October 28, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PROGRESS ENERGY FLORIDA, INC.	)	
	)	Docket Nos. 52-029 and 52-030
	)	
(Combined License Application for Levy County Nuclear Plant, Units 1 and 2)	)	

NRC STAFF ANSWER TO INTERVENORS' NEW CONTENTION 7A[1]

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), and the Atomic Safety and Licensing Board's (Board) Initial Scheduling Order, *Progress Energy Florida, Inc*. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC __ (slip op. at 8) (Aug. 27, 2009), the NRC staff (Staff) hereby files its Answer to the Nuclear Information and Resource Service, Green Party of Florida, and Ecology Part of Florida's (Joint Intervenors) October 4, 2010, "Motion For Leave to File a New, Timely Contention and Contention 7A: Inadequacy of the Levy DEIS with Respect to the Environmental Impacts of Low-Leve[l] Radioactive Waste" (New Contention 7A). For the reasons discussed below, New Contention 7A complies with the timeliness requirements for new and amended contentions in 10 C.F.R. § 2.309(f)(2). However, New Contention 7A should be dismissed for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

BACKGROUND

On July 28, 2008, Progress Energy Florida, Inc. (PEF, Applicant) filed an application for a combined construction permit and operating license (COL) for two new reactors in Levy

[1] The Staff has filed a corrected version of this Answer because the Staff inadvertently omitted the Certificate of Service in the earlier version.

County, Florida. On February 6, 2009, the Joint Intervenors collectively filed a petition to intervene and several contentions.[2] On July 8, 2009, the Board issued a Memorandum and Order, granting the hearing request and admitting three Contentions. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 104 (2009). The NRC Staff's Draft Environmental Impact Statement For Levy County Units 1 and 2 (DEIS) became publicly available on August 5, 2010, and on August 13, 2010, the notice of availability was published in the *Federal Register*. 75 Fed. Reg. 49539. On August 12, 2010, the Applicant filed a Motion for Summary Disposition of Contention 7 as Moot, because the Staff's issuance of the DEIS addressed the alleged omissions in the Applicant's Environmental Report. Applicant Motion for Summary Disposition of Contention 7. The Joint Intervenors agreed with the Applicant's motion.[3] On September 8, 2010, the Board granted the Applicant's motion for summary disposition of Contention 7, holding that this contention was rendered moot by the issuance of the DEIS. Licensing Board Memorandum and Order (Granting Motion for Summary Disposition of Contention 7 as Moot) at 2 (Sept. 8, 2010) (unpublished). Thereafter, on October 4, 2010, the Joint Intervenors filed New Contention 7A.

DISCUSSION

The Joint Intervenors assert that one new contention based on the Draft Environmental Impact Statement should be admitted in this proceeding. For the reasons set forth below, the Intervenors' New Contention 7A is inadmissible.

I. Legal Standards for Admissibility of New and Amended Contentions

The admissibility of new and amended contentions is governed by 10 C.F.R. § 2.309(f)(2) and 2.309(f)(1).

First, new or amended contentions arising under the National Environmental Policy Act

[2] Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida and Nuclear Information and Resource Service (Feb. 6, 2009).

[3] PEF Motion for Summary Disposition of Contention 7 as Moot (Aug. 12, 2010).

may be filed if there are data or conclusions in the NRC draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents. 10 C.F.R. § 2.309(f)(2). Otherwise, new or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer if, in accordance with 10 C.F.R. § 2.309(f)(2), the contention meets the following requirements:

> (i) The information upon which the amended or new contention is based was not previously available;
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> (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
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> (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i)-(iii).

