

April 22, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)	
Progress Energy Florida, Inc.)	Docket Nos. 52-029-COL,
(Levy County Nuclear Power Plant,)	52-030-COL
Units 1 and 2))	

**NUCLEAR INFORMATION AND RESOURCE SERVICE’S HEARING REQUEST
AND PETITION TO INTERVENE IN COMBINED LICENSE
PROCEEDING FOR LEVY COUNTY NUCLEAR POWER PLANT**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.309(c), 2.309(f)(1), and 2.309(f)(2), Nuclear Information and Resource Service (“NIRS”) requests a hearing and seeks leave to intervene in the Nuclear Regulatory Commission’s (“NRC’s”) combined licensing (“COL”) proceeding for the Levy County Units 1 and 2 nuclear power plant. This Hearing Request/Petition to Intervene is supported by the attached NIRS’ Motion to Reopen the Record of Combined License Proceeding for Levy County Nuclear Power Plant (Apr. 22, 2015).

NIRS seeks admission of a single “place-holder” contention challenging the NRC’s reliance, in proposing to license Levy County, on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”).¹ While NIRS seeks

¹ NIRS notes that similar place-holder contentions have been filed in other NRC licensing cases, including license renewal proceeding for Callaway Unit 1 and the Fermi Unit 3 COL proceeding. *See* Missouri Coalition for the Environment’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Callaway Nuclear Power Plant (Dec. 8, 2014); Beyond Nuclear’s Hearing Request and Petition to Intervene in Combined License Proceeding for Fermi Unit 3 Nuclear Power Plant (Feb. 12, 2015).

admission of its contention, it does not seek to litigate the substantive content in an adjudicatory hearing. Instead, NIRS has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded NIRS' comments in the final versions of the Rule and GEIS. NIRS also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).²

The sole purpose of this contention is to lodge a formal challenge to the NRC's complete and unqualified reliance, in the individual licensing proceeding for Levy County, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS. NIRS submits its contention with the reasonable expectation that it will be denied, because the subject matter of the contention is generic. NIRS respectfully submits that nevertheless, the filing of a contention is the only procedural means offered by Commission regulations for ensuring that any court decision resulting from NIRS' appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Levy County licensing proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS. Upon denial of NIRS' contention, NIRS intends to appeal the decision to the U.S. Court of Appeals and request the Court to hold the appeal in abeyance pending its ruling in *New York II*.³

² *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York et al. v. NRC*, Docket Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) (filed October 31, 2014) ("*New York II*").

³ In this context, NIRS notes that its contention is not accompanied by a petition for a waiver of 10 C.F.R. §§ 51.71(d), 51.95(c)(2), or any of the other regulations on which the Commission relies to bar members of the public from litigating generic NEPA issues in individual licensing

II. DEMONSTRATION OF STANDING

NIRS is a non-profit corporation with over 12,000 members across the United States. NIRS has a mission to promote a nonnuclear energy policy and a concern for the health and safety of the people and ecosphere. NIRS seeks admission of its contention in order to protect its members' interest in a clean and healthy environment, including protection from the health and environmental hazards posed by generation of spent fuel at the proposed Levy County nuclear reactors. The organization has standing to intervene through members who live, work, and/or own property within 50 miles of the proposed Levy County reactors, and their interests may be affected by the results of the proceeding. *Virginia Electric and Power Co.* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Their health, safety, property value, and means of livelihood could be adversely affected if the NRC permits Levy County to operate in a manner that is unsafe or harmful to the environment. NIRS has attached declarations from members Amanda Hancock Anderson, William Russell Anderson, and Emily Casey, who have authorized NIRS to bring this legal action on their behalves.

