

September 17, 2020

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
(Seabrook Station, Unit 1))	
_____)	

**C-10 RESEARCH AND EDUCATION FOUNDATION’S
MOTION FOR LEAVE TO FILE REPLY TO OPPOSITIONS TO
MOTION FOR PARTIAL RECONSIDERATION OF LBP-20-09**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.32(e), C-10 Research and Education Foundation (“C-10”) hereby requests the Atomic Safety and Licensing Board (“ASLB”) to grant it leave to file a reply to NextEra’s Answer Opposing C-10’s Motion for Leave and Motion for Partial Reconsideration of LBP-20-9 (Sept. 10, 2020) (“NextEra Answer I”), NextEra’s Answer Opposing C-10’s Motion to Reopen the Record for Consideration of Supplemental Testimony (Sept. 10, 2020) (“NextEra Answer II”) and NRC Staff’s Answer to C-10’s Motion for Partial Reconsideration and to Reopen the Record (Sept. 10, 2020) (“NRC Staff Answer”). C-10 also requests leave to file the attached Ex. INT053, Rebuttal Supplemental Testimony of Victor E. Saouma, Ph.D Regarding License Conditions in LBP-20-09 (Sept. 17, 2020) (“Saouma Rebuttal Supp. Test.”), which responds to technical arguments in the Affidavit of Angela Buford, Bryce Lehman, Jacob Philip, and George Thomas in Response to C-10’s Motion for Partial Reconsideration and to Reopen the Record (Sept. 10, 2020) (“Staff Aff.”). NextEra Answer I, NextEra Answer II, NRC Staff Answer, and Staff. Aff. were filed in response to C-10’s Motion for Partial Reconsideration and Motion to Re-Open the Record for Consideration of Supplemental Testimony Regarding License Conditions in LBP-20-09 (Aug. 31, 2020) (“Motion for Partial Reconsideration and

Motion to Re-Open the Record”), and the supporting Supplemental Testimony of Victor E. Saouma, Ph.D Regarding License Conditions in LBP-20-09 (Aug. 28, 2020) (“Saouma Supp. Test.”).

II. DISCUSSION

C-10 respectfully submits that a reply is warranted here by “compelling circumstances,” as required by 10 C.F.R. § 2.323(b). These circumstances are as follows:

- (a) The NRC Staff agrees that reconsideration of LBP-20-09 is appropriate, responds to Dr. Saouma’s Supplemental Testimony, and proposes changes of its own to the license conditions imposed by the ASLB in LBP-20-09. The Staff also implicitly concedes the safety significance of the modification to which it agrees, by stating that LBP-20-09 would be “invalid” without the change. Staff Answer at 2. And the Staff cites guidance which suggests it is appropriate to allow an opportunity to comment on new license conditions before they are imposed. Staff Aff., A.6 at 4-5. These multiple concessions by the Staff demonstrate that the new license conditions are important and safety-significant measures, and that C-10’s proposed changes should be considered.
- (b) C-10’s proposed changes are explained supported by extensive expert testimony by Dr. Saouma’ including his initial proposal in INT052 and his response to criticisms by the Staff and NextEra in INT053. His testimony demonstrates that proposed changes to the license conditions are necessary for clarity and reliability. His Rebuttal Supplemental Testimony (Ex. INT053) also responds to criticisms by the NRC Staff and NextEra. Dr. Saouma has demonstrated his extremely high level of expertise in this proceeding, and his commitment to thoroughly reviewing the record documents. He does not seek to overturn the ASLB’s decision, but to ensure its effectiveness and internal consistency. As

he explains, his views are not merely preferences, but his considered expert opinion on what is needed to ensure the long-term effectiveness of the license conditions. In order to make a meaningful record, and in fairness to C-10, his expert opinion should be considered.

(c) Dr. Saouma is highly qualified to testify regarding the effectiveness of the ASLB's license conditions to monitor and detect the progression of Alkali-silica reaction ("ASR"), including establishing clarity for purposes of avoiding confusion or misinterpretation of data. In contrast, while the NRC Staff has submitted an affidavit by NRC Staff members, they do not claim expertise with respect to ASR. Instead, their claimed expertise relates only to the NRC licensing and review process. And NextEra does not offer any expert testimony or affidavit, but rather comments by its attorneys. Thus, the Staff's and NextEra's attempts to diminish the significance of Dr. Saouma's proposed changes should not be accepted without considering additional testimony by Dr. Saouma, as presented in INT053.

(d) NextEra's and the Staff's legal arguments against consideration of C-10's Motion to Reconsider and Motion to Re-open are inconsistent with LBP-20-09 and NRC Staff guidance. C-10 could not have anticipated these inconsistent arguments, and therefore in fairness should be allowed to respond to them.

(e) For the next thirty years, the license conditions will constitute the primary tool for maintaining NextEra's accountability for public safety with respect to ASR. Dr. Saouma's proposed changes to the license conditions are intended to provide a needed degree of clarity and reliability, to ensure that the license conditions will not be subject to misinterpretation. This has nothing to do with NextEra's integrity or competence, but

with general principles of sound regulation. The proposed changes are also needed to maintain consistency with the conceptual basis for LBP-20-09. Moreover, the ASLB did not present the changes to C-10 or any other party until August 21, 2020. Given the importance of the license conditions to protection of public health and safety, and in light of the ASLB's interest in basing its decision on a complete and meaningful record, C-10 should be permitted to reply to NextEra's and the Staff's Answers.

III. CONCLUSION

For the foregoing reasons, the ASLB should permit C-10 to reply to the Answers filed by NextEra and the NRC Staff, and to submit Ex. INT053.

Respectfully submitted,

/signed electronically by/
Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1725 DeSales Street N.W., Suite 500
Washington, D.C. 20036
240-393-9285
dcurran@harmoncurran.com

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CERTIFICATE OF COUNSEL

Pursuant to 10 C.F.R. § 2.323(b), I certify that on September 16, 2020, I consulted counsel for NextEra and the NRC Staff in a sincere effort to resolve the issues raised by this motion. Counsel for NextEra and the Staff stated that they would oppose this motion.

_____*[Signed electronically by]*_____

Diane Curran