

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman  
Dr. Anthony J. Baratta  
Dr. William M. Murphy

In the Matter of

PROGRESS ENERGY FLORIDA, INC.

(Levy County Nuclear Power Plant, Units 1 and 2)

Docket Nos. 52-029-COL, 52-030-COL

ASLBP No. 09-879-04-COL-BD01

March 29, 2011

MEMORANDUM AND ORDER  
(Denying Contention 12A)

This proceeding involves the application of Progress Energy Florida, Inc. (PEF) for a combined license (COL) to construct and operate two AP1000 nuclear power reactors at its Levy Nuclear Plant (LNP) site in Levy County, Florida.<sup>1</sup> On November 15, 2010, the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, Intervenor), filed a motion to admit a new contention that they denominated as Contention 12, but that we will refer to as Contention 12A or C-12A.<sup>2</sup> This contention challenges the NRC Staff's draft environmental impact statement (DEIS) weighing of alternatives, alleging that the Staff inappropriately failed to consider various alleged fresh water losses and resulting environmental impacts that will occur due to the placement of the LNP

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<sup>1</sup> [PEF]; Application for the Levy County Nuclear Power Plant Units 1 and 2; Notice of Order, Hearing, and Opportunity to Petition for Leave to Intervene, 73 Fed. Reg. 74,532 (Dec. 8, 2008).

<sup>2</sup> The Intervenor previously filed a proposed twelfth contention, LBP-09-10, 70 NRC 51, 68 (2009), which we denominated as Contention 12 and denied as untimely. *Id.* at 144. Thus, for purposes of clarity, we refer to the Intervenor's new contention as Contention 12A.

cooling water intake structure (CWIS) in the cross Florida barge canal (CFBC).<sup>3</sup> PEF and the NRC Staff oppose the motion.<sup>4</sup> For the reasons explained below, we do not admit C-12A.

## I. BACKGROUND

On July 8, 2009, this Board granted the Intervenors' petition to intervene, concluding that they had demonstrated their standing to participate as a party in this proceeding and admitting three of their proffered contentions. LBP-09-10, 70 NRC at 147, 149-50. Two of these contentions challenged the adequacy of PEF's environmental report (ER).

On August 5, 2010, the NRC Staff issued its DEIS concerning PEF's application and subsequently published a notice of its issuance in the Federal Register.<sup>5</sup> On November 15, 2010, Intervenors submitted proposed Contention 12A.<sup>6</sup> Motion at 1. Thereafter, Intervenors re-submitted some of the attachments to C-12A.<sup>7</sup> As a consequence, the Board extended the

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<sup>3</sup> Intervener's [sic] Motion For Leave to File a New Contention and Contention 12 (Nov. 15, 2010) at 2-3 (Motion).

<sup>4</sup> Progress Answer Opposing Joint Intervenors' Motion for Contention 12 (Dec. 29, 2010) at 2-3 (PEF Answer); NRC Staff Answer to Intervenors' Contention 12 (Dec. 21, 2010) at 1 (Staff Answer).

<sup>5</sup> See Status Report (Aug. 5, 2010) at 2; Nuclear Regulatory Commission; Notice of Availability of the Draft Environmental Impact Statement for the Combined Licenses for Levy Nuclear Plant Units 1 and 2, 75 Fed. Reg. 49,539, 49,540 (Aug. 13, 2010); see Nuclear Regulatory Commission, Office of New Reactors, Draft Environmental Impact Statement for Combined Licenses (COLs) for Levy Nuclear Plant Units 1 and 2, Draft Report for Comment, NUREG-1941 (Aug. 2010) (DEIS).

<sup>6</sup> New contentions based on the DEIS were originally due within sixty (60) days of its publication. Memorandum and Order (Granting Motion for Clarification) at 1 (Sept. 3, 2009) (unpublished). Subsequently, we granted a forty (40) day extension within which to file contentions based on the DEIS relating to hydroecology issues. Memorandum and Order (Granting Motion for Extension of Time) (Sept. 29, 2010) at 1 (unpublished). November 15, 2010 is within this time frame.

