UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NEXTERA'S REPLY TO
NRC STAFF'S ANSWER TO C-10'S PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

On May 5, 2017, NextEra Energy Seabrook LLC ("NextEra") and the U.S. Nuclear Regulatory Commission ("NRC") Staff ("Staff") filed their respective answers[1] 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 insert content from other proposed contentions (*i.e.*, not pled in Contention D), and then inventing a *new* specific statement of the issue of law or

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) ("NextEra Answer") (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.

fact to be raised or controverted ("Staff's New/Amended Contention").[4] The Staff's act of drafting and proposing a new contention appears to be unprecedented in the history of 10 C.F.R. Part 50 licensing proceedings.[5]

Staff's action amounts to either: (a) an unauthorized proposal for a late-filed contention, for which the Staff also has not demonstrated good cause, or (b) a recommendation that the Board rejuvenate Petitioner's deficient contentions, which is prohibited by law. Either way, Staff's New/Amended Contention does not satisfy the admissibility requirements in 10 C.F.R. § 2.309(f). Accordingly, Staff's New/Amended Contention should be rejected.

II. STAFF'S NEW/AMENDED CONTENTION IS AN UNAUTHORIZED LATE-FILED CONTENTION AND SHOULD NOT BE ENTERTAINED IN THIS PROCEEDING

As explained below, Staff does not have the authority to submit contentions in adjudicatory proceedings. Even assuming it had such authority, Staff's New/Amended Contention, for all practical purposes, constitutes a late-filed contention. However, Staff has neither addressed nor satisfied the 10 C.F.R. § 2.309(c) standards for late-filed new or amended contentions—it has not moved or been granted leave to submit a late-filed contention, and it has not demonstrated good cause for the New/Amended Contention to be entertained in this proceeding. Moreover, as further explained in Section IV, below, Staff's New/Amended Contention likewise fails to satisfy the applicable contention admissibility requirements in 10

---

4 *Id*.

5 In *Crow Butte*, the Commission addressed board authority to reformulate contentions and pointed to a more fulsome discussion in the *MOX* proceeding. *See Crow Butte Resources, Inc.* (North Trend Expansion Project), CLI-09-12, 69 NRC 535, 552 n.79 (2009). The *MOX* board examined a series of cases in which boards had reformulated contentions. *See Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), Licensing Board Memorandum and Order (Recasting Contention 4 and Suggesting Certain Discussions) at 4-5 n.3 (Jan. 16, 2008) (unpublished) (ML080160265). Staff did not affirmatively draft or propose a new contention in its answer pleading in any of those cases. Nor did keyword searches in the NRC's Electronic Hearing Docket reveal any such pleadings.

C.F.R. § 2.309(f). Accordingly, Staff's New/Amended Contention should be summarily rejected.

A. Staff Lacks Authority to Submit Contentions in Adjudicatory Proceedings

Staff points to no authority permitting submission of its New/Amended Contention in this proceeding. Nor is there any. Although NRC regulations do not include an explicit prohibition against Staff contentions, it would be unreasonable to read the agency's Rules of Practice and Procedure to authorize them.

Submission of hearing requests and contentions in adjudicatory proceedings is governed by 10 C.F.R. § 2.309. This regulation specifies that only a "person" whose interest may be affected by a proceeding is authorized to file a hearing request. The NRC is explicitly excluded from the definition of "person."[6] Thus, Staff is not authorized to submit contentions as part of a hearing request.

Moreover, reading 10 C.F.R. § 2.309 to authorize Staff contentions would be inconsistent with the remainder of Part 2. If Staff concludes that an application is deficient, its recourse is to "issue a notice of proposed denial or a notice of denial of the application."[7] And if Staff has questions, it may submit requests for additional information ("RAI").[8] In fact, Staff appears likely to do so here. On the same day it filed its Answer, Staff issued draft RAIs to NextEra posing several questions related to representativeness of NextEra's ASR testing program—which is also the subject of the Staff's New/Amended Contention. The Staff's New/Amended Contention could be viewed as an effort to also address such issues through litigation before the

---

6 *See* 10 C.F.R. § 2.4 (definition of "person").

7 *See* 10 C.F.R. § 2.103(b).

8 *See generally, e.g.*, NRR Office Instruction LIC-101, Rev. 5, "License Amendment Review Procedures" (Jan. 9, 2017) (ML16061A451).

