

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

August 19, 2024

MEMORANDUM AND ORDER  
(Granting Motion to Enter Protective Order)

Pending before the Licensing Board in this 10 C.F.R. Part 54 proceeding regarding the subsequent renewal of the Part 50 operating licenses for the Oconee Nuclear Station, Units 1, 2, and 3 (ONS) is a July 24, 2024 motion filed by the NRC Staff, in which applicant Duke Energy Carolinas, LLC (Duke) joins, asking the Board to enter a proposed protective order in this case to govern the management and dissemination of possible nonpublic Sensitive Unclassified Non-Safeguards Information (SUNSI), specifically Critical Energy/Electric Infrastructure Information (CEII), potentially associated with this proceeding.<sup>1</sup> The Staff's motion was opposed by petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc. (collectively Petitioners) in a filing dated July 29, 2024, and was the subject of a July 30, 2024 public

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<sup>1</sup> See Joint Motion for Proposed Protective Order Governing Disclosure of [SUNSI] and Non-Disclosure Declaration (July 24, 2024) at 1 [hereinafter Protective Order Motion]; id. attach. 1, at 1 ([Proposed] Protective Order) [hereinafter Proposed Protective Order].

prehearing conference. See Response by [Petitioners] to Joint Motion for Protective Order (July 29, 2024) [hereinafter Petitioners Protective Order Response]; Tr. at 150–246.

For the reasons set forth below, we grant the NRC Staff’s motion for the entry of a protective order, as modified by the Board. The revised protective order, with associated attachments, is being issued in a separate Board memorandum and order contemporaneous with the docketing of this issuance. See Licensing Board Memorandum and Order (Protective Order Governing Specific [SUNSI]) (Aug. 19, 2024) (unpublished) [hereinafter Protective Order].

A. Background and Basis Regarding Protective Order

The detailed background regarding this issuance, which we will not reiterate here, can be found in our August 6, 2024 memorandum. As we outlined there, the NRC Staff has indicated that it has engaged in consultations with the Federal Energy Regulatory Commission (FERC) regarding information possibly associated with this proceeding that potentially contain CEII and had proffered a proposed protective order motion, supported by Duke, intended to provide for nonpublic consideration of this information.<sup>2</sup> Following that Board issuance, the NRC Staff provided two additional status reports, the most recent of which indicated that the Staff had submitted to the Board an in camera update.<sup>3</sup> In that in camera report, the Staff asserted, among other things, that an in camera filing was required because FERC had notified the Staff that documents in this proceeding contain CEII. See NRC Staff August 9, 2024, In Camera Update Regarding Non-Public Information (Aug. 9, 2024) at 1 (nonpublic) [hereinafter

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<sup>2</sup> See Licensing Board Memorandum (Status of Proceeding Relative to Potential Nonpublic Information) (Aug. 6, 2024) at 1–4 (unpublished). Under an existing NRC/FERC memorandum of understanding (MOU), if the NRC identifies potential CEII, it may consult with FERC to obtain a supporting determination that the information in question is CEII. See id. at 2 n.3 (citing [MOU] between [NRC] and [FERC] Regarding the Treatment of [CEII] ¶ 2.C (June 2018) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18164A182) [hereinafter NRC/FERC MOU]).

<sup>3</sup> See NRC Staff Notice of August 9, 2024, In Camera Filing Before the Licensing Board (Aug. 9, 2024) at 1; NRC Staff August 8, 2024, Status Report Regarding Consultations Concerning the Withholding of Nonpublic Information from Disclosure (Aug. 8, 2024).

Staff In Camera Filing]. The Staff maintained that entry of a protective order was necessary to protect this nonpublic information, to allow the Staff to notify all the participants in this proceeding about the presence of CEII, and to consult with the participants regarding redaction of the transcript of the June 24, 2024 initial prehearing conference previously identified as possibly containing CEII. See id. at 2–3.

