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NUCLEAR REGULATORY COMMISSION

Title: Dominion Nuclear North Anna ESP

Docket Number: 52-008-ESP; ASLBP No.: 04-822-02-ESP

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

PRE-HEARING CONFERENCE CALL

+ + + + +

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

Wednesday,
September 15, 2004

Teleconference

The above-entitled matter came on for
hearing, pursuant to notice, at 2:00 p.m.

Before Administrative Judges:

ALEX KARLIN, Chair
THOMAS ELLEMAN
RICHARD COLE

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APPEARANCES:On Behalf of the Applicant:

DAVID LEWIS, ESQ.; and
ROBERT HAEMER, ESQ.
of: Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128
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LILLIAN M. CUOCO, ESQ.
Dominion Nuclear North Anna

On Behalf of the Petitioners:

RICK PARRISH, ESQ.
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201 West Main Street
Charlottesville; Virginia 22902
(434) 817-1304

On Behalf of the Nuclear Regulatory Commission:

ROBERT M. WEISMAN, ESQ.
of: Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(301) 415-1533
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OTHER NRC STAFF PRESENT:

JOHN S. CUSHING
ANN P. HODGDON
MAURI T. LEMONCELLI
BROOKE D. POOLE

ALSO PRESENT:

JONATHAN RUND

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P-R-O-C-E-E-D-I-N-G-S

(2:02 p.m.)

1
2
3 CHAIRMAN KARLIN: Good afternoon. My name
4 is Alex Karlin. I am the Chair of the Atomic Safety
5 Licensing Board panel for the Dominion North Anna
6 case.

7 And what I want to do at this point is go
8 around. This is a conference call being held on
9 September -- what is today? -- 15th at 2:00 p.m.
10 Eastern time.

11 So the parties are scattered at various
12 locations around the country. And I'll go around the
13 call and ask everyone to identify themselves. This is
14 in the matter of Dominion Nuclear North Anna, LLC,
15 docket number 52-008-ESP. It's an early site permit
16 case.

17 I want to instruct the reporter that the
18 transcript and docket of this case will begin at page
19 411. We're starting from the pagination that was left
20 off when these cases were still joined together. Now
21 this is a separate one and will be at 411.

22 As I said, we have Dr. Richard Cole, Judge
23 Cole, here with me in Rockville; as well Jonathan
24 Rund, lawyer and law clerk, who will be following this
25 case for us; and Judge Elleman, who can introduce

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1 himself. Dr. Elleman is calling in remotely.

2 JUDGE ELLEMAN: Yes, this is Judge Thomas
3 Elleman. And I'm a technical member of the panel.

4 CHAIRMAN KARLIN: Okay. With that,
5 perhaps we could start with the petitioner, the
6 applicant, and then the staff in terms of identifying
7 yourself.

8 MR. PARRISH: Yes, Your Honor. This is
9 Rick Parrish calling in from Charlottesville,
10 Virginia, representing petitioners, Blue Ridge
11 Environmental Defense League, Public Citizen.

12 And my colleague Diane Curran was
13 planning, is planning to join us, but we can certainly
14 proceed in her absence. I will be the lead counsel
15 for the petitioners for the issues that have been
16 admitted into this proceeding.

17 CHAIRMAN KARLIN: All right. Thank you,
18 Mr. Parrish.

19 MR. LEWIS: For the applicant, Dominion
20 Nuclear Connecticut, this is David Lewis from the law
21 firm of Shaw Pittman. With me is Robert Haemer. In
22 addition, Lillian Cuoco, Dominion Nuclear senior
23 counsel, is on the line on another phone.

24 CHAIRMAN KARLIN: Could you spell those
25 names, Mr. Lewis?

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1 MR. LEWIS: Yes. Robert Haemer, Haemer.
2 Lillian Cuoco, Dominion Nuclear, not Connecticut.
3 Excuse me. I have two cases. Dominion Nuclear North
4 Anna.

5 CHAIRMAN KARLIN: I was going to ask you
6 about that. All right. Thank you, Mr. Lewis.
7 Welcome.

8 And, Ms. Poole, the staff participants
9 here?

10 MS. POOLE: Yes. The staff is calling in
11 from headquarters today: Robert Weisman; Brooke
12 Poole; Ann Hodgdon; -- that's H-o-d-g-d-o-n -- Mauri
13 Lemoncelli, L-e-m-o-n-c-e-l-l-i; and Jack Cushing,
14 C-u-s-h-i-n-g.