Board. However, litigating Staff's questions and concerns regarding applications in adjudicatory proceedings is first unauthorized and second would require an unnecessary expenditure of resources, directly contrary to Commission policy.[9] Accordingly, Staff's New/Amended Contention is not authorized, here.

B. Staff's New/Amended Contention Is Properly Viewed As a Late-Filed Contention

Even assuming Staff had the authority to file a contention, Staff's New/Amended Contention constitutes a late-filed contention because Staff did not merely respond to Petitioner's as-pled contentions. Rather, Staff took the additional step of *affirmatively crafting and arguing the sufficiency of* an entirely new contention—with a *new* specific statement of law or fact to be raised or controverted—for the Board's consideration.[10] Staff accomplished this by *amending* an existing contention that it declared inadmissible to add bases not pled by Petitioner for that contention.[11] Staff argues, incorrectly, that *amending* the otherwise defective contention renders it admissible.[12]

Staff, in reality, has proposed a new or amended contention. Had Petitioner, itself, proposed to amend its existing contention, after expiration of the hearing opportunity, to add additional bases or propose a new specific statement of law or fact, as Staff has, there would be no question that such action amounted to a new or amended contention. Accordingly, Staff's action here must be treated the same.

---

9 *See generally* 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).

10 *See* Staff Answer at 26.

11 *See id*.

12 *See id*.

C. Staff Has Neither Requested Nor Obtained Leave of the Board

In order to submit a new or amended contention after expiration of the hearing opportunity, participants must request leave to do so from the Board.[13] Here, the hearing opportunity has expired,[14] and Staff has not otherwise sought or obtained such leave, which is dispositive.

D. Staff Has Not Demonstrated Good Cause

Notwithstanding the lack of a motion for leave to submit a new or amended contention after the deadline, NRC regulations further specify that late-filed contentions will not be entertained unless:

> (i) The information upon which the filing is based was not previously available;
>
> (ii) The information upon which the filing is based is materially different from information previously available; and
>
> (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.[15]

The NRC Staff does not acknowledge these standards, much less contend that Staff's New/Amended Contention satisfies them. Nor could it. Staff's New/Amended Contention relies on the same insufficient documentary support proffered in the Petition, bolstered by Staff's new arguments and formulations.[16]

---

13 10 C.F.R. § 2.309(c)(1).

14 The deadline was April 10, 2017. *See* Application and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information, 82 Fed. Reg. 9601, 9602 (Feb. 7, 2017).

15 10 C.F.R. § 2.309(c)(1)(i)-(iii).

16 *See* Staff Answer at 26-39.

III. STAFF'S RECOMMENDATION THAT THE BOARD REJUVENATE OTHERWISE INADMISSIBLE CONTENTIONS IS CONTRARY TO LAW

Alternatively, to the extent Staff's New/Amended Contention is viewed as a "recrafting" of (or a request to the Board to "recraft") Petitioner's otherwise inadmissible contentions (rather than as Staff's own late-filed contention), Staff's actions are directly contrary to Commission case law. Accordingly, Staff's recommendation should be rejected.

In its answer to the Petition, Staff states that the Board has "authority to reformulate a petitioner's arguments while not itself generating arguments on behalf of the petitioner."[17] Staff further states that, "had C-10 established standing, the Board could have found that the Petition had articulated a single admissible contention, which Staff has rewritten."[18] However, Staff overstates the Board's authority to resuscitate deficient contentions, and understates the degree to which Staff has altered and supplemented the Petition to create its New/Amended Contention.

The Commission has recently made clear that "it is Petitioners' responsibility, not the Board's, to formulate contentions and to provide the necessary information to satisfy the basis requirement for admission."[19] Although licensing boards have some limited discretion to "reformulate contentions to eliminate extraneous issues or to consolidate issues" for adjudicatory efficiency,[20] they "may not supply information that is lacking in a contention that *otherwise would be inadmissible*."[21] In other words, the Board's authority is to "reframe *admissible*

---

17 *Id*. at 26 (citing *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 2), CLI-15-18, 82 NRC 135, 145-46 (2015)).

18 Staff Answer at 26.

19 *Entergy Nuclear Ops., Inc.* (Palisades Nuclear Plant), CLI-15-23, 82 NRC 321, 329 (2015) (internal citation omitted).

