UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
Dr. Randall J. Charbeneau

In the Matter of	Docket Nos. 52-029-COL, 52-030-COL
PROGRESS ENERGY FLORIDA, INC.	ASLBP No. 09-879-04-COL-BD01
(Levy County Nuclear Power Plant, Units 1 and 2)	December 15, 2011

MEMORANDUM AND ORDER
(Denying Motion to Admit Contentions 13 and 5 and Granting Motion to Supplement)

Before the Board are two motions filed by the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (Intervenors). The motions relate to recent events in Japan concerning the Fukushima Dai-ichi nuclear power facility. The first is a motion to admit new Contention 13 (C-13) and to reconsider and admit a contention that had been previously proffered and denied, Contention 5 (C-5).[1] The second is a motion to "supplement the basis" of Contention 13.[2] For the reasons stated below, we deny the motion to admit C-5 and C-13, and grant the motion to supplement.

[1] Motion to Admit New Contention (13) and Reconsider Contention 5 Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-Ichi Accident (Aug. 11, 2011) (Motion).

[2] Motion by Intervenors for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Nov. 2, 2011) at 1 (Motion to Supplement).

I. BACKGROUND

On March 11, 2011, a large earthquake and tsunami produced widespread devastation across a large area of northeastern Japan. This event caused the Fukushima Dai-ichi nuclear power facility to suffer substantial damage to a number of its nuclear reactors, spent fuel pools, and other associated systems (Fukushima Accident). As a result of the Fukushima Accident, radiation was released into the surrounding environment.[3]

On March 23, 2011, the NRC established a special Task Force to study the Fukushima Accident and to report on the implications for nuclear reactors in the United States.[4]

Meanwhile, on April 14, 2011, the Intervenors, as well as petitioners in a number of other licensing proceedings, filed an emergency petition with the Commission asking it to suspend all licensing and rulemaking activities pending investigation of the lessons learned from the Fukushima Accident.[5] The Emergency Petition also requested that the NRC initiate a generic environmental analysis under the National Environmental Policy Act, 42 U.S.C. § 4332(C) (NEPA), of the information arising from the Fukushima Accident on the ground that such information constitutes "new and significant information" that must be considered as part of NRC's environmental review for nuclear reactor licensing decisions. Emergency Petition at 2.

The Task Force issued a report on July 12, 2011, including twelve recommendations to improve the safety of new and operating reactors.[6] Although the Task Force stated that the

---

[3] Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) at 7-14 (Task Force Report).

[4] Tasking Memorandum – COMGBJ–11–0002 – NRC Actions Following the Events in Japan (Mar. 23, 2011); see also Charter for the Nuclear Regulatory Commission Task Force to Conduct a Near-Term Evaluation of the Need for Agency Actions Following the Events in Japan (Apr. 1, 2011).

[5] Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Dai-ichi Nuclear Power Station Accident (Apr. 14, 2011) (Emergency Petition).

[6] Task Force Report at 69-70.

continued operation and licensing of nuclear power plants in the United States does not pose an "imminent risk" to public health and safety, it also "conclude[d] that a more balanced application of the Commission's defense-in-depth philosophy using risk insights would provide an enhanced regulatory framework that is logical, systematic, coherent, and better understood" and that "[s]uch a framework would . . . significantly enhanc[e] safety." Id. at vii-viii. Further, it stated that the "Task Force has concluded that a collection of such 'extended design-basis' requirements . . . should be established." Id. at viii.

On August 11, 2011, based on the Task Force Report, the Intervenors filed the instant motion to admit C-13 and to reconsider and admit C-5. Motion at 1.[7] Contention 13 asserts that PEF's environmental report (ER) and NRC's draft environmental impact statement (DEIS) fail "to satisfy the requirements of NEPA because the documents do not address the new and significant environmental implications of the findings and recommendations raised by NRC's Fukushima Task Force Report."[8] (This contention, or substantially similar ones, were filed simultaneously in over 20 NRC reactor licensing proceedings.)[9] In addition, the Intervenors resubmitted C-5, which asserts that PEF's ER is defective because it fails to consider the

[7] Intervenors failed to paginate the Motion, the Statement of C-13, and the Statement of C-5. Therefore the Board has assigned pagination to these documents.

