

December 21, 2010

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
)
(Combined License Application for)
Levy County Nuclear Plant, Units 1 and 2))

NRC STAFF ANSWER TO INTERVENORS' CONTENTION 12

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1), and the Atomic Safety and Licensing Board's (Board) Initial Scheduling Order, *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC ___ (slip op. at 8) (Aug. 27, 2009), the NRC staff (Staff) hereby files its Answer to the Nuclear Information and Resource Service, Green Party of Florida, and Ecology Part of Florida's (Joint Intervenors) November 15, 2010, "Intervenor's Motion For leave to File a New Contention and Contention 12" (contention 12). For the reasons discussed below, contention 12 does not comply with the timeliness requirements for new and amended contentions in 10 C.F.R. § 2.309(f)(2) and (c). In addition, contention 12 should be dismissed for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

BACKGROUND

On July 28, 2008, Progress Energy Florida, Inc. (PEF, Applicant) filed an application for a combined construction permit and operating license (COL) for two new reactors in Levy County, Florida. On February 6, 2009, the Joint Intervenors collectively filed a petition to

intervene and several contentions.¹ On July 8, 2009, the Board issued a Memorandum and Order, granting the hearing request and admitting three Contentions. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 104 (2009). The NRC Staff's Draft Environmental Impact Statement For Levy County Units 1 and 2 (DEIS) 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. Pursuant to Licensing Board Memorandum and Order (Granting Motion for Clarification) at 1 (Sept. 3, 2009) (unpublished), the Joint Intervenors had sixty days from publication of the DEIS to file new or amended contentions based on the DEIS. Therefore, the Joint Intervenors were to file contentions on the DEIS on October 4, 2010. However, the Board granted the Joint Intervenors a forty-day extension of time, until November 15, 2010, to file contentions on the DEIS related to hydroecology. Licensing Board Memorandum and Order (Granting Motion for Extension of Time) at 1 (Sept. 29, 2010) (unpublished). Thereafter, on November 15, 2010, the Joint Intervenors filed contention 12. Because the attachments that accompany Contention 12 were submitted intermittently on and after November 15, 2010, the parties filed a "Joint Motion for Extension of Time" on November 24, 2010. The Board granted this motion on November 29, 2010, giving the NRC Staff and the Applicant until December 29, 2010, to file responses. Licensing Board Order (Granting Motion for Extension of Time) at 1, (Nov. 29, 2010) (unpublished).

DISCUSSION

The Joint Intervenors assert that one new contention based on the Draft Environmental Impact Statement should be admitted in this proceeding. For the reasons set forth below, the Intervenors' contention 12 is inadmissible.

I. Legal Standards for Admissibility of New and Amended Contentions

¹ Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida and Nuclear Information and Resource Service (Feb. 6, 2009).

The admissibility of new and amended contentions is governed by 10 C.F.R. § 2.309(f)(2) and 2.309(f)(1).

First, new or amended contentions arising under the National Environmental Policy Act may be filed if there are data or conclusions in the NRC draft environmental impact statement that differ significantly from the data or conclusions in the applicant's documents. 10 C.F.R. § 2.309(f)(2).² Otherwise, new or amended contentions filed after the initial filing period may be admitted only with leave of the presiding officer if, in accordance with 10 C.F.R. § 2.309(f)(2), the contention meets the following requirements:

- (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).

The 10 C.F.R. § 2.309(f)(2) standard for new or amended contentions addresses two situations. For the first situation, 10 C.F.R. § 2.309(f)(2) states that contentions may be filed on the DEIS where the DEIS differs significantly from the applicant's document, which in this case is the Levy Nuclear Power Plant Units 1 and 2, Combined License Application, Part 3: Environmental Report, Revision 1, October 2009 (Environmental Report or ER). The second situation provides criteria for filing "all other new or amended contentions," making clear that the criteria in 10 C.F.R. § 2.309(f)(2)(i) through (iii) must be satisfied for admission of a contention based on new information. *Id.* If new information arises related to the ER, then under the criteria of 10 C.F.R. § 2.309(f)(2)(i) through (iii), an intervenor must raise this new information in

² Pursuant to Licensing Board Memorandum and Order (Granting Motion for Clarification) at 1 (Sept. 3, 2009) (unpublished), the Joint Intervenors had sixty days from publication of the DEIS to file new or amended contentions based on the DEIS.

a timely fashion and not wait until the DEIS is issued. *Exelon Generating Company, LLC* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 160-64 (2005).

In either case, the new, amended, or untimely petition must meet the general contention admissibility requirements of 10 C.F.R. § 2.309(f)(1). In accordance with 10 C.F.R.

§ 2.309(f)(1), an admissible contention must:

- (i) provide a specific statement of the legal or factual issue sought to be raised;
- (ii) provide a brief explanation of the basis for the contention;
- (iii) demonstrate that the issue raised is within the scope of the proceeding;
- (iv) demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing;
- (vi) . . . provide sufficient information to show that a genuine dispute with the Applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient on a relevant matter as required by law, the identification of such deficiencies and supporting reasons for this belief

10 C.F.R. § 2.309(f)(1). The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999). "Mere 'notice pleading' does not suffice." *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006) (internal quotation omitted). The general contention admissibility requirements apply to contentions on the DEIS as well. *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).

II. The Joint Intervenors' Contention Is Not Timely

The Joint Intervenors propose the following contention:

The Draft Environmental Impact Statement (DEIS) consideration of alternatives to the proposal to build 2 Ap1000 nuclear power reactors on the Levy County site, under Section 102(2)(c)(iii) of the National Environmental Policy Act of 1969, as amended (NEPA, 42 USC 4321) fails to factor two key issues that are associated with the Levy site only, not the four alternate sites. The Levy site would necessitate construction of a Cooling Water Intake Structure (CWIS) in the Cross Florida Barge Canal which is incompatible with 1) the restoration of the severed upper and lower Withlacoochee River and also with 2) the option of creating an impoundment in the Cross Florida Barge Canal for freshwater to augment and support municipal water supply

1) The Levy site is not the "least environmentally damaging practicable alternative" (LEDPA) since the construction of the CWIS would delay the restoration of the hydraulic flow between the upper and lower Withlacoochee River segments until the CWIS is decommissioned in a minimum of 40 – 80 years. This is a LARGE environmental impact not considered by the DEIS that could impact the outcome of the alternate site analysis.

