

May 2, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of )  
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NextEra Energy Seabrook, LLC         )      Docket No. 50-443-LR  
                        )      ASLBP No. 10-906-02-LR  
(Seabrook Station, Unit 1)             )

**ANSWER OF NEXTERA ENERGY SEABROOK LLC OPPOSING  
PETITION TO SUSPEND PENDING LICENSING PROCEEDINGS**

**I. INTRODUCTION**

Pursuant to the Commission’s Order of April 19, 2011, NextEra Energy Seabrook, LLC (“NextEra”) hereby answers and opposes the Emergency Petition to Suspend All Pending Reactor Licensing Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Corrected April 18, 2011) (“Petition”), which was filed in the Seabrook license renewal proceeding by the New England Coalition and Friends of the Coast (collectively, “NEC”), and by Beyond Nuclear, the Seacoast Anti-Pollution League, and the New Hampshire Sierra Club (collectively, “BN”).<sup>1</sup> The Petition, which is being filed in no less than twenty-six separate proceedings by some fifty individuals and organizations that have intervened in opposition to those proceedings, requests sweeping actions, including: 1) suspension of all decisions pending completion of the NRC’s review of the Fukushima Daiichi accident; 2)

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<sup>1</sup> A version of the Petition dated “April 14-18, 2011” was submitted in the Seabrook license renewal proceeding by NEC on April 15, 2011, and by BN on April 18, 2011. On April 19, 2011, BN filed an Amendment and Errata to Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (April 18, 2011); and on April 20, 2011, BN submitted a Declaration of Dr. Arjun Makhijani in Support of Emergency Petition to Suspend all Pending Reactor Licensing Decisions and Relating Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (April 19, 2011) (“Makhijani Decl.”). On April 20, 2011, NEC also filed the Amendment and Errata, and the Declaration of Dr. Makhijani.

suspension of all proceedings, hearings or opportunities for public comment on any issue considered in that review; 3) performance of an environmental analysis of the accident; 4) performance of a safety analysis of the regulatory implications; 5) establishment of procedures and a time table for raising of new issues in pending licensing proceedings; 6) suspension of all decisions and proceedings pending the outcome of any independent Congressional, Presidential, or NRC investigations; and 7) for the NRC to request a Presidential investigation.

Petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. AmerGen Energy Co., LLC et al. (Oyster Creek Nuclear Generating Station et al.), CLI-08-23, 68 N.R.C. 461, 476 (2008); Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23 56 N.R.C. 230, 237 (2002). While the NRC rules require that motions be addressed to the Presiding Officer when a proceeding is pending, the Commission has previously indicated that suspension motions such as this are best addressed to it. Oyster Creek, CLI-08-23, 68 N.R.C. at 476; Diablo Canyon, CLI-02-23, 56 N.R.C. at 237. Given the Petition's sweeping requests and its applicability to all pending reactor licensing proceedings, NextEra agrees that the Petition should be decided by the Commission rather than numerous individual licensing boards.

As discussed below, the Petition is without merit and should be denied. The Commission considers the suspension of licensing proceedings to be a "drastic" action that is not warranted absent "immediate threats to public health and safety." Oyster Creek, CLI-08-23, 68 N.R.C. at 484; Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 N.R.C. 151, 173-74 (2000). Here, continuing to conduct the Seabrook license renewal proceeding obviously poses no threat the public health and safety, as a Commission decision in

this proceeding is not expected until December 2012.<sup>2</sup> Further, the Commission is already conducting extensive reviews to identify and apply the lessons learned from the Fukushima Daiichi accident, and the Commission has made it clear that it will use the information from these activities to impose any requirements it deems necessary, and will do so irrespective of license renewal. Thus, there is simply no basis to interrupt the Seabrook proceeding.

Moreover, the Petition is deficient both procedurally and substantively. Procedurally, the Petition neither addresses nor satisfies the standards for suspending or staying a proceeding. Further, NEC and BN have not met the NRC's consultation requirements. Substantively, the Petition relates to matters that are not within the scope of a license renewal proceeding.

## II. BACKGROUND

### A. The Seabrook License Renewal Proceeding

On May 25, 2010, NextEra submitted its Application requesting renewal of Operating License NPF-86 for Seabrook Station. On February 15, 2011, the Atomic Safety and Licensing Board granted petitions to intervene by BN and by NEC, and admitted four contentions.

NextEra Energy Seabrook LLC (Seabrook Station, Unit 1), LBP-11-02, 73 N.R.C. \_\_, slip op. at 63 (Feb. 15, 2011). NextEra has appealed these rulings.<sup>3</sup> Because of the pending appeals, document disclosure has been deferred until October 3, 2011.<sup>4</sup>

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<sup>2</sup> Letter from B. Holian to P. Freeman, Determination of Acceptability and Sufficiency for Docketing, Proposed Review Schedule, and Opportunity for a Hearing Regarding the Application from NextEra Energy Seabrook, LLC, for Renewal of the Operating License for Seabrook Station, Unit 1 (July 13, 2010) (ADAMS Accession No. ML101690417) ("July 13, 2010 Letter").

