

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

NextEra Energy Seabrook, LLC

Docket No. EL21-3-000

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**COMMENTS OF
THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the New England Power Generators Association, Inc. (“NEPGA”)² files this Motion to Intervene and Comments in support of NextEra Energy Seabrook LLC’s (“Seabrook”) Petition for Declaratory Order.³ Seabrook’s requested confirmations, including confirmations that it shall be financially and legally unharmed by any actions it takes in order to accommodate a merchant transmission line (in ISO-NE Tarff terms, an Elective Transmission Upgrade) to interconnect into New England, are supported by law and Commission precedent, and is sound policy. Neither Seabrook, nor any other generator, should assume the costs of, or forgo revenue opportunities incurred as a result of providing a service to accommodate the interconnection of a merchant transmission project or other Market Participant. Though Seabrook asks for conformations due to the pending interconnection by NECEC Transmission LLC of the New England Clean Energy Connect (“NECEC”) project, by confirming Seabrook’s

¹ 18 C.F.R. §§ 385.211, 385.214 (2020). This Motion to Intervene and Comments is timely filed. *See Notice of Petition for Declaratory Order*, Docket No. EL21-3-000 (Oct. 6, 2020).

² The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

³ *Petition for Declaratory order of NextEra Energy Seabrook, LLC*, Docket No. EL21-3-000 (filed Oct. 5, 2020).

declarations the Commission will provide generators and merchant transmission developers with predictable and transparent clarity of the financial and legal rights and obligations to the benefit of all future parties similarly situated.

I. MOTIONS TO INTERVENE AND COMMUNICATIONS

NEPGA is the trade association representing competitive power generators in New England. NEPGA's member companies represent approximately 26,000 megawatts, or nearly 90% of the installed capacity in New England. NEPGA's mission is to support competitive wholesale electricity markets in New England. NEPGA believes that open markets guided by stable public policies are the best means to provide reliable and competitively priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region. NEPGA's member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. As active participants in the ISO-NE wholesale electricity markets, NEPGA's member companies have substantial and direct interests in the outcome of these proceedings, and those interests cannot be adequately represented by any other party in the proceeding.

All correspondence and communications related to this proceeding should be addressed to the following individuals:

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II. COMMENTS

Seabrook asks the Commission to declare that it is not required to incur financial losses (actual or through lost opportunities) or be liable for consequential damages in accommodating the interconnection of the NECEC Project.⁴ If the Commission will not confirm these declarations, Seabrook asks for confirmation that it is entitled to contract with NECEC for appropriate cost recovery and liability provisions, rather than be required to enter into an agreement with specific terms.⁵ Given the service being provided by Seabrook to NECEC, these are reasonable requests and are consistent with the Federal Power Act, the United States Constitution, Commission precedent, and the ISO New England Tariff. Accordingly, NEPGA supports Seabrook's requests.⁶

According to ISO New England's NECEC Electric Upgrade System Impact Study, the NECEC Electric Upgrade will have an adverse effect on Seabrook Station's existing Generation Breaker, requiring its replacement if NECEC is to interconnect into the New England grid.⁷ But for the NECEC Electric Upgrade, there is no need to replace the Generation Breaker. Thus, all costs and lost opportunities incurred by Seabrook in replacing the Seabrook Station Generation Breaker to accommodate the NECEC Project are entirely for the benefit of NECEC. Seabrook further explains that replacing the Generation Breaker is a complex, time consuming and costly endeavor, that may be accomplished only during a refueling outage, but which outage will most likely be extended.⁸ Seabrook estimates that replacement of the Generation Breaker could cause an outage 10 days longer than the outage would otherwise take but for the replacement of the

⁴ Petition at 1.

⁵ *Id.* at 37.

⁶ *Id.* at 21-27.

⁷ *Id.* at 13.

⁸ *Id.* at 14-15.

Generation Breaker.⁹ Seabrook estimates significant costs and lost opportunities to it and its Joint Owners over an outage extended by 10 days.¹⁰

Seabrook will necessarily incur several types of costs to plan for and execute the Generation Breaker replacement, including not only actual costs incurred but those due to the lost opportunities to realize energy market and power purchase agreement revenues, and to the loss of hedging value for the Seabrook Station Joint Owners.¹¹ Seabrook will also be exposed to penalties and lost revenue opportunities should a Capacity Scarcity Condition occur during the extended outage time under the Pay for Performance construct. As Seabrook explains, Seabrook is entitled to the full recovery of prudent costs incurred and opportunity costs pursuant to the Federal Power Act, the United States Constitution's prohibition on confiscatory rates, and Commission precedent.¹² Seabrook proposes to recover its costs through a formula rate mechanism which reasonably balances Seabrook's right to compensation with NECEC's interest in compensating Seabrook only for those costs to which it is entitled.¹³

No generator, transmission owner, or other Market Participant should be required to incur costs, lose revenue opportunities, or assume potential liabilities when improving infrastructure solely for the benefit of another Market Participant. All Market Participants would benefit from Commission confirmation of these rights and obligations. The dispute between NECEC and Seabrook stems from NECEC seeking to create uncertainty as to the questions Seabrook raises, and here Seabrook provides the Commission the opportunity to confirm the rights and obligations of Seabrook and its Joint Owners and NECEC, and other parties then similarly situated. Absent

⁹ *Id.* at 15.

¹⁰ *Cite.*

¹¹ *Id.* at 17-19.

¹² *Id.* at 22-27.

¹³ *Id.* at 27-31.

this confirmation, in the future other parties may likewise be compelled to ask the Commission to again affirm these rights and obligations. NEPGA thus asks the Commission to confirm Seabrook's declarations not only on their merits, but also to provide certainty to all similarly situated Market Participants as to their rights and obligations.

III. CONCLUSION

For the reasons stated above, NEPGA respectfully requests that the Commission grant its Motions to Intervene and confirm the declarations posed by Seabrook.

Respectfully Submitted,

/s/ Bruce Anderson _____

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston, Massachusetts, November 4, 2020.

/s/ Bruce Anderson _____

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