

December 22, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
NextEra Energy Seabrook, LLC)	Docket No. 50-443-LR
)	
(Seabrook Station))	
)	ASLBP No. 10-906-02-LR
(Operating License Renewal))	

**NextEra Energy Seabrook, LLC’s Answer to
NEC/Friends of the Coast’s Motion for Leave to File a Reply**

Pursuant to 10 C.F.R. § 2.323(c), NextEra Energy Seabrook, LLC (“NextEra”) hereby answers the “Motion by Friends of the Coast and New England Coalition [“Friends/NEC”] for Leave to Reply to NRC Staff Objections; NextEra Energy Seabrook, LLC Response in Opposition to the Friends of the Coast and New England Coalition Supplement to Its Petition” (“Friends/NEC Motion for Leave”) dated December 20, 2010. As shown below, Friends/NEC has not demonstrated circumstances that compel the Atomic Safety and Licensing Board (“Board”) to permit a reply. 10 C.F.R. § 2.323(c).

During the November 30, 2010 prehearing conference held in the above-captioned proceeding, the Board afforded Friends/NEC seven days to present a corrected version of the Declaration of Paul Blanch (“First Blanch Declaration”) that Friends/NEC originally filed with their Hearing Request on October 21, 2010. Transcript at 69-70. The Board explained at the prehearing conference that NextEra and the NRC Staff could object to the revised declaration within seven days of its filing to point out changes that

go beyond what is permitted by “the Commission’s rules and caselaw.” Transcript at 70-71. The Board did not authorize the filing of a reply. *See id.* On December 6, 2010, Friends/NEC submitted a “Supplement to Friends of the Coast and New England Coalition Petition for Leave to Intervene, Request for Hearing, and Admission of Contention: Errors and Corrections and New Information,” (“Petition Supplement”), which included, *inter alia*, a revised version of the Blanch Declaration (“Second Blanch Declaration”). In accord with the Board’s direction, NextEra and the NRC Staff each filed responses to the Petition Supplement on December 13, 2010.¹

Although the Petition Supplement was not a motion filed under 10 C.F.R. § 2.323, NextEra agrees with Friends/NEC that the Board should rely on the standard found in 10 C.F.R. § 2.323(c) for determining whether leave to file a reply should be granted to Friends/NEC: “Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.” *See* Friends/NEC Motion for Leave at 3-4. While the filing of the Petition Supplement was pre-authorized by the Board, it was in effect a motion to supplement the Petition and the First Blanch Declaration, so the rules governing motions are applicable in this context.

Friends/NEC’s attempt to show that arguments raised by NextEra and the NRC Staff could not have been anticipated is baseless. For instance, Friends/NEC argue that they “could not have anticipated NRC Staff and NextEra’s over-the-top comparison of submitting a corrected Declaration in compliance with the board’s order as analogous to filing a Reply.” *Id.* at 3. But at the prehearing conference, the Board made plain that it

¹ “NextEra Energy Seabrook, LLC’s Response Opposing NEC/Friends of the Coast’s Supplement to its Petition” (Dec. 13, 2010) (“NextEra Response”); “NRC Staff’s Objections to the Friends of the Coast and New England Coalition’s Supplement” (Dec. 13, 2010).

would apply “the Commission’s rules and caselaw” to Friends/NEC’s supplement. Transcript at 71. As NextEra pointed out in its Response, the Commission explained in *Palisades* that the limitations on the ability of petitioners to raise new claims in support of their contentions is not applicable only to initial reply briefs, but extends to any pleading filed at “any other time after the date the original contentions are due.” NextEra Response at 5 (quoting *Nuclear Management Company, LLC* (Palisades Nuclear Plant), CLI-06-17, 63 NRC 727, 730 (2006)). NextEra and the NRC Staff both filed responsive pleadings applying pertinent Commission caselaw, as directed by the Board. These arguments certainly could have been reasonably anticipated. Moreover, Friends/NEC do not *demonstrate* that they could not have anticipated these arguments, as required by 10 C.F.R. § 2.323(c). Instead, they simply identify the relevant legal standard and assert without foundation that it has been met.

Friends/NEC then make a series of serious groundless allegations, with no support or citations to the record. *See* Friends/NEC Motion for Leave at 3-4. They argue that their “motives and integrity” have been questioned (*id.* at 3), that “NextEra and the NRC Staff . . . cast aside their ethical responsibilities” by selectively quoting rules, precedent, and the transcript (*id.* at 4), that NextEra and the NRC Staff deliberately distorted the Second Blanch Declaration (*id.*), and that NextEra challenged the Second Blanch Declaration and the contentions on the merits (*id.*). But Friends/NEC fail to support any of these frivolous claims with citations to or quotations from pleadings. Accordingly, these bald allegations cannot serve to demonstrate that NextEra or the NRC Staff raised arguments that could not have been anticipated.

Finally, Friends/NEC claim that NextEra argued that the Blanch declaration should be dismissed in its entirety. Friends/NEC Motion for Leave at 4. To be clear, NextEra argued only that the Board should disregard the Second Blanch Declaration because the Board should not be required to separate the wheat from the chaff. *See* NextEra Response at 9. NextEra made no assertions regarding the First Blanch Declaration. *See id.* Regardless, the Board made clear at the prehearing conference that “what [is] permissible is subject to the Commission’s rules and caselaw” and that NextEra would have an opportunity to argue that the Board cannot accept certain proposed amendments to the First Blanch Declaration. Transcript at 70-71. Thus, Friends/NEC’s assertion that NextEra’s position challenging changes to the First Blanch Declaration could not have been anticipated is without merit.

For the reasons discussed above, the Board should deny Friends/NEC’s Motion for Leave and should not consider their Reply Brief.

Respectfully Submitted,

/Signed electronically by Steven Hamrick/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NextEra Energy Seabrook, LLC’s Answer to NEC/Friends of the Coast’s Motion for Leave to File a Reply,” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 22nd day of December, 2010.

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