

September 16, 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 Requests for Extension of Time of Beyond Nuclear  
and the New England Coalition and Friends of the Coast**

For the reasons set forth below, NextEra Energy Seabrook, LLC (“NextEra”) opposes the request filed by Beyond Nuclear, dated September 14 (“Beyond Nuclear Request”),<sup>1</sup> and the request submitted by the New England Coalition and Friends of the Coast, dated September 15 (“NEC Request”), each of which seeks a 90-day extension (or longer) of the Commission’s deadline for requests for hearing and petitions to intervene in the above-captioned proceeding. The deadline for filing hearing requests and intervention petitions in the Seabrook license renewal proceeding is Monday, September 20, 2010.<sup>2</sup> The additional time sought by Beyond Nuclear and NEC is inordinately long. Neither offers justification or Commission precedent for any extension. Because the

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<sup>1</sup> While both the Beyond Nuclear Request and its Certificate of Service are dated September 14, the Request was not served until September 15.

<sup>2</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”).

Requests fail to demonstrate good cause for any extension, much less a *three-month* extension, they should be denied in their entirety.<sup>3</sup>

Both Beyond Nuclear and NEC rely upon the State of New Hampshire's request for a 90-day extension of the deadline for it to file a request for hearing and petition to intervene in the Seabrook license renewal proceeding. Neither offers any additional justifications for extending their intervention deadlines, other than their claims that it is difficult to prepare intervention petitions on a 60-day deadline. It is not sufficient for Beyond Nuclear and NEC to simply piggy-back on the State's filing—they must demonstrate good cause for extending the deadline on their own.

Notably, neither party conferred with NextEra prior to filing its motion. This is a clear violation of NRC rules and requires the rejection of each of their requests. Motions that do not contain a consultation certification “must be rejected.” 10 C.F.R. § 2.323(b). The representatives for both Beyond Nuclear and NEC are well experienced in NRC proceedings and should be aware of this rule.<sup>4</sup> Because neither included this certification, or consulted with NextEra, their requests “must be rejected.”

Moreover, NEC’s request was served by e-mail on the counsel for NextEra, the NRC Staff, and the hearing docket. This is a violation of 10 C.F.R. § 2.302(a), which *requires* filing via the E-Filing system unless an exemption is granted. NEC sought no exemption from the requirement to submit via the E-Filing system. NEC’s representative is certainly aware of the E-filing Rule, as that very requirement is discussed in the excerpt

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<sup>3</sup> Beyond Nuclear also filed a “Reply in Support of the New Hampshire Office of Attorney General Request for a Ninety (90) Day Extension of Time to File Petition for Leave to Intervene.” Because Beyond Nuclear is neither a party to nor a petitioner in this proceeding, this reply is impermissible and should be ignored.

<sup>4</sup> For instance, NEC, represented by Mr. Shadis, participated in the Vermont Yankee license renewal hearing, as well as a Vermont Yankee license amendment hearing on a challenged extended power uprate. Mr. Gunter, the representative of Beyond Nuclear, has participated in numerous licensing proceedings.

of Judge Farrar’s concurring opinion quoted in the NEC Request. *See* NEC Request at 6.

In any event, the importance of using the E-Filing system can be seen because the representative for NEC originally misspelled the name of the sole NextEra attorney that he e-mailed—causing NextEra to not receive NEC’s filing contemporaneously with other recipients.

It is worth noting that *Pro se* intervenors are subject to the same requirements in terms of abiding by the Commission rules as any other participant. The Commission “generally extend[s] some latitude to *pro se* litigants, but they still are expected to comply with [its] procedural rules, including contention pleading requirements.” *South Carolina Electric and Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-01, 71 NRC \_\_\_, slip op. at 5 (Jan. 7, 2010) (citing *USEC, Inc.* (America Centrifuge Plant), CLI-06-10, 63 NRC 451, 456-57 (2006)).

Beyond their procedural flaws, both requests also fail substantively to show good cause for an extension of time, as discussed below.

A. Beyond Nuclear

Beyond Nuclear offers no reasons to support its request other than (1) claims of fairness because the New Hampshire Attorney General has also requested an extension; and (2) the “arduous task of conferring, interviewing and selecting potential experts to formulate, present and defend contentions.” *See* Request at 2. These reasons are plainly insufficient; an extension of time may only be made upon a showing of “good cause.” 10 C.F.R. § 2.307.

Further, the Commission considered the appropriate length of time necessary to prepare an intervention petition in its 2004 rulemaking that revised 10 C.F.R. Part 2.

Final Rule, “Changes to Adjudicatory Process,” 69 Fed. Reg. 2,182 (Jan. 14, 2004). In that rulemaking, the Commission determined that 60 days would be sufficient. *Id. See also* 10 C.F.R. § 2.309(b)(3)(i).

The Commission’s intention is that the most important applications, licensing and regulatory actions, e.g., initial nuclear power plant and fuel facility construction permits, *facility license renewals*, design certifications under part 52, be noticed on the NRC Web site at <http://www.nrc.gov/public-involve/major-actions.html>. This Webpage will include either a link for download of the document, a link to a webpage with the document text, or an ADAMS accession number and a link to the NRC’s Public Electronic Reading Room (PERR).