<sup>7</sup> See Motion at 2 (listing twelve attachments). Intervenors resubmitted attachments 8 through 12 on November 23, 2010, attachments 4 through 7 on November 24, 2010, and attachment 5 again on November 30, 2010.

deadline for filing answers to C-12A until December 29, 2010.<sup>8</sup> The NRC Staff and PEF filed their answers opposing the motion on December 21 and 29, 2010, respectively. Both PEF and the NRC Staff oppose the motion on timeliness and admissibility grounds. PEF Answer at 2; Staff Answer at 1. Intervenors submitted their reply to the NRC Staff's answer on December 28, 2010, and to PEF's answer on January 5, 2011.<sup>9</sup>

## II. POSITIONS OF THE PARTIES

The primary thrust of Contention 12A is that the DEIS has improperly concluded that none of the alternative sites are preferable to the LNP site, because the DEIS fails to adequately consider the consequences that will result from the placement of the LNP's cooling water intake structure (CWIS) in the cross Florida barge canal (CFBC). Motion at 2-3. Contention 12A reads as follows:

C-12[A] Levy County site is not "obviously superior" to alternatives and two key impacts have not been considered in the choice of site

The Draft Environmental Impact Statement (DEIS) consideration of alternatives to the proposal to build 2 Ap1000 [sic] 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.

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<sup>8</sup> Order (Establishing Deadline for Answers to Proposed Contention 12[A]) (Dec. 2, 2010) at 1 (unpublished).

<sup>9</sup> Intervener's [sic] Reply to NRC Staff Answer: New Contention 12[A] (Dec. 28, 2010); Intervenors' [sic] Reply to Applicant Answer to Contention 12 (Jan. 5, 2011).

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) [sic] 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.

These impacts of the Levy County site are not considered when appraising the relative merits of the 5 sites for the new nuclear reactors. When the CFBC issues are considered, the Levy County site is "obviously inferior" both for the environment and the public compared to the other site options or the no-action alternative.

Note: items one and two are both incompatible with the construction of two AP1000 nuclear reactors on the proposed Levy site – however, the two initiatives are mutually viable.

Id. at 2-3.

The Intervenors main arguments are that (1) placement of the CWIS in the CFBC<sup>10</sup> will delay the reconnection of the upper and lower sections of the Withlacoochee River (and thus the restoration their hydraulic flow) for the lifespan of the LNP (40-80 years); and (2) the LNP's use of water from the CFBC is incompatible with a proposal to impound fresh water from the CFBC and thus interferes with the use of that fresh water to support municipal water supplies.

Id. Intervenors assert that, if the NRC Staff would consider these two issues in the DEIS alternatives analysis, then it would conclude that the LNP site is "obviously inferior" to other alternative sites that were considered. Id. at 3.

With regard to their first argument (restoration of the Withlacoochee River), Intervenors refer to the restoration as a "mandate (from the Florida State Legislature) to restore a protected,

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<sup>10</sup> Intervenors explain that the CFBC is a man-made basin linking the artificially-created Lake Rousseau further east of the proposed LNP site location with the Gulf of Mexico to the west. Id. at 2. They indicate that the CFBC is actually only a "local" structure, because it was never completed, and the CFBC does not, in fact, cross the State of Florida. Id.

outstanding Florida water, the Withlacoochee river [sic].” Id. at 3 (citing id. Attachment 2). Citing an August 4, 2009, memo from the Southwest Florida Water Management District (SWFWMD) to the Florida Department of Community Affairs (DCA), Intervenor note that “[r]iver restoration has been a priority of a number of bodies.” Id. at 4, 5 (citing id. Attachment 3 at 24-26). Intervenor contend that “large,” not “small,” environmental impacts will result from preventing restoration of the Withlacoochee River, including degradation of the lower portion of the river, inshore movement of isohaline gradients, as well as diversion of freshwater to coastal waters and attendant increase in salinity and sulfate concentrations. Id.

With regard to their second argument (loss of freshwater impoundment for potential municipal water supply), Intervenor point to the fact that, on October 20, 2010, at the behest of a group named the Withlacoochee Area Residents, Inc. (WAR), a local governmental body known as the Withlacoochee Regional Water Supply Authority (WRWSA) agreed to accept the WAR “proposal [to use the CFBC] as a potential alternative source project for consideration as a long term water supply project along with the other AWS projects.”<sup>11</sup> Intervenor argue that the LNP would cause the freshwater in the CFBC to no longer be available for this potential purpose. Id. at 8. This loss, Intervenor argue, constitutes a “large” impact that should be considered when the DEIS weighs the various alternative sites for the LNP. Id.