2) Fresh water flows in the Cross Florida Barge Canal (CFBC) represent a LARGE publicly beneficial resource that is not considered when the alternative sites were weighed. A new (October 20, 2010) proposal before the Withlacoochee River Regional Water Supply Authority (WRWSA's) would create an impoundment in the CFBC that could supply significant quantities of fresh water to local residents weekly for public beneficial use. The consumption of this freshwater resource by Levy County Units 1 & 2, via the CWIS is an impact not considered or factored in the relative merits of the alternative sites. Billions of gallons of freshwater would leave the area, either as blow-down that would be discharged to the Gulf of Mexico, or alternately as steam issuing from the mechanical cooling towers. This loss of freshwater is an enormous waste that is not in the public interest.

Contention 12 at 2-3. The Staff opposes the timeliness of Joint Intervenors' contention 12 as this contention fails to satisfy the criteria in 10 C.F.R. § 2.309(f)(2). Pursuant to the Licensing Board Memorandum and Order (Granting Motion for Extension of Time) at 1 (Sept. 29, 2010) (unpublished), the Joint Intervenors had until November 15, 2010, to file new contentions based upon the DEIS with respect to hydroecology only. All other new contentions aside from hydroecology were required to be filed by October 4, 2010. Licensing Board Memorandum and Order (Granting Joint Motion for Extension of Time) at 1 (Aug. 20, 2010) (unpublished). Joint Intervenors claim that contention 12 is "offered within that extension" on hydroecology contentions. Contention 12 at 10. Substantively, however, contention 12 takes issue with the DEIS's alternatives analysis and does not the DEIS's analysis of hydroecological issues.

Contention 12 at 2 and 3. Contention 12 does not allege any inadequacies or omissions regarding the DEIS' hydroecology analysis. Rather, the Joint Intervenors' claim that the "Levy County site is not 'obviously superior' to alternatives and two key impacts have not been considered in the choice of site." Contention 12 at 3.

First, the Joint Intervenors allege that "[t]he Levy site is not the 'least environmentally damaging practicable alternative' (LEDPA) since construction of the CWIS [Cooling Water Intake Structure] would delay the restoration of the hydraulic flow between the upper and lower Withlacoochee River segments until the CWIS is decommissioned in a minimum of 40-80 years. This is a LARGE environmental impact not considered by the DEIS that could impact the outcome of the alternate site analysis." Although this claim mentions the hydraulic flow, it substantively makes no reference to hydroecology issues in the DEIS and only mentions water issues as they relate to the DEIS' alternatives analysis. The Joint Intervenors go on to discuss the hydraulic flow between the Withlacoochee River segments exclusively in terms of selecting an alternative site. "This LARGE impact to the ecological health of the protected, Withlacoochee River which is an Outstanding Florida water is tied exclusively to the selection of the Levy County site and would not be associated with construction at any of the alternative sites." Contention 12 at 3-4. Contention 12 then discusses the Staff's analysis in DEIS Section 9.3.6.3, alleging that the Staff's alternatives analysis did not consider the Withlacoochee River Basin Board's priority to restore the river. Contention 12 at 5. As the Joint Intervenors take issue with the DEIS' alternatives analysis and do not raise any specific hydroecology issues, contention 12 is not a hydroecology contention.

For the second part of contention 12, Joint Intervenors assert that "[f]resh water flows in the Cross Florida Barge Canal (CFBC) represent a LARGE publicly beneficial resource that is not considered when the alternative sites were weighed." Contention 12 at 3. This section likewise mentions water issues as support for the Joint Intervenors' position that the Levy County site is not obviously superior. "In both the matter of restoring the Withlacoochee River,

and the issue of the use of the fresh water for Regional Water Supply, the choice of the Levy site, compared to all others will be destabilizing. We dispute the DEIS finding that the Levy site is preferred.” Contention 12 at 9. Here, as with the first part of the contention, river restoration and other hydroecological issues are not discussed independent of the claim that the Staff’s alternatives analysis is inadequate. Because contention 12 essentially is challenging the Staff’s alternative analysis in the DEIS and not its analysis of impacts on hydroecology, contention 12 is not timely.

III. The Joint Intervenors’ Contention Is Not New

Even if contention 12 was a hydroecology contention, contention 12 is still not timely since it is not based on new information pursuant to the 10 C.F.R. § 2.309(f)(2) criteria. Pursuant to 10 C.F.R. § 2.309(f)(2), contentions raising concerns associated with NEPA should be “based on the applicant’s environmental report. The petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant’s documents.” 10 C.F.R. § 2.309(f)(2).

The Joint Intervenors do not show how this information on alternatives was not previously available prior to publication of the DEIS. Nor do they show how this information was not available in the ER, which was submitted in 2008. As such, the Joint Intervenors were required to file contention 12 as part of their original intervention petition in February 2009. See “Petition to Intervene and Request for Hearing by the Green Party of Florida, the Ecology Party of Florida, and Nuclear Information and Resource Service” (Feb. 6, 2009).

Information that the Joint Intervenors assert is inadequately addressed in the DEIS is available in the ER. For instance, the Joint Intervenors assert that the DEIS’ alternatives analysis does not discuss the Withlacoochee River restoration. However, ER Section 9.4.2.1.1 at 9-157, contains such information:

the Withlacoochee River and Lake Rousseau are the fresh surface waters within the

LNP site vicinity. The Withlacoochee River is designated as an OFW and is, therefore, afforded a high degree of regulatory protection. The Withlacoochee River Basin Board has made the restoration of Lake Rousseau and the Lower Withlacoochee River a priority in their Fiscal Year 2006 Basin Priorities Statement.

