

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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
50-287-SLR-2

February 4, 2025

**DUKE ENERGY CAROLINAS, LLC’S ANSWER PARTIALLY OPPOSING
PETITIONERS’ MOTION FOR EXTENSION OF TIME AND PAGE LIMITS**

Pursuant to 10 C.F.R. § 2.323(c), Duke Energy Carolinas, LLC (“Duke”), submits this Answer in partial opposition to the February 3, 2025 motion (“Motion”) filed by Beyond Nuclear and the Sierra Club (together, “Petitioners”).¹ In the Motion, Petitioners request a two-week extension of time to file an appeal challenging various adjudicatory decisions and other agency actions, and a 20-page extension of the codified page limit for briefs on appeal.

As explained below, the Motion is fundamentally flawed because it seeks additional time and pages to challenge a range of agency actions that are beyond the scope of the instant appeal opportunity. Pursuant to 10 C.F.R. § 2.311(c), the only agency action subject to appeal is adjudicatory memorandum and order LBP-25-01.² Therein, the Atomic Safety and Licensing Board (“ASLB”) for the above-captioned proceeding denied Petitioners’ hearing request. And the sole issue for such appeal is whether that hearing request “should have been granted.”³ In contrast, as revealed in the Motion, Petitioners plan to use their brief on appeal to raise a mishmash of other issues, including challenges to a 2022 adjudicatory order that the Commission already reviewed,

¹ Motion by Beyond Nuclear and Sierra Club for Extension of Time and Page Limit for Their Appeal of LBP-25-01 (Feb. 3, 2025) (ML25034A273).

² *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3), LBP-25-01, 101 NRC __ (Jan. 17, 2025).

³ 10 C.F.R. § 2.311(c).

a second adjudicatory order that already has been referred for Commission review, and other non-adjudicatory actions taken by the NRC to withhold sensitive documents. Petitioners' desire to commandeer the appeal process and contest these out-of-scope issues does not supply "good cause" for an extension of the page limit or a two-week extension of the deadline to appeal LBP-25-01. Accordingly, the Commission should DENY the relief as requested in the Motion.

That said, given the competing briefing deadlines cited by Petitioners (for this proceeding and a separate proceeding in federal court), Duke does not oppose a shorter, seven-day extension of the time for filing an appeal of LBP-25-01 (*i.e.*, a new deadline of February 24, 2025).⁴

I. ARGUMENT

A. LEGAL STANDARDS

The appeal opportunity here arises under 10 C.F.R. § 2.311, which allows ASLB orders that disposition hearing requests to be appealed to the Commission as a matter of right.⁵ Such appeals must be made within 25 days after the appealing party is served with the order, and corresponding briefs "may not exceed 30 pages in length."⁶ The Commission may alter this page limit at its discretion, and may alter the appeal deadline "for good cause."⁷ The Commission has further explained that, in this context, "good cause" requires demonstration of "unavoidable and extreme circumstances."⁸ Notably, the proponent of a motion seeking to alter the codified time or page limits has the burden of proof.⁹

⁴ LBP-25-01 was served on the Petitioners on January 22, 2025. Twenty-five days thereafter is February 16, 2025. And a seven-day extension therefrom is February 23, 2025, which falls on a Sunday. Thus, the deadline would be the next business day, Monday, February 24, 2025. *See* 10 C.F.R. § 2.306 (a).

⁵ 10 C.F.R. § 2.311(a).

⁶ *Id.* §§ 2.311(b), 2.341(c)(3).

⁷ *Id.* §§ 2.341(c)(3), 2.307(a).

⁸ *See* Statement of Policy on Conduct of Adjudicatory Proceedings, 63 Fed. Reg. 41,872, 41,874 (Aug. 5, 1998); *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998); *Hydro Res., Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87210), CLI-99-1, 49 NRC 1, 3 n.2 (1999). Petitioners agree that these are the applicable standards. *See* Motion at 4.

