

April 3, 2012

**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
)	ASLBP No. 10-906-02-LR
(Seabrook Station, Unit 1))	

**NextEra Energy Seabrook, LLC's
Unopposed Motion to Amend Protective Order**

Pursuant to 10 C.F.R. § 2.323, NextEra Energy Seabrook, LLC (“NextEra”), hereby moves to amend the Memorandum and Order (Protective Order Governing Disclosure of Proprietary Materials) (“Protective Order”) issued by the Atomic Safety and Licensing Board (“Board”) on November 10, 2011. Paragraph O of the Protective Order states that the parties may seek changes “as future circumstances warrant.” Protective Order at 8. Similarly, Paragraph R of the Protective Order states that the “Board may alter or amend this protective order as circumstances warrant at any time during the course of this proceeding.” *Id.* at 9. For the reasons discussed below, NextEra respectfully maintains that circumstances warrant an amendment to the Protective Order and requests that the Board amend the Protective Order to make two distinct changes.

DISCUSSION

In compiling its initial mandatory disclosures, NextEra identified a relevant document within its custody and control that is proprietary to Westinghouse Electric Company LLC (“WEC”). NextEra has custody of this document through agreements

with WEC which obligate it to maintain such materials in confidence. In consultations with NextEra, WEC requested that NextEra seek two amendments to the current Protective Order in this proceeding to add additional protections. The language in both proposed amendments is taken from the protective order issued in *Indian Point*, another pending license renewal proceeding involving WEC-designed reactors. See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), “Protective Order” (September 4, 2009). The proposed amendments include only minor changes from the *Indian Point* language in order to conform to the existing format of the *Seabrook* Protective Order.

I. Approved Individuals

First, NextEra requests that the Board amend existing Paragraph F of the Protective Order and add a new Paragraph F1. At this point in the proceeding, the parties have not yet identified witnesses, consultants, or other representatives who may need to access proprietary information. As a result, WEC has requested that a procedure be put in place to allow it to contest the release of its proprietary information to a witness, consultant, or other representative who may be either employed by or a consultant to a WEC competitor. Even with a signed non-disclosure agreement, the release of WEC proprietary information to an employee or a consultant of a WEC competitor would present a potential for harm to its competitive interests. The following revision to Paragraph F and new Paragraph F1 create a procedure whereby WEC can obtain assurance that witnesses or consultants who are identified later in the proceeding are not employed by or consulting for a WEC competitor. Specifically, NextEra requests Paragraph F be revised as follows (revision in italics):

F. Only individual counsel, consultants, witnesses, employees, and others representing *participants listed in Attachment B*, or the Staff who have executed the attached non-disclosure declaration may have access to proprietary documents.⁴ A proprietary document shall only be used as necessary for the conduct of this proceeding. A proprietary document shall not be disclosed in any manner to any person except (1) the Board and its staff; and (2) those engaged in the conduct of this proceeding who have executed a nondisclosure declaration and who, in the reasonable opinion of the party who has received the proprietary document, need to know the information contained in the proprietary document in order to carry out their responsibilities in this proceeding. An individual with access to proprietary documents may make copies of and take notes on the confidential information contained in the documents, but such copies and notes become proprietary documents subject to the terms of this protective order.

⁴ Individuals who are authorized to have access to proprietary information in this proceeding in accordance with this protective order, including the NRC Staff, and who wish to have web-based access to docketed proprietary materials via the agency's Electronic Hearing Docket (EHD) should contact the Office of the Secretary via e-mail at hearingdocket@nrc.gov to obtain a password, which will provide them with access to the non-public portion of the EHD for this proceeding. Alternatively, after being served with such materials via the agency's E-Filing system, parties may wish to print/download those items, which will remain accessible via the link in the service e-mail for a period of 30 days from the date of the service e-mail. Proprietary materials accessed via the EHD or an E-Filing service e-mail must be protected in accord with the terms of this protective order.

A copy of the proposed Attachment B is enclosed herein. The list of approved individuals in the enclosed Attachment B is currently populated with names of counsel for NextEra and the representative for Friends of the Coast and the New England Coalition ("Friends/NEC").

