

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Kristine L. Svinicki, Chairman
Jeff Baran
Annie Caputo
David A. Wright
Christopher T. Hanson

In the Matter of

OKLO POWER, LLC

(Aurora Reactor)

Docket No. 52-049-COL

CLI-20-17

MEMORANDUM AND ORDER

On July 31, 2020, a number of organizations¹ (Petitioners) jointly filed an emergency petition² (Petition) to immediately revoke or suspend the docketing notice and hearing notice in this proceeding.³ For the reasons specified below, we deny the Petition.

¹ The Petitioners are: Beyond Nuclear, Blue Ridge Environmental Defense League, Citizens Awareness Network, Citizen Power, Citizens' Resistance at Fermi Two, Concerned Citizens for Nuclear Safety, Don't Waste Michigan, Ecological Options Network, Food and Water Watch, Friends of the Earth, HEAL Utah, Indian Point Safe Energy Coalition, Manhattan Project for a Nuclear-Free World, National Nuclear Workers for Justice, Nevada Nuclear Waste Task Force, Nuclear Energy Information Service, Nuclear Information and Resource Service, Nuclear Watch New Mexico, Oak Ridge Environmental Peace Alliance, Physicians for Social Responsibility, Portsmouth/Piketon Residents for Environmental Safety and Security, Promoting Health and Sustainable Energy, Tennessee Environmental Council, Three Mile Island Alert, San Luis Obispo Mothers for Peace, Snake River Alliance, Tri-Valley Cares, and Uranium Watch (Petitioners).

² While the Petitioners designate their filing as an "emergency petition," they do not demonstrate that there is an urgent safety matter that we must address.

³ *Emergency Petition by [Petitioners] to Immediately Revoke or Suspend Docketing Notice and Hearing Notice for Combined License Application for Oklo Power, LLC and Request for*

I. BACKGROUND

On March 11, 2020, Oklo Power, LLC (Oklo) submitted a combined license application (Application) to build and operate a four-megawatt thermal micro-reactor, called the Aurora, on the site of the Idaho National Laboratory.⁴ The NRC Staff accepted the Application for docketing and noted that it plans to complete the review of the Aurora design in a two-step process.⁵ In Step 1, the Staff plans to “engage Oklo in public meetings, conduct regulatory audits, and issue requests for additional information to efficiently align on four key safety and design aspects of the licensing basis.”⁶ At the end of Step 1, the Staff plans to develop a review schedule for Step 2 and complete the remainder of its technical review.⁷

On June 16, 2020, a notice of the Staff’s decision to docket the Application was published in the *Federal Register*.⁸ Shortly thereafter, the Staff published a Notice of Hearing and Opportunity to Petition for Leave to Intervene in the *Federal Register*, which set a deadline

Clarification that Nuclear Energy Innovation and Modernization Act Does Not Mandate or Authorize Disregard of NRC Procedural Requirements for New Reactor License Applicants (July 31, 2020) (ADAMS accession no. ML20213C692).

⁴ Oklo Power Combined Operating License Application for the Aurora at Idaho National Laboratory (Mar. 11, 2020) (ML20075A000 (package)) (Application).

⁵ Letter from Jan Mazza, NRC, to Dr. Jacob DeWitte, Oklo, Inc. (June 5, 2020) (ML20149K616) (Docketing Letter).

⁶ *Id.* at 2.

⁷ The Staff plans to address four topics in Step 1: use of a maximum credible accident in the Aurora safety case; the Applicant’s classification of structures, systems, and components; the applicability of NRC regulations to a non-light water reactor design like the Aurora; and certain aspects of the Applicant’s quality assurance program. *Id.*; *NRC Staff Answer Opposing Emergency Petition to Suspend Docketing Decision and Hearing Notice* (Aug. 10, 2020), at 4 (Staff Answer).

⁸ Oklo Power LLC, Combined License Application; Acceptance for Docketing, 85 Fed. Reg. 36,427 (June 16, 2020) (Docketing Notice).

of August 31, 2020, for intervention petitions.⁹ In response, the Petitioners filed their Petition seeking to immediately revoke or suspend the docketing notice and hearing notice. On August 10, 2020, the Staff and Oklo each filed a response in opposition to the Petition.¹⁰ On August 17, 2020, the Petitioners moved for leave to reply to the Oklo Answer and the Staff Answer and submitted their proposed reply.¹¹ Oklo opposed the Petitioners' motion.¹² Given that we consider the Petition under our inherent supervisory authority, we need not address the propriety of the Petitioners' motion for leave to reply.¹³ We have reviewed the Petitioners' reply and have determined that it would not affect our decision.