⁹ 10 C.F.R. § 2.325.

B. PETITIONERS FAIL TO CARRY THEIR AFFIRMATIVE BURDEN TO DEMONSTRATE “GOOD CAUSE” FOR A TWO-WEEK EXTENSION OF TIME OR ANY EXTENSION OF THE CODIFIED PAGE LIMIT

Petitioners proffer several reasons for their requested extensions of time and page limits. As explained below, these justifications provide no basis to depart from the Commission’s well-reasoned page limits and fail to justify a two-week extension of the appeal deadline.

1. The Availability Status of LBP-22-01 in Public ADAMS Provides No Basis for an Extension of Time or Page Limits

Pursuant to the NRC’s Rules of Practice and Procedure, the initiating event for the 25-day appeal clock is “the service of the order.”¹⁰ LBP-25-01 was served on Petitioners on January 22, 2025.¹¹ But, Petitioners assert that a different initiating event is warranted.¹² Petitioners claim that the previous licensing board’s decision in LBP-22-01 (issued as part of the previous adjudicatory proceeding in this case) is of “importance” to their appeal.¹³ According to the Motion, LBP-22-01 was: published and posted on ADAMS when issued in 2022; temporarily removed from ADAMS in approximately June 2024 when it was discovered to contain potentially sensitive information; and restored to ADAMS, in redacted form, on January 28, 2025.¹⁴ To prepare their appeal, Petitioners allege that they “require access to LBP-22-01.”¹⁵ Therefore, according to Petitioners, January 29, 2025, “the first full day when LBP-22-01 was available to the Petitioners,” is a more appropriate initiating event for the appeal.¹⁶

¹⁰ *Id.* § 2.311(b)

¹¹ *See* Motion at 1 n.1.

¹² *Id.* at 4–5.

¹³ *Id.* at 5 (referencing *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3), LBP-22-01, 95 NRC 49 (2022)).

¹⁴ *Id.* at 2, 5. The redacted slip op. for LBP-22-01 is available at ML24341A169.

¹⁵ Motion at 4.

¹⁶ *Id.* at 5 (emphasis added).

However, Petitioners fail to explain why the temporary absence of LBP-22-01 from public ADAMS justifies an extension of time or page limits here. Importantly, the Motion fails to disclose that LBP-22-01 was served directly on Petitioners, by counsel, on February 11, 2022.¹⁷ In other words, Petitioners have had “access” to LBP-22-01, independent of public ADAMS, continuously for nearly three years—and Petitioners do not claim otherwise in the Motion. Thus, the ADAMS public availability status of LBP-22-01 provides no basis for an extension of time or page limits.

2. The Minimal Redactions in LBP-22-01 Provide No Basis for an Extension of Time or Page Limits

Petitioners further argue that they will need to expend “extensive time and effort” to figure out how to “approach the redactions” in LBP-22-01.¹⁸ However, Petitioners provide no basis or explanation for their suggestion that the level of effort is somehow inordinate—and the facts suggest otherwise. A brief review of LBP-22-01 reveals that small, targeted redactions of certain numerical values are found on only six pages of the 49-page slip opinion.¹⁹ And those minimal redactions (to a document to which Petitioners have long had unredacted access) became available to Petitioners three weeks before the current appeal deadline.²⁰ So, Petitioners clearly *do* have an “opportunity to review [those] redactions.”²¹ To the extent Petitioners believe 21 days is insufficient, or somehow unfair, they again offer no explanation for why they would need more time (and there is no obvious reason, particularly for an appeal where the redactions, themselves, are not subject to challenge). By any objective measure, these are unremarkable circumstances—and they certainly are not “extreme” circumstances warranting an extension of time or page limits.

