

December 20, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NextEra Energy Seabrook, LLC

(Seabrook Nuclear Station, Unit 1)

Docket No. 50-443-LR

ASLBP No. 10-906-02-LR-BD01

**FRIENDS OF THE COAST AND NEW ENGLAND COALITION'S REPLY
TO NRC STAFF OBJECTIONS; AND NEXTERA ENERGY SEABROOK, LLC.
RESPONSE IN OPPOSITION TO THE FRIENDS OF THE COAST AND NEW
ENGLAND COALITION'S SUPPLEMENT TO ITS PETITION**

Submitted by:

Raymond Shadis
Pro se Representative
Friends of the Coast
New England Coalition

December 20, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
NextEra Energy Seabrook, LLC
(Seabrook Nuclear Station, Unit 1)

Docket No. 50-443-LR
ASLBP No. 10-906-02-LR

**FRIENDS OF THE COAST AND NEW ENGLAND COALITION’S REPLY
TO NRC STAFF OBJECTIONS; AND NEXTERA ENERGY SEABROOK, LLC.
RESPONSE IN OPPOSITION TO THE FRIENDS OF THE COAST AND NEW
ENGLAND COALITION’S SUPPLEMENT TO ITS PETITION**

Friends of the Coast and New England Coalition (“collectively, Friends/NEC”), through its *pro se* representative, Raymond Shadis, hereby makes reply to the NRC Staff’s Objections To The Friends Of The Coast And New England Coalition’s Supplement and NextEra/ Seabrook, LLC’s Response In Opposition To The Friends Of The Coast And New England Coalition Supplement To Its Petition.

I. BACKGROUND

On November 30, 2010, the Atomic Safety and Licensing Board Panel (“Board”), appointed in the above captioned matter, held a prehearing conference in Portsmouth, N.H. to explore matters pertaining to the admissibility of proposed contentions in Petitions for Leave to Intervene filed by two sets of petitioners consisting of non-profit public interest and environmental organizations. One set of petitioners, denominated, “Beyond Nuclear”, includes Beyond Nuclear, Seacoast Anti-Pollution League, and New

Hampshire Sierra Club; the second set denominated, "Friends/NEC" consists of Friends of the Coast-Opposing Nuclear Pollution and New England Coalition.

Friends/NEC proposed four contentions; one environmental contention without supporting declaration; and three safety contentions supported by the declaration of expert witness, Mr. Paul Blanch.

During the prehearing conference, the Board pointed out several clerical defects, typographical errors, gaps, and inconsistencies, in the Friends/NEC petition and, in particular, in the declaration of its expert, Mr. Paul Blanch. The Board then, having queried Friends/NEC regarding the declaration in the context of the three contentions supported by the declaration and with respect to the declaration's silence on Mr. Blanch's qualifications to testify regarding piping issues, per se, ordered that the declaration should be corrected and resubmitted.

The most relevant portions of that conversation are contained in the following extracts from the transcript:

PAGE 68

CHAIRMAN RYERSON: 16-23 We don't have that in the record as a declaration. We may not need it as a declaration, but to the extent that we are going to take the Blanche declaration as partial support for your first three contentions, you're standing on the way it is right now. You're saying that there are some typos that are obvious like the SER is obviously a typo because it doesn't exist.

MR. SHADIS: 24 Right.

CHAIRMAN RYERSON: 25 But there's been no

PAGE 69

1 -2 further corrections. So we are to take that in the form of which it exists.

MR. SHADIS: 3-6 Well, if I may, sir. We're in luck because we have the declarant here. And there's any way that the corrections can be made now, he can take oath in your presence and --

CHAIRMAN RYERSON: 7-10 We don't take evidence again at these proceedings. This is an effort to determine the adequacy of the pleading that was filed.

MR.-SHADIS: 11-18 Quite so. Well, to the extent that the declaration supports our contentions and that the source of the contentions needs to be verified either [by] documents or expert testimony I think that at least to that extent we would greatly appreciate it if you would allow us to have Mr. Blanche simply authenticate his declaration or affidavit, whichever it is.

