PRM-54-6
(75FR59158)

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December 09, 2010
L-2010-297

Ms. Annette Vietti-Cook
Secretary of the Commission
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

SUBJECT: Request for Comment, PRM–54–6; NRC–2010–0291
(75 Fed. Reg. 59,158; Sept. 27, 2010)

Dear Ms. Vietti-Cook:

NextEra Energy Seabrook, LLC ("NextEra Energy Seabrook"), the licensee for Seabrook Station ("Seabrook"), and its NextEra Energy, Inc. affiliates, Florida Power and Light Company, the licensee for the St. Lucie Nuclear Plant, Units 1 and 2, and the Turkey Point Nuclear Plant, Units 3 and 4; NextEra Energy Duane Arnold, LLC, the licensee for Duane Arnold Energy Center; and NextEra Energy Point Beach, LLC, the licensee for Point Beach Nuclear Plant, Units 1 and 2 (hereafter referred to collectively as "NextEra Energy"), hereby submit the following comments on the petition for rulemaking docketed as PRM-54-6, in response to the above-referenced Federal Register notice issued by the NRC. For the reasons set forth below, the Petition should be denied.

I. INTRODUCTION

On August 18, 2010, Friends of the Coast, Beyond Nuclear, the New England Coalition, Seacoast Anti-Pollution League, Pilgrim Watch, and C-10 Research & Education Foundation (collectively, "Petitioners") filed with the NRC a "Petition for Rulemaking Pursuant to 10 CFR § 2.802; Seeking to Amend 10 CFR § 54.17(c)" (the "Petition"). The Petition requests the NRC amend 10 C.F.R. § 54.17(c), which allows reactor licensees to submit a license renewal application ("LRA") once 20 years remain on their current operating licenses.[1] Petitioners propose instead that the Commission revise this rule to only permit licensees to apply for license renewal once ten years or less remain on their current operating licenses.

[1] 10 C.F.R. § 54.17(c) states:

> An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license or combined license currently in effect.

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NextEra Energy has a direct and substantial interest in the outcome of this rulemaking petition, as it specifically references Seabrook, for which NextEra Energy Seabrook submitted a license renewal application with twenty years of operating experience.[2]

II. ARGUMENT

When evaluating petitions to amend its existing rules, the NRC considers whether the petition raises issues that it already considered in developing the rule. *See* Andrew J. Spano and Joseph C. Scarpelli; Denial of Petitions for Rulemaking (PRM-54-2 and PRM-54-3), 71 Fed. Reg. 74,848, 74,851 (Dec. 13, 2006); *aff'd*, *Spano v. NRC*, 293 Fed. Appx. 91 (2nd. Cir 2008) (unpublished order). The NRC has denied several petitions requesting that it amend its license renewal rules because the "petitioners did not present any new information that would contradict positions taken by the Commission when the license renewal rule was established or demonstrate that sufficient reason exists to modify the current regulations." *Id.* *See also* Friends United for Sustainable Energy; Denial of Petitions for Rulemaking (PRM-54-4), 72 Fed. Reg. 63,141 (Nov. 8, 2007); Eric Epstein; Denial of Petitions for Rulemaking (PRM-54-5), 73 Fed. Reg. 44,671 (July 31, 2008). This Petition should be denied for the very same reason—the arguments it presents were either addressed in the NRC's license renewal rulemaking or simply provide insufficient grounds to modify Part 54.

The 20-year timing requirement in 10 C.F.R. § 54.17(c) has been a part of the NRC's license renewal rule since the rule was first proposed in 1990. Proposed Rule, "Nuclear Power Plant License Renewal," 55 Fed. Reg. 29,043, 29,051 (July 17, 1990). Many of the arguments raised by Petitioners are not new and were thoroughly considered by the Commission when it promulgated Part 54. *See* Final Rule, "Nuclear Power Plant License Renewal," 56 Fed. Reg. 64,943 (Dec. 13, 1991). The 20-year timing provision in the proposed rule elicited public comment, which the Commission addressed in the Statements of Consideration ("SOC") for the 1991 Final Rule:

> Neither the AEA nor the Commission's current regulations set a limit on how long before expiration of the operating license a renewal application may be filed. The Commission has decided to impose such a limit to ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application.
>
> In the proposed rule, the Commission suggested a 20-year time limit for filing renewal applications. Several

