

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LA-2

NRC STAFF'S ANSWER TO C-10'S EMERGENCY PETITION

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INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c), the U.S. Nuclear Regulatory Commission staff files this answer to the “Emergency Petition by C-10 Research and Education Foundation for Exercise of Commission’s Supervisory Authority to Reverse No Significant Hazards Determination and Immediately Suspend License Amendment and License Renewal Decisions” (Petition).¹ C-10 requests that the Commission exercise its inherent supervisory authority and take four specific actions: (1) reverse the Staff’s no significant hazards consideration determination (NSHCD); (2) “immediately order the suspension” of the Staff’s licensing decisions on a pending license amendment request related to alkali-silica reaction (ASR) and license renewal application; (3) open an inquiry into best practices for assessing ASR that would include “all relevant research” and peer review by an “internationally recognized independent panel”; and (4) provide guidance and instruction to the Staff for the establishment of more “rigorous and sophisticated” methods and criteria for evaluating safety risks posed by ASR at

¹ (Feb. 13, 2019) (ADAMS Accession No. ML19044A768).

Seabrook and other reactors.² For the reasons discussed in detail below, the Commission should deny the Petition.

BACKGROUND

This proceeding concerns the August 1, 2016 NextEra Energy Seabrook, LLC (NextEra) license amendment request (LAR) related to ASR at Seabrook Station, Unit No. 1.³ ASR is a chemical reaction that, under certain conditions present at Seabrook, causes the expansion and cracking of concrete, which can potentially impact both the material properties and capacity of a concrete structure.⁴ If granted, the LAR would revise the Seabrook Updated Final Safety Analysis Report (UFSAR) to include a methodology to demonstrate that Seabrook structures with ASR continue to meet the design codes for original construction.⁵ NextEra commissioned MPR Associates (MPR), in collaboration with the Ferguson Structural Engineering Laboratory (FSEL) at the University of Texas at Austin, to conduct a large-scale test program.⁶ NextEra used the results from this large-scale test program and existing literature to develop the methodology proposed in the LAR.⁷

² *Id.* at 16.

³ License Amendment Request 16-03, Revise Current Licensing Basis to Adopt a Methodology for the Analysis of Seismic Category I Structures with Concrete Affected by Alkali-Silica Reaction (Aug. 1, 2016) (ML16216A240).

⁴ *Id.* at 7-8 of 73 (unnumbered).

⁵ *Id.* at 9-10 of 73 (unnumbered).

⁶ *Id.* at 14-15 of 73 (unnumbered).

⁷ *Id.* at 9 of 73 (unnumbered).

On February 7, 2017, the Staff published a notice of opportunity to request a hearing on the LAR⁸ and, in response, C-10 requested a hearing.⁹ In LBP-17-7, the Board ruled that C-10 had standing to intervene and admitted one reformulated contention: that “[t]he large-scale test program ... has yielded data that are not ‘representative’ of the progression of ASR at Seabrook [and, a]s a result, the proposed monitoring, acceptance criteria, and inspection intervals are not adequate.”¹⁰ An evidentiary hearing in this matter is scheduled for 180 days after the Staff’s final safety evaluation of the LAR becomes publicly available, if no new or amended contentions are filed on the final safety evaluation.¹¹

Separately, in 2010, NextEra submitted an application to renew the operating license for Seabrook for an additional twenty years.¹² The adjudicatory proceeding associated with the license renewal application ended in 2016.¹³

⁸ Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information, 82 Fed. Reg. 9601, 9604 (Feb. 7, 2017).

⁹ C-10 Research and Education Foundation, Inc. Petition for Leave to Intervene: Nuclear Regulatory Commission Docket No. 50-443 (Apr. 10, 2017) (ML17100B013).

¹⁰ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), LBP-17-7, 86 NRC 59, 127, 137 (2017). The Commission affirmed the Board’s decision. CLI-18-4, 87 NRC 89, 110 (2018).

¹¹ Memorandum and Order (Revised Scheduling Order) (Feb. 15, 2018) (ML18046A985).

¹² License Renewal Application, NextEra Energy Seabrook, LLC, et al., Docket No. 50-443, Seabrook Station, Unit No. 1, Facility Operating License No. NPF-86 (May 25, 2010) (ML101590098).

