

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).<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup>

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

---

<sup>2</sup> 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](mailto: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](mailto: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](mailto:ask2@nrc.gov)

Robert B. Haemer, Esq.  
Ambrea Watts, Esq.  
Alison Crane, Esq.

Anthony J. Baratta  
Administrative Judge  
E-mail: [Anthony.baratta@nrc.gov](mailto: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](mailto:Randall.Charbeneau@nrc.gov)

Stephen Markus  
E-mail:  
[john.oneill@pillsburylaw.com](mailto:john.oneill@pillsburylaw.com)  
[robert.haemer@pillsburylaw.com](mailto:robert.haemer@pillsburylaw.com);

Joshua A. Kirstein, Law Clerk  
E-mail: [josh.kirstein@nrc.gov](mailto:josh.kirstein@nrc.gov)

[ambrea.watts@pillsburylaw.com](mailto:ambrea.watts@pillsburylaw.com)  
[alison.crane@pillsburylaw.com](mailto:alison.crane@pillsburylaw.com)  
[michael.lepre@pillsburylaw.com](mailto:michael.lepre@pillsburylaw.com)  
[jason.parker@pillsburylaw.com](mailto:jason.parker@pillsburylaw.com)  
[stefanie.george@pillsburylaw.com](mailto:stefanie.george@pillsburylaw.com)  
[kimberly.harshaw@pillsburylaw.com](mailto:kimberly.harshaw@pillsburylaw.com)  
[stephen.markus@pillsburylaw.com](mailto:stephen.markus@pillsburylaw.com)

Matthew Flyntz, Law Clerk  
[matthew.flyntz@nrc.gov](mailto: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](mailto:marian.zabler@nrc.gov)  
[sara.kirkwood@nrc.gov](mailto:sara.kirkwood@nrc.gov)  
[jody.martin@nrc.gov](mailto:jody.martin@nrc.gov)  
[michael.spencer@nrc.gov](mailto:michael.spencer@nrc.gov)  
[kevin.roach@nrc.gov](mailto:kevin.roach@nrc.gov)  
[laura.goldin@nrc.gov](mailto:laura.goldin@nrc.gov)  
[emily.moneith@nrc.gov](mailto:emily.moneith@nrc.gov)  
[joseph.gilman@nrc.gov](mailto:joseph.gilman@nrc.gov)  
[karin.francis@nrc.gov](mailto:karin.francis@nrc.gov)

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

OGC Mail Center : [OGCMailCenter@nrc.gov](mailto: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](mailto:alachuagreen@windstream.net)

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

Ecology Party of Florida  
 641 SW 6<sup>th</sup> Avenue  
 Ft. Lauderdale, FL 33315  
 Cara Campbell, Chair  
 Gary Hecker  
 E-mail: [levynuke@ecologyparty.org](mailto:levynuke@ecologyparty.org)

[Original signed by Evangeline S. Ngbea]

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 15<sup>th</sup> day of February 2012