[8] Contention 13 Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) at 4-5 (Statement of C-13).

[9] See, e.g., [San Luis Obispo Mothers for Peace's] Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident (Aug. 11, 2011) (filed in the Diablo Canyon license renewal proceeding); [Blue Ridge Environmental Defense League and the Southern Alliance for Clean Energy's] Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident (Aug. 11, 2011) (filed in the Bellefonte combined license proceeding); and [Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage's] Motion to Admit New Contention to Address the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident (Aug. 11, 2011) (filed in the Turkey Point combined license proceeding).

"impact of a severe radiological accident at [the] Crystal River Energy Complex."[10] (The Crystal River Energy Complex is located 9.6 miles from the proposed Levy nuclear plant and includes a nuclear power plant. See LBP-09-10, 70 NRC 51, 109 (2009).) On September 6, 2011, PEF and the NRC Staff filed answers opposing the admission of C-13 and C-5.[11]

Immediately thereafter, on September 9, 2011, the Commission issued CLI-11-5, denying virtually all of the relief requested in the Emergency Petition.[12] The Commission declined to suspend reactor licensing or the adjudicatory proceedings because of the Fukushima Accident, stating that there is "no imminent risk to public health and safety if . . . [the] regulatory process[] . . . continue[s]." Id. at __ (slip op. at 29). It added that "[m]oving forward with . . . decisions and proceedings will have no effect on the NRC's ability to implement necessary rule or policy changes that might come out of [Commission] review of the Fukushima Daiichi events." Id. In addition, the Commission stated that any changes adopted as a result of the Fukushima Accident or the Task Force Report can and will be implemented through the "normal regulatory processes." Id. at __ (slip op. at 5 n.6).

In addition, CLI-11-5 rejected the Intervenors' "request that the NRC conduct a separate generic NEPA analysis regarding whether the Fukushima events constitute 'new and significant information' under NEPA that must be analyzed as part of the environmental review for new

[10] Contention 5 on Severe Accident Impact on Multiple Sites – Submitted for Reconsideration by the Ecology Party of Florida, Nuclear Information and Resource Service and the Green Party of Florida (Aug. 11, 2011) at 2 (Statement of C-5).

[11] Progress Energy Florida, Inc.'s Answer Opposing Motion to Admit New Contention 13 and Reconsider Contention 5 (Sept. 6, 2011); NRC Staff's Answer to Joint Intervenors' Motion to Admit New Contention 13 Regarding the Safety and Environmental Implications of the NRC Task Force Report on the Fukushima Dai-Ichi Accident (Sept. 6, 2011); NRC Staff Answer to Joint Intervenors' Resubmission of Contention 5 (Sept. 6, 2011).

[12] Union Electric Co. d/b/a Ameren Missouri (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __ (slip op.) (Sept. 9, 2011).

reactor and license renewal decisions." Id. at __ (slip op. at 30). The Commission ruled

> [t]he request is premature. Although the Task Force completed its review and provided its recommendations to us, the agency continues to evaluate the accident and its implications for U.S. facilities and the full picture of what happened at Fukushima is still far from clear. In short, we do not know today the full implications of the Japan events for U.S. facilities. Therefore, any generic NEPA duty – if one were appropriate at all – does not accrue now.

Id.

The Commission noted, however, that individual "[r]eactor adjudications should go forward, including those that may involve proposed contentions based on issues implicated by the Fukushima events." Id. at __ (slip op. at 35). But it declined to provide guidance as to when contentions based on the Fukushima Accident or the Task Force Report might accrue and become ripe. Id. at __-__ (slip op. at 35-36).

Thereafter, on October 18, 2011, the Commission issued SRM/SECY-11-0124, directing the Staff to implement some of the Task Force recommendations and to strive to do so within five years—by 2016.[13]

On November 2, 2011, Intervenors moved to supplement the basis of C-13 based on SRM/SECY-11-0124, arguing that this directive "makes clear that [the Commission] believes the lessons learned from the Fukushima accident have safety and environmental significance."[14] The Intervenors asserted SRM/SECY-11-0124 "undermines the basis for a recent licensing board decision finding that contentions similar to Intervenors' contention were premature

[13] Staff Requirements – SECY-11-0124 – Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report (Oct. 18, 2011) at 1 (unanimous approval) (SRM/SECY-11-0124).

