

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell

In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LR

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

March 23, 2011

ORDER

(Circulating Draft Initial Scheduling Order)

The attached draft Initial Scheduling Order sets forth case management procedures and deadlines that the Board proposes to govern this proceeding. The Board has considered suggestions made during the March 14, 2011 conference call and subsequent correspondence. However, the parties and the interested state may, if they wish, submit — preferably jointly, but otherwise individually — any further comments or suggestions concerning the scheduling order no later than March 30, 2011.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 23, 2011

UNITED STATES OF AMERICA
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In the Matter of

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station, Unit 1)

Docket No. 50-443-LR

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

April , 2011

INITIAL SCHEDULING ORDER

This proceeding concerns an application by NextEra Energy Seabrook, LLC (NextEra) to renew the operating license for Seabrook Station, Unit 1, a nuclear power reactor located in Rockingham County, New Hampshire. The Board has the “duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order.”¹ This order is intended to further those objectives.²

I. Background

The principal history of this proceeding is set forth in the Board’s Memorandum and Order of February 15, 2011.³ Thereafter, on February 17, 2011, NextEra filed an unopposed motion to

¹ 10 C.F.R. § 2.319.

² See id. § 2.332(c)(1)-(5).

³ Licensing Board Order (Ruling on Petitions for Intervention and Requests for Hearing), LBP-11-02, 73 NRC __ (Feb. 15, 2011).

defer initial disclosures.⁴ On February 24, 2011, the NRC Staff noticed its intention to participate as a party with respect to all admitted contentions.⁵ On March 7, 2011, the Staff provided its best estimate of the projected schedule for completion of the Staff's safety and environmental evaluations.⁶ On March 9, 2011, the Commonwealth of Massachusetts (Massachusetts) filed a request to participate as an interested state pursuant to 10 C.F.R. § 2.315(c),⁷ which request the Board granted on March 23, 2011.⁸

On March 14, 2011, the Board conducted an initial scheduling conference with the parties, by telephone, pursuant to 10 C.F.R. § 2.332. On March 16, 2011, the NRC Staff submitted suggested language for certain provisions in this order.⁹ Additionally, on March 23, 2011, the Board circulated a draft for comment.¹⁰

In preparing this initial scheduling order, therefore, the Board has considered the positions of the parties and has taken them into account insofar as consistent with our responsibility to establish "early and continuing control so that the proceeding will not be protracted because of lack of management."¹¹

II. Schedule

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, the following case management procedures and schedule shall

⁴ NextEra Energy Seabrook, LLC's Unopposed Motion to Defer Initial Disclosures (Feb. 17, 2011) [hereinafter NextEra's Motion to Defer Discovery].

⁵ NRC Staff's Notice of Inten[t] to Participate as a Party (Feb. 24, 2011).

⁶ Letter from Mary B. Spencer, Counsel for NRC Staff, to Licensing Board (Mar. 7, 2011).

⁷ Commonwealth of Massachusetts' Request To Participate as an Interested State (Mar. 9, 2011).

⁸ Licensing Board Order (Granting Massachusetts Interested State Status) (Mar. 23, 2011).

⁹ Letter from Mary B. Spencer, Counsel for NRC Staff, to Licensing Board (Mar. 16, 2011).

¹⁰ Licensing Board Order (Circulating Draft Initial Scheduling Order (Mar. 23, 2011).

¹¹ 10 C.F.R. § 2.332(c)(2).

govern this adjudicatory proceeding in accordance with 10 C.F.R. § 2.332.

A. Mandatory Disclosures and Production of Hearing File.

1. Initial Mandatory Disclosures and Production of Hearing File. Unless otherwise ordered by the Board, the parties must make certain mandatory disclosures within thirty (30) days of the Board's ruling admitting contentions.¹² Likewise, within those thirty (30) days, the NRC Staff must make certain mandatory disclosures,¹³ and must produce a hearing file and make it available to all parties.¹⁴ These deadlines, which were temporarily suspended in response to NextEra's unopposed motion to defer,¹⁵ are modified. They shall be satisfied within thirty (30) days of the Commission's disposition of pending appeals of the Board's February 15, 2011 Memorandum and Order, but in no event later than October 3, 2011.

2. Updating of Disclosures. Updates to mandatory disclosures and to the NRC Staff's hearing file shall be filed on the first Thursday of every month, and shall include documents identified by the 15th of the prior month.

3. Monthly Status Report. Should the NRC Staff's best estimate of the projected schedule for completion of either its safety or environmental evaluations materially change, the Staff shall so advise as soon as practicable, and in no event later than in the next monthly update of disclosures.

B. Protective Order and Nondisclosure Agreement.

The parties shall confer for the purpose of developing a proposed protective order and nondisclosure agreement concerning the handling (and possible redaction) of documents that are proprietary or otherwise sensitive. On or before October 3, 2011 — and in no event later than thirty (30) days after initial disclosures if they are made earlier than October 3, 2011 — the parties

¹² 10 C.F.R. § 2.336(a).

¹³ Id. § 2.336(b).

¹⁴ Id. § 2.1203(a).

¹⁵ NextEra's Motion to Defer Discovery; Licensing Board Order (Scheduling Initial Scheduling Conference) (Feb. 24, 2011) at 1.

shall submit either an agreed upon proposed protective order and nondisclosure agreement or individually or jointly proposed versions of such documents.