¹³ See *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-16-3, 83 NRC 52, 52-54 (2016) (setting out, as part of a decision denying a motion to withdraw the final supplemental environmental impact statement, a brief history of the adjudication). Seabrook was also part of the administrative litigation associated with the Continued Storage Rule. See, e.g., *DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-4, 81 NRC 221, 224, 240 (2015) (declining, on multiple dockets including *Seabrook*, to make predictive findings regarding the technical feasibility of spent fuel disposal as part of reactor licensing decisions); *Calvert Cliffs 3 Nuclear Project, LLC, and UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-8, 80 NRC 71, 74-76, 81 (2014) (lifting the suspension on final licensing decisions (including in the *Seabrook* license renewal matter) in view of the issuance of a revised Continued Storage Rule and associated Generic Environmental Impact Statement; at the same time, the Commission dismissed the continued storage contention pending before the Board in the *Seabrook* matter).

The Staff made its draft safety evaluation of the LAR and safety evaluation report of the license renewal application publicly available on September 28, 2018.¹⁴

On January 11, 2019, the Staff advised the Board and parties to the captioned proceeding of its notifications to the Commission that (1) on or about January 22, 2019, the Staff would issue the amendment and a final NSHCD on the amendment and (2) on or about January 30, 2019, the Staff would issue the renewed facility operating license.¹⁵ On January 22, 2019, the Staff notified the Board and parties that the Staff planned to meet with the public before issuing both the amendment and the renewed license.¹⁶ C-10 thereafter filed the instant petition.

DISCUSSION

C-10 requests that the Commission exercise its discretionary supervisory authority over the Staff and take four specific actions.¹⁷ The Petition does not fall squarely within the NRC's rules of practice.¹⁸ Although the Commission has considered petitions of the type C-10 has filed here,¹⁹ it has found requests for exercise of its inherent supervisory authority in similar

¹⁴ Draft Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. XXX to Facility Operating License No. NPF-86, NextEra Energy Seabrook, LLC, Seabrook Station, Unit No. 1, Docket No. 50-443 (Sept. 28, 2018) (ML18226A205) (Draft SE) and Safety Evaluation Report Related to the License Renewal of Seabrook Station, Docket No. 50-443, NextEra Energy Seabrook, LLC (Sept. 28, 2018) (ML18254A294) (SER).

¹⁵ Board Notification (Jan. 11, 2019) (ML19011A356).

¹⁶ Board Notification (Jan. 22, 2019) (ML19022A400). The Staff held this meeting on February 13, 2019; the Staff's presentation slides may be found at ML19042A110.

¹⁷ Petition at 16.

¹⁸ For example, the provision in the NRC's rules that expressly authorizes stay applications is available to a party seeking a stay of a decision or action of a presiding officer pending the filing and resolution of a petition for review—the rule does not contemplate the type of suspension requested by C-10 here. See 10 C.F.R. § 2.342.

¹⁹ See, e.g., *Union Electric Co., d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141 (2011).

circumstances procedurally improper.²⁰ The Commission should deny each of C-10's requests for this reason, and for the reasons discussed in detail below.

I. The Commission Should Deny C-10's Requests to Reverse the Staff's NSHCD and to Stay the Issuance of the License Amendment

C-10 first requests that the Commission “[r]eview and reverse the Staff’s [NSHCD] to allow the prior completion of an adjudicatory hearing on C-10’s admitted ASR-related contentions before the [Board]” and “immediately order the suspension of the LAR ... decision[.]”²¹

The issuance of a license amendment prior to a hearing being held on the amendment is permitted by Section 189 of the Atomic Energy Act of 1954, as amended (AEA), and the NRC’s regulations at 10 C.F.R. §§ 2.340, 2.1202, 50.91, and 50.92. Specifically, the AEA and NRC regulations allow the issuance of an amendment during the pendency of a hearing on the amendment upon a determination by the NRC that the amendment involves no significant hazards consideration. By design, the Staff’s decision on an amendment request and the Staff’s decision on the “no significant hazards consideration determination” associated with that request are two separate actions.²² Whereas a decision on an amendment request generally

²⁰ See, e.g., *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-09-6, 69 NRC 128, 138 (2009) (holding, with respect to a party’s request that the Commission exercise its inherent supervisory authority to take interlocutory review of a matter, that “[T]he Commission itself may exercise its discretion to review [an interlocutory Board decision] if the *Commission* wants to address a novel or important issue However, the Commission’s decision to do so in any particular proceeding stems from its inherent supervisory authority over adjudications and *in no way implies that parties have a right to seek interlocutory review on that same ground.*”) (alteration in original) (quoting *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-00-11, 51 NRC 297, 299 (2000)).

²¹ Petition at 16.

