

February 25, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**  
Before the Atomic Safety and Licensing Board

In the Matter of

NextEra Energy Seabrook, LLC  
Seabrook Station  
(Operating License Renewal)

ASLBP No. 10-906-02-LR

Docket No. 50-443-LR

February 25, 2011

**FRIENDS OF THE COAST AND NEW ENGLAND COALITION, INC.  
MOTION FOR LEAVE TO FILE FOR RECONSIDERATION  
OF MEMORANDUM AND ORDER LBP-11-02**

Pursuant to 10 C.F.R. § 2.323(e), Friends of the Coast and New England Coalition, Inc. (Friends/NEC) respectfully move for leave to file a motion for reconsideration of those portions of the Atomic Safety and Licensing Board's MEMORANDUM AND ORDER (Ruling on Petitions for Intervention and Requests for Hearing) of February 15, 2011, which ruled on mootness; denied admission of Friends/NEC Contention 3, and declined to consider portions of Friends/NEC Contention 4.

Contention 3: The aging management plan contained in the license renewal application violates 10 C.F.R. §§ 54.21 and 54.29(a) because it does not provide adequate inspection and monitoring for corrosion, structural failure, degradation, or leaks in all buried systems, structures, and components [SSCs] that may convey or contain radioactively contaminated water or other fluids and/or may be important for plant safety.

Contention 4: The Environmental Report is inadequate because it underestimates the true cost of a severe accident at Seabrook Station in violation of 10 C.F.R. 51.53(c)(3)(ii)(L) and further analysis by the Applicant is called for.

In reaching its decision regarding Friends/NEC's Contentions 3 and 4, and the mooted effect of NextEra late-filed information, the Board has misapprehended or misapplied either factual information or controlling legal principle. Reconsideration is therefore appropriate. 10 C.F.R. § 2.323(e); *Private Fuel Storage LLC (Independent Spent Fuel Storage Installation)*, 52 NRC 340, 342 (2000).

#### I. Mootness

The Board has chosen to declare moot that portion of Friends/NEC's Contention 4 that deals with wind borne radiation dose. The Board bases its decision on sections of Seabrook's Final Safety Analysis report provided to the Board months late and outside of any provision for such filing in the rule; and as new information, which of course it was not. It does nothing but to more firmly establish that there is a dispute.

The Board has stated that no party argued the question of whether this filing mooted any part of Friends/NEC Contentions. Friends/NEC did in fact in its answer. Further Friends/NEC specifically reminded the Board during the Prehearing Conference of the long standing precedent that any time a party files information taken as mooted a contention, the intervenor will be accorded an opportunity to amend its contention accordingly.

#### II. Friends/NEC Contention 3

The aging management plan contained in the license renewal application violates 10 C.F.R. §§ 54.21 and 54.29(a) because it does not provide adequate inspection and monitoring for corrosion, structural failure, degradation, or leaks in all buried systems, structures, and components [SSCs] that may convey or contain radioactively contaminated water or other fluids and/or may be important for plant safety. Friends NEC Petition to Intervene at 22-23

The Board found NEC's Contention 3 inadmissible on the grounds that NEC failed to show that the likelihood of leaks radioactive water or other fluids resulting from inadequate inspection and monitoring of buried SSCs is within the scope of or material to the findings NRC must make to support a license renewal decision. Order at 38.

Specifically, the Board states,

Friends/NEC Contention 3 is inadmissible because radioactive leaks are outside the scope of the proceeding and petitioners do not provide any alleged facts or expert opinion indicating that significant deterioration in buried structures at Seabrook could impair their only function that is appropriately before us in this license renewal proceeding: i.e., to maintain pressure and to provide flow. Ibid. [Emphasis added]

In reaching this decision, the Board appears to have adopted an extremely narrow view of safety function as steam system pressure boundary and/or coolant supply. The Board must recognize the accident mitigation performance of numerous buried SSCs is to move radioactive water to collection points, sumps, treatment, and storage; thus mitigating or preventing its escape to the human environment.

10 CFR §54.4 defines this proceeding's scope to include:

(1) Safety-related systems, structures, and components which are those relied upon to remain functional during **and following design basis events**., to ensure the following functions -

(iii) The capability to prevent or **mitigate the consequences of accidents which could result in potential offsite exposures ....**

(2) **All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in..[paragraph I(iii)].**

The Board must consider how, in this case, the piping can maintain pressure and fully provide flow if it is allowed to deteriorate to the point that it may leak uncontrolled.

