

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

RAS 7545  
RAS 7546  
RAS 7547

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/05/04

SERVED 04/05/04

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Paul B. Abramson  
Dr. Anthony J. Baratta

In the Matter of

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007-ESP

ASLBP No. 04-821-01-ESP

April 5, 2004

In the Matter of

DOMINION NUCLEAR NORTH ANNA, LLC

(Early Site Permit for North Anna ESP Site)

Docket No. 52-008-ESP

ASLBP No. 04-822-02-ESP

April 5, 2004

In the Matter of

SYSTEM ENERGY RESOURCES, INC.

(Early Site Permit for Grand Gulf ESP Site)

Docket No. 52-009-ESP

ASLBP No. 04-823-03-ESP

April 5, 2004

MEMORANDUM AND ORDER  
(Denying Motion Requesting Reconsideration  
of Initial Prehearing Conference Location)

By motion dated April 1, 2004, the petitioners in each of the three above-captioned proceedings ask that the Licensing Board reconsider that portion of its March 22, 2004 prehearing order that indicated the initial prehearing conferences for these cases would be held

as part of a joint session in the agency's Rockville, Maryland headquarters facility.<sup>1</sup> According to the petitioners, holding such a conjoined proceeding would prejudice the ability of their members, the general public, and the press to attend the prehearing conference in a manner that is inconsistent with the Commission's long-established policy of holding public portions of agency adjudicatory proceedings in the locale of the facility at issue and the agency's environmental justice policy.

Notwithstanding the recent withdrawal of the most prominent statement of the Commission policy on the location of prehearing and hearing sessions,<sup>2</sup> it is apparent that policy is intended to incorporate a balancing of a number of different factors,<sup>3</sup> the ultimate resolution of which remains a matter over which the presiding officer has considerable discretion. In this instance, after giving due consideration to the factors outlined by the petitioners as well as the similarity of the subject matter of these first-of-a-kind proceedings and the fact that one or more of the principal counsel/representatives for all potential participants, including the petitioners, are based in the Washington, D.C. metropolitan area, the Board has

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<sup>1</sup> As we have noted previously, although the Board designation notices for these proceedings established three separate licensing boards (albeit each with the same members), for simplicity we will refer to these Boards in the singular.

<sup>2</sup> The clearest statement of the Commission's policy on the location for prehearing and hearing sessions was found in Appendix A to 10 C.F.R. Part 2, which was recently rescinded as part of an overall revision of Part 2. See 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004).

<sup>3</sup> Appendix A to Part 2 provided that, although the evidentiary hearing session for a proceeding generally should begin in the vicinity of the site of the facility at issue, the site of prehearing conferences and additional evidentiary hearing sessions was to be fixed with "due regard . . . for the convenience and necessity of the [petitioners and the other parties], as well as of the Board members, the nature of such conference [or session] . . . , and the public interest." 10 C.F.R. Part 2, App. A, § I.(a)-(b). Further, assuming the agency's environmental justice policy has any applicability in this instance, it seems apparent that the considerations under that policy that would be important relative to the location of proceedings can be addressed in connection with any future evidentiary sessions the Board may have regarding the petitioners' environmental justice contentions.

concluded that the most efficient and effective means for conducting an initial prehearing conference for these proceedings is to do so jointly at the NRC's headquarters facility in Rockville, Maryland.

Accordingly, the petitioners' April 1, 2004 reconsideration motion is denied.<sup>4</sup> The location for future prehearing conferences and any evidentiary proceedings for those matters that remain for consideration following the initial prehearing conference is a subject that likewise will be assessed on an individual basis to determine which sessions appropriately can be

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<sup>4</sup> Having heard nothing in response to the request in our March 22, 2004 memorandum and order that we be advised promptly of any scheduling conflicts, the Board assumes that a counsel/representative for all the participants are available during the period of June 21-23, 2004, for the initial prehearing conference.

conducted in the locale of the individual facilities that are the subject of these three early site permit applications.<sup>5</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>6</sup>

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G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 5, 2004

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<sup>5</sup> In this regard, the Board appreciates the petitioners' offer to help locate suitable space for conducting proceedings in the various localities involved and in the future may avail itself of that assistance.

<sup>6</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel or the representatives for the applicants, the petitioners, and the NRC staff in each of the above-captioned proceedings.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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EXELON GENERATION COMPANY, LLC ) Docket No. 52-007-ESP  
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(Early Site Permit for Clinton ESP Site) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (DENYING MOTION REQUESTING RECONSIDERATION OF INITIAL PREHEARING CONFERENCE LOCATION) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
G. Paul Bollwerk, III, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
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Administrative Judge  
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Docket No. 52-007-ESP  
LB MEMORANDUM AND ORDER (DENYING MOTION  
REQUESTING RECONSIDERATION OF INITIAL  
PREHEARING CONFERENCE LOCATION)

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 5<sup>th</sup> day of April 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

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Docket No. 52-008-ESP  
LB MEMORANDUM AND ORDER (DENYING MOTION  
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Michele Boyd  
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215 Pennsylvania Ave., SE  
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
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NUCLEAR REGULATORY COMMISSION

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 5<sup>th</sup> day of April 2004