

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Title: Progress Energy Florida, Inc.

March 23, 2010 (9:20am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 52-029-COL and 52-030-COL

ASLBP Number: 09-879-04-COL

Location: (telephone conference)

Date: Tuesday, March 16, 2010

Work Order No.: NRC-103

Pages 472-496

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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SCHEDULING CONFERENCE

In the Matter of: :
PROGRESS ENERGY FLORIDA, : Docket Nos. 52-029-COL
INC. : 52-030-COL
(Levy County Nuclear Power : ASLBP No.
Plant Units 1 and 2) : 09-879-04-COL
(Combined License) :

Tuesday, March 16, 2010

The above-entitled conference was convened telephonically, pursuant to notice, at 2:00 p.m.

BEFORE:

ALEX S. KARLIN, Administrative Law Judge, Chair
ANTHONY J. BARATTA, Administrative Law Judge
WILLIAM M. MURPHY, Administrative Law Judge

1 APPEARANCES:

2 On Behalf of the Applicant:

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4 ROBERT B. HAEMER, Esquire; and

5 STEPHANIE GEORGE, Esquire

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APPEARANCES (Continued):

On Behalf of the Intervenors:

MARY OLSON

Nuclear Information and Resource Service

CARA CAMPBELL, Chair

Ecology Party of Florida

641 SW 6th Avenue

Fort Lauderdale, Florida 33315

Tel: (954) 525-4522

P-R-O-C-E-E-D-I-N-G-S

(2:01 p.m.)

1
2
3 CHAIRMAN KARLIN: Good afternoon. This is
4 Alex Karlin, one of the judges for the Atomic Safety
5 and Licensing Board. We are now going to go on the
6 record and convene a meeting of the Progress
7 Energy-Levy County application for a COL license for
8 two nuclear power plants in Levy County, Florida.

9 We are on the record. The docket number
10 for the record of this case is 52-029-COL and
11 52-030-COL. That reflects the two separate reactor
12 licenses. The ASLBP number on this is 09-879-04COL.

13 We are conducting this prehearing
14 conference call pursuant to an order that this Board
15 issued on February 16th of 2010. Today's date is
16 March 16th, 2010.

17 This call will be transcribed by a court
18 reporter. And we're conducting the call
19 telephonically or the conference, the prehearing
20 conference, telephonically.

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22 Alex Karlin, one of the judges for the Atomic Safety
23 and Licensing Board. We are now going to go on the
24 record and convene a meeting of the Progress
25 Energy-Levy County application for a COL license for

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1 two nuclear power plants in Levy County, Florida.

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7 conference call pursuant to an order that this Board
8 issued on February 16th of 2010. Today's date is
9 March 16th, 2010.

10 This call will be transcribed by a court
11 reporter. And we're conducting the call
12 telephonically or the conference, the prehearing
13 conference, telephonically.

14 First let me introduce the Board here.
15 The members of the Board are here in Rockville,
16 Maryland with me. Again, I'm Alex Karlin. We have
17 Dr. Baratta. Anthony Baratta is here in the room as
18 well as Dr. Murphy, William Murphy. And Megan Wright,
19 our lawyer and law clerk, is in the conference room
20 with us at this point.

21 Now I am going to ask the parties to
22 introduce themselves, but before I do, if I could just
23 alert you all to something. We seem to have a bit of
24 a confusion here.

25 The way we normally set these up is we

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1 have a speaker telephone call-in number. And we have
2 a non-speaker telephone call-in number. The only
3 people who are authorized to speak in this call are
4 the lawyers and representatives of the parties who are
5 litigating this case.

6 This is like a courtroom. And members of
7 the public and the media are welcome to attend and to
8 listen, just like we would be in court, but this is
9 not the time for the media or the public to talk or
10 ask questions.

11 So apparently the line has not worked
12 quite right. And a number of the members of the
13 public and the media are on a line which authorizes
14 them or allows them to speak, but hopefully you all
15 will just put your telephones on mute so that when I
16 ask for introductions now, the only people I am asking
17 to identify themselves are the parties.

