

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

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 Intervenor did not move for leave to make these corrections and changes. Intervenor stated that the corrections were needed because inter alia, “after the Intervenor’s 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, Intervenor granted themselves a ten-day extension for getting their ISOP and associated filings right. In addition, Intervenor 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, Intervenor 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”); Intervenor’s Motion for Leave to File Exhibits Out of Time (July 6, 2012) (“Motion for Leave”). As explained in the Curran Letter, Intervenor 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, Intervenor re-filed these documents and attached the redline versions.⁵

The Intervenor's 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 Intervenor, 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 Intervenor must comply.

⁴ See Intervenor's Unopposed Motion for Leave to File Corrected SOP and Exhibits (July 10, 2012). Intervenor 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, Intervenor 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 Intervenor 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 Intervenor's 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 Intervenor's 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 Intervenor is 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 Intervenor's 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/

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.

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.
John H. O'Neill, Esq.

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

Alison Crane, Esq.
Michael G. Lepre, Esq.
Jason P. Parker, Esq.
Kimberly Harshaw, Esq.
Timothy Walsh, Esq.
Robert Ross, Esq.

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

Stephen Markus
john.oneill@pillsburylaw.com
alison.crane@pillsburylaw.com
michael.lepre@pillsburylaw.com
jason.parker@pillsburylaw.com
kimberly.harshaw@pillsburylaw.com
timothy.walsh@pillsburylaw.com
robert.ross@pillsburylaw.com
stephen.markus@pillsburylaw.com

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

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

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 FILINGS)

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.
 Susan Vrahoretis, Esq.
 Patrick Moulding, Esq.
 Karin Francis, Paralegal
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
susan.vrahoretis@nrc.gov
patrick.moulding@nrc.gov
karin.francis@nrc.gov

OGC Mail Center : OGCMailCenter@nrc.gov

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

Counsel for Nuclear Information & Resource
 Service and Ecology Party of Florida
 1726 M Street N.W., Suite 600
 Washington, D.C. 20036
 Diane Curran, Esq.
 Mary Olson, NIRS Southeast Regional Coordinator
 Cara Campbell, Chair
 E-mail: dcurran@harmoncurran.com
maryo@nirs.org
levynuke@ecologyparty.org

Erich Pica, President
 Friends of the Earth
 1100 15th Street, NW
 11th Floor
 Washington, D.C. 20555
mkeever@foe.org

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

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