The ER also refers to construction of the CWIS in the CFBC. "CFBC near Inglis Lock: A makeup water pipeline from the LNP site would draw water from the CWIS located on the CFBC just below the Inglis Lock, near the upstream end of the CFBC." ER Section 9.4.2.1.1.2 at 9-158. Further, ER Section 9.4.1.2 at 9-145 discusses the environmental impacts of the Withlacoochee River restoration:

As discussed in ER Subsection 4.2.1.1, construction of the LNP, including cooling towers, will result in hydrologic alterations of the watersheds at the LNP, including filling wetlands and excavation. The alterations related to LNP site preparation and construction may temporarily increase the volume of stormwater runoff to the CFBC, Withlacoochee River, and Inglis Lock Bypass Channel, and may also temporarily alter the quality of runoff. Any long-term impacts of the temporary increase in runoff from the construction are expected to be SMALL, and mitigation will not be warranted.

The ER also addresses the Joint Intervenors' assertion that the DEIS does not consider the impacts from loss of fresh water flows in the CFBC:

Hydrologic alterations resulting from CWIS construction will only affect the immediate area surrounding the location in the CFBC. Circulation patterns are expected to be minimally and temporarily affected during construction... Operation of the LNP, including the withdrawal of cooling water from the CFBC and discharge to the CREC discharge canal, is not expected to alter surface water hydrology in the CFBC or the Gulf of Mexico.

Id. at 9-146. Also, as part of their argument regarding the CWIS' possible relocation, the Joint Intervenors attack the adequacy of DEIS Section 7.2.1.1, which addresses the Withlacoochee River's surface water supply. Contention 12 at 5. As referenced above, surface water impacts are discussed in ER Section 9.4.1.2 at 9-146.

The Joint Intervenors go on to reference the DEIS' conclusion that the AP1000 reactors will use cooling water from the Gulf of Mexico. This information is also in the ER. "Operation of the LNP, including the withdrawal of cooling water from the CFBC and discharge to the CREC discharge canal, is not expected to alter surface water hydrology in the CFBC or the Gulf of

Mexico.” ER Section 9.4.1.2 at 9-146. Likewise, the Joint Intervenors reference the DEIS’ findings regarding alleged reductions in the fresh water supply. Contention 12 at 7. This information is also in the ER: “Hydrologic alterations resulting from CWIS construction will only affect the immediate area surrounding the location in the CFBC. Circulation patterns are expected to be minimally and temporarily affected during construction.” *Id.* Lastly, the Joint Intervenors claim that the “loss of the beneficial use of this freshwater for the public is a LARGE impact.” The ER addresses the use of freshwater around the Levy county area. “The freshwater sources reviewed included groundwater, surface freshwater, and reuse water from municipal or commercial sources. The assessment determined that freshwater sources are considered limited in the LNP site area.” ER Section 9.4.2.1.1.1 at 9-156. All of this information was previously available in the ER. Because the information in the DEIS does not differ significantly from the information in the ER, contention 12 does not meet the criteria of 10 C.F.R. § 2.309(f)(2). Therefore, it is not timely.

In addition, the Joint Intervenors refer to the Southwest Florida Water Management District’s (SWFWMD) alternatives study to support their claim that the DEIS’s analysis inadequately addressed the Withlacoochee River restoration. *See* Attachment 6 Alternatives Study; *see also* contention 12 at 6. However, the SWFWMD study is dated December 31, 2003, which indicates that the findings in this study have been available since December 2003. Therefore, the information in this study does not comprise new information that was not available prior to issuance of the DEIS in August 2010. The Joint Intervenors further allege that Florida conditions of certification may require the Applicant to relocate the CWIS if the state modifies the CFBC. *See* Attachment 3, Conditions of Certification. According to Attachment 3, these conditions of certification were modified on February 23, 2010, roughly six months before issuance of the DEIS. This information is not new. Also, because these conditions were “modified” in February 2010, this implies that some of the information existed even before that date. At the very least, these conditions were available six months before publication of the

DEIS. Since this information is not new, the Joint Intervenors could have obtained this information long before the DEIS' publication. Thus, the information that the Joint Intervenors claim is new was actually previously available.

Second, the information upon which contention 12 is based was available at the time of the initial petition and is not materially different than information that was previously available in the ER. The DEIS contains all of the information on alternative sites that the Joint Intervenors relied upon in framing contention 12. Although Joint Intervenors state that they "were unaware of the plan of the Withlacoochee River Basin Board to restore the Withlacoochee River until the publication of the DEIS," the standard for 2.309(f)(2)(ii) is not when the party becomes aware of information, but rather when information actually becomes available. The Joint Intervenors even admit that this excuse "does not cure the timeliness factor" and "that something as basic as the location of the proposal is not 'new'." Contention 12 at 9 and 10. However, the ER mentions the Withlacoochee River restoration plan. See ER 9.4.2.1.1.1 at 9-157. Because this information was available in the ER and has been available since 2006, the Joint Intervenors should have filed contention 12 as part of their initial intervention petition in February 2009.

In support of their contention, the Joint Intervenors reference the October 20, 2010 meeting minutes of the Withlacoochee Regional Water Supply Authority (WRWSA). See Attachment 11. The document contains comments by the WRWSA's Executive Director, Jack Sullivan. Mr. Sullivan mentioned a proposal by a Mr. Dan Hilliard of the Withlacoochee Area Residents, Inc. "to use the Cross Florida Bridge Canal (CFBC) as an alternative water supply." Attachment 11 at 3. However, the plan to restore the Withlacoochee River is not new; it was discussed in the ER. ER Section 9.4.2.1.1 at 9-157. Although Joint Intervenors claim that the WRWSA took an action on this date, the meeting minutes simply mention that another member of the WRWSA made a motion to "approve the recommendation of the Executive Director on this project." *Id.* The Joint Intervenors also allege that the "action . . . by the Withlacoochee Regional Water Supply Authority on October 20, 2010 with respect to the impoundment of fresh

water in the CFBC brought these issues into focus.” Contention 12 at 9. However, simply “bringing an issue into focus” does not mean that there is new information on that issue. *Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC _ (slip op. at 64) (July 8, 2009). In sum, the Joint Intervenors fail to satisfy 10 C.F.R. § 2.309(f)(2). Accordingly, contention 12 is untimely.

