

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of)	
Duke Energy Carolinas, LLC)	Docket Nos. 50-269/270/287 SLR
Oconee Nuclear Station,)	February 3, 2025
Units 1, 2 & 3)	

**MOTION BY BEYOND NUCLEAR AND SIERRA CLUB
FOR EXTENSION OF TIME AND PAGE LIMIT
FOR THEIR APPEAL OF LBP-25-01**

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323(b), 2.307(a) and 2.341(b), Petitioners Beyond Nuclear, Inc. and the Sierra Club, Inc. hereby request the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to grant a two-week extension of the deadline for submitting their notice of appeal and brief on appeal of LBP-25-01, the Atomic Safety and Licensing Board’s (“ASLB’s”) Memorandum and Order (Ruling on Intervention Petition) (Jan. 17, 2025) (“LBP-25-01”).¹ The deadline would change from February 17, 2025 (25 days after January 22, 2025, when a complete copy of LBP-25-01 was served on the parties) to March 3, 2025.

BACKGROUND

The procedural history leading to this motion is lengthy and complex, consisting of three separate substantive and procedural strands that have unfolded over the course of three and a half years. The first two strands relate to the adjudication of Petitioners’ 2021 and 2024 hearing requests regarding Duke Energy Carolinas, LLC’s (“Duke’s”) June 7, 2021, application for subsequent license renewal (“SLR”) of the operating licenses for the three Oconee nuclear

¹ Petitioners note that LBP-25-01 is dated January 17, 2025, but that is the date they were served with a summary of the decision. Release of a complete version of LBP-25-01 was delayed by the NRC Staff’s review of the document for potential redactions. A complete version of the decision was served on the parties on January 22, 2025.

reactors in northwestern South Carolina.² This history is recounted in LBP-25-01, slip op. at pages 3-9, and will not be repeated here for brevity's sake.

The second substantive and procedural strand of this proceeding relates to the NRC Staff's decision that a significant amount of information generated by the NRC Staff and Duke, cited by Petitioners or relied on by Petitioners in their hearing request, could not be discussed publicly in this proceeding because the Federal Energy Regulatory Commission ("FERC") has designated it as Critical Energy/Electric Infrastructure Information ("CEII") that is exempt from public disclosure. Starting in June 2024, the Staff removed from public ADAMS pleadings, an oral argument transcript, LBP-22-01, and various source documents which the petitioners relied upon. Most but not all of those documents have since been re-posted on ADAMS, but with redactions of information central to Petitioners' hearing request. LBP-22-01 is an example of a document that was withdrawn from ADAMS, apparently in 2024, and then re-posted on ADAMS in redacted form on January 28, 2025, six days after the parties were served with a complete version of LBP-25-01.

The history of the Staff's removal of documents from public ADAMS, the ASLB's issuance of a protective order and nondisclosure declarations; Petitioners' election to instead seek public disclosure of all withdrawn or redacted pleadings, transcript and source documents under the official acknowledgment doctrine; and the ASLB's denial of Petitioners' motion to disclose those documents, is provided in the ASLB's Memorandum and Order (Denying Petitioners' Document Disclosure Motion and Referring Ruling to the Commission") (Jan. 17, 2025) ("Document Disclosure Order") at pages 3 to 6, and will not be repeated here in full for brevity's sake.

² See LBP-22-01, slip op. at 1 n.1 and 6.

However, it is important to note that the Document Disclosure Order referred to the Commission (a) the ASLB’s ruling that it had lawfully invited the Petitioners to submit a motion for disclosure of the documents on the basis of the judicial doctrine of “public acknowledgement” and (b) the lawfulness of its ruling that Petitioners had failed to satisfy the test for demonstrating public acknowledgement.³

The third procedural strand occurred in the separate proceeding for comments on the draft revised License Renewal Generic Environmental Impact Statement (“GEIS”), whose preparation was ordered by the Commission in *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Units 3 and 4), CLI-22-2, 95 N.R.C. 26, 27 (2022) (“CLI-22-02”).⁴ Petitioners submitted comments on the Draft GEIS, including a supporting expert declaration and report by Jeffrey T. Mitman.⁵ Petitioners’ comments included extensive criticisms of the NRC’s analysis of reactor accident risk, including general technical deficiencies and the unlawfulness under NEPA of the NRC’s refusal to consider the effects of climate change on accident risk.

The Commission issued the final License Renewal Rule and GEIS in the fall of 2024.⁶ The NRC acknowledged and responded to Petitioners’ comments but did not make any changes

³ Document Disclosure Order at 21-25.

⁴ Proposed Rule, 88 Fed. Reg. 13,329 (Mar. 3, 2023) (“Proposed License Renewal Rule”); Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437, Rev. 2, Feb. 2023) (“Draft GEIS”).

