

April 6, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PROGRESS ENERGY FLORIDA)	
)	Docket Nos. 52-029 COL
)	52-030 COL
(Levy County Nuclear Station)	
Units 1 & 2))	

RESPONSE TO NRC STAFF AND PROGRESS ENERGY FLORIDA ANSWERS TO
NEW CONTENTION (12) FROM THE GREEN PARTY OF FLORIDA, THE ECOLOGY
PARTY OF FLORIDA AND NUCLEAR INFORMATION AND RESOURCE SERVICE

Pursuant to 10 C.F.R. § 2.309(f)(2), Petitioners Nuclear Information and Resource Service, The Green Party of Florida and the Ecology Party of Florida hereby reply to Progress Energy Florida (applicant) and NRC Staff response to Petitioners' New Contention regarding issues raised by Petitioners in comments on the Waste Confidence Update.

The applicant and NRC staff first argue that the contention is does not meet the requirements of a late-filed contention and that the submission is unjustifiably late, because the information on which Petitioners rely was available before they filed their comments on the U.S. Nuclear Regulatory Commission's ("NRC's") Waste Confidence Update. In fact, however, the timing of the contention was determined by the NRC's publication of a Federal Register notice, soliciting – for the first time in approximately ten

years – comments on the Waste Confidence rule and the rule regarding the environmental impacts of spent fuel storage. Before that commenting opportunity opened, no meaningful purpose would have been served by performing the detailed technical analyses of the spent fuel storage and disposal issues that are contained in the technical comments in which Petitioners joined.

Both the applicant and NRC staff argue that Petitioners' contention is barred by law on the grounds that it constitutes an attack on the Commission's regulations and that it is the subject of a rulemaking. According to NRC staff and the applicant if the Petitioners wish to appeal the Commission's decision in the Waste Confidence rulemaking proceeding, they can appeal the rulemaking decision at the appropriate time. In making this argument, both miss the fact that the purpose of the Waste Confidence rule and the related spent fuel storage rule is to support individual licensing decisions. Therefore it is appropriate for Petitioners to take steps to ensure that the issues raised by their comments on those rulemakings are addressed before the NRC makes a licensing decision with respect to the Levy County application. If the Commission issues a license for the Levy County nuclear plant before those rulemakings are completed, then it will do Petitioners no good to appeal the rulemaking decision.

Finally, the applicant and NRC staff argue that the contention should be rejected because the proposed contention does not identify the specific portion of the application disputed by Petitioners. The applicant and the NRC overlook the fact that the purpose of the Waste Confidence Decision and the spent fuel storage rule is to exempt the applicant from having to address spent fuel storage and disposal issues in its

application. The applicant does not point to any part of the application where spent fuel storage and disposal issues are addressed, nor does it state that it does not rely on

Table S-3.

For these reasons, the contention should be admitted and held in abeyance. If the Licensing Board believes that it does not have the authority to rule on the contention, Petitioners request the Board to refer it to the Commission.

Respectfully submitted,

_____/s/_____

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