[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. 42,462 (July 21, 2010).

commenters argued that 20 years would not be a sufficient period of time to accumulate an adequate body of information and experience to support the agency's consideration of a renewal application. Other commenters stated that information gained from operating experience after the renewal license is granted would not be considered by the NRC. One commenter also argued that even after considering the 10-year lead time deemed necessary by utilities to plan for alternative generating capacity and a 3-year period for NRC review of a renewal application, the proposed 20-year limit is too long. The commenter proposed that a 15-year limit should be a compromise acceptable to the industry. Another commenter stated that a 20-year time limit would be an illegal expansion of the initial licensing period, in violation of the AEA, but the commenter did not explain the legal basis for this conclusion. The commenter suggested that a 5-year time limit would be reasonable.

While the Commission accepts the premise that operating experience is important, it rejects the suggestion that 20 years of operational and regulatory experience with a particular plant is an insufficient period in which to accumulate information on plant performance. A nuclear power plant will undergo a significant number of fuel cycles over 20 years, and plant and utility personnel will have a substantial number of hours of operational experience with every system, structure, and component. The NRC believes that the history of operation over the minimum 20-year period provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation.

Commenters incorrectly suggest that new information about plant systems and components as well as age-related degradation concerns discovered after the renewed license is issued would not be considered by the NRC or would not be factored into a plant's programs. The CLB of a plant will continue to evolve throughout the term of the renewed license to address the effects of age-related degradation as well as any other operational concern that arises. The licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis.

> The NRC's regulatory oversight activities will also assess any new information on age-related degradation or plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety. The commenters ignore the fact that both renewal applicants and the NRC will have the benefit of the operational experience from the nuclear industry and are not limited to information developed solely by the utility seeking a renewed license. For example, there are now approximately 1400 reactor years of operating experience in the U.S. nuclear power industry. This experience will increase each year. All of this experience would be considered by the NRC in evaluating the adequacy of licensee-proposed activities to address age-related degradation in connection with a renewal application.
>
> The Commission disagrees with a commenter's proposal that a 5-year, or even a 15-year, time limit for filing renewal applications will be adequate. In proposing the earliest date of application, the Commission considered the time necessary for utilities to plan for replacement of retired nuclear plants. Industry studies estimate that the lead time to build a new electric generation plant is 10 to 12 years for fossil fuels and 12 to 14 years for nuclear or other new technologies. When the staff review is factored into the decision process, the Commission concludes that applications 18 to 20 years before expiration of a license are not unreasonable. For these reasons, the final rule permits the application for a renewed license to be filed 20 years before expiration of an existing operating license.

Id. at 64,963.

The Commission revisited this issue in 1995 when it made substantial revisions to Part 54. It again received public comments on this issue, but determined that no change to 10 C.F.R. § 54.17(c) was necessary:

> Based on the general nature of the information provided by the commenters, no change to the final rule will be made. The Commission is willing to consider, however, plant-specific exemption requests by those applicants who believe that they may have sufficient information available to justify applying for a renewal license prior to 20 years from the expiration date of the current license.

Final Rule, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,488 (May 8, 1995).

Petitioners ignore this long rulemaking history and imply that the Commission arbitrarily set the 20-year time for filing renewal applications. *See, e.g.*, Petition at 3. However, the Commission's license renewal rules are the product of years of careful consideration:

> Two sets of regulatory requirements govern the agency's review of license renewal applications. Pursuant to 10 C.F.R. Part 54, the NRC conducts a technical review of the license renewal application to ensure that public health and safety requirements are satisfied. Pursuant to 10 C.F.R. Part 51, the NRC completes an environmental review for license renewal, focusing upon the potential impacts of an additional 20 years of nuclear power plant operation. *Both sets of agency regulations derive from years of extensive technical study, review, interagency input, and public comment.*

Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 6-7 (2001) (emphasis added).

Petitioners make seven numbered claims in support of their argument that the 20-year period should be shortened to 10 years. None of these claims provides support for the suggested rulemaking.