⁹ Oklo, Inc.; Oklo Power LLC, Combined License Application; Notice of Hearing and Opportunity to Petition for Leave to Intervene; Order Imposing Procedures, 85 Fed. Reg. 39,214 (June 30, 2020) (Hearing Notice).

¹⁰ Staff Answer; *Oklo Power LLC's Answer Opposing July 31, 2020 Unauthorized Filing by Beyond Nuclear et. al.* (Aug. 10, 2020) (Oklo Answer).

¹¹ *Petitioners' Motion for Leave to Reply to NRC Staff and Oklo Oppositions to Emergency Petition to Revoke or Suspend Docketing Notice and Hearing Notice for Oklo COL Application* (Aug. 17, 2020); *Petitioners' Reply to Oppositions to Emergency Petition by Beyond Nuclear, et al. to Immediately Revoke or Suspend Docketing Notice and Hearing Notice for Combined License Application by Oklo Power, LLC and Request for Clarification that Nuclear Energy Innovation and Modernization Act Does Not Mandate or Authorize Disregard of NRC Procedural Requirements for New Reactor License Applicants* (Aug. 17, 2020). On August 18, 2020, the Petitioners filed a corrected version of their reply. *Corrected Petitioners' Reply to Oppositions to Emergency Petition by Beyond Nuclear, et al. to Immediately Revoke or Suspend Docketing Notice and Hearing Notice for Combined License Application by Oklo Power, LLC and Request for Clarification that [Nuclear Energy Innovation and Modernization Act] Does Not Mandate or Authorize Disregard of NRC Procedural Requirements for New Reactor License Applicants* (Aug. 18, 2020).

¹² *Oklo Power LLC's Answer Opposing Beyond Nuclear et al August 17, 2020[,] Motion for Leave to File a Reply* (Aug. 20, 2020) (Oklo Answer Opposing Reply).

¹³ See *Union Electric Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 145-46, 158 & n.65 (2011) (considering a series of petitions "to suspend adjudicatory, licensing, and rulemaking activities" in multiple proceedings under the Commission's inherent supervisory authority and declining to address "a number of procedural issues that would merit further discussion in a traditional adjudication").

II. DISCUSSION

The Petitioners challenge the Staff's decision to docket the Application and claim defects in the Hearing Notice.¹⁴ They raise concerns regarding the Staff's planned two-step review approach and the Application itself.¹⁵ The Petitioners request that the Commission exercise its supervisory authority over this proceeding to immediately revoke or suspend the docketing notice and hearing notice and "[c]larify that nothing in [the Nuclear Energy Innovation and Modernization Act (NEIMA)] authorizes the Staff to avoid or disregard NRC's current legal requirements for issuing docketing notices and hearing notices in licensing proceedings."¹⁶

The Commission has previously considered "requests to suspend proceedings or hold them in abeyance in the exercise of our inherent supervisory powers over proceedings."¹⁷ We consider the Petitioners' similar request here and view the suspension of licensing proceedings to be a "'drastic action' that is not warranted absent 'immediate threats to public health and safety.'"¹⁸

The Petitioners challenge the Staff's decision to docket the Application and claim that the Staff failed to make a sufficient completeness finding.¹⁹ However, it is well settled in our case law that the Staff's decision to docket an application is not challengeable in an adjudicatory

¹⁴ Petition at 13-16, 16-21.

¹⁵ *Id.*

¹⁶ *Id.* at 3, 32.

¹⁷ *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461, 484-85 (2008). Because we consider the Petition under our inherent supervisory authority, we need not address the procedural issue of whether the requirements of 10 C.F.R. § 2.323 apply. *Callaway*, CLI-11-5, 74 NRC at 158 n.65; see *Oklo Answer* at 6.

¹⁸ *Oyster Creek*, CLI-08-23, 68 NRC at 484 (quoting *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 173-74 (2000)).

