

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

Before Administrative Judges:

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

July 25, 2024

MEMORANDUM AND ORDER
(Regarding Objection to Motion for Entry of a Protective Order)

In this 10 C.F.R. Part 52 subsequent license renewal (SLR) proceeding, the Licensing Board in a July 8, 2024 issuance outlined a series of actions it requested that the participants undertake in anticipation of a July 23, 2024 NRC Staff status report regarding possible redaction of nonpublic information in the transcript for the June 24, 2024 initial prehearing conference. See Licensing Board Memorandum and Order (Regarding NRC Staff Review of Initial Prehearing Conference Transcript) (July 8, 2024) at 2–3 (unpublished). These included (1) preparing a joint proposed protective order and an associated affidavit of nondisclosure for prompt post-status report submission to the Board; and (2) providing agreed dates/times for a possible nonpublic prehearing conference regarding any issues relating to the matter of potential nonpublic information. See id.

In its July 23 status report, the NRC Staff stated that it is involved in ongoing consultation with the Federal Energy Regulatory Commission (FERC) on the status of information in this proceeding. See NRC Staff Update Related to the June 28, 2024, Licensing

Board Memorandum and Order (July 23, 2024) at 1. Further, the Staff indicated that while this FERC review is ongoing, it will propose information to be redacted in the proceeding to allow the Board to make decisions on contention admissibility, with any changes to proposed information redactions promptly communicated to the Board and the other participants. See id. The Staff also declared that it would file a proposed joint motion for a protective order on July 24, 2024. See id. Finally, the Staff indicated it was in consultation with the other participants to this proceeding about a proposed joint motion for redaction of the June 24, 2024 initial prehearing conference transcript, consistent with 10 C.F.R. § 2.390(a)(3), and would promptly file its proposed transcript redactions once consultation with the other participants was complete. See id. at 1–2.

On July 24, 2024, the Staff submitted a motion for entry of a protective order with an accompanying proposed protective order, a proposed affidavit of nondisclosure, and a proposed termination of possession declaration. See Joint Motion for Proposed Protective Order Governing Disclosure of Sensitive Unclassified Non-Safeguards Information and Non-Disclosure Declaration (July 24, 2024) [hereinafter Motion for Entry of Protective Order]. While applicant Duke Energy Carolinas, LLC, (Duke) joined in that motion, in the 10 C.F.R. § 2.323(b) consultation certification included with the motion the Staff indicated that petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., (collectively Petitioners) “offered no comments or edits [to both the draft protective order and non-disclosure declaration] . . . [and] oppose this motion and reserve the right to respond to it.” Id. at 1, 3.

Based on the representations in the NRC Staff’s July 23 status report, it appears that there may be information associated with this proceeding, including portions of the June 24, 2024 initial prehearing conference transcript, that FERC believes may warrant treatment as

nonpublic.¹ Under the circumstances, we believe the matter of whether to adopt a protective order in this proceeding to govern access to and dissemination of nonpublic information warrants prompt resolution. Accordingly, Petitioners may submit any written opposition to the July 24, 2024 Staff motion for entry of a protective order on or before 5:00 p.m. Eastern Time (ET) on Monday, July 29, 2024.

In addition, consistent with the scheduling information previously provided by the participants, the Board will hold a public prehearing conference on Tuesday, July 30, 2024, beginning at 2:30 p.m. Eastern Time (ET) for the purpose, among other things, of allowing the participants to present their positions on whether (1) the Staff's July 24, 2024 motion for entry of a protective order should be granted; and (2) any of the specific terms of the proposed protective order and the accompanying proposed affidavit of nondisclosure and proposed termination of possession declaration should be revised. It is the Board's expectation that the matters discussed at the prehearing conference, as outlined below, can be addressed without referencing any nonpublic information.

The conference will be conducted virtually using the Cisco WebEx web conferencing platform. Additionally, public access to the conference will be afforded via a listen-only telephone connection by dialing (301) 576-2978 and entering passcode 825 750 95#. After successful entry of the passcode, the following message will be heard: "You are not allowed to unmute. To raise your hand press *5." Please note that this listen-only telephone line is not being monitored and pressing "*5" will not allow participation in the conference.

