

July 15, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket Nos. 52-029-COL
Progress Energy Florida, Inc.)	52-030-COL
)	
Levy County Nuclear Plant, Units 1 and 2)	ASLBP No. 09-879-04-COL

PROGRESS ENERGY'S MOTION TO SUSPEND DISCOVERY OBLIGATIONS

Progress Energy Florida, Inc. ("Progress") moves for an order suspending any obligations of the parties concerning disclosures under 10 C.F.R. § 2.336, the Staff's role under 10 C.F.R. § 2.1202(b)(2), and the hearing file under 10 C.F.R. § 2.1203. On July 8, 2009, the Atomic Safety and Licensing Board ("Board") issued a Memorandum and Order (LBP-09-10) ruling on standing and contention admissibility. The Board admitted Contentions 4, 7, and 8. Progress will appeal the admission of those contentions to the Commission.

It is therefore appropriate to suspend any discovery obligations pending the appeal. Compliance with these obligations at this time could lead to unnecessary expenditure of considerable resources in circumstances in which a decision by the Commission might make such compliance irrelevant. Progress believes that it has a reasonable chance of success on appeal. Contentions similar to Contentions 7 and 8 are currently on appeal before the Commission in the *Calvert Cliffs*¹ and *Vogtle*² proceedings, respectively, and the Commission

¹ See *Calvert Cliffs 3 Nuclear Project, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), Applicants' Brief in Support of Appeal from LBP-09-04 (Apr. 3, 2009) at 22-27.

² See *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 & 4), Southern Nuclear Operating Company's Brief in Support of Appeal of LBP-09-03 (Mar. 14, 2009).

has previously rejected, *sua sponte*, another set of similar contentions in the *Bellefonte*³ proceeding. Regarding Contention 4, the recent Commission decision in *Crow Butte*⁴ makes it unlikely that a contention with the breadth of Contention 4 will be litigated in this proceeding. Deferral of discovery obligations would conserve the resources of all parties.

As required by 10 C.F.R. § 2.323(b), counsel for Progress certifies that he has consulted with the other parties in a sincere effort to resolve the issues raised in this Motion. The NRC Staff supports this Motion. The representative for Petitioners Green Party of Florida, the Ecology Party of Florida, and Nuclear Information and Resource Service has authorized Progress to advise the Board that Petitioners “do not express an opinion on this motion.” Petitioners neither oppose nor support the Motion.

For the reasons stated above, Progress requests that the Board suspend any obligations of the parties concerning disclosures under 10 C.F.R. § 2.336, the Staff’s role under 10 C.F.R. § 2.1202(b)(2), and the hearing file under 10 C.F.R. § 2.1203, pending Progress’s appeal to the Commission.

Respectfully Submitted,

/signed electronically by Stefanie M. Nelson/

John H. O’Neill, Jr.
Stefanie M. Nelson
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Tel. (202) 663-8148
Counsel for Progress Energy Florida, Inc.

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³ See *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI-09-03, 69 N.R.C. __ (slip op. at 5) (Feb. 17, 2009).

⁴ See *Crow Butte Resources, Inc.* (North Trend Expansion Area), CLI-09-12, 69 N.R.C. __ (slip op. at 22-24) (June 29, 2009).

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	Docket Nos. 52-022-COL
Progress Energy Florida, Inc.)	52-023-COL
)	
Levy County Nuclear Power Plant, Units 1 and 2)	ASLBP No. 09-879-04-COL-BD01

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Progress Energy's Motion to Suspend Discovery Obligations," dated July 15, 2009, were provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding this 15th day of July 2009.

Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

Dr. William M. Murphy
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: william.murphy@nrc.gov

Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ajb5@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Laura R. Goldin, Esq.
Kathryn L. Winsberg, Esq.
Sara Brock Kirkland, Esq.
Joseph Gilman, Paralegal
Washington, DC 20555-0001
E-mail: Kathryn.winsberg@nrc.gov;
seb2@nrc.gov; jsg1@nrc.gov ;
Laura.Goldin@nrc.gov

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

/signed electronically by Stefanie M. Nelson/
Stefanie M. Nelson