¹⁹ Petition at 23-24.

proceeding.²⁰ With limited exceptions such as the Staff's review under the National Environmental Policy Act (NEPA) and other environmental statutes,²¹ "it is the license application, not the NRC staff review that is at issue in our adjudications."²² As we have explained, "[t]he NRC has not, and will not, litigate claims about the adequacy of the Staff's safety review in licensing adjudications."²³ Furthermore, "[a]n application is neither accepted for full review by the NRC Staff nor automatically noticed for a possible hearing when it is submitted."²⁴ Rather, an application is only noticed for a possible hearing once it has been accepted, or docketed, by the Staff.²⁵ In conducting the preliminary acceptance review, "the Staff reviews [the application] to ensure it contains the information and analyses [required] in a proper application to allow the Staff's full review of the proposed licensing action."²⁶ In deciding whether to accept for docketing an application, "the Staff does not consider the technical or legal merits of the application; rather, the Staff's preliminary review is simply a screening process—a determination whether the license application contains sufficient information for the

²⁰ *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3 n.2 (2008).

²¹ The Staff's review under NEPA is an exception because "NEPA places legal duties on the NRC, not on license applicants." *Oyster Creek*, CLI-08-23, 68 NRC at 476-77 n.64.

²² *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 350 (1998); see *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

²³ *Oyster Creek*, CLI-08-23, 68 NRC at 476.

²⁴ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 NRC 237, 241 (2004); see 10 C.F.R. § 2.101 (outlining the application submittal and docketing process).

²⁵ *Millstone*, CLI-04-12, 59 NRC at 241-242.

²⁶ *Id.*

NRC to begin its safety review.”²⁷ Accordingly, we find the Petitioners’ challenges to the Staff’s docketing decision unavailing.

The Petitioners also request that we clarify that the Staff’s docketing decision is not mandated or excused by NEIMA.²⁸ In support of their argument, the Petitioners cite to the docketing letter wherein the Staff stated that one of the circumstances it considered in docketing the Application was that “it is in the national interest to allow innovation and the commercialization of safe and secure advanced nuclear reactors as indicated in [NEIMA].”²⁹ As we explained above, however, NRC Staff docketing decisions are not subject to challenge in NRC adjudications. Moreover, “the issue for decision is not whether the Staff performed well, but whether the license application raises health and safety concerns.”³⁰ Examining the Staff’s rationale for docketing the Application is not within the scope of our adjudicatory proceedings.³¹

The Petitioners’ arguments challenging the Staff’s planned two-step approach are also outside the scope of our adjudications.³² The Petitioners claim that by requesting additional information and conducting regulatory audits in Step 1, the Staff is improperly conducting an

²⁷ *U.S. Department of Energy* (High-Level Waste Repository), CLI-08-20, 68 NRC 272, 274 (2008).

²⁸ Petition at 29.

²⁹ Docketing Letter at 1; see Petition at 29.

³⁰ *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 396 (1995); see *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 213 (1998) (“Adjudications are not the appropriate forum for resolving complaints about NRC Staff conduct.”).

³¹ See *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), CLI-16-12, 83 NRC 542, 555 (2016) (rejecting appellant’s argument that the Staff’s review of a license amendment application must await a decision on a related exemption request because the argument took “issue with the timing of the Staff’s review—an issue that is not cognizable in an adjudicatory proceeding”).

³² See Petition at 27-29.

acceptance review of the application after it has already been docketed.³³ However, we have previously found that “[t]he mere fact that the Staff is asking for more information does not make an application incomplete.”³⁴ Indeed, “[t]he Commission considers many applications sufficiently complete for purposes of docketing, and for starting the adjudicatory process, even though the staff subsequently poses questions to the applicants regarding those applications.”³⁵ In fact, the docketing notice in this proceeding made clear that “[d]ocketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application.”³⁶

The Petitioners’ view that the Staff should not have docketed the Application when it planned to seek additional information to complete its safety review “is incompatible with the dynamic licensing process followed in Commission licensing proceedings.”³⁷ Requests for additional information and regulatory audits are a routine part of NRC licensing reviews.³⁸

³³ *Id.* at 15-16, 27-29.

³⁴ *Shearon Harris*, CLI-08-15, 68 NRC at 3.

³⁵ *Calvert Cliffs*, CLI-98-25, 48 NRC at 350.

³⁶ Docketing Notice, 85 Fed. Reg. at 36,427.

