

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

IN THE MATTER OF PETITION)
FOR WAIVER BY:)
NEXTERA ENERGY DUANE)
ARNOLD, LLC)

ORDER
Waiver of 191 – 57.5(1)(b)

Now comes the Iowa Insurance Division (“Division”) pursuant to the provisions of Iowa Code section 17A.9A (2015) and 191 Iowa Administrative Code (“IAC”) Chapter 4 and issues the following ruling on NextEra Energy Duane Arnold, LLC, (“Duane Arnold”), formerly known as FPL Energy Duane Arnold, LLC, Petition for Waiver.

Course of Proceedings

1. On May 22, 2015, Duane Arnold filed a Request for Waiver of Rule (“Petition”), renewable on an annual basis, of the following administrative rule:

191 IAC 57.5(1) - An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following:

b. Parental guarantee from the ultimate controlling parent, if applicable.

2. The Division has considered the Petition.

Findings of Fact

3. Petitioner, Duane Arnold, has filed an application for a certificate of relief of workers’ compensation insurance with the Division.

4. Duane Arnold’s ultimate controlling parent is NextEra Energy, Inc. (“NextEra Energy”). NextEra Energy is a public utility holding company headquartered in Juno Beach, Florida.

5. Duane Arnold requests that the commissioner accept a guarantee from NextEra Energy Capital Holdings, Inc. (“NextEra Energy Capital Holdings”) in lieu of a guarantee from its ultimate controlling parent, NextEra Energy.

6. Duane Arnold acquired a 70 percent interest in the nuclear power generating plant known as the Duane Arnold Energy Center (“DAEC”) at Palo, Iowa from Interstate Power & Light Company. DAEC operates the plant on an ongoing basis on behalf of

itself and the other joint owners of the facility, the Corn Belt Power Cooperative, and the Central Iowa Power Cooperative.

7. NextEra Energy Capital Holdings has a net worth of \$5.94 billion as shown by its SEC Form 10Q (for the quarter period ending March 31, 2015) and has \$4.85 billion in bank lines of credit available to it.

8. NextEra Energy's principal subsidiary, Florida Power & Light Company, is a rate regulated utility engaged in generation, transmission, distribution and sale of electric energy.

9. NextEra Energy Capital Holdings is a wholly-owned subsidiary of the ultimate controlling parent, NextEra Energy.

10. NextEra Energy Capital Holdings holds the capital stock and provides funding for the operating subsidiaries of NextEra Energy other than Florida Power & Light Company.

11. Within the NextEra Energy organization, NextEra Energy Capital Holdings has been charged through corporate authority to meet, where appropriate, the financial obligations of its subsidiaries. Through this corporate structure NextEra Energy is able to maintain a separation of duties and responsibilities between Florida Power & Light Company and other operating subsidiaries.

12. In the event of the insolvency of a workers' compensation self-insured, no guaranty fund exists to ensure the payment of claims made by injured workers.

13. On July 29, 2015, Nextera Energy Duane Arnold LLC asserted that the information contained in this Order is accurate and reflects the current status of the company.

Summary of Law

14. Iowa Code section 87.14A (2015) provides that an employer that desires to be a workers' compensation self-insured may not do business in Iowa without first obtaining relief from insurance as provided in Iowa Code chapter 87.

15. Pursuant to Iowa Code section 508.8 (2015), the commissioner promulgated Iowa Administrative Chapter 191 IAC 57 entitled "Workers' Compensation Self-Insurance for Individual Employers."

16. Iowa administrative rule 191-57.5(1)(a)-(e) delineates the items that an applicant shall submit in its application for a certificate of relief from insurance. These items include, but are not limited to, the following provision for which waiver has been requested.

191 IAC 57.5(1) – An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following:

b. Parental guarantee from the ultimate controlling parent, if applicable.

17. The Division may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule only if the Division finds, based upon clear and convincing evidence, all of the following:

- a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal right of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

191 IAC 4.24

18. The Division's rules provide that "the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the Division should exercise its discretion to grant a waiver from a Division rule." 191 IAC 4.30(2).

Criteria for Waiver

19. Undue Hardship

NextEra Energy, the ultimate controlling parent, from time to time, guarantees the obligations to its subsidiaries' credit facilities. However, it distinguishes the guarantee of credit facilities from the guarantees of operational liabilities of its subsidiaries. NextEra Energy's organizational chart is organized by regulated and unregulated operations. The applicant, Duane Arnold is on the unregulated side of the organizational chart.

NextEra Energy states that it is inappropriate for the regulated utility to take on the expenses of liabilities from the unregulated side of the business and equally inappropriate for the unregulated side of the business to take on expenses and liabilities from the regulated side of the business. Mixing the two distinct operational areas would cause a distortion in the rate structure of the regulated utility.

Therefore, it is NextEra Energy's position that its policy of not guaranteeing the contingent operating liabilities of its unregulated subsidiaries is not just a matter of corporate policy or preference, but is based on sound principles of regulatory

accounting practices. Within the NextEra Energy holding company structure, NextEra Energy Capital Holdings has been charged with the authority to meet, where appropriate, the financial obligations of its subsidiaries. Through this corporate structure, NextEra Energy is able to maintain a separation of duties and responsibilities between Florida Power & Light and its other operating subsidiaries.

As noted in the Findings of Fact, NextEra Energy Capital Holdings is a wholly-owned subsidiary of the ultimate controlling parent, NextEra Energy. NextEra Energy Capital Holdings owns and provides funding for NextEra Energy's unregulated operating subsidiaries, including Duane Arnold. NextEra Energy Capital Holdings is a well capitalized entity and Standard & Poor's gives it a credit rating of A-/stable; Moody's rates it Baa1/stable; and Fitch rates it A-/stable outlook. It is not unreasonable for the commissioner to accept NextEra Energy Capital Holdings as the guarantor of Duane Arnold's obligations as a worker's compensation self-insured in Iowa.

20. Prejudice of the rights of others.

Granting of a waiver enabling Duane Arnold to present a guarantee from NextEra Energy Capital Holdings, pursuant to the Findings of Fact enumerated above, will not substantially prejudice the rights of others.

21. Statutory mandate.

The rule from which Duane Arnold seeks a waiver is not specifically mandated by statute or any other provision of law and, accordingly, may be waived by the Commissioner.

22. Protection of public health, safety, and welfare.

The public health, safety, and welfare will not be substantially compromised or placed at risk as a result of the Division granting the waiver requested in this case.

Order

IT IS HEREBY ORDERED that the requirement of 191 IAC 57.5(1)(b) is waived for Petitioner. This waiver is valid until the next renewal date of its certificate of relief from workers' compensation self-insurance. The waiver is conditioned upon Duane Arnold's compliance with all of the following:


- A. Duane Arnold shall report material decreases in NextEra Energy Capital Holding's net worth to the commissioner within 15 days of the decrease;
- B. Duane Arnold shall report downgrades in NextEra Energy Capital Holdings' credit ratings to the commissioner within five days of the public announcement of the downgrade; and

C. Duane Arnold shall present a surety bond acceptable to the commissioner with a penal sum as follows: the greater of an amount determined by the Iowa Insurance Division's actuary or \$2 million. Duane Arnold acknowledges that in the event that the surety bond is replaced or cancelled, the commissioner will, upon request, acknowledge cancellation of the bond but will not provide the surety with an absolute release of liability except as provided by Iowa Code section 87.11(1)(b) and (c) (2015).

All other provisions of the Division's rules remain applicable to Duane Arnold.

Dated this 12 day of August, 2015.

Iowa Insurance Division



NICK GERHART
Commissioner of Insurance

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