

April 14, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)		
	)	Docket Nos.	52-029-COL
Progress Energy Florida, Inc.	)		52-030-COL
	)		
(Combined License Application for	)		
Levy County Nuclear Plant, Units 1 and 2)	)	ASLBP No.	09-879-04-COL

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND DISMISSAL OF CONTENTION 8**

Pursuant to 10 C.F.R. § 2.338, Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, “Joint Intervenors”) and Progress Energy Florida, Inc. (“Progress”) (collectively, the “Parties”) hereby move this Atomic Safety and Licensing Board (the “Board”) to approve a settlement of Contention 8. Based on this settlement, the Parties seek dismissal of this Contention. Counsel to Progress has discussed the settlement of Contention 8 with NRC Staff counsel and the Staff does not object to the settlement.

On July 8, 2009, the Board admitted three contentions submitted by the Joint Intervenors, including Contention 8. As admitted, Contention 8 alleged that the COLA Final Safety Analysis Report omitted an analysis of safety implications if Class B, C, and Greater-than-Class-C (“GTCC”) Low Level Radioactive Waste (“LLRW”) generated at the Levy County Nuclear Plant (“Levy”) were not shipped offsite within two years. Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 N.R.C. \_\_\_, slip op. at 75 (2009). On January 7, 2010, the Nuclear Regulatory Commission (“Commission”) further narrowed Contention 8 to discuss compliance with the relevant substantive radiation protection requirements in Part 20 and to exclude the impacts of GTCC LLRW.

On December 4, 2009, Progress submitted responses to NRC RAI Nos. 11.04-1 and 11.04-2 (“RAI Responses”). These responses, attached hereto as Attachment A,<sup>1</sup> provide analysis of compliance with 10 C.F.R. Part 20 in the event that Progress will have to manage Class B and C LLRW at Levy for more than two years.

On April 6, 2010, the Parties conferred regarding the status of Contention 8 in light of the RAI Responses. Joint Intervenors have agreed to withdraw Contention 8, provided that Progress will not raise an argument as to the timeliness of any contention submitted by Joint Intervenors within thirty (30) days of the date of this Joint Motion that challenges the adequacy of the RAI Responses. A settlement agreement, attached hereto as Attachment B in accordance with 10 C.F.R. § 2.338(g), sets forth this understanding.

Accordingly, the Parties request that the Board approve this settlement and dismiss Contention 8. Dismissal of this Contention is in the public interest because Progress has taken actions to address the Joint Intervenors’ Contention, and because the Commission encourages settlement of contested issues in licensing proceedings. 10 C.F.R. § 2.338. As required by 10 C.F.R. § 2.338(g), a proposed consent order is provided as Attachment C.

#### **CERTIFICATION**

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues. I certify that after this consultation, the representative of the Joint Intervenors has authorized me to file this Joint Motion on their behalf, and the NRC Staff does not object to this Joint Motion.

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<sup>1</sup> Attachment A was included in the supplemental disclosures that Progress made to the Parties on January 21, 2010.

Respectfully Submitted,

/Signed electronically by John H. O'Neill, Jr./

John H. O'Neill, Jr.

Stefanie Nelson George

PILLSBURY WINTHROP SHAW PITTMAN LLP

2300 N Street, NW

Washington, DC 20037-1128

Tel. (202) 663-8148

Counsel for Progress Energy Florida, Inc.

Dated: April 14, 2010

Attachment A  
Progress letter to NRC dated Dec. 4, 2009



Serial: NPD-NRC-2009-241  
December 4, 2009

10CFR52.79

U.S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D.C. 20555-0001

**LEVY NUCLEAR PLANT, UNITS 1 AND 2  
DOCKET NOS. 52-029 AND 52-030  
RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION LETTER NO. 073 RELATED TO  
SOLID WASTE MANAGEMENT SYSTEM**

Reference: Letter from Donald Habib (NRC) to Garry Miller (PEF), dated November 4, 2009,  
"Request for Additional Information Letter No. 073 Related to SRP Section 11.4 for  
the Levy County Nuclear Plant, Units 1 and 2 Combined License Application"

Ladies and Gentlemen:

Progress Energy Florida, Inc. (PEF) hereby submits our response to the Nuclear Regulatory Commission's (NRC) request for additional information provided in the referenced letter.

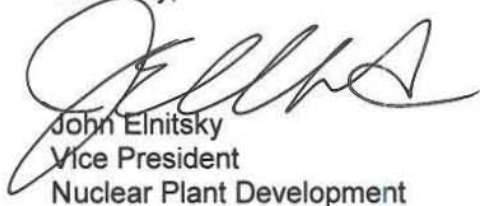
A response to the NRC request is addressed in the enclosure. The enclosure also identifies changes that will be made in a future revision of the Levy Nuclear Plant Units 1 and 2 application.