15 CHAIRMAN KARLIN: Thank you.

16 Is there anyone else on the call?

17 (No response.)

18 CHAIRMAN KARLIN: All right. Hearing
19 none, we can proceed. As everyone, I believe,
20 understands, the August 6th, '04 order of the board
21 admitted two contentions in this matter and specified
22 some procedural issues and questions that it would
23 like each of the parties to attend to and express
24 their views on.

25 As I see it, the main purpose of this call

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1 is to receive and hear from the three parties -- the
2 staff has indicated and elected to participate as a
3 party -- their views on the issues identified in the
4 August 6th order. So I would propose to go ahead and
5 do that, generally proceeding with the petitioners
6 first, the applicant second, and the staff last.

7 I will pause here for a minute and ask if
8 there are any other issues or questions that the
9 parties believe need to be addressed in this call.

10 (No response.)

11 CHAIRMAN KARLIN: Okay. Fine. Then let's
12 just go ahead. As the order indicated, there was a
13 requirement under the regulations for the parties to
14 meet and to see if there are any opportunities to
15 resolve, simplify any of the issues. Can you tell me
16 whether you had such a meeting and what the impact or
17 status of those discussions was.

18 MR. PARRISH: Yes, sir. This is Rick
19 Parrish for the petitioners. We did meet in late
20 August, August 25th, at Diane Curran's office. I was
21 participating via telephone. And it's fair to say, I
22 believe, that we made some progress in simplifying
23 this proceeding.

24 We have, shall I say, agreed in principle
25 on the dismissal of the no action alternative

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1 contention. Petitioners are still working on some
2 language that we will submit to the applicant and the
3 NRC staff, but I am very confident that we will agree
4 to the dismissal of that contention.

5 The remaining contention for this
6 proceeding concentrates on water quality and the
7 striped bass in Lake Anna downstream. And that issue
8 we were not able to come to any agreement on. We will
9 be proceeding. There have been document disclosures
10 already. And I think the scheduling of the hearing
11 for that contention depends, in part, upon the
12 publication of the draft and final environmental
13 impact statement. The draft is currently scheduled
14 for release in mid November.

15 CHAIRMAN KARLIN: Yes. Okay. I was going
16 to ask the staff about that at some point to give us
17 a current status of that as best they can estimate.

18 If that is all from Mr. Parrish, Mr.
19 Lewis, does that basically confirm? Is there anything
20 more you need to report on?

21 MR. LEWIS: That's correct. Perhaps down
22 the road, there may an opportunity to talk about the
23 striped bass contention. And if so, we will be
24 willing to do so. But right now we think we have
25 reached an understanding on the no action alternative

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1 contention and we're now working on providing our
2 disclosures and then moving on with the striped bass
3 contention.

4 CHAIRMAN KARLIN: Good. Did staff
5 participate in those discussions as well, Ms. Poole?

6 MS. POOLE: Yes, we did.

7 CHAIRMAN KARLIN: Okay. Yes, you had just
8 filed in as party status by that point, I guess. Can
9 you confirm those are the discussions essentially?

10 MS. POOLE: Yes. That reflects the
11 discussions as we understood them.

12 CHAIRMAN KARLIN: Good. Well, it sounds
13 like that is good progress. It seems like the no
14 action alternative is a relatively, it seems to me,
15 pure legal issue without a lot of actual questions in
16 it. And perhaps it will be mooted out by other events
17 or can be cured by the applicant without prejudice if
18 they choose to do that.

19 Perhaps you could help us, Ms. Poole, with
20 the question of what is your schedule; that is, what
21 is the NRC schedule, for the SER and the EIS, draft
22 and final? Can you help us with that at this point?

23 MS. POOLE: Yes. The current schedule is
24 reflected in a June 22nd letter to the licensee, which
25 is available on the NRC's Web site. That is still the

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1 current schedule.

2 And, as it is scheduled today, the draft
3 environmental impact statement is scheduled to be
4 issued in mid November. The target date is November
5 12th, 2004.

6 The draft safety evaluation report is
7 scheduled to be issued mid December. Specifically,
8 the target date is December 20th, 2004. The final
9 safety evaluation report is scheduled to be issued mid
10 June, specifically June 16th of '05.

11 The SER will be issued as a NUREG,
12 including any ACRS report that the staff receives,
13 approximately late August, August 25th of '50. And
14 the final environmental impact statement is scheduled
15 to be issued mid July of 2005. The target date is
16 July 15th.

