

South Carolina Department of Natural Resources

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March 6, 2012

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Charleston District, Corps of Engineers
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Charleston, South Carolina 29403-5107

Ms. Alicia Rowe
SCDHEC Bureau of Water
2600 Bull Street
Columbia, South Carolina 29201

REFERENCE: SAC #2009-122-SIR Duke Energy Carolinas, LLC

Dear Dr. Darden and Ms. Rowe,

Personnel with the South Carolina Department of Natural Resources (DNR) have reviewed the joint public notice (JPN) and application for Section 404 permit (Application) submitted by Duke Energy Carolinas, LLC (Applicant) and Draft Environmental Impact Statement (DEIS) for the William States Lee III Nuclear Station (Lee Nuclear Station) and evaluated its impact on natural resources and offer the following comments.

Background

According to the JPN, the Applicant's project purpose is the development of a new nuclear base-load generating capacity as part of a diverse fuel portfolio to supply reliable electrical generation to the Applicant's customers, consistent with the Applicant's integrated resource planning approach, located proximate to its major customer base and that minimizes overall impacts to the environment. According to the Application the proposed work consists of construction of ancillary facilities associated with 2 new nuclear power units, including a drought contingency pond, intake and refill structures, and roads and road crossings at the site and within the vicinity of the formerly permitted (but not constructed) Cherokee Nuclear Station. The proposed work also includes the enlargement of a culvert along an existing railroad right-of-way and the construction of 4 new transmission lines to be installed within 2 different routes totaling approximately 31 miles of new right-of-way within Cherokee and Union counties, South Carolina.

The proposed Lee Nuclear Station would result in impacts to 5.43 acres of wetlands, 29.63 acres of open water, and 67,285 linear feet of streams within the jurisdiction of the Clean Water Act. Specifically, the proposed Lee Nuclear Station requires:

1. Excavation, fill, and temporary draining within open waters of the Ninety-Nine Islands Reservoir and existing impoundments (Make-Up Pond A and Make-Up Pond B) that would result in 2.68 acres of temporary impact and 9.37 acres of permanent impact from the installation of proposed raw water system intake structures, proposed refill structures and a proposed wastewater discharge diffuser,

2. Permanent impacts to 65,056 linear feet of stream, 4.07 acres of wetlands, and 17.58 acres of open water farm ponds due to the construction of a drought contingency pond (Drought Contingency Pond C) and associated infrastructure,
3. Clearing impacts to 884 linear feet of stream due to a 50-ft-wide cleared area required around the perimeter of Drought Contingency Pond C,
4. Temporary impacts to 1,345 linear feet of stream and 0.45 acre of wetland from placement of fill and flooding associated with temporary cofferdams used during the replacement of a railroad culvert, and
5. Clearing impacts to 1.36 acres of forested wetlands due to the construction of the 4 transmission lines.

Compensatory mitigation for unavoidable impacts is proposed to be provided through the combination of credit purchase from mitigation banks serving the Broad River watershed and permittee-responsible mitigation (PRM). Information supplied by the Applicant indicates that 483,583 stream compensatory mitigation credits will be required for stream impacts. In addition, 54 wetland compensatory mitigation credits and 273 open water compensatory mitigation credits would be required for wetland and open water impacts. According to the Applicant, its proposed compensatory mitigation proposal has been prepared consistent with the United States Army Corps of Engineers (USACE) Charleston District 2010 Guidelines for Preparing a Compensatory Mitigation Plan and the 2008 Federal Compensatory Mitigation Rule. The Applicant anticipates that approximately 10 to 20 percent of the wetland and stream mitigation need would be satisfied through mitigation banks, potentially purchased from Sandy Fork, Grove Creek, Taylors Creek, and/or Turners Branch mitigation banks. The Application proposes that the remainder of the stream and wetland mitigation needs would be satisfied through PRM projects at 2 sites in the Broad River watershed. One of these projects would consist of stream restoration activities at the Sumter National Forest (SNF) in cooperation with the United States Forest Service. The other project would consist of wetland and stream enhancement and preservation at the nearby Turkey Creek tract. The applicant intends to provide compensatory mitigation for unavoidable impacts to open water through the onsite and in-kind creation of Drought Contingency Pond C.

