

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

February 15, 2012

MEMORANDUM

(Issue to Address in Answers to Proposed Contention 14)

On February 13, 2012, the Green Party of Florida, the Ecology Party of Florida, and the Nuclear Information and Resource Service (collectively "Intervenors") filed a motion for leave to file a new contention, proposed contention 14 (C-14).¹ Proposed C-14 asserts that NRC cannot issue a license to Progress Energy Florida, Inc. (PEF) for the proposed nuclear power reactors because to do so would violate Federal and State law. Answers to Intervenors' motion and to proposed C-14 are due on March 9, 2012. See LBP-09-22, 70 NRC 640, 647 (2009).

The Board notes that the NRC recently made the following representation to the U.S. Court of Appeals for the District of Columbia Circuit regarding the scope and jurisdiction of Atomic Safety and Licensing Boards in the NRC adjudicatory process:

NRC's hearing process is not limited to claims under the Atomic Energy Act, as petitioners' brief implies, but encompasses any claim of unlawfulness that would defeat issuing a license, including (for example) claims under the National

¹ Motion for Leave to File Contention 14: Proposed Levy County Site for Two AP1000 Reactors Does Not Comply with Existing State and Federal Law, (Feb. 13, 2012).

Environmental Policy Act, the National Historic Preservation Act, and the CWA [Clean Water Act] itself.²

The Board requests that, in their answers, the NRC Staff and PEF discuss the NRC's position (reflected in the foregoing quote) and address whether the Board's jurisdiction, and the scope of the instant proceeding, encompasses the claims of unlawfulness specified in C-14.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 15, 2012

² Initial Brief for the Federal Respondents [NRC] at 29, Vermont Department of Public Service; New England Coalition v. U.S. Nuclear Regulatory Commission, Nos. 11-1168 and 11-1177 (D.C. Cir. filed Jan. 20, 2012) (emphasis in original).

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 LB MEMORANDUM (ISSUE TO ADDRESS IN ANSWERS TO PROPOSED CONTENTION 14) have been served upon the following persons by Electronic Information Exchange.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

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

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001

Pillsbury Winthrop Shaw Pittman, LLP
2300 N. Street, N.W.
Washington, DC 20037-1122
Counsel for Progress Energy Florida, Inc.

Alex S. Karlin, Chair
Administrative Judge
E-mail: ask2@nrc.gov

John H. O'Neill, Esq.
Robert B. Haemer, Esq.
Ambrea Watts, Esq.
Alison Crane, Esq.

Anthony J. Baratta
Administrative Judge
E-mail: Anthony.baratta@nrc.gov

Michael G. Lepre, Esq.
Jason P. Parker, Esq.
Stefanie Nelson George, Esq.
Kimberly Harshaw, Esq.

Randall J. Charbeneau
Administrative Judge
E-mail: Randall.Charbeneau@nrc.gov

Stephen Markus
E-mail:
john.oneill@pillsburylaw.com
robert.haemer@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

Joshua A. Kirstein, Law Clerk
E-mail: josh.kirstein@nrc.gov

Matthew Flyntz, Law Clerk
matthew.flyntz@nrc.gov

Docket Nos. 52-029-COL and 52-030-COL

LB MEMORANDUM (ISSUE TO ADDRESS IN ANSWERS TO PROPOSED CONTENTION 14)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
Marian Zabler, Esq.
Sara Kirkwood, Esq.
Jody Martin, Esq.
Michael Spencer, Esq.
Kevin Roach, Esq.
Lauren Goldin, Esq.
Emily Monteith, Esq.
Joseph Gilman, Paralegal
Karin Francis, Paralegal
E-mail:

marian.zabler@nrc.gov
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

OGC Mail Center : OGCMailCenter@nrc.gov

Alachua County Green Party, Green
Party of Florida
P.O. Box 190
Alachua, FL
Michael Canney, Co-Chair
E-mail: alachuagreen@windstream.net

Nuclear Information & Resource Service
P.O. Box 7586
Asheville, NC 28802
Mary Olson,
NIRS Southeast Regional Coordinator
E-mail: maryo@nirs.org

Nuclear Information Resource Service
6390 Carroll Avenue, #340
Takoma Park, MD 20912
Michael Mariotte, Executive Director
E-mail: nirsnet@nirs.org

Ecology Party of Florida
641 SW 6th Avenue
Ft. Lauderdale, FL 33315
Cara Campbell, Chair
Gary Hecker
E-mail: levynuke@ecologyparty.org

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 15th day of February 2012