

December 10, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF ANSWER TO JOINT INTERVENORS'
MOTION TO AMEND CONTENTION 4

INTRODUCTION

The NRC staff ("Staff") hereby answers Joint Intervenors'¹ "Motion for Leave to Amend Contention 4" ("Motion") and "An Amended Contention 4" ("Amended Contention 4") pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board's Initial Scheduling Order dated August 27, 2009. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 647 (2009). As described below the Staff opposes the admission of some, but not all, portions of Amended Contention 4.

BACKGROUND

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

¹ The Joint Intervenors are the Ecology Party of Florida, the Green Party of Florida, and Nuclear Information and Resource Service.

in Levy County, Florida. The *Federal Register* notice of docketing was published on October 14, 2008 (73 Fed. Reg. 60,726), and the *Federal Register* notice of hearing (Hearing Notice) was published on December 8, 2008 (73 Fed. Reg. 74,532). On February 6, 2009, the Joint Intervenors collectively filed a petition to intervene containing several contentions. On July 8, 2009, the Board issued a Memorandum and Order granting the hearing request and admitting, among others, Contention 4, which challenged the analysis in the Applicant's Environmental Report (ER) of impacts associated with dewatering and salt drift during construction and operation. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 109 (2009). The Commission affirmed the admission of Contention 4 in ruling on the Applicant's appeal of the Board's decision. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), CLI-10-02, 71 NRC __ (Jan. 7, 2010) (slip op. at 3-18).

The NRC Staff's Draft Environmental Impact Statement (DEIS) for the Levy project 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. 49,539. On October 4, 2010, the Board granted Joint Intervenors' request for an extension of time to file amended or new hydroecology contentions based on the DEIS; the extension provided an additional 40 days. Licensing Board Order (Granting Motion for Extension of Time) (September 29, 2010) (unpublished). On November 15, 2010, Joint Intervenors filed, within the 40-day extension period, their Motion and Amended Contention 4.

DISCUSSION

I. Staff Approach to Reviewing Amended Contention 4

Joint Intervenors' statement of Amended Contention 4 follows the same framework as the contention 4 initially admitted by the Board, except that Amended Contention 4 refers to the

DEIS rather than the ER. Amended Contention 4 at 2. Some of the allegations in Amended Contention 4 are unchanged from the original admitted contention, but both Amended Contention 4 and the accompanying November 15, 2010 affidavit of Dr. Sydney Bacchus (Bacchus Affidavit) put forth new supporting arguments and bases, some that pertain to hydroecology and some that do not.

The Bacchus Affidavit contains assertions that are neither contained within nor directly referred to in Amended Contention 4; in several instances, these assertions challenge other documents (e.g., affidavits filed by PEF). The Staff considers Amended Contention 4 to represent Joint Intervenors' primary challenge to hydroecology issues in the DEIS. However, the Staff also addresses in its Answer the portions of the Bacchus Affidavit that explicitly challenge the DEIS, consistent with the Board's consideration of the Bacchus Affidavit in its Order Admitting Contentions. *See Levy County*, LBP-09-10, 70 NRC 51 at 102-103 (finding that Bacchus Affidavit satisfied criteria (v) and (vi) of 10 C.F.R. § 2.309(f)(1)).

Dr. Bacchus also includes several statements that do not clearly relate to the newly Amended Contention 4, which challenges the DEIS, but instead appear to take issue with some of the applicant's summary disposition filings. For example, Dr. Bacchus states that the Griffin Affidavit filed in support of PEF's October 4, 2010, Motion for Summary Disposition of Contention 4 (Amended Contention 4, Attachment 10) is internally inconsistent. Bacchus Affidavit at 8. The following numbered paragraphs in the Bacchus Affidavit pertaining to water quality and quantity (Bacchus Affidavit at 8-11) do not appear to support the amended contention: 6-9, 11-12. The following numbered paragraphs in the Bacchus Affidavit pertaining to salt drift (Bacchus Affidavit at 16-22) similarly do not appear to support the amended contention: 10, 18-20, 23. Because these statements do not appear to lend support to Amended Contention 4, the Staff will not address them further, and they should not be

considered as bases for Amended Contention 4.

Additionally, Joint Intervenors attached many documents—styled as both “exhibits” and “attachments”—to their filing. The Staff does not view these documents as additional contentions or bases for contentions. See *USEC, Inc. (American Centrifuge Plant)*, CLI-6-10, 63 NRC 451, 472 (2006) (attaching materials or documents without explaining their significance is insufficient for contention admissibility); *Pacific Gas & Electric Co.*, CLI-02-16, 55 NRC 317, 337 (2002) (“We cannot be expected to sift through the parties' pleadings to uncover and resolve arguments not advanced by the litigants themselves.” (internal quotation marks and citations omitted)). Rather, where the Joint Intervenors have specifically referenced a document, the Staff views the reference as supporting the bases articulated in Amended Contention 4 and the Bacchus Affidavit.

For the reasons discussed below, the Staff agree that some portions of Amended Contention 4 are admissible; other portions are not admissible because those portions do not meet the admissibility criteria in 10 C.F.R. § 2.309(f)(1) or because those portions are not timely raised under 10 C.F.R. § 2.309(c) and (f)(2).

II. Legal Standards for Admissibility of New and Amended Contentions

The admissibility requirements that apply to all contentions, including new and amended contentions challenging the DEIS, are contained in 10 C.F.R. § 2.309(f)(1). 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). These standards are extensively discussed in the Staff’s initial response to the intervention petition and in the

Board's ruling on contention admissibility.² Failure to comply with any one of these general admissibility requirements is grounds for dismissal of the contention. See Final Rule, Changes to the Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004); see also *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 275 (2009).

New and amended contentions challenging the DEIS are also governed by 10 C.F.R. § 2.309(f)(2), which “expressly allow[s] timely amendment of NEPA contentions if there is significant new information or different conclusions in the DEIS that could not have been challenged previously.”³ *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-05-20, 62 NRC 523, 533 (2005). By definition, the Commission has noted, an amended contention can include issues outside the scope of the original admitted contention so long as the issues are timely. *Id.*

If data or conclusions in the DEIS do not differ significantly from the data or conclusions in the ER, new or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer if the contention meets the following requirements:

² See NRC Staff Answer to Petition to Intervene at 6-9 (Mar. 3, 2009); *Levy County*, LBP-09-10, 70 NRC at 71-73 (2009). Briefly, an admissible contention must: (1) provide a specific statement of the issue of law or fact to be raised or controverted, (2) provide a brief explanation of the basis for the contention, (3) demonstrate that the issue raised is within the scope of the proceeding, (4) demonstrate that the issue raised is material to the findings the NRC must make to support the licensing action, (5) provide a concise statement of the alleged facts or expert opinions that support the petitioner's position, and (6) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of fact or law. 10 C.F.R. § 2.309(f)(1).

