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## NUCLEAR REGULATORY COMMISSION

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March 31, 2010 (1:55pm)

Title: Progress Energy Florida, Inc.

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

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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

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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) :

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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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19 SARA KIRKWOOD, Esquire

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1 APPEARANCES (Continued):

2 On Behalf of the Intervenors:

3 MARY OLSON

4 Nuclear Information and Resource Service

5

6 CARA CAMPBELL, Chair

7 Ecology Party of Florida

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9 Fort Lauderdale, Florida 33315

10 Tel: (954) 525-4522

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

(2:01 p.m.)

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

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

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

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

First let me introduce the Board here. The members of the Board are here in Rockville, Maryland with me. Again, I'm Alex Karlin. We have Dr. Baratta. Anthony Baratta is here in the room as well as Dr. Murphy, William Murphy. And Megan Wright,

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1 our lawyer and law clerk, is in the conference room  
2 with us at this point.

3 Now I am going to ask the parties to  
4 introduce themselves, but before I do, if I could just  
5 alert you all to something. We seem to have a bit of  
6 a confusion here.

7 The way we normally set these up is we  
8 have a speaker telephone call-in number. And we have  
9 a non-speaker telephone call-in number. The only  
10 people who are authorized to speak in this call are  
11 the lawyers and representatives of the parties who are  
12 litigating this case.

13 This is like a courtroom. And members of  
14 the public and the media are welcome to attend and to  
15 listen, just like we would be in court, but this is  
16 not the time for the media or the public to talk or  
17 ask questions.

18 So apparently the line has not worked  
19 quite right. And a number of the members of the  
20 public and the media are on a line which authorizes  
21 them or allows them to speak, but hopefully you all  
22 will just put your telephones on mute so that when I  
23 ask for introductions now, the only people I am asking  
24 to identify themselves are the parties.

25 So, if I may ask, with regard to the

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1 petitioners, the intervenors, Ms. Olson, could you  
2 identify yourself and anyone else form the intervenor  
3 group that is on the line?

4 MS. OLSON: This is Mary Olson, Nuclear  
5 Information and Resource Service lead of the  
6 intervening group. And I am sitting in Washington,  
7 D.C.

8 I honestly do not know if the others are  
9 on the line. Perhaps they could identify themselves  
10 if they are briefly.

11 CHAIRMAN KARLIN: Yes.

12 MS. CAMPBELL: Cara Campbell from the  
13 Ecology Party. I am here.

14 CHAIRMAN KARLIN: Great. Okay. Anyone  
15 else? Mr. Canney, is he on the line?

16 (No response.)

17 CHAIRMAN KARLIN: Okay. So we have Ms.  
18 Olson and Ms. Campbell from the intervenor community.  
19 Welcome to both of you.

20 Now I will turn to Progress and Pillsbury  
21 Winthrop. Mr. O'Neill, perhaps you could introduce  
22 your Pillsbury team and your client, members of your  
23 client?

24 MR. O'NEILL: Judge Karlin, this is John  
25 O'Neill on the phone in Washington; in Raleigh in the

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1 General Counsel's Office, Progress Energy, David  
2 Conley.

3 CHAIRMAN KARLIN: Okay.

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

6 CHAIRMAN KARLIN: All right. Welcome.  
7 Welcome. And from the staff, could Ms. Martin or  
8 whoever else is leading introduce the staff members,  
9 please?

10 MR. ROACH: Good afternoon.

11 CHAIRMAN KARLIN: Good afternoon.

12 MR. ROACH: Good afternoon, Judge Karlin.  
13 My name is Kevin Roach for the NRC staff. Sara  
14 Kirkwood will be my co-counsel today. And also with  
15 me is a member of the technical staff: Douglas  
16 Bruner.

17 CHAIRMAN KARLIN: All right. Welcome.  
18 That represents the parties, the three parties: the  
19 intervenor, the applicant, and the staff.

