

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

G. Paul Bollwerk, III, Chair
Dr. Sue H. Abreu
Dr. Arielle J. Miller

In the Matter of
DUKE ENERGY CAROLINAS, LLC
(Oconee Nuclear Station, Units 1, 2, and 3)

Docket Nos. 50-269-SLR-2, 50-270-SLR-2, and 50-287-SLR-2

ASLBP No. 24-985-03-SLR-BD01

May 8, 2024

MEMORANDUM AND ORDER
(Initial Prehearing Order)

Pending before the Licensing Board is an April 29, 2024 hearing request filed by petitioners Beyond Nuclear and the Sierra Club (Petitioners) concerning the June 2021 Duke Energy Carolinas, LLC (Duke) subsequent license renewal (SLR) application for the 10 C.F.R. Part 50 operating licenses for Oconee Nuclear Station Units 1, 2, and 3 (ONS).¹ The focus of this intervention petition is the adequacy of several aspects of the Nuclear Regulatory

¹ See Hearing Request and Petition to Intervene by [Petitioners] (Apr. 29, 2024) [hereinafter Hearing Request]. On May 1, 2024, Petitioners submitted a corrected version of their hearing petition. See Hearing Request and Petition to Intervene by [Petitioners] (Apr. 29, 2024; corrected May 1, 2024) [hereinafter Hearing Request]. Because the revisions to this May 1 version lack substantive significance, see Errata to Hearing Request and Petition to Intervene by [Petitioners] (May 1, 2024) at 1, they do not provide a basis for extending the previously established deadline for answers to Petitioners' hearing request, see infra section I. Moreover, going forward the May 1, 2024 version of Petitioners' intervention petition is what we will utilize and reference in this proceeding.

Commission (NRC) Staff's February 2024 National Environmental Policy Act (NEPA)-related draft supplemental environmental impact statement (SEIS).² With this issuance, we outline the initial schedule and administrative precepts that will govern the conduct of this proceeding.

I. BRIEFING SCHEDULE

The answers of Duke and the NRC Staff to Petitioners' April 29, 2024 hearing request (as corrected on May 1, 2024) are due on or before Friday, May 31, 2024, while any reply by Petitioners to those answers is due by Friday, June 7, 2024.³

II. ADMINISTRATIVE MATTERS

A. Notice of Appearance

If they have not already done so, on or before Wednesday, May 15, 2024, each counsel or representative for each participant shall file a notice of appearance complying with the requirements of 10 C.F.R. § 2.314(b) via the agency's E-Filing system.⁴ In each notice of appearance, besides providing a business address and telephone number, an attorney or representative should provide an email address and a facsimile number (if any).

² See Hearing Request at 1–2; see also Office of Nuclear Material Safety and Safeguards, NRC, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants, Supp. 2, Second Renewal, Regarding [SLR] for [ONS], NUREG-1437 (Feb. 2024) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24033A298).

³ See Secretary of the Commission Order (Mar. 28, 2024) at 3 (unpublished). If the Duke or NRC Staff answers to their intervention petition are filed earlier than May 31, 2024, Petitioners nevertheless have until June 7, 2024, to file their reply.

⁴ For assistance with the NRC's E-Filing system, a participant can contact the Electronic Filing Helpdesk via its webpage (<https://www.nrc.gov/site-help/e-submittals/contact-us-eie.html>) or by calling (866) 672-7640 between the hours of 9:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (excluding federal government holidays).

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Absent preapproval by the Board or some other Board directive, any motion filed after the date of this memorandum and order and any related responsive pleadings shall not exceed ten pages in length (including the signature page, but excluding the certificate of service and any attachments/enclosures).⁵ Any request for preapproval to exceed this page limitation shall be submitted via the E-Filing system no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed. The request must (1) indicate (as is the case with any motion) whether the request is opposed or supported by the other participants to the proceeding;⁶ (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

⁵ Any answers/replies associated with Petitioners' April 29, 2024 hearing request (as corrected on May 1, 2024) are not subject to this page limitation. However, any subsequent motion for admission of a new or amended contention under section 2.309(f)(2) and answers/replies to such a motion are subject to this page limitation. And because the page limit applies regardless of the number of contentions involved, when more than one new/amended contention is being submitted, in lieu of multiple separate motions of ten pages seeking the admission of each individual contention, it would be preferable to seek leave of the Board to exceed the page limit. If granted, this would permit the participant to file one timely motion that deals with all the new/amended contentions being proffered that are associated with the information that it is asserted triggers the motion.

