March 11, 2011

UNITED STATED OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)		
	)	Docket Nos.	52-029-COL
Progress Energy Florida, Inc.	)		52-030-COL
	)		
(Combined License Application for	)		
Levy County Nuclear Plant, Units 1 and 2)	)	ASLBP No.	09-879-04-COL

JOINT MOTION ON SCHEDULE

Pursuant to the Atomic Safety and Licensing Board's (the "Board") Initial Scheduling Order dated August 27, 2009,[1] applicant Progress Energy Florida, Inc. ("Progress"); Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, "Joint Intervenors"); and the NRC Staff (collectively, the "Parties") hereby submit this joint motion on several schedule issues. Specifically, the Parties suggest that October 2012 be reserved for the hearing in this matter and suggest that a Board site visit and limited appearance statements still be taken in January 2012. Also, the Parties request an extension to the deadline for filing motions for summary disposition of environmental contentions. Motions for extensions should be filed three business days before the deadline. ISO at 649. For the reasons discussed further below, the Parties move that the deadline for filing a motion that Contention 4A is moot be due within twenty days after the Final Environmental Impact Statement ("FEIS") is issued, consistent with recent Board dicta. In the event Contention 7A is admitted, the Parties ask that a summary disposition motion be due the same time as one for Contention 8A reflecting the interrelation of these two contentions. In the event Contention 12 is admitted, the Parties ask that a summary disposition motion be due 55 days after the date of the Order admitting the contention, consistent with the Model Milestones. 10 C.F.R. Part 2, App. B, Sect. II.

[1] Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 71 NRC 640 (2009) ("ISO").

In its ISO, the Board established a timeliness trigger that, "dispositive motions may be filed twenty (20) days after the occurrence or circumstance from which the motion arises." ISO at 652. In addition, the Board established an ultimate deadline of March 17, 2011 for motions for summary disposition of environmental matters.[2] On December 2, 2010, the NRC Staff submitted its Fifteenth Status Report in this proceeding identifying that the issue date for the FEIS was revised and now the Staff expects to complete it by the end of April 2012.

The Board has asked the Parties to reserve January 16-27, 2012 for a potential hearing. April 7, 2010 Order at 4. Such a hearing would not be conducted prior to the FEIS being issued. 10 C.F.R. § 2.332(d). Reflecting the timelines for hearing preparation in the ISO, the Parties suggest that October 2012 be reserved for the hearing in this matter and further suggest that a Board site visit and limited appearance statements still be taken in January 2012.

Contention 4A

In dicta, the Board stated that whether challenges to the Environmental Report migrate to serve as challenges to the FEIS will depend on whether the FEIS is, in pertinent parts, substantially the same as the Draft Environmental Impact Statement.[3] Therefore, it is possible that a substantially different FEIS could moot aspects of Contention 4A. The Parties ask the Board to clarify whether the ultimate deadline for filing motions for summary disposition on environmental contentions applies to motions to moot a contention because such a motion is less likely to distract from hearing preparations while potentially significantly simplifying the matters set for hearing. But see, April 7, 2010 Order at 2-3 (*establishing* that dispositive motions filed after the ultimate deadline would be due 7 days after the Board grants leave to file such a motion). Reflecting the possibility that the FEIS could be substantially different, the Parties move that a motion to moot Contention 4A, in whole or in part, be due within 20 days[4] of the date the

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[2] Licensing Board Order (Revising Deadline for Motions For Summary Disposition of Environmental Matters) (April 7, 2010) (unpublished) ("April 7, 2010 Order").

[3] Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-11-01, 73 NRC __ (slip op. at 9 n. 17) (Feb. 2, 2011).

[4] Assuming timely consultation is initiated by the moving party. ISO at 653.

FEIS is issued. If such a motion is filed, Joint Intervenors' answer would be due no later than 40 days after the FEIS is issued.

Contention 7A

It is generally accepted that Contentions 7A and 8A are closely related as both derive from the Progress plan to manage Low Level Radioactive Waste on-site for longer than two years, differing only in that Contention 7A addresses the environmental aspect and Contention 8A addresses the safety aspect. See generally, ISO at 654 (*stating* that the safety and environmental contentions should be heard together). Therefore, if Contention 7A were to be admitted, any motion on Contention 7A should be due contemporaneously with similar motions on Contention 8A. ISO at 653; April 7, 2010 Order at 2 (*requiring* other summary disposition motions be filed within twenty (20) days after the Advanced Final Safety Evaluation Report is issued).

Contention 12

The ISO does not address when motions for summary disposition of newly admitted contentions should be filed. The Parties ask the Board to clarify whether the ultimate deadline and timeliness trigger apply to such newly admitted contentions. If Contention 12 were to be admitted, the Parties move that any motion for summary disposition of Contention 12 be due fifty-five (55) days after the contention is admitted. This proposed timing allows for completing mandatory disclosure and is consistent with the timelines suggested by the Model Milestones for NRC Adjudicatory Proceedings.[5]

Conclusion

Pursuant to the ISO,[6] a motion to extend the deadline for filing motions for summary disposition of environmental contentions is due to be filed on March 14, 2011. ISO at 649. This motion is timely as it is filed before that due date. Progress has contacted Joint Intervenors and the Nuclear Regulatory Commission Staff, who join in this motion. This motion demonstrates adequate cause as the ultimate

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[5] See generally, Model Milestones for NRC Adjudicatory Proceedings, 70 Fed. Reg. 20,457, 20,462 (Apr. 20, 2005).

[6] As supplemented and modified by the April 7, 2010 Order.

deadline for summary disposition motions of environmental contentions does not reflect a recent delay in the schedule for issuing the FEIS.

CERTIFICATION

I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts to resolve the issues have resulted in this joint motion.

Respectfully Submitted,

/Signed electronically by Robert B. Haemer./
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Dated: March 11, 2011

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Motion on Schedule dated March 11, 2011, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding this 11th day of March 2011.

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