

United States of America
Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Before Administrative Judges:

Alex S. Karlin, Chair
Dr. Anthony J. Baratta
Dr. William M. Murphy

In the Matter of: PROGRESS ENERGY FLORIDA, INC. Combined License Application for Levy County Units 1 & 2	Dockets Numbers 52-029-COL and 52-030-COL November 4, 2010
---	--

INTEVENERS REPLY BRIEF TO ANSWER FROM NRC STAFF TO
PROPOSED NEW CONTENTION 7 A

Green Party of Florida, Ecology Party of Florida and Nuclear Information and Resource Service (Co-Intervenors, or Intervenors) reply to the Answer Brief by the Nuclear Regulatory Commission Counsel for Staff (NRC Staff—10-28-2010) to Intervenor’s October 4 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-Level Radioactive Waste. This reply comes in the above captioned case of Progress Energy Florida’s (PEF’s) proposal to build two nuclear power reactors on a Greenfield site in Levy County in the Nature Coast¹ of Florida.

Intervenors thank the NRC staff for its support of the timely status of the proposed Contention 7A (NRC Staff Answer pg 5). Due to successful negotiation of Parties during the Scheduling Order process, Intervenors won the support for 60 days for timely filing of contentions with regard to the Draft Environmental Impact Statement (DIES) for the proposed reactors at Levy. We further thank NRC Staff for recognition (also pg 5) that there is basis for

¹ The term “Nature Coast” is to some degree a promotional term – however this area features many sites where freshwater flows from the Earth in such quantities to form whole rivers – such as Rainbow Springs, which are the primary “head waters” of the Rainbow River. All rivers in this area flow to the Gulf Coast.

bringing this new contention given differences between the DEIS and the prior Environment Report (ER). We would also like to compliment NRC Staff on its stellar quote on Answer pg 7:

“Our boards do not sit to “flyspeck” environmental documents or to add details or nuances.” (references omitted)

Intervenors agree on all counts and congratulate Staff for finding the opportunity to repeat this great cite on pg 10! So-called “low-level” waste (so-called LLRW) is not trivial and the issues we bring in Contention 7A are not “flyspeck”s. Indeed, it is quite remarkable that a mammalian species has developed practices that create wastes which pose a unique hazard that will persist in large part longer than this Nation has existed, and in part for longer than recorded history.² The responsibility of all Parties to consider the consequences of generating, storing, processing and permanent disposition of this material should be a shared priority in this proceeding.

Indeed, the Board’s admission of Contention 7³ and the support of this action by the Commission⁴ squarely placed the issues on the table – and these were not limited exclusively to storage:

CONTENTION 7: Progress Energy Florida’s (PEF’s) application is inadequate because the Environmental 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 the environmental impacts in the event that PEF will need to **manage** such LLW on the Levy site for a more extended period of time. (Contention 7 as admitted, July 8, 2009, emphasis added)

Intervenors contend in proposed Contention 7A that PEF fails to offer sufficient details (at any point) for how so-called LLRW will be managed and stored over a (very likely and definitely foreseeable) extended period, and because of this, NRC Staff is not able to do a sufficient, or credible analysis of potential extended impacts. This logic, if not fully apprehended, may lead analysts to read the EXAMPLES that Intervenors have given for potential problems with managing so-called LLRW on-site for an extended period as being “nit picks” or flyspecks,

² See Intervenor’s Petition to Intervene (February 6, 2009 page 87, discussion of Contention 7). In addition, concerns for health, safety and overall environmental impact were well included in the initial Petition filing.

³ LBP 09-10 Rulings on Standing, Contentions Admissibility, Motion to File a New Contention and Selection of Hearing Procedure, July 8, 2009

⁴ CLI-10-02 Commission Ruling on PEF appeal of LBP 09-10

or nuances. This could be construed as another Contention of Omission but for the extensive substantive information offered in the appended Declarations of Dr. Resnikoff and Ms. D'Arrigo in support of the proposed Contention which give examples of the problems that could come up. These are offered as examples of why more details are needed – not assertions that we “magically” know the plan that PEF will employ.

Indeed, in Response to the NRC Staff Dr. Resnikoff commented:

My declaration argued that other reactors have had a problem with offsite releases of Sr-90 from the waste processing system. I think the staff counters that we haven't pointed out that such leakage may specifically occur from the Levy reactors. Yes, they are right. Essentially we are arguing that **additional storage and processing increase the risk** of accidental leakage into the aquifer, based on past experience at other reactors. (email 11/04/2010 from Marvin Resnikoff to Mary Olson referring to NRC Answer at p 9)

Intervenors have looked at the AP1000 design and do not find any compelling new feature that would prevent such leakage from being a possibility at the Levy County site, particularly over time. The potential for extended period of storage is not precluded by the NRC and yet the possible consequences including the possible leakage from resins are not analyzed. NRC staff defense of a process that may not result in such analysis of impact at all (50.59 path), or which would defer such analysis until AFTER this waste has already been generated in a limited, *fait accompli* license amendment is to ask the impacted community to accept these consequences now, without adequate disclosure, without specific impact analysis and no demonstration that the stated radiation “protection” standards have been met. This is not in keeping with the reason the National Environmental Policy act is used to “inform” a federal decision. It affirms the fact that the NRC Staff has already made its decision. Our members have not, and are entitled to a detailed, comprehensive disclosure of how waste will be “managed” in every dimension of that word, and what the impacts of that management will be. NRC staff complains (p 12) that Intervenors do not explain “what methods [for waste processing] Dr. Resnikoff is referring, why use of such methods would be reasonably

foreseeable...” We agree, we also do not know what methods would be employed for long-term waste “management” and we think that NRC Staff needs to know that in order to do a DEIS.