[14] Motion to Supplement at 2. Similar motions to supplement were filed in many other reactor adjudicatory proceedings. See, e.g., San Luis Obispo Mothers for Peace's Motion for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Oct. 28, 2011) (filed in the Diablo Canyon license renewal proceeding); [Southern Alliance for Clean Energy, National Parks Conservation Association, Dan Kipnis, and Mark Oncavage's] Motion for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Oct. 28, 2011) (filed in the Turkey Point combined license proceeding).

because the Commission itself had not yet accepted or implemented the Task Force Report's conclusions and recommendations."[15] PEF and NRC Staff each opposed the motion to supplement.[16]

II. LEGAL STANDARDS

Three regulations govern the admissibility of new contentions. First, all contentions must meet the requirements of 10 C.F.R. § 2.309(f)(1). For contentions filed after the deadline set in the original Federal Register notice, they must satisfy either 10 C.F.R. § 2.309(f)(2) (for timely new contentions) or 10 C.F.R. § 2.309(c) (for nontimely new contentions).[17] We have discussed these three regulations in our prior rulings in this proceeding and need not do so again. See LBP-09-10, 70 NRC at 138-140.

In addition, in cases where a party moves for admission of a contention that the Board previously denied, the party must also satisfy the requirements of a motion for reconsideration. Such motions must include "a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid." 10 C.F.R. § 2.323(e).

---

[15] Motion to Supplement at 2; see also PPL Bell Bend, L.L.C. (Bell Bend Nuclear Power Plant); Luminant Generation Co., L.L.C. (Comanche Peak Nuclear Power Plant, Units 3 and 4); Energy Northwest (Columbia Generating Station); Southern Nuclear Operating Co. (Vogtle Electric Generating Plants, Units 3 and 4); Duke Energy Carolinas, L.L.C. (William States Lee Nuclear Station, Units 1 and 2), LBP-11-27, 74 NRC __, __ (slip op. at 16) (Oct. 28, 2011).

[16] See Progress Energy Florida, Inc.'s Response Opposing Intervenors' Motion to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of Task Force Report (Nov. 14, 2011) (PEF Opposition to Motion to Supplement); NRC Staff Answer to "Motion by Intervenors for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report" (Nov. 14, 2011) (NRC Staff Opposition to Motion to Supplement).

[17] While these regulations do not specify when a new contention is deemed to be "timely," this Board stated, in our Initial Scheduling Order, that "[a] motion and proposed new contention . . . shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available." LBP-09-22, 70 NRC 640, 647 (2009).

III. RULING ON CONTENTION 13

Proposed Contention 13 states:

> The ER and subsequent DEIS for Levy County Units 1 & 2 fails [sic] to satisfy the requirements of NEPA because the documents do not address the new and significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report. As required by NEPA and the NRC regulations, these implications must be addressed in the ER.

Statement of Contention 13 at 4-5.

Virtually identical contentions were filed on August 11, 2011 in over 20 reactor licensing proceedings, and every Board that has ruled on the matter has denied this contention.[18] The November 30, 2011, decision in Bellefonte provides an excellent synopsis of the rulings and reasoning in these cases, as follows:

> In rejecting the Task Force report-related contentions before them that are, for all practical purposes, identical to contention NEPA-T that is before us, other licensing boards have identified two principal deficiencies. One is the fact that the Commission's recent disposition of a petition to suspend the issuance of new or renewed licenses for nuclear power plants in the United States (including the requested COLs for Bellefonte Units 3 and 4), see Union Elec. Co. d/b/a Ameren Missouri (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __ (Sept. 9, 2011); . . . essentially renders premature the claim for relief in the similarly-situated licensing proceeding contentions. In its decision on those petitions, the boards note, the Commission indicated that whether any new regulatory requirements will arise out of the Task Force report, and when the applicability/impact of those requirements in individual licensing adjudications will be appropriate for consideration, is a matter for future determination. As a consequence, given that the Fukushima contentions before them are based on the same information that was before the Commission (principally the affidavit by Dr. Makhijani that was presented in support of the various contentions, including contention NEPA-T here), in light of the Commission's disposition of the petition, the licensing boards have determined that the issue statements before them were filed prematurely and/or failed to establish the requisite genuine dispute on a material issue of law