The 10 C.F.R. § 2.309(f)(2) standard for new or amended contentions addresses two situations. For the first situation, 10 C.F.R. § 2.309(f)(2) states that contentions may be filed on the DEIS where the DEIS differs significantly from the applicant's document, which in this case is the Levy Nuclear Power Plant Units 1 and 2, Combined License Application, Part 3: Environmental Report, Revision 1, October 2009 (Environmental Report or ER). Such new or amended environmental contentions "must be submitted promptly after the NRC's environmental documents are issued." Changes to Adjudicatory Process (Final Rule), 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004). The second situation provides criteria for filing "all other new or amended contentions," making clear that the criteria in 10 C.F.R. § 2.309(f)(2)(i) through (iii) must be satisfied for admission of a contention based on new information. *Id*. If new information arises related to the ER, then under the criteria of 10 C.F.R. § 2.309(f)(2)(i) through (iii), an intervenor must raise this new information in a timely fashion and not wait until the DEIS is issued.

Further, the status of the petitioner is the relevant factor in determining whether

10 C.F.R. § 2.309(f)(2) or 10 C.F.R. § 2.309(c) is applied to determine the admissibility of new, amended, or untimely petitions. A new or amended contention filed by a current party to the proceeding must be reviewed under the requirements of 10 C.F.R. § 2.309(f)(2) rather than the provisions of 10 C.F.R. § 2.309(c). *See Pa'ina Hawaii, LLC* (Material License Application), CLI-10-18, 72 NRC __, (Jul. 8, 2010) (slip op. at 40 n.171).

In either case, the new, amended, or untimely petition must meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1).In accordance with 10 C.F.R. § 2.309(f)(1), an admissible contention must:

> (i) provide a specific statement of the legal or factual issue sought to be raised;
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> (ii) provide a brief explanation of the basis for the contention;
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> (iii) demonstrate that the issue raised is within the scope of the proceeding;
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> (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing;
>
> (vi) . . . provide sufficient information to show that a genuine dispute with the Applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient on a relevant matter as required by law, the identification of such deficiencies and supporting reasons for this belief . . . .

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal quotation omitted). The general contention admissibility

requirements apply to contentions on the DEIS as well. *See*, *e.g.*, *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 808-09 (2005) (applying 10 C.F.R. § 2.309(f) standards to DEIS contentions).

II. The Joint Intervenors' Contention Is Timely

The Staff does not oppose the timeliness of Joint Intervenors' New Contention 7A. The DEIS became publicly available on August 5, 2010, and notice of its availability was published in the *Federal Register* on August 13, 2010 (75 Fed. Reg. 49539). Pursuant to the Licensing Board Memorandum and Order (Granting Motion for Clarification) at 1 (Sept. 3, 2009) (unpublished), Joint Intervenors have sixty days to file contentions on the DEIS after the DEIS first becomes available. New Contention 7A was filed on October 4, 2010. New Contention 7A. Further, the Staff does not oppose the Joint Intervenors' assertion that the contention complies with § 2.309(f)(2) because the Joint Intervenors are submitting New Contention 7A based upon the Staff's analysis DEIS, which differs from the Applicant's analysis in the ER. *Id.* at 3; *see also* Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida and Nuclear Information Resource Service (Feb. 6, 2009).

III. The Joint Intervenors' Contention Is Not Admissible Under § 2.309(f)(1)

The Joint Intervenors proposed Contention 7A reads:

> The US Nuclear Regulatory Commission's (NRC's) Draft Environmental Impact Statement (DEIS) prepared as an initial report to support a Commission ruling on a proposed COL at Progress Energy Florida's (PEF's) Levy County Florida nuclear power reactor site fails to comply with 10 C.F.R. Part 51 and the National Environmental Policy Act because it fails to adequately address, and inappropriately characterizes as SMALL, direct, indirect, and cumulative impacts, onsite and offsite, of generating and managing so-called Low-Level Radioactive Waste (so-called LLRW) from operating the proposed two AP1000 reactors:

New Contention 7A at 3. The Joint Intervenors argue Contention 7A in five subparts, labeled A through E. Each subpart is discussed, in order, below, although the Staff also explains below why the contention is inadmissible when read as a whole. The NRC Staff understands the beginning portion of the contention to be the introductory text, Subparts A-D to be the specific

allegations, and Subpart E to be the consequential allegations. The Staff below looks at Subparts A-D specifically to determine if these sections provide support for the consequential allegations.