20 Is there anything my fellow judges would  
21 like to say at this point?

22 JUDGE BARATTA: I have nothing to say.  
23 Judge Baratta.

24 CHAIRMAN KARLIN: Okay.

25 JUDGE MURPHY: Good afternoon, everyone.

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1 This is Judge Murphy.

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

7 It shouldn't be very long. The purpose of  
8 this call is really just to have a basic case  
9 management conference. The last case management  
10 conference we had was in August of '09, so about  
11 seven-eight months ago.

12 And, as I indicated and we indicated at  
13 that time, for good case management purposes, we just  
14 think it's a good idea to have a conference call at  
15 least once or twice a year to check in and see where  
16 things are.

17 The agenda that I have lined out on this  
18 thing covers four items. One, we'll just review what  
19 major actions have happened since the last case  
20 management conference.

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

24 Three, we'll talk about our tentative  
25 schedule for the evidentiary hearing and any other

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1 activities, such as a site visit, we might conduct.

2 And, four, we will discuss what appears to  
3 be a difficulty that may have arisen or has arisen  
4 with regard to the ultimate deadline for motions for  
5 summary disposition with regard to environmental  
6 matters. Those are the four items we have decided we  
7 think we ought to cover briefly.

8 Is there anything else that the parties  
9 think they need to bring forward we need to talk about  
10 today?

11 (No response.)

12 CHAIRMAN KARLIN: Okay. Then we'll  
13 proceed with those four items: first, major items or  
14 activities that have occurred since our last case  
15 management conference.

16 The conference was in August, as I say, of  
17 '09. And right after that, we issued the initial  
18 scheduling order on August 27th of '09. And that is  
19 the scheduling order, which, as you, the parties,  
20 know, governs what is going to happen in this case and  
21 when it is going to happen.

22 That scheduling order is based on model  
23 milestones that are found in the NRC regulations  
24 governing evidentiary hearings, which are 10 CFR part  
25 2, appendix B, table 2, to be precise.

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1           And so we have a schedule that is, in  
2 part, developed because of the way the regs read and  
3 the way the regs work. And also we have customized  
4 that and developed a schedule based upon those regs.  
5 And that was the initial scheduling order in August of  
6 '09.

7           Then in October of '09, we issued a  
8 protective order and nondisclosure agreement that  
9 would govern the management of any information that  
10 the parties claimed to be privileged in one way or  
11 another and would allow for the disclosure of that  
12 information pursuant to the nondisclosure agreement.  
13 The parties worked on that. And we basically approved  
14 what they had drafted. So thank you for that.

15           The third item is that in December, end of  
16 December, '09, we ruled on a motion to compel the  
17 production of certain documents and information. The  
18 motion had been filed by the applicant. And we looked  
19 at the briefs. And we issued that ruling. And you  
20 all should be familiar with that.

21           And then the fourth item of significance  
22 that has occurred perhaps is the Commission's ruling  
23 on January 7th of 2010, a ruling on the interlocutory  
24 appeal by the applicant, Progress Energy, on several  
25 of the contentions that we admitted. So the

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1 Commission essentially affirmed our admission of those  
2 contentions with the exception of greater than class  
3 C waste, which was not affirmed, but the rest of it  
4 was.

5 So those are the four main things that  
6 have happened that I know of. And, as far as I know,  
7 no motions are currently pending before us or action  
8 items.

9 Per the regulations, which was section  
10 2.322, I think it is, or 332 of the regs, we are now  
11 in a situation where we have to wait for the staff to  
12 finish its environmental impact statement and for the  
13 staff to finish its safety evaluation report, so the  
14 final safety evaluation report, FSER, and the final  
15 environmental impact statement. And we wait for the  
16 staff to do those action items.

