

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket Nos. 50-269-SLR
DUKE ENERGY CAROLINAS, LLC)	50-270-SLR and
)	50-287-SLR
(Oconee Nuclear Station, Units 1, 2 and 3))	November 29, 2021
)	

**DUKE ENERGY CAROLINAS, LLC’S RESPONSE TO THE ATOMIC SAFETY AND
LICENSING BOARD’S NOVEMBER 22, 2021 ORDER**

I. INTRODUCTION

On November 22, 2021, the Atomic Safety and Licensing Board (“Board”) issued an order (“Order”) requesting participant submissions “regarding the supporting basis for th[e] NRC Staff’s statement that evaluation of failure modes had found Jocassee Dam failure from overtopping or seismic events ‘not credible.’”¹ The Order established Tuesday, November 30, 2021 as the schedule for a submission from Duke Energy Carolinas, LLC (“Duke”). Duke’s response is provided below.

By letter dated April 12, 2016, the U.S. Office of Special Counsel (“OSC”) referred a matter to Stephen G. Burns, as Chairman of the U.S. Nuclear Regulatory Commission (“NRC”), requesting that the Chairman investigate certain allegations, including that the NRC failed to “require Oconee Nuclear Station in South Carolina to take corrective measures to safeguard the plant from potential flooding should the Lake Jocassee Dam fail.”² Page 88 of the Chairman’s

¹ Licensing Board Order (Establishing Briefing Schedule Associated with Applicant Duke Energy Carolinas, LLC’s Motion to Strike) (Nov. 16, 2021).

² See Letter from S. Burns, NRC, to C. Lerner, OSC, “OSC File No. DI-15-5254” at 1 (June 30, 2016), available at <https://osc.gov/Documents/Public%20Files/FY17/DI-15-5254/DI-15-5254%20Agency%20Report.pdf>.

Investigative Report notes that the “sunny-day scenario [] was selected after NRC technical experts determined that overtopping and seismic failures were not credible” and states that “the basis for excluding these other failure modes” was articulated in the NRC Staff’s response to a 2011 non-concurrence regarding “the NRC Staff evaluation of [Duke’s] response to the Confirmatory Action Letter.”³ More specifically, section IV.1 of that document describes the technical basis for the Staff’s conclusions.⁴

The technical basis was revisited using updated guidance and standards in Duke’s 2015 Flooding Hazard Reevaluation Report (“FHRR”),⁵ and the NRC Staff independently reviewed these analyses in its 2016 Staff Evaluation.⁶ The Staff again concluded that seismically-induced and overtopping-induced failures of the Jocassee Dam are not reasonable modes of failure based on current information, present-day methodologies and regulatory guidance.⁷

³ *Id.*, Encl. 1 at 88 (PDF page 96). The full OSC public file is available here: <https://osc.gov/PublicFiles#k=DI-15-5254#l=1033>.

⁴ Non-Concurrence Process; Confirmatory Action Letter – Oconee Commitments to Address External Flooding Concerns (ML110260443). The “Staff Response” (dated January 25, 2011) begins at PDF page 12; section IV.1 begins at PDF page 14.

⁵ Flooding Hazard Reevaluation Report; Oconee Nuclear Station §§ 2.2 through 2.3.2.9 (Jan. 29, 2015) (ML16272A217) (PDF pages 30-54).

⁶ Staff Assessment of FHRR § 3.4.2 (Apr. 14, 2016) (available in a FOIA response at ML20288A414) (PDF pages 22 to 30).

⁷ *Id.*, Encl. 2 at 3 (PDF page 82).

Respectfully submitted,

Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.
this 29th day of November 2021

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, a copy of “Duke Energy Carolinas, LLC’s Response to the Atomic Safety and Licensing Board’s November 22, 2021 Order” and its attachment were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Paul M. Bessette
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