A. The Joint Intervenors' Claims in Contention 7A With Respect to Radiological Impacts to Workers Are Inadmissible

> A. Radiological impacts to workers (occupational dose) specifically:
> 1. Impacts resulting from storage of so-called LLRW under the DCD
> 2. Impacts resulting [sic] extended storage of so-called LLRW not covered by the DCD but likely do to the lack of an off-site location for permanent disposition of Levy County so-called LLRW

New Contention 7A at 3. In Subpart A, the Joint Intervenors assert that the DEIS is inadequate because it fails to adequately account for radiological impacts to workers which they allege will result from onsite storage as well as from the lack of a permanent storage location for LLRW generated by the proposed Levy units. To support their position, the Joint Intervenors contend that it is "reasonably foreseeable" that PEF will not be able to ship LLRW off-site and thus, impacts from on-site storage must be included as part of the NRC's NEPA analysis. "[T]he generation of so-called LLRW by the operation of these reactors is a certainty [sic] the full scope of potential impacts that are reasonably foreseeable should be included in the EIS, and NRC Staff fails to include possible outcomes that could be significant." New Contention 7A at 7. The Joint Intervenors additionally argue that the DEIS must include "all future treatment and processing that could add to the routine and accidental radioactive and chemical releases and exposures from the operation of the reactors." In Subpart A, the Joint Intervenors also argue that the NRC Staff must include this information in the DEIS to assure compliance with 10 CFR Part 20 and ALARA. *Id*.

Staff Response:

The proposed contention is inadmissible because it does not meet the requirements of 10 CFR § 2.309(f)(1)(vi).

Although the Joint Intervenors assert that the Staff's analysis in the Levy DEIS is inadequate, they do not take issue with information that is in the Levy DEIS and do not specify which of the Staff's conclusions they believe to be inadequate. For instance, they do not state why the Staff's analysis on page 6-13 inadequately addresses the environmental impacts from PEF's three potential options for handling onsite storage of LLRW. Nor do the Joint Intervenors explain why the Staff was incorrect to conclude that the environmental impacts from constructing and operating additional onsite storage facilities would be small. DEIS 6.1.6, page 6-14. More importantly, the Joint Intervenors have not shown why alleged inadequacies in the DEIS are material omissions such that the Staff should have included them in its analysis. "Our boards do not sit to "flyspeck" environmental documents or to add details or nuances." *System Energy Resources, Inc*. (Grand Gulf Early Site Permit), CLI-05-04, 61 NRC 10, 13 (2005) (*citing Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 71 (2001)). The Staff identified each option for handling onsite storage, described the anticipated impacts, and reached a conclusion regarding the significance of those impacts. The Joint Intervenors have not explained why the alleged inadequacies would have the potential to affect the analyses or the Staff's conclusions.

Further, the Joint Intervenors fail to take issue with the Staff's finding on page 6-14, which states that impacts on environmental resources following the 10 CFR § 50.59 process and PEF's construction and operation of additional LLRW onsite facilities "would be very small." The Joint Intervenors do not challenge the Staff's finding that limitations on radiation doses at the site boundary will be met: "The NRC Staff concludes that doses to members of the public within the NRC and EPA regulations are a small impact." DEIS 6.1.6, page 6-14. Additionally, although the Joint Intervenors argue that onsite storage of LLRW could increase occupational doses and doses to the public, they do not dispute the NRC Staff's statement that "radiation doses continue to be below 25 mrem/yr, the dose limit of 40 CFR Part 190. The NRC Staff concludes that doses to members of the public…are a small impact." *Id*. at 6-14. Again, without

explaining why the alleged inadequacies would have the potential to affect the analyses or the Staff's conclusions, the Joint Intervenors fail to identify a genuine dispute with the DEIS on a material issue of law or fact.