19 (Off the record discussion.)

CHAIRMAN RYERSON: 20-25 Yes. Here, Mr. Shadis. In the interest of moving forward, if you would like to submit a revised declaration from Mr. Blanche you may do that and all of the parties who may have objections can file them as well. I would suggest that if you have such a revised declaration

PAGE 70

1 -4 you file that within seven days. And the other parties if they wish to object to any corrections submit those within seven days thereafter.

MR. FERNANDEZ: 13-15 The purpose of the revised declaration is to correct typographical mistakes. Is that the intent of the Board and not to supplement?

CHAIRMAN RYERSON: 16-25 Well, that would be a desirable purpose. If it goes beyond that, there may -- Well, you will look at it and you will tell us what you agree with or do not agree with. But, yes, that's the -- Clearly, it is not the Board's intent to encourage the filing of a declaration that presents new arguments, new issues or whatever. It's a correction of typos, maybe some clarification or something similar to a typo has occurred. And again, what's permissible is subject

PAGE 71

1 -4 to the Commission's rules and case law. And if it goes beyond a mere technical correction, a typo, you have your opportunity to tell us that we can't accept that.

PAGE 107

JUDGE WARDWELL: 17-25 -- you say on page 22 of your petition under paragraph 8 that these are passive devices. Under nine, you say they are active devices. And Blanche makes similar statements at page 11, paragraph 28 and page 12, paragraph 36 where on 28 he says they are passive and on 36 he says they are active. I don't understand unless you're saying active is a typo for passive.

PAGE 108

1 MR. SHADIS: 1-2 That should have read inactive I believe.

3 -4 [Judge Wardwell] Good catch. [Mr. Shadis] But your earlier points are really well taken, Your Honor.

JUDGE WARDWELL: 5-6 I have a list of them that I'm not going to take the time to go through.

MR. SHADIS: 7 Thank you.

CHAIRMAN RYERSON: 8-25 I have one more of that nature that the -- If I'm looking at the correct version, I think there was only one version of the Blanche declaration that was filed. The discussion of transformers appears to begin with the discussion of cables and it gets back to transformers and then finishes with cables. And I don't know if this word processor perhaps ran amuck. But I think where we are, although the other judges may have some further questions, is this. The Applicant agrees that this is a fact question. And the Applicant's position is that you have not done the minimum to raise it as a fact question. And I suppose the question is whether the Blanche declaration is sufficient to do that. And so we'll have to see what your revised one looks like and again we'll have to decide whether changes

PAGE 109 1-6

are significantly substantial that we really can't consider them because it's not fair to change things too much after everyone has already gone through the process of briefing and arguing based on what you filed. But that's sort of where I am that I need to see that in a better form.

PAGE 112

CHAIRMAN RYERSON: All right. Well, procedurally, I think again the way we're going to deal with this is it doesn't benefit anyone to have a record that consists of a declaration that is difficult to follow and then to have Mr. Shadis'

PAGE 113 1-11

representations as to what the declaration really meant. We will get a declaration that is for want of a better of term cleaned up and we will have to decide whether the changes are significantly substantial that we accept that. Clearly, if there were new arguments that were never previously raised I doubt very much that they would be accepted. But if we see a cleaned up, if you will, declaration, we'll look at that in terms of whether there is the minimal factual showing required on admissibility.

On December 6, 2010, Friends/NEC filed a corrected Paul Blanch Declaration together with, for purposes of economy and in accordance with NRC case-law requiring that the NRC staff and parties promptly place before an adjudicatory body all material new information as it becomes available, material new information, an NRC Information Notice regarding submerged electrical cables at nuclear power stations, issued December 2, 2010. The new information is not intended nor is it offered as an amendment to Friends/NEC's Petition for Leave to Intervene, nor should it be viewed as that. Friends/NEC merely provided material new information, complete with parts that support and parts that oppose its petition, much as NRC Staff has now provided to the Board a copy of the recently issued Gall report update and much as the NRC Staff should have but was slow in providing the new and material NRC Information Notice.

