

October 16, 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 ANSWER OPPOSING  
FOTC/NEC’S CONTENTION SUPPLEMENT**

**I. INTRODUCTION**

On August 27, 2012, Friends of the Coast and New England Coalition (“FOTC/NEC”) filed a motion for leave to submit a new contention regarding Alkali-Silica Reaction (“ASR”).<sup>1</sup> Shortly thereafter FOTC/NEC filed a supplement to their ASR Contention.<sup>2</sup> Pursuant to 10 C.F.R. § 2.309(h)(1) and the Board’s Initial Scheduling Order, NextEra Energy Seabrook, LLC (“NextEra”) hereby answers and opposes admission of the ASR Contention Supplement.

As described by FOTC/NEC, the ASR Contention Supplement seeks leave to introduce four new exhibits, which it claims contain new and material information providing support for FOTC/NEC’s pending contention challenging NextEra’s four-month-old ASR Monitoring Program.<sup>3</sup> ASR Contention Supplement at 1-2. As NextEra explained in its Answer, the ASR Contention should be rejected because it is untimely and fails to meet NRC standards for

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<sup>1</sup> Friends of the Coast and New England Coalition’s Motion for Leave to File a New Contention Concerning NextEra Energy Seabrook’s Amendment of its Aging Management Program for Safety-Related Structures (Aug. 27, 2012) (the “ASR Contention”).

<sup>2</sup> Supplement to Friends of the Coast and New England Coalition’s Motion for Leave to File a New Contention Concerning NextEra Energy Seabrook’s Amendment of its Aging Management Program for Safety-Related Structures (Sept. 21, 2012) (the “ASR Contention Supplement”).

<sup>3</sup> SBK-L-12101, Seabrook Station, NextEra Energy Seabrook License Renewal Application, Structures Monitoring Program Supplement-Alkali-Silica Reaction (ASR) Monitoring (May 16, 2012) (ADAMS Accession No. ML12142A323) (“LRA Supplement”).

admissibility.<sup>4</sup> The ASR Contention Supplement cures neither the timing nor the admissibility deficiencies of the original ASR Contention.<sup>5</sup> While it identifies several documents that are newly available, it fails to demonstrate that the information is materially different from information previously available. Accordingly, FOTC/NEC cannot show good cause for its failure to raise these issues earlier. 10 C.F.R. § 2.309(c). Nor do the exhibits identified in the ASR Contention Supplement cure the failure of the original ASR Contention to provide facts or expert opinion necessary to demonstrate the existence of a genuine dispute with NextEra's ASR Monitoring Program on an issue within the scope of this NRC license renewal proceeding. 10 C.F.R. § 2.309(f)(1). For these reasons, the ASR Contention Supplement is insufficient to rehabilitate FOTC/NEC's inadmissible ASR Contention.

## **II. THE ASR CONTENTION SUPPLEMENT SHOULD BE REJECTED BECAUSE IT IS UNTIMELY AND DOES NOT MEET CONTENTION ADMISSIBILITY STANDARDS**

The four new documents identified by FOTC/NEC include: (1) an NRC Staff request for deviation from the Reactor Oversight Process ("ROP") to allow increased inspections at Seabrook;<sup>6</sup> (2) the charter for an NRC Technical Team compiled to consider ASR at Seabrook;<sup>7</sup>

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<sup>4</sup> NextEra's Answer Opposing Admission of Contention Concerning Alkali-Silica Reaction, (Sept. 21, 2012) ("NextEra ASR Contention Answer").

<sup>5</sup> In the interest of brevity, NextEra does not reiterate its discussion of the timeliness and admissibility criteria it provided in the NextEra ASR Contention Answer. For the purpose of this Answer, it suffices to note that in order for intervenors to raise contentions after the time period set forth in the Initial Scheduling Order, they must demonstrate "good cause" for their failure to raise the claim in a timely fashion based on a showing that any new information is "materially different" from information that had previously been available. 10 C.F.R. § 2.309(c)(ii). Further, to be admissible, a contention must be within the scope of the proceeding, be supported by adequate fact or expert support, and raise a genuine dispute with the application. 10 C.F.R. §§ 2.309(f)(iii), (v), (vi).

<sup>6</sup> FOTC/NEC Exhibit 1 - Memorandum from W.M. Dean, Regional Administrator, Region I, to R.W. Borchardt, Executive Director for Operations, "Request for Deviation from the Reactor Oversight Process Action Matrix to Provide Increased Oversight of the Alkali-Silica Reaction Issue at Seabrook" (Sept. 5, 2012) ("ROP Deviation Memo").

<sup>7</sup> FOTC/NEC Exhibit 2 - Memorandum from E.J. Leeds, Director, NRR and W.M. Dean, Regional Administrator, Region I, "Seabrook Alkali-Silica Reaction Issue Technical Team Charter" (July 9, 2012) ("ASR Technical Team Charter").

(3) a set of NRC Staff requests for additional information (“RAIs”) on the Seabrook ASR aging management program;<sup>8</sup> and (4) a letter from the advocacy group C-10 and the Union of Concerned Scientists describing the views of their claimed expert on the ASR issue at Seabrook.<sup>9</sup> Relying on these documents, FOTC/NEC make arguments that either relate to NRC’s ongoing oversight of Seabrook under its existing license and are therefore beyond the scope of this license renewal proceeding or else materially misrepresent NextEra’s ASR Monitoring Program and so fail to demonstrate the existence of a genuine dispute with the LRA Supplement. 10 C.F.R. § 2.309(f)(1)(iii), (vi). In any event, as described below, these documents do not present information that is materially different from that previously available so FOTC/NEC cannot rely on them to show good cause (a showing it does not even attempt to make) to excuse their failure to challenge the ASR Monitoring Program when it was first submitted in May.

