

United States of America
Nuclear Regulatory Commission
Atomic Safety and Licensing Board

Before Administrative Judges:

Alex S. Karlin, Chair
Dr. Anthony J. Baratta
Dr. William M. Murphy

In the Matter of: PROGRESS ENERGY FLORIDA, INC. Combined License Application for Levy County Units 1 & 2	Dockets Numbers 52-029-COL and 52-030-COL September 13, 2011
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**INTERVENORS' MEMORANDUM IN REPLY TO OPPOSITIONS TO ADMISSION OF
NEW CONTENTION**

Pursuant to 10 C.F.R. § 2.309(h)(2), The Ecology Party of Florida, The Green Party of Florida and Nuclear Information and Resource Service (the Intervenors) hereby reply to the opposition submitted by the U.S. Nuclear Regulatory Commission ("NRC") Staff to Intervenors' new contention (13) seeking consideration of the environmental implications of the Fukushima Task Force Report. We would first, like to thank Staff for including the Task Force Report in its filing. We apologize to the Panel for not providing a copy with the filing of Contention 13.

The applicant, Progress Energy of Florida (PEF) chose to file an Objection in this proceeding, dated August 22, and on the same day filed a pleading with the Commission. Since we are now out of date range to include a reply to that filing here, we will simply add one comment at the end of this pleading highlighting a misreading of C13 by the applicant.

Intervenors will therefore focus on the Answer filed by NRC Staff. Intervenors respectfully submit that the arguments by the NRC Staff regarding the timeliness and admissibility of the contention are without merit and the contention should be admitted.

The arguments raised by the NRC Staff in response to Intervenor's contention are similar or identical to arguments made by the applicant and staff in response to Fukushima Task Force Report-related contentions that were filed in other reactor licensing proceedings on the same day. Intervenors attach and incorporate by reference here a Reply Memorandum, which addresses the most common arguments that are made in the responses and forms the basis for replies that are being filed today in the Diablo Canyon, Turkey Point, Vogtle, and Watts Bar cases.¹

The Reply Memorandum also discusses the effect of the NRC Commissioners' recent decision regarding the Emergency Petition that was submitted by Intervenors and many other intervenors and petitioners in April 2011. *Union Electric Co., d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, ___ NRC ___ (Sept. 6, 2011) ("CLI-11-05").²

In addition, Intervenors hereby reply to arguments by the NRC Staff that Contention 13 is not specific enough to the Levy County Units 1 & 2 application and the DEIS for this application. It is our fundamental contention that the entire DEIS and the entire application do not reflect the real-world implications of the Fukushima disaster

¹ The Reply Memorandum was prepared by the attorneys who represent the intervenors or petitioners in those cases: Diane Curran (Diablo Canyon license renewal proceeding), Mindy Goldstein (Vogtle COL and Turkey Point COL proceedings), and Jason Totoui (Turkey Point COL proceeding).

² Because the applicant and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of Intervenors' [Petitioners'] contention, Intervenors [Petitioners] would not object to a response by the applicant and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.

and that, in particular, NEPA requires that the DEIS, and any subsequent FEIS and licensing decision do so.

The application, of course, was first submitted in July 2008 and has been updated, but not substantially this year. Thus, the application naturally does not reflect events that began in March 2011 and continue today, nor does it reflect the July 2011 Fukushima Task Force Report.

Similarly, the DEIS, while completed in August, 2001, also does not reflect events that began in mid-March 2011 and continue today, nor does it reflect the July 2011 Fukushima Task Force Report.

While Joint Intervenors did not point to specific page numbers in the application and DEIS in filing our initial contention, we believe we offered sufficient specificity in this passage of our contention:

“Were SAMAs imposed as mandatory measures, the outcome of the ER and now the DEIS for Levy County Units 1 & 2 could be affected significantly in two major respects. First, severe accident mitigative measures now rejected as too costly may be required, thus substantially improving the safety of the Levy County Units 1 & 2 operation if it is licensed. Second, consideration of the costs of mandatory mitigative measures could affect the overall cost-benefit analysis for the reactor.⁶ As discussed in Dr. Makhijani’s declaration, these costs may be significant, showing that other alternatives such as the no-action alternative and other alternative electricity production sources may be more attractive. Intervenors brought in our original Petition to Intervene contention 1 which would be substantially impacted if the issues raised by Dr. Makhijani were introduced to that discussion. We choose to offer this contention as it is,

rather than revise Contention 1 for purposes of consistency, but note that our team has raised these same concerns from "day one." "

The Staff also errs in asserting that the Task Force Report is the "basis" of Contention 13; the Contention is very clear: the National Environmental Policy Act is the basis of Contention 13. Interveners are bringing the force of that law to bear upon the information that has been revealed, first and foremost by the events in Japan in 2011 at the Fukushima Dai-ichi power reactor site and the area it has impacted, and then subsequently by the reflection of these events by the NRC's "A-team." The fact that the Task Force does not reflect upon the NEPA implications, can, perhaps be forgiven insofar as it is not presiding over a licensing action. NRC staff is. NRC staff is bound by NEPA. If the Commission had deemed to respond sooner, and in a different manner to Intervener's Emergency Petition, there might have been a more coherent process in which staff could execute its lawful obligations, pointed to (but not limited by) C13. As it is, there is a patchwork developing across all the nuclear licensing activity in the USA, unless the various Atomic Safety Licensing Board panels choose to impose coherence; though the mechanism for that is not entirely clear. We, as interveners chose to attempt to serve that cause by working together. It remains to be seen whether the NRC can muster a similar level of internal cooperation.