17 CHAIRMAN KARLIN: Excellent. So the final
18 SER is June of '05, but then depending upon the ACRS
19 report, you are issuing a NUREG late August, I guess?

20 MS. POOLE: Yes. Correct.

21 CHAIRMAN KARLIN: Forgive me if this
22 question is not logical, but do we know when the ACRS
23 report is planned to be issued?

24 MS. POOLE: Actually, our schedule
25 reflects that the ACRS letter to the Commission would

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1 be issued on or about August 17th of '05. That's the
2 target date that we have in the schedule now.

3 CHAIRMAN KARLIN: Okay. And certainly for
4 all of the mandatory findings and this sort of thing,
5 we will have to have all of those under our belt
6 before we can proceed, as I see it.

7 Okay. Excellent. That is helpful.
8 Perhaps we can move just to another issue, which is --
9 and I have to ask this question -- whether we have a
10 unanimous consent to proceed, vis-a-vis the
11 contentions at least, under subpart N, expedited
12 proceeding. Any interest in that?

13 MR. PARRISH: This is Rick Parrish for the
14 petitioners.

15 We would prefer not to do that, Your
16 Honor.

17 CHAIRMAN KARLIN: Right. Okay. So
18 needing unanimity is probably dispositive unless we
19 can cajole you into changing your mind. We will just
20 wait on that one and understand that that is probably
21 set aside for the moment.

22 We are already proceeding, as I haven't
23 mentioned and perhaps should have, under subpart L;
24 which would be the informal proceedings, which are in
25 some respects not entirely tested and the SER a bit

1 new in the way they work.

2 How are the disclosures going? I see that
3 each party and the staff has made their disclosures
4 and the staff have docketed the hearing file. We are
5 not really in a position to question or judge. It
6 looks adequate to me. But are there any issues that
7 anyone has with the adequacy of those disclosures?

8 (No response.)

9 CHAIRMAN KARLIN: No. Okay. It's good
10 that the parties, I note, formed a joint motion to
11 waive the privilege log. I'm a bit curious about
12 that. I wonder if you would care to comment. Is this
13 simply because there were virtually no privilege
14 documents to be concerned about or was there some
15 other logic going on?

16 MR. LEWIS: This is David Lewis for the
17 applicant.

18 From our perspective, the privileged
19 documents that we had were mainly e-mail messages and
20 drafts and responses to questions. It was a lot of
21 work to log all of those when they were fairly clearly
22 not documents that were going to be produced. So we
23 are simply hoping to avoid that burden.

24 CHAIRMAN KARLIN: Good. And all the
25 parties consented in the joint motion. So we were

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1 happy to see that done and granted that motion. So no
2 issues with regard go disclosures. I see the staff
3 recently did a supplemental disclosure. And I assume
4 we'll continue to do so when required as this
5 proceeding moves on.

6 MS. POOLE: Yes, Your Honor. In view of
7 the 14-day requirement in section 2.2336(d), we
8 anticipate filing an update to the hearing file
9 weekly.

10 CHAIRMAN KARLIN: Great. Okay. Also, we
11 received today or yesterday, I guess, from -- I'm not
12 sure whether it's the applicant or not -- a CD with
13 the application, about 2,000 pages of material.

14 Mr. Lewis, thank you for that. I don't
15 know whether you have distributed a copy of that to
16 Judge Elleman or not. Did you send one to him as
17 well?

18 MR. LEWIS: It was sent to all three
19 judges and the intervenor's attorney. I don't know
20 what address was on the -- whether it was the
21 licensing board's main address or a home address for
22 Mr. Elleman.

23 CHAIRMAN KARLIN: Yes. Well, we've looked
24 around here preliminarily and did not find the one
25 addressed to Judge Elleman. It is your call, Judge

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1 Elleman, but I think maybe it's been sent to your home
2 and just hasn't gotten there, it's a little bit slower
3 moving down south.

4 JUDGE ELLEMAN: Yes. It would seem
5 expedient to wait several days and see if it appears.
6 And if it doesn't, then maybe I can make inquiry
7 through you Judge Karlin to get a copy somehow.

8 CHAIRMAN KARLIN: Right.

9 MR. LEWIS: I can check. I just don't
10 have it here in my office, but it was distributed to
11 all three board members and to the petitioners, both
12 counsel. We felt it was appropriate since we were
13 updating the entire application to reflect all the REI
14 responses that everybody get it as promptly as
15 possible.

