

October 23, 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

JOINT MOTION FOR EXTENSION TO FILE MOTIONS TO COMPEL

Pursuant to 10 C.F.R. § 2.323, applicant Progress Energy Florida, Inc. (“Progress”) and Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, “Joint Intervenors”) hereby submit this joint motion requesting that the Atomic Safety and Licensing Board (“Board”) issue an extension for thirty days to the deadline for filing disputes regarding the completeness of the initial disclosure. In its Initial Scheduling Order, the Board required, “On or before October 29, 2009, the parties and the NRC Staff shall file any motions to compel or challenges regarding the adequacy of any mandatory disclosure ... concerning any disclosures occurring prior to that date.”¹

NRC regulations require that the disclosures identify witnesses and includes "a copy of the analysis or other authority upon which that person bases his or her opinion." See 10 C.F.R. 2.336(a)(1). With regard to Contention 4, the Joint Intervenors have identified Dr. Bacchus as a witness. While Progress has a copy of the opinion of Dr. Bacchus, what Progress believes is missing from the

¹ Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC __ (slip op. at 7) (Aug. 27, 2009) (“Initial Scheduling Order”).

disclosures by the Joint Intervenors to date is the analysis or other authority that provides bases² for her opinion.

Arising primarily from prior commitments of Dr. Bacchus, the Parties and the NRC staff are not planning for substantive discussions on the dispute until the week of November 2. Consistent with the Board's guidance,³ because the Parties believe that all or part of the matter may be resolved amicably if additional time for filing a motion were provided, the Parties request an extension of 30 days, or until Monday, November 30, 2009, to file motions to compel or challenges regarding the adequacy of any mandatory disclosure prior to that date.

Counsel for Progress has been authorized by the representative of the Joint Intervenors to submit this motion on their behalf. Counsel for the NRC Staff has stated that the Staff does not oppose the 30-day extension of time, but that they take no position on whether any subsequent motion to compel or to challenge the mandatory disclosures is appropriate. The NRC Staff remains willing to discuss any such future motions with the other parties to reach an amicable resolution.

² For clarity, the factual or evidentiary bases appropriate for discovery differ from the bases evaluated at the pleading stage. Commonwealth Edison Co. (Byron Station, Units 1 and 2), LBP-81-39-A, 14 NRC 364, 369 (1981).

³ Id. at 11 n. 24.

CERTIFICATION

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues. I certify that after this consultation, the Joint Intervenors agreed to file this motion jointly and the NRC staff did not object.

Respectfully Submitted,

/Signed electronically by Robert B. Haemer/

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(Combined License Application for)		
Levy County Nuclear Plant, Units 1 and 2))	ASLBP No.	09-879-04-COL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Motion for Extension To File Motions To Compel dated October 23, 2009, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding this 23rd day of October 2009.

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