³ In this case, Joint Intervenors were required to file contentions challenging PEF's October 2009 Rev.1 ER (ML092860995). See 10 C.F.R. § 2.309(f)(2).

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (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). Thus, under these criteria, if new information related to the ER arises, an intervenor must challenge it in a timely fashion and not wait until the DEIS is issued because “[a]n amended NEPA contention is not an occasion to raise arguments that could have been raised previously.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 385-6 (2002).

If a proposed contention does not meet the timeliness criteria of section 2.309(f)(2), it is untimely under 10 C.F.R. § 2.309(c). *Levy County*, LBP-09-22, 70 NRC at 647. Should that be the case, the contention’s proponent should also address the eight section 2.309(c) criteria, the first of which, good cause for failure to file on time, is the most important. *Oyster Creek*, CLI-09-7, 69 NRC at 261. Similarly, “[n]ew bases for a contention cannot be introduced in a reply brief, or any other time after the date the original contentions are due, unless the petitioner meets the late-filing criteria set forth in 10 C.F.R. § 2.309(c), (f)(2).” *Id.* (internal citations omitted).

III. Admissibility of Amended Contention 4

The Staff does not oppose the admission of certain portions of Amended Contention 4 because they comply with the timeliness requirements for amended contentions in 10 C.F.R. § 2.309(f)(2) and because they challenge the adequacy of the DEIS and are within the scope of the Board’s admissibility decision, which is to say that the Board deemed them to comply with the general admissibility criteria in section 2.309(f)(1). *Levy County*, LBP-09-10, 70 NRC at 109. Some portions of Amended Contention 4 need not have been pleaded again because a

contention initially framed as a challenge to the substance of the ER analysis of an issue does not necessarily require an amendment to constitute a litigable challenge to the Staff's DEIS analysis on that same issue. *McGuire/Catawba*, CLI-02-28, 56 NRC at n.44 (citing *Private Fuel Storage, LLC* (Independent Fuel Storage Installation), LBP-01-26, 54 NRC 199, 208 (2001)). To avoid potential confusion created by two essentially identical contentions, the Staff requests that the admitted portions of Amended Contention 4 supersede their previously admitted counterparts that challenged the ER.

Amended Contention 4 and the Bacchus Affidavit present several new issues that were not raised in the initial petition. To the extent that these issues could have been raised against the ER, but were not, they are untimely under 10 C.F.R. § 2.309(c); for this reason alone, these portions should be dismissed. Other issues do not satisfy the general admissibility criteria under 10 C.F.R. § 2.309(f)(1) and should also be dismissed.

A. Inappropriate Reliance on Florida Conditions of Certification [C-4 II]

In this portion of Amended Contention 4, which is labeled C-4 II, Joint Intervenors assert that the Staff inappropriately relies on the Florida Department of Environmental Protection's Conditions of Certification to conclude that environmental harm will not occur or that impacts will be small. Amended Contention 4 at 3. The Joint Intervenors claim the "primary problem...is that the NRC Staff have not reviewed the environmental monitoring plan upon which so many of its determinations are based" because the plan does not exist. *Id.* at 5. The Joint Intervenors argue that the construction impacts of the project could occur before the Environmental Monitoring Plan is implemented or even developed. *Id.*

Staff Response:

This portion of the contention is inadmissible because it fails to demonstrate a genuine dispute with the applicant on a material issue of law or fact. 10 C.F.R. § 2.309(f)(1)(vi). While

Joint Intervenors cite various portions of the DEIS that reference the Conditions of Certification, they do not demonstrate a genuine dispute on a material issue of law or fact. Joint Intervenors argue that the Staff did not assess the environmental impacts of the proposed action and just relied on the Conditions of Certification to find that there would be no environmental harm or that impacts would be small. Amended Contention 4 at 3. The Joint Intervenors cite a number of places in the DEIS where the Conditions of Certification are referenced; however, they do not cite to any statements that show the Staff abandoned its responsibility to evaluate environmental impacts and simply relied upon what another entity had concluded.

The Staff did in fact evaluate the environmental impacts of the proposed action, and examined the Conditions of Certification, among other things, in order to reach its determinations on impacts. For example, the Joint Intervenors cite a passage from the DEIS' discussion of construction impacts of transmission-line corridors (DEIS § 4.1.2) that refers to the Conditions of Certification. Amended Contention 4 at 3 (citing DEIS at 4-15). The DEIS does more than just refer to the Conditions of Certification. The DEIS discusses the new transmission lines that would be required (*id.* at 4-12), the amount of land that would be disturbed by transmission line corridors (*id.* at 4-15), the types of land use/habitat within the corridors (*id.* at Table 4-3 at 4-13), and mitigation measures identified by PEF (*id.* at 4-16).

Another example used by the Joint Intervenors is a section of the DEIS relating to the dewatering impacts of construction, in which the Staff determines the impacts of NRC-authorized activities would be small. Amended Contention 4 at 3 (citing DEIS at 4-24). The Staff reaches its conclusion that construction-related groundwater-use impacts are expected to be minor, in part, on the basis that operational groundwater usage is expected to result in minor impacts (see DEIS § 5.2.2.2), and "groundwater usage while building the proposed units is expected to be less than half that used during plant operations." DEIS at 4-24.

These examples illustrate that the Staff is not merely relying on conclusions reached by the State but is conducting its own analysis of environmental impacts. The Staff appropriately examined and referenced the Conditions of Certification, issued by the State, in order to more fully understand the environmental impacts of the proposed action. The Joint Intervenors' misreading of the DEIS' references to the Conditions of Certification as the Staff's abdication of its NEPA responsibility does not create a basis for an admissible contention. See *Georgia Inst. of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.) LBP-95- 6, 41 NRC 281, 300 (1995) ("A petitioner's imprecise reading of a reference document cannot serve to generate an issue suitable for litigation."). The Joint Intervenors do not point to any of the discussions of impacts in the DEIS and argue that such evaluation was not done by the Staff. Accordingly, the Joint Intervenors have not raised a genuine dispute on a material issue of law or fact as required by 10 C.F.R. § 2.309(f)(1)(vi), and Contention 4-II should be dismissed.

