

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

Before Administrative Judges:

Alex S. Karlin, Chair
Dr. Anthony J. Baratta
Dr. Randall Charbonneau

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 February 13, 2012
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Motion for Leave to File Contention 14: Proposed Levy County Site for Two AP1000 Reactors Does Not Comply With Existing State and Federal Law

The co-interveners: The Green Party of Florida, The Ecology Party of Florida and Nuclear Information and Resource Service respectfully file this Motion for Leave to File a New Contention in this case captioned above; Contention 14: Proposed Levy County Site for Two AP1000 Reactors Does Not Comply With Restrictions in USC Title 16, Chapter 1, Subchapter CV, section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" the January 22, 1991 Resolution of the Governor of Florida and Secretary of State; and the implementing Statute [Florida] Title XVIII, Chapter 253, Section 781. [Statutes are provided as Attachments 1 and 2, and Resolution of the Governor of Florida is Attachment 3].

In the alternative, Interveners seek leave to file Contention 14-A for admission but to be held in abeyance until the issuance of the Record of Decision on the NRC Staff's Final Environmental Impact Statement (FEIS); Contention 14-A: Nuclear Regulatory

Commission Federal Action is in Violation of USC Title 16, Chapter 1, Subchapter CV, section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" the January 22, 1991 Resolution of the Governor of Florida and Secretary of State; and the implementing Statute [Florida] Title XVIII, Chapter 253, Section 781. (Both contentions are attached).

Background

Progress Energy Florida (PEF or applicant) has proposed a site in Levy County Florida for two AP1000 atomic fission reactors and applied to the Nuclear Regulatory Commission (NRC) for a combined operating license (COL) for authority to pursue the proposed siting, construction and operation of Levy County 1 and 2 under the Atomic Energy Act. The site is more than 9 miles from the Gulf Coast, in an area with many fresh water springs, including the famous Rainbow River at Dunnellon. The proposal includes pumping water from the Floridan aquifer, as well as reversing of the flow of the now-canceled Cross Florida Barge Canal to deliver Gulf of Mexico waters to the proposed site, for reactor cooling, while sending the discharges back to the gulf.

Intervenors filed a Petition to intervene early in 2009 and three contentions were admitted for hearing. One of these three contentions is a broad set issues all associated with the impact that the applicant's proposal would have, if built and operated on the hydro ecology of the site and the area (Contention 4 or C-4). The issues raised in the current contention have some overlap, but throughout this pleading, the Intervenors wish to be clear: we are not re-introducing the issues of C-4 here, except in passing commentary for context. Intervenors intend to litigate C-4 as this proceeding currently

stands, under the provisions of the National Environmental Policy Act. We do hope however, that such litigation will fall, with many other things under the category of "resources" which should not be wasted in the Board's ruling on C-14.

In the course of the adjudication of contentions admitted to the contested COL for the Levy County site, this Board held an in-person "Limited Appearance" session in Crystal River Florida on January 12, 2012. One of the members of the public who offered information to be included in the Hearing File is Ms. Sarah (Betty) Berger. Ms Berger presented information here-to-fore known only to those who have a 20+ year memory of legal matters pertaining to Levy County. Ms Berger has identified a Federal Law -- USC Title 16, Chapter 1, Subchapter CV, section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" and the January 22, 1991 Resolution of the Governor of Florida and Secretary of State upon which the federal law is predicated; and the implementing Statute [Florida] Title XVIII, Chapter 253, Section 781 all of which are the basis for enforceable restrictions on the use of the Cross Florida Barge Canal, now officially since 1998 the Marjorie Harris Carr Cross Florida Greenway.

It is unclear the extent to which the issues were raised earlier with Mr. Doug Bruner, NRC Staff, working on the Levy County 1 and 2 proposal, with whom, apparently Ms. Berger shared some of this information prior to the Limited Appearance Session, albeit in truncated and non-specific fashion [Attachment 4 is one of many emails and communications Ms Berger has had with NRC staff about the Levy Proposal. Note that this author was copied on the email to Mr Bruner, and I did not understand the

implications of that message until the January 12, 2012 testimony.] Ms. Berger's oral testimony begins at page 725 of the oral transcript [ML12023A077], of the January 12th session. Unfortunately Ms. Berger's oral presentation did not fully represent the information which she introduced into the hearing record that day. Contention 14 and 14-A are based upon that information [Attachment 5 is Ms Berger's written statement from Jan. 12, 2012 and it is also available in the Hearing Docket as ML12024A271]. Interveners find this information to be startling and compelling and bring this contention since we have not seen any "action" on this matter by any other Party.