<sup>3</sup> NextEra Energy Seabrook, LLC's Notice of Appeal of LBP-11-02 as to the New England Coalition and Friends of the Coast (Feb. 25, 2011); NextEra Energy Seabrook, LLC's Notice of Appeal of LBP-11-02 as to Beyond Nuclear, the Seacoast Anti-Pollution League, and the Sierra Club of New Hampshire (Feb. 25, 2011).

<sup>4</sup> Initial Scheduling Order (Apr. 4, 2011) at 4.

The draft environmental impact statement (“EIS”) in this proceeding is scheduled to be issued in mid-May 2011,<sup>5</sup> but the NRC Staff has indicated that it may be delayed.<sup>6</sup> The initial SER is scheduled to be issued in July 2011. The final EIS and final SER are scheduled to be issued in January 2012.<sup>7</sup> The NRC Staff’s schedule projects a final Commission decision in December 2012.<sup>8</sup>

B. The Scope of License Renewal Proceedings

The Commission has specifically limited the safety review in license renewal proceedings to the matters specified in 10 C.F.R. §§ 54.21 and 54.29(a),<sup>9</sup> which focus on managing the aging of certain systems, structures, and components, and the review of time-limited aging analyses. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 N.R.C. 3, 7-8 (2001); Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-26, 56 N.R.C. 358, 363 (2002). Thus, the potential effect of aging is the issue that essentially defines the scope of license renewal proceedings. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 N.R.C. 631, 637 (2004).

This scope is based on the principle, established in the 10 C.F.R. Part 54 rulemaking proceedings, that with the exception of the detrimental effects of aging, the existing regulatory

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<sup>5</sup> July 13, 2010 Letter, Encl. 1.

<sup>6</sup> Letter from B. Pham to P. Freeman, Schedule Revision and Request for Additional Information for the Review of the Seabrook Station License Renewal Application Environmental Review (Mar. 4, 2011) (ADAMS Accession No. ML110590638).

<sup>7</sup> July 13, 2010 Letter, Encl. 1.

<sup>8</sup> Id.

<sup>9</sup> The Commission has stated that the scope of review under its rules determines the scope of admissible issues in a renewal hearing. Final Rule, Nuclear Power Plant License Renewal Revisions, 60 Fed. Reg. 22,461, 22,482 n.2 (May 8, 1995). “Adjudicatory hearings in individual license renewal proceedings will share the same scope of issues as our NRC Staff review, for our hearing process (like our Staff’s review) necessarily examines only the questions our safety rules make pertinent.” Turkey Point, CLI-01-17, 54 N.R.C. at 10.

processes are adequate to ensure that the current licensing bases (“CLB”) of operating plants provide and maintain an adequate level of safety. 60 Fed. Reg. at 22,464, 22,481-82. A plant’s CLB is not static, but rather is an “evolving set of requirements and commitments for a specific plant that [is] modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.” Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-14, 71 N.R.C. \_\_, slip op at 4 (June 17, 2010), quoting 60 Fed. Reg. at 22,474. Therefore, [i]n developing the renewal regulations, the Commission concluded that the “only issue” where the regulatory process may not adequately maintain a plant’s current licensing basis involves the potential “detrimental effects of aging on the functionality of certain systems, structures, and components in the period of extended operations.”

Id. at 5. Consequently, license renewal does not focus on operational issues or on the adequacy of a plant’s CLB (other than with respect to aging), because these issues “are effectively addressed and maintained by ongoing agency oversight, review, and enforcement.” Millstone, CLI-04-36, 60 N.R.C. at 638 (footnote omitted).<sup>10</sup> Aside from the issue of aging management, the adequacy of a plant’s CLB is not within the scope of license renewal review. Turkey Point, CLI-01-17, 54 N.R.C. at 23 (affirming rejection of a contention alleging spent fuel pool vulnerability to external hazards).

### C. The NRC Response to the Fukushima Daiichi Accident

On March 11, 2011, the Tohoku-Taiheiyou-Oki Earthquake occurred near the east coast of Honshu, Japan. This magnitude 9.0 earthquake and the subsequent tsunami caused significant damage to at least four of the six units of the Fukushima Daiichi nuclear power station as the

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<sup>10</sup> See also Federal Respondents’ Memorandum on the Events at the Fukushima Daiichi Nuclear Power Station at 18, New Jersey Envtl. Fed’n v. NRC, No. 09-2567 (3d Cir. Apr. 4, 2011) (“Federal Respondents’ Memorandum”) (“the license renewal hearing process . . . focuse[s] strictly on contentions relating to the ‘potential detrimental effects of aging that are not routinely addressed by ongoing regulatory programs’ . . . ; the license renewal process [is] ‘not intended to duplicate the Commission’s ongoing review of operating reactors.’”).

result of a sustained loss of both the offsite and on-site power systems. NRC Information Notice 2011-05, Tohoku-Taiheiyou-oki Earthquake Effects on Japanese Nuclear Power Plants (Mar. 18, 2011) at 1 (ADAMS Accession No. ML110760432).