Furthermore, the Staff is entitled to presume that an applicant will comply with applicable laws and regulations. See *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 207 (2000) (stating that, without documentary support, "this agency has declined to assume that licensees will contravene our regulations") (citations omitted); *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 400 (1995) (declining intervenor's suggestion to assume licensee will violate a license condition). Therefore, where Florida has set forth conditions for the operation of reactors at the Levy Nuclear Plant (LNP) site, the Staff may legitimately assume that PEF will comply with those conditions and use those conditions to inform its evaluation of environmental impacts in the EIS. Therefore, the Staff's use of the Conditions of Certification to inform its discussion of what environmental impacts would reasonably result from the proposed project is appropriate, and Joint Intervenors have not raised a genuine dispute on a material issue of fact or law.

Insofar as the Joint Intervenors challenge the adequacy of the Conditions of Certification and the Environmental Monitoring Plan required by the State, those aspects of the contention are inadmissible because they fail to raise an issue within the scope of this proceeding or demonstrate that the issue raised is material to the findings the NRC must make in contravention of 10 C.F.R. § 2.309(f)(1)(iii) and (iv). See Amended Contention 4 at 7-8. In this part of the contention, Joint Intervenors are attempting to litigate the adequacy of the Conditions of Certification. Under Florida's Power Plant Siting Act, FLA. STAT. §§ 403.501-.518 (LexisNexis 2010), large power plants receive one license, a certification, which addresses permitting, land use and zoning, and property interests. Local governments and state agencies participate in the process, but the certification does not include licenses required by the Federal government. http://www.dep.state.fl.us/siting/power_plants.htm (last visited Dec. 10, 2010) (Attachment 1).

However, the Conditions of Certification for LNP state that:

The certification shall be modified to conform to subsequent DEP-issued amendments, modifications, or renewals of any separately issued Prevention of Significant Deterioration (PSD) permit, Title V Air Operation permit, Underground Injection Control (UIC) permit, or National Pollutant Discharge Elimination System (NPDES) permit for the project. In the event of a conflict, the more stringent of the conditions of such permits or of these Conditions of Certification shall be controlling.

State of Florida Department of Environmental Protection Conditions of Certification at 14 (Conditions of Certification) (Amended Contention 4, Attachment 3). The NRC is not the proper forum for adjudicating disputes related to matters contained in the Conditions of Certification.

See *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 & 2), CLI-07-25, 66 NRC 101, 107 (2007) (Where petitioner "claims that NRC ought to concern itself with water use matters within the jurisdiction of other state and Federal agencies," the "complaints simply do not articulate any issue material to this proceeding...."); *Hydro Resources, Inc.* (292 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121 (1998) ("Congress

granted us authority merely to regulate radiological and related environmental concerns. It gave our agency no roving mandate to determine other agencies' permit authority.") Since Joint Intervenors are raising issues regarding the sufficiency of the Conditions of Certification, and the NRC has no authority over the content of the Conditions of Certification, Joint Intervenors' concerns are outside the scope of the proceeding. Furthermore, Joint Intervenors raise issues that are not material to the findings the NRC must make. Thus, this contention is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1).

Joint Intervenors' Contention C-4 II further argues that the Staff's assertion that there will be no adverse impacts on wetlands "sidesteps the question of spring flow." Amended Contention 4 at 5. This aspect of the contention is not admissible because it fails to raise a genuine dispute on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi). The DEIS contains discussions of spring flow, *see, e.g.*, DEIS at 5-4, 5-5. Because the contention only stated that the DEIS "sidesteps the question of spring flow" and does not point to any particular inadequacy of the Staff's discussion of spring flow, this contention fails to raise a genuine dispute on a material issue of fact or law and should not be admitted.

Finally, Contention C-4 II raises issues related to the Environmental Monitoring Plan. Joint intervenors assert that the "NRC staff punts to the Florida Conditions of Certification" and that "it is improper for the DEIS to rely on [the Environmental Monitoring Plan] when there can be no informed analysis to determine whether the plan is sufficient." Amended Contention 4 at 6. While Joint Intervenors cite several passages in the DEIS that discuss environmental impacts, *see id.* at 6-7 (citing DEIS at 4-26, DEIS at 5-37, and DEIS at 5-42 to 5-43), the passages do not support the assertion that the Staff relied on the Environmental Monitoring Plan in lieu of conducting its own analysis. Joint Intervenors have not cited any part of the DEIS that supports this assertion. Additionally, where the DEIS references the Environmental

Monitoring Plan, the Joint Intervenors have not explained why the Staff would need to review a fully developed Environmental Monitoring Plan. For example, the DEIS states that:

The FDEP conditions of certification require PEF to develop an environmental monitoring plan, which includes a hydraulic testing program during drilling and installation of the proposed water-supply wells to obtain site-specific hydraulic property estimates and determine whether the wellfield can meet groundwater usage impacts without significantly affecting water levels in the surficial aquifer.

DEIS at 4-23. Joint Intervenors do not explain why it is necessary for the Staff to review, for example, the details of PEF's hydraulic testing program. The State of Florida will review and approve the Environmental Monitoring Plan. See Conditions of Certification at 33. Joint Intervenors further argue that "[i]t is impossible for Staff to take 'a hard look' at the EMP." Amended Contention 4 at 6. The Staff notes that, while NEPA requires the Staff to take "a hard look" at environmental impacts resulting from the proposed action in the EIS, there is no legal requirement to take "a hard look" at the Environmental Monitoring Plan, which is related to Florida's licensing process. Therefore, this portion of the contention does not satisfy 10 C.F.R. § 2.309(f)(1)(vi) and should be dismissed.

In summary, no aspect of Contention C-4 II satisfies all of the contention admissibility requirements in 10 C.F.R § 2.309(f)(1), and therefore, no part of C-4 II should be admitted.

B. Active Dewatering [C-4 A-1]

1. Karst Formation

Joint Intervenors assert that the "DEIS fails to correctly identify problems with the underlying geology of the area," namely "karst formation and [the] possibility of sinkholes and fracture issues [that] will directly lead to misidentification of dewatering and aquifer flow issues." Amended Contention 4 at 3. In support of their claim that the DEIS is incorrect, Joint Intervenors cite three things: a statement from the FSAR that "[t]he LNP site lies within a region susceptible to dissolution and karst development;" the Levy County Comprehensive Plan, which

notes that the construction of a highway has resulted in increased runoff into at least two sinkholes; and a map that apparently indicates the existence of several sinkholes in Levy County.

