

September 13, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
AND OFFICE OF THE SECRETARY

_____)	
In the Matter of)	
)	
NEXTERA ENERGY SEABROOK (LLC))	
[Also Known As FLORIDA POWER & LIGHT])	
)	
SEABROOK NUCLEAR POWER PLANT)	DOCKET NO. 50-443-LR
)	
Regarding the Renewal of Facility Operating License)	ASLBP No. 10-906-02-LR
No-NFP-86 for a 20-Year Period)	
_____)	

**PETITIONERS’ MEMORANDUM IN REPLY TO OPPOSITIONS TO ADMISSION OF
NEW CONTENTION IN THE SEABROOK RELICENSING PROCEEDING**

Pursuant to 10 C.F.R. § 2.309(h)(2), Beyond Nuclear, Seacoast Anti-Pollution League and Sierra Club of New Hampshire [collectively “the petitioners”] hereby reply to the oppositions submitted by the applicant, NextEra Seabrook, and the U.S. Nuclear Regulatory Commission (“NRC”) Staff to Petitioners’ new contention seeking consideration of the environmental implications of the Fukushima Task Force Report. Petitioners respectfully submit that the arguments by applicant and the NRC Staff regarding the timeliness and admissibility of the contention are without merit and the contention should be admitted.

The arguments raised by the applicant and the NRC Staff in response to Petitioner’s contention are similar or identical to arguments made by the applicant and staff in response to Fukushima Task Force Report-related contentions that were filed in

other reactor licensing proceedings on the same day. Petitioners attach and incorporate by reference the attached Reply Memorandum, which addresses the most common arguments that are made in the responses and was prepared by counsel for intervenors in several of the cases¹ The Reply Memorandum discusses the effect of the NRC Commissioners' recent decision regarding the Emergency Petition that was submitted by Petitioners and many other intervenors and petitioners in April 2011. *Union Electric Co., d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2) et al., CLI-11-05, ___ NRC ___ (Sept. 9, 2011) ("CLI-11-05").²

Petitioners reply to arguments by the applicant and NRC Staff that are particular to this proceeding that the new contention is not specific enough to the NextEra license renewal application, the Environmental Review and the Draft Supplemental Environmental Impact Statement for this application. It is our fundamental contention that the entire application does not reflect the real-world implications of the Fukushima disaster and that, in particular, NEPA requires that the applicant to do so. On the most basic and rational level of argument, the application was submitted prior to March 11, 2011. Thus, the application does not reflect the undisputable tragic events of an unprecedented nuclear catastrophe that began in March 2011 and continues today, nor does it reflect the recommendations contained in the July 2011 Fukushima Task Force

¹ The Reply Memorandum was prepared by Diane Curran (counsel for the intervenor in the Diablo Canyon license renewal proceeding and Watts Bar operating license proceeding), Mindy Goldstein (counsel for some of the intervenors in the Vogtle and Turkey Point COL proceedings), and Jason Totoui (counsel for some of the intervenors in the Turkey Point COL proceeding).

² Because the applicant and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of Petitioners contention, Petitioners would not object to a response by the applicant and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.

Report. Thus, the NextEra application and Environment Report does not real world reflect events that began in mid-March 2011 and continue today, nor do they reflect the July 2011 Fukushima Task Force Report.

Reply as to Public's Burden to Show Necessity for Changing Scope of NEPA Consideration

The point repeatedly overlooked by the Applicant and Staff oppositions is that the burden placed on Intervenor or other members of the public to trigger consideration of new information is quite low, particularly when the NEPA process is, as here, not even consummated at the DEIS stage.

