

April 30, 2009

James Scarola, Senior Vice President  
and Chief Nuclear Officer  
Progress Energy Corporation  
P.O. Box 1551  
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SUBJECT: PROGRESS ENERGY CORPORATION – REQUEST FOR WITHOLDING OF  
PROPRIETARY INFORMATION RELATED TO SHEARON HARRIS NUCLEAR  
POWER PLANT UNITS 2 AND 3 AND LEVY NUCLEAR POWER PLANT UNITS  
1 AND 2

Dear Mr. Scarola:

I am responding to your letter of November 6, 2008, in which you submitted an affidavit, as identified below, requesting that information obtained and/or received by the NRC regarding alternative greenfield sites associated with the Shearon Harris and Levy combined license applications (COLAs) be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390. Additionally, two subsequent letters received from you dated March 16, 2009, requested that the site selection studies for both the Levy and Shearon Harris COLAs be withheld from public disclosure. Responses to the submissions are contained below.

The affidavit requests that information regarding the location of greenfield alternative sites be considered proprietary for the following reason:

PEC may consider greenfield alternative sites identified in the environmental reports submitted for combined license applications for the Shearon Harris and Levy sites as sites for future generating plants and, accordingly, may consider purchasing these sites for future development. PEC considers information regarding these sites to be trade secrets and commercial information which is privileged and confidential.

The NRC has reviewed your request in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements in the affidavit, agrees with the request to treat the locations of alternative greenfield sites as proprietary on the basis that the information can be considered trade secrets and commercial information. As such, the alternative sites will be identified in correspondence and reports by county or nomenclature used in the respective environmental reports submitted with the combined license applications for each of the proposed plants. However, in accordance with NRC's Environmental Standard Review Plan, NUREG-1555, it will be necessary to characterize each of the sites, including the vicinity, with a level of detail necessary to support the staff's independent review and analysis. Given the NRC staff's requirements under the National Environmental Policy Act and the U.S. Army Corps of Engineers alternatives analysis under 404(b)(1) guidelines (40 CFR 230.10), the NRC may not be able to accommodate PEC's request to fully protect from public disclosure all pertinent information.

While it will not be the NRC's intent, the staff's discussion of the alternative sites may be sufficiently detailed for an outside party to be able to extrapolate information to locate one or more of the sites. For example, under a discussion of land use, descriptive information could include the location of state parks, game reserves, private residences, businesses, etc., in the vicinity or adjacent to one of the sites. In order to ensure that the NRC is not inadvertently releasing proprietary information, the NRC staff will provide PEC with an opportunity to inspect draft sections of documents discussing alternative sites. PEC's review will be limited to five business days for the sole purpose of identifying any proprietary information. Should revisions to the environmental impact statement be required as a result of PEC's review, schedule delays could result.

The letter and affidavit discussed above were submitted to the NRC as proprietary. However, in accordance with 2.390, the NRC has determined that the letter and affidavit requesting that the locations of alternative greenfield sites be kept proprietary in themselves do not contain proprietary information. The letter and affidavit will therefore become publicly available 30 days from the date of this correspondence.

The two additional affidavits (ADAMS Accession Nos. ML090830369 and ML090820519) include submission of the site selection studies for the Shearon Harris and Levy COLAs. The affidavits identify the studies as being proprietary in nature and request that they be withheld from public disclosure in accordance with 10 CFR 2.390 for the following reasons:

- i. The information sought to be withheld from public disclosure is owned by Progress Energy Corporation, Inc. and has been held in confidence by Progress Energy Corporation, Inc.
- ii. The information sought to be protected is not available to the public to the best of our knowledge or belief.
- iii. The information is the type that would customarily be held in confidence by PEC. The financial information consists of Progress Energy Corporation, Inc.'s assessment of the suitability of certain sites for construction of future generating facilities. Public disclosure of this information is likely to cause harm to Progress Energy Corporation, Inc. because it would allow contractors, vendors, and competitors to understand PEC's competitive position prior to securing the related contracts and services or pricing competitive services.

The NRC staff has reviewed the March 16, 2009 letters and associated affidavits in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, has determined that additional information is necessary before the NRC staff can reach a decision on whether the submitted information sought to be withheld contains proprietary commercial information.

The staff has reached this conclusion on the following bases:

- i. A non-proprietary version of each site selection study was not provided to the staff to be able to sufficiently identify the information that is or is not proprietary in accordance with 10 CFR 2.390. Moreover, a non-proprietary summary is required by 10 CFR 51.16.
- ii. At least part of the information is of the type that would customarily not be held in confidence by combined license applicants. Other combined license applicants with ongoing reviews provided site selection information to be placed on the docket which were non-proprietary.

The site selections studies are prepared in support of Section 9.3 of the Environmental Standard Review Plan, NUREG-1555. The NRC reviews the applicant's alternative sites selection process to determine if the process is: (1) reasonable, (2) makes full use of the candidate site data available, and (3) presents the data in a manner that permits valid comparisons between sites. Having the site selection study as a part of the docket for the Shearon Harris Nuclear Power Plant, Units 2 and 3, and the Levy Nuclear Power Plant, Units 1 and 2, combined license reviews readily supports this effort.

Therefore, until a redacted or non-proprietary versions of the Shearon Harris or Levy Nuclear Power Plant COL's site selection studies have been submitted to the NRC, the determination under 10 CFR 2.390 shall be deferred.

Pursuant to 2.390, when submitting information to the NRC, PEC must denote information that it considers proprietary. Any information provided to the NRC that is not properly marked will be considered public. Should PEC determine that information it had submitted is no longer proprietary, PEC should promptly notify the NRC. Please note that the NRC may have cause to review its determination that the information you have submitted is proprietary in the future, for example, if a Freedom of Information Act request encompasses your information. If the NRC makes a determination that the information should be disclosed to the public, you will be notified in advance of any public disclosure.

If you have any questions or require additional information, please contact Mr. Douglas Bruner, Project Manager for the Levy Nuclear Power Plant COL environmental review, at 301-415-2730 or by e-mail at [Douglas.Bruner@nrc.gov](mailto:Douglas.Bruner@nrc.gov), or Dr. Donald Palmrose, Project Manager for the Shearon Harris Nuclear Power Plant COL environmental review, at 301-415-3803 or by e-mail at [Donald.Palmrose@nrc.gov](mailto:Donald.Palmrose@nrc.gov).

Sincerely,

*/RA/*

Scott C. Flanders, Director  
Division of Site and Environmental Reviews  
Office of New Reactors

Docket Nos. 52-022, 52-023, 52-029 and 52-030

cc: See next page

The staff has reached this conclusion on the following bases:

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If you have any questions or require additional information, please contact Mr. Douglas Bruner, Project Manager for the Levy Nuclear Power Plant COL environmental review, at 301-415-2730 or by e-mail at [Douglas.Bruner@nrc.gov](mailto:Douglas.Bruner@nrc.gov), or Dr. Donald Palmrose, Project Manager for the Shearon Harris Nuclear Power Plant COL environmental review, at 301-415-3803 or by e-mail at [Donald.Palmrose@nrc.gov](mailto:Donald.Palmrose@nrc.gov).

Sincerely,

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Scott C. Flanders, Director  
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Docket Nos. 52-022, 52-023, 52-029 and 52-030

cc: See next page

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**ADAMS ACCESSION NUMBER: ML091040203**

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