The Bacchus Affidavit similarly addresses “the failure to acknowledge karst and other characteristics of [the] proposed LNP site and vicinity identified in FSAR Chapter 2.” Bacchus Affidavit at 3. The Bacchus Affidavit contains several other claims that, while under a “passive dewatering” topical heading, are more appropriately considered as part of Amended Contention 4’s karst arguments. Specifically, Dr. Bacchus asserts that:

[t]here is no evidence that the models or other information relied on by PEF or the DEIS accounted for the magnitude or extent to which characteristic karst features such as sinkholes and fractures increase the adverse environmental impacts of anthropogenic water quantity and water quality alterations such as those that would occur from the proposed LNP. Furthermore, there is no evidence that PEF or the DEIS has identified the location of fracture networks and associated karst features in the affected area of the proposed LNP.

Bacchus Affidavit at 6. Dr. Bacchus goes on to argue that adverse impacts to water quantity and quality will occur because subsidence, fractures, or sinkholes will develop due to weight loads exerted on the aquifer by storm water ponds and dewatering associated with deep excavation at the LNP site and with mines in the vicinity. *Id.* at 6-7.

Staff Response:

First, this portion of Amended Contention 4, and the related arguments in the Bacchus Affidavit, is untimely under 10 C.F.R. § 2.309(c) and (f)(2). Joint Intervenors did not claim an omission in or raise a dispute with PEF’s characterization of the LNP site’s geology with regard to karst formation in their original petition. Moreover, PEF’s description of site geology in the ER is similar to the Staff’s assessment that karst is unlikely to be problematic. The ER concludes its description of area karst geology with the statement: “[b]ased on a regional study of Florida, the LNP site is shown to be located in a region where the limestone is bare or thinly covered,

and sinkholes are few, generally shallow, broad, and develop gradually.” ER at 2-619. The DEIS description, which is referenced in Amended Contention 4 at 9, expands upon the ER assessment only by corroborating it with USGS Groundwater Atlas, which states that “transmissivity values in the vicinity of the LNP site . . . are below the threshold that would be indicative of well-developed karst systems.” DEIS at 2-175. Thus, under 10 C.F.R. § 2.309(f)(2), this information is not new and significant information presented by the DEIS. Because Joint Intervenors could have challenged this information in the ER, it is also not previously unavailable information under section 2.309 (f)(2)(i). Joint Intervenors fail to attempt to argue that this portion of Amended Contention 4 should be admitted based on the late-filing criteria in section 2.309(c). Accordingly, because this portion of Amended Contention 4 does not satisfy the criteria of 10 C.F.R. § 2.309(c) and (f)(2), the Board should reject it. See *Oyster Creek*, CLI-09-7, 69 NRC at 261.

Second, Joint Intervenors have not shown a genuine dispute on a material issue of fact with the DEIS as required by 10 C.F.R. § 2.309(f)(1)(vi). To dispute the adequacy of the description of the LNP site’s geology in the DEIS, Amended Contention 4 refers, as described above, to documents that either indicate the mere existence of sinkholes in Levy County or that the greater region where the LNP site lies is susceptible to dissolution and karst development. Amended Contention 4 at 10. The DEIS acknowledges that karst formations are common throughout Florida, but also provides, based on local data and observations of area limestone characteristics, that the LNP site in particular is unlikely to have well-developed karst. DEIS at 2-25; 2-175. Amended Contention 4 presents no disagreement with the DEIS. Similarly, Dr. Bacchus’ arguments allege a failure to assess impacts that will result from sinkholes that she assumes will develop, but she fails to reference the DEIS discussion of site geology (DEIS § 2.3.1.2) or discuss why she disagrees with the DEIS conclusion that the site is unlikely to have

well-developed karst. *Id.* For these reasons, the Board should reject this portion of Amended Contention 4 and the Bacchus Affidavit because they do not raise a genuine dispute of fact or law with the DEIS under 10 C.F.R. § 2.309(f)(1).

2. Water Consumption, Recharge, and Groundwater Modeling

Joint Intervenors challenge the adequacy of the DEIS analysis of water consumption compared with water availability and aquifer recharge. Amended Contention 4 at 10. They assert that the DEIS analysis uses a wide area to determine aquifer recharge rates and a small area to determine drawdown rates. *Id.* at 11. Joint Intervenors also argue that because a state-mandated water budget has not been established by Levy County, there is no basis for the DEIS to conclude that the Florida Conditions of Certification will protect water resources. Finally, they argue that the groundwater model is flawed in that “[t]he modeling used in the DEIS to predict the impact of withdrawing water from the aquifers is incorrect, based on faulty data and not reliable.” *Id.* In particular they assert that,

PEF gives no guarantee that the drawdown of 5.8 Mgd will only occur for a duration of 1 week. It also assumes this drawdown would occur under normal precipitation conditions and fails to address impacts that will occur during dry or drought conditions. It also completely fails to consider the cumulative effects of the Tarmac Mine drawing 1 Mgd in the immediate area of the LNP.

Amended Contention 4 at 11-12.

Staff Response:

The Board should dismiss this portion of Amended Contention 4 because Joint Intervenors have not provided sufficient information to demonstrate a genuine dispute of material fact or law with the DEIS. 10 C.F.R. § 2.309(f)(1)(vi). Moreover, in many instances Joint Intervenors have not provided the necessary references to specific portions of the DEIS that they dispute. *Id.* For these reasons, the Board should reject this portion of Amended Contention 4.

Joint Intervenors' assertions that recharge and discharge are compared on different scales, and that the groundwater model water recharge input is incorrect, is erroneous. Amended Contention 4 at 10. Figure 2-12 (DEIS at 2-31) provides a grid indicating the size of the local-scale groundwater model domain—20 miles by 20 miles. As the DEIS notes, “[t]his model, which was a local refinement of the Southwest Florida Water Management District’s (SWFWMD) District-Wide Regulation Model, Version 2 (DWRM2) regional groundwater flow model, was used to simulate both LNP and cumulative groundwater-usage impacts.” DEIS at 5-7. Thus, the model domain factors all incoming and outgoing water over the local scale, not some larger “regional” scale as Joint Intervenors suggest. *Id.* See also DEIS Figure 5-2 at 5-8. The drawdown from the Levy plant is incorporated into this model as one of a number of discharges from the model domain. *Id.* Accordingly, Joint Intervenors have failed to demonstrate a genuine dispute of fact or law because they incorrectly represent the analysis in the DEIS.