On December 13, the NRC Staff filed its Objections To The Friends Of The Coast And New England Coalition's Supplement and NextEra/ Seabrook, LLC's ("NextEra") filed a Response In Opposition To The Friends Of The Coast And New England Coalition Supplement To Its Petition.

II. DISCUSSION

A. Filing the corrected declaration is not filing a "reply".

In an apparent search for governing precedent, both NRC Staff and NextEra decided, rather than to address the nature and conditions of the Board's order, that it was somehow appropriate to characterize submittal of the corrected Paul Blanch Declaration as a "reply" to answers to the petition for leave to intervene. Both then go on to discuss at length the regulation and applicable case law regarding, replies. It is clearly not a reply, and this NRC Staff and NextEra discussion is entirely irrelevant and immaterial; and the Board should therefore altogether either strike or ignore it. A plain reading of the most relevant portions of the transcript above shows that the Board was **not** granting permission to file a new reply. The Board granted, well within its permitted latitude and discretion,¹ the intervenor an opportunity to remedy, for purposes of clarity and understanding, a filing of its curable defects.

The Board's conditions and strictures are also well within its permitted latitude and they are plainly, if somewhat subjectively, articulated in the preceding transcript text.

B. Significant substantial changes are not to be entertained.

¹ A Licensing Board has wide latitude to permit the amendment of defective petitions prior to the issuance of its final order on intervention. The Board's decision to allow such amendment will not be disturbed on appeal absent a showing of gross abuse of discretion. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-107, 6 AEC 188, 194 (1973).

10 CFR § 2.1208 accords the Presiding Officer the discretion both to determine the sequence in which the parties present their arguments, documentary data, informational materials, and other supporting written evidence, and to offer individual parties the opportunity to provide further data, material and evidence in response to the Presiding Officer's questions. Curators of University of Missouri, CLI-95-1, 41 NRC 71, 117 (1995). Section 7(c) and the Administrative Procedure Act does not apply to informal hearings conducted pursuant to Subpart L.

Requirements of 10 C.F.R. § 2.309 must ultimately be met, however every benefit of the doubt should be given to the potential intervenor in order to obviate dismissal of an intervention petition because of inarticulate draftsmanship or procedural or pleading defects. Sequoyah Fuels Corp. (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-94-8, 39 NRC 116 (1994). As such, petitioners will usually be permitted to amend petitions containing curable defects. Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631 (1973). See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-1, 33 NRC 15, 40 (1991); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 195 (1991); Sequoyah Fuels Corporation and General Atomics (Gore, Oklahoma Site), LBP-94- 19, 40 NRC 9, 15 (1994).

In the pre-hearing (and in the ensuing transcript) the Board speaks directly to NRC Staff's and NextEra's concerns regarding substantial changes and the introduction of new issues or new basis for contentions. Friends/NEC's witness Mr. Blanch has made every effort in correcting typographical and word processing errors, including inadvertent insertions and omissions, not to raise new issues that are not in the original petition and declaration or to insert controvertible facts.

As Friends/NEC explained to the Board during the prehearing conference, many of the defects in the original declaration were an artifact of cut and paste word processing; these included, by way of example, the spurious reference to a Seabrook "SER" and the in the case of discussion of transformers, the inadvertent substitution of "active" for "passive" In searching out the cause of the errors, essentially asking, "What happened to our filing?", Friends/NEC was reminded that much of the composition and editing of Mr. Blanch's Declaration , as well as its reconciliation with the petition, was done while Mr. Blanch was visiting in the Pacific Northwest, working with only a handheld device of limited capacity. Hence, many of the errors in the original filing, were of electronic transmission difficulties in origin; obviously, not something Friends/NEC is prepared to deal with on a routine basis.