17 And it takes quite a bit of time -- they  
18 do it carefully -- before we can have the actual  
19 evidentiary hearing. So we have asked the staff to  
20 give us a monthly report as to what their best  
21 estimate is as to when they are going to issue these  
22 documents. And they have been doing that, and we  
23 appreciate that.

24 In July of '09, the staff estimated that  
25 the FEIS would be issued in September of 2010.

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1 Beginning of this month, the staff changed that  
2 estimate. It's about ten months later. And the FEIS  
3 is now by the staff's estimate going to come out in  
4 July of 2011. So it's about a ten-month delay in the  
5 FEIS.

6 The FSER hasn't changed that much.  
7 Originally the staff gave us an estimate of May of  
8 2011. And now the staff estimate is July of 2011.

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

12 MR. ROACH: No, Your Honor, there have  
13 been no changes to the schedule that we filed on March  
14 4th.

15 CHAIRMAN KARLIN: Okay. Great. And we  
16 understand that that is your best estimate. You're  
17 not tied to it. I mean, you're just doing the best  
18 estimate you can give us.

19 And it may change. It may shorten. It  
20 may length. But, as you know the regs require us to  
21 tee off of your schedule for our scheduling of the  
22 evidentiary hearing.

23 So now let's talk about the second. I  
24 guess we've talked about the major actions. And we've  
25 talked about the review of the changes in the staff's

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1 schedule. The third item we want to talk about is our  
2 tentative schedule for the Board going forward.

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

6 It looks like based upon the initial  
7 scheduling order that once the FEIS is issued, there  
8 will be initial written testimony and exhibits filed.  
9 There will be rebuttal testimony filed. There will be  
10 a number of motions, opportunity to file motions. And  
11 it looks like the evidentiary hearing is likely to be  
12 in December of 2011 or January of 2012 based upon what  
13 we have got so far.

14 And then the decision, written decision,  
15 would be 90 days later or so after the evidentiary  
16 hearing closes. And that is based upon the regs and  
17 the initial scheduling order.

18 What I would like to ask the parties to do  
19 is to submit to us their availability in writing by  
20 next Friday, March 26th, what I call blackout dates.  
21 For the month of December of 2011 or January of 2012,  
22 please give us the dates when you cannot participate  
23 in the evidentiary hearing.

24 Let's assume for the moment that the  
25 evidentiary hearing is going to take three days for

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1 three contentions, maybe four, total of three or four  
2 days.

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

6 Hopefully we are far enough out in advance  
7 that this is going to be less of a problem so we can  
8 tentatively reserve a week or whatever, maybe two  
9 weeks just in case one or the other needs to be used.  
10 I don't think it's going to take two weeks, but we  
11 might reserve those dates.

12 MS. OLSON: Your Honor, a question?

13 CHAIRMAN KARLIN: Yes?

14 MS. OLSON: Mary Olson. I just wanted to  
15 know whether this would probably be by phone or  
16 probably be travel. Do you know?

17 CHAIRMAN KARLIN: This evidentiary hearing  
18 will be in person in Levy County.

19 MS. OLSON: Very good.

20 CHAIRMAN KARLIN: And you will have to  
21 make sure both you are there and your witnesses are  
22 there.

23 MS. OLSON: Yes.

24 CHAIRMAN KARLIN: So you need to check  
25 with them as well and their schedules. And sometimes

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1 experts have commitments and other things that create  
2 difficulties.

3 So next Friday.

4 MS. CAMPBELL: Excuse me, Your Honor.  
5 This is Cara Campbell from the Ecology Party.  
6 Obviously the days that the courtroom would be closed,  
7 like Christmas and things like that, we wouldn't have  
8 to put that in there because it wouldn't be open  
9 anyway, correct?

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

15 MS. CAMPBELL: Okay.

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

19 MS. CAMPBELL: Okay.

20 CHAIRMAN KARLIN: Okay.

21 JUDGE BARATTA: Yes. This is Judge  
22 Baratta here. One of the reasons why we do this, if  
23 you look, there are probably going to be a number of  
24 evidentiary hearings that are going to be occurring at  
25 that time.

