

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)		
	)	Docket Nos.	52-029-COL
Progress Energy Florida, Inc.	)		52-030-COL
	)		
(Combined License Application for	)		
Levy County Nuclear Plant, Units 1 and 2)	)	ASLBP No.	09-879-04-COL

**PROGRESS ANSWER OPPOSING JOINT INTERVENORS’ MOTION TO COMPEL**

**I. Introduction**

Progress Energy Florida, Inc. (“Progress”) hereby opposes the Motion for Order Compelling Discovery of PEF Groundwater Model Digital Files (“JI Motion to Compel”) submitted by Nuclear Information and Resource Service, the Ecology Party of Florida, and the Green Party of Florida (collectively, “Joint Intervenors”) on September 27, 2010. Joint Intervenors request that the Board compel production of the “groundwater model described below and any other water-related models referred to in the DEIS and/or relied upon by the NRC in drawing their conclusions regarding groundwater use. Production should include, but is not limited to, all water-related computer models, input files and reports, parameters, input data, boundary conditions, assumptions, and all iterations and results, in a model-ready digital format. In short, Intervenors request everything necessary for evaluation of any water model PEF has devised and upon which NRC has relied.” JI Motion to Compel at 1. Joint Intervenors claim that their motion should be considered timely based on a sidebar settlement discussion at a public meeting regarding the Draft Environmental Impact Statement (“DEIS”)<sup>1</sup> on September 23, 2010. *Id.* at 9. The Joint Intervenors’ Motion to Compel should be denied because Progress has complied with the disclosure requirements applicable to this proceeding. *See* 10 C.F.R. § 2.336(a), as modified by the Board’s Initial Scheduling Order, Progress Energy Florida, Inc. (Combined License Application for

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<sup>1</sup> *See* Notice of Availability of the Draft Environmental Impact Statement for the Combined Licenses for Levy Nuclear Plant Units 1 and 2, 75 Fed. Reg. 49,539, 49,540 (Aug. 13, 2010).

Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC \_\_ (slip op. at 5-6) (Aug. 27, 2009) (“ISO”).

## **II. The Joint Intervenors’ Motion To Compel Should Be Denied**

### **A. Progress Has Disclosed All Required Materials Under The Initial Scheduling Order**

Progress has already provided all materials required to be disclosed by 10 C.F.R. § 2.336(a), as modified by the ISO, that were identified as relevant through a search of the information and documentation reasonably available to, and under the possession, custody, or control of, Progress. See JI Motion to Compel, Attachment 2 at 2-3. The Board has specified that disclosure need only encompass final documents (ISO at 5) and, as Joint Intervenors concede, Progress has provided the final reports describing the analyses performed associated with modeling of groundwater use during operations of Levy: Reports 74<sup>2</sup> and 123.<sup>3</sup> As required by the ISO, Progress has also disclosed several draft versions of the reports that Progress believes were shared with outside parties (primarily the State of Florida).

### **B. Progress Does Not Have The Requested Computer Model, But It Is Publicly Available**

Progress does not have in its possession, custody or control the computer model requested by Joint Intervenors, and counsel for Progress has advised Joint Intervenors’ representatives of that fact on numerous occasions, orally and in writing, beginning with the e-mail, dated July 9, 2010, at Attachment 2 to the Joint Intervenors’ Motion to Compel. Joint Intervenors have offered no evidence to support their unfounded allegation that Progress is withholding the computer model. As this Board has previously held, a party is not obligated to disclose that which it does not have. See Progress Energy Florida, Inc.

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<sup>2</sup> Report 74 was included in Progress’s initial production log as document PROD0000338. See JI Motion to Compel, Attachment 2 at 4. It was also provided as Attachment C to Progress Motion to Dismiss as Moot the Aspects of Contention 4 Related to Active Dewatering During Levy Nuclear Plant Operations (Sept. 30, 2010) (“Progress September 30 Motion to Dismiss”).

<sup>3</sup> Report 123 was included in Progress’s fifth supplemental production log as document PROD0000920. See JI Motion to Compel, Attachment 2 at 1. It was also provided as Attachment D to Progress September 30 Motion to Dismiss.

(Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-30, 70 NRC \_\_ (slip op. at 9) (Dec. 29, 2009).