¹⁷ See Attachment 1 to this pleading (E-mail from Hearingdocket@nrc.gov to [multiple parties including Petitioners’ counsel Diane Curran], Re: NRC Proceeding “Oconee 50-269, 50-270 & 50-287-SLR” (Feb. 11, 2022, 2:19 PM) (serving “Memorandum and Order (Denying Intervention and Terminating Proceeding) (LBP-22-01)”).

¹⁸ Motion at 6.

¹⁹ See LBP-22-01 (redacted slip op. at 12–15, 17, and 20).

²⁰ The redacted version of LBP-22-01 became available on January 28, 2025, and the current appeal deadline is February 18, 2025, which is a difference of 21 days.

²¹ Motion at 4.

3. Petitioners’ Desire to Brief Out-of Scope Issues Provides No Basis for an Extension of Time or Page Limits

As an overarching matter, Petitioners devote multiple paragraphs in their Motion to describing various “substantive and procedural strands that have unfolded over the course of three and a half years.”²² As the Motion makes clear, Petitioners seek more time and more pages because they wish to file a *kitchen-sink* brief that protests the agency’s decision-making as to each of those “strands.” However, that would run afoul of the limitation in 10 C.F.R. § 2.311, which permits an appeal as of right on the sole question of whether the hearing request “should have been granted.”

a. Petitioners improperly plan to “appeal” a prior licensing board decision that the Commission has already reviewed.

In their Motion, Petitioners claim they need more time and pages to “effectively brief an appeal of LBP-22-01, *in addition to* addressing LBP-25-01.”²³ However, LBP-22-01 is not eligible to be appealed here. The Commission reviewed that decision *sua sponte* and took corresponding action nearly three years ago.²⁴ As such, that decision has no controlling effect. Petitioners do not explain why it needs to be “appealed.” And if Petitioners merely intend to reference LBP-22-01 to the extent it is relevant to the holdings in LBP-25-01, they offer no reason why more time or pages are needed to do so.²⁵ ASLB decisions routinely cross-reference dozens or hundreds of external documents and authorities that may be relevant to an appeal. But that is not an “extreme” circumstance warranting deviation from codified time and page limits.

²² *Id.* at 1–4.

²³ *Id.* at 7 (emphasis in original). *See also id.* at 5 (claiming Petitioners need more time and pages “[i]n order to have a meaningful opportunity to appeal . . . LBP-22-01 . . .”).

²⁴ *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-22-3, 95 NRC 40, 43 (2022).

²⁵ Furthermore, Petitioners expressly relied on information from LBP-22-01 in developing their hearing request. *See* Hearing Request and Petition to Intervene by [Petitioners] at 7 n.8 (Apr. 29, 2024; corrected May 1, 2024) (ML24337A222, redacted version) (“Petitioners rely on quotations and paraphrasing of [certain documents] as presented in . . . the ASLB’s decision in LBP-22-01 . . .”).

b. Petitioners improperly plan to challenge NRC administrative actions to protect sensitive information.

Petitioners also claim they need more time and pages to address, in their 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.”²⁶ As noted above, 10 C.F.R. § 2.311 permits an appeal as of right on the sole question of whether the hearing request “should have been granted.” Petitioners do not explain how the agency’s actions to protect sensitive information had any bearing on that question. Nor could they, because those two things are unrelated. Petitioners’ bare desire to brief this out-of-scope issue in their appeal of LBP-25-01 is not an “extreme” circumstance warranting deviation from codified time and page limits.

c. Petitioners improperly plan to “appeal” a licensing board order related to protection of sensitive information that already has been referred to the Commission for review.

Petitioners further attempt to justify their request for more time and pages to “appeal”²⁷ the ASLB’s January 17, 2025 order denying Petitioners’ motion for public disclosure of certain documents.²⁸ However, that order is not eligible to be appealed here. First, it is not among the types of orders that may be appealed as of right under 10 C.F.R. § 2.311. Second, that order, and the parties’ briefings thereon, already have been referred to the Commission for consideration.²⁹ If the Commission needs additional briefing from the parties—which would be highly unusual for a referred ruling—it will issue an order to that effect. Absent such an order, no additional briefing is permitted under the rules; and a mere desire to present unauthorized and unrequested arguments is not an “extreme” circumstance warranting deviation from codified time and page limits.

