

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  
(Protective Order Governing Specific Sensitive  
Unclassified Non-Safeguards Information)

1. This Protective Order shall govern the access, disclosure, and use in this proceeding of the Sensitive Unclassified Non-Safeguards Information (SUNSI) denoted below as being subject to this Protective Order. The SUNSI that is subject to this Protective Order is "Identified CEII," which is information in a document that is (1) either pending, or has received, a final designation by the Federal Energy Regulatory Commission as Critical Energy/Electric Infrastructure Information (CEII);<sup>1</sup> and (2) has been identified in Appendix 1 to this Protective Order. Additionally, this Protective Order will apply to "Board-Designated Information," which is any submission by a participant to this proceeding (i.e., the Nuclear Regulatory Commission (NRC) Staff, applicant Duke Energy Carolinas LLC (Duke), and petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., (collectively Petitioners)) or Atomic Safety and Licensing Board (Licensing

---

<sup>1</sup> See 16 U.S.C. § 824o-1; 18 C.F.R. § 388.113.

Board) issuance associated with this proceeding that the Board designates or accepts as subject to this Protective Order. This Protective Order, which shall remain in effect until specifically amended or terminated by the Licensing Board (or the Commission), does not apply to Identified CEII that is subsequently determined by the NRC not to contain CEII so as not to warrant withholding from public disclosure or to Board-Designated Information subsequently determined by the Licensing Board (or the Commission) as not warranting withholding from public disclosure.

2. "Authorized Holders" of Identified CEII or Board-Designated Information pursuant to this Protective Order include:
  - a. The following persons associated with Petitioners so long as they have executed a copy of the Nondisclosure Declaration included as Attachment A to this Order and submitted a copy of that executed Nondisclosure Declaration as a "Public Submission" via the agency's E-Filing system: (1) Diane Curran, (2) Jeffrey Mitman, and (3) Paul Gunter;
  - b. Personnel, contractors, and legal counsel of the NRC (including a presiding officer (e.g., the Commission or a Licensing Board) and their staff, and Commission adjudicatory employees as defined by 10 C.F.R. § 2.4); and
  - c. Personnel, contractors, and legal counsel of Duke and their Affiliates so long as they have executed a copy of the Nondisclosure Declaration included as Attachment A to this Order and submitted a copy of that executed Nondisclosure Declaration as a "Public Submission" via the agency's E-Filing system.
3. Other than the requirements set forth in this Protective Order for filing documents and protecting Identified CEII and Board-Designated Information, the terms of this Protective Order do not apply to personnel, contractors, and legal counsel of the NRC. The NRC's use of Identified CEII or Board-Designated Information is governed by NRC regulations and policies as well as other applicable laws.

4. Identified CEII and Board-Designated Information shall not be used or reproduced by the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order except as necessary for the conduct of this proceeding.
5. Access to Identified CEII or Board-Designated Information by the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall be held in confidence by the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order and shall not be disclosed by the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order in any form or in any manner to any person except Authorized Holders. The Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order may copy and take notes of Identified CEII or Board-Designated Information, but such copies and notes become Identified CEII or Board-Designated Information subject to the terms of this Protective Order. The Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order may generate documents derived from Identified CEII or Board-Designated Information, but such documents are also subject to the terms of this Protective Order. The Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall not reveal, either during or after this proceeding, any Identified CEII or Board-Designated Information that is disclosed to the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order.
6. Marking Documents Containing Identified CEII or Board-Designated Information:
  - a. Each document containing Identified CEII or Board-Designated Information shall be marked "CONTAINS PROTECTED INFORMATION – SUBJECT TO PROTECTIVE ORDER" in a conspicuous manner at the top of every page (including the first page or cover page and transmittal documents) and centered when feasible. Document marking shall be the responsibility of the Authorized Holder that initially identifies the document as containing Identified CEII or Board-Designated Information.

