

August 8, 2013

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AND DISMISSAL OF FOTC/NEC CONTENTION 4D**

Pursuant to 10 C.F.R. § 2.338(i), NextEra Energy Seabrook, LLC (“NextEra”), Friends of the Coast and the New England Coalition (“FOTC/NEC”), and the NRC Staff (collectively, the “Parties”) hereby move this Atomic Safety and Licensing Board (the “Board”) for approval of a settlement of Contention 4D in the Seabrook license renewal proceeding. The Settlement Agreement is attached hereto as Exhibit A, in accordance with 10 C.F.R. § 2.338(g). Also attached as Exhibits B and C are two consent orders to approve and effectuate this settlement. The initial consent order would be issued by the Board now to approve the settlement. The final consent order would be issued by the Board seven (7) days after the NRC Staff publishes its Final Supplemental Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station (“FSEIS”) providing additional analysis that the Parties have agreed resolves Contention 4D, and would dismiss Contention 4D at that time without further motion.

By Memorandum and Order dated February 15, 2011, the Board admitted FOTC/NEC as a party to the license renewal proceeding and admitted for litigation FOTC/NEC Contention 4D, relating to the reasonableness of the atmospheric dispersion model utilized in NextEra’s Severe Accident Mitigation Alternatives (“SAMA”) analysis. On May 10, 2013, NextEra filed a motion

for summary disposition of FOTC/NEC Contention 4D, which included the results of an analysis using an alternative meteorological model (“the CALMET sensitivity”) and a Statement of Material Facts. On July 15 and July 16, 2013, respectively, the NRC Staff and FOTC/NEC filed answers to NextEra’s Motion, both admitting 21 of the 23 material facts from NextEra’s Statement of Material Facts, including that NextEra’s atmospheric dispersion model is reasonable for a SAMA analysis, but arguing that NextEra should have evaluated the impact of uncertainty in addition to the results of the CALMET sensitivity in determining whether additional SAMAs may be potentially cost beneficial. The NRC Staff explained that using NextEra’s previously submitted estimates of uncertainty (“the uncertainty factor”), 15 additional SAMAs might be identified as being potentially cost-beneficial based on the CALMET sensitivity, including the following SAMAs: 13, 24, 44, 55, 56, 77, 96, 108, 109, 147, 163, 167, 168, 169, and 170. NRC-endorsed guidance for performing SAMA analyses, states that “[a] discussion of [core damage frequency] uncertainty, and conservatisms in the SAMA analysis that off-set uncertainty, should be included” in a SAMA analysis and that “[i]f SAMAs appear cost-beneficial in the sensitivity results, discussion of conservatisms in the analysis . . . and their impact on the results may be appropriate.”<sup>1</sup>

To resolve this matter without further litigation, the Parties have entered into the attached Settlement Agreement, subject to the Board’s approval. Under the Settlement Agreement, the NRC Staff will include an analysis of the CALMET sensitivity in its FSEIS, and identify the SAMAs (13, 24, 44, 55, 56, 77, 96, 108, 109, 147, 163, 167, 168, 169, and 170) that might be considered potentially cost beneficial if the CALMET sensitivity were added to NextEra’s uncertainty factor. The NRC Staff’s FSEIS will also analyze conservatisms in NextEra’s SAMA

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<sup>1</sup> Nuclear Energy Institute, NEI 05-01 (Rev. A), Severe Accident Mitigation Alternatives (SAMA) Analysis - Guidance Document, at 30 (Nov. 2005) (ADAMS Accession No. ML060530203).

analysis and the extent to which such conservatisms may off-set the uncertainty factor.

Consideration of conservatism offsetting uncertainty, comparison of the CALMET sensitivity with the uncertainty factor, or other considerations, may result in some or all of the SAMAs as no longer being considered potentially cost-beneficial in the NRC's FSEIS. Upon issuance of the FSEIS, the NRC Staff will submit a letter to the Board identifying the portions of the FSEIS in which it analyzes the CALMET sensitivity, the treatment of uncertainty and off-setting conservatisms in NextEra's analysis.

