

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 15, 2010
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Ecology Party of Florida, Green Party of Florida, Nuclear Information and Resource Service
Motion for Leave to Amend Contention 4

The Ecology Party of Florida, The Green Party of Florida and Nuclear Information and Resource Service (Co-Intervenors, or Intervenors) hereby submit this timely motion to amend the pending Contention 4 (C-4) focusing upon the potential for LARGE hydro-ecology impacts if the proposed Levy County Units 1 & 2 are approved in the above captioned licensing action.

We Attach to this motion Contention 4 as admitted by the ASLB, July 8, 2009.

I. LEGAL HISTORY

July 2008 Progress Energy Florida (PEF) sent an application to the US Nuclear Regulatory Commission (NRC) for two Combined Operating Licenses (COLs) for two AP1000 reactors, proposed for a site in Levy County FL, about ten miles inland from the Gulf Coast. December of 2009 the NRC issued a notice of opportunity to intervene, and on February 2, 2009 Co-Intervenors filed a Petition to Intervene bringing eleven contentions including this Contention 4 (C 4) focused on the hydro ecological impacts that the COL did not adequately address. The

contention was admitted (in part) by this board in a Ruling LBP-09-10 on July 8, 2009.

Attachment A of that ruling is appended here as Attachment A. (Contentions 7 and 8 published in the attachment are, in various forms, also still pending in this case, but not the subject of this filing.)

On September 30, PEF filed a motion to dismiss as moot aspects of C4 related to active dewatering during levy plant operations. Co-interveners file today an Answer to that motion. Similarly, PEF on October 4 filed a motion for summary disposition of C4 with regard to salt drift and passive dewatering, and Interveners today, also file an Answer.

Interveners here request leave and offer an amendment to C4 to update it insofar as it now pertains to the inadequacies of the Draft Environmental Impact Statement (DEIS) and its reliance on the Conditions of the State of Florida upon its Certificate of Compliance permit for the proposed facility. It should be noted that the broad statement of the contention remains the same, however as new issues have been introduced by NRC Staff in the DEIS, and PEF as now relies on the DEIS, interveners respond.

II. THIS MOTION IS TIMELY

A deadline of sixty days after the publication of the DIES for the amendment or filing of new contentions was agreed to by all Parties in negotiation of the scheduling order, and affirmed by this Board (unpublished September 3, 2009). The Board then granted an additional filing extension of 40 days based on good medical cause on October 7, 2010. This document is filed within the extension allowed.

III. NEED FOR AMENDMENT

C-4 was restated by this Board when admitted, including a citation to failure to comply with 10 CFR 51. In its discussion of this point, the Board declared that the NRC regulations specify that since environmental concerns are to be filed with the petition to intervene, but the NRC Staff had not yet written an Environmental Impact Statement (EIS), such concerns are focused on the Environment Report. Now the Draft EIS has been issued. Interveners amend C-4 to reflect this. We further note that with this amendment comes the higher bar of the force of the National Environmental Policy Act, which holds the NRC to a higher standard. Indeed, in our view a higher standard than NRC staff has yet achieved.

The issuance of the DEIS offers the applicant and the NRC Staff ample opportunity to assert that the matters of C-4 have been resolved. Interveners disagree. The reliance by NRC Staff and now PEF, upon “conditions” placed on the State of Florida Certificate of Compliance water “permit” do not satisfy or validate the assertion that building and operating two AP1000 reactors in Levy County would result in SMALL hydro ecological impacts; in our view, and that of our expert, Dr. Sydney Bacchus this is an incorrect finding; the impacts are under estimated and would be LARGE. Dr Bacchus’ affidavit of November 15, 2010 is filed with the amended contention.

IV. AMENDED CONTENTION 4:

Interveners were puzzled when consulting the Initial Scheduling Order of August 8, 2009 on the matter of filing new contentions. Motions are constrained by a 15 page limit. Three calls on this day to various arms of the US NRC yielded the same opinion: this is the motion, it is subject to the page limit, however there is no precedent for a page limit on contentions. No one at NRC

would give “legal advice” however it was noted by one that the contention and the Motion could be severed. We decided to do that. Amended Contention 4 and its attachments is offered in a concurrent filing today.

Respectfully Submitted,

_____/s/_____
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On behalf of the Co-Interveners
November 15, 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

November 15, 2010

Certificate of Service

I hereby certify that copies of the Motion for Leave to Amend Contention 4 have been served on the following persons by Electronic Information Exchange on this 15th Day of November, 2010:

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/Signed (electronically) by/

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