²² Final Procedures and Standards on No Significant Hazards Considerations, 51 Fed. Reg. 7744, 7749 (March 6, 1986) (quoting Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982)) (“[The no significant hazards consideration] standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations.”).

requires reasonable assurance of the health and safety of the public and the common defense and security,²³ a determination on no significant hazards consideration is limited to a determination whether to hold a hearing before, as opposed to after, an amendment is issued.²⁴

As a threshold matter, C-10's request is prohibited by NRC regulations. Under the regulations at 10 C.F.R. § 2.1213(f), "[s]tays are not available on matters limited to whether a no significant hazards consideration determination was proper in proceedings on power reactor license amendments."²⁵ Additionally, under 10 C.F.R. § 50.58(b)(6), "[n]o petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission" C-10's request is, by its own terms, a request for review of the Staff's NSHCD associated with the Seabrook ASR-related amendment—the exact filing that 10 C.F.R. § 50.58(b)(6) prohibits. Therefore, the Commission should reject this request and find, as it has previously, that 10 C.F.R. § 50.58(b)(6) is "quite clear in this regard...."²⁶

²³ See 10 C.F.R. §§ 50.92 and 50.40.

²⁴ 51 Fed. Reg. at 7749. To make the NSHCD, the Staff considers three criteria as "screening devices": whether the proposed amendment would (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. *Id.* at 7748-49. If the proposed amendment meets any one of these criteria, a significant hazards consideration exists; if a hearing on such amendment request is granted, that hearing must take place prior to the Staff's action on the request. 10 C.F.R. § 50.92(c).

²⁵ In 2012, the NRC added a new paragraph (f) to 10 C.F.R. § 2.1213 to exclude from the stay provisions matters limited to whether an NSHCD for a power reactor license amendment was proper. Final Rule, Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46,562, 46,580 (Aug. 3, 2012). The Commission explained that challenges to NSHCDs, which may be made in license amendment proceedings for production or utilization facilities that are subject to the 10 C.F.R. Part 50 requirements, are not allowed in accordance with 10 C.F.R. § 50.58(b)(6). *Id.* The Commission observed that excluding NSHCDs from the stay provisions is consistent with federal case law holding that these findings, which are not appealable to the Commission, are final agency actions. *Id.* (citing *Ctr. for Nuclear Responsibility, Inc. v. NRC*, 586 F. Supp. 579, 580-81 (D.D.C. 1984)).

²⁶ *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-7, 53 NRC 113, 117-18 (2001) (rejecting under 10 C.F.R. § 50.58(b)(6) a "petition for review and request for immediate

The Staff recognizes, however, that, at bottom, C-10 seeks to stay the issuance of the Seabrook ASR-related amendment until after the completion of the hearing on the amendment. But even under this expansive reading of the Petition, and even if such a request would not run afoul of 10 C.F.R. § 2.1213(f), C-10 fails to address the criteria for an application for a stay in 10 C.F.R. § 2.1213: (1) whether the requestor will be irreparably injured unless a stay is granted; (2) whether the requestor has made a strong showing that it is likely to prevail on the merits; (3) whether the granting of a stay would harm other participants; and (4) where the public interest lies.²⁷ Since C-10 does not address these factors in its Petition,²⁸ its request should be denied.²⁹

Even if the Commission were to interpret C-10's filing in a light most favorable to C-10, the filing would still not support a stay of the issuance of the Seabrook ASR-related amendment. First, C-10's arguments are not sufficient to demonstrate that it faces imminent, irreparable harm that is both "certain and great."³⁰ C-10 states that the amendment (1) has to do with containment, which is a "key component[] of a reactor"; (2) involves the first-of-a-kind occurrence of ASR at a U.S. nuclear power plant, for which there is a "lack of standards [and] long-term knowledge"; and (3) affects operation during the current license term and the renewed

suspension and stay of the NRC staff's no significant hazards determination and issuance of license amendment").

²⁷ 10 C.F.R. § 2.1213(d).

²⁸ 10 C.F.R. § 2.1213(b) ("An application for a stay of the NRC staff's action ... must contain ... [a] concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.").

²⁹ See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-06-8, 63 NRC 235, 237-38 (2006) (denying a request to stay the Staff's issuance of an operating license amendment prior to the completion of a pending adjudication on the amendment for failure to address or otherwise meet the stay standards).

³⁰ *Vermont Yankee*, CLI-06-8, 63 NRC at 237 ("Irreparable harm is the most important of the four standards—the *sine qua non* of obtaining a stay.").

license term.³¹ As the First Circuit has found, however, “[m]erely raising the specter of a nuclear accident’ does not demonstrate irreparable harm.”³² Indeed, given that Seabrook has been operating since NextEra initially identified visual indications typical of ASR in 2009,³³ that ASR is a slow-progressing degradation mechanism,³⁴ and that the amendment only changes Seabrook’s UFSAR to reflect its current operations and does not “alter the design, physical configuration, or method of operation of any plant [structure, system, or component],”³⁵ these arguments do not demonstrate that the issuance of the amendment would cause imminent, irreparable harm to C-10.