DNR Mission and Objectives

DNR is the state agency charged by law (Titles 48 and 50, South Carolina Code of Laws 1976, as amended) with the management, protection, and enhancement of wildlife and fisheries resources in South Carolina. DNR is charged with regulating watercraft operation and associated recreation, including establishing boating safety standards. Title 49, South Carolina Code of Laws, authorizes DNR as the state agency responsible for considering water supply (domestic, municipal, agricultural and industrial) issues, water quality facilities and controls, navigation facilities, hydroelectric power generation, outdoor recreation and fish and wildlife opportunities, as well as other water and land resource interests. This title also charges DNR with aquatic plant management, comprehensive drought response planning, management of State Scenic Rivers and coordination, and the conservation, protection and use of floodplain lands.

DNR thus is the steward of the state's natural resources and is responsible for the protection and management of these resources for the use and enjoyment by the public. Natural resources within DNR purview include the full range of land, water, mineral and biological resources. Public and private uses of natural resources are varied, sometimes conflicting and can result in significant impacts to the resources being used. DNR, in carrying out its protection and management responsibilities, must balance its objectives and actions in order to most appropriately protect and sustain the natural resources of South Carolina.

DNR submits these comments, opinions and recommendations as the position of the agency in accordance with the provisions of the Fish and Wildlife Coordination Act, as amended (16 U.S.C. §§ 661-667); the Federal Power Act (16 U.S.C. § 791 et seq.); the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); and the Administrative Procedure Act (5 U.S.C. Chapters 5 through 8). The following comments address relevant sections within the Application in the order in which they appear in the document.

1.0 INTRODUCTION

The Applicant is proposing to provide compensatory mitigation for unavoidable impacts to open water through the onsite and in-kind creation of Drought Contingency Pond C. The impoundment of London Creek to create Drought Contingency Pond C is a permanent impact to Waters of the United States, including open water, and therefore cannot be considered a form of mitigation. The stated purpose of Drought Contingency Pond C is to provide a source of makeup water during times of drought. The Applicant intends to operate the pond as a sterile make-up water reservoir with a 50-ft grassed and maintained buffer, which would reduce its value for natural resources. Drought Contingency Pond C also would be subject to extreme and possibly extended draw-downs of ± 30 ft. The Applicant is not proposing any type of public recreational access on any part of Drought Contingency Pond C. As proposed, Drought Contingency Pond C would have little resource value and no public access. DNR opposes the use of Drought Contingency Pond C as mitigation for open water impacts and urges the regulatory agencies not to accept the use of Drought Contingency Pond C as mitigation.

2.0 PROJECT BACKGROUND AND DESCRIPTION

2.2.1.2.1 Raw Water System

The Applicant asserts that only the lowest minimum flow (i.e., 483 cfs) should constrain withdrawals from the Broad River. DNR would like to point out that Article 402 refers to seasonal minimum flow requirements as based on *inflow*. Our interpretation of Article 402 is that the *continuous* seasonal minimum flow, or a drought contingency flow, *when inflow* is less than the seasonal minimum flow, are the appropriate criteria for curtailment of withdrawals from the Broad River. DNR opposes any proposal to modify seasonal minimum flows articulated in Article 402 of the FERC license for the Ninety-Nine Islands Hydroelectric Project.

2.2.2.1 Drought Contingency Pond C Impoundment

See comments in section 2.2.1.2.1 Raw Water System.

The Applicant proposes a 300-ft buffer around Make-Up Pond C, 50 ft of which is proposed to be cleared, grubbed, grassed and maintained to prevent debris from washing into the reservoir. DNR concurs with the proposed 300-ft buffer but does not support maintaining a grassed 50-ft shoreline buffer. If a natural shoreline buffer is maintained, Drought Contingency Pond C likely would naturalize and support a greater variety of aquatic life and wildlife. Riparian zones perform numerous ecological functions including providing food, cover, and nesting sites for a variety of wildlife species as well as detritus and woody debris which are an important source of energy and cover for aquatic life. Canopy cover helps to maintain water quality by reducing surface water temperatures and evaporative loss. Riparian zones function as biofilters and remove nutrients and other pollutants from storm-water runoff before it enters rivers, lakes and streams. Maintenance of the 50-ft buffer likely will contribute to lowered water quality. DNR recommends the Applicant explore alternatives for preventing debris from entering intake structures in order to protect water quality, maximize wildlife habitat and reduce evaporative losses.