Timeliness

While the existence of these laws cannot meet the standard in 10 CFR Part 2 for "new" information since the statutes have been "on the books" for twenty years, the provisions for new contentions also include 2.309(2):

- (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

Clearly the statutes in question provide materially different information than that presented in the COL (see C14). In deference to the NRC regulations, this contention is offered the Monday after 30 days of the Limited Appearance session held in Crystal River on January 12, 2012 when interveners became aware of this information. We recognize that does not meet the standard, but in our view, the force of law exists continuously, and that force does not rest upon it being known, or new. The only question is whether it is applicable. In our view the force of federal and state laws

supersede even an adjudicated license application. It does not matter whether an existing federal nuclear license might supersede such a law. This license is not in force. Further, it is the responsibility of the applicant and the NRC Staff to uncover and comply with any relevant laws and statutes that might govern the siting of a major project subject to federal license. It is in this light that we respectfully submit that any issue of "timeliness" of this contention is irrelevant.

Conclusion:

To the extent to which Contention 14 overlaps with issues already admitted to this proceeding under Contention 4, Interveners seek adjudication of those issues under Contention 4. The present issues revolve around the compliance with existing legally enforceable restrictions on the use of the Barge Canal and its associated land and water resources. Interveners request that this Board order NRC Staff to exercise its delegated authority (and also lack-there-of) under the Atomic Energy Act to require the applicant to conform to relevant laws which apply to this application and any restrictions therein.

Interveners would appreciate summary judgment in this matter to relieve all parties from inappropriate expenditure of time and resources in a proceeding that could be found (if no action is taken by this Board) to be in violation of multiple laws.

In the alternative, if Judges choose not to give summary disposition, Interveners request the alternate contention (14-A) be admitted but held "in abeyance" until the issuance of the Record of Decision (ROD) on the Final Environmental Impact Statement on Levy

County 1 and 2. The ROD would be the first "final federal action" that the US Nuclear Regulatory Commission would take in this matter, and therefore the first point at which the question of a U.S. Nuclear Regulatory Commission violation of statutes (in contrast to the applicant and perhaps the neglect of responsibility by NRC Staff) arises. This would give NRC staff the opportunity to discover and conform to any legal restrictions that it should take into account before issuing the Final Environmental Impact Statement, and might save Parties unnecessary expenditure of resources on litigation of contention 14 if it is not "ripe."

Respectfully Submitted,

_____/s/_____
Mary Olson
Nuclear Information and Resource Service
Southeast Office,
PO Box 7586
Asheville, North Carolina 28802
828-252-8409

on behalf of the Co-Intervenors

February 13, 2012

United States of America
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Contention 14 and Contention 14-A

CONTENTION 14:

The Applicant's Proposed Levy County Site for Two AP1000 Reactors Does Not Comply With Restrictions in USC Title 16, Chapter 1, Subchapter CV, Section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" the January 22, 1991 Resolution of the Governor of Florida and Secretary of State; and the Implementing Statute [Florida] Title XVIII, Chapter 253, Section 781 [Attachments 2, 3 and 4]; Compliance With These Laws Would Make the Proposed Levy County Site Not Viable. [Provided at Attachments 1, 2 and three; this novice finds the numbering confusing, so in addition to the provided attachment, the federal Code may also be found: <http://www.law.cornell.edu/uscode/text/16/460tt>]

Progress Energy Florida (PEF) has applied for a Combined Operating License for two AP1000 reactors proposing a site in Levy County, Florida that is 9.6 miles inland from the Gulf of Mexico.

