

October 1, 2012

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

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

**NEXTERA’S MOTION TO STRIKE
FOTC/NEC’S CORRECTED CONTENTION**

On September 21, 2012, Friends of the Coast and the New England Coalition (“FOTC/NEC”) filed a “correction” to its pending contention regarding NextEra Energy Seabrook’s (“NextEra”) aging management program for alkali-silica reaction (“ASR”) (the “ASR Contention”).¹ According to its transmittal letter, FOTC/NEC’s Corrected Contention was intended to correct “typographical and scrivener’s errors . . . for the sake of the record and the convenience of readers . . . together with an errata and corrections index so that readers need not hunt for changes.”² However, in addition to failing to include the promised index of corrections, FOTC/NEC once again went beyond permissible correction of typographical errors and attempted to provide threshold support for its contention. Accordingly, the Board should strike FOTC/NEC’s Corrected Contention.

¹ Friends of the Coast and New England Coalition’s Motion (With September 19, 2012 Corrections) for Leave to File a New Contention Concerning NextEra Energy Seabrook’s Amendment of its Aging Management Program for Safety-Related Structures (Dated Aug. 27, 2012 and Sept. 19, 2012, but filed on Sept. 21, 2012) (“Corrected Contention”).

² Letter from R. Shadis to Atomic Safety and Licensing Board, “Corrections and Supplement to Friends of the Coast and New England Coalition Petition for leave to File a New Contention Regarding NextEra Energy Seabrook License Renewal Application Structures Monitoring Program Supplement-Alkali-Silica Reaction (‘ASR’) Monitoring” (Sept. 21, 2012) (“Transmittal Letter”). The Transmittal Letter also forwarded a supplement to the ASR Contention. NextEra will respond to that filing in 25 days in accordance with the Initial Scheduling Order.

Specifically, on page 3 of the Corrected Contention, FOTC/NEC modified footnote 3 by adding a reference in support of a previously unsupported assertion. Further, on page 9, FOTC/NEC added a reference to the newly revised footnote 3 following its previously unsupported statement number 2 regarding the adequacy of visual inspection. Neither of these additions can reasonably be considered the correction of a typographical error.³ Revised footnote 3 cites to a PowerPoint presentation prepared by the Portland Cement Association. Corrected Contention at 3. This document has been publicly available in the NRC's ADAMS database at Accession No. ML12153A420 since July 10, 2012. The Commission does not allow contentions to be supplemented after the fact with previously available information. *See e.g., Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-25, 60 N.R.C. 223, 224-25 (2004), *reconsideration denied* CLI-04-35, 60 N.R.C. 619 (2004). Its contention timeliness requirements "demand a level of discipline and preparedness on the part of petitioners," as there simply would be "no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements" and add new bases or new issues that "simply did not occur to [them] at the outset." *Id.*

Of course, this is not the first time FOTC/NEC has attempted to add missing threshold support for one of its contentions under the guise of correcting typographical errors. *See NextEra Energy Seabrook, LLC* (Seabrook Station Unit 1), LBP-11-02, slip op. at 8 (2011). At oral argument in this case, the Board invited FOTC/NEC to correct typographical errors, but warned it not to present new arguments or new issues. *Id.* citing Tr. at 70. FOTC/NEC failed to abide by the Board's admonition:

³ FOTC/NEC also added a heading regarding the NRC's late filing criteria in 10 C.F.R. § 2.309(f)(2) on page 17 and a prayer for relief in its conclusion on page 18. These additions are not as egregious as the addition of threshold support for its visual inspection claim, but they nonetheless contradict FOTC/NEC's claim that it intended only to fix typographical errors.

Although some of Friends/NEC's numerous corrections appear to be of the sort the Board expected, others — such as bolstering the description of Mr. Blanch's credentials to opine concerning subjects on which his expertise had been questioned during oral argument — clearly go further. In the circumstances, the Board will not try to parse through which of Friends/NEC's changes constitute authorized corrections and which improperly go beyond what the Board intended.

Accordingly, in ruling on Friends/NEC's petition, we have not considered or relied upon their submissions subsequent to their original petition and reply.

LBP-11-02, slip op. at 8-9.

At this point in the litigation, FOTC/NEC cannot reasonably argue that it was unaware that this type of addition is unacceptable. Accordingly, NextEra requests the Board to strike FOTC/NEC's Corrected Contention or, in the alternative, to follow its precedent from LBP-11-02 and simply refuse to consider the submission.

As required by 10 C.F.R. § 2.323(c), NextEra consulted with the other parties to this proceeding prior to filing this motion. NextEra was unable to resolve the issues identified herein with FOTC/NEC. The NRC Staff stated that it would not oppose the motion.

Respectfully Submitted,

/Signed electronically by Steven C. Hamrick/

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Dated: October 1, 2012

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CERTIFICATE OF SERVICE

I hereby certify that NextEra's Motion to Strike FOTC/NEC's Corrected Contention, dated October 1, 2012, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 1st day of October, 2012.

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