

United States of America
Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Before Administrative Judges:

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

In the Matter of: PROGRESS ENERGY FLORIDA, INC. Combined License Application for Levy County Units 1 & 2	Dockets Numbers 52-029-COL and 52-030-COL April 10, 2012
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SUPPLEMENTAL MOTION FOR EXTENSION OF TIME
AND REQUEST FOR STAFF ANALYSIS OF RAI SEISMIC STUDY AS HEARING TRIGGER

Introduction

As allowed by the ASLB in the 29 March 2012 Conference Call, Intervenors are providing supplemental information to justify our request for a 30-day extension in our Motion for Extension of Time dated 19 March 2012. This information consists of one new letter from Dr. Bacchus's oral surgeon, the previous two letters from her oral surgeon, a new letter from her eye surgeon, and a letter from legal counsel for Dr. Bacchus. These have been submitted separately under a Confidentiality Agreement and Protective Order as Attachment 1. As discussed below and in the attached Affidavit of Dr. Sydney Bacchus (Attachment 2), Intervenors believe that the results of the seismic study could very likely affect the evidence presented on Amended Contention 4A. Intervenors therefore request the ASLB consider the NRC Staff analysis of seismic information required by the Request for Information Letter 108, dated 15 March 2012 (Attachment 3) as the event triggering the 45 day period for submission of testimony, rather than the date the FEIS is issued. In the alternative, if the Board does not change the triggering event, Intervenors are requesting an additional 30-day extension based on Dr. Bacchus's confidential medical information discussed later, for a total of 60 days extension following the issuance of the FEIS. As discussed below, this process will not harm

PEF and will help better to align the process with the NRC regulations and allow Staff the opportunity to issue a complete FSER.

PEF Counsel reported in the latest pre-hearing conference call on 29 March 2012 that the information from the seismic RAI (Attachment 3) resulting from the Fukushima nuclear disaster will be available to Staff in August. Staff explained they would issue the FSER without the results and analysis of the forthcoming information. This was the first we were aware of that Staff decision.¹ Unfortunately we were also unaware of the agenda for the call so we were taken aback and unable to make an extemporaneous argument to support the relevance RAI had to our contention, and the ensuing exigency for changing the event triggering the Scheduling Order dates. We apologize to the Board for being unprepared on the call to answer the question put to us on the triggering event and do so now.

Discussion

RAI Letter 108 asks the Applicant to (emphasis in bold):

Evaluate the seismic hazards at your site against current NRC requirements and guidance, and, **if necessary, update the design basis and structures systems and components important to safety to protect against the updated hazards** (seismic portion only - of detailed Recommendation 2.1 - Enclosure 7 of SECY-12-0025).

Provide reasonable protection for equipment currently provided pursuant to 10 CFR 50.54(hh)(2) from the effects of design-basis external events and to **add equipment as needed** to address multi-unit events while other requirements are being revised and implemented (detailed Recommendation 4.2 - Enclosure 4 of SECY-120025).

Staff's analysis of answers to either or both of these requests may result in changes to

¹ Staff's February 29, 2012, status report stated "...certain recommendations from the Fukushima Near Term Task Force should be implemented for new reactors prior to licensing. Consequently, the Staff intends to issue requests for additional information (RAIs) regarding these recommendations to the Applicant. At this time, the Staff anticipates that these RAIs will delay the issuance of the FSER by two months." See Attachment 4, NRC Staff's Status Report of 02-29-2012

the LNP and the COLA that could have additional environmental impacts well within the scope of Contention 4A (and which could affect the FEIS) for the following reasons. It is already apparent that the geology for the area has affected the design for the AP1000 at the LNP: those nuclear islands currently require a uniquely site-specific modification to the design precisely because of the karst geology at Levy. The Transcript (Tr.) of the Presentation to the ACRS Subcommittee PowerPoint presentation from 10/18/11 confirms this on p. 90, lines 12-16:

The Westinghouse plant is designed to be embedded 40 feet. That leaves a 35 foot gap between the rock, the Avon Park, and the base of the Westinghouse AP 1000 foundation. That is the basis for the 35-foot thickness of the RCC mat.

