactors and one boiling water reactor—“requires many meetings and a great deal of consultation and cooperation, all of which takes a significant amount of time.”¹⁴ The organizations asserted that they did not have the staff and resources necessary to review the “extensive and complex application for relicensing” within 60 days, nor could they accomplish the process of identifying and retaining experts to assist with the review within that period. Nevertheless, the Commission denied petitioners’ request, granting only a 16-day extension of the deadline.¹⁵

Likewise, in *Nuclear Fuel Services*, a citizens group sought a 30-business day extension because they needed time to raise funds for legal help and find and hire an attorney.¹⁶ The Commission used its discretion to grant petitioners a shorter, 14-day extension of time “[i]n light of the medical and health issues cited in the extension request.”¹⁷

Not only has the Commission rejected requests by public interest groups for significant

¹³ *Id.*

¹⁴ Requests for Extension of Time to Petition for Hearing in the Matter of PSEG Nuclear, LLC License Renewal Applications, Nov. 2, 2009.

¹⁵ *PSEG Nuclear LLC* (Salem Nuclear Generating Station, Units 1 & 2, Hope Creek Generating Station, Unit 1) Dkt. Nos. 50-272-LR, 50-311-LR, & 50-354-LR, Order (Nov. 13, 2009) (unpublished) (ADAMS Accession Nos. ML0931707322 & ML0931707720) (“Salem & Hope Creek Order”).

¹⁶ Request for Extension of Time to Petition for Hearing in the Matter of Nuclear Fuel Services (NFS) License Renewal Application, Nov. 27, 2009.

¹⁷ *Nuclear Fuel Service, Inc.* (Erwin Tennessee) Dkt. No. 70-143-LR Order (Dec. 4, 2009) (unpublished) (ADAMS Accession No. ML0933809640) (“NFS Order”).

extension periods, the Commission has also denied a request by local government authorities for a 60-day extension of the deadline for filing a petition for leave to intervene.¹⁸ In *Shearon Harris*, the Board of Commissioners of Orange County, North Carolina, requested a 60-day extension of time in which to hold a public hearing on whether to hire counsel and file a petition for leave to intervene in the Shearon Harris combined license application proceeding.¹⁹ Orange County declared that the requested extension would be unlikely to delay the licensing application because the key NRC licensing documents were not scheduled to be issued for over two years.²⁰ The Commission nevertheless denied Orange County's request, stating that the petitioners had not shown good cause for extending the deadline because the application itself had been filed and publicly available for over five months, sufficient time for Orange County to determine whether it should investigate filing a petition to intervene.²¹

II. New Hampshire Has Not Shown Good Cause for the Requested Extension

Contrary to New Hampshire's assertions, the reasons it has provided for a 90-day extension are not sufficient to constitute good cause. The examples cited by New Hampshire, *Salem and Hope Creek* and *Nuclear Fuel Services*, do not support the New Hampshire's reasons for seeking a 90-day extension. As previously discussed, New Hampshire asserts that the scientific and technical complexity of the application requires a large commitment of financial and human resources to assess whether to seek a hearing, necessitating time to identify and

¹⁸ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3) Dkt. Nos. 52-022 and 52-023, Order (Aug. 5, 2009) (unpublished) (ADAMS Accession No. ML082180832) ("Shearon Harris Order").

¹⁹ *Id.*

²⁰ Orange County's Motion for 60-Day Extension of Deadline for Filing Petition for Leave to Intervene (Aug. 1, 2008) (ADAMS Accession No. ML082140554).

²¹ *Shearon Harris Order*.

retain the scientific and technical experts necessary to advise the state, time for those experts to review the application and make recommendations, and time for state officials to review those recommendations. In *Salem and Hope Creek*, however, the Commission granted not the 60-day extension but a 16-day extension, and there, unlike here, the petitioner was seeking extra time to review not one application for a single unit, but two applications for three reactors—two pressurized reactors and one boiling water reactor.²² In *Nuclear Fuel Services*, the Commission expressly based its order of a 14-day extension on medical and health issues cited in the extension request, not the time and resource constraints invoked by the group in its request.²³ Therefore, neither *Nuclear Fuel Services* nor *Salem and Hope Creek* supports New Hampshire's request for an extension of 90 days from the current deadline, let alone 90 days from the date a decision on the August 18, 2010 Petition for Rulemaking becomes final.

