

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

October 27, 2009

ORDER

(Granting Motion for Extension of Time)

On October 23, 2009, Progress Energy Florida, Inc. (PEF) filed a motion requesting that the deadline for filing motions challenging the adequacy of initial mandatory disclosures be extended from October 29, 2009, to November 30, 2009.¹ The Motion states that the pro se representatives of the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (Joint Intervenors), join in the extension request, and that the NRC Staff does not oppose it. Motion at 2. The Motion was timely filed.²

The only specific potential problem referred to in the Motion is a concern raised by PEF that, although the Joint Intervenors have produced a copy of the written opinion by their expert, Dr. Bacchus, “what PEF believes is missing from the disclosures . . . is the analysis or other authority that provide bases for her opinion.” Id. at 2. PEF states that, due to prior

¹ Joint Motion for Extension to File Motions to Compel (Oct. 23, 2009) (Motion).

² Section II.G.4 of the Board’s Initial Scheduling Order (ISO) requires that motions for extension of time be filed “at least three (3) business days before the due date for the pleading or other submission for which the extension is sought.” 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 11) (Aug. 27, 2009). PEF’s motion, filed on October 23, 2009, meets the ISO deadline.

commitments, the parties and the NRC Staff are not planning for substantive discussions on the dispute until the week of November 2. Id. Based on these representations, PEF asks for an extension for all challenges to the initial mandatory disclosures (not just the Bacchus opinion matter) until four (4) weeks after November 2. Id.

While the Board is uncertain as to why the extension request is not limited to the specific issue identified, given that it is the product of a joint agreement among the parties, we hereby grant the Motion.³ The deadline specified in the first sentence of ISO II.C for filing motions to compel is extended to November 30, 2009.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁴

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 27, 2009

³ We do not rule on the merits of any dispute regarding the adequacy of the initial mandatory disclosures. We note, however, that 10 C.F.R. § 2.336(a)(1), which requires that the mandatory disclosures include “a copy of the analysis or other authority upon which [the expert] bases his or her opinion,” (a) is stated in the disjunctive (either an “analysis” or the “other authority” upon which the expert is relying), (b) does not require the existence or creation (and thus disclosure) of an expert “analysis” at the time of the initial mandatory disclosures, and (c) even if an expert analysis exists at the time of the initial mandatory disclosures and thus is disclosed, the regulation does not freeze the expert’s “analysis or other authority” produced at the initial disclosures for the remainder of the adjudication. Indeed, we expect that the “analyses and other authority” upon which the various experts base their opinion will be supplemented, amended, and better focused as more information becomes available during the DEIS, FEIS and FSER processes. Nor do we rule that an “expert opinion” accompanying an initial petition pursuant to 10 C.F.R. § 2.309(f)(1)(v) does not suffice under 10 C.F.R. § 2.336(a)(1).

⁴ 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 (GRANTING MOTION FOR EXTENSION OF TIME) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-029-COL and 52-030-COL
LB ORDER (GRANTING MOTION FOR EXTENSION OF TIME)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 27th day of October 2009