- b. Electronic storage media (including, but not limited to, USB sticks, removable hard drives, CD-ROMs, or DVDs) containing Identified CEII and/or Board-Designated Information shall be marked "SUNSI/Identified CEII" and/or "Board-Designated Information."
  - c. The Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall treat unmarked Identified CEII or Board-Designated Information in accordance with the terms of this Protective Order.
7. Protecting Identified CEII or Board-Designated Information: Legal counsel for the participants to this proceeding shall take all reasonable precautions necessary to ensure that Identified CEII and Board-Designated Information are securely maintained and securely distributed only to persons authorized to receive Identified CEII or Board-Designated Information under the terms of this Protective Order. Legal counsel for the participants are responsible for ensuring that persons under their supervision or control comply with this Protective Order.
8. Identified CEII or Board-Designated Information shall be filed in this proceeding using the E-Filing system as follows:
- a. The person filing the document shall choose the "Non-Public Submission" option to prevent the document from being filed in the public docket of the proceeding.
  - b. In the "Submission Comment" portion of the "Non-Public Submission" form, the filer shall include a statement that the filing contains nonpublic protected information.
  - c. Under E-Filing system protocols governing "Non-Public Submission" filings, only the Licensing Board (or the Commission), NRC Staff legal counsel, the Office of the Secretary (HearingDocket@nrc.gov), the Office of Commission Appellate Adjudication (OCAAMail.Resource@nrc.gov), and other Authorized Holders should be "checked" as recipients on the electronic service list. Authorized Holders and others on the electronic service list not affiliated with the NRC should be

“deselected” by a filer upon a good faith belief that the Authorized Holder or other on the service list not affiliated with the NRC is not authorized to access the Identified CEII or Board-Designated Information being submitted.

- d. Except as specified in paragraph 10 of this Protective Order, all nonpublic filings under this Protective Order shall be accompanied by a separate letter or other submission filed as a “Public Submission” via the agency’s E-Filing system that briefly identifies the nature of the nonpublic filing without identifying or including Identified CEII or Board-Designated Information.
9. Persons may not reveal Identified CEII or Board-Designated Information during any public hearing or conference session. Any person who anticipates discussing Identified CEII at any hearing or conference shall notify the Licensing Board (or the Commission) and the other participants at least three (3) business days prior to that hearing or conference that Identified CEII or Board-Designated Information may be discussed. During any public hearing or conference, any person who intends to discuss Identified CEII or Board-Designated Information shall notify the Licensing Board (or the Commission) and the participants that such discussion will contain Identified CEII or Board-Designated Information prior to the statement being made. Such statements containing Identified CEII or Board-Designated Information may be provided only in a nonpublic session as permitted by the Licensing Board (or the Commission).
10. If a participant has reason to believe that Identified CEII or Board-Designated Information may have been lost or misplaced, or that Identified CEII or Board-Designated Information has otherwise become available to unauthorized persons, notification shall promptly be made to the Licensing Board (or the Commission), and legal counsel for the other participants regarding that belief and the reason for that belief by filing a notification as a “Non-Public Submission” through the agency’s E-Filing system in accordance with paragraphs 8.a to 8.c of this Protective

Order, but without publicly filing a letter or other submission that would otherwise be required by paragraph 8.d of this Protective Order.

