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)	July 18, 2012

MEMORANDUM AND ORDER
(Ruling and Instructions Regarding Evidentiary Filings)

This memorandum and order addresses several difficulties that have arisen in connection with the filing of the initial statement of position (ISOP), testimony, and exhibits by the Nuclear Information and Resource Service and the Ecology Party of Florida (Intervenors).

On June 26, 2012, Intervenors filed their ISOP, the written testimony of four witnesses, and over 150 exhibits.[1] Then on July 6, 2012, Intervenors filed (1) errata sheets for their ISOP,

[1] See Intervenors' Initial Written Statement of Position Regarding Contention 4 (June 26, 2012); Initial Pre-filed Testimony of Gareth J. Davies in Support of Contention C-4 Regarding Environmental Impacts of Levy Units 1 and 2 on Water Resources and Ecology (June 26, 2012) (Exhibit INT001); Initial Pre-filed Testimony of Tim Hazlett in Support of Contention C-4 Regarding Environmental Impacts of Levy Units 1 and 2 on Water Resources and Ecology (June 26, 2012) (Exhibit INT101); Initial Pre-filed Testimony of David Still in Support of Intervenors' Contention C4 Regarding Environmental Impacts of Levy Units 1 and 2 on Water Resources and Ecology (June 26, 2012) (Exhibit INT201); Initial Pre-filed Testimony of Dr. Sydney Bacchus in Support of Contention C-4 Regarding Environmental Impacts of Levy Units 1 and 2 on Water Resources and Ecology (June 26, 2012) (Exhibit INT301); [List of] Intervenors' Exhibits (June 26, 2012) (Exhibit INT000).

errata for the four witness declarations, and errata and changes involving numerous exhibits, (2) "corrected" versions (without redlines) of those erroneous filings, and (3) a motion for leave to file six additional exhibits.[2] Intervenors did not move for leave to make these corrections and changes. Intervenors stated that the corrections were needed because inter alia, "after the Intervenors' case was filed, counsel requested two paralegals in her office to review [them] and to make corrections." See Motion for Leave at 1-2 (emphasis added).

In effect, Intervenors granted themselves a ten-day extension for getting their ISOP and associated filings right. In addition, Intervenors revised filings did not mention, much less comply with, our February 22, 2012 order specifying that ISOPs and evidentiary filings "are due on specific dates and should be final and correct as of that date," that "parties are not entitled to submit revised documents, except on motion for leave to file revisions and for good cause shown," and that if such revisions are necessary, the moving party should provide redline versions of the revised documents and should mark such revised filings distinctively (i.e., with an "R").[3]

Next, on July 10, 2012, Intervenors filed further revisions to their pleadings that were supposed to provide us with the required redline documents. In actuality, however, the redline

[2] See Letter from Diane Curran to Atomic Safety and Licensing Board (July 6, 2012) ("Curran Letter"); Intervenors' Motion for Leave to File Exhibits Out of Time (July 6, 2012) ("Motion for Leave"). As explained in the Curran Letter, Intervenors filed errata sheets for each of their witnesses' initial testimonies, their ISOP, and their exhibit list; corrected versions of each of these documents; and 13 re-filed exhibits adding exhibit numbers to previously unmarked exhibits.

[3] See Licensing Board Order (Providing Instructions on Pre-Filed Evidentiary Material) (Feb. 22, 2012) at 5 (emphasis in original).

documents were not attached to these filings.[4] Later that day, Intervenors re-filed these documents and attached the redline versions.[5]

The Intervenors' filings and re-filings have created difficulty and confusion for members of the Board, who undertook to read and study the June 26, 2012 filings only to find out that they have been modified, and for the other parties, who are preparing their rebuttal statement of position (RSOP), testimony, and exhibits.[6]

Under these circumstances, the Board rules as follows:

1. Counsel for Intervenors, who we recognize only recently filed her appearance herein,[7] is reminded that she enters this adjudication as it stands. She should familiarize herself with, and comply with, prior instructions that we have issued in pre-hearing conferences and our prior decisions and case management orders. These orders and instructions are designed to facilitate the fair and efficient conduct of this proceeding, and the Intervenors must comply.

[4] See Intervenors' Unopposed Motion for Leave to File Corrected SOP and Exhibits (July 10, 2012). Intervenors filed corrected versions of all of their witnesses' testimonies marked "clean" and "red-lined." The supposed "red-lined" copies, however, were exactly the same as the "clean" copies.

[5] Again, Intervenors filed corrected versions of each of their witnesses' testimonies, marked "clean" and "red-lined." The "red-lined" copies actually did mark the revisions in red, as requested by the Board. The Intervenors also filed corrected "clean" and properly "red-lined" versions of their ISOP, which they failed to do in their initial attempt to file red-lined corrections.

[6] See Progress Energy Florida, Inc.'s Response to Intervenors' July 6, 2012 Letter (July 9, 2012).

[7] See Notice of Appearance by Diane Curran and Notice of Withdrawal of Appearances by Mary Olson, Cara Campbell, and Gary Hecker (June 18, 2012).

2. Despite Intervenors' non-compliance with our February 22, 2012 order, the Board will accept the various revised/corrected filings with regard to the ISOP, testimony, and exhibits.
3. The motion for leave to file six additional exhibits is granted.
4. The Intervenors are advised that similar behavior will not be tolerated with regard to the RSOP, rebuttal testimony, and rebuttal exhibits, or to other later filings in this adjudication. Proofreading should be done before a document is filed, and should not be used as a vehicle for obtaining extra time for filing a document.[8] Our initial scheduling order (ISO)[9] specifies a relatively tight schedule for the filings that must precede the evidentiary hearing. Most of these filings respond to and are dependent on the prior filing. Subsequent corrections/changes to the prior filing (e.g., adding, deleting, and/or renumbering of prior exhibits) results in confusion and makes it more difficult (if not impossible) for opposing parties to respond to that prior filing.

[8] A large number of the Intervenors' errata and changes dealt with minor editorial, spelling, or grammatical changes. For example, the errata to the prefiled testimony of Dr. Sydney Bacchus included such minor changes as changing "aquifer system," to "aquifer system."; "used as synonymously" to "used synonymously'"; "FEIS indicates" to "FEIS indicates:"; "Accordiing" to "According," and "Cronicle" to "Chronicle." See Errata to Initial Pre-Filed Testimony of Dr. Sydney Bacchus (July 6, 2012) at 1-3. Despite the fact that these were minor, the errata filings themselves disrupted the process. In the future, the parties should restrict any proposed corrections to those that are material and must file the relevant motion, as specified in our February 22, 2012 order.

[9] LBP-09-22, 70 NRC 640 (2009).

5. Corrections, errata, or changes (by any name) to an initial filing constitute revisions, fall within the ambit of the February 22, 2012 order, and all parties must comply with it.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

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Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Anthony J. Baratta
ADMINISTRATIVE JUDGE

/RA/

_____
Dr. Randall J. Charbeneau
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 18, 2012

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 AND INSTRUCTIONS REGARDING EVIDENTIARY FILINGS) have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland
this 18th day of July 2012