NRC staff profess that the ground contamination issues in Dr. Resnikoff’s declaration of October 4, 2010 are not substantial or material. In proposed Contention 7A, the point is made that such volumetric contamination of soil as may happen from leaks from waste processing greatly increases the cost and impact of decommissioning. It is worth pointing out that in the case of at least one reactor (Vermont Yankee), it has also changed the licensing options. This is not insignificant – and this level of impact should not go unaddressed in the licensing decision. The admission of this contention would allow the development of issues such as the percentage of existing reactors that demonstrate ground contamination; the potential for on-site and offsite exposures and applicable regulations. Page 6 of the Proposed Contention 7A refers to two Declarations of Dr. Resnikoff, both of which were appended to the filing as attachments. The declaration of September 15, 2010 offered again on October 4, states clearly that the details offered in the AP1000 DCD could result in worker exposures in excess of Part 20 regulations – so clearly in excess of ALARA as well. This is not a minor allegation. Perhaps we should have underscored this point several times; perhaps that is part of the function of a “reply.”

Given the lack of details of the PEF plan, the collusion of NRC Staff with PEF in side stepping the “need” for a detailed plan for extended management at this stage of the proposed action, the few examples Interveners and our experts have offered as must be seen as EXAMPLES of the type of impact there may be from extended onsite management – we find it adequate that NRC Staff dismisses issues of Contention 7A as mere “flyspecks.”

When it comes to the admissibility tests of 10 C.F.R. § 2.309(f)(1)

- (i) provide a specific statement of the legal or factual issue sought to be raised;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised is within the scope of the proceeding;

- (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

We find that our filings meet these requirements. The deficiency we point to is the ability to show that the NRC's own radiation standards will actually be met. If meeting these standards is not a matter of law, our members are entitled to a detailed explication of why this is the case.

We would like to offer a correction to NRC Staff: Answer pg 2 states:

The Joint Interveners assert that one new contention based on the Draft Environmental Impact Statement should be admitted in this proceeding.

It would be more correct to say "to date" since Interveners have until November 15, 2010 to offer any new contentions based on the DEIS in the area of Hydro ecological impact.

Finally, a note: while it would be tempting to imagine that the present contention is verging into hydro ecology – I would like to be clear: it is not. Nor will the hydro ecological work intersect with the concerns raised here. In the real world, where radioactivity is not constrained by non-profit budgets and time from volunteers, these contentions would interact; here they do not.

Respectfully Submitted,

_____/s/_____
Mary Olson
Nuclear Information and Resource Service
Southeast Office,
PO Box 7586
Asheville, North Carolina 28802
828-252-8409
on behalf of the Co-Interveners
November 4, 2010

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

September 27, 2010

Certificate of Service

I hereby certify that copies of the INTEVENERS REPLY BRIEF TO ANSWER FROM NRC STAFF TO PROPOSED NEW CONTENTION 7 A have been served on the following persons by Electronic Information Exchange on this 4th day of November, 2010:

Administrative Judge Alex S. Karlin, Chair Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Alex.Karlin@nrc.gov	Office of Commission Appellate Adjudication Mail Stop O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: OCAAmail@nrc.gov
Administrative Judge Anthony J. Baratta Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Anthony.Baratta@nrc.gov	Office of the Secretary ATTN: Docketing and Service Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov
Administrative Judge William M. Murphy Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: William.Murphy@nrc.gov	Megan Wright Law Clerk Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: megan.wright@nrc.gov

<p>Mary Olson NIRS Southeast PO Box 7586 Asheville, NC 28802 E-mail: maryo@nirs.org</p>	<p>Michael Mariotte Nuclear Information and Resource Service 6930 Carroll Ave Suite 340 Takoma Park, MD 20912 E-mail: nirsnet@nirs.org</p>
<p>Michael Canney The Green Party of Florida Alachua County Office PO Box 12416 Gainesville, FL 32604 E-mail: alachuagreen@windstream.net</p>	<p>Cara Campbell The Ecology Party of Florida 641 SW 6th Ave Ft. Lauderdale, FL 33315 E-Mail: levynuke@ecologyparty.org</p>
<p>John H. O'Neill, Esq. Michael G. Lepre, Esq. Blake J. Nelson, Esq. Robert B. Haemer, Esq. Jason P. Parker, Esq. Counsel for Progress Energy Florida, Inc. Pillsbury, Winthrop, Shaw, Pittman, LLP 2300 N. Street, NW Washington, DC 20037-1122 E-mail: john.O'Neill@pillsburylaw.com michael.lepre@pillsburylaw.com blake.nelson@pillsburylaw.com robert.haemer@pillsburylaw.com jason.parker@pillsburylaw.com</p>	<p>U.S. Nuclear Regulatory Commission Office of the General Counsel Kathryn L. Winsberg, Esq. Sara Brock Kirkland, Esq. Jody Martin, Esq. Kevin Roach Joseph Gilman, Paralegal Washington, DC 20555-0001 E-mail: Kathryn.winsberg@nrc.gov; seb2@nrc.gov; jcm5@nrc.gov; jsg1@nrc.gov ; Kevin.Roach@nrc.gov Laura.Goldin@nrc.gov</p>

/Signed (electronically) by/

Mary Olson
NIRS Southeast Office
maryo@nirs.org