20 *Crow Butte*, CLI-09-12, 69 NRC at 552 (internal citation omitted).

21 *Fermi*, CLI-15-18, 82 NRC at 141 (emphasis added).

contentions for purposes of clarity, succinctness, and a more efficient proceeding."[22] The limits of this authority are defined in NRC regulations.[23]

Here, as Staff explicitly recognizes, all ten contentions proposed by Petitioner are *otherwise inadmissible*.[24] Staff points out the *information that is lacking* as to each and every contention proposed by Petitioner.[25] However, Staff suggests that the Board could or should supply the *necessary information to satisfy the basis requirement for admission* of Staff's New/Amended Contention. But this would be contrary to established Commission case law holding that boards may not supply legal support, technical support, expert opinion, references to specific sources, or a reasoned basis or explanation for a conclusion[26]—even for *pro se* litigants.[27] Staff offers no explanation for its assertion that the Board, here, can supply the *missing information* necessary to turn *otherwise inadmissible* contentions into an admissible one, other than a single footnote citing to the very case law that explains the opposite.[28]

Moreover, Staff does not explain how the Board purportedly could reformulate the defective contentions "while not itself generating arguments on behalf of the petitioner."[29] Had the Petitioner generated such arguments on its own, there would be no need for the Board (or the

---

22 *Shaw AREVA MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460, 482 (2008). This discussion was cited by the Commission as explaining "the Board's legal authority to reformulate contentions." *Crow Butte*, CLI-09-12, 69 NRC at 552 n.79.

23 *See MOX*, LBP-08-11, 67 NRC at 482-83 (citing, as the source of the Board's authority to reformulate contentions, the Board's authority to hold conferences under 10 C.F.R. § 2.319(j) (*e.g.*, for "simplification of contentions") and § 2.329(c)(1) (for "[s]implification, clarification, and specification of the issues").

24 Staff Answer at 26.

25 *Id*. at 27-48.

26 *See Fermi*, CLI-15-18, 82 NRC at 149 ("the Board may not substitute its own support for a contention or make arguments for the litigants that were never made by the litigants themselves").

27 *See id.* at 145-46 ("even though [petitioner] is not represented by counsel, the Board should not have read into [petitioner]'s petition a different challenge from the one [petitioner] presented in [that] Contention").

28 Staff Answer at 26 (citing *Fermi*, CLI-15-18, 82 NRC at 145-46).

29 Staff Answer at 26.

Staff) to create such a "reformulation." But Petitioner did not do so—hence, Staff is asking the Board to supply *missing information* to rejuvenate *otherwise inadmissible* contentions, an action which is prohibited by Commission precedent.

As a prime example, Staff's New/Amended Contention introduces for the very first time the assertion that "[t]he MPR/FSEL large-scale test program is not bounding of the Seabrook concrete."[30] Staff created this assertion from whole cloth—the Petition does not once use the word "bounding." Thus, this is not merely a reformulation.

Furthermore, Petitioner's remaining contentions make only passing references to the representativeness of the Large-Scale Test Program ("LSTP"), if at all. Staff has twisted these contentions into arguments not raised by Petitioner. For example, Petitioner's Contention G asserts that the LAR is deficient because it does not identify the point of failure.[31] Staff acknowledges Petitioner's assertion is immaterial, but invents a new claim (without citation to support) that "the limits imposed by the LAR are derived from, and, in turn, determined to be conservative by the [LSTP]."[32] But where a petitioner, itself, does not provide "any nexus between" its claims and "any [purported] deficiencies" in the underlying application, a reformulation that imputes a claimed nexus would exceed the Board's authority.[33] Furthermore, it makes no difference whether the *missing information* purportedly comes from elsewhere in the Petition; Petitioner has an affirmative obligation to plead the connection itself.[34]

---

30 *Id*.

31 *See* Petition at 13-15.

32 Staff Answer at 37.

33 *Fermi*, CLI-15-18, 82 NRC at 141.

34 *See id*. at 141-42 (transplanting support from a different argument exceeds the Board's authority); *id*. at 142 (using information from elsewhere "in the[] hearing request" that petitioner, itself, did not use to support the argument raised in the reformulation exceeds the Board's authority).