In granting the NRC Staff's motion, we observe that having a protective order in place will allow the participants continuing unredacted access to information in this proceeding. Such an order also provides the Board with the mechanism it needs to make the limited determination about what potential or FERC-designated CEII information is related to this proceeding. With this information in hand, the Board can then fulfill its responsibilities to issue a decision on Petitioners' pending hearing request that is based on the public record to the maximum extent feasible, while ensuring that its ruling provides an accurate and adequate explanation of the Board's determinations and supporting reasoning. And although Petitioners suggested that the Board await final FERC determinations about the extent to which any NRC Staff referred-documents may contain CEII, see Petitioners Protective Order Response at 13, we find that the best approach is to issue a protective order now that FERC has designated documents in this proceeding as containing CEII.<sup>4</sup>

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<sup>4</sup> In an August 16, 2024 submission, Petitioners objected to the NRC Staff's August 9, 2024 in camera filing on the basis that it was an ex parte/separation of functions-prohibited communication that was unnecessary and improper because (1) FERC has not identified any CEII associated with this proceeding; and (2) CEII designation would only justify submitting a redacted version of the material, not an off-the-record communication to the Board. See Objection by [Petitioners] to NRC Staff Notice of In Camera Filing (Aug. 16, 2024) at 5–8. As we noted above, FERC has designated some documents in this proceeding as containing CEII. Further, to whatever degree the NRC Staff's August 9 in camera submission might be considered as falling into the category of an ex parte/separation of functions communication, as we indicate below, see infra pp. 13–14, following the period afforded for Petitioners and Duke to submit nondisclosure declarations so as to gain access to nonpublic materials under the protective order we are issuing this date, pursuant to the agency's ex parte/separation of functions restrictions, see 10 C.F.R. §§ 2.347(c), 2.348(c), we will place the NRC Staff's August 9, 2024 in camera filing into the nonpublic portion of the docket of this proceeding. In addition, we anticipate initiating discussions with and among the participants regarding the

B. Protective Order Provisions

Relative to the individual provisions of the Staff's proposed protective order and the accompanying attachments containing proposed nondisclosure and termination of possession declarations, in adopting the order we make several significant revisions as described below.

1. Scope of Coverage. The proposed protective order in paragraph 1 indicated it covers "all" SUNSI, while designating CEII as the type of SUNSI that is within its scope. Proposed Protective Order ¶ 1. But as the Board observed during the July 30 prehearing conference, the scope of this protective order needs to be limited to "what [CEII] relates to this proceeding." Tr. at 208 (Bollwerk). To that end, the Board has defined the scope of the protective order to include only "Identified CEII," which the order further categorizes as "information in a document that is (1) either pending, or has received, a final designation by [FERC] as [CEII]; and (2) has been identified in Appendix 1 to this Protective Order." Protective Order ¶ 1. As this language indicates, the Protective Order will include an Appendix 1 that lists what the Board determines constitutes documents identified by the NRC Staff as containing CEII that are sufficiently related to this proceeding to warrant being included within the scope of the protective order.

In this regard, we observe that the Board's protective order has a different character from protective orders issued in other NRC proceedings. Often a protective order identifies a category of nonpublic information, such as proprietary information, as within its scope and encompasses all documents, whether Board issuances, participant pleadings, evidentiary material, or otherwise, that a participant submits to the proceeding labeled with the nonpublic designation covered by the protective order. In this instance, however, only a Board-designated class of nonpublic information is encompassed by the protective order. Notwithstanding an NRC Staff identification of what formerly public information associated with ONS has been provided to FERC for CEII designation review or has received such a designation from FERC,

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redaction of nonpublic material in the near term.

given the Board's expressed concern about the impact of nonpublic information on its ability to carry out its decision-making responsibilities, the Board will determine what information has a sufficient relationship to the matters at issue in this proceeding to constitute "Identified CEII" that falls within the scope and strictures of the protective order.

