

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

October 9, 2024

MEMORANDUM AND ORDER

(Concerning Additional Ex Parte/Separation of Functions Communications)

The Licensing Board is in receipt of three additional e-mails dated September 23 and 26, 2024, and October 3, 2024, from Lawrence Criscione, a member of the Nuclear Regulatory Commission (NRC) technical staff, that 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 as well. See 10 C.F.R. §§ 2.347(c), 2.348(c). Moreover, consistent with these rules outlining the prohibition on ex parte communications and the recognized separation between agency adjudicatory and technical staff, we cannot and do not consider Mr. Criscione's e-mails.¹

¹ See Licensing Board Memorandum and Order (Notice Concerning Ex Parte/Separation of Functions Communications) (Aug. 19, 2024) at 3 (unpublished) [hereinafter Board Order Concerning Ex Parte/Separation of Functions Communications].

As we noted in our August 19, 2024 order regarding such communications, under these regulatory provisions, the e-mails generally would be placed into the public portion of the docket for this proceeding. See Board Order Concerning Ex Parte/Separation of Functions Communications at 1. For the September 23, 2024 e-mail, we find this an appropriate approach and include that e-mail as Attachment A to this issuance. We are not, however, including with this communication an e-mail string incorporating Mr. Criscione's previous July 29 and 30, 2024, and August 3 and 14, 2024 e-mails, which would be duplicative as each of these e-mails currently are under NRC Staff review 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.² Nor are we including an attachment to the September 23, 2024 e-mail consisting of the NRC Staff's September 6, 2024 filing regarding the status of the redaction process for the June 24, 2024 initial prehearing conference transcript, which is already in the public record.³

In contrast, the contents of the September 26 and October 3, 2024 e-mails merit further review to determine whether they contain nonpublic information so as to warrant redaction before being made publicly available. Accordingly, we are submitting those e-mails for inclusion in the docket of this proceeding as nonpublic information under the aegis of existing Protective Order B.⁴ In doing so, however, we are not including with (1) the September 26, 2024 communication an e-mail string incorporating Mr. Criscione's previous July 29 and 30, 2024,

² See NRC Staff September 25, 2024 Status Update (Sept. 25, 2024) at 1 (indicating that while the process for reviewing the ex parte/separation of functions communications previously received from the Licensing Board is not yet complete, the Staff will either provide another status report update or a copy of the publicly available versions of the communications by October 16, 2024).

³ See NRC Staff Status Update Regarding the Transcript from the June 24, 2024, Initial Prehearing Conference (Sept. 6, 2024).

⁴ See Licensing Board Memorandum and Order (Protective Order B Regarding Ex Parte/Separation of Functions Communications) (Aug. 19, 2024) (unpublished).

and August 23, 2024 e-mails; or (2) the October 3, 2024 communication an e-mail string incorporating Mr. Criscione's previous July 29 and 30, 2024, and August 3, 2024 e-mails. In each instance, this would be duplicative as these e-mails currently are under NRC Staff review to determine whether they contain SUNSI. Nor are we including a September 26, 2008 letter from Duke Energy Carolinas, LLC, to the NRC that was attached to the October 3, 2024 e-mail, which has recently been designated by the agency as a public document with redactions.⁵

Via a nonpublic issuance, the Board will submit unredacted copies of these two e-mails for inclusion in the nonpublic portion of the docket of this proceeding. And as we did previously, the Board requests that the NRC Staff review these two e-mails and make a prompt determination about whether all or any portion of each e-mail can be publicly released. See Board Order Concerning Ex Parte/Separation of Functions Communications at 2. Upon completing its review, the Staff should provide a copy of the publicly available versions of these communications with any appropriate redactions for the docket of this proceeding through the agency's E-Filing system.

Finally, 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

/RA/

G. Paul Bollwerk, III, Chair
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 9, 2024

⁵ See Letter from Dave Baxter, Vice President, Oconee Nuclear Site, to NRC Document Control Desk (Sept. 26, 2008) (ADAMS Accession No. ML082750106).

Attachment A

Paul Bollwerk

From: Lawrence Criscione
Sent: Monday, September 23, 2024 8:18 PM
To: Mirela Gavrilas
Cc: Paul Bollwerk
Subject: RE: Questions Concerning Back Classifying Public Information as CEII
Attachments: 2024.09.06 NRC Staff September 6 Status Update.pdf

Mirela,

Seventeen days ago, the NRC received from FERC a redacted copy of the June 24, 2024 initial prehearing conference on the Oconee subsequent license renewal (see attached).

Near as I can tell, we have yet to make that redacted transcript public.

In my August 3 email to you (below) I explained some of the issues faced by the staff when categorizing nuclear safety-related concerns as CEII when those concerns do not have anything to do with security, terrorism, sabotage, etc.

Would it be possible for you to provide me and other interested staff the June 24th transcript containing FERC's redactions? Knowing what FERC considers to be CEII would be extremely beneficial to staff attempting to address the flooding hazards at U.S. reactor plants.

V/r,
Larry
Lawrence Criscione
573-230-3959

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 (Concerning Additional 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)
MEMORANDUM AND ORDER (Concerning Additional Ex Parte/Separation of Functions Communications)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of October 2024.