

August 22, 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))	
)	ASLBP No. 10-906-02-LR
(Operating License Renewal))	

**NextEra Energy Seabrook, LLC’s Response Opposing Request
to Suspend Licensing Proceedings Pending Resolution of Rulemaking Petition**

Applicant NextEra Energy Seabrook, LLC (“NextEra”) hereby responds to and opposes the suspension request included in the substantially identical rulemaking petitions¹ (collectively referred to as “Petition”) filed by intervenors Beyond Nuclear, Seacoast Anti-Pollution League, and Sierra Club of New Hampshire, and by Friends of the Coast and the New England Coalition (collectively, “Intervenors”). The Petition asks that the Commission rescind regulations in 10 C.F.R. Part 51 that make generic conclusions about the environmental impacts of severe reactor and spent fuel pool accidents and also requests that the NRC suspend the Seabrook Station License Renewal proceeding² while the NRC considers this petition and the environmental issues raised in a proposed new contention

¹ Rulemaking Petition to Rescind Prohibition Against Consideration of Environmental Impacts of Severe Reactor and Spent Fuel Pool Accidents and Request to Suspend Licensing Decision (Aug. 11, 2011).

² The title of the Petition references suspension of the licensing *decision*, while the text of the Petition references suspension of the licensing *proceeding*. We conservatively assume that the request seeks suspension of the Seabrook Station License Renewal proceeding, not just withholding of final action on the License Renewal application.

alleging a requirement to address the implications of the Fukushima Task Force Report.³ Petition at 1. NextEra opposes the request that the Commission suspend the Seabrook Station License Renewal proceeding because it does not meet the standards for suspension or stay; is entirely unnecessary and inimical to the interests of license applicants such as NextEra and to the NRC's commitment to expeditious and efficient decision-making; and is based on a rulemaking petition and contention that are devoid of merit.⁴ Thus, the suspension request must be denied.

While Beyond Nuclear has addressed its Petition to the Secretary, Friends of the Coast and the New England Coalition have addressed the Petition to both the Secretary and to the Licensing Board. Because 10 C.F.R. § 2.802(d) indicates that any suspension request associated with a rulemaking petition will be decided by the Commission, a suspension request is already before the Commission,⁵ and the Commission has generally

³ Both groups of Intervenor have also filed substantially identical late-filed contentions ("Contentions") regarding the environmental implications of "Recommendations for Enhancing Reactor Safety in the 21st Century," a report by the NRC Task Force investigating the insights to be gained from the accident at the Fukushima Daiichi nuclear power station ("the Task Force Report"), issued on July 12, 2011. *See, e.g.*, Beyond Nuclear's, "Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident" (August 11, 2011) and "Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report" (August 11, 2011). A separate response will be filed to the Contentions before the Atomic Safety and Licensing Board ("ASLB" or "Board") in this proceeding.

⁴ NextEra will file its opposition to the rulemaking petition if and when it is accepted by the Commission and made available for comment.

⁵ 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). The Emergency Petition was filed with the Commission in April 2011 on the Seabrook Station License Renewal docket and by intervenors in over twenty other pending proceedings. The Emergency Petition seeks that all licensing proceedings be stayed pending completion of the NRC review of the Fukushima accident. The Commission also has not acted on the Emergency Petition.

indicated that suspension motions are best addressed to it,⁶ NextEra has objected to the filing of the Petition before the Licensing Board and notified the Board that NextEra's opposition to the suspension request will be submitted to the Commission, as NextEra is now doing.

BACKGROUND

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 massive tsunami caused significant damage to at least four of the six units of the Fukushima Daiichi nuclear power station as the 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. ML110950110).

The Commission 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 analysis of the lessons that can be learned from the Fukushima accident. The Task Force was 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.

⁶ *AmerGen Energy Company, LLC et al.* (Oyster Creek Nuclear Generating Station et al.), CLI-08-23, 68 NRC 461, 476 (2008); *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23 56 NRC 230, 237 (2002).

- 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).

The Task Force completed its 90-day review and issued its report to the Commission on July 12, 2011. The Task Force Report concludes:

The current regulatory approach, and more importantly, the resultant plant capabilities allow the Task Force to conclude that a sequence of events like the Fukushima accident is unlikely to occur in the United States and some appropriate mitigation measures have been implemented, reducing the likelihood of core damage and radiological releases. Therefore, continued operation and continued licensing activities do not pose an imminent risk to public health and safety. *Id.* at vii.

In summarizing the Task Force Report to the Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Safety, NRC Chairman Gregory Jaczko's statement included:

- “Overall, the Task Force found that continued operation and continued licensing activities do not pose an imminent risk to public health and safety. The Task Force concluded that a sequence of events like the Fukushima Dai-ichi accident is unlikely to occur in the United States, and that some appropriate mitigation measures have been implemented, reducing the likelihood of core damage and radiological releases.”
- “The Task Force report included a comprehensive set of twelve overarching recommendations. The Task Force recommendations are intended to clarify and strengthen the regulatory framework for nuclear power plants, and are structured around the focus areas of the NRC's defense-in-depth philosophy as applied to protection from natural phenomena; mitigation of prolonged station blackout events; and emergency preparedness. The Task Force also provided recommendations to improve the effectiveness of the NRC's programs.”

