



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 21, 2020

Mr. Don Moul
Executive Vice President, Nuclear Division
and Chief Nuclear Officer
Florida Power & Light Company
NextEra Energy Seabrook, LLC
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Juno Beach, FL 33408

SUBJECT: SEABROOK STATION, UNIT NO. 1 – EXEMPTION FROM REQUIREMENTS
OF 10 CFR PART 50, APPENDIX E, SECTIONS IV.F.2.B AND IV.F.2.C
(EPID L-2020-LLE-0229 AND EPID L-2020-LLE-0230 [COVID-19])

Dear Mr. Moul:

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Appendix E to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Sections IV.F.2.b and IV F.2.c, for Seabrook Station, Unit No. 1 (Seabrook). This action is in response to your application dated December 3, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20338A493), that requested:

- a one-time schedular exemption from the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b, to postpone conducting the calendar year (CY) 2020 biennial onsite emergency preparedness (EP) exercise until CY 2021, and
- a one-time schedular exemption from the requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, for conducting the CY 2020 biennial EP exercise with full offsite response organization (ORO) participation.

NextEra Energy Seabrook, LLC (NextEra, the licensee) holds Renewed Facility Operating License No. NPF-86, which authorizes operation of Seabrook. This license is subject to the rules, regulations, and orders of the Commission. The facility consists of a pressurized-water nuclear reactor located on the western shore of Hampton Harbor in Rockingham County in the Township of Seabrook, New Hampshire.

By letter dated December 3, 2020, NextEra submitted a request for a one-time schedular exemption from Appendix E to 10 CFR Part 50, Sections IV.F.2.b and IV.F.2.c, regarding the performance of its CY 2020 biennial EP exercise.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b, state, in part:

Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. ... The exercise may be included in the full participation biennial exercise required by paragraph 2.c of this section.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

In Appendix E to 10 CFR Part 50, the NRC defines the term “full participation,” when used in conjunction with EP exercises for a particular site, to mean appropriate offsite State and local authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local, and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. While desirable, full participation exercises (i.e., exercises required by 10 CFR Part 50, Appendix E, Sections IV.F.2.b and 2.c) are not required to be performed simultaneously.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation’s healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing, limiting assemblies) in an attempt to limit the spread of COVID-19.¹

In Attachment 1, “Request One-Time Exemption for 10 CFR 50, Appendix E, Section IV.F.2.b,” and Attachment 2, “One-Time Exemption Request for 10 CFR 50, Appendix E, Section IV.F.2.c,” to your application, you provided the following information:

- NextEra requests to postpone the CY 2020 biennial onsite EP exercise until CY 2021 and to not conduct the CY 2020 biennial offsite EP exercise to support the continued implementation of COVID-19 isolation activities (e.g., social distancing, group size limitations, remote working, etc.) at Seabrook. These isolation activities are intended to protect both onsite emergency response organization (ERO) and the ORO personnel from the spread of COVID-19, while allowing the OROs to continue their focus on essential COVID-19 PHE response efforts.
- The threat of the COVID-19 spread has resulted in the inability to safely conduct the biennial EP exercise at Seabrook in CY 2020. In addition, NextEra was notified by the affected OROs of their decision to defer participation in the exercise that had been rescheduled from September 2020 to December 2020. Further, the State of New Hampshire Department of Safety and the Commonwealth of Massachusetts Emergency Management Agency support NextEra’s request for an exemption (as reflected in Attachment 3, “Correspondence Relating to Offsite Emergency Response Organization Participation in Radiological Emergency Plan Exercises During the COVID-19 Public Health Emergency,” to the application).

¹ CDC, “How to Protect Yourself and Others,” April 18, 2020 (ADAMS Accession No. ML20125A069).