[See figure 2, Attachment 6 ¹] the entire COL application is posted

<http://pbadupws.nrc.gov/docs/ML1028/ML102870352.pdf>. In order to cool two atomic fission reactors, PEF proposes to use what it calls the Cross Florida Barge canal. By installing a cooling water in-take structure (CWIS) near what was once a functioning canal lock, PEF proposes to reverse the flow of water in the canal bringing the vast quantities of reactor cooling water needed from the Gulf of Mexico to the CWIS, and from there in large buried pipes for ~3 miles north to the reactors. In addition the PEF plan is to install two 54" diameter pipes parallel to the canal, for more than 5 miles to carry the blow-down and other discharge liquids to the

¹ Attachment numbers begin in the accompanying Motion

Gulf (see Attachment 7, Evaluation and Management of Materials Dredged from the Cross Florida Barge Canal for the Construction of Barge Slip, Intake Structure, and Pipeline Facilities Associated with the Levy Nuclear Plant, Florida); at one point these pipes will be buried deep enough to cross under the canal [see attachment 7, page 17].

It turns out however that the area in question is no longer the Cross Florida Barge Canal; that project was de-authorized by the Federal Government in 1990; by 1993 the transfer was complete and in 1998 the canal was officially designated the Marjorie Harris Carr Cross Florida Greenway. The Cross Florida Barge Canal is a historical name that predates the current greenway. The greenway is subject to federal and state restrictions in Law that have been overlooked by PEF, and subsequently by NRC Staff.

The existence of restrictions on the former Cross Florida Barge Canal, now the Marjorie Harris Carr Cross Florida Greenway was brought to the attention of the Parties in this case, and the Atomic Safety Licensing Board Panel during the Limited Appearance Statements in Crystal River, Florida on January 12, 2012 [Attachment 5].

The statement contains transcriptions of both USC Title 16, Chapter 1, Subchapter CV, Section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" and also the January 22, 1991 Resolution of the Governor of Florida and Secretary of State. [Also provided from source documents in Attachments 1, 2 and 3 and discussed further below].

Digging into the history of the deauthorization of the canal it is clear that the present interveners are not the first group to intervene on behalf of the resident aquifer and other waters of the Nature Coast of Florida. Those who came before, of whom we were unaware, scored the very

significant victory of creating a greenway and restricting its use for conservation and recreation, which was embodied in federal statute,

The federal law states: (full text is attachment 2, this portion starts on page 50 of the PDF document page numbers):

SEC. 402. CROSS FLORIDA BARGE CANAL.

Section 1114 of the Water Resources Development Act of 1986 (16 U.S.C. 460tt; 100 Stat. 4232) is amended to read as follows: "SEC. 1114. CROSS FLORIDA BARGE CANAL "

(a) DEAUTHORIZATION. -- The barge canal project located between the Gulf of Mexico and the Atlantic Ocean (hereinafter in this section referred to as the 'project'), as described in the Act of July 23, 1942 (56 Stat. 703), shall be deauthorized by operation of law *immediately upon the Governor and Cabinet of the State of Florida adopting a resolution specifically agreeing on behalf of the State of Florida* (hereinafter in this section referred to as the 'State') to all of the terms of the agreement prescribed in subsection (b).

"(b) TRANSFER OF PROJECT LANDS. -- Notwithstanding any other provision of law, the Secretary is, subject to the provisions of subsections (d) and (e), directed to transfer to the State all lands and interests in lands acquired by the Secretary and facilities completed for the project in subsection (a), without consideration, if the State agrees to each of the following:

"(1) The State shall agree to hold the United States harmless from all claims arising from or through the operations of the lands and facilities conveyed by the United States.

"(2) The State shall agree to preserve and maintain a greenway corridor which shall be open to the public for compatible recreation and conservation activities and which shall be continuous, except for areas referred to in subparagraphs (A) and (C) of this paragraph, along the project route over lands acquired by the Secretary or by the State or State Canal Authority, or lands acquired along the project route in the future by the State or State Canal Authority, to the maximum width possible, as determined in the management plan to be developed by the State for former project lands. Such greenway corridor shall not be less than 300 yards wide, except for the following areas:

"(A) Any area of the project corridor where, as of the date of the enactment of this subparagraph, no land is owned by the State or State Canal Authority.

"(B) Any area of the project corridor where, as of the date of the enactment of this subparagraph, the land owned by the State or State Canal Authority is less than 300 yards wide.

"(C) Any area of the project corridor where a road or bridge crosses the project corridor.

"(3) Consistent with paragraph (2) of this subsection, the State shall create a State park or conservation/recreation area in the lands and interests in lands acquired for the project lying between the Atlantic Ocean and the western boundaries of sections 20 and 29, township 15 south, range 23 east.