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

4           CHAIRMAN KARLIN: Right, right. And keep  
5 in mind this is just going to be a blackout reserve a  
6 date because if the staff's FEIS and FSER change, then  
7 we've got to adapt to that change as well. So that's  
8 with the evidentiary hearing. The end of 2011 or  
9 first month of 2012 is what we're shooting for for  
10 that.

11           In the meantime, we also think that it's  
12 probable we want to have a site visit. We do want to  
13 have a site visit. We might want to have a limited  
14 appearance statement session in the community. And  
15 the site visit we usually try to schedule after the  
16 draft EIS has been issued but before the final so that  
17 we have something we can study and orient ourselves  
18 with.

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

23           We're not going to worry about a specific  
24 time frame at this point. It would only be one day  
25 for a site visit and one day for a limited appearance

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1 statement session. And I think we have enough  
2 flexibility to figure something out in that time  
3 frame.

4 I just wanted to alert the parties. We  
5 have discussed this before in our earlier conference  
6 calls. And I think everyone thought it would be  
7 appropriate to have a site visit.

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

12 The fourth item on the agenda talks about  
13 a difficulty we see maybe arising with regard to the  
14 motions for summary disposition for environmental  
15 matters on the FEIS, I should say.

16 As you know, we have established deadlines  
17 for motions for summary disposition in two ways: one,  
18 that there is a promptness deadline; that is, motions  
19 for summary disposition need to be filed within 20  
20 days of the event or occurrence upon which they are  
21 based.

22 In addition, there is an ultimate  
23 deadline, after which no motions for summary  
24 disposition will be entertained at all. And we tried  
25 to explain some of the rationale for that in our

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1 initial scheduling order. And I think it was footnote  
2 28 was part of that explanation.

3 With the staff's schedule changing and the  
4 FEIS coming out as the last item before the  
5 evidentiary hearing, it appears to me -- and I've  
6 talked about this with my colleagues here -- that we  
7 may have a train wreck or a tentative train wreck  
8 developing because -- let's just put it this way. If  
9 the FEIS comes out on July 21st, 2011, the initial  
10 statements of testimony and exhibits and positions are  
11 due 45 days thereafter, September 5th.

12 If the staff file a motion for summary  
13 disposition based upon the FEIS, then the intervenor's  
14 answers are due almost the same date, the intervenor's  
15 answers to the motion for summary disposition are due  
16 almost the same date, as their initial submissions of  
17 testimony are due. This would create difficulty and  
18 havoc, I'm afraid, in the intervenor's community  
19 unless they have a large amount of resources.

20 It would also impose a situation which we  
21 are trying to avoid, which is having motions for  
22 summary disposition come in so late in the game that  
23 they duplicate the filings that are going to be needed  
24 for the actual hearing itself. And so it doubles up  
25 the reading that the Board does. And they're

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1 identical. They're duplicative almost.

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

7 Another option is to establish a mechanism  
8 something like the Areva case, where motions for  
9 summary disposition are screened by the Board before  
10 the answer is required.

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

19 Does everyone understand that?

20 MS. CAMPBELL: Yes, Your Honor.

21 MR. ROACH: Yes.

22 JUDGE BARATTA: Mr. O'Neill, you're okay  
23 with that?

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

25 CHAIRMAN KARLIN: Okay. So if you could

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1 give us your input on that by next Friday? Maybe  
2 let's say keep it to a minimum of five pages. I mean,  
3 I don't think that -- maximum. I'm sorry. Maximum of  
4 five pages. Maximum of five pages. And just share  
5 what your thoughts are.

6 And if you want to confer amongst  
7 yourselves and come up with some joint ideas, that is  
8 great. We would encourage that. We probably would  
9 cut you some slack on the page numbers if you actually  
10 have something joint to file.

