

December 29, 2004

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

December 29, 2004 (1:15pm)

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

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND
DISMISSAL OF CONTENTION EC 3.3.4**

Pursuant to 10 C.F.R. § 2.338(i), the Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (“Intervenors”), and Dominion Nuclear North Anna, LLC (“DNNA”) (collectively, the “Parties”) hereby move for approval of a settlement of Contention EC 3.3.4, “Failure to Provide Adequate Consideration of the No-Action Alternative.” Based on this settlement, the Parties seek dismissal of the contention. The NRC Staff has reviewed, supports, and consents to this motion and settlement.

On August 6, 2004, the Atomic Safety and Licensing Board (the “Board”) admitted two contentions submitted by the Intervenors. One of the admitted contentions, EC 3.3.4, states, “[t]he [Environmental Report] fails to satisfy 10 C.F.R. § 51.45(b)(3) because it fails to consider the no-action alternative to the use of Lake Anna water for cooling Unit 3.”

On September 7, 2004, DNNA revised section 9.1 of its Environmental Report (“ER”) to include a discussion of the no-action alternative. A copy of this section is attached as Exhibit 1 hereto. This section discusses no-action both in the context of an ESP proceeding and in the context of a combined Construction Permit and Operating License (“COL”) proceeding. With

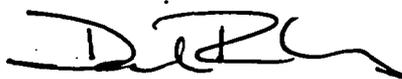
respect to the latter, it states that the reasonableness of this alternative involves need for power and alternative energy sources, which are topics that would be addressed at the COL stage.

Following this addition to the ER, Intervenors agreed to withdraw Contention 3.3.4, provided that they are not foreclosed from raising the no-action alternative in any subsequent COL proceeding relating to new nuclear units at the North Anna ESP site. A settlement agreement, attached as Exhibit 2 hereto in accordance with 10 C.F.R. § 2.338(g), sets forth this understanding.

Accordingly, the Parties request that the Board approve this settlement and dismiss contention 3.3.4. Dismissal of this contention is in the public interest because DNNA has taken action to address Intervenors' concern, and because the Commission favors settlement of contested issues in licensing proceedings. 10 C.F.R. § 2.338; *Changes to the Adjudicatory Process – Final Rule*, 69 Fed. Reg. 2209-2210 (2004). As required by 10 C.F.R. § 2.338(g), a proposed consent order is provided as Exhibit 3.

Intervenors' counsel has authorized DNNA to file this Joint Motion on their behalf.

Respectfully submitted,



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Counsel for Dominion Nuclear North Anna, LLC

Dated: December 29, 2004

Exhibit 1

Chapter 9 Alternatives to the Proposed Action

This chapter assesses alternatives to siting and developing nuclear power plants at the North Anna ESP site.

9.1 No-Action Alternative

The no-action alternative on a proposed ESP is non-issuance of that permit (i.e., NRC declining to determine whether a proposed site is suitable for new nuclear plants). In this context, no-action would accomplish none of the benefits intended by the ESP process, which would include early resolution of siting issues prior to large investments with financial capital and human resources in new plant design and construction, early resolution of issues on the environmental impact of construction and operation of reactors that fall within the site parameters, and the ability to bank sites on which nuclear plants may be located, and the facilitation of future decisions on whether to build new nuclear plants. This no-action alternative would avoid no significant environmental impacts, because no such impacts are caused by a site suitability determination. The only activities that are permissible under an ESP are limited work activities allowed by 10 CFR 50.10(e)(1), and those activities are permissible only if the final environmental impact statement concludes that the activities will not result in any significant environmental impacts that cannot be redressed.

With respect to a future proposal to construct and operate new nuclear units, the no-action alternative at that stage would constitute denial of the construction permit and operating license (eliminating nuclear units as the source of generation to meet the power needs at that time. The alternative of not licensing the construction and operation of new units would obviously avoid the environmental impacts associated with such construction and operation. However, depending on the need for power and impacts associated with alternative energy sources at the time when construction of new nuclear units may be proposed, the alternative of not licensing the construction and operation of the new nuclear units might result in other site and area environmental impacts, such as the impacts of constructing and operating a large, base-load coal-fired plant. Consideration of the reasonableness of this alternative involves need for power and alternative energy sources, which are topics that would be addressed during the combined construction and operating license stage.

9.2 Energy Alternatives

This subject is not addressed in the ESP application.

9.3 Alternative Sites

This section presents the alternative site evaluation to determine whether there is any obviously superior site when compared to the ESP site. The ROI for the proposed action is defined, the

Exhibit 2

**SETTLEMENT AGREEMENT AMONG
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,
NUCLEAR INFORMATION AND RESOURCE SERVICE, AND PUBLIC CITIZEN; AND
DOMINION NUCLEAR NORTH ANNA, LLC**

THIS AGREEMENT is made and entered into among the Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen ("Intervenors"), and Dominion Nuclear North Anna, LLC ("DNNA"), hereinafter referred to collectively as "Parties."