"(4) The State shall agree, consistent with paragraphs (2), (5) and (6) of this subsection, to preserve, enhance, interpret, and manage the water and related

land resources of the area containing cultural, fish and wildlife, scenic, and recreational values in the remaining lands and interests in land acquired for the project, lying west of sections 20 and 29, township 15 south, range 23 east, as determined by the State, for the benefit and enjoyment of present and future generations of people and the development of outdoor recreation. (Emphasis added, the Resolution signed by Governor Chiles will be discussed below).

The Code also includes enforcement provisions, see Attachment 1, page 51:

"(c) ENFORCEMENT. -- "(1) REMEDIES AND JURISDICTION. -- The United States is directed to vigorously enforce the agreement referred to in subsections (a) and (b) in the courts of the United States and shall be entitled to any remedies in equity or law, including, without limitation, injunctive relief.

PEF's Levy County plans directly violate the restrictions enacted with the deauthorization of the canal project. Compliance with this federal law, and the State law which implemented it would make the Levy site unworkable for two AP1000 atomic fission reactors since there is no obvious way to get sufficient water to utilize an atomic steam power generating system.

In fact, the parcels of land that PEF would use for the CWIS and the barge slip for the delivery of large reactor components are explicitly tracts of land transferred from the federal government to the State of Florida for greenway development. Deeds for these parcels are Attachment 8 and the Quit Claim Deed [Attachment 9] repeats the restrictions in the law.

The proposed CWIS and the proposed barge slip are incompatible with public access, let alone "conservation and recreation." It is also clear that the tremendous excavation required to install the large pipe / conduit intake and discharge is not compatible with the protection of the aquifer upon which the deauthorization of the canal is based.

The Centrality of the Greenway to the Levy Proposal

The first actual textual reference to the Levy County location and reactor design in the COL application comes on page 15 of the included "Form 10K" which is part of "Nuclear Matters /

Potential New Construction" which is (pdf) page 45 of 526 pages of Section 1. Many of the passages of the COL better describe the site, for instance Section 3.0 (page 3-1 of Rev 1) of the PEF Environment Report:

Figure 2.3-1 provides an illustration of the LNP site in relation to the region and state. **Figure 2.3-2** presents a depiction of the LNP site in relation to the local area. **Figure 2.1-2** presents a depiction of the proposed reactors superimposed on a map of the LNP site area, the makeup and blowdown piping routes, proposed transmission corridors, cooling towers, switchyard, and intake location on the Cross Florida Barge Canal (CFBC). **Figure 2.3-3** provides an illustration of the LNP, which is superimposed onto a topographic map of the site. **Figure 3.1-1** is an architect's rendition of an AP1000 reactor plant when built. **Figure 3.1-2** illustrates the AP1000 plant layout. A conceptual view of major station components on the LNP site is presented in **Figure 3.1-3**. [See attachment x for a selection of images of the proposed project, however many of the maps referenced here are image files that are too large to provide via the EIE system]

Greater detail about the use of the barge canal for cooling is given in both the applicant's Environment Report [see chapters 1, 2, 3, 4] and also the applicant's FSAR. The use of the former canal to move water from the Gulf to the Levy site seemed, no doubt, an elegant solution to putting reactors in-land from the Gulf coast, while at the same time utilizing the Gulf waters for cooling. The Intervener's C4 raised a great many issues under the National Environmental Policy Act, some of which are pending a full hearing. We do not intend to recreate those arguments here. Suffice it to say, the restrictions in Law are not the only concerns Interveners hold associated with the installations and use of the former canal in the proposed way. Nonetheless, if the canal is not used this would present major challenges to the use of the Levy site for a power generating station.

Silence On Existence of Restrictions in Law by Applicant and NRC Staff

Since both the applicant's Environment Report and Final Safety Analysis reports are extensive documents now posted on the NRC website in multiple revisions and in a great many individual files, it is not possible for the Interveners to say with 100% certitude that neither of these documents reference or cite the statutes brought to our attention by Ms Berger, but we are fairly

confident that if the applicant were aware of these statutes, they would have factored them into the original proposal, and made other plans. We have, from separate research accomplished by Ms Berger, discovered via the current Governor's staff that the applicant sought, and received an easement from the State of Florida for the use of the parcels of land [2000-1 and 2000-2] that were transferred to the State, and so restricted when the canal was deauthorized. Clearly this proceeding cannot focus on un-founded actions taken by the state, but others may do so. The easement is provided as Attachment 10, provided merely to "create a full record."

