

June 5, 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-LA2
)
(Seabrook Station, Unit 1))
)

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

On May 12, 2017, NextEra Energy Seabrook, LLC ("NextEra") submitted a motion for leave to file a reply¹ to the U.S. Nuclear Regulatory Commission ("NRC") staff ("Staff") answer ("Staff Answer")² to the C-10 Research and Education Foundation, Inc. ("C-10") petition for leave to intervene ("Petition").³ NextEra also filed its reply ("NextEra Reply") at the same time.⁴ On May 26, 2017, the Atomic Safety and Licensing Board ("Board") granted the NextEra motion to file its Reply and stated that, should either the Staff or C-10 desire to submit a response to any arguments raised in the NextEra Reply, such a response should be filed no later than ten days together with a brief motion seeking leave to file the response.⁵ In accordance with this

¹ NextEra's Motion for Leave to File a Reply to NRC Staff's Answer to C-10's Petition for Leave to Intervene (May 12, 2017) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML17132A284).

² NRC Staff's Answer to C-10 Research and Education Foundation, Inc. Petition for Leave to Intervene (May 5, 2017) (ADAMS Accession No. ML17125A304; ADAMS Document Package No. ML17125A303) ("Staff Answer").

³ C-10 Research and Education Foundation, Inc. Petition for Leave to Intervene: Nuclear Regulatory Commission Docket No. 50-443 (Apr. 10, 2017) (ADAMS Accession No. ML17100B013) ("Petition").

⁴ NextEra's Reply to NRC Staff's Answer to C-10's Petition for Leave to Intervene (May 12, 2017) (ADAMS Accession No. ML17132A285) ("NextEra Reply").

⁵ Order (Granting NextEra's Motion to File a Reply) (May 26, 2017) (unpublished) (ADAMS Accession No. ML17146A173).

order, and pursuant to 10 C.F.R. § 2.323, the Staff submits this timely motion to file a sur-reply along with the proposed sur-reply.

The NextEra Reply raises a number of new arguments that could not have been reasonably anticipated by the Staff in its Answer. Specifically, NextEra argues in its Reply that the Staff's suggestion in the Staff Answer that the Board reformulate C-10's proposed contentions⁶ is unprecedented and states that it was unable to find pleadings in which the Staff had "affirmatively draft[ed] or propose[d] a new contention in its answer pleading...."⁷ NextEra also suggests in its Reply that the Staff's participation in NRC adjudicatory proceedings is somehow limited.⁸ Finally, NextEra argues in its Reply that the Staff's suggested reformulation of C-10's proposed contentions goes beyond addressing the factors set forth in 10 C.F.R. § 2.309(a)-(h)⁹ and amounts to the "drafting and proposing [of] a new contention...."¹⁰

In order to ensure that the record is complete and accurate and to support the fair resolution of this proceeding, the Staff moves for leave to file a sur-reply to the NextEra Reply so that it may address these new arguments. Specifically, the Staff sur-reply will demonstrate that these new arguments are without merit because (1) the Staff, as a full party to NRC proceedings and "the representative of the public interest in these proceedings,"¹¹ has broad authority to suggest reformulations of petitioners' contentions, has suggested reformulations in previous answers to petitions, and is not in any way limited in how it may respond to petitions

⁶ Staff Answer at 26, 38-39.

⁷ NextEra Reply at 1-2, 2 n.5.

⁸ *Id.* at 3-4.

⁹ See 10 C.F.R. § 2.309(i)(1) ("Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.").

¹⁰ NextEra Reply at 1-2.

¹¹ Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings, 51 Fed. Reg. 36,811, 36,812 (Oct. 16, 1986) (advance notice of proposed rulemaking; withdrawal).

and (2) the Staff's suggested reformulation in this proceeding was appropriate given the interrelationship of the underlying proposed contentions and does not amount to the Staff's pleading of a new contention.

For these reasons, and as more fully explained in the Staff's sur-reply accompanying this motion, the Staff respectfully requests that the Board grant the Staff's motion.

Respectfully submitted,

/Signed (electronically) by/

Jeremy L. Wachutka
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O14-A44
Washington, DC 20555
Telephone: (301) 287-9188
E-mail: Jeremy.Wachutka@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Brian G. Harris
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O14-A44
Washington, DC 20555
Telephone: (301) 287-9120
E-mail: brian.harris@nrc.gov

Executed in Accord with 10 CFR 2.304(d)

Anita Ghosh
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O14-A44
Washington, DC 20555
Telephone: (301) 287-9175
E-mail: Anita.Ghosh@nrc.gov

Dated at Rockville, Maryland
this 5th day of June, 2017

CONSULTATION CERTIFICATION

Pursuant to 10 C.F.R. § 2.323(b), I hereby certify that the Staff has made a sincere effort to contact the other participants in this proceeding and resolve the issues raised in the above motion. C-10 and NextEra stated that they have no objections to Staff's planned motion for leave to file a reply.

/Signed (electronically) by/

Jeremy L. Wachutka
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O14-A44
Washington, DC 20555
Telephone: (301) 287-9188
E-mail: Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland
this 5th day of June, 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-LA2
)
(Seabrook Station, Unit 1))
)

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing "NRC STAFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY TO NEXTERA'S REPLY TO NRC STAFF'S ANSWER TO C-10'S PETITION FOR LEAVE TO INTERVENE," dated June 5, 2017, have been filed through the Electronic Information Exchange, the NRC's E-Filing System, in the above-captioned proceeding, this 5th day of June, 2017.

/Signed (electronically) by/

Jeremy L. Wachutka
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O14-A44
Washington, DC 20555
Telephone: (301) 287-9188
E-mail: Jeremy.Wachutka@nrc.gov

Dated at Rockville, Maryland
this 5th day of June, 2017