18 So, if I may ask, with regard to the
19 petitioners, the intervenors, Ms. Olson, could you
20 identify yourself and anyone else from the intervenor
21 group that is on the line?

22 MS. OLSON: This is Mary Olson, Nuclear
23 Information and Resource Service lead of the
24 intervening group. And I am sitting in Washington,
25 D.C.

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1 I honestly do not know if the others are
2 on the line. Perhaps they could identify themselves
3 if they are briefly.

4 CHAIRMAN KARLIN: Yes.

5 MS. CAMPBELL: Cara Campbell from the
6 Ecology Party. I am here.

7 CHAIRMAN KARLIN: Great. Okay. Anyone
8 else? Mr. Cannèy, is he on the line?

9 (No response.)

10 CHAIRMAN KARLIN: Okay. So we have Ms.
11 Olson and Ms. Campbell from the intervenor community.
12 Welcome to both of you.

13 Now I will turn to Progress and Pillsbury
14 Winthrop. Mr. O'Neill, perhaps you could introduce
15 your Pillsbury team and your client, members of your
16 client?

17 MR. O'NEILL: Judge Karlin, this is John
18 O'Neill on the phone in Washington; in Raleigh in the
19 General Counsel's Office, Progress Energy, David
20 Conley.

21 CHAIRMAN KARLIN: Okay.

22 MR. O'NEILL: And with me in Washington
23 are my colleagues Robert Haemer and Stephanie George.

24 CHAIRMAN KARLIN: All right. Welcome.
25 Welcome. And from the staff, could Ms. Martin or

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1 whoever else is leading introduce the staff members,
2 please?

3 MR. ROACH: Good afternoon.

4 CHAIRMAN KARLIN: Good afternoon.

5 MR. ROACH: Good afternoon, Judge Karlin.
6 My name is Kevin Roach for the NRC staff. Sara
7 Kirkwood will be my co-counsel today. And also with
8 me is a member of the technical staff: Douglas
9 Bruner.

10 CHAIRMAN KARLIN: All right. Welcome.
11 That represents the parties, the three parties: the
12 intervenor, the applicant, and the staff.

13 Is there anything my fellow judges would
14 like to say at this point?

15 JUDGE BARATTA: I have nothing to say.
16 Judge Baratta.

17 CHAIRMAN KARLIN: Okay.

18 JUDGE MURPHY: Good afternoon, everyone.
19 This is Judge Murphy.

20 CHAIRMAN KARLIN: Okay. Good. We will
21 proceed, then. And, as I mentioned, please, all other
22 -- I won't say "participants" but listeners on the
23 call, if you would please put your calls on mute so
24 that we can conduct the call.

25 It shouldn't be very long. The purpose of

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1 this call is really just to have a basic case
2 management conference. The last case management
3 conference we had was in August of '09, so about
4 seven-eight months ago.

5 And, as I indicated and we indicated at
6 that time, for good case management purposes, we just
7 think it's a good idea to have a conference call at
8 least once or twice a year to check in and see where
9 things are.

10 The agenda that I have lined out on this
11 thing covers four items. One, we'll just review what
12 major actions have happened since the last case
13 management conference.

14 Two, we will review the changes that have
15 apparently evolved in the staff's estimated schedule
16 and how it is going to affect our schedule.

17 Three, we'll talk about our tentative
18 schedule for the evidentiary hearing and any other
19 activities, such as a site visit, we might conduct.

20 And, four, we will discuss what appears to
21 be a difficulty that may have arisen or has arisen
22 with regard to the ultimate deadline for motions for
23 summary disposition with regard to environmental
24 matters. Those are the four items we have decided we
25 think we ought to cover briefly.

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1 Is there anything else that the parties
2 think they need to bring forward we need to talk about
3 today?

4 (No response.)

5 CHAIRMAN KARLIN: Okay. Then we'll
6 proceed with those four items: first, major items or
7 activities that have occurred since our last case
8 management conference.

