

**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)	)	September 9, 2019

**NEXTERA’S ANSWER OPPOSING C-10’S MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL REBUTTAL TESTIMONY**

Pursuant to 10 C.F.R. § 2.323(c), NextEra Energy Seabrook, LLC (“NextEra”) hereby timely files this answer to C-10 Research and Education Foundation’s (“C-10”) Motion for Leave to File Supplemental Rebuttal Testimony (“Motion”).<sup>1</sup> NextEra opposes the Motion because the Atomic Safety and Licensing Board’s (“Board”) structured schedule for filing written testimony in this proceeding provides no opportunity to file “supplemental rebuttal,” and C-10 fails to demonstrate good cause for abandoning—on the eve of the hearing—the Board’s well-conceived approach. Thus, the Motion should be summarily rejected.

In February 2018, the Board issued a revised scheduling order (“RSO”) governing the submission of written testimony in this proceeding.<sup>2</sup> The RSO provided C-10 with an opportunity to file written direct testimony by June 10, 2019, and written rebuttal testimony by August 23, 2019.<sup>3</sup> C-10 took advantage of both opportunities. Now, C-10’s Motion requests

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<sup>1</sup> C-10 Research and Education Foundation’s Motion for Leave to File Supplemental Rebuttal Testimony (Sept. 4, 2019).

<sup>2</sup> See ASLB, Memorandum and Order (Revised Scheduling Order) (Feb. 15, 2018) (unpublished). See also ASLB, Initial Scheduling Order (Nov. 29, 2017) (unpublished).

<sup>3</sup> See RSO at 3 (specifying that C-10 written direct testimony and written rebuttal testimony were due 90 days and 165 days, respectively, from the date the final Safety Evaluation (“FSE”) is issued). The FSE was issued on March 11, 2019. See Letter from to M. Nazar, NextEra, “Seabrook Station, Unit No. 1 – Issuance of

leave to file “supplemental” (*i.e.*, more) rebuttal beyond the August 23, 2019 deadline. In essence, the Motion seeks an *extension* of the deadline for submission of rebuttal testimony.

Generally speaking, “the Commission expects its licensing boards to set and adhere to reasonable schedules for the various steps in the hearing process,” and the parties likewise “are expected to adhere to the time frames specified in the . . . scheduling orders in the proceeding.”<sup>4</sup> 10 C.F.R. § 2.307(a) permits deadlines to be extended, but only upon a showing of “good cause.” According to formal Commission policy, good cause for extensions of adjudicatory filing deadlines exists “*only* when warranted by unavoidable and extreme circumstances.”<sup>5</sup>

C-10 points to no such circumstances here. Rather, C-10’s sole justification for the Motion is that, “in the course of reviewing exhibits for the upcoming hearing,” its expert has “discovered” his own additional thoughts on the application documents.<sup>6</sup> But C-10 makes no assertion that its delay in submitting those thoughts somehow was “unavoidable,” or the result of some “extreme circumstance.” Thus, the Motion does not remotely satisfy the “good cause” standard. Moreover, allowing the unauthorized and untimely submission of additional expert views on the eve of hearing is prejudicial to the parties and the Board, and contravenes principles of fundamental fairness.<sup>7</sup>

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Amendment No. 159 re: Methodology for Analysis of Seismic Category I Structures with Concrete Affected by Alkali-Silica Reaction (CAC No. MF8260; EPID L-2016-LLA-0007)” (Mar. 11, 2019) (ML18204A291).

<sup>4</sup> Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

<sup>5</sup> *Id.* (emphasis added). See also *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998); *Hydro Res., Inc.* (Albuquerque, NM), CLI-99-1, 49 NRC 1, 3 & n.2 (1999) (“We caution all parties in this case, however, to pay heed to the guidance in our policy statement that ordinarily only ‘unavoidable and extreme circumstances’ provide sufficient cause to extend filing deadlines”).

<sup>6</sup> Motion at 2.

<sup>7</sup> NextEra notes the irony of C-10’s view that NextEra’s Motion *in Limine*, filed ten days before the applicable deadline, somehow is prejudicial (see NextEra’s Motion *in Limine* to Strike or Exclude Portions of C-10’s Testimony and Exhibits at Motion Certification (Sept. 9, 2019) (“MIL”)), but C-10’s submission of additional rebuttal testimony twelve days after the applicable deadline apparently is not.

Furthermore, the Commission has explained that adjudicatory “timeliness rules require a high level of discipline and preparation by petitioners, who must examine the [ ] available material and set forth their claims and the support for their claims” in a timely manner.<sup>8</sup> This obligation is “iron-clad.”<sup>9</sup> Likewise, intervenors may not “disregard [adjudicatory] timeliness requirements . . . at their convenience during the course of a proceeding” in order to advance additional arguments based on previously-available information.<sup>10</sup> Here, the information on which C-10’s expert wishes to supply additional untimely commentary (*i.e.*, regarding the “corroboration study”) was clearly available well before the deadline to submit rebuttal testimony; and C-10 does not claim otherwise—nor could it.<sup>11</sup>

Finally, C-10’s assertion that testimony can be filed anytime, at-will, so long as the other parties have a “reasonable opportunity” to review it, is unpersuasive.<sup>12</sup> The case cited by C-10 quotes a standard that is only applicable to Formal Adjudications under Subpart G.<sup>13</sup> In contrast, this proceeding is governed by the simplified hearing provisions of Subpart L.<sup>14</sup> Thus, the authority cited by C-10 is entirely inapplicable to this proceeding.

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<sup>8</sup> *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 271-72 (2009).

<sup>9</sup> *See generally N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC 481, 496 (Sept. 30, 2010).

<sup>10</sup> *Id.*

<sup>11</sup> Indeed, C-10 submitted the LAR’s discussion of the corroboration study as an exhibit to its *initial* testimony nearly three months ago. *See* MPR-4273, app. C (INT019-R)(NP), (INT021)(P).

<sup>12</sup> *See* Motion at 3-4 (citing *Tenn. Valley Auth.* (Hartsville Nuclear Plant, Units 1A, 2A, 1B, & 2B), ALAB-367, 5 NRC 92, 118 (1977)).

<sup>13</sup> *See Hartsville*, ALAB-367, 5 NRC at 118 (quoting 10 C.F.R. § 2.743(b) (1977)); *see also* Changes to Adjudicatory Process, 69 Fed. Reg. 2,182 (Jan. 14, 2004) (moving that provision to § 2.711(b) under Subpart G, “Rules for Formal Adjudications”).

<sup>14</sup> *See* ASLB Order (Identifying hearing procedures, requesting information related to scheduling, and deferring deadlines for production of initial disclosures and the hearing file) at 1 (Oct. 26, 2017) (unpublished).

At bottom, C-10's "*I just thought of it*" claim fails to demonstrate good cause for an extension of the Board-imposed deadline for submission of rebuttal testimony. Accordingly, C-10's Motion should be denied.<sup>15</sup>

Respectfully submitted,

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

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*Counsel for NextEra Energy Seabrook, LLC*

Dated in Washington, DC  
this 9th day of September 2019

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<sup>15</sup> Even if the Board grants the Motion, C-10's proposed "Supplemental Rebuttal" (INT030) should be stricken or excluded from the evidentiary record for the additional reason that it is beyond the scope of permissible rebuttal. *See* MIL at 30.

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**CERTIFICATE OF SERVICE**

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, the foregoing “NEXTERA’S ANSWER OPPOSING C-10’S MOTION FOR LEAVE TO FILE SUPPLEMENTAL REBUTTAL TESTIMONY” was 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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