

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
William C. Ostendorff
Jeff Baran

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LR

CLI-16-03

MEMORANDUM AND ORDER

Friends of the Coast and New England Coalition (Friends/NEC) request that we order the Final Supplemental Environmental Impact Statement (Final SEIS) for the Seabrook Station, Unit 1 license renewal application to be withdrawn, re-released as a draft or supplement to the Draft Supplemental Environmental Impact Statement (Draft SEIS), and published for public comment.¹ For the reasons set forth below, we deny the motion.

I. BACKGROUND

In May 2010, NextEra Energy Seabrook, LLC applied to renew the operating license for Seabrook for an additional twenty years.² The NRC Staff docketed the application shortly

¹ *Motion to Withhold or Withdraw Final Environmental Impact Statement Pending Renewed Opportunity for Comment* (July 28, 2015), at 1, 8 (Motion).

² Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-86 for an Additional 20-Year Period;

thereafter and provided an opportunity for interested persons to request an adjudicatory hearing.³ Friends/NEC filed a petition to intervene at that time.⁴ The Atomic Safety and Licensing Board granted the petition and admitted several of their proposed contentions.⁵ We affirmed in part and reversed in part the Board's ruling, leaving two admitted contentions pending in the proceeding: Friends/NEC's Contentions 4B and 4D.⁶

The Staff issued the Draft SEIS in July 2011 and made it available for public comment.⁷ The Staff's review of the Seabrook license renewal application continued, and in April 2013, the Staff issued a supplement to the Draft SEIS addressing new information.⁸ Specifically, the Draft

NextEra Energy Seabrook, LLC; Seabrook Station, Unit 1, 75 Fed. Reg. 42,462, 42,462 (July 21, 2010).

³ *Id.* at 42,462-63.

⁴ *Friends of the Coast and New England Coalition Petition for Leave to Intervene, Request for Hearing, and Admission of Contentions* (Oct. 20, 2010).

⁵ LBP-11-2, 73 NRC 28, 79 (2011).

⁶ CLI-12-5, 75 NRC 301, 327, 329, 349 (2012). Both contentions challenged NextEra's severe accident mitigation alternatives (SAMA) analysis for Seabrook. In Contention 4B, Friends/NEC challenged the use in the analysis of certain source terms. In Contention 4D, Friends/NEC challenged NextEra's atmospheric dispersion model. *Id.* at 324-29.

⁷ See "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station" (Draft Report for Comment), NUREG-1437, Supp. 46 (July 2011) (ADAMS accession nos. ML11213A024 and ML11213A203) (Draft SEIS); NextEra Energy Seabrook, LLC; Notice of Availability of Draft Supplement 46 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of Seabrook Station, Unit 1, 76 Fed. Reg. 47,612, 47,612 (Aug. 5, 2011). The Staff held two public meetings during the comment period to receive additional input. See Summary of Public Meetings Conducted to Discuss the Draft Supplemental Environmental Impact Statement Related to the Review of the Seabrook Station License Renewal Application (TAC No. ME3959) (Oct. 26, 2011), at 1 (ML11277A046).

⁸ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station" (Second Draft Report for Comment), NUREG-1437, Supp. 46 (Apr. 2013), at iii, ix (ML13113A174) (Draft SEIS Supplement).

SEIS Supplement addressed (1) an updated SAMA analysis that NextEra submitted in March 2012; (2) the June 2012 decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating the NRC's "Waste Confidence" Rule;⁹ and (3) new issues arising from the NRC's rulemaking to revise the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants.¹⁰ The Draft SEIS Supplement was also made available for public comment.¹¹

In May 2013, NextEra sought summary disposition of Contentions 4B and 4D.¹² Friends/NEC offered no opposition with respect to Contention 4B and the Board dismissed the contention.¹³ With respect to Contention 4D, Friends/NEC, NextEra, and the Staff jointly requested that the Board issue two orders: the first to approve settlement of the contention; the second to dismiss the contention seven days after the Staff had notified the Board of publication

⁹ See generally *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

¹⁰ Draft SEIS Supplement at iii, ix.

¹¹ Draft Supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants; NextEra Energy Seabrook; Seabrook Station, Unit 1, 78 Fed. Reg. 26,662, 26,662 (May 7, 2013) (Notice of Draft SEIS Supplement).

¹² See *NextEra's Motion for Summary Disposition of Friends of the Coast/New England Coalition Contention 4B (SAMA Analysis Source Terms)* (May 10, 2013); *NextEra's Motion for Summary Disposition of Friends of the Coast/New England Coalition Contention 4D (SAMA Analysis Atmospheric Modeling)* (May 10, 2013).

