

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Dr. Randall J. Charbeneau

In the Matter of

PROGRESS ENERGY FLORIDA, INC.

(Levy County Nuclear Power Plant, Units 1 and 2)

Docket Nos. 52-029-COL, 52-030-COL

ASLBP No. 09-879-04-COL-BD01

August 21, 2012

NOTICE OF HEARING

This Atomic Safety and Licensing Board gives notice that it will convene an evidentiary hearing with regard to a challenge by the Nuclear Information and Resource Service and the Ecology Party of Florida (Intervenors)¹ to an application by Progress Energy Florida, Inc. (PEF) to construct and operate two new nuclear power reactors in Levy County, Florida.² The evidentiary hearing will be held in Bronson, Florida and will commence on October 31, 2012. The hearing will concern the one admitted contention in this proceeding, Contention 4A, which is described more fully below.³

The evidentiary hearing will be held under the authority of the Atomic Energy Act, 42 U.S.C. §§ 2231, 2239, and 2241. It will be conducted pursuant to the NRC hearing procedures

¹ The Green Party of Florida was one of the original intervenors herein, but it subsequently withdrew. See Notice of Withdrawal (May 17, 2012).

² See Progress Energy Florida, Inc.; Application for the Levy County Nuclear Power Plant Units 1 and 2; Notice of Order, Hearing, and Opportunity To Petition for Leave To Intervene, 73 Fed. Reg. 74,532, 74,532 (Dec. 8, 2008).

³ A motion to admit another contention was filed on July 9, 2012 and is currently pending. Pursuant to an order of the Commission, CLI-12-16, the Board has placed this proposed new contention in abeyance. Order (Holding Proposed New Contention in Abeyance) (Aug. 16, 2012) (unpublished).

set forth in 10 C.F.R. Part 2, Subpart L, 10 C.F.R. §§ 2.1200-2.1213. During the course of this adjudicatory proceeding the Board may also hear oral arguments as provided in 10 C.F.R. § 2.331 and may hold various prehearing conferences pursuant to 10 C.F.R. § 2.329. These may be held via teleconference, video-conference, and/or in person. Except where certain legally privileged documents or testimony are being heard, all of the proceedings will be open to the public. See 10 C.F.R. § 2.328.

A. Matters to Be Considered

Contention 4A, as it will be litigated during the October 31, 2012 evidentiary hearing,⁴ reads as follows:

The Final Environmental Impact Statement (FEIS) fails to comply with 10 C.F.R. Part 51 and the National Environmental Policy Act because it fails to specifically and adequately address, and inappropriately characterizes as SMALL, certain direct, indirect, and cumulative impacts, onsite and offsite, of constructing and operating the proposed LNP facility:

A. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with dewatering, specifically:

1. Impacts resulting from active and passive dewatering;
2. Impacts resulting from the connection of the site to the underlying Floridan aquifer system;
3. Impacts on Outstanding Florida Waters such as the Withlacoochee and Waccasassa Rivers;

⁴ This contention has evolved during the course of this proceeding. First, the contention challenged the adequacy of the Environmental Report, a document submitted by PEF. See LBP-09-10, 70 NRC 51, 106 (2009). Next, the Intervenor interposed substantially the same contention challenging the adequacy of the Draft Environmental Impact Statement issued by the NRC Staff. See Memorandum and Order (Admitting Contention 4A) (Feb. 2, 2011) (unpublished). Finally, when the NRC Staff issued the Final Environmental Impact Statement, this same contention migrated and continued to be admitted as a challenge to the FEIS. Tr. at 856.

4. Impacts on water quality and the aquatic environment due to alterations and increases in nutrient concentrations caused by the removal of water; and

5. Impacts on water quality and the aquatic environment due to increased nutrients resulting from destructive wildfires resulting from dewatering.

B. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with salt drift and salt deposition resulting from cooling towers (that use salt water) being situated in an inland, freshwater wetland area of the LNP site.

C. As a result of the omissions and inadequacies described above, the Draft Environmental Impact Statement also failed to adequately identify, and inappropriately characterizes as SMALL, the proposed project's zone of:

1. Environmental impacts;
2. Impact on Federally listed species;
3. Irreversible and irretrievable environmental impacts; and
4. Appropriate mitigation measures.