In any case, Friends/NEC includes in its arguments safety related piping where pressure and flow are a necessity under and after accident conditions, in the declaration of its expert witness, in its arguments, and in its proposed contention:

The aging management plan contained in the license renewal application violates 10 C.F.R. §§ 54.21 and 54.29(a) because it does not provide adequate inspection and monitoring for corrosion, structural failure, degradation, or leaks in **all** buried systems, structures, and components [SSCs] that may convey or contain radioactively contaminated water or other fluids **and/or may be important for plant safety.** [Emphasis added]

Further, NRC cannot provide adequate assurance of public health and safety; nor can it provide adequate assurance of environmental protection of the biotic community through its ongoing reactor oversight program [process] either in the present or during the proposed period of extended operation because it relies on licensee conducted inspections, which, in many SSCs, inspect primarily for external corrosion and are monitoring to detect leaks only after they have occurred. These failings are at the core of Friends/NEC's arguments and its expert's declaration in support of this contention. Friends/NEC does not in its petition argue with what is in the current oversight regime; only with what is or is not adequately laid out within the license renewal application. Friends/NEC is at a loss to understand how the adequacy, in terms of protecting the public health and welfare, of anything that is treated in the license renewal application is not within the scope of a proceeding that is convened to settle disputes about the contents of the license renewal application.

In conclusion, the Board states

Neither Friends/NEC Contention 3 nor the Blanch declaration directly asserts that the intended function of any buried structures at Seabrook might fail. Instead they rely on reports of released radioactivity from other plants in the country to infer similar problems at the New Hampshire facility.<sup>198</sup> The existence of leaking pipes and tanks at other plants falls well short of providing support for alleging that the buried structures at Seabrook might not perform their intended function. By failing to provide any support that the integrity of leaking structures

at Seabrook has the potential to prevent them from maintaining pressure, providing flow, or both, Friends/NEC do not present the requisite factual bases required by 10 C.F.R. § 2.309(f)(1)(v).

The Board errs in its overly-narrow interpretation of “basis” by denying that industry experience can provide reasonable cause for concern that similar incidents and problems are likely to occur at Seabrook as it has occurred at other nuclear plants. Indeed, under NRC oversight, licensees are often chided for not paying attention to industry experience when they have component or human failures similar to those that have occurred elsewhere. Indeed, in support of its conclusion that SSC flaws resulting in a loss of flow or pressure boundary are unlike, the Board quotes from inspection experience at Pilgrim Nuclear Power Station (Order at 39)<sup>1</sup>

Finally, at this stage of the proceeding, Friends/NEC is not required to prove the merits of its contentions. Rather, it must only make "a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate." *In Gulf State Utilities Co.*, 40 NRC 43, 51

The Board should, for all of the reasons stated, reconsider its decision with respect to Contention 3 and grant admission of Contention 3.

### III. Friends/NEC Contention 4

Friends/NEC Contention 4 states: The Environmental Report is inadequate because it underestimates the true cost of a severe accident at Seabrook Station in violation of 10 C.F.R. 51.53(c)(3)(ii)(L) and further analysis by the Applicant is called for.

The Board has erred in converting the many sections of this contention into “sub-contentions” as it were, for purposes of more orderly review. The effect, as manifest in

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<sup>1</sup> “In Pilgrim II, the Commission summarized an evaluation of site-specific conditions and reviewed the applicant’s monitoring/inspection program in assessing whether it was likely that the integrity of any buried SSCs had deteriorated sufficiently to prevent it from serving its intended”. Order at 39

the Board's order, however was to dice up Friends/NEC's elements of support for its contention and to consider each section or element as a related but separate contention; subjecting each element to separate litigation. The Board has chosen to allow litigation each element in some detail, which of course requires some defense in detail. Thus the controlling law and precedent which require only a minimal showing at this stage of the proceeding of a credible, factual dispute are overridden. Friends/NEC has provided more than adequate basis in scientific and regulatory documents for its contention that the true cost of an accident is grossly underestimated and it has provided the licensee with clear and ample notice of the issue it seeks to litigate. All of issues that support the overarching contention are within the scope of license renewal.<sup>2</sup>

Again, at this stage of the proceeding, Friends/NEC is not required to prove the merits of its contentions. Rather, it must only make "a minimal showing that material facts are in dispute, thereby demonstrating that an inquiry in depth is appropriate." *In Gulf State Utilities Co.*, 40 NRC 43, 51

Friends /NEC offers some examples from the Order in support of the foregoing discussion.