The Board's holding applies with even more force here, where the computer model is publicly available. To clarify, the computer model at issue here was developed by agencies of the State of Florida, not Progress. Report 74 at 2-3. Analysis was performed by Progress's contractor on an extracted section of that computer model. *Id.* at 2. In the spirit of cooperation, counsel for Progress advised Joint Intervenors that the computer model can be obtained from public sources. JI Motion to Compel, Attachment 2 at 2. According to the Joint Intervenors' Motion to Compel, the State of Florida has provided Joint Intervenors with detailed instructions for downloading the computer model in question. JI Motion to Compel, Attachment 3 at 1-3.

**C. Producing The Computer Model Would Be Unduly Burdensome and Costly**

The ISO does not require the parties to disclose information that is not reasonably accessible because of undue burden or cost. *See* ISO at 6. Obtaining the computer model would be both burdensome and costly for Progress, because the input files are in a format that can only be used in conjunction with a proprietary computer program maintained by a contractor to the State of Florida. According to the Joint Intervenors' Motion to Compel, Joint Intervenors were informed of this fact by the State of Florida. JI Motion to Compel, Attachment 4 at 1.

The burden on Progress to obtain and produce these files and the associated proprietary program is undue and the legal precedent cited by Joint Intervenors is inapplicable. Joint Intervenors cite to several cases to support the proposition that the Board should compel Progress to produce the computer inputs. JI Motion to Compel at 7-8. The cases are not on point because they pertain to discovery in Federal Court, not disclosure in NRC proceedings. Furthermore, the cases are not persuasive because they relate to admissibility of evidence. In an NRC proceeding, both the ER and the DEIS are presumed admissible evidence. 10 C.F.R. § 2.337(g); *see also* Southern California Edison Co. (San Onofre Nuclear

Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 365-68 (1983) (finding that a Board erred in admitting an NRC Staff review document once the presumption of admissibility was rebutted).

Specifically, whether witnesses need to produce back-up analysis for their opinions at a NRC hearing goes to weight, not admissibility, unless the witness's opinion is patently absurd. See Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-10, 70 NRC 51, 87 (2009); cf., Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 125 n.13 (2006) (stating that expert opinion that is patently incorrect or absurd must be rejected).

#### **D. The Joint Intervenors' Motion to Compel Is Untimely**

In addition, the Joint Intervenors' Motion to Compel is untimely. Progress disclosed Report 74 in its initial disclosures. This Board ordered that all challenges to the adequacy of the initial disclosures be filed by November 30, 2009. See Licensing Board Order (Granting Motion for Extension of Time) (Oct. 27, 2009) (unpublished). Progress disclosed Report 123 in its fifth supplemental disclosures, attached hereto as Attachment A, on March 18, 2010. The Board's Initial Scheduling Order requires that motions to compel shall be filed within ten days after the occurrence or circumstance from which the motion arises – in this case, March 29, 2010 (as March 28 was a Sunday). See ISO at 7-8. Not only did Joint Intervenors miss both deadlines for filing their motion to compel, but they also failed to even request the items they now seek from Progress until July 8, 2010 – more than three months after the second deadline and more than seven months after the first deadline. The Joint Intervenors' Motion to Compel was not filed until almost six months after the second deadline. Joint Intervenors learned no new information on September 23, 2010<sup>4</sup> – Progress only confirmed on that date what it has been telling Joint Intervenors since July: the computer model that Joint Intervenors seek is not in the possession, custody, or control of Progress.

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<sup>4</sup> Note that the September 23, 2010 conversation that Joint Intervenors reference was a settlement discussion, and as such, describing its contents in a pleading before this Board is wholly inappropriate and shows a lack of good faith.

### **III. Conclusion**

For the reasons stated above, the Joint Intervenors' Motion to Compel should be denied.

#### **CERTIFICATION**

I certify that I have made a sincere effort to make myself available to listen and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.

Respectfully Submitted,

/Signed electronically by John H. O'Neill, Jr./

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Dated: October 7, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of	)		
	)	Docket Nos.	52-029-COL
Progress Energy Florida, Inc.	)		52-030-COL
	)		
(Combined License Application for	)		
Levy County Nuclear Plant, Units 1 and 2)	)	ASLBP No.	09-879-04-COL

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Progress Answer Opposing Joint Intervenors' Motion to Compel, dated October 7, 2010, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding this 7th day of October 2010.