The Commission has been closely monitoring the activities in Japan and reviewing all information available.<sup>11</sup> It has dispatched a team of experts to Japan, to support both the Japanese authorities and the U.S. embassy. In addition, the Commission is already conducting extensive reviews to identify and apply the lessons learned from the Fukushima Daiichi accident.

The Commission has created a Task Force, made up of current senior managers and former NRC experts with relevant experience, to conduct both short term and long term analyses of the lessons that can be learned from the Fukushima Daiichi accident. In the short term, to be completed in 90 days, the Task Force has been directed to

- evaluate currently available technical and operational information from the events that have occurred at the Fukushima Daiichi nuclear complex in Japan to identify potential or preliminary near term/immediate operational or regulatory issues affecting domestic operating reactors of all designs, including their spent fuel pools, in areas such as protection against earthquake, tsunami, flooding, hurricanes; station blackout and a degraded ability to restore power; severe accident mitigation; emergency preparedness; and combustible gas control.
- develop recommendations, as appropriate, for potential changes to inspection procedures and licensing review guidance, and recommend whether generic communications, orders, or other regulatory requirements are needed.

Tasking Memorandum – COMGBJ-11-0002 – NRC Actions Following the Events In Japan (Mar. 23, 2011) at 1 (ADAMS Accession No. ML110950110). This effort will be informed by stakeholder input, and the Task Force report will be released to the public. *Id.* The longer term actions, which will begin as soon as the NRC has sufficient technical information from the

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<sup>11</sup> Statement by Chairman Jaczko to the Senate Environment and Public Works Committee and Clean Air and Nuclear Safety Subcommittee (Apr. 12, 2011) (ADAMS Accession No. ML111020070) (“Chairman Jaczko April 12 Statement”).

events in Japan with the goal of no later than the completion of the 90-day near-term report, will include evaluation of all technical and policy issues related to the event to identify potential research, generic issues, changes to the reactor oversight process, rulemakings, and adjustments to the regulatory framework that should be conducted by NRC. Id. at 2. It will also include evaluation of potential interagency issues such as emergency preparedness. Id.

The longer term review will receive input from, and interact with, all key stakeholders. Id. Within six months, the Task Force will provide a report with recommendations to the Commission, which will be reviewed by the Advisory Committee on Reactor Safeguards and will be released to the public under the NRC's normal procedures. Id.

In addition, the nuclear power industry has taken a number of actions at each licensed reactor site, including:

- verification of the capability to mitigate conditions that result from severe adverse events, including the loss of significant operational and safety systems due to natural events, fires, aircraft impact and explosions;
- verification of the capability to mitigate a total loss of electric power to a nuclear power plant;
- verification of the capability to mitigate flooding and the impact of floods on systems inside and outside the plant; and
- identification of the potential for loss of equipment functions during seismic events appropriate for the site and the development of mitigating strategies to address potential vulnerabilities.

The NRC Staff is also proceeding with independent assessments of nuclear power plant readiness to address beyond design-basis natural phenomena. NRC Information Notice 2011-05 at 4-5.

The Commission has made it clear that it will use the information from these activities to impose any requirements it deems necessary.

NRC has already announced its plan to draw upon “lessons learned” from the Japan events, as the agency has done previously after natural or man-made disasters. As in the past, NRC will conduct rulemaking[s], or issue orders and other directives, to make upgrades required to implement whatever short-term or longer-term safety improvements emerge from the Task Force directed by the Commission to analyze the Fukushima Daiichi disaster.

Federal Respondents’ Memorandum at 21-22. The NRC has also made it clear that it has the authority to do so.

In response to the disaster at Fukushima Daiichi, NRC has authority to order . . . licensees of operating nuclear plants[] to adopt whatever measures NRC determines are needed in the short term for continued assurance of the public health and safety while NRC considers longer-term measures, including changes in its safety regulations. Such measures may be subject to site-specific considerations.

Id. at 2-3.

While the Commission is thus carefully examining the implications of the Fukushima Daiichi accident, its current, informed assessment is that U.S. plants remain safe.

[W]e have been very closely monitoring the activities in Japan and reviewing all currently available information. Review of this information, combined with our ongoing inspection and licensing oversight, gives us confidence that the U.S. plants continue to operate safely.

Chairman Jaczko April 12 Statement at 3.

NRC has stated that licensed nuclear power reactors in the United States are currently safe, and may continue to operate under NRC’s comprehensive scheme of safety regulations and inspections, pending development of any new safety measures that emerge as NRC’s “lessons-learned” project moves forward.

Federal Respondents’ Memorandum at 3.

### **III. DISCUSSION**

#### **A. Suspension of Proceedings Would Be a Drastic Action That Is Inappropriate In the Absence of Any Immediate Threat to Public Health and Safety**

As previously noted, the Commission considers suspension of licensing proceedings to be a “drastic” action that is not warranted absent “immediate threats to public health and safety.”

Oyster Creek, CLI-08-23, 68 N.R.C. at 484; Vermont Yankee, CLI-00-20, 52 N.R.C. at 173-74.