¹³ See *Friends of the Coast and New England Coalition's Answer to NextEra's Motion for Summary Disposition of Contentions 4B (SAMA Source Terms) and 4D (SAMA Atmospheric Modeling)* (July 15, 2013), at 1; Order (Granting Summary Disposition of Contention 4B) (Aug. 12, 2013) (unpublished).

of a Final SEIS providing additional analysis that the parties agreed would resolve the contention.¹⁴ The Board approved settlement of Contention 4D in August 2013.¹⁵

On July 28, 2015, Friends/NEC filed the instant motion.¹⁶ The Staff issued the Final SEIS on July 29, 2015.¹⁷ Among other things, the Final SEIS included (1) the updated SAMA analysis performed pursuant to the Board-approved settlement agreement;¹⁸ (2) a discussion of the impacts from the NRC's Continued Storage Rule and associated GEIS for Continued Storage of Spent Nuclear Fuel;¹⁹ and (3) an updated analysis related to the revision to the License Renewal GEIS, which was finalized after the issuance of the Draft SEIS Supplement.²⁰ Shortly thereafter, and consistent with the parties' earlier request, the Board dismissed Contention 4D and terminated the proceeding.²¹

¹⁴ *Joint Motion for Approval of Settlement and Dismissal of FOTC/NEC Contention 4D* (Aug. 8, 2013), at 1, 3; *id.*, Ex. B, *Proposed Initial Consent Order*, at 2. The additional information involved a sensitivity analysis and related work performed in connection with the atmospheric dispersion model used in NextEra's SAMA analysis. *Id.* at 1-3.

¹⁵ Order (Approving Settlement of Contention 4D) (Aug. 12, 2013) (unpublished).

¹⁶ The Staff and NextEra oppose Friends/NEC's motion. See *NRC Staff's Answer to Motion to Withhold or Withdraw Final Environmental Impact Statement Pending Renewed Opportunity for Comment* (Aug. 7, 2015) (Staff Answer); *NextEra Energy Seabrook, LLC's Answer Opposing Friends of the Coast and New England Coalition's Motion to Withhold or Withdraw Final Environmental Impact Statement* (Aug. 7, 2015).

¹⁷ "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Seabrook Station" (Final Report), NUREG-1437, Supp. 46, Vols. 1-2 (July 2015) (ML15209A575 and ML15209A870) (Final SEIS).

¹⁸ See *id.*, Vol. 1, ch. 5; *id.*, Vol. 2, app. F.

¹⁹ See *id.*, Vol. 1, at 1-4, § 6.1.

²⁰ See *id.*, Vol. 1, at 1-3 to -4, ch. 4.

²¹ LBP-15-22, 82 NRC 49 (2015); see letter from Anita Ghosh, counsel for the Staff, to the Administrative Judges (July 29, 2015), at 1-2 (advising the Board of the Final SEIS's issuance).

II. DISCUSSION

Friends/NEC request that if the SEIS has not been finalized, then we direct that the document be withheld and issued as a draft or supplement for public comment. Alternatively, were we to consider their motion following issuance of the Final SEIS, then Friends/NEC request that we direct that the document be withdrawn and re-issued as a draft or supplement for public comment.²² Because the Final SEIS has been issued and Friends/NEC request, in that circumstance, that we direct that the Final SEIS be withdrawn and re-released as a draft or supplement, our regulation at 10 C.F.R. § 51.92 governs here.²³

Section 51.92 specifies the circumstances under which the Staff is required to prepare a supplement to a final environmental impact statement if (as is the case here) the proposed action has not yet been taken. More specifically, section 51.92(a) requires the Staff to prepare such a supplement if there are (1) “substantial changes in the proposed action that are relevant to environmental concerns” or (2) “new and significant circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” The relevant question is whether substantial changes in the proposed action or new and significant information “presents ‘a seriously different picture’ of the environmental impacts that have been

²² Motion at 1, 10.

²³ Had we considered Friends/NEC’s request in the context of the Draft SEIS, and thereby applied 10 C.F.R. § 51.72, which governs supplementation of a draft environmental impact statement, our analysis would have yielded the same result; sections 51.72(a) and (b) are substantively identical to sections 51.92(a) and (c). See *Union Electric Co. (Callaway Plant, Unit 2)*, CLI-11-5, 74 NRC 141, 167 n.103 (2011).

assessed in the relevant licensing action, and of our analysis of those impacts, when compared to the previously issued final environmental impact statement.”²⁴

Friends/NEC express concern that “the DEIS is a departure from what the public was given the opportunity to review back in 2011” and that the NRC was “deprived of the benefit of public comment (input) on significant portions of the DEIS now containing new information.”²⁵ Friends/NEC also assert that the “material substance” of the Draft SEIS has been “altered” due to the nearly four years between the end of the public comment period for the Draft SEIS and the issuance of the Final SEIS.²⁶ Friends/NEC have not, however, identified any changes in the proposed license renewal action. Friends/NEC also have not pointed to new and significant information relevant to the Seabrook environmental review.