More importantly, the Staff’s decision to grant the amendment prior to the hearing on the amendment does not leave C-10 without effective redress. The Commission’s regulations and case law indicate that the existence of a challenge to an amendment alone cannot suffice to stay the issuance of the amendment during the pendency of the hearing; the challenge will be addressed through the normal hearing process and its final outcome will be made effective.³⁶

³¹ Petition at 5-6, 9-10, 13.

³² *Vermont Yankee*, CLI-06-8, 63 NRC at 237-38 (quoting *Massachusetts Coalition of Citizens with Disabilities v. Civil Defense Agency*, 649 F.2d 71, 75 (1st Cir. 1981)).

Further, the Commission should not be expected to sift through documents attached to a pleading in search of asserted factual support that the pleading does not specify. *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 332 (2012).

³³ Draft SE at 5.

³⁴ *Id.* at 55.

³⁵ 82 Fed. Reg. at 9604. The amendment only involves the use of a new methodology that will “demonstrate that [Seabrook] structures continue to satisfy the design requirements of the code of construction and other applicable requirements with the additional load from ASR.” *Id.*

³⁶ 10 C.F.R. § 2.340(a)(2)(ii) (“Once the presiding officer’s initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision.”); *Vermont Yankee*, CLI-06-8, 63 NRC at 238 (“If the Board determines after full adjudication that the license amendment should not have been granted, it may be revoked (or conditioned).”).

Absent a showing of irreparable harm, C-10 must show that success on the merits is a “virtual certainty.”³⁷ Based on a report developed by its expert, Dr. Victor Saouma, C-10 argues that the amendment “fails to ... adequately protect public health and safety from the effects of a design basis earthquake at Seabrook” because “concrete used in the FSEL tests is not representative of the concrete at Seabrook,” “the Shear tests do not have the proper boundary conditions,” “the crack index measurements relied on ... cannot provide a reliable assessment of the *in-situ* ASR expansion,” and NextEra uses “linear and deterministic analysis” instead of “probabilistic analysis”³⁸ However, the mere articulation of possible grounds for reversal of an NRC decision, as C-10 outlines in its Petition, is not in and of itself sufficient to justify a stay.³⁹ Because material issues of fact remain in dispute, C-10 has not made the requisite showing that success on the merits is a virtual certainty.

Finally, C-10 does not address whether the granting of a stay would harm other participants, such as NextEra.⁴⁰ Nor does C-10 consider where the public interest lies, including consideration of the fact that the issuance of the amendment would update the Seabrook license to account for the monitoring and management of the effects of ASR where no

³⁷ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-13, 67 NRC 396, 400 (2008) (citations omitted).

³⁸ Petition at 13-16; see also *id.* at 3 (“NextEra’s studies cannot lawfully be relied on by the NRC Staff to establish NextEra’s satisfaction of NRC safety requirements for the amendment or renewal of its license, or for continuing safe operation.”). To be sure, the Staff takes no position here on the positions articulated by (or on the statements of) C-10 and Dr. Saouma. Moreover, many of these statements appear to be outside the scope of the contention admitted in this proceeding, which is limited to whether the large-scale test program has yielded data that are representative of the progression of ASR at Seabrook. See *Seabrook*, LBP-17-7, 86 NRC at 127.

³⁹ See *Toledo Edison Co., The Cleveland Elec. Illuminating Co.* (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), *The Cleveland Elec. Illuminating Co., et al.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-385, 5 NRC 621, 634 (1977).

⁴⁰ See *Vermont Yankee*, CLI-06-8, 63 NRC at 238.

such requirement currently resides.⁴¹ Accordingly, C-10 does not make a case for a stay of the issuance of the amendment.

For these reasons, the Commission should deny C-10's request to reverse the Staff's NSHCD and to stay the Staff's issuance of the amendment during the pendency of the hearing on the amendment.

II. The Commission Should Deny C-10's Request to Stay the Issuance of the Renewed License

C-10 next requests that the Commission "immediately order the suspension of the ... [license renewal] decision[]." ⁴² In accordance with Commission case law, a motion to stay issuance of a license will not be granted unless the factors usually considered in granting emergency injunctive relief are satisfied.⁴³ These factors include: irreparable harm, likelihood of success on the merits, absence of harm to others, and the public interest.⁴⁴ As is the case with the amendment request, discussed immediately above, C-10 does not address these stay factors and, therefore, the Commission should deny its request to stay the issuance of the renewed license.

