

October 26, 2021

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
Duke Energy Carolinas, LLC) Docket Nos. 50-269/270/287 SLR
Oconee Nuclear Station,)
Units 1, 2 & 3)

**PETITIONERS' PARTIALLY UNOPPOSED MOTION
FOR EXTENSION OF TIME TO REPLY TO
OPPOSITIONS TO HEARING REQUEST AND WAIVER PETITION**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.307 and 2.323, and the Atomic Safety and Licensing Board's ("ASLB's") Memorandum and Order (Initial Prehearing Order) (Oct. 13, 2021), Petitioners Beyond Nuclear, Inc. ("Beyond Nuclear") and the Sierra Club, Inc. ("Sierra Club") hereby request a seven-day extension of time to reply to oppositions by Duke Energy Corp. ("Duke") and the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff to Petitioners' Hearing Request and Waiver Petition in this proceeding for subsequent license renewal ("SLR") of the operating license for the Oconee Units 1, 2 and 3 nuclear power plant.¹ As demonstrated below, Petitioners have good cause for the requested extension of time.

This extension request is not opposed by the NRC Staff, but is opposed by Duke.

¹ These pleadings are: Applicant's Answer Opposing Request for Hearing, Petition to Intervene, and Petition For Waiver Submitted by Beyond Nuclear and Sierra Club (Oct. 22, 2021) ("Duke Answer"); NRC Staff's Answer Opposing Beyond Nuclear and the Sierra Club's Hearing Request (Oct. 22, 2021) ("NRC Staff Answer"); Hearing Request and Petition to Intervene by Beyond Nuclear And Sierra Club and Petition for Waiver of 10 C.F.R. §§ 51.53(c)(3)(I), 51.71(d), and 51.95(c)(1) to Allow Consideration of Category 1 NEPA Issues (Sept. 27, 2021).

II. ARGUMENT

Under NRC regulations and precedents, extensions may be granted for “good cause.” 10 C.F.R. § 2.307. The NRC has interpreted “good cause” to constitute circumstances that are “unavoidable and extreme.” *Baltimore Gas and Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 342-43 (1998). Petitioners respectfully submit that the following unavoidable and extreme circumstances justify the granting of a seven-day extension of the October 29 reply deadline established by 10 C.F.R. § 2.309(i)(2) until November 5, 2021:

- (1) Two of Petitioners’ three contentions involve both a hearing request and a petition for a waiver of the governing regulations. Contention admissibility and regulatory waivers are each governed by different legal standards, each with multiple sub-criteria. In their answers, each of which exceeds 40 pages in length, both Duke and the Staff contest Petitioners’ satisfaction of all of the sub-criteria for each standard, and thus each must be addressed in Petitioners’ reply. This is a time-consuming process for which the standard seven-day period is insufficient.
- (2) Duke devotes a significant portion of its response to factual assertions regarding the history of safety regulation at Oconee which Petitioners respectfully submit are erroneous. *See* Duke Answer at 10 - 19. The disputes have great legal significance, because Duke asserts that they are not just differences of opinion, but errors by Petitioners and their expert that deprive Petitioners of “the requisite support and ability to demonstrate a genuine dispute, as required at the contention admissibility stage.” *Id.* at 13. The seven-day period afforded by the regulations does not afford Petitioners an adequate amount of time to respond to each of these multiple claims specifically and in detail, in addition to meeting their other obligations.

(3) Duke and the NRC Staff's responses raise significant legal issues about the relationship between NRC safety regulation and the National Environmental Policy Act ("NEPA") (Duke Answer at 3, 6-7, 23, 33, 38; NRC Staff Answer at 38-39, 47-48); the relationship between ongoing operational reviews and NEPA licensing reviews (Duke Answer at 7, 9; NRC Staff Answer at 14-16, 3, 38-39, 47-50); and whether NEPA reviews should cover external events such as floods. Duke Answer at 7-8; NRC Answer at 35, 45-46. Each of these legal issues is important to this proceeding, because they bear on the question of the degree to which a NEPA analysis must assess issues that also have safety relevance. An adequate discussion of these issues requires more thorough research, analysis and briefing than can be accomplished in the seven-day period afforded by the regulations.

(4) Undersigned counsel is the only attorney with responsibility for representation of Petitioners in this proceeding, and she has two other significant conflicting obligations before the NRC for which she is also the sole responsible attorney. She will not be able to fulfill these multiple obligations in an adequate manner without some schedular relief. First, in the North Anna subsequent license renewal proceeding, undersigned counsel has a filing deadline of November 1 for a reply to oppositions to a motion to re-open the record and amend the petitioners' hearing request. Counsel received the opposing pleadings yesterday and has only seven days to reply. *See* 10 C.F.R. § 2.309(i)(2).

Second, as a participant in an NRC panel discussion of environmental justice issues on September 27, 2021, undersigned counsel has been requested by NRC to submit comments on the NRC's "Systematic Assessment for How the NRC Addresses Environmental Justice in Its Programs, Policies, and Activities," 86 Fed. Reg. 36,2307 (July 9, 2021). Comments are due October 29, the same day as Petitioners' reply in this

proceeding. *See* 86 Fed. Reg. 50,745 (Sept. 10, 2021). The deadlines in both the North Anna proceeding and the environmental justice proceeding were imposed by the NRC, and undersigned counsel has no control over them.

Petitioners respectfully submit that these circumstances are unavoidable and extreme, and thus they constitute good cause for granting an extension.

In addition, Petitioners respectfully submit that by providing the Atomic Safety and Licensing Board them with additional time to reply to Duke's and the Staff's arguments, Petitioners will assist in the creation of a more complete record for purposes of making a meaningful decision on Petitioners' Hearing Request and Waiver Petition. And if the Board decides to hold an oral argument, the discussion will be aided by a more thorough written discussion of the issues.

III. CONCLUSION

Accordingly, because Petitioners have shown good cause for requesting an extension of time, it should be granted.

Respectfully submitted,

 /signed electronically by/

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CERTIFICATION OF COUNSEL PURSUANT TO 10 C.F.R. § 2.323(b)

Pursuant to 10 C.F.R. § 2.323(b), I certify that on October 25, 2021, I contacted counsel for Duke Energy and the NRC Staff in a sincere effort to resolve the issues raised by this motion. Counsel for the NRC Staff stated the Staff does not oppose Petitioners' motion. Counsel for Duke Energy stated that Duke opposes the motion and will respond in accordance with the Board's prehearing order.

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CERTIFICATE OF SERVICE

I certify that on October 26, 2021, I posted on the NRC's Electronic Information Exchange PETITIONERS' MOTION FOR EXTENSION OF TIME TO REPLY TO OPPOSITIONS TO HEARING REQUEST AND WAIVER PETITION.

 /signed electronically by/
Diane Curran