If you have any further questions, or need additional information, please contact Bob Kitchen at (919) 546-6992, or me at (727) 820-4481.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2009.

Sincerely,



John Elnitsky  
Vice President  
Nuclear Plant Development

Enclosure

cc : U.S. NRC Region II, Regional Administrator  
Mr. Brian C. Anderson, U.S. NRC Project Manager

**Levy Nuclear Plant Units 1 and 2  
Response to NRC Request for Additional Information Letter No. 073 Related to  
SRP Section 11.4 for the Combined License Application, dated November 4, 2009**

<u>NRC RAI #</u>	<u>Progress Energy RAI #</u>	<u>Progress Energy Response</u>
11.04 -1	L-0678	Response enclosed – see following pages
11.04 -2	L-0679	Response enclosed – see following pages

**NRC Letter No.:** LNP-RAI-LTR-073

**NRC Letter Date:** November 4, 2009

**NRC Review of Final Safety Analysis Report**

**NRC RAI NUMBER:** 11.04-1

Text of NRC RAI:

In Standard COL 11.4-1, the applicant states that “no additional onsite radwaste storage is required beyond that described in the DCD.” Please explain why this statement is included or remove it.

**PGN RAI ID #:** L-0678

**PGN Response to NRC RAI:**

The referenced statement is provided to address the portion of the COL information item in DCD Subsection 11.4.6 that states “In the event additional onsite storage facilities are a part of Combined License plans, this program will include a discussion of conformance to Generic Letter GL-81-038” and the statement in Regulatory Guide 1.206 page C.III.1-137 “In the event that additional onsite storage facilities are part of COL plans, include a discussion of conformance to GL-81-038. Supplemental guidance is provided in SECY-94-198.” The statement is intended to confirm that additional onsite storage facilities are not expected to be needed for LNP 1 & 2. Accordingly, the statement establishes that no discussion of permanent on-site storage facilities is necessary in the COL.

The statement in Standard COL 11.4-1 also clarifies that although the AP1000 design has provisions for the temporary storage of radwaste prior to shipment for disposal, such waste is normally promptly disposed of offsite at licensed processing and disposal facilities. In the event that an offsite facility is not available to accept Class B and C waste, at least two years of storage is available within the facilities described in the DCD, considering routine operations and anticipated operational occurrences. In the event that an offsite facility is not available to accept Class B and C waste, a waste minimization plan will also be implemented. This plan will consider strategies to reduce generation of Class B and C waste, including reducing the in-service run length of resin beds, as well as resin selection, short-loading, and point-of-generation segregation techniques. Implementation of these techniques could substantially extend the capacity of the Class B and C storage within the facilities identified in the DCD. If additional storage capacity for Class B and C waste is required, further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A; therefore, the design does not provide for the permanent onsite storage of radwaste. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

As discussed above, LNP 1 & 2 plans to ship all processed or temporarily stored radwaste offsite for disposal; therefore, there is no anticipated need for additional onsite radwaste storage beyond the temporary storage described in the DCD. The referenced statement reflects the underlying analyses of radioactive sources and dose assessments, and assesses

the radiological impact of normal operation with conservative, bounding analyses. Progress Energy understands that LNP 1 & 2 will be licensed to operate within that licensing basis, which means that the accumulation of low-level radioactive waste in excess of the dose assessments is hypothetical at this time. To the extent that additional storage could be needed sometime in the future, the existing regulatory framework as described in NRC Regulatory Issue Summary 2008-32, Interim Low-Level Radioactive Waste Storage at Reactor Sites would allow Progress Energy to conduct written safety analyses under 10 C.F.R. § 50.59. If the additional storage does not satisfy 10 C.F.R. § 50.59, a license amendment would be required.

**Associated LNP COL Application Revisions:**

The following change will be made to the LNP FSAR in a future revision:

COLA Part 2, FSAR Chapter 11, Subsection 11.4.6 will be revised to add two new paragraphs at the end of STD COL 11.4-1:

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Add the following at the end of STD COL 11.4-1 :

All packaged and stored radwaste will be shipped to offsite disposal/storage facilities and temporary storage of radwaste is only provided until routine offsite shipping can be performed. Accordingly, there is no expected need for permanent on-site storage facilities at LNP 1 & 2.