III. FACTUAL AND PROCEDURAL BACKGROUND

For several decades, the NRC relied on its "Waste Confidence" decision and Temporary Storage Rule to address, in reactor licensing and re-licensing proceedings, safety and environmental issues associated with spent fuel storage and disposal. In 2010, the NRC

proceedings. No purpose would be served by such a waiver, because NIRS does not seek an adjudicatory hearing on the NRC's generic environmental findings. Instead, NIRS' only purpose in raising its contention is to ensure that any decision by the U.S. Court of Appeals regarding the validity of the Continued Spent Fuel Storage Rule and GEIS will also be applied to this proceeding, in which the NRC relies on them.

published updates to the Waste Confidence decision (the “Waste Confidence Update”) and Temporary Storage Rule, which were challenged by several state governments, an Indian tribe, and environmental organizations. Waste Confidence Decision Update, 75 Fed. Reg. 81,037 (Dec. 23, 2010) and Temporary Storage Rule, 75 Fed. Reg. 81,032 (Dec. 23, 2010). In *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”), the U.S. Court of Appeals vacated the Waste Confidence Update and Temporary Storage Rule, and remanded them to the NRC for further proceedings.

In April 2012, the NRC issued the Final Environmental Impact Statement for Combined Licenses (COLs) for Levy County Nuclear Plant, Units 1 and 2 (NUREG-1941) (ML12100A068) (“Levy County FEIS”). The Levy County FEIS cross-referenced the 2010 Waste Confidence Decision for findings regarding the safety and environmental impacts of storing and disposing of spent fuel. *Id.* at 6-14 – 6-16.

On July 9, 2012, following on the Court’s decision in *New York I*, NIRS submitted a contention in this proceeding, asserting that in the absence of a valid GEIS for spent fuel storage and disposal, the environmental impacts and alternatives must be analyzed in the individual licensing proceeding. Intervenors’ Motion for Leave to File a New Contention Concerning Temporary Storage and Ultimate Disposal of Nuclear Waste at Proposed Levy County Nuclear Power Plant. NIRS also petitioned the NRC to suspend the Levy County licensing proceeding pending the agency’s compliance with the Court’s remand. At the request of NIRS and other petitioners, the NRC subsequently suspended licensing and re-licensing decisions for all reactors, including Levy County. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-16, 76 NRC 63 (2012) (“CLI-12-16”).

Then, on September 13, 2013, in response to the Court’s remand in *New York I*, the NRC published a proposed rule entitled Waste Confidence – Continued Storage of Spent Nuclear Fuel, 78 Fed. Reg. 56,776 (Sept. 13, 2013) (“Proposed Waste Confidence Rule”). The NRC also published a Draft Waste Confidence GEIS (NUREG-2157, noticed at 78 Fed. Reg. 56,621 (Sept. 13, 2013)).

On December 20, 2013, NIRS joined thirty-two other environmental organizations in submitting Comments by Environmental Organizations on Draft Waste Confidence Generic Environmental Impact Statement and Proposed Waste Confidence Rule and Petition to Revise and Integrate All Safety and Environmental Regulations Related to Spent Fuel Storage and Disposal (ADAMS Accession No. ML14030A152, corrected on Jan. 7, 2014 in ML14024A297) (“NIRS et al. Comments”). The NIRS et al. Comments were supported by expert declarations by Dr. Arjun Makhijani, David Lochbaum, Dr. Gordon Thompson, and Mark Cooper (ADAMS Accession No. ML14030A152). The comments and supporting declarations made detailed and comprehensive criticisms of the Proposed Waste Confidence Rule and Draft Waste Confidence GEIS, charging that they were inadequate to satisfy NEPA or the Atomic Energy Act on both legal and technical grounds. Other organizations, as well as state and local governments, also filed comments critical of the Proposed Rule and Draft GEIS.

Despite receiving significant criticisms of the proposed Waste Confidence Rule and Draft Waste Confidence GEIS, in September 2014, the NRC published the Final Continued Spent Fuel Storage Rule and Final Continued Spent Fuel Storage GEIS, without changing its environmental analysis in any significant respect. The Final Continued Spent Fuel Storage Rule also omitted “Waste Confidence” safety findings required by the Atomic Energy Act. Upon issuance of the

Rule and GEIS, the Commission lifted the suspension of licensing and re-licensing for Levy County and other reactors. *Calvert Cliffs 3 Nuclear Power Project, LLC et al.*, CLI-12-08, 80 NRC 71 (2014).