Ultimately, Staff significantly understates the degree to which it has manipulated the deficient contentions, and misinterprets Commission case law as to the Board's acknowledged but limited authority to narrow arguments, trim out-of-scope subject matter, and otherwise ensure an efficient adjudication. Accordingly, Staff's New/Amended Contention should be rejected.

IV. NRC STAFF'S NEW/AMENDED CONTENTION IS INADMISSIBLE

Commission regulations at 10 C.F.R. § 2.309(f)(1) identify the six admissibility criteria for proposed contentions. NextEra fully briefed the applicable legal standards in its answer to C-10's Petition.[35] As discussed below, even if Staff's New/Amended Contention could be considered in the proceeding, it still fails to articulate an admissible contention.

Staff acknowledges that Petitioner's proposed Contention D "in and of itself, is not admissible." [36] However, Staff argues that, when "rewritten" (*i.e.*, amended) to include certain *missing information*, it would "amount to a single admissible contention."[37] Staff frames its new contention as follows:

> The MPR/FSEL large-scale test program is not bounding of the Seabrook concrete because of the age of the Seabrook concrete, the length of time that ASR has propagated in the Seabrook concrete, the effect of water at varying levels of height and varying levels of salt concentration on the Seabrook concrete, the effect of heat on the Seabrook concrete, and the effect of radiation on the Seabrook concrete. As a result, the proposed monitoring, acceptance criteria, and inspection intervals are not adequate.[38]

But Staff offers no factual or documentary support for its new contention beyond the deficient conclusions and citations proffered in the original Petition. Likewise, it does nothing to

---

35 *See* NextEra Answer § III.B. That discussion is incorporated by reference, rather than republished, here.

36 Staff Answer at 26.

37 *Id*.

38 *Id*.

rectify the other major deficiencies of these contentions in the original Petition: the fact that they disregard, rather than dispute, highly-relevant portions of the LAR, including its specific methods, analyses, conclusions, and underlying technical studies.[39] As explained below, because Staff's New/Amended Contention relies on these empty claims, it, too, is inadmissible.

A. Contention D Does Not Supply Sufficient Support for Staff's New/Amended Contention or Demonstrate a Genuine Dispute with the LAR

In Contention D, Petitioner asserted, erroneously, that NextEra is attempting to "substitute" "not representative" data from the LSTP in lieu of performing core sample testing at Seabrook.[40] Staff argues Contention D's deficiencies (as pled by Petitioner) relate to scope and materiality, but believes it otherwise provides sufficient support and identifies a genuine dispute.[41] However, Staff devotes only a passing reference to its conclusions in this regard. An examination of the proffered arguments and support in Contention D reveals that they are nothing more than threadbare speculation and generalized commentary, rather than legitimate challenges to the LAR. Such assertions are insufficient to satisfy the NRC's contention admissibility requirements, which are "strict by design."[42]

For example, Staff views Petitioner's assertion that the LSTP's "use of wetted absorbent fabric and misters could not accurately represent the potential presence of groundwater on one side of the reinforced concrete at Seabrook" (as paraphrased by Staff) as providing "support" for Contention D.[43] But Staff appears to conflate this mere *conclusion* with the support required by 10 C.F.R. § 2.309(f)(1)(v). Petitioner simply claims that the LAR is 'deficient,' 'inadequate,' or

---

39 *See* NextEra Answer § V.

40 Petition at 2, 8 (arguing the LSTP data "cannot be substituted" for core sample testing).

41 Staff Answer at 28.

42 *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001), *reconsid. denied*, CLI-02-01, 55 NRC 1 (2002).

43 Staff Answer at 27.

'wrong,' but does not otherwise support its assertion with any factual information or expert opinion. Moreover, Petitioner's *conclusion* disregards, rather than disputes, the intended purpose of the wetted fabric, as described in the LAR;[44] and disregards, rather than disputes, the confirmatory analysis showing the wetted absorbent fabric accomplished its purpose.[45] To the contrary, a contention must acknowledge relevant portions of the application and explain, with appropriate support, how those portions are purportedly deficient.[46] So too with Staff's and Petitioner's vague references to the purported effects of concrete age, ASR age, water height, salt concentration, heat, and radiation on the Seabrook concrete.[47] Neither Contention D, as pled by Petitioner, nor Staff's Answer make any showing that these topics are within the scope of the instant proceeding, versus issues that are considered under other CLB programs, or offer any explanation for *how* such purported effects would impact the LAR. Ultimately, Staff's New/Amended Contention deprives the Board of the ability to make the necessary, reflective assessment of the underlying assertion.[48]