Intervenors believe that the results of the seismic data required by the RAI may require yet another compensatory site-specific “fix” of those nuclear islands or other structural elements of the LNP. The roller compacted concrete (RCC) bridging mat is untested in the application for which it has been proposed as compensation for karst at Levy for, “It has never been used for a nuclear plant...(Tr. p.107, line 24). Therefore, Staff’s analysis of seismic issues resulting from the Fukushima Task Force might reasonably be expected to necessitate some modifications to the construction of these untested “bridging mats” for each nuclear island. These mats are already massive, “each one of our RCC bridging mats is about 50,000 cubic yards.” (Tr. P.108, line 22) Were they required to be increased in depth, width, or both, the larger mass of the nuclear islands will contribute to cumulative environmental impacts by increasing passive dewatering. If the RAI necessitates changes that would affect the environmental impact of the project, those changes must be included in the hearing of Contention 4A, and therefore there must be time allowed for additional analysis by our expert after the NRC Staff has issued its analysis. (See Bacchus Affidavit p.2)

Other than the RCC bridging mats required at Levy, the seismic study that PEF will do under the RAI may yield information necessitating yet other changes in the construction of LNP 1 and 2. Staff, PEF and Intervenors cannot possibly claim to foresee what these could be. In

turn, any changes in construction size, methods and equipment could have bearing on issues that are within the scope of Contention 4A. Additionally, the study may reveal data relevant to the karst features connecting springs, rivers and other water-bodies and, therefore those data would be relevant to our Contention as well as to the FEIS. Intervenors and our expert cannot (indeed no one can) reliably or accurately predict what the results of that study will be and whether they or their analysis will influence our case. In fact, this uncertainty is a salient point of our argument. We do not know, but we have the right to know *before* completing our pre-hearing testimony and that information should also be part of any *real* Final SER. Although ours is not a safety contention, karst geology is at the heart of C4A, as well as the construction design at Levy. Resulting information and analysis of RAI 108 may also very well change the EIS and Intervenors are entitled to see Staff's evaluation before preparing our pre-hearing testimony.

There can be no debate over why issues impacting karst and karstic connections would influence Contention 4A. Intervenors specifically said that there is karst geology at Levy and that it is a concern.² To wit: Intervenors Amended Contention 4, filed 15 November 2010. A.1 (p.9) stated:

² The Board agreed that presence of karst was a legitimate issue: the Memorandum and Order Admitting Contention 4A, p.19 states:

For example, the possible presence of sinkholes and karst at the LNP site was an issue that was discussed when we admitted C-4, see LBP-09-10, 70 NRC at 90 ("relict sinkholes"), these issues are relevant to C-4A. These allegations (e.g., impacts resulting from the connection of the site to the underlying Floridan aquifer) are neither new or untimely.

The Memorandum and Order admitting C 4A p. 5 includes (emphasis in bold):

A. Impacts to wetlands, floodplains, special aquatic sites, and other waters, associated with dewatering, specifically:

1. Impacts resulting from active and passive dewatering;
2. Impacts **resulting from the connection of the site to the underlying Floridan aquifer system;**

As Intervenors stated on page 3 of our Reply to NRC Staff's Answer to Amended Contention 4 (and the Board accepted) this connection is through the sinkholes and other dissolution and fracture connections characteristic of karst geology.

The DEIS fails to correctly identify problems with the underlying geology of the Levy area. This failure to address the karst formation and possibility of sinkholes and fracture issues will directly lead to misidentification of dewatering and aquifer flow issues.

The DEIS states:

This interpretation [that sinkholes are few, generally shallow, broad and develop gradually] is also consistent with the USGS Ground Water Atlas, which shows transmissivity values in the vicinity of the LNP site that are below the threshold that would be indicative of well-developed karst systems.(DEIS P 2-175, LINE 16).