Additionally, the Board has added to paragraph 1 of the protective order a provision stating that the protective order will apply to any participant submissions or Board issuances that the Board designates or accepts as being subject to the protective order. See Protective Order ¶ 1. This addition is chiefly to accommodate the NRC Staff's request to limit the extent to which information now considered nonpublic is identified on the public record. To this end, both NRC Staff filings identifying formerly public documents that are pending or have received FERC CEII review as well as any further participant submissions associated with a Board determination about whether such documents warrant initial or continued designation as "Identified CEII" are to be submitted via the agency's E-Filing system as a "Non-Public Submission" and will be maintained as nonpublic filings in the docket of this proceeding absent further order of the Board. Likewise, at this juncture Appendix 1 will be maintained (and revised as appropriate) as a nonpublic document in recognition of the NRC Staff's concern to minimize the public identification of the changed CEII status of previously publicly available documents.

2. Definitions of "Authorized Recipients" and "Authorized Holders". In paragraph 2 of the proposed protective order, "Authorized Recipients" of CEII material covered under the proposed order were "designated" as Petitioners counsel and two advisors. See Proposed Protective Order ¶ 2. Although this paragraph also made clear that it was necessary for these Authorized Recipients to execute and submit via the E-Filing system a copy of the nondisclosure declaration included as attachment A to the proposed protective order, other provisions of the proposed order might be interpreted as bringing these individuals, by reason of their designation, under the aegis of the protective order regardless of whether they had submitted an executed nondisclosure declaration. See Proposed Protective Order ¶ 5. This no

doubt reflected the premise that Petitioners counsel and advisors would execute such agreements to gain access to nonpublic information under the protective order, a surmise that is in question given Petitioners' representations at the July 30, 2024 prehearing conference. See Tr. at 211–12 (Curran). Accordingly, we have revised this paragraph to make explicit that nondisclosure declaration execution and filing is a condition of gaining access to nonpublic information within the scope of the protective order and to indicate Petitioners counsel and named advisors are eligible for designation if they so choose.<sup>5</sup> See Protective Order ¶ 2.a.

Further, given the current uncertainty about what information is the subject of the NRC Staff's CEII review, in comparing the "Authorized Recipients" provision in paragraph 2 of the proposed protective order, which covers the three designated individuals, with the "Authorized Holders" provision in paragraph 3.c for applicant Duke's personnel, which covers more broadly "Personnel, contractors, and legal counsel of [Duke] and their Affiliates," Proposed Protective Order ¶ 3.c, we consider the latter definition overbroad. The proposed protective order language seems to reflect the usual circumstance surrounding a protective order in agency cases, which frequently covers an applicant's proprietary information. In such a circumstance, in which the information at issue belongs to the applicant, allowing a broad definition of applicant personnel covered by the order without further delineation or requiring the execution of nondisclosure declarations is entirely appropriate. Here, however, there is nothing indicating that the CEII information involved would necessarily belong to the applicant. Given this, we believe the better approach at this juncture is to have the coverage afforded to applicant personnel parallel that provided to Petitioners to the degree that access to the information within

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<sup>5</sup> While Petitioners counsel and the two named individuals would not be subject to the terms of the protective order regarding the maintenance and dissemination of "Identified CEII" if they do not submit nondisclosure agreements, declining to submit such declarations seemingly would not impact their responsibility regarding the maintenance and dissemination of any document lawfully designated as containing CEII under existing statutory and regulatory provisions, regardless of whether the document is covered by the protective order.

the scope of the protective order will be afforded only to applicant personnel who execute and publicly file a nondisclosure declaration. And to accomplish this end, rather than retaining the category of "Authorized Recipient" from the proposed protective order, under paragraph 2 of the protective order that we adopt, both Petitioners' and Duke's specified personnel are afforded access to protective order information as "Authorized Holders" if the requisite nondisclosure declaration is executed and submitted. See Protective Order ¶¶ 2.a, 2.c.

