

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 Regarding
Ex Parte/Separation of Functions Communications)

1. This Protective Order shall govern access to and disclosure of Sensitive Unclassified Non-Safeguards Information (SUNSI) in four e-mails, dated July 29 and 30, 2024, and August 3 and 14, 2024, referred to herein as the “Specified E-Mails,” that were provided to the Atomic Safety and Licensing Board (Licensing Board) and are being placed into the docket of this proceeding consistent with 10 C.F.R. §§ 2.347(c), 2.348(c). The SUNSI that is subject to this Protective Order is “Specified E-Mails SUNSI,” which is any information in the Specified E-Mails that (a) is pending, or has received, a final designation by the Federal Energy Regulatory Commission as Critical Energy/Electric Infrastructure Information (CEII);¹ or (b) constitutes Privacy Act/Personally Identifiable Information (PII) or any other type of SUNSI. This Protective

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

Order, which shall remain in effect until specifically amended or terminated by the Licensing Board (or the Commission), does not apply to any information in the Specified E-Mails subsequently determined by the Nuclear Regulatory Commission (NRC) not to constitute SUNSI so as not to warrant being withheld from public disclosure.

2. "Authorized Holders" of the Specified E-Mails and Specified E-Mails SUNSI pursuant to this Protective Order include:
 - a. The following persons associated with petitioners Beyond Nuclear, Inc., and the Sierra Club, Inc., (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 Energy Carolinas LLC (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 the Specified E-Mails SUNSI, the terms of this Protective Order do not apply to personnel, contractors, and legal counsel of the NRC. The NRC's use of the Specified E-Mails SUNSI is governed by NRC regulations and policies as well as other applicable laws.

4. Specified E-Mails SUNSI 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 Specified E-Mails SUNSI 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 the Specified E-Mails SUNSI, but such copies and notes become SUNSI 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 Specified E-Mails SUNSI, 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 Specified E-Mails SUNSI that is disclosed to the Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order.
6. Marking Documents Associated with the Specified E-Mails:
 - a. The Specified E-Mails and any generated documents containing Specified E-Mails SUNSI 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 Specified E-Mails SUNSI.
 - b. Electronic storage media (including, but not limited to, USB sticks, removable hard drives, CD-ROMs, or DVDs) containing the Specified E-Mails and/or Specified

E-Mails SUNSI subject to this Protective Order shall be marked "Specified E-Mails" and/or "Specified E-Mails SUNSI."

- c. The Authorized Holders specified in paragraphs 2.a and 2.c of this Protective Order shall treat unmarked Specified E-Mails SUNSI subject to this Protective Order in accordance with the terms of this Protective Order.
7. Protecting the Specified E-Mails and Specified E-Mails SUNSI: Legal counsel for the participants to this proceeding (i.e., the NRC Staff, Duke, and Petitioners) shall take all reasonable precautions necessary to ensure that the Specified E-Mails and Specified E-Mails SUNSI are securely maintained and securely distributed only to persons authorized to receive that 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. The Specified E-Mails and any Specified E-Mails SUNSI 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 (OCAAmal.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 Specified E-Mails SUNSI.
9. Persons may not reveal Specified E-Mails SUNSI during any public hearing or conference session. Any person who anticipates discussing Specified E-Mails SUNSI 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 Specified E-Mails SUNSI may be discussed. During any public hearing or conference, any person who intends to discuss Specified E-Mails SUNSI shall notify the Licensing Board (or the Commission) and the participants that such discussion will contain Specified E-Mails SUNSI prior to the statement being made. Such statements containing Specified E-Mails SUNSI 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 Specified E-Mails SUNSI may have been lost or misplaced, or that Specified E-Mails SUNSI 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. 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.
12. The Specified E-Mails and any Specified E-Mails SUNSI 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.
13. 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 the Specified E-Mails and any Specified E-Mails SUNSI or return such materials to the NRC Staff. Each Authorized Holder specified in paragraphs 2.a and 2.c of this Protective Order shall take those actions necessary to satisfy this obligation. 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 Specified E-Mails and any Specified E-Mails SUNSI within the Authorized Holder's possession or control have been either destroyed or returned 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.
14. 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 the

Specified E-Mails or Specified E-Mails SUNSI. The Licensing Board (or the Commission) may issue additional orders concerning the use of the Specified E-Mails or Specified E-Mails SUNSI.

15. 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.
16. If Specified E-Mails SUNSI 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 that 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.
17. 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.² 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 Specified E-Mails SUNSI.

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

18. 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

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 the Specified E-Mails and Specified E-Mails SUNSI as defined in that Protective Order. I will protect and keep in confidence the Specified E-Mails and all Specified E-Mail SUNSI in accordance with the terms of the Protective Order and of this Nondisclosure Declaration.
2. I will not disclose the Specified E-Mails or Specified E-Mails SUNSI to anyone except an Authorized Holder as defined in the Protective Order. I will protect the Specified E-Mails and documents containing Specified E-Mails SUNSI in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents containing Specified E-Mails SUNSI), so that the Specified E-Mails SUNSI 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 the Specified E-Mails and Specified E-Mails SUNSI (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 Specified E-Mails SUNSI in accordance with the terms of the Protective Order.
5. Neither during nor after this proceeding, will I publicly reveal the Specified E-Mails or any Specified E-Mails SUNSI that I receive by virtue of this proceeding as long as the

information remains Specified E-Mails SUNSI.

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 the Specified E-Mails or Specified E-Mails 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 the Specified E-Mails and such Specified E-Mails SUNSI 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 or returned the Sensitive Unclassified Non-Safeguards Information (SUNSI), specifically Identified as the Specified E-Mails or Specified E-Mails SUNSI 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 the Specified E-Mails and/or Specified E-Mails SUNSI in accordance with the Protective Order.

_____ I have returned the Specified E-Mails and/or Specified E-Mails SUNSI to the NRC Staff.

WHEREFORE, I certify under penalty of perjury that the foregoing is true and correct.

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 Regarding Ex Parte/Separation of Functions Communications)** 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

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

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
Sue.abreu@nrc.gov
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
susan.vrahoretis@nrc.gov
mary.woods@nrc.gov
megan.wright@nrc.gov
kevin.bernstein@nrc.gov
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
ryan.lighty@morganlewis.com
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 Regarding Ex Parte/Separation of Functions Communications)**

Duke Energy Corporation
525 South Tryon Street
Charlotte, North Carolina 28202
Tracey M. Leroy
E-mail: 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

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

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of August 2024.