In addition, the Joint Intervenors credit the NRC Staff with acknowledging "in the DEIS (page ++) that [*sic*] extended storage of so-called LLRW on the Levy Site is one of the possible outcomes, however lacking any detail from the applicant about the way in which such extended storage and possible handling would be conducted, the assertion that environmental impacts…will be SMALL…is not credible." New Contention 7A at 5. Nonetheless, the Joint Intervenors provide no basis for asserting that the Staff's analysis is incorrect. Although the Joint Intervenors contend that "the full scope of potential impacts that are reasonably foreseeable should be included in the EIS, and NRC Staff fails to include possible outcomes that could be significant" *id*., the Joint Intervenors have not stated with specificity what impacts they contend are reasonably foreseeable, let alone why those impacts would be "significant" and potentially affect the Staff's conclusions. Under NEPA, the NRC Staff is not required to conduct an analysis of "remote and speculative" impacts or "worst case" scenarios. *Nuclear Fuel Servs. Inc*. (Erwin, Tennessee), LBP-05-8, 61 NRC 202, 208 (2005) (quoting *Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)). The Joint Intervenors have not explained why any potential impacts not already addressed in the DEIS are more than merely speculative. Accordingly, they fail to identify a material dispute with the Staff analysis.

Also, PEF has stated in its response to Staff RAIs that it will follow the 10 CFR § 50.59 process and comply with ALARA principles in 10 CFR Part 20. As the DEIS concludes, compliance with these regulations supports the findings that environmental impacts resulting from onsite storage of LLRW, if necessary, will be small. Section 6.1.6, page 6-14. However, New Contention 7A does not take issue with this Staff rationale, nor does it present any specific disagreement with the DEIS characterization of the potential environmental impacts that may

result from new LLRW onsite storage facilities as small. Section 6.1.6, page 6-14. As such, New Contention 7A is inadmissible. 10 CFR § 2.309(f)(1)(vi).

B. The Joint Intervenors' Claims in Contention 7A With Respect to Soil and Groundwater Contamination Are Inadmissible

> Soil and ground water contamination that is possible from "normal storage" of LLRW:
> 1. Impacts resulting from storage of so-called LLRW under the DCD
> 2. Impacts resulting extended storage of so-called LLRW not covered by the DCD

New Contention 7A at 3.

Staff Response:

Subsection B of the proposed contention is inadmissible because it does not meet the requirements of 10 CFR § 2.309(f)(1)(v) and (vi).

In support of their proposed contention, the Joint Intervenors attack Chapter 11 of Revision 17 of the AP1000 DCD, asserting that "the enumeration of source term in the DCD (Chapter 11) is insufficient." New Contention 7A at 5. This contention is inadmissible as it does not state a genuine dispute with the DEIS.[4] Dr. Resnikoff's Declaration discusses "liquid releases to the environment" that have occurred from "waste processing operations" at the Connecticut Yankee and Vermont Yankee facilities. Resnikoff Declaration, ¶ 4. However, Dr. Resnikoff fails to explain how these facilities are similar to the proposed LNP or why similar releases would be reasonably foreseeable at the Levy site and thus relate to the Joint

[4] Moreover, to the extent that the Joint Intervenors are attacking the analysis of LLRW already provided by the DCD and the associated environmental impacts, this contention is inadmissible as it attacks a pending design certification proceeding. If it were otherwise admissible, this portion of the contention should be held in abeyance, pending an NRC determination on certification of the amendment to the AP1000 (Revision 17). *See Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-08, 69 NRC 317 (2009); *see* also Conduct of New Reactor Licensing Proceedings; Final Policy Statement, 73 Fed. Reg. 20,963, 20,972 (Apr. 17, 2008). However, as explained above, this contention is inadmissible as it does not state a genuine dispute with the DEIS, and thus should not be admitted and held in abeyance.