Moreover, the Joint Intervenors erroneously assert that even if contention 12 is not timely, they still meet the criteria for nontimely filings under 10 C.F.R. § 2.309(c). Contention 12 at 10-11. A 10 C.F.R. § 2.309(c) determination must be based on a balancing of eight factors, the most important of which is ‘good cause’ to submit a timely filing. See *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-88-12, 28 NRC 605, 609-609 (1988), *reconsid. denied on other grounds*, CLI-89-6, 29 NRC 348 (1989), *aff’d sub nom.*, *Citizens for Fair Utility Regulation v. NRC*, 898 F. 2d 51 (5th Cir. 1990). The intervenor bears the burden of satisfying these eight criteria. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-00-16, 51 NRC 320, 325) (2000). Good cause is the most important factor in assessing whether a late-filed contention should be deemed to be admissible. See *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986). The eight factors listed in 10 C.F.R. § 2.309(c) are:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;
- (v) The availability of other means whereby the requestor's/petitioner's interest will be protected;
- (vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

A good cause determination based on new information rests on two prongs: (1) when was sufficient information reasonably available to support the submission of the late-filed contention; and (2) once the information became available, how long did it take for the contention admission request to be filed. "In essence, not only must the petitioner have acted promptly after learning of the new information, but the information itself must be new information, not information already in the public domain." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 69 (1992). In support of their "good cause" for late-filing, the Joint Intervenors state that

[t]he good cause for bringing issues that others will attack as late is action within the local community in the area of the proposed Levy site that is incompatible with the proposed project, the implementation of which more clearly meet the criteria of 'providing reasonable assurance of adequate protection of the public health and safety' than proceeding with the project on the proposed site. A reconsideration of the alternative sites, which is not impossible, could cure this matter.

Id. The Joint Intervenors have not satisfied the two prongs which are required for a good cause determination based upon new information. They do not address when sufficient information upon which they base contention 12 became reasonably available. Nor do they explain, once the information used to support contention 12 became available, how long it took them to file this contention. The Joint Intervenors do not attempt to clarify how their assertion of "good cause" is based on new information. As such, the Joint Intervenors fail to show that they have good cause for their late-filing pursuant to 10 C.F.R. § 2.309(c)(i).

Moreover, absent a showing of good cause, the Joint Intervenors' other seven factors must be strong. See *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-92-12, 36 NRC 62, 73-75 (1992). It is rare for the Commission to excuse a late-filed petition that lacks good cause. See *Tennessee Valley Authority* (Watts Bar Nuclear Plant,

Unit 2) CLI-10-12, 71 NRC__ (slip op. at 4) (Mar. 26, 2010). Because the Joint Intervenors are parties, the second and third criteria balance in their favor. The Joint Intervenors satisfy 10 C.F.R. § 2.309(c)(iv), because they state that the effect of the Board's order will be "to admit this contention. The litigation of this contention could result in the determination that one of the other sites would be 'obviously superior' to the proposed site." Contention 12 at 11. As for the fifth prong, the Joint Intervenors do not explain whether there are other forums for protecting their interests. 10 C.F.R. § 2.309(f)(c)(v). Instead, they allege that "[t]he issue is the construction and operation of CWIS in the CFBC. This decision is wholly in the hands of the US NRC and PEF." Contention 12 at 11.

The sixth factor favors the Joint Intervenors because there are no other parties in the proceeding that could represent their interests. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit 3), LBP-02-5, 55 NRC 131, 141 (2002). For the seventh factor, the Joint Intervenors argue that contention 12 will not broaden the issues or delay the proceeding, as "there should be no major construction on the Levy site prior to the COL determination, there has not been large, irretrievable investment in the Levy site to date. Given that one of the alternative sites is the Crystal River Energy Center . . . it is not a foregone conclusion that litigation of these issues, even were they to result in the movement of the project to another site would have to create toxic or deadly delay." Contention 12 at 12. Since the Board has already admitted environmental contentions and a hearing will be held on environmental issues, this prong should be weighed in the Joint Intervenors' favor. Finally, for the eighth factor, for the reasons discussed below, contention 12 is inadmissible. Therefore, this factor balances against the Joint Intervenors. Assessing all of the eight factors together, giving due weight to the lack of good cause, the Joint Intervenors have failed to satisfy the criteria in 10 C.F.R. § 2.309(c) for late-filed contentions.

IV. The Joint Intervenors' Contention Is Not Admissible Under § 2.309(f)(1)

The Joint Intervenors proposed Contention 12 reads:

The Draft Environmental Impact Statement (DEIS) consideration of alternatives to the proposal to build 2 Ap1000 nuclear power reactors on the Levy County site, under Section 102(2)(c)(iii) of the National Environmental Policy Act of 1969, as amended (NEPA, 42 USC 4321) fails to factor two key issues that are associated with the Levy site only, not the four alternate sites. The Levy site would necessitate construction of a Cooling Water Intake Structure (CWIS) in the Cross Florida Barge Canal which is incompatible with 1) the restoration of the severed upper and lower Withlacoochee River and also with 2) the option of creating an impoundment in the Cross Florida Barge Canal for freshwater to augment and support municipal water supply.

Contention 12 at 2. The Joint Intervenors argue Contention 12 in two subparts, labeled 1 and 2. Both subparts are discussed, in order, below. The NRC Staff understands the beginning portion of the contention to be the introductory text and Subparts 1 and 2 to be the specific assertions.

1. The Joint Intervenors' Contention 12 Alleging that the Levy Site is not the "Least Environmentally Damaging Practicable Alternative" Should be Denied

Subpart 1 of Joint Intervenors proposed Contention 12 reads:

1) The Levy site is not the "least environmentally damaging practicable alternative" (LEDPA) since the construction of the CWIS would delay the restoration of the hydraulic flow between the upper and lower Withlacoochee River segments until the CWIS is decommissioned in a minimum of 40 – 80 years. This is a LARGE environmental impact not considered by the DEIS that could impact the outcome of the alternate site analysis.

Contention 12 at 3. The Joint Intervenors allege that the Levy site is not the "least environmentally damaging practicable alternative" (LEDPA) as the construction of the CWIS would "delay the restoration of the hydraulic flow between the upper and lower Withlacoochee River segments until the CWIS is decommissioned in a minimum of 40-80 years." *Id.* The Joint Intervenors argue that the DEIS is inadequate as it fails to take into account the resulting large environmental impact caused by this construction. In turn, this may affect the alternative sites analysis.