³⁷ *Curators of the University of Missouri*, CLI-95-8, 41 NRC at 395 (“We by no means encourage defective applications, but we also do not take the Intervenor’s absolutist position that an application, however minimally flawed, must be rejected altogether, and may not be modified or improved as NRC review goes forward.”); see *Calvert Cliffs*, CLI-98-25, 48 NRC at 349-50.

³⁸ See, e.g., 10 C.F.R. § 2.102(a) (“During review of an application by the NRC staff, an applicant may be required to supply additional information.”); *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), CLI-07-12, 65 NRC 203, 207-08 (2007) (“We consider our current regulatory approach, of relying on our licensees to submit complete and accurate information, and auditing that information as appropriate, to be entirely consistent with sound regulatory practice.”); *Calvert Cliffs*, CLI-98-25, 48 NRC at 349 (“[Requests for additional information] are a standard and ongoing part of NRC licensing reviews.”).

Although the Petitioners claim that the Application itself is deficient,³⁹ the proper vehicle for such a challenge is the filing of contentions, which can be addressed within the framework of our normal hearing process.⁴⁰ In fact, “the very purpose of NRC adjudicatory hearings is to consider claims of deficiencies in a license application; such contentions are commonplace at the outset of NRC adjudications.”⁴¹

The Petitioners acknowledge their obligation to examine the application and other publicly available documents and file contentions within the initial sixty-day timeframe to intervene in this proceeding.⁴² However, our hearing process also contemplates that contentions may be filed after the initial deadline to intervene based on new and materially different information.⁴³ Thus, to the extent that new and materially different information gleaned during Step 1 of the Staff’s review “raises a legitimate question about the adequacy of the [a]pplication,” the Petitioners can submit a contention to that effect, subject to the filing requirements in 10 C.F.R. § 2.309(c).⁴⁴

³⁹ The Petitioners argue that the Application (1) fails to comply with the requirements of 10 C.F.R. § 52.79(a) to include a Final Safety Analysis Report that “presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems and components of the facility as a whole,” Petition at 24 (citing 10 C.F.R. § 52.79(a)); (2) fails to address several requirements in 10 CFR Part 52, *id.* at 25; and (3) fails to address “the radiological impacts of the proposed reactor or the uranium fuel cycle, including those aspects that are unique to this project” in the Environmental Report. *Id.*

⁴⁰ See *Shearon Harris*, CLI-08-15, 68 NRC at 3 (“If the Petitioners believe the Application is incomplete in some way, they may file a contention to that effect.”).

⁴¹ *Id.* (citing *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-7, 63 NRC 188 (2006); *Connecticut Yankee Atomic Power Co.* (Haddam Neck Plant), LBP-01-21, 54 NRC 33 (2001), *petition for review denied*, CLI-01-25, 54 NRC 368 (2001); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142 (1998), *aff’d in part*, CLI-98-13, 48 NRC 26 (1998)).

⁴² *Oconee*, CLI-99-11, 49 NRC at 338 (internal citation marks omitted); see Petition at 22.

⁴³ See 10 C.F.R. § 2.309(c), (f)(2).

⁴⁴ *Calvert Cliffs*, CLI-98-25, 48 NRC 350 (quotations omitted). In addition to complying with the requirements of 10 C.F.R. § 2.309(c) to demonstrate good cause for filing after the initial

The issues the Petitioners raise with respect to the Application, do not rise to the level of an immediate public health and safety concern to warrant the drastic remedy of suspending the entirety of the Staff's review of the Application.⁴⁵ The Petitioners claim that the deficiencies in the Application deprive them of a full and fair opportunity to request a hearing.⁴⁶ Specifically, they argue that several documents relevant to the proceeding, including the Application itself and the Staff's audit plan of the Application, were not readily accessible to the public in the NRC's Agencywide Documents Access and Management System (ADAMS).⁴⁷

In its answer to the Petition, the Staff acknowledged that "[a]lthough the documents were in ADAMS and accessible from the NRC's public website, and the Petitioners obtained access to them, the Petitioners correctly noted that the documents were not yet profiled by docket number in ADAMS."⁴⁸ The Staff indicated that it has since "corrected the electronic information associated with these files so that the docket number is included."⁴⁹

The fact that the Application and related documents were not profiled in ADAMS with the proceeding's docket number for a short period of time does not compromise the integrity of the proceeding. The Application, which is the focus of NRC adjudications,⁵⁰ was publicly available

deadline for intervention petitions, a petitioner must also submit contentions that meet the applicable contention admissibility requirements in 10 C.F.R. § 2.309(f) and demonstrate standing. 10 C.F.R. § 2.309(c), (d), (f).

