

**RAS 9160**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED 01/12/05**

**SERVED 01/12/05**

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 12, 2005

ORDER

(Denying Intervenors' Motion to Suspend Proceeding)

Before the Board is a motion by the Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, Intervenors), requesting that the Board suspend this proceeding involving the Early Site Permit (ESP) license application of Dominion Nuclear North Anna, LLC (Dominion). For the reasons stated below, we deny the motion.

On October 25, 2004, the NRC Staff (Staff) notified the Board that the Commission had blocked public access to the NRC's Agencywide Documents Access and Management System (ADAMS) in order to conduct a security review of all documents, including those related to this case.<sup>1</sup> Intervenors subsequently filed a motion to suspend this proceeding until 30 days after ADAMS is restored, claiming that the unavailability of ADAMS denies them of meaningful participation in this proceeding.<sup>2</sup> While the Intervenors acknowledge the prejudice caused by

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<sup>1</sup>Letter from Brooke D. Poole, Counsel for NRC Staff, to Administrative Judges (Oct. 25, 2004), ADAMS Accession No. ML043010109.

<sup>2</sup>Intervenors' Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System (Nov. 3, 2004) [hereinafter Intervenors Motion].

the ADAMS restrictions can be minimized by keeping them apprised of all correspondence between Dominion and the Staff, the Intervenor claim that the ADAMS suspension denies them access to generic NRC documents related to advanced reactor siting and design issues and the other ESP applications. Intervenor Motion at 3. Intervenor maintain that without access to these documents, it is impossible to have a meaningful hearing on the ESP application, as their ability to participate in the proceeding will be severely prejudiced. Id. at 2-4. Intervenor also assert that the ADAMS restrictions prejudice “other members of the public who seek to become informed about this ESP proceeding.” Id. at 4. Furthermore, Intervenor maintain that this grave prejudice outweighs any minor inconvenience that temporarily suspending the proceedings would cause Dominion. Id.

Both Dominion and the Staff oppose the Intervenor’s motion.<sup>3</sup> Dominion maintains that the Intervenor have failed to demonstrate they will be prejudiced by the unavailability of ADAMS because 10 C.F.R. § 2.309(f)(2) provides the Intervenor with a remedy for filing an amended or new contention based on the unavailability of information. Dominion Answer at 1, 3. Dominion points out that the hearing is not expected until at least September 2005, giving Intervenor adequate time to prepare. Id. at 3. Further, Dominion argues that a delay in this proceeding would in fact prejudice Dominion by adding to its already considerable staffing costs. Id. at 3-4. The Staff points out that all of the documents related to the North Anna ESP that were available prior to their removal from ADAMS are available to the Intervenor by contacting the NRC public document room. Staff Answer at 2. The Staff also argues that should previously unavailable documents provide a basis for new or amended contentions, the Intervenor would then have the opportunity to show that the 10 C.F.R. § 2.309(c) or (f)(2)

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<sup>3</sup>Dominion’s Answer Opposing Intervenor’s Motion to Suspend Proceeding (Nov. 15, 2004) [hereinafter Dominion Answer]; NRC Staff Answer Opposing Intervenor’s Motion to Suspend Proceeding Pending Reinstatement of Agencywide Document Access and Management System (ADAMS) (Nov. 15, 2004) [hereinafter Staff Answer].

contention requirements, which take into consideration the unavailability of documents, are satisfied. Id. at 3. The Staff notes that the Intervenors do not have standing to raise arguments related to the “general public’s interest in this proceeding.” Id. at 2 n.4. Finally, given the fact that there are no impending deadlines, the Staff sees no reason to grant the motion. Id. at 3.

Since the parties briefed this issue, the Staff has notified the Board that the Electronic Hearing Docket (EHD) “file for this proceeding has been restored to public access” and any request for access to documents necessary for this proceeding that are not otherwise available can be made to Staff counsel.<sup>4</sup> Additionally, the Board has learned that the public Citrix-based version of ADAMS Publicly Available Records System (PARS) was partially restored on December 7, 2004.<sup>5</sup>

The Intervenors motion is denied for the following reasons.

First, granting the motion is unnecessary because the Commission’s regulations have procedural protections built in to deal with the unavailability of information. Should the Intervenors determine that information that became available after October 25, 2004 could have provided the basis for filing additional contentions, they may be able to take advantage of 10 C.F.R. § 2.309(c) or (f). These provisions take into consideration the unavailability of information upon which a late, new, or amended contention may be based.

Second, suspending the proceeding is unnecessary because the Intervenors will have adequate access to relevant materials. The Intervenors may access documents pertaining to this proceeding through the EHD, PARS, and the NRC public document room. Furthermore, the Staff has indicated that it will give the Intervenors access to documents that are otherwise unavailable.

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<sup>4</sup>Letter from Brooke D. Poole, Counsel for NRC Staff, to Administrative Judges (Nov. 17, 2004), ADAMS Accession No. ML043230039.

<sup>5</sup>Press Release, NRC Restores Online Availability of Large Number of Reactor-Related Documents, ADAMS Accession No. ML043420220.

Finally, the Board notes that the hearings in this case will not occur until after the Staff issues the final environmental impact statement, which it is now scheduled to do in August 2005. While the parties will spend much of the intervening time preparing for the hearing, the fact that the hearing will not take place for several months factors into the Board's conclusion that suspending the proceeding is unnecessary. In the meantime, the staff is gradually restoring ADAMS.<sup>6</sup> As we approach the hearing date, if difficulties with ADAMS continue and the Intervenor demonstrate actual prejudice and promptly notify the Board, we will consider making necessary schedule adjustments at that time.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>7</sup>

*/RA/*

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Alex S. Karlin, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 12, 2005

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<sup>6</sup> See letters from Brooke D. Poole, Counsel for NRC Staff, to Administrative Judges dated November 17, 2004 (access to reactor-related dockets restored on the Electronic Hearing Docket) and December 29, 2004 (documents in North Anna ESP docket made available through the Citrix-based version of the ADAMS Publicly Available Records System).

<sup>7</sup> Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) applicant DNNA; (2) the North Anna Intervenor; and (3) the NRC Staff.

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DENYING INTERVENORS' MOTION TO SUSPEND PROCEEDING) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 52-008-ESP  
LB ORDER (DENYING INTERVENORS' MOTION  
TO SUSPEND PROCEEDING)

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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 12<sup>th</sup> day of January 2005