On the other hand, Interveners are confident that the NRC Staff's Draft Environmental Impact Statement (Draft NuReg 1941, Vol 1 and Vol 2) does not reference either the Federal or State statute or any of its restrictions on the former barge canal / greenway; though on page 2-89 of the DEIS, Staff does give a little (and incomplete) history:

Official deauthorization for the barge canal came in 1991, and the Cross-Florida Greenway State Recreation and Conservation Area took over the former barge canal properties. In 1998, the canal and associated lands were renamed the Marjorie Harris Carr Cross-Florida Greenway and Conservation Area... [page 2-89 Vol 1 Draft NUREG 1941]

This is based on the one source they cite "History Report: From Exploitation to Conservation A History of the Marjorie Harris Carr Cross Florida Greenway," by Steven Noll and M. David Tegeder [Attachment 11]. Staff, notwithstanding its own statement, persists in using the term Cross Florida Barge Canal or its acronym CFBC in the DEIS, again, a historical term for the greenway.

Consulting the one source that NRC Staff give for the historical section on the CFBC / greenway (cited above), it is readily apparent that the 2003 document is a part of a proposal to create an interpretive center as part of the greenway; starting with the Pre-Columbians and using a very

broad brush. It makes no mention of the statutes, but it does give a picture that NRC Staff might find familiar:

Reflecting much of the criticism of the Ship Canal, FDE scientists warned that even a shallow canal would pollute the aquifer because of the porosity of the underlying rock structure. They asserted the barge traffic alone would jeopardize both the surface and ground water with the threat of oil spills and other leakage from vessels and from the washoff of herbicides, pesticides, fertilizers, and wastes that would accompany industrial and residential development along the canal route. The project also threatened the water quality of Silver Springs, Marion County's chief tourist attraction. More importantly, however, the wholesale destruction of the Ocklawaha Valley, a wild habitat that supported a "full spectrum" of plant and animal life, would far outweigh any benefits accompanying the construction...[FDE = Florida Defenders of the Environment]

Again it is not Intervener's intent to litigate the issues of C4 here. This narrative is to establish that although NRC Staff did some research, apparently it did not turn up the restriction of law reflected in the Resolution signed by Governor Lawton Chiles in 1991:

Whereas the Governor and Cabinet of the State of Florida have previously determined that completion of the Cross Florida Barge Canal ("Barge Canal") could have caused incalculable damage to the Floridan Aquifer and thereby threaten much of Florida's drinking water resources. And (emphasis added).

The resolution continues:

Whereas the Governor and the Cabinet of the State of Florida have adopted prior resolutions supporting final deauthorization of the Barge Canal and retention by the State of Florida of former Barge Canal lands and related water resources, for the purpose of preserving to the maximum extent possible, a greenbelt corridor of unspoiled wetlands, forests and waterways to provide a habitat for many endangered species and for public recreation; and

Whereas federal bills were filed earlier this year in the Congress of the United States by Senators Bob Graham and Connie Mack (Senate bill 2250) and by United States Representatives Cliff Stearns, Bill Grant, Dante Fascell, Mike Bilirakis, Bill James, Tom Lewis, Bill Nelson, Bill Young, Porter Oces, and Andy Ireland (House Bill 4237) providing for final deauthorization of the Barge Canal Project and ownership, by the State of Florida of Former Barge Canal lands, upon certain conditions being agreed to by the State of Florida as set forth in subsection (b) of the federal bills; and

Whereas in order to comply with the conditions set forth in subsection (b) of these federal deauthorization bills, the Florida Legislature responded by enacting in the 1990 session, Ch 90 -- 328, Laws of Florida, creating from the former Barge Canal the Cross Florida Greenbelt State Recreation and Conservation Area and providing a statutory plan for the preservation by the State of Florida of greenbelt corridor along the former

Barge Canal corridor to the maximum extent possible... (emphasis added, see Attachment 3 for full text)

The US Code governing the deauthorization of the Cross Florida Barge Canal was enacted only after (and rests upon) the 1991 resolution of Governor Lawton Chiles and his Cabinet.