Friends/NEC agrees with NextEra's definition of typographical error, "A typographical error is 'an error in printed or typewritten matter resulting from striking the improper key of a keyboard, from mechanical failure, or the like.'" However, the reality is that sometime in the latter half of the 20th century, it became the common practice to work with digital computers, where a keystroke can add a batch of text, or blow a paragraph into ether. Judge Ryerson appears to have alluded to this 'fact-of-modern-life'

with his comment that some errors appear to be the product of faulty word-processing; he says,

The discussion of transformers appears to begin with the discussion of cables and it gets back to transformers and then finishes with cables. And I don't know if this word processor perhaps ran amuck.

In any case, any sentence length or greater corrections that Mr. Blanch made in the resubmitted Declaration are for the purposes of clarification of his language and position; and basically to make the declaration more readily understandable by restoring the order and continuity (thread) of its narrative, or more properly , the thread of its exposition. Judge Ryerson recognized the desirability of “some clarification” (tr. P.108 at 9-15) in outlining the Board’s intention with respect to limits on a resubmitted declaration:

Clearly, it is not the Board's intent to encourage the filing of a declaration that presents new arguments, new issues or whatever. It's a correction of typos, maybe some clarification or something similar to a typo has occurred. And again, what's permissible is subject to the Commission's rules and case law. Tr. at 70 [Emphasis added]

The foregoing discussion notwithstanding, Friends/NEC remains eager to follow the Board’s directives and thus does not dispute NRC Staff’s recommendation that if the Board finds that any portions of the corrected declaration to be “significant substantial changes” then the Board should not consider those offending portions when deliberating the admissibility of Friends/NEC contentions.

Friends/NEC respectfully reminds the Board that, with respect to the declaration’s treatment of a contention regarding the lack of an adequate aging management plan (“AMP”) for transformers, the contention is primarily a contention of omission. As such, the requisite minimal showing of basis is substantially reduced as basis is laid largely in

demonstration of the negative: there being no such plan in the Seabrook LRA. As NextEra observed during the prehearing conference, “Nothing plus nothing equals nothing.” Further, NextEra does not contest the fact of omission; only its significance.

Additionally Friends/NEC must show, and does through the declaration, that an AMP for transformers belongs in the LRA, in part because it is a passive component and because there are potential safety implications to some transformer failures. This is no exotic topic or one so narrowly focused and highly specialized that the declaration of credentialed electrical engineer with more than 40 years of nuclear power generation experience should not be able to stand on its own at the threshold level of admissibility.

Obvious corrections in the Friends/NEC re-submittal of Mr. Blanch’s declaration , such as inactive or for greater clarity, “passive”, in place of active, (changes to which NextEra objects), are not significantly substantial, in as much as elsewhere Friends/NEC and Blanch have clearly denoted transformers as “passive.” This correction is in fact one among many corrections that the Board has recognized as needed to render the declaration more consistent and coherent.

C. Friends/NEC’s expert made limited and discreet changes within the limits of the Board’s Order. Friends/NEC and its expert have no hidden motives.

NextEra asserts that Friends/NEC made “wholesale” changes in response to the Board’s “gracious” offer to fix typos; that this is in violation of §2.309 criteria, ignorance of which is no excuse. NextEra then goes on to complain that Friends/NEC did not provide a list of changes; making the changes hard to find. Friends/NEC does not disagree that it should have, as a matter of proper form, filed a list of changes concurrent with the corrected petition and apologizes that it did not. That said, when it comes to

finding “significant substantial changes,” the corrected declaration at only 19 pages, is hardly an adequate field in which to launch purported “wholesale” changes. NextEra, by way of illustrating what it terms “wholesale” and “significant changes” to the Blanch declaration produced a Matrix titled, “Significant Changes to the Blanch Declaration”, as Attachment 1.

The Matrix contains approximately 43 items reflecting changes that NextEra has identified in the 19 pages of Mr. Blanch’s declaration, Friends/NEC respectfully submits that an average of 2.3 corrections per page spread over 19 pages (with many of the corrections comprised of a deletion or the substitution of one word) hardly constitutes “wholesale significant substantial changes.”

