

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–269, 50–270, and 50–287; NRC–2013–0016]

Duke Energy Carolinas, LLC, Oconee Nuclear Station, Units 1, 2, and 3 Denial of Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial; opportunity to request a hearing and leave to intervene.

DATES: A request for a hearing must be filed by March 4, 2013. Any potential party as defined in section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by February 11, 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0016, when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2013–0016. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: Carol.Gallagher@nrc.gov.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for amendment, dated July 31, 2012, contains security-related information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment, dated July 31, 2012, is available in ADAMS under Accession No. ML12262A372. A supplement to the application for amendment, dated September 5, 2012, is available in ADAMS under Accession No. ML12251A010. The NRC's denial safety

evaluation, dated January 15, 2013, is also available under ADAMS Accession No. ML12345A204.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has denied a request by Duke Energy Carolinas, LLC, (licensee) for an amendment to Renewed Facility Operating Licenses DPR–38, DPR–47, and DPR–55 issued to the licensee for operation of the Oconee Nuclear Station (ONS), Units 1, 2, and 3, located in South Carolina, Oconee County. A Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on October 9, 2012 (77 FR 61436).

The purpose of the licensee's amendment request was to revise the licenses to extend the required dates to meet certain conditions associated with the transition of the plant's fire protection program from a deterministic program under 10 CFR 50.48(b) to a performance-based program under 10 CFR 50.48(c), in accordance with National Fire Protection Association (NFPA) Standard NFPA–805, “Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants.”

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated January 15, 2013.

II. Opportunity To Request a Hearing; Petition for Leave To Intervene

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any demand for a hearing must be filed in accordance with the Commission's “Rules of Practice For Domestic Licensing Proceedings” in 10 CFR Part 2, including the requirements of 10 CFR 2.309. Within 30 days from the date of publication of this notice in the **Federal Register**, any person whose interest may be affected by this proceeding may file a written petition for leave to intervene and a request for a hearing pursuant to the requirements of 10 CFR 2.309. The NRC regulations are accessible electronically from the NRC Library on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

III. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's “Guidance for Electronic Submission,” which is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the

participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call to 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to

continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 30 days from January 31, 2013. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 30-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion

based on the availability of the subsequent information.

For further details with respect to this action, see (1) the application for amendment dated July 31, 2012, and supplemented on September 5, 2012, and (2) the Commission's letter to the licensee dated January 15, 2013.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202-1802.

IV. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov, respectively.¹ The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent

disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release

would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 25th day of January 2013.

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/Activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not

yet been designated, within 30 days of the deadline for the receipt of the written access request.

³ Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/Activity
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68735; File No. SR-NASDAQ-2012-119]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Establish a New Optional Wireless Connectivity for Colocated Clients

January 25, 2013.

On October 10, 2012, The NASDAQ Stock Market LLC (“Exchange” or “NASDAQ”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a new optional wireless connectivity for colocated clients. The proposed rule change was published for comment in the **Federal Register** on October 29, 2012.³ The Commission received one comment on the proposal and a response from NASDAQ.⁴ On December 12, 2012, the Commission extended the time period in which to either approve NASDAQ’s proposal, disapprove NASDAQ’s proposal, or institute proceedings to determine whether to approve or disapprove NASDAQ’s proposal, to January 25, 2013.⁵ This order approves the proposed rule change.

II. Description of the Proposal

Under the proposal, NASDAQ would establish fees for new optional means for clients to receive third party market data and NASDAQ TotalView ITCH

market data. NASDAQ would offer wireless connectivity for colocated clients in NASDAQ’s Carteret data center to receive Direct Edge, BATS, NYSE, and NYSE ARCA multi-cast market data feeds. It also would offer remote multi-cast ITCH Wave Ports for clients colocated at other third party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network. As noted by the Exchange, wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Over the last year, wireless technology has been introduced in the financial services industry, according to the Exchange.

Additionally, the proposed rule change would amend NASDAQ Rule 7034 to establish fees for the delivery of third party market data to market center clients via a wireless network using millimeter wave or microwave technology. It also would amend NASDAQ Rule 7015 to establish fees for remote multi-cast ITCH Wave Ports for clients colocated at other third-party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network.

Wireless Connectivity in Carteret

Under the proposed rule change, NASDAQ would utilize a network vendor to supply wireless connectivity from its Carteret data center to the Secaucus Equinix data center (NY4) used by Direct Edge and other exchanges; the Newark data center used by NYSE as a SFTI Network Point of Presence; and the Weehawken Savvis data center (NJ2) used by BATS. The vendor would install, test and maintain the necessary communication equipment for this wireless network between the data centers.

Clients who choose this optional service would have their NASDAQ cross connect handoffs (1G, 10G, or 40G) enabled to receive the chosen raw, multicast market data for Direct Edge, BATS, and/or NYSE. NASDAQ OMX would continue to act as re-distributor of these third party market data feeds, capturing the data at the originating data centers and transporting the data to the

Carteret data center. In the Notice, the Exchange represented that it is offering these particular equity feeds because they are the feeds requested by clients. There is limited bandwidth available on the wireless connection, and the Exchange has opted to offer those that are in most demand to start. Additional feeds may be added based on overall client demand and bandwidth availability.

The wireless connectivity would be an optional offering, an alternative to fiber optic network connectivity, and according to the Exchange, would provide lower latency. It would not provide a new market data product, but merely an alternative means of connectivity. The Exchange has represented that NASDAQ’s wireless connectivity offering, in conjunction with NASDAQ’s equidistant cross connect handoffs (1G, 10G, or 40G), would ensure that all clients colocated within Carteret and electing to use this wireless connectivity offering would receive the chosen market data at the same low latency, equalizing any variances that might otherwise result from differences in the location of client cabinets within the facility.

To obtain wireless connectivity, clients would be charged a \$2,500 installation fee (a non-recurring charge) and a monthly recurring charge (MRC) that will vary depending upon the feed. The MRC for the NYSE multi-cast equities data feed, which includes NYSE ArcaBook Highspeed and NYSE OpenBook (Aggregated or Ultra), will be \$10,000; the MRC for BATS Multicast PITCH, which includes BZX and BYX, will be \$7,500; and the MRC for Direct Edge Depth of Book multi-cast feed, which includes EDGA and EDGX, will be \$7,500. According to the Exchange, the rates are higher for the NYSE feeds because the two feeds are larger and take up more bandwidth than the BATS and Direct Edge feeds.

Clients would place orders for the wireless connectivity via the CoLo Console⁶ and would be subject to a one-year minimum lock-in period. In the Notice, the Exchange represented that

⁶ The “CoLo Console” is a web-based ordering tool NASDAQ offers to enable members to place colocation orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 68085 (October 23, 2012), 77 FR 65596 (“Notice”).

⁴ See comment from Anthony C.J. Nuland, Attorney at Law, representing Quincy Data LLC, dated January 17, 2013 (“Quincy Data Letter”); see also letter from Jeff Davis, Vice President and Deputy General Counsel, NASDAQ, to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2013 (“NASDAQ Letter”).

⁵ See Securities Exchange Act Release No. 68416 (December 12, 2012), 77 FR 75229 (December 19, 2012).