- The last biennial EP exercise was conducted on April 4, 2018. Since that time, the licensee has conducted numerous drills, exercises, and other training activities that have exercised its emergency response strategies, in coordination with offsite agencies. Attachments 1 and 2 to the application provide a list of drills, exercises, and other training activities with the offsite agencies that NextEra has undertaken since the April 4, 2018, exercise.
- NextEra plans to conduct training and drills with the ERO throughout CY 2021.
- The licensee made a reasonable effort to reschedule the CY 2020 biennial EP exercise during CY 2020 but was unsuccessful. The biennial EP exercise was originally scheduled for September 2020 but was moved to December 2020 due to the COVID-19 PHE impacts on NextEra, as well as the State's availability for exercise preparation. The threat of COVID-19 spread and the notification by the affected OROs of their decision to defer participation in the December 2020 exercise resulted in the inability to conduct the biennial EP exercise at Seabrook in CY 2020. The requested exemption would postpone the CY 2020 biennial onsite EP exercise to CY 2021, with a current rescheduled date of August 11, 2021, and would cancel the CY 2020 biennial offsite EP exercise, with the next performance of that exercise to be no later than the end of CY 2022. Future biennial EP exercises would continue to be held in even-numbered years.
- Since the date of the rescheduled biennial onsite EP exercise (i.e., August 11, 2021) is greater than 35 months from the month of the previously evaluated biennial EP exercise conducted on April 4, 2018, NRC Region I performed an EP Baseline Program Inspection during the week of December 7, 2020, to confirm the adequacy of the licensee's EP Program. In addition, as reflected in the letter provided in Attachment 3 to the application, the State of New Hampshire states, in part, that the Federal Emergency Management Agency (FEMA) Regional Assistance Committee Chair has approved reasonable assurance (without findings) as it relates to the 2020 Graded Exercise.
- Attachment 3 to the application provides statements from responsible OROs indicating that they support the licensee's exemption request, that they are committed to maintaining their radiological emergency plans, and that the exemption would not adversely affect their ability to maintain response capability to support emergency response activities to actual nuclear power plant radiological emergencies.

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present.

The NRC staff determined that the requested exemption is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The regulations in 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, concern requirements for licensees to conduct biennial EP exercises at their facilities. No new accident

precursors are created by allowing the licensee to postpone the CY 2020 biennial onsite EP exercise to CY 2021 and to not conduct the CY 2020 biennial offsite EP exercise. Thus, the probability and consequences of postulated accidents are not increased. In addition, the requested exemption has no relation to security issues. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Special circumstances, per 10 CFR 50.12, that apply to the requested exemption include:

- a. 10 CFR 50.12(a)(2)(ii): “Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.”

The regulation in 10 CFR Part 50, Appendix E, Section, IV.F.2.b, requires licensees to conduct an exercise of their site emergency plan biennially. Further, the regulation in 10 CFR Part 50, Appendix E, Section IV.F.2.c, requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. The underlying purpose of these requirements is to ensure that the emergency organization personnel are familiar with their duties and to identify and correct any weaknesses that may exist in the licensee’s EP Program. The underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities and the licensee. The licensee has provided a list of training activities in Attachments 1 and 2 to the application that have occurred since the last evaluated biennial EP exercise, as well as its plans to conduct training and drills with the ERO throughout CY 2021. NextEra further stated that this training will ensure that the onsite ERO is fully prepared to respond to an event at Seabrook. Additionally, NextEra stated that it understands that approval of the exemption request will not impact the future biennial EP exercise schedule at Seabrook and that the exercises will continue to be held in even-numbered years.

Additionally, with respect to the exemption request to not conduct the CY 2020 biennial offsite EP exercise, the NRC recognizes that in the event of an actual radiological emergency, offsite authorities would respond. Offsite authorities in all states are currently demonstrating response capabilities, including making decisions on protective actions for the public, in response to the COVID-19 PHE.² Moreover, the NRC continues to regulate U.S. nuclear power plants to ensure that they operate safely during the COVID-19 PHE and that defense in depth is maintained to prevent accidents from happening and to mitigate their consequences.

The NRC has consulted with FEMA on the readiness of OROs and the use of this information to inform the NRC decision to grant exemptions, per the NRC/FEMA Memorandum of Understanding.³ FEMA has recently performed assessments of all offsite emergency response plan capabilities and has concluded that offsite radiological EP remains adequate to provide reasonable assurance that appropriate measures can and will be taken to protect the health and safety of the public in a radiological

² COVID-19 Resources for State Leaders, Executive Orders – By State, accessed December 7, 2020, <https://web.csg.org/covid19/executive-orders/>.

³ “Memorandum of Understanding (MOU) Between the Department of Homeland Security / Federal Emergency Management Agency and Nuclear Regulatory Commission Regarding Radiological Response, Planning and Preparedness,” December 7, 2015, ADAMS Accession No. ML15344A371.

emergency during the COVID-19 PHE.⁴ FEMA monitors response and preparedness capabilities of the OROs to ensure that the response to the current PHE does not adversely impact their ability to protect the public health and safety in the event of a radiological emergency at a commercial nuclear power plant. Exercises are just one of the many methods by which FEMA assesses and validates the adequacy of the ORO plans and ability to implement those plans. In accordance with current FEMA program guidance,⁵ FEMA has alternative means of conducting these assessments.