Intervenors' contention regarding potential environmental impacts.[5] A petitioner must "provide documents or other factual information or expert opinion that set forth the necessary technical analysis to show why the proffered bases support its contention." *Georgia Inst. of Tech.* (Georgia Tech Research Reactor, Atlanta, Georgia), LBP–95–6, 41 NRC 281, 305, *vacated in part and remanded on other grounds,* CLI–95–10, 42 NRC 1, *aff'd in part,* CLI–95–12, 42 NRC 111 (1995). As such, the Declaration does not demonstrate how it provides support for the Joint Intervenors' assertion. 10 CFR. § 2.309(f)(1)(v).

Although the Joint Intervenors assert that the DEIS's analysis is inadequate with respect to potential soil and groundwater contamination from storage of LLRW, they have not shown why this is a material omission such that the Staff should have included it in its analysis. The Staff identified each option for handling onsite storage, described the anticipated impacts, and reached a conclusion regarding the significance of those impacts. The Joint Intervenors have not explained why the alleged inadequacies would have the potential to affect the analyses or the Staff's conclusions. Nor have they demonstrated how, if this information was included, it would change the DEIS conclusions that the environmental impacts would be small. Section 6.1.6, page 6-14. "Our boards do not sit to "flyspeck" environmental documents or to add details or nuances." *System Energy Resources, Inc*. (Grand Gulf Early Site Permit), CLI-05-04, 61 NRC 10, 13 (2005) (*citing Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 71 (2001)). Moreover, contentions must make more than bald and conclusory allegations. *Fansteel, Inc*. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003); *see also USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 597 (2005), *aff'd* CLI-06-10, 63 NRC 451 (2006). Since the Joint Intervenors do not point to a

[5] Furthermore, to the extent the Joint Intervenors intend these examples to assert that the NRC's environmental review must assume that licensee non-compliance with applicable NRC standards regarding processing and storage of LLRW is reasonably foreseeable, the agency does not presume that a licensee will violate agency regulations. *See Northeastern Nuclear Energy Co.* (Millstone Nuclear Power Station), LBP-01-10, 57 NRC 273, 287 (2001); *see also Crow Butte Resources, Inc*. (North Trend Expansion Area), CLI-09-12, 69 NRC 535, 569 n. 155 (June 25, 2009).

specific portion of the DEIS and state why it is inadequate and why such inadequacies are material, the contention is inadmissible. 10 CFR § 2.309(f)(1)(vi).

C. The Joint Intervenors' Claims in Contention 7A With Respect to Impacts from Waste Minimization Practices Are Inadmissible

> Impacts, including (but not limited to) soil and groundwater contamination resulting from practices intended to minimize storage of Class B and Class C so-called LLRW are not analyzed in the DEIS but should be part of any DEIS or Final EIS on the proposed reactors:
> 1. The applicant has invoked, but not described "waste minimization" actions
> 2. NRC Staff have not demanded disclosure or specific plans associated with "minimizing" class B and C waste
> 3. The DEIS is deficient because it does not address environmental impacts that may result from waste minimization activities that will be the direct result of so-called LLRW generation in Levy County FL.

New Contention 7A at 4.

Staff Response:

The proposed contention is inadmissible because it does not meet the requirements of 10 CFR § 2.309(f)(1)(v) and (vi).