**A. The ROP Deviation Memo and ASR Technical Task Force Charter Discuss Current Operations Outside the Scope of this Proceeding and Do Not Contain Materially Different Information**

The first two documents FOTC/NEC cites are the ROP Deviation Memo (*supra* note 6) and the ASR Technical Task Force Charter (*supra* note 7). ASR Contention Supplement at 2, 4-9. These documents were both recently made publicly available but neither contain information that is materially different from that which had been previously available and so FOTC/NEC cannot rely upon them to show good cause for its failure to timely challenge the ASR Monitoring Program. 10 C.F.R. § 2.309(c)(1). In addition, these documents reflect the NRC’s ongoing oversight of the Seabrook under its current operating license. FOTC/NEC’s challenge to the

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<sup>8</sup> FOTC/NEC Exhibit 3 - Letter from P. Milano, Senior Project Manager, to K. Walsh, Site Vice President, “Requests for Additional Information for the Review of the Seabrook Station, License Renewal Application -Set 19” (“ASR RAIs”).

<sup>9</sup> FOTC/NEC Exhibit 4 - Letter from S. Gavutis, Co-Director, C-10 Research and Education Foundation and D. Wright, Executive Director Global Security Program Union of Concerned Scientists, to W.M. Dean, Regional Administrator, Region I, (Sept. 13, 2012) (“C-10 Letter”).

NRC's ongoing regulatory review outlined in these documents is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii), 10 C.F.R. § 54.30.

The ROP Deviation Memo explains that “the staff believes that additional inspections (hours and samples) and assessments are needed to support the review of the licensee commitments and planned large scale concrete specimen testing by the licensee, the development of staff technical guidance, and stakeholder communications and outreach activities.” ROP Deviation Memo at 1. Similarly, the stated purpose of the ASR Technical Task Force Charter is to “provide coordination of the onsite inspections, in-office technical reviews, and other associated evaluation and assessment activities involving NextEra’s review and resolution of the ASR issues at Seabrook Station.” ASR Technical Task Force Charter at 1. FOTC/NEC argues that these documents indicate that the NRC Staff has not completed its confirmation review of Seabrook’s compliance with its current licensing basis (“CLB”) and of operability under its current operating license and so by extension can have “zero” confidence in NextEra’s license renewal ASR Monitoring Program. ASR Contention Supplement at 5.

FOTC/NEC makes no effort to meet its burden to demonstrate good cause to excuse its failure to raise this claim earlier by showing that this new information “is materially different from information previously available.” 10 C.F.R. § 2.309(c)(ii). Instead, it simply argues that the documents are material to the license renewal decision and assumes that their recent public release is sufficient to meet the NRC’s timeliness standards. *See* ASR Contention Supplement at 4-6. But to show good cause under the Commission’s procedural regulations, an intervenor must show not only that it “acted promptly after learning of the new information, but the information itself must be new information, not information already in the public domain.” *Tex. Utils. Elec. Co.* (Comanche Peak Steam Elec. Station, Units 1 & 2), CLI-92-12, 36 NRC at 62, 70 (1992).

By itself, FOTC/NEC's failure to address the good cause standard in section 2.309(c) is a sufficient basis to reject its "supplemental" arguments. *See, e.g., Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-5, 69 N.R.C. 115, 126 (2009) ("failure to address the requirements [of the previous versions of 10 C.F.R. §§ 2.309(c) and (f)(2) is] reason enough to reject the proposed new contentions.").

Perhaps FOTC/NEC declined even to attempt to show that these documents present materially different information because such a showing is just not possible. The ongoing and thorough nature of the NRC Staff's review of the ASR issue at Seabrook under NextEra's current operating license has long been transparent. The ROP Deviation Memo and ASR Technical Task Force Charter simply reflect the next administrative steps in this ongoing and public regulatory process. For this reason, they do not provide information that is materially different from that previously available.

Information detailing this ongoing NRC Staff review has been shared through publicly released inspection reports, public meetings, and docketed correspondence between the NRC Staff and NextEra going back over a year.<sup>10</sup> More recently, the NRC Staff sent NextEra a letter on March 26, 2012, entitled "Seabrook Station - NRC Inspection Report 05000443/2011010 Related to Alkali-Silica Reaction Issue in Safety Related Structures."<sup>11</sup> The Inspection Report documented the ASR issue at Seabrook and stated that:

*The NRC still has concerns associated with long term operability, therefore additional information is needed to determine: 1) how various characteristics of the concrete may be affected by ASR; 2) the related effects on other elements of the structures, such as rebar, due to groundwater in-leakage; and 3) the rate of progression of the ASR in structures at the site. It is our understanding that these*

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<sup>10</sup> *See generally*, NextEra ASR Contention Answer, *supra* note 4, at 7-15.

<sup>11</sup> NRC Letter, "Seabrook Station - NRC Inspection Report 05000443/2011010 Related to Alkali-Silica Reaction Issue in Safety Related Structures" March 26, 2012 (ADAMS Accession Number ML120480066).

specific areas are being addressed in a comprehensive corrective action plan that was still being finalized by your organization at the end of the inspection.

Inspection Report Cover Letter at 1 (emphasis added).

This Inspection Report also described a public meeting to be held in Rockville on April 23, 2012 to discuss NextEra's plans to understand and manage ASR and ensure its licensing bases remain valid. *Id.* at 1-2. At that public meeting, NextEra "commit[ed] to send [the NRC] a letter on the docket by May 6, 2012, with dates for submitting a root cause evaluation, interim assessment engineering evaluation, revised operability determination, University of Texas test results, ASR reaction rate, and corrective action plan."<sup>12</sup> The NRC followed up on May 16, 2012, sending NextEra a Confirmatory Action Letter ("CAL"),<sup>13</sup> to confirm NextEra's commitments regarding ASR, including its plans to submit a number of completed reports as well as the results of future studies that in some cases would not be available for over a year.<sup>14</sup> For instance, the promised short term and long term aggregate expansion testing results would not be available to the NRC until July 2012 and July 2013, respectively. Confirmatory Action Letter at 2-3. Similarly, the anchor test program results would not be available for NRC Staff review until January 2013. *Id.* at 3. And the CAL confirms that only the technical details of planned testing at the University of Texas would be available in the summer 2012. *Id.* This testing is not expected to be completed until 2014. April 23, 2012 Meeting Summary, *supra* note 12, at 5. These are the very licensee commitments and planned large scale testing results

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<sup>12</sup> Meeting Summary Regarding Concrete Degradation Held on April 23, 2012 (May 4, 2012) at 3-4 (ADAMS Accession No. ML121220109) ("April 23, 2012 Meeting Summary").