The Petition makes no claim or showing of any threat to the public health and safety. Moreover, with respect to the Seabrook license renewal proceeding, continuing the renewal proceeding obviously poses no such threat. In this proceeding, a final decision is not expected until late 2012; and the period of extended operation will not commence until March 15, 2030, when the current license expires. As the Commission has previously held in similar circumstances, “we see no risk here of any immediate threat to the public health and safety.” Duke Energy Corp. (McGuire Nuclear Stations, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-27, 54 N.R.C. 385, 390 (2001) (denying petition to suspend license renewal proceedings pending review of terrorism related rules and policies following the 9/11 events) (footnote omitted).

Moreover, continuing to conduct the Seabrook license renewal proceeding also poses no threat to the public health and safety because there is no apparent connection between the scope of the license renewal safety review, which is limited to aging management issues, and the events at Fukushima Daiichi. Apart from aging management issues, the sufficiency of a plant’s CLB to provide adequate protection to the public health and safety, and a plant’s compliance therewith, are reasonably assured by the NRC’s ongoing regulatory processes and oversight, and not by the license renewal process. In this respect, the Commission is already conducting extensive reviews to identify and apply the lessons learned from the Fukushima Daiichi accident, and the Commission has made it clear that it will use the information from these activities to impose any requirements it deems necessary irrespective of license renewal. As the Commission has recently explained,

As with the post-TMI and post-9/11 regulatory enhancements, any “lessons learned” from the Fukushima Daiichi event will be applied generically to all reactors . . . as appropriate to their location, design, construction, and operation.

Federal Respondents' Memorandum at 13. This application of lessons learned will occur as part of the Commission's ongoing regulatory process, irrespective of, and wholly apart from, the license renewal process:

NRC's comprehensive and ongoing oversight of licensed facilities will assure that useful data and "lessons learned" from Fukushima Daiichi disaster will be absorbed by changes in NRC rules, orders, and license amendments as needed, accompanied by the public participation required by statute and regulation. This process is distinct, however, from the disposition of specific contentions admitted for hearing (or proposed for admission) in a license renewal adjudication. . . .

Id. at 17-18. In sum, any measures that the Commission determines are necessary to protect public health and safety as a result of its review of the Fukushima Daiichi accident will be addressed by the Commission as part of its ongoing regulatory process that is applicable to all plants, and not in the context of the license renewal process or limited to those plants that happen to be seeking license renewal. Thus, there is simply no basis to interrupt the Seabrook license renewal proceeding.

B. Suspension is Not Warranted By Any Administrative Considerations

In denying similar suspension petitions submitted after 9/11, the Commission also considered whether moving forward with proceedings would prove an obstacle to fair and efficient decision making, or prevent appropriate implementation of any rule or policy changes that might emerge from its ongoing evaluation of that event. Diablo Canyon, CLI-02-23, 56 N.R.C. at 238; Private Fuel Storage, LLC, (Independent Spent Fuel Storage Installation), CLI-01-26, 54 N.R.C. 376, 380 (2001); McGuire/Catawba, CLI-01-27, 54 N.R.C. at 389-90; Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 N.R.C. 393, 399 (2001). Neither of these additional considerations would justify suspending the Seabrook proceeding.

The Commission has specifically rejected arguments like the one presented in the Petition that proceedings should be stayed because the normal processes for filing new contentions, rulemaking comments and motions to reopen would be “cumbersome,” “place an undue burden on intervenors,” and be limited by intervenors’ resources. Petition at 24.

We are unpersuaded by [petitioner’s] assertion that the “piecemeal” nature of the adjudication “makes it impossible to perform a complete or effective presentation of the issues . . . with the scope of the current hearing” and “is wasteful of [the Petitioners’] resources.” . . . We have repeatedly rejected such resource-related arguments in prior proceedings, and do so again here. As we stated . . . in *Indian Point*, CLI-01-8, 53 NRC [225] at 229-30 [2001], “litigation inevitably results in parties’ loss of both time and money. We cannot postpone cases by many weeks or months simply because going forward will prove difficult for litigants or their lawyers.”

McGuire/Catawba, CLI-01-27, 54 N.R.C. at 391.

In addition, the Commission has held that it has a responsibility to go forward with pending proceedings. Private Fuel Storage, CLI-01-26, 54 N.R.C. at 381.

During the time when the NRC is pursuing its top-to-bottom reassessment of its regulations and policies on terrorism, the agency must also continue to meet its statutory responsibilities for licensing and regulation of all nuclear facilities and materials in a timely and efficient manner. *See Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998). Permitting unnecessary delays would contravene the Commission’s fundamental duties to the general public, as well as to applicants and licensees. The Commission’s objectives are to provide a fair hearing process, to avoid unnecessary delays in the NRC’s review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC’s responsibilities for protecting public health and safety, the common defense and security, and the environment. Id. at 19. Consistent with this policy, the Commission has a history of not delaying adjudications to await extrinsic actions, absent special needs of efficiency or fairness. *See Private Fuel Storage*, CLI-01-26, 54 NRC at 381-83 and references cited therein; *McGuire & Catawba*, CLI-01-27, 54 NRC at 390-91.

