

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
DOMINION NUCLEAR NORTH ANNA, LLC	)	Docket No. 52-008
	)	
(Early Site Permit for North Anna ESP Site)	)	
	)	

NRC STAFF'S ANSWER TO APPLICANT'S MOTION  
TO APPLY NEW ADJUDICATORY PROCESS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby answers the "Motion to Apply New Adjudicatory Process" submitted by Dominion Nuclear North Anna, LLC ("Applicant" or "Dominion") on January 16, 2004. In its motion, the Applicant requests that the Commission, in this proceeding on the Applicant's request for an Early Site Permit ("ESP") for the North Anna Site,<sup>1</sup> apply the newly revised version of the Commission's Rules of Practice in 10 C.F.R. Part 2 ("New Part 2"). See 69 Fed. Reg. 2182 (Jan. 14, 2004). As discussed further below, the Staff does not oppose the Applicant's Motion.

DISCUSSION

New Part 2 is scheduled to become effective on February 13, 2004, and is applicable to proceedings initially noticed after that date; thus, under the terms of the final rule, New Part 2 would not apply to this proceeding. *Id.*<sup>2</sup> The Commission, however, allowed for application of the New Part 2 prior to the effective date: "The rules of procedure in the final rule apply to proceedings

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<sup>1</sup> See "Notice of Hearing and Opportunity to Petition for Leave to Intervene; Early Site Permit for the North Anna ESP Site," 68 Fed. Reg. 67,489 (Dec. 2, 2003).

<sup>2</sup> As a general proposition, proceedings noticed before February 13, 2004 are to be conducted under the currently applicable Part 2 Rules of Practice. See *Id.*

noticed on or after the effective date, *unless otherwise directed by the Commission.*” *Id.* (emphasis added).<sup>3</sup> As set forth below, the Staff does not oppose the Applicant’s motion.

The Commission has the authority to establish new, case-specific procedures, and has done so in the past. See *National Whistleblower Center v. Nuclear Regulatory Commission*, 208 F.3d 256, 262 (D.C. Cir. 2000). See also *City of West Chicago v. NRC*, 701 F.2d 632, 647 (7<sup>th</sup> Cir. 1983), citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974). The Commission’s *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 19 (1998), set forth the agency objectives to “provide a fair hearing process, to avoid unnecessary delays in the NRC’s review and hearing processes, and to produce an informed adjudicatory record that supports agency decision making on matters related to the NRC’s responsibilities for protecting public health and safety, the common defense and security, and the environment.” *Id.* at 19. As the Statements of Consideration for the New Part 2 note, “[o]ne of the cornerstones of the NRC’s regulatory approach has always been ensuring that its review processes and decisionmaking are open, understandable, and accessible to all interested parties.” 69 Fed. Reg. 2182.

Application of the New Part 2 as proposed by the Applicant is intended to achieve these long-standing agency goals without prejudice to the substantive opportunity of any person to participate in this proceeding.<sup>4</sup> As the Statements of Consideration to the final rule summarize:

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<sup>3</sup> We understand that during informal discussions with the public before the scoping meeting on the System Energy Resources, Inc. application for an ESP for the Grand Gulf Site (January 21, 2004 in Port Gibson, Mississippi), a member of the NRC Staff, in response to a question regarding application of the New Part 2 in the ESP proceeding *for that facility*, indicated that because the Grand Gulf proceeding was noticed before the rule’s effective date of February 13, 2004, the current Rules of Practice would apply. We further understand, however, that in providing the foregoing response, the Staff member did not address the potential for the Commission to apply the new procedures as a matter of its discretion as indicated in the final rule.

<sup>4</sup> If the Applicant’s motion is granted, Subpart L of New Part 2 would apply to this proceeding. Pursuant to § 2.309 of New Part 2, in addition to proffering contentions, petitioners may address the selection of hearing procedures. See § 2.309(g) of New Part 2, 69 Fed. Reg. at 2240.

The Commission believes that there is a need to take some action to improve the management of the adjudicatory process to avoid needless delay and unproductive litigation. Using less formal hearing processes with simplified procedures for most types of proceedings along with the requirement for well-supported specific contentions in all cases can improve NRC hearings, limit unproductive litigation, and at the same time ease the burdens in hearing preparations and participation for all participants.

*Id.* at 2188. The petitioners in this case, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, "Petitioners"), argue, without elaboration, in their answer<sup>5</sup> to Dominion's motion ("Answer") that due to the complex issues involved, "a formal hearing will be a more effective and efficient means of resolving the parties' disputes." Answer at 2. This argument fails to demonstrate how their substantive rights will be impacted, and does not identify any specific procedure in the current Rules of Practice of which they would be deprived if New Part 2 is applied,<sup>6</sup> that is necessary to resolving any complex issue that might arise in this proceeding.

#### CONCLUSION

For the foregoing reasons, the Staff does not oppose Dominion's motion to apply the new adjudicatory process to the North Anna ESP proceeding.

Respectfully submitted,

**/RA/**  
Laura C. Zaccari  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 5th day of February, 2004

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<sup>5</sup> "Petitioners' Opposition to Dominion Nuclear's Application for New Adjudicatory Process," filed January 26, 2004.

<sup>6</sup> Petitioners fail to acknowledge that New Part 2 permits the use of more traditional Subpart G-type processes if the need can be demonstrated. See New 10 C.F.R. § 2.310, 69 Fed. Reg. at 2240.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO APPLICANT'S MOTION TO APPLY NEW ADJUDICATORY PROCESS in the above captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with courtesy copies by electronic mail, as indicated by an asterisk, or by deposit in the U.S. Postal Service, as indicated by double asterisk, with courtesy copies by electronic mail this 5<sup>th</sup> day of February, 2004:

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