In response, PEF insists that C-12A is untimely because it is based on previously available information. PEF Answer at 8. PEF asserts that the Intervenor “here recycle an objection to the siting . . . raised in the 2009 Florida Site Certification proceeding” by WAR. Id. at 1. PEF says that WAR’s objection (i.e., that the LNP would prevent the future reconnection of the Withlacoochee River) was rejected in 2009 by the Governor and Cabinet of the State of Florida, sitting as Florida’s Siting Board. Id. PEF argues that WAR’s July 14, 2010 submission

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<sup>11</sup> Id. at 7 (quoting id. Attachment 11 at 3 (minutes of WRWSA meeting of October 20, 2010)).

of a proposal to the WRWSA on this same subject, and WRWSA's October 20, 2010 statement agreeing to consider that proposal, does not make that information new. Id. at 2.

PEF goes on to argue that C-12A is untimely because the DEIS alternatives analysis repeats information that had previously been provided in PEF's ER regarding the history of the CFBC, analysis of alternative sites, and environmental impacts to water quality and local land use planning that would result from placing the LNP water intake structure in the CFBC.<sup>12</sup> PEF also says that the information is not new, because it was the subject of various requests for additional information (RAI) regarding aquatic impacts resulting to the CFBC issued by NRC in early 2009. Id. In that C-12A involves information contained in the ER and in these RAIs, PEF insists that C-12A is untimely filed, and that Intervenor's show neither good cause for nontimely filing, nor that the remaining 10 C.F.R. § 2.309(c)(1) factors favor admission despite nontimely filing. Id. at 13, 15-20.

PEF also claims that new C-12A fails the substantive admissibility requirements of 10 C.F.R. § 2.309(f)(1)(iv)-(vi), noting Intervenor's failure to cite sufficient support to show that the SWFWMD, the WRWSA, or any federal, state, or local agency ever actually intends to restore the hydraulic connection between the currently bisected Withlacoochee River segments. Id. at 20-39. As a mere proposal, PEF insists that the proposed restoration effort is neither reasonably foreseeable nor material to the instant proceeding. Id. at 30.

PEF also argues that new C-12A consists of bare assertions and mere speculation regarding the Withlacoochee River restoration effort and freshwater source impoundment of the CFBC. Id. at 22-23. They note that the NRC Staff in fact did recognize in the DEIS that the CFBC bisects the Withlacoochee River, and that Intervenor's fail to cite sufficient support showing that the DEIS must otherwise consider an unapproved project that remains speculative. Id. at 23.

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<sup>12</sup> Id. at 8-10 (citing [LNP] Units 1 and 2, COL Application, Part 3, [ER], sections 5.2.1.4, 5.3.1, 5.11, 4.1.1.1.2.3, 9.3.4) (rev. 0) (July 2008)).

PEF further notes that the State of Florida approved the LNP site along with a condition authorizing the State to require PEF to relocate the CWIS if the Withlacoochee River restoration project ever materializes. Id. at 30, 38; see also Motion at 6.

Regarding the impoundment of the CFBC as an alternative freshwater supply project under consideration by the WRWSA, PEF argues that it is nothing more than “an interesting proposal” that “would require an in-depth level of analysis to determine the viability of the project.” Id. at 30-31 (citing Motion Attachment 11 at 2). As only a suggested course of action, PEF argues that these claims in new C-12A are bare assertions and mere speculation that are not reasonably foreseeable and lack adequate support for admission. PEF thus argues that Intervenor’s claims in new C-12A fail to support a genuine dispute on a material issue of fact or law, contrary to 10 C.F.R. § 2.309(f)(1)(iv) through (vi). Id. at 32-39.

The NRC Staff also argues that new C-12A is both untimely and inadmissible. NRC Staff Answer at 1. The Staff notes C-12A is untimely because, although the deadline for new contentions based on the DEIS relating to hydroecology was extended until November 15, 2010, C-12A does not qualify for this extension, because it is a challenge to the DEIS alternatives analysis and not a hydroecology challenge. Id. at 5-7.

The NRC Staff agrees with PEF that the concept of restoring the river is not new and that it was discussed in the ER. Id. at 10 (citing ER section 9.4.2.1.1 at 9-157). The Staff insists that while the WRWSA meeting and vote may have “brought these issues into focus,” it merely indicates grant of a motion to “approve the recommendation” of the water use project and does not constitute new information under 10 C.F.R. § 2.309(f)(2). Id. Because this information was previously available and is not significantly or materially different in the DEIS, the NRC Staff argues that C-12A does not meet the criteria for timely new contentions under 10 C.F.R. § 2.309(f)(2). Id. at 10-11. The NRC Staff also claims that Intervenor’s fail to make a sufficient showing under 10 C.F.R. § 2.309(c) to admit C-12A as a nontimely contention. Id.

