

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

In the Matter of)
Duke Energy Carolinas, LLC) Docket Nos. 50-269/270/287 SLR-2
Oconee Nuclear Station,) August 29, 2024
Units 1, 2 & 3)

**MOTION BY BEYOND NUCLEAR AND THE SIERRA CLUB
FOR CLARIFICATION AND/OR RECONSIDERATION
OF PROTECTIVE ORDERS**

As provided by the Atomic Safety and Licensing Board’s (“ASLB’s”) Memorandum and Order (Regarding Nondisclosure Declaration Filings, Reconsideration/Clarification Motions, Nonpublic Document Redaction, and Marking Nonpublic Documents) (Aug. 26, 2024) (“08/26/24 Memorandum and Order”), Petitioners Beyond Nuclear, Inc. and the Sierra Club, Inc. hereby seek clarification and/or reconsideration of certain aspects of the 08/26/24 Memorandum and Order and other orders issued by the ASLB in this proceeding on August 19, 2024.¹ Those aspects relate to Petitioners’ obligations as “participants,” *i.e.*, non-signers of the nondisclosure declarations.

1. Paragraph 9 of the Specific SUNSI Protective Order requires that “Persons,” *i.e.*, Petitioners, “may not reveal identified CEII or Board-Designated information during any public hearing or conference session.”² As non-signers of the nondisclosure declaration, Petitioners do not know what documents have been identified as CEII or Board-Designated information,

¹ Memorandum and Order (Granting Motion to Enter Protective Order) (Aug. 19, 2024) (“Board Order Regarding Specific SUNSI”); Memorandum and Order (Protective Order Regarding Ex Parte/Separation of Functions Communications) (Aug. 19, 2024) (“Protective Order Regarding Ex Parte Protective/Separation of Functions Communications”); and Memorandum and Order (Protective Order Governing Specific Sensitive Unclassified Non-Safeguards Information) (Aug. 19, 2024) (“Specific SUNSI Protective Order”).

² Specific SUNSI Protective Order at 5.

because that identifying information is in non-public Appendix 1.³ Petitioners seek the ASLB’s guidance regarding how they can comply with this requirement given their lack of knowledge regarding the contents of Appendix 1. In the alternative, they seek the elimination of this requirement on the ground that it could potentially penalize the Petitioners for conduct they have no way of knowing would violate the Protective Order.

2. Similarly, paragraph 10 of the Specific SUNSI Protective Order imposes obligations on Petitioners with respect to information that has not been identified to them. Under paragraph 10, a “participant,” *i.e.*, a Petitioner, must notify the ASLB if the participant:

has reason to believe the Identified CEII or Board-Designated Information may have been lost or misplaced, or 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.”⁴

Petitioners do not have a means of knowing the identity of CEII or Board-Designated Information and therefore seek the ASLB’s guidance on how they can comply with this requirement. In the alternative, they seek the elimination of this requirement on the ground that it could potentially penalize the Petitioners for conduct they have no way of knowing would violate the Protective Order.

3. Paragraph 11 of the Specific SUNSI Protective Order establishes a process for contesting the designation of information as Identified CEII or Board-Designated Information.⁵ Petitioners note that it is not clear when, if ever, they will learn what information the Board has designed as Identified CEII or Board-Designated Information. After documents have been redacted, it may be possible to deduce their status under the Protective Order, but that process seems

³ Board Order Regarding Specific SUNSI at 5.

⁴ Specific SUNSI Protective Order at 5.

⁵ Specific SUNSI Protective Order at 6.

likely to be very imperfect. Therefore, the procedure appears to have limited utility and places the Petitioners at peril of inadvertently disclosing protected information.

Petitioners are also aware that the NRC Staff is in the process of removing some formerly publicly available documents relevant to this proceeding from the NRC's public Agencywide Document Access and Management System ("ADAMS"). The scope of information that the NRC Staff is now removing from public ADAMS includes documents that -- while relevant to this proceeding -- may never be submitted on the docket of this proceeding.⁶ And of course, Petitioners will not be able to determine which documents withdrawn by the Staff from public ADAMS are also placed in the nonpublic Appendix 1 in this proceeding.