⁴⁵ See Petition at 2, 31.

⁴⁶ *Id.* at 3, 22-23, 27-29.

⁴⁷ Petition at 18; see "Audit Plan for the Oklo Power LLC. Aurora Reactor Combined License Application Acceptance Review" (Apr. 1, 2020) (ML20079L202). The Staff notes that "[t]he audit summary report for this audit is in concurrence at the time of this filing and will be released publicly." Staff Answer at 6 n.24.

⁴⁸ Staff Answer at 4 n.12.

⁴⁹ *Id.*

⁵⁰ *Oyster Creek*, CLI-08-23, 68 NRC at 476 ("The purpose and scope of a licensing proceeding is to allow interested persons the right to challenge the sufficiency of the application."); *Calvert*

for the entirety of the sixty-day intervention period, and the Hearing Notice correctly provided the ADAMS accession number for the Application.⁵¹

For these reasons, we deny the Petitioners' request that we exercise our supervisory authority to immediately revoke or suspend the docketing notice and hearing notice or to make the requested clarifications.

The Petitioners contend that "Oklo's failure to show, in its application, what portions have been redacted or indicate the grounds for the redactions, makes it impossible to determine what [Sensitive Unclassified Non-Safeguards Information (SUNSI)], safeguards, or proprietary information should be requested, as directed in the hearing request."⁵² Consistent with our regulations, Oklo appropriately bracketed those portions of the Application it sought to withhold from public disclosure and included affidavits supporting the rationale for the withholdings.⁵³ However, the brackets demarking the redactions were not appropriately copied over into the public version of the Application. Rather, the current publicly available version of the Application "whites out" the withheld segments leaving only blank spaces without any indication of whether the blank space represents an end of a discussion or redacted information. While the Petitioners are correct that it is difficult to discern what portions of the Application are being withheld, we do not find that this lack of clarity justifies the extraordinary remedy requested by the Petitioners.

Cliffs, CLI-98-25, 48 NRC at 349 ("Under our longstanding practice, contentions must rest on the *license application*, not on NRC staff reviews.").

⁵¹ See Hearing Notice, 85 Fed. Reg. at 39,214. The Application was first made publicly available on March 27, 2020. NRC Press Release No. 20-019, "NRC Makes Oklo Advanced Reactor Application Publicly Available" (Mar. 27, 2020) (ML20087M738).

⁵² Petition at 28.

⁵³ See Affidavit of Caroline Cochran Requesting Withholding of Part I from Public Disclosure (Mar. 11, 2020) (ML20075A013); Affidavit of Caroline Cochran Requesting Withholding of Part II from Public Disclosure (Mar. 11, 2020) (ML20075A014); Affidavit of Caroline Cochran Requesting Withholding of Part IV from Public Disclosure (Mar. 11, 2020) (ML20075A015).

However in the interest of transparency, we direct the Staff to make available a public version of the Application that allows a member of the public to reasonably discern what portions of the Application are withheld within fifteen days of the publication of this Order (e.g., by inserting brackets around the whited-out segments or blacking out the redacted segments). The Staff should file a notice on the hearing docket of this proceeding when the appropriately redacted version of the Application is available and include the ADAMS accession number of that version of the Application.

III. CONCLUSION

We *deny* the Petitioners' request to immediately revoke or suspend the docketing notice and hearing notice. We *direct* the Staff, within fifteen days of the publication of this Order, to make available an appropriately redacted version of the Application and to file a notice on the Hearing Docket when that version is available.

IT IS SO ORDERED.

For the Commission



Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of December 2020.

Oklo Power LLC 52-049-COL
Commission Memorandum and Order (CLI-20-17)

Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Ryan K. Lighty, Esq.
Alex Polonsky, Esq.
ryan.lighty@morganlewis.com
alex.polonsky@morganlewis.com

Dated at Rockville, Maryland
this 22nd day of December 2020

Office of the Secretary of the Commission