16 JUDGE COLE: Judge Karlin and I had
17 received our copies. This is Judge Cole.

18 CHAIRMAN KARLIN: Yes. Okay. Well, we'll
19 wait and see if it comes in here and check with Judge
20 Elleman a bit tomorrow or the next day and see if it
21 gets in down there. In the meantime, it would be good
22 if when everyone files their documents if you're not
23 already doing so when you file them electronically, if
24 you could add or put Judge Elleman's home e-mail
25 address on there as well if you don't already have

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1 that.

2 MR. LEWIS: I just checked the letter. It
3 was sent to the Atomic Safety and Licensing Board
4 address. So that's where it should have gone.

5 CHAIRMAN KARLIN: All right. Well, we'll
6 look around for it. If we find it, we'll forward it
7 on. If not, we might get back to you and ask for you
8 to send a copy to Judge Elleman directly.

9 MS. POOLE: Judge Karlin, this is Brooke
10 Poole. Could you provide Judge Elleman's home e-mail
11 just to ensure that we have it correctly?

12 CHAIRMAN KARLIN: Right. Go ahead, Judge
13 Elleman. Why don't you give them the --

14 JUDGE ELLEMAN: All right.

15 CHAIRMAN KARLIN: And perhaps your home
16 address if you want to do that.

17 JUDGE ELLEMAN: Okay. My e-mail at home
18 is Elleman, my last name. That's e-l-l-e-m-a-n, --
19 it's all lower-case -- @eos, e-o-s, dot, n-c-s-u, dot,
20 e-d-u. Was that clear to everyone?

21 CHAIRMAN KARLIN: That's fine.

22 JUDGE ELLEMAN: Okay. For a mailing
23 address, my mailing address is 5207 Creedmoor Road.
24 And Creedmoor is C-r-e-e-d-m-o-o-r. And that's
25 Raleigh, North Carolina. The zip is 27612.

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1 MS. POOLE: Thank you.

2 MR. PARRISH: Thank you.

3 CHAIRMAN KARLIN: Yes. Thank you, Judge
4 Elleman.

5 All right. So we have no further
6 discussion on the disclosures. The order of August
7 6th had indicated that we should talk about schedule
8 and when we might be ready to proceed. It seems to me
9 that we ought to talk sort of conceptually first
10 before we get into any kind of specifics.

11 I would like to hear from each of you
12 about the value or appropriateness or not of trying to
13 proceed on two, hopefully one, contention in isolation
14 early in light of the fact that perhaps the substance
15 of it may be since mooted out once the EISEs are
16 issued or should we wait until, as I think is more the
17 norm, the EIS issued and the SER before we try to
18 proceed and work the issues.

19 Perhaps petitioner could speak to that
20 first, Mr. Parrish.

21 MR. PARRISH: Yes. This is Rick Parrish,
22 Your Honor.

23 I don't see any need to try to rush this.
24 I think waiting until the EIS is on the table is the
25 appropriate way to go. And obviously we will continue

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1 to exchange documents in the meantime.

2 CHAIRMAN KARLIN: Okay. Mr. Lewis?

3 MR. LEWIS: Yes, we discussed this among
4 the parties at our August 25th meeting. The
5 understanding that we reached was that the parties
6 would be prepared to go forward on any evidentiary
7 hearing on this issue 60 days after issuance of the
8 final environmental impact statement and expected that
9 we could complete a hearing on this contention in
10 about two days, maybe one day, but we thought it would
11 be safer for purposes of estimation to say two.

12 Of course, that's a schedule for an
13 evidentiary hearing. We may well apply for summary
14 disposition well before that but after issuance of the
15 draft environmental impact statement.

16 CHAIRMAN KARLIN: Okay. So this was
17 discussed on August 25th? And you all thought that 60
18 days after the EIS would be about the time to proceed
19 with the hearing?

20 MR. LEWIS: That was my understanding,
21 yes.

22 MR. PARRISH: Yes, Your Honor. That's
23 what we were discussing.

24 CHAIRMAN KARLIN: Okay. And, Ms. Poole,
25 that's consistent with what your understanding was?

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1 MS. POOLE: Yes, sir.

2 CHAIRMAN KARLIN: Great. So, as I see it,
3 that would be FEIS July 15, '05. The ACRS NUREG would
4 be August 25th of '05. Let's hold on for a second
5 because you --

6 JUDGE ELLEMAN: We just got a message that
7 Diane Curran has been trying to get a call, but he
8 can't get on.

9 MR. PARRISH: Yes. I got the same message
10 being via e-mail. Diane and I will try to -- she has
11 been put on hold three times and has not been able to
12 get in to the call. We can take it up with the staff,
13 who is Karen Valloch, perhaps.