⁶ See 10 C.F.R. § 2.323(b). Pursuant to section 2.323(b), a motion requires a certification by the attorney or representative for the moving participant/party that a sincere effort has been made to contact the other participants/parties in the proceeding and resolve the matters raised by the motion, but that the movant's efforts in this regard have been unsuccessful. The Board notes that it is inconsistent with the dispute avoidance/resolution purposes of section 2.323(b) for counsel or the representative for the non-moving participant/party to fail to make a sincere effort to be available to consult regarding, or to fail to attempt in good faith to resolve, the factual and legal issues raised in the motion. Also, if the consultation mandated by section 2.323(b) is initiated within a reasonable time and the participants/parties believe that all or part of the matter may be resolved amicably if additional time is provided for filing the motion, the participants/parties are encouraged to file a joint motion requesting such a time extension.

2. Reply Pleadings

Except in instances involving a motion to file a new/amended contention, participants in this proceeding must request permission to file a reply to a response/answer to a motion.⁷ A request for Board preapproval to file a reply shall be submitted via the E-Filing system no less than three business days prior to the time the reply will be filed.⁸ A request to file a reply must (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate compelling circumstances exist for permitting the reply to be filed.⁹

C. Motions for Extension of Time

A motion for extension of time in this proceeding shall be submitted via the E-Filing system at least three business days before the due date for the pleading or other submission for which an extension is sought.¹⁰ A motion for extension of time must (1) indicate whether the

⁷ Compare 10 C.F.R. § 2.323(c), with id. § 2.309(i)(2).

⁸ Although the agency's rules regarding motions practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within seven days of the date of service of the answer it is intended to address. See 10 C.F.R. § 2.309(i)(2).

⁹ Section 2.323(c) indicates that "compelling circumstances" might be shown in an instance when the moving participant/party demonstrates that it could not reasonably have anticipated the arguments to which it seeks to reply.

¹⁰ Unless some other time is specified in the agency's rules of practice or by the Board, in accordance with 10 C.F.R. § 2.323(a)(2), (c), motions (other than summary disposition motions) are due within 10 days after the occurrence or circumstance from which the motion arises, with any answer to that motion due within 10 days of service of the motion. But for a motion seeking the admission of new/amended contentions, see 10 C.F.R. § 2.309(f)(2); see also id. § 2.323(a)(1) (motions for new/amended contentions not subject to section 2.323 requirements), to be considered timely under 10 C.F.R. § 2.309(c)(1)(iii), such a motion (and the accompanying new/amended contention) should be filed within 30 days of the date upon which the information that is the basis of the motion becomes available to the petitioner/intervenor. Moreover, notwithstanding the provisions of section 2.309(i)(1), any answer to a motion seeking the admission of a new/amended contention shall be due within 14 days of service of the motion, and any reply to an answer is due within seven days of service of the response.

request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate appropriate cause that supports permitting the extension.

D. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be submitted via the E-Filing system no later than the next business day after the filing of the request.