B. Date, Time, and Location of Evidentiary Hearing

The Board will convene the evidentiary hearing on Wednesday, October 31, 2012, at 9:00 AM EDT, in the Levy County Courthouse. The courthouse is located at 355 South Court Street, Bronson, Florida. If the evidentiary hearing lasts longer than one day, we will adjourn at approximately 5:00 PM on October 31 and will reconvene and continue at 9:00 AM EDT on Thursday, November 1, 2012. We anticipate that the evidentiary hearing will not take more than two days.

Members of the public and media are welcome to attend and observe the evidentiary hearing. Actual participation in the hearing will be limited to the parties and their lawyers and

witnesses.⁵ Please be aware that security measures may be employed at the entrance to the facility, including searches of hand-carried items such as briefcases or backpacks. No signs will be permitted in the courtroom.

C. Limited Appearance Statements

The purpose of limited appearance statements is to allow members of the public who are not parties to the adjudication to provide the Board with statements setting forth their positions or concerns on matters relating to the admitted contentions. This Board already conducted two oral limited appearance statement sessions regarding Contention 4A in Crystal River, Florida, on Thursday, January 12, 2012. See Tr. at 698-827, 876-927. Thus, we will not hear further oral limited appearance statements. However, the Board will continue to accept written limited appearance statements until October 24, 2012. Such written statements should be submitted in one of the following methods:

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1966)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Alex S. Karlin, Chairman
c/o: Matthew E. Flyntz, Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop T-3 E2C
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

⁵ The parties consist of the Nuclear Information and Resource Service, the Ecology Party of Florida, Progress Energy Florida, Inc., and the Staff of the Nuclear Regulatory Commission.

Fax: (301) 415-5599 (verification (301) 415-7405)

Email: Matthew.Flyntz@nrc.gov

D. Availability of Documentary Information Regarding the Proceeding

Documents relating to this Atomic Safety and Licensing Board adjudicatory proceeding such as the parties' statements of position, pre-filed testimony, pre-filed evidentiary exhibits, transcripts of prior conferences and oral arguments, and copies of prior orders and rulings issued by this Board in this case, are available for public inspection at the Nuclear Regulatory Commission's "Electronic Hearing Docket" (EHD). The EHD is located at <http://adams.nrc.gov/ehd/>. Interested persons should access that webpage and click on the tab identified as "Levy_County_52-029 & 52-030-COL." The documents in that portion of the EHD will be the primary focus of the evidentiary hearing. The public should be aware that new documents are regularly added to the EHD as the parties file pleadings and the Board issues orders or notices. Therefore this website should be monitored regularly by interested members of the public.

In addition, the broader category of all of NRC's public documents related to PEF's application and the responses, questions, and other documents generated by the NRC Staff (such as PEF's Combined License Application and the NRC's Environmental Impact Statements) may be accessed via the publicly available records component of NRC's document system (ADAMS). ADAMS can be accessed via the NRC website at <http://www.nrc.gov/> and then clicking on the link specified as: "ADAMS Public Documents." Once on that page, click on the link identified as "Begin Web-Based ADAMS Search."

Persons who have difficulty in conducting useful searches in ADAMS or who otherwise encounter problems in accessing the documents located in ADAMS may contact the NRC

Public Document Room (PDR) reference staff by telephone at (800) 397-4209 or (301) 415-4737, or by e-mail at pdr@nrc.gov.

In addition, hard copies of Board orders, notices and/or memoranda are also available at the NRC PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Finally, the public is advised that the Secretary of the Commission will give notice of filings and other events in this proceeding to any member of the public who requests it.⁶ See 10 C.F.R. § 2.315(b).

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 21, 2012

⁶ Any such request may be directed to the Secretary of the Commission by electronic mail at hearing.docket@nrc.gov or by telephone at (301) 415-1677.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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PROGRESS ENERGY FLORIDA, INC.) Docket Nos. 52-029-COL
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 Units 1 and 2))
)
 (Combined License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF HEARING have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of August 2012