First, Petitioners argue that the rule is "antiquated and obsolete" and does not consider changes in NRC oversight as well as changes in reactor ownership that have "affected the dynamics of license renewal aging analysis and aging management planning." Petition at 4-5. While this argument attempts to provide new information that the NRC allegedly did not consider in its rulemaking, it fails to explain what that new information is and thus fails to demonstrate that sufficient reason exists to modify the current regulations. Petitioners fail to identify what changes in NRC oversight they believe to be relevant or how such changes would affect aging management. Similarly, Petitioners do not indicate how electric power deregulation, which led to some changes in reactor ownership, has had any affect on aging management. All license renewal applicants, whether they are rate-based utilities or merchant generators, must comply with Part 50 and Part 54 requirements. And, contrary to Petitioners' assertion, Part 54 does "take into consideration [the] present context," (Pet. at 5) as it requires the maintenance of each reactor's current licensing basis. *See* 10 C.F.R. § 54.33(d).

Also in the first numbered paragraph, Petitioners claim that none of the license renewal applications that the NRC has received were submitted 20 years in advance of the current license's expiration, and that the Seabrook LRA is the first exception to this general rule. Petition at 5. Petitioners are wrong. The NRC has docketed and granted several license renewal applications filed around the 20-year point. Among the LRAs submitted around the 20-year threshold are: McGuire Unit 1, Beaver Valley Unit 2, V.C. Summer, Wolf Creek, Shearon Harris, and Vogtle Unit 1.[3] Moreover, as the Commission explained in the SOC for the 1995 Final Rule, it has been willing to grant exemptions from the requirements of 10 C.F.R. § 54.17(c). *See* 60 Fed. Reg. at 22,488. These exemptions have allowed numerous licensees to submit a license renewal application with more than 20 years remaining on their operating licenses. Among the LRAs submitted under such an exemption are: Vogtle Unit 2, Nine Mile Point Unit 2, St. Lucie Unit 2, McGuire Unit 2, Catawba Units 1 and 2, and Millstone Unit 3. Consequently, Petitioners' assertion that the Seabrook LRA is an outlier in this regard is without merit and fails to provide sufficient grounds to modify the current regulation.

Second, Petitioners argue that the NRC promulgated 10 C.F.R. § 54.17(c) without sufficient consideration of its impact on the hearing rights of affected persons because the NRC has removed "to the distance of a full generation, the opportunity for an adjudicatory hearing." Petition at 5. To the extent Petitioners mean to raise a constitutional challenge to 10 C.F.R. § 54.17(c)—that it deprives future citizens of a fundamental right to intervene in the license renewal proceeding, it must fail because "there is no fundamental right to participate in administrative adjudications." *Citizens Awareness Network, Inc. v. NRC*, 391 F.3d 338, 354 (1st. Cir. 2004). Moreover, Petitioners ignore the fact that, as set forth in the Atomic Energy Act, initial operating licenses are issued for 40-year periods. The combination of a 20-year license renewal period with the 18 years (at most) that would remain on an initial license following the NRC's review of an LRA is less than the 40-year period for operating licenses that the NRC grants under Part 50 or Part 52. Petitioners' argument, if accepted, would mean that the NRC is incapable of ever providing any meaningful hearing opportunity on an initial operating license and that the Atomic Energy Act's provisions requiring both an opportunity for hearing and a 40-year term are fundamentally incompatible.

In any event, as the Commission explained in the 1991 Final Rule, the Atomic Energy Act does not require the Commission to provide an opportunity for hearing on LRAs. 56 Fed. Reg. at 64,961. The Commission decided to grant license renewal hearings as a matter of discretion. *Id.* Petitioners provide no explanation why the discretionary opportunity for hearings the Commission provides for license renewal should preclude the NRC from accepting LRAs at the 20-year mark while the statutorily

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[3] *Compare* NUREG-1350 Vol. 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) *with* NRC License Renewal Website (providing the date of application for each LRA filed to date; available at http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html).

required hearings for an initial operating license are adequate for review of a license with a 40-year term. Accordingly, Petitioners' argument that 10 C.F.R. § 54.17(c) somehow violates the public's hearing rights is baseless and does not provide grounds to reconsider the Commission's current regulations.

