

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

**NECEC Transmission LLC and  
Avangrid, Inc.,  
Complainants,** )  
)  
)  
)  
**v.** )  
)  
**NextEra Energy Resources, LLC,  
NextEra Energy Seabrook, LLC,  
FPL Energy Wyman LLC, and  
FPL Energy Wyman IV LLC,  
Respondents** )

**Docket No. EL21-6-000**

**JOINT COMMENTS OF THE NEW ENGLAND  
POWER GENERATORS ASSOCIATION, INC.  
AND ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> the New England Power Generators Association, Inc. (“NEPGA”)<sup>2</sup> and Electric Power Supply Association (“EPSA”)<sup>3</sup> (“Joint Associations”) offer these Comments on the questions posed by the Commission in its Order in this Complaint proceeding.<sup>4</sup> Joint Associations respectfully request that the Commission expeditiously resolve whether NextEra Energy Seabrook, LLC (“Seabrook”) is required to incur financial losses, *i.e.*, opportunity costs for incremental lost revenues (or performance penalties), to accommodate the NECEC

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<sup>1</sup> 18 C.F.R. §§ 385.213 (2020). These Comments are timely filed. *See Order Establishing Additional Briefing and Instituting Section 206 Proceeding*. Docket Nos. EL21-6-000 and EL21-94-000 (Sept. 7, 2021).

<sup>2</sup> The comments expressed herein represent those of NEPGA and EPSA as organizations, but not necessarily those of any particular NEPGA or EPSA member.

<sup>3</sup> EPSA filed a doc-less motion for intervention in this proceeding on September 16, 2021, pursuant to the *Order Establishing Additional Briefing and Instituting Section 206 Proceeding*, (Sept. 7, 2021). NEPGA likewise filed a doc-less motion to intervene out-of-time on September 30, 2021.

<sup>4</sup> *Order Establishing Addition Briefing and Instituting Section 206 Proceeding*, Docket Nos. EL21-6-000 and EL21-94-000 (Not Consolidated) (Sept. 7, 2021) (“Order”).

elective transmission project (the “NECEC Project”). Seabrook has already agreed to replace its generation circuit breaker (“Generation Breaker”) to allow the NECEC Project to safely connect to the bulk power system and NECEC Transmission LLC (“NECEC”) has agreed to pay for all direct costs associated with that replacement.<sup>5</sup> The questions raised by the Commission go far beyond this one narrow issue and raise significant concern as to Seabrook’s – and potentially all existing generators’ – obligations under their respective Large Generator Interconnection Agreements (“LGIAs”), the ISO-NE Tariff, ISO-NE Operating Documents, and Applicable Reliability Standards (including its status as an Affected Party). Further, the answers to these questions could affect the entire industry, not just the Complainants and Respondents to the proceeding. NEPGA and EPSA ask that the Commission limit its findings to the one question noted here, and find that Seabrook is entitled to recovery of any opportunity costs for incremental lost revenues (or performance penalties) in accommodating the NECEC Project.

## I. COMMENTS

### A. SEABROOK IS ENTITLED TO RECOVER ITS FULL COST OF REPLACING THE CIRCUIT BREAKER, INCLUDING OPPORTUNITY COSTS OR PENALTIES INCURRED

For decades, New England generators and other Market Participants have made infrastructure improvements necessary to interconnect new generation or other resources to the

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<sup>5</sup> See *NextEra Energy Seabrook, LLC*, Protest of NECEC and Avangrid at 16, Docket No. EL21-3-000 (Nov. 4, 2020) (“NECEC Protest”) (“Avangrid has already agreed to pay for all *direct costs* associated with upgrading the Seabrook Breaker.”); *NECEC Transmission LLC v. NextEra Energy Res., LLC*, Complaint and Request for Shortened Answer Period and For Fast Track Processing of NECEC and Avangrid at 17, Docket No. EL21-6-000 (Oct. 13, 2020) (“Complaint”) (“For clarity, NECEC Transmission is willing to pay for the costs of the Seabrook Breaker Replacement itself.”); *NECEC Transmission LLC v. NextEra Res., LLC*, Motion for Leave to Answer and Limited Answer of NECEC and Avangrid at 12, Docket No. EL21-6-000 (Nov. 17, 2020); *NECEC Transmission LLC v. NextEra Energy Res., LLC*, Amended Complaint and Request for Expedited Relief of NECEC Transmission LLC and Avangrid, Inc. at 8-9, Docket No. EL21-6-000 (Mar. 26, 2021); *NECEC Transmission LLC v. NextEra Energy Res., LLC*, Motion for Leave to Answer and Limited Answer of NECEC Transmission LLC and Avangrid, Inc. at 6, Docket No. EL21-6-000 (Apr. 30, 2021).

bulk power system and negotiated in good faith on the terms of those improvements. This case is no different, in that Seabrook has agreed to replace the Generation Breaker and asks only that Avangrid assume responsibility for the full cost of its replacement so that Seabrook not incur a financial loss to accommodate an interconnection for a competitor. In its November 2020 Petition for Declaratory Order (“Petition”),<sup>6</sup> Seabrook asked the Commission to declare that it is not required to incur financial losses (actual or through lost opportunities) or to be liable for consequential damages in accommodating the interconnection of the NECEC Project.<sup>7</sup> The Joint Associations ask that the Commission confirm Seabrook’s declarations without further delay to inform the negotiations between Avangrid and Seabrook. 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, Joint Associations support Seabrook’s requests.<sup>8</sup>

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.<sup>9</sup> As Seabrook has explained, absent 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 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, which will most likely need to be extended due to the Generator Breaker replacement.<sup>10</sup>

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<sup>6</sup> *Petition for Declaratory Order of NextEra Energy Seabrook*, Docket No. EL21-3-000 (filed Oct. 5, 2020)

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 21-27.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 14-15.