In October 2014, NIRS joined seven other environmental organizations in seeking judicial review of the Rule and GEIS by the U.S. Court of Appeals for the District of Columbia Circuit under NEPA, the Atomic Energy Act, and the Administrative Procedure Act, *inter alia*. *Beyond Nuclear et al. v. NRC*, No. 14-1216 (filed Oct. 29, 2014). The case was consolidated with similar appeals by the States of New York, Connecticut, Massachusetts, and Vermont; the Prairie Island Indian Community; and Natural Resources Defense Council in *New York II*. See note 2 above. The parties are now awaiting a briefing schedule.

After the NRC issued the Continued Spent Fuel Storage Rule and GEIS, NIRS reasonably anticipated that the NRC Staff would comply with NEPA and the agency's own implementing regulations by incorporating the Continued Spent Fuel Storage GEIS by reference into the outdated Levy County FEIS. When three months had passed after the effective date of the Rule and the NRC Staff still had not supplemented the Levy County FEIS (or any other FEIS issued prior to the Continued Spent Fuel Storage GEIS), NIRS joined four other organizations in petitioning the NRC Commissioners to order the correction of the Staff's legal error. *Petition to Supplement Reactor-Specific Environmental Impact Statements to Incorporate by Reference the Generic Environmental Impact Statement for Continued Spent Fuel Storage* (Jan. 28, 2015) ("Petition to Supplement"). The Petitioners argued that NEPA and implementing regulations of NRC and the Council on Environmental Quality ("CEQ") require the NRC to supplement the Levy County FEIS and other EISs to incorporate the Continued Spent Fuel Storage GEIS by

reference. The Petition to Supplement is pending before the Commission.

IV. CONTENTION

A. Statement of Contention

While the text of the Levy County FEIS is outdated with respect to its discussion of spent fuel storage impacts, 10 C.F.R. § 51.23(b) provides that the Continued Spent Fuel Storage GEIS is incorporated by reference into the Levy County FEIS.⁴ For all of the reasons stated in NIRS et al.'s Comments on the Draft Waste Confidence GEIS, however, the Continued Spent Fuel Storage Rule and GEIS fail to provide the NRC with a lawful basis under NEPA for issuing a COL for Levy County. As discussed in NIRS et al.'s comments on the Rule and GEIS, they suffer from the following failures:

- In blatant violation of NEPA and the Court's decision in *New York I*, the Continued Spent Fuel Storage GEIS fails to examine the probability and consequences of failure to site a repository. Instead of examining the risk of failing to site a repository, the GEIS rationalizes the risk away, by arbitrarily assuming that spent fuel will be protected by "institutional controls" for an infinite period of time at reactor sites. This assumption is not only absurd and inconsistent with the Nuclear Waste Policy Act ("NWPA"), but it also defeats the Court's purpose of forcing NRC to reckon with the environmental consequences of its failure to site a repository.
- The GEIS fails to acknowledge that the Continued Spent Fuel Storage Rule is a licensing action, and therefore it distorts the statement of purpose and need for the rule as relating to administrative rather than environmental concerns. As a result, the GEIS also mischaracterizes the alternatives that must be considered. Instead of evaluating alternatives related to storage and disposal of spent fuel, the GEIS examines alternatives related to the administrative question of how to prepare an EIS. The result is a farcical cost-benefit analysis that utterly fails to address alternatives for avoiding or mitigating the environmental impacts of storing spent fuel or siting a repository.

⁴ 10 C.F.R. § 51.23(b) states that the Continued Spent Fuel Storage GEIS is deemed incorporated into EISs prepared under 10 C.F.R. § 51.95 (which governs preparation of draft and final supplemental EISs for reactor licensing and license renewal).

- The GEIS' analysis of the environmental impacts of extended spent fuel storage ignores the fact that NRC knows very little about the behavior of spent fuel in long-term or indefinite storage conditions, especially the potentially significant effects of long-term dry cask storage on high burnup fuel integrity. In violation of NEPA, the NRC makes no attempt to quantify these uncertainties.
- The GEIS fails to fully consider the environmental impacts of spent fuel pool leaks and fires. In violation of NEPA, the GEIS relies upon incomplete data, adopts a flawed concept of risk and ignores a range of causes for accidents.
- In violation of NEPA, the GEIS makes no attempt to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. Although spent fuel disposal and long-term storage costs are high enough to tip the balance of a cost-benefit analysis for reactor licensing away from licensing, nowhere does the NRC explain how it will take these costs into account in reactor licensing decisions.
- In violation of NEPA, the GEIS fails to support the limited conclusions in the Continued Spent Fuel Storage Rule and GEIS regarding the technical feasibility of spent fuel disposal.
- The NRC has splintered the analysis of environmental impacts associated with storage and disposal of spent fuel into an array of safety findings and environmental analyses. While the issues covered by these separate findings and analyses overlap and involve cumulative impacts, the NRC refuses to integrate them. The NRC also refuses to correct inconsistencies between them.⁵

