

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 28, 2011



SECRETARY

Mr. Robert Leyse
P.O. Box 2850
Sun Valley, Idaho 83353-2850

Dear Mr. Leyse;

The Office of the Secretary has received your submission dated January 11, 2011. The Electronic Information Exchange ("EIE") Form you filed states that the submission is a "Legal Petition to Intervene/Request for Hearing" in response to the request by NextEra Energy Point Beach LLC for a license amendment to increase the core power level at the Point Beach Nuclear Power Plant. See 75 Fed. Reg. 70,305 (Nov. 17, 2010). But the submission itself consists of a Petition for Rulemaking, PRM-50-93, that is already pending before the agency, not a request for an administrative hearing on this particular proposed amendment. Moreover, the submission does not attempt to demonstrate that you have standing to intervene in the proceeding, 10 C.F.R. § 2.309(d), and does not contain contentions challenging the proposed power increase, 10 C.F.R. § 2.309(f)(1).

Because this submission did not appear to be a Request for Hearing, members of my staff telephoned you on January 12, 2011, to ask whether you intended this submission to constitute a Request for Hearing. My staff noted the possible problems with the submission and advised you of the applicable regulations. I understand that you advised them that you wanted this submission to be considered as a Request for Hearing.

Accordingly, after review, I have determined that the submission does not comply with the Commission's pleading requirements set forth in 10 C.F.R. Part 2 and fails to set forth a basis for further proceedings. Accordingly, I am denying your request for a hearing in this matter under my authority in 10 C.F.R. § 2.346(h).

I also note that your EIE form states that "There must be no authorization of power level increases at Point Beach until PRM-50-93 is resolved." That statement appears to request that the Commission issue an administrative "stay" of the Staff's review of the amendment request – as well as the Point Beach proceeding itself – pending completion of the rulemaking proceeding. But absent extraordinary conditions, Commission does not interrupt licensing reviews or adjudicatory proceedings, as it recently explained in denying a similar request. See *In re Petition For Rulemaking to Amend 10 C.F.R. 54.17(c)*, CLI-11-01, issued on January 24, 2011.

Moreover, generally speaking, a person must first successfully intervene in an NRC proceeding in order to seek a stay of that NRC proceeding and the related NRC staff action, 10 C.F.R. § 2.342. The Commission can exercise its discretion to stay actions by the NRC Staff, but only when the person seeking the stay presents a detailed explanation for the request and addresses the criteria considered by courts (and the Commission) when reviewing stay requests.

In this case, you have not successfully intervened in the proceeding. Furthermore, you have not explained why the Commission should stay the Staff's review of NextEra's request for a power increase, *i.e.*, you have not explained what "extraordinary" conditions exist in this case, and you have not addressed the required criteria to justify a stay. Accordingly, I am denying your stay request under my authority in 10 C.F.R. § 2.346(j).

This letter completes NRC action on your submission of January 11, 2011. A copy is being served to those on the service list for the Point Beach proceeding.

Sincerely,

/RA/

Annette L. Vietti-Cook

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NEXTERA ENERGY POINT BEACH, LLC) Docket Nos. 50-266-OLA
(Point Beach Nuclear Plant, Units 1 and 2)) 50-301-OLA
)
(License Amendment))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter from the Secretary dated January 28, 2011, have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 28th day of January 2011