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/Signed electronically by Stefanie Nelson George/  
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# Attachment A

Progress's Fifth Supplemental Disclosures



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March 18, 2010

Via Electronic Mail

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Re: Progress Energy Florida, Inc. (Combined License Application for Levy  
County Nuclear Plant, Units 1 and 2), Docket Nos. 52-029-COL & 52-030-  
COL, ASLBP No. 09-879-04-COL

Dear Parties:

Pursuant to 10 C.F.R. § 2.336(a) and the Board's Initial Scheduling Order, LBP-09-22 at II(A)(3)(i), Progress Energy Florida Inc. ("Progress") hereby supplements its disclosures. Documents and data compilations to be disclosed that are relevant to each of the admitted contentions, other than those for which a claim of privilege or protected status is being made, are listed in Attachment 1. The documents and data compilations listed in Attachment 1 are available for review and copying at the Offices of Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street N.W., Washington D.C. Arrangements for reviewing these documents can be made by contacting Stefanie Nelson George at 202-663-9382. A listing of documents that are proprietary is provided in Attachment 2. No relevant documents with security or safeguards information have been identified.

Progress's certification pursuant to 10 C.F.R. § 2.336(c) is provided in Attachment 3.

Sincerely,



Stefanie Nelson George  
Counsel for Progress Energy

Attachments

**ATTACHMENT 1**

**Progress Energy Florida, Inc.  
 Combined License Application for Levy County Nuclear Plant, Units 1 and 2  
 Docket Nos. 52-029-COL & 52-030-COL, ASLBP No. 09-879-04-COL  
 Production Log for Progress's Fifth Supplemental Disclosures (March 18, 2010)**

<b>Document ID</b>	<b>Description</b>	<b>Contention</b>
PROD0000918	CH2M Hill Memo: Floodplain Evaluation Bonding Analysis for Levy	4
PROD0000919	Sargent and Lundy Report: Evaluation of Oxygen Scavenger, pH Control Agent, Potable Water Biocide, and Cooling Water Chemicals	4
PROD0000920	CH2M Hill Memo: Revised Groundwater Model Evaluation of Simulated Drawdown Water Impacts	4
PROD0000921	CH2M Hill Memo: Revised Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impacts	4
PROD0000922	Wetland Mitigation Plan for Levy	4
PROD0000923	Wetland Map with Simulated Incremental Drawdown Contours in Surficial Aquifer	4
PROD0000924	Aquifer Test Data from Monitoring Wells	4
PROD0000925	Florida Fish and Wildlife Conservation Commission: Available Options to Address the Presence of Gopher Turtles on Lands Slated for Development	4
PROD0000926	Department of Environmental Protection Staff Analysis Report: Site Certification Transmission Line Portion	4
PROD0000927	Southwest Florida Water Management District Agency Report	4
PROD0000928	SWFWMD TMR Model Water Budget with Levy withdrawing 1.58 mgd	4
PROD0000929	Salt Drift analysis at Crystal River (1994)	4
PROD0000930	Salt Drift study documents (1995-1996)	4
PROD0000931	Salt Drift study documents (1994)	4
PROD0000932	CH2M Hill Memo: Need for a Deep Water Supply Test Well at the Levy Site for Aquifer Characterization	4
PROD0000933	CH2M Hill Memo: Gopher Tortoise and Upland Habitat Condition Survey Results	4
PROD0000934	CH2M Hill Memo: Revised Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impacts	4
PROD0000935	CH2M Hill Memo: Aquatic Ecology Sampling Report	4
PROD0000936	Tables to Aquatic Ecology Sampling Report	4
PROD0000937	CH2M Hill Memo: Supplemental 316(b) Information on Potential Impacts to Aquatic Biota at Levy (Rev 0)	4
PROD0000938	CH2M Hill Memo: Supplemental 316(b) Information on Potential Impacts to Aquatic Biota at Levy (Rev 1)	4
PROD0000939	CH2M Hill Memo: Cross Florida Barge Canal Water Quality Sampling, Oct. 2008, Jan. 2009, and Feb. 2009	4
PROD0000940	CH2M Hill: Floodplain Evaluation Bounding Analysis for Levy	4
PROD0000941	CH2M Hill Memo: Levy Project Timber-Related Activities	4
PROD0000942	CH2M Hill Memo: Aquifer Performance Testing Plan for Levy Raw Water Well Field (Rev 0)	4