E. Attachments/Enclosures to Filings and Evidentiary Exhibits

For all future filings, if a participant proffers a pleading or other submission that has additional documents appended to it, these items should be referred to as attachments or enclosures (not exhibits), with a separate alpha or numeric designation given to each appended document (e.g., Attachment A, Enclosure 1), either on the first page of the appended document or on a cover/divider sheet in front of the appended document. Attachments or enclosures to a motion and any related responsive pleadings are not subject to the page limitation set forth in section II.B.1 above, but should be submitted via the agency's E-Filing system as part of a single electronic file consisting of the pleading or other submission, the certificate of service, and all the attachments or enclosures associated with the pleading or submission. In accordance with the agency's electronic submission guidance (at page 6), multiple electronic files should be used for pleadings or submissions with attachments or enclosures only if the filing exceeds 1000 megabytes (1 gigabyte) in size.¹¹

The label "exhibit" should be reserved for use as a designation for those items that are submitted, whether by pre-filing or at the time of an evidentiary hearing, as potential materials a

¹¹ See <https://www.nrc.gov/docs/ML13031A056.pdf> (access link for Guidance for Electronic Submissions to the NRC (rev. 10 May 30, 2023)).

participant will seek to have identified for inclusion in the evidentiary record of the proceeding. Each evidentiary hearing exhibit (including prefiled written testimony) must be submitted via the agency's E-Filing system as a separate electronic file. See 10 C.F.R. § 2.304(g).

F. Filing Date on Pleadings

The Board requests that the first page of each pleading submitted by a participant include the pleading's filing date in the upper right-hand corner or as part of the caption.

G. Use of Generative Artificial Intelligence (AI)

Given the development of generative AI and its use in the legal community, the Board reminds the participants that the signature on any submission is a certification that the signer has made an independent determination that the submission is "supported by appropriate and accurate references to legal authority and factual basis." 10 C.F.R. § 2.323(d); see id. § 2.304(d). Accordingly, submission of a filing containing inaccurate AI-generated content, such as non-existent legal authority, may result in appropriate sanctions being imposed by the Board. See id. § 2.323(d) (indicating failure to provide accurate filings "may result in appropriate sanctions, including striking a matter from the record or, in extreme circumstances, dismissal of the party").

III. INITIAL PREHEARING CONFERENCE

The Board has not yet determined whether it will hold an initial prehearing conference to hear argument regarding any disputes over standing or the admissibility of the proffered contentions. The Board would note, however, that if it decides to conduct an initial prehearing conference, that prehearing conference will be held in the Licensing Board Panel's Rockville, Maryland hearing room with an additional opportunity for public access to the conference afforded via a listen-only telephone number and passcode.

Further, if the Board determines that an initial prehearing conference is to be held in this case, the Board would like to conduct the prehearing conference sometime during the weeks of June 24 or July 8, 2024. Accordingly, the Board is providing the participants with a list of proposed dates/times for the argument to take place during this period through its law clerk Emily Newman (emily.newman@nrc.gov) via an e-mail that is being sent contemporaneously with the issuance of this memorandum and order. The Board requests that on or before noon Eastern Time on Tuesday, May 14, 2024, one representative of the participants to this proceeding send an e-mail to Ms. Newman, with a copy to the other participants, listing one or more agreed dates and times during which all the participants will be available for this prehearing conference. The Board, which currently anticipates the argument will last no longer than three hours, will provide details about the prehearing conference's schedule and procedures in a subsequent order or orders.

IV. LIMITED APPEARANCE STATEMENTS

Finally, at some point later in this proceeding the Board will determine whether it intends to conduct an oral limited appearance statements session. Currently, however, in accord with 10 C.F.R. § 2.315(a), any person not a participant to this proceeding who wishes to make a statement regarding the issues in the proceeding can do so in writing. Limited appearance statements, which are placed in the docket for the hearing, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding.

A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-1101 (verification (301) 415-1677)

E-mail to: hearing.docket@nrc.gov

In addition, a copy of the limited appearance statement should be sent to the Licensing Board
Chair using the same method at the address/fax number/e-mail address below:

Mail to: Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop T-3A02
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax to: (301) 415-5206 (verification (301) 415-7550)

E-mail to: paul.bollwerk@nrc.gov

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

May 8, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Initial Prehearing Order)** have been served upon the following persons by Electronic Information Exchange.

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Duke Energy Carolinas, LLC (Oconee Nuclear Station Units 1, 2, and 3, Docket Nos. 50-269, 50-270, and 50-287 SLR-2)

MEMORANDUM AND ORDER (Initial Prehearing Order)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of May 2024.