

UNITED STATES OF AMERICA February 25, 2011
NUCLEAR REGULATORY COMMISSION
Before the Commission

In the Matter of

)

March 10, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEEFORE THE COMMISSION

NextEra Energy Seabrook, LLC

)

Docket No. 50-443-LR

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(Seabrook Station)

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ASLBP No. 10-906-02-LR

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(Operating License Renewal)

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**FRIENDS OF THE COAST AND NEW ENGLAND COALITION
ANSWER AND OPPOSITION
TO**

NEXTERA ENERGY SEABROOK, LLC'S NOTICE OF APPEAL OF LBP-11-02

Friends of the Coast and New England Coalition ("Friends/NEC"), joint intervenors in the above captioned proceeding, through their pro se representative, Raymond Shadis now state their answer and declare their opposition to NextEra Energy Seabrook, LLC's ("NextEra") Notice of Appeal of the Atomic Safety and Licensing Board's ("Board") Memorandum and Order, LBP-11-02. In particular NextEra appeals the Board's admission for litigation in the above-captioned proceeding three contentions brought by Friends/NEC. NextEra's Appeal is wholly without merit as, failing to establish a litigable

threshold of error¹, NextEra impermissibly relies on attacking the substance of Friends/NEC contentions through rehashing arguments rejected by the Board or bringing new arguments on substance, which it could have brought, did not bring before the Board.

¹ The Commission defers to Board rulings on contention admissibility unless it finds clear error or abuse of discretion. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-02, CLI-10-2, 71 NRC ___ (Jan. 7, 2010) (slip op. at 1); *U.S. Department of Energy* (High Level Waste Repository), CLI-09-14, 69 NRC ___ (Jun 30, 2009) (slip op. at 4); *Crow Butte Resources, Inc.* (North Trend Expansion Area), CLI-09-12, 69 NRC ___ (Jun. 25, 2009) (slip op. at 8-9).

I. BACKGROUND

This proceeding involves NextEra's application for a renewed operating license for Seabrook Station, Unit 1 ("Application" or "LRA") submitted by letter dated May 25, 2010. The NRC published notice of an opportunity for hearing in the Federal Register.² By order dated September 17, 2010, the Secretary of the Commission granted NEC a 30-day extension of time to file intervention petitions, until October 20, 2010. Due to a failure in a first-time use of NRC's electronic filing system, NEC filed its Petition, on October 21, 2010. On November 15, 2010, NextEra and the NRC Staff filed answers opposing the Petition.³ On November 23, 2010, NEC replied. A Prehear Conference was held on November 30, 2010

¹ Although dated October 20, 2010, the Petition was actually served through the NRC's Electronic Information Exchange on October 21, 2010.

² "Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. NPF-86 for an Additional 20-Year Period; Nextera Energy Seabrook, LLC; Seabrook Station, Unit 1," 75 Fed. Reg. 42,462 (July 21, 2010) ("Hearing Notice").

³ See "NextEra Energy Seabrook, LLC's Answer Opposing the Petition to Intervene and Request for Hearing of Friends of the Coast and the New England Coalition" (Nov. 15, 2010) ("NextEra Answer"); and "NRC Staff's Answer to Petitions to Intervene and Requests for Hearing Filed By (1) Friends of the Coast and New England Coalition and (2) Beyond Nuclear, Seacoast Anti-Pollution League and New Hampshire Sierra Club" (Nov. 15, 2010) ("Staff Answer").

II. DISCUSSION

NextEra first complains that “most” of the three admitted contentions were copied from other license renewal proceedings. The Board in LBP-1 1-02 did not see a problem with this approach (*see slip op.* at 47, n. 248). NextEra claims that “the cutting and pasting of contentions was one of the problems” that the Commission sought to address when it toughened its contention admissibility rules in the 1980s: “In practice, this requirement [the prior contention admissibility standard] may be met by copying contentions from another proceeding involving another reactor.” The second part of NextEra’s quote belies its interpretation that cutting and pasting is the “problem.” “Thus, an intervenor may not fully understand a contention and frivolous contentions may be admitted.” Proposed Rule, Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 51 Fed. Reg. 24,365 at 24,366 (July 3, 1986). Clearly, the problem that the Commission identified is that, “the intervenor may not understand the contention.” In this case Friends/NEC Staff and its expert, a schooled and credentialed electrical engineer with more than 40 years of nuclear power experience, were drawing on their notes from their involvement in other license renewal proceedings at other reactors in the region; other reactors at which LRA contain identical or essentially the same information on various aging management areas. The errors in NEC’s Petition and Mr. Paul Blanch’s Declaration were clerical errors not factual errors that would confuse one reactor with another. NextEra’s claim in that regard at this date; the Board having probed the errors in NextEra’s presence at the Pre-hearing conference, is simply preposterous.

In NextEra's challenge to Friends/NEC Contention I, it references aging management program ("AMP") for non- environmentally qualified inaccessible cables. NextEra offers that on October 29, 2010, it filed a supplement to its LRA, in order to bring it in line with Revision 2 of the GALL Report.; and amending the NonEQ Inaccessible Medium-Voltage Cables Program to include low voltage cables, resulting in a change of the AMP's name to "Inaccessible *Power* Cables Not Subject to 10 CFR 50.49 EQ Requirements." See LRA Supplement, Encl. 2 at 2, 6. Presumably, NextEra intends this to mean that a portion of Contention I is mooted. It was not argued by the parties at the time. The proper way remaining to bring this to the Board's attention is through a Motion for Summary Disposition; not through an appeal to the Commission.

NextEra argues that NEC Contention 2 – "Transformers"_which claims that NextEra's LRA is inadequate because it fails to include an AMP for electrical transformers that are important to safety is inadmissible because they are active components that do not require aging management. However, NEC disagrees with this claim and it was thoroughly hashed out before the Board by all parties in the pre-hearing conference. Based on the oral arguments and the filings, Board properly found that it "adequately raised an issue as to whether transformers constitute active or passive components." LBP-1 1-02 (slip op. at 32-33). NextEra then points to a clerical error in the Blanch Declaration, where active was substituted for passive or inactive. Again, this was roundly discussed in the pre-hearing conference, where NextEra had its say.

NextEra could neither at that time nor does it now define the change of state that it claims transformers undergo.

Next Era claims that NEC 4 which challenges NextEra's Severe Accident Mitigation Alternatives ("SAMA") analysis is based entirely on non-specific references to technical

documents although a plain reading of the Friend/NEC petition will show that Friends/NEC explained each documents relevance and tied its claims to specific portions of the LRA. NextEra made its early hearing arguments on this subject and should not be permitted to rehash them before the Commission. NextEra's remedy is to try summary disposition.

The foregoing are but examples of NextEra's persistence in tediously reviewing arguments that it could have made before the Board or worse rehashing arguments that it did make.

Nowhere does NextEra raise examples of egregious error or abuse of discretion by the Board sufficient to merit Commission intervention.

III. CONCLUSION

For the foregoing good reasons NextEra's appeal should be rejected in its entirety

Respectfully Submitted,

/Signed electronically by Raymond Shadis/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Friends of the Coast/New England Coalition Answer and Opposition to NextEra Energy Seabrook, LLC's Notice of Appeal of LBP- 11-02 were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 10th day of March, 2011.

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/Signed electronically by Raymond Shadis/

Raymond Shadis