Moreover, C-10 does not even articulate sufficient grounds for a stay of the issuance of the renewed license because nowhere in the Petition does C-10 demonstrate that it would be irreparably harmed by the issuance of the renewed license. Noting the "entwined relationship" between the ASR-related license amendment request and the license renewal application, the

⁴¹ In addition, as the Commission has previously noted, NRC regulations "expressly instruct the Staff not to let pending hearings delay licensing decisions: the Staff is 'to issue its approval or denial of the application promptly' once it completes its own review of the application, notwithstanding the 'pendency of any hearing.'" *Vermont Yankee*, CLI-06-8, 63 NRC at 237 (quoting 10 C.F.R. § 2.1202(a)).

⁴² Petition at 16.

⁴³ *Oyster Creek*, CLI-08-13, 67 NRC at 399-400 (citations omitted).

⁴⁴ *Id.*

Staff understands C-10 to argue that it intervened in the license amendment request proceeding “with the understanding that its concerns about the long-term risks of ASR during the license renewal term should be raised in the [license amendment request] proceeding in order to have an effect on the license renewal decision.”⁴⁵ C-10 is correct that the license renewal application relies, in part, on the ASR-related license amendment request and that the issuance of the renewed license depends upon the completion of that action.⁴⁶ But this relationship between the two applications is not, in and of itself, sufficient to demonstrate irreparable harm. On the contrary, even if the amendment and then the renewed license are approved before the hearing on the amendment request, the amendment and the renewed license would be modified, if necessary, to reflect the final outcome of the hearing process.⁴⁷ Thus, in the Staff’s view, issuing the amendment and then the renewed license during the pendency of the hearing on the amendment will not irreparably harm C-10.

⁴⁵ Petition at 5-6.

⁴⁶ See Memorandum from Ho K. Nieh, Director, Office of Nuclear Reactor Regulation, to the Commissioners, NRC, “Renewal of Full-Power Operating License for Seabrook Station, Unit No. 1” (Jan. 10, 2019) (ML19011A356) (stating that “[f]our of the Seabrook license renewal aging management programs (i.e., the plant-specific Alkali-Silica Reaction (ASR) Monitoring Program, the plant-specific Building Deformation Monitoring Program, the Structures Monitoring Program, and the ASME Section XI, Subsection IWL aging management program) are based, in whole or in part, on the methodology submitted in the license amendment request” and that the Staff intended to issue the renewed license “subsequent to the issuance of the license amendment”).

⁴⁷ See *Vermont Yankee*, CLI-06-8, 63 NRC at 237-38 (rejecting the argument that issuing an amendment before a hearing on the amendment request will deny the intervenor “effective redress and due process” because “[i]f the Board determines after full adjudication that the license amendment should not have been granted, it may be revoked (or conditioned)”; 10 C.F.R. § 2.340(a)(2)(ii) (“Once the presiding officer’s initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision.”); 10 C.F.R. § 54.31(c) (“If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license ... previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner.”); see also Letter from NextEra to NRC, “Seabrook Station, License Renewal Application Relating to the Alkali-Silica Reaction (ASR) Monitoring Program” (Aug. 9, 2016) (ML16224B079) (“Any changes to [the LAR’s methodologies to evaluate concrete affected by ASR] resulting from the NRC’s review of the LAR will be reflected in the [ASR-related aging management programs] through updating the [current licensing basis] or as operating experience, as appropriate.”).

In addition, as described in Section I above, although C-10 sets forth possible grounds for the vacatur (or other modification) of the ASR-related amendment, it does not make an overwhelming showing that it is likely to prevail on the merits. Moreover, C-10 does not address whether granting a stay would harm other participants, including NextEra. With respect to the public interest, C-10 argues that issuance of the renewed license must await the completion of the hearing on the amendment to “maintain the integrity and accountability of the NRC’s regulatory scheme for license renewal, and to be fair to C-10 as an interested member of the public.”⁴⁸ However, as noted above, the contested proceeding on the license renewal application has ended;⁴⁹ C-10 did not submit a motion to re-open that proceeding. The Director of the Office of Nuclear Reactor Regulation is authorized to issue uncontested license renewals without prior Commission authorization once the Director has made the appropriate findings.⁵⁰ The issuance of the Seabrook renewed license during the pendency of the hearing on the license amendment would not preclude the later modification of the renewed license to reflect the final outcome of the hearing.⁵¹ Therefore, a stay of the renewed license is not necessary.⁵²

⁴⁸ Petition at 15.

⁴⁹ See *supra* footnote 13.

