

December 22, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
NextEra Energy, LLC)	Docket Nos. 50-443
)	
(Seabrook Station, Unit 1))	ASLBP No. 10-906-02-LR-BD01

NRC STAFF'S RESPONSE IN OPPOSITION TO FRIENDS OF THE COAST AND NEW
ENGLAND COALITION'S MOTION FOR LEAVE TO REPLY

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to Friends of the Coast and New England Coalition's (FOTC/NEC's) "Motion by Friends of the Coast and New England Coalition 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" ("Motion") filed December 20, 2010. For the reasons set forth below, the Staff opposes the Motion.

DISCUSSION

As authorized by the Board,¹ on December 13, 2010, NRC Staff and NextEra filed objections to FOTC/NEC's December 6, 2010 Supplement to the Blanch Declaration ("Supplement").² FOTC/NEC now moves for leave to file a reply to these objections.

¹ Argument Transcript, NextEra Seabrook Station, LLC (Seabrook Station, Unit 1), at 69-70, 170 (Nov. 30, 2010) ("Tr.") (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML103420615).

² See Supplement to Friends of the Coast and New England Coalition Petition for Leave to Intervene, Request for Hearing, and Admission of Contentions: Errors and Corrections and New

FOTC/NEC claims that it could not have anticipated either the procedural arguments or the arguments concerning the nature of changes made to the Blanch Declaration that were raised in the Staff's and NextEra's objections. See Motion at 3-4. Therefore, FOTC/NEC argues, the compelling circumstances contemplated by 10 C.F.R. § 2.323(c) for the filing of replies exist. See *id.* However, FOTC/NEC has not met the requirements for filing a reply under 10 C.F.R. § 2.323(c).

Under 10 C.F.R. § 2.323(c), any party wishing to file a reply after filing an initial motion and receiving a responsive pleading must first seek, and obtain, leave to file the reply. This is because, as § 2.323(c) states, “[t]he moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer.” Leave to reply “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.” 10 C.F.R. § 2.323(c) (emphasis added). FOTC/NEC has not demonstrated compelling circumstances exist because it has not demonstrated that the Staff and NextEra’s objections to aspects of FOTC/NEC’s Supplement could not reasonably have been anticipated. The Board specifically authorized the Staff and NextEra to file objections to the Supplement and to raise the issue of whether the Board could consider any changes made consistent with the Commission’s rules and case law. Tr. at 69-71. The Board also specifically noted that the Staff and NextEra may raise objections as to the substantive nature of any changes made in the Supplement. *Id.* at 170³. In acknowledging the need and opportunity to object, the Board itself contemplated that the Staff and NextEra would file objections. Thus, FOTC/NEC should have anticipated that the

Information (Dec. 6, 2010) (ADAMS Accession No. ML103400561); Friends/NEC Petition Supplement – Attachment 1: Declaration of Paul Blanch (Dec. 6, 2010) (ADAMS Accession No. 103400564); NRC Staff’s Objections to the Friends of the Coast and New England Coalition’s Supplement (Dec. 13, 2010) (ADAMS Accession No. ML103470591); NextEra Energy Seabrook, LLC’s Response Opposing NEC/Friends of the Coast’s Supplement to Its Petition (Dec. 13, 2010) (ADAMS Accession No. ML103470704).

³ Specifically, the Board stated, “the other parties will have seven days after receiving [the revised declaration] if they wish to object to any aspect of it presumably as going beyond the original filing other than what might be allowed under Commission precedent.” Tr. at 170.

Staff and NextEra would in fact file such objections based upon the Commission's regulations and case law.

FOTC/NEC's disagreements with the Staff's and NextEra's arguments and conclusions as to the changes made in the Supplement do not amount to the "compelling circumstances" contemplated by 10 C.F.R. § 2.323(c). FOTC/NEC has not referenced any particular statement in the Staff's and NextEra's pleadings that FOTC/NEC believes it could not have reasonably anticipated. Motion at 3-4. Instead, FOTC/NEC relies on a series of vague assertions to support its motion, such as broad statements that it could not have anticipated the Staff's and NextEra's argument that the Supplement was analogous to a reply or that some of the revisions FOTC/NEC made to the Supplement were substantive. *Id.* But, such unsupported statements cannot constitute the "demonstration" of "compelling circumstances" necessary to justify leave to reply. 10 C.F.R. § 2.323(c).

Moreover, this Motion goes beyond what the Board specified and is not contemplated by the Commission's regulations. Under 10 C.F.R. § 2.309(h), unless otherwise specified by the Commission, the presiding officer, or the Board designated to rule on requests for hearing or petitions for leave to intervene, the pleadings in an NRC proceeding are limited to the petition for leave to intervene, an answer to the petition to intervene, and a reply to any answer. "No other written answers or replies will be entertained." 10 C.F.R. § 2.309(h)(3). The Board specified that FOTC/NEC could file a revised declaration and that the Staff and NextEra could file objections to the revised declaration. See Tr. at 69-70; 170. No further pleadings were specified by the Board. Thus, the additional reply requested by FOTC/NEC is beyond what the Board specified and beyond what is contemplated by the Commission's rules. Consequently, the Board should not consider the proposed reply submitted by FOTC/NEC concurrently with this Motion.

CONCLUSION

For the reasons stated above, the Staff respectfully requests that the Board deny FOTC/NEC's Motion and give no consideration to FOTC/NEC's proposed reply.

Respectfully submitted,

Signed (electronically) by

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE IN OPPOSITION TO FRIENDS OF THE COAST AND NEW ENGLAND COALITION'S MOTION FOR LEAVE TO REPLY," dated December 22, 2010, have been served upon the following by the Electronic Information Exchange, this 22nd day of December, 2010:

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