The karst in the vicinity of the LNP is developed (or developing) enough to be problematic because of dewatering. Although the DEIS states, "few sinkholes occur near the LNP site (Randazzo and Jones 1997; Miller 1986) and the regional transmissivity of the Upper Floridan aquifer in the area is less than would be expected for well developed karst." (USGS 2000).(DEIS 2-25, Line 15), the Levy FSAR contradicts this (emphasis in bold), "The potential for nontectonic deformation at the site from phenomenon **other than karst-related collapse or subsidence** is negligible. **The LNP site lies within a region susceptible to dissolution and karst development.**" FSAR 2.5-299

Similarly, it is obvious that any changes in construction, whether in size, methods (such as grouting) or placement, could affect our Contention 4A for Intervenors, in Amended Contention 4, also raised the issue of passive dewatering due to the construction of the nuclear Islands (p.15):

When below-ground construction sites, such as the 2 100' deep pits covering approximately 1 acre each for the two nuclear islands (DEIS p. 3-12, line 21) (FSAR figs. 2.5.4.5-201A,B (Attachment 9) 2 are dug, lateral and upward flow of water that would normally be following the natural aquifer flow patterns which distribute it throughout the area will instead collect in that below-ground construction site and will not be available to the organisms accustomed to receive it **on or off-site**. PEF'S expert, Dr. Griffin, confirms this (emphasis bold), "In other instances **the natural groundwater system of a site could be altered indirectly through profile modification, like deep excavations...**" (Griffin ¶ 7).

Constructing the bridging mats and nuclear islands beneath the reactors, the resultant dewatering due to altering the underground water paths and impacts from diverting the historic sheet flow of water on the surface are part and parcel of the process involved in underground construction and *any* changes to the information on which Intervenors are now relying could reasonably have an impact on our pre-hearing testimony.

Furthermore, in addition to the nuclear islands and their associated bridging mats' redesign causing increased or different cumulative impacts, there is a plan also to construct a test mat:

At Levy, we will have a prototype pad, 40 feet by 40 feet by 60 foot by six feet, for a number of reasons. To measure and obtain samples of the RCC as-built. We committed this as a licensing condition to do this. (Tr. p.110 line 1-5)

Not only does the potential for increase in cumulative effects flow (as it were) from any required design changes to the islands, but also from any design changes to an experimental pad the size of which could well be increased even more or the mat completely redesigned due to post-Fukushima disaster concerns. As mentioned previously, the seismic study also has the valuable potential to clarify further the karstic features on the site that are of paramount importance to Contention 4A. For the foregoing reasons Intervenor's vehemently disagree with PEF counsel's and Staff's position that neither information from RAI 108 nor Staff's analysis and recommendations based on the seismic data required for the RAI would be relevant to our contention. In fact, the information from and analysis of, the RAI has the potential require a major amendment to the FEIS.

Intervenor's also wish to point out that a magnitude 5.8 quake on 10 September 2006 indicates that seismic activity in the Levy area is not remote conjecture but rather, historical fact (emphasis added in bold):

The following is a release by the United States Geological Survey, National Earthquake Information Center: A strong earthquake occurred about 250 miles (405 km) south-southwest of Apalachicola, Florida at 8:56 AM MDT, Sep 10, 2006 (10:56 AM EDT in Florida). The magnitude and location may be revised when additional data and further analysis results are available. This earthquake was felt in parts of Florida, Georgia and Alabama. No reports of damage or casualties have been received at this time.

Felt Reports

Items were knocked from shelves and seiches were observed in swimming pools in parts of Florida. Felt (IV) at Brooksville, **Crystal River**, Kissimmee, Lakeland,

Osteen, Palm Coast, Panama City, Port Saint Joe, Santa Rosa Beach, Titusville and Wimauma, Florida. Felt in much of Florida including (Ill) at Fort Lauderdale, Jacksonville, Orlando, St. Petersburg, Tallahassee and Tampa. ³

And, in a 1948 earthquake report:

A sudden jar caused doors and windows to rattle at Captiva in November 1948. The apparent earthquake was accompanied by sounds like distant heavy explosions. Captiva is located on Captiva Island, in the Gulf west of Fort Myers. ⁴

Since 1900, there have been 18 recognized earthquakes/tremors in Florida. ⁵ The license for the LNP would be for 40 years, with a possible 20-year extension. The possibility of an earthquake at the Levy site is neither negligible, nor inconsequential.

