

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 9179

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 01/19/05

SERVED 01/19/05

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 19, 2005

INITIAL SCHEDULING ORDER

This proceeding concerns the September 25, 2003 application of Dominion Nuclear North Anna, LLC (Dominion) for an early site permit (ESP) under 10 C.F.R. Part 52 for the possible construction of two new nuclear reactors on the site of the existing North Anna nuclear reactors in Louisa County, Virginia. This initial scheduling order, issued pursuant to 10 C.F.R. § 2.332(a) sets forth limits for the filing of motions and testimony, and time frames for certain other activities in this proceeding.

I. Background

On December 2, 2003, the Commission published a notice of hearing with regard to Dominion's ESP application, mandating that a hearing be held and that the Board make determinations on certain specified issues, and notifying the public of the right to petition for leave to intervene. 68 Fed. Reg. 67,489 (Dec. 2, 2003) (Notice). On January 2, 2004, Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, Intervenor) filed a petition to intervene. Subsequently, the predecessor Board herein ruled that the Intervenor had established standing and had submitted at least

one admissible contention. LBP-04-18, 60 NRC 253 (August 6, 2004). Accordingly, this is a “contested proceeding” within the definition of 10 C.F.R. § 2.4.

The Board has three main tasks in this contested proceeding. First, we must hold an evidentiary hearing and issue a decision on the only remaining admitted contention - EC 3.3.2 - Impacts on striped bass in Lake Anna.¹ Second, the Board must hold a mandatory hearing, consider and decide two safety issues and one NEPA issue. These issues are as follows:

Issues Pursuant to the Atomic Energy Act of 1954 as Amended

- (1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and
- (2) whether, taking into consideration the sited criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2).

Issue Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

Whether, in accordance with the requirements of subpart A of 10 CFR part 51, the ESP should be issued as proposed.

Notice at 67,489. (These three issues are hereinafter referred to as the Safety/NEPA Issues.²)

¹ On December 29, 2004 the parties, supported by the Staff, moved for an order approving settlement and dismissal of contention EC 3.3.4 - Failure to provide adequate consideration of the no-action alternative. On January 6, 2005 the Board issued an order approving the settlement and dismissal of contention EC 3.3.4. Accordingly, contention EC 3.3.2 is the only remaining contention in this proceeding.

² The Board’s decision-making role on Safety/NEPA Issues is significantly different depending on whether the proceeding is contested or uncontested. The Notice specifies that if the proceeding “is contested as defined by 10 C.F.R. § 2.4, the presiding officer will consider” the Safety/NEPA Issues. In contrast, if the proceeding is uncontested, the presiding officer “will determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission’s staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.” (Emphasis added). In short, in a contested proceeding, the Board decides the Safety/NEPA Issues itself, whereas in an uncontested proceeding the Board decides whether the record is sufficient and whether the actions of the Staff, the Director and the Commission have been adequate. As stated, this is a contested proceeding.

Third, the Board must hold a mandatory hearing and:

- (1) Determine whether the requirements of Section 102(2)(A), (C) and (E) of NEPA and subpart A of 10 CFR part 51 have been complied with in the proceeding;
- (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and
- (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

Id. (These three issues are hereinafter referred to as the Baseline NEPA Issues.)

On September 15, 2004 this Board held a pre-hearing conference call among the parties, to hear, inter alia, their positions with regard to the timing and scheduling of the evidentiary hearing.³ The parties stated that they had conferred and all agreed that they would be prepared to go forward on the evidentiary hearing on EC 3.3.2 sixty days after NRC issues the final environmental impact statement (FEIS). Tr. at 426.⁴ The Staff stated that the FEIS is scheduled to be issued in July 2005. Id. at 419. With regard to safety issues, the Staff stated that the final safety evaluation report (FSER) in this matter is scheduled to be issued on June 16, 2005 and that, after receiving the Advisory Committee on Reactor Safety (ACRS) report, the Staff intends to issue the SER as a NUREG on August 25, 2005.⁵

On October 8, 2004, the parties submitted memoranda presenting their views as to the procedures to be followed in implementing the above-quoted mandatory hearing and mandatory

³ The Staff has elected to participate in this proceeding as a party. Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (August 23, 2004), ADAMS Accession No. ML042380455.