<sup>13</sup> NRC Letter CAL No. 1-2012-002 "Confirmatory Action Letter, Seabrook Station Unit 1- Information Related to Concrete Degradation Issues," May 16, 2012 (ADAMS Accession Number ML12125A172).

<sup>14</sup> NextEra fulfilled certain CAL commitments in May and June 2012 and the NRC is currently reviewing NextEra's submittals. SBK-L-12122, Seabrook Station – Response to Confirmatory Action Letter (June 8, 2012) at Encl. (ASR Project Corrective Action Plan) (ADAMS Accession No. ML12171A277) ("June 8, 2012 CAL Response"); SBK-L-12106, Seabrook Station – Response to Confirmatory Action Letter (May 24, 2012) at Encl. 1 (Root Cause for the Organizational Causes Associated with the Occurrence of ASR at Seabrook Station) (ADAMS Accession No. ML12151A396) ("May 24, 2012 CAL Response").

referred to in the ROP Deviation Memo. The fact that the NRC's comprehensive review of long-term operability and CLB compliance under Seabrook's current operating license will remain ongoing for a significant period of time is simply not new information.

The CAL closed by explaining that:

*This CAL will remain in effect until the NRC has concluded that all actions listed above have been satisfactorily completed.* We note that, regarding the ASR issue, license renewal is a separate licensing action before the Commission and the NRC may require the submittal of further information as part of the licensee renewal application review beyond that provided in response to this CAL.

Confirmatory Action Letter at 3. It should have come as no surprise that the NRC's review of the information that has only recently been provided to it (not to mention the information that has yet to be provided to it) in response to the CAL is still underway. Nothing in the ROP Deviation Memo or the ASR Technical Task Force Charter is materially different from information that has long been publicly available<sup>15</sup> and therefore, FOTC/NEC cannot demonstrate "good cause" for waiting until now to raise this issue.

Regardless of the timeliness of this claim, it is inadmissible under longstanding Commission precedent because these documents are a part of the NRC's ongoing regulatory oversight of Seabrook under its current operating license, which is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii), 10 C.F.R. § 54.30. FOTC/NEC does not identify which, if any, of its eight previously specified contention bases it intends to supplement with these NRC documents. *See* ASR Contention Supplement at 5-8. Instead, it essentially presents a new contention – that these recent NRC Staff documents demonstrate a lack of NRC Staff confidence in the operability of Seabrook under its CLB (*id.* at 5-6) and that, as a result,

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<sup>15</sup> FOTC/NEC has been aware of the CAL since at least July 9, 2012. *See* NextEra ASR Contention Answer, *supra*, note 4, at 22-23 (discussing FOTC/NEC's consultation email describing the CAL, NextEra's root cause analysis, and its extent of condition review). Regardless, the relevant inquiry is not when FOTC/NEC became aware of new information, but when that information was "reasonably available to the public." *Millstone*, 69 N.R.C. at 126.

NextEra's ASR Monitoring Program is *ipso facto* inadequate (*id.* at 5-8). Because it knows this argument is an inadmissible challenge to CLB issues (*see id.* at 7-8), FOTC/NEC attempts to bootstrap its criticisms of NextEra's operability determination and its ongoing compliance with the CLB into a challenge to its license renewal aging management program. But this bootstrapping argument is clearly beyond the scope of this license renewal proceeding and inadmissible.

As FOTC/NEC understands (*see* ASR Contention Supplement at 7), the Commission has drawn a clear line of demarcation between operating issues and aging management issues in its license renewal rules. *See* 10 C.F.R. §§ 54.29, 54.30. In promulgating Part 54, it concluded that "aging management of certain important systems, structures, and components during this period of extended operation should be the focus of a renewal proceeding and that issues concerning operation during the currently authorized term of operation should be addressed as part of the current license rather than deferred until a renewal review." Nuclear Power Plant License Renewal, Revisions, 60 Fed. Reg. 22,461, 22,481 (May 8, 1995) ("1995 Final Rule"). The Commission's rules on license renewal are based on the assumption that the NRC's ongoing regulatory activities are sufficient to ensure licensee compliance with the CLB during the initial period of operation and the extended period of operation. *See* Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,946 (Dec. 13, 1991) ("1991 Final Rule").

In other words, for the purpose of license renewal, we must proceed under the assumption that ultimately NextEra will either satisfy the NRC that its actions to date sufficiently assure the long term operability of Seabrook or else the NRC will require some additional action prior to allowing continued long-term operation under the current license. The question to be determined during the license renewal review is, given that the issue of CLB compliance will ultimately be

resolved during the current period of licensed operations, what type of monitoring or other aging management is necessary such that NRC can be assured that Seabrook will continue to comply with its CLB during the period of extended operations.

FOTC/NEC argues that the current operations review and the license renewal review cannot proceed in parallel. ASR Contention Supplement at 7 (these issues “should have been resolved before filing the Seabrook LRA since NRC assumes substantial compliance with the CLB”). This is contrary to the NRC’s long-established policy. The CLB represents an “evolving set of requirements and commitments for a specific plant that are modified as necessary over the life of a plant to ensure continuation of an adequate level of safety.” 1995 Final Rule, 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement. *Fla. Power & Light Co.*, (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 9 (2001). In creating this framework, the Commission was fully aware that some issues would appear to be relevant both to current operation and to the period of extended operations but made clear that those issues must be addressed as part of current operations:

Given the Commission’s ongoing obligation to oversee the safety and security of operating reactors, issues that are relevant to both current plant operation and operation during the extended period must be addressed now within the present license term rather than at the time of renewal. Otherwise, the scope of Commission inquiry into the safety and security during the current term of operation would depend on the unrelated decision of a licensee to seek license renewal and the timing of the Commission’s renewal decision.

