



Florida Department of Environmental Protection

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3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
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Michael W. Sole
Secretary

November 20, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. John Hunter
Lead Environmental Specialist
Progress Energy Florida, Inc.
100 Central Avenue, NE
MAC-CX1B
St. Petersburg, FL 33703

RE: Progress Energy Levy Nuclear Plant
Modification to Conditions of Certification
Alteration of Submittal Dates
DEP Case Number PA08-51A
OGC Case Number 09-3933

NOTICE OF INTENT TO MODIFY CONDITIONS OF CERTIFICATION

Dear Mr. Hunter,

On November 18, 2009 the Siting Coordination Office received a request from the Southwest Florida Water Management District (SWFWMD) to modify the Conditions of Certification for the Progress Energy Florida (PEF) Levy Nuclear Plant (LNP). The request is to alter specific submittal date requirements set forth in the Conditions of Certification.

On May 1, 2009 PEF formally announced plans to shift the construction schedule for the LNP Project to reflect a licensing determination made by the U.S. Nuclear Regulatory Commission (NRC) which affected the timing of the excavation and foundation preparation work for the facility. This schedule shift will ultimately result in a delay of commercial operation of the two LNP units by a minimum of twenty months.

SWFWMD Conditions XXVIII.A.2 and XXVIII.A.4 of the Conditions of Certification require that PEF provide an Environmental Monitoring Plan (EMP) and an Aquifer Performance Test (APT) Plan to the SWFWMD within 90 days of the issuance of the Conditions of Certification (November 24, 2009). As a result of the shift in the LNP construction schedule, PEF and the SWFWMD have agreed to extensions of the submittal dates of the EMP and the APT (as well as

other minor revisions), and the SWFWMD has made a request to the Siting Office for a modification to the Conditions of Certification to reflect those changes.

Although PEF, by letter dated November 13, 2009, requested that this modification be processed under Condition X.J. of the LNP Conditions of Certification, the Department finds this condition to be inapplicable in this case. Under Condition X.J., "DEP, in consultation with the appropriate agencies that have regulatory authority over a matter addressed in a post-certification submittal, and PEF may jointly agree to vary any of the post-certification submittal requirements, provided the information submitted is sufficient to provide reasonable assurances of compliance with the Conditions of Certification." Simply stated, Condition X.J. allows for variances of post-certification submittal requirements provided there are assurances of compliance with the Conditions of Certification. The subject request cannot assure compliance with the Conditions of Certification, as evidenced by the necessity to modify the Conditions of Certification.

In response to the SWFWMD's request and consistent with the Siting Office's practice (following review and concurrence) of modifying an agency's conditions at its request, the Department is hereby initiating a modification to update the existing COC in accordance with 403.516(1)(c), Florida Statutes (F.S.). Furthermore, the Department notes that it will be initiating a future modification in accordance with 403.516(1)(c), F.S. to address required updates to the COC.

Modifications have been placed in the attached draft Final Order. A copy of the complete set of the draft Conditions of Certification (strikethrough/underline notation and attachments included) are available at the following file transfer protocol site:

<ftp://ftp.dep.state.fl.us/pub/siting/Outgoing/PEF%20Levy/Mod%20A/>. Copies of the draft Conditions of Certification and/or attachments may also be obtained by contacting the Siting Coordination Office, 3900 Commonwealth Blvd, Tallahassee, Florida 32399-3000, (850) 245-2002.

Pursuant to Section 403.516, Florida Statutes ("F.S."), and Rule 62-17.211, Florida Administrative Code ("F.A.C."), all parties to the certification proceeding have 45 days from the issuance of this notice by mail to such party's last address of record in which to file a written objection to the modification. A public notice will also be published in the Florida Administrative Weekly ("FAW") regarding this Intent to Modify the Conditions of Certification. Any person who is not already a party to the certification proceeding and whose substantial interests will be affected by the requested modification has 30 days from the date of publication of the public notice in the FAW to object in writing. Failure to act within the time frame constitutes a waiver of the right to become a party.

Written objections must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. If the Department does not receive any written objections, then an Order Modifying the Conditions of Certification shall be issued by the Department. If written objections are timely filed which address only a portion of the modification, then pursuant to Rule 62-17.211(1)(b)5., F.A.C., the Department shall issue an Order approving that portion of the modification to which no objections were filed, unless that portion of the modification is substantially related to or necessary to implement the portion to which written objections are filed. If written objections are raised, then pursuant to Section 403.516(1)(c), F.S., the applicant may file a petition for modification with the

Department and the Division of Administrative Hearings seeking approval for those portions of the modification to which written objections were timely filed.

Mediation is not available in this proceeding.

Any questions regarding this Intent to Modify Conditions of Certification should be directed to Cindy Mulkey at (850) 245-2175. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2242. Such contact with any of the above does not constitute an objection to the modification.

Sincerely,



Michael P. Halpin, P.E.
Administrator,
Siting Coordination Office

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52
Florida Statutes, with the designated
Department Clerk, receipt of which is
hereby acknowledged.

Clerk

Date

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