Savannah River, CLI-01-28, 54 N.R.C. at 400 (italicized and underlined emphasis in original; underlined emphasis added). See also McGuire/Catawba, CLI-01-27, 54 N.R.C. at 391 (“This

general reluctance [to suspend proceedings] is firmly grounded in our longstanding commitment to efficient and expeditious decisionmaking. . . .”).

Further, the Commission has been particularly reluctant to suspend license renewal proceedings based on broad ranging claims concerning design and operational issues having no apparent connection to the scope of license renewal proceedings:

License renewal, by its very nature, contemplates a limited inquiry -- i.e., the safety and environmental consequences of an additional 20-year operating period. License renewal focuses on aging issues, not on everyday operating issues. Hence, it is far from clear that upcoming terrorism-related changes in our rules, if any, will bear on license renewal reviews.

McGuire/Catawba, CLI-01-27, 54 N.R.C. at 391 (emphasis in original; footnotes omitted). In this respect, the Petition neither alleges nor makes any direct connection between the recent Fukushima Daiichi events and the effects of aging at issue in a license renewal proceeding. The Petition asserts that the flooding phenomena at Fukushima Daiichi raise questions about the potential impact for a Tsunami at Seabrook (Petition at 12), but this issue relates to the adequacy of the CLB, and not to any aging management issue.<sup>12</sup> The Petition also baldly asserts that all of the contentions admitted in the Seabrook proceeding appear relevant to the Fukushima Daiichi accident (see Petition at 11), but provides absolutely no explanation of or support for this conclusory and incorrect claim.<sup>13</sup>

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<sup>12</sup> The Petition refers to a tsunami that was generated by an earthquake and underwater landslide off of the Grand Banks in 1929, and states that the tsunami crested at 90 feet when funneled into the bays and inlets of Newfoundland. Petition at 12. This is not new information, as the 1929 Grand Banks landslide and tsunami were discussed in NUREG/CR-6966, Tsunami Hazard Assessment at Nuclear Power Plant Sites in the United States of America (March 2009) at 15. While that report indeed indicates a large run-up in the Newfoundland bays, there is no bay at Seabrook that could cause such a funneling effect. Indeed, NUREG/CR-6966 indicates that the recorded run-ups along the U.S. Atlantic coast from the 1929 tsunami were only a few feet. Id. Neither the Petition nor the Makhijani Declaration make any showing that a tsunami is likely to exceed maximum probable flood established as part of Seabrook's design basis.

<sup>13</sup> The Petition claims: “Early reports from Japan indicate that unanticipated costs to the environment and the regional economy resulting from the release of radiological fission products, activation products, and heavy radioactive elements to the environment from the Fukushima reactors and spent fuel pools will dwarf those risks considered in the NRC’s Generic Environmental Impact Statement for License Renewal, NRC site specific

Finally, as the Commission observed in McGuire/Catawba:

[T]o the extent the Commission does, during the later stages of this adjudication, modify this agency's safety, environmental, or safeguards rules in a manner that affects issues material to this adjudication, our procedural rules allow for the possibility of late-filed contentions to address such new developments. Moreover, if our generic review leads to new rules applicable here, there will be time enough to apply them.

Id. That observation is equally applicable to the Seabrook license renewal proceeding, where a final decision is not expected until late 2012. The Commission's rules provide appropriate procedures for submitting new contentions if the NRC's review of the Fukushima Daiichi accident indeed identifies concerns within the scope of license renewal proceedings.

In considering whether moving forward with proceedings would prevent appropriate implementation of any rule or policy changes that might emerge from its ongoing evaluation of an event, the Commission has held:

[E]very license the Commission issues is subject to the possibility of additional requirements. The Commission can modify license requirements by rule, regulation, or order; and changes can be applicable to both applicants and licensees. Thus, as in *Private Fuel Storage*, “holding up these proceedings is not necessary to ensure that the public will realize the full benefit of our ongoing regulatory review” . . . .

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evaluations, or in the license renewal application.” Petition at 11. No support is provided for this assertion (or explanation how consequences from four reactors at Fukushima Daiichi would have any bearing on estimates of risk for a single unit like Seabrook). The only allegations concerning increased accident risk in the Makhijani Declaration relate to spent fuel pool accidents (see Makhijani Decl. at ¶ 30). Neither the Petition nor Makhijani Declaration make any attempt to explain how the Fukushima Daiichi events bear on spent fuel pool risk at Seabrook, where spent fuel is stored in a Seismic Category 1 Fuel Storage Building (not at the top of the reactor building as in a BWR Mark 1 plant) (UFSAR, § 3.8.4), and spent fuel pool cooling and make-up are reasonably assured not only by the normal spent fuel pool cooling system but also by the additional measures implemented in accordance with Section B.5.b of EA-02-026, “Order for Interim Safeguards and Security Compensatory Measures” (Feb. 25, 2002). See also 67 Fed. Reg. 9,792 (Mar. 4, 2002).

