

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DUKE ENERGY CAROLINAS, LLC

(Oconee Nuclear Station, Units 1, 2, and 3)

Docket Nos. 50-269 & 50-270,
and 50-287-SLR

NRC STAFF RESPONSE TO ATOMIC SAFETY AND LICENSING BOARD PANEL'S
NOVEMBER 10, 2021, MEMORANDUM AND ORDER AND TO DUKE'S NOVEMBER 8, 2021,
NOTIFICATION LETTER

On November 10, 2021, the Atomic Safety and Licensing Board Panel (Board) issued a Memorandum and Order in response to Duke Energy Carolinas' (Duke) November 8, 2021, Notification Letter to the Board regarding the involvement in this proceeding of former Nuclear Regulatory Commission (NRC) staff member, Jeffrey T. Mitman, and the provisions of 18 U.S.C. § 207(a)(1) relating to post-employment restrictions.¹ Duke stated in its Notification Letter to the Board that it had reported the information regarding Mr. Mitman's involvement in this proceeding to the NRC's Office of the Inspector General (OIG) and requested that OIG confirm whether Mr. Mitman's involvement complies with applicable requirements. The Board further requested that NRC Staff, after consulting with OIG and/or ethics counselors from the NRC Office of the General Counsel, provide the Board with "(1) a description of the OIG process for considering and addressing Duke's request for confirmation; and (2) the approximate time frame within

¹ Board Memorandum and Order, Schedule for Responses to Applicant Duke Energy Carolinas, LLC's Information Notification (Nov. 10, 2021) (unpublished) (Agencywide Document Access and Management System (ADAMS) Accession No. ML21314A289) (Memorandum and Order); Letter from Ryan Lighty, Duke Counsel, to Board, Notification Regarding Information Potentially Relevant to the Adjudicatory Proceeding (Nov. 8, 2021) (ADAMS Accession No. ML21312A551) (Notification Letter).

which an OIG response to that request may be forthcoming.” OIG provided the following response:

Generally, the OIG does not provide a response to an allexer of any action taken in response to an allegation reported to us. The OIG’s internal processes allow up to 10 days to assess any allegation and to decide whether it warrants any further action. If the OIG elects to initiate an investigation and finds that a criminal violation may have occurred, we may refer the matter to state or federal prosecutors to either accept or decline prosecution. Regardless of whether the prosecutors decide to accept the matter for prosecution, the OIG’s strategic goal states that active, full investigations should be completed in 18 months or less.

The NRC staff would also like to correct a misstatement in Duke’s November 8, 2021, Notification Letter to the Board. In its letter, Duke states that “NRC staff declined to consult” with Duke regarding its notification to the Board. This statement is false; counsel for the Staff did in fact consult with Duke’s counsel on this matter, consistent with 10 C.F.R. § 2.323(b), as reflected in the attached correspondence between the Staff and Duke’s counsel (Attachment 1).

Respectfully submitted,

/Signed (electronically) by/

Joseph M. Azeizat
Counsel for NRC Staff
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U.S. Nuclear Regulatory
Commission
Washington, DC 20555-0001
Telephone: (301) 415-8552
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Attachment 1

Email Correspondence Between Duke Counsel and NRC Staff Counsel

From: [Wright, Megan](#)
To: [Lighty, Ryan K.](#)
Cc: [Woods, Mary](#); [Azeizat, Joseph](#); [Bessette, Paul M.](#); [Roth \(OGC\), David](#)
Subject: RE: RE: Your voicemail regarding Mr. Mitman
Date: Friday, October 29, 2021 2:46:00 PM

Ryan,

Thank you for the clarification. To the extent that Applicant's counsel wishes to file a motion regarding Petitioners' expert, the NRC Staff takes no position at this time and reserves the right to respond. If you set up a conference to discuss the issue with Petitioners' counsel, we would be open to joining that call.

Thank you again,
Megan

*Megan Wright
Senior Attorney
New Reactor Programs
Office of the General Counsel
United States Nuclear Regulatory Commission
Mail Stop O14-A44
516-765-6523*

From: Lighty, Ryan K. <ryan.lighty@morganlewis.com>
Sent: Friday, October 29, 2021 10:22 AM
To: Wright, Megan <Megan.Wright@nrc.gov>
Cc: Woods, Mary <Mary.Woods@nrc.gov>; Azeizat, Joseph <Joseph.Azeizat@nrc.gov>; Bessette, Paul M. <paul.bessette@morganlewis.com>
Subject: [External_Sender] RE: Your voicemail regarding Mr. Mitman

Good morning Megan,

Thank you for your quick response.

For clarification, we certainly were not reaching out with an expectation of discussing any privileged or protected information. However, to the extent this issue is relevant to the instant adjudicatory proceeding, we are making a good faith attempt to consult with you regarding the need for a possible filing before the Board. In past proceedings involving similar factual circumstances, such filings have been made by OGC. We would appreciate an opportunity to discuss the matter among counsel, consistent with the spirit of Part 2.

We remain generally available today for a call before 1pm or from 2-3pm.

Regards,
Ryan

Ryan K. Lighty

Morgan, Lewis & Bockius LLP

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Assistant: Rhonda Rollerson | +1.202.739.5157 | rhonda.rollerson@morganlewis.com

From: Wright, Megan <Megan.Wright@nrc.gov>

Sent: Thursday, October 28, 2021 6:56 PM

To: Lighty, Ryan K. <ryan.lighty@morganlewis.com>; Bessette, Paul M. <paul.bessette@morganlewis.com>

Cc: Woods, Mary <Mary.Woods@nrc.gov>; Azeizat, Joseph <Joseph.Azeizat@nrc.gov>

Subject: RE: Your voicemail regarding Mr. Mitman

[EXTERNAL EMAIL]

Dear Mr. Lighty and Mr. Bessette:

We received your voicemail regarding your question surrounding post-employment restrictions and Mr. Mitman's Declaration in the Oconee subsequent license renewal proceeding. We appreciate your call, but we are not going to share any internal communications regarding this litigation.

If you have concerns, the NRC's Office of the Inspector General (OIG) has established a "[Hotline](#)" program that provides a confidential means for all individuals to report incidences of suspicious activity to the OIG concerning fraud, waste, abuse, and employee or management misconduct. You can do so by calling, writing, or using the new online form. Additional information regarding the Hotline program is available at the link above.

Thanks again for reaching out. We hope you both have a great weekend.

Thanks,
Megan

Megan Wright

Senior Attorney

New Reactor Programs

Office of the General Counsel

United States Nuclear Regulatory Commission

Mail Stop O14-A44

516-765-6523

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Certificate of Service

Pursuant to 10 C.F.R § 2.305, I hereby certify that copies of the foregoing “NRC STAFF RESPONSE TO ATOMIC SAFETY AND LICENSING BOARD PANEL’S NOVEMBER 10, 2021, MEMORANDUM AND ORDER AND TO DUKE’S NOVEMBER 8, 2021, NOTIFICATION LETTER,” dated November 19, 2021, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 19th day of November 2021.

/Signed (electronically) by/

Joseph M. Azeizat
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Mail Stop: O-14-A44
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telephone: 301-415-8552
E-mail: Joseph.Azeizat@nrc.gov

Dated in Rockville, MD
this 19th day of November 2021