

November 6, 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

**FRIENDS OF THE COAST AND NEW ENGLAND COALITION'S
MOTION FOR ORAL ARGUMENT AND A SITE VISIT**

I. INTRODUCTION

For reasons stated herein, Friends of the Coast and New England Coalition (“Friends/NEC”) respectfully requests the opportunity to engage in oral argument before this Atomic Safety and Licensing Board Panel (“Board”) on the matter of Friends/NEC’s proposed new contention regarding NextEra’s license renewal application (“LRA”) aging management plan (“AMP”) for alkali silica reaction (“ASR”) affected structures at Seabrook Station¹.

Further, for reasons also stated herein, Friends/NEC respectfully requests that the Board visit Seabrook Station in order to ascertain first-hand the size and approximate volume, distribution and extent of ASR affecting safety-related structures.

Friends/NEC respectfully requests that the Board weigh information gathered both in oral argument and the site visit before casting a decision on the admissibility of the proposed ASR contention.

¹ Seabrook Station, NextEra Energy Seabrook License Renewal Application – Structures Monitoring Program Supplement - Alkali Silica Reaction (ASR) Monitoring, (May 16, 2012) (ADAMS Accession No. ML12142A323) (“ASR AMP”).

II. PROCEDURAL HISTORY

On August 27, 2012, FOTC/NEC, intervenors in the above captioned matter, submitted a Motion for Leave to File a New Contention Concerning NextEra Energy Seabrook’s (“NextEra”) Amendment of its Aging Management Program for Safety-Related Concrete Structures (“ASR Contention”).²

In its Motion, Friends/NEC asserts that NextEra’s aging management plan fails to demonstrate that the effects of aging on structures and components subject to an aging management review (“AMR”) are adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis (“CLB”) for the period of extended operation and thus does not comply with Section 21(a)(3), of Title 10 of the *Code of Federal Regulations*

The NRC Staff and NextEra filed responses to the ASR Contention on September 21, 2012.³ NRC Staff opined that the ASR Contention raised some admissible issues, but that it was untimely under the Commission’s regulations.

On September 28, 2012, Friends/NEC filed a Reply to the Staff’s and NextEra’s Answers.⁴

On September 21, 2012, the same day NextEra and the Staff filed their responses,

² 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 Concrete Structures (Aug. 27, 2012) (ADAMS Accession No. ML12241A061) (“ASR Contention”).

³ NRC Staff’s Answer to Intervenor’s Motion for Leave to File New Contention Concerning Safety- Related Concrete Structures (Sep. 21, 2012) (ADAMS Accession No. ML1 2265A384) (“Staff Answer”); NextEra Answer Opposing Admission of Contention Concerning Alkali-Silica Reaction (Sep. 21, 2012) (ADAMS Accession No. ML1 2265A1 35).

⁴ Friends of the Coast and New England Coalition’s Reply to NRC Staff’s Answer & NextEra’s Answer to Intervenor’s Motion for Leave to File New Contention Concerning Safety-Related Concrete Structures (Sep. 28, 2012) (ADAMS Accession No. ML 12273A008).

FOTC/NEC filed a 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 and a Supplement to the ASR Contention,⁵ which provides four additional documents, newly made public, to lend further support and clarification for the ASR Contention. The four documents are (1) a Request for Deviation from the Reactor Oversight Process (“ROP”) Action Matrix to Provide Increased Oversight of the Alkali-Silica Reaction Issue at Seabrook⁶ (“Staff ROP Request”); (2) the Seabrook Alkali Silica Reaction Issue Technical Team Charter⁷ (“Charter”), (3) Requests for Additional Information (“RAI”) for the Review of the Seabrook Station, License Renewal Application – Set 19⁸ (“RAI Set 19”); and (4) a Letter from Sandra Gavutis, Executive Director, C-10 Research and Education Foundation and Dr. David Wright, Co-Director, Global Security Program, Union of Concerned Scientists to William M. Dean, Regional Administrator Region 1, NRC⁹ (“C-10 Letter”).

On October 1, 2012, NextEra filed NextEra’s Motion to Strike FOTC/NEC’s Corrected Contention.¹⁰

⁵ 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 Concrete Structures (Sep. 21, 2012) (ADAMS Accession No. ML12265A394) (“ASR Supplement”).

⁶ Request for Deviation from the Reactor Oversight Process Action Matrix to Provide Increased Oversight of the Alkali-Silica Reaction Issue at Seabrook (Sep. 5, 2012) (ADAMS Accession No. ML12242A370) (“Staff ROP Request”).