If additional storage capacity for Class B and C waste is required, further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A. To the extent that additional storage could be needed sometime in the future, the existing regulatory framework would allow Progress Energy to conduct written safety analyses under 10 C.F.R. § 50.59. If the additional storage does not satisfy 10 C.F.R. § 50.59, a license amendment would be required.

**Attachments/Enclosures:**

None.



**NRC Letter No.:** LNP-RAI-LTR-073

**NRC Letter Date:** November 4, 2009

**NRC Review of Final Safety Analysis Report**

**NRC RAI NUMBER:** 11.04-2

Text of NRC RAI:

In Section 11.4 of NUREG-1793, the staff states that if a need for onsite storage of low-level waste has been identified beyond that provided in AP1000 Standard Design because of unavailability of offsite storage, the applicant should submit the details of any proposed onsite storage facility to the NRC. Please provide any arrangements for offsite storage for low-level wastes or submit plans for onsite storage.

**PGN RAI ID #:** L-0679

**PGN Response to NRC RAI:**

Progress Energy currently employs agreements with offsite facilities for the disposal of radwaste from its operating nuclear plants. It is expected that these same or additional offsite facilities (current or future) would be utilized for radwaste from LNP Units 1 & 2. Currently, facilities are available in Texas and Utah for the disposal / storage of radwaste from LNP 1 & 2. LNP Units 1 & 2 are not scheduled to load fuel and begin operation for several years. Because the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires that disposal capacity be available for all types of LLRW generated by Atomic Energy Act licensees, Progress Energy has confidence that disposal facilities will be available that would accept the Class A, B, and C waste generated by these plants when needed. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

In the event that off-site shipping is disrupted or facilities are not available to accept radwaste after LNP Units 1 & 2 become operational, as described in DCD Section 11.4.2.1 paragraph ten, temporary storage capability on-site is available for greater than two years at the expected rate of radwaste generation and greater than one year at the maximum rate of radwaste generation. During this period, the implementation of additional waste minimization strategies could extend the duration of temporary radwaste storage capability. The waste minimization strategy would include techniques to reduce generation of Class B and C waste such as reducing the in-service run length of resin beds, as well as resin selection, short loading, and point-of-generation segregation methods. If additional temporary radwaste storage is eventually needed, then on-site facilities could be constructed utilizing the design guidance provided in NUREG-0800, Standard Review Plan Chapter 11 Radioactive Waste Management Appendix 11.4-A, Design Guidance for Temporary Storage of Low-Level Radioactive Waste.

LNP Units 1 & 2 plans to ship all packaged and stored radwaste to offsite disposal or storage facilities. In the event disposal capacity is disrupted, Progress Energy would only temporarily store radwaste and would use off-site storage, if necessary, until routine disposal could be resumed.

**Associated LNP COL Application Revisions:**

The following change will be made to the LNP FSAR in a future revision:

COLA Part 2, FSAR Chapter 11, Subsection 11.4.2.4 will be revised to add a new subsection with the LMA of STD COL 11.4-2 to read:

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Add the following after DCD Subsection 11.4.2.4.2:

**11.4.2.4.3 Temporary Storage of Low-Level Radioactive Waste**

In the event that off-site shipping is disrupted or facilities are not available to accept radwaste when LNP Units 1 & 2 become operational, as described in DCD Section 11.4.2.1 paragraph ten, temporary storage capability on-site is available for greater than two years at the expected rate of radwaste generation and greater than one year at the maximum rate of radwaste generation. During this period, the implementation of additional waste minimization strategies could extend the duration of temporary radwaste storage capability. Since there are no facilities currently licensed by the NRC for disposal of Greater Than Class C (GTCC) LLRW, storage of GTCC would be similar to the methodology used for storage of spent fuel.

If additional temporary radwaste storage is eventually required, then on-site facilities could be constructed utilizing the design guidance provided in NUREG-0800, Standard Review Plan Chapter 11 Radioactive Waste Management Appendix 11.4-A, Design Guidance for Temporary Storage of Low-Level Radioactive Waste.

**Attachments/Enclosures:**

None.

# Attachment B

## **SETTLEMENT AGREEMENT AMONG NUCLEAR INFORMATION AND RESOURCE SERVICE, THE ECOLOGY PARTY OF FLORIDA, THE GREEN PARTY OF FLORIDA AND PROGRESS ENERGY FLORIDA, INC.**

This Settlement Agreement is made and entered into as of April 14, 2010, by and among Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, "Joint Intervenors") and Progress Energy Florida, Inc. ("Progress"), hereinafter referred to collectively as "Parties."

