

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

(Notice Concerning Ex Parte/Separation of Functions Communications)

The Licensing Board is in receipt of four e-mails dated July 29 and 30, 2024, and August 3 and 14, 2024, from Lawrence Criscione, a member of the Nuclear Regulatory Commission (NRC) technical staff, that, among other things, express concerns relating to the Oconee facility. Consistent with the agency's rules governing the receipt of ex parte and separation of functions communications, the Board has determined that these e-mails should be placed in the record of this proceeding. See 10 C.F.R. §§ 2.347(c), 2.348(c).

Under these regulatory provisions, the e-mails generally would be placed into the public portion of the docket for this proceeding. See id. But in light of the NRC Staff's ongoing review regarding the existence and disclosure of nonpublic information associated with this proceeding, a review of these e-mails is appropriate to ascertain whether they contain Sensitive Unclassified Non-Safeguards Information (SUNSI), including Critical Energy/Electric Infrastructure Information (CEII), so as to warrant redaction before being made publicly available.

To conform to the dictates of the agency's ex parte and separation of functions restrictions while at the same time seeking to ensure that nonpublic information is not placed on the public record of this proceeding, the Board today is establishing a protective order, with an accompanying nondisclosure declaration and possession termination declaration, that will provide the participants to this proceeding with restricted access to these communications. See Licensing Board Memorandum and Order (Protective Order Regarding Ex Parte/Separation of Functions Communications) (Aug. 19, 2024) (unpublished) [hereinafter Protective Order]. That protective order, being issued contemporaneously with this memorandum and order, will encompass only these e-mails and any SUNSI information they contain to protect such information from public disclosure pending a determination about their status as containing nonpublic information.

In that regard, the Board requests that the NRC Staff review these e-mails and make a prompt determination about whether all or any portion of each e-mail can be publicly released, after which the Staff should provide a copy of the publicly available versions of these communications with any appropriate redactions for the docket of this proceeding via a public filing through the agency's E-Filing system. And to that end, within fourteen (14) days of this issuance, the NRC Staff should provide a status report regarding its SUNSI review of these four e-mails, including an estimate of when it contemplates that review will be completed such that a redacted version of these e-mails can be submitted for the public record.

Once the nonpublic protective order file for this proceeding is established consistent with the terms of the protective order,<sup>1</sup> via a nonpublic issuance the Board will submit unredacted

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<sup>1</sup> The participants to this proceeding, i.e., the NRC Staff, Duke Energy Carolinas LLC, and petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., should be aware that this protective order is one of two being entered in this proceeding. See Licensing Board Memorandum and Order (Granting Motion to Enter Protective Order) (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

copies of these e-mail communications for inclusion in the nonpublic portion of the docket of this proceeding pending the receipt of NRC Staff-created redacted versions of the e-mails for the public portion of the docket.<sup>2</sup>

Finally, although he appears to have concerns about issues related to this proceeding, we remind Mr. Criscione that he may not engage in off-the-record communications with Commission adjudicatory employees, including the members of this Licensing Board. See 10 C.F.R. §§ 2.4 (defining “Commission Adjudicatory Employee”), 2.347(a), 2.348(a). The NRC’s rules of practice — of which the prohibition on ex parte communications and the recognized separation between agency adjudicatory and technical staff are part — are designed to ensure that agency adjudications are conducted in an impartial manner, with fairness to all participants.<sup>3</sup> We therefore cannot and do not consider Mr. Criscione’s e-mails.

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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 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>2</sup> To access nonpublic documents associated with the 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 e-mail 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>.

<sup>3</sup> See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 19 (1998) (“Current adjudicatory procedures and policies provide a latitude to the Commission, its licensing boards, and presiding officers to instill discipline in the hearing process and ensure a prompt yet fair resolution of contested issues in adjudicatory proceedings.”); Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981) (“Fairness to all involved in NRC’s adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations.”).

At the Board's request, the Office of the Secretary will provide a copy of this memorandum and order to Mr. Criscione concurrently with its issuance.

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

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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 (Notice Concerning Ex Parte/Separation of Functions Communications)** 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 19<sup>th</sup> day of August 2024.