9 The conference was in August, as I say, of
10 '09. And right after that, we issued the initial
11 scheduling order on August 27th of '09. And that is
12 the scheduling order, which, as you, the parties,
13 know, governs what is going to happen in this case and
14 when it is going to happen.

15 That scheduling order is based on model
16 milestones that are found in the NRC regulations
17 governing evidentiary hearings, which are 10 CFR part
18 2, appendix B, table 2, to be precise.

19 And so we have a schedule that is, in
20 part, developed because of the way the regs read and
21 the way the regs work. And also we have customized
22 that and developed a schedule based upon those regs.
23 And that was the initial scheduling order in August of
24 '09.

25 Then in October of '09, we issued a

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1 protective order and nondisclosure agreement that
2 would govern the management of any information that
3 the parties claimed to be privileged in one way or
4 another and would allow for the disclosure of that
5 information pursuant to the nondisclosure agreement.
6 The parties worked on that. And we basically approved
7 what they had drafted. So thank you for that.

8 The third item is that in December, end of
9 December, '09, we ruled on a motion to compel the
10 production of certain documents and information. The
11 motion had been filed by the applicant. And we looked
12 at the briefs. And we issued that ruling. And you
13 all should be familiar with that.

14 And then the fourth item of significance
15 that has occurred perhaps is the Commission's ruling
16 on January 7th of 2010, a ruling on the interlocutory
17 appeal by the applicant, Progress Energy, on several
18 of the contentions that we admitted. So the
19 Commission essentially affirmed our admission of those
20 contentions with the exception of greater than class
21 C waste, which was not affirmed, but the rest of it
22 was.

23 So those are the four main things that
24 have happened that I know of. And, as far as I know,
25 no mentions are currently pending before us or action

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1 items.

2 Per the regulations, which was section
3 2.322, I think it is, or 332 of the regs, we are now
4 in a situation where we have to wait for the staff to
5 finish its environmental impact statement and for the
6 staff to finish its safety evaluation report, so the
7 final safety evaluation report, FSER, and the final
8 environmental impact statement. And we wait for the
9 staff to do those action items.

10 And it takes quite a bit of time -- they
11 do it carefully -- before we can have the actual
12 evidentiary hearing. So we have asked the staff to
13 give us a monthly report as to what their best
14 estimate is as to when they are going to issue these
15 documents. And they have been doing that, and we
16 appreciate that.

17 In July of '09, the staff estimated that
18 the FEIS would be issued in September of 2010.
19 Beginning of this month, the staff changed that
20 estimate. It's about ten months later. And the FEIS
21 is now by the staff's estimate going to come out in
22 July of 2011. So it's about a ten-month delay in the
23 FEIS.

24 The FSER hasn't changed that much.
25 Originally the staff gave us an estimate of May of

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1 2011. And now the staff estimate is July of 2011.

2 Can I ask, Mr. Roach, whether or not there
3 have been any changes in that schedule since your
4 filing on the beginning of this month?

5 MR. ROACH: No, Your Honor, there have
6 been no changes to the schedule that we filed on March
7 4th.

8 CHAIRMAN KARLIN: Okay. Great. And we
9 understand that that is your best estimate. You're
10 not tied to it. I mean, you're just doing the best
11 estimate you can give us.

12 And it may change. It may shorten. It
13 may length. But, as you know the regs require us to
14 tee off of your schedule for our scheduling of the
15 evidentiary hearing.

16 So now let's talk about the second. I
17 guess we've talked about the major actions. And we've
18 talked about the review of the changes in the staff's
19 schedule. The third item we want to talk about is our
20 tentative schedule for the Board going forward.

21 Under the regs, we have to wait until, as
22 I say, these two FEIS and FSER are finished before we
23 can have the evidentiary hearing.

24 It looks like based upon the initial
25 scheduling order that once the FEIS is issued, there

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1 will be initial written testimony and exhibits filed.
2 There will be rebuttal testimony filed. There will be
3 a number of motions, opportunity to file motions. And
4 it looks like the evidentiary hearing is likely to be
5 in December of 2011 or January of 2012 based upon what
6 we have got so far.