Joint Intervenors seem to assert that, until Levy County develops a “Groundwater Basin Resource Availability Inventory” (GWBRAI), there is no way to gauge the state of the aquifer system. Amended Contention at 11. However, PEF’s use of two groundwater models, their coordination with SWFWMD, and the Staff’s analysis of site specific conditions and PEF’s submissions provides the same information. Moreover, PEF’s model development process followed the requirements of the LNP Site Certification Application to the State of Florida with input from SWFWMD. DEIS at 5-7. The state of the aquifer is represented by the extensive analyses undertaken at each of these junctures, and Joint Intervenors put forth no genuine dispute of fact or law as to why the GWBRAI is a necessary addition.

Joint Intervenors make a number of assertions regarding the use of the recalibrated groundwater model that do not support their conclusion that it is faulty. First, they assert that

“PEF gives no guarantee that the drawdown of 5.8 Mgd will only occur for a duration of 1 week.” Amended Contention 4 at 12. However, these withdrawal limits are provided for in the Conditions of Certification. The DEIS notes that PEF estimated that plant operations would require an average total withdrawal of 1.58 Mgd and a potential maximum daily withdrawal of 5.8 Mgd. DEIS at 5-7. Further, SWFWMD authorized these average and maximum daily usage values, provided the Conditions of Certification are met. *Id.* The 1.58 Mgd withdrawal amount is a required average that is verified monthly by SWFWMD. Conditions of Certification at 31, 37 (Amended Contention 4, Attachment 3). In order to be in compliance with the monthly withdrawal limit, PEF could not withdraw 5.8 Mgd for more than one week. DEIS at 5-7. Joint Intervenors provide no specific information that disagrees with this; accordingly, they have not demonstrated a genuine dispute of fact or law.

Next, Joint Intervenors assert that the groundwater model is not reliable because it was recalibrated. Amended Contention 4 at 12. They also assert that the DEIS fails to consider impacts from the Tarmac mine; the Staff discusses arguments related to the Tarmac mine below. The DEIS explains that the model was recalibrated to improve the goodness of fit by incorporating more site-specific conditions. DEIS at 2-28; 2-29. Joint Intervenors provide no information disputing how changes in the model to better capture local-scale conditions “show its failure.” Amended Contention at 12. In fact, the portions of the DEIS cited by Joint Intervenors illustrate that the recalibrated model is more conservative.

For the reasons stated above, portions of Amended Contention 4 challenging the groundwater model, including recharge issues, do not meet the requirements of 10 C.F.R. § 2.309(f)(1)(vi) and should be dismissed. To the extent that this portion of Amended Contention 4 (at 12-13) raises arguments about dewatering and salt intrusion, the Staff does not object to the admission of these portions. These issues appear to be timely and within the

scope of the previously admitted contention.

C. Impacts Resulting From the Connection of the Site to the Underlying Floridan Aquifer System [C-4 A2]

Amended Contention 4 at 13. The Staff does not object to the admission of this contention because it is timely and within the scope of the previously admitted contention.

D. Impacts on Outstanding Florida Waters such as the Withlacoochee and Waccasassa Rivers [C-4 A-3]

Amended Contention 4 at 13-14. The Staff does not object to the admission of this portion of the contention because it is timely and within the scope of the previously admitted contention.

E. Passive Dewatering [C-4 A-3]

“Passive Dewatering” is discussed in Amended Contention 4 at 14-16 and Bacchus Affidavit at 5-9. With the exception of the portion regarding the Tarmac King Road Limestone Mine (Tarmac) (Amended Contention 4 at 16), which is addressed below, the Staff does not object to the admission of this portion of the contention because it is timely and within the scope of the previously admitted contention.

With respect to its evaluation of the Tarmac mine, Joint Intervenors assert several shortcomings of the DEIS: (1) the DEIS evaluation is incomplete because the Staff did not evaluate the impacts of water use at Tarmac on groundwater levels and wetlands, Amended Contention 4 at 16; (2) the DEIS lacks substantive discussion of the cumulative impacts of the Tarmac and Levy projects, *id.*; and (3) the Levy DEIS should have incorporated, in full, the DEIS currently in progress for Tarmac, Bacchus Affidavit at 8.

Staff Response:

Joint Intervenors initially filed a contention with three subparts, C4B, C4C, and C4D, that challenged the PEF’s ER on the grounds that it failed to adequately address impacts from

mining activities associated with the LNP project. See *Levy County*, LBP-09-10, 70 NRC at 49. The Board ruled that these parts of Contention 4 were inadmissible. *Id.* Joint Intervenors have not presented any argument for why the information related to mining activities at Tarmac in the Bacchus Affidavit should be considered new or different from what the Board has already ruled upon and found inadmissible. Accordingly, to the extent Amended Contention 4 raises issues relating to the DEIS' consideration of mining at Tarmac, those portions should be dismissed.

This aspect of the contention relating to the DEIS' treatment of Tarmac is also not admissible because it fails to raise a genuine dispute on a material issue of fact or law, as required by 10 C.F.R. § 2.309(f)(1)(vi). The Joint Intervenors contend that the DEIS did not evaluate the impacts of water use at Tarmac on groundwater levels and wetlands. Amended Contention 4 at 16. However, even though the DEIS does not evaluate the Tarmac site specifically, the DEIS did *consider* the impacts of water use at Tarmac to groundwater levels and wetlands. The Staff did not specifically evaluate Tarmac because it considered Tarmac to be comparable to the LNP wellfield:

This limestone mine [Tarmac] is expected to use less than 1 Mgd of water (PEF 2009a), which is comparable to LNP operational usage. Although no evaluation of the impacts of water use at the Tarmac mine on groundwater levels and wetlands was performed, the review team determined that the effects would be of the same order of magnitude as those predicted for the LNP wellfield. As discussed in Section 5.2.2.2, a modeling evaluation indicated that average LNP operational groundwater use (1.58 Mgd) represents only a small percentage (0.8 percent) of the total water flux (208 Mgd) moving through the groundwater model domain. Assuming similar geohydrologic conditions at the Tarmac site, the review team determined that the proposed water use would also be a relatively small amount of the flux moving through the groundwater system.