NRC staff asserts that there is no new information presented -- and we agree insofar, as station blackout has been an issue since the beginning of atomic power, and can occur from any one of a multitude of scenarios, from large solar flares to a squirrel eating into a transmission line (the root cause of the most recent large-scale U.S. blackout). What is new--what is a lesson from Fukushima--are the potential effects of a

prolonged station blackout. This is no longer a hypothetical scenario, it is a real one and merits serious attention. The same holds true for the other issues identified in the Fukushima Task Force Report and our Contention 13.

Since Intervenors submitted Contention 13, we have experienced a major earthquake in the Mid-Atlantic States that according to initial USGS and NRC evaluations triggered ground motion approximately double that which the North Anna nuclear power station closest to the epicenter was designed to withstand. The implications of this earthquake on seismic standards for all U.S. reactors, and especially those, like Calvert Cliffs, relatively close to the epicenter, are not yet fully understood but are likely to be significant and at the least certainly provide substantial new information about seismic risk. It should be noted that since events at a power plant may, itself, produce seismic phenomena (for instance a turbine blade being "thrown" while in operation) any lessons from the Mineral VA event should be applied to ALL reactors, not only those on earthquake fault lines. These matters need to be factored not only in the safety dimension (Intervenors are NOT challenging safety regulations) but also in the dimensions of the environmental impact analysis, under NEPA.

In addition, since Joint Intervenors submitted Contention 13, Hurricane Irene had impact on reactor operations, including an unexpected scram of one of the existing Calvert Cliffs reactors, raising additional safety concerns. Flooding in the Midwest similarly continues to raise concerns. Natural disasters, as the residents of the Gulf Coast of Florida know, are not limited to the Japanese coastline.

While perhaps these events should form the basis of another new contention, we suggest that they also fall into the broader concerns addressed by Contention 13 and

simply reflect additional urgency for a revision of the DEIS and COL as outlined in Contention 13.

The Staff asserts throughout its reply that we fail to offer "new information" which meets the criteria of the regulations, and that therefore the issues are not timely. We are reminded of a moment in oral argument when it was suggested that if we came with an issue it would be too soon, but if we came back with the same issue it would be too late, no matter what day it was.

In fact, the Task Force Report is based on the real life nuclear meltdowns at Fukushima; which have been of considerable consequence to the entire world. As such, the Report holds perhaps greater import than the average NRC report. Moreover, because the meltdowns took place in March 2011 and the Task Force Report was issued in July 2011, it would have been astonishingly prescient for Joint Intervenors to have been able to submit this as a contention as part of our initial petition to intervene, filed in February 2009, or following issuance of the DEIS last year, both filed before July 2011. We are Joint Intervenors, not Seers.

...or are we? This brings us to Contention 5. It was, perhaps, inappropriate to ask for reconsideration of our original contention on the potential for impact of a catastrophe at one reactor site 9.6 miles away on the new proposed additions to the nuclear neighborhood of Levy and Citrus Counties. The Code of Federal Regulations, Chapter 10, Part 2 dictates that "reconsideration" must be in the form of a Petition, and it must come, under Part 2 within 10 days of the relevant decision. So we erred, perhaps in submitting C5 on multiple sites and catastrophes for "reconsideration." Perhaps it would have been more appropriate to simply offer it as an exhibit in support of C13. There is

nothing in Contention 5 that would not be addressed by granting the full relief sought by C13. We brought it back, merely perhaps to show, we do SEE, and what we see causes us to fear for our members in Levy County, to fear for the waters -- the pristine Springs of the Nature Coast, Dunnellon and all the other clear clear waters boiling from the earth, that the proposed site even without a meltdown might suck dry, or alternately contaminate for very very long time. We continue to show up...to bring our vision, and to hope for a better future. We apologize for this lapse in reading Part 2. None of NRC Staff's response to it as a new contention merit reply. It is not.

Finally, to the applicant's objection we point out only this: the citation "The Petition also asks the NRC to suspend the Levy COL proceeding while it considers the Petition and the environmental issues raised in a proposed new contention alleging that the implications of the Fukushima Task Force Report must be addressed in the COL proceeding. *Id.*" is a mis-reading of C13. We did not ask that the entire COL proceeding be suspended -- we asked that the portions of it pertaining to the issues in C13 would be suspended.

Respectfully submitted,

_____/s/_____
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On behalf of the Intervenors

September 13, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Alex S. Karlin, Chairman
Dr. Anthony J. Baratta
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In the Matter of

PROGRESS ENERGY FLORIDA, INC.

(Combined License Application for Levy County
Nuclear Power Plant, Units 1 and 2)

Docket No. 52-029-COL, 52-030-COL

ASLBP No. 09-879-04-COL-BD01

September 13, 2011

Certificate of Service

I, Mary Olson, certify that on 09-13-2011 I served the following documents
"INTERVENORS' MEMORANDUM IN REPLY TO OPPOSITIONS TO ADMISSION OF
NEW CONTENTION" and "REPLY MEMORANDUM REGARDING TIMELINESS AND
ADMISSIBILITY OF NEW CONTENTIONS SEEKING CONSIDERATION OF
ENVIRONMENTAL IMPLICATIONS OF FUKUSHIMA TASK FORCE REPORT
IN INDIVIDUAL REACTOR LICENSING PROCEEDINGS"
by the The Ecology Party of Florida, Nuclear Information and Resource Service and the
Green Party of Florida on the parties listed below:

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