The Staff also asserts that C-12A does not meet the admissibility criteria of 10 C.F.R. § 2.309(f)(1)(iii)-(vi). Id. at 13. First, the NRC Staff argues that whether the LNP site is the least environmentally damaging practicable alternative (LEDPA) is immaterial, because the NRC conducts its NEPA alternatives analysis under the “obviously superior site” standard. Id. at 15-16. Further, the NRC Staff notes that Intervenor’s fail to explain how the DEIS analysis and conclusion regarding selection of the LNP site is inadequate. Id. at 16-17 (citing ER section 9.4.2.1 at 9-245, 9-248). The DEIS also discusses Withlacoochee River restoration at section 9.4.2.4, which, the NRC Staff alleges, Intervenor’s fail to dispute in C-12A. Id. at 17. Further, the NRC Staff claims that Intervenor’s make no effort to explain how its many attachments support its claims in C-12A, aside from vague references to them in C-12A. Id. at 18-19.

Also, given that the conditions imposed by the State of Florida upon certification of the LNP site indicate that the State may move to modify structures in the CFBC after public hearing, the NRC Staff notes that whether the CWIS will need to be removed from a location in the CFBC remains uncertain. It argues that the DEIS therefore need not consider whether placement of the CWIS in the CFBC will negatively impact the restoration proposal, because the proposal remains speculative.<sup>13</sup>

Furthermore, the NRC Staff asserts that the October 2010 proposal before the WRWSA to create a freshwater impoundment in the CFBC also remains a speculative hypothetical scenario that is merely being contemplated or considered. As such, the NRC Staff argues that it is not reasonably foreseeable, and the NRC Staff therefore need not consider it in its DEIS. Id. at 23-25. According to the NRC Staff, Intervenor’s have failed in C-12A to show how their allegations raise material issues of law or fact disputing the DEIS, and that the Board does not sit to “flyspeak” environmental documents or to add mere details or nuances. Id. at 26.

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<sup>13</sup> Id. at 20 (citing 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)).

Accordingly, the NRC Staff states that Intervenor in C-12A fail to identify and support a genuine material dispute with the analysis in the DEIS, and that C-12A is thus inadmissible under 10 C.F.R. § 2.309(f)(1)(iv) through (vi).

The replies filed by the Intervenor on December 21, and 29, 2010 do not add materially to the argument or analysis of the issues.

### III. ANALYSIS AND RULING<sup>14</sup>

#### A. Timeliness Analysis

It is clear to the Board that proposed Contention 12A is not timely. First, there is no argument or showing that the “data or conclusions” in the DEIS “differ significantly from the data or conclusions” in PEF’s ER. Therefore C-12A is not timely under the third sentence in 10 C.F.R. § 2.309(f)(2).<sup>15</sup> Likewise, we conclude that the information upon which proposed Contention 12A is based was “previously available” and therefore that this contention is not timely under 10 C.F.R. § 2.309(f)(2)(i) and (iii). We also agree with PEF and the NRC Staff that the Intervenor has not shown any good cause for the nontimely filing of C-12A and have not otherwise satisfied the other balancing factors of 10 C.F.R. § 2.309(c). In short, with one exception (i.e., the NRC Staff’s argument that C-12A is nontimely because it is not based on hydroecology issues), we agree with PEF and the NRC Staff that C-12A is not timely.

It is clear that the idea of restoring the connection between the upper and lower Withlacoochee River, which is one of the two pillars of “new information” ostensibly underlying Contention 12A, has been bandied about by various Florida agencies and stakeholders for at

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<sup>14</sup> We discussed the legal framework for admission of new or amended contentions in earlier decisions in this proceeding and we need not repeat that discussion here. See Memorandum and Order (Admitting Contention 4A) (Feb. 2, 2011) at 3-5 (unpublished); Memorandum and Order (Ruling on Joint Intervenor’s Motion to File and Admit New Contention 8A) (Aug. 9, 2010) at 3-5 (unpublished); see also LBP-09-10, 70 NRC at 71-73 and 138-144.