Document ID	Description	Contention
PROD0000943	CH2M Hill Memo: Aquifer Performance Testing Plan for Levy Raw Water Well Field (Rev 1)	4
PROD0000944	CH2M Hill Memo: Aquifer Performance Testing Plan for Levy Raw Water Well Field (Rev 2)	4
PROD0000945	CH2M Hill Memo: Aquifer Performance Testing Plan for Levy Raw Water Well Field (Rev 3)	4
PROD0000946	CH2M Hill Memo: Environmental Monitoring Plan for Levy Raw Water Well Field (Rev 0)	4
PROD0000947	CH2M Hill Memo: Environmental Monitoring Plan for Levy Raw Water Well Field (Rev 1)	4
PROD0000948	CH2M Hill Memo: Environmental Monitoring Plan for Levy Raw Water Well Field (Rev 2)	4
PROD0000949	CH2M Hill Memo: Environmental Monitoring Plan for Levy Raw Water Well Field (Rev 3)	4
PROD0000950	CH2M Hill Memo: Detailed Floodplain Analysis for the Site (Rev 0)	4
PROD0000951	CH2M Hill Memo: Cross Florida Barge Canal and Withlacoochee River Survey and Monitoring Plan (Rev 0)	4
PROD0000952	CH2M Hill Memo: Cross Florida Barge Canal and Withlacoochee River Survey and Monitoring Plan (Rev 1)	4
PROD0000953	TestAmerica Level III Data Package for water quality testing	4
PROD0000954	TestAmerica Level III Data Package for water quality testing	4
PROD0000955	CH2M Hill Memo: Environmental Review of Potential Cooling Tower Blowdown Alternatives (Rev. 0)	4
PROD0000956	CH2M Hill Memo: Crystal Bay Surface Water Monitoring Plan (Rev 0)	4
PROD0000957	CH2M Hill Memo: Crystal Bay Surface Water Monitoring Plan (Rev 1)	4
PROD0000958	CH2M Hill Memo: Revised Groundwater Model Evaluation of Simulated Drawdown Water Impacts (Rev 0)	4
PROD0000959	CH2M Hill Memo: Environmental Review of Preferred Cooling Tower Blowdown Pipeline Route (Rev 0)	4
PROD0000960	CH2M Hill Memo: Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impacts (Rev 1)	4
PROD0000961	CH2M Hill Memo: Floodplain Evaluation Bounding Analysis for the Levy Site (Rev 2)	4
PROD0000962	Testimony of expert witness Eldon C Blancher.	4
PROD0000963	Design control summary regarding excess storm water pump and pip size calculation	4
PROD0000964	Considering Cumulative Effects Under the National Environmental Policy Act: Council on Environmental Quality January 1997	4
PROD0000965	Calculation for Groundwater Slug Test	4
PROD0000966	Neuman article on Groundwater modeling (1974)	4
PROD0000967	TMR Model Water Budget with LNP withdrawing 1.58 mgd	4
PROD0000968	Conceptual Design and Calculations for Levy Circulating Water and Raw Water Systems	4
PROD0000969	Evaluation of Liquid Radwaste Tank Failure	4
PROD0000970	Calculation for Groundwater Slug Test	4
PROD0000971	Calculation for Aquifer Test	4
PROD0000972	Groundwater Vertical Gradients Calculation	4
PROD0000973	Water level measurements within the vicinity of the LNG proposed North and South Reactors	4
PROD0000974	Groundwater Velocity and Flux Calculations	4
PROD0000975	Probable Maximum Flood (PMF) for the LNP Site	4

