RAS 7385

January 16, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

January 16, 2004 (4:00PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before the Commission

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

APPLICANT'S MOTION TO APPLY NEW ADJUDICATORY PROCESS

Dominion Nuclear North Anna, LLC, ("Applicant" or "Dominion") hereby moves the Commission to apply the new adjudicatory process, established in a final rule published on January 14, 2004 (hereinafter referred to as the New Part 2 Rules),[1] to this Early Site Permit proceeding. Applicant requests that the New Part 2 Rules be applied to this proceeding prospectively, after their effective date and after the filing by the Nuclear Information and Resource Service, Blue Ridge Environmental Defense League, and Public Citizen ("Petitioners") of a supplement to their petition to intervene listing contentions. Application of the New Part 2 Rules to this proceeding is permitted by the new rule, would promote the efficiency and other benefits intended by the new rule, and would result in no prejudice to any party.

The New Part 2 Rules are intended to "improve the effectiveness and efficiency of the NRC's hearing process, and better focus the limited resources of all involved." 69 Fed. Reg. at 2,190. This is a important and laudable objective, and one that should be applied equally to pending proceedings where application of the new rules would prejudice no party. In the Early Site Permit proceeding for the North Anna site, the hearing process is at the very earliest stages,[2]

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[1] Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2,182 (Jan. 14, 2004).

[2] Applicant filed its application for an Early Site Permit for the North Anna site on September 25, 2003. A Notice of Hearing and Opportunity to Petition for Leave to Intervene was published in the Federal Register on December 2,

with no Atomic Safety and Licensing Board yet appointed and no contentions yet filed. Accordingly, the new rules could be applied prospectively without any interruption of or added burden on this proceeding.

The New Part 2 Rules apply to "proceedings noticed on or after the effective date [of February 13, 2004], unless otherwise directed by the Commission." 69 Fed. Reg. at 2,182 (emphasis added). Thus, the new rules explicitly allow the Commission to direct the application of these new rules to a proceeding noticed before the effective date. As a general matter, the Commission clearly has the authority to establish new procedures in a proceeding with timely notice to the parties. National Whistleblower Center v. NRC, 208 F.3d 256, 262 (D.C. Cir. 2000), cert. denied, 531 U.S. 1070 (2001); City of W. Chicago v. NRC, 701 F.2d 632, 647 (7th Cir. 1983), citing NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974). An order from the Commission ruling on this motion, after receipt and consideration of answers from Petitioners and the NRC Staff, would provide timely notice to all parties.

Applying the New Part 2 Rules would result in no interruption, delay or added burden in this proceeding. The Petitioners in this case have requested intervention and made a showing of standing, but have not yet pleaded any contentions. The New Part 2 Rules require an intervention petition, filed 60 days after the notice of hearing, to both demonstrate standing and list contentions. An order granting Petitioners another 30 days from the date of the order to supplement their petition and plead contentions would result in the proceeding being at a stage identical to that which would have been reached under the New Part 2 Rules, with Petitioners having had more than 60 days from the Notice of Hearing[3] to formulate contentions. The New Part 2 Rules, which by the time that the supplemental petition is received will have become effective, could then be applied prospectively from that point onwards. The New Part 2 Rules do

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2003. 68 Fed. Reg. 67,489 (2003). A Hearing Request and Petition to Intervene by Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen was filed on January 2, 2004.

[3] 68 Fed. Reg. 67,489 (Dec. 2, 2003).

not change any of the standards for demonstrating standing or pleading contentions and thus will not affect whether Petitioners' intervention petition is granted.

In sum, application of the New Part 2 Rules to this proceeding would serve the Commission's objective in adopting the New Part 2 Rules of improving the effectiveness and efficiency of the NRC's hearing process, and better focusing the resources of all involved. Dominion's application for an early site permit represents the first such application to be noticed and reflects renewed interest in nuclear power in the United States. It is clearly appropriate to make sure that the past inefficiencies in the hearing process are not imported into this new era. Where, as here, the new adjudicatory process can be applied prospectively and seamlessly, the Commission should direct its application, as permitted by the new rule.

For all these reasons, the Commission should grant Applicant's motion by referring Petitioners' intervention petition to the Atomic Safety and Licensing Board with instructions to (1) allow Petitioners an additional 30 days to supplement their petition and list contentions, and (2) apply the New Part 2 Rules thereafter.

Respectfully submitted,

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Dated: January 16, 2004

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion to Apply New Adjudicatory Process, dated January 16, 2004, were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 16th day of January, 2004.

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