These examples of earthquake activity *in an area known for its stability*, point to the need for further evaluation, as required by the RAI. The Florida Geologic Survey website states (emphasis added in bold:

Because earthquakes are usually associated with faults the FGS frequently receives inquiries concerning the location of faults in Florida. A number of faults have been proposed by various authors over the years based on various criteria. Because of the difficulties in defining faults in the state there is little agreement concerning the validity of those which have been proposed. Several problems interfere with the definition of faults. The layered rocks of Florida are mainly thick carbonate units that do not contain well-defined marker beds. **The natural process that causes limestone to dissolve may obscure what was originally a faulted surface.** ⁶

Thus, we contend that, especially given the concerns raised by the nuclear disaster in Fukushima, it is completely reasonable to assume the Staff's analysis of information resulting from the seismic study required by the unanswered RAI could result in significant changes to the design of the nuclear islands, and thereby directly impact cumulative effects outlined in Contention 4A. Again, in the case of the nuclear islands, there has already been a substantial

³<http://earthquake.usgs.gov/earthquakes/eqinthenews/2006/usslav/#summary>

⁴ <http://earthquake.usgs.gov/earthquakes/states/florida/history.php>

⁵ Earthquakes and Seismic History of Florida, Information Circular No. 93, 1983, p.7.

⁶<http://www.dep.state.fl.us/geology/geologictopics/hazards/earthquakes.htm>

site-specific alteration of the design of the AP 1000: the RCC mat that is specifically related to the possibility of seismic activity (see LNP 1 and 2 COL Application, Part 2, FSAR page 3.7-2 (rev 2)). Again, Intervenor also believe important data that illuminates the hitherto unknown particulars of karst geology and connectivity at the site may well surface as a result of the RAI and Staff's analysis.

NRC Staff indicated in the last conference call that they plan to issue the FSER on or around 27 April, 2012, without analyzing the results of the RAI, and then (as we understand their comments) later release a "supplement" of sorts to the FSER after analyzing the answer to the RAI. It disturbs Intervenor to hear that staff is deliberately releasing as a "Final" SER a document they fully realize is not truly a Final SER but rather a "partial, incomplete SER" merely masquerading as a Final SER. Publishing an incomplete FSER, knowing full well that supplemental material is definitely forthcoming is very different from releasing a FSER that staff believes is complete but later requires supplementation. The latter is an honest mistake, the former, an intentional omission. Furthermore, by releasing a knowingly partial "Final" SER, staff may, whether intentionally or not, be depriving Intervenor of information critical to our pre-hearing testimony, and the overall litigation of the issues in Contention 4A.

All in all, the release of an incomplete FSER does not ensure that the legal requirements of the NRC regulations (for instance 10CFR52.79⁷) will be met, and their *intent*, which is that a *complete* FSER should be available, is definitely being ignored. CLI-98-12, 48 NRC 18, (1998), p.21 Statement of Policy on Conduct of Adjudications provides:

⁷ In addition to the policies and regulations stating that final staff documents will be available for the evidentiary hearing, 10CFR52.79 requires that the FSER will include "a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license..." Clearly the Staff's RAI is a set of questions that are under the header of safety and to the extent that they impact the "matters" that must be resolved by the Commission, the information must be in the FSER to meet 52.79. In the case of the Levy County site, and in the case of the seismic study and any safety-related changes it may engender, it also has the potential to have environmental impacts and to change the FEIS. Complying with 52.79 in the first place by issuing a true Final SER will expedite the environmental evaluation of any changes required.

... any evidentiary hearing should not commence before completion of the Staff's Safety Evaluation Report (SER) or Final Environmental Statement (FES) regarding an application, unless the presiding officer finds that beginning earlier, e.g., by starting the hearing with respect to safety issues prior to issuance of the SER, will indeed expedite the proceeding, taking into account the effect of going forward on the Staff's ability to complete its evaluations in a timely manner.

NRC regulations clearly indicate a desire that critical information be available before the hearing. Intervenors suggest that pushing this process toward a hearing for October or early November simply because that was a suggested date based on estimates, is ill advised if it precludes the release of a legitimate Final SER that Staff holds in good faith to be complete. Staff appears, to the detriment of providing important information, to be forcing publication of the FESER to meet an arbitrary and premature deadline. 10 C.F.R. 2.332(d) (emphasis added in bold):

.... (d) Effect of NRC staff's schedule on scheduling order. In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to **ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner**. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, **hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS**. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

Even though Contention 4 is not based on safety concerns, the seismic issues raised in the RAI may result in data or design changes that affect the core of our environmental arguments, and we need and have a right to the benefit of Staff's evaluation for a thorough understanding of the total environmental impact of LNP