<sup>15</sup> For a good analysis of the interplay between the third and fourth sentences of 10 C.F.R. § 2.309(f)(2), see Calvert Cliffs 3 Nuclear Project, LLC (Combined License Application for Calvert Cliffs Unit 3), LBP-10-24, 73 NRC \_\_\_, \_\_\_ (slip op. at 6-9) (Dec. 28, 2010).

least several years. The SWFWMD has evaluated such a restoration. Motion Attachment 6 (Alternatives Study). WAR raised this issue in the 2009 Florida Site Certification proceeding. PEF Answer at 1. The State of Florida's certification of the LNP includes a condition indicating that, if the restoration of the Withlacoochee River ever becomes a reality, the State has the right to require PEF to relocate the CWIS. See Motion at 6; PEF Answer at 30, 38. The ER discussed the river restoration issue. ER section 9.4.2.11 at 9-145, 9-146, 9-157. The DEIS discusses this issue. DEIS section 9.4.2.4 at 9-249. Even assuming arguendo that the LNP project would interfere with, or prevent (for 40-80 years) the restoration of the Withlacoochee River, there is nothing new about this issue that could not have been raised much earlier.

For the same reasons, C-12A's second pillar of "new information" – the idea that the CFBC could be a source of fresh water for local residents and municipalities – is also not new. This concept was discussed in the ER and discussed by the State of Florida when it approved the proposed site for the LNP facility.<sup>16</sup>

We reject the proposition that the July 14, 2010 proposal by WAR (that the WRWSA include the restoration of the Withlacoochee in its long term studies), and WRWSA's October 20, 2010 agreement to study this idea, makes C-12A new or timely. Putting an old idea in front of yet another governmental entity, and the agreement of that entity to study it, does not make it a new idea.<sup>17</sup> The Intervenors have not shown that the concept of using the CFBC as a source of fresh water is a concept that was "not previously available" as specified in 10 C.F.R. § 2.309(f)(2).

Having concluded that C-12A is nontimely, we also rule that Intervenors have not shown "good cause" or otherwise met the criteria of 10 C.F.R. § 2.309(c) for the admission of C-12A as

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<sup>16</sup> See ER sections 9.4.2.1.1 at 9-157, 5.11, 4.1.1.1.2.3, 7.0 at 7-10, 7.2.1.1 at 7-13; PEF Answer at 30 (citing RO at 33-34).

<sup>17</sup> See LBP-09-10, 70 NRC at 142 ("Putting old wine into new wineskins does not make it new wine.").

a nontimely contention. As the information on which Intervenor's attempt to base C-12A is has long been available, good cause does not exist for admission of C-12A as a nontimely contention. 10 C.F.R. § 2.309(c)(1)(i). In addition, it appears that Intervenor's have significant "other means whereby [their] interests will be protected" (e.g., the condition in the State of Florida certificate of compliance requiring the location of the LNP CWIS to be re-evaluated and perhaps moved if the reconnection of the upper and lower sections of the Withlacoochee River ever materializes). 10 C.F.R. § 2.309(c)(1)(v).

B. Contention Admissibility Under 10 C.F.R. § 2.309(f)(1)(i)-(vi)<sup>18</sup>

Second, we conclude that new C-12A is not admissible for failure to demonstrate a genuine dispute on a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(vi). The two foundational aspects of C-12A – reconnection of the upper and lower Withlacoochee River and creation of a freshwater impoundment in the CFBC – are speculative scenarios.

Regarding reconnection of the upper and lower Withlacoochee River, the Florida Siting Board approved the May 15, 2009 statements of the reviewing state Administrative Law Judge that "SWFWMD has evaluated restoration of the River to its original condition, but has not advocated reconnection. . . . No agency is currently pursuing a project of this type."<sup>19</sup>

Meanwhile, the WRWSA merely agreed to study the restoration of the Withlacoochee River as a "proposal" for a "potential" alternative source project "for consideration" as a "long term" water

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<sup>18</sup> We note, as we did when we recently rejected Intervenor's proposed new Contention 7A, see Memorandum and Order (Denying Contention 7A) March 16, 2011 (unpublished), that Intervenor's motion and briefs concerning Contention 12A never mention, much less discuss, the six admissibility criteria of 10 C.F.R. § 2.309(f)(1). At this stage in this proceeding, where this Board has analyzed and discussed the applicability of this regulation with respect to every prior contention, we would think that even pro se Intervenor's would realize the relevance of 10 C.F.R. § 2.309(f)(1).