Based on the above, granting the request for exemption from the 10 CFR Part 50, Appendix E, Section IV.F.2.c, requirement for biennial offsite EP exercises in CY 2020, with the next performance of the exercise to be no later than the end of CY 2022, would allow the OROs to continue to focus their essential response efforts on the COVID-19 PHE. This exemption would apply only to the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.c, and would not address 44 CFR Part 350. An exemption from Section IV.F.2.c would not prevent a State or local authority, at its discretion, from demonstrating key skills in drills and exercises for the 8-year exercise cycle or prevent a State or local authority from conducting the exercise in CY 2020 or CY 2021.

Based on the above, the NRC staff finds that the underlying purposes of these regulations are met by the licensee having conducted preparedness activities and establishing a date for the rescheduled biennial onsite EP exercise of August 11, 2021, with the biennial offsite EP exercise to occur in CY 2022.

- b. 10 CFR 50.12(a)(2)(v): “The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.”

NextEra has determined that the originally scheduled exercise date does not support continued implementation of the isolation activities (e.g., social distancing, group size limitations, remote working, etc.) to protect required ERO personnel in response to the ongoing COVID-19 PHE. These activities are needed to ensure that ERO personnel are isolated from COVID-19 and remain capable of executing the functions of the ERO, as described in the Seabrook Emergency Plan. August 11, 2021, has been established for the conduct of the CY 2020 biennial onsite EP exercise.

NextEra stated that it was notified by the affected OROs of their decision to defer participation in the Seabrook biennial EP exercise for CY 2020. The one-time schedular exemption is needed to support continued implementation of public health measures (e.g., social distancing, group size limitations, remote working, etc.) taken at Seabrook to protect ERO personnel from the spread of COVID-19, while allowing the OROs to continue their focus on essential COVID-19 PHE response efforts. NextEra stated that the next exercise involving the OROs is scheduled for April 6, 2022, and that it will continue to coordinate the scheduling and logistics with the necessary OROs.

⁴ FEMA Preparedness Assessments, ADAMS Accession Nos. ML20164A275, ML20174A603, ML20141L795, ML20170B043, ML20170B171, ML20167A175, ML20164A038, ML20154K696, ML20154K617, ML20150A110, and ML20162A056.

⁵ Program Manual, Radiological Emergency Preparedness, FEMA P-1028, December 2019, https://www.fema.gov/media-library-data/1577108409695-4e49a0a56c8c62695dcc301272a1eda7/FEMA_REP_Program_Manual_Dec_2019.pdf.

Therefore, the NRC staff finds that the requested exemption to allow the licensee to postpone the CY 2020 biennial onsite EP exercise to CY 2021 and to not conduct the CY 2020 biennial offsite EP exercise, with the next performance of the exercise to be no later than the end of CY 2022, would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Based on the above evaluations, the NRC staff finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the licensee's safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the licensee's technical specifications or by the regulations in 10 CFR Part 20, "Standards for Protection Against Radiation." There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Granting the requested exemption does not impact NRC findings of reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Seabrook. In the statement of considerations for the standards to be applied when considering whether to grant exemptions ("Specific Exemptions; Clarification of Standards, Final Rule," 50 *Federal Register* 50764, dated December 12, 1985), the Commission stated:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

The NRC staff has determined that, in accordance with 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and that special circumstances are present. Therefore, the NRC hereby grants the licensee's request for a one-time schedular exemption from the requirements for the biennial onsite EP exercise in 10 CFR Part 50, Appendix E, Section IV.F.2.b, and from the requirements for the biennial offsite EP exercise in 10 CFR Part 50, Appendix E, Section IV.F.2.c, to postpone conducting the CY 2020 biennial onsite EP exercise until CY 2021 and to not conduct the CY 2020 biennial offsite EP exercise.

The exemption with respect to the biennial onsite EP exercise requirement expires on December 31, 2021, or when the biennial onsite EP exercise is performed in CY 2021, whichever occurs first; the exemption with respect to the biennial offsite EP exercise requirement expires on December 31, 2022, or when the biennial offsite EP exercise is performed in CY 2022, whichever occurs first.

If you have any questions, please contact the Seabrook project manager, Justin Poole, at 301-415-2048 or by e-mail to Justin.Poole@nrc.gov.

Sincerely

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-443

cc: Listserv

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