Revised Paragraph F would be followed by new Paragraph F1, which provides a simple certification procedure for adding additional individuals not currently identified in Attachment B:

F1. Participants may have an additional or substitute person(s) necessary for the preparation of materials for this proceeding be authorized to receive proprietary documents. Participants must advise the initial holder of the proprietary information ("Initial Holder") by electronic mail of the names of any additional or substitute person(s) for

whom access to proprietary information is sought. The notification must certify that the individual to be authorized is either: (a) legal counsel to a participant; (b) an employee, member, officer, or representative of a participant; or (c) a consultant, witness, or another individual whose review thereof is necessary for the preparation of materials for this proceeding. If the Initial Holder agrees to disclose to the additional or substitute designee, the Initial Holder will so notify the participant, and the individual must execute and serve the attached non-disclosure declaration prior to receipt of proprietary information. If the Initial Holder declines to disclose to the applicable designee, then the participant may seek approval from the Board by filing a motion stating that such agreement was sought and declined, and the basis for its belief that such information should be disclosed to the proposed designee. The Initial Holder may challenge such a motion within ten (10) days of receipt of the participant's filing and the Board will determine the designation of such additional or substitute recipients by further order. Only after the approval of the requested designation by the Board and the individual's execution and filing of the attached non-disclosure declaration, may such person(s) be granted access to any proprietary information.

This proposed revision will only serve as a check on any additional, currently unknown individuals who may be employed by or consultant to a WEC competitor. In the unlikely event of a dispute, ultimate authority for determining access to proprietary information would remain with the Board.

A conforming change would also need to be made to Paragraph I (2), to state that service of proprietary information should be made (changes in italics):

only on counsel for NextEra, personnel from the Office of the Secretary on the E-Filing service list for this proceeding, the Staff, a representative of Intervenors who has signed a non-disclosure declaration, and the individual members of the Licensing Board and the Board's law clerks, *subject to the limitations in Paragraphs F and F1.*

II. Vendor Proprietary Information

Second, NextEra requests the addition of a new paragraph S, which would state:

The additional provisions set forth in Attachment C apply to participants receiving proprietary documents designated as containing "Vendor Proprietary Information" (i.e., documents containing information proprietary to vendors and contractors such as Westinghouse Electric

Company LLC) from any other participant in this proceeding or its vendors or contractors.

In furtherance of new paragraph S, NextEra requests the inclusion of a new Attachment C, which would address protections for “Vendor Proprietary Information.” Attachment C would state:

A. The following additional provisions apply to participants receiving proprietary documents designated as containing “Vendor Proprietary Information”:

1. The direct or indirect receipt and use of Vendor Proprietary Information by a participant in this proceeding shall not be for the purpose of producing a product or service either by a participant, its parent corporation, subsidiaries, officers, directors, contractors, consultants, counsel, witnesses, employees, or any other person, for transfer to third parties.
2. Vendors make no warranty or representation whatsoever to participants as to the sufficiency or accuracy of the Vendor Proprietary Information provided pursuant to this Protective Order.
3. Vendors and their suppliers and subcontractors of any tier shall not be liable to participants with respect to or resulting from the use (or the results of such use) or misuse by participants or others of any Vendor Proprietary Information furnished pursuant to this Protective Order.
4. Participants shall not, at any time, without the prior written approval of the appropriate vendor, file, cause or authorize the filing of any patent application in any country in respect of any invention derived from the Vendor Proprietary Information supplied pursuant to this Protective Order.
5. Participants shall not disclose any Vendor Proprietary Information received in this proceeding, or any product of such Vendor Proprietary Information, directly or indirectly, without the prior written permission of the appropriate vendor, to any of the countries designated in the United States Government regulations as issued from time to time relating to the exportation of technical data, including any computer programs. Participants shall fully comply with all regulations with regard to the Vendor Proprietary Information transmitted pursuant to this Protective Order.

A copy of the proposed Attachment C is enclosed herein.

NextEra submits that this change should have no adverse effect on the parties to this proceeding while further protecting WEC's interest in its intellectual property and ensuring compliance with federal export control regulations. For this reason, NextEra requests the Board amend the Protective Order to add Paragraph S and Attachment C.

CERTIFICATION OF CONSULTATION

NextEra has consulted with the NRC Staff and Friends/NEC.¹ The NRC Staff has no objection to the relief sought in the motion. Friends/NEC has no objection to the relief sought in the motion so long as it does not affect its right to challenge the protected status of documents or to file a motion to amend the Protective Order if it appears that there has been abuse of its protections. Because the motion does not affect Paragraphs C, D, and E (dispute resolution procedure) or Paragraphs O and R (allowing for motions to amend the Protective Order) of the current Protective Order, NextEra submits that Friends/NEC's conditions are met.

