

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 21, 2024

MEMORANDUM AND ORDER

(Request to Address Impacts of Final Rule
Applying Generic Environmental Impact Statement
to Subsequent License Renewal Period)

On May 16, 2024, the Commission adopted a final rule (2024 Rule) that will make an agency generic environmental analysis applicable to both the initial license renewal (ILR) period (i.e., operating years 40 through 60) and the first subsequent license renewal (SLR) period (i.e., operating years 60 through 80) for nuclear power plants.¹ Also, in conjunction with the 2024 Rule, the NRC Staff has updated the 2013 version of NUREG-1437, Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants.²

¹ See Mem. from Carrie M. Safford, Secretary, Nuclear Regulatory Commission (NRC) to Raymond V. Fursteneau, Acting Executive Director for Operations (EDO), NRC, at 1 (May 16, 2024) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24137A164) [hereinafter SRM].

² See id.; see also 1 Office of Nuclear Material Safety and Safeguards, NUREG-1437,

Of particular relevance to this proceeding, the 2024 Rule will revise portions of Table B-1, Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants, in appendix B to subpart A of 10 C.F.R. part 51 (Table B-1) that will delineate 80 environmental topics that are to be classified either as generic (Category 1) issues or as plant-specific (Category 2) issues.³

Additional administrative action by the NRC Staff is necessary before the newly adopted rule will be published in the Federal Register, to become effective 30 days after publication.⁴ Nonetheless, the possibility exists that the 2024 Rule may become effective before the resolution of the question of the admissibility of the three pending contentions proffered by petitioners Beyond Nuclear and the Sierra Club (Petitioners) in their pending April 29, 2024 hearing request (as corrected on May 1, 2024). Moreover, based on prior Commission precedent in ILR cases, whether a contention is denoted as raising issues falling within either Table B-1 Category 1 or Table B-1 Category 2 can have a significant impact on the standards that apply to the admission of the contention.⁵ Accordingly, to aid the Board in its understanding of the potential substantive and procedural impacts of this newly adopted rule, in their upcoming

[GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (rev. 2 Feb. 2024) (ADAMS Accession No. ML23201A224) [hereinafter 2024 GEIS]; 1 Office of Nuclear Reactor Regulation, NRC, NUREG-1437, [GEIS] for License Renewal of Nuclear Plants, Main Report, Final Report (rev. 1 June 2013) (ADAMS Accession No. ML13106A241).

³ See Mem. from Raymond V. Furstenau, Acting EDO, NRC, to the Commissioners, NRC, SECY-24-0017, Final Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review at 3 (Feb. 21, 2024) (ADAMS Accession No. ML23202A150) [hereinafter SECY-24-0017].

⁴ See SRM at 1; SECY-24-0017, at 7.

⁵ See Exelon Generation Co., LLC (Limerick Generating Station, Units 1 and 2), CLI-12-19, 76 NRC 377, 385–87 (2012) (indicating that notwithstanding recognized opportunity in license renewal cases to contest matters involving new and significant environmental information, challenge to Table B-1 Category 1 issues requires that petitioner submit a 10 C.F.R. § 2.335(b) rule waiver petition).

responsive pleadings associated with Petitioners' pending hearing request,⁶ the participants should address the following matters, as appropriate:

1. What Is the Applicability of the 2024 Rule to this Proceeding? When effective, will the 2024 Rule apply to a pending SLR application proceeding like this one, including any associated adjudication?⁷

2. When Does the NRC Staff Anticipate the 2024 Rule Will Be Effective? What is the NRC Staff's schedule for submitting the 2024 Rule, as revised by the Commission, to the NRC Secretary for transmission to the Federal Register and when does the Staff anticipate that the 2024 Rule will become effective?

3. What Is the Relevance of the 2024 Rule's Compliance Provision to this Proceeding? What effect, if any, does the 2024 Rule's requirement that there be compliance with the rule within one year after publication have upon its effectiveness or its potential application in this adjudicatory proceeding?⁸

4. What Is the Status of NRC Staff's Compliance with the 2024 Rule in this Proceeding? 10 C.F.R. § 51.95(c)(4) provides that in making a determination about license renewal environmental impacts, "the NRC staff, adjudicatory officers, and [the] Commission shall integrate the conclusions in the generic environmental impact statement for issues designated

⁶ See Licensing Board Memorandum and Order (Initial Prehearing Order) (May 8, 2024) at 2 (indicating answers of applicant Duke Energy Carolinas, LLC, (Duke) and the NRC Staff to Petitioners' pending hearing request are due by May 31, 2024, while Petitioners' reply must be filed on or before June 7, 2024) (unpublished).

⁷ See SECY-24-0017, at 6 (indicating that adoption of the rule "would enable pending and future license renewal applicants to realize the efficiencies based on the findings for Category 1 issues in Table B-1, as supported by the technical basis in the revised [2024] GEIS, in preparing environmental reports as part of their applications").

⁸ See *id.* at 7 (stating that "[c]ompliance with the rule will be required no later than 1 year after publication").

as Category 1 with information developed for those Category 2 issues applicable to the plant under § 53.51(c)(3)(ii) and any new and significant information.” Given this provision, once the 2024 Rule becomes effective, in light of the discussion in Appendix G to its February 2024 draft site-specific environmental impact statement (SSEIS) for the Oconee facility,⁹ what additional actions, if any, must be taken by the NRC Staff to incorporate the provisions of the 2024 Rule and the 2024 GEIS into this licensing proceeding (including the 2024 draft SSEIS) before any adjudication of Petitioners’ contentions would be subject to the terms of the 2024 Rule and the 2024 GEIS?

5. What Impact Does the 2024 Rule Have on This Proceeding Relative to Petitioners’ Contentions? Assuming the 2024 Rule is applicable to this proceeding per item 1 above, Petitioners’ contentions could fall within the ambit of Table B-1’s issue groupings and findings as well as the associated Category 1 and 2 designations. In light of the NRC Staff’s responses to items 2 and 3 above regarding the 2024 Rule’s effective date and NRC Staff compliance with the 2024 Rule in this proceeding, what impact would the 2024 Rule have on this proceeding, including additional participant filings that would be appropriate and the schedule for such submissions?¹⁰

⁹ See Office of Nuclear Material Safety and Safeguards, [SSEIS] for License Renewal of Nuclear Plants, Supp. 2, Second Renewal, Regarding [SLR] for Oconee Nuclear Station Units 1, 2, and 3, NUREG-1437, app. G (draft Feb. 2024) (Environmental Issues and Impact Findings Contained In the Proposed Rule, 10 CFR Part 51, “Environmental Protection Regulations For Domestic Licensing And Related Regulatory Functions”) (ADAMS Accession No. ML24033A298).

¹⁰ Although Duke may not have knowledge of the NRC Staff’s answers to item 2 and 3 before filing its answer (unless the NRC Staff chooses to provide that information to Duke prior to the Staff’s submission of its answer), Duke nonetheless should make its best effort to respond regarding these items based on whatever stated assumptions it deems reasonable.

As was noted earlier, participant responses to these questions should be incorporated into their upcoming responsive pleadings. See supra note 6 and accompanying text.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

May 21, 2024

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Request to Address Impacts of Final Rule Applying Generic Environmental Impact Statement to Subsequent License Renewal Period)** 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)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of May 2024.