

**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

**JOINT MOTION REGARDING ENUMERATED MATTERS
IN INITIAL SCHEDULING CONFERENCE ORDER**

As required by the Atomic Safety and Licensing Board's ("Board") July 10, 2009 Order,¹ Applicant Progress Energy Florida, Inc., Intervenors Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida, and the NRC staff (collectively, "the Parties") have conferred with one another regarding the enumerated procedural matters in that order. The Parties have reached agreements on many of those matters and respectfully request that the Board approve the following agreements, numbered to correspond with the matters enumerated in the July 10 Order. For the few issues where the Parties have not yet reached an agreement, all Parties agree that it is premature to address these items at this time. For the Board's convenience, the Parties have attached a proposed Initial Scheduling Order to this Joint Motion.

1. Hearings on Contention 8 (safety issues regarding low-level waste storage) shall be conducted simultaneously with hearings on Contention 7 (environmental impacts of low-level waste storage), provided that hearings on Contention 8 shall not commence prior to publication of both the Final Environmental Impact Statement ("FEIS") and the Advanced Final Safety Evaluation Report ("AFSER").

¹ Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), Order (Scheduling Initial Scheduling Conference) (July 10, 2009) ("July 10 Order").

2. The Parties shall file motions for summary disposition no later than thirty (30) days after the issuance of the FEIS or the AFSER.

3. A motion for leave to file a new or amended contention and the proposed contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available, unless such information first becomes available in the Draft Environmental Impact Statement (“DEIS”) or the AFSER. If the motion for leave to file a new or amended contention and the proposed contention are based on information that first becomes available in the DEIS or the AFSER, such a motion and proposed contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within sixty (60) days of the date when such information first becomes available.

4. If a Party seeks to file a motion for leave to file a new or amended contention, then it shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a new or amended contention addressing both the criteria in 10 C.F.R. § 2.309(f)(2) and in 10 C.F.R. § 2.309(c), as well as the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). If the motion does not address both sets of criteria, that which is not addressed will be deemed waived and may not be addressed in a reply pleading. Within twenty-five (25) days after service of the motion and proposed contention, any other Party may file an answer, responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.

5. This item is currently inapplicable to this proceeding, because the intervenors have already filed their contentions jointly. The Parties are still considering this issue for any potential new or amended contentions.

6. Pursuant to the Board's July 31, 2009 Order,² Applicant and Intervenors shall make their initial disclosures under 10 C.F.R. § 2.336(a) and the NRC staff shall make its initial production of the hearing file under 10 C.F.R. § 2.1203 on September 1, 2009. The Parties shall update their disclosures and the hearing file on the second Thursday in October and November of 2009 and thereafter on the third Thursday of every month beginning with January of 2010.³ Each such disclosure will cover all documents in the possession, custody, or control of each Party as of the last day of the month preceding the disclosure.

7. The Parties shall conduct a reasonable search in good faith and shall include a signed affidavit attesting to the performance of such reasonable search with each disclosure.

8. The Parties shall disclose each document in the same form as the original document in the Party's possession, custody, or control. Electronic documents shall be in searchable electronic form to the extent that the original electronic document in the Party's possession, custody, or control is searchable.

9. The Parties shall file their final lists of potential witnesses at the same time that they file those witnesses' testimony. The Parties reserve the right to present rebuttal witnesses not included on that list at a later date.

10. The Parties agree that any request pursuant to 10 C.F.R. § 2.310(d) for the use of Subpart G hearing procedures for the resolution of a new or amended contention must be made with the motion to file the new or amended contention. Any request by the Applicant or NRC staff for the use of Subpart G procedures for the resolution of a new or amended contention must be made in the Answer to any such new or amended contention.

² Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), Order (Suspending Certain Mandatory Disclosures Until September 1, 2009) (July 31, 2009).

³ The Parties will not update their disclosures or the hearing file in December of 2009.

