

RAS 11273

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

DOCKETED 03/01/06

SERVED 03/01/06

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

March 1, 2006

REVISED 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. We previously issued an initial scheduling order setting forth the time frames for certain activities in this proceeding¹ and now revise that schedule in order to adjust for delays resulting from Dominion's recently proposed changes to its application.

I. BACKGROUND

On December 2, 2003, the Commission published a notice of hearing with regard to Dominion's ESP application, notifying the public of the mandatory hearing on certain uncontested safety and environmental issues, and of the right to petition for leave to intervene to contest the application. 68 Fed. Reg. 67,489 (Dec. 2, 2003). On January 2, 2004, Blue

¹ See Licensing Board Initial Scheduling Order (Jan. 19, 2005) (unpublished), motion for partial reconsideration granted, Licensing Board Order (Granting Dominion's Motion for Reconsideration) (Feb. 10, 2005) (unpublished).

Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, Intervenor) filed a petition to intervene. Subsequently, the predecessor Board ruled that the Intervenor had established standing and admitted contention EC 3.3.2.² The Staff has since elected to participate as a party on this contention³ and, pursuant to 10 C.F.R. § 2.336, the Staff and the other parties in this proceeding made initial mandatory disclosures and have continued to make supplemental disclosures.

Upon conferring with the parties, we issued an initial scheduling order, pursuant to 10 C.F.R. § 2.332(a), which set forth limits for the filing of motions and testimony, and time frames for certain other activities in this proceeding. Delays in this proceeding have, however, brought about the need to revisit the time frames set forth in the initial scheduling order. These delays are the result of Dominion's January 13, 2006 submission of a supplement to its application which proposes to change the cooling system for proposed Unit 3 and increase the power level of each proposed unit (Units 3 and 4) from 4300 Mwt to 4500 Mwt.⁴ The Staff considers these to be "substantial changes" to the application, which will require additional information and additional time to review this information.⁵ Furthermore, the Staff will need, *inter alia*, to supplement its previously issued Draft Environment Impact Statement (EIS) and Final Safety Evaluation Report (SER), allow the public to comment on the Draft EIS, give consideration to

² LBP-04-18, 60 NRC 253, 274 (2004). Contention EC 3.3.4 was also admitted, but has since been settled and dismissed. See Licensing Board Order (Approving Settlement and Dismissal of Contention EC 3.3.4) (Jan. 6, 2005) (unpublished).

³ See Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (Aug. 23, 2004), ADAMS Accession No. ML042380455.

⁴ See Letter from Eugene S. Grecheck, Vice President Nuclear Support Services at Dominion, to NRC (Jan. 13, 2006), ADAMS Accession No. ML060250396.

⁵ Letter from David B. Matthews, Director Division of New Reactor Licensing at NRC, to David A. Christian, Senior Vice President and Chief Nuclear Officer at Dominion (Feb. 10, 2006), ADAMS Accession No. ML060390208.

these comments, and then issue the Final EIS.⁶ Dominion and the Staff estimate that the completion of these tasks will delay this proceeding by approximately one year. See Tr. at 451-52.

II. SCHEDULE

Based on the consultations with the parties during the February 22, 2006 conference call, and in accordance with 10 C.F.R. § 2.332, we hereby revise the initial scheduling order as follows:

1. Monthly supplements and updates: In lieu of any more frequent filings and until further notice, the Staff shall supplement its hearing file, and each party, including the Staff, shall supplement its mandatory disclosures, on or before the 10th of each month. If the party or Staff has no new materials to add during a particular month, then no filing is necessary.
2. 30 days after information is made available: Motions for leave to file new or amended contentions pursuant to 10 C.F.R. § 2.309(f)(2) shall be filed no later than 30 days after information is made available. In lieu of answering the motion within 10 days as specified by 10 C.F.R. § 2.323(b), any party shall file its answer to the motion, and substantive response to the proposed new or amended contention, within 25 days after service of the motion. The movant may file a reply within 7 days after service of the answer. See 10 C.F.R. § 2.309(h).
3. 30 days after Supplemental Draft EIS is made available: Motions for summary disposition pursuant to 10 C.F.R. § 2.1205 shall be filed within 30 days after the Supplemental Draft EIS is made available. Any answer or opposing motion shall be filed within 20 days after service of the motion.

⁶ Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (Feb. 16, 2006), ADAMS Accession No. ML060530144.

4. 30 days after Final EIS is made available: File initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness or evidence supports a factual or legal position). The written testimony shall be under oath or supported by an affidavit.
5. 20 days after service of the materials submitted under paragraph 4 above: File written responses and rebuttal testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal testimony shall be under oath or supported by an affidavit. Being in the nature of rebuttal, the response and rebuttal testimony are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously-filed initial written statement.
6. 15 days after service of the materials submitted under paragraph 5 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). In preparing the proposed direct or rebuttal questions, each party should be mindful that the examination plan is not a trial tool to assist the party; rather its purpose is to assist in ensuring the development of an adequate record. Accordingly, the plan should contain a brief description of the issue or issues which the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific

questions) that may logically lead to achieving the objective.

7. 15 days after service of the materials submitted under paragraph 5 above: File any requests to permit a party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b).⁷
8. 25 days after service of the materials submitted under paragraph 5 above: Deadline for filing motions in limine.
9. 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 at this time.
10. 30 days after close of oral hearing: File proposed findings of fact and conclusions of law on contention EC 3.3.2.
11. Schedule for Mandatory Hearing: The mandatory hearing for the issues specified in the original notice of hearing cannot reasonably be scheduled at this time. Once the Staff

⁷ Motions for cross-examination should be consider the guidance and analysis in Citizens Awareness Network, Inc., v. NRC, 391 F.3d 338 (1st Cir. 2004) and Entergy Nuclear Vermont Yankee, L.L.C. (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686 (2004).

issues the Supplemental Final SER and the Final EIS, the Board will schedule and conduct this hearing, either in conjunction with the oral hearing on contention EC 3.3.2 or separately, as it deems necessary to discharge this responsibility.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁸

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 1, 2006

⁸ 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 REVISED SCHEDULING ORDER have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Elleman
ASLBP
5207 Creedmoor Rd., Unit 101
Raleigh, NC 27612-6303

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Robert M. Weisman, Esq.
Michael A. Woods, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Diane Curran, Esq.
Harmon, Curran, Spielberg,
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

David R. Lewis, Esq.
Robert B. Haemer, Esq.
Timothy J. V. Walsh, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

Lillian M. Cuoco, Esq.
Senior Counsel
Dominion Resources Services, Inc.
Rope Ferry Road
Waterford, CT 06385

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Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th St., NW, Suite 404
Washington, DC 20036

Michele Boyd
Public Citizen
215 Pennsylvania Ave., SE
Washington, DC 20003

Richard A. Parrish, Esq.
Morgan W. Butler, Esq.
Southern Environmental Law Center
201 West Main Street
Charlottesville, VA 22902

Jonathan M. Rund, Esq.
Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 1st day of March 2006