Third, Petitioners argue that "10 C.F.R. § 54.17(c) allows licensees and NRC reviewing staff to press to untenable lengths of time the unproven ability to predict the aging and deterioration of systems, structures and components ('SSCs')." Petition at 6. But Petitioners misrepresent the NRC's license renewal program. It is not intended to "predict" specific failures. Instead:

> Part 54 requires renewal applicants to demonstrate how their programs will be effective in managing the effects of aging during the proposed period of extended operation. *See generally* 10 C.F.R. § 54.21(a). This is a detailed assessment, conducted at "a component and structure level," rather than at a more generalized "system level." 60 Fed. Reg. at 22,462. License renewal applicants must demonstrate that all "important systems, structures, and components will continue to perform their intended function in the period of extended operation." *Id.* at 22,463. Applicants must identify any additional actions, i.e., maintenance, replacement of parts, etc., that will need to be taken to manage adequately the detrimental effects of aging. *Id. Adverse aging effects generally are gradual and thus can be detected by programs that ensure sufficient inspections and testing. Id.* at 22,475.

Turkey Point, CLI-01-17, 54 NRC at 4 (emphasis added). In drafting Part 54, the NRC did not expect licensees to predict all possible age-related failures prior to issuance of a renewed license. Instead, it requires licensees to have inspection and testing programs that would detect aging effects such that those effects could be adequately managed. *See id.* A licensee's license renewal programs are detection—not prediction—programs. Accordingly, this argument does not provide any grounds to reconsider the Commission's current regulations.[4]

Petitioners also raise a number of concerns that are beyond the scope of the Commission's license renewal review and so have no bearing on the appropriate time for filing an LRA. Petition at 6 (raising the threat of terrorism, reactor security, storage of spent fuel and low level radioactive waste, and potential impacts to aquatic species). For

[4] In the third numbered paragraph, Petitioners raise several additional arguments related to the alternatives analysis performed under the National Environmental Policy Act. These claims are generally addressed in response to the seventh numbered paragraph, below.

instance, the Commission has repeatedly stated that security issues are not among the aging-related questions that are relevant in license renewal review. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 638; *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 NRC 358, 363 (2002). Moreover, acts of terrorism need not be addressed in the NRC's environmental review. *AmerGen Energy Co.* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 129 (2007); *aff'd N.J. Dep't of Envtl. Prot. v. NRC*, 561 F.3d 132, 137-44 (3rd Cir. 2009)). The storage and disposal of low-level waste and the onsite storage of spent fuel generated during the additional 20 years of operation are Category 1 issues for which the NRC has already codified environmental impact findings in Appendix B to 10 C.F.R. Part 51. And the eventual on- or off-site storage of spent fuel following the permanent cessation of operations is generically addressed in 10 C.F.R. § 51.23.[5]

Fourth, Petitioners argue that most aging effects "increase rapidly in the fourth quarter and toward the end of the license." Petition at 7. Petitioners call this the "Bath Tub Curve" and argue that licensees should be required to wait until these later-life structural failures have presented themselves before filing a LRA. *Id.* at 7. Again, the Commission specifically addressed this argument in its 1991 Final Rule:

> While the Commission accepts the premise that operating experience is important, it rejects the suggestion that 20 years of operational and regulatory experience with a particular plant is an insufficient period in which to accumulate information on plant performance. A nuclear power plant will undergo a significant number of fuel cycles over 20 years, and plant and utility personnel will have a substantial number of hours of operational experience with every system, structure, and component. The NRC believes that the history of operation over the minimum 20-year period provides a licensee with substantial amounts of information and would disclose any plant-specific concerns with regard to age-related degradation.

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[5] Further, Petitioners question the impact that a potential rise in ocean temperatures could have on aquatic species impacted by a reactor's thermal discharge plume or the cooling intake structure. Assuming such changes occur, the EPA or designated state agency that permits operations under sections 316 (a) and (b) of the Clean Water Act could modify the permits to account for the change in conditions. Regardless of whether these permitting authorities amend the National Pollutant Discharge Elimination System (NPDES) permits, section 511(c)(2) of the Clean Water Act precludes the NRC from either second-guessing the conclusions in NPDES permits or imposing its own effluent limitations. *Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.*, (Vermont Yankee Nuclear Power Station) CLI-07-16, 65 NRC 371, 377 (2007) (citing 33 U.S.C. § 1371(c)(2)). *See also* 10 C.F.R. § 51.53(c)(3)(ii)(B).