11 But keep in mind it doesn't just affect  
12 the parties. It affects this Board also because this  
13 is an L proceeding. And in an L proceeding, as you  
14 know, what happens is the parties file a tremendous  
15 amount of material in the weeks preceding the  
16 evidentiary hearing.

17 And then the Board reads that material.  
18 And then the Board based upon its reading of those  
19 materials identifies who needs to show up at the  
20 evidentiary hearing and what questions we're going to  
21 have.

22 So the Board has a lot of work to do in  
23 the run-up to the evidentiary hearing. That's fine.  
24 We're fine with that. And that is what we are here.  
25 But, by the same token, sometimes a motion for summary

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1 disposition at that juncture is just not very  
2 productive in terms of either our time or the parties'  
3 time. And so please take a look at that and see if  
4 you think there is a problem or a concern.

5 We welcome your submissions. You may say,  
6 "It's not a problem. Leave it the way it is." You  
7 may say, "Change it in some way." And so we're hoping  
8 you can give us your thoughts on it.

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

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

19 MR. O'NEILL: It really depends. I mean,  
20 we have thought of lots of different scenarios  
21 depending on what happens. I mean, you know,  
22 environmental contentions depend on -- this is on the  
23 staff's document.

24 Once we see the draft EIS, it may be  
25 appropriate at that time to file a motion for summary

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1 disposition, although the staff has not been  
2 comfortable answering and taking positions on  
3 environmental contentions until later in the process.

4 I would have the staff consider whether or  
5 not once they at least respond to public comments,  
6 they have essentially established their position,  
7 first, in the draft EIS; and, then, secondly, in  
8 responding to any comments.

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

13 CHAIRMAN KARLIN: Right.

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

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

24 And maybe other contentions come in later  
25 -- I don't know -- but are proposed, in any event.

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1 But at this point, there is a contention,  
2 environmental contention, out there.

3 I would assume the draft EIS is in the  
4 works as we speak.

5 MS. OLSON: Your Honor, there are two  
6 environmental contentions out there.

7 CHAIRMAN KARLIN: Yes. I'm sorry. I'm  
8 sorry. Quite right. There is a low-level waste one  
9 as well. And the draft EIS is in the works. And if,  
10 indeed, the draft EIS cures or allegedly cures some of  
11 the alleged defects that are reflected in those  
12 contentions, then, as you know, the parties would be  
13 obliged to file any motion for summary disposition  
14 based thereon within 20 days of the draft EIS.

15 And so that would be a juncture where a  
16 motion for summary disposition might come in because,  
17 finally, I ask if the only motion for summary  
18 disposition could be based upon some delta between the  
19 draft and the final, some new information, as it were.

20 So okay. Think about that. And I  
21 appreciate your answer, your thoughts on that, Mr.  
22 O'Neill. Other than that, thank you, Judge Murphy.  
23 That was a good point to raise.

24 Okay. With that, I think we will adjourn  
25 the call. I appreciate your participating. It wasn't

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1 very long. And we probably again, if nothing else  
2 comes along, in a six-to-nine-month window will have  
3 another conference call, just to manage the case and  
4 stay on top of anything that's occurring.

5 So the action items -- and we are not  
6 going to issue an order on this, but by next Friday,  
7 please submit a maximum page-page submittal from each  
8 of you on your thoughts with regard to the train wreck  
9 problem I just described; and, two, your blackout  
10 dates for December of 2011 and January of 2012.

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

13 (No response.)

14 CHAIRMAN KARLIN: All right. Thank you.  
15 We stand adjourned.

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

18  
19  
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25

CERTIFICATE

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

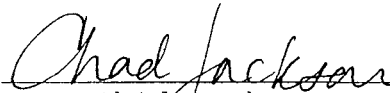
Name of Proceeding: Pre-Hearing Conference

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 original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

  
Chad Jackson  
Official Reporter  
Neal R. Gross & Co., Inc.