

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Nicholas G. Trikouros
Dr. Sekazi Mtingwa

In the Matter of:

NEXTERA ENERGY SEABROOK, LLC

(Seabrook Station Unit 1)

Docket No. 50-443-LA-2

ASLBP No. 17-953-LA-BD01

[DATE]

[PROPOSED] PROTECTIVE ORDER
(Governing Non-Disclosure of Protected Information)

Pursuant to the Initial Scheduling Order in this proceeding,¹ and the joint request of the Parties,² this Protective Order shall govern the use of all Protected Information produced by, or on behalf of, the Parties to this proceeding. Protected Information consists of information designated by the Parties as sensitive unclassified non-safeguards information (SUNSI), i.e., information whose disclosure could “reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the personal privacy of individuals.”³ This Protective Order shall remain in

¹ ASLB Initial Scheduling Order at 1-2 n.3 (Nov. 29, 2017) (unpublished).

² Letter from P. Bessette to the Atomic Safety and Licensing Board, “Proposed Protective Order and Non-Disclosure Affidavit” (Jan. 16, 2017). The Parties to this proceeding are NextEra Energy Seabrook LLC (“NextEra”), the U.S. Nuclear Regulatory Commission Staff (“NRC Staff”), and C-10 Education and Research Foundation, Inc. (“C-10”).

³ NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information at 1 (Oct. 26, 2005) (ML052990146).

effect until specifically terminated by the Atomic Safety and Licensing Board (“Board”) or the Commission.

1. If the producing party has a good faith belief that a document (or portion thereof) contains Protected Information, including information that qualifies as a trade secret and/or commercial or financial information that is privileged or confidential under 10 C.F.R. § 2.390(a)(4), then the producing party may designate the document as such and it shall be protected in accordance with the terms and conditions of this Protective Order.
2. The producing party shall mark the top of each page of each disclosed proprietary document with the words “Contains Proprietary Information – Subject to Protective Order.”
3. Documents that are designated proprietary shall be held in strict confidence pursuant to 10 C.F.R. § 2.390(a)(4) and this Protective Order. This Protective Order, and the good faith representation and designation of documents as proprietary documents by the producing party or the initial holder, serves in lieu of the requirement for an affidavit under 10 C.F.R. § 2.390(b) and allows the NRC Staff to receive proprietary documents and to protect their confidentiality under the Freedom of Information Act. Nothing in this Protective Order shall be interpreted to prevent the NRC from discharging its obligation to release or retain documents in its possession and control in accordance with, and only to the extent required by, federal regulations or statute.
4. This Protective Order governs Protected information related to the admitted contention and owned or produced by NextEra and/or its principal contractor,

MPR, NRC Staff, or C-10. This Protective Order does not govern Protected Information owned by other third parties and in the possession or control of the Parties ("Third-Party Protected Information"), including but not limited to EPRI or ASME. Should any party seek access to Third-Party Protected Information of another party, then the producing party shall make reasonable efforts to obtain from the owner of the Third-Party Protected Information any necessary approvals for its release, subject to any appropriate nondisclosure provisions. If there are costs associated with acquiring the rights or approval to produce Third-Party Protected Information (e.g., copyright or subscription costs), then the producing party will inform the requesting party of the total costs involved, and the requesting party must agree to pay those costs as a condition of being supplied the Third-Party Protected Information. If the requesting party does not agree to pay these costs, then the producing party is not obligated to go through the effort of acquiring approval to produce the Third-Party Protected Information.

5. Individual representatives of the Parties, and consultants and experts retained by the Parties, shall be entitled to have access to the Protected Information if they execute and deliver to the party producing the Protected Information a Non-Disclosure Affidavit in the form included as Attachment A to this Protective Order, the terms of which are hereby incorporated herein. An individual that does not execute and file the Non-Disclosure Affidavit is not authorized to access the Protected Information.
6. On or before the later of (a) thirty (30) days after the date a Party requests a copy of a proprietary document, or (b) thirty (30) days after the date of this Protective

Order, the producing party shall produce a copy of the requested proprietary document with the proprietary information unredacted by providing it to the duly authorized representatives of the requesting party, provided each such representative has signed a Non-Disclosure Affidavit. Upon the request of NRC Staff counsel, the producing party shall provide an unredacted copy of such document to NRC Staff counsel.

7. Other than the filing deadlines set forth in this Order, the terms of this Protective Order do not apply to the NRC Staff, NRC contractors, or NRC legal counsel, whose use of Protected Information is governed by NRC regulations and policies as well as other applicable law.
8. Protected Information shall be treated as confidential by the Parties. Protected Information shall not be used except as necessary for the conduct of this proceeding on NextEra's License Amendment Request 16-03 for Seabrook Station Unit 1 ("LAR"). A proprietary document subject to this Protective Order shall not be disclosed in any manner to any person except (1) the Commission, the Office of the Secretary, the Board and their respective staffs; (2) the NRC Staff, its counsel, and contractors or consultants employed by the U.S. government, and (3) those persons engaged in the conduct of this proceeding who have executed a Non-Disclosure Affidavit. An individual with access to Protected Information may make copies of and take notes on the Protected Information, but such copies and notes become Protected Information subject to the terms of this Protective Order.

