

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

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

May 23, 2012

MEMORANDUM

(Requesting Proposals Regarding Publication with Minimum Redaction)

On May 23, 2012, simultaneously with this memorandum, the Board issued a memorandum and order granting a request for extension of time filed by the Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, Intervenor).¹ Because that ruling contains information claimed to be legally protected, we filed it initially in a protected folder of the NRC's electronic hearing docket and distributed it only to the representatives of the parties who had signed the relevant non-disclosure agreement.² We note, however, the Board is obliged to make the non-protected portion of that ruling available to the public. See 10 C.F.R. §§ 2.327(b), 2.328.

¹ Board Memorandum and Order (Granting Motions for Extension of Time and motion to Change the Trigger Date for the Evidentiary Hearing) (May XX, 2012) (unpublished).

² Board Order (Protective Order Governing Non-Disclosure of Certain Confidential Medical Information (Apr. 10, 2012) (unpublished) ("Protective Order"); Nondisclosure Agreement (Apr. 10, 2012) (unpublished).

The Board solicits the input of Dr. Sydney Bacchus and the parties regarding making the foregoing ruling available to the public, as follows:

First, we request that Dr. Bacchus, the privilege claimant, state whether she chooses to assert or to waive any such privilege(s). This statement should be filed within seven (7) days of the issuance of this memorandum. If Dr. Bacchus chooses to waive the privilege(s), then we will make the May 23, 2012 memorandum and order available to the public in full.

Second, if Dr. Bacchus states that she does not wish to waive her claim of privilege, then Dr. Bacchus and the parties should, within 14 days of the issuance of this memorandum, submit the following:

1. Legal Basis. Please specify what legal privilege(s) or protections(s) apply and/or are being asserted and what statute, regulation, case law, or other law requires that such information be withheld from the public.³ Please specify the legal criteria that must be used in distinguishing between protected information and non-protected information. In this regard, the Board notes that there are innumerable published decisions by Federal courts and agencies (e.g., OSHA, Social Security Administration) under the Americans With Disabilities Act, the Rehabilitation Act, OSHA, SSA, and personal injury tort law, that publicly recount, often in some detail, medical facts and information concerning specified individuals. In light of this longstanding judicial practice, the parties should explain why their proposed redactions are legally mandated here.
2. Proposed Redactions. Please provide the Board with a proposed redacted version of the May 23, 2012 ruling that contains the minimum amount of redactions necessary to protect the confidentiality of the privileged information.⁴ Total redaction of the entire

³ A citation to the April 10, 2012 Protective Order will not suffice.

⁴ See, e.g., Freedom of Information Act at 5 U.S.C. § 552(b)(9) (“Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the

document is not appropriate. Each individual redaction should be accompanied by a note in the margin identifying the legal privilege or protection being asserted.

The foregoing filings may be submitted pursuant to the protective order previously issued herein. See Protective Order. Dr. Bacchus and the parties may submit separate or joint responses. Once the Board studies these submissions, it will issue the necessary and appropriate public version of the May 23, 2012 memorandum and order.

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
May 23, 2012

portions which are exempt under this subsection. The amount of information deleted and the exemption under which deletion is made, shall be indicated on the released portion of the record. . .”).

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 (REQUESTING PROPOSALS REGARDING PUBLICATION WITH MINIMUM REDACTION) have been served upon the following persons by Electronic Information Exchange.

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Docket Nos. 52-029-COL and 52-030-COL
 MEMORANDUM (REQUESTING PROPOSALS REGARDING PUBLICATION WITH MINIMUM
 REDACTION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
 this 23rd day of May 2012