DEIS at 4-21 to 4-23. The Joint Intervenors have not presented any argument for why it is not sufficient to consider the impacts of Tarmac in this manner. Furthermore, the Joint Intervenors have not presented any specific impacts from Tarmac that should have been considered but were not. As such, the Joint Intervenors have not demonstrated a genuine dispute on a

material issue of fact or law.

The Joint Intervenors next claim that the DEIS lacks substantive discussion of the cumulative impacts of the Tarmac and Levy projects. Amended Contention 4 at 16. However, the Joint Intervenors do not reference any portion of Chapter 7, “Cumulative Impacts,” that they claim is inadequate. Chapter 7 states, “[w]ithin the region, the reasonably foreseeable project with the greatest potential to affect cumulative land-use impacts would be the Tarmac King Road Limestone Mine” DEIS at 7-8. Section 7.2 of the DEIS addresses cumulative water use and quality impacts and considers Tarmac. See DEIS at 7-14 to 7-15. Because the Joint Intervenors have not cited any portion of the DEIS that they consider inadequate or explained why the DEIS’ discussion of cumulative impacts, which considers Tarmac, is inadequate, this portion of the contention does not raise a genuine dispute on a material issue of fact or law.

The Joint Intervenors additionally assert that the DEIS should incorporate, in full, the Tarmac DEIS and the failure to do so inappropriately segments the activities at LNP and Tarmac. Bacchus Affidavit at 8. The Joint Intervenors state that “a Supplemental DEIS is required to combine the entire pending DEIS/EIS for the proposed Tarmac mine with this DEIS for the proposed LNP.” *Id.* Because the LNP and Tarmac projects are not “connected actions,” NEPA does not require them to be included in a single EIS, and therefore, this aspect of the contention does not raise a genuine dispute with a material issue of fact or law as required by 10 C.F.R. § 2.309(f)(1)(vi).

NEPA requires that an agency include in an EIS the effects of other “connected actions” to be performed. See 40 C.F.R. § 1508.25. “Actions are connected if they: (i) [a]utomatically trigger other actions which may require environmental impact statements; (ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously; or (iii) [a]re interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* However, in

this proceeding, because the potential mining at Tarmac is not necessary for NRC approval of the LNP COL application and is not even certain to occur, it cannot be said to be part of the NRC's action in approving the COL application. Moreover, the Tarmac project involves a different applicant, Tarmac America LLC, and the Tarmac action, if it were to occur, would be subject to the independent decision-making authority of another Federal agency, the Army Corps of Engineers (Corps). See DEIS at 7-8; Table 7-1 at 7-4 (A permit application was submitted to the Corps in September 2007, and a DEIS is expected to be completed in 2010.). Therefore, potential mining at Tarmac is not a part of the NRC action nor is it a "connected" action under NEPA.

NEPA may require actions to be treated as "connected" if it would be "irrational, or at least unwise" to undertake one without the other. *Save the Yaak Comm. v. Block*, 840 F.2d 714, 720 (9th Cir. 1988). Actions may need to be analyzed as "connected" if they are "inextricably intertwined." *Thomas v. Peterson*, 753 F.2d 754, 759 (9th Cir 1985) (requiring analysis of both road and timber sales). However, issuing the COL is not practically dependent on mining at Tarmac, and mining at Tarmac is not practically dependent on construction or operation of LNP, thus issuance of the COL and mining at Tarmac should not be considered "inextricably intertwined." See DEIS at 4-10 ("PEF has not made a final determination regarding the source of the fill material for the LNP site....The Tarmac mine would not be developed solely for providing fill material to the LNP site.").

In sum, NEPA requires agencies to analyze impacts that are direct, indirect, and cumulative. 40 C.F.R. § 1508.25. Consequently, the Staff analyzed the impacts of potential mining at Tarmac in the DEIS. However, just because the Staff addressed Tarmac in the DEIS does not mean that the Staff had to complete a full EIS for Tarmac or incorporate the Tarmac EIS into the Levy DEIS. The two projects are not dependent upon one another and so are not

“connected” actions under NEPA.

F. Impacts on Water Quality Due to Increases in Nutrient Concentration [C4-A4]

Amended Contention 4 at 16. The Staff does not object to the admission of this portion of the contention because it is timely and is within the scope of the originally admitted contention.

G. Impacts on Water Quality Due to Increases in Nutrients from Wildfires [C4-A5]

Amended Contention 4 at 17; Bacchus Affidavit at 12-14. The Staff does not object to the admission of this portion of the contention because it is timely and is within the scope of the originally admitted contention.

H. Salt Drift [C-4: B]

Amended Contention 4 at 17-19; Bacchus Affidavit at 14-23. With the exceptions noted below in “Issues Raised Solely by Bacchus Affidavit,” the Staff does not object to the admission of this portion of Amended Contention 4 because it is timely and appears to be within the scope of the previously admitted contention.

I. Consequential Impacts [IV]

“The Hydro-Ecological Impacts of Construction and Operation of 2 AP1000 Nuclear Reactor Units on the Levy County Site Would be LARGE” (Amended Contention 4 at 19-21). The Staff does not object to the admission of this portion of the contention, with the exception of Joint Intervenors’ arguments regarding the Conditions of Certification, because it is timely and within the scope of the previously admitted contention. The Staff addressed above why challenges to its use of the Florida Conditions of Certification are inadmissible.

IV. Issues Raised Solely by Bacchus Affidavit

A. Failure to Identify/Evaluate Affected Area of the Proposed LNP

Bacchus Affidavit at 3-4. The Staff does not object to the admission of this portion of Amended Contention 4 because it is timely and appears to be within the scope of the previously admitted

contention.

B. Unpermitted 'Taking' of Endangered and Threatened Species

Bacchus Affidavit at 23. Joint Intervenors argue that the DEIS fails to adequately assess environmental impacts, and therefore, “the affected public and regulatory agencies have been precluded from providing meaningful comments regarding the unpermitted ‘taking’ of federally listed endangered and threatened species.” Bacchus Affidavit at 23. The Joint Intervenors also assert that the DEIS failed to consider the cessation of springs discharging into the Cross Florida Barge Canal and other coastal springs near the proposed LNP, which is important because these discharges are critical sources of fresh water for manatees. *Id.* at 23-24. This portion of the contention appears to be within the scope of the already admitted contention, but directed at the DEIS instead of the ER. Accordingly, the Staff does not object to its admissibility.

C. No Bona Fide Comprehensive Cumulative Effects Analysis Conducted or Compliance with Other NEPA and Federal Requirements

Bacchus Affidavit at 25. Staff does not object to the admission of this portion of Amended Contention 4 because it is timely and appears to be within the scope of the previously admitted contention.

