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USNRC

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Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

July 17, 2007 (8:25am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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Re: Progress Energy Comments on the Proposed Rule for Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information – Project Numbers 738 and 756

Dear Rulemakings and Adjudications Staff:

The Nuclear Regulatory Commission (“NRC”) is proposing to amend its regulations to provide for expedited (and in this case, “interlocutory”) review by the Commission of orders on requests by potential parties for access to certain sensitive unclassified non-safeguards information (“SUNSI”) and Safeguards Information (“SGI”). On June 11, 2007, the NRC requested comments on its proposed rule by July 11, 2007. *Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information – Proposed Rule*, 72 Fed. Reg. 32,018 (2007). This letter submits the comments of Progress Energy that the background and discussion sections of the Supplementary Information accompanying the proposed rule should be clarified to reflect that the proposed rule allows applicants or licensees to appeal grants of access to SUNSI and SGI.

The proposed rule at 10 C.F.R. § 2.311(a)(3) would allow an appeal to the Commission with respect to an order requesting access to SUNSI or SGI. Proposed § 2.311(c) would permit a person requesting access to SUNSI or SGI to appeal the denial of such a request. Conversely, 10 C.F.R. § 2.311(d)(2) would permit a party other than the requester to appeal whether the request for information “should have been denied in whole or in part.” 72 Fed. Reg. at 32,021. Allowing appeals to determine if access to information should have been denied is consistent with the provisions of 10 C.F.R. § 2.390(f) for protective orders. Where the NRC has determined information has been submitted as and should be controlled as proprietary pursuant to 10 C.F.R. § 2.390(b), the regulations allow a Presiding Officer to fashion appropriate protective orders. 10 C.F.R. § 2.390(f). Therefore, the proposed rule is consistent with the existing regulations for the control of proprietary information.

In contrast, the Background section of the Supplementary Information is unclear in that it only discusses the appeals of decision that deny access to information. To be consistent with the proposed rule, the Background section should be revised to reflect the provisions of 10 C.F.R. § 2.311(d)(2) as well as those of 10 C.F.R. § 2.311(c). For example, in the fourth paragraph of the Background section (72 Fed. Reg. at 32,019, col. 1), following the sentence beginning “If the request for access to SUNSI or SGI is granted . . .”, a sentence should be added that states that the licensee or applicant could challenge the staff’s granting of access. This would parallel the subsequent sentence that states that “The requester could challenge the staff’s adverse determination or denial of access.” Similarly, the second to last paragraph of the Background section should be clarified by deleting “adverse” before “staff-determinations.” In addition, the

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Discussion section should clarify that the appeals process is available to parties who would challenge the granting, as well as the denial, of access to SUNSI and SGI. For example, in the fourth paragraph (72 Fed. Reg. at 32,019, col. 3), the first sentence should be revised to include "NRC Staff, applicant or licensee" as those who may seek interlocutory review as well as "potential parties (persons who may intend to request a hearing or petition for leave to intervene in a hearing)." Similarly, two sentences later, the necessity for the amendment should not be restricted to "these requesters or petitioners", but should include applicants, licensees and the NRC Staff as well.

Progress Energy believes these changes will ensure the proposed rule is interpreted in harmony with existing regulations for control of proprietary information. If you have any questions, please contact me at (919) 546-5650.

Sincerely,

A handwritten signature in black ink, appearing to read "A. D. Barginere", with a long horizontal flourish extending to the right.

A. D. Barginere
Nuclear Plant Development-Security

cc: Brian McCabe, Progress Energy
Bob Kitchen, Progress Energy
Project File