

October 9, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of)
NextEra Energy Seabrook, LLC
(Seabrook Station, Unit 1)

Docket No. 50-443-LR
ASLBP No. 10-906-02-LR

FRIENDS OF THE COAST AND NEW ENGLAND COALITION'S OPPOSITION
TO
NEXTERA'S MOTION TO STRIKE FOTC/NEC'S CORRECTED CONTENTION

I. INTRODUCTION

On September 21, 2012, Friends of the Coast and the New England Coalition ("Friends/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 Friends/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 [emphasis added].

On October 1, 2012, NextEra filed a Motion to Strike FOTC/NEC's Corrected Contention.

Friends/NEC, through its *pro se* representative, Raymond Shadis, opposes herein NextEra's Motion to Strike.

II. DISCUSSION

NextEra brings three complaints regarding Friends/NEC's Corrected Contention:

A. The Corrected Contention includes a previously-omitted footnote, which is more than the correction of a typographical error.

Friends/NEC responds that this is quite so; the footnote being inadvertently omitted in transcribing a draft to final copy. The footnote is appended to a Friends/NEC allegation in a

section of the filing referring to NextEra's failure to file a complete application addressing all structural defects of which it was aware under 10 CFR §50.9. It was not intended to add basis for the Alkali-Silica Reaction ("ASR") Contention, but rather to illumine how important an extent of condition review, termed here, "field history" must be to determining how ASR will progress.

The restored footnote reads:

1 These indicators signal the chemical-physical processes underway; but give little information as to the extent, depth, rate of growth, or stage of progress of the processes.

Portland Cement Association P.48 ,PCI Concrete Technology and Codes. "The BEST ASR "Test" The most accurate test for determining deleterious ASR potential is Field History; Structures >15 years old?, Same aggregate?, Same cement/concrete alkali ?, Same SCMs (brand, type, amount)?, Same water content?, Same exposure conditions?"

ML12153A420[1] The Condition Survey and Evaluation of Hardened Concrete, Alkali-Aggregate Reactions ,Portland Cement Association (power point, undated)

NextEra states that information previously available may not be used to add basis to a contention. This raises several questions: What of simple applied mathematics? Or, in this case, what of long standing industry knowledge and practice? What is NextEra's responsibility to review operating experience in the concrete industry once a problem has been discovered? Friends/NEC's purpose in raising this industry standard for extent-of-condition review is to point to the paucity of NextEra's response to ASR in the nearly two years that lapsed between the discovery of deteriorated concrete in structures subject to aging management review and the filing of their ASR monitoring plan.

This is not, as NextEra without basis asserts, and attempt to add basis in the "guise" of correcting "typographical errors." In its transmittal letter, Friends/NEC identified "scrivener's" errors that were to also be corrected.¹ NextEra's innuendo and suppositions about Friends/NEC's

¹ Clerical error or Scrivener's error is an error due to a minor mistake or inadvertence and not one that occurs from judicial reasoning or determination. It can be a mistake made in a letter, paper, or document that changes the meaning of the same. Typographical errors or the unintentional addition or omission of a

motives are provided without basis save for an allusion to difficulties with the testimony of a Friends/NEC witness, Paul Blanch, which occurred under entirely unrelated circumstances in the opening phases of this proceeding. Friends/NEC has not produced its corrections under the strictures of a Board order following oral argument; nor are these corrections to a witness declaration.

Friends/NEC offers that, on the whole, the significance of this footnote; whether it is a minor or major restoration, rests with how significant the Board finds it; in particular where a footnote on page 9 of the Corrected Contention refers back to the Portland Cement Institute slides tying in the statements of NRC expert, Abdul Sheihk regarding NextEra's failure to justify proceeding on visual inspections and failure to complete extent-of-condition review in time to inform its ASR monitoring (and management) program. This correction should be allowed to stand.

word, phrase, or figure in writing or copying something on the record are all examples of clerical or scrivener's error. Such an error is made by mistake and not purposely and so should be readily remedied without objection. [emphasis added]

US Legal.Com, Definitions: Clerical error/scrivener's error/ vitium clerici.

A scrivener's error literally refers to a written error. The definition for scrivener's error in Black's Law Dictionary directs the reader to "[s]ee clerical error." Black's Law Dictionary 1349 (7th ed. 1999).

Title 19 CFR 162 : Customs Duties
CHAPTER I: U.S. CUSTOMS
Subpart G: Special Procedures for Certain Violations
162.71 - Definitions.

(e) Clerical error. Clerical error means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

If a litigant notices an omission or an error in a document that has already been served or filed and the litigant wishes to amend or correct the pleading, the litigant should then file a document that is clearly marked as a corrected version of the pleading, and to request leave to substitute the corrected pleading for the original. Such a request (motion) should also explain the differences between the amended pleading and the original, as well as the circumstances justifying the filing of the corrected pleading. USEC, Inc. (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 593 (2005). [Emphasis Added]

B. The Corrected Contention includes an added “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, says NextEra, 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.