⁵⁰ Staff Requirements Memorandum for SECY-02-0088, “Turkey Point Nuclear Plant, Units 3 and 4, Renewal of Full-Power Operating Licenses” (Jun. 5, 2002) (ML021560479). The Director made the appropriate findings in the Staff safety evaluation report and final supplemental environmental impact statement. SER at 6-1; “Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 46, Regarding Seabrook Station” (Final Report), NUREG-1437, vol. 1 (July 2015), at 9-4 (ML15209A575).

⁵¹ See *supra* footnote 47.

⁵² Moreover, to the extent C-10 argues that issuance of the renewed license would not be in the public interest, this factor alone would not outweigh consideration of the other three stay factors, which C-10 did not meet. *Oyster Creek*, CLI-08-13, 67 NRC at 400 (noting that the petitioner’s failure to show irreparable harm or a likelihood of success on the merits makes it unnecessary to consider the remaining stay factors: balance of harms and the public interest).

For these reasons, the Commission should deny C-10's request to stay issuance of the renewed license during the pendency of the hearing on the amendment request.

III. The Commission Should Deny C-10's Request to Open an Inquiry into ASR

C-10 next requests that the Commission “[g]ive due recognition to the significance, complexity, and lack of adequately rigorous study of ASR by opening an in-depth inquiry into best practices for assessing ASR, including consideration of all relevant research and use of peer review by an internationally recognized independent panel”⁵³ Such an action, however, is not warranted here because it is not within the scope of this proceeding, which has to do with whether the ASR-related license amendment request complies with the Commission’s regulations.⁵⁴ Importantly, in this regard, the Advisory Committee on Reactor Safeguards (ACRS) has evaluated the issue of ASR at Seabrook and concluded that the amendment request “establishes a robust analytical methodology, supported by a comprehensive large scale test program, for the treatment and monitoring of [ASR]-affected Seismic Category I structures at Seabrook.”⁵⁵ The ACRS further found that the license renewal application’s aging management programs to monitor ASR and building deformation “incorporate the test program results and license amendment request methodology and assure that the effects of [ASR] will

⁵³ Petition at 16.

⁵⁴ See Memorandum from Annette Vietti-Cook, Secretary of the Commission, to E. Roy Hawkens, Chief Administrative Judge, Atomic Safety and Licensing Board Panel, “Request for Hearing in the Matter of NextEra Energy Seabrook LLC, Seabrook Station, Unit 1, Docket No. 50-443-LA-2” (Apr. 12, 2017) (ML17102B570).

⁵⁵ Letter from Michael Corradini, Chairman, ACRS, to Kristine L. Svinicki, Chairman, NRC, “Seabrook Station Unit 1 License Renewal Application: Review of Licensee Program Addressing Alkali-Silica Reaction,” at 1 (Dec. 14, 2018) (ML18348A951). The ACRS is independent of the Staff and reports directly to the Commission, which appoints its members. 42 U.S.C. § 2039.

be effectively tracked and evaluated through the end of the license renewal application period of extended operation.”⁵⁶

Additionally, the Staff is already generically addressing the issue of ASR. Since NextEra initially identified visual indications typical of ASR in 2009,⁵⁷ the Staff has taken numerous steps to better understand ASR and to make the U.S. nuclear power industry aware of the issue of ASR. In 2011, the Staff issued an Information Notice to all licensees and applicants informing them of the ASR at Seabrook so that they can consider actions, as appropriate, to avoid similar problems at their facilities.⁵⁸ The Staff has revised the Standard Review Plan for the review of subsequent license renewal applications to describe when applicants may need plant-specific aging management programs to address ASR.⁵⁹ The Staff has funded independent research projects into ASR, including by the National Institute of Standards and Technology (NIST),⁶⁰ the University of Colorado at Boulder (with Dr. Saouma, C-10’s expert, as principal investigator),⁶¹

⁵⁶ Corradini Letter at 1.

⁵⁷ Draft SE at 5.

⁵⁸ NRC Information Notice 2011-20, “Concrete Degradation by Alkali-Silica Reaction” (Nov. 18, 2011) (ML112241029).

⁵⁹ “Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants” (Final Report), NUREG-2192 (July 2017), at 3.5-12, 3.5-13, 3.5-15 (ML17188A158).

⁶⁰ Interagency Agreement between NRC and NIST (Mar. 31, 2014) (ML14147A221) (to “develop a technical basis and regulatory guidance for NRC staff to evaluate ASR-affected concrete structures [and to] assess the structural performance of ASR-affected concrete structures for design basis static and dynamic loading and load combinations through its service life, including the period of extended operation for the 20 year license renewal period”).

