

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

NOTICE OF CORRECTION

This is to notify the parties and the NRC Staff that Attachment A hereto corrects, and shall be substituted for, footnote 89 of this Board's July 8, 2009 Order.¹ This correction shall be reflected in the published version of that Order.

THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 10, 2009

¹ Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 69 NRC __ (slip op.) (July 8, 2009).

² Copies of this notice 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.

Attachment A

⁸⁹ The right to interlocutory appeal of this Order under 10 C.F.R. § 2.311 is fundamentally asymmetrical. As the Commission reads it, this regulation allows the Applicant or Staff to immediately appeal the admission of all of the contentions, but denies Petitioners the right to immediately appeal the denial of any of the contentions. Thus, under 10 C.F.R. § 2.311, PEF can appeal the admission of the three admitted contentions, but Petitioners cannot appeal the denial of the nine contentions. Any appeal by the Petitioners of the admitted contentions must “abide the end of the case,” i.e., wait approximately two or three years until the Staff issues the FSEER and FEIS and the final disposition of the evidentiary hearing on the 3 admitted contentions. Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation), CLI-00-02, 51 NRC 77, 80 (2000) (citing Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-492, 8 NRC 251, 252 (1978)). The only exception to this harsh rule is found in 10 C.F.R. § 2.341(f)(2), which entitles Petitioners to request, and the Commission, in its discretion, to grant interlocutory review if it is shown, inter alia, that the issue threatens Petitioners with immediate and serious irreparable impacts or affects the basic structure of the proceeding in a pervasive manner. See Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Plant, Units 2 and 3), CLI-09-06, 69 NRC __, __ (slip op. at 3) (Mar. 5, 2009).

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 NOTICE OF CORRECTION have been served upon the following persons by Electronic Information Exchange.

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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