In return, FOTC/NEC consents to the dismissal of Contention 4D effective seven (7) days after issuance of the FSEIS, with the CALMET sensitivity, uncertainty factor and off-setting conservatism evaluated to the sole satisfaction of the NRC Staff. FOTC/NEC will not challenge the NRC Staff's disposition of, or make any further claims in this proceeding regarding, any of the SAMAs that might be considered potentially cost beneficial if the CALMET sensitivity were added to NextEra's uncertainty factor.

The Parties request that the Board approve this settlement by issuance of the initial Consent Order (Exhibit B). As reflected in the initial Consent Order, the Parties also request that the Board relieve the Parties of the obligation to submit memoranda pursuant to this Board's Memorandum and Order of July 30, 2013 (Granting NextEra's Motion to File Reply and Directing Additional Briefing), and terminate the obligation of Parties to update their disclosures regarding Contention 4D pursuant to 10 C.F.R. 2.336(d) and the Initial Scheduling Order in this proceeding. Seven days after issuance of the FSEIS, the final Consent Order (Exhibit C) would be issued without further motion dismissing Contention 4D. Dismissal of this Contention is in the public interest because the NRC Staff is taking actions to address the FOTC/NEC's sole

remaining concern, and because the Commission encourages settlement of contested issues in licensing proceedings. 10 C.F.R. § 2.338.

FOTC/NEC and the NRC Staff have authorized NextEra to file this Joint Motion on its behalf.

Respectfully Submitted,

/Signed electronically by David R. Lewis /

Steven C. Hamrick  
NextEra Energy Seabrook, LLC  
801 Pennsylvania Avenue, NW Suite 220  
Washington, DC 20004  
Telephone: 202-349-3496

Dated: August 8, 2013

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David R. Lewis  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N St. NW  
Washington, DC 20037  
Telephone: 202-663-8474

Counsel for NextEra Energy Seabrook, LLC

## **Exhibit A**

**SETTLEMENT AGREEMENT AMONG FRIENDS OF THE COAST/  
THE NEW ENGLAND COALITION, NEXTERA ENERGY SEABROOK, LLC, AND THE  
STAFF OF THE U.S. NUCLEAR REGULATORY COMMISSION  
REGARDING CONTENTION 4D**

This Settlement Agreement is made and entered into as of August 7, 2013 by and among the Friends of the Coast and the New England Coalition ("FOTC/NEC"), NextEra Energy Seabrook, LLC (NextEra), a Delaware limited liability company, and the Staff of the U.S. Nuclear Regulatory Commission ("NRC Staff") hereinafter referred to collectively as "Parties."

WHEREAS, NextEra submitted a License Renewal Application ("LRA") dated May 25, 2010, to the U.S. Nuclear Regulatory Commission ("NRC") seeking renewal of its license to operate Seabrook Station, Unit 1 ("the Plant");

WHEREAS, on October 21, 2010, FOTC/NEC petitioned to intervene as a party in the NRC proceeding to renew the operating license of the Plant, and raised a contention relating to the reasonableness of the atmospheric dispersion model utilized in NextEra's Severe Accident Mitigation Alternatives ("SAMA") analysis ("FOTC/NEC Contention 4D");

WHEREAS, by Memorandum and Order dated February 15, 2011, the Atomic Safety and Licensing Board (the "Board") admitted FOTC/NEC as a party to the license renewal proceeding and admitted FOTC/NEC Contention 4D for litigation;

WHEREAS, NextEra filed a motion for summary disposition of FOTC/NEC Contention 4D on May 10, 2013, which included the results of an analysis using an alternative meteorological model ("the CALMET sensitivity") and a Statement of Material Facts;

WHEREAS, the NRC Staff and FOTC/NEC filed answers to NextEra's Motion on July 15 and July 16, 2013, both admitting 21 of the 23 material facts from NextEra's Statement of Material Facts, including that NextEra's atmospheric dispersion model is reasonable for a SAMA analysis, but arguing that NextEra should have evaluated the impact of uncertainty in addition to the results of the CALMET sensitivity in determining whether additional SAMAs may be potentially cost beneficial;