11. Contesting the Status of Protected Information: If a participant determines that Identified CEII or Board-Designated Information does not appear, in whole or in part, to qualify for protection as nonpublic information, that participant may file a motion challenging the information's nonpublic status. A motion challenging information's nonpublic status as CEII or Board-Designated Information shall be filed with the Licensing Board pursuant to 10 C.F.R. § 2.323, which shall also govern the filing of any answers to such a motion. The motion and any answers thereto shall be filed with the Licensing Board as a "Non-Public Submission" through the E-Filing system pursuant to paragraphs 8.a to 8.d of this Protective Order. In this manner, all the participants to this proceeding and the public will know when such a motion and any responsive pleadings are filed, but the Identified CEII or Board-Designated Information will continue to be withheld from public disclosure. Prior to presenting any dispute to the Licensing Board over whether Identified CEII or Board-Designated Information qualifies for protection as nonpublic information, pursuant to 10 C.F.R. § 2.323(b) the participants shall consult and use their best efforts to resolve the dispute.
12. When a participant files a motion under paragraph 11 of this Protective Order, pending a Licensing Board ruling, the Identified CEII or Board-Designated Information at issue shall continue to be held in confidence by Authorized Holders. If the Licensing Board rules that a document, or a portion thereof, does not qualify for protection as nonpublic information, then unrestricted use of the document or that portion of the document may begin twenty-five (25) calendar days after the Licensing Board's decision. If during that twenty-five (25) calendar day-period an Authorized Holder files an interlocutory appeal with the Commission pursuant to 10 C.F.R. § 2.341(f)(2), such period of time shall be

extended, and the document shall continue to be held in confidence until the Commission rules on the appeal.

13. The Licensing Board (or the Commission) may alter or amend this Protective Order, the Nondisclosure Declaration, or the Termination of Possession Declaration and resolve disputes regarding the application of their terms. The participants may seek amendments to this Protective Order, the Nondisclosure Declaration, or the Termination of Possession Declaration via motion pursuant to 10 C.F.R. § 2.323.
14. Identified CEII or Board-Designated Information shall remain available to the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order until the Access Termination Date. The Access Termination Date is the earlier of (a) the date of an order by the Licensing Board (or the Commission) rescinding the right of access granted by this Protective Order; or (b) the date that an order terminating this proceeding is no longer subject to judicial review.
15. Within ten (10) calendar days of the Access Termination Date, the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall either destroy Identified CEII or return such materials to the NRC Staff, except that (a) copies of Licensing Board (or Commission) issuances, participant filings, transcripts, and exhibits in this proceeding that contain such information and notes taken by persons reviewing Identified CEII may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized persons will occur; and (b) if such Licensing Board (or Commission) issuances, participant filings, transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this Protective Order. Further, within ten (10) calendar days of the Access Termination Date, the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall either destroy Board-Designated Information or return such information generated by a participant to legal counsel for the participant that submitted that

information, except that (a) copies of Licensing Board issuances, participant filings, transcripts, and exhibits in this proceeding that contain such information and notes taken by persons reviewing Board-Designated Information may be retained if they are maintained in a secure place such that no distribution of the information to unauthorized persons will occur; and (b) if such Licensing Board issuances, participant filings, transcripts, exhibits, and notes are not returned or destroyed, they shall remain subject to the provisions of this Protective Order. Each Authorized Holder shall take those actions necessary to satisfy this obligation. Finally, within ten (10) calendar days of the Access Termination Date, the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall execute the Termination of Possession Declaration included as Attachment B to this Protective Order, stating that the Identified CEII and Board-Designated Information within the Authorized Holder's possession or control has been either destroyed, returned, or maintained in a secure place as required by this Protective Order. Within ten (10) calendar days of the Access Termination Date, all executed Termination of Possession Declarations shall be filed as a "Public Submission" via the E-Filing system.

16. This Protective Order does not govern Identified CEII or Board-Designated Information owned by third parties and in the possession or control of the parties (Third-Party Protected Information). Should any participant seek access to Third-Party Protected Information, then the producing participant shall make reasonable efforts to obtain from the owner of the Third-Party Protected Information any necessary approvals for its release, subject to any appropriate nondisclosure provisions. If there are costs associated with acquiring the rights or approval to produce Third-Party Protected Information (e.g., copyright or subscription costs), then the producing participant will inform the requesting participant of the total costs involved, and the requesting participant must agree to pay those costs as a condition of being supplied the



Third-Party Protected Information. If the requesting participant does not agree to pay these costs, then the producing participant is not obligated to go through the effort of acquiring approval to produce the Third-Party Protected Information.