<b>Document ID</b>	<b>Description</b>	<b>Contention</b>
PROD0000976	HEC RAS Model of Barge Canal	4
PROD0000977	Aquatic Sampling Data - Event 1	4
PROD0000978	Surficial and Floridan Aquifer Test Analysis Using MLU	4
PROD0000979	Effect of Grouting on Groundwater Flow Regime	4
PROD0000980	Design of Excavation Dewatering System	4
PROD0000981	Conceptual Grading and Drainage	4
PROD0000982	Conceptual Design Specification for the Raw Water System Self-Cleaning Strainer and Media Filters	4
PROD0000983	Response to RAIs re: extent of and the impacts from the saltwater drawn from the Gulf of Mexico	4
PROD0000984	Validation Package for RAI 2.3.1-1	4
PROD0000985	Validation Package for RAI 2.3.1-3	4
PROD0000986	Validation Package for RAI 2.4.1-3	4
PROD0000987	Validation Package for RAI 2.4.1-3	4
PROD0000988	Validation Package for RAI 2.4.1.3	4
PROD0000989	Validation Package for RAI 2.4.1-4	4
PROD0000990	Validation Package for RAI 4.1.1-1	4
PROD0000991	Validation Package for RAI 4.3.1-1	4
PROD0000992	Validation Package for RAI 4.3.1-1	4
PROD0000993	Validation Package for RAI 4.3.1-5	4
PROD0000994	Validation Package for RAI 5.2.2-1	4
PROD0000995	Validation Package for RAI 5.2.2-3	4
PROD0000996	Validation Package for RAI 5.2.2-4	4
PROD0000997	Validation Package for RAI 5.2.2-4	4
PROD0000998	Validation Package for RAI 5.2.2-4	4
PROD0000999	Response to RAI 5.2.2-4	4
PROD0001000	Validation Package for RAI 5.3.2.1-2	4
PROD0001001	Validation Package for RAI 5.3.3.2-1	4
PROD0001002	Validation Package for RAI 2.4.3-3	4
PROD0001003	Validation Package for RAI 2.4.12-2	4
PROD0001004	Validation Package for RAI 2.4.12-10	4
PROD0001005	Validation Package for RAI 2.4.12-12	4
PROD0001006	Validation Package for RAI 2.4.12-14	4
PROD0001007	Validation Package for RAI 2.4.12-18	4
PROD0001008	Validation Package for RAI 2.4.12-19	4
PROD0001009	Validation Package for RAI 2.4.12-7	4

<b>Document ID</b>	<b>Description</b>	<b>Contention</b>
PROD0001010	Validation Package for RAI 2.4.13-10	7/8
PROD0001011	Validation Package for RAI 2.4.13-2	7/8
PROD0001012	Validation Package for RAI 2.4.13-3	4
PROD0001013	Validation Package for RAI 2.4.13-4	4
PROD0001014	Validation Package for RAI 2.4.13-5	4
PROD0001015	Validation Package for RAI 2.4.13-6	4
PROD0001016	Validation Package for RAI 2.4.13-7	7/8
PROD0001017	Validation Package for RAI 2.4.13-8	7/8
PROD0001018	Validation Package for RAI 2.4.13-9	7/8
PROD0001019	LNP M-Show Comment Summary	4
PROD0001020	Validation Package for RAI 9.3-10	4
PROD0001021	Validation Package for RAI 9.3-17	4
PROD0001022	Validation Package for RAI 9.3-3	4
PROD0001023	WorleyParsons Calculation: Evaluation of Liquid Radwaste Take Failure	4
PROD0001024	Responses to RAIs 2.4.13-2 through 2.4.13-11	4, 7/8
PROD0001025	Conceptual Grading and Drainage Considerations	4
PROD0001026	November 13, 2009 Letter from Progress to FDEP re changes in Conditions of Certification based on shift in construction schedule	4
PROD0001027	October 26, 2009 Letter from Progress to USACE responding to comments in EPA and NMFS letters	4
PROD0001028	Redacted Progress Evaluation of Florida Sites	4
PROD0001029	Rock Core Log	4
PROD0001030	Literature Review On The Effects Of Groundwater Drawdowns On Isolated Wetlands	4
PROD0001031	Geohydrology Of The Cross-Florida Barge Canal Area With Special Reference To The Ocala Vicinity	4
PROD0001032	Groundwater Model Article	4
PROD0001033	Revised Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impacts, Levy Nuclear Plant	4
PROD0001034	Revised Groundwater Model Evaluation of Simulated Drawdown Water Impacts, Levy Nuclear Plant	4
PROD0001035	Conceptual Design and Calculations for Levy Circulating Water and Raw Water Systems	4
PROD0001036	Progress Energy Florida response to Determination of Incompleteness--Main Sites & Associated Facilities	4
PROD0001037	USGS Potentiometric map of SWFWMD	4
PROD0001038	Comment resolution on Revised Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impact, Levy Nuclear Plant	4
PROD0001039	Conceptual Design Specification for the Excess Storm Water Pump House and Piping	4
PROD0001040	Supplemental Computations of Levy Nuclear Plant Potential Effects on Temperature and Salinity in the Plume of the Crystal River Energy Complex Discharge	4