3. Safeguarding Identified CEII and Board-Designated Information. Paragraphs 8 and 9 of the proposed protective order set out a list of detailed requirements governing the management and dissemination of covered material by the Petitioners as the designated "Authorized Recipients."<sup>6</sup> See Proposed Protective Order ¶¶ 8–9. At the July 30 prehearing conference, the Board was informed that the proposed protective order, including these provisions, was based on an NRC template described as "the most modern." Tr. at 221 (Lighty). The template in question was developed by the agency in 2019 for protective orders governing the disclosure and use of SUNSI in hearings regarding 10 C.F.R. Part 52 combined licenses, specifically the portion of the licensing proceeding concerning inspections, tests, analyses, and acceptance criteria (ITAAC)-associated challenges.<sup>7</sup> The ITAAC template-associated requirements in proposed protective order paragraphs 8 and 9 can be contrasted with protective orders recently adopted by other licensing boards, which indicated

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<sup>6</sup> The proposed protective order included provisions requiring Authorized Recipients to establish special "controlled environments" for the protection of covered nonpublic information, which required the use of locked filing cabinets to store nonpublic material, encrypted, password-protected files and cloud servers for holding such information, and computer-screen viewing controls along with encrypted data transmission. See Proposed Protective Order at ¶¶ 8–9 & n.2.

<sup>7</sup> See Final Template for Protective Orders Governing the Disclosure and Use of [SUNSI] in Hearings Related to Conformance with [ITAAC] (ADAMS Accession No. ML19036A727) [hereinafter ITAAC Template].

that participants' counsel are responsible for taking all reasonable precautions to ensure that nonpublic information was not distributed to unauthorized individuals.<sup>8</sup>

We conclude that following the approach taken relatively recently by other licensing boards, which specifically places the responsibility on participant's counsel to ensure that nonpublic information is securely maintained and disseminated, remains an acceptable course in this instance. According to the introductory explanation accompanying the 2019 template, it was adopted in part to facilitate conformity with the 2016 National Archives and Records Administration final Controlled Unclassified Information (CUI) rule. See ITAAC Template at 1. But this is hardly a compelling justification here given the agency (to say nothing of the federal government generally) has not yet implemented the CUI rule and, to the best of our knowledge, has no plans to do so in the immediate future. Moreover, in the one instance in which this template apparently has been utilized, it was employed in the context of a proceeding involving access to nonpublic information by, among others, a participant's non-attorney representative.<sup>9</sup> Here, however, the situation is markedly different in that Petitioners are not only represented by an attorney, a position that brings with it a singular responsibility to ensure compliance with licensing board directives, but one who previously has been involved in agency cases involving nonpublic information.<sup>10</sup>

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<sup>8</sup> See Tr. at 218 (Bollwerk) (referencing licensing board protective orders in the 2022 Palisades license transfer case (ADAMS Accession No. ML22356A153) and the 2018 Seabrook license amendment proceeding (ADAMS Accession No. ML18019A148)).

<sup>9</sup> See Tr. at 202–03 (Bollwerk) (referencing protective order in 2021 Commission proceeding involving license transfer for various Exelon Generating Company facilities (ADAMS Accession No. ML21280A362)).

<sup>10</sup> See Duke Energy Corp. (Catawaba Nuclear Station, Units 1 and 2), CLI-05-2, 61 NRC 1, 5 (2005) (noting that security measures implemented by counsel in her law office were found after an NRC audit to be adequate to protect Safeguards information); Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-05-15, 62 NRC 53, 54 (2005) (in which counsel maintained a security clearance providing access to nonpublic information for that fuel fabrication facility construction permit proceeding).



As the ITAAC template notes, it is to be utilized by a presiding officer, “as appropriate.” ITAAC Template at 2 (quoting Final Template A: Notice of Intended Operation and Associated Orders at 27 (emphasis added) (ADAMS Accession No. ML16167A469)). It may be that a future licensing board in a post-CUI implementation proceeding involving a party representative who is relatively unfamiliar with NRC protocols governing nonpublic information might wish to consider approving specific strictures on nonpublic information maintenance and dissemination such as those outlined in the 2019 ITAAC template. In this instance, however, we find it sufficient to adopt the language in paragraph 7 of the protective order, which has been employed by previous licensing boards without incident, and places upon counsel for all three participants equivalent responsibility for maintaining the security of information covered by the protective order. See Protective Order ¶ 7.