9. The Parties shall securely maintain all Protected Information and shall not provide the Protected Information to anyone not authorized to receive it pursuant to this Order. Counsel and others representing a Party shall take all precautions necessary to assure that proprietary documents and proprietary information are not distributed to unauthorized persons. Counsel and others representing a Participant are responsible for ensuring that persons under their supervision or control comply with this Protective Order.
10. Even if no longer engaging in this proceeding, every person who has executed a Non-Disclosure Affidavit shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Affidavit.
11. Upon the termination of this proceeding, or upon order by the Board or the Commission, the Parties shall return all materials containing Protected Information to the party that produced that information, or destroy that information, including copies of filings, official transcripts, and notes that contain Protected Information. Each recipient of Protected Information shall execute an affidavit stating that the Protected Information within its possession or control has been returned or destroyed, and shall serve a copy of the executed affidavit upon the applicable party within fifteen (15) calendar days.
12. A party that has reason to suspect that Protected Information may have been lost or misplaced, or that Protected Information has otherwise become available to unauthorized persons, shall promptly notify the other parties of those suspicions and their basis and any corrective actions that have been taken to recover the information and prevent future disclosures. If no agreement can be made as to

the appropriate corrective actions, the parties will inform the Board or the Commission.

13. If, upon receipt and review of a document containing Protected Information, a party determines that such document does not appear to qualify for protection, that party may file a motion with the Board challenging such designation. The motion shall not contain any Protected Information and shall be filed as a "Public Submission" through the EIE; the challenged documents which contain Protected Information shall be filed as an "In-Camera Submission" through the EIE. In this manner, all parties and the public will know when such a motion is filed, but the Protected Information will continue to be withheld from public disclosure. Absent good cause shown, any such motion shall be filed within thirty (30) days of receipt of the Proprietary Document. Prior to presenting any such dispute to the Board, the parties shall consult and use their best efforts to resolve it, including, but not limited to, the use of redaction. However, no party is obligated to redact documents containing Protected Information.
14. If a party has filed a motion under the preceding paragraph then, pending a ruling by the Board, the Protected Information in question shall continue to be held in confidence. If the Board rules that a document does not qualify as Protected Information, then the unrestricted use of such documents may begin fifteen (15) days after the Board's decision. If, during such time, the party that asserted protected status of the document files an interlocutory appeal or request that the issue be certified to the Commission, such period of time shall be extended until

such time as the Board or the Commission rules on the appeal or request for certification.

15. The Board may alter or amend this Protective Order and resolve disputes. The Parties may seek amendments to this Order or the Non-Disclosure Affidavit by filing a motion for amendment.
16. Pleadings or other documents for filing that contain information protected pursuant to this Order shall be filed electronically using the NRC's E-Filing system. The person filing the document must properly choose the option to prevent the document from being filed in the public docket. Only members of the ASLB, NRC Staff counsel, and authorized persons should be "checked" as recipients on the electronic service list. If any party to a proceeding on this Application intends to submit an exhibit, testimony, or pleading containing Protected Information without using the E-Filing system, the party shall notify the Licensing Board prior to such filing. Nothing in this Order shall preclude a party to a proceeding on the Application from objecting to the use of an exhibit, testimony, or a pleading because it contains Protected Information. The Board may issue additional orders concerning the use of Protected Information at a hearing.
17. Nothing in this Order shall preclude any person from seeking public disclosure of Protected Information in accordance with NRC regulations. Nothing in this Order shall preclude any person from seeking, through discovery in any other administrative or judicial proceeding, information protected by this Order.

18. Any violation of this Protective Order or of any Non-Disclosure Affidavit executed hereunder may result in the imposition of sanctions as the Licensing Board or the Commission may deem to be appropriate. Nothing in this Order restricts or waives a party's rights to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Information.
19. If a party wishes to receive Protected Information, then it must send any signed Non-Disclosure Affidavits to the other parties. In this manner, all of the Parties will know the identity of individuals who are authorized to access Protected Information in this proceeding. Any party possessing Protected Information is not required to produce that Information as part of the mandatory disclosure process until it receives one or more signed Non-Disclosure Affidavits from another party. Protected Information may be produced as part of the mandatory disclosures process in paper or electronic form.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
[DATE]

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NUCLEAR REGULATORY COMMISSION

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Docket No. 50-443-LA-2

ASLBP No. 17-953-LA-BD01

DATE: _____

[PROPOSED] NON-DISCLOSURE AFFIDAVIT

I, _____, being duly sworn, state:

1. I have read the [DATE], 2018 Atomic Safety and Licensing Board Protective Order issued in this proceeding governing access to Protected Information and will comply in all respects with its terms and conditions regarding the Protected Information produced in connection therewith. I will protect and keep confidential all Protected Information in accordance with the terms of this Non-Disclosure Affidavit.
2. I will not disclose Protected Information to anyone except an authorized person. I will protect documents containing or revealing Protected Information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such Protected Information), so that the Protected Information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.
3. When not under my direct control or the direct control of another authorized person, I will securely maintain all documents containing or revealing Protected Information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make).
4. I will know that I am in possession of a document containing Protected Information because each document that contains or reveals Protected Information will be marked "Contains Proprietary Information – Subject to Protective Order."
5. Neither during nor after this proceeding will I publicly reveal any Protected Information that I receive in this proceeding.
6. I will return or destroy any Protected Information I acquired or generated during this proceeding as required by the Protective Order.

7. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's Protective Order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me that the Licensing Board or the Commission may deem to be appropriate. I also acknowledge that if I am involved in the actual or anticipated disclosure of Protected Information, or otherwise violate the terms of this affidavit or the Licensing Board's Protective Order, then the party that produced the information or another affected entity might pursue legal or equitable remedies against me personally.

WHEREFORE, I do solemnly agree to protect and keep confidential such Protected Information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit.

Name (printed): _____

Title: _____

Signature: _____

Date: _____

Subscribed to and sworn before me this _____ day of _____, _____.

Notary Public

My commission expires: _____