It is not clear the extent to which Ms Berger communicated the details of these documents to Mr. Doug Bruner -- she herself cannot find the relevant emails, nor remember exact details; however it is important to note that Ms Berger has been directing her public comments on Levy to Mr. Bruner, and Mr. Bruner in an effort to assist Ms. Berger to understand the Levy Project sent her an engineering document ML 1130707240 [Attachment 7] which does confirm (see page 16 and 17) that there would be extensive excavation below the depth of the canal if installation of the AP1000 fission reactor discharge pipes is approved by NRC. It should also be noted that there would also be thermal issues associated with the hot fluids moving in this massive installation. Page 11 shows the excavations required for the barge slip. Page 7 shows the blow-down pipe route particularly the fact that it would hug the canal / greenway for several miles towards the Crystal River Energy Center.

It is an interesting note that the proposal to reverse the flow of the former canal (at all) is a product of the deauthorization -- had the canal been viable as a commerce route and were the Inglis lock in operation, likely the CWIS and use of the canal would not have been contemplated by the applicant. It is however the fact that the project that was scrapped in order to protect endangered species, to protect an aquifer, and to create a conservation and recreation greenway for "generations of the future" that will, we hope, continue to protect the area from ill conceived industrial development.

See Attachment 2 for the text of the Florida Statute implementing these provisions at the state level. It is noteworthy that the State of Florida has violated the restrictions in Federal Law by approving the applicant's proposal in the Conditions of Compliance of 2009 (see points below) and also providing PEF an easement for the use of the greenway, in direct contradiction to the terms of the Statute and the Quit Claim Deed for the same parcels that were "eased." It is incumbent upon the Commission not to engage in the same unlawful activity. Interveners will forward this filing to the US Army Corps of Engineers as well.

To review -- Building an operating two AP1000 fission reactors on the proposed Levy County site would result in violations of the restrictions in force to protect the Marjorie Harris Carr Cross Florida Greenway, and most notably, the waters of Florida from "incalculable damage":

- 1) The Cooling Water In-Take Structure or CWIS and the barge slip would both be constructed on lands that were deeded back to the State of Florida (see attachments 8 and 9 under restrictions for conservation and protection of the aquifer as well as endangered species and recreation). As of the 1991 deauthorization of the Barge Canal these lands are subject to the restrictions in Law.
- 2) An easement was granted by previous Governor Christ's administration, (Attachment 10) that does not reference the restrictions that this area is subject to for conservation.
- 3) Public access to both the CWIS and the barge slip will be limited if not excluded. Aquatic life and other species that currently use the canal as a habitat "connector" to the Gulf will be impacted.

4) The construction of these structures will require digging and dredging; activities that were identified in the 1991 Resolution as a threat to the underlying aquifer.

5) The laying of the very large pipes for discharge liquids from the proposed Levy site for deposition in the Gulf of Mexico at the existing Crystal River reactor site would extend for many miles adjacent to the barge canal, as well as passing beneath the canal. This instillation will further require excavation and dredging. (See attachment 7)

Clearly there is basis to say that the site proposed in Levy County for building a new reactor site, and its associated service structures in and near and under the Barge Canal is in direct conflict with restriction of the Cross Florida Barge Canal / Marjorie Harris Carr Cross-Florida Greenway and Conservation Area to protect ground water and endangered species via conservation and also provide for human recreation.

It should be noted that some of the digging of documents was accomplished by local residents, some of whom prefer to remain unnamed. In addition to Ms Berger, Mr Dan Hilliard provided the Interveners with valuable documents and has also taken the time to provide many of the same (and more) to the Secretary, and the Board. The interveners have endeavored to help the residents of the area who are deeply concerned about the negative consequences of the applicant's proposal on their community to understand how they may contribute to a meaningful and well documented Hearing Record, and we thank them for being such "quick studies."

Remedies Are Subject to Challenge

The applicant has not proposed exclusive use of ground water for cooling and such a proposal is unlikely to be approved by the State for such a proposal; certainly such a new plan would be subject to challenge under Contention 4 in this proceeding. Therefore we bring Contention 14

since building two AP1000's on a site where sufficient cooling water would not be available (if the restrictions on the greenway are enforced) makes this an issue which demonstrates per 10CFR Part 2.309(f)(i):

...one or more of the acceptance criteria in the combined license have not been, or will not be met...

Contention Test

10CFR Part 2.309(f)(i) We have provided a basic discussion of the issues.

