

April 10, 2012

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 Power Plant,)	
Units 1 and 2))	

JOINT MOTION FOR PROTECTIVE ORDER GOVERNING ACCESS TO
AND DISCLOSURE OF CERTAIN MEDICAL INFORMATION

Pursuant to 10 C.F.R. § 2.323, applicant Progress Energy Florida, Inc. (Progress); Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, Intervenor), and the Nuclear Regulatory Commission staff hereby submit this joint motion requesting that the Atomic Safety and Licensing Board (Board) issue a protective order governing access to and disclosure of certain confidential medical information from Dr. Sydney Bacchus.¹ In its Initial Scheduling Order, the Board instructed the parties to confer with one another to develop a joint proposed protective order and non-disclosure agreement if any party intends to assert a protected status for information or documents that are claimed to contain privileged or otherwise protected information.² The parties have conferred and now unanimously request that the Board adopt the attached protective order, and non-disclosure agreement, both enclosed as Staff Attachment 1. A waiver of confidentiality signed by Dr. Sydney Bacchus will be filed separately by the Intervenor.

¹ The instant joint motion, which includes a revision to the protective order sought by one of the parties, completely supersedes an earlier version of this joint motion, filed on April 10, 2012.

² Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC 640, 645 (2009).

Counsel for the NRC staff has been authorized by the representative of the Intervenor and Progress to submit this motion on their behalf.

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. I certify that after this consultation, the Intervenor and Progress both agreed to file this motion jointly.

Respectfully submitted,

/Signed (electronically) by/

Laura R. Goldin
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Dated at Rockville, Maryland
The 10th day of April 2012

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PROGRESS ENERGY FLORIDA, INC.)	Docket Nos. 52-029 and 52-030
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(Levy County Nuclear Power Plant,)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Joint Motion For Protective Order Governing Access to and Disclosure of Certain Bacchus Medical Information," with attachment, have been served on the following persons by Electronic Information Exchange on this 10th day of April 2012:

Administrative Judge
Alex S. Karlin, Chair
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/Signed (electronically) by/

Laura R. Goldin
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Staff Attachment 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE 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 and 52-030-COL
PROGRESS ENERGY FLORIDA, INC.)	
)	ASLBP No. 09-879-04-COL-BD01
(Combined License Application for Levy)	
County Nuclear Power Plant, Units 1 and 2))	April 10, 2012

ORDER

(Protective Order Governing Non-Disclosure of Certain Confidential Medical Information)

This protective order governs the disclosure and use in this proceeding of confidential medical information of Dr. Sydney Bacchus ("Dr. Bacchus") provided to the Atomic Safety and Licensing Board ("Board") and the parties to the Levy COL proceeding by Dr. Bacchus or the Nuclear Information and Resource Service (NIRS), the Ecology Party of Florida, and the Green Party of Florida (jointly, Intervenor).

Pursuant to this protective order, counsel for Progress Energy Florida Inc. (Progress), Progress' project manager for the Levy project, and persons representing the Intervenor shall only be permitted access to Dr. Bacchus's confidential medical information upon the conditions set forth herein.

The NRC Staff's disclosure and use of the confidential medical information of Dr. Bacchus is governed by NRC regulations and policies as well as other applicable law.

This protective order is based on a proposed protective order and non-disclosure agreement to which the parties unanimously agreed and which they jointly submitted to the Board on April 10, 2012.

Terms and Conditions of Protective Order

After due consideration of the proposed protective order and non-disclosure agreement, confidentiality concerns regarding medical information submitted to the Board and the parties, the waiver of confidentiality executed by Dr. Bacchus and filed on April 10, 2012, and the practical and efficient conduct of this proceeding, the Board issues the following protective order:

1. This protective order applies to the confidential medical records of Dr. Bacchus, the information contained in them, and any other confidential medical information about Dr. Bacchus, that are disclosed to the Board, the Intervenors, the NRC Staff, and Progress by Dr. Bacchus or the Intervenors in the Levy COL proceeding (collectively, Bacchus Medical Information). Medical Information is deemed to be confidential only if Dr. Bacchus or the Intervenors designate it as such. This order is intended to preserve the confidentiality of the Bacchus Medical Information.
2. Parties to this proceeding receiving information through this protective order shall use the Bacchus Medical Information only for purposes of the present Levy COL proceeding.
3. Only counsel for Progress, Progress' project manager for the Levy project, and persons representing the Intervenors who have executed the attached non-disclosure agreement, the NRC Staff, and the Board and its staff, may have access to the Bacchus Medical Information.
4. Parties to this proceeding receiving information through this protective order shall not show or disclose the Bacchus Medical Information to anyone other than (a) the Board and its staff, (b) the NRC Staff, (c) counsel for Progress, Progress' project manager for the Levy project, and persons representing the Intervenors in this Levy COL proceeding who have

executed the non-disclosure agreement and who, in the reasonable opinion of the party showing or disclosing the information, need to know the information to carry out their responsibilities in this proceeding.