1991 Final Rule, 56 Fed. Reg. at 64,946.

The Commission clearly did not envision license renewal as a forum for a duplicative review with its ongoing oversight process. *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 72 N.R.C. \_\_\_, CLI-11-11, slip op. at 5 (2011). Accordingly, under

10 C.F.R. § 54.30, while the licensee must address potential noncompliances under its current operating license, such compliance is “not within the scope of the license renewal review.”<sup>16</sup>

10 C.F.R. § 54.30(b). For this reason, the adequacy of NextEra’s operability determination, its compliance with its CLB, and the NRC Staff’s inspections to verify that compliance are not within the scope of this license renewal proceeding. Whether the NRC Staff is yet satisfied with the long-term operability of Seabrook under NextEra’s current operating license is outside the scope of this proceeding, immaterial, and inadmissible. 10 C.F.R. §§ 2.309(f)(1)(iii), (iv).

**B. The NRC Staff Requests for Additional Information and the C-10 Letter Do Not Demonstrate a Genuine Dispute with the LRA Supplement and Do Not Present Materially Different Information**

Referring to the NRC Staff’s recent ASR RAIs (*supra* note 8) and the C-10 Letter (*supra* note 9), FOTC/NEC attempt to bolster two arguments from their initial ASR contention – the incorrect claim that NextEra will seek to rule out ASR in some areas based on visual inspections and the baseless claim that NextEra will not have adequate information regarding the rate of ASR degradation upon which to base ASR inspection intervals during the period of extended operation. ASR Contention Supplement at 9. These claims, and other issues raised in the ASR RAIs and C-10 Letter are not timely, not based on materially different information, and do not raise an admissible issue.

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<sup>16</sup> As the Commission explained in *Diablo Canyon*, to the extent FOTC/NEC takes issue with the current operability and CLB compliance at Seabrook, then its remedy is not to bootstrap a contention challenging the license renewal application, but “to direct the Staff’s attention to those matters by filing a request for action in accordance with 10 C.F.R. § 2.206.” CLI-11-11, slip op. at 6.

## 1. The NRC Staffs RAIs Do Not Present Materially Different Information

FOTC/NEC specifically excerpts four RAIs as relevant to their previously identified matters of concern. These are: Follow-Up RAI B.2.1.28-3 (the “Program Scope RAI”); RAI B.2.31-5 (the “Visual Inspection RAI”); RAI B.2.1.31-6 (the “Acceptance Criteria RAI”); and RAI B.2.1.31-7 (the “Degradation Rate RAI”). As described below, none of these RAIs provides the necessary support for FOTC/NEC’s contention and do not include materially different information necessary to excuse FOTC/NEC’s late filing.

At the outset, FOTC/NEC do little more than claim that these RAIs “provide a window on more narrowly drawn ASR characterization, monitoring and mitigation issues.” ASR Contention Supplement at 9. In fact, they simply excerpt entire RAIs and state, in conclusory fashion, that the RAIs support their claims. *Id.* But as the Commission has repeatedly made clear, to satisfy its contention rule, intervenors must do more than “rest on [the] mere existence” of RAIs as a basis for their contention. *Duke Energy Corp.*, (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11 49 N.R.C. 328, 350 (1999). RAIs generally “indicate[] nothing more than that the staff requested further information and analysis from the licensee.” *Sacramento Municipal Utility Dist.* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 N.R.C. 135, 146 (1993). They are a routine means for the NRC staff to request clarification or further discussion of particular items in the application.<sup>17</sup> *Oconee*, 49 N.R.C. at 336.

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<sup>17</sup> “Questions by the NRC regulatory staff simply indicate that the staff is doing its job: making sure that the application, if granted, will result in safe operation of the facility. The staff assuredly will not grant the renewal application if the responses to the RAIs suggest unresolved safety concerns.” *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 349-50 (1998).

Certainly, the existence of an RAI on a matter does not immunize that matter from being the subject of an admissible contention. But the Commission allows litigation of issues raised in RAIs only if they contain “genuinely new and material safety or environmental issues.” *Oconee*, 49 N.R.C. at 338; *see also* 10 C.F.R. § 2.309(c)(ii) (a contention filed after the deadline may be admitted only if it relies upon information that is materially different than information that was previously available). If an intervenor can raise a contention based upon an application, or as is the case here, a supplement to an application, it must do so and not wait for the NRC Staff to perform its own review.<sup>18</sup> *Calvert Cliffs*, 48 N.R.C. at 349, *supra* note 17 (“Under our longstanding practice, contentions must rest on the license application, not on NRC staff reviews.”). The Statements of Consideration accompanying the NRC’s Contentions Rule (previously section 2.714) made this approach entirely clear:

The Commission ... disagrees with the comments that § 2.714(b)(2)(iii) should permit petitioner to show ... that petitioners not be required to set forth facts in support of contentions until the petitioner has access to NRC reports and documents.... [B]ecause the license application should include sufficient information to form a basis for contentions, we reject commenters’ suggestions that intervenors not be required to set forth pertinent facts until the staff has published its FES [Final Environmental Impact Statement] and SER [Safety Evaluation Report].

54 Fed. Reg. at 33,171; *see also Calvert Cliffs*, 48 N.R.C. at 349-50.

Just as with the ROP Deviation Memo and the ASR Technical Task Force Charter, FOTC/NEC makes no effort to meet its burden to show that the information contained in the ASR RAIs is materially different from that previously available. 10 C.F.R. § 2.309(c)(ii). And, just as with the ROP Deviation Memo and the ASR Technical Task Force Charter, the ASR

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<sup>18</sup> A ruling to the contrary would create a perverse incentive for intervenors to ignore the application or supplement and await NRC Staff RAIs before filing a contention. This would, in effect, punish an intervenor who seeks out an expert to review an application, by holding it to the filing deadlines, while another less diligent intervenor can simply await NRC questions regarding long available information. If an intervenor were to wait three months to hire an expert to review an application before submitting a contention, its claim would be considered irredeemably late. No different result should apply in the case where an “expert opinion” (tentative and preliminary as it may be) falls into an intervenor’s lap in the form of an RAI.