WHEREAS, the NRC Staff explained that using NextEra's previously submitted estimates of uncertainty ("the uncertainty factor"), 15 additional SAMAs might be identified as being potentially cost-beneficial based on the CALMET sensitivity, including the following SAMAs: 13, 24, 44, 55, 56, 77, 96, 108, 109, 147, 163, 167, 168, 169, and 170;

WHEREAS, NEI-05-01, the NRC-endorsed guidance document for performing SAMA analyses, states that "[a] discussion of [core damage frequency] uncertainty, and conservatisms in the SAMA analysis that off-set uncertainty, should be included" in a SAMA analysis and that "[i]f SAMAs appear cost-beneficial in the sensitivity results, discussion of conservatisms in the analysis, (e.g., conservatisms in cost estimates discussed in Section 7.2), and their impact on the results may be appropriate";

WHEREAS, the NRC Staff is currently preparing the Final Supplemental Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station (NUREG-1437, Supplement 46) ("FSEIS");

NOW, THEREFORE, in consideration of the premises and mutual promises herein, NextEra, the NRC Staff and FOTC/NEC agree as follows:

1. The NRC Staff will include an analysis of the CALMET sensitivity in the FSEIS, and identify the SAMAs (13, 24, 44, 55, 56, 77, 96, 108, 109, 147, 163, 167, 168, 169, and 170) that might be considered potentially cost beneficial if the CALMET sensitivity were added to NextEra's uncertainty factor.
2. The NRC Staff's FSEIS will also analyze conservatisms in NextEra's SAMA analysis and the extent to which such conservatisms may off-set the uncertainty factor, in accordance with 10 C.F.R. Part 51.
3. Consideration of conservatism offsetting uncertainty, comparison of the CALMET sensitivity with the uncertainty factor, or other considerations, may result in some or all of the SAMAs identified in Paragraph 1 as no longer being considered potentially cost-beneficial in the NRC's FSEIS. FOTC/NEC will not challenge the NRC Staff's disposition in the FSEIS, or make any further claims in this proceeding regarding, any of the SAMAs identified in Paragraph 1.
4. FOTC/NEC consents to the dismissal of Contention 4D effective seven (7) days after issuance of the FSEIS, with the CALMET sensitivity, uncertainty factor and off-setting conservatism evaluated to the sole satisfaction of the NRC Staff, and agrees to take such other actions as may be reasonably necessary to obtain its dismissal.
5. Upon issuance of the FSEIS, the NRC Staff will submit a letter to the Board, identifying the portions of the FSEIS in which it analyzes the CALMET sensitivity, the treatment of uncertainty and off-setting conservatisms in NextEra's analysis.
6. The Parties agree to file a joint motion seeking a Consent Order from the Board approving this Settlement Agreement, relieving the parties from further briefings pursuant to the Board's July 30, 2013 Memorandum and Order, and terminating the parties' duty to update their disclosures regarding Contention 4D; and a second Consent Order to be issued seven days after publication of the NRC's FSEIS dismissing FOTC/NEC Contention 4D.
7. With regard to this Settlement Agreement, NextEra, the NRC Staff, and FOTC/NEC expressly waive any and all further procedural steps before the Board or any right to challenge or contest the validity of any order entered by that Board on Contention 4D in accordance with this Settlement. The Parties also expressly waive all rights to seek judicial review or otherwise to contest the validity of any order entered by the Board on Contention 4D, so long as such order is fully consistent with each provision of this Settlement Agreement.
8. NextEra, the NRC Staff, and FOTC/NEC agree that an order entered by the Board on Contention 4D in accordance with this Settlement Agreement will have the same force and effect as an order entered after a full hearing.
9. NextEra, the NRC Staff, and FOTC/NEC acknowledge this Settlement Agreement resolves the matters identified in this Settlement Agreement that are required to be adjudicated.
10. This Settlement Agreement shall be effective upon the last signature dated below. In the event that the Board disapproves this Settlement Agreement, it shall be null and void.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be signed by their respective counsel or representative on the dates indicated below.