B. Statement of Basis for the Contention

The basis for NIRS' contention is provided in the NIRS et al. Comments and attachments (including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper).

⁵ As discussed above at pages 6-7, the NRC Staff has not yet updated the Levy County FEIS to incorporate the Continued Spent Fuel Storage GEIS by reference, as required by NEPA, 10 C.F.R. Part 51, Appendix A and other authorities. *See also* Petition to Supplement at 7-9. In the absence of an accurate FEIS, NIRS is not able to challenge the Levy County FEIS with the accuracy and specificity required by 10 C.F.R. §§ 2.309(f)(1)(vi) and (f)(2). *Id.* at 10-11. Nevertheless, in order to ensure that the contention is filed before the NRC licenses the Levy County reactors, NIRS submits it now, based on the best available information.

C. Demonstration that the Contention is Within the Scope of the Proceeding

The contention is within the scope of the proceeding because it challenges the adequacy of the NRC's NEPA review for the licensing of the proposed Levy County reactors.

D. Demonstration that the Contention is Material to the Findings the NRC Must Make to License This Reactor

The contention is material to the findings that the NRC must make in order to license this reactor because it asserts that the environmental findings in the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS are not supported and are legally deficient.

E. Concise Statement of the Facts or Expert Opinion Supporting the Contention, Along with Appropriate Citations to Supporting Scientific or Factual Materials

The statements of fact or expert opinion supporting the contention are set forth in the NIRS et al. Comments and attachments (including the declarations of Dr. Arjun Makhijani, Dr. Gordon Thompson, David Lochbaum, and Mark Cooper).

F. A Genuine Dispute Exists with the Applicant on a Material Issue of Law or Fact

This contention raises a genuine dispute with both the applicant and the NRC regarding whether the NRC has satisfied NEPA for the purpose of issuing a COL for Levy County.

V. THE CONTENTION IS TIMELY PURSUANT TO 10 C.F.R. §§ 2.309(c) and 2.309(f)(2)

NRC regulations 10 C.F.R. § 2.309(c) and § 2.309(f)(2) call for a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

This Hearing Request/Petition to Intervene is timely because it does not depend at all on past information. Instead, it is a “place-holder” that depends on an event that will occur in the future: the U.S. Court of Appeals’ decision in *New York II*. NIRS’ contention seeks the denial (or revocation) of a COL for Levy County in the event that the Court of Appeals reverses the Continued Spent Fuel Storage Rule and/or GEIS.

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)

Undersigned attorney Diane Curran certifies that on April 13, 2015, she contacted counsel for the applicant and the NRC Staff in an attempt to obtain their consent to this Hearing Request/Petition to Intervene. Counsel for both parties stated that they would oppose it.

VII. CONCLUSION

For the reasons stated, NIRS respectfully requests that its contention be admitted.

Respectfully submitted,

Signed (electronically) by:

Diane Curran
Harmon, Curran, Spielberg & Eisenberg, L.L.P.
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202-328-3500
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April 22, 2015

March 25, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)
) Docket Nos. 52-029-COL,
PROGRESS ENERGY FLORIDA, INC.) 52-030-COL
(Levy County Nuclear Power Plant,)
Units 1 and 2))
)

DECLARATION OF AMANDA HANCOCK ANDERSON

Under penalty of perjury, I, Amanda Hancock Anderson, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Nuclear Information and Resources Service (NIRS). I agree with NIRS's mission of working for a sustainable, non-nuclear energy policy and I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized NIRS to submit a contention on my behalf challenging the NRC's failure to fully and adequately assess the environmental impacts of storing and disposing of the spent fuel that will be generated by the Levy County Units 1 and 2 nuclear reactors, if they are licensed.