17. Nothing in this Protective Order shall preclude a participant to this proceeding from objecting to the use of an exhibit, testimony, or a pleading because it contains Identified CEII or Board-Designated Information. The Licensing Board (or the Commission) may issue additional orders concerning the use of Identified CEII or Board-Designated Information.
18. Nothing in this Protective Order shall preclude any person from seeking through discovery in any other administrative or judicial proceeding any information protected by this Protective Order.
19. If CEII or Board-Designated Information comes into the possession of or is known by any participant independent of the access provisions of this Protective Order or outside of this adjudicatory proceeding and such knowledge was acquired without violation of law or other nondisclosure requirements applicable to such participant, use of that document or information in this proceeding, without compliance with the terms of this Protective Order, shall not be a violation of the terms of this Protective Order. If a participant asserts that disclosure of such information or document violates this Protective Order, then the participant asserting independent knowledge of the contents of the document or independent access to such a document shall have the burden of proving that (1) such information was independently obtained; and (2) was not improperly disclosed in contravention of any law or other nondisclosure obligation.
20. Any violation of this Protective Order or of any Nondisclosure Declaration executed hereunder may result in the imposition of sanctions as the Licensing Board (or the

Commission) deems appropriate.<sup>2</sup> Nothing in this Protective Order restricts or waives the rights of any Authorized Holder to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Identified CEII or Board-Designated Information.

21. To ensure access through the Electronic Hearing Docket to nonpublic filings associated with this Protective Order, the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order must submit executed Nondisclosure Declarations as a "Public Submission" via the E-Filing system within three (3) business days after the issuance of this Protective Order.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

G. Paul Bollwerk, III, Chair  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 19, 2024

---

<sup>2</sup> See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).

# Attachment A

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY  
COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

**NONDISCLOSURE DECLARATION**

I, \_\_\_\_\_, state:

1. I have read the Licensing Board's Protective Order issued in the above-captioned proceeding and will comply in all respects with its terms and conditions regarding the Sensitive Unclassified Non-Safeguards Information (SUNSI) subject to that Protective Order, specifically Identified CEII and Board-Designated Information as defined in that Protective Order. I will protect and keep in confidence all Identified CEII and Board-Designated Information in accordance with the terms of the Protective Order and of this Nondisclosure Declaration.
2. I will not disclose Identified CEII or Board-Designated Information to anyone except an Authorized Holder as defined in the Protective Order. I will protect documents containing Identified CEII or Board-Designated Information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents containing such Identified CEII or Board-Designated Information), so that the Identified CEII or Board-Designated Information contained therein remains at all times under the control of an Authorized Holder and is not revealed to anyone else.
3. I will keep, protect, and transmit Identified CEII and Board-Designated Information (including, without limitation, transcripts, pleadings, documents that I generate, and any notes and copies that I make containing such information) in accordance with the terms of the Protective Order.
4. I will mark each document containing Identified CEII or Board-Designated Information in accordance with the terms of the Protective Order.
5. Neither during nor after this proceeding, will I publicly reveal any Identified CEII or

Board-Designated Information that I receive by virtue of this proceeding as long as the information remains Identified CEII or Board-Designated Information.

6. I acknowledge that any violation of the terms of this declaration or the Licensing Board's Protective Order, which incorporates the terms of this declaration, may result in the imposition of such sanctions on me that the Licensing Board (or the Commission) may deem to be appropriate, or any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of SUNSI.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and do solemnly agree to protect and keep in confidence such Identified CEII and Board-Designated Information as may be disclosed to me in the above-captioned proceeding in accordance with the terms of the Protective Order and of this Nondisclosure Declaration.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Executed

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

## Attachment B

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY  
COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

**TERMINATION OF POSSESSION DECLARATION**

I, \_\_\_\_\_, state:

In accordance with the Licensing Board's Protective Order in the above-captioned proceeding, I have destroyed, returned, or secured the Sensitive Unclassified Non-Safeguards Information (SUNSI), specifically Identified Critical Energy/Electric Infrastructure Information (Identified CEII) or Board-Designated Information as defined in that Protective Order, that is in my possession by one or more of the following methods (check all that apply):

\_\_\_\_\_ I have destroyed Identified CEII and/or Board-Designated Information in accordance with the Protective Order.