The Applicant also indicates that security fencing will be installed around the perimeter of the pond, and DNR understands that there are no plans for any type of public access to Drought Contingency Pond C. DNR appreciates the sensitive nature of operation and protection of a nuclear generation station. However, London Creek constitutes Waters of the United States and any impacts to it for purposes of a reservoir the size of the one being proposed should include an examination of compatible public use opportunities. These compatible public use opportunities might include fishing and boating opportunities and other compatible appreciative uses along the northern boundary. DNR recommends continued discussion with the Applicant regarding potential, compatible public use opportunities on a portion of the proposed Make-Up Pond C.

2.2.2.4 Lake Cherokee Dam Improvements

Construction of Drought Contingency Pond C would directly impact approximately 4.4 acres of land titled to DNR at Lake Cherokee. Drought Contingency Pond C would inundate forest land on the DNR site and directly affect the Lake Cherokee Dam. Lake Cherokee is public property titled to the State of South Carolina through its agency, DNR. Lake Cherokee provides recreational fishing opportunities to the public constituting the highest and best use of the property. DNR likely would oppose any attempt by Duke Energy to acquire Lake Cherokee and alter the use of these lands by way of condemnation. DNR can consider making some part of its land at Lake Cherokee available for use and/or modification. The DNR Board has adopted a policy for responding to requests for exclusive use of DNR owned land. A copy of DNR Board Policy 400.01 is attached. In the event DNR staff and the Applicant reach an agreement on use of DNR land, the agreement would have to be approved by the DNR Board and the South Carolina Budget and Control Board. Sections 1-11-65, 10-1-130, and 10-1-135, SC Code Ann, govern this issue.

Based upon DNR Policy 400.01, the statutes cited above, and past action on requests to use DNR owned land, DNR is willing to negotiate an agreement to allow the Applicant to use and/or modify some part of the Lake Cherokee tract. Among the considerations in any negotiation will be the following:

1. DNR must be fully compensated for the loss of use of any land,
2. The physical integrity of Lake Cherokee and its supporting infrastructure must not be compromised,
3. The future use of Lake Cherokee as a public recreational site must not be adversely effected, and
4. The most likely means of authorizing use of DNR land would be by way of a grant of an easement.

2.2.3. Railroad

The Applicant is proposing to enlarge the London Creek culvert beneath the abandoned railway. The Applicant proposes to replace the existing 2 120-inch steel pipe culverts with a four-cell reinforced concrete box culvert. In order to maximize movement of aquatic species and nutrients DNR recommends the use of a bottomless culvert or conspan at this location.

2.2.4 Offsite Transmission Lines

The Applicant proposes to build 4 new transmission lines along Routes K and O running south and southwest from the sites to their respective tie-in locations on the existing 230-kV Pacolet Tie–Catawba line located approximately 7 miles south of the site and the existing 525-kV Oconee–Newport line located approximately 15 miles south of the site. Clearing impacts from the construction of the transmission line corridors would permanently remove wildlife habitat. Bottomland hardwood habitats support a vast array of wildlife species, due to the abundance of fruiting and flowering plants and an abundance of natural cover for animals. Mast-producing hardwood tree species such as oaks and hickories provide an abundant

and reliable food source, tree cavities characteristic of mature hardwood trees provide preferred nest and den sites and snags and downed woody debris provide food sources and cover for a wide variety of wildlife including invertebrates, reptiles, amphibians, birds and mammals. Bottomland hardwood forests also provide critical travel corridors for mammals and nesting, stopover, and winter habitat for birds. Many birds use bottomland hardwood forests as nesting, foraging, migrating and winter habitat. These birds include resident birds as well as Neotropical and Nearctic migrants. Resident and migratory waterfowl also utilize flooded bottomland hardwood habitats as nesting, brood-rearing, foraging or roosting areas.

