

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

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Dr. William M. Murphy

In the Matter of

PROGRESS ENERGY FLORIDA, INC.

(Combined License Application for Levy County
Nuclear Power Plant, Units 1 and 2)

Docket No. 52-029-COL, 52-030-COL

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

July 10, 2009

ORDER
(Scheduling Initial Scheduling Conference)

This is to notify Progress Energy Florida, Inc., Intervenors Nuclear Information and Resource Services, the Ecology Party of Florida, and the Green Party of Florida, and the NRC Staff that, in accordance with 10 C.F.R. §§ 2.329 and 2.332, the Board will hold an initial scheduling conference call on August 18, 2009, at 2:00 PM EDT for the purpose of developing a scheduling order to govern the conduct of this proceeding.

Prior to the conference call, the parties and the Staff should familiarize themselves with the relevant procedural rules of 10 C.F.R. Part 2, including but not limited to 10 C.F.R. §§ 2.309(c) and (f), 2.310, 2.323, 2.329, 2.332, 2.333, 2.334, 2.338, all of Subpart L, and the model milestones set forth in Appendix B to Part 2.

Pursuant to 10 C.F.R. § 2.332(d), the Board is to consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. Accordingly, on July 28, 2009, the NRC Staff shall submit to the Board, with copies to all parties, a written estimate of its projected schedule for completion of such safety and

environmental evaluations, including but not limited to its best good faith estimate of the dates when it expects to issue the draft and final safety evaluation reports, the draft and final environmental assessments or environmental impact statements, and if applicable, the draft and final no significant hazards consideration determinations.

The parties and the Staff should be prepared to address the following matters at the initial scheduling conference call:

1. Whether hearings on the safety contention (Contention 8) should be commenced before publication of the NRC Staff's safety evaluation as permitted under 10 C.F.R. § 2.332(d);
2. Suggestions for modifying the time limits set in 10 C.F.R. § 2.1205(a) to prevent motions for summary disposition from conflicting with the preparation by the parties, the Staff, and the Board for the evidentiary hearing;
3. Suggested time limits for filing "timely" motions for leave to file new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii) and defining "nontimely" filings under 10 C.F.R. § 2.309(c);¹
4. Specification of pleading rules for motions for leave to file new or amended contentions that reconcile 10 C.F.R. §§ 2.309(c), 2.309(f)(2), and 2.323 (motions and answers to motions) with 10 C.F.R. § 2.309(h) (answers and replies to contentions); Id.
5. Suggested time limits for adoption of any newly admitted contentions under 10 C.F.R. § 2.309(f)(3);
6. Suggested regularized time frames for the continuous updating of mandatory disclosures under 10 C.F.R. § 2.336(d) and for the continuous updating of the hearing file under 10 C.F.R. § 2.1203(c);

¹ See Licensing Board Order (Specifying Process for Responding to Proposed New or Amended Contentions) (Mar. 11, 2009) (unpublished).

7. Establishment of an agreement concerning which electronically stored information will be considered reasonably accessible and thus subject to mandatory disclosure under 10 C.F.R. § 2.336 or production under 10 C.F.R. § 2.1203(c) (e.g., an agreement between the parties and Staff as to the nature and extent of their respective duties to conduct a reasonable search for their electronically stored information);²

8. Establishment of an agreement as to the form of the mandatory disclosure or production of electronically stored information (if no agreement can be reached, and the Board does not otherwise instruct, then electronically stored information shall be disclosed and produced in an electronic form that is readily searchable by commonly available computer programs);³

9. Suggested time limit for filing of the final list of potential witnesses for each contention pursuant to 10 C.F.R. § 2.336(a)(1);

10. Suggested time limits for any motion for the use of Subpart G hearing procedures for a particular contention based upon challenges to the credibility of a newly disclosed eyewitness pursuant to 10 C.F.R. § 2.310(d);⁴

² See Fed. R. Civ. P. 16(b)(5) (Scheduling order to include “provisions for disclosure or discovery of electronically stored information”); 26(b)(2)(B) (“A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, a party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.”) (Emphasis added).

³ See Fed. R. Civ. P. 34 (regarding the formats for the production of electronically stored information).

⁴ See Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 703 (2004).

11. Whether, pursuant to 10 C.F.R. § 2.310(h), the parties and the Staff are currently willing to consent to handling of any specific contention under Part 2 Subpart N and, if not at this time, whether to establish a later time for reconsideration of this issue;

12. Opportunities for the clarification, simplification, or specification of the issues in accordance with 10 C.F.R. § 2.329(c)(1);

13. The necessity or desirability of amending the pleadings in accordance with 10 C.F.R. § 2.329(c)(2);

14. Opportunities to develop stipulations or admissions of fact in accordance with 10 C.F.R. § 2.329(c)(3);

15. Opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338;

16. Whether any party or the Staff intend to assert a privilege or protected status for any information or documents otherwise required to be disclosed herein and, if so, proposals for the submission of privilege logs under 10 C.F.R. §§ 2.336(a)(3) and (b)(5), procedures and time limits for challenges to such assertions, and the development of a protective order and non-disclosure agreement;⁵

17. Whether a site visit would be appropriate and helpful to the Board in the resolution of the contentions;

18. Whether the parties and the Staff should be required to file their respective initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially, and if sequentially, which party should file first;

⁵ See Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828 (2005).