Furthermore, New Hampshire has already had sufficient time to make a determination about making contentions and seeking a hearing. The instant request is similar to that in *Shearon Harris*, in which the Commission found that the submission of the combined operating license application five months before Orange County's petition for an extension provided sufficient time for the county to determine whether it should investigate filing a petition to intervene.²⁴ Here, as in *Shearon Harris*, New Hampshire has had sufficient time to assess whether to file a petition to intervene. The NRC published a notice of availability of Seabrook's license renewal application in the *Federal Register* on June 16, 2010.²⁵ Seabrook's application

²² *Salem & Hope Creek Order*.

²³ *NFS Order*.

²⁴ *Shearon Harris Order*.

²⁵ See *supra* note 2.

has thus been available for review for 90 days as of today, September 14, 2010. Therefore, New Hampshire has had sufficient time to make its determination on the application and an extension of 90 days is unwarranted in this case.

New Hampshire's reasons for an extension are also based on the responsibilities and constraints faced by state governments. However, in *Shearon Harris*, the Commission did not find such considerations to constitute good cause for a substantial extension.²⁶ As in *Shearon Harris*, New Hampshire notes that it has a governmental interest in conserving public resources and making a considered assessment of the application, including allocating time for bureaucratic and political processes. Also, as in *Shearon Harris*, New Hampshire suggests that because time is not of the essence, its request for an extension should be granted. In *Shearon Harris*, however, the Commission did not appear to find these assertions persuasive, denying the petitioner's request for 60-day extension.²⁷ Therefore, because the governmental considerations in *Shearon Harris* are analogous to those at issue in the instant case, New Hampshire's assertions do not demonstrate the type of special circumstances that provide good cause for a 90-day extension. However, recognizing New Hampshire's unique position as the representative of the State of New Hampshire and its residents, and thus its need to thoughtfully consider the interests of all New Hampshire residents, the Staff does not oppose granting New Hampshire an extension until October 13, 2010 to file a request for hearing.

²⁶ *Shearon Harris Order*.

²⁷ *See id.*

CONCLUSION

For the reasons discussed above, New Hampshire's request for a ninety-day extension should be denied for lack of good cause. However, recognizing New Hampshire's unique governmental position, the Staff does not oppose granting New Hampshire an extension to October 13, 2010 to file a request for hearing.

Respectfully submitted,

Signed (electronically) by

Mary Baty Spencer
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1324
mary.baty@nrc.gov

Dated at Rockville, Maryland
this 14 day of September, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO NEW HAMPSHIRE ATTORNEY GENERAL'S REQUEST FOR NINETY-DAY EXTENSION" in the above-captioned proceeding have been served on the following by Electronic Information Exchange this 14th day of September, 2010.

Office of the Secretary
Attn: Rulemakings and Adjudications Staff
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Hearing.Docket@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAMAIL.Resource@nrc.gov

Steven Hamrick, Esq.
NextEra Energy Seabrook, LLC
801 Pennsylvania Ave NW Suite 220
Washington, DC 20004
Steven.hamrick@fpl.com

Peter Roth, Esq.
Office of the Attorney General
33 Capitol Street
Concord, NH 03301
E-mail: peter.roth@doj.nh.gov

Mitchell Ross, Esq.
Antonio Fernandez, Esq.
NextEra Energy Seabrook, LLC
700 Universe Boulevard
Juno Beach, FL 33408
E-mail: mitch.ross@fpl.com
E-mail: antonio.fernandez@fpl.com

Signed (electronically) by
Mary Baty Spencer
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1324
mary.baty@nrc.gov