4. Contesting CEII Determinations. As a general rule, the protection from public disclosure afforded by a protective order also brings with it the opportunity for other participants in the proceeding subject to the order to challenge, along with the authority for a presiding officer to rule on, whether the asserted basis for a protected document’s nonpublic status is or is not legally permissible such that some or all of the information in the document can be released on the public docket.<sup>11</sup> While language permitting such a challenge is generally part of a protective order issued in an agency adjudication that involves nonpublic information relevant to resolving disputed matters,<sup>12</sup> the proposed protective order proffered in this instance contained no such provision. When questioned about this omission at the July 30, 2024 prehearing

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<sup>11</sup> See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-807, 21 NRC 1195, 1214–15 (1985) (indicating licensing board properly issued a protective order and agreed to allow nonpublic testimony with caveat that transcript would be released if subsequent review indicated information should be public); 10 C.F.R. § 2.390(b)(6) (indicating that if there is a subsequent determination that information subject to a protective order may be disclosed, it will be made publicly available).

<sup>12</sup> See supra notes 8 (paragraphs K and 13, respectively, of referenced 2022 and 2018 licensing board protective orders) & 9 (paragraph 14 of referenced 2021 Commission protective order).

conference, the NRC Staff asserted that, as compared to other types of SUNSI, for CEII “[t]he NRC or the board would not have the authority to designate information that is identified or designated as CEII by FERC, as it is mandatory to withhold under statutory requirements for that category of information.” Tr. at 181 (Woods).

In reviewing the Staff’s claim, we begin by observing that it has long been recognized that, consistent with the Freedom of Information Act (FOIA) standards governing document disclosure embodied in the provisions of 10 C.F.R. § 2.390,<sup>13</sup> licensing boards have the authority to consider and rule on disputes about the nonpublic status of documentary material subject to a protective order.<sup>14</sup> The question here then, is whether CEII, a particular type of SUNSI, somehow falls outside this established regulatory framework.

As discussed below, we do not perceive anything in the statutory or regulatory provisions that govern the agency’s CEII designation arrangement with FERC that negates this licensing board authority.

Initially we note that the only statutory authority referenced in the proposed protective order relative to CEII is 16 U.S.C. § 824o-1, which establishes the legal foundation for CEII. This provision gives FERC the authority to designate CEII as well as to promulgate regulations establishing “the criteria and procedures to designate information as [CEII].” 16 U.S.C. § 824o-1(d)(2), (3). In those regulations, FERC has established a CEII Coordinator, who is responsible for making a determination about whether information submitted to or generated by FERC should be designated as CEII. See 18 C.F.R. § 388.113(d)(1)(v), (2)(i). At the same

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<sup>13</sup> See Consumers Power Co. (Palisades Nuclear Power Facility), ALJ-80-1, 12 NRC 117, 120 (1980) (indicating section 2.790 (now section 2.390) is NRC’s promulgation “in obedience to the [FOIA]”).

<sup>14</sup> See Wis. Elec. Power Co. (Point Beach Nuclear Plant, Units 1 & 2), LBP-81-62, 14 NRC 1747, 1755-56 (1981); see also Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 162-84 (2005) (resolving review requests pursuant to section 2.390 (formerly section 2.790) concerning licensing board decisions regarding disclosure or redaction of nonpublic information associated with the adjudicatory proceeding).

time, FERC has established a process by which disputes in FERC proceedings regarding a CEII designation by the CEII Coordinator are to be referred back to the Coordinator for disposition.<sup>15</sup> Additionally, these regulations provide that an administrative appeal of a CEII designation made in association with a FERC proceeding can be made to the General Counsel (or the General Counsel's designee), with such an appeal being required before seeking judicial review of the CEII designation.<sup>16</sup> Thus, review mechanisms, both administrative and judicial, are built into the FERC CEII designation framework.