“To [require an EIS], a plaintiff need not show that significant effects will in fact occur ... raising substantial questions whether a project may have a significant effect is sufficient.” (Emphasis supplied). *Anglers of the Au Sable v. U.S. Forest Service*, Case #05-10152-BC (E.D. Mich. N.D. 2005) at 13-14, citing *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (EIS required if “substantial questions are raised” about effects on environmental quality). The Court must not “substitute [its] judgment of the environmental impact for the judgment of the agency, once the agency has adequately studied the issue.” *Crouse Corp. v. Interstate Commerce Comm’n*, 781 F.2d 1176, 1193 (6th Cir. 1986). However, “[i]t is [the Court’s] role . . . to determine whether the agency has, in fact, adequately studied the issue and taken a ‘hard look’ at the environmental consequences of its decision.” *Id.* The harm NEPA seeks to prevent is complete when the agency makes a decision without considering information NEPA requires be placed before the decision-maker and public. *Sierra Club v. Marsh*, 872 F.2d 497, 500 (1st Cir. 1989). “The injury of an increased risk of harm due to an agency’s uninformed decision is precisely the type of injury {NEPA} was designed

to prevent.” *Comm. to Save the Rio Hondo v. Lucero*, 102 F.3d 445, 448-49 (10th Cir. 1996).

Moreover, since Joint Intervenors submitted Contention, we have experienced a major earthquake in the Mid-Atlantic States that according to initial USGS and NRC evaluations triggered ground motion approximately double that which the North Anna nuclear power station closest to the epicenter was designed to withstand. The implications of this earthquake on seismic standards for all U.S. reactors, and especially those, like Seabrook, relatively close to the epicenter, are not yet fully understood but are likely to be significant and at the least certainly provide substantial new information about seismic risk in our region.

In addition, since Joint Intervenors submitted Contention, we have experienced Hurricane Irene, which caused extensive flooding up much of the Eastern Seaboard, with major impacts on New Jersey and on up into Vermont, raising additional safety concerns and potential environmental impacts. Natural disasters are now clearly not just limited to the Japanese coastline.

While perhaps these events should arguably form the basis of yet another new contention, petitioners suggest that they also fall into the broader concerns addressed by the new contention and simply reflect additional urgency for a revision of the license renewal application, its ER and the DSEIS.

Both the Applicant and the NRC have argued that the Petitioners contention is not timely and inadmissible. The Petitioners simple answer is that the contention is in fact timely as in fact the event upon which it is based has not yet ended nor are its consequences reliably contained nor is the accident brought to any facsimile of finality. At page 10-11 of the Applicant reply, they make the argument for the petitioners in saying, "With respect to environmental contentions, "[t]he petitioner may amend [its] contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents." 10 C.F.R. § 2.309(f)(2). Absent such circumstances, an intervenor may file new contentions only with leave of the presiding officer upon a showing that the new contention is based on information that "was not previously available" and is "materially different than information previously available," and that the contention "has been submitted in a timely fashion." Id." [NextEra

The Petitioners reply that the NRC Task Force Report is in fact based on a very real nuclear catastrophe that is unfortunately still unfolding at Fukushima now surpassing six months old; an accident that has not yet been contained and is still currently of considerable consequence to the entire world. The environmental consequence of this ongoing accident has not been reliably bounded. As such, the NRC Task Force Report holds perhaps greater import than the average NRC report. Moreover, because the meltdowns took place in March 2011 and the Task Force Report was issued in July 2011, it would have been astonishingly prescient for the Petitioners

to have been able to submit this as a contention as part of our initial petition to intervene, filed in October 2010. We are but joint petitioners, not Seers.

Respectfully signed and submitted electronically by digital certificate,

-----/s/-----

Paul Gunter
Beyond Nuclear
6930 Carroll Avenue Suite 400
Takoma Park, MD 20912
Tel. 301.270.2209 ext.3
Email: paul@beyondnuclear.org

-----/s/-----

Doug Bogen
Executive Director
Seacoast Anti-Pollution League
PO Box 1136
Portsmouth, NH 03802
E-mail: bogen@metrocast.net
Tel: 603.431.5089

-----/s/-----

Kurt Ehrenberg
Sierra Club of New Hampshire
40 North Main Street
Concord, NH 03301
Email: kurtehrenberg@gmail.com
Tel: 603.498.2275

September 13, 2011