We do not believe beginning the hearing process before a thorough analysis of all necessary information has been completed will expedite the process. If Intervenors have to make changes to pre-filed hearing testimony based on the information the

outstanding RAI elicits, or the new information on karst changes the FEIS, this will delay the process. Furthermore, Intervenor has the right to submit new contentions (whether safety or environmentally-based) within 30 days of any new information, and both the reply to the RAI and particularly Staff's analysis, have the potential to provide information to which we could not previously have had access. Changing the trigger date to the published analysis of RAI 108 (or even more desirable, *waiting and issuing a complete Final SER when Staff's analysis is incorporated*) has the potential to simplify the process for everyone. Conversely, if a lacking "Final" SER is released, and the answer or NRC Staff analysis of the answer to RAI 108 triggers either a new contention, or amendment of C4A after the evidentiary process is well underway, it would likely delay the whole proceeding anyway.

[TEXT REMOVED FOR PUBLIC FILING OF THIS MOTION. COMPLETE MOTION FILED UNDER PROTECTIVE ORDER OF 04-10-2012]

Although it has been suggested by PEF, there is no conceivable reason to curtail the involvement of Dr. Sydney Bacchus. Progress now anticipates the Levy plant would not become operational until 2021 even if it were finally approved for construction. Thus a delay of 60 days, or even longer, would not harm PEF by delaying either the COL process or the construction of the facility (if authorized) for PEF admits they are in no rush to break ground. In the Page 12, line 22-p.13 line 7 of the Transcript of the ACRS 589th Meeting, 1 December 2011, PEF stated (emphasis added in bold):

... in April of 2010 we modified that contract to change the in-service dates for the first unit to 2021 and the second unit to 2022.

The planned in-service date of 2021 for that first unit supports our generation needs in Florida. **And the time line extension will allow**

Progress Energy to complete the licensing process and benefit from the construction experience of other companies that have already begun construction of new nuclear plants.⁸

We contend that using the RAI information and Staff's ensuing analysis as the trigger for beginning the hearing process will, if granted, benefit not only the Intervenors, but also Progress, its counsel, and NRC Staff, since it also allows them all to prepare their own submissions, and will allow incorporation of additional information stemming from RAI 108.

If the Board elects to retain the release of the FEIS as the Scheduling Order trigger event, Intervenors request they consider a 60 day extension based on the newly understood severity of Dr. Bacchus medical conditions, with the understanding that this extension allows for at least the possibility that the RAI information might become available.

Respectfully submitted,

_____/s/_____
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⁸ Forty-nine days after COLs were issued to Southern Company for the expansion of the Vogtle nuclear site, Southern Company sent a letter to NRC (see Attachment 5) foreshadowing a request for a license amendment due to a newly discovered need to increase the allowed variation in the concrete "mudmat" substrate to be **quadrupled** from 1 to 4 inches. This situation is apparently rooted in soil compaction issues, and is an example of the "experience" PEF references, and supports intervenor's concern that RAI 108 may also result in significant design changes. The nuclear island foundation at Vogtle, like Levy, supports the weight of the buildings and equipment and is vital in protecting the plant against earthquakes and other loads.-The seismic study at Levy has the potential to change the AP1000 again.

CERTIFICATE

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.

Counsel for the Applicant reports that PEF will not support either changing the trigger to the final staff analysis of the seismic study under RAI 108, and also opposes a 60-day extension on the initial filings from the publication of the FEIS. NRC Staff is at this time opposed to a 60-day extension and to changing the trigger date to their analysis of the RAI on seismic issues.

Mary Olson
NIRS
on behalf of the Co-Interveners

April 10, 2012

United States of America
Nuclear Regulatory Commission

Atomic Safety and Licensing Board

Before Administrative Judges:

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

In the Matter of: PROGRESS ENERGY FLORIDA, INC. Combined License Application for Levy County Units 1 & 2	Dockets Numbers 52-029-COL and 52-030-COL April 10, 2012
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Certificate of Service

I hereby certify that copies of the foregoing SUPPLEMENTAL MOTION FOR EXTENSION OF TIME AND REQUEST FOR STAFF ANALYSIS OF RAI SEISMIC STUDY AS HEARING TRIGGER have been served upon the following persons by Electronic Information Exchange.

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April 10, 2012