⁷ Seabrook Alkali Silica Reaction Issue Technical Team Charter (July 9, 2012) (ADAMS Accession No. ML121250588) (“Charter”).

⁸ Requests for Additional Information for the Review of the Seabrook Station, License Renewal Application – Set 19 (Sep. 14, 2012) (ADAMS Accession No. ML12250A707) (“RAI Set 19”).

⁹ Letter; Sandra Gavutis, C-10 Research and Education Foundation; Dr. David Wright, Union of Concerned Scientists to William M. Dean, Regional Administrator Region 1, NRC (Sep. 13, 2012) (ADAMS Accession No. ML12265A398) (“C-10 Letter”).

¹⁰ NextEra's Motion to Strike FOTC/NEC's Corrected Contention. 10/01/2012, ADAMS Accession #

On October 9, 2012, Friends/NEC filed 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 Structures¹¹

On October 16, 2012, NRC Staff filed a "NRC Staff Answer to Intervenors' Supplement to Motion for Leave to File a New Contention Concerning Safety-Related Concrete Structures," and NextEra filed, "NextEra's Answer Opposing FOTC/NEC's Contention Supplement."

On October 24, 2012, Friends/NEC filed a "Reply to NRC Staff's and NextEra's Opposition to the Supplement..."¹²

III. DISCUSSION

A. Oral argument is needed to clarify and resolve the differing interpretations of law and perceptions of fact among the parties.

It is expected that opposing parties will find grounds for both disagreement and agreement in any adversarial proceeding, however, in the instance of the Friends/NEC proposed new ASR contention, agreement on any aspect is rare. A review of the documents cited in the preceding case history finds only two instances of agreement between Friends/NEC and the opposition: (1) NRC Staff agrees that some elements of basis in the Friends/NEC ASR contention are admissible, (2) NRC Staff agrees that some

ML12275A475

¹¹ Friends of the Coast and New England Coalition's Opposition to NextEra's Motion to Strike FOTC/NEC'S Corrected Contention. 10/09/2012 ADAMS Accession # ML12283A945

¹² Friends Of The Coast And New England Coalition's Reply To NRC Staff's And NextEra's Opposition To The Supplement To Friends Of The Coast And New England Coalition's Motion For Leave To File A New Contention Concerning NextEra Energy Seabrook's... 10/24/2012 ADAMS ACCESSION # ML12298A111

portion of the documents that Friends/NEC submitted to supplement the factual foundation of the ASR Contention as the documents became available, are also admissible.

For the rest, Friends/NEC, NextEra, and NRC Staff disagree on just about every element that the Board must consider in making a decision; not only as to the facts, but also to the definitions of new-contention criteria.

The parties disagree as to whether Friends/NEC's ASR contention was timely filed; as to what criteria for timeliness apply; as to the materiality of supporting documents, whether supporting documents in fact support the contention, the definition of "new" information, the degree of specificity or particularity required in a newly-filed contention, whether cited caselaw is truly applicable, the Board's authority to investigate any aspect of current licensing basis; even as a element in authenticating an aging management plan that doesn't kick in until 20-years into the future, whether all documents offered in support of a contention must present new information or only that the basic foundation of the contention must rest on new information.

In their written submissions, the parties follow dissimilar and divergent lines of reasoning, which Friends/NEC offers can only be adequately compared with the aid of live questioning and the responsive give and take of oral argument.

For example, Friends/NEC says that the ASR contention was filed timely upon emergence of new, admissible, and material information. Friends/NEC reasons that information is new, in part, because it is an expression of the status and quality of advances in NextEra's investigations into ASR which logically cannot have been greater at the (preceding) time when NextEra filed the now contested ASR AMP Supplement..

NextEra says that the contention should have been filed within 30 days of publication of the License Renewal Supplement [amendment, really] which Friends/NEC finds deficient. The parties assume conflicting views of what constitutes the “new information” that the Commission says must start the thirty day clock on timeliness. Friends/NEC, even though it is represented pro se, would not consider filing a contention without the basis required for admission; either the testimony of an expert or supporting documents, or both.

A diligent search of public documents, NRC, academia, and industry, by Friends/NEC in response to questions of timeliness later raised in NextEra and NRC Staff Opposition could locate nothing published thirty days either side of the LRA supplement that Friends/NEC thought could provide the basis for a credible technical critique of the ASR management supplement. NextEra says that Friends/NEC should have hired an expert, but Friends/NEC has no money to have an expert do the information spadework preparatory to laying a factual foundation or to support speculation on what an expert might find. Besides, the law says a contention must lay a basis in documents or expert testimony.