56 Fed. Reg. at 64,963.

Further, license renewal applicants benefit not only from their own operating experience, but from that of the entire industry:

> both renewal applicants and the NRC will have the benefit of the operational experience from the nuclear industry and are not limited to information developed solely by the utility seeking a renewed license. For example, there are now approximately 1400 reactor years of operating experience in the U.S. nuclear power industry. This experience will increase each year. All of this experience would be considered by the NRC in evaluating the adequacy of licensee-proposed activities to address age-related degradation in connection with a renewal application.

56 Fed. Reg. at 64,963. Accordingly, this argument does not provide new information that the Commission has not already considered in its earlier rulemakings or grounds to reconsider the Commission's current regulations.

Fifth, Petitioners argue that "the current rule exacerbates NRC staff and licensee difficulty in following license renewal commitments." Petition at 7. Petitioners question the NRC's ability to keep track of license renewal commitments that are more than ten years old, blaming NRC Staff turnover, changes in oversight, and potential new facility ownership. *Id.* Contrary to Petitioners' specious claims, license renewal commitments are in the Updated Final Safety Analysis Report ("UFSAR"), which is docketed and searchable. Petitioners fail to identify why the NRC staff would encounter any difficulty keeping track of documented commitments in a licensee's UFSAR. Accordingly, this argument does not provide grounds to reconsider the Commission's current regulations.

Sixth, Petitioners argue that "[t]wenty years from application to onset of extended period of operation will, based on regulatory history, certainly see an inordinate amount of applicable regulatory change, with lack of compliance likely to be grandfathered in." Petition at 7. However, the Commission has explained that it expects "licensees and license renewal applicants to adjust their aging management programs to reflect lessons learned in the future through individual and industrywide experiences." *AmerGen Energy Company, LLC,* (Oyster Creek Nuclear Generating Station) CLI-08-23, 68 NRC 461, 485 (2008). The Commission has described the license renewal program as a living program that continues to evolve. *Id.* If "new insights or changes emerge over time," the NRC Staff will "require, as appropriate, any modification to systems, structures, or components that is necessary to assure adequate protection of the public health and safety, or to bring the facility into compliance with a license, or the rules and orders of the Commission." *Id.* (citing 10 C.F.R. § 50.109 and *Pacific Gas & Elec. Co.* (Diablo

Canyon Power Plant Independent Spent Fuel Storage Installation) CLI-02-23, 56 NRC 230, 240 (2002)). The NRC will act to ensure adequate protection regardless of when an LRA is submitted.

The Commission also considered this same argument nearly 20 years ago in its 1991 Final Rule:

> Commenters incorrectly suggest that new information about plant systems and components as well as age-related degradation concerns discovered after the renewed license is issued would not be considered by the NRC or would not be factored into a plant's programs. The CLB of a plant will continue to evolve throughout the term of the renewed license to address the effects of age-related degradation as well as any other operational concern that arises. The licensee must continue to ensure that the plant is being operated safely and in conformance with its licensing basis. The NRC's regulatory oversight activities will also assess any new information on age-related degradation or plant operation issues and take whatever regulatory action is appropriate for ensuring the protection of the public health and safety.

56 Fed. Reg. at 64,963. Accordingly, this argument does not provide new information that the Commission has not already considered in its earlier rulemakings or grounds to reconsider the Commission's current regulations.

Seventh, Petitioners argue that 10 C.F.R. § 54.17(c) conflicts with the National Environmental Policy Act ("NEPA") because it allows the agency's environmental review to fix its analysis prematurely from the license expiration date. Petition at 8. Specifically, Petitioners argue that an environmental review performed 20 years prior to the expiration of the operating license "provides a dated, incomplete and meaningless assessment of Energy Alternatives and is biased towards the requested relicensing action." *Id.* at 10. In essence, Petitioners argue that the NRC should revise the regulatory framework that is has developed to meet its public health and safety obligations under the Atomic Energy Act in order to provide a more complete and up-to-date review and comply with the "spirit" of NEPA. *See id.* at 7.