Friends/NEC now examines the corrections in NextEra’s matrix for substance and significance: The first eight (8) corrections concern Mr. Blanch’s education and experience. NextEra does not say the corrections are inaccurate, nor does it say how they are material to deciding admissibility of NEC’s contentions. All of the corrections are for purposes of clarifying Mr. Blanch’s education and experience. NextEra appears to regard any change, no matter how small, as significant and substantial; for example NextEra notes in the “significant changes” matrix that “reactor and electrical theory” as it appeared in the original is now restored to “reactor systems and electrical theory”, as if somehow this were a new revelation to NextEra or prejudicial to its case.

Two items in this section mention specifically Mr. Blanch’s piping experience. These clarifications follow on Judge Wardwell’s observation during the prehearing conference that he did not see in the declaration any reference particular to Mr. Blanch’s expertise in piping. These references were inadvertently omitted in the original

declaration and restored in the corrected declaration. In addition, it appeared to Friends/NEC that Judge Wardwell wanted to know if Mr. Blanch had any piping expertise and why it was not listed in the original declaration. In any case, corrections in this section add nothing to the substance of NEC's contentions.

Of the remaining 35 items in NextEra's matrix, 12 are deletions of text or footnotes of material that was inadvertently included in the original and was off-the-mark, duplicative, or in other ways confusing and less than clear; their removal is the epitome of "clean up".

Of the remaining 23 items in NextEra's matrix, 3 address inadvertent transpositions pointed out by the Board during the prehearing conference with all indications that the Board wanted them corrected and clarified:

- On page 4 of his original declaration, Mr. Blanch included inadvertent mention of Vermont Yankee, Indian Point, and the NRC SER for that plant; on page 5 of the corrected declaration, he states as he had intended that he has reviewed applicable portions of the Seabrook LRA.
- In similar fashion, on page 7, he deletes unintended reference to the LRA and the Staff SER and corrects with clarification by inserting instead the correct reference: Seabrook LRA, Appendix B. He further clarifies the lack of a TLAA or AMP with AMP "for inaccessible cables designed in the low voltage range...there is no assurance that cables not designed to operate while submerged or subsequent to submergence are capable of performing the functions within the scope of 10 CFR 54.4." All of the specifics in this correction are given elsewhere

in the Friends/NEC petition and/or declaration and are gathered to be repeated here for purposes of clarification. No new bases, arguments, or issues are added.

- On page 8, Mr. Blanch has removed an inadvertent reference to “...transformers at Indian Point...” and replaced it with “...cables at Seabrook...” This reference is again no surprise to NextEra, reconciles with statements made elsewhere in the petition and in the declaration, and does not change the substance of the contention on cables.

Of the remaining 20 items in NextEra’s matrix, 10 involve the substitution of synonyms or rephrasing with very much the same meaning as the original, but for purposes of clarification or correction of English usage. No new bases are identified; no new issues or arguments are added.

Of the remaining 10 items that NextEra identifies as significant changes, two are simply relocations of identical or near identical statements. A statement regarding characterization of cables by commodity grouping on page 11 of the corrected declaration is listed by NextEra when in fact it is simply moved, as an effect of editing preceding material, from page 13 in the original declaration.

In similar fashion, on Page 8 of its matrix, NextEra characterizes a statement regarding transformers as part of the station blackout (SBO) recovery path as significant new or different information when, in fact, it has simply been moved, as an effect of editing other information in the declaration, from page 13 (#38) in the original declaration to page 14 in the corrected declaration.

Of the remaining 8 items, 7 do involve some generally minor addition of text, all added for purposes of correction or clarification; none intended to present new bases or

add new issues. In several instances, they serve only to make clear what is inferred in preceding text. For example, on page 12 of the new declaration, Mr. Blanch adds, “This UFSAR is not readily available for review” to the statement at 12 (#34) in the original, “while other applications contained a copy of relevant sections of the UFSAR, Seabrook did not provide such copy and only referenced applicable sections of the UFSAR.” Where is the significance in terms of prejudice to NextEra’s case here or exceeding substance? There is none.