- Friends/NEC Contention 4A PROBABILISTIC MODELING

Next Era's use of probabilistic modeling is a challenge to how NextEra used it not to probabilistic modeling per se. SAMA analyses are a Category 2 issue so it is clearly proper to challenge probabilistic modeling was used at Seabrook. NEC attached a paper

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<sup>2</sup> except, perhaps the issue of the risk from malevolent acts; where the NRC has ruled, we believe, erroneously, that consequences would not likely exceed those of an accident.

by NRC's K. Jamali <sup>3</sup>to support Friends/NEC's claim that there are multiple uncertainties and as a consequence he advocated a combination of probabilistic and deterministic approaches. Also due to uncertainties, additional conservatism is called for. Friends/NEC disputes that NextEra's analysis was conservative. Therefore a dispute within scope was established.

- Probability Weighted Consequences

The Board states, “Furthermore, including probability-weighted consequences into SAMA analyses does not reduce the consequences so low as to “reject all possible mitigation as too costly” — as evidenced by the results presented by the applicants in several recent cases.”

This is, of course, irrelevant, unless the Board now says that experience with other licensees is an appropriate indicator of what is likely to happen at Seabrook.

The Board continues, “ Conversely, ignoring risk (i.e., the probability-weighted accidents) in favor of deterministic consequences that do not consider the frequency of occurrence might just as likely distort the analysis by making all mitigation appear so highly cost-effective as to be of little use in discriminating between alternatives in this NEPA decision-making process.”

The ASLB may not however its ignore obligation to weigh evidence and seek a balance, which is in part why Friends/NEC has brought this contention.

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<sup>3</sup> Kamiar Jamali<sup>47</sup> (*Use of risk in measures in design and licensing of future reactors*, Reliability Engineering and Safety System 95 (2010) 935-943 [www.elsevier.com/locate/ress](http://www.elsevier.com/locate/ress)) makes the same observation. He says that, It is well- known that quantitative results of PRAs, in particular, are subject to various types of uncertainties. Examples of these uncertainties include probabilistic quantification of single and common cause hardware or software failures, occurrence of certain physical phenomena, human errors of omission or commission, magnitudes of source terms, radionuclide release and transport, atmospheric dispersion, biological effects of radiation, dose calculations, and many others. (935).” (NEC at 75) Jamali is employed by NRC

- Probability-Weighted Consequences

The Board stated, “As the NRC Staff points out,<sup>217</sup> the use of probability-weighted consequences is consistent with the long standing NEPA “rule of reason that requires reasonable consideration of alternative mitigation measures, but does not require that any specific plan be implemented.”

In Friends/NEC’s response to NRC and NextEra's objections to the contention Friends/NEC defended Its position in regard to the rule of reason; as it was at PNPS, this should be on the table as a dispute to be resolved.

“Rather” the Board continues, “a SAMA analysis need only assure that the environmental consequences of the project have been fairly evaluated.

Precisely, Friends/NEC agrees the dispute remains, was it "fairly evaluated?"

These are but examples, Friends/NEC’s main point is that it has met its minimal showing evidentiary burden for admission in all respects and in every aspect of its contention. This is not an appropriate time to litigate the various aspects of its contention in detail, and defeats the stated aim of the Commission; to provide a fair hearing.

Friends/NEC respectfully requests that the Board reconsider Contention 4 as an integral whole and admit it for litigation as such; letting the adjudicatory proceeding whittle, prune, and cure it as part of the evidentiary process.

#### IV. Friends/NEC Has Consulted All Parties.

Pursuant to 10 C.F.R. § 2.323(a), NEC has consulted all parties to this proceeding concerning this motion. Beyond Nuclear, NextEra, and the NRC Staff have no objection to its filing. Consent to this motion is not to be construed, however, as agreement that

standards for granting reconsideration are satisfied. NextEra and NRC Staff explicitly reserve the right to answer and object.

#### IV. Conclusion

For all of the foregoing good reasons stated, Friends/NEC's motion for leave to file a motion for reconsideration should be granted.

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Friends of the Coast/New England Coalition, Inc.

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