RAIs do not meet that standard. An RAI that provides a new *factual predicate*,<sup>19</sup> such as a reference to previously undisclosed data or an unavailable licensee document, could potentially provide materially different information. But that is not the case here. The NRC’s RAIs simply discuss the long-available ASR Monitoring Program and ask for clarification of basic license renewal issues that have served as the basis of NRC’s license renewal framework for over a decade. Questions regarding the need to identify the rate of age-related degradation, the scope of a program, and the appropriateness of acceptance criteria are standard issues in the NRC Staff’s review of an aging management program, as reflected in the GALL Report<sup>20</sup> and the NRC Staff’s Standard Review Plan for License Renewal<sup>21</sup> and could easily have been raised by FOTC/NEC prior to the issuance of the ASR RAIs.<sup>22</sup> The issues identified by FOTC/NEC, whether raised in the ACRS meeting or in these ASR RAIs, did not first emerge from either the ACRS transcript or the RAIs, but instead have been hiding in plain sight for the past three months in NextEra’s ASR Monitoring Program.

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<sup>19</sup> A new document does not provide good cause for a late-filed contention “when the factual predicate for that contention [was] available from other sources. . . .” *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, CLI-83-19, 17 N.R.C.1041, 1043 (1983). Consequently, a document that merely asks questions about information previously available, or offers opinions based on such previously available information, fails to provide the requisite good cause.

<sup>20</sup> NUREG 1801, “Generic Aging Lessons Learned Report,” Rev. 2 (Dec. 2010) (“GALL Report”).

<sup>21</sup> NUREG-1800, “Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants, Rev. 2 (Dec. 2010) (“SRP-LR”).

<sup>22</sup> *See, e.g.*, GALL Report at 6 and SRP-LR at A.1-9, Table A.1-1 (identifying the ten program elements of an aging management program, including: “Scope of the Program – The scope of the program should include the specific structures and components subject to an AMR”; “Parameters Monitored or Inspected - Parameters monitored or inspected should be linked to the effects of aging on the intended functions of the particular structure and component”; “Monitoring and Trending - Monitoring and trending should provide for prediction of the extent of the effects of aging and timely corrective or mitigative actions”; and “Acceptance Criteria - Acceptance criteria, against which the need for corrective action will be evaluated, should ensure that the particular structure and component’s intended functions are maintained under all current licensing basis (CLB) design conditions during the period of extended operation”).

## 2. The ASR Monitoring Program Does Not Rule Out ASR Based on Visual Inspections

Relying on both the NRC Staff's Visual Inspection RAI and the C-10 Letter, FOTC/NEC challenge the ASR Monitoring Program's reliance on visual inspections. ASR Contention Supplement at 9-11, 15. FOTC/NEC suggests that the NRC Staff formally interprets the ASR Monitoring Program as ruling out ASR based on visual inspection. *See* ASR Contention Supplement at 9, 15. But the Visual Inspection RAI that FOTC/NEC now brings to the Board's attention actually refutes the idea that the NRC Staff has concluded that the ASR Monitoring Program rules out ASR based on visual inspections – instead, the RAI merely asks NextEra to “*clarify whether* the ASR visual inspections will be used to rule out the presence of ASR.” ASR RAI at 4 (emphasis added).

In fact, nowhere in the ASR Monitoring Program does NextEra state that it will rule out ASR based on visual inspections. Just like its original ASR Contention, FOTC/NEC's ASR Contention Supplement never once cites to the challenged ASR Monitoring Program to support this claim. To raise a genuine dispute with the application, a petitioner must “read the pertinent portions of the license application . . . state the applicant's position and the petitioner's opposing view,” and explain why it disagrees with the application. Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989). FOTC/NEC has done little more than excerpt the Visual Inspection RAI. But because the Visual Inspection RAI simply asks for clarification, it too, does not represent a disagreement with the application.

Regardless, contrary to FOTC/NEC's insinuations, the ASR Monitoring Program clearly states that any area with visual indications of pattern cracking or water ingress will be monitored either qualitatively or quantitatively and, importantly, that areas without a visual presence of

ASR will still be inspected routinely as prescribed under the Structures Monitoring Program. LRA Supplement, Encl. 2 at 5. The ASR Monitoring Program is intended to “manage the aging effects of cracking due to expansion and reaction with aggregates in concrete structures.” LRA Supplement, Encl. 2 at 3, 5, 8. ASR “cracking propagates on the surface of the concrete where it is visually identifiable.” *Id.* at 12. For this reason, the ASR Monitoring Program relies upon visual inspection to identify areas with ASR for additional inspection. *Id.* at 11. FOTC/NEC still has not challenged this reasoning by identifying any ASR-induced structural deficiency in the interior of the reinforced structure that would not be indicated by pattern cracking on the exterior unreinforced surface. If FOTC/NEC believes that NextEra should manage a different ASR-related aging effect other than expansive cracking that propagates on the surface of concrete and is visually identifiable, it should have filed a contention in response to NextEra’s submission of the ASR Monitoring Program that identifies that different aging effect and argues that NextEra does not have a program to address it.

In any event, FOTC/NEC fails to demonstrate a genuine dispute with the LRA Supplement because the ASR Monitoring Program never rules out ASR, as the program description makes plain:

Newly discovered areas exhibiting visual signs of ASR are identified during routinely performed Structural Monitoring Program inspections and documented as deficiencies. Deficiencies are reviewed in accordance with the Structural Monitoring Program and established guidelines of ACI 349.3R, “Structural Condition Assessment of Buildings.”