²⁶ Motion at 7.

²⁷ *Id.* at 5 (seeking “a meaningful opportunity to appeal . . . the interlocutory Document Disclosure Order”).

²⁸ Licensing Board Memorandum and Order (Denying Petitioners’ Document Disclosure Motion and Referring Ruling to the Commission) (Jan. 17, 2025) (unpublished) (ML25017A345).

²⁹ *Id.* at 25–26.

4. Petitioners’ Desire to Comprehensively Catalog the “Lengthy History of This Proceeding” Provides No Basis for an Extension of Time or Page Limits

Petitioners also request more time and pages to “brief the extensive history of this case” and present arguments on “multiple issues” (including the out-of-scope topics noted above).³⁰ But, as Petitioners acknowledge, the procedural history is already well-documented.³¹ Petitioners’ desire to present even further detail on the regulatory history of the Oconee plant or Petitioners’ generalized grievances therewith far exceeds the purpose of an appeal. In fact, the Commission deliberately imposed page limits to prevent exhaustive and unfocused filings. As the Commission has explained, “[o]ur page limits on appeal briefs are intended to encourage parties to make their strongest arguments as concisely as possible.”³² Petitioners’ intent here would defeat the Commission’s objective. Accordingly, Petitioners desire to “brief the extensive history of this case” also fails to demonstrate good cause for an extension of time or page limits.

C. **DUKE DOES NOT OPPOSE A MODEST ONE-WEEK EXTENSION OF TIME IN LIGHT OF CONFLICTING BRIEFING OBLIGATIONS**

Finally, Petitioners note that their deadline to file a brief before the U.S. Court of Appeals for the District of Columbia Circuit, in another matter, is January 20, 2025.³³ That is two days after the current January 18, 2025 due date for Petitioners’ appeal of LBP-25-01.³⁴ Given the proximity of these deadlines, Duke does not oppose a shorter, seven-day extension of the time for filing an appeal of LBP-25-01 (*i.e.*, a new deadline of February 24, 2025).³⁵

³⁰ Motion at 7.

³¹ *See, e.g., id.* at 2.

³² *USEC Inc.* (Am. Centrifuge Plant), CLI-06-10, 63 NRC 451, 476 (2006).

³³ Motion at 4, 6.

³⁴ Petitioners claim that their current deadline is February 17, 2025. However, that is a federal holiday.

³⁵ *Accord Va. Elec. & Power Co.* (North Anna Power Station, Units 1 & 2), Order of the Secretary of the Commission at 3–4 & n.13 (Feb. 21, 2024) (unpublished) (ML24052A386) (partially granting an extension request based on “overlapping deadlines in proceedings both within and outside the NRC”).

II. CONCLUSION

The Commission should DENY the relief requested in the Motion because Petitioners have not demonstrated “good cause” therefore. However, Duke does not oppose a discretionary extension, to February 24, 2025, of Petitioners’ deadline to appeal LBP-25-01.

Respectfully submitted,

Signed (electronically) by Ryan K. Lighty

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Dated in Washington, DC
this 4th day of February 2025

