

September 21, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

JOINT MOTION TO MODIFY INITIAL SCHEDULING ORDER

INTRODUCTION

On August 22, 2012, the Atomic Safety and Licensing Board (“Board”) issued an order notifying the parties that the NRC amended its Part 2 regulations related to adjudicatory proceedings.¹ The order encourages the parties to file a motion by September 24, 2012, to modify the initial scheduling order (“ISO”)² if the parties believe that the amendments to the Part 2 regulations require any changes to the ISO. The NRC staff (“Staff”), NextEra Energy Seabrook, LLC (“NextEra”), and the Friends of the Coast and the New England Coalition (“FOTC/NEC”) (collectively, the “parties”) have reviewed the ISO and agree that the following amendments should be made to that document.³

¹ Order (Notifying Parties of 10 C.F.R. Part 2 Rule Changes), at 1 (Aug. 22, 2012) (Agencywide Documents Access and Management System (“ADAMS”) Accession No. ML12235A350) (“Order”).

² *Id.* at 1; Initial Scheduling Order (Apr. 4, 2011) (ADAMS Accession No. ML110940336) (“ISO”).

³ While FOTC/NEC initially informed Staff counsel they would not join the this motion, FOTC/NEC filed a notice on September 20, 2012, indicating that, upon further reflection, it would join this motion. Friends of the Coast and New England Coalition’s Memorandum of Full Support for a Joint Motion to Modify Initial Scheduling Order (Sep. 20, 2012) (ADAMS Accession No. ML12264A930).

DISCUSSION

A. Additional Contentions

First, the amendments to Part 2 amend the regulations on filing new contentions.⁴ Prior to the amendments, NRC regulations contained two provisions potentially applicable to contentions filed after the initial filing period: 10 C.F.R. § 2.309(c)(1), governing nontimely filings, and 10 C.F.R. §2.309(f)(2), governing new or amended contentions. The amendments to Part 2 eliminate the provisions on nontimely filings, currently in 10 C.F.R. § 2.309(c)(1), and move the provisions on new or amended contentions currently in § 2.309(f)(2) to §2.309(c)(1).⁵

Additionally, the amendments to Part 2 clarify that 10 C.F.R. § 2.323, the provision normally governing motions in NRC practice, does not apply to motions for new or amended contentions under the new § 2.309(c).⁶ Moreover, the amendments to Part 2 also provide that the time periods for answers and replies concerning initial contentions in new 10 C.F.R. §2.309(i) also apply to answers and replies on new contentions.⁷ These provisions alleviate difficulties, noted by one board, that “have arisen in several proceedings concerning the interplay of the sequence and timing for motions under 10 C.F.R. §§ 2.309(f)(2) and 2.323 (motion, answer), and the sequence and timing for contentions under 10 C.F.R. § 2.309(h) (contention, answer, reply).”⁸

⁴ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46562, 46566-67, 46571-72, 46582-83, 46,591(Aug. 3, 2012).

⁵ Amendments to Adjudicatory Process Rules and Related Requirements, 77 Fed. Reg. 46562, 46566-67, 46571-72, 46582-83, 46,591(Aug. 3, 2012).

⁶ *Id.* at 46,567, 46,574, 46,583, 46,593

⁷ *Id.* at 46,592.

⁸ Initial Scheduling Order (Sep. 15, 2010) (ADAMS Accession No. ML102580745) (Diablo Canyon License Renewal Proceeding).

As a result, the new rules eliminate the need for much of section C of the ISO, which governs additional contentions. That section currently reads:

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.⁹

In light of the amendments to Part 2, it is no longer necessary to discuss consolidated briefing for new or amended contentions and provide which deadlines apply to responses to those contentions. Therefore, the parties propose that section (C)(2) of the ISO be eliminated. Moreover, because all motions for new or amended contentions will need to meet the timeliness criteria currently in § 2.309(f)(2) under the new rules, the ISO's discussion of nontimely contentions under current § 2.309(c) in section (C)(1) of the ISO is superfluous.

Consequently, the parties propose the following revision to section (F) of the ISO (deletions are crossed out, additions are underlined).

1. Timeliness. A motion and proposed new contention shall be deemed timely under 10 C.F.R. § 2.309(~~cf~~)(~~12~~)(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~~

⁹ ISO at 4

~~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.~~

The above revisions would bring section (C) of the ISO into conformity with the amendments to Part 2.

B. Mandatory Disclosures and Production of Hearing File

In addition, the Part 2 amendments limit the scope of the Staff's hearing file disclosure obligations under 10 C.F.R. § 2.336(b) to documents that "are relevant to the admitted contentions."¹⁰ The ISO does not specifically discuss the scope of the Staff's disclosure obligations, so no revisions are necessary to conform the ISO to the amendments to § 2.336(b). Nonetheless, the Staff takes this opportunity to inform the parties and the Board that in light of this amendment, future hearing file updates will only reflect those documents that "are relevant to admitted contentions" or otherwise subject to disclosure under 10 C.F.R. § 2.1203.¹¹

¹⁰ 77 Fed. Reg. 46,563-65, 46,574-75, 46, 583, 46,593.

¹¹ The ISO provides, "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." ISO at 3. The Part 2 amendments provide that the mandatory disclosure updates need not include "documents that are developed, obtained, or discovered during the two weeks before the due date" for the disclosure. 77 Fed. Reg. at 46,575, 46,593. Thus, the ISO provides for an earlier cut-off date for including documents in an update than the new regulations provide. Nonetheless, because the ISO reflects the parties' agreement, sanctioned by the Board, the parties understand the ISO to still control on this issue.

CONCLUSION

For the reasons set forth above, the parties respectfully believe that the amendments to Part 2 require the aforementioned changes to the ISO.

/Signed (electronically) by/

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Executed in Accord with 10 CFR 2.304(d)

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "JOINT MOTION TO MODIFY INITIAL SCHEDULING ORDER dated September 21, 2012, have been served upon the following by the Electronic Information Exchange, this 21st day of September, 2012:

Signed (electronically) by
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