<sup>19</sup> See PEF Answer at 30 (citing Re Progress Energy Florida Levy Nuclear Projects Units 1 and 2, Recommended Order on Certification, State of Florida, Division of Administrative Hearings (Case No. 08-2727EPP) (May 15, 2009) at 33-34, adopted by the State of Florida Siting Board, Final Order Approving Certification (Aug. 26, 2009) (RO)). The Florida Department of Environmental Protection's Conditions of Certification (COC) document attached to the "RO" that PEF cites in its answer brief was submitted as Attachment 3 to Intervenor's Amended Contention 4. See An Amended Contention 4 (Nov. 15, 2010) at 1.

supply project “along with other AWS projects.” Id. at 30-31 (citing Motion Attachment 11 at 3). The fact that the SWFWMD may have invested time and resources in studying the possibility of reconnecting the upper and lower Withlacoochee River does not make its restoration reasonably foreseeable. Reading the allegations in new C-12A most charitably toward Intervenors, we see no “plan,” no “proposal,” and no “project” for the reconnection of the River – only studies and consideration.

Proposed Contention 12A is founded on a hypothetical – if the Withlacoochee River is reconnected and restored, then the siting of the CWIS in the CFBC will have large adverse environmental impacts. Assuming this hypothetical scenario as true, Intervenors proceed to assert that the DEIS alternatives analysis is defective, because, in such a situation, the LNP site would be the least preferable one. We need not get into the merits of C-12A in order to rule that Intervenors have shown no State or local governmental action that would require the NRC Staff to make such an assumption – i.e., that the restoration of the Withlacoochee River is a event upon which the DEIS alternatives analysis should be founded.

In its reply to PEF’s answer to new C-12A, Intervenors state that “it is not actually clear from that record that the SWFWMD had rejected the river restoration plan.” Reply to PEF at 3. However, it is not enough for Intervenors to state that a proposed river restoration plan has not been ruled out as a possible project. Intervenors must instead provide some positive allegation or support for the proposition that restoration of the river is within the realm of reason. See LBP-09-10, 70 NRC at 87. Intervenors have failed to make this showing. Therefore, they fail to raise a genuine dispute on a material issue of fact or law, contrary to 10 C.F.R. § 2.309(f)(1)(vi).

In addition, Intervenors fail to provide meaningful support for other points they raise in new C-12A, regarding the positive impact of proposed restoration of the Withlacoochee River segments. Specifically, the Florida Siting Board itself approved the Florida Administrative Law Judge’s statement that “reconnection of the Withlacoochee River or downstream impoundment

of the CFBC probably would not prevent the impacts of increased salinity . . . during periods of low freshwater flow.” See PEF Answer at 30 (citing RO at 33-34).

The WAR proposal to create a freshwater impoundment in the CFBC is similarly speculative, and is at present no more than a hypothetical water use project requiring further study. Intervenors in C-12A cite the WRWSA’s October 20, 2010 meeting minutes, but fail to explain how the WRWSA’s intention to “further analyze[]” the proposal indicates that a freshwater impoundment in the CFBC will be created. They have only demonstrated that it is a proposal for further analysis. Intervenors thus fail in C-12A to explain how this hypothetical freshwater impoundment is anything more than a speculative “proposed” future action that is not reasonably foreseeable, and why it must be considered in the NRC Staff’s DEIS.

PEF also need not situate the CWIS in the CFBC, as the State of Florida Conditions of Certification issued in approving the LNP site contemplate the possibility of relocating the CWIS away from the CFBC.<sup>20</sup>

Lastly, the Board is not required, and does not intend, to sift through over 100 pages of unexplained attachments to find support for Intervenors’ allegations. Rather, Intervenors carry the responsibility of citing specific support for their allegations in new C-12A. Many of Intervenors submitted attachments provide no apparent support for their claims in new C-12A.

For the above reasons, we conclude that Intervenors have failed to demonstrate a genuine dispute regarding a material issue of law or fact, contrary to 10 C.F.R. § 2.309(f)(1)(vi). We therefore conclude that C-12A is not admissible.

#### IV. CONCLUSION

For the reasons set forth above, we conclude that Contention 12A is nontimely, and that Intervenors have failed to show that a balance of the factors of 10 C.F.R. § 2.309(c)(1) weigh in favor of admitting Contention 12A despite its nontimeliness. We conclude further that the

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<sup>20</sup> See PEF Answer at 15, 30, 35, 38-39 (citing FDEP Levy Plan Conditions of Certification (Feb. 23, 2010) at 30).

allegations in Contention 12A fail to show a genuine dispute on a material issue of fact or law, contrary to the requirements of 10 C.F.R. § 2.309(vi). Contention 12A is not admitted.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Anthony J. Baratta  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. William M. Murphy  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 29, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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(Levy County Nuclear Power Plant )  
Units 1 and 2) )  
 )  
(Combined License) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING CONTENTION 12A) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 29<sup>th</sup> day of March 2011