Moreover, the Staff’s approach to the environmental review for Seabrook satisfied the purposes of the National Environmental Policy Act of 1969 (NEPA). The requirement under NEPA to prepare an environmental impact statement serves two purposes.²⁷ First, it “ensures that decisionmakers ‘will have available, and will carefully consider, detailed information concerning significant environmental impacts.’”²⁸ Second, it “guarantees that the relevant

²⁴ *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535, 543 (2015) (quoting *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-04-39, 60 NRC 657, 659 (2004)).

²⁵ Motion at 6.

²⁶ *Id.* at 1-2.

²⁷ *Fermi*, CLI-15-10, 81 NRC at 540 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

²⁸ *Id.* (quoting *Robertson*, 490 U.S. at 349).

information will be made available to the larger audience . . . that may also play a role in the decisionmaking process.”²⁹ The Staff’s approach has fulfilled both of these purposes.

First, the Staff’s efforts have ensured that the NRC has available for its consideration detailed information regarding the environmental impacts of the Seabrook Unit 1 license renewal application. Prior to issuance of the Final SEIS, the Staff identified new information meriting preparation of a supplement to the Draft SEIS.³⁰ The Staff issued the Draft SEIS Supplement analyzing that information in April 2013.³¹ The Final SEIS incorporates both the Draft SEIS and the Draft SEIS Supplement.³² The Final SEIS also considers the public comments submitted on the Draft SEIS as well as those submitted on the Draft SEIS Supplement.³³ As the Staff acknowledges, the NRC’s environmental review in this matter required additional time to complete, in large part because—as relevant here—the Staff identified new information that merited preparation of a supplement to the Draft SEIS.³⁴ Friends/NEC have not identified additional information that was not considered before issuance of the Final SEIS.

Second, the Staff’s efforts have ensured that relevant information was made available to the public and other stakeholders. The record reflects that the Staff afforded Friends/NEC and

²⁹ *Id.* at 540-41 (quoting *Robertson*, 490 U.S. at 349).

³⁰ License Renewal Application for Seabrook Station, Unit 1; NextEra Energy Seabrook, LLC, 77 Fed. Reg. 35,079, 35,080 (June 12, 2012) (informing the public of the Staff’s intent to prepare a supplement to the Draft SEIS to address new information related to SAMA analysis).

³¹ Draft SEIS Supplement at iii, ix.

³² Final SEIS, Vol. 1, at 1-3.

³³ *Id.*

³⁴ See Staff Answer at 8-9.

the public sufficient opportunity to provide input to both the Draft SEIS and the Draft SEIS Supplement.³⁵ Further, the public had an opportunity to provide comments on issues addressed in the Final SEIS through the Continued Storage rulemaking and the revision process for the License Renewal GEIS.³⁶

In summary, Friends/NEC have not shown that supplementation, or an accompanying new opportunity for public comment, is required under our regulations because they have not identified substantial changes in the proposed action or significant new information. The Staff's approach to considering new and significant information, providing opportunities for public input thereon, and issuing a Final SEIS after completing these efforts was reasonable and consistent with the dual objectives of NEPA's environmental-impact-statement requirement.³⁷

³⁵ See Notice of Draft SEIS Supplement, 78 Fed. Reg. at 26,662; NextEra Energy Seabrook, LLC; Notice of Availability of Draft Supplement 46 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of Seabrook Station, Unit 1, 76 Fed. Reg. 47,612, 47,612 (Aug. 5, 2011); Summary of Public Meetings Conducted to Discuss the Draft Supplemental Environmental Impact Statement Related to the Review of the Seabrook Station License Renewal Application (TAC No. ME3959) (Oct. 26, 2011), at 1 (ML11277A046).

³⁶ See Waste Confidence—Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776, 56,776 (Sept. 13, 2013) (soliciting public comments on the proposed rule for continued storage of spent nuclear fuel); Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 74 Fed. Reg. 38,117, 38,117 (July 31, 2009) (soliciting public comments on the revised GEIS for License Renewal).

³⁷ For the same reasons, Friends/NEC have not identified a circumstance in which a supplement should be prepared as a matter of discretion. See 10 C.F.R. § 51.92(c) (providing that the Staff *may* prepare a supplement to a final environmental impact statement when, in its opinion, doing so will further the purposes of NEPA).

III. CONCLUSION

As discussed above, Friends/NEC have not demonstrated that withdrawal of the Final SEIS in this matter is warranted. We therefore *deny* Friends/NEC's motion.

IT IS SO ORDERED.

For the Commission

NRC Seal

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of February, 2016.

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 **COMMISSION MEMORANDUM AND ORDER (CLI-16-03)** have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Clara Sola]
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Dated at Rockville, Maryland
this 25th day of February, 2016