[18] See Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-11-37, 74 NRC __, __ (slip op. at 2) (Nov. 30, 2011); Luminant Generation Co. LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-36, 74 NRC __, __ (slip op. at 7) (Nov. 30, 2011) (denying motion to reinstate contention); FirstEnergy Nuclear Operating Co. (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-34, 74 NRC __, __ (slip op. at 4) (Nov. 23, 2011); Florida Power & Light Co. (Turkey Point Units 6 and 7), LBP-11-33, 74 NRC __, __-__ (slip op. at 2-4) (Nov. 21, 2011); Pac. Gas & Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-11-32, 74 NRC __, __-__ (slip op. at 2-5) (Nov. 18, 2011); NextEra Energy Seabrook, LLC (Seabrook Station, Unit 1), LBP-11-28, 74 NRC __, __-__ (slip op. at 2-4) (Oct. 19, 2011); PPL Bell Bend, L.L.C. (Bell Bend Nuclear Power Plant), LBP-11-27, 74 NRC __, __-__ (slip op. at 3-4) (Oct. 18, 2011).

> or fact so as to fulfill the section 2.309(f)(1)(vi) contention admissibility requirement. See Bell Bend, LBP-11-27, 74 NRC at __ (slip op. at 10-15); Seabrook, LBP-11-28, 74 NRC at __ (slip op. at 5-9); Diablo Canyon, LBP-11-32, 74 NRC at __ (slip op. at 18-19); Turkey Point, LBP-11-33, 74 NRC at __ (slip op. at 8).
>
> The other deficiency identified by the boards relates to the claim in the contentions before them that the Task Force report evidences a shortcoming in the applicant's ER that must be corrected. This is insufficient to frame a litigable issue, the boards have maintained, because there is no agency regulatory requirement that an applicant needs to update or otherwise supplement an ER subsequent to the time that the staff finds that report acceptable for review as part of a license application. According to the boards, absent some voluntary action on the part of the applicant to amend its ER, an intervenor wishing to raise some new or revised post-ER environmental concern must await the issuance of the staff's draft environmental impact statement (DEIS). See Diablo Canyon, LBP-11-32, 74 NRC at __ (slip op. at 12-18); Turkey Point, LBP-11-33, 74 NRC at __ (slip op. at 6-7); Davis-Besse, LBP-11-34, 74 NRC at __ (slip op. at 15).
>
> We find either of these grounds -- the premature nature of the contention given the Commission's decision in CLI-11-05 and the contention's inappropriate reliance on the need to amend/supplement the ER -- as compelling reasons for concluding that contention NEPA-T before us is inadmissible in this COL proceeding.

Bellefonte, LBP-11-37, 74 NRC at __ (slip op. at 9-11) (footnotes omitted).

We agree with this analysis and these rulings, and conclude that Contention 13 is not admissible. First, we conclude that the Intervenors have not shown that a genuine dispute exists, under 10 C.F.R. § 2.309(f)(1)(vi), that the findings and recommendations of the Task Force Report, in themselves, "present 'a seriously different picture of the environmental impacts of the proposed project [Levy Units 1 and 2] from what was previously envisioned.'" See Callaway, CLI-11-05, 74 NRC at __ (slip op. at 31). The impacts of the Task Force findings and recommendations are uncertain and unpredictable. See Diablo Canyon, LBP-11-32, 74 NRC at __ (slip op. at 19).

The uncertainty remains substantial, despite the Commission's subsequent decision, in SRM/SECY-11-0124, to accept some of the Task Force recommendations and to instruct the NRC Staff to commence rulemakings (and other activities) to implement some of them by 2016. Id. Thus, C-13 fails to show a genuine dispute that the findings and recommendations, even if

some are contemplated for rulemaking (or other agency action) during the next five years, constitute "new and significant information" that oblige the NRC Staff to supplement its DEIS pursuant to 10 C.F.R. § 51.72(a)(2).