LRA Supplement, Encl. 2 at 13; *see also id.* at 5, Table (areas with no indications of pattern cracking or water ingress and no visual indication of ASR are still subject to routine inspection under the Structures Monitoring Program). Thus, regardless of its initial characterization under the ASR Monitoring Program, structures within the scope of the Structures Monitoring Program

will be inspected in accordance with that program (including an inaccessible area at least every five years). LRA at B-165. If ASR is discovered during a Structures Monitoring Program inspection, the affected area will be subject to further monitoring and trending under the ASR Monitoring Program following the guidelines of ACI 349.3R “Structural Condition Assessment of Buildings.” LRA Supplement, Encl. 2 at 5, 13. ASR is never ruled out – based on visual inspection or otherwise. FOTC/NEC’s assertion to the contrary, whether based on the NRC Staff’s clarification RAI or the C-10 Letter, simply does not demonstrate the existence of a genuine dispute with the application.

### **3. The ASR Monitoring Program Adjusts Inspection Intervals Based on the Rate of Degradation**

FOTC/NEC also refers to the ASR RAIs and C-10 Letter to support its argument that the initial inspection intervals are insufficient to determine the rate of ASR degradation. ASR Contention Supplement at 9. It argues that “changing crack formation and growth rates do not call for static inspection intervals; especially twenty years out.” *Id* at 15. Once again, FOTC/NEC misrepresents the LRA Supplement and so has failed to show a genuine dispute. 10 C.F.R. § 2.309(f)(1)(vi).

On this point, FOTC/NEC seems to rely on the Degradation Rate RAI, which states that “it is not clear to the staff why only 20 areas out of the 131 areas with ASR cracks have been selected for baseline inspection.”<sup>23</sup> ASR Contention Supplement at 13. The RAI hypothesizes that “[t]here is a *potential* that some of the remaining 111 areas *may* degrade at a faster rate than the 20 areas that are selected for baseline inspection.” *Id* (emphases added). The C-10 Letter

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<sup>23</sup> The RAI unfortunately uses the word “baseline” to refer to two different issues: (1) the walkdown inspections to identify the 131 areas; and (2) the selection of approximately 20 areas with the largest combined crack index from which NextEra can determine a conservative baseline rate of degradation. While FOTC/NEC did raise the former issue in their original ASR Contention, FOTC/NEC in the ASR Contention Supplement and the NRC Staff in the Degradation Rate RAI appear to focus on the latter issue, the *baseline rate of degradation*.

also addresses this issue, noting that “crack formation and growth are not linear with time” leading FOTC/NEC to conclude that “changing crack and growth rates do not call for static inspection intervals.” ASR Contention Supplement at 15.

FOTC/NEC’s challenge regarding the baseline degradation rate and allegedly static inspection intervals does not represent a genuine dispute with the ASR Monitoring Program, which states in no uncertain terms that the monitoring frequency can be shortened in the event ASR develops more severely than expected:

*The progression of ASR degradation of the concrete is an important consideration for assessing the long term implications of ASR and specifying monitoring intervals. The most reliable means for establishing the progression of degradation is to monitor expansion of the concrete in situ.*

\* \* \*

Monitoring of Cracking Index and Individual Crack Width of at least 20 areas identified in the baseline inspection as having the largest [combined crack index] will be performed at six month intervals. Measurement of Cracking Index and Individual Crack Width will be performed in the same areas as the baseline. *Trend data from these follow-up inspections will be used in determining the progression of expansion and a basis for any change to the frequency of the inspection.* Documentation and trend data will be maintained in accordance with the Structural Monitoring Program and established guidelines of ACI 349.3R, “Structural Condition Assessment of Buildings.”

LRA Supplement, Encl. 2 at 7 (emphases added). FOTC/NEC’s allegation that the ASR Monitoring Program relies on a “static” inspection frequency is baseless and contradictory to the plain language of the program.<sup>24</sup> The ASR Monitoring Program is exactly what FOTC/NEC demands – a flexible program that adjusts inspection frequency by considering inspection results.

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<sup>24</sup> Further, the ASR Monitoring Program states that it is based upon a number of principle references, including “Report on the Diagnosis, Prognosis, and Mitigation of Alkali-Silica Reaction in Transportation Structures,” U.S. Dept. of Transportation, Rederal Highway Asministration, January 2010, Report number FHWA-HIF-09-004” (“FHWA Report”). LRA Supplement, Encl. 2 at 6. The FHWA Report explains that, “the frequency of [ASR monitoring] measurements [should be] adapted to the particular needs of each case,” but that as “a general guideline, bi-yearly (i.e., twice a year) measurements should be taken for the first 3 to 5 years and then every five years if the evolution of the damage is slow or nil.” FHWA Report at 79-80. The FHWA Report is publicly

The ASR Monitoring Program also puts to rest the concern that some areas may encounter faster rates of degradation for which the initial inspection frequency may be insufficient. It states clearly that “any area with indications of pattern cracking or water ingress” will be monitored. LRA Supplement Encl. 2 at 5. If cracking in an area surpasses the Tier 2 or Tier 3 thresholds, the inspection frequency will be increased. *See id.* at 5, 7. Further, the ASR Monitoring Program states that “[d]eficiencies being repaired or trended are subject to follow-up inspections of increased frequency.” LRA Supplement, Encl. 2 at 7. Thus, far from demonstrating a dispute with the application, this claim actually shows agreement with NextEra’s plan for trending degraded areas and increasing the frequency of inspections as conditions warrant. Whether based on the Degradation Rate RAI or the C-10 Letter, the ASR Contention Supplement does not demonstrate the existence of a genuine dispute with the LRA Supplement. 10 C.F.R. § 2.309(f)(1)(vi).

As both NextEra and the NRC Staff have stated, ASR proceeds slowly.<sup>25</sup> And nearly 18 years of current operations remain to determine the rate of degradation and to identify appropriate inspection intervals for license renewal. More than 30 six-month intervals will pass between now and the time Seabrook enters the period of extended operation. This will permit sufficient time for NextEra’s ASR Monitoring Program to identify the necessary inspection frequency in the manner outlined in the program itself. FOTC/NEC has offered no reason to believe NextEra cannot establish an accurate and reliable degradation rate over the next 18 years. At bottom, this issue amounts to a challenge to the NRC’s ongoing oversight of Seabrook under its current license. If there are areas with a faster rate of degradation (a claim for which

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available on the Department of Transportation website at:  
<http://www.fhwa.dot.gov/pavement/concrete/pubs/hif09004/asr00.cfm>.