WHEREAS, Progress submitted a Combined Construction and Operating License ("COL") Application, dated July 28, 2008, to the U.S. Nuclear Regulatory Commission ("NRC"), seeking a license to construct and operate Levy County Nuclear Plant, Units 1 and 2 ("Levy");

WHEREAS, on February 6, 2009, the Joint Intervenors petitioned to intervene as parties in the NRC proceeding regarding the Levy COL, and raised a contention alleging omission of an analysis of safety implications if Class B, C, and Greater-than-Class-C ("GTCC") Low Level Radioactive Waste ("LLRW") generated Levy are not shipped offsite within two years ("Contention 8");

WHEREAS, by Memorandum and Order dated July 8, 2009, the Atomic Safety and Licensing Board (the "Board") admitted Joint Intervenors as parties to the COL proceeding and admitted, as limited and reworded by the Board, Contention 8;

WHEREAS, by Memorandum and Order dated January 7, 2010, the NRC narrowed the scope of Contention 8 to discuss compliance with the relevant substantive radiation protection requirements in Part 20 and to exclude the impacts of GTCC LLRW;

WHEREAS, on December 4, 2009, Progress submitted responses to NRC RAI Nos. 11.04-1 and 11.04-2 ("RAI Responses"), providing analysis of compliance with 10 C.F.R. Part 20 in the event that Progress will have to manage Class B and C LLRW at Levy for more than two years;

WHEREAS, the Parties desire to resolve and settle Contention 8;

NOW, THEREFORE, in consideration of the premises and mutual promises herein, the Parties agree as follows:

1. Joint Intervenors consent to the dismissal of Contention 8, and agree to take such other actions as may be reasonably necessary to obtain its dismissal.
2. The Parties agree to file a joint motion seeking a Consent Order from the Board approving this Settlement Agreement and dismissing Contention 8 ("Joint Motion").
3. Progress will not raise an argument as to the timeliness of any contention submitted by Joint Intervenors within thirty (30) days of the date of the Joint Motion that challenges the adequacy of the RAI Responses.
4. With regard to this Settlement Agreement, the Parties expressly waive any and all further procedural steps before the Board or any right to challenge or contest the validity of any order entered by that Board in accordance with this Settlement. The Parties also expressly waive all rights to seek judicial

review or otherwise to contest the validity of any order entered by the Board, so long as such order is fully consistent with each provision of this Settlement Agreement.

5. The Parties agree that an order entered by the Board in accordance with this Settlement Agreement will have the same force and effect as an order entered after a full hearing.

6. The Parties acknowledge this Settlement Agreement resolves the matters identified in this Settlement Agreement that are required to be adjudicated.

7. This Settlement Agreement shall be effective upon the last signature dated below. In the event that the Board disapproves this Settlement Agreement, it shall be null and void.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be signed by their respective representatives on the dates indicated below.


FOR PROGRESS ENERGY FLORIDA, INC.

By:   
John H. O'Neill, Jr.

Date

04/14/2010

FOR THE JOINT INTERVENORS

By:   
Mary Olson

Date

04/14/2010

# ATTACHMENT C: PROPOSED CONSENT ORDER

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 Nos. 52-029-COL, 52-030-COL

ASLBP No. 09-879-04-COL-BD01

April \_\_, 2010

## **ORDER**

(Approving Settlement and Dismissal of Contention 8)

On April 14, 2010, Nuclear Information and Resource Service, the Ecology Party of Florida, the Green Party of Florida, and Progress Energy Florida, Inc. (collectively, the "Parties") moved for an order approving settlement and dismissal of Contention 8. In accordance with 10 C.F.R. § 2.338(g), the Parties forwarded the settlement agreement and proposed order to this Board.

Consistent with Commission policy to encourage resolution of contested issues in licensing proceedings through settlement, we find dismissal in the public interest. Pursuant to our authority under 10 C.F.R. § 2.338(i), we grant the Joint Motion and dismiss Contention 8.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

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Dr. Anthony J. Baratta  
ADMINISTRATIVE JUDGE

---

Dr. William M. Murphy  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April \_\_, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)		
	)	Docket Nos.	52-029-COL
Progress Energy Florida, Inc.	)		52-030-COL
	)		
(Combined License Application for	)		
Levy County Nuclear Plant, Units 1 and 2)	)	ASLBP No.	09-879-04-COL

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Motion for Approval of Settlement and Dismissal of Contention 8, dated April 14, 2010, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding this 14th day of April 2010.

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Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

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NIRS Southeast Regional Coordinator  
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Party of Florida  
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Cara Campbell, Chair  
Gary Hecker  
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/Signed electronically by John H. O'Neill, Jr./  
John H. O'Neill, Jr.