Second, to the extent that C-13 asserts that PEF must amend or supplement its ER, we agree with the reasoning of the Boards in Diablo Canyon, Turkey Point, Davis-Besse, and Bellefonte.[19] While it is clear that NEPA requires that NRC supplement or update its DEIS or FEIS to reflect subsequently arising new and significant information, neither NEPA nor 10 C.F.R. part 51 requires an applicant to supplement or update its ER in such circumstances. The allegations in C-13 with regard to the ER are, therefore, plainly without merit.

IV. RULING ON CONTENTION 5

On February 6, 2009, in their original petition to intervene, the Intervenors included Contention 5.[20] On August 11, 2011, they resubmitted this contention, asking us to reconsider it. Statement of Contention 5. The Intervenors repeated, verbatim, the entire text of their original petition dealing with Contention 5, as follows:

> Contention 5 Proximity of Proposed Site to Crystal River Nuclear Power Station Not Assessed in SAMA Analysis.
>
> PEF relies on the Westinghouse probabilistic risk assessment ("PRA") which as cited in contention 1, was done in the Rev 15 phase of non-certified design. To date there is not an updated PRA for Rev 16 as incorporated in PEF's COLA, nor for Rev 17 that it appears has now supplanted Rev 16 in consideration for certification. Therefore the entire SAMA section does not appear to be relevant at this time. Nonetheless, there is a striking omission in the COL part 3, Environment Report, Chapter 7 on severe accidents, there is no consideration of the impact of a severe radiological accident at Crystal River Energy Complex ("CREC"). An accident at the nuclear unit at CREC could disrupt normal operations at Levy County units 1 and 2 and should be analyzed in the SAMA analysis for this COL. There is an additional concern that the safety provisions for control room operators at Levy County [sic] 1 and 2 if the AP 1000 is utilized, will presume that the source of any radiological disruption originates from an AP

[19] See Bellefonte, LBP-11-37, 74 NRC at __ (slip op at 10); Davis-Besse, LBP-11-34, 74 NRC at __ (slip op. at 15); Turkey Point, LBP-11-33, 74 NRC at __-__ (slip op. at 6-7); Diablo Canyon, LBP-11-32, 74 NRC at __-__ (slip op. at 12-18).

[20] 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) at 72.

> 1000. If however, the source of the radiological emergency is, in fact CREC, the protective measures supplied may not be sufficient due to the different assumptions for AP 1000s cited in section 7.2.1 of the PEF Environment Report.

Statement of Contention 5 at 2-3.

In support of their motion for reconsideration, the Intervenors cross-referenced us to two pages in the Task Force Report and four pages from the Statement of Contention 13. The remainder of their motion for reconsideration consisted of the following:

> We note that the Task Force put considerable emphasis on the need for the Commission to consider, and re-consider the possible impacts of accidents at multiple units and the impact of accidents at one unit on other units. Contention 5 is squarely within the concerns raised by the Task Force Report and deserves reconsideration. This request is timely.

Statement of Contention 5 at 1-2.

The Intervenors never mentioned or discussed the Board's original analysis of C-5 at LBP-09-10, 70 NRC 106-112, or our reasons for finding it not admissible. The Intervenors never attempted to cure the defects that led to our rejection of C-5 in the first instance. The Intervenors never mentioned or attempted to comply with 10 C.F.R. § 2.323(e), the regulation that governs motions to reconsider the admission of a contention. The Intervenors never addressed the key criterion for reconsideration, i.e., the need to show "compelling circumstances, such as the existence of a clear and material error in a decision." 10 C.F.R. § 2.323(e). Nor did the Intervenors attempt to grapple with the fundamental requirements of 10 C.F.R. §§ 2.309(f)(1)(i)-(vi), 2.309(f)(2)(i)-(iii), or 2.309(c).

For the foregoing reasons, the Board concludes that Intervenors have not met the requirements for the reconsideration and admission of Contention 5.