<sup>25</sup> ACRS PLR Subcommittee Transcript (July 10, 2012) (ADAMS Accession No. ML122070401) at 80; NRC Information Notice 2011-20: Concrete Degradation by Alkali-Silica Reaction (Nov, 18, 2011) (ADAMS Accession No. ML112241029) at 2.

FOTC/NEC has not offered a shred of evidence), that is a concern that the NRC Staff will address as part of its review to confirm the long-term operability under Seabrook's current license. Any NRC Staff questions regarding the near-term degradation rate as it pertains to current operability are beyond the scope of this proceeding under 10 C.F.R. § 54.30(b).

**4. The Other Excerpted RAIs Do Not Present Materially Different Information and Lack Specificity**

FOTC/NEC also alleges that the “scope of ASR degradation has not been fully determined.” ASR Contention Supplement at 9. Though FOTC/NEC does not explain the connection between it and the NRC's ASR RAIs, it may be referring to the excerpted Program Scope RAI, which discusses whether ASR may be present in Containment Building concrete. *Id.* at 10. However, the question it poses is straightforward and merely asks NextEra to clarify whether the Containment Building is within the scope of the program. ASR RAI at 1-2. This cannot demonstrate a genuine dispute with the LRA Supplement because the ASR Monitoring Program is clear on this point. In the discussion under “Element 1 - Scope of Program,” the very first structure listed is “Containment Building.” LRA Supplement, Encl. 2 at 9. The NRC's follow-up questions ask, assuming the Containment Building is included within the scope of the ASR Monitoring Program, which it is, whether it will be subject to the monitoring, trending, and evaluation required by the program. ASR RAI at 2. Neither FOTC/NEC nor the Program Scope RAI offers any reason it would not be. Because the Containment Building has been expressly included within the scope of the ASR Monitoring Program since the program was submitted to the NRC in May 2012, nothing in this RAI presents materially different information. Moreover, since the NRC Staff's question simply asks NextEra to affirm the plain language of the ASR Monitoring Program, it does not present a genuine dispute with the application and certainly

does not support FOTC/NEC's claim that the scope of ASR degradation has not been fully determined. 10 C.F.R. §§ 2.309(c)(ii), 2.309(f)(vi).

FOTC/NEC also excerpts the Acceptance Criteria RAI, albeit without any explanation. ASR Contention Supplement at 11-12. The Acceptance Criteria RAI refers to the acceptance criteria basis document, MPR-3727, "Seabrook Station: Impact of Alkali-Silica Reaction on Concrete Structures and Attachments" (Rev. 0, April 2012), which was identified in the ASR Monitoring Program and is neither new nor materially different information. LRA Supplement, Encl. 2 at 6. The MPR document was submitted to the NRC as part of NextEra's May 24, 2012 CAL Response and is found at ADAMS Accession No. ML12151A397. Any claim based on this RAI cannot satisfy the timeliness requirements of 10 C.F.R. § 2.309(c)(ii).

Further, the Acceptance Criteria RAI, like the Program Scope RAI, simply asks for clarification. ASR RAI at 5. The NRC Staff posits that a different acceptance criterion "may be appropriate" and simply asks NextEra to "provide the basis" for its chosen acceptance criterion. *Id.* Stating that a different acceptance criterion may be appropriate and asking for further explanation does not demonstrate the existence of a genuine dispute with the LRA Supplement. 10 C.F.R. § 2.309(f)(1)(vi).

In any event, FOTC/NEC's original ASR Contention did not address the ASR Monitoring Program's acceptance criteria or question whether the scope of the program was sufficiently broad (or whether it included the Containment Building). *See generally* ASR Contention. And even in its ASR Contention Supplement, FOTC/NEC provides no explanation for why these RAIs presents a genuine dispute with the LRA Supplement. If the references to these RAIs are intended to introduce new bases in support of the ASR Contention, they are inadmissible. Under NRC rules, a mere reference to documents does not provide an adequate

basis for a contention. *Calvert Cliffs*, 48 N.R.C. at 348. An intervenor must do more than “rest on the mere existence of RAIs as a basis for their contention.” *Oconee*, 49 N.R.C. at 336. In *Oconee*, the petitioner simply referred to all RAIs “filed or forthcoming,” which the Commission found to be “bereft of supporting detail” and “a far cry from the reasonable specificity our contention rule demands.” *Id.* Here, FOTC/NEC has taken a similar tack, copying entire RAIs and claiming, without further explanation, that they support its contention.<sup>26</sup> This is clearly not the “reasonable specificity” demanded by 10 C.F.R. § 2.309(f)(1).

**5. The C-10 Letter Does Not Present Materially Different Information and is Merely an Unreliable Paraphrasing of a Purported Expert’s Views**

Finally, FOTC/NEC cites the C-10 Letter, which paraphrases, but does not provide, the views of a purported ASR expert, Dr. Paul Brown. ASR Contention Supplement at 14-15. FOTC/NEC does not provide Brown’s secret declaration, his qualifications, or a discussion of his relevant experience with ASR. Essentially, FOTC/NEC offers a layman’s paraphrasing of the unexamined statement of a purported expert. Moreover, there is no indication that Dr. Brown has even reviewed NextEra’s LRA Supplement. As the Commission has held, to rely on an expert opinion, a Licensing Board must have the ability to “make the necessary, reflective assessment of the opinion.” *USEC, Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 472 (2006). Without a statement of Dr. Brown’s qualifications, a statement from Dr. Brown himself, or any reason to believe that Dr. Brown has even reviewed the ASR Monitoring Program, the Board cannot make that reflective evaluation of his opinions.