⁴ On December 29, 2004 the parties, supported by the Staff, moved for an order approving settlement and dismissal of contention EC 3.3.4 - Failure to provide adequate consideration of the no-action alternative. On January 6, 2005 the Board issued an order approving the settlement and dismissal of contention EC 3.3.4. Accordingly, contention 3.3.2 is the only remaining contention in this proceeding.

⁵ The Staff later revised its estimates and projected that the FEIS will be issued in August 2005 and that the NUREG will be issued on August 29, 2005. Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (November 12, 2004), ADAMS Accession No. ML043230501.

determination provisions of the Notice.⁶ The Board continues to consider how best to discharge its mandatory hearing and mandatory finding responsibilities in the context of this contested proceeding.

II. Schedule

Based on the foregoing, and in accordance with 10 C.F.R. § 2.332, we hereby establish the following schedule.

1. Schedule for contention EC 3.3.2:
 - a. Month of April 2005: Board will conduct a view of the proposed site on a date to be established by the Board based on Board, party, and facility availability.
 - b. June 1, 2005: Deadline for filing motions for summary disposition pursuant to 10 C.F.R. § 2.1205.
 - c. June 1, 2005: File final list, including the name, address and telephone number, of eyewitnesses for whom written testimony is to be submitted under 10 C.F.R. §§ 2.1207(a)(1) and, if known, 2.1207(a)(2).
 - d. June 15, 2005: Deadline for filing request pursuant to 10 C.F.R. §§ 2.309(g) and 2.310(d) for a Subpart G proceeding based on credibility of an eyewitness newly identified under paragraph 1(c) above.
 - e. 30 days after date of publication of FEIS: File initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1).
 - f. 20 days after service of the materials submitted under paragraph 1(e) above:
File written responses and rebuttal testimony with supporting affidavits pursuant

⁶ Joint Memorandum on the Mandatory Hearing Process (October 8, 2004) submitted by Dominion and the Staff [hereinafter Joint Memorandum]; Intervenor's Memorandum on the Mandatory Hearing Process (October 8, 2004) [hereinafter Intervenor's Memorandum].

to 10 C.F.R. § 2.1207(a)(2).

- g. 15 days after service of the materials submitted under paragraph 1(f) above:
File proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(I) and (ii) and file any requests to permit specified cross-examination of a witness by a party and associated cross-examination plan pursuant to 10 C.F.R. § 2.1204(b).
- h. 15 days after service of the materials submitted under paragraph 1(g) above:
Deadline for filing motions in limine.
- i. Date to be determined: Board conducts oral hearing on contention EC 3.3.2 pursuant to 10 C.F.R. §§ 2.1206 and 2.1207. Oral limited appearance statements will be heard by the Board at this time.
- j. 30 days after close of oral hearing: File proposed findings of fact and conclusions of law on contention EC 3.3.2.

2. Schedule for mandatory Baseline NEPA Issues.

The Baseline NEPA Issues cannot be addressed until after NRC publishes the FEIS. At that point, pursuant to the mandatory hearing requirement of the Notice, the Board will schedule and conduct such inquiry and hearing, either in conjunction with the oral hearing on contention EC 3.3.2 or separately, as it deems necessary to discharge this responsibility. In the meantime, the view of the site, specified in II.1.a above, will also serve to assist the Board in deciding the Baseline NEPA Issues.

3. Schedule for mandatory Safety/NEPA Issues

The Safety/NEPA Issues cannot be addressed until after the NRC publishes the FEIS, FSER and NUREG, and after the ACRS issues its report or letter on this application. At that point, pursuant to the mandatory hearing requirement of the Notice, the Board will schedule and conduct such inquiry and hearing, either in conjunction with the oral hearing on contention EC

3.3.2 or separately, as it deems necessary to discharge this responsibility. In the meantime, the view of the site, specified in II.1.a above, will also serve to assist the Board in deciding the Safety/NEPA Issues.

Within 10 days of any changes or revisions in the estimates for completion or issuance of the FEIS, FSER, NUREG or ACRS letter, the Staff shall notify the Board and the parties of any such delay and of the revised dates.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 19, 2005

⁷ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) Dominion; (2) the Intervenors; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB INITIAL SCHEDULING ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Rebecca L. Gitter]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of January 2005