10CFR Part 2.309(f)(ii) Brief basis -- we have provided many documents and a narrative to show that there are matters of real-world law with which the applicant's proposal, if approved, would fail to comply. We have also shown that the NRC Staff is silent, and presumably ignorant of this situation until January 12, 2012.

10CFR Part 2.309(f)(iii) This issue is within scope since the site has been defined, and if it is found that the site is not workable due to the legal restriction on the use of the canal, then the COL application would need to be revised. As much as it pains the Interveners to acknowledge this, the applicant does have other options for siting AP1000's that would not depend upon the use of the Barge Canal / Marjorie Harris Carr Cross-Florida Greenway and Conservation Area.

10CFR Part 2.309(f)(iv) -- Are these matters material to the findings that the NRC must make to support the action in this proceeding? Interestingly, this novice has not been able to find any NRC regulation that states the application process must conform to federal and state laws. Perhaps it is because, as a Federal Agency the US Nuclear Regulatory Commission, more than many, has been creating novel regulatory requirements to license activities that did not exist 100 years ago. In addition it is a Federal agency empowered to exercise broad preemptive authority once a license is granted. Perhaps this is why the regulations fail to state the obvious:

that the applicant and the application process are subject to existing state and federal statute. A thorough search of Chapter 10 of the Code of Federal Regulations by this novice has not turned up a statement of this obvious situation; however it is stated with respect to the transfer of a nuclear license:

10CFR50.81 (c)
(2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

If the case is made that Federal Preemption exists during the license application process, this is also text that this novice was unable to find in the regs. Therefore we assert that we are invoking the obvious, not attacking regulation, or its lack thereof.

10CFR Part 2.309(f)(v) The facts: Laws were passed in 1990 and 1991 that are in force today that prohibit activities in the Marjorie Harris Carr Cross-Florida Greenway and Conservation Area that are enforceable by those same laws. The NRC must expect its applicants to comply with these laws.

10CFR Part 2.309(f)(vi) This is a material dispute of law, and we have provided the material and the law. We have listed specific pages, chapters and sections where it is made clear that this proposal depends upon the violation of the restriction on the Marjorie Harris Carr Cross-Florida Greenway and Conservation Area and provided documentation in support of this in the attachments to this filing.

10CFR Part 2.309(f)(vii) If the restrictions on the Marjorie Harris Carr Cross-Florida Greenway and Conservation Area are enforced, or better yet, complied with, then the two proposed

AP1000 atomic fission reactors will not have an obvious or viable cooling water source. This means that it cannot be accepted by the U.S. NRC as a complete application.

Our discussion of timeliness issues is in the Motion for Leave to File Contention 14. What follows here is an alternate contention:

Contention 14 -- A (Alternate)

The Issuance of a Record of Decision on the Final Environmental Impact Statement for the Proposed Two AP 1000 Atomic Fission Reactors on A Site in Levy County Site Does Not Comply With Restrictions in USC Title 16, Chapter 1, Subchapter CV, Section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal;" the January 22, 1991 Resolution of the Governor of Florida and Secretary of State; and the Implementing Statute [Florida] Title XVIII, Chapter 253, Section 781 [Attachments 1, 2 and 3]; Non-Compliance With These Laws Is Subject to Federal Enforcement.

Contention 14 and its attachments are incorporated by reference.

Please see Motion for the reasons to offer this alternative which is directed at the Commission rather than the applicant.

Conclusion:

The force of law is not intermittent. As a pro se intervener I cannot assert that any law of the land has been broken, nor indeed will it be by any of these Parties unless and until the proposed COL is granted and construction begins. Please do not waste any more time on this proposal.

Respectfully Submitted,

_____/s/_____
Mary Olson
Nuclear Information and Resource Service
Southeast Office,
PO Box 7586
Asheville, North Carolina 28802
828-252-8409

on behalf of the Co-Interveners

February 13, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman

Dr. Anthony J. Baratta

Dr. William M. Murphy

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

February 13, 2012

Certificate of Service

I, Mary Olson, certify that on 12-12-2011 I served the following documents **Intervenors' Motion to Clarify and Augment January 11, 2011 Site Visit Itinerary for Review of Proposed Levy County 1 & 2 Nuclear Power Reactors** and **Attachment A** by the The Ecology Party of Florida, Nuclear Information and Resource Service and the Green Party of Florida on the parties listed below:

