

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 21, 2010

ORDER

(Approving Settlement and Dismissal of Contention 8)

On April 14, 2010, Progress Energy Florida, Inc. and the Intervenors (Nuclear Information and Resource Service, the Ecology Party of Florida and the Green Party of Florida) (collectively, the Parties) filed a motion requesting that the Board approve a proposed settlement of Contention 8.<sup>1</sup> The Joint Motion states that Progress has provided information that cures the omission in Progress's Application and that Intervenors agree Contention 8 should be dismissed.<sup>2</sup> The Board finds that the proposed settlement agreement, a copy of which is attached hereto as Attachment A, is in the public interest and in compliance with 10 C.F.R. § 2.338(i) and grants the Parties' motion.

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<sup>1</sup> Joint Motion for Approval of Settlement and Dismissal of Contention 8 (Apr. 14, 2010) (Joint Motion). Contention 8 states, "Progress Energy Florida's (PEF's) application is inadequate because the Safety Analysis Report assumes that the class B, C, and greater than C low-level radioactive waste (LLW) generated by proposed Levy Units 1 and 2 will be promptly (e.g., within two years) shipped offsite and fails to address compliance with Part 20 and Part 50 Appendix I (ALARA) in the event that PEF will need to manage such LLW on the Levy site for a more extended period of time." Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 & 2), LBP-09-10, 70 NRC \_\_, \_\_ (slip op. at 75) (July 8, 2009).

<sup>2</sup> Joint Motion at 2.

The Intervenors will have thirty (30) days from the date of the Joint Motion to file contentions that challenge the adequacy of the information Progress provided to cure the omission discussed in Contention 8.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>3</sup>

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 21, 2010

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<sup>3</sup> 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) Nuclear Information and Resource Service, The Green Party of Florida and The Ecology Party of Florida; and (3) NRC Staff.

# Attachment A

## **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.

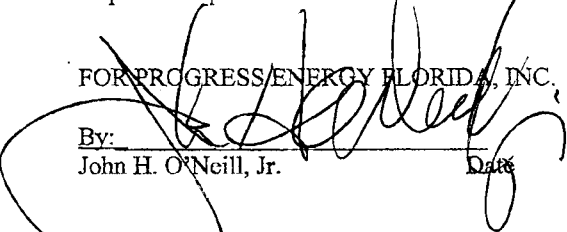
5. The Parties agree that an order entered by the Board in accordance with this Settlement Agreement will have the same force and effect as an order entered after a full hearing.

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.

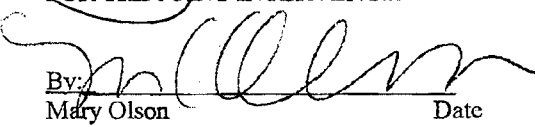
FOR PROGRESS ENERGY FLORIDA, INC.

By:   
John H. O'Neill, Jr.

Date

04/14/2010

FOR THE JOINT INTERVENORS

By:   
Mary Olson

Date

04/14/2010

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 (APPROVING SETTLEMENT AND DISMISSAL OF CONTENTION 8) 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 (APPROVING SETTLEMENT AND DISMISSAL OF CONTENTION 8)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 21<sup>st</sup> day of April 2010