

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
---	---

**CO-INTERVENERS' ANSWER TO PROGRESS ENERGY FLORIDA MOTION TO DISMISS
AS MOOT THE ASPECTS OF CONTENTION 4 RELATED TO ACTIVE DEWATERING
DURING LEVY COUNTY UNITS 1 & 2 NUCLEAR OPERATIONS**

I. Introduction

In the above captioned proceeding, Progress Energy Florida (PEF) has moved (on September 30, 2010¹) to dismiss as “moot” portions of admitted Contention 4 that relate to active dewatering that would result from the operations of the proposed two nuclear power reactors at Levy County, Florida. The Ecology Party of Florida, The Green Party of Florida and Nuclear Information and Resource Service (Co-Intervenors or Intervenors) respond here to dispute material facts offered by PEF in this motion, and to develop the case that the operation of Levy County Units 1 and 2 will have direct, indirect and cumulative environmental impacts from active dewatering that PEF continues to fail to assess and therefore underestimates the impact that would result from construction and operation of these facilities.

Intervenors note that PEF does not address active dewatering during construction of the two reactors in its Motion. Intervenors do not, therefore address those issues here, but note that

¹ This Answer is timely. The Board ruled to grant a 40 day extension for good cause on 10-07-2010, making the new deadline the first business day after November 13, 2010.

the enormous excavation and insertion of massive quantities of concrete will require active dewatering of the site during construction and that these impacts are considerable (see Attachment 1 Bacchus affidavit ¶ D-1)

Intervenors agree that the NRC staff has issued a Draft Environmental Impact Statement (DEIS). Intervenors agree that there is new information in the DEIS. Intervenors file on this same day a Motion for Leave to Amend, and an Amended Contention 4. Co-Intervenors seek to update Contention 4 to clarify that the DEIS also fails to adequately address direct, indirect and cumulative impacts that will be LARGE if this facility is constructed and goes into operation on the Levy County site, in other words there are still hydroecological and environmental consequences of the operation of two AP1000 reactors on the proposed Levy County site that have not been addressed by the DEIS. Intervenors disagree with PEF's statement that there are no material facts in dispute with regard to active dewatering, or with the bases presented by PEF for its motion. PEF offers three points as the basis for its Motion to Dismiss:

- (1) Any dispute over the impacts from active dewatering at the site during operations is moot because the four production wells described in the Environmental Report ("ER") have been relocated off-site in order to minimize environmental impacts.
- (2) The State of Florida has issued conditions on the use of groundwater during operations at Levy and the NRC relies on these conditions in evaluating the potential environmental impacts.
- (3) The environmental impact analysis by the Nuclear Regulatory Commission ("NRC") of active dewatering during operations differs from, and does not rely on, Progress's analysis in the ER, rendering the compliance of the ER with NRC regulations moot. This Motion is supported by a Statement of Material Facts as to which Progress asserts that there is no genuine dispute (Attachment A). (Motion pg 1)

We will address points 1 and 2 here and the Statement of Material Facts here, and will incorporate points from this Answer in our parallel filing which will address point 3. While it might be argued that point 3 renders this Answer Moot, Contention 4 has not fundamentally altered and will not be substantially amended, therefore the issues raised by PEF in points 1 and 2 remain relevant and must be answered; this is the most appropriate place.

2. Relocation of the Proposed Levy Production Wells Does not “Cure” Active Dewatering Contention

PEF states on page 5 of its Motion that: “There is no dispute that the ER described four production wells on-site as the source for the freshwater portion of the Raw Water System (“RWS”) during operations.” It is true that Revision 0 states (page 5-11 and others) that there will be groundwater withdrawals from wells “on-site.” It is also true that the movement of the production wells to a second PEF owned site, adjacent to the proposed Levy Reactor site is show in the ER Rev 1 in Figure 6.1-4, published in October, 2009. The plan for these wells was available to Interveners over a year ago and is not “new” information in the DEIS. The movement of the wells was not viewed by Interveners as “substantial new information” that could alter the outcome of this case because Interveners do not view the relocation of the wells as material to the following issues:

A. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with dewatering, specifically:

1. Impacts resulting from active and passive dewatering;
2. Impacts resulting from the connection of the site to the underlying Floridan aquifer system;
3. Impacts on Outstanding Florida Waters such as the Withlacoochee and Waccasassa Rivers;
4. Impacts on water quality and the aquatic environment due to alterations and increases in nutrient concentrations caused by the removal of water; and
5. Impacts on water quality and the aquatic environment due to increased nutrients resulting from destructive wildfires resulting from dewatering.