But "NEPA does not require agencies to adopt any particular internal decisionmaking structure." *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 100 (1983) (citing *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 535 (1978)). In fact, the Commission has "broad discretion" to structure its NEPA inquiries. *Turkey Point*, CLI-01-17, 54 NRC at 14. As the Supreme Court made clear in *Vermont Yankee* over 30 years ago, "it is clear" that NEPA does not provide any basis for adding

procedural requirements beyond the "carefully constructed procedural specifications" imposed by the Administrative Procedure Act. *Vermont Yankee*, 435 U.S. at 548. *Vermont Yankee* also explained that "the only procedural requirements imposed by NEPA are those stated in the plain language of the Act." *Id.* (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 405-406 (1976)). The Commission has decided that its safety review of LRAs under the Atomic Energy Act can be initiated with 20 years remaining on the current license and NEPA cannot compel a different procedural timetable. Accordingly, Petitioners claim that NEPA requires the NRC to amend 10 C.F.R. § 54.17(c) to allow for a later analysis of alternatives finds no support in law.

However, even if the NRC were to decide that NEPA factors should influence its license renewal procedural timeframe, the NEPA alternatives analysis still would provide no basis for moving back the time for submitting an LRA. The Supreme Court in *Vermont Yankee* made clear that "the concept of alternatives [under NEPA] must be bounded by some notion of feasibility." 435 U.S. at 551. As a result, "agencies are not required to consider alternatives that are remote and speculative." *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 295 (D.C. Cir. 1988) (citations omitted). Instead, agencies "may deal with circumstances as they exist and are likely to exist." *Id.* While there "will always be more data that could be gathered," agencies "must have some discretion to draw the line and move forward with decisionmaking." *Town of Winthrop v. FAA*, 535 F.3d 1, 11 (1st Cir. 2008). The Commission's decision to allow licensees to file LRAs in accordance with 10 C.F.R. § 54.17(c) and perform its environmental review along that timeframe is a valid exercise of this discretion.

Accordingly, Petitioners' NEPA argument fails to demonstrate that sufficient reason exists to modify the NRC's current regulatory structure.

Petitioners also raise a number of specific claims about the sufficiency of NextEra Energy Seabrook's LRA for Seabrook. Petition at 10-11. To the extent Petitioners argue that the LRA is deficient, their claims are inappropriate in a rulemaking petition and should be raised in the ongoing adjudicatory proceeding, in which several of the Petitioners are currently participating and have already raised similar claims. Petitioners then request that the Commission suspend all license renewal reviews, pursuant to 10 C.F.R. § 2.802(d), while it considers this Petition. *Id.* at 12. Because the Commission has determined that this request is not part of the rulemaking process (75 Fed. Reg. 59,160), NextEra Energy will not respond to this request here, except to note that section 2.802(d) allows a petitioner to makes such a request only as to a proceeding to which it is a party. NextEra Energy is unaware of any license renewal proceeding in which any of the Petitioners are currently a party that would be affected by the relief sought by this rulemaking petition.

In their conclusion, Petitioners assert that the rule, if revised, should be applied retroactively to applicants who have already filed LRAs in reliance on the current version of 10 C.F.R. § 54.17(c). Petition at 13. But retroactivity is not favored in the law.

Bowen v. Georgetown University Hospital, 488 U.S. 204, 208 (1988). In fact, under the Administrative Procedure Act, a "rule" is an "agency statement of general or particular applicability *and future effect*." 5 U.S.C. § 551(4) (emphasis added). For that reason, a "statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen*, 488 U.S. at 208. Where an agency has established an explicit standard of conduct, "the principles which underlie the very notion of an ordered society, in which authoritatively established rules of conduct may fairly be relied upon" normally preclude giving new rules retroactive effect. *Retail, Wholesale and Department Store Union, AFL–CIO v. NLRB*, 466 F.2d 380, 392 (D.C. Cir. 1972). Here, Petitioners would simply dismiss the time, effort, and resources that licensees have devoted to preparing docketable LRAs. But a rule that alters regulations "in a manner that makes worthless substantial past investment incurred in reliance upon the prior rule-may for that reason be 'arbitrary' or 'capricious.'" *Bowen*, 488 U.S. at 220 (Scalia, J., concurring).

III. CONCLUSION

The arguments presented in PRM-54-6 have either been adequately addressed in the NRC's previous license renewal rulemaking proceedings or simply provide insufficient grounds to modify Part 54. Accordingly, PRM-54-6 should be denied.

We appreciate the Commission's consideration of NextEra Energy's views on this important matter.

Sincerely yours,

Larry Nicholson
Director of Licensing