Staff Response:

The proposed contention is inadmissible because it does not meet the requirements of 10 C.F.R. § 2.309(f)(1)(iii)-(vi). The Joint Intervenors allege that the DEIS is inadequate

because it does not conclude that the Levy site is the LEDPA for alternative sites. However, the NRC does not assess alternative sites under the LEDPA standard, but rather uses the “obviously superior site” standard. The Commission’s “obviously superior site” standard has been upheld by the federal courts. See *New England Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 95 (1st Cir. 1978). The obviously superior site standard is further explained in NUREG-1555, *US NRC Environmental Standard Review Plan*, at 9.3-1 (July 2007): “When one or more environmentally preferable alternative sites are identified, the scope of this review should be extended, using benefit-cost techniques and other procedures to determine if any environmentally preferable site can be shown to be obviously superior to the applicant’s proposed site.” Although the US Army Corps of Engineers (the Corps) relies upon the LEDPA standard when it conducts its alternative sites analysis, the NRC has not adopted this standard and does not analyze alternatives pursuant to it. See DEIS Section 9.3.6 at 9-239.

The Corps is a cooperating agency on the DEIS. In the “Memorandum of Understanding Between U.S. Army Corps of Engineers and U.S. Nuclear Regulatory Commission on Environmental Reviews Related to the Issuance of Authorizations To Construct and Operate Nuclear Power Plants,” 73 Fed. Reg. 55,546-55,549 (Sept. 25, 2008), (MOU), the main objective is to:

establish a framework for early coordination and participation among the signatories to this agreement to ensure the timely review of proposed nuclear power plant applications. Cooperation among the MOU signatories will ensure each agency’s review responsibilities under the National Environmental Policy Act (NEPA) and other related statutes are met in connection with the authorizations required to construct and operate nuclear power plants licensed by the NRC.

Id. at 55,546. Although the NRC is the lead agency for preparing EISs, the NRC and the Corps “acknowledge their respective responsibilities for complying with the requirements of NEPA.” *Id.* at 55,547. As stated above, LEDPA is standard under which the Corps analyzes alternatives. “The NRC’s determination is independent of the USACE’s determination of a LEDPA.” DEIS 9.3.6 at 9-239. To date, the Corps has not rendered its LEDPA decision because “[t]he

USACE's evaluation of this project will not be completed until it receives public feedback in the form of public comments on this draft EIS, and subsequent issuance of a final EIS." DEIS 9.0 at 9-2. Pursuant to the MOU, the information upon which the Corps will base its LEDPA conclusion will be in the DEIS. See DEIS Chapter 9-2. The Corps will then make its LEDPA decision in its Record of Decision: "the USACE must conduct a quantitative comparison of impacts on waters of the United States as part of the LEDPA analysis. The USACE will conclude its analysis of both offsite and onsite alternatives in its Record of Decision." DEIS 9.3.6 at 9-239. While the NRC Staff must look at all of the environmental impacts of the proposed action, whether or not the Corps determines that the Levy County site is LEDPA is not material to a finding the NRC Staff must make. Therefore, contention 12 is inadmissible because it fails to meet the requirement of 10 C.F.R. § 2.309(f)(1)(iv).

Further, the Joint Intervenors have not shown why the alleged inadequacies in the DEIS' alternatives analysis are material. They assert that the Levy site is "obviously inferior" to other alternative sites because of "the plan to use the Cross Florida Barge Canal (CFBC) as a conduit for cooling water, which would prevent implantation of the Withlacoochee Basin Board's mandate...to restore a protected, Outstanding Florida water." Contention 12 at 3. Using the CFBC for cooling water for Levy's reactors "would delay restoration of the protected river through the period of operation (40-80 years) until the Cooling Water Intake Structure (CWIS) would be decommissioned." *Id.* Consequently, the Joint Intervenors allege that this will result in a "LARGE impact to the ecological health of the protected, Withlacoochee River" and construction at any of the alternative sites would not result in such an impact. *Id.* at 3-4. In DEIS Chapter 9.3.6, the NRC staff concludes that "[n]one of the alternative sites was determined to be environmentally preferable to the proposed LNP site. Therefore, the NRC staff concludes that none of the alternative sites would be obviously superior to the LNP site." *Id.* at 9.3.6.2, 9-245. In terms of impacts from the CWIS, the NRC staff concluded that "[b]ecause PEF does not propose to use surface water for building the proposed units, the review team

determined in Chapter 4 that the impacts of building the proposed units would be SMALL for both hydrologic and aquatic resources.” *Id.* at 9.4.2.1, 9-248. The Joint Intervenors do not mention these findings in the DEIS, much less dispute the Staff’s analysis finding that the impacts would be small. Contention 12 is therefore inadmissible because the Joint Intervenors fail to show that a genuine dispute exists with the DEIS. 10 C.F.R. § 2.309(f)(1)(vi).

Also, the Joint Intervenors assert that although Section 9.4.2.4 does in fact discuss the Withlacoochee River restoration project, the DEIS’ alternatives analysis “did not include restoration of the river...there is no reference to the NRC staff considering the implications of this priority of the Board when considering the impact of the Levy site decision.” Contention 12 at 5. According to DEIS Section 9.4.2.4, 9-249:

The Withlacoochee River is designated as an Outstanding Florida Water and therefore has regulatory protection (Fla.Admin. Code 62-302). In addition, the Withlacoochee River Basin Board has made the restoration of Lake Rousseau and the Lower Withlacoochee River a priority in its Fiscal Year 2006 Basin Priorities Statement. Both of these surface waters contribute to a major groundwater recharge area (PEF 2009e). Given that local and State regulators have focused their attention on protecting or restoring these resources and that the CFBC provides a virtually unlimited supply of water from the Gulf of Mexico and does not require the construction of an extensive pipeline, the review team concludes that other alternative water supplies would not be environmentally preferable to PEF’s proposed water supply.

The Joint Intervenors do not take issue with the Staff’s analysis in Section 9.4.2.4 or state why it is inadequate. The Joint Intervenors did not take issue with the DEIS’ conclusion that the Withlacoochee River restoration plan was a priority of the Withlacoochee River Basin Board. Without taking issue with a specific portion of the DEIS or explaining why the alleged inadequacies would potentially affect the Staff’s analyses or conclusions, the Joint Intervenors fail to show a genuine dispute with the DEIS on a material issue of law or fact. Therefore, contention 12 is inadmissible. 10 C.F.R. § 2.309(f)(1)(iv) and (vi).