Upland hardwood forests and mixed pine-hardwood forests support many of the same species as bottomland hardwood forests, with the exception of those species which are wetland obligates. Species of highest conservation priority in South Carolina which inhabit or utilize upland hardwood forest or bottomland hardwood forest include: Eastern wood pewee (*Contopus virens*), Kentucky warbler (*Oporornis formosus*), black-throated green warbler (*Setophaga virens*), little blue heron (*Egretta caerulea*), yellow-crowned night heron (*Nyctanassa violacea*), rusty blackbird (*Euphagus carolinus*), Swainson's warbler (*Limnothlypis swainsonii*), swallow-tailed kite (*Elanoides forficatus*), wood thrush (*Hylocichla mustelina*), worm-eating warbler (*Helmitheros vermivorum*), black bear (*Ursus americanus*), and northern yellow bat (*Lasiurus intermedius*).

Grassland birds are among the most steeply declining of all bird populations in North America due to loss and degradation of grassland and shrub-scrub habitats. Transmission corridors can provide significant habitat for grassland birds, as well as raptors and small mammals, functioning as linear grassland/shrublands through forest-dominated landscapes. Excellent wildlife habitat, as well as safe and efficient power delivery, can be provided by managing these areas as a combination of native grasses, forbs, and small shrubs through direct seeding or natural regeneration. Any direct seeding of corridors should utilize only native plant materials. Sod-forming grasses like Bermuda grass and fescue, and aggressive non-native forbs provide poor wildlife habitat along the right-of-way and can potentially escape to adjacent woodlands or fields resulting in additional habitat degradation. DNR recommends that, where possible, lands within transmission line corridors be managed for the benefit of wildlife.

3.0 ALTERNATIVES ANALYSIS

3.2 Supplemental Water Needs (Drought Contingency Pond C)

DNR has concluded the Applicant has conducted a thorough and exhaustive review of the need for obtaining additional water supply for safe operation of the proposed facility during periods of extreme drought. A number of the alternatives that have been put forward for additional water supply represent engineering solutions exceeding the capability for DNR analysis. DNR is satisfied the Applicant has identified the least damaging alternative to natural resources for provision of additional water supply based on comparison of alternative supplemental water supply options.

4.0 ONSITE AVOIDANCE AND MINIMIZATION

4.2 Drought Contingency Pond C and Associated Features

The provision of a seasonally-adjusted minimum flow is DNR policy and is embraced by the South Carolina Surface Water Withdrawal, Permitting, Use, and Reporting Act (SC Code 33 Ann. 49-4). DNR recommends the Section 404 permit/Section 401 water quality certification be conditioned to include a seasonal minimum flow release from the Drought Contingency Pond C Dam that is protective of downstream aquatic resources. The minimum flow should commence with the filling of the pond to

avoid and minimize adverse impacts to fish and the macrobenthic community downstream of the dam to the confluence of London Creek with the Broad River.

4.4 Offsite Transmission Lines

See comments in section 2.2.4 Offsite Transmission Lines.

DNR staff met with representatives of the Applicant in August 2010 regarding DNR's concern about view-shed impacts from the transmission lines to the Scenic Broad River. During this meeting, the Applicant's representatives provided DNR staff a presentation depicting the transmission lines as seen from the Broad River. Based on these depictions, DNR understands that the transmission lines will be minimally visible to the recreating public during winter, leaf-off conditions. Furthermore, DNR understands that impacts can be further reduced through the employment of shorter towers along the Scenic Broad River corridor. DNR requested and was assured of continued consultation during the design phase of the transmission lines; however, as of this date, DNR has not received any such consultation. DNR urges the Licensee to avoid and minimize visual impacts to the greatest practicable extent through the careful design and placement of transmission lines (e.g., shorter towers and the use of wider buffer in those sections of the corridor along the Scenic Broad River).