The Commission believes that these notice provisions, in conjunction with an *expanded period of sixty (60) days in which to file a request for hearing/petition to intervene and contentions, will provide more than ample time for a potential requestor/intervenor to review the application, prepare a filing on standing, and develop proposed contentions and references to materials in support of the contentions.*

69 Fed. Reg. at 2,199 (emphases added).<sup>5</sup>

The Commission still maintains this webpage identifying currently pending and near-term opportunities to request a hearing. Moreover, 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>6</sup> By September 20, the Application will have been available to Beyond Nuclear for nearly four months.

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<sup>5</sup> To the extent Beyond Nuclear or NEC present an argument that sixty days is an insufficient amount of time, it is unavailing, since “no rule or regulation of the Commission, or any provision thereof … is subject to attack by way of … argument, or other means in any adjudicatory proceeding subject to this part.” 10 C.F.R. § 2.335(a).

<sup>6</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 Commission explained that potential intervenors may move for an extension of time, but that such authority would be exercised “sparingly.” *Id.* at 2,200. The Commission’s Policy Statement on Adjudications also explains that hearing participants “are expected to adhere to the time frames specified in the Rules of Practice in 10 CFR Part 2 for filing” and that those time frames should only be extended “when warranted by unavoidable and extreme circumstances.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998). Beyond Nuclear has identified no extreme circumstances or any good cause for an extension of time. The Commission was well aware in 2004 that license renewal applications are lengthy and complex, as it had already been reviewing them for several years. The complexity of the LRA is simply not sufficient grounds for an extension of time.

B. New England Coalition and Friends of the Coast

The NEC Request argues that “60 days is, in case [sic] in particular, not adequate time to lay the basis for acceptable contentions or to fulfill what NRC terms the parties’ ‘ironclad’ responsibility to examine all relevant publicly available documents.” NEC Request at 3. Again, this is a direct challenge to the NRC’s determination that 60 days is a sufficient time to formulate contentions. *See* 69 Fed. Reg. at 2,199. The NEC Request goes on to claim that petitioners should not be required to assume, following publication of the Notice of Receipt and Availability of the Application that the Application will soon be docketed, such that they should be expected to begin reviewing the Application in anticipation of a hearing request. *Id.* at 4. NEC argues that it “cannot be NRC’s intention” that petitioners should need to watch for early notice of the filing of an application in order to take advantage of extra time for review. *Id.* But that is *exactly*

what the Commission said in the Statements of Consideration for its Part 2 rulemaking in 2004, as described above. *See* 69 Fed. Reg. at 2,199.

NEC also argues that an extension of time would not be prejudicial to NextEra. NEC Request at 5. NEC seems to believe that, because Seabrook's operating license will not expire for nearly 20 years, it cannot be harmed by any hearing that will last only a few years. This argument proves too much. NEC's argument, taken at face value, would suggest that no license renewal applicant could ever claim harm by an extension of the intervention deadline for a license renewal proceeding. This is not the case. Any undue extension of the hearing process is clearly prejudicial to NextEra.

The NEC Request closes by quoting a long passage from a concurring opinion of Judge Farrar in a materials licensing case. NEC Request at 6-7 (citing Shaw AREVA MOX Services (Mixed Oxide Fuel Fabrication Facility) LBP-08-11, 67 NRC 460, 497 (2008). NEC did not elaborate or attempt to explain how Judge Fararr's statements are relevant to this proceeding. The MOX case, which involved a construction authorization for a fuel cycle facility, presents a very different set of facts from this reactor license renewal proceeding. That Licensing Board dealt with a complex proceeding that was in the second stage of a "two-stage licensing process." *Id.* at 465-66. One of the applicable regulatory requirements in that proceeding was a finding by the NRC Staff that the construction of the facility had been completed, but the NRC Staff (originally) had no procedure by which to give notice of this finding to the public. *Id.* at 489-90. On the other hand, the Staff and the Applicant argued that the petitioner's contention (which alleged that the facility would not, in fact, be constructed in accordance with regulations, such that the NRC could not make the required finding) was impermissibly speculative

before construction had actually been completed. *Id.* It was in this context, where the petitioner could not challenge construction in the current proceeding, but was not assured of notice of the NRC finding that it would be allowed to challenge, that Judge Farrar's comments were made.

NEC has not even attempted to make a comparable showing of procedural irregularities in the instant case. In publishing the Seabrook Hearing Notice, the NRC simply followed its long-standing practice in reactor license renewal cases. There is nothing unusual about the timing or the form of the Seabrook Hearing Notice. NEC's citation of the MOX proceeding is inapposite.

Like Beyond Nuclear, NEC offers no good cause for their request for an extension of time and identifies no extreme circumstances. Both petitioners simply would like to have more time. While perhaps understandable, that desire is insufficient to demonstrate good cause to extend the time for them to request a hearing.

For the foregoing reasons, the requests of Beyond Nuclear and NEC for an extension of time to file requests for hearing in this proceeding should be denied in their entirety.

Respectfully Submitted,

/Signed electronically by Antonio Fernández/

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NextEra Energy Seabrook, LLC ) Docket No. 50-443-LR  
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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NextEra Energy Seabrook, LLC's Response to Beyond Nuclear'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 16th day of September, 2010.

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\*To NextEra's knowledge, Mr. Shadis has not yet signed up for the EIE, so NextEra will submit a copy of this pleading to him via e-mail as a courtesy.

/Signed electronically by Antonio Fernández/

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Antonio Fernández