---

44 The purpose of the wetted absorbent fabric was to ensure that ASR developed through the entire thickness of the test specimens. *See* MPR-4273, Rev. 0, "Seabrook Station - Implications of Large-Scale Test Program Results on Reinforced Concrete Affected by Alkali-Silica Reaction" at 4-7 (July 2016) (Non-Proprietary) ("MPR-4273") ("[t]he internal humidity of the concrete [created by the wet fabric] and the atmospheric conditions in the ECF were sufficient to drive progression of ASR uniformly throughout the test specimens") (MPR-4273 was included as Enclosure 3 to SBK-L-16071, Letter from to R. Dodds to NRC Document Control Desk, "License Amendment Request 16-03 – Revise Current Licensing Basis to Adopt A Methodology for the Analysis of Seismic Category I Structures with Concrete Affected by Alkali-Silica Reaction," (Aug. 1, 2016) (ML16216A240) ("Original LAR") .

45 Confirmatory petrographic analysis showed ASR was "observed throughout the entire test specimen, not just at the surface," thus, "the control specimens provided an appropriate baseline for the test programs." MPR-4273 at 4-10.

46 *Millstone*, CLI-01-24, 54 NRC at 358.

47 *See* Staff Answer at 27-28 (citing Petition at 9-11).

48 *Cf. USEC, Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006).

Likewise, Staff points to "the opinion of Dr. Brown" as purported support for a representativeness contention.[49] However, the purported support is actually a letter written by Petitioner and the Union of Concerned Scientists, not Dr. Brown himself.[50] Moreover, the proffered quotation merely suggests that "ASR is not a linear phenomenon."[51] Neither the source document, nor the Petition, nor the Staff explain any connection between ASR linearity and the LSTP—nor is there any obvious connection—and the Board cannot accept uncritically the assertion that there is one.[52] As to Staff's and Petitioner's vague references to salt, radiation, etc.,[53] Staff points to nothing—not one bit of support—for the assertion that these factors influence ASR, impact the LAR analysis, or render the application deficient. This type of "vague speculation" that a "flaw may exist . . . is not sufficient to establish a material challenge."[54] Thus, nothing in Contention D, as pled by Petitioner, provides support for Staff's New/Amended Contention or demonstrates a genuine dispute with the LAR, as demanded by 10 C.F.R. § 2.309(f)(1)(v)-(vi).[55]

B. Contentions A, B, C, G, and H Do Not Supply Sufficient Support for Staff's New/Amended Contention or Demonstrate a Genuine Dispute with the LAR

Staff states that the only thing preventing admission of Contention D is an "assert[ion]" that "consequences" would accrue from the purported lack of representativeness of the LSTP.[56]

---

49 Staff Answer at 28.

50 *See id*. at 27 (citing Petition at 9, which it turn cites Letter from S. Gavutis, C-10, and D. Wright, UCS, to W. Dean, NRC (Sept. 13, 2012) ("C-10 and UCS 9/13/12 Letter")).

51 *See* Petition at 9 (citing C-10 and UCS 9/13/12 Letter).

52 *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), LBP, 98-7, 47 NRC 142, 181 (1998), *aff'd*, CLI-98-13, 48 NRC 26, 37 (1998).

53 *See* Staff Answer at 27-28 (citing Petition at 9-11).

54 *See Palisades*, CLI-15-23, 82 NRC at 329-30 (2015).

55 *See generally* NextEra Answer § V.D (providing a full explanation of the deficiencies of Contention D).

56 Staff Answer at 26, 28.

Staff attempts to cure this deficiency by stitching together portions of Contentions A, B, C, G, and H (which Staff also admits are individually inadmissible) to the extent they purportedly challenge the representativeness of the LSTP.[57] Notwithstanding, even when combined with Petitioner's generalized assertions from Contentions A, B, C, G, and H, Staff's New/Amended Contention remains unsupported and ignores, rather than disputes, relevant portions of the LAR. Moreover, it is unclear how *anything* from Petitioner's contentions on prestressing, petrography, or "tipping point" could support Staff's New/Amended Contention because the specific statement of the contention says nothing about these issues.