Statement of Gregory Jaczko (Chairman, Nuclear Regulatory Commission), United States Senate Committee on Environment and Public Works, Subcommittee on Clean Air and Nuclear Safety (August 2, 2011) at 2-3, *available at* http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=6c8870f2-0484-49da-a275-2dd98a823cbd.

The NRC staff (“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 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, 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 on the Events at the Fukushima Daiichi Nuclear Power Station at 21-22, *New Jersey Env’tl Federation v. NRC*, No. 09-2567 (3d Cir. Apr. 4, 2011) (“Federal Respondents’ Memorandum”). 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 examining the implications of the Fukushima accident, its informed assessment is that continued operation and continued licensing activities for U.S. plants do not pose an imminent risk to public health and safety (that was also the conclusion of the NRC Task Force; *see* Task Force Report at vii, 18.)

In furtherance of its ongoing efforts to incorporate into the NRC regulatory scheme, as appropriate, the lessons learned from the Fukushima accident, the Commission issued on August 19, 2011 a Staff Requirements Memorandum (“SRM”), “Staff Requirements – SECY-11-0093 – Near-Term Report And Recommendations for Agency Actions Following the Events in Japan,” in which it directs the Staff to take a series of actions in response to the Task Force Report. These recommendations include:

- Producing within 21 days a paper outlining which of the Task Force’s recommendations, either in part or in whole, the Staff believes should be implemented without unnecessary delay. The 21-day effort will include a public dialogue on the staff’s proposal, and the staff expects to announce a public meeting in the next few days.

- Producing by October 3, 2011 a paper which prioritizes Task Force recommendations, other than the one calling for a change to the NRC’s overall regulatory approach. This paper is expected to lay out all agency actions to be taken in responding to lessons learned from the Fukushima Daiichi accident. The paper will also lay out a schedule for interacting with the public, other stakeholders and the Advisory Committee on Reactor Safeguards.

- Producing a paper within 18 months to consider the Task Force’s call for revising the NRC’s regulatory approach. The paper is expected to provide options, including a recommended course of action, in dealing with the Task Force’s recommendation.

While the Commission is taking these actions to assess the implications of the Fukushima accident and take appropriate responsive actions, its informed assessment is that continued operation and continued licensing activities for U.S. plants do not pose an imminent risk to public health and safety (that was also the conclusion of the NRC Task Force; *see* Task Force Report at vii.) Consistent with that assessment, the Commission has continued its licensing activities, including the completion of several license renewal proceedings, the review of standard design certification applications, and the processing of COL applications. It has scheduled for September 27, 2011 its first mandatory hearing on a COL application (that for the new Vogtle Units 3 and 4 units), *see* 76 Fed. Reg. 50767 (Aug. 16, 2011), and has completed its technical review for Revision 19 of the Design Certification for Westinghouse’s AP1000 advanced reactor, *see* Final Safety Evaluation Report Related to Certification of the AP1000 Standard Plant Design, NUREG-1793 Supplement 2 (Aug. 2011), ADAMS Accession No. ML112061231.

ARGUMENT

I. SUSPENSION OF LICENSING PROCEEDINGS PENDING ACTION ON RULEMAKING PETITIONS SHOULD NOT BE GRANTED ABSENT IMMEDIATE THREATS TO PUBLIC HEALTH AND SAFETY

The Commission has stated on numerous occasions that suspension of licensing proceedings is a “drastic” action that is not warranted absent “immediate threats to public health and safety.” *Petition for Rulemaking to Amend 10 C.F.R. § 54.17(c)*, CLI-11-01,

73 NRC __ (Jan. 24, 2011) (“CLI-11-01”), slip op. at 3; *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station, *et al.*), CLI-08-23, 68 NRC 461, 484 (2008); *Private Fuel Storage, LLC*, (Independent Spent Fuel Storage Installation) (“PFS”), CLI-01-26, 54 NRC 376 (2001). *See also Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230 (2002); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393 (2001); *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000). The NRC’s reluctance to suspend licensing proceedings is particularly strong when the suspension would last for potentially long periods of time, and where the duration of the suspension would depend on the completion of other pending Commission actions, such as proposed rulemakings. CLI-11-01, slip op. at 3; Petition for Rulemaking Denial, 71 Fed. Reg. 74,848 (2006); *Entergy Nuclear Vermont Yankee, L.L.C.* (Vermont Yankee Nuclear Power Station), CLI-10-17, 72 NRC___ (July 8, 2010) (slip op. at 10 & n.36).