3. I know that NIRS submitted comments to the U.S. Nuclear Regulatory Commission ("NRC") in 2013 regarding the NRC's proposed rule entitled "Waste Confidence Decision - Continued Storage of Spent Nuclear Fuel," which was published at 78 Fed. Reg. 56,776 on September 13, 2013 and its accompanying "Waste Confidence Generic Environmental Impact Statement," published the same day.

4. I live at 516 NW 19th Avenue, Gainesville, Florida 32609. My home lies within 48 miles of the proposed Levy County Units 1 and 2 nuclear reactors. This is less than the fifty-mile radius distance at which the U.S. Nuclear Regulatory Commission ("NRC") presumes a reactor accident will cause harm to my health and safety.

5. I am concerned about the health and environmental risks posed by the spent fuel that will be generated by Levy County Units 1 and 2 if they are licensed. I am aware that Congress has established a policy that the spent fuel should be removed from the Levy County Units 1 and 2 nuclear plant site to a repository for permanent disposal. But, I am concerned that permanent disposal of spent fuel may not be feasible. I am also concerned that the government will not find sufficient capacity in a repository or multiple repositories to accommodate the spent fuel to be generated by Levy County Units 1 and 2. For these reasons, I am concerned that the Levy

County Units 1 and 2 reactor site may become a *de facto* long term spent fuel storage depot or even waste disposal site. I am concerned that spent fuel stored for a lengthy period at the Levy County Units 1 and 2 site may leak into the environment and harm my health and threaten my safety. Additionally, I am concerned about the health and safety of future generations in my family, and protection of the environment.

6. I am aware that NRC must conduct a full environmental review whenever it licenses or re-licenses a nuclear power plant. However, I am concerned that NRC has not adequately evaluated the environmental, health, and safety consequences of storing spent nuclear fuel at the Levy County Units 1 and 2 nuclear plant site during the time following the licensed life of the reactor. In the absence of adequate environmental analyses regarding the storage of spent fuel, I do not have confidence that my health and safety or the integrity of my environment will be protected from the adverse effects of exposure to spent reactor fuel.

7. I have authorized Nuclear Information and Resources Service to file a contention that seeks to raise my concerns in this proceeding. I believe this contention will redress my concerns by forcing the NRC to either conduct the required environmental analyses or deny the license application for Levy County Units 1 and 2.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Amanda Hancock Anderson
Name: Amanda Hancock Anderson

Amanda Hancock Anderson
Date: 3/25/2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)
)
PROGRESS ENERGY FLORIDA, INC.) Docket Nos. 52-029-COL,
(Levy County Nuclear Power Plant,) 52-030-COL
Units 1 and 2))
)

DECLARATION OF William Russell Anderson

Under penalty of perjury, I, William Russell Anderson, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Nuclear Information and Resources Service (NIRS). I agree with NIRS’s mission of working for a sustainable, non-nuclear energy policy and I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized NIRS to submit a contention on my behalf challenging the NRC’s failure to fully and adequately assess the environmental impacts of storing and disposing of the spent fuel that will be generated by the Levy County Units 1 and 2 nuclear reactors, if they are licensed.

3. I know that NIRS submitted comments to the U.S. Nuclear Regulatory Commission (“NRC”) in 2013 regarding the NRC’s proposed rule entitled “Waste Confidence Decision - Continued Storage of Spent Nuclear Fuel,” which was published at 78 Fed. Reg. 56,776 on September 13, 2013 and its accompanying “Waste Confidence Generic Environmental Impact Statement,” published the same day.

4. I live at 516 NW 19th Ave Gainesville, FL 32609. My home lies within 48 miles of the proposed Levy County Units 1 and 2 nuclear reactors. This is less than the fifty-mile radius distance at which the U.S. Nuclear Regulatory Commission (“NRC”) presumes a reactor accident will cause harm to my health and safety.