6.0 ENVIRONMENTAL AND CULTURAL RESOURCES

6.1.3.2 Drought Contingency Pond C and Associated Features

DNR conducted a preliminary stream assessment of London Creek and its tributaries during a 2-day site assessment hosted by the Applicant in December 2009. This assessment revealed that the proposed reservoir will represent the loss of intact Piedmont watershed and associated aquatic habitats and species. Indeed, London Creek merits inclusion in DNR's reference stream inventory. Overall, London Creek currently exhibits physical conditions consistent with a quality Piedmont stream, including a forested riparian corridor, channel sinuosity and habitat (riffle/pool) diversity and coarse, clean substrate composition. DNR conducted a fisheries survey of London Creek per South Carolina Stream Assessment protocol in May 2010. Eighteen species were collected during this sampling event (17 native species), including 4 state conservation priority species: greenfin shiner (*Cyprinella chloristia*), highback chub (*Hypopsis hypsinotus*), greenhead shiner (*Notropis chlorocephalus*) and flat bullhead (*Ameiurus platycephalus*).

6.1.4.1. Lee Nuclear Site

DNR staff sampled the upper portion of the Ninety-Nine Islands Reservoir and a site 4.5 kilometers below the Ninety-Nine Islands Dam while completing the Broad River Aquatic Resources Inventory (Bettinger, Crane and Bulak, 2003). State conservation priority species collected include seagreen darter (*Etheostoma thalassinum*), piedmont darter (*Percina crassa*), quillback (*Carpodes cyprinus*), greenfin shiner (*Cyprinella chloristia*), fieryblack shiner (*Cyprinella pyrrhomelas*), notchlip redhorse (*Moxostoma collapsum*), V-lip redhorse (*Moxostoma pappillosum*), snail bullhead (*Ameiurus brunneus*) and flat bullhead (*Ameiurus platycephalus*). Important recreational fisheries include largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*) and black crappie (*Pomoxis nigromaculatus*). Although sampling results indicated that the condition of the largemouth bass population was good, largemouth bass condition near sites of industrial effluent were adversely affected. Carolina darter (*Etheostoma collis*), fantail darter (*Etheostoma flabellare*) and highback chub (*Hypopsis hypsinotus*) are known state conservation priority fish species from the Kings Creek system, which drains into the Broad River just below Ninety-Nine Islands Reservoir and therefore could be affected by activities at the Lee Nuclear Station. The Broad River below Ninety-Nine Islands Reservoir also supports an excellent smallmouth bass fishery that is enjoyed by South Carolina anglers as well as anglers

from surrounding states. The fishery is augmented with supplemental stockings, but the majority of fish are wild spawned. Smallmouth bass grow rapidly and reach large sizes in the Broad River giving anglers the opportunity to catch trophy fish.

Of particular importance to DNR is the assurance that the aquatic ecology of Ninety-Nine Islands Reservoir and the Broad River downstream of Ninety-Nine Islands dam will not be adversely impacted by the Lee Nuclear Station, particularly the smallmouth bass fishery. DNR has reviewed the Mixing Zone Request prepared by Geosyntec on behalf of the Applicant in support of their National Pollutant Discharge Elimination System (NPDES) permit application, which includes a summary of the model used to characterize the thermal and chemical plume. DNR notes that only the discharge proposed for normal operations, 18 cfs, was considered in model scenarios. The maximum discharge of 64 cfs was not modeled. During an interagency meeting with the Applicant on February 17, 2012, DNR was assured that maximum blowdown would occur only during periods of high flows. DNR requests additional information on the duration of such events and the magnitude of the thermal plume produced during anticipated maximum blowdown conditions. DNR urges due diligence by the South Carolina Department of Health and Environmental Control to ensure that the NPDES permit for the Lee Nuclear Station will be conditioned to require appropriate biological and chemical monitoring, to include fish community monitoring, before and after commencement of operations.

6.2.1 Lee Nuclear Site and 6.2.2 Drought Contingency Pond C and Associated Features

A number of state listed plant and animal species occur within the footprint of Drought Contingency Pond C and the transmission line and railroad corridors. Impacts to individuals and/or habitat of conservation priority species should be avoided to the greatest extent practicable. Where appropriate, the Applicant should consult with DNR on potential relocation of conservation priority plant species populations that may be impacted by construction.