14 CHAIRMAN KARLIN: Yes. Ms. Valloch is
15 right here. How many lines do we have for this? We
16 have ten lines. And I don't think we're covering them
17 all. We certainly don't have ten different call-ins
18 on this. So I'm not going to understand. Do you have
19 Ms. Curran's phone number? So if you could call her.
20 I mean, I don't know if she's got the right phone
21 number.

22 MR. PARRISH: She does. I gave her the
23 number. I called in, and that's the number she had
24 tried. But it's not a problem other than making sure
25 it doesn't recur, I guess.

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1 CHAIRMAN KARLIN: Yes. Okay. Thanks a
2 lot. Ms. Valloch is going to go and call Ms. Curran.
3 But I guess, Mr. Parrish, you are saying it is okay
4 for us to proceed.

5 MR. PARRISH: It is, Your Honor.

6 CHAIRMAN KARLIN: Okay. Well, I apologize
7 for that. I'm not sure what the technical glitch was.
8 We'll try to find out and make sure it doesn't happen
9 again.

10 I think we had enough lines to make this
11 work. So there must be something else going on.

12 CHAIRMAN KARLIN: So back to the
13 scheduling. Sixty days after the final environmental
14 impact statement, that would be something like next
15 September, I would think, before we get going.

16 And since you mentioned the two days, I
17 think it was Mr. Lewis, you said two days, perhaps
18 even one, that's one reason why maybe part N would
19 work, I think. Isn't that limited to two days?

20 (No response.)

21 CHAIRMAN KARLIN: No answer. Okay. It
22 was worth a try.

23 MS. POOLE: I'm paging through my rules.

24 CHAIRMAN KARLIN: I think it is limited to
25 two days generally. That's ample time perhaps for

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1 this contention -- I don't know -- especially if we
2 get it down to one. We'll see, although perhaps there
3 will be other contentions by that time on other notes
4 and we'll have to rethink the issue.

5 I think we have talked, the panel, board,
6 has talked. And at some point, our inclination is to
7 have a view of the lake and of the site. Site
8 suitability issues will come up certainly in our
9 mandatory findings. And so at the point we might
10 solicit or think about how we would conduct that view
11 in a fair way to get a look at the operation of the
12 site, that does not need to be any urgency about that,
13 but that's a point.

14 Also, we are going to solicit viewpoints.
15 Perhaps you could speak to it, even now, although this
16 may be a year in advance, of locations for the
17 hearing; i.e., someplace down in the vicinity. I
18 don't know whether the closest places are
19 Charlottesville or Fredericksburg or Richmond or what.

20 Do you have any thoughts on that? Has
21 that been discussed?

22 MR. PARRISH: It has not, Your Honor. The
23 closest in my sense is that it's a pretty equal
24 distance to Fredericksburg, Richmond, and
25 Charlottesville.

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1 CHAIRMAN KARLIN: Yes. That was Mr.
2 Parrish speaking?

3 MR. PARRISH: Yes, sir. Yes, sir.

4 CHAIRMAN KARLIN: Okay. Thank you. Well,
5 think about that. It's our inclination that at least
6 some of the hearings would be down there. Unless
7 there is something else, I would like to turn to the
8 question that was asked that the parties speak to the
9 nature of the mandatory findings, I think it was
10 called, that were sort of listed in the December 2nd,
11 '03 initial hearing notice for this.

12 My thought is to sort of go around the
13 table and ask your thoughts on that and then to ask
14 for something to be submitted in writing within the
15 next couple of weeks.

16 Let me pause for a moment and say Ms.
17 Valloch just gave us a note that says, "Only seven
18 lines were given for this, and they are all being
19 used."

20 So, somehow or another, we only got seven.
21 I'm not sure why. I apologize. And hopefully you can
22 convey our apologies to Ms. Curran. And we will make
23 sure that doesn't happen again.

24 MR. PARRISH: Certainly.

25 CHAIRMAN KARLIN: That seems to be the

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1 explanation there.

2 Anyway, go around the room and ask your
3 thoughts. And this is including, I would like, the
4 thoughts of the petitioner. I also would note that I
5 have read in the public record the joint filing of
6 CERI and the NRC public record in the Grand Gulf
7 proceeding regarding what they think about mandatory
8 findings and how to go about doing that in an
9 uncontested case. This is, of course, a contested
10 case. So it's a bit different.