The Joint Intervenors also attack the NRC Staff’s obviously superior site analysis, claiming that it did not consider the restoration of the Withlacoochee River. Contention 12 at 5. Despite the Staff’s conclusion in DEIS Section 9.4.2.4 that “other alternative water supplies

would not be environmentally preferable to PEF's proposed water supply," the Joint Intervenors assert that the NRC Staff failed to consider "the implications of this priority of the Board when considering the impact of the Levy site decision." Contention 12 at 5. However, they have not shown how the Staff's analysis is inadequate in Section 9.4.2.4, nor how discussion of river restoration is material to the Staff's conclusions. In support of their position, the Joint Intervenors reference Attachment 5, Cross Florida Greenway: Watershed Evaluation Evaluation of Alternate Flow Scenarios Using Hydrodynamic Models. Aside from citing this to this attachment, however, the Joint Intervenors make no effort to explain why it is significant to the Staff's conclusions in the DEIS. Merely attaching a document in support of a contention without any explanation of its significance does not provide an adequate basis for a contention. See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204-205 (2003). Contention 12 is thus inadmissible. 10 C.F.R. § 2.309(f)(1)(iv) and (v).

Next the Joint Intervenors discuss the Withlacoochee river restoration as "a priority of a number of bodies." Contention 12 at 4. They then assert that the "DEIS fails to consider the likely LARGE impacts resulting from the indefinite postponement of the restoration of the Withlacoochee River including: 1. Progressive degradation of the Lower Withlacoochee River due to reduced system flows 2. Inshore movement of current isohaline gradients in the Withlacoochee River which will result from diversion of freshwater supplies to coastal waters and attendant increases of salinity and sulfate concentrations." Contention 12 at 4. Although they allege that there will be "likely LARGE impacts," the Joint Intervenors do not show how such impacts stemming from the "indefinite postponement" of the Withlacoochee River restoration are reasonably foreseeable such that the Staff should have included them in the DEIS. They further provide no support for their conclusion that such impacts to the river will be "LARGE." NEPA requires an agency to take a "hard look" to predict reasonably foreseeable environmental impacts, however, this review is governed by the "rule of reason" and an agency's EIS is not required to account for every conceivable scenario. *Duke Energy Corp.*

(McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 431 (2003).

Additionally, the Joint Intervenors refer to Attachment 4 which contains a description of the history and ecology of the Withlacoochee Watershed. See Attachment 4, "FDEP Site Specific Information Wacassassa Bay 2010" at 14. This attachment also contains detailed figures and charts regarding species in the Withlacoochee ecosystem. However, it is not clear how Attachment 4 connects to or provides support for the Joint Intervenors' claim that the DEIS is inadequate. Nor have they shown how the information in the attachment is material to the conclusions the Staff must make. Merely attaching a document in support of a contention without any explanation of its significance does not provide an adequate basis for a contention. See *Fansteel, Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 204-205 (2003). Contention 12 is inadmissible because the Joint Intervenors do not show how this alleged inadequacy is material and they do not provide a concise statement of the alleged facts or expert opinions which support their position. 10 C.F.R. § 2.309(f)(1)(iv) and (v).

Further, regarding the Withlacoochee River restoration, the Joint Intervenors assert that the "[l]ocation of the Applicant's CWIS at the proposed site will prevent such action by the State." Contention 12 at 6. They refer to Attachment 6, "Alternatives Study" in support of their position that building the Levy site will prevent the State of Florida from pursuing river restoration alternatives such as "restoring the hydraulic connection between the severed segments of the river resulting from CFBC construction." This attachment contains information on various research and studies that were conducted related to the CFBC, Withlacoochee River, and the surrounding area. However, the Joint Intervenors make no attempt to link Attachment 6 to the alleged deficiencies in the DEIS. A document set forth by an intervenor as supporting the basis for a contention is subject to scrutiny for what it does and does not show. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996). Likewise, attaching a

document in support of a contention without any explanation of its significance does not provide an adequate basis for a contention. See *Fansteel*, CLI-03-13, 58 NRC at 204-205. Since the Joint Intervenors do not provide a concise statement of the alleged facts or expert opinions which support their position on the issue, contention 12 is inadmissible. 10 C.F.R.

§ 2.309(f)(1)(v).

Moreover, the Joint Intervenors refer to the Florida Conditions of Certification “which implies at some point in the future the State may move to modify structures in the CFBC and after public hearing the Applicant may be required to relocate the CWIS or other architecture as necessary....rate payers will fund both initial and subsequent construction costs of the CWIS if relocation is required.” Contention 12 at 6. However, whether in fact the applicant will be required to move the CWIS is uncertain. NEPA does not require agencies to consider every speculative and remote scenario. *Nuclear Fuel Servs. Inc.* (Erwin, Tennessee), LBP-05-8, 61 NRC 202, 208 (2005) (quoting *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-02-25, 56 NRC 340, 348-49 (2002)). Although NEPA requires an agency to take a “hard look” to predict reasonably foreseeable environmental impacts, this review is governed by the “rule of reason.” *Duke Energy Corp.*, CLI-03-17, 58 NRC 419 at 431. Here, the Joint Intervenors simply state that the Applicant may in the future be required to move the CWIS. Such speculative impacts are not required to be considered under NEPA. Accordingly, they fail to identify a material dispute with the Staff’s analysis. 10 C.F.R. § 2.309(f)(1)(iv).