WHEREAS, DNNA submitted an application, dated September 25, 2003, to the U.S. Nuclear Regulatory Commission ("NRC") seeking an early site permit ("ESP") for a location in central Virginia identified as the North Anna ESP site;

WHEREAS, on August 6, 2004, the Atomic Safety and Licensing Board (the "Board") granted Intervenors' petition for leave to intervene in this ESP proceeding, captioned *Dominion Nuclear North Anna, LLC* (Early Site Permit for North Anna ESP Site), Docket No. 52-008, ASLBP No. 04-822-02-ESP (the "ESP Proceeding");

WHEREAS, one of the Intervenors' contentions admitted by the Board, EC 3.3.4, states, "[t]he [Environmental Report] fails to satisfy 10 C.F.R. § 51.45(b)(3) because it fails to consider the no-action alternative to the use of Lake Anna water for cooling Unit 3;"

WHEREAS, on September 7, 2004, DNNA revised section 9.1 of its Environmental Report to include a discussion of the no-action alternative; and

WHEREAS, the Parties now desire to resolve and settle Contention EC 3.3.4;

NOW THEREFORE, in consideration of the mutual of the premises and mutual promises herein, the Parties agree as follows:

1. Intervenors agree to withdraw Contention EC 3.3.4, and to take such other actions as may be reasonably necessary to obtain its dismissal.

2. DNNA agrees that a contention raising the no-action alternative (i.e., a contention asserting that new units should not be built because the power is not needed or an alternative source is superior) would be within the scope of any Combined Construction Permit and Operating License ("COL") proceeding for new nuclear units at the North Anna ESP site. Further, if Intervenors choose to raise such a contention in a COL proceeding for new nuclear units at the North Anna ESP site, DNNA will not argue that its admission is barred by collateral estoppel or *res judicata*. DNNA reserves the right to contest the admission of such a contention on any other grounds, such as failure to meet the basis and specificity requirements for an admissible contention.

3. Upon execution of this Agreement, the Parties shall promptly file a joint motion requesting Board approval this agreement and dismissal of Contention EC 3.3.4 from the ESP Proceeding ("Dismissal Order").

4. Upon issuance of the Dismissal Order by the Board, neither Intervenors nor DNNA will have disclosure obligations under 10 C.F.R. § 2.336 with regard to witnesses, documents, data compilations, tangible things, or a privilege log relevant to Contention EC 3.3.4.

5. In accordance with 10 C.F.R. § 2.338(h)(2), Intervenors and DNNA waive further procedural steps before the Board, waive any right to challenge or contest the validity of the Dismissal Order, and waive all rights to seek judicial review or otherwise contest the validity of the Dismissal Order.

6. Pursuant to 10 C.F.R. § 2.338(h)(3), the Parties acknowledge the Dismissal Order will have the same force and effect as an order made after full hearing.

7. As required by 10 C.F.R. § 2.338(h)(4), the Parties acknowledge this Agreement resolves the matters identified in this Agreement that are required to be adjudicated.

8. This settlement agreement shall be effective upon the last signature dated below. In the event that the Board disapproves this settlement, it shall be null and void.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective counsel on the dates indicated below.

 12/29/04
David R. Lewis Date
SHAW PITTMAN, LLP
Counsel for Dominion Nuclear North Anna, LLC

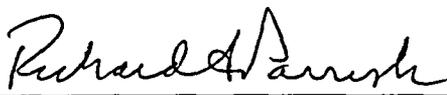
 12/28/04
Richard A. Parrish Date
Counsel for the Intervenors

Exhibit 3

PROPOSED CONSENT ORDER

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Thomas S. Elleman
Dr. Richard F. Cole

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

January xx, 2005

ORDER

(Approving Settlement and Dismissal of Contention EC 3.3.4)

On December 29, 2004, the Blue Ridge Environmental Defense League, the Nuclear Information and Resource Service, and Public Citizen, and Dominion Nuclear North Anna, LLC, with the NRC Staff's support and consent, moved for an order approving settlement and dismissal of Contention EC 3.3.4, "Failure to Provide Adequate Consideration of the No-Action Alternative." In accordance with 10 C.F.R. §§ 2.338(g), the Parties forwarded the settlement agreement and a proposed order.

Consistent with Commission policy to encourage resolution of contested issues in licensing proceedings through settlement, we find dismissal in the public interest. Pursuant to our authority under 10 C.F.R. § 2.338(i), we grant the motion and dismiss Contention EC 3.3.4. Dismissal of this contention supersedes the obligation of the

Board's Order of August 31, 2004, to preserve and maintain privileged documents
specific to Contention EC 3.3.4.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January xx, 2005

**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 "Joint Motion For Approval of Settlement of and Dismissal of Contention EC 3.3.4" 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 29th day of December, 2004.

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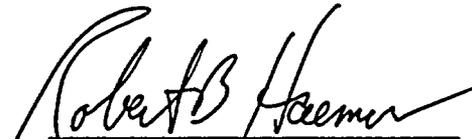
*Secretary
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Adjudication
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