7.0 QUANTIFIED IMPACTS

7.2 Drought Contingency Pond C and Associated Features

See comments in section 2.2.2.1 Drought Contingency Pond C Impoundment.

7.2.1 Wetlands

DNR disagrees with the statement that some aquatic functions of the wetlands to be flooded for Drought Contingency Pond C will remain after impoundment. Wetland systems are characterized by unique hydrology, vegetation and animal species adapted to wetland conditions. The impoundment of London Creek will permanently convert these wetland systems to open water, replacing quality riparian habitat with a managed water storage reservoir.

7.2.2 Tributaries

Again, DNR disagrees with the inference that some aquatic resource functions of tributaries will remain after impoundment of London Creek. London Creek is a quality Piedmont stream with a diversity of bed form, clean sand and gravel substrate and woody debris. Drought Contingency Pond C, as proposed, will replace natural Piedmont stream habitat with a relatively sterile, managed water storage reservoir subject to extreme water fluctuation events.

8.0 SECONDARY AND CUMULATIVE EFFECTS

The secondary and cumulative impact potential of a project the size of the one being proposed is significant and the zone of influence would be expected to extend beyond the footprint of the impact zone. The loss of London Creek and associated riparian forest will result in the loss of Piedmont riparian

and aquatic habitats that are becoming increasingly rare. A number of rare or imperiled habitat types occur within the footprint of Drought Contingency Pond C, such as seepage swamp, floodplain canebrake, Piedmont acidic mesic mixed hardwood forest and Piedmont beech/heath bluff. In order to adequately mitigate all identified impacts, the Applicant will be required to develop a comprehensive mitigation plan. For impacts to the amount of wetlands and stream that will be involved to develop Drought Contingency Pond C, such a mitigation plan should encompass more than simple wetland and stream impact restoration and compensation. DNR requests continued discussion with the Applicant and resource agencies regarding appropriate compensatory mitigation to replace the lost functions of London Creek and its riparian corridor on a watershed scale.

8.1.2 Drought Contingency Pond C

See comments in sections 4.2 Drought Contingency Pond C and Associated Features and 8.0 Secondary and Cumulative Effects.

8.1.4 Offsite Transmission Lines

See comments in sections 2.2.4 Offsite Transmission Lines and 4.4 Offsite Transmission Lines.

9.0 MITIGATION

DNR does not support the Applicant's proposal to satisfy a significant portion of its mitigation burden by the purchase of credits from mitigation banks within the service area. The purchase of a large number of credits from these banks would deplete available credits and force future applicants into smaller PRM projects, effectively piece-mealing mitigation within the watershed. Furthermore, the proposal to satisfy the credit obligation by the purchase of credits that *may* be available in the future is speculative. DNR believes a more appropriate form of mitigation would be watershed scale PRM that addresses the needs of the watershed and provides more than a simple credit to credit mitigation ratio.

The Applicant is proposing preservation and possibly buffer enhancement on the Turkey Creek tract. The proposed buffer width of 150 ft should be maximized to at least 300 ft. Indeed, DNR recognizes the functional resource value of adjacent upland areas that function as transitional areas for some aquatic species, and these areas should be maximized to the greatest practicable extent and placed under conservation easement. The current proposal calls for only approximately 10-15% of the Turkey Creek tract to be preserved. The Applicant also should balance the benefit of the minimal enhancement credit that would be generated through the proposed enhancement activities on the Turkey Creek tract with the benefit of providing additional restoration, either at the Turkey Creek tract or perhaps additional restoration opportunities within the SNF or another site.

The proposed restoration in the SNF will take place in Hydrologic Unit Code (HUC) 03050106, outside of HUC 03050105 where the vast majority of impacts occur. Therefore, the *location* factor in credit worksheets should be adjusted, or *prorated* to indicate that some/most of the proposed restoration will take place in the adjacent watershed. As the Applicant has not finalized the proposed mitigation activities, it is not possible to fully evaluate the adequacy of the conceptual mitigation plan at this time. During the February 17, 2012 meeting, the need for an interagency site visit to the proposed mitigation sites was discussed but has not been conducted. DNR looks forward to continued discussion regarding appropriate mitigation opportunities for the Lee Nuclear Station.