But there appears to be nothing in this statutory and regulatory construct governing CEII that has any impact on the NRC's existing regulatory structure, which contemplates, in the first instance, presiding officer consideration of protective order-based challenges to a claim that information subject to a protective order, in whole or in part, should be withheld from public disclosure. Indeed, licensing board (or Commission) consideration of such claims is integral to the authority to issue a protective order, which necessarily encompasses the power to make determinations about its scope, about compliance with its terms, and about the appropriate measures to enforce its provisions.<sup>17</sup>

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<sup>15</sup> See Indep. Mkt. Monitor for PJM v. Am. Elec. Power Serv. Corp., 162 FERC ¶ 61074, at 6 (2018) (2018 WL 656603) (stating in protective order that challenges to CEII designation are to be made to the agency's CEII Coordinator).

<sup>16</sup> See 18 C.F.R. § 388.113(j); see also Regulations Implementing FAST Act Section 61003 — [CEII] and Amending [CEII] Availability of Certain North American Electric Reliability Corporation Databases to the Commission, 157 FERC ¶ 61123, at 18 (2016) (2016 WL 6821056) ("Congress directed the Commission to establish criteria and procedures to designate information as CEII, and the mandatory appeal to the Commission's General Counsel is a procedure that will assist in proper designation of such information. . . . The administrative appeal process gives the Commission an opportunity to correct any error and to ensure that Commission policy has been properly complied with. This process creates efficiency in the administrative process and promotes judicial economy. In addition, the current FOIA and CEII process provides for administrative appeal." (footnotes omitted)).

<sup>17</sup> See 10 C.F.R. §§ 2.319, 2.390(f); cf. id. § 2.705(c) (outlining presiding officer's authority in establishing protective orders governing discovery in 10 C.F.R. Part 2, Subpart G formal adjudications).

By its terms, FERC's CEII regulation recognizes that its provisions do not "limit[] the ability" of other federal agencies "to take all necessary steps" to protect [CEII] within their "custody and control." 18 C.F.R. § 388.113(a); see NRC/FERC MOU at ¶ 2.B. And to assist other agencies in this regard, the regulation also indicates that agencies "may consult with the [FERC] CEII Coordinator regarding the treatment and designation" of CEII, the apparent regulatory basis for the NRC Staff's recent CEII designation consultations with FERC about information associated with this proceeding. 18 C.F.R. § 388.113(a). It was such a consultation process between NRC and FERC that apparently has resulted in a determination that documents in this proceeding contain CEII. Certainly, as was noted previously, see supra note 2, the existing CEII MOU between FERC and NRC acknowledges the significance that the CEII designation consultation process plays in the protection of CEII.<sup>18</sup> Yet, it also clearly acknowledges that this is a "consultation" process in that a final determination about whether to invoke FOIA exemption 3, which encompasses information specifically exempt from disclosure by statute,<sup>19</sup> as a basis for withholding CEII from public disclosure "remains with NRC at all times." NRC/FERC MOU ¶ 2.C. This, in turn, leaves in the hands of the NRC, and pursuant to section 2.390 within a licensing board's (and the Commission's) bailiwick in an adjudicatory proceeding, the authority to establish a process whereby a CEII designation may be contested,

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<sup>18</sup> We note, however, that both FERC regulations and the NRC/FERC MOU state that the two agencies "may," not "shall," consult about a CEII designation, see 18 C.F.R § 388.13(a); NRC/FERC MOU ¶ 2.C., arguably leaving open the possibility that NRC could decide a CEII designation question of its own volition.

