

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

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In the Matter of	)	
Oklo Power, LLC	)	Docket No. 52-049-COL
Aurora Reactor	)	
	)	

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**PETITIONERS’ MOTION FOR LEAVE TO REPLY TO NRC STAFF  
AND OKLO OPPOSITIONS TO EMERGENCY PETITION TO REVOKE  
OR SUSPEND DOCKETING NOTICE AND HEARING NOTICE FOR  
OKLO COL APPLICATION**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.323(b), Petitioners hereby request leave to reply to oppositions by the U.S. Nuclear Regulatory Commission (“NRC”) Staff and Oklo Power LLC (“Oklo”) to Petitioners’ emergency petition to revoke or suspend the docketing notice and hearing notice in this proceeding.<sup>1</sup> Petitioners respectfully submit that, as discussed in the attached Emergency Petition, the NRC’s Part 2 regulations governing adjudicatory proceedings are based on a presumption that proceedings are being conducted in a lawful manner that conforms to NRC regulations. Because the Staff did not follow NRC regulations for docketing Oklo’s combined license (“COL”) application, Petitioners respectfully submit that 10 C.F.R. § 2.323 does not apply to the Emergency

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<sup>1</sup> Respectively, these pleadings are: NRC Staff Answer Opposing Emergency Petition to Suspend Docketing Decision and Hearing Notice (Aug. 10, 2020) (“Staff Opp.”); Oklo Power LLC’s Answer Opposing July 31, 2020 Unauthorized Filing by Beyond Nuclear et al. (Aug. 10, 2020) (“Oklo Opp.”); and Emergency Petition by Beyond Nuclear, et al. to Immediately Revoke or Suspend Docketing Notice and Hearing Notice for Combined License Application by Oklo Power, LLC and Request for Clarification That Nuclear Energy Innovation and Modernization Act Does Not Mandate or Authorize Disregard of NRC Procedural Requirements for New Reactor License Applicants (July 31, 2020) (“Emergency Petition”).

Petition. Nevertheless, Petitioners submit this motion in an abundance of caution. As demonstrated below, Petitioners have good cause and compelling reasons for seeking leave to reply to the Staff and Oklo.

## **II. ARGUMENT**

Principally, Petitioners seek to respond to the Staff's argument that it has complete discretion to conduct the safety review for the Oklo application. In the attached Reply, Petitioners explain and provide legal support for the proposition that the Staff's discretion is not unlimited, and does not extend to violating or ignoring NRC regulations. In this case, the Staff willfully disregarded and failed to comply with regulations and caselaw requiring completeness findings before docketing a license application. The Staff's significant misinterpretation of its authority should not be left unanswered, because the Staff's actions in this proceeding have greatly exceeded the clearly defined scope of the Staff's authority and have jeopardized the integrity and fairness of the proceeding.

Petitioners also seek to respond to the multiple legal arguments made by the Staff and Oklo as to why the Commission should not consider the petition at all or grant the relief requested. The rules and precedents cited by the Staff and Oklo are designed to protect the orderliness and integrity of lawfully commenced licensing proceedings, which is not the case here; and therefore those rules and precedents should not be applied.

In addition, Petitioners seek to respond to the Staff's offer, made for the first time in its Opposition, to extend the deadline for filing hearing requests until the completion of Step 1 of its review process. Petitioners intend to explain that the offered relief is not sufficient because it lacks a commitment to make a completeness finding before the public's obligation to prepare hearing requests is triggered.

Finally, Petitioners seek to respond to Oklo's unfounded mischaracterizations of the Emergency Petition as an attempt to "undo the good work that the Staff has done to date" and a request for an "infinite extension of time to file a Hearing Request." Oklo Opp. at 2. Petitioners seek to clarify that their purpose is to compel the Staff to do work that remains undone, not to undo work that has been done. And Petitioners have not requested any extension of time for submitting a hearing request. Again, Petitioners seek compliance by the NRC Staff with regulations requiring completeness findings.

These circumstances are compelling because they are unusual: the Oklo COL application is the first non-light water reactor ("LWR") COL to be submitted to the NRC. It is also the first proceeding, of which Petitioners are aware, in which the Staff has interpreted the Nuclear Energy Innovation and Modernization Act ("NEIMA"); and the Staff has interpreted it to the prejudice of Petitioners. While the Staff disclaims reliance on NEIMA in its Opposition, this argument is inconsistent with the administrative record. Petitioners seek leave to point out the inconsistency.

The circumstances are also compelling because Petitioners could not have anticipated that Oklo would mischaracterize their Petition, that the Staff would erroneously represent the scope of its authority over licensing reviews, or that Staff and Oklo would seek to completely bar consideration of the Emergency Petition on grounds that are inapposite because they apply only to a lawfully commenced licensing proceeding.

Finally, the circumstances are compelling because Petitioners could not have anticipated that the NRC staff would repeat its settlement offer to the Commission and suggest that the Commission should implement it to resolve Petitioners' claims. Petitioners reasonably assumed that the settlement offer was confidential.

### III. CONCLUSION

For the foregoing reasons, the Commission should grant Petitioners' request for leave to reply to the oppositions filed by the NRC Staff and Oklo to their Emergency Petition.

Respectfully submitted,

*[Electronically signed by]*

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August 17, 2020

### **CERTIFICATE OF COUNSEL**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on August 14, 2020, I consulted counsel for the NRC Staff and Oklo in a sincere effort to resolve the issues raised by this reply. Counsel for the NRC Staff stated that “the NRC Staff does not consent to a reply. We believe the issues and arguments raised in your email could have been raised in Petitioners’ initial pleading. In particular, Petitioners could have aired their views as to a possible extended hearing request deadline during the consultation offered by the Staff on July 29, 2020.”

By e-mail dated August 17, 2020, counsel for Oklo stated that “Your Petition was unauthorized. 10 C.F.R. § 2.323(b) applies to the Oklo proceeding. Therefore, you also have no right to file a Reply. We agree with Staff that each and every issue identified in your email clearly could have been anticipated, especially given your direct and personal knowledge. Attempting to file a Reply to an Answer to an unauthorized Petition continues your abuse of the NRC’s licensing proceeding rules. Oklo does not consent to your request to file a Reply, and reserves the right to respond accordingly.”

/Signed electronically by/  
Diane Curran

### **CERTIFICATE OF SERVICE**

I certify that on August 17, 2020, I posted copies of the foregoing PETITIONERS’ MOTION FOR LEAVE TO REPLY TO NRC STAFF AND OKLO OPPOSITIONS TO EMERGENCY PETITION TO REVOKE OR SUSPEND DOCKETING NOTICE AND HEARING NOTICE FOR OKLO COL APPLICATION on the NRC’s Electronic Information Exchange System.

/signed electronically by/  
Diane Curran