

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 5, 2015

MEMORANDUM AND ORDER
(Dismissing Contention 4D and Terminating the Proceeding)

The background of this license renewal proceeding for Seabrook Station, Unit 1, is set forth in previous orders of this Board and of the Commission.¹

This order concerns Contention 4D, in which Friends of the Coast and the New England Coalition (FOTC/NEC) challenged the reasonableness of the atmospheric dispersion model used in the Severe Accident Mitigation Alternatives analysis portion of NextEra Energy Seabrook, LLC's (NextEra) license renewal application.² The Board admitted this contention on February 15, 2011, and the Commission affirmed that decision.³

¹ See, e.g., LBP-11-2, 73 NRC 28, 34–37 (2011), aff'd in part & rev'd in part, CLI-12-05, 75 NRC 301, 349 (2012); Licensing Board Memorandum and Order (Granting Summary Disposition of Contention 4B) (Aug. 12, 2013) (unpublished); Licensing Board Memorandum and Order (Denying Motion to File a New Contention Concerning Nuclear Waste) (Sept. 9, 2014) (unpublished).

² Friends of the Coast and New England Coalition Petition for Leave to Intervene, Request for Hearing, and Admission of Contentions (Oct. 21, 2010) at 47–61.

³ LBP-11-2, 73 NRC at 69–73, aff'd, CLI-12-05, 75 NRC at 327–29.

On August 8, 2013, NextEra, FOTC/NEC, and the NRC Staff moved for an order approving settlement of Contention 4D and for a second order to dismiss Contention 4D after publication of the Final Supplemental Environmental Impact Statement (FSEIS).⁴ This Board approved the parties' settlement and directed the NRC Staff to "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" as soon as the FSEIS was completed.⁵ The Board stated that "[s]even days after receipt of this letter, [it would] issue a further order dismissing Contention 4D without further motion."⁶

Seven days ago, the NRC Staff submitted the requisite letter informing the Board and the parties of issuance of the FSEIS and identifying the portions that address Contention 4D.⁷ Accordingly, Contention 4D is dismissed.⁸

There being no remaining admitted contention, this adjudicatory proceeding concerning NextEra's application to renew the operating license for Seabrook Station, Unit 1 is terminated. Under the Settlement Agreement, the parties may petition for review of this order only to the

⁴ See Joint Motion for Approval of Settlement and Dismissal of FOTC/NEC Contention 4D at Ex. A, Settlement Agreement Among FOTC/NEC, NextEra Entergy Seabrook, LLC, and the Staff of the US Nuclear Regulatory Commission Regarding Contention 4D (Aug. 8, 2013) [hereinafter Settlement Agreement]. The Settlement Agreement is attached as Attachment A.

⁵ Licensing Board Memorandum and Order (Approving Settlement of Contention 4D) (Aug. 12, 2013) at 1–2 (unpublished).

⁶ Id. at 2.

⁷ Letter from Anita Ghosh, Counsel for NRC Staff, to the Board (July 29, 2015).

⁸ The Board is aware that FOTC/NEC has moved the Commission to order the NRC Staff to release the FSEIS as a draft or supplement and provide another comment period because of the four-year gap between the public comment period and the issuance of the FSEIS. Motion to Withhold or Withdraw Final Environmental Impact Statement Pending Renewed Opportunity for Comment (July 28, 2015). This motion does not change the NRC Staff's obligations under the Settlement Agreement or the Board's enforcement of that agreement. The Commission has the power to reopen this proceeding if necessary.

extent that it is not “fully consistent with each provision of this Settlement Agreement.”⁹ Any petition for review of this Memorandum and Order must be filed within twenty-five (25) days after this order is served.¹⁰

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael F. Kennedy
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 5, 2015

⁹ Attach. A, Settlement Agreement at 2 ¶ 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.”).

¹⁰ 10 C.F.R. § 2.341(b).

ATTACHMENT 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

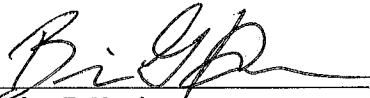
Date



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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
NEXTERA ENERGY SEABROOK, LLC)	Docket No. 50-443-LR
(Seabrook Station, Unit 1))	
)	
(License Renewal))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Dismissing Contention 4D and Terminating the Proceeding) (LBP-15-22)** have been served upon the following persons by Electronic Information Exchange.

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NEXTERA ENERGY SEABROOK, LLC (Seabrook Station Unit 1) – Docket No. 50-443-LR
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(LBP-15-22)

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[Original signed by Clara Sola _____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of August, 2015