11. The Parties do not consent to handling any of the admitted contentions under Part 2 Subpart N.

12. The Parties agree that it is premature to address this issue at this time.

13. The Parties agree that it is premature to address this issue at this time.

14. The Parties agree that it is premature to address this issue at this time.

15. The Parties agree that it is premature to address this issue at this time.

16. Regarding mandatory disclosures, the Parties agree that:

- A. The Parties waive the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce a privilege log. However, the Parties will still produce as part of their disclosures a list of any documents withheld as proprietary, including those containing security-related information;
- B. The Parties shall have thirty (30) days from the date that the first proprietary document is requested to negotiate a protective order and nondisclosure agreement;
- C. The Parties may limit mandatory discovery disclosures to final documents they develop, and need not include drafts (including comments on drafts, resolutions of comments, draft transmittals, or similar documents);
- D. A Party need not identify or produce any document that has been served on the other Parties to this proceeding;
- E. If a document exists in both hard copy and electronic formats, a Party may produce the electronic copy only; and

F. All relevant documents available via the NRC's website, or the NRC's Agencywide Documents Access and Management System (ADAMS) will be identified by the NRC staff as required by 10 C.F.R. §§ 2.336(b) and 2.1203. No Party is required to otherwise identify or produce documents available via the NRC's website or ADAMS.

17. The Parties agree to let the Board determine whether the Board believes a site visit would be appropriate and helpful.

18. The Parties agree to abide by the schedule set forth in Paragraphs 10(A) – 10(F) of the initial scheduling order in the Vermont Yankee license renewal proceeding,⁴ provided that the "Staff's Second Notice" shall be defined as the issuance of the latter of the AFSER and FEIS.

19. The Parties agree to abide by the schedule set forth in Paragraph 10(G) of the initial scheduling order in the Vermont Yankee license renewal proceeding.⁵

20. As noted in their July 30, 2009 Joint Motion, the Parties have discussed limiting the NRC Staff's mandatory disclosures to documents relating to the admitted contentions. Currently, the Joint Intervenors have not agreed to so limit the disclosures; however, the NRC staff will ensure that the Joint Intervenors are added to the distribution list for this proceeding. If the distribution list provides the Joint Intervenors with sufficient information to keep abreast of the proceeding, then the Parties will revisit this subject.

⁴ Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), Initial Scheduling Order at 9-12 (Nov. 17, 2006).

⁵ Id. at 12.

John O'Neill, counsel for the Applicant has authorized the NRC staff to submit this motion on behalf of the Applicant, Progress Energy. Mary Olson, representative of NIRS and Cara Campbell, representative of the Ecology Party of Florida, have authorized the NRC staff to submit this motion on behalf of the Joint Intervenors. Mary Olson has also stated that the Green Party of Florida supports this Joint Motion.

/Signed (electronically) by/

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Dated at Rockville, Maryland
This the 14th day of August, 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

INITIAL SCHEDULING ORDER

This proceeding concerns the Progress Energy Florida, Inc. ("Progress") application for a combined construction and operating license for the Levy County Nuclear Plant, Units 1 and 2, in Levy County, Florida. This initial scheduling order, issued pursuant to 10 C.F.R. § 2.332(a), sets forth a schedule for filing of motions and testimony and time frames for certain other activities in this proceeding.

I. Background

On July 28, 2008, Progress filed an application pursuant to 10 C.F.R. Part 52 for a combined construction and operating license for the Levy County Nuclear Plant. On December 8, 2008, the Commission published a Notice of Hearing and Opportunity to Petition for Leave to Intervene in this proceeding. 73 Fed. Reg. 74,532 (Dec. 8, 2008). Three entities filed a joint hearing request challenging Progress's application and asking to be admitted as parties to any proceeding conducted on the application. On July 8, 2009, the Board ruled, inter alia, that all three petitioners, Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida, had standing to challenge Progress's application and that they had presented at least one contention that met the admissibility criteria of 10 C.F.R. § 2.309(f)(1). Progress Energy Florida, Inc. (Levy County Nuclear Plant, Units 1 and 2), LBP-09-10, 70 N.R.C. ___, slip op. (July 8, 2009). The Board granted the hearing request and admitted three contentions. At the same time the Board ruled, based on the information available at the

contention admission stage, that the 10 C.F.R. Part 2, Subpart L procedures were appropriate for each of the three contentions. Id.