11 I don't know. Are you, the petitioner,
12 prepared to discuss this issue or not at this moment?
13 You weren't asked to in the order.

14 MR. PARRISH: And to tell you the truth,
15 I'm not, Your Honor. Rick Parrish here. I would be
16 happy to submit something in writing within a couple
17 of weeks, but I am going to have to get a little
18 further up to speed before I am able to do that.

19 CHAIRMAN KARLIN: Okay. And I'm not
20 trying to signal whether or not any inclination one
21 way or another whether petitioner has any right or
22 opportunity to participate in such hearings that are
23 really outside of the contentions, but, you know, it
24 might be valuable to use.

25 Anyway, Mr. Lewis, perhaps you can speak

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1 to this issue.

2 MR. LEWIS: Yes. We've discussed it with
3 the NRC staff from Dominion's perspective. We would
4 be comfortable following the same procedures that were
5 outlined in the Grand Gulf case.

6 I don't think it makes a difference that
7 there is a contention in our proceeding. I think that
8 the board's inquiry on the noncontested portion will
9 be basically the same and, therefore, make good sense
10 to us to follow that same procedure and to have
11 uniformity among the cases and the approaches taken to
12 the noncontested portion of the proceeding.

13 CHAIRMAN KARLIN: Okay. And, Ms. Poole?

14 MS. POOLE: Generally we would agree with
15 Mr. Lewis. We would add one thought. In the Grand
16 Gulf filing, the parties proposed that the staff would
17 not provide an executive summary of the key areas of
18 review and staff findings in the SER and the EIS.

19 We're not opposed to doing that, to
20 providing such an executive summary, should the board
21 desire one. Our thought is that both the EIS and the
22 SER have executive summaries and abstracts at the
23 beginning of those documents, which may provide an
24 overview. But if the board would like something
25 different or additional, we would certainly provide

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1 that.

2 CHAIRMAN KARLIN: Okay. Thank you. We'll
3 take that into consideration when we get there.

4 I had a couple of questions about it that
5 perhaps you could address now if you feel prone to or
6 in your writing when you submit it. In terms of the
7 mandatory findings, some of them are from the Atomic
8 Energy Act, section 189(a), which requires a hearing,
9 as I understand it, and some findings and the NEPA
10 under Calvert Cliffs and the regs that came after
11 that.

12 So I think we ought to step behind section
13 2.104(b), which sort of lays out what the hearing
14 notice has to say, which is somewhat of a paperwork
15 procedural document, and get behind that to the
16 regulations that are behind that that substantively,
17 as it were, require us to make these findings. I
18 would ask you to address that, if you could, not just
19 2.104(b), which just says what the hearing notice has
20 to say.

21 We're now looking -- and the hearing
22 notice did say that. And that's done, fini. Now, we
23 need to think about what we need to do. It seems to
24 me that one of the areas that is different from Grand
25 Gulf's is that if you look, I am looking at their

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1 filing right now on page 3. And it says, "If the
2 hearing is uncontested, then the licensing board is to
3 determine without conducting a de novo review of the
4 license application whether" blah de blah de blah.

5 So I think it's implicit -- and I would
6 like to hear any objections or differing views -- that
7 if the hearing is uncontested, we do this without
8 conducting a de novo review that is Grand Gulf's. If
9 the hearing is contested, which it is, then we do
10 conduct a de novo review of all of those questions and
11 issues and make a decision de novo. It's not a
12 review. It's a de novo decision, I guess it would be.

13 And so if you have any thoughts on that,
14 I would like to see them in whatever you submit.

15 MR. LEWIS: Judge Karlin, my understanding
16 is that where there is a contested hearing, you would
17 do a de novo review with respect to those matters that
18 are in controversy, the contested issues, but with
19 respect to all other issues, your focus is basically
20 the same as an entirely uncontested case.

21 So with respect to the contentions and the
22 contested issues, you would look at all of the
23 testimony and evidence and reach your decision. On
24 all other noncontested issues, you would basically
25 receive the application and SER and EIS into evidence

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1 and would be looking to see that the appropriate areas
2 that were required to be looked at were looked at.

3 CHAIRMAN KARLIN: And that's Mr. Lewis who
4 is speaking?

5 MR. LEWIS: Yes, sir.

6 CHAIRMAN KARLIN: Okay. Please try to
7 identify yourself for the court reporter's purposes
8 here. We're all a bit new or at least I am. And it
9 would be helpful to the court reporter to have that.

