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)	March 19, 2012

MEMORANDUM AND ORDER
(Ruling on Motion for Leave to File Proposed Contentions 14 and 14A)

On February 13, 2012, the Green Party of Florida, the Ecology Party of Florida, and the Nuclear Information and Resource Service (collectively "Intervenors") filed a motion for leave to file a new contention, denominated as Contention 14 or C14.[1] In the alternative, the Intervenors asked that the same contention (strangely, now denominated Contention 14A or C14A) be admitted but held in abeyance until the issuance of the record of decision on the final environmental impact statement (FEIS) on the proposed new nuclear reactors. Id. at 5. On March 9, 2012, Progress Energy Florida, Inc. (Applicant) and the NRC Staff filed answers opposing the motion.[2] On March 16, 2012, the Intervenors filed a reply. C14 Interveners' Reply to Answers from Staff and Applicant (Mar. 16, 2012) (Reply).

For the following reasons, the motion is denied.

[1] Motion for Leave to File Contention 14: Proposed Levy County Site for Two AP1000 Reactors Does Not Comply with Existing State and Federal Law (Feb. 13, 2012) (Motion).

[2] Progress Energy's Answer Opposing Joint Intervenors' Motion to Admit Proposed Contentions 14 and 14A (Mar. 9, 2012); NRC Staff Answer to Joint Intervenors' Motion for Leave to File New Contention 14 (Mar. 9, 2012).

First, the motion does not comply with the certification requirement set forth in 10 C.F.R. § 2.323(b) ("A motion must be rejected if it does not include a certification by the attorney or representative . . . that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful."). The Board reminded the parties of this requirement in our first prehearing conference, Tr. at 449-50, and incorporated this requirement into the initial scheduling order (ISO). LBP-09-22, 70 NRC 640, 649 (2009). The consultation requirements are designed to avoid unnecessary briefing, litigation, and cost. As this adjudication approaches the evidentiary hearing stage, it is even more important that all parties comply with the consultation requirements specified in 10 C.F.R. § 2.323(b) and the ISO.

Second, the motion for leave to file the new contention(s) is denied because it does not meet the criteria of 10 C.F.R. § 2.309. Specifically, the motion and proposed C14/14A are untimely under 10 C.F.R. § 2.309(f)(2)(iii), and the Intervenors have not justified these nontimely filings under 10 C.F.R. § 2.309(c).

As the Intervenors acknowledge, the motion for leave to file C14/14A does not satisfy the timeliness criterion of 10 C.F.R. § 2.309(f)(2)(iii). Motion at 4. The Intervenors admit that the proposed new contention(s) are based on State and Federal statutes that "have been 'on the books' for twenty years." Id. The fact that, subjectively, the Intervenors only recently became aware of this information does not make the motion timely.[3] Thus, the motion and C14/14A cannot be admitted under 10 C.F.R. § 2.309(f)(2).

Given that the Intervenors admitted that the motion is untimely under 10 C.F.R. § 2.309(f)(2)(iii), they could have attempted to justify the admission of C14/14A under the

[3] See LBP-09-10, 70 NRC 51, 142 (2009); Memorandum and Order (Denying Contention 12A) (Mar. 29, 2011) at 10 (unpublished).

balancing test specified in 10 C.F.R. § 2.309(c). We have repeatedly reminded the Intervenors of this "good cause" alternative. See LBP-09-10, 70 NRC at 138; LBP-09-22, 70 NRC at 647. But the motion does not even attempt to address this option. And the reply cavalierly suggests that "dumb ignorance" constitutes good cause. Reply at 16. Upon examination of this record, we see no reason to think that the motion meets the balancing test of 10 C.F.R. § 2.309(c) or that C14/14A should be admitted as a nontimely contention under this regulation.

Finally, we note that the Intervenors request that we admit C14A and hold it in abeyance until the NRC issues the record of decision on the FEIS. We have just denied the admission of C14 and C14A. Accordingly, we see no reason to reverse ourselves and admit the contention (and hold it in abeyance). This part of the Intervenors' motion is denied as moot.[4]

Any party aggrieved by this Order may file a petition for interlocutory review by the Commission in accordance with the provisions of 10 C.F.R. § 2.341(f)(2). Any such petition for review must be filed within fifteen (15) days of service of this Memorandum and 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 Charbeneau
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 19, 2012

[4] Given that the Intervenors have failed to satisfy the essential prerequisites of 10 C.F.R. § 2.309(f)(2)(iii) or 10 C.F.R. § 2.309(c), it is unnecessary for the Board to determine whether the allegations contained in C14/14A are within the scope of this proceeding.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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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 (RULING ON MOTION FOR LEAVE TO FILE PROPOSED CONTENTIONS 14 AND 14A) have been served upon the following persons by Electronic Information Exchange.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 19th day of March 2012