Staff argues that Contention A "is supported by March 2013 and November 2013 reports disputing the reliability of using a crack width index, and Dr. Paul Brown's 2016 commentary specifically disputing the reliability of extensometers."[58] However, those references largely comment on now-superseded iterations of NextEra's ASR assessment program and other outdated information rather than the current LAR.[59] None of the excerpts—nor any other part of Contention A—challenge the *specific* application of techniques as described in the LAR,[60] as an

---

57 *See, e.g.*, *id*. at 30.

58 *Id*. (citing Petition at 3-4, which in turn cites: C-10 and UCS, "Commentary on 'Seabrook Station: Impact of Alkali-Silica Reaction on Concrete Structures and Attachments'" (Mar. 2013) (the letter notes it is "based on" commentary by P. Brown) ("C-10 and UCS 3/13 Commentary"); UCS, "Continuing Problems with Monitoring Concrete Damage at Seabrook" (Nov. 4, 2013) (listing UCS and C-10 as contacts) ("UCS 11/4/13 Commentary"); and P. Brown, "Commentary on Seabrook Station License Amendment Request 16-03" (Sept. 30, 2016) ("Brown 9/30/16 Commentary")).

59 *See generally* NextEra Answer § V.A (providing a full explanation of the deficiencies of Contention A).

60 *See, e.g.*, NextEra Answer at 23-26 (explaining that commentary criticizing the use of crack width indexing as the only means of monitoring ASR does not challenge the LAR methodology, which, categorically, does not propose the use of crack width indexing as the *only* means of monitoring ASR); *id*. at 26-27 (explaining that the 2013 document authored by UCS broadly suggesting visual inspection is not a comprehensive means of assessing ASR also misses the mark because it ignores the LAR's three-tiered system which proposes only *limited* use of visual inspections *up to the Tier 2 threshold*—a specific application which does not purport to use visual inspections as a comprehensive solution and to which the commentary is inapplicable); *id*. at 27 (explaining that Dr. Brown's generalized criticism of extensometers does not consider the specific application of extensometers contemplated in LAR, whereby they are installed in the most conservative locations, and does not provide a *reasoned explanation* for how such application purportedly is deficient).

admissible contention must.[61] Ultimately, nothing in Contention A provides adequate support for Staff's New/Amended Contention or demonstrates a genuine dispute with the LAR.

Next, Staff argues that Contention B (challenging the LAR's use of the term "prestressing") "is supported by the opinion of Dr. Paul Brown."[62] Staff references Dr. Brown's acknowledgement that the temporary mitigation of the loss of structural capacity caused by ASR in reinforced concrete ultimately "does not stop the progress" of ASR.[63] However, there is no dispute on this point.[64] Neither Dr. Brown—nor the Petitioner—nor Staff—offer any connection between this assertion and Staff's New/Amended Contention. Moreover, Staff's conclusion that "Contention B raises a genuine dispute with the LAR because it challenges the sufficiency of NextEra's determination, based on the results of the [LSTP], that the prestressing effect impacts the structures at Seabrook" is misguided. Quite the contrary—the approach described in the LAR does not credit the increase in capacity (from prestressing or otherwise) of the ASR-affected structural members.[65] Ultimately, Contention B fails to provide adequate support for Staff's New/Revised Contention or demonstrate a genuine dispute with the specific analysis in the LAR.[66]

As to Contention C, which criticizes the LAR for allegedly not utilizing "petrographic testing" (a term that likely was intended to refer to material property testing, generally),[67] Staff

---

61 *See USEC*, CLI-06-10, 63 NRC at 472 (2006) (explaining petitioners must identify an error or omission in the underlying analysis).

62 Staff Answer at 33.

63 *Id*. at 32 (citing Petition at 5, which in turn cites Brown 9/30/16 Commentary).

64 The LAR explicitly acknowledges that the mitigation is temporary. MPR-4288, Rev. 0, "Seabrook Station: Impact of Alkali-Silica Reaction on Structural Design Evaluations" at 4-2 (July 2016) (Non-Proprietary) ("MPR-4288") (included as Enclosure 2 to the Original LAR).

65 *See, e.g.*, MPR-4273 at vi, 2-3 n.3; MPR-4288 at 5-2, 5-4.

66 *See generally* NextEra Answer § V.B (providing a full explanation of the deficiencies of Contention B).