Friends/NEC responds: There was no claim to fix only typographic errors. In fact, the reference to 10 C.F.R. §2.309 (f)(2) was in the draft and its restoration has no material effect; serving only to clarify references to criteria under the section. Further, Friends/NEC did not add a “prayer for relief”. What Friends/NEC did was to reunite two inadvertently separated paragraphs. The text does not change at all.

C. The Corrected Contention did not include a list of errata and corrections, as it was represented to be included in the transmittal letter.

Friends/NEC responds: This charge is true and Friends/NEC was chagrined, on review of its filing, to find NextEra’s accusation on this one point was true. It would have been helpful, had NextEra simply telephoned or sent an e-mail notifying Friends/NEC of the omission, as we would have soon corrected it. A copy of the errant errata sheet is attached hereto as, “Attachment One,” along with Friends/NEC’s apologies for any undue concern or confusion resulting from its prior omission.

III. CONCLUSION

Accordingly, the Board should deny NextEra’s motion to strike and give what weight it deems proper to the minor substantive restorations.

Respectfully Submitted,
/Signed electronically by Raymond Shadis
Dated: October 9, 2012

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ATTACHMENT ONE

September 19, 2012
Docket No. 50-443-LR

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 Concrete Structures

ERRATA AND CORRECTIONS

Page 3, Paragraph 3 – indent

Page 3, Paragraph 3 - spacing, change single to double

Page 3, Footnote 3 - inadvertent omission restored per original draft

P.48 ,PCI Concrete Technology and Codes. “The BEST ASR “Test” The most accurate test for determining deleterious ASR potential is Field History; Structures >15 years old?, Same aggregate?, Same cement/concrete alkali ?, Same SCMs (brand, type, amount)?, Same water content?, Same exposure conditions?”
ML12153A420[1] The Condition Survey and Evaluation of Hardened Concrete, Alkali-Aggregate Reactions ,Portland Cement Association (power point, undated)

Page 4, Paragraph 4 10 CFR §50.9 quote corrected – indent

Page 5, Footnote 5 – Strike citation at Paragraph 3

Page 6, Paragraph 4, Line 3, .capitalize Friends

Page 7, Paragraphs 1 and two –correct space between

Page 7, Paragraph 2, correct space separating quote

Page 8, Paragraph 2, 1st sentence, capitalize, Friends

Page 8, Paragraph 2, Omit comma after “information”

Page 8, Paragraph 3, restore double spacing

Pages 8 and 9, Under III. CONTENTION, Criteria (i) and (ii), italicize

Page 9, Sentence 2, double space restored

Page 9, Item 2, “visual inspection” etc., inadvertent omission restored,”(see, footnote 3)”

Page 10, Second sentence, Title, “Second,” etc in bold, single-spaced.

Page 10, Item Number 1, correct inadvertent omission “...Appears nominal or arbitrary”

Page 10, Item Number 2, Sentence 3, reduce “O” in “NO” to small case.

Page 11, Transcript Page 154, Line 23, restore indent.

Page 11, Transcript, Page 156, underline, 156

Page 12, Paragraph 2, correct spelling, “Mr. Sheihk” and “enormity.”

Page 12, Last Paragraph, Third sentence, Capitalize, “Friends,” Space between 20 and years.

September 19, 2012
Docket No. 50-443-LR
Attachment One
Errata and Corrections

Page 14, Contention Criterion (iii) italicize

Page 15 Contention Criterion (iv) italicize

Page 15, Contention Criterion (v) italicize

Page 15, Under Criterion (v) NEC “intended” corrected to “intends”

Page 15, Contention Criterion (vi) italicize, single-space

Page 17, After , SBK-L-12101, Pages 2,3 of 18, added caption, “Additional Criteria under 10C.F.R.§309(f)(2) Which May Apply to Late-Filed Contention.

Page 17, Criteria (i) and (iii), italicize, corrected numbering addressing (i) and (iii) together; with (ii) following separately.

Page 17, Computation of Time, strike Part 2, insert 10C.F.R.§2.306

Page 18, Numbering error in inadvertently separating first and second paragraph under, “Conclusion” (repeated. Recombine and renumber as IV. CONCLUSION with V. CONSULTATION , etc, following.

October 9, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
FPL Energy Seabrook, LLC (NextEra, Inc)
(Seabrook Station, Unit 1 – License Renewal Application)

Docket No. 50-443
ASLBP No. 10-906-02-LR

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2012, a copy of **Friends Of The Coast And New England Coalition’s Opposition to NextEra’s Motion to Strike FOTC/NEC’s Corrected Petition for Leave to File a New Contention Concerning NextEra Energy Seabrook’s Amendment of its Aging Management Program for Safety-Related Concrete Structures** in the above captioned proceeding, was filed by electronic filing and provided to the persons and parties identified for service in this matter by NRC’s electronic filing system.

Signed electronically,

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