In any event, the risk of spent fuel pool accidents is not an aging management issue within the scope of safety review in a license renewal proceeding; and with respect to environmental considerations, it is a Category 1 issue not subject to challenge in license renewal proceedings. Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station & Pilgrim Nuclear Power Station), CLI-07-3, 65 N.R.C. 13, 19-21, reconsideration denied, CLI-07-13, 65 N.R.C. 211 (2007), aff'd sub nom., Massachusetts v. NRC, 522 F.3d 115 (1st Cir. 2008). See also Denial of PRM-51-10 & PRM-51-12, 73 Fed. Reg. 46,204 (Aug. 8, 2008), aff'd, New York v. NRC, 589 F.3d 551 (2d Cir. 2009) (per curiam); Pilgrim, CLI-10-14, slip op. at 29-37.

Diablo Canyon, CLI-02-23, 56 N.R.C. at 240 (emphasis in original) (footnote omitted). The same is true here, where the Commission has stated unequivocally that “any ‘lessons learned’ from the Fukushima Daiichi event will be applied generically to all reactors . . . as appropriate to their location, design, construction, and operation.” Federal Respondents’ Memorandum at 13.

In sum, no basis exists for the Commission to suspend the Seabrook license renewal proceeding. Any issue concerning the adequacy of the CLB to provide adequate protection of the public health and safety will be addressed as part of the NRC’s ongoing regulatory process applicable to all operating nuclear reactors in the United States, and will be applied irrespective of license renewal.

### C. Petitioners Have Not Met the Standards for a Stay

The Petition should also be denied because it neither addresses nor satisfies the NRC’s standards for seeking a stay. Because of the nature of the relief sought (including suspension of decisions), the Petition is in effect a motion for stay of a proceeding. 10 C.F.R. § 2.342(e) sets forth the standards applicable to stay motions.<sup>14</sup> The Petition’s failure to address these standards requires its denial. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), CLI-93-2, 37 N.R.C. 55, 58 & n.2 (1993).

Moreover, application of these standards militates strongly against a stay in this instance. The most important factor in considering a stay is whether the moving party will be irreparably

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<sup>14</sup> In determining whether to grant a stay, the Commission will consider:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.

10 C.F.R. § 2.342(e). See also Shieldalloy Metallurgical Corp. (License Amendment Request for Decommissioning of the Newfield, New Jersey Site), CLI-10-08, 71 N.R.C. \_\_ (Jan. 7, 2010); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir.1958).

injured if the stay is not granted. Shieldalloy, CLI-10-08, slip op. at 12. The NRC requires “a showing of a ‘threat of immediate and irreparable harm’ that will result absent a stay.” Id. No such harm exists here. The injury claimed in the Petition is:

If the Commission fails to [grant the relief sought] intervenor groups will be placed in the position of rushing to file contentions, rulemaking comments, and motions to re-open closed hearing records, based on whatever evaluations they are able to make of slowly-emerging and ever-evolving information from the accident. Such a process would not only be cumbersome, but its effectiveness would be limited by whatever limitations the intervenors or petitioners had on their resources for making a technical evaluation of the information yielded by the accident. It would place an unfair burden on intervenors and petitioners by forcing them to perform analyses that should be performed by the government in the first instance.

Petition at 23-24. Not only is this alleged injury speculative, but it does not constitute the type of harm that supports a motion to stay. The cost and inconvenience of litigating challenges to pending applications are not the kind of injury that warrants postponing licensing proceedings, and a petitioner “is not injured or prejudiced in a cognizable sense simply because it may incur litigating costs and inconvenience from moving forward with the adjudication before the generic review is completed.” Savannah River, CLI-01-28, 54 N.R.C. at 400. In addition, there is no immediacy to any potential harm to BN and NEC, as this proceeding is not expected to be complete until late 2012, and the period of extended operation will not begin until 2030.

Other factors to be considered in deciding whether to grant a motion to stay are whether the granting of a stay would harm other parties or be inconsistent with the public interest. The NRC has made it clear that it will not grant requests to suspend licensing processes pending consideration of generic issues because it would be contrary to the agency’s duties to the applicants and the general public. See id.

Finally, the Petition makes no showing that the events at Fukushima Daiichi are relevant to the merits of the Seabrook license renewal proceeding – let alone any showing that the petitioners are likely to prevail on the merits of any related issue. As discussed later, the Commission has excluded design and operational issues from the scope of license renewal proceedings, and has made it abundantly clear that any new requirements determined by the Commission to be necessary as a result of its review of the Fukushima Daiichi events will be imposed apart from, and irrespective of, license renewal.

D. Petitioners Have Not Met the Consultation Requirements for a Motion

The Commission should reject the Petition for failing the certification requirements contained in 10 C.F.R. § 2.323(b), which provides in relevant part that,

[a] motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding to resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.

10 C.F.R. § 2.323(b) (emphasis added). As previously stated, the Commission treats suspension petitions such as this as motions. The Petition contains no certification, nor did BN or NEC make any effort to contact NextEra or its counsel to consult on the matters raised in the motion. Consequently, the Commission should reject the Petition out of hand. See U.S. Dep't of Energy (High Level Waste Repository), Order of the Secretary (Dec. 22, 2009) (ADAMS Accession No. ML093561409) (rejecting a motion to suspend the proceeding for failing the certification requirement contained in 10 C.F.R. § 2.323(b)).