The Joint Intervenors argue based on Dr. Resnikoff's Declaration that "there have been incidents of liquids associated with 'Solid' so-called LLRW, including resins that have leaked into the accessible environment. Such events are not reflected in the analysis offered in the DEIS." New Contention 7A at 5. Despite this general claim, the Joint Intervenors do not specify why the NRC Staff's analysis in the DEIS is inadequate. They have not identified the basis for any dispute with the Staff's conclusion that the impacts are small. In DEIS Section 6.1.6, page 6-14, the Staff discusses waste minimization: "The measures to reduce the generation of Class B and Class C wastes described by PEF, such as reducing the service run length of resin beds, could increase the volume of LLW, but would not increase the total curies of radioactive material in the waste." The Joint Intervenors do not address or contradict this statement and thus fail to explain why the contention represents a genuine dispute with the DEIS.[6]

[6] Further, as noted earlier, to the extent that the Joint Intervenors attack the source term as defined in Chapter 11 of the DCD, this contention is inadmissible as it attacks a pending design

In addition, the Joint Intervenors have not stated why PEF's waste management techniques would result in significant environmental impacts. They have identified topics that they assert should be discussed in the DEIS. New Contention 7A at 5. However, they do not explain how analyzing these topics would change the NRC Staff's DEIS conclusions, nor why the conclusions in the DEIS are thus erroneous. Even if there may be mistakes in an EIS, "in an NRC adjudication it is the Intervenors' burden to show their significance and materiality." *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), CLI-05-29, 62 NRC 801, 811 (2005). Here the Joint Intervenors have not explained why the issues they identify are potentially significant, let alone errors in the Staff's analysis.

Also, the Joint Intervenors fail to provide sufficient factual support or expert opinion to support their position. Dr. Resnikoff states in his Declaration that:

> The lack of information about how PEF intends to manage an extended accumulation of LLRW on-site limits the capacity of NRC staff…to project the impacts of such storage. Of particular concern is any waste handling, processing or methods to reduce the amount of class B or C waste that may result in larger liquid or gaseous waste fractions being generated on-site. Such (as yet undisclosed) practices would likely result in environmental impacts that should be reflected in the DEIS.

Resnikoff Declaration, ¶ 6. Neither this opinion nor the contention explains to what methods Dr. Resnikoff is referring, why use of such methods would be reasonably foreseeable, or why the associated impacts would differ in significance from the impacts analyzed by the Staff; correspondingly, it does not state why the Staff's DEIS conclusion, that the environmental impact would be small, is inadequate. Section 6.1.6, page 6-14. Dr. Resnikoff does not dispute any specific information in the DEIS and "an expert opinion that merely states a conclusion (e.g., the application is 'deficient,' 'inadequate,' or 'wrong') without providing a reasoned basis or explanation for that conclusion is inadequate because it deprives the Board

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certification amendment proceeding. If it were otherwise admissible, this portion of the contention should be held in abeyance, pending an NRC determination on certification of the amendment to the AP1000 (Revision 17). *See Shearon Harris*, CLI-09-08, 69 NRC 317; *see also* 73 Fed. Reg. at 20,972. However, as explained above, this contention is inadmissible as it does not state a genuine dispute with the DEIS, and thus should not be admitted and held in abeyance.

of the ability to make the necessary, reflective assessment of the opinion …." *USEC Inc*. (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 472 (2006) (*quoting Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998)). Accordingly, the Joint Intervenors have not provided expert opinions which support their contention and have not identified a genuine dispute with a material aspect of the DEIS. Therefore, the contention is inadmissible. 10 CFR § 2.309(f)(1)(v) and (vi).

D. The Joint Intervenors' Claims in Contention 7A With Respect to Environmental Impacts from Lack of a Waste Management Plan Are Inadmissible

> Environmental impacts such as those arising from the contamination of ground water and soil or other possible impacts that would become clear if there were an explicit plan for waste management may result in significant impact of the proposed project, such as the possibility that all contaminated soil would be required to be exhumed during clean up or decommissioning in the event of a leak.

New Contention 7A at 4.