Here, continuing to conduct the Seabrook Station License Renewal licensing reviews and the ongoing License Renewal proceeding poses no immediate threat to the public health and safety, thus stay of the proceeding is not warranted. The Task Force has specifically concluded that continued licensing activities for U.S. plants do not pose an imminent risk to public health and safety. Further, a final decision in the Seabrook Station License Renewal proceeding is not expected until 2013, and the period of extended operation would not begin until 2030.

Moreover, continuing to conduct the Seabrook Station 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 Station License Renewal proceeding.

II. THE STAY REQUEST DOES NOT MEET THE REQUIREMENTS FOR MOTIONS TO 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. 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).

NRC regulations establish that, in order to decide whether to grant a motion for a stay, the Commission will weigh four factors:

- (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 NRC ___, slip op. at 11 (Jan. 7, 2010); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C.Cir.1958).

The most important of the four is the second, irreparable injury to the moving party if the stay is not granted. *Shieldalloy*, CLI-10-08 at 12. The NRC requires "a showing of a

‘threat of immediate and irreparable harm’ that will result absent a stay.” *Id.*, citing *Oyster Creek*, CLI-08-13, 67 NRC at 400.

As noted above, no such harm can be claimed in connection with the Stay Request. There is no urgency to granting a stay of the Seabrook Station License Renewal licensing proceeding as a final decision is not expected until 2013. *See*

<http://www.nrc.gov/reactors/operating/licensing/renewal/applications/seabrook.html#schedule>

Therefore, this consideration does not warrant a halt to the current proceeding. *PFS*, CLI-01-26, 54 NRC at 381.⁷ There is ample time to incorporate any new regulatory requirements that come from the Task Force Report recommendations without the need to suspend the Seabrook Station License Renewal licensing proceeding. As the Commission observed in *McGuire/Catawba*:

[T]o the extent the Commission does, during a later stage 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.

CLI-01-27, 54 NRC at 391 (footnote omitted). That observation is equally applicable to the Seabrook Station proceeding. No stay of the proceeding is warranted.

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

⁷ Neither the Petition nor the underlying Contentions allege that there is an imminent threat to the health and safety of the public, and as noted above the Task Force Report confirms that no such threat exists. Task Force Report at vii.

processes pending consideration of generic issues because it would be contrary to the agency's duties to the applicants and to the interests of the general public. *See, e.g., Savannah River*, where the Commission rejected a petition to suspend licensing of a mixed-oxide fuel fabrication facility in the wake of the September 11, 2001 events in the following terms:

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; [*Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2); Catawba Nuclear Station, Units 1 and 2)], CLI-01-27, 54 NRC [385, 390-91 (2001)].

CLI-01-28, 54 NRC at 400 (emphasis in original). In this case, the relief sought in the Stay Request to suspend the Seabrook Station License Renewal licensing proceeding for an indefinite time would be detrimental to NextEra and would contravene the Commission's fundamental duties to the general public and the NRC's policy to avoid unnecessary delays in the NRC's review and hearing processes.

The final factor in granting a stay is a strong showing that the moving party is likely to prevail on the merits. The Petition, and the Contentions with which it is associated, makes no such showing. The Petition is based on the flawed analysis in the Contentions that the Task Force Report recommendations *mandate* that the NRC must

upgrade the design basis for nuclear reactors to include severe accidents and rescind the current Part 51 regulations that preclude consideration of the environmental impacts of such severe accidents, so that the environmental impact statements and environmental reports for pending license applications must be modified to incorporate the impacts of severe accidents into the analysis of design basis accidents. *See* Contentions at 10-14. However, the Task Force Report recommendations are not regulations and may or may not be adopted by the Commission. Hence, the recommendations in themselves have no significance from the standpoint of NEPA.

The Contentions further assert that, even if the Task Force Report recommendations are not adopted, the environmental impacts of the recommended actions must be included in revisions to the ERs and EISs. There is no legal support for this claim, either. Modification of the environmental impact statements or environmental reports to consider the environmental impact of severe reactor or spent fuel accidents would only be required “where new information provides a *seriously* different picture of the environmental landscape.” *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis in original; internal quotations omitted) (quoting *City of Olmsted Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002)). *See also* *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”). The Commission has adopted this standard. *Hydro Resources, Inc.*, CLI-01-4, 53 NRC 31, 52 (2001) (“The new circumstance must reveal a seriously different picture of the environmental impact of the proposed project”) (citation omitted). The Task Force Report, however, contains no new

and significant information that would require modification of the Part 51 regulations, for the Report only makes recommendations for Commission and Staff actions and includes no new information that could trigger the need for additional environmental analyses.

Thus, none of the factors used in assessing motions to stay supports granting such a motion in this case.

CONCLUSION

For the above stated reasons, the suspension request must be denied.

Respectfully submitted,

/Signed electronically by Steven Hamrick

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NextEra Energy Seabrook, LLC’s Response Opposing Request to Suspend Licensing Proceedings Pending Resolution of Rulemaking Petition” was provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 22nd day of August, 2011.

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