(Contention 4 as admitted)

The Contention states that the site is “connected to” the Floridan aquifer. The concern about hydrological impacts raised in Interveners’ filing of this contention in the Petition to Intervene of February 6, 2009 is based on the fact that while boundaries may be drawn on the surface of the ground, such boundaries have no relationship whatsoever to waters under those boundaries. In other words, the arbitrary property designations by PEF of “on-site” or “off-site” do not in any way correspond to the Floridan aquifer or the impacts that may result from pumping large amounts of water from wells. The movement of the wells from the reactor site as

described in the ER Rev 0 and the position of the wells as pictured in Rev 1 may, in fact increase the impact of dewatering (Bacchus¶ D-16a; it is not clear, and the necessary analysis to make the case either way has not been provided by PEF. It simply assumes that such relocation settles the matter.

PEF errs in construing that merely the movement of the wells is material. This construction rests in part on PEF's quote (Motion pg 13) from the Commission ruling (CLI-10-02, 14 -- 15) "the aquifer system underlying the project area, the Withlacoochee and Waccasassa Rivers, and the fresh water wetlands in the area of the project site." This is, in fact, merely a paraphrase by the Commission of the actual contention language as admitted, reproduced herein (above).

PEF does not read these words as a paraphrase, and instead interprets them in an inappropriately literal revision of this proceeding. First PEF interprets "project area" to mean "site boundary." Interveners find that the assumption that "area" translates to "site" is unsupported, particularly when the word "site" is used in the same sentence. Second, PEF then attempts to take this first revision of meaning to infer that the only dewatering impacts in question are those that could be measured immediately under the ground within its site boundary. This imposes an imaginary boundary on groundwater which PEF asserts corresponds to its arbitrary legal boundaries on the surface. Contention 4 is not so constrained, nor would the impact of 4 wells drawing up to 5.8 million gallons of water per day be constrained, especially when no impact monitoring might be required by the CoC for the first three years-(CoC at 33) SEE also the Motion to Amend Contention 4.

Pledges of future compliance with State and local restrictions is insufficient to allow adequate analysis of impacts and cumulative impacts concerning dewatering, since it depends on "PEF's plans for future monitoring."(DEIS, p 5-16, Line 26).

PEF similarly has tried to interpret the Commission's ruling in a revisionist manner elsewhere see: PROGRESS ENERGY'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION 4 (ENVIRONMENTAL IMPACTS OF DEWATERING AND SALT DRIFT) WITH REGARD TO SALT DRIFT AND PASSIVE DEWATERING (Motion for Summary Disposition C4) and Intervener's Answer, filed concurrently with this Answer for an enumeration of the multiple misrepresentations of CLI-10-02. We will simply restate here:

In reality the Commission merely reaffirmed the Board's decision in denying PEF's Appeal by stating (emphasis added):

"The Board's decision here was thorough and clear, and, with the exception of one matter related to Contentions 7 and 8 – the Board's consideration of Greater-than-Class-C (GTCC) waste – we decline to disturb the challenged contention admissibility rulings." CLI-10-02 at 2.

On the other hand, the assertion that either NRC Staff or PEF has adequately assessed the impacts of active dewatering of the "project area" from 4 wells, regardless of the location, remains in dispute. In a second parallel portion of this proceeding, Interveners hold that the assertions made by PEF and NRC about groundwater impacts are subject to the outcome of review of the computer models used to make the projections upon which impact is assessed. It is not possible to assess the impacts of active dewatering by the wells in question because the details of the assumptions made in the model design, the nature of the in-put data and any expert judgment employed in analysis have not been reviewed by our experts (see Bacchus ¶ D-10 for a detailed list of why the model data are necessary).

Since clearly the basis for asserting the impact of the 4 proposed wells, regardless of their location "in the project area" is in dispute, and while there have been additional factors introduced to govern the decision-making of NRC on water impacts – Staff does still repeatedly refer to these models in the DEIS (see DEIS 2-25, 2-26, 2-28 – 30, 4-19, 4-21, 4-23 – 24, 4-62, ,

4-87, 5-5, 5-7...) Until this dispute about access to information and what that information means is settled, the facts about ground water impacts will remain in dispute.

3. State of Florida Permit Conditions Do Not Resolve Active Dewatering Impacts

As stated above, the construction of reactors on the proposed site would result in active dewatering that would have direct and indirect impacts on-site and off-site that would be cumulative (see Bacchus Affidavit ¶) that have not been adequately addressed by PEF in its ER or NRC Staff in its DEIS, and are also not addressed in the Conditions to the Certificate of Compliance. Point number 2 in PEFs Motion to Dismiss as Moot implies that the simple fact that NRC Staff has based its impact analysis on the state permit conditions means dewatering issues have been fully addressed; this is not the case.

As we point out in the concurrently filed Answer to the PEF Motion for Summary Disposition C4, the reliance on a State permit (See DEIS 1-8,1-9,2036,2-122,3-36, et al.) does not preclude a hard look at the issues in the contention and the problems presented in the choice of this location for new nuclear power reactors. This Board made it quite clear that the fact that an applicant secures a permit is not dispositive Tr. at p. 99. Federal bodies, such as the NRC have the responsibility to ensure that all federal statutes are met, including NEPA, the Clean Water Act and others -- a higher bar than individual state agencies; for this reason any permits PEF has are incidental to the purposes of the Board's determinations.