None of these changes are of significant substantial nature. None significantly add to bases, nor do they amend any of the proposed Friends/NEC contentions.

The last item in NextEra’s matrix is the addition of the required qualifier, “Executed in Accord with 10 CFR 2.304(d).”

D. Friends/NEC has had no ulterior motives and its integrity is questioned without basis; without requisite proffer of evidence or reason by NRC Staff. At 10 of its Objections, NRC Staff says,

Together, these changes are an attempt to bolster FOTC/NEC’s Contention 2 because they attempt to cure the defects in the Original Declaration with respect to providing a basis for the contention, as required by 10 C.F.R. § 2.309(f)(1)(ii), and making references to specific portions of the Seabrook LRA along with supporting reasons for the LRA’s claimed inadequacy, as required by § 2.309(f)(1)(vi).

NRC Staff has offered a conclusion as to what Friends/ NEC is attempting to do, when NRC Staff’s objection would be better and more properly served by simply stating the purported ground for the objection. NRC Staff has no knowledge of what FOTC/NEC is attempting. Again at 12, NRC Staff offers its suspicions,

Moreover, in light of Board questioning of FOTC/NEC regarding the intended function of buried and inaccessible piping and FOTC/NEC’s acknowledged unfamiliarity with the Commission’s decision in CLI-10-1423 at the time of the

prehearing conference, *see* Tr. at 126-29, this additional factual assertion appears to be a belated attempt to shift the focus of the contention away from radioactive leaks to leaks of any type large enough to impact the ability of piping to perform its 10 C.F.R. § 54.4(a)(1)-(3) functions. [Emphasis added]

NRC Staff is entitled to raise objections to the admission of any argument or evidence on the basis of what is actually in or missing from the pleading; not some inferred motive for its presence. This should not be permitted because if such behavior, in particular on the part of Staff Counsel, is condoned, it can only have a chilling effect on the exercise of citizen's hearing rights. This kind of adversarial and prosecutorial inference raises the question of the purpose of NRC Staff's participation in the proceeding in the first place. If NRC Staff intends or is permitted to be the petitioner's constant and vigorous adversary, then fairness would require that a caveat to that effect be appended to all notices of an opportunity for a hearing. Would be intervenors should be told to expect that they will face two adversarial legal teams, including an NRC Staff that specializes exclusively in nuclear law and has access to the full resources of the agency.

(III) CONCLUSION – For all of the good reasons above, the Board should give little weight to the objections of NRC Staff and the opposition of NextEra. NextEra exceeds all reasonable expectation by calling for the dismissal of Mr. Blanch's declaration in its entirety; offering as support for that most extreme sanction only the deeply flawed and overblown interpretations of the corrected declaration discussed above. Thus NextEra's motion should not be considered. NRC Staff suggests that in its deliberations on admissibility the Board should ignore any portions of the Blanch declaration that are found to contain impermissibly substantial and significant change. Friend/NEC does not believe careful examination of the declaration will show that any such changes are

included. For all of the foregoing good reasons, the Board should find that the corrected Blanch declaration is admissible and should consider it in its entirety when deliberating the admissions of the contentions it supports. However, if the Board finds that some corrections exceed the bounds of what it intended in permitting the declaration to be corrected, Friends/NEC agrees with NRC Staff, that those offending corrections and only those corrections should be ignored.

(IV) CERTIFICATE OF COUNSEL

Pro Se Representative for Friends/NEC hereby certifies that in conformance with 10 C.F.R. §2.323, Friends/NEC made a sincere attempt to obtain the consent of NextEra and NRC Staff to the filing of the foregoing Motion for Leave to Relay and by extension the attached Reply, but consent was denied.

Respectfully submitted,
Electronically signed
Raymond Shadis

Raymond Shadis
Pro se representative
Friends of the Coast
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
207-882-7801
Shadis@prexar.com