

September 15, 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 – License Renewal Application)

FRIENDS OF THE COAST AND NEW ENGLAND COALITION’S ANSWER
TO
NEW HAMPSHIRE ATTORNEY GENERAL’S REQUEST FOR EXTENSION

I. INTRODUCTION

On September 10, 2010, the Attorney General for the State of New Hampshire (“New Hampshire”) filed a request for an extension of time of ninety (90) days for filing requests for hearing petitions for leave to intervene (“hearing requests”) ¹until the later date 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.

For all of the good reasons stated below, Friends of the Coast and New England Coalition, through their pro-se representative, Raymond Shadis, support New Hampshire’s request, provided the extension of time be granted to all parties.

Friends of the Coast and New England Coalition are signatories of the August 18, 2010 petition for rulemaking. Both organizations meet the ‘interest’ criteria for standing in the above captioned matter extension inasmuch as both have members resident and/or

¹ 1 Letter from Michael A. Delaney, New Hampshire Attorney General, to Gregory B. Jaczko, Chairman, Nuclear Regulatory Commission (September 9, 2010) (“Extension Request”), September 9, 2010 (Received September 10, 2010).

with property within 50 miles of Seabrook Nuclear Generating Station. Friends of the Coast has been incorporated as a non-profit public good corporation (Earth Day Commitment d/b/a Friends of the Coast-Opposing Nuclear Pollution/ Friends of the Coast) in the State of Maine since 1995. New England Coalition has been incorporated as New England Coalition on Nuclear Pollution, d/b/a New England Coalition, in the State of Vermont since 1971. Raymond Shadis is Executive Director of Friends of the Coast and Trustee of New England Coalition. It is the intention of both organizations to file a request for a Hearing and a Petition for Leave to Intervene in the above captioned matter.

II. BACKGROUND

On July 21, 2010, the Staff published a notice in the *Federal Register* stating that the Seabrook Nuclear Generating Station license renewal application was acceptable for docketing and establishing September 20, 2010, as the deadline for filing Hearing Requests.² 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, where a Final Safety Evaluation Report had not yet been issued; pending resolution of the Rulemaking Petition.³

² 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).

³ 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”).

III. DISCUSSION

At core is the question of whether or not 60 days is adequate time for New Hampshire or any other concerned entity to review Next Era's highly detailed, highly technical, and voluminous License Renewal Application ("LRA") and all relevant publicly available information in a manner that would support meaningful participation in the hearing process. Friends of the Coast and New England Coalition contend in support of New Hampshire's averments that 60 days is, in case 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 documents⁴. For example, Friends of the Coast and New England Coalition are particularly concerned that the applicant's treatment of Severe Accident Mitigation Alternatives is, Friends of the Coast and New England Coalition believe, laced with non-conservative assumptions, calculations, analytical methods, and conclusions; on the whole grossly and unrealistically estimating accident costs and consequences. Confirming the basis for these concerns requires consultation with numerous sources and references. Friends of the Coast and New England Coalition, like New Hampshire, have been limited by lack of resources; in the case of Friends of the Coast and New England Coalition hampered by the fact that this 60 days is draped over the month of August when numerous volunteer workers, consultants, and potential witness are on vacation and unreachable.

⁴ An intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable the petitioner to uncover any information that could serve as the foundation for a specific contention.- Neither Section 189a of the Atomic Energy Act nor Section 2.309 of the Rules of Practice permits the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2),-ALAB-687,.16 NRC 460, 468 (1982), et seq., (Shoreham Nuclear Power Station, Unit 1),LBP-91-35,r34-NRC 163,175-76(1991).

It is unjustified and spurious to claim that New Hampshire or anyone else seeking a hearing had several months from the Federal Register Notice of Availability⁵ in which to examine the LRA. Are the affected states and the public now expected to examine in fine every application docketed and prepare a request for hearing with contentions meeting the manifold criteria for acceptance, even though the application has yet to be accepted for review by NRC staff? If NRC intends that the Notice of Availability should be a notice that (1) in short order the staff will with no uncertainty or amendment accept the application for review and (2) that an Notice of Opportunity for a Hearing is merely a pro forma mile marker, then NRC should say so at the onset; not when some overwhelmed party well into the allotted 60 days begs for relief. Friends of the Coast and New England Coalition believe this cannot be NRC's intention and respectfully suggest that the Commission should act to erase any confusion between the party's obligation to act on merely published information and the party's obligation to act on information published in the context of active NRC licensing or rulemaking processes.

Friends of the Coast and New England Coalition would also point out that the time allotted to staff to review the LRA is based entirely; it appears, on availability of resources and the complexity of the application. In this case the staff took more than 30 days just to assure itself that the application was sufficiently complete to accept for review. The staff allots itself a target of 24 months or more for the actual review. What New Hampshire requested is modest by comparison and if granted will in no way affect the pace of staff review.

⁵ 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).

The Commission may wish to consider any potential negative effect of granting New Hampshire's request. Friends of the Coast and New England Coalition say now that there is none that we can foresee. Certainly, the applicant has a twenty year lead time and cannot claim harm due to press of schedule. Such an extension will in no way hamper the applicants' ability to attempt to settle differences with intervenors; in fact more refined contentions resulting from additional time now are certain to later save time in addressing the issues they raise.