On July 10, 2009, the Board issued an order scheduling a prehearing conference call, pursuant to 10 C.F.R. §§ 2.329 and 2.332, for the purpose of developing a scheduling order to govern the conduct of this proceeding.¹ The July 10 Order stated that the conference call would cover, inter alia, twenty items related to the schedule and management of the case. In addition, the July 10 Order instructed the NRC Staff to submit a written estimate of its projected schedule for completion of its safety and environmental evaluation reports. Accordingly, on July 28, 2009, the NRC Staff filed its estimate that the Staff would issue its Final Environmental Impact Statement (“FEIS”) on the proposed application on September 22, 2010, its Advanced Final Safety Evaluation Report (“AFSER”) on September 30, 2010, and its Final Safety Evaluation Report (“FSER”) on May 5, 2011.

On August 14, 2009, the NRC Staff filed a joint motion on behalf of all parties setting forth the parties’ agreements on the matters in the July 10 Order. On August 18, 2009, the Board held the pre-hearing conference call with the parties to hear their positions with regard to scheduling of the evidentiary hearing in this matter. The parties stated their views regarding the twenty items listed in the July 10 Order, as well as their views on certain other matters that arose. Based on that input, the NRC Staff’s projected schedule, and the Board’s analysis of the regulations and the nature and circumstances for this case, the Board now issues this initial scheduling order.

II. Schedule

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, the Board establishes the following initial schedule for this matter.

¹ Licensing Board Order (Scheduling Initial Scheduling Conference) (July 10, 2009) (“July 10 Order”).

1. Deadlines for Mandatory Disclosures and Hearing File. Pursuant to the Board's July 31, 2009 Order,² Applicant and Intervenors shall make their initial disclosures under 10 C.F.R. § 2.336(a) and the NRC Staff shall make its initial production of the hearing file under 10 C.F.R. § 2.1203 on September 1, 2009. The Parties shall update their disclosures and the hearing file on the second Thursday in October and November of 2009 and thereafter on the third Thursday of every month beginning with January of 2010.³ Each such disclosure will cover all documents in the possession, custody, or control of each Party as of the last day of the month preceding the disclosure.

2. Privilege Logs and Protective Order. The Parties have waived the requirement in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce a privilege log. However, the Parties shall still produce as part of their disclosures a list of any documents withheld as proprietary, including those containing security-related information. The Parties shall have thirty (30) days from the date that the first proprietary document is requested to negotiate a protective order and nondisclosure agreement.

3. Scope of Disclosures and Hearing File.
 - A. The Parties may limit mandatory discovery disclosures to final documents they develop, and need not include drafts (including comments on drafts, resolutions of comments, draft transmittals, or similar documents).

² Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), Order (Suspending Certain Mandatory Disclosures Until September 1, 2009) (July 31, 2009).

³ The Parties will not update their disclosures or the hearing file in December of 2009.

- B. A Party need not identify or produce any document that has been served on the other Parties to this proceeding.
 - C. If a document exists in both hard copy and electronic formats, a Party may produce the electronic copy only.
 - D. All relevant documents available via the NRC's website, or the NRC's Agencywide Documents Access and Management System (ADAMS) will be identified by the NRC Staff as required by 10 C.F.R. §§ 2.336(b) and 2.1203. No Party is required to otherwise identify or produce documents available via the NRC's website or ADAMS.
 - E. The Parties shall conduct a reasonable search in good faith and shall include a signed affidavit attesting to the performance of such reasonable search with each disclosure.
 - F. The Parties shall disclose each document in the same form as the original document in the Party's possession, custody, or control. Electronic documents shall be in searchable electronic form to the extent that the original electronic document in the Party's possession, custody, or control is searchable.
4. Witness Lists. The Parties shall file their final lists of potential witnesses at the same time that they file those witnesses' testimony. The Parties may present rebuttal witnesses not included on that list at a later date.
5. Requests for Subpart G Procedures. Any request pursuant to 10 C.F.R. § 2.310(d) for the use of Subpart G hearing procedures for the resolution of a new or amended contention must be made with the motion to file the new or amended

contention. Any request by the Applicant or NRC Staff for the use of Subpart G procedures for the resolution of a new or amended contention must be made in the Answer to any such new or amended contention.

6. Additional Contentions.

A. Consolidated Briefing. If a Party seeks to file a motion for leave to file a new or amended contention, then it shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a new or amended contention addressing both the criteria in 10 C.F.R. § 2.309(f)(2) and in 10 C.F.R. § 2.309(c), as well as the support for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). If the motion does not address both sets of criteria, that which is not addressed will be deemed waived and may not be addressed in a reply pleading. Within twenty-five (25) days after service of the motion and proposed contention, any other Party may file an answer, responding to all elements of the motion and contention. Within seven (7) days of service of the answer, the movant may file a reply.