\_\_\_\_\_ I have retained Identified CEII and/or Board-Designated Information in accordance with the Protective Order that is maintained in a secure place such that no distribution of the information to unauthorized persons will occur.

\_\_\_\_\_ I have returned Identified CEII to the NRC Staff.

\_\_\_\_\_ I have returned Board-Designated Information generated by an Authorized Holder to legal counsel for the Authorized Holder.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct and do solemnly agree to CONTINUE to protect and keep in confidence such Identified CEII or Board-Designated Information as may have been disclosed to me in connection with the above-captioned proceeding in accordance with the terms of the Protective Order and of the Nondisclosure Declaration I previously executed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Executed

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

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 (Protective Order Governing Specific Sensitive Unclassified Non-Safeguards Information)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [ocaamail.resource@nrc.gov](mailto:ocaamail.resource@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
Washington, DC 20555-0001  
G. Paul Bollwerk, III, Chairman,  
Administrative Judge  
Dr. Sue H. Abreu, Administrative Judge  
Dr. Arielle J. Miller, Administrative Judge  
E-mail: [Paul.bollwerk@nrc.gov](mailto:Paul.bollwerk@nrc.gov)  
[Sue.abreu@nrc.gov](mailto:Sue.abreu@nrc.gov)  
[Arielle.miller@nrc.gov](mailto:Arielle.miller@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-14A44  
Washington, DC 20555-0001  
David Roth  
Susan H. Vrahoretis  
Mary Frances Woods  
Megan Wright  
Kevin Bernstein  
Caitlin R. Byrd, Paralegal  
E-mail: [david.roth@nrc.gov](mailto:david.roth@nrc.gov)  
[susan.vrahoretis@nrc.gov](mailto:susan.vrahoretis@nrc.gov)  
[mary.woods@nrc.gov](mailto:mary.woods@nrc.gov)  
[megan.wright@nrc.gov](mailto:megan.wright@nrc.gov)  
[kevin.bernstein@nrc.gov](mailto:kevin.bernstein@nrc.gov)  
[caitlin.byrd@nrc.gov](mailto:caitlin.byrd@nrc.gov)

Counsel for Duke Energy Carolinas, LLC  
Morgan, Lewis & Bockius, LLC  
1111 Pennsylvania Ave NW  
Washington, DC 20004  
Paul Bessette  
Ryan K. Lighty  
Scott Clausen  
E-mail: [paul.bessette@morganlewis.com](mailto:paul.bessette@morganlewis.com)  
[ryan.lighty@morganlewis.com](mailto:ryan.lighty@morganlewis.com)  
[scott.clausen@morganlewis.com](mailto:scott.clausen@morganlewis.com)



**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 (Protective Order Governing Specific Sensitive Unclassified Non-Safeguards Information)**

Duke Energy Corporation  
525 South Tryon Street  
Charlotte, North Carolina 28202  
Tracey M. Leroy  
E-mail: [tracey.leroy@duke-energy.com](mailto:tracey.leroy@duke-energy.com)

Beyond Nuclear Reactor Oversight Project  
7304 Carroll Avenue #182  
Takoma Park, MD 20912  
Paul Gunter  
E-mail: [paul@beyondnuclear.org](mailto:paul@beyondnuclear.org)

Counsel for Beyond Nuclear and  
Sierra Club  
Harmon, Curran, Spielberg, &  
Eisenberg, LLP  
1725 DeSales Street, N.W.  
Suite 500  
Washington, DC 20036  
Diane Curran  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

---

Office of the Secretary of the Commission

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