D. Mitigation

Bacchus Affidavit at 25-26. The Staff does not object to portions of the contention that relate to the DEIS’ discussion of appropriate mitigation measures, as they appear to be timely and within the scope of the previously admitted contention.

E. Salt Drift

The Bacchus Affidavit raises a new issue regarding salt drift impacts: that components other than salt in cooling tower drift will damage the surrounding environment. Bacchus

Affidavit at 16. Dr. Bacchus bases this assertion on the possibility that chemical laden water from storm water ponds will be used as a source of water for cooling towers and that anti-scaling chemicals intentionally added to cooling water will cause harm to the environment. *Id.*

Staff Response:

This issue is untimely under 10 C.F.R. § 2.309(c) and (f)(2). Joint Intervenors did not claim an omission in or raise a dispute with PEF's proposal to pump storm water from storm water ponds to the cooling tower blowdown basin during large storm events in their original petition. See ER at 5-84. Thus, under 10 C.F.R. § 2.309(f)(2), this information is not new and significant information presented by the DEIS. Because Joint Intervenors could have challenged this information in the ER, it is also not previously unavailable information under section 2.309 (f)(2)(i). No attempt was made to argue that this portion of Amended Contention 4 should be admitted based on the late-filing criteria in section 2.309(c). Accordingly, because this portion of Amended Contention 4 does not satisfy the criteria of 10 C.F.R. § 2.309(c) and (f)(2), the Board should reject it. See *Oyster Creek*, CLI-09-7, 69 NRC at 261.

The Staff also notes an apparent misunderstanding in the the Bacchus Affidavit regarding PEF's proposal for managing storm water during large rainfall events. Dr. Bacchus states that "[i]n addition to surface water and ground water, stormwater is proposed to be used as a source of water for the cooling towers. (Griffin affidavit ¶ 24)." Bacchus Affidavit at 16. The Affidavit of Dr. Mitchell L. Griffin (Progress Energy Florida's Motion for Summary Disposition of Contention 4, Attachment C) provides in paragraph 24 that "[t]he LNP project proposed to pump stormwater out of the wet ponds to the cooling towers, if necessary, to achieve more storage in the event of successive large storms." Dr. Griffin's statement is consistent with the ER at 5-84. The storm water would not disperse into the environment as vapor because it would not be heated in the process of being pumped to the cooling tower

discharge basin. In this regard, the Bacchus Affidavit does not demonstrate a genuine dispute of fact or law regarding impacts from chemicals in drift due to stormwater. 10 C.F.R. § 2.309(f)(1)(vi). The Staff does not object to the admission of other portions of this argument on the basis of section 2.309(f)(1) criteria.

F. Avoidance—Alternatives Not Considered or Adequately Assessed

The Bacchus Affidavit asserts that the DEIS fails to consider alternatives that would avoid all of the adverse environmental impacts described in her affidavits and exhibits while still providing affordable energy. Bacchus Affidavit at 24.

Staff Response:

Joint Intervenors initially filed four contentions, C-9, C-10, C-11, and C-4.O, that challenged the PEF's ER on the ground that it failed to adequately address alternatives to the proposed construction and operation of two new nuclear power reactors. *See Levy County, LBP-09-10, 70 NRC at 78-79.* The Board ruled that these contentions were inadmissible. *Id.* at 85, 88, 91, 94-95. Joint Intervenors have not presented any new or different information related to alternatives analyses in the Bacchus Affidavit from what the Board has already ruled upon and found inadmissible. Accordingly, to the extent Amended Contention 4 raises issues relating to the alternatives analyses in the DEIS, those portions should be dismissed.

Furthermore, a new contention related to alternatives is untimely. On September 27, 2010, Joint Intervenors filed a Motion for Extension of Time to File Amended or New Contentions on Hydroecology seeking more time to file "new contentions on hydroecology and amendments to Contention 4 related to the Draft Environmental Impact Statement." On September 29, 2010, the Board granted this motion and extended their deadline for filing new contentions until 40 days from October 4, 2010. "Board Order (Granting Motion for Extension of Time)," Sept. 29, 2010. As this part of the contention relates to alternatives, and not

hydroecology, it is not timely. Joint Intervenors did not attempt to address the factors governing late-filed contentions in 10 C.F.R. section 2.309(c)(1) or (f)(2). Therefore, inasmuch as Amended Contention 4 raises issues related to alternatives, it should not be admitted.

CONCLUSION

For the reasons discussed above, Amended Contention 4 should be admitted in part and denied in part. The Staff also requests that the admitted portions of Amended Contention 4 be deemed to supersede their previously admitted contention 4 counterpart.

Respectfully Submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
this 10th day of December, 2010

ATTACHMENT 1

PDF Version of http://www.dep.state.fl.us/siting/power_plants.htm

Attachment 1



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Department of Environmental Protection

"More Protection, Less Process"
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Governor Crist's Initiatives



Power Plant Siting Act

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[Certification](#)

The Power Plant Siting Act (PPSA), ss. [403.501-518](#), F.S., is the state's centralized process for licensing large power plants. One license—a certification—replaces local and state permits. Local governments and state agencies within whose jurisdiction the power plant is to be built participate in the process. Certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others.



Power plants generate electricity to power modern conveniences

Certification does not include licenses required by the federal government. The Power Plant Siting Act applies to all steam or solar electrical generating facilities that:

- » Generate 75 megawatts or more.
- » Applications occurred after July 1, 1973.

Ch. 62-17, Part I, ([62-17.011 - 62-17.293](#) [PDF - 117 KB]), Florida Administrative Code, is the procedural Rule implementing the PPSA. An application guide is also available. All nonprocedural rules that would otherwise apply to such a facility will apply to a certified facility. See the [Certified Facilities list](#) for the power plants that are certified under the Electrical Power Plant Siting Act.

Since certification is a life-of-the facility authorization, the considerations involved in the application review are extensive. The application process for a new facility is discussed below.

Who Issues Certifications?

Certification is issued by the Siting Board (Governor and Cabinet) or by the Secretary of the Florida Department of Environmental Protection (DEP) in non-contested cases.

Long-range Planning for Power Plants

[Ten-year Site Plans](#) can be viewed on the Florida Public Service Commission's (PSC) page.