5. I am concerned about the health and environmental risks posed by the spent fuel that will be generated by Levy County Units 1 and 2 if they are licensed. I am aware that Congress has established a policy that the spent fuel should be removed from the Levy County Units 1 and 2 nuclear plant site to a repository for permanent disposal. But, I am concerned that permanent disposal of spent fuel may not be feasible. I am also concerned that the government will not find sufficient capacity in a repository or multiple repositories to accommodate the spent fuel to be generated by Levy County Units 1 and 2. For these reasons, I am concerned that the Levy

County Units 1 and 2 reactor site may become a *de facto* long term spent fuel storage depot or even waste disposal site. I am concerned that spent fuel stored for a lengthy period at the Levy County Units 1 and 2 site may leak into the environment and harm my health and threaten my safety. Additionally, I am concerned about the health and safety of future generations in my family, and protection of the environment.

6. I am aware that NRC must conduct a full environmental review whenever it licenses or re-licenses a nuclear power plant. However, I am concerned that NRC has not adequately evaluated the environmental, health, and safety consequences of storing spent nuclear fuel at the Levy County Units 1 and 2 nuclear plant site during the time following the licensed life of the reactor. In the absence of adequate environmental analyses regarding the storage of spent fuel, I do not have confidence that my health and safety or the integrity of my environment will be protected from the adverse effects of exposure to spent reactor fuel.

7. I have authorized Nuclear Information and Resources Service to file a contention that seeks to raise my concerns in this proceeding. I believe this contention will redress my concerns by forcing the NRC to either conduct the required environmental analyses or deny the license application for Levy County Units 1 and 2.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

A handwritten signature in cursive script that reads "William Russell Anderson". The signature is written in black ink on a light-colored background.

Date: _____ March, 24 2015 _____

Name: William Russell Anderson

March 26 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)
)
PROGRESS ENERGY FLORIDA, INC.) Docket Nos. 52-029-COL,
(Levy County Nuclear Power Plant,) 52-030-COL
Units 1 and 2))
)

DECLARATION OF Emily Casey

Under penalty of perjury, I, Emily Casey, declare as follows:

1. I make this declaration of my own personal knowledge. If called to testify as a witness, I could and would testify competently regarding its contents.

2. I am a current member of Nuclear Information and Resources Service (NIRS). I agree with NIRS's mission of working for a sustainable, non-nuclear energy policy and I believe my health and well-being depend upon the health of the environment in the region where I live. I have authorized NIRS to submit a contention on my behalf challenging the NRC's failure to fully and adequately assess the environmental impacts of storing and disposing of the spent fuel that will be generated by the Levy County Units 1 and 2 nuclear reactors, if they are licensed.

3. I know that NIRS submitted comments to the U.S. Nuclear Regulatory Commission ("NRC") in 2013 regarding the NRC's proposed rule entitled "Waste Confidence Decision - Continued Storage of Spent Nuclear Fuel," which was published at 78 Fed. Reg. 56,776 on September 13, 2013 and its accompanying "Waste Confidence Generic Environmental Impact Statement," published the same day.

4. I live at 1430 E. Hartford St. Inverness, FL 34453. My home lies within 20 miles of the proposed Levy County Units 1 and 2 nuclear reactors. This is less than the fifty-mile radius distance at which the U.S. Nuclear Regulatory Commission ("NRC") presumes a reactor accident will cause harm to my health and safety.

5. I am concerned about the health and environmental risks posed by the spent fuel that will be generated by Levy County Units 1 and 2 if they are licensed. I am aware that Congress has established a policy that the spent fuel should be removed from the Levy County Units 1 and 2 nuclear plant site to a repository for permanent disposal. But, I am concerned that permanent disposal of spent fuel may not be feasible. I am also concerned that the government will not find sufficient capacity in a repository or multiple repositories to accommodate the spent fuel to be generated by Levy County Units 1 and 2. For these reasons, I am concerned that the Levy

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[Remainder of this page has been intentionally left blank.]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Name: Emily Casey
Emily Casey

Date: March 26, 2015

April 22, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION

In the Matter of)	
Progress Energy Florida, Inc.)	Docket Nos. 52-029-COL,
(Levy County Nuclear Power Plant,)	52-030-COL
Units 1 and 2))	