⁵ 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) (“Petitioners’ Comments on Draft GEIS”); Declaration of Jeffrey T. Mitman (May 2, 2023); Mitman, *Technical Review of U.S. Nuclear Regulatory Commission’s Draft License Renewal GEIS, etc.* (May 2, 2023) (“Mitman Technical Review”). (ADAMS Accession No. ML23139A275). Petitioners’ comments are no longer posted at that Accession Number, apparently because some portions of the comments and Mr. Mitman’s supporting expert report discussed details of flooding risks at Oconee. *See* note 8, *infra*.

⁶ Final rule and Guidance: Reviewing Nuclear Power Plant Operating Licenses – Environmental Review, 89 Fed. Reg. 64,166 (Aug. 6, 2024) (“Final License Renewal Rule”); Generic

to the Final Rule or the GEIS in response to Petitioners' comments.⁷ In LBP-25-01, the ASLB also relied in part on the Final GEIS to deny the admission of Petitioners' Contentions 2 and 3.⁸

Petitioners have appealed the Final License Renewal Rule to the U.S. Court of Appeals for the D.C. Circuit. As agreed by all parties, including Petitioners, the NRC, and Duke (as represented by the Respondent-Intervenor Nuclear Energy Institute), and as approved by the Court, Petitioners' opening brief is due on February 20, 2025.⁹

GROUND FOR EXTENSION OF TIME UNTIL MARCH 3, 2025

Petitioners respectfully submit that under 10 C.F.R. §§ 2.307(a), they have good cause to request the extension of time due to "unavoidable and extreme circumstances."¹⁰ These circumstances consist of the following:

1. As noted in LBP-25-01, the ASLB's decision to deny admission of Petitioners' Contention 1 cross-references and depends heavily on LBP-22-01.¹¹ Therefore, in order to prepare their appeal, Petitioners require access to LBP-22-01, including the opportunity to review redactions. However, as discussed above, LBP-22-01 – including the slip opinion posted on the NRC's Electronic Hearing Docket and the published opinion in NUREG-0570 -- was

Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437, Rev. 2, August 2024) ("Final GEIS").

⁷ See, e.g., Final GEIS at A-4, acknowledging Petitioners' comments and stating that they could be found at ADAMS Accession No. ML23139A275. However, Petitioners' comments are no longer posted at that Accession Number, apparently because some portions of the comments and Mr. Mitman's supporting expert report discussed details of flooding risks at Oconee.

⁸ See LBP-25-01, slip op. at 29 n.56, 32-33 n.59, 35 n.61, 45-46 n.75, 52 n.82, 54-55 n.87.

⁹ Order (D.C. Circuit, Docket No. 24-1318, Dec. 13, 2024).

¹⁰ *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 N.R.C. 18, 21 (1998); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CI-98-25, 48 N.R.C. 325, 342 (1998) (*pet. for review denied sub nom. Nat'l Whistleblower Ctr. v. NRC*, 208 F.3d 256, 264 (D.C. Cir. 2000) ("CLI-98-12")).

¹¹ See *id.*, slip op. at 23, 24, and 25-26 n.53.

removed from the NRC's public website in 2024. A redacted version of LBP-22-01 was not posted on ADAMS until Jan. 28, 2025, almost a week after Petitioners were served with the complete version of LBP-25-01.

Given the importance of LBP-22-01 to the Board's decision and Petitioners' appeal, the unavailability of LBP-22-01 until January 28 constitutes an extreme and unavoidable circumstance adversely affecting Petitioners' ability to adequately brief their appeal. As a matter of fundamental fairness, the time for briefing Petitioners' appeal should not have begun until *both* LBP-25-01 *and* LBP-22-01 were available to Petitioners. Therefore, Petitioners respectfully request the Commission to order that the time period for briefing Petitioners' appeal of LBP-25-01 did not begin until January 29, the first full day when LBP-22-01 was available to the Petitioners. That would amount to a one-week extension, changing the due date to February 24, 2025.

2. Petitioners also respectfully submit that extreme and unavoidable circumstances justify an additional one-week extension past Feb. 24 or until March 3, as follow:
 - a. In order to have a meaningful opportunity to appeal LBP-25-01, LBP-22-01, and the interlocutory Document Disclosure Order, Petitioners must review and respond to a significant volume of material generated by the ASLB, including LBP-22-01 (about 50 pages), the Document Disclosure Order (about 25 pages), and LBP-25-01 itself (about 58 pages). These decisions address a complex regulatory history ranging over many years, including two adjudicatory proceedings leading to two ASLB decisions. The issues raised by Petitioners' contentions and the Document Disclosure are multiple and complex legal and technical issues, including the relationship between the Atomic Energy Act and NEPA; the application of the public acknowledgment

