

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
NEXTERA ENERGY SEABROOK, LLC)	Docket No. 50-443-LA-2
)	
(Seabrook Station Unit 1))	May 12, 2017
)	

**NEXTERA’S MOTION FOR LEAVE TO FILE A REPLY
TO NRC STAFF’S ANSWER TO C-10’S PETITION FOR LEAVE TO INTERVENE**

On May 5, 2017, NextEra Energy Seabrook LLC (“NextEra”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff (“Staff”) filed their respective answers¹ to C-10 Research and Education Foundation, Inc.’s (“C-10” or “Petitioner”) April 10, 2017 “Petition for Leave to Intervene” (“Petition”), requesting a hearing, and proposing ten contentions.²

The NRC Staff, in its Answer, concluded that “[n]one of C-10’s contentions are independently admissible.”³ However, Staff took the extraordinary step of crafting a new proposed contention for the Board’s consideration—one that it argues would be admissible—by *amending* Petitioner’s proposed Contention D to include additional content not pled in Contention D, and then inventing a *new* specific statement of the issue of law or fact to be raised or controverted (“Staff’s New/Amended Contention”).⁴ As explained further below, necessity

¹ See NextEra’s Answer Opposing C-10 Research & Education Foundation’s Petition for Leave to Intervene and Hearing Request on NextEra Energy Seabrook, LLC’s License Amendment Request 16-03 (May 5, 2017) (ML17125A289); NRC Staff’s Answer to C-10 Research and Education Foundation, Inc. Petition for Leave to Intervene (May 5, 2017) (“Staff Answer”) (ML17125A304).

² C-10 Research and Education Foundation, Inc., Petition for Leave to Intervene: Nuclear Regulatory Commission Docket No. 50-443 (Apr. 10, 2017) (ML17100B013).

³ Staff Answer at 26.

⁴ *Id.*

and fairness require an opportunity for NextEra to respond to Staff's New/Amended Contention. Accordingly, NextEra files this Motion for Leave to File a Reply pursuant to 10 C.F.R. § 2.323.

NRC regulations provide that only the participant who filed the hearing request under 10 C.F.R. § 2.309 may file a reply to an answer thereto.⁵ However, the Commission has explained that "extra filings," such as reply briefs that are not explicitly permitted by NRC regulations, may be considered on a case-by-case basis and are permissible "where necessity or fairness dictates."⁶ Here, necessity and fairness weigh strongly in favor of providing NextEra an opportunity to respond to Staff's Answer because: (1) NextEra has not had a fair—or any—opportunity to respond to Staff's New/Amended Contention, and (2) such a response is necessary for a complete record.

The Commission's Statement of Policy on the Conduct of Adjudicatory Proceedings emphasizes the importance of ensuring a fair and thorough hearing process and establishing a full, fair, and adequate record.⁷ Here, NextEra has not had an opportunity to respond to the NRC Staff's New/Amended Contention. Contrary to Staff's assertions that it has simply "reformulate[d]" Petitioner's arguments, it has instead proposed a brand new contention, with an entirely new set of issues of law or fact to be raised or controverted in this proceeding.⁸ Moreover, although the various components of Staff's New/Amended Contention are found scattered throughout the Petition, Staff seeks to assemble them in a new formulation aided by a

⁵ 10 C.F.R. §§ 2.309(i)(2)-(3).

⁶ *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-08-12, 67 NRC 386, 393 (2008).

⁷ Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 18-19 (1998); Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-81-08, 13 NRC 452, 453 (1981).

⁸ *See* Staff Answer at 26.

new overarching argument developed by the Staff itself. By doing so, Staff admits that it transformed Contention D.⁹

It is not NextEra's burden to foresee every possible permutation of reorganized snippets of content from the original Petition, or every possible amendment, amalgam, or reformulation of specific issues of law or fact to be raised or controverted, against which it is expected to defend. Nothing in the Commission's regulations require it to do so. Further, it is not enough that a party be placed on general notice of possible arguments.¹⁰ The regulations afford applicants the absolute right to be presented with contentions that are "set forth with particularity"¹¹ and with "specific" statements of law or fact for which a petitioner seeks a hearing.¹² NRC regulations further provide applicants the absolute right to respond thereto.¹³ Here, where Staff's Answer presents a new contention, with a new specific statement of law or fact for the Board's consideration, but to which NextEra has not had a full and fair opportunity to respond, fairness demands the provision of such an opportunity, and necessity commands the establishment of a full record.

Accordingly, NextEra respectfully requests that the Board grant this Motion for Leave to File a Reply, and accept for the Board's consideration its proposed Reply to Staff's Answer, attached hereto.

⁹ See *id.* (arguing its alterations render otherwise-inadmissible contentions admissible).

¹⁰ *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006) (explaining that Notice Pleading is not sufficient in NRC adjudicatory proceedings).

¹¹ 10 C.F.R. § 2.309(f)(1).

¹² 10 C.F.R. § 2.309(f)(1)(i). See also *Kan. Gas & Elec. Co.* (Wolf Creek Generating Station, Unit 1), ALAB-279, 1 NRC 559, 557 (1975) ("The applicant is entitled to a fair chance to defend. It is therefore entitled to be told at the outset, with clarity and precision, what arguments are being advanced").

¹³ 10 C.F.R. § 2.309(i)(1). See also *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 146 (2015) (citing *Wolf Creek* and explaining litigants should not be "taken by surprise" and should be "accorded an appropriate opportunity to respond to new arguments").

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, DC
this 12th day of May 2017

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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-LA-2

) May 12, 2017

CONSULTATION CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), I certify that NextEra has made a sincere effort to contact the other participants in this proceeding and resolve the issues raised in the above motion. Neither the NRC Staff nor the Petitioner oppose this motion.

Executed in Accord with 10 C.F.R. § 2.304(d)

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_____)

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of the foregoing “NextEra’s Motion for Leave to File a Reply to NRC Staff’s Answer to C-10’s Petition for Leave to Intervene” were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned proceeding.

Signed (electronically) by Ryan K. Lighty

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