Friends of the Coast and New England Coalition have encountered difficulties comparable to those reported by New Hampshire.

If the Commission grants New Hampshire's request and applies the extension to all parties, then all parties will have an opportunity to more fully engage in the process, more adequately assist in building a good hearing record and more adequately assist NRC in fulfillment of its role in assuring adequate assurance of public health and safety.

If the Commission grants New Hampshire's request and applies the extension to all parties, then all parties will start on the same page, and avoid a potential multiplicity of conferences, oral hearings, and filings.

IV. Conclusion

Friends of the Coast and New England Coalition asks that the Commission take this opportunity to reconsider the increasingly ossified practice of rigid adherence to a preset schedule and its potential effect in this case on the Commission's goal; of affording a meaningful hearing opportunity. Friends of the Coast and New England Coalition respectfully direct the Commission's attention to the words of Atomic safety and

Licensing Board Judge Michael Farrar in his concurring opinion in the Matter of SHAW
AREVA MOX SERVICES (Mixed Oxide Fuel Fabrication Facility) June 27, 2008.

The other matters center on potential intervenors' right to a hearing, which is an empty promise unless there is an opportunity to be heard "at a meaningful time and in a meaningful manner."¹ It is in that spirit that this concurrence respectfully suggests a need for Commission directives or policies that would enable agency adjudications to proceed differently when circumstances call for it. Specifically, those adjudications should be conducted in a way that more nearly assures that the agency's hearing process — one of the means by which nuclear safety is promoted and the natural environment protected—makes the hearings mandated by the Atomic Energy Act "meaningful."

In that regard, this proceeding has illustrated how the adjudicatory system established by the Commission can become contorted so as to place artificial — even unfair—barriers in the way of those citizens, organizations, or governments genuinely seeking to participate in a constructive manner. The Commission made its intervention rules "strict by design"—but that does not justify what we have seen here.

The proceeding has also focused attention on the unnecessarily short and burdensome time periods that routinely govern potential intervenors' prehearing participation in the adjudicatory process. In contrast, industry parties are routinely—and quite properly—granted great blocks of time, both within and outside the adjudicatory process (*Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), to prepare or to reformulate their presentations.

All agree that the better an Applicant's presentation, the more that safety will be promoted.

But does not the Atomic Energy Act require us at least to allow for the possibility that the same might be said of a particular Intervenor's presentation?

...In sum, the Commission may wish to consider (1) insisting that notices of hearing opportunities, upon which the public relies to know how to proceed, be more artfully crafted so as to articulate more clearly what is required; (2) allowing more time to file intervention petitions in circumstances where, like here, the adjudication is not yet on the critical path and time is not yet of the essence); and (3) making it clear that well-founded extensions of time for filing petitions or taking other actions at the contention stage are not disfavored in any proceeding, particularly where the Applicant has taken extraordinary amounts of time to put its materials together descriptions (if included) and deadlines, needed to draft intervention pleadings, seem too often to be obscured by boilerplate, rather than highlighted in some fashion.

The procedural difficulties petitioners might encounter, for example, in preparing to act in accordance with the agency's Electronic Information Exchange, can scarcely be overstated. The Notice is long; the instructions are longer; and becoming skilled is not easy.

To be sure, prospective petitioners will usually have had an opportunity for access to at least a redacted version of an application for some additional period

before the Staff issues the notice that formally triggers the opportunity to participate...

In this “early notice” case, then, time was not of the essence — but the deadlines imposed on petitioners made it seem otherwise. In most instances, pursuant to Commission direction, evidentiary hearings on admitted contentions await the Staff’s later issuance of key analytical documents. 10 C.F.R. § 2.332(d).

The latter two steps would advance symmetry, for if the Staff detects deficiencies in an application before or after a notice of hearing opportunity is issued, the applicant will freely be given (outside the adjudicatory process) ample opportunity to amend it. This is as it should be, for it serves the public interest in safety for a facility *application* to be as good as it can be. But it can also serve the public interest in safety, one would think, for a facility *opposition* to be as good as it can be.

This is most readily achieved by granting more time at the outset. For once the initial petition is filed, facility proponents routinely press within the adjudicatory process to ensure that any attempt thereafter to cure any deficiencies — as in a response to the proponents’ answers—is rejected as untimely.

It is no answer to say that disparate, unfair treatment does not exist, in that the limitless opportunities for the applicant to “get it right” take place *outside* the hearing process, while the denial of opportunities for the petitioners to raise their challenges occurs *inside* the hearing process, where “the rules are the same for everyone.” That is a meaningless bromide when the crucial adjudicatory pleading deadlines have practical exclusionary impact on only one of the parties — the petitioners.

Docket No. 70-3098-MLA (ASLBP No. 07-856-02-MLA-BD01)

New Hampshire, Friends of the Coast, and New England Coalition have laid before the Commission the difficulties, and constraints on the quality of our contentions, encountered in diligent and sincere attempts to meet the deadline for filing imposed in the July 21 , 2010 Federal Register Notice. We now respectfully request that the Commission afford relief to the aforementioned parties by granting New Hampshire’s request for an extension of time.

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