<sup>19</sup> FOIA Exemption 3, as embodied in section 2.390, provides an exception from public release for information "[s]pecifically exempted from disclosure by statute." 10 C.F.R. § 2.390(a)(3). While this provision provides a basis upon which to exclude properly designated CEII from public disclosure, see 16 U.S.C. § 824o-1(d)(1)(A) (indicating CEII "shall be exempt from disclosure under section 552(b)(3) of title 5"), as FERC's own regulatory provisions indicate, see supra note 16, it does not foreclose an agency review process inquiring into whether such a designation has been appropriately made in the first instance.

and to make a determination about whether and how to implement any FERC CEII designation in terms of treating the information as nonpublic for the purposes of that proceeding.<sup>20</sup>

In providing a process for challenging an NRC Staff CEII determination in the context of this protective order, at this juncture we do not establish a deadline by which such a challenge must be lodged. In our view, the appropriate time within which a motion for that purpose should be filed cannot be established until the Board and the participants have additional information regarding the Staff's schedule for generating redacted versions of the items in question that will identify the nature of the purported nonpublic material.<sup>21</sup> This is an item that will be explored by the Board with the participants once the protective order is in place.

### C. Next Steps

Under the terms of the protective order, to ensure that they have access through the Electronic Hearing Docket to any nonpublic filings associated with the protective order, within three business days of that order's issuance Authorized Holders for Petitioners and Duke should submit publicly through the E-Filing system executed nondisclosure declarations.<sup>22</sup>

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<sup>20</sup> Given FERC's experience relative to identifying CEII, it would not be surprising if the NRC Staff gave substantial deference to a FERC CEII designation in reaching its own conclusion about whether such information exists so as to merit withholding the document from public disclosure. We express no opinion about the deference, if any, that should be accorded a FERC designation in the context of a CEII determination subject to a protective order challenge in an adjudication.

<sup>21</sup> See Private Fuel Storage, CLI-05-1, 61 NRC at 183 (establishing schedule for the applicant to provide proposed redactions to the licensing board to provide an opportunity to assess the propriety of maintaining the identified material as nonpublic).

<sup>22</sup> The participants to this proceeding should be aware that this protective order is one of two being entered in this proceeding. See Licensing Board Memorandum and Order (Notice Concerning Ex Parte/Separations of Functions Communications)) (Aug. 19, 2024) (unpublished). The participants should be aware as well that this presents the possibility that, depending on what nondisclosure declarations are publicly entered relative to each protective order, the service list for each protective order could be different.

Accordingly, in making a "Non-Public Submission" associated with a protective order, the participant making the submission is responsible for ensuring that, consistent with paragraph 8.c of the protective order, see Protective Order ¶ 8.c, only those individuals not affiliated with the NRC who have provided a nondisclosure declaration so as to be considered an "Authorized

Thereafter, the Board will place into the nonpublic portion of the docket of this proceeding the NRC Staff's August 9, 2024 in camera submission along with Appendix 1 to the protective order designating Identified CEII based on the information provided in the Staff's in camera submission.<sup>23</sup>

Additionally, the Board may seek to establish a date for a nonpublic conference to discuss the status of efforts by the NRC Staff to provide redacted versions of the Identified CEII so as to allow the Board to assess the scope and nature of the CEII involved in those documents in preparing its decision on Petitioners' hearing request and for other purposes.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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G. Paul Bollwerk, III, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 19, 2024

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Holder" under paragraph 2, see id. ¶¶ 2.a, 2.c, have a check mark next to their e-mail address in the "Notify" column. Additionally, because all "deselected" individuals otherwise on the service list will receive an e-mail advising them that they have been deselected from receiving a nonpublic submission in the proceeding, the submitter must provide a reason in the "Deselected Notification Reason" box next to the "deselected" individual's name on the service list indicating why the individual was excluded from service of the nonpublic submission.

<sup>23</sup> To access nonpublic documents associated with a protective order in the Electronic Hearing Docket, an Authorized Holder as defined in paragraph 2 of the protective order must have a digital certificate. To request a digital certificate, an Authorized Holder should contact the Office of the Secretary by email at [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov), or by telephone at 301-415-1677. Information about applying for a digital certificate also is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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DUKE ENERGY CAROLINAS, LLC, ) Docket Nos. 50-269 SLR-2  
 ) 50-270 SLR-2  
 ) 50-287 SLR-2  
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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 (Granting Motion to Enter 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)**

**MEMORANDUM AND ORDER (Granting Motion to Enter Protective Order)**

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 19<sup>th</sup> day of August 2024.