

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

April 7, 2010

ORDER

(Revising Deadline for Motions for Summary Disposition of Environmental Matters)

On March 16, 2010, the Board held a prehearing conference with Progress Energy Florida, Inc. (PEF), the NRC Staff, and the Intervenors (Nuclear Information and Resource Service, the Ecology Party of Florida and the Green Party of Florida) to discuss the status of the proceeding. During the conference call, the Board identified a scheduling difficulty caused by the fact that there is likely to be a ten-month delay in the Staff's issuance of the Final Environmental Impact Statement (FEIS).¹ This delay places the FEIS directly on the critical path to the evidentiary hearing and creates conflict between the date for the filing of initial submissions of testimony and exhibits for the hearing and the ultimate deadline for filing dispositive motions on environmental contentions.² In light of this conflict, the Board requested

¹ At the outset of this proceeding, the Staff anticipated issuing the FEIS in September of 2010. Letter from Sara Kirkwood, Counsel for NRC Staff (July 28, 2009). However, this date has since been delayed to July of 2011. [NRC Staff's] Sixth Status Report (Mar. 3, 2010).

² Tr. at 482-84. In the Initial Scheduling Order (LBP-09-22, 70 NRC __ (slip op.) (Aug. 27, 2009) (ISO)), the Board established the deadline for filing dispositive motions on environmental contentions no later than twenty (20) days after the Staff publishes the FEIS. 70 NRC at __ (slip op. at 15). As a result of the ten-month delay in issuing the FEIS, the ultimate deadline for filing dispositive motions and answers will occur at the same time as the submission of initial

that the parties submit proposals to deal with this problem. Tr. at 484. The Board also asked the parties to indicate their availability for an evidentiary hearing during the period of December 2011 and January 2012. Tr. at 484-85. Each party filed its responses to these questions on March 26, 2010.³

Based on these submissions and the Board's assessment as to the best method for managing this proceeding as fairly, efficiently, and expeditiously as possible, the Board revises the ISO as follows:

1. The ultimate deadline for filing dispositive motions on environmental contentions specified in Section II.H.5 of the ISO is now March 17, 2011.⁴
 2. The ultimate deadline for filing all other dispositive motions remains, as specified in Section II.H.5, as twenty days after the NRC Staff publishes the Advanced Final Safety Evaluation Report (AFSER).
 3. If, after either of the foregoing deadlines, a party believes that compelling circumstances exist that warrant the filing of a late dispositive motion, then that party
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statements, testimony and exhibits for the evidentiary hearing. This unnecessarily places a significant burden on the parties and the Board when their time would be better spent preparing for the Subpart L evidentiary hearing.

³ NRC Staff Response to Board Scheduling Questions in the Matter of Levy County Nuclear Site, Units 1 & 2 (Mar. 26, 2010) (Staff Response); Response of the Ecology Party of Florida, the Green Party of Florida, and Nuclear Information and Resource Service to Judge Karlin's Request for Information (Mar. 26, 2010); [PEF's] Comments on Schedule for Proceeding (Mar. 26, 2010) (PEF Response).

⁴ The NRC Staff suggested that the ultimate deadline for filing of dispositive motions on environmental contentions be after the close of public comments on the Draft Environmental Impact Statement (DEIS). Staff Response at 2. PEF suggested a slightly later date - 20 days after NRC Staff's responses to public comments on the DEIS. PEF Response at 5. Under the Staff's current schedule, it expects to issue its responses to public comments on the DEIS on February 25, 2011. See <http://www.nrc.gov/reactors/new-reactors/col/levy/review-schedule.html>. Twenty days thereafter is March 17, 2011.

shall first file a motion for leave to file a late dispositive motion. The motion for leave shall identify the compelling circumstances, shall show that any such late-filed dispositive motion will not interfere with the work of the other parties and the Board in preparing for the evidentiary hearing, and shall be no longer than five (5) pages. Answers to the motion for leave (but not the dispositive motion itself) shall be filed within seven (7) days of service thereof. If the Board grants the motion for leave, then, unless otherwise specified by the Board, the late dispositive motion shall be filed within seven (7) days of the Board's ruling and the answers to the late dispositive motion shall be filed within twenty-one (21) days after the Board's ruling.⁵

4. All other deadlines specified in the ISO remain applicable. For example, regardless of the ultimate deadlines specified above, a dispositive motion must also be filed promptly, i.e., within twenty (20) days after the occurrence or circumstance from which it arises. See ISO Section II.H.2. The ultimate deadlines do not operate to extend or excuse compliance with the promptness deadline.

5. Section II.D of the ISO is amended to require the Staff to include in its Monthly Status Report its best estimate of the date it expects to issue its response to public comments on the DEIS.

⁵ This provision is consistent with, but acts in lieu of, footnote 30 at page 15 of the ISO.

In addition, based on the input from the parties as to their availability during the period of December 2011 and January 2012, the Board instructs the parties and the NRC Staff to hold the time period of January 16-27, 2012 open for the conduct of the evidentiary hearing.⁶

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 7, 2010

⁶ We do not expect the evidentiary hearing to consume all of the time period of January 16-27, 2012. Nor are we scheduling the evidentiary hearing for that time period. Rather, we are merely instructing the parties and the Staff to hold that time period open. If there are further delays in the issuance of the FEIS or FSER, then the evidentiary hearing will need to be held during a different time period

⁷ 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) the Intervenors, 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 (REVISING DEADLINE FOR MOTIONS FOR SUMMARY DISPOSITION OF ENVIRONMENTAL MATTERS) 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 (REVISING DEADLINE FOR MOTIONS FOR SUMMARY DISPOSITION OF
 ENVIRONMENTAL MATTERS)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
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