B. Timeliness. A motion for leave to file a new or amended contention and the proposed contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available, unless such information first becomes available in the Draft Environmental Impact Statement ("DEIS") or the AFSER. If the motion for leave to file a new or amended contention and the proposed contention are based on information that first becomes available in the DEIS or the

AFSER, such a motion and proposed contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within sixty (60) days of the date when such information first becomes available.

7. Motions for Summary Disposition. The Parties shall file motions for summary disposition no later than thirty (30) days after the issuance of the FEIS or the AFSER.
8. Clarification, Simplification, and Amendment of the Pleadings. During the August 18, 2009, prehearing conference call, the Parties stated that it was their consensus that it is premature to address the issues raised in paragraphs 12-15 of the July 10 Order. These items include (i) the clarification, simplification or specification of the issues; (ii) the necessity or desirability of amending the pleadings; (iii) opportunities to develop stipulations or admissions of fact; and (iv) opportunities for the settlement of issues or contentions. The Board encourages the Parties to continue to consider and pursue such measures and will revisit this issue at a later stage in the proceeding. If, at any time, it appears that stipulations or admissions of fact can narrow or eliminate factual or legal disputes, the Parties are encouraged to file motions for leave to request and pursue same.
9. Hearings on Contentions 7 and 8. Hearings on Contention 8 (safety issues regarding low-level waste storage) shall be conducted simultaneously with hearings on Contention 7 (environmental impacts of low-level waste storage), provided that hearings on Contention 8 shall not commence prior to publication of both the FEIS and the AFSER.

10. Evidentiary Hearing Filings.

- A. Declaration of Position. Fifteen (15) days after the Staff issues the latter of the AFSEER and FEIS (“the Staff’s Second Notice”), the NRC Staff is requested, with respect to each contention, to file a brief declaration as to whether it currently supports the position of the Intervenor or the Applicant. Thereafter, the NRC Staff submissions on each contention shall be filed at the same time as those of the Party it supports. If the NRC Staff declines to declare its position, its filings under this paragraph shall be made within the deadlines applicable to the Applicant.
- B. Intervenor’s Initial Statement of Position, Testimony, Affidavits, and Exhibits. Sixty (60) days after the Staff’s Second Notice, the Intervenor shall file their initial written statement of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party’s case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses, refer to, use, or are relying upon for their statements or position.

- C. Applicant's Initial Statement of Position, Testimony, Affidavits, and Exhibits. No later than ten (10) days after service of the materials submitted under paragraph 10.B, the Applicant shall file its initial written statements of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the Party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses, refer to, use, or are relying upon for their statements or position.
- D. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits. No later than twenty (20) days after service of the materials submitted under paragraph 10.C, Parties, shall file their written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal testimony shall

be under oath or by affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses, refer to, use, or are relying upon for their statements or position. Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that should have been, but were not, included in the Party's previously-filed initial written statement.

- E. Motions in Limine. Not later than ten (10) days after service of the materials submitted under paragraph 10.D, Parties shall file their motions in limine regarding the materials submitted under paragraphs 10.B through 10.D. Answers shall be filed no later than seven (7) days after service of such motions.

- F. Proposed Direct Examination Questions for Board to Ask. No later than forty (40) days after service of the materials submitted under paragraph 10.D, all Parties shall file proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The direct examination plan should contain a brief description of the issue or issues which the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. The proposed direct examination questions need not be filed with any other party.

G. Motions for Cross Examination. No later than forty (40) days after service of the materials submitted under paragraph 10.D, all Parties shall file any motions or requests to permit that Party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-examination shall be filed with all Parties, but the cross-examination plan itself need not be filed with any other Party.

11. Failure to meet the deadlines and schedules specified herein may result in sanctions, including but not limited to default, under 10 C.F.R. § 2.320.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the JOINT MOTION REGARDING ENUMERATED MATTERS IN INITIAL SCHEDULING CONFERENCE ORDER has been served on the following persons by Electronic Information Exchange on this 14th day of August, 2009:

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