67 *See id*. at 34.

points to commentary calling for core sample testing and predictive modeling, and suggests the contention "could be admissible" to the extent it challenges representativeness.[68] Staff offers nothing to explain how such commentary would support its New/Amended Contention or demonstrate a genuine dispute with the LAR. Nor could it. Neither Petitioner, nor Dr. Brown, nor Staff offer anything to acknowledge, address, or otherwise challenge the specific elements of the LAR, such as the LSTP's use of core sample testing to correlate material properties to ASR progression, or the LAR's use of actual measurements in lieu of predictive modeling.[69] Thus, Contention C likewise fails to bolster Staff's proposed contention.

As to Contention G, which claims that the "tipping point" concept is "[o]mitted from the LAR,"[70] Staff does not assert that the Petition offers documentary or expert support for a representativeness contention, such as Staff's New/Amended Contention, or demonstrates a genuine dispute with the LAR on the topic of representativeness.[71] And as to Contention H, which asserts that the inspection intervals referenced in the LAR are "too long, and too fixed,"[72] Staff offers only its conclusory assertion that "C-10 has identified a specific [unspecified] dispute with the LAR and has provided some limited support in the [unspecified] referenced documents."[73] In other words, Staff merely makes vague references to the underlying Petition

---

68 Staff Answer at 35.

69 *See generally* NextEra Answer § V.C (providing a full explanation of the deficiencies of Contention C).

70 Petition at 13.

71 *See* Staff Answer at 36-37. Staff does, however, attempt to create a genuine dispute via its new argument, not raised by Petitioner, claiming "the limits imposed by the LAR are derived from, and, in turn, determined to be conservative by the [LSTP]." *Id*. at 37. Otherwise, Staff merely opines that the subject matter raised in the contention would have been material had Petitioner raised representativeness arguments—which it did not do. *Id*.

72 Petition at 15.

73 Staff Answer at 38.

but does not identify the purported support or dispute, which is insufficient.[74] Accordingly, these cannot cure the support and genuine dispute deficiencies from Contentions G and H as to Staff's New/Amended Contention.[75]

In summary, just like Petitioner's original Contentions A, B, C, D, G, and H, Staff's New/Amended Contention likewise fails to demonstrate the requisite level of support required by 10 C.F.R. § 2.309(f)(1)(v), and fails to demonstrate a genuine dispute with the actual methodologies and underlying technical content of the LAR, as required by 10 C.F.R. § 2.309(f)(1)(vi). Accordingly, it is inadmissible and should be rejected.

V. CONCLUSION

Because Staff lacks the authority to submit contentions, and furthermore has not addressed or satisfied the requirements for late-filed contentions in 10 C.F.R. § 2.309(c), Staff's New/Amended Contention should be rejected. Alternatively, Staff's recommendation that the Board craft a new contention is contrary to law and should be rejected. Ultimately, even if Staff's New/Amended Contention could be entertained in this proceeding, it still fails to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Accordingly, the Board should reject Staff's New/Amended Contention.

---

74 *Cf. USEC*, CLI-06-10, 63 NRC at 457 ("A contention must make clear why cited references provide a basis for a contention").

75 *See generally* NextEra Answer §§ V.G, H (providing a full explanation of the deficiencies of Contentions G and H).

Respectfully submitted,

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

Steven Hamrick, Esq.
NextEra Energy Seabrook, LLC
801 Pennsylvania Ave., NW Suite 220
Washington, D.C. 20004
Phone: (202) 349-3496
Fax: (202) 347-7076
E-mail: steven.hamrick@fpl.com

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

Paul M. Bessette, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5796
Fax: (202) 739-3001
E-mail: paul.bessette@morganlewis.com

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

William S. Blair, Esq.
NextEra Energy Seabrook, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Phone: (561) 304-5238
Fax: (561) 304-5366
E-mail: william.blair@fpl.com

Signed (electronically) by Ryan K. Lighty

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: ryan.lighty@morganlewis.com

Counsel for NextEra Energy Seabrook, LLC

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

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

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, copies of the foregoing "NextEra's Reply to NRC Staff's Answer to C-10's Petition 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

Ryan K. Lighty, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 739-5274
Fax: (202) 739-3001
E-mail: ryan.lighty@morganlewis.com

Counsel for NextEra Energy Seabrook, LLC

DB1/ 92079564