7 And then the decision, written decision,
8 would be 90 days later or so after the evidentiary
9 hearing closes. And that is based upon the regs and
10 the initial scheduling order.

11 What I would like to ask the parties to do
12 is to submit to us their availability in writing by
13 next Friday, March 26th, what I call blackout dates.
14 For the month of December of 2011 or January of 2012,
15 please give us the dates when you cannot participate
16 in the evidentiary hearing.

17 Let's assume for the moment that the
18 evidentiary hearing is going to take three days for
19 three contentions, maybe four, total of three or four
20 days.

21 So please submit in writing by next Friday
22 blackout dates; i.e., those dates when you are totally
23 unable to participate in an evidentiary hearing.

24 Hopefully we are far enough out in advance
25 that this is going to be less of a problem so we can

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1 tentatively reserve a week or whatever, maybe two
2 weeks just in case one or the other needs to be used.
3 I don't think it's going to take two weeks, but we
4 might reserve those dates.

5 MS. OLSON: Your Honor, a question?

6 CHAIRMAN KARLIN: Yes?

7 MS. OLSON: Mary Olson. I just wanted to
8 know whether this would probably be by phone or
9 probably be travel. Do you know?

10 CHAIRMAN KARLIN: This evidentiary hearing
11 will be in person in Levy County.

12 MS. OLSON: Very good.

13 CHAIRMAN KARLIN: And you will have to
14 make sure both you are there and your witnesses are
15 there.

16 MS. OLSON: Yes.

17 CHAIRMAN KARLIN: So you need to check
18 with them as well and their schedules. And sometimes
19 experts have commitments and other things that create
20 difficulties.

21 So next Friday.

22 MS. CAMPBELL: Excuse me, Your Honor.
23 This is Cara Campbell from the Ecology Party.
24 Obviously the days that the courtroom would be closed,
25 like Christmas and things like that, we wouldn't have

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1 to put that in there because it wouldn't be open
2 anyway, correct?

3 CHAIRMAN KARLIN: Right. I mean, don't
4 worry about Christmas Day. We probably won't hold it
5 on Christmas Day or New Year's Day, but, I mean, if we
6 get pressed, we might try. There have been boards
7 that have held evidentiary hearings on Sundays.

8 MS. CAMPBELL: Okay.

9 CHAIRMAN KARLIN: So, if push comes to
10 shove and we have to fit it in -- but we're not going
11 to do it on Christmas or New Year's.

12 MS. CAMPBELL: Okay.

13 CHAIRMAN KARLIN: Okay.

14 JUDGE BARATTA: Yes. This is Judge
15 Baratta here. One of the reasons why we do this, if
16 you look, there are probably going to be a number of
17 evidentiary hearings that are going to be occurring at
18 that time.

19 And I know that some of the witnesses are
20 likely to be common. So we would like to get going on
21 scheduling so we can keep to our schedule.

22 CHAIRMAN KARLIN: Right, right. And keep
23 in mind this is just going to be a blackout reserve a
24 date because if the staff's FEIS and FSER change, then
25 we've got to adapt to that change as well. So that's

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1 with the evidentiary hearing. The end of 2011 or
2 first month of 2012 is what we're shooting for for
3 that.

4 In the meantime, we also think that it's
5 probable we want to have a site visit. We do want to
6 have a site visit. We might want to have a limited
7 appearance statement session in the community. And
8 the site visit we usually try to schedule after the
9 draft EIS has been issued but before the final so that
10 we have something we can study and orient ourselves
11 with.

12 And so that works out to be probably
13 sometime between February and April of 2011 we would
14 be looking to schedule a site visit down at the -- I
15 won't say facility but at the site.

16 We're not going to worry about a specific
17 time frame at this point. It would only be one day
18 for a site visit and one day for a limited appearance
19 statement session. And I think we have enough
20 flexibility to figure something out in that time
21 frame.

22 I just wanted to alert the parties. We
23 have discussed this before in our earlier conference
24 calls. And I think everyone thought it would be
25 appropriate to have a site visit.

