

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-COL
(Levy County Nuclear Power Plant,)	and 52-030-COL
Units 1 and 2))	July 6, 2012

**INTERVENORS' MOTION FOR LEAVE TO FILE
EXHIBITS OUT OF TIME**

Intervenors, the Nuclear Information and Resource Service (“NIRS”) and the Ecology Party of Florida, hereby request leave to submit six exhibits to their Initial Statement of Position that were inadvertently omitted from their filing on June 26, 2012 (Exhibits INT213 through INT218). Intervenors respectfully submit that they have compelling justification to file the exhibits late for the following reasons:

1. On June 26, 2012, Intervenors submitted an Initial Statement of Position, four pieces of testimony, and over 150 exhibits in support of their position on Contention 4. The significant volume and detail of the testimony and exhibits represented several years of work by the Intervenors to develop their case in support of Contention 4.

2. Each document had to be separately posted on the NRC’s Electronic Information Exchange (“EIE”) website. It took Intervenors’ counsel five hours to post the Statement of Position, testimony, and exhibits. Despite Intervenors’ counsel’s best efforts, which included continuing to submit documents until 3:00 a.m. the following day until (as far as she knew) all the documents had been submitted and therefore could be accessed by the Board and parties, she overlooked the fact that Exhibits INT213 through INT218 (exhibits to the Testimony of David Still) were not filed.

3. After the Intervenors’ case was filed, Intervenors’ counsel requested two paralegals in

her office to review the Statement of Position, the List of Exhibits, the testimony, and all of the exhibits to make corrections and ensure that all exhibits were marked correctly. This process took the paralegals several days and they reported back to Intervenors' counsel on Monday July 2. Intervenors' counsel was out of town on business July 2 and 3 and was not able to review the results of the paralegals' review and compare them to the documents themselves until July 5 (July 4 was a federal holiday and counsel's office was closed). At that point she discovered that Exhibits INT213 through INT218 had inadvertently been omitted from the filing on June 26, 2012.

4. In order to ensure that all references to exhibits in the testimony were correct (including references by other witnesses to Mr. Still's testimony), it was necessary for Intervenors' counsel to complete all of the corrections before filing this motion. In the past two days, Intervenors' counsel has proceeded as diligently as possible to complete all of the corrections to the Statement of Position, List of Exhibits, Testimony and exhibits. Given the fact that four pieces of testimony and a large number of exhibits were filed, Intervenors submit that the time they took to ensure that their voluminous filings are correct is reasonable and the effort will contribute to a sound hearing process.

5. Although some other exhibits were not filed on June 26, Intervenors are limiting their request for relief in recognition of the Board's reluctance to grant any further extensions to Intervenors. Intervenors have not sought to add any other exhibits except for the exhibits related to Mr. Still's testimony. For all other exhibits that were not filed by the deadline, Intervenors have removed the references to the exhibits from the testimony.

6. Intervenors respectfully submit that the omitted exhibits relate to Mr. Still's experience with current environmental conditions and are important for the development of a

meaningful record regarding the degree to which construction and operation of the Levy reactors will exacerbate pre-existing environmental damage.

7. Progress Energy (“PEF”) and the NRC Staff were not significantly harmed by Intervenor’s oversight because Exhibits INT213 through INT218 had previously been disclosed to them and were reasonably identifiable in the testimony.

For the foregoing reasons, Intervenor request the ASLB to grant their motion.

Respectfully submitted,

(Electronically signed by)

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July 6, 2012

CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 2.323

I certify that on July 5, 2012, I contacted counsel for PEF and the NRC Staff to seek their consent to this motion. The NRC Staff did not take a position on Intervenor’s request and does not intend to file a response. Counsel for PEF stated: “PEF opposes the Intervenor’s request because the exhibits are being filed ten days out of time, after approximately one-quarter of the time period for rebuttal has expired, and after having already received a fifteen-day extension to submit their direct case. The Intervenor could have submitted these exhibits its far sooner than nine days after the filing deadline. Intervenor’s justification for failing to file the exhibits at issue in a timely manner does not amount to the type of “extraordinary circumstances” that the Board stated in its May 23, 2012 Order would be necessary to justify further time extensions regarding Intervenor’s pre-hearing filings. PEF will not submit a separate answer in opposition.”

Signed (electronically) by
Diane Curran

Certificate of Service

I hereby certify that on July 6, 2012, I posted copies of the following documents on the NRC’s Electronic Information Exchange:

- Errata to the Intervenors’ Statement of Position and Testimony of Gareth Davies, Tim Hazlett, David Still, and Sydney Bacchus;
- Corrected Statement of Position and Testimony of Gareth Davies, Tim Hazlett, David Still, and Sydney Bacchus;
- Errata to the List of Exhibits and a corrected List of Exhibits;
- Re-filed and labeled Exhibits INT319, INT333, INT344, INT353, INT363, INT370, INT376, INT377, INT378, INT379, INT383, INT385, and INT433;
- A motion for leave to file six exhibits to the Testimony of David Still out of time (Exhibits INT213, INT214, INT215, INT216, INT217, and INT218); and
- Exhibits INT213, INT214, INT215, INT216, INT217, and INT218.

It is my understanding that the following individuals or offices were served as a result:

<p>Office of Commission Appellate Adjudication U.S. Nuclear Regulatory Commission Mail Stop: O-16C1 Washington, DC 20555-0001 E-mail: ocaamail@nrc.gov</p>	<p>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</p>
<p>Sara Kirkwood, Esq. Jody Martin, Esq. Michael Spencer, Esq. Kevin Roach, Esq. Laura Goldin, Esq. Emily Monteith, Esq. Office of the General Counsel U.S. Nuclear Regulatory Commission Mail Stop O-15D21 Washington, DC 20555-0001 E-mail: sara.kirkwood@nrc.gov jody.martin@nrc.gov michael.spencer@nrc.gov kevin.roach@nrc.gov laura.goldin@nrc.gov emily.moneith@nrc.gov joseph.gilman@nrc.gov karin.francis@nrc.gov</p>	<p>Michael G. Lepre, Esq. John H. O’Neill, Esq. Ambrea Watts, Esq. Alison Crane, Esq. Jason P. Parker, Esq. Stefanie Nelson George, Esq. Kimberly Harshaw, Esq. Stephen Markus Pillsbury Winthrop Shaw Pittman, LLP 2300 N. Street, N.W. Washington, DC 20037-1122 Counsel for Progress Energy Florida, Inc. E-mail: john.oneill@pillsburylaw.com ambrea.watts@pillsburylaw.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</p>

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Signed [Electronically] by
Diane Curran