The Joint Intervenors argue that because there is no "explicit" plan for waste management, this may result in a significant impact such as a leak that may cause soil contamination that will need to be cleaned up or cause the applicant to decommission the reactor. In support of this contention, the Joint Intervenors allege that the DEIS fails to consider waste handling and storage issues. The Joint Intervenors contend that due to this alleged inadequacy in the DEIS, "the assertion that environmental impacts from such undefined activities will be SMALL or that the NRC regulations will necessarily be met is not credible." New Contention at 5. They also assert that because the applicant has not provided a sufficiently-detailed plan for onsite storage, the existing plan cannot show compliance with 10 CFR § 52.79. In turn, the Joint Intervenors assert that this regulatory requirement is also required by NEPA. The Joint Intervenors also reference Dr. Resnikoff's Declaration that there have been liquids "associated with 'Solid' so-called LLRW, including resins that have leaked into

the accessible environment" and this was not included in the Staff's DEIS conclusions. *See* Attachment A; *see also* New Contention 7A at 5.

Staff Response:

The proposed contention is inadmissible because it does not meet the requirements of 10 CFR § 2.309(f)(1)(v) and (vi).

The Joint Intervenors do not take issue with a specific portion of the DEIS, nor do they assert why the DEIS inadequately accounts for environmental impacts of soil and groundwater contamination stemming from the waste management plan. On Page 6-13 of the DEIS, the NRC Staff writes that PEF has three options with respect to storage of LLRW and any environmental impacts from these options would be small. *Id*. at 6-15. The Joint Intervenors do not state why the Staff's analysis is inadequate, nor do they explain why the environmental impacts would be greater than small, as concluded by the Staff. This failure to identify and dispute the Staff's reasoning renders the contention inadmissible.

In addition, the Joint Intervenors reference Dr. Resnikoff's declaration as support for their position that the DEIS is inadequate. However, Dr. Resnikoff's declaration does not support the Intervenors' assertion. For instance, in his declaration, Dr. Resnikoff takes issue with NUREG-1437, stating that significant liquid releases to the environment may occur. Resnikoff Declaration at ¶ 4. However, Dr. Resnikoff does not assert that the DEIS is inadequate on this point and does not reference any portion of the DEIS. *Id.* Dr. Resnikoff also argues that "reactor sites where the liquid fraction of LLRW has been released to the environment…should appear in the PEF DEIS." *Id*. Specifically, his declaration references liquid releases at the Vermont Yankee Nuclear Power Plant: "This additional discussion of experience at reactor sites where the liquid fraction of LLRW has been released to the environment should appear in the PEF DEIS." *Id.* However, Dr. Resnikoff does not explain why liquid releases at Vermont Yankee require that this same information be analyzed in the Levy DEIS. Further, NEPA does not require that an agency's EIS contain every conceivable

speculative and remote scenario. *Nuclear Fuel Serv. Inc*. LBP-05-8, 61 NRC 202, 208 (2005) (*quoting Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)). In addition, to the extent that Dr. Resnikoff asserts that such releases are reasonably foreseeable, the agency does not assume that licensees will violate agency regulations. *See Northeastern Nuclear Energy Co.* (Millstone Nuclear Power Station), LBP-01-10, 57 NRC 273, 287 (2001); *see also Crow Butte Resources, Inc*. (North Trend Expansion Area), CLI-09-12, 69 NRC 535, 569 n. 155 (June 25, 2009).

Dr. Resnikoff's Declaration also argues that "such an environmental analysis should assume that eventually the licensee may be required to exhume the contamination." Resnikoff Declaration, ¶ 4. However, the Declaration again fails to state why such actions are reasonably foreseeable so as to warrant analysis in the DEIS, nor how it would affect or contradict the Staff's analysis. Moreover, NEPA does not require that the EIS discuss remote and speculative scenarios. *Nuclear Fuel Serv, Inc.* LBP-05-8, 61 NRC at 208. Although NEPA requires an agency to take a "hard look" to predict reasonably foreseeable environmental impacts, this review is governed by the "rule of reason" and an agency's EIS is not required to account for every conceivable scenario. *Duke Energy Corp*. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003).