In addition, the Joint Intervenors cite to DEIS Section 7.2.1.1, surface water use impacts, to allege a reduction of flows in the future: “Due to containment structure design for Lake Rousseau, consumptive water use . . . will result in corresponding reduction of flows to the Lower River . . . This volume of flow will result in a 143+CFS reduction in System component flow and in conjunction with the Applicant’s consumption of fresh water from the CFBC will result in a loss of fresh water contribution to the estuary.” Contention 12 at 6. In this section of the DEIS, the Staff writes:

According to the 2010 draft Regional Water Supply Plan prepared by the SWFWMD (2010), the Withlacoochee River is the only major river in the Northern Planning Region of the district where the LNP site is located. Although minimum flow for the Withlacoochee River has not yet been established, the SWFWMD (2010) stated that in the future, established minimum flows will provide some bound on the water supply from the river during low-flow conditions. In a preliminary study conducted by the Withlacoochee Regional Water Supply Authority in cooperation with the SWFWMD, the agencies concluded that an additional 93 Mgd of surface water supply may potentially be available from the river. Currently, minor withdrawals totaling 0.5 Mgd are permitted from the Withlacoochee and the Rainbow rivers (SWFWMD 2010). The proposed LNP units would not withdraw surface waters from the Withlacoochee River, the Suwannee River, or their tributaries. Because the Gulf of Mexico is a virtually unlimited source, historical water use impact on it from recreation and industry (e.g., CREC power plant units) is undetectable.

DEIS Section 7.2.1.1 at 7-11. The Joint Intervenors do not dispute any information in Section 7.2.1.1 or in any other section of the DEIS as required by 10 C.F.R. § 2.309(f)(1)(vi). Nor have they demonstrated how these alleged reduced system flows are reasonably foreseeable.

Although NEPA requires an agency to take a “hard look” to predict reasonably foreseeable environmental impacts, this review is governed by the “rule of reason” and an agency’s EIS is not required to account for every conceivable scenario. *Duke Energy Corp.*, CLI-03-17, 58 NRC at 431. Since the Joint Intervenors have not explained why any potential impacts not already addressed in the DEIS are more than merely speculative, they fail to identify a material dispute with the Staff’s analysis. 10 C.F.R. § 2.309(f)(1)(iv).³

The Joint Intervenors also assert that PEF “may be required to revert to ground water use which will cause adverse impacts to regional first magnitude springs such as Rainbow Springs and Silver Springs, both of which are powerful economic forces in local economies.” Contention 12 at 6-7. In support of this claim, the Joint Intervenors refer to Attachment 9, the Rainbow Springs State Park webpage. This webpage, however, only provides basic information for park visitors. It is unclear how this attachment provides support for the Joint Intervenors’ contention. Merely attaching a document in support of a contention without any explanation of

³ Joint Intervenors also assert that “[i]t is not clear that the [sic] such a level of impact is consistent with the Clean Water Act.” Contention 12 at 6. However, compliance with the Clean Water Act is not material to the findings the NRC must make. See *Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-16, 65 NRC 371, 376-378 (2007).

its significance does not provide an adequate basis for a contention. See *Fansteel*, CLI-03-13, 58 NRC at 204-205. As further support for this assertion, the Joint Intervenors refer to Dan Hilliard's public comments on the DEIS regarding the plan to restore the Withlacoochee River. Contention 12 at 7; see also Attachment 10, "War Comments to NRC." Again, however, without explaining the significance of this attachment, it cannot comprise support for the Joint Intervenors' contention. See *Fansteel*, CLI-03-13, 58 NRC at 204-205. In addition, the Joint Intervenors do not state why any alleged impacts from the restoration plan are reasonably foreseeable. Merely alleging that something may cause an impact to the Rainbow and Silver Springs is not sufficient for an admissible contention. See *Duke Energy Corp.*, CLI-03-17, 58 NRC 419 at 431. Therefore, contention 12 is inadmissible because it does not provide a concise statement of the alleged facts or expert opinions which support the Joint Intervenors' position and does not assert a genuine dispute with the DEIS. 10 CFR § 2.309(f)(1) and (vi).

2. The Joint Intervenors' Contention 12 Alleging That the Staff's Alternatives Analysis did not Consider Fresh Water Flows in the CFBC Should Be Denied.

Subpart 2 of Joint Intervenors proposed Contention 12 reads:

Fresh water flows in the Cross Florida Barge Canal (CFBC) represent a LARGE publicly beneficial resource that is not considered when the alternative sites were weighed. A new (October 20, 2010) proposal before the Withlacoochee River Regional Water Supply Authority (WRWSA's) would create an impoundment in the CFBC that could supply significant quantities of fresh water to local residents weekly for public beneficial use. The consumption of this freshwater resource by Levy County Units 1 & 2, via the CWIS is an impact not considered or factored in the relative merits of the alternative sites. Billions of gallons of freshwater would leave the area, either as blow-down that would be discharged to the Gulf of Mexico, or alternately as steam issuing from the mechanical cooling towers. This loss of freshwater is an enormous waste that is not in the public interest.

Contention 12 at 3. The Joint Intervenors allege that the Staff did not consider fresh water flows from the CFBC "when the alternative sites were weighed." *Id.* In support of this claim, they reference the October proposal before the WRWSA to create an impoundment in the CFBC that could supply large quantities of fresh water. According to the new contention, the Levy units will consume this water and the impacts caused by the CWIS "is an impact not considered or

factored in the relative merits of the alternative sites.” *Id.* As a result, the Joint Intervenors allege that billions of gallons of freshwater will leave the area and this loss is not in the public interest. As such, the Levy site is “obviously inferior.” *Id.*

Staff Response:

The proposed contention is inadmissible because it does not meet the requirements of 10 C.F.R. § 2.309(f)(1) (iv), (v), and (vi). The Joint Intervenors allege that the use of the Levy site is “incompatible” with the WRWSA’s motion to accept the proposal by the Withalcoochee Area Residents to use the CFBC as a water supply for long-term supply project. As support for this claim, the Joint Intervenors reference Attachment 11, “Minutes of WRRWSA meeting of October 20, 2010” at 3-4. At this meeting, the Withalcoochee Regional Planning Council entertained a proposal by Dan Hilliard of the Withalcoochee Area Residents, Inc. to use the CFBC as an alternate water supply. Attachment 11 at 3. In response to this proposal, Mr. Sullivan, WRWSA Executive Director, recommended that the WRWSA:

accept the Withalcoochee Area Residents, Inc. proposal as a potential alternative water supply (AWS) project for consideration as a long-term water supply project along with the other AWS projects approved in the Water Supply Master Plan. It is also recommended that further analysis of the project not take place until the time in which these long-term AWS projects are further analyzed for consideration and development in the future.