E. Neither the AEA nor NEPA Mandate Suspension of the Proceedings or Deferral of Decisions

The Petition argues that the Atomic Energy Act (“AEA”) and National Environmental Policy Act (“NEPA”) preclude the NRC from issuing licenses until it has completed its

investigations of the Fukushima Daiichi accident and considered the safety and environmental implications of the accident. See Petition at 24. These arguments are very premature when applied to the Seabrook license renewal proceeding, where a final decision is not expected until late 2012. The NRC Task Force’s evaluations of the Fukushima Daiichi accident (both the short term and longer term reviews) are scheduled to be complete in about 9 months -- well before a decision is expected in the Seabrook proceeding. Moreover, the draft EIS (the site-specific supplement to the GEIS) for the Seabrook license renewal has not yet been issued, and the final EIS is not scheduled to be issued until next year.

In any event, Petitioner’s statutory arguments are wrong. The Commission is not required by the AEA to make findings on the accident before issuing a renewed license.<sup>15</sup> Nor is the Commission required by NEPA to prepare an EIS or environmental assessment on that accident before proceeding with license renewals.

In license renewal proceedings, the Commission’s findings under the AEA for all matters other than those relating to aging management are based on the principle – established in the rulemaking proceedings promulgating 10 C.F.R. Part 54 – that the NRC’s regulatory process is adequate to ensure that the licensing basis of all currently operating plants provides and maintains an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security. See 56 Fed. Reg. 64,943, 64,946-47, 64,961 (Dec. 13, 1991); 60 Fed. Reg. at 22,463-64. The Commission therefore concluded that the decision to issue a renewed operating license need not include a licensing review of the adequacy of or

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<sup>15</sup> The Petition is also wrong in claiming that after the Three Mile Island accident, the Commission “suspended all licensing actions while it considered the lessons to be learned from the accident.” Petition at 25. Instead, the Commission adopted a “lessons learned” approach to addressing the issues from the TMI accident in licensing proceedings. See McGuire/Catawba, CLI-01-27, 54 N.R.C. at 390 & n.10; Private Fuel Storage, CLI-01-26, 54 N.R.C. at 381-82.

compliance with a plant’s licensing basis. 56 Fed. Reg. at 64,960. The assertion in the Petition that the NRC cannot make the requisite safety findings without completion of its investigation into the Fukushima Daiichi accident (Petition at 24-25) – and the unfounded claim that the NRC Task Force’s charter “raises significant questions about the adequacy of the NRC’s regulatory program on a wide range of important safety issues, including the safety of spent fuel storage, seismic and flooding risks, station blackout, emergency planning, and severe accident management guidelines” (*id.* at 25) – are simply attacks on the standards for issuance of a renewed license in 10 C.F.R. § 54.29. Such attacks on an NRC rule are impermissible. See 10 C.F.R. § 2.335.

Similarly, the Petition’s claims that NEPA requires that the Commission “immediately suspend all pending licensing . . . decisions until it has addressed the significance of the new information revealed by the accident in environmental assessments and/or EISs” (Petition at 27, footnote omitted) is erroneous and misplaced on several accounts, particularly in the context of license renewal. The NRC has issued the GEIS to evaluate environmental issues generic to all license renewals. In this context, the NRC has evaluated and determined as a generic matter that the probability-weighted consequences from severe accident impacts are small for all plants.<sup>16</sup> Similarly, the NRC has evaluated and determined generically that the environmental impacts on spent fuel storage, including accident risk, are small for all plants.<sup>17</sup> The Petition presents no information indicating that these determinations are incorrect, either generically or on a plant specific basis.

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<sup>16</sup> 10 C.F.R. Part 51, App. B, Table B-1; GEIS at 5-114 to 5-115.

<sup>17</sup> 10 C.F.R. Part 51, App. B, Table B-1; GEIS at 6-91 to 6-92; Pilgrim, CLI-10-14, slip op. at 31-35; Vermont Yankee/Pilgrim, CLI-07-3, 65 N.R.C. at 19-21.

Further, while tragic, the events at Fukushima Daiichi do not imply that the NRC’s evaluation of severe accidents at U.S. plants is incorrect, or that the GEIS needs to be supplemented. It is well established that a supplemental EIS is only required where new information “provides a seriously different picture of the environmental landscape,” as numerous courts have ruled. Nat’l Comm. for the New River v. FERC, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original), quoting City of Olmsted Falls v. FAA, 292 F.3d 261, 274 (D.C. Cir. 2002).<sup>18</sup> Furthermore, the Commission has adopted this standard.<sup>19</sup> As the Supreme Court made clear in Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989) (cited in the Petition), a requirement to supplement an EIS every time new information comes to light “would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.” Marsh, 490 U.S. at 373 (footnote omitted). Here, there is no information suggesting that either the probability or consequences of severe accidents is significantly different from that presented in the GEIS.

