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 5, 2010

INTEVENERS REPLY BRIEF TO ANSWERS FROM PROGRESS ENERGY FLORIDA TO PROPOSED NEW CONTENTION 7 A

Green Party of Florida, Ecology Party of Florida and Nuclear Information and Resource Service (Co-Interveners, or Interveners) reply to the 20/29/2010 Answer Brief by Progress Energy (PEF) to Intervener'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.

Many of the issues raised by PEF were also covered by NRC Staff in its Answer to Proposed Contention 7 A; Interveners replied on November 4, 2010 to the NRC Staff filing and will not repeat all of those arguments here. The key issues that were not covered in that reply are the question of timeliness of Proposed Contention 7A and the matter of whether interveners have challenged Table S 3.

Contention 7 A is Timely

Contention 7 was admitted by the Board in a ruling (LBP 09-10) on July 8, 2009 explicitly as a contention of omission since the PEF COL for two new AP1000 reactors assumed that waste

generated as a result of reactor operation would be shipped off-site in about 2 years, though maximum projected rate of generation would fill the temporary storage area considerably sooner. There is no provision in the AP1000 DCD for extended storage of this waste (whether liquid, solid or gas) and the Environment Report therefore did not include any analysis of the impact that extended storage of these wastes might have.

After the publication of the Draft Environmental Impact Statement (DEIS) PEF asserted that the NRC staff had "cured" this situation and that therefore Contention 7 was moot and should receive Summary Disposition. The same entity now comes to say that there is no substance or basis for Contention 7A in the DEIS and that therefore it should be ruled as not timely.

The basis for the Contention 7A on why the NRC Staff's environmental impact analysis is not sufficient rests on the fact that NRC Staff have endorsed PEF's lack-of-a-plan-plan for so-called Low-Level Radioactive Waste (so-called LLRW) and have concluded that since they have no idea what the long-term storage or management of the wastes that WILL BE generated is going to be, nonetheless they are confident that the impact will be SMALL. This is not a sufficient analysis to show the members of the Co-Intervening organizations that NRC's regulations, meant to protect them, have been met.

Interveners could not have known what the NRC Staff was going to argue prior to the publication of the DEIS. Therefore Proposed Contention 7A could not have been filed prior to

the publication of the DEIS. Further, PEF agreed that Interveners could have 60 days to file TIMLEY Contentions in exchange for provisions in the scheduling order that it sought.[1]

Interveners and Dr. Resnikoff do not attack Table S 3

PEF also argues that contention 7A is inadmissible because it is a challenge to Table S-3, primarily because Table S-3 shows no significant impact and because attacks upon NRC regulations are not permissible in a license intervention. As much as the Co-Interveners have disagreements with NRC regulations (and lack thereof) we understand that the process of making a license decision relies upon the regulations, and that such a process would be a complete farce if the rules were constantly changing. Therefore interveners have resisted – in all cases, including this one -- any attack on the NRC's regulations. However, it is also not permissible for the applicant to bend, twist or spindle regulations to its advantage.

Table S-3 was never conceived with long-term on-site storage in mind. Table S-3 is primarily directed at burial grounds and it is worth noting that Table S3 was developed before the problems at burial grounds (Maxey Flats KY, West Valley NY, Sheffield IL, Beatty NV) became apparent. Further, it never took into account leakage at CT Yankee, that is, accidents or situations above the norm. These comments are not a challenge – merely recognition that there is basis for the stance that the Commission has taken[2] that there are new issues associated with so-called LLRW that could, and should be addressed in a COL decision.[3]

---

[1] Cited by NRC staff Answer of 10/28/2010: 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. (Answer at p 5)

[2] Commission ruling LI-10-02 on PEF appeal of LBP 09-10

[3] This is not a new argument for interveners – for example, From the 2009 Petition to Intervene Pg 88: "Neither the application nor the ER nor the FSAR indicate that the intent is to store Class B, C and Greater than C wastes for 60 years nor is there indication that the facilities could accommodate physically or otherwise such an accumulation. The intent is that the facility will prepare waste for routine shipment to a disposal site for 60 years while no such disposal site is currently available, let alone guaranteed available in future decades. The planning omits this essential

While Table S-3 applies to all aspects of so-called LLRW, the environmental impacts of so-called LLRW summarized by Table S-3 does not include accidents or the environmental impacts of storage at the point of generation for extended periods. The admission of contention 7A is an opportunity to develop these issues before this Board. This is not a challenge to Table S-3; we are not disputing the matters that Table S-3 did consider, such as the volume of so-called LLRW; rather we are considering the issues that Table S-3 did not consider, namely accidental leakage due to waste processing at the reactor site.

PEF (and the NRC Staff) make the broad assertion that the reactors will not affect off-site persons and workers; we have provided information (Resnikoff Declarations) that this has occurred elsewhere and that it is up to PEF to show that it will not happen at the Levy site.

These are not "new issues" insofar as they were raised broadly in the Co-Intervener's Petition to Intervene February 6, 2009 (pg 89):

> Applicant states that the systems are: "designed to minimize releases from reactor operation so values are as low as reasonably achievable (ALARA). The systems are capable of meeting the design objectives of 10 CFR 20 and 10 CFR 50, Appendix I." These are the routine release levels and the applicant provides no detail regarding the ongoing onsite management and potential impact from permanent or very long term storage of all the B, C and >C radioactive waste from operations on the site of generation. No explanation is offered for how the applicant will meet this plan in the absence of a licensed disposal site.
>
> The simple fact is that Applicants fail to address how so-called "low-level" radioactive waste from the operation and closure/dismantlement and decommissioning of Levy County Units 1 & 2 will be isolated from the environment and permanently disposed of.

As stated in our Reply to NRC staff: Indeed, it is quite remarkable that a mammalian species has developed practices that create wastes that pose a unique hazard that will persist in large

---

information. Nonetheless, as stated above, the duration of potential hazard associated with this waste is considerably longer than 60 years. There are no regulations that specifically guide this situation."

part longer than this Nation has existed, and in part for longer than recorded history.[4] 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.

The Intervener's "reply" to NRC Staff Answer to Proposed Contention 7A is hereby incorporated here by reference.

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 5, 2010

[4] These issues were raised in Intervener'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.

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 November 5, 2010

Certificate of Service

I hereby certify that copies of the INTEVENERS REPLY BRIEF TO ANSWER FROM PEF 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

Mary Olson NIRS Southeast PO Box 7586 Asheville, NC 28802 E-mail: maryo@nirs.org	Michael Mariotte Nuclear Information and Resource Service 6930 Carroll Ave Suite 340 Takoma Park, MD 20912 E-mail: nirsnet@nirs.org
Michael Canney The Green Party of Florida Alachua County Office PO Box 12416 Gainesville, FL 32604 E-mail: alachuagreen@windstream.net	Cara Campbell The Ecology Party of Florida 641 SW 6th Ave Ft. Lauderdale, FL 33315 E-Mail: levynuke@ecologyparty.org
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	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

/Signed (electronically) by/

Mary Olson
NIRS Southeast Office
maryo@nirs.org