19. Suggested time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204;⁶ and

20. Any other procedural or scheduling matters that the Board may deem appropriate.

Most of the foregoing matters are addressed (in the context of a different proceeding) in the Initial Scheduling Order in Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station) Docket No. 50-271-LR ASLBP No. 06-849-03-LR. During the initial scheduling conference call herein, the parties and the Staff should be prepared to explain, on a point-by-point basis, why a similar order should not be issued here.⁷

On or before August 10, 2009, the parties and the Staff shall confer with one another for the purpose of discussing the foregoing procedural matters and, where possible, developing agreement, joint positions, or proposals. It would be helpful if, for the purpose of the conference call, the parties and the Staff agreed upon a lead spokesperson for areas where they are in agreement. If disagreement occurs on a significant issue, the Board may call for the submission of briefs or separate written proposals on relevant issues after the prehearing conference call.

⁶ See Citizens Awareness Network v. United States, 391 F.3d 338, 353-54 (1st Cir. 2004); Vermont Yankee, LBP-04-31, 60 NRC at 710-11.

⁷ Licensing Board Order (Initial Scheduling Order) (Nov. 17, 2006) (unpublished) (ADAMS Accession No. ML063210212).

On or before August 13, 2009, counsel for each of the parties and the Staff should contact Sara J. Culler at 301-415-5694 to obtain the telephone number and pass code for the August 18, 2009, prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Ms. Culler at the above number for the requisite information.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁸

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 10, 2009

⁸ Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) Progress Energy Florida, Inc. (2) Nuclear Information and Resource Service, The Green Party of Florida and The Ecology Party of Florida; and (3) NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PROGRESS ENERGY FLORIDA, INC.) Docket Nos. 52-029-COL
) and 52-030-COL
(Levy County Nuclear Power Plant)
Units 1 and 2))
)
(Combined License))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING INITIAL SCHEDULING CONFERENCE) have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

Pillsbury, Winthrop, Shaw, Pittman, LLP
2300 N. Street, N.W.
Washington, DC 20037-1122
Counsel for Progress Energy Florida, Inc.
John H. O'Neill, Esq.
Robert B. Haemer, Esq.
Ambrea Watts, Esq.
Alison Crane, Esq.
Michael G. Lepre, Esq.
Blake J. Nelson, Esq.
Jason P. Parker, Esq.
Stefanie M. Nelson, Esq.

Alex S. Karlin, Chair
Administrative Judge
E-mail: ask2@nrc.gov

E-mail:
john.oneill@pillsburylaw.com
robert.haemer@pillsburylaw.com;
ambrea.watts@pillsburylaw.com
alison.crane@pillsburylaw.com
michael.lepre@pillsburylaw.com
blake.nelson@pillsburylaw.com
jason.parker@pillsburylaw.com
stefanie.nelson@pillsburylaw.com

Anthony J. Baratta
Administrative Judge
E-mail: ajb5@nrc.gov

William M. Murphy
Administrative Judge
E-mail: William.murphy@nrc.gov

Megan Wright, Law Clerk
E-mail: megan.wright@nrc.gov

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Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Kathryn L. Winsberg, Esq.
Sara Kirkwood, Esq.
Jody Martin, Esq.
Laura Goldin, Esq.
Michael Spencer, Esq.
Joseph Gilman, Paralegal
E-mail:
kathryn.winsberg@nrc.gov
seb2@nrc.gov
jcm5@nrc.gov
laura.goldin@nrc.gov
michael.spencer@nrc.gov
jsq1@nrc.gov

Nuclear Information & Resource Service
P.O. Box 7586
Asheville, NC 28802
Mary Olson,
NIRS Southeast Regional Coordinator
E-mail: nirs@main.nc.us

OGC Mail Center : OGCMailCenter@nrc.gov

Alachua County Green Party, Green
Party of Florida
P.O. Box 190
Alachua, FL
Michael Canney, Co-Chair
E-mail: alachuagreen@windstream.net

Nuclear Information Resource Service
6390 Carroll Avenue, #340
Takoma Park, MD 20912
Michael Mariotte, Executive Director
E-mail: nirsnet@nirs.org

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburg, PA 15219
Counsel for Westinghouse Electric Co., LLC
Barton Z. Cowan, Esq.
E-mail: teribart61@aol.com

Ecology Party of Florida
641 SW 6th Avenue
Ft. Lauderdale, FL 33315
Cara Campbell, Chair
Gary Hecker
[E-filing participants using nirs@main.nc.us]

State of Florida Department of Environmental
Protection, Office of Siting
3900 Commonwealth Blvd., MS 35
Tallahassee, FL 32399-3000
Michael Halpin, Program Administrator
Toni L. Sturtevant, Esq.
E-mail: Mike.halpin@dep.state.fl.us
E-mail: toni.sturtevant@dep.state.fl.us

Ecology Party of Florida
641 SW 6th Avenue
Ft. Lauderdale, FL 33315
Michael Canney
Email: alachuagreen@windstrem.net

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[Original Signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
This 10th day of July 2009