Seabrook will necessarily incur several types of costs to plan for and execute the Generation Breaker replacement, including not only actual costs incurred but, in the case of an extended outage, those due to the lost opportunities to realize energy market and power purchase agreement revenues.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

Placing these costs on an existing generator (Seabrook) rather than the new interconnection customer (NECEC) is unreasonable. Commission precedent is clear that interconnection costs should be paid for by those who cause the need for the upgrade. This practice is clear in the Commission-approved participant funding model now in place in the ISO-NE region. The record in this proceeding provides no basis for changing these rules mid-stream, particularly since NECEC has itself accepted cost responsibility for the Generation Breaker as a condition in its LGIA. Joint Associations further urge the Commission to carefully limit precedent that may evolve from this proceeding, as unintended consequences could follow by placing replacement costs on existing generators who did not cause the need for an upgrade. While such a change in rules might arguably be of help to the interconnection of new renewable resources, those resources

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<sup>11</sup> *Id.* at 17-19.

<sup>12</sup> *Id.* at 22-27.

<sup>13</sup> *Id.* at 27-31.

will soon be existing generators who likewise may be subject to unknowable upgrade costs caused by another new interconnection customer, with power purchase agreements that provide no method for passing on such additional costs.

For these reasons, and those given by NEPGA in its Comments<sup>14</sup> on the Seabrook's Petition for Declaratory Order, the Commission should act on and find in favor of Seabrook on its Petition, and thus allow Seabrook and Avangrid to proceed with and complete negotiating the terms of the Generation Breaker replacement.

**B. The Commission Should Resolve the Issue Outstanding Between Avangrid and Seabrook But Decline to Make Any Broader Findings or Statements of Policy**

The briefing questions posed by the Commission in this proceeding and in the Show Cause Directive proceeding<sup>15</sup> suggest a potential interest in a change to Commission policy, specifically with respect to obligations of an existing resource to facilitate the interconnection of another resource and to potentially incur the cost of necessary infrastructure improvements.<sup>16</sup> This type of inquiry could have national implications. Consequently, the broad and important policy questions raised by the Commission should be considered in a generic proceeding structured to gather adequate evidence and stakeholder perspectives. The unique facts of this proceeding, including that a nuclear generator has unique operational, refueling and outage characteristics, do not lend themselves to issues that would implicate all generators in competitive markets. Establishing a new policy that existing generators under their existing LGIAs are required to accommodate new interconnection customers regardless of the ability of existing generators to recover all costs

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<sup>14</sup> *Comments of the New England Power Generators Association, Inc.*, Docket No. EL21-3-000 (filed Nov. 4, 2020).

<sup>15</sup> See Order at PP 20-26, Docket No. EL21-94-000 (Sept. 7, 2021).

<sup>16</sup> See Order, Commissioner Danly, *dissenting*, at P 10.

associated with such accommodation, could harm investor confidence in new projects, including renewables and storage.

If the Commission chooses to pursue these issues, it should initiate a proceeding under its authority under Section 206 of the FPA to further consider the obligations, requirements, and other considerations for existing generation owners that are implicated in the interconnection of new resources. The primary basis of the Commission’s Show Cause Directive is its preliminary finding that the Tariff appears to allow for “a category of required upgrades the completion of which the Tariff does not address.”<sup>17</sup> Issues such as these, and others raised by the Commission in the Show Cause Directive, should serve as the foundation of such a proceeding together with appropriate notice and application to all jurisdictional wholesale electricity markets. A separate proceeding applicable to all resources and potentially all markets would allow the Commission to receive all relevant information before making a policy change. This is particularly relevant given that new resources entering the markets in the years subsequent to any change in policy are immediately, *i.e.* once cleared in the market, subject to the existing resource rights and obligations reflected in that change, within New England and in other RTOs/ISOs.<sup>18</sup> The Commission should establish the proper venue and procedural structure to make a reasoned decision of general applicability based on substantial evidence, given those and other considerations.

To change Commission policy here, in these proceedings based on a set of specific facts, would fail to develop the broad record necessary to account for the consequences of any policy change across multiple markets.<sup>19</sup> Avangrid and NECEC did not seek resolution of this question in its Complaint, nor did Seabrook in its October 2020 Petition for Declaratory Order asking the

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<sup>17</sup> Order at P 23.

<sup>18</sup> *See, e.g., Mich. Pub. Power Agency v. FERC*, 405 F.3d 8, 12-13 (2005) (remanding to the Commission for its failure to explain departure from existing policy).

<sup>19</sup> *See id.*

Commission to, *inter alia*, confirm Seabrook's and Avangrid's rights and obligations for cost recovery and compensation. Rather than make any findings with the potential for broad, policy-like consequences for all, Joint Associations ask that the Commission first resolve the questions raised by Avangrid and Seabrook with respect to cost recovery. If the Commission seeks as well to investigate and consider best policies going-forward with respect to the interconnection of prospective new resources and the rights and obligations of existing resources, it should do so through a generic process with the necessary amount of information gathering to make a policy decision with wide-ranging consequences.

## II. CONCLUSION

NEPGA and EPSA respectfully request that the Commission find that Seabrook is entitled to any lost opportunity costs for its replacement of the Generation Breaker, and that the Commission decline to make any findings contrary to Commission policy in these proceedings and instead initiate a generic proceeding to gather the appropriate amount of evidence to make any prospective policy change.

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 Cambridge, Massachusetts, October 7, 2021.

*/s/ Bruce Anderson*

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