V. RULING ON MOTION TO SUPPLEMENT

On October 18, 2011, the Commission directed the NRC Staff to "strive to complete and implement the lessons learned from the Fukushima accident within five years – by 2016." SRM/SECY-11-0124. On November 3, 2011, the Intervenors moved for leave to supplement the basis of Contention 13 to consider the fact that SRM/SECY-11-0124 had been issued. PEF

and the NRC Staff oppose the motion and urge that we ignore the existence of SRM/SECY-11-0124 when ruling on the admissibility of C-13. See PEF Opposition to Motion to Supplement at 5 and NRC Staff Opposition to Motion to Supplement at 5. For the reasons set forth below, we grant the Motion to Supplement.

At the outset, a point of clarification is in order. NRC regulations provide for the admission of contentions, not "bases."[21] There is no provision for the admission of something called a "basis." The only regulation that uses the term "basis" merely states that, in order for a contention to be admitted, the intervenor must "provide a brief explanation of the basis for the contention." 10 C.F.R. § 2.309(f)(1)(ii). This regulation does not require the submission of alleged facts or expert testimony, but merely requires that the intervenor provide a brief explanation of the theory, reasoning, or concept underlying the contention. See LBP-09-10, 70 NRC at 102.

Turning to the Motion to Supplement, we see that it is not an attempt to supplement the "basis" under 10 C.F.R. § 2.309(f)(1)(ii) at all. Instead, the Intervenors merely allege the existence of a new fact, i.e., the issuance and existence of SRM/SECY-11-0124, and ask us to consider this new fact when evaluating the admissibility, and ultimately the merits, of Contention 13. The brief explanation of the basis of a contention helps to define the scope of a

[21] See 10 C.F.R. §§ 2.309(a), 2.309(f)(1), 2.309(f)(2); see also Tennessee Valley Authority (Watts Bar Unit 2), LBP-09-26, 70 NRC 939, 988 (2009) ("[W]e admit 'contentions,' not 'bases.'"); Duke Energy Carolinas, LLC (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC 431, 447 (2008) ("[L]icensing boards admit contentions, not bases."); Crow Butte Resources, Inc. (North Trend Expansion Project), LBP-08-06, 67 NRC 241, 293 (2008) ("[I]t is the contention, not 'bases,' whose admissibility must be determined."); Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 353 (2006) ("[I]t is the contention, not 'bases,' whose admissibility must be determined."); Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-20, 64 NRC 131, 147 (2006) ("[I]t is the contention, not 'bases,' whose admissibility must be determined."); Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-15, 44 NRC 8, 22 (1996) ("[C]ontentions, not bases, are litigated in NRC adjudications.").

contention[22] and there is nothing in the issuance of SRM/SECY-11-0124 that alters or expands the underlying theory of C-13.

The supplementation in question clearly falls under 10 C.F.R. § 2.309(f)(1)(v), which requires that the intervenor provide a concise statement of the "alleged facts or expert opinions" underlying the proposed new contention. There is no duty under 10 C.F.R. § 2.309(f)(1)(v), at the contention admissibility stage, for the intervenor to enumerate every alleged fact or expert opinion that it will ever use in the litigation of that contention. See Louisiana Energy Services, L.P. (National Enrichment Facility) CLI-04-35, 60 NRC 619, 623 (2004) ("Under our contention rule, Intervenors are not being asked to prove their case, or to provide an exhaustive list of possible bases, but simply to provide sufficient alleged factual or legal bases to support the contention, and to do so at the outset.")[23]

We reject the arguments by PEF and the Staff that the motion to supplement is untimely. We do not apply the ten-day rule of 10 C.F.R. § 2.323(a). At most, we see the motion as an effort to amend the contention in light of new information, and apply the 30-day rule for amending contentions specified in section II.F.2 of our Initial Scheduling Order. LBP-09-22, 70 NRC at 647. The motion meets the 30-day standard.

---

[22] Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988) ("The reach of a contention necessarily hinges upon its terms coupled with its stated bases.") aff'd sub nom. Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir. 1991) cert. denied, 502 U.S. 899 (1991).