Intervenors are filing a series of interlaced pleadings today. We have done our best to organize our arguments to maximize coherence with respect to the issues that Contention 4 embodies. Much of the discussion of the role and adequacy of the State of Florida conditions attached to the PEF Levy County Certificate of Compliance are properly part of a discussion of the DEIS, and so will be plead in the Motion for Leave to Amend Contention 4 and an Amended Contention 4, also filed today.

It is worth noting here that the issues of the next section of this Answer are an example of further issues not addressed in by the State of Florida in its permit, or the conditions attached to it.

4. Additional Active Dewatering Impacts from Proposed Reactor Operations Not Considered by PEF, NRC or State of Florida Permit

Contention 4 as presented in the Petition to Intervene, and as admitted, addresses a broad range of hydroecological impacts that may result if two AP1000 nuclear reactors are constructed and operated on the proposed Levy County site; concerns about active dewatering during operation of the proposed reactors is in no way limited to the pumping of groundwater as significant an activity as that may be. Both the ER and the DEIS identify the fact that the Cross Florida Barge Canal (CFBC) is proposed as the conduit for cooling water withdrawals (DEIS 2-24, ER 5-13), as high as 122 million gallons per day (DEIS 3-26). Both the ER and DEIS identify the fact that the construction of the proposed Cooling Water Intake Structure (CWIS) and its operation would reverse the flow of water in the canal such that water from the Gulf of Mexico would be brought into the canal (DEIS 5-10, ER 5-14). Both the ER and the DEIS also acknowledge that there is water in the Canal now that does not come from the Gulf (DEIS 5-10). What is not considered in either analysis, and is a solid example of direct, indirect and cumulative impacts which are the focal point of Contention 4:

- 1) exactly where all the water that is in the barge canal now comes from
- 2) the exact nature of this water – percentage that is fresh, percentage that is spring-fed, percentage from run-off, percentage that is from the upper Withlacoochee, and how much is from the dam and its associated structures
- 3) a clear statement recognizing that these waters will be consumed by the CWIS and used in cooling the proposed reactors
- 4) a recognition and analysis of the direct, indirect and cumulative impacts of denying the outflow of this fresh water from the CFBC on coastal waters,

- 5) the direct, indirect and cumulative impacts of changing the CFBC's fresh water contribution on the biological communities residing in coastal waters including the coastal estuary systems of the Withlacoochee Bay, Waccasassa Bay and the southern extremity of the Big Bend Sea Grass Preserve and other protected areas.

That all documents to date miss the loss of freshwater to the coastal area as an issue to be assessed is offered here as an example of the lack of integration that is required to describe let alone evaluate, cumulative impacts that would arise if this project goes forward on this site. Dr Bacchus states:

"Alterations of the natural hydroperiod and subsequent adverse environmental impacts that would result from the construction and operation of the proposed LNP occur from the combined direct, indirect and cumulative impacts of "passive dewatering" and mechanical extractions of ground and surface waters. Therefore, there is no scientific basis for segmenting adverse environmental impacts due to "passive dewatering" from those due to other alterations of the natural hydroperiod such as mechanical extractions of ground and surface waters. Thus, segmenting adverse environmental impacts from passive and active dewatering associated with the proposed LNP is arbitrary and capricious." (Bacchus affidavit ¶1__)

The starving of the fresh water that is currently exiting the CFBC from the coastal area may be a considerable issue since the Withlacoochee River system, inclusive of fresh water discharge through the CFBC, is the dominant supply of fresh water to the coastal estuary system including the Withlacoochee Bay, Waccasassa Bay and the southern extremity of the BBSGP. The System provides fresh water throughout the year whereas during dry season or drought conditions,²the Waccasassa River does not .

² Interveners acknowledge that one of our Members, Dan Hilliard who has offered comments from another organization, the Withlacoochee Area Residents (WAR, Inc) has contributed to this section, and his comments on the DEIS to the NRC are provides as ATTACHMENT 2

Additionally, it appears that PEF is trying for a ‘divide and conquer” strategy, by simultaneously petitioning for a Motion to Dismiss as Moot the active dewatering portion of Contention 4, and seeking a Summary Dismissal of the passive dewatering and salt drift portions of the Contention. This leads to a complete inability to address cumulative effects of the dewatering and the salt drift. Interveners ask that the Board consider the whole cloth of the Contention, and allow a systematic examination of the effects, and the cumulative effects, of the issues allowed under the Board’s initial findings. The Motion to Dismiss as Moot is ill-timed, poorly thought out, and should be denied.

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 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 ANSWER TO PEF's MOTION TO DISMISS...AS MOOT...C4 have been served on the following persons by Electronic Information Exchange on this 15th 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	Megan Wright Law Clerk Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: megan.wright@nrc.gov

E-mail: William.Murphy@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 6 th 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 Laura Goldin 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