

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

October 15, 2010

NOTICE

(Scheduling Oral Argument and Testimony)

On September 27, 2010, the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, Joint Intervenors) moved to compel Progress Energy Florida, Inc. (PEF) "to produce the revised groundwater model . . . and any other water-related models referred to in the DEIS¹ and/or relied upon by the NRC in drawing their conclusions regarding groundwater use."² The motion was filed pursuant to 10 C.F.R. § 2.336. The purpose of this notice is to inform the parties that the Board will hear oral argument on this motion commencing at 9:00 AM EST on November 17, 2010. The oral

¹ U.S. Nuclear Regulatory Commission, Office of New Reactors, Draft Environmental Impact Statement for Combined Licenses (COLs) for Levy Nuclear Plant Units 1 and 2, Draft Report for Comment, NUREG-1941, Vol. 1 (Aug. 2010) (DEIS).

² Motion for Order Compelling Discovery of PEF Groundwater Model Digital Files (Sept. 27, 2010) at 1 (Motion).

argument will be held in the Atomic Safety and Licensing Board Panel Hearing Room, Room T-3B45, located on the third floor of the Two White Flint North Building, 11545 Rockville Pike, in Rockville, Maryland.

The oral argument shall be presented by one counsel or pro se representative per party. Each counsel or pro se representative shall appear in person. He or she shall be prepared to address all legal and factual assertions relevant to the motion, including but not limited to (1) the precise nature of what the Joint Intervenors are seeking,³ (2) how PEF and/or its contractors could have used the groundwater model or relevant sub-model, calibrated it, and/or revised it without having, at any time, possession, custody, or control of it,⁴ (3) whether the DEIS relies on that model or sub-model, (4) whether and how the revised model or sub-model can be obtained from public sources, (5) whether the model and/or sub-model (and the files needed in order to operate and/or to double-check the validity of or PEF's groundwater conclusions derived from the model and/or sub-model) are proprietary, (6) if proprietary, how PEF and/or the NRC Staff were able to access the models and associated computer codes (e.g., via a commercial license or agreement), (7) what if any calculation notes or similar documentation exist describing the

³ For example, the Joint Intervenors assert that the production should include "all water-related computer models, input files and reports, parameters, input data, boundary conditions, assumptions, and all iterations and results, in a model-ready digital format. In short, . . . everything necessary for evaluation of any water model PEF has devised and upon which NRC has relied." Motion at 1. Joint Intervenors should be prepared to address whether this includes the SWFWMD- DWRM2 model, DEIS at 2-25, the "Multi-Layer Unsteady state . . . model," DEIS at 2-26, PEF's submodel of the SWFWMD's DWRM2 regional groundwater flow model, DEIS at 2-28, PEF's recalibrated submodel of SWFWMD's DWRM2 model, DEIS at 2-29, and/or any other models or codes. Given the fact that PEF argues that it would be unduly burdensome and costly to comply with the motion to compel, Progress Answer Opposing Joint Intervenors' Motion to Compel (Oct. 7, 2010) at 3-4, the parties should be prepared to address possible reductions in the scope of the motion that will achieve the necessary disclosures while minimizing such burdens and costs.

⁴ See DEIS at 2-28 to -29.

assumptions used in developing the model, the model itself, the input, the output, and the interpretation of the results, (8) the costs and burdens associated with production and use of the model, sub-model, and necessary files, and (9) the timeliness of the motion.

Each counsel or pro se representative shall be authorized and prepared to discuss the possible resolution of this matter and practical mechanisms for the possible disclosure of the necessary model and associated information.

The Board might need to take testimony on November 17, 2010, to assess and understand the factual allegations contained in the pleadings. Accordingly, each party shall be accompanied by a person or persons competent, knowledgeable, and authorized to testify concerning the factual statements and allegations made in that party's pleadings. In addition, we request that the NRC Staff produce a witness who is competent, knowledgeable, and authorized to testify concerning the DEIS discussion of the topic of groundwater modeling and "model development" found in the DEIS at pages 2-25 through 2-29. Each potential witness shall appear in person unless, in special circumstances, the Board approves an alternative arrangement. Requests for any such alternative arrangement must be e-mailed to our law clerk, Joshua Kirstein (Josh.Kirstein@nrc.gov), no later than November 9, 2010. On that same date, each party shall file a list specifying the name, employer, position, and relevant background, knowledge, or experience of each of the persons it intends to bring, as potential witnesses, to the November 17, 2010, argument.

Prior to November 17, 2010, the Board might issue additional instructions or questions to the parties concerning the issues that should be addressed. In the meantime, we currently estimate that the oral argument and testimony will be completed by 12:00 PM EST.⁵

The public is welcome to attend this oral argument. Persons wishing to attend should arrive in sufficient time to allow for security screening and should bring a government-issued picture identification card (e.g., a driver's license).

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 15, 2010

⁵ The Board does not intend to hear oral argument on November 17, 2010, concerning the other currently pending motions. On that date, however, we may ask the parties to address their availability for a possible oral argument, site visit, and/or oral limited appearance statement session to be held in the vicinity of the proposed facility in January or February 2011.

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 NOTICE (SCHEDULING ORAL ARGUMENT AND TESTIMONY) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-029-COL and 52-030-COL
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 15th day of October 2010