doctrine to Oconee-related documents (including the doctrine of inadvertent disclosure); and the adequacy of the site-specific Environmental Impact Statement (“EIS” for the Oconee reactors with respect to accident risk analysis, including consideration of climate change effects. To brief these issues will require extensive time and effort to review the entire history of the past three and a half years – including considering how to approach the redactions in the current public version of LBP-22-01.¹²

b. Petitioners’ counsel has a conflicting briefing obligation in the U.S. Court of Appeals for the D.C. Circuit in *Beyond Nuclear and Sierra Club v. NRC*, No. 24-1318. The appeal challenges multiple violations of NEPA the NRC’s 2024 License Renewal GEIS. Given the Board’s extensive reliance on the 2024 GEIS in LBP-25-01,¹³ Petitioners seek to ensure they have sufficient time to brief both their D.C. Circuit appeal and their appeal of LBP-25-01. Petitioners’ opening brief to the D.C. Circuit is due Feb. 20.

3. The circumstances leading to this request constitute good cause under NRC regulations because they are both extreme and unavoidable for the following reasons:

a. Petitioners had no control over the Commission’s decision to issue CLI-22-03 and other related decisions on Feb. 24, 2022, just after the Board issued LBP-22-01 on Feb. 11, 2022. Because of that timing, Petitioners had no reason to appeal LBP-22-01

¹² Petitioners recognize that the Commission may establish a separate briefing on the issues referred to it in the Document Disclosure Order. In that event, Petitioners request the Commission to establish staggered deadlines for the two briefings that give Petitioners a reasonable amount of time and pages, taking into account the significant demands of briefing the issues raised by LBP-25-01, LBP-22-01, and the Document Disclosure Order.

¹³ See note 8, *supra*.

at that time. Therefore, it is both extreme and beyond our control that we must effectively brief an appeal of LBP-22-01, *in addition to* addressing LBP-25-01.

- b. Petitioners had no control over the Staff’s decision to remove most of the relevant documents in this proceeding from the public record, subsequently replacing most of them with redacted versions. Thus, it is both beyond Petitioners’ control and extreme that they must address, in a single appeal brief, the legal and practical issues raised by the Staff’s removal and redaction of documents from public ADAMS, in addition to the merits of Petitioners’ contentions.¹⁴
- c. The briefing schedule in *Beyond Nuclear and the Sierra Club v. NRC* was established in December 2024 by a Court order and by agreement of multiple parties including Petitioners, the NRC and Duke.¹⁵ The coincidence of major briefing obligations in both this proceeding and the D.C. Circuit proceeding (which bears on this proceeding) therefore constitutes a circumstance that is both extreme and unavoidable for the Petitioners.

GROUND FOR EXTENSION OF PAGE LIMIT FROM 30 PAGES TO 50 PAGES

In addition, based on the same circumstances described above, Petitioners request an extension of the page limit for their appellate brief from 30 pages to 50 pages. An extension of the page limit is necessary in order to allow Petitioners a fair and meaningful opportunity to brief the extensive history of this case and the multiple issues raised in the proceeding below.¹⁶

¹⁴ *But see* note 12, *supra*.

¹⁵ *See* page 4 and note 9, *supra*.

¹⁶ *See* 10 C.F.R. § 2.341(b), limiting the substantive content of briefs to 30 pages “[u]nless the Commission orders otherwise.” *See also* CLI-98-12, 48 N.R.C. at 18-19 (confirming longstanding Commission policy of providing a “fair” and “meaningful” hearing process and the development of an “adequate record.”)

CONCLUSION

For the foregoing reasons, Petitioners have demonstrated good cause for an extension of time until March 3, 2025 to submit their notice of appeal and brief on appeal in this proceeding.

Petitioners also have good cause to request an extension of the page limit from 30 to 50.

Respectfully submitted,

 /signed electronically by/

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February 3, 2025

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

I certify that on January 30, 2025, I contacted counsel for Duke and the NRC Staff in a sincere effort to resolve the issues raised in this motion. Counsel for Duke stated: “Duke opposes Petitioners’ request for an extension of the page limit. Duke also opposes Petitioners’ request for a two-week extension of the deadline to appeal LBP-25-01. However, Duke would not oppose a one-week extension of that deadline (from February 17, 2025 to February 24, 2025).”

Counsel for the Staff stated: “The NRC Staff opposes the Petitioners’ Motion for extension of time or page limit. The Commission has previously considered what is reasonable for an appeal and adopted it into the regulations; the Petitioners have not demonstrated good cause to support the requested extensions.”

 /signed electronically by/

Diane Curran

CERTIFICATE OF SERVICE

I certify that on February 3, 2024, I posted MOTION BY BEYOND NUCLEAR AND SIERRA CLUB FOR EXTENSION OF TIME AND PAGE LIMIT FOR THEIR APPEAL OF LBP-25-01 on the NRC's Electronic Information Exchange.

 /Electronically signed by/
Paul Gunter