10 Okay. Well, that is certainly one view.
11 I'm not sure whether that is the way it is written and
12 because it does speak to -- when you read the hearing
13 notice, it doesn't seem to say "limited to the issue
14 that is in contention." In fact, it lists the three
15 issues or more that have to be decided. But please
16 try to speak to that issue when you submit your
17 thoughts in writing on that.

18 Another question I have is, how does
19 section 51.105 apply? That appears to me to be the
20 underlying or at least one of the underlying
21 substantive regulations which mandate that we make
22 these findings -- that's the NEPA provisions, of
23 course -- in order to issue a construction permit,
24 which this is. So if you could think about that a
25 little bit?

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1 I have a particular knotty problem. And
2 we are not going to resolve these questions in the
3 next 20 days, I might say. They'll probably come up
4 later. But I'm troubled by 51.105, which talks about,
5 I think, 105(a)(3), which requires us to do a
6 cost-benefit sort of weighing under NEPA in making the
7 ultimate NEPA decision.

8 Meanwhile, 52.17, 18, and 21 all say that
9 neither the applicant nor the staff is required to
10 discuss benefits in EIS or the SER. How is this board
11 going to do a cost-benefit analysis if there is no
12 discussion of benefits?

13 MR. WEISMAN: Your Honor, this is Robert
14 Weisman with the NRC staff.

15 CHAIRMAN KARLIN: Yes?

16 MR. WEISMAN: And if I might address that
17 briefly, I think that one way of looking at it is that
18 the proposed action here is issuance of an ESP. Many
19 of the environmental effects that we are going to be
20 examining in the EIS go to construction of a nuclear
21 power plant.

22 It's not possible to make the balancing of
23 the costs and the benefits if you're not going to be
24 considering the benefits, as directed by 52.17. And
25 the staff would submit that that balancing on the

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1 construction of the nuclear power plant, the balancing
2 of costs and benefits, would wait for the CLL stage.

3 The balancing that we would make to
4 satisfy part 51 here would be with respect to issuance
5 of the ESP. That's what the staff would submit.

6 CHAIRMAN KARLIN: Okay. Anyone else? Mr.
7 Lewis, have you thought about that?

8 MR. LEWIS: I certainly agree that this is
9 not the proceeding to be making an ultimate finding on
10 the balancing of whether a new plant should be built.
11 That issue is not yet ripe. And the benefit side of
12 the environmental impact statement does not exist and
13 is not required under the NRC's rules, but NRC's rules
14 explicitly state that the application does not need to
15 address need for power.

16 CHAIRMAN KARLIN: Yes. I agree with you.
17 They clearly do say they don't need to address
18 benefits, including need for power.

19 MR. LEWIS: Yes.

20 CHAIRMAN KARLIN: And that's what troubles
21 me because 51.105 says that in public hearings in the
22 proceedings, the insurance of construction permits, we
23 must determine after weighing the environmental and
24 protective technical and benefits against
25 environmental costs, whether or not to issue the

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1 permit.

2 MR. WEISMAN: This is really only a
3 partial construction permit. And, as you have said,
4 it is a new process. I think there are some wrinkles.
5 I think that this is an area that needs to be worked
6 out.

7 I think that under NEPA, you need to
8 justify issuance of the ESP. And beyond that, you
9 need to ensure compliance with those portions of EIS
10 that the Commission has said should be addressed in
11 the ESP proceeding.

12 CHAIRMAN KARLIN: And since that is one of
13 them, how do we make the ultimate NEPA decision
14 without weighing costs and benefits?

15 MR. PARRISH: Your Honor, Rick Parrish
16 here for the petitioners.

17 We have had some discussion of this issue.
18 Our perspective is that, similar to the implication in
19 your question, without a discussion of the benefits
20 and the cost-benefits, this probably shouldn't really
21 be called an EIS. It may mislead the public into
22 thinking that these issues have been thoroughly vetted
23 when, in fact, they have not at this stage.

24 So that is something we will certainly be
25 addressing.

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1 CHAIRMAN KARLIN: Right. Well, the regs
2 are what they are. And we're obliged to follow them.
3 But I'm a bit quizzical about how we weave through
4 these and how they all apply if they all apply. So I
5 would appreciate any thoughts you have on that.

6 Let's see here. I guess another question
7 is, to what extent, if any, should the petitioner or
8 any other member of the public be allowed to
9 participate other than a limited appearance statement,
10 which I understand, in any hearings that we might have
11 on the mandatory findings?