Petitioners wish to inform the ASLB that they intend to pursue their legal right under the Freedom of Information Act ("FOIA") to seek public disclosure of this information by using the NRC's procedures in 10 C.F.R. Part 9 and potential federal court litigation.⁷ In that respect, Petitioners request a modification to paragraph 18 of the Specific SUNSI Protective Order to state: "Nothing in this Protective order shall preclude any person from seeking public disclosure of any information protected by this Protective Order by lawful means other than or in addition to the procedures set forth in this Protective Order, including discovery in other proceedings, administrative requests for public disclosure to NRC and other federal agencies, and federal litigation."

⁶ For instance, the NRC Staff has removed from ADAMS Petitioners' comments on the Draft License Renewal GEIS. Comments by Beyond Nuclear and the Sierra Club on Proposed Rule and Draft Generic Environmental Impact Statement for Renewing Nuclear Power Plant Licenses (May 2, 2023; corrected May 19, 2023) (formerly posted on public ADAMS at ML23139A275).

⁷ Petitioners note that their purposes in seeking public disclosure of this information extend beyond their participation in this proceeding to their ability to discuss significant safety and environmental issues with other members of the public in other settings.

4. On August 27, 2024, Duke Energy Carolinas, LLC (“Duke”) submitted a Motion for Clarification of Protective Orders (“Duke Motion”). Duke makes two observations that apply to Petitioners as well: that (a) it already possesses most or all of the information that will be subject to the Protective Order (referred by Duke as “Covered Information”) and (b) that it has other legitimate uses for the information. In the case of Duke, the use is related to the operation of its business and compliance with NRC regulatory requirements. The Petitioners also have legitimate uses of this public information outside of the hearing. In the case of Petitioners, the use is dissemination and discussion of significant safety and environmental issues with state and local government officials and interested members of the public.

Duke has requested the ASLB to clarify:

whether the prohibitions of the Protective Orders (prohibiting use and reproduction of Covered Information for non-adjudicatory purposes) should be read to permit otherwise lawful non-adjudicatory use and reproduction; and whether the exceptions in Paragraph 19 of the [Special SUNSI Protective Order] and Paragraph 16 of the [Protective Order Regarding Ex Parte/Separation of Functions Communications] should be read to deem otherwise lawful uses of independently-acquired Covered information both inside and outside the adjudicatory proceeding to be non-violative of the Protective Orders.⁸

Petitioners respectfully request that any clarification provided by the ASLB also address the similarity of Petitioners’ circumstances.

Respectfully submitted,

/signed electronically by/

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August 29, 2024

⁸ Duke Motion at 6.

CERTIFICATE OF COUNSEL PURSUANT TO 10 C.F.R. § 2.323(b)

I certify that on August 28, 2024, I consulted counsel for Duke and the NRC Staff in a sincere effort to resolve the issues raised in this motion. Counsel for Duke stated that Duke takes no position on the motion.

Counsel for the NRC Staff stated that the NRC Staff does not oppose the Petitioners' request for clarification on the issues the motion identifies; however, the NRC Staff does not support Petitioners' request that the Licensing Board reconsider portions of the protective order. The Staff reserves the right to respond, as provided in the Licensing Board's Memorandum and Order (Regarding Nondisclosure Declaration Filings, Reconsideration/Clarification Motions, Nonpublic Document Redaction, and Marking Nonpublic Documents), dated August 26, 2024.

/signed electronically by/
Diane Curran

CERTIFICATE OF SERVICE

I certify that on August 29, 2024, I posted on the NRC's Electronic Information Exchange MOTION BY BEYOND NUCLEAR AND THE SIERRA CLUB FOR CLARIFICATION AND/OR RECONSIDERATION OF PROTECTIVE ORDERS.

/signed electronically by/
Diane Curran