⁶¹ Grant and Cooperative Agreement between NRC and the Regents of the University of Colorado (Sept. 30, 2014) (ML14274A265) (to research the effect of ASR on shear strength, the ability to predict the future expansion of ASR and its kinetics, and the impact of ASR on the safety and serviceability of a nuclear power plant). A “grant” is a legal instrument for transferring money, property, or services to a recipient to accomplish a public purpose of support or stimulation where there will be no substantial involvement between the Federal agency and the recipient during performance. “Financial Assistance Program” NRC Directive Handbook 11.6 (July 28, 2017), at 2 (ML18073A311). See also 31 U.S.C. § 6304.

and Northwestern University.⁶² ASR is also being investigated by the Electric Power Research Institute's (EPRI) Long Term Operations research program,⁶³ the Department of Energy's (DOE) Light Water Reactor Sustainability research program,⁶⁴ the Nuclear Energy Agency's (NEA) Committee on the Safety of Nuclear Installations (CSNI), Working Group on Integrity and Ageing of Components and Structures,⁶⁵ and France's Institut de radioprotection et de sûreté nucléaire (IRSN).⁶⁶ The NRC plans to use the results of these studies to further its

⁶² Grant and Cooperative Agreement between NRC and Northwestern University (Sept. 30, 2014) (ML14275A015) (to provide support to the "Service Lifetime Extension of Nuclear Power Plants: Prediction of Concrete Aging and Deterioration Through Accelerated Tests, Nondestructive Evaluation, and Stochastic Multiscale Computations").

⁶³ See U.S. Department of Energy, "Light Water Reactor Sustainability Program — A Summary of Collaborative Research and Development Activities," INL/EXT-19-52416, Rev. 0 (Jan. 2019), at 11 (available at https://lwrs.inl.gov/Technical%20Integration%20Office/FY-18_LWRS_Collaborative_RD.pdf) (stating that EPRI is working to develop the technical basis for detecting, evaluating, and managing the effects of ASR); Sherry Bernhoft, EPRI Senior Program Manager, NRC Commissioner Briefing on the Status of Subsequent License Renewal Preparations, "EPRI Long Term Operations: Research & Development for Aging Management" (Apr. 26, 2017) (available at <https://www.nrc.gov/reading-rm/doc-collections/commission/slides/2017/20170426/bernhoff-20170426.pdf>) (showing a series of technical reports on ASR aging management that EPRI is publishing); Emma L. Wong & Sherry Bernhoft, *Overview of the Electric Power Research Institute's Research for Long Term Operations*, 117 TRANSACTIONS OF THE AM. NUCLEAR SOC'Y, 648, 648 (October 29–November 2, 2017) (available at http://answinter.org/wp-content/2017/data/polopoly_fs/1.3879846.1507849315!/fileserver/file/822705/filename/204.pdf) (listing EPRI technical reports on ASR).

⁶⁴ See U.S. Department of Energy, "Light Water Reactor Sustainability Program, Integrated Program Plan," INL/EXT-11-23452, Rev. 7 (Nov. 2018), at 26-27 (available at https://lwrs.inl.gov/Technical%20Integration%20Office/LWRS_Integrated_Program_Plan.pdf) (discussing the DOE project to "study the development of [ASR] expansion and induced damage of large-scale specimens that are representative of structural concrete elements found in nuclear power plants").

⁶⁵ See Organisation for Economic Co-operation and Development, Nuclear Energy Agency, "Final Report on the Phase 1 of the Assessment of Structures Subjected to Concrete Pathologies," NEA/CSNI/R(2016)13 (July 2017), at 23 (available at <https://www.oecd-nea.org/nsd/docs/2016/csni-r2016-13.pdf>); Organisation for Economic Co-operation and Development, Nuclear Energy Agency, "Phase II of the Assessment of Structures Subjected to Concrete Pathologies (ASCET): Final Report," NEA/CSNI/R(2018)4 (Jan. 21, 2019) (available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=NEA/CSNI/R\(2018\)4&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=NEA/CSNI/R(2018)4&docLanguage=En)).