<b>Document ID</b>	<b>Description</b>	<b>Contention</b>
PROD0001041	Supplemental 316(b) Information on Potential Impacts to Aquatic Biota at LNP	4
PROD0001042	Transcript of Douglas J. Durbin's testimony regarding wetlands.	4
PROD0001043	Figure: Water Balance Diagram	4
PROD0001044	Response to RAI regarding Potential Dam Failures	4
PROD0001045	CH2M Hill Memo: Clean Water Act Jurisdictional Determination of Wetlands Located on Levy Nuclear Plant Site	4
PROD0001046	Presentation: NRC Levy Site Environmental Audit (Dec. 2008)	4
PROD0001047	Validation Package regarding Radiation Doses	7/8
PROD0001048	TestAmerica Analytical Report regarding water quality measurements	4
PROD0001049	CH2M Hill Work Plan: Field Activities in Support of the Levy Nuclear Project	4
PROD0001050	CH2M Hill Memo: Need for a Deep Water Supply Test Well at the LNP Site for Aquifer Characterization	4
PROD0001051	CH2M Hill Memo: LNP Cooling Tower Plume Deposition Analysis (Rev 2)	4
PROD0001052	CH2M Hill Memo: Conceptual Wellfield Layout and Evaluation of Simulated Drawdown Impacts, Levy	4
PROD0001053	CH2M Hill Memo: Estimated Salinity Changes in the Cross Florida Barge Canal and Old Withlacoochee River Channels after Levy Operations	4
PROD0001054	CH2M Hill Memo: On-Site Disposal of Domestic-Type Treated Sanitary Wastewater: Preliminary Evaluation	4
PROD0001055	CH2M Hill Memo: Distribution Coefficient Measurements with Soil and Groundwater from the Levy Site	4
PROD0001056	CH2M Hill Memo: Detailed Floodplain Analysis for the Site (Rev. 2)	4
PROD0001057	Post COLA Audit Dec. 2-5, 2008 Breakout Session Notes	4
PROD0001058	Evaluation of Liquid Radwaste Tank Failure	4
PROD0001059	Pathway Doses Resulting from the Liquid Radwaste Tank Failure	4
PROD0001060	Potentiometric Surface Map	4
PROD0001061	Calculation for Aquifer Test	4
PROD0001062	Groundwater Vertical Gradients	4
PROD0001063	Water Level Measurements within the Vicinity of the Proposed LNG North and South Reactors	4
PROD0001064	Groundwater Velocity and Flux Calculations	4
PROD0001065	HEC RAS Model of Barge Canal	4
PROD0001066	Aquatic Sampling Data - Event 1	4
PROD0001067	Calculation for Groundwater Slug Test	4
PROD0001068	Surficial and Floridan Aquifer Test Analysis Using MLU	4
PROD0001069	Effect of Grouting on Groundwater Flow Regime	4
PROD0001070	Design of Excavation Dewatering System	4
PROD0001071	Conceptual Design and Calculations for Levy Circulating Water and Raw Water Systems	4

<b>Document ID</b>	<b>Description</b>	<b>Contention</b>
PROD0001072	Makeup Water System Conceptual Design Study	4
PROD0001073	Conceptual Design Specification for the Mechanical Draft Cooling Towers	4
PROD0001074	Response to RAI 5.2.2-4	4
PROD0001075	December 14, 2009 Response to Supplemental Request for Additional Information Regarding the Environmental Review	4
PROD0001076	Presentation: Levy FSAR 2.4 Hydrology, ACRS, April 2010	4
PROD0001077	Supplement 2 to Response to Supplemental Request for Additional Information Regarding the Environmental Review	4
PROD0001078	Supplement 3 to Response to Supplemental Request for Additional Information Regarding the Environmental Review	4
PROD0001079	Florida Department of Environmental Protection Conditions of Certification	4