David R. Lewis  
Pillsbury, Winthrop Shaw Pittman, LLP  
Counsel for NextEra Energy Seabrook, LLC

8/8/2013

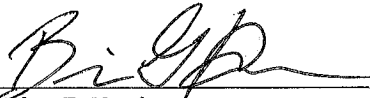
Date



Raymond Shadis  
Representative for Friends of the Coast and  
The New England Coalition

8/8/2013

Date



Brian G. Harris  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission

8/8/2013

Date



# Exhibit B – Proposed Initial Consent Order

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman  
Dr. Michael F. Kennedy  
Dr. Richard E. Wardwell

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1) ,

Docket No. 50-443-LR

ASLBP No. 10-906-02-LR-BD01

August XX, 2013

## **ORDER**

(Approving Settlement of Contention 4D)

On August 8, 2013, NextEra Energy Seabrook, LLC (“NextEra”), Friends of the Coast and the New England Coalition (“FOTC/NEC”), and the NRC Staff (collectively, the “Parties”) moved for an order approving settlement of Contention 4D, and for a second Order, to be issued seven days after publication of the FSEIS without further motion dismissing Contention 4D. In accordance with 10 C.F.R. § 2.338(g), the Parties forwarded the settlement agreement and proposed orders to this Board.

Consistent with Commission policy to encourage resolution of contested issues in licensing proceedings through settlement, we find the settlement and eventual dismissal of Contention 4D in the public interest. Pursuant to our authority under 10 C.F.R. § 2.338(i), we grant the Joint Motion approving the settlement agreement. Pursuant to that Settlement Agreement, upon issuance of the Final Supplemental

Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station (NUREG-1437, Supplement 46), the NRC Staff will submit a letter to the Board, identifying the portions of the FSEIS in which it analyzes the CALMET sensitivity, the treatment of uncertainty and off-setting conservatisms in NextEra's analysis. Seven days after receipt of this letter, the Board will issue a further order dismissing Contention 4D without further motion.

Based on this settlement of Contention 4D, the Parties are hereby relieved of the obligation to submit memoranda pursuant to this Board's Memorandum and Order of July 30, 2013 (Granting NextEra's Motion to File Reply and Directing Additional Briefing). In addition, the obligation of Parties to update their disclosures regarding Contention 4D, pursuant to 10 C.F.R. 2.336(d) and the Initial Scheduling Order in this proceeding is hereby terminated.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

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Dr. Michael F. Kennedy  
ADMINISTRATIVE JUDGE

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Dr. Richard E. Wardwell  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
August \_\_, 2013

# Exhibit C – Proposed Final Consent Order

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman  
Dr. Michael F. Kennedy  
Dr. Richard E. Wardwell

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LR

ASLBP No. 10-906-02-LR-BD01

[DATE]

## **ORDER**

(Dismissing Contention 4D)

Pursuant to our Order of August XX, 2013 (Approving Settlement of Contention 4D), upon issuance of the Final Supplemental Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station (NUREG-1437, Supplement 46), the NRC Staff submitted a letter to the Board identifying the portions of the FSEIS in which it analyzes the CALMET sensitivity, the treatment of uncertainty and off-setting conservatisms in NextEra's analysis. Therefore, in accordance with our previous Order, Contention 4D is hereby dismissed.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

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Dr. Michael F. Kennedy  
ADMINISTRATIVE JUDGE

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Dr. Richard E. Wardwell  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
[DATE]

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Motion for Approval of Settlement Agreement and Dismissal of FOTC/NEC Contention 4D has been served through the E-Filing system on the participants in the above-captioned proceeding, this 8<sup>th</sup> day of August 2013.

/Signed electronically by David R. Lewis/

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David R. Lewis