

RAS 12328

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Hearing ITMO North Anna ESP

Docket Number: 52-008-ESP; ASLBP No. 04-822-02-ESP

Location: (telephone conference)

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE CALL

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IN THE MATTER OF:	Docket No.
DOMINION NUCLEAR NORTH	52-008-ESP
ANNA, LLC	ASLBP No.
(Early Site Permit for	04-822-02-ESP
North Anna ESP Site)	
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Tuesday, September 26, 2006

Teleconference

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 a.m., Administrative Judge Karlin, Chair, presiding.

BEFORE:

- ALEX S. KARLIN, Administrative Judge
- RICHARD F. COLE, Administrative Judge
- THOMAS S. ELLEMAN, Administrative Judge

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1     APPEARANCES:

2             On Behalf of the Nuclear Regulatory Commission:

3                     ROBERT M. WEISMAN, ESQ.

4