C. Additional Contentions.

1. Timeliness. A motion and proposed new contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available to the moving party through service, publication, or any other means. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both sections.

2. Consolidated Briefing. A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a timely new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file an untimely new or amended contention under 10 C.F.R. § 2.309(c) (or both), and the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). Within twenty-five (25) days after service of the motion and proposed contention, any other party may file an answer responding to all elements of the motion and contention. Within ten (10) days of service of the answer, the movant may file a reply.

D. Dispositive Motions.

1. Generally. Dispositive motions, such as motions for summary disposition under 10 C.F.R. § 2.1205 and motions to dismiss a contention as moot, may often be less efficient than proceeding directly to a Subpart L hearing, in which the Board decides contentions on the merits, but primarily on the basis of written testimony and exhibits. The parties are reminded that the Board “need not consider a motion for summary disposition unless its resolution will serve to expedite the proceeding.”¹⁶ While the Board will not prohibit dispositive motions, it expects the

¹⁶ 10 C.F.R. § 2.710(d)(1).

parties to consider carefully whether they can assert in good faith that no genuine issue exists as to any material fact relating to each such motion and that the motion has the potential to terminate the proceeding. As appropriate, the Board may order that no answer to a dispositive motion need be filed.

2. Timing. Except by agreement among the parties, no dispositive motion shall be filed any earlier than thirty (30) days after the parties' initial disclosures. In no event shall any dispositive motion be filed later than thirty (30) days after the Trigger Date, as defined in section F.1. infra. In accordance with 10 C.F.R. § 2.1205(b), an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within twenty (20) days after service of the motion, unless the Board orders otherwise.

E. Site Visit.

At the request of certain of the parties, the Board currently intends to conduct a site visit, at a time to be determined.

F. Evidentiary Hearing and Related Filings.

1. Trigger Date. The Board currently contemplates a single evidentiary hearing, which will address both environmental and safety contentions. Pursuant to 10 C.F.R. § 2.1207, certain documents must be filed prior to the hearing. The trigger date ("Trigger Date") for the initiation of such filings shall be the later of (a) the date on which the NRC Staff issues the final supplemental environmental impact statement (FSEIS), or (b) the date on which the Staff issues the final safety evaluation report (FSER). If additional contentions are admitted after the Trigger Date, the Board may, as appropriate, either revise the Trigger Date, bifurcate the evidentiary hearing, or both.

2. Prehearing Evidentiary Submissions. Prehearing evidentiary submissions by the parties and by Massachusetts shall contain, on a contention-by-contention basis, an initial written statement of position, written testimony and exhibits. The initial written statement shall be in the nature of a trial brief that summarizes the party's case, setting out applicable legal standards,

identifying witnesses and evidence, and specifying with as much particularity as practicable how each witness, exhibit, or category of evidence supports a factual or legal position. The written testimony shall be submitted under oath in the form of an affidavit or sworn declaration suitable for being received directly into evidence pursuant to 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are specifically relying upon for their statements or position.

3. Schedule. The parties and Massachusetts shall file their prehearing evidentiary submissions in accordance with the following number of days after the Trigger Date:

40 Days: Intervener Initial Submissions

70 Days: Applicant and NRC Staff Submissions

90 Days: Intervener Rebuttal Submissions

105 Days: Massachusetts Submission

4. Motions In Limine or to Strike. Motions in limine or motions to strike regarding prehearing evidentiary submissions shall be filed no later than thirty (30) days after service of the submission in issue. Answers shall be filed no later than ten (10) days after service of such motions.

5. Proposed Questions for Board to Ask. No later than thirty (30) days after service of the last prehearing evidentiary submission, all parties and Massachusetts shall file proposed questions for the Board to consider propounding to the witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The examination plans should contain a brief description of the issue or issues that the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. Proposed examination questions and plans should be filed in camera, using the NRC's E-Filing system, and not be served on other parties.

6. Motions for Cross-Examination. No later than thirty (30) days after service of the last prehearing evidentiary submission, all parties and Massachusetts shall file any motions or

requests to permit that party or interested state to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-examination shall be filed and served in the normal manner, but the cross-examination plan itself should be filed in camera, using the NRC's E-Filing system, and not be served on other parties.

7. Evidentiary Hearing. Although the specific time and date for the evidentiary hearing will be determined later, the Board currently contemplates that it will commence between sixty (60) and seventy-five (75) days after service of the last prehearing evidentiary submission.

8. Witness with Written Testimony Must be Available in Person. Unless the Board orders otherwise, each party (including the NRC Staff) must, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.

G. Additional Case Management. The Board assumes that all parties will act responsibly. While the Board expects that most legal briefs rarely should exceed fifteen (15) pages, we prefer not to impose, beyond the requirements of 10 C.F.R. Part 2, unnecessarily prescriptive rules concerning the length or format of future filings and other administrative matters. As experience warrants, however, the Board may establish additional case-specific requirements, either on its own initiation or at the suggestion of a party.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April , 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
NEXTERA ENERGY SEABROOK, LLC) DOCKET NO. 50-443-LR
(Seabrook Station, Unit 1))
)
(License Renewal))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **ORDER (Circulating Draft Initial Scheduling Order)**, dated March 23, 2011, have been served upon the following persons by Electronic Information Exchange.

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NEXTERA ENERGY SEABROOK, LLC (Seabrook Station Unit 1) – Docket No. 50-443-LR
ORDER (Circulating Draft Initial Scheduling Order)

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[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 23rd day of March 2011