**ATTACHMENT 2**

**Progress Energy Florida, Inc.  
Combined License Application for Levy County Nuclear Plant, Units 1 and 2  
Docket Nos. 52-029-COL & 52-030-COL, ASLBP No. 09-879-04-COL  
Proprietary Log for Progress's Fifth Supplemental Disclosures (March 18, 2010)**

<b>Document ID</b>	<b>Document Date</b>	<b>Entity Claiming Proprietary Status</b>	<b>Description</b>	<b>Contention</b>
PROP0000035	October 2007	Progress Energy	Validation Package for RAI 9.3-13, including Progress Evaluation of Florida Sites	4
PROP0000036	October 2007	Progress Energy	Validation Package for RAI 9.3-2, including Progress Evaluation of Florida Sites	4
PROP0000037	October 2007	Progress Energy	Validation Package for RAI 9.3-4, including Progress Evaluation of Florida Sites	4
PROP0000038	October 2007	Progress Energy	Validation Package for RAI 9.3-6, including Progress Evaluation of Florida Sites	4
PROP0000039	October 2007	Progress Energy	Validation Package for RAI 9.3-7, including Progress Evaluation of Florida Sites	4
PROP0000040	October 2007	Progress Energy	Validation Package for RAI 9.3-9, including Progress Evaluation of Florida Sites	4
PROP0000041	November 2009	Progress Energy	Progress NPD Performance Report, November 2009	4
PROP0000042	November 2008	Progress Energy	CH2M Hill: COLA Aquatic Sampling Workplan	4

March 18, 2010

**Certification of Fifth Supplemental Disclosures**  
**Affidavit of John Elnitsky**

I, John Elnitsky, being duly sworn, state:

I am providing this certification in support of the disclosures of Progress Energy Florida Inc. ("Progress") in the combined construction and operating license proceeding for the Levy County Nuclear Power Plant, Units 1 and 2. I am the Vice President, Nuclear Plant Development and am authorized to provide this certification.

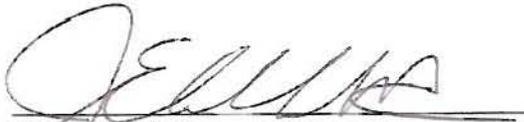
To the best of my knowledge and belief, Progress's fifth supplemental disclosures in this proceeding contain all additional materials required to be disclosed by 10 C.F.R. § 2.336(d) that were identified as relevant through a search of the information and documentation reasonably available to and under the possession, custody and control of Progress. Progress's fifth supplemental disclosures exclude only (a) documents or information exempted from disclosure pursuant to the law, including NRC regulations or the Atomic Safety and Licensing Board's August 27, 2009 Initial Scheduling Order,<sup>1</sup> and (b) information that is not reasonably accessible because of undue burden or cost.

Further, to the best of my knowledge, information and belief, and based on the review of information and documentation reasonably available to and under the possession, custody and control of Progress, these fifth supplemental disclosures are accurate and complete as of February 28, 2009.

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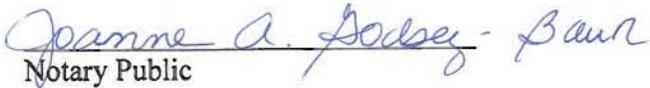
<sup>1</sup> Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 N.R.C. \_\_ (slip op.) (Aug. 27, 2009).

Further the affiant sayeth not.



John Elnitsky  
Vice President, Nuclear Plant Development  
Progress Energy  
Post Office Box 1981  
Raleigh, NC 27601  
(919) 546-6107

Subscribed and sworn to before me  
this 18th day of March, 2010



Notary Public

My commission expires: August 08, 2011

NOTARY PUBLIC-STATE OF FLORIDA  
 Joanne A. Godsey-Baur  
Commission # DD703482  
Expires: AUG. 08, 2011  
BONDED THRU ATLANTIC BONDING CO., INC.