⁶⁶ See IRSN, *Research programs*, <https://www.irsn.fr/EN/Research/Research-organisation/Research-programmes/Odoba-project/Pages/ODOBA.aspx> (discussing the IRSN's "observatory of the durability of reinforced concrete structures" research project).

understanding of ASR.⁶⁷ Finally, with respect to C-10's request that the Staff use "peer review by an internationally recognized independent panel,"⁶⁸ the Staff has already used an expert panel to identify knowledge gap areas with regard to the aging mechanisms of concrete structures for subsequent license renewal to 80 years, which included consideration of ASR.⁶⁹

For these reasons, the Commission should deny C-10's request that it open an inquiry into ASR as a part of this adjudicatory proceeding.⁷⁰

IV. The Commission Should Deny C-10's Request to Instruct the Staff to Establish More Rigorous Criteria for Evaluating ASR

Finally, C-10 requests that the Commission, "[p]rovide guidance and instruction to the Staff for establishment of significantly more rigorous and sophisticated state-of-the-art methods and criteria for evaluating safety risks posed by ASR at Seabrook and other reactors."⁷¹ With respect to the ASR-related amendment request, the Staff evaluated the request against all applicable regulatory standards.⁷² Whether these standards are sufficient, as opposed to whether the request satisfies these standards, is a challenge to the Commission's regulations

⁶⁷ See "Research Activities FY 2018-2020," NUREG-1925, Rev. 4 (Mar. 2018), at 144 (ML18071A139) (stating that, with respect to ASR, the NRC Office of Nuclear Regulatory Research participates in domestic cooperative research with DOE and EPRI and international cooperative research with NEA and IRSN).

⁶⁸ Petition at 16.

⁶⁹ "Expanded Materials Degradation Assessment (EMDA), Volume 4: Aging of Concrete and Civil Structures" NUREG/CR-7153 (Oct. 2014) (ML14279A430) (prepared by an expert panel, which included Dr. Saouma).

⁷⁰ To the extent that C-10 wants more to be done regarding ASR than is already being done, its request is more appropriately addressed through the 10 C.F.R. § 2.802 petition for rulemaking process. See, e.g., *Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-13-10, 78 NRC 563, 568-69 (2013) (citations omitted) (observing that, if an interested person wishes to pursue safety concerns generically, it may, at any time, file a petition for rulemaking under 10 C.F.R. § 2.802, and, in the absence of a live controversy, any such request before the Commission should be dismissed).

⁷¹ Petition at 16.

⁷² See Draft SE at 1-4.

that is not permissible in this proceeding.⁷³ If C-10 seeks different regulatory standards, then the appropriate vehicle to request such a change is to file a 10 C.F.R. § 2.802 petition for rulemaking.⁷⁴ Additionally, if C-10 believes that ASR at Seabrook poses a current safety risk,⁷⁵ then its remedy is to file a 10 C.F.R. § 2.206 request for agency action.

At its foundation, in making this argument, C-10 appears to lodge a thinly veiled challenge to the Staff's review of the license amendment request. Case law is clear that such a challenge is improper.⁷⁶ C-10 will have the opportunity to litigate the merits of the admitted contention at the evidentiary hearing. If it is dissatisfied with the Board's ultimate resolution of that contention, C-10 will have an opportunity to appeal at the end of the case. Commission intervention on the merits is not warranted at this time.

For all these reasons, the Commission should deny C-10's request that it instruct the Staff to establish more rigorous criteria for evaluating safety risks posed by ASR at Seabrook and other reactors.

⁷³ 10 C.F.R. § 2.335(a).

⁷⁴ See 10 C.F.R. § 2.335(e) ("Whether or not the procedure in paragraph (b) of this section is available, a participant to an initial or renewal licensing proceeding may file a petition for rulemaking under [10 C.F.R.] § 2.802.").

⁷⁵ See Petition at 2 (challenging "the Staff's determination that Seabrook can be operated safely on a day-to-day basis despite the presence of ASR (formally announced in 2012 and continually renewed as a matter of enforcement oversight)").

⁷⁶ See, e.g., *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 493 n.56 (2010) (citations omitted) (noting that adjudicatory challenges that focus on the Staff's review of the application rather than errors or omissions of the application are not permitted in NRC adjudications); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), CLI-09-5, 69 NRC 115, 123 n.39 (2009); *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 476-77, 481-82 (2008) (citations omitted) (stating that "[t]he NRC has not, and will not, litigate claims about the adequacy of the Staff's safety review in licensing adjudications" and that it is the applicant, not the Staff, that has the burden of proof in litigation); Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004) ("The adequacy of the applicant's license application, not the NRC staff's safety evaluation, is the safety issue in any licensing proceeding, and under longstanding decisions of the agency, contentions on the adequacy of the SER are not cognizable in a proceeding.").

CONCLUSION

For the foregoing reasons, the Staff respectfully requests that the Commission deny C-10's Petition.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Colorado Springs, Colorado
this 25th day of February, 2019

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LA-2

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO C-10'S EMERGENCY PETITION," dated February 25, 2019, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 25th day of February, 2019.

/Signed (electronically) by/

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Dated at Colorado Springs, Colorado
this 25th day of February, 2019