**NUCLEAR INFORMATION AND RESOURCE SERVICE'S
MOTION TO REOPEN THE RECORD
OF COMBINED LICENSE PROCEEDING FOR
LEVY COUNTY UNITS 1 AND 2 NUCLEAR POWER PLANT**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.326, Nuclear Information and Resource Service (“NIRS”) hereby moves to reopen the record in this proceeding to admit a new contention challenging the legal adequacy of the Final Environmental Impact Statement for Combined Licenses (COLs) for Levy County Nuclear Plant, Units 1 and 2 (NUREG-1941, Apr. 2012) (ML12100A068) (“Levy County FEIS”). NIRS’ Hearing Request and Petition to Intervene in Combined License Proceeding for Levy County Nuclear Power Plant (April 22, 2015) (“Hearing Request/Petition to Intervene”). NIRS contends that under NEPA, the Levy County FEIS does not provide the NRC with an adequate legal basis for licensing Levy County because it relies for its evaluation of the environmental impacts of spent fuel storage and disposal on the Continued Storage of Spent Nuclear Fuel Rule (79 Fed. Reg. 56,238 (Sept. 19, 2014) (“Continued Spent Fuel Storage Rule”)) and the Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel (NUREG-2157, September 2014) (“Continued Spent Fuel Storage GEIS”).¹

¹ The NRC issued the Continued Spent Fuel Storage Rule and GEIS on remand from the U.S. Court of Appeals in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (“*New York I*”).

As discussed in NIRS' Hearing Request/Petition to Intervene, while NIRS seeks admission of its contention, NIRS does not seek to litigate the substantive content of its contention in an adjudicatory hearing. Instead, NIRS has already raised its concerns about the Continued Spent Fuel Storage Rule and the Continued Spent Fuel Storage GEIS in comments on draft versions of those documents, and the NRC has already either rejected or disregarded NIRS' comments in the final versions of the Rule and GEIS. NIRS also has appealed the final versions to the U.S. Court of Appeals for the District of Columbia Circuit. *See Beyond Nuclear v. NRC*, Docket No. 14-1216 (filed Oct. 29, 2014).² The sole purpose of NIRS' contention is to lodge a formal challenge to the NRC's reliance, in the Levy County FEIS, on the legally deficient Continued Spent Fuel Storage Rule and Continued Spent Fuel Storage GEIS for purposes of licensing Levy County. This motion is necessary because the hearing record is closed.

Several overlapping factors, set forth in three regulations, govern motions to reopen and admit new contentions. *See* 10 C.F.R. §§ 2.309(c), 2.309(f), and 2.326. This motion and the accompanying contention satisfy each of these factors.

II. JURISDICTION

Until issuance of its initial final decision, a Licensing Board has jurisdiction to reopen a proceeding. *See* 10 C.F.R. §§ 2.318(a), 2.713(a), 2.319(m), and 2.341; *Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324, 1326, 1327 (1982)*. After that, jurisdiction lies with the Commission. Therefore, NIRS has filed this Motion before the Secretary of the Commission.

² *Beyond Nuclear v. NRC* was consolidated with four other cases and is now captioned *New York v. NRC*, Nos. 14-1210, 14-1212, 14-1216, and 14-1217 (Consolidated) ("*New York II*").

III. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(a).

10 C.F.R. § 2.236(a) provides three criteria which must be satisfied for this motion to be granted:

- (1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;
- (2) The motion must address a significant safety or environmental issue; and
- (3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

Id. This motion and the accompanying contention satisfy all three criteria, as discussed below.

A. This Motion is Timely.

Pursuant to 10 C.F.R. § 2.326, motions to re-open the record must be “timely.” The NRC judges timeliness of motions to reopen the record by the same standards as for contentions. 77 Fed. Reg. 46,562, 46,571 (Aug. 3, 2012).³ This motion to reopen and the attached contention are timely because they do not depend at all on past information. Instead, they are “placeholders” that depend on an event that will occur in the future: the U.S. Court of Appeals’ decision in *New York II*. NIRS’ contention seeks the denial (or revocation) of a COL for Levy County in the event that the Court of Appeals reverses the Continued Spent Fuel Storage Rule and/or GEIS.

