

November 15, 2004

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

November 15, 2004 (2:50pm)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

DOMINION NUCLEAR NORTH ANNA, LLC)

(Early Site Permit for North Anna ESP Site))

) Docket No. 52-008

) ASLBP No. 04-822-02-ESP

**DOMINION'S ANSWER OPPOSING
INTERVENORS' MOTION TO SUSPEND PROCEEDING**

Dominion Nuclear North Anna, LLC ("Dominion") submits this answer opposing Intervenor's Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System, filed by the Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen ("Intervenors") on November 3, 2004. Intervenor's have not demonstrated that they are prejudiced by the temporary unavailability of the ADAMS system in any way.

Intervenors continue to have access to the information necessary to prepare their case. Intervenor's involvement in this proceeding before the Licensing Board is currently limited to the litigation of two admitted contentions. Pursuant to the NRC's Rules of Practice, Dominion has made available all non-privileged documents and data compilations that were identified as relevant to these admitted contentions through a search of the information and documentation reasonably available to and under the possession, custody, or control of Dominion. All of this information remains available.

Intervenors also had electronic access to the NRC's case file from September 7, when the initial disclosure were made, until October 25, when access to ADAMS was temporarily suspended. Intervenors therefore had nearly seven weeks to review this information before their electronic access was interrupted. Further, Dominion presumes that the NRC Staff would provide Intervenors with a hard copy, at Intervenors request, of any of the documents listed in the Staff's disclosure filings. See 10 C.F.R. §§ 2.1203(a)(2)-(3).¹

In addition, a considerable amount of general information remains accessible on the NRC's website. Intervenors assert that the NRC posts on ADAMS all publicly available notices, technical reports, generic correspondence, and enforcement orders and correspondence. Motion at 2. The NRC website continues to provide access to meeting notices and press releases, technical reports (NUREGs and Regulatory Guides), generic communications, and enforcement actions. The NRC's web-pages on early site permit proceedings contain complete copies of the all three ESP applications, the NRC's guidance on processing ESP applications, the correspondence on ESP generic issues, and summaries and handouts from public meetings. See <http://www.nrc.gov/reactors/new-licensing/esp.html>.²

Intervenors fail to explain why the wealth of information that remains available, including Dominion's production of documents and data compilations, is insufficient to allow them to prepare their case. Intervenors' argument that they have no access to "generic NRC

¹ The NRC's staff's disclosures are not limited to documents that are relevant to the admitted contentions, but rather include all non-privileged documents that provide support for, or opposition to, the application or supporting the NRC staff's review. 10 C.F.R. § 2.2.336(b)(3).

² In a separate letter to the Commissioners, Intervenors argue that the NRC should not release the draft environmental impact statement (DEIS) for public comment until ADAMS is restored, because "the closing of ADAMS makes it virtually impossible for anyone to obtain a copy of the North Anna Early Site Permit DEIS or to comment on this document." Letter from R. Parrish and Diane Curran to the Commissioners, "Request for Postponement of the Release of the DEIS for North Anna ESP" (Nov. 3, 2004). Dominion expects that the NRC Staff will post a fully accessible copy of the DEIS on its website, as the NRC Staff does in many other proceedings. Consequently, the temporary interruption of ADAMS should have no impact on the public availability of the DEIS. Further, the DEIS is currently not scheduled to be released until mid-December.

documents regarding advanced reactor siting and design issues that may be relevant to admitted contentions. . .” is unpersuasive. Motion at 3. Since the two admitted contentions relate to the thermal impact on striped bass and the no-action alternative, documents relating to “advanced reactor siting and design issues” are simply not relevant.

Intervenors’ argument that such documents may provide a basis for a late-filed contention (*id.*) is equally unpersuasive. Contentions are meant to be based on the application and supporting documentation available when a petition is filed. See 10 C.F.R. § 2.309(f)(2). Moreover, the speculative possibility that some document might provide the basis for a late-filed contention does not justify suspending activities on the admitted contentions. In addition, the temporary unavailability of ADAMS would not foreclose Intervenors from proffering late-filed contentions after access to ADAMS is restored, if indeed the prior unavailability of some document provides good cause for the filing.

Moreover, the evidentiary hearing in this proceeding is not expected to begin until September 2005. Tr. 424-26. Consequently, Intervenors have months to prepare for the hearing. Since the NRC has announced that it expects to restore access over the next few weeks to hearing-related documents and to time-sensitive documents related to opportunities for hearing or needed for public reviews and comments,³ it is difficult to see how the temporary unavailability of ADAMS would have any impact on the Intervenors’ hearing opportunity. In sum, there is simply no basis to upset this proceeding.

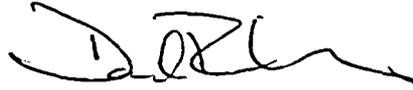
Intervenors are also incorrect in asserting that a delay would not prejudice Dominion. The cost of staffing the ESP project are considerable, and any appreciable delay would impose a

³ NRC Press Release 04-140, “NRC Restores Various Documents Removed From Web Site for Security Review” (Nov. 4, 2004).

significant and unwarranted burden on Dominion's resources. Further, as Intervenor
acknowledge, an applicant has a right to a prompt resolution of disputes. Indeed, efficient
proceedings serve the public interest.

For all of these reasons, Intervenor's motion should be denied.

Respectfully submitted,



David R. Lewis
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Tel. (202) 663-8474

Lillian M. Cuoco
Senior Counsel
Dominion Resources Services, Inc.
Rope Ferry Road
Waterford, CT 06385
Tel. (860) 444-5316

Counsel for Dominion Nuclear North Anna, LLC

Dated: November 15, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
DOMINION NUCLEAR NORTH ANNA, LLC)	Docket No. 52-008
)	
(Early Site Permit for North Anna ESP Site))	ASLBP No. 04-822-02-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of "Dominion's Answer Opposing Intervenors' Motion to Suspend Proceeding," dated November 15, 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 15th day of November, 2004.

*Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ASK2@nrc.gov

*Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
RFC1@nrc.gov

Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*Administrative Judge
Dr. Thomas S. Elleman
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
TSE@nrc.gov

*Administrative Judge
Dr. Thomas S. Elleman
5207 Creedmoor Road
Raleigh, NC 27612
elleman@eos.ncsu.edu

*Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
secy@nrc.gov, hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*Richard A. Parrish, Esq.
Southern Environmental Law Center
201 West Main Street
Charlottesville, VA 22902
(434) 977-4090
rparrish@selcva.org

*Dianne Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, N.W., Suite 600
Washington, D.C. 20036
dcurran@harmoncurran.com

*Robert M. Weisman, Esq.
*Brooke D. Poole, Esq.
*Ann P. Hodgdon, Esq.
*Antonio Fernandez, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
rmw@nrc.gov, bdp@nrc.gov, aph@nrc.gov,
axf2@nrc.gov



David R. Lewis