[23] The quoted passage helps to clarify some of the confusion displayed in some of our case-law concerning the terms "basis" and "bases." In the passage, when the Commission uses the term "bases" it is clearly referring to 10 C.F.R. § 2.714(b)(2)(ii) [2003], which is the direct predecessor to the current 10 C.F.R. § 2.309(f)(1)(v), which was issued in 2004. This regulation requires that intervenors "provide a concise statement of the alleged facts or expert opinions which support" the contention. Clearly, in the quoted passage the Commission is using the term "bases" to mean "factual support." This is apropos for 10 C.F.R. § 2.309(f)(1)(v), but not for 10 C.F.R. § 2.309(f)(1)(ii), which uses the term "basis" to mean "concept" or "rationale." And, even with regard to subsection (v), the quoted passage makes plain that an intervenor does not need to provide an exhaustive enumeration of all its alleged factual support at the contention admissibility stage.

Finally, as to the impact of SRM/SECY-11-0124 on this proceeding, we have addressed this subject in the discussion of Contention 13 above. Thus, although we grant the Motion to Supplement, it does not change the result, nor render Contention 13 admissible.

V. CONCLUSION

In conclusion, the Board grants Intervenors' motion to supplement, but denies their motion to admit new Contention 13 and to reconsider and admit prior Contention 5.

Petitions for review of this ruling may be filed with the Commission pursuant to 10 C.F.R. § 2.341(f). Such petitions must be filed within fifteen (15) days of the service of this order.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

_____
Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Randall J. Charbeneau
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 15, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (DENYING MOTION TO ADMIT CONTENTIONS 13 AND 5 AND GRANTING MOTION TO SUPPLEMENT) have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

Alex S. Karlin, Chair
Administrative Judge
E-mail: ask2@nrc.gov

Anthony J. Baratta
Administrative Judge
E-mail: Anthony.baratta@nrc.gov

Randall J. Charbeneau
Administrative Judge
E-mail: Randall.Charbeneau@nrc.gov

Joshua A. Kirstein, Law Clerk
E-mail: josh.kirstein@nrc.gov

Matthew Flyntz, Law Clerk
matthew.flyntz@nrc.gov

Pillsbury Winthrop Shaw Pittman, LLP
2300 N. Street, N.W.
Washington, DC 20037-1122
Counsel for Progress Energy Florida, Inc.
John H. O'Neill, Esq.
Robert B. Haemer, Esq.
Ambrea Watts, Esq.
Alison Crane, Esq.
Michael G. Lepre, Esq.
Jason P. Parker, Esq.
Stefanie Nelson George, Esq.
Kimberly Harshaw, Esq.
Stephen Markus
E-mail:
john.oneill@pillsburylaw.com
robert.haemer@pillsburylaw.com;
ambrea.watts@pillslburylaw.com
alison.crane@pillsburylaw.com
michael.lepre@pillsburylaw.com
jason.parker@pillsburylaw.com
stefanie.george@pillsburylaw.com
kimberly.harshaw@pillsburylaw.com
stephen.markus@pillsburylaw.com

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Marian Zobler, Esq.
Sara Kirkwood, Esq.
Jody Martin, Esq.
Michael Spencer, Esq.
Kevin Roach, Esq.
Lauren Goldin, Esq.
Joseph Gilman, Paralegal
Karin Francis, Paralegal
E-mail:
marian.zobler@nrc.gov
sara.kirkwood@nrc.gov
jody.martin@nrc.gov
michael.spencer@nrc.gov
kevin.roach@nrc.gov
laura.goldin@nrc.gov
joseph.gilman@nrc.gov
karin.francis@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

Nuclear Information & Resource Service
P.O. Box 7586
Asheville, NC 28802
Mary Olson,
NIRS Southeast Regional Coordinator
E-mail: maryo@nirs.org

Alachua County Green Party, Green Party of Florida
P.O. Box 190
Alachua, FL
Michael Canney, Co-Chair
E-mail: alachuagreen@windstream.net

Nuclear Information Resource Service
6390 Carroll Avenue, #340
Takoma Park, MD 20912
Michael Mariotte, Executive Director
E-mail: nirsnet@nirs.org

Ecology Party of Florida
641 SW 6th Avenue
Ft. Lauderdale, FL 33315
Cara Campbell, Chair
Gary Hecker
E-mail: levynuke@ecologyparty.org

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 15th day of December 2011