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<sup>26</sup> The ASR RAIs also presented further questions in addition to those specifically excerpted by FOTC/NEC, but FOTC/NEC cannot rely on “wholesale incorporation by reference” of documents and instead can only rely on the RAIs that it cites and discusses with specificity. *Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2)*, CLI-89-3, 29 N.R.C. 234, 240-41 (1989) (“The Commission expects parties to bear their burden and to clearly identify the matters on which they intend to rely with reference to a specific point. The Commission cannot be faulted for not having searched for a needle that may be in a haystack”).

In FOTC/NEC's retelling of C-10's paraphrasing of Dr. Brown's statement, he calls for "a thorough ASR extent-of condition review including, for example, examination of identical source, identical mix, and similar environment; contemporary and older concrete pours across the region." But FOTC/NEC's assertion that an extent-of-condition review must include assessment of other concrete pours in the region with identical source and mix is just not found in the C-10 Letter. The C-10 Letter does describe the need for an extent-of-condition review, which NextEra has already performed and discussed in the ASR Monitoring Program. *See* LRA Supplement, Encl. 2 at 18; April 23, 2012 Meeting Summary at 4. The C-10 Letter also raises issues regarding visual inspection and the degradation rate, which are discussed *supra* in sections B.2 and B.3. In short, nothing in the C-10 Letter identifies a genuine dispute with the ASR Monitoring Program. 10 C.F.R. § 2.309(f)(1)(vi).

In any event, C-10's paraphrasing of Dr. Brown's opinions does not provide information that is materially different from that previously available. 10 C.F.R. § 2.309(c)(ii). Both the ASR Monitoring Program's reliance on visual indications and its inspection frequency have been part of the program since its inception. *See* LRA Supplement Encl. 2, at 2, 3, 5, 7, 9, 11-13. As stated in NextEra's Answer, the NRC Staff position with which Dr. Brown apparently agrees regarding the inability to "rule out" ASR with visual inspections alone has been public knowledge since the November 2011 Information Notice.<sup>27</sup>

Further, the issues FOTC/NEC identifies from the C-10 Letter regarding the need to identify the rate of degradation, the need to determine whether non-visible ASR is occurring within the concrete itself, and the need to perform an extent-of-condition review were already

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<sup>27</sup> NRC Information Notice 2011-20: Concrete Degradation by Alkali-Silica Reaction (Nov. 18, 2011) (ADAMS Accession No. ML112241029).

publicly discussed in a report on ASR at Seabrook that Dr. Brown prepared in March.<sup>28</sup> This report has been publicly available on the website of the Union of Concerned Scientists and C-10 since this spring.<sup>29</sup> The March Brown Report identifies several “generic areas of uncertainty,” that FOTC/NEC could have relied upon in evaluating NextEra’s ASR Monitoring Program, including, *inter alia*:

- “Any basis for predicting the rates of corrosion of embedded reinforcement and of ferrous components presently exposed to infiltrating ground water or likely to be exposed in the future.”
- “Lack of quantification of the extent to which ASR is occurring both with respect to the physical locations identified within the structures and with respect to the locations within the thickness of the concrete walls themselves.”
- “Lack of adequate quantification of the extent to which ASR has presently resulted in diminution of mechanical properties as compared to control samples of concrete obtained from non-damaged locations.”
- “Any basis for predicting whether or not ASR will occur at locations not yet identified.”
- “Any basis for predicting the future loss in mechanical properties of concrete at locations where ASR has been identified.”

March Brown Report at 8. The March Brown Report also quoted the NRC’s June 29, 2011 RAI (referred to by its ADAMS Accession Number, ML11178A338), which asked NextEra to address “[t]he frequency of the monitoring and sampling to establish a trend in degradation of the structure and rate of ASR, and why the provided frequency is adequate.”<sup>30</sup> March Brown Report at 1. Nothing FOTC/NEC identifies in the C-10 Letter represents information that is

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<sup>28</sup> Brown, Paul W., Commentary on the Alkali-Silica Reaction in Concrete Structures at the Seabrook Nuclear Plant, (Mar. 14, 2012) (the “March Brown Report”). Available at:

<http://c-10.org/pdf/Brown-Seabrook%20Concrete%20Report%203-14-12-15.pdf>; and  
[http://www.ucsusa.org/assets/documents/nuclear\\_power/brown-seabrook-concrete-report-3-14-12.pdf](http://www.ucsusa.org/assets/documents/nuclear_power/brown-seabrook-concrete-report-3-14-12.pdf).

<sup>29</sup> See Press Release, Union of Concerned Scientists, Report Finds Many Unanswered Questions about Concrete Degradation at Seabrook, New Hampshire, Nuclear Plant (April 23, 2012), available at:  
[http://www.ucsusa.org/news/press\\_release/report-finds-many-unanswered.html](http://www.ucsusa.org/news/press_release/report-finds-many-unanswered.html).

<sup>30</sup> Letter from Plasse, Richard A., Project Manager, NRC to Freeman, Paul, Site Vice President, NextEra Energy Seabrook, LLC, “Request for Additional Information for the Review of the Seabrook Station License Renewal Application” (June 29, 2011). ADAMS Accession No. ML11178A338.

materially different than that previously available from the NRC and even from Dr. Brown himself. Thus, the C-10 Letter does not provide good cause to excuse FOTC/NEC's untimely challenge to NextEra's ASR Monitoring Program.

### **III. CONCLUSION**

For all of the above stated reasons, the ASR Contention Supplement is insufficient to rehabilitate FOTC/NEC's inadmissible ASR Contention. It does not present new information that is materially different from information previously available, which is necessary to demonstrate good cause for FOTC/NEC late filing. Moreover, the issues raised in the ASR Contention Supplement are beyond the scope of this proceeding or otherwise fail to demonstrate the existence of a genuine dispute with the ASR Monitoring Program.

Respectfully Submitted,

/Signed electronically by Steven C. Hamrick/

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Dated: October 16, 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)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that NextEra's Answer Opposing Admission Opposing FOTC/NEC's Contention Supplement, dated October 16, 2012, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 16<sup>th</sup> day of October, 2012.

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