Administrative Judge Alex S. Karlin, Chair Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Alex.Karlin@nrc.gov	Office of Commission Appellate Adjudication Mail Stop O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: OCAEmail@nrc.gov
Administrative Judge Anthony J. Baratta Atomic Safety and Licensing Board Panel Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: Anthony.Baratta@nrc.gov	Office of the Secretary ATTN: Docketing and Service Mail Stop: O-16C1 U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: HEARINGDOCKET@nrc.gov
Administrative Judge William M. Murphy Atomic Safety and Licensing Board Panel Mail Stop: T-3F23	Megan Wright Law Clerk Mail Stop: T-3F23 U.S. Nuclear Regulatory Commission

<p>U.S. Nuclear Regulatory Commission Washington, DC 20555-0001 E-mail: William.Murphy@nrc.gov</p>	<p>Washington, DC 20555-0001 E-mail: megan.wright@nrc.gov</p>
<p>Mary Olson NIRS Southeast PO Box 7586 Asheville, NC 28802 E-mail: maryo@nirs.org</p>	<p>Michael Mariotte Nuclear Information and Resource Service 6930 Carroll Ave Suite 340 Takoma Park, MD 20912 E-mail: nirsnet@nirs.org</p>
<p>Michael Canney The Green Party of Florida Alachua County Office PO Box 12416 Gainesville, FL 32604 E-mail: alachuagreen@windstream.net</p>	<p>Cara Campbell The Ecology Party of Florida 641 SW 6th Ave Ft. Lauderdale, FL 33315 E-Mail: levynuke@ecologyparty.org</p>
<p>John H. O'Neill, Esq. Michael G. Lepre, Esq. Blake J. Nelson, Esq. Robert B. Haemer, Esq. Jason P. Parker, Esq. Counsel for Progress Energy Florida, Inc. Pillsbury, Winthrop, Shaw, Pittman, LLP 2300 N. Street, NW Washington, DC 20037-1122 E-mail: john.O'Neill@pillsburylaw.com michael.lepre@pillsburylaw.com blake.nelson@pillsburylaw.com robert.haemer@pillsburylaw.com jason.parker@pillsburylaw.com</p>	<p>U.S. Nuclear Regulatory Commission Office of the General Counsel Kathryn L. Winsberg, Esq. Sara Brock Kirkland, Esq. Jody Martin, Esq. Kevin Roach Laura Goldin Joseph Gilman, Paralegal Washington, DC 20555-0001 E-mail: Kathryn.winsberg@nrc.gov; seb2@nrc.gov; jcm5@nrc.gov; jsg1@nrc.gov ; Kevin.Roach@nrc.gov Laura.goldin@nrc.gov</p>

/Signed (electronically) by/

Mary Olson
NIRS Southeast Office
maryo@nirs.org
PO Box 7586 Asheville, NC 28802
828-252-8409

February 13, 2012

LIST OF ATTACHMENTS
February 13, 2012

Attachment 1

USC Title 16, Chapter 1, Subchapter CV, section 460 tt (b)(2)(3)(4) and (c)(1) "Cross Florida Barge Canal [Section 402 starts on Page 50]

Attachment 2

[Florida] Title XVIII, Chapter 253, Section 781.

Attachment 3

1991 Resolution of the Governor of Florida and Secretary of State

Attachment 4

Email of Betty Berger to Doug Bruner

Attachment 5

Statement of Sarah (Betty) Berger January 12, 2012

Attachment 6

Schematic of Proposed Levy Site, Cooling Water Intake and Make Up and Blow-Down pipes

Attachment 7

ML 1130707240 CH2MHILL Technical Memo " Evaluation and Management of Materials Dredged from the Cross Florida Barge Canal for the Construction of Barge Slip, Intake Structure, and Pipeline Facilities Associated with the Levy Nuclear Plant, Florida"

Attachment 8

Deeds of Lands Transferred When Canal Was Deauthorized

Attachment 9

Quit Claim Deed For Transferred Lands With Restrictions Stated

Attachment 10

Easement granted to Florida Power d-b-a Progress Energy Florida

Attachment 11

History Report: From Exploitation to Conservation A History of the Marjorie Harris Carr Cross Florida Greenway, by Steven Noll and M. David Tegender