Dr. Resnikoff further asserts that the "lack of information about how PEF intends to manage an extended accumulation of LLRW on-site limits the capacity of NRC staff…to project the impacts of such storage. Of particular concern is any waste handling, processing or methods to reduce the amount of class B or C waste that may result in larger liquid or gaseous waste fractions being generated on-site. Such…practices would likely result in environmental impacts that should be reflected in the DEIS." Resnikoff Declaration, point #6. As previously discussed in Subpart D regarding Joint Intervenors' claims with respect to impacts from waste management practices, Dr. Resnikoff's declaration does not take issue with a specific portion of the DEIS or state why the DEIS is inadequate. Nor does Dr. Resnikoff mention why the Staff's

mention of three options for PEF's storage of LLRW are inadequate. Further, Dr. Resnikoff does not explain why it is reasonably foreseeable that impacts from such waste management practices will occur. As explained above, NEPA does not require agencies to account for every conceivable environmental scenario and an agency's environmental review under NEPA is subject to a rule of reason and need not include all theoretically possible environmental effects arising out of an action. *Duke Energy Corp*. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003). Here Dr. Resnikoff asserts that the handling of Class B and Class C waste could result in ground water and soil contamination. However, mere speculation about possible effects from unspecified processing methods does not demonstrate why an analysis of these actions is required in the DEIS, let alone identify a specific inadequacy in the DEIS. Therefore, because the Joint Intervenors have not provided sufficient factual support or expert opinion for the alleged inadequacy of the DEIS, nor have they explained how these assertions contradict the DEIS's analysis, this contention is inadmissible. 10 CFR § 2.309(f)(1)(v) and (vi).

E. The Joint Intervenors' Claims in Contention 7A With Respect to Environmental Impacts, Impacts on Workers, and Lack of Detailed Waste Mitigation Measures Are Inadmissible

> The lack of a detailed plan from the applicant about storage, management and possible treatment of so-called LLRW beyond the 1 – 2 year storage capacity described in the DCD for the AP1000 has resulted in omissions and inadequacies described above. Therefore the DEIS also failed to adequately identify, and inappropriately characterizes as SMALL:
> 1. Environmental impacts,
> 2. Impacts on workers
> 3. Appropriate mitigation measures

New Contention 7A at 4.

Staff Response:

Subpart E of Contention 7A is a "consequential" contention. Because Subparts A through D of contention 7A are inadmissible, Subpart E is also inadmissible. In none of the other Subparts, nor in Subpart E, have the Joint Intervenors demonstrated a genuine dispute

with the DEIS on a material issue of law or fact. 10 CFR § 2.309(f)(1)(vi). As explained above, the Joint Intervenors either fail to explain why the asserted inadequacies stem from reasonably foreseeable (rather than simply speculative) impacts, or they fail to explain in what way such impacts potentially contradict the Staff's analysis and conclusions in the DEIS. Thus, the Joint Intervenors do not provide support for this consequential portion of Contention 7A. They have never shown why the NRC Staff's characterization of these impacts as small is incorrect. Contentions must do more than make "bare assertions"; instead, they must demonstrate a genuine dispute. *Fansteel, Inc*. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003); *see also USEC Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585, 597 (2005), *aff'd* CLI-06-10, 63 NRC 451 (2006). In addition, a contention that simply alleges a general, bare assertion without providing any tangible information for support does not provide the basis for an admissible contention. *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000). As the Joint Intervenors have failed to demonstrate why additional analysis is required and have not identified the basis for a genuine, material dispute with the analysis in the DEIS, Contention 7A, including Subpart E, is inadmissible.

CONCLUSION

The Joint Intervenors' proposed New Contention 7A should be rejected for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

Respectfully submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
this 28th day of October, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
	)	
PROGRESS ENERGY FLORIDA, INC.	)	Docket Nos. 52-029 and 52-030
	)	
	)	
(Levy County Nuclear Site, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO INTERVENORS' NEW CONTENTION 7A, have been served upon the following persons by Electronic Information Exchange this 28th day of October, 2010:

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