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I. Pre-application Filing Activities

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- » [Florida Administrative Weekly](#)
- » [Ten Year Site Plans](#)
- » [Certification Process Flowchart](#)

Attachment 1

A. Notice of Intent [403.5063](#)

An applicant may file a Notice of Intent to indicate that it plans to submit an application, and then work with the reviewing agencies on what information to include in the application.

B. Need Determinations

Need Determination, a formal process required under s. [403.519](#), F.S., is conducted by the Public Service Commission. The Public Service Commission reviews the need for the power generated by the proposed facility in relation to the needs of Florida.

C. Federally Delegated or Approved Permits

Federal permits may be required separately and may include:

- » [Preconstruction/Prevention of Significant Deterioration/New Source Review program, \(often referred to as PSD/NSR\)](#)
- » [National Pollutant Discharge Elimination System/Wastewater program \(often referred to as NPDES\)](#)
- » [Underground Injection Control program \(UIC\)](#)
- » [Resource Recovery and Conservation Act program \(RRCA\)](#)

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II. Certification Process*A. Application Filing and Distribution* [403.5064](#)

The application, with the appropriate fee, must be submitted to DEP's Siting Coordination Office (SCO).

B. Public Involvement and "Parties to the Proceeding"

Entities and persons affected by a proposed project can attend the hearings and provide comments. Typically, attorneys represent parties at the proceedings.

C. Completeness [403.5066](#)

After the certification application is filed, the SCO (with input from affected agencies) determines if the application contains enough information for agencies to analyze impacts of the proposed project.

D. Land Use Determination [403.50665](#)

The application for certification includes a statement that the power plant and associated facilities are consistent with land use plans and zoning ordinances. Unless otherwise exempt by statute, the local Government will make a finding regarding consistency with land use plans and zoning ordinances.

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E. Public Notice by the Applicant [403.5115](#)

Public notices are made by the applicant for all applications. The many different types of notices are outlined in the statute.

F. Informational Public Meetings [403.50663](#)

The local government within whose jurisdiction the power plant is proposed may host a public meeting to receive public input.

G. Preliminary Statements of Issues [403.507\(1\)](#)

Each affected agency may submit a Preliminary Statements of Issues to the SCO, the applicant and parties to the proceedings to address concerns with a proposed project.

Attachment 1

H. Agency Reports [403.507\(2\)](#)

The Agency Reports, along with internal reports from the DEP districts and bureaus, must be submitted to the DEP SCO. Agency Reports (other than the Public Service Commission's reports) need to include:

- » An assessment of jurisdictional issues.
- » A recommendation whether the agency would approve or disapprove the proposal if the project were being judged solely on their own jurisdictional authority.
- » The Conditions of Certification (permit provisos or other restrictions) recommended if the project is certified.
- » An assessment of any requested variances, exemptions, exceptions or other relief and a recommendation whether these should be granted.
- » An assessment of exceptions or other relief and variances that would be required to approve certification but which were not requested in the application, along with a recommendation whether these should be granted.
- » An assessment of issues related to the use, connection to, or crossing of an agency-owned or controlled land.
- » A summary of public comments received.

The Siting Board may decide that it is in the overall best public interest to certify the project, regardless of a negative recommendation. The Public Service Commission's Report is required only to contain a copy of the Determination of Need.

I. Project Analysis [403.507\(5\)](#)

DEP's SCO prepares a project analysis based on the reports and recommendations of the affected agencies, the Public Service Commission and DEP's districts/bureaus. The Project Analysis includes:

- » A statement indicating whether the proposed electrical power plant (and proposed ultimate site capacity) will be in compliance and consistent with:
 - » The nonprocedural requirements of the affected agencies, as based upon the information provided by those agencies.
 - » Matters within DEP's standard jurisdiction (e.g., water quality, air quality, proprietary impacts on state-owned lands, state park protections, etc.).
- » An overall recommendation whether the project should be approved or denied. If denial is recommended, the reasons should be provided and corrective measures suggested.

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J. Notice of the Certification Hearing [403.508\(2\)\(b\)](#) and subsequently [403.5115\(1\)\(e\)](#)

Notice of the hearing must be published in newspapers and in the *Florida Administrative Weekly* no later than 45 days before the hearing to assure ample opportunity for the public to review the reports and analysis.

K. Certification Hearing. [403.508 \(2\) and \(3\)](#)

A Certification Hearing must be held if the proposed project is disputed.

In a case where it appears that no hearing is necessary, a stipulation (legal agreement) is initiated asserting that there are no disputed issues that need to be raised at the certification hearing. In order for the hearing to be cancelled, all parties to the proceeding must agree and sign the stipulation. DEP or the applicant will then submit this stipulation to the ALJ with a request that the ALJ release authority over the case. [403.508 \(6\)](#)

The ALJ has five days to issue an order approving or denying the request.

Attachment 1

The approval of cancellation must be accomplished in enough time for a large newspaper notice and a Florida Administrative Weekly notice to be published regarding the hearing cancellation at least three days prior to the date originally scheduled for the hearing. It is hoped that everyone interested in the case will be apprised of the notice, and not travel to the previously announced hearing location.

Once the ALJ has cancelled the hearing, the DEP prepares the Recommended Order that forms the basis for a Final Order of Certification signed by the Secretary (agency head) of DEP. See further below for details of Recommended Orders and Final Orders. To assist DEP in preparing the Recommended Order, the statute allows parties to submit proposed Orders to DEP for consideration. The Final Order must be issued by the Secretary within 40 days of the cancellation of the Certification Hearing.

L. Administrative Law Judge Recommended Order [403.509](#)

If a Certification Hearing has been conducted, the administrative law judge issues a Recommended Order that contains facts and conclusions of law about the matters raised at the hearing or in the application, along with the proposed Conditions of Certification if certification is recommended. The Recommended Order is submitted to DEP for presentation to the Siting Board.

M. Siting Board Hearing, Criteria for Certification

The Siting Board hearing is typically a subset of a standard Governor and Cabinet meeting. To determine whether an application should be approved or denied, the Siting Board determines whether or not the electrical power plant and directly associated facilities and their construction and operation will:

- » Provide reasonable assurance that operational safeguards are sufficient for the public welfare and protection.
- » Comply with agency requirements.

N. Final Order Effective Date

The signed Final Order is sent to the Clerk of the Siting Board for official entry.

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Last updated: October 25, 2010

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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 Joint Intervenor's Motion to Amend Contention 4 have been served upon the following persons by Electronic Information Exchange this 10th day of December, 2010:

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