The first document to surface either through NRC or elsewhere that contains new, relevant authoritative, and material information regarding characterization of ASR and subsequent proposed ASR aging management program at Seabrook Station is a transcript of NRC technical experts presenting before the Advisory Committee on Reactor Safeguards. This document was not anticipated by Friends/NEC, but when it was published it led friends/NEC back to NextEra’s ASR supplement - and not the other way around.

NRC Staff and NextEra say that the information presented by the expert before the ACRS is largely a summary of information previously available and they offer similar though not, in Friends/NEC's view identical information from earlier stages of NextEra's investigation into ASR. If the information is not new and merely a summary, then the Friends/NEC ASR contention is untimely; so the reasoning goes.

A singular example of this line of thought and resulting confusion occurs in the following excerpt from NextEra's Answer Opposing FOTC/NEC's Contention Supplement.

NextEra is referring directly to an RAI, which Friends/NEC submitted as supporting material in Friends/NEC's Contention Supplement. NextEra raises questions of timeliness as if the RAI were the primary basis document (which it is not) when it reaches back to the Friends/NEC ASR contention filing.

Page 12

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.¹⁸ *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.”).

¹⁸ 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.

NextEra's use of this citation is not on point because the “review” of which *Calvert Cliffs* speaks in the quote is a more comprehensive scheduled

review such as the environmental impact assessment. It is impossible to tell if the advice in the footnote¹⁸ is a continuation of the *Calvert Cliffs* reference or just NextEra's interpretation of the potential for dire results should the precedent not be followed. It doesn't really matter since in this case intervenors did not wait for an EIS, or a FSER, or an RAI before filing a contention.

Clearly the foregoing examples demonstrate the need for an injection of clarity in this dispute. Friends/NEC respectfully submits that only the Board can bring a much-needed overarching and non-partisan perspective to bear in the crucible of the Board's direct interview of the parties and oral argument.

B. The Board has authority to allow for oral argument.

§ 2.331 Oral argument before the presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, the presiding officer may allow, and fix a time for, the presentation of oral argument. The presiding officer will impose appropriate limits of time on the argument. The transcript of the argument is part of the record.

A Licensing Board has considerable flexibility in regulating the course of a hearing and designating the order of procedure. Philadelphia Elec. Co. (Limerick Generating Station, Units 1 & 2), ALAB-819, 22 NRC 681, 727 (1985), citing 10 C.F.R. §§ 2.319(g), 2.324 (formerly §§ 2.718(e), 2.731). See Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-772, 19 NRC 1193, 1245-46 (1984), rev'd in part on other grounds, CLI-85-2, 21 NRC 282 (1985).

The presiding officer has the duty to conduct a fair and impartial hearing, to maintain order and to take appropriate action to avoid delay. Specific powers of the presiding officer are set forth in 10 C.F.R. § 2.319 (formerly § 2.718). While the Licensing Board has broad discretion as to the manner in which a hearing is conducted, any actions pursuant to that discretion must be supported by a record that indicates that such action was based on a consideration of discretionary factors. Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-463, 7 NRC 341, 356 (1978).

Licensing Boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of participants. It is the Board's responsibility to "conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, and to maintain

order.” 10 C.F.R. § 2.319. The Commission generally will not interfere with the Board’s day-to-day case management decisions, unless there has been an abuse of power. *See, e.g., Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-07-28, 66 NRC 275 (2007); *Consolidated Edison Co. of New York* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 37 (1982).

C. The opportunity for oral argument requested will not delay or broaden the scope of this proceeding.

By Commission order¹³, no final licensing decisions are to be issued until the Commission has resolved Waste Confidence Rule matters now on remand from the federal court. The Commission has now given the staff two years in which to complete the appropriate rulemaking:

September 6, 2012
MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations
FROM: Annette L. Vietti-Cook, Secretary /*RA by Andrew L. Bates/*
SUBJECT: STAFF REQUIREMENTS – COMSECY-12-0016 –
APPROACH FOR ADDRESSING POLICY ISSUES RESULTING
FROM COURT DECISION TO VACATE WASTE CONFIDENCE
DECISION AND RULE
The staff should proceed directly with development of a generic environmental impact statement (EIS) to support an updated Waste Confidence Decision and temporary storage rule. The staff should establish a schedule to publish a final rule and EIS within 24 months from the date of this staff requirements memorandum (the *Federal Register* Notice that announces the final rule would also satisfy the Commission’s obligations related to a “Waste Confidence decision”).