Moreover, the Commission has held on more than one occasion that a mere claim of new and significant information does not open up generic issues to consideration in individual license renewal proceedings, because this would defeat the purpose of resolving issues generically in the GEIS. Vermont Yankee/Pilgrim, CLI-07-3, 65 N.R.C. at 21; Pilgrim, CLI-10-14, slip op. at 36.

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<sup>18</sup> See also In re Operation of the Missouri River Sys. Litig., 516 F.3d 688, 693 (8th Cir. 2008) (“seriously different picture of the environmental impact”); Town of Winthrop v. FAA, 535 F.3d 1, 9 (1st Cir. 2008) (substantial change in conditions since the data used in the EIS were gathered); Sierra Club v. U.S. Army Corps of Eng’rs, 295 F.3d 1209, 1215-16 (11th Cir. 2002) (significant impact not previously covered); S. Trenton Residents Against 29 v. FHA, 176 F.3d 658, 663 (3d Cir. 1999) (“seriously different picture of the environmental impact”); Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 443 (4th Cir. 1996) (same); Village of Grand View v. Skinner, 947 F.2d 651, 657 (2d Cir. 1991) (significant impact not previously covered); Sierra Club v. Froehlke, 816 F.2d 205, 210 (5th Cir. 1987) (“seriously different picture of the environmental impact”); Wisconsin v. Weinberger, 745 F.2d 412, 418 (7th Cir. 1984) (same).

<sup>19</sup> Hydro Resources, Inc., CLI-01-04, 53 N.R.C. 31, 52 (2001) (“The new circumstance must reveal a seriously different picture of the environmental impact of the proposed project.”) (internal quotes and citations omitted).

In addition, the Petition is wrong in asserting that the NRC must at least prepare an environmental assessment to determine the significance of the Fukushima Daiichi information. “[N]either NEPA nor the CEQ regulations” prescribe how an agency is to determine the existence of new and significant information that would require supplementation under NEPA. N. Idaho Cnty. Action Network v. DOT, 545 F.3d 1147, 1154 (9th Cir. 2008), citing Price Rd. Neighborhood Ass’n v. DOT, 113 F.3d 1505, 1509-10 (9th Cir. 1997). Accordingly, following the general Supreme Court’s mandate in Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978) that administrative agencies should be free to fashion their own rules of procedures to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties, the courts have allowed agencies to employ different approaches that utilize various types of non-NEPA processes and documentation. These include processes and documentation (other than preparing an environmental assessment or a supplemental EIS with public participation) for determining whether alleged new impacts are sufficiently significant to warrant supplemental analysis and formal supplementation of existing NEPA documents.<sup>20</sup> It is clear from these and other cases that there is no requirement for public participation under NEPA in an agency’s determination of whether a NEPA supplement is required. See, e.g., Friends of the Clearwater v. Dombeck, 222 F.3d 552, 560 (9th Cir. 2000) (“Although NEPA requires agencies to allow the public to participate in the preparation of an SEIS, there is no such requirement for the decision whether to prepare an SEIS.”) (emphasis in original). See also Northwoods Wilderness Recovery, Inc. v. U.S. Dep’t of Agric. Forest Serv., 192 Fed. Appx.

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<sup>20</sup> See, e.g., N. Idaho, 545 F.3d at 1154 (internal agency reevaluation of projected impacts from new information); Highway J Citizens Group v. Mineta, 349 F.3d 938, 959-60 (7th Cir. 2003), cert. denied, 541 U.S. 974 (2004) (agency-requested expert analysis); Hodges v. Abraham, 300 F.3d 432, 446, 448 (4th Cir. 2002) (agency record of decision based on review of previous NEPA documents), cert. denied, 537 U.S. 1105 (2003); Marsh, 490 U.S. at 383-85 (agency supplemental information report based on agency-requested expert analysis).

369, 377 (6th Cir. 2006) (citing Dombeck). Accordingly, the Commission is free to dispose of the Petition's claims in its decision on the Petition.

#### **IV. CONCLUSION**

For all of the above stated reasons, the Petition should be denied. The Petition provides no basis to suspend the Seabrook license renewal proceeding, which is not scheduled to be complete until late 2012. The Petition offers nothing more than vague speculation that the Commission's review of the Fukushima Daiichi accident will have any effect on the Seabrook license renewal proceeding, and essentially ignores the fact that the safety review in license renewal proceedings is limited to aging management issues having no apparent relationship to the accident. For the same reason, there is no basis to establish special rules for late-filed contentions. If the Commission's review of the Fukushima Daiichi accident leads to the establishment of new requirements applicable to license renewal proceedings, the Commission's rules already provide appropriate procedures for late-filed contentions.

Respectfully submitted

/Signed electronically by/

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Dated: May 2, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

In the Matter of )  
                        )  
NextEra Energy Seabrook, LLC      ) Docket No. 50-443-LR  
                        )  
(Seabrook Station, Unit 1)         ) ASLBP No. 10-906-02-LR

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of "Answer of NextEra Energy Seabrook LLC Opposing Petition to Suspend Pending Licensing Proceedings," dated May 2, 2011, was provided to the Electronic Information Exchange for service on the individuals listed below, this 2<sup>nd</sup> day of May, 2011.

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