¹ Since the Commonwealth of Massachusetts is participating in this proceeding as an Interested State under 10 C.F.R. § 2.315 and, in accordance with the Board's initial scheduling order, will only participate in the discovery process if it elects to submit a prehearing evidentiary submission, the Commonwealth has not stated a position on this motion. If and when the Commonwealth elects to participate via evidentiary submission and join the discovery process, the Parties and the Commonwealth will negotiate any separate or additional agreements required by the unique circumstances presented by the Commonwealth's participation and, if necessary, seek guidance or further order from the Board.

CONCLUSION

For the above-stated reasons, NextEra respectfully requests the Board grant its motion and amend the Protective Order as described above.

/Signed (electronically) by Steven Hamrick /

Mitchell S. Ross
James M. Petro, Jr.
NextEra Energy Seabrook, LLC
700 Universe Blvd.
Juno Beach, Florida 33408
Telephone: 561-691-7126
Facsimile: 561-691-7135
E-mail: mitch.ross@fpl.com
james.petro@fpl.com

Steven C. Hamrick
NextEra Energy Seabrook, LLC
801 Pennsylvania Avenue, N.W. Suite 220
Washington, DC 20004
Telephone: 202-349-3496
Facsimile: 202-347-7076
E-mail: steven.hamrick@fpl.com

Counsel for NextEra Energy Seabrook, LLC

Dated: April 3, 2012

ATTACHMENT B

**Individuals Approved to Receive Proprietary Documents Upon Execution of
Nondisclosure Agreement and Acknowledgment**

NextEra Energy Seabrook, LLC

Mitchell S. Ross (Counsel for NextEra)

James M. Petro, Jr. (Counsel for NextEra)

Steven C. Hamrick (Counsel for NextEra)

David R. Lewis (Pillsbury Winthrop Shaw Pittman LLP- Counsel for NextEra)

New England Coalition and Friends of the Coast

Raymond Shadis (Representative of Friends of the Coast and New England Coalition)

ATTACHMENT C

Additional Provisions Applicable to Vendor Proprietary Information

A. The following additional provisions apply to participants receiving proprietary documents designated as containing "Vendor Proprietary Information":

1. The direct or indirect receipt and use of Vendor Proprietary Information by a participant in this proceeding shall not be for the purpose of producing a product or service either by a participant, its parent corporation, subsidiaries, officers, directors, contractors, consultants, counsel, witnesses, employees, or any other person, for transfer to third parties.
2. Vendors make no warranty or representation whatsoever to participants as to the sufficiency or accuracy of the Vendor Proprietary Information provided pursuant to this Protective Order.
3. Vendors and their suppliers and subcontractors of any tier shall not be liable to participants with respect to or resulting from the use (or the results of such use) or misuse by participants or others of any Vendor Proprietary Information furnished pursuant to this Protective Order.
4. Participants shall not, at any time, without the prior written approval of the appropriate vendor, file, cause or authorize the filing of any patent application in any country in respect of any invention derived from the Vendor Proprietary Information supplied pursuant to this Protective Order.
5. Participants shall not disclose any Vendor Proprietary Information received in this proceeding, or any product of such Vendor Proprietary Information, directly or indirectly, without the prior written permission of the appropriate vendor, to any of the countries designated in the United States Government regulations as issued from time to time relating to the exportation of technical data, including any computer programs. Participants shall fully comply with all regulations with regard to the Vendor Proprietary Information transmitted pursuant to this Protective Order.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “NextEra Energy Seabrook, LLC’s Unopposed Motion to Amend Protective Order,” were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 3rd day of April, 2012.

Administrative Judge
Paul S. Ryerson, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: psr1@nrc.gov

Administrative Judge
Dr. Michael Kennedy
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: michael.kennedy@nrc.gov

Administrative Judge
Dr. Richard E. Wardwell
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: richard.wardwell@nrc.gov

Secretary
Att’n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAMAIL@nrc.gov

Mary Spencer, Esq.
Maxwell C. Smith, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mary.spencer@nrc.gov

Raymond Shadis
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
E-mail: shadis@prexar.com

Matthew Brock, Esq.
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
E-mail: matthew.brock@state.ma.us

/Signed electronically by Steven Hamrick/

Steven C. Hamrick