5. All pleadings, testimony, exhibits and correspondence in this proceeding that contain information derived from the Bacchus Medical Information shall:

a. Be provided to the NRC's Electronic Information Exchange (EIE) for service (except for attachments to such pleadings which are too large (50 MB) to serve by EIE), but shall be excluded from the public docket for this proceeding by selecting the non-public "Protective Order" filing option on the EIE website;

b. Include an attached cover sheet identifying the pleading, testimony, exhibit, or correspondence as containing Bacchus Medical Information or information derived therefrom, that describes the contents of the pleading or correspondence, and include in the subject line of the EIE filing a statement that the electronic filing contains confidential medical information;

c. Be served only on the Board, the Board's law clerk, the NRC's Office of the Secretary, and representatives of the Staff or appropriate party authorized to receive such information pursuant to this protective order such as by filing under the nonpublic option on the EIE website;

d. Other than the pleadings to be filed by Intervenors on April 10, 2012 and all answers thereto, be accompanied by a version of the pleading, testimony, exhibit and/or correspondence with the Bacchus Medical Information redacted.

6. At any hearing or conference in this proceeding in which a statement is made by the representative of a party, or a witness is questioned, concerning Bacchus Medical Information, the statement or testimony shall be given in camera or under other suitable conditions as this Board may establish, and the record of that portion of the hearing and any transcript thereof shall be withheld from distribution to the public. It shall be the duty of the party

whose statement or testimony contains the Bacchus Medical Information to be presented, to notify the Board and the parties that such testimony or statement will contain Bacchus Medical Information, prior to the testimony or statement being made.

7. The Bacchus Medical Information submitted to the Board in the Levy COL proceeding shall be sealed and not available for public scrutiny.

8. The Board will resolve any disputes arising under this protective order. Prior to presenting any such dispute to the Board, the parties shall consult and use their best efforts to resolve it.

9. Authorized persons who receive documents subject to the terms of this protective order shall maintain the confidentiality of the information contained therein as required by this protective order and the attached non-disclosure agreement, the terms of which are incorporated herein.

10. Counsel or other party representatives shall take all reasonable precautions necessary to assure that the Bacchus Medical Information is not distributed to unauthorized persons. Counsel and other party representatives are responsible for ensuring that persons under their supervision or control comply with this protective order.

11. The Intervenor and Progress shall, within fifteen (15) days of the date that an order terminating this proceeding is no longer subject to judicial review, return documents containing the Bacchus Medical Information to Dr. Bacchus or shall destroy that material, except that copies of filings, transcripts, and exhibits in this proceeding that contain such information and notes taken by persons reviewing medical material, may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized individuals will occur. Within such time period, the Intervenor and Progress shall submit to Intervenor and Dr. Bacchus an affidavit stating that, to the best of its knowledge, all documents containing the Bacchus Medical Information have been returned or destroyed, or, if filings, transcripts, exhibits, or notes in this proceeding, will be maintained in a secure place such that no distribution of the

information to unauthorized individuals will occur. To the extent that such filings, transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this protective order.

12. Authorized persons receiving Bacchus Medical Information who have reason to believe that documents containing the Bacchus Medical Information may have been lost or misplaced or may have otherwise become available to unauthorized persons during the pendency of this proceeding shall notify the Board and Intervenor and Dr. Bacchus promptly of their concerns and the reasons for them.

13. Any violation of the terms of this protective order or a non-disclosure agreement executed in furtherance of this order may result in the imposition of such sanctions as the Board may deem appropriate, including but not limited to (1) referral of the violation to appropriate bar associations and/or other disciplinary authorities, and (2) ordering the return of all documents containing the Bacchus Medical Information.

14. Each party governed by this protective order has the right to seek changes in it as appropriate from the Board or the Commission.

15. The Board may alter or amend this protective order as circumstances warrant at any time during the course of the Levy COL proceeding.

IT IS SO ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 10, 2012

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NUCLEAR REGULATORY COMMISSION

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Before Administrative Judges:

Alex S. Karlin, Chairman
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)	
(Combined License Application for Levy)	ASLBP No. 09-879-04-COL-BD01
County Nuclear Power Plant, Units 1 and 2))	

NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify that access to Bacchus Medical Information, as defined in the Atomic Safety and Licensing Board's protective order in this proceeding, dated April 10, 2012, is provided to me pursuant to the terms and restrictions of the Board's protective order; that I have been given a copy and have read said protective order; and that I agree to be bound by it. I understand and agree that the Bacchus Medical Information, its contents, or any notes or other memoranda summarizing or otherwise describing its contents, or any form of information that derives from the Bacchus Medical Information and copies of this information that disclose the contents of the Bacchus Medical Information, shall be held in confidence and shall not be disclosed to anyone except in accordance with that protective order. I acknowledge that a violation of this agreement or the protective order, which incorporates the terms of this agreement, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of such sanctions as the Board or the Commission may deem to be appropriate.

WHEREFORE, I do solemnly agree to protect such Bacchus Medical Information, and its contents, as may be disclosed to me in this NRC proceeding, in accordance with the terms of this agreement.

Name (printed): _____

Title: _____

Employed by or Representing: _____

Signature: _____

Date: _____