¹ In the proposed protective order included as an attachment to the NRC Staff's July 24, 2024 motion seeking entry of a protective order, the proposed order makes reference to "information designated as containing potentially Critical Energy/Electric Infrastructure Information [(CEII)]" as the type of nonpublic information that apparently is the focus of FERC's public information review. Motion for Entry of Protective Order attach. 1, at 5 ([Proposed] Protective Order).

Given the scope of the issues before the Board, we do not anticipate hearing from more than one counsel for each participant. Those counsel will also be the only participant representative given WebEx video access to the argument, with all other counsel and participant representatives being afforded access via the listen-only telephone connection. Accordingly, on or before 5:00 p.m. ET on Monday, July 29, 2024, each of the three participants should provide an e-mail to Licensing Board Panel Information Technology (IT) specialist Andy Welkie, andrew.welkie@nrc.gov, with a copy to all other participants, specifying the name of the single counsel who will be making a presentation on behalf of that participant.² On the morning of Tuesday, July 30, 2024, the Board's IT staff will provide the requisite information to participating counsel (and any other identified participant representatives per note 2 above) to join the prehearing conference virtually.

As the proponent of the July 24, 2024 motion for entry of a protective order, the NRC Staff will be permitted to speak first; followed by Duke, which joined in the motion; then the Petitioners in opposition to the motion; followed by any rebuttal from Duke and, lastly, the NRC Staff. Each of the participants will be allocated a total of fifteen minutes for its presentation, with Duke and the NRC Staff able to reserve up to 5 minutes of their prescribed time for rebuttal.

² The Board recognizes that because the prehearing conference is being conducted virtually, a participant's counsel may not be in the presence of those individuals who might be able to provide information that would help frame the most accurate response to any Board inquiry during the prehearing conference. If a participant believes it needs video access to the argument for more than one representative for consultation purposes, by Monday, July 29, 2024, at 5:00 p.m., it should provide a separate e-mail to Licensing Board Panel IT specialist Andy Welkie, andrew.welkie@nrc.gov, with a copy to all other participants, that identifies the name and e-mail address of additional individual(s) who should be given video access and explains why such access is necessary.

It should be noted that video access will not provide participant's counsel with the ability to communicate with the designated individual(s). Accordingly, counsel should make other communications arrangements that will allow for prompt consultation in formulating a response to a Board question.

Following the conclusion of the parties' presentations and any Board questions regarding the Staff's July 24, 2024 motion for entry of a protective order, the Board intends to explore with the participants the following additional matters:

1. Regarding any information associated with the 2021-2022 Oconee SLR adjudication or with this proceeding (i.e., any documents that are part of the dockets of those proceedings or that have been cited in any of the pleadings or Board orders in the dockets of those proceedings), what are the circumstances surrounding the removal of previously public information to make that information nonpublic in the agency's Agencywide Documents Access and Management System (ADAMS), including when did such removal begin and what was the scope of the removal effort? In this regard, the Board would like an explanation of the circumstances involved with the withdrawal from public availability of the January 2011 NRC Staff safety evaluation (ADAMS Accession No. ML110280153) as described in footnote eight of the May 10, 2024 corrected version of Petitioners' hearing request.³

2. What is the status of the ongoing review of information associated with this proceeding to identify nonpublic information, including the NRC Staff's best estimate of when it anticipates being able to identify to the Board and the other participants the entirety of the previously public information associated with this proceeding that FERC identifies as requiring treatment as nonpublic information?

3. What is the position of the participants regarding implementation of a process for creating a redacted version of any document associated with this proceeding that is identified by

³ Although the ADAMS accession number for this document cited in footnote eight of Petitioners' corrected May 10, 2024 hearing request is incorrect, the correct ADAMS accession number is provided in the corrected May 15, 2024 report of Jeffery Mitman that is referenced in that footnote and was included as an attachment to Petitioners' hearing request. See Jeffrey T. Mitman, NRC Relicensing Crisis at Oconee Nuclear Station: Stop Duke from Sending Safety Over the Jocassee Dam at 1 n.3 (Apr. 2024; corrected May 15, 2024).

FERC as containing nonpublic information and substituting that redacted version of the document as a public record in ADAMS?

4. For any specific item of previously public information associated with this proceeding that the NRC Staff identifies as being designated by FERC as containing nonpublic information, what is the position of the participants regarding a process in this proceeding for Petitioners to challenge the NRC Staff's determination that the specific item of previously public information should be treated as nonpublic information?

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 25, 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 (Regarding Objection to Motion for Entry of a Protective 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)
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of July 2024.