B. This Motion and the Accompanying Contention Address a Significant Environmental Issue.

³ NRC regulations 10 C.F.R. § 2.309(c) and § 2.309(f)(2) call for a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

This motion and the accompanying contention raise the significant environmental issue that the Levy County FEIS is not supported by an adequate analysis of the environmental impacts of spent fuel storage and disposal. As discussed in NIRS' comments on the proposed version of the Continued Spent Fuel Storage Rule and the draft version of the Continued Spent Fuel Storage GEIS, the analysis referenced by the Levy County FEIS is seriously deficient to satisfy NEPA. *See* Hearing Request/Petition to Intervene at 9-10.

C. This Motion and the Accompanying Contention Would Likely Produce a Materially Different Result in this Proceeding.

The purpose of NIRS' contention is to ensure that in the reasonably likely event that the U.S. Court of Appeals grants NIRS' petition for review of the Continued Spent Fuel Storage Rule and GEIS and vacates them for failure to comply with NEPA, the NRC will withdraw the Levy County FEIS as base for licensing Levy County, and therefore withdraw the Levy County COL. Thus, admission of this contention would likely produce a materially different result in this proceeding.

IV. THIS MOTION SATISFIES THE STANDARDS FOR REOPENING A CLOSED HEARING RECORD SET FORTH IN 10 C.F.R. § 2.326(b).

10 C.F.R. § 2.326(b) requires that a motion to reopen the record must be accompanied by affidavits that set forth the factual and/or technical bases for the movant' claim that the criteria of Section 2.326(a) have been satisfied. NIRS has not submitted affidavits, because the bases for this motion are purely legal: As discussed in NIRS' Contention, the sole purpose of NIRS' Contention – and therefore of this motion – is to ensure that any court decision resulting from NIRS' appeal of the generic Continued Spent Fuel Storage Rule and GEIS will also be applied to the individual Levy County COL proceeding, which relies on the Continued Spent Fuel Storage Rule and GEIS.

V. THIS MOTION AND THE ACCOMPANYING CONTENTION SATISFY THE STANDARDS FOR CONTENTIONS FILED AFTER THE DEADLINE SET FORTH IN 10 C.F.R. §§ 2.326(d) AND 2.309(c).

10 C.F.R. § 2.326(d) provides that “[a] motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b).”⁴ As discussed above in Section III.A, this Motion and NIRS’ placeholder Contention are timely because they are based on information that does not yet exist: the U.S. Court of Appeals’ decision in *New York II*. If the U.S. Court of Appeals reverses the Continued Spent Fuel Storage Rule and GEIS, then the filing of this contention will have ensured that the Levy County COL decision is also reversed, because the Levy County FEIS relies on the Continued Spent Fuel Storage Rule and GEIS.

VI. CONSULTATION CERTIFICATION PURSUANT TO 10 C.F.R. § 2.323(b)

Undersigned counsel Diane Curran certifies that on April 13, 2015, she contacted counsel for the applicant and the NRC staff in an attempt to obtain their consent to this motion. Counsel for both parties stated that they would oppose it.

VII. CONCLUSION

For the foregoing reasons, NIRS’ Motion to Reopen the Record should be granted.

Respectfully submitted,

[Electronically signed by]

Diane Curran

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April 22, 2015

⁴ See note 3 above for the requirements of 10 C.F.R. § 2.309(c).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:) Docket Nos.
Progress Energy Florida, Inc.) 52-029-COL, 52-030-COL
Levy County Nuclear Power Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2015, I posted the foregoing NUCLEAR INFORMATION AND RESOURCE SERVICE'S HEARING REQUEST AND PETITION TO INTERVENE IN COMBINED LICENSE PROCEEDING FOR LEVY COUNTY NUCLEAR POWER PLANT; NUCLEAR INFORMATION AND RESOURCE SERVICE'S MOTION TO REOPEN THE RECORD OF COMBINED LICENSE PROCEEDING FOR LEVY COUNTY UNITS 1 AND 2 NUCLEAR POWER PLANT; and standing declarations of Amanda Hancock Anderson, William Russell Anderson, and Emily Casey on the NRC's Electronic Information Exchange system. It is my understanding that as a result, the Commission, Atomic Safety and Licensing Board, and parties were served.

Signed (electronically) by
Diane Curran
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April 22, 2015