12 Are they barred? Are they permitted? Is
13 it under the discretion of the board? And, of course,
14 the other issue might be other parties. The state,
15 presumably the state, would have some opportunity to
16 participate as a governmental entity if it chose to do
17 so.

18 Any thoughts you have on that? I note
19 that -- I can't assume at the moment that there's no
20 role necessarily for the petitioner, but I just don't
21 know whether there might be or not.

22 Okay. I guess that is all of the
23 questions I have. I think we have covered most of
24 them that are in the October 6th order. I'm sorry.
25 I keep saying October. It's August 6th, yes.

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1 It seems like the parties are agreed that
2 we really should wait until after the final EIS. And
3 I think I am going to confer with the other judges,
4 but I think we are inclined to agree with that as the
5 most efficient way of proceeding, although it is kind
6 of strange -- I'm a new judge here -- to think that
7 this proceeding has to sort of sit on ice for 12
8 months before we can move ahead and do anything. But
9 that's the way the system works.

10 JUDGE COLE: Could we get the staff
11 positions on that, on when we should go to hearing?

12 CHAIRMAN KARLIN: I think so. Ms. Poole
13 I think concurred that they had agreed to that in
14 August 25th. Right, Ms. Poole?

15 MS. POOLE: That's correct. Looking at
16 51.104, we felt that we couldn't go to hearing on the
17 environmental issue until the final EIS had been
18 issued.

19 CHAIRMAN KARLIN: Okay. Yes. So we
20 really may not have a lot of action here except for
21 the supplementation by the staff over the next few
22 months.

23 Okay. In terms of obtaining written
24 submission from the parties, let's see. On the issues
25 we have discussed here and any other issues about the

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1 mandatory findings, today is the 15th. What if we,
2 say, given everyone 15 days to submit something to us,
3 perhaps no greater than 10 pages in length, on this
4 subject? If you can submit something jointly, all the
5 better, but let's say October 1st.

6 So I would be instructing the parties and
7 the staff to submit their views to us on the issues
8 relating to the mandatory findings and how they
9 interrelate with the regulatory requirements we have.

10 It will be somewhat like what I see was
11 submitted in this area. But perhaps you can speak to
12 some of those issues we just raised. It will be
13 helpful to us. And I think all of the judges in the
14 three ESP proceedings are trying to study what has
15 been filed in the others on these issues to see if we
16 can achieve some common understanding of how we
17 proceed.

18 MR. PARRISH: Yes, Judge Karlin, we'll do
19 it.

20 MR. WEISMAN: Your Honor, this is Bob
21 Weisman with the NRC staff. I have just briefly
22 conferred with Ms. Poole.

23 I know I am going to be out of the office
24 for at least four days during that time. We wondered
25 if we might be able to have a little bit of -- extend

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1 that by a week or ten days to just give us a little
2 more time to do that.

3 CHAIRMAN KARLIN: Well, since we are not
4 going to go to a hearing for a year, I'm sure. I
5 can't really believe there is an internal problem with
6 that. So how about Friday, the 8th?

7 MR. WEISMAN: Is that okay with you?

8 MS. POOLE: That would be fine. Thank you
9 very much.

10 MR. LEWIS: Judge Karlin, this is David
11 Lewis again.

12 Just on the statement about having a
13 lengthy period before we go to hearing, I just wanted
14 to reiterate that we do have the option of moving for
15 summary disposition and may well exercise that option
16 after issuance of the draft environmental impact
17 statement.

18 CHAIRMAN KARLIN: That's true. You always
19 have that option.

20 MR. LEWIS: I just didn't want anybody to
21 be surprised.

22 CHAIRMAN KARLIN: No. Okay. I think that
23 is understood, and I appreciate you pointing it out.

24 I appreciate everyone's participation on
25 this call. Any further questions or issues that

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1 someone needs to raise?

2 (No response.)

3 CHAIRMAN KARLIN: All right. Then we'll
4 close the call and adjourn this prehearing conference
5 in North Anna. Thank you, everyone.

6 (Whereupon, at 2:45 p.m., the foregoing
7 matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Dominion Nuclear

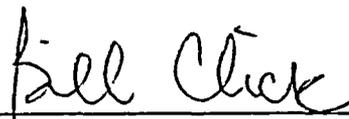
North Anna ESP

Docket Number: 52-008-ESP;

ASLBP No. 04-822-02-ESP

Location: Teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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