Although DNR has reviewed the JPN, Application and DEIS and provides these comments and recommendations on the information contained therein, DNR asserts the application submittal is premature. According to the Nuclear Regulatory Commission's schedule for application review, the

Dr. Richard Darden and Ms. Alicia Rowe
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target date for completion of the Final Environmental Impact Statement (FEIS) is October 2012. DNR is concerned that the application submittal far in advance of the FEIS will limit the review of alternatives, avoidance and minimization measures and cumulative impacts to information contained within the DEIS. DNR recommends that all permits and/or certifications for the proposed project be held in abeyance until such time as the FEIS is published and a Record of Decision has been issued.

DNR appreciates the opportunity to comment on the Application for the proposed Lee Nuclear Station. Should you have any questions regarding these comments please feel free to contact Vivianne Vejdani at 803.734.4199 or at vejdani@dnr.sc.gov.

Very truly yours,



Bob Perry
Director, Office of Environmental Programs

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Literature Cited

Bettinger, J. M., J. S. Crane and J. S. Bulak. 2003. Broad River Aquatic Resources Inventory Completion Report. South Carolina Department of Natural Resources, Columbia, SC. 90 pp.

SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

**BOARD POLICY POLICY #: 400.01 Page 1 of 2 SUBJECT: Request to Use or Acquire Real Property Under the Jurisdiction of SCDNR
Revised July 1, 2004**

STATEMENT OF POLICY

Requests to use or acquire any real property or interest therein under the jurisdiction of SCDNR must be made in writing to the Director. The request must identify:

- I. The name(s) and address(es) of all persons or entities on whose behalf the request is made.
- II. The specific parcel of property which is the subject of the request and the specific area or acreage of the property which is the subject of the request.
- III. A brief description of the nature of the request; e.g., request to purchase; request for property exchange; request for a right-of-way, rental or temporary use, etc.
- IV. The duration of the requested use; e.g. permanent, thirty days, twelve months with renewal, etc.
- V. The type use and the expected frequency of use; e.g., light truck travel - weekly, heavy equipment travel for duration of project, etc.
- VI. What benefit will accrue to the public if the Department grants request.
- VII. Whether alternate route or locations not on state property have been investigated and why they cannot be used in lieu of state property.
- VIII. The anticipated impact on the environment; anticipated impact on Department programs; anticipated impact on current or future Department use of the property; and any anticipated impact on any surrounding property.
- IX. What mitigation or compensation is offered for the use of the property.
- X. Whether the requesting entity expects exclusive use of the property or whether the intended use will allow other members of the public to make a similar use of the property.
- XI. In evaluating requests for use or acquisition of real property or interest therein under the jurisdiction of SCDNR, the Department must first consider those requirements outlined in § 10-1-135, Code of Laws of South Carolina (1976), as amended. Those are:

- A. Is there an important public necessity for the encroachment.
- B. Are there alternate routes or locations not on state property which are either prudent or feasible.
- C. Is the proposed encroachment disruptive of the existing or planned uses of state property.
- D. Has the entity requesting the encroachment offered to make reasonable mitigation of the impacts of the proposed encroachment.

XII. Once a request is received the Director will contact the Division whose programs or operations is most directly affected and request that that Division undertake a study of the request and make a written response to the Director on the impacts to proposed use.

XIII. The written report must be transmitted to the Director within ninety (90) days after a completion of the investigation.

XVI. The Director will then make a determination as to whether or not the request should be granted and notify the requesting individual.

XV. If the Department concludes that the request should be granted, the Office of Chief Counsel will prepare the appropriate documents and transmit them to the Director of Administrative Services for submission to the Budget and Control Board with a letter recommending favorable action. Once the Budget and Control Board has taken action, the Office of Chief Counsel will notify the requesting party of that action.