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1 And we certainly think it would be helpful
2 to our understanding of the issues to do that. So
3 that is probably the time frame we are thinking about,
4 just giving you a head's up on that.

5 The fourth item on the agenda talks about
6 a difficulty we see maybe arising with regard to the
7 motions for summary disposition for environmental
8 matters on the FEIS, I should say.

9 As you know, we have established deadlines
10 for motions for summary disposition in two ways: one,
11 that there is a promptness deadline; that is, motions
12 for summary disposition need to be filed within 20
13 days of the event or occurrence upon which they are
14 based.

15 In addition, there is an ultimate
16 deadline, after which no motions for summary
17 disposition will be entertained at all. And we tried
18 to explain some of the rationale for that in our
19 initial scheduling order. And I think it was footnote
20 28 was part of that explanation.

21 With the staff's schedule changing and the
22 FEIS coming out as the last item before the
23 evidentiary hearing, it appears to me -- and I've
24 talked about this with my colleagues here -- that we
25 may have a train wreck or a tentative train wreck

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1 developing because -- let's just put it this way. If
2 the FEIS comes out on July 21st, 2011, the initial
3 statements of testimony and exhibits and positions are
4 due 45 days thereafter, September 5th.

5 If the staff file a motion for summary
6 disposition based upon the FEIS, then the intervenor's
7 answers are due almost the same date, the intervenor's
8 answers to the motion for summary disposition are due
9 almost the same date, as their initial submissions of
10 testimony are due. This would create difficulty and
11 havoc, I'm afraid, in the intervenor's community
12 unless they have a large amount of resources.

13 It would also impose a situation which we
14 are trying to avoid, which is having motions for
15 summary disposition come in so late in the game that
16 they duplicate the filings that are going to be needed
17 for the actual hearing itself. And so it doubles up
18 the reading that the Board does. And they're
19 identical. They're duplicative almost.

20 So I would like -- and we are troubled by
21 that. We don't want that to happen, but we're not
22 sure what the solution is. So one option is to move
23 motion for summary disposition for environmental
24 matters up to the draft EIS.

25 Another option is to establish a mechanism

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1 something like the Areva case, where motions for
2 summary disposition are screened by the Board before
3 the answer is required.

4 But, in any event, what we would like to
5 do is ask you, the parties, to take a look at that.
6 And we're soliciting your input, say, by next Friday,
7 the 26th of March, on what changes, if any, we should
8 implement in the schedule to avoid what I refer to as
9 the train wreck scenario of the motion for summary
10 disposition being filed at the same time as the
11 initial filings are being filed.

12 Does everyone understand that?

13 MS. CAMPBELL: Yes, Your Honor.

14 MR. ROACH: Yes.

15 JUDGE BARATTA: Mr. O'Neill, you're okay
16 with that?

17 MR. O'NEILL: I understand, sure.

18 CHAIRMAN KARLIN: Okay. So if you could
19 give us your input on that by next Friday? Maybe
20 let's say keep it to a minimum of five pages. I mean,
21 I don't think that -- maximum. I'm sorry. Maximum of
22 five pages. Maximum of five pages. And just share
23 what your thoughts are.

24 And if you want to confer amongst
25 yourselves and come up with some joint ideas, that is

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1 great. We would encourage that. We probably would
2 cut you some slack on the page numbers if you actually
3 have something joint to file.

4 But keep in mind it doesn't just affect
5 the parties. It affects this Board also because this
6 is an L proceeding. And in an L proceeding, as you
7 know, what happens is the parties file a tremendous
8 amount of material in the weeks preceding the
9 evidentiary hearing.

10 And then the Board reads that material.
11 And then the Board based upon its reading of those
12 materials identifies who needs to show up at the
13 evidentiary hearing and what questions we're going to
14 have.

15 So the Board has a lot of work to do in
16 the run-up to the evidentiary hearing. That's fine.
17 We're fine with that. And that is what we are here.
18 But, by the same token, sometimes a motion for summary
19 disposition at that juncture is just not very
20 productive in terms of either our time or the parties'
21 time. And so please take a look at that and see if
22 you think there is a problem or a concern.