Further, on August 15, 2012, this board has ordered “ In accordance with CLI-12-16, the Board will hold in abeyance, pending further order of the Commission, consideration of Intervenors’ Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Seabrook Station, Unit 1 (July 9, 2012).”

Also, On June 4, 2012 NRC Staff indicated by letter that they did not anticipate

¹³ Calvert Cliffs Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), et al., CLI-12-16, 76 NRC __, __ (slip op. at 6) (Aug. 7, 2012).

issuing an Environmental Impact Statement for Seabrook until March 2013 and that, because of open items, in particular those related to ASR, Staff could not predict when the Final Safety Evaluation Report would be complete.

It should be noted that NextEra Seabrook's current license does not expire until 2032. NextEra's claims that having that renewed license in hand now would be of real value for operational planning purposes today or as an investor/lender incentive are, given interim volatility in energy costs and investment markets, hardly credible.

In short, the schedule has already been drawn out, with no small contribution from NextEra, to such an extent that a small deviation to secure better understanding of both sides positions on a proposed contention, will neither be felt (cause palpable harm) nor cause significant delay. However, as represented in the forgoing discussion, oral argument on the admissibility of the ASR contention has the real potential to ensure a fair hearing and justice done.

Friends/NEC does not propose the introduction of new evidence, issues, or new argument, rather Friends/NEC seeks an opportunity for the parties to clarify and compare their positions before the Board and to answer whatever questions the Board may have that will help the Board to make a sound decision on the admissibility of the proposed ASR contention.

C. A site visit would help the Board to capture in the record of its deliberations the severity, depth, and extent of the ASR problem at Seabrook Station.

The parties are at odds as to the severity, depth, and extent of the ASR problem at Seabrook Station. While NRC Staff has assured the public that ASR-affected structures have not lost operability, they are at the same time arguing before the ACRS and this board that NextEra has not properly characterized at Seabrook, nor has it finally

determined extent-of-condition. Friends/NEC argues that surely no one can credit design of an effects management or monitoring program that is uninformed of site-specific ASR growth rates, the geometry and progress of ASR within plant structures, and full extent-of-condition review. All of these were missing as of the time that Friends/NEC filed its proposed ASR contention.

Friends/NEC respectfully submits that differences of perception and characterization of the pervasiveness and effects of ASR at Seabrook Station as presented to the Board in the various filings cited in the foregoing history and discussion, could be largely reconciled for purposes of the Board's review of the Friends/NEC proposed ASR contention by a site tour attended by the Board and the parties and led by knowledgeable NRC technical personnel. Friends/NEC urges the board to make this happen in the interest of truth and a fair assessment of the potential safety-significance of ASR degradation in the Seabrook Station containment and surrounding structures in the long-term.

IV. CONCLUSION

For all of the good reasons stated in the foregoing discussion, Friends/NEC urges the Board to exercise its discretion in favor of better information and a better record, by scheduling oral argument and a site visit; to be accomplished before casting a decision on the admissibility of the Friends/NEC proposed new contention on ASR effects management at Seabrook Station beyond 2032.

V. CERTIFICATE REQUIRED BY 10 C.F.R. § 2.323(b)

I certify that on October 25, 2012, I contacted counsel for the applicant and the NRC Staff in an attempt to obtain their consent to this motion and inviting them to join this motion. However, we reached no agreement. They stated as follows:

NRC Staff:

The NRC Staff takes no position on your motions for oral argument and a site visit. These are case-management matters left to the Board. Ultimately, it is within the Board's discretion to determine if these proposed activities will be helpful to it in resolving the issues pending before it.

NextEra:

NextEra will not join in a joint motion either for oral argument or for a site tour. We will respond to your motion, if necessary, upon reviewing it once it is filed.

Respectfully submitted,

Signed electronically,

Raymond Shadis
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New England Coalition
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November 6, 2012

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

In the Matter of

NextEra Energy, LLC
(Seabrook Station, Unit 1

Docket Nos. 50-443

ASLBP No. 10-906-02-LR-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing FRIENDS OF THE COAST AND NEW ENGLAND COALITION'S MOTION FOR ORAL ARGUMENT AND A SITE VISIT, dated November 6, 2012, have been served over the Electronic Information Exchange, the NRC's E-Filing System, this 6th day of November, 2012:

Signed electronically,

Raymond Shadis
Friends of the Coast
New England Coalition
Post Office Box 98
Edgecomb, Maine 04556
shadis@prexar.com
207-882-7801

Signed this day: November 6, 2012