ATTACHMENT 1

From: Hearingdocket@nrc.gov <Hearingdocket@nrc.gov>
Sent: Friday, February 11, 2022 2:19 PM
To: Emily.Krause@nrc.gov; Gary.Arnold@nrc.gov; Paul.Bollwerk@nrc.gov; Nicholas.Trikouros@nrc.gov; joseph.azeizat@nrc.gov; Bessette, Paul M. <paul.bessette@morganlewis.com>; amanda.black@nrc.gov; Krupskaya.Castellon@nrc.gov; dcurran@harmoncurran.com; hearing.docket@nrc.gov; paul@beyondnuclear.org; georgiann.hampton@nrc.gov; tracey.leroy@duke-energy.com; Lighty, Ryan K. <ryan.lighty@morganlewis.com>; Brian.Newell@nrc.gov; ocaamail.resource@nrc.gov; David.Roth@nrc.gov; Clara.Sola@nrc.gov; herald.speiser@nrc.gov; stefen@nealrgross.com; brooke.taylor@nrc.gov; Susan.Vrahoretis@nrc.gov; allison.wood@nrc.gov; Mary.Woods@nrc.gov; Megan.Wright@nrc.gov
Subject: Re: NRC Proceeding "Oconee 50-269, 50-270 & 50-287-SLR"

****EIE Update**** Due to certain NRC computer security enhancements the process to open submissions having more than one attachment has had to be changed. Now, after opening the link in the e-mail and validating their certificate, users will see a page with a button saying "Download Attachments". Selecting that button will cause the attached .zip file to be downloaded to the users' computer. Thereafter, the files can be opened using the normal protocol. ****EIE Update****

MESSAGE FROM THE OFFICE OF THE SECRETARY, NUCLEAR REGULATORY COMMISSION

Re: NRC Proceeding "Oconee 50-269, 50-270 & 50-287-SLR"

The Office of the Secretary has received a Submission entitled

"Memorandum and Order (Denying Intervention and Terminating Proceeding) (LBP-22-01)"

submitted by Krupskaya T. Castellon who is affiliated with NRC SECY. It contains 1 attachment(s).

It is intended for inclusion in the referenced proceeding. It was submitted through the NRC Electronic Information Exchange (EIE) system and arrived on 02/11/2022 at 02:18 PM.

As a hearing participant, you are entitled to view and/or retrieve this Submission by visiting the following web link.

Memorandum and Order (Denying Intervention and Terminating Proceeding) (LBP-22-01) - <https://eie.nrc.gov/eie/adj/downloadAttachment.eie?submissionId=56344&docId=27621> (378 KB)

If the submission contains 2 or more attachments, they will be delivered to you as a single compressed zip file from which you may open the attachments. The delivery model works best with the free download product named "SecureZip". This is the product used in the screen shots in the Adjudicatory User's Guide. Other compression products will work but the access steps may vary.

The link will remain active for 30 day(s) after which its contents will be removed from the EIE system. Not later than 3 days from the date of this message the attachment(s) will also be available through NRC Electronic Hearing Docket (EHD) web site. The web link for this site is: <https://adams.nrc.gov/ehd> and the documents can be located by browsing in the appropriate hearing folder.

Receipt of this message constitutes completion of service of this filing.

PARTIES SERVED WITH THIS SUBMISSION: Arnold, Gary S.; Azeizat, Joseph M.; Bessette, Paul Michael; Black, Amanda M.; Bollwerk, George P.; Castellon, Krupskaya T.; Curran, Diane J.; Docket, Hearing; Gunter, Paul Vernon; Hampton, Georgiann E.; Krause, Emily I.; LeRoy, Tracey; Lighty, Ryan K.; Newell, Brian P.; ocaamail, ocaamail; Roth, David E.; Sola, Clara I.; Speiser, Herald; Styrsky, Stefen; Taylor, Brooke A.; Trikouros, Nicholas G.; Vrahoretis, Susan H.; Wood, Allison R.; Woods, Mary F.; Wright, Megan A.

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In the Matter of:

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Docket Nos. 50-269-SLR-2

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50-287-SLR-2

February 4, 2025

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “DUKE ENERGY CAROLINAS, LLC’S ANSWER PARTIALLY OPPOSING PETITIONERS’ MOTION FOR EXTENSION OF TIME AND PAGE LIMITS” and Attachment 1 thereto were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

Signed (electronically) by Ryan K. Lighty

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