23 We welcome your submissions. You may say,
24 "It's not a problem. Leave it the way it is." You
25 may say, "Change it in some way." And so we're hoping

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1 you can give us your thoughts on it.

2 JUDGE MURPHY: This is Judge Murphy. At
3 this time does anyone have an indication that they
4 plan to submit a motion for perhaps prior or after the
5 draft EIS?

6 CHAIRMAN KARLIN: Yes. That is a good
7 question. Do the staff or the applicant have a
8 thought that they are going to file a motion for
9 summary disposition after the draft EIS, ostensibly
10 because it cures the alleged defects in the ER? Mr.
11 O'Neill, are you thinking along those lines?

12 MR. O'NEILL: It really depends. I mean,
13 we have thought of lots of different scenarios
14 depending on what happens. I mean, you know,
15 environmental contentions depend on -- this is on the
16 staff's document.

17 Once we see the draft EIS, it may be
18 appropriate at that time to file a motion for summary
19 disposition, although the staff has not been
20 comfortable answering and taking positions on
21 environmental contentions until later in the process.

22 I would have the staff consider whether or
23 not once they at least respond to public comments,
24 they have essentially established their position,
25 first, in the draft EIS; and, then, secondly, in

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1 responding to any comments.

2 I don't see why there would be any reason
3 where they could not have motions practiced between
4 that period and when the final EIS comes out, which
5 will avoid your train wreck.

6 CHAIRMAN KARLIN: Right.

7 MR. O'NEILL: But, you know, I'm thinking
8 out loud to a certain extent. And I think what we'll
9 try to do is confer with the staff and the intervenors
10 before the 26th. And perhaps we can work something
11 out.

12 CHAIRMAN KARLIN: Okay. That would be
13 good. I think your thoughts are well-taken. And we
14 understand you're not committing one way or the other.
15 But it does seem to me that the contention has been
16 admitted with regard to contention 4.

17 And maybe other contentions come in later
18 -- I don't know -- but are proposed, in any event.
19 But at this point, there is a contention,
20 environmental contention, out there.

21 I would assume the draft EIS is in the
22 works as we speak.

23 MS. OLSON: Your Honor, there are two
24 environmental contentions out there.

25 CHAIRMAN KARLIN: Yes. I'm sorry. I'm

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1 sorry. Quite right. There is a low-level waste one
2 as well. And the draft EIS is in the works. And if,
3 indeed, the draft EIS cures or allegedly cures some of
4 the alleged defects that are reflected in those
5 contentions, then, as you know, the parties would be
6 obliged to file any motion for summary disposition
7 based thereon within 20 days of the draft EIS.

8 And so that would be a juncture where a
9 motion for summary disposition might come in because,
10 finally, I ask if the only motion for summary
11 disposition could be based upon some delta between the
12 draft and the final, some new information, as it were.

13 So okay. Think about that. And I
14 appreciate your answer, your thoughts on that, Mr.
15 O'Neill. Other than that, thank you, Judge Murphy.
16 That was a good point to raise.

17 Okay. With that, I think we will adjourn
18 the call. I appreciate your participating. It wasn't
19 very long. And we probably again, if nothing else
20 comes along, in a six-to-nine-month window will have
21 another conference call, just to manage the case and
22 stay on top of anything that's occurring.

23 So the action items -- and we are not
24 going to issue an order on this, but by next Friday,
25 please submit a maximum page-page submittal from each

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1 of you on your thoughts with regard to the train wreck
2 problem I just described; and, two, your blackout
3 dates for December of 2011 and January of 2012.

4 With that, thanks to all of you for
5 participating in the call. Any last questions?

6 (No response.)

7 CHAIRMAN KARLIN: All right. Thank you.
8 We stand adjourned.

9 (Whereupon, the foregoing matter was
10 concluded at 2:28 p.m.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Progress Energy Florida, Inc.

Name of Proceeding: Scheduling Conference

Docket Number: 52-029-COL and 52-030-COL

ASLBP Number: 09-879-04-COL

Location: (teleconference)

were held as herein appears, and that this is the
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