Id. at 4. The Joint Intervenors do not state how such impacts from the WRWSA proposal are reasonably foreseeable such that the Staff should have included a discussion of them in the DEIS. A plan from a public meeting is not sufficient to show that such a plan is reasonably foreseeable. Under NEPA, just because an action has been proposed does not mean that the potential impacts stemming from that proposal need to be discussed. Specifically, “an EIS need not delve into the possible effects of a hypothetical project, but need only focus on the impact of the particular proposal at issue and other pending or recently approved proposals that might be connected to or act cumulatively with the proposal at issue.” *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2, Catawba Nuclear Station, Units 1 and 2), LBP-02-4, 55 NRC 49,

92 (2002) (citing *National Wildlife Federation v. FERC*, 912 F.2d 1471 (D.C. Cir. 1990)). A proposal is not reasonably foreseeable if it is merely being contemplated or considered. *Id.* As the Joint Intervenors have not shown why the DEIS is inadequate, the contention is inadmissible. 10 C.F.R. § 2.309(f)(1)(iv).

As part of their discussion of the proposal before the WRWSA, the Joint Intervenors claim that the DEIS has not adequately addressed the WRWSA's proposal to "install a second lock on the canal at the western distal end of the body to create an impoundment...near Lake Rousseau and the new lock, near to the Gulf." Contention 12 at 7. NEPA however does not require an agency's EIS to contain an analysis of every remote and speculative scenario. See *Nuclear Fuel Serv, Inc.* LBP-05-8, 61 NRC at 208. The Joint Intervenors provide no explanation of why the DEIS should contain a discussion of the WRWSA's prospective plan. The Joint Intervenors therefore fail to identify a genuine dispute with the DEIS on a material issue of law or fact. 10 C.F.R. § 2.309(f)(vi).

The Joint Intervenors then refer to Attachment 12, "War Inc. proposal for impoundment of CFBC" and contend that "[f]orming a closed impoundment, the CFBC would hold this water . . . This would be a significant source for use in the regional freshwater supply." Contention 12 at 8. Attachment 12 mostly contains maps of the CFBC and discusses plans for capturing freshwater inflows to increase the freshwater supply in the CFBC area. Attachment 12 at 2. Aside from quoting from the attachment, however, the Joint Intervenors do not refer to the content in Attachment 12 to support their claim and do not link any of the information in Attachment 12 to alleged deficiencies in the DEIS. A document set forth by an intervenor as supporting the basis for a contention is subject to scrutiny for what it does and does not show. See *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996), *rev'd in part on other grounds*, CLI-96-7, 43 NRC 235 (1996).

The Joint Intervenors also discuss the flow of water and leakage at the Inglis Dam and how the CFBC would be a "significant source for use in the regional freshwater supply."

Contention 12 at 8. They go on to say that the “loss of the beneficial use of this freshwater for the public is a LARGE impact.” However, the river restoration plan is still speculative.

Despite claiming there will be “LARGE” impacts, the Joint Intervenors have not stated with specificity what impacts they contend are reasonably foreseeable, let alone why those impacts would be more than merely speculative. While NEPA requires an agency to take a “hard look” to predict reasonably foreseeable environmental impacts, this review is governed by the “rule of reason” and an agency’s EIS is not required to account for every conceivable scenario. *Duke Energy Corp.*, CLI-03-17, 58 NRC 419 at 431.

They likewise allege that “[i]n both the matter of restoring the Withlacoochee River, and the issue of the use of the fresh water for Regional Water Supply, the choice of the Levy site, compared to all others will be destabilizing. We dispute the DEIS finding that the Levy site is preferred.” Contention 12 at 9. The Joint Intervenors appear to be confused as to the NRC Staff’s alternatives standard and analysis. The NRC does not assess the viability of alternative sites according to which site is “preferred.” According to NUREG-1555, *US NRC Environmental Standard Review Plan*, at 9.3-1 (July 2007):

The scope of the review directed by this plan should include the analysis and evaluation of the region of interest, candidate sites and a reasonable number of proposed alternative sites identified by the applicant, and the methodology used by the applicant to identify these sites. The review should also include the staff’s independent comparison of alternative sites with the applicant’s preferred site to determine if there are any alternative sites that are environmentally preferable to the proposed site. When one or more environmentally preferable alternative sites are identified, the scope of this review should be extended, using benefit-cost techniques and other procedures to determine if any environmentally preferable site can be shown to be obviously superior to the applicant’s proposed site.... ‘Alternative sites’ are those candidate sites that are specifically compared to the proposed site to determine if there is an obviously superior site. An ‘environmentally preferred’ alternative site is a site for which the environmental impacts are sufficiently less than for the proposed site so that environmental preference for the alternative site can be established.

Therefore, because the Joint Intervenors take issue with an alternatives analysis that is not part of the NRC Staff’s process for evaluating alternative sites, they fail to demonstrate that the issue raised in the contention is material to a finding the Staff must make. 10 C.F.R. § 2.309(f)(1)(iv).

Nor do they specify which DEIS finding they contest and they have not shown why alleged inadequacies in the DEIS are material omissions such that the Staff should have included them in its analysis. "Our boards do not sit to "flyspeck" environmental documents or to add details or nuances." *System Energy Resources, Inc.* (Grand Gulf Early Site Permit), CLI-05-04, 61 NRC 10, 13 (2005) (citing *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 71 (2001)). Lastly, the Joint Intervenors do not provide support for their claim that selecting the Levy site will be "destabilizing" and NEPA does not require an EIS to analyze all conceivable outcomes that are not reasonably foreseeable. See *Nuclear Fuel Servs. Inc.*, 61 NRC at 208. Accordingly, as the Joint Intervenors fail to identify a genuine material dispute with the Staff's analysis, contention 12 inadmissible. 10 C.F.R. § 2.309(f)(1)(vi).

CONCLUSION

For the reasons set for above, the Joint Intervenors' proposed contention 12 should be rejected for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1), (f)(2), and (c).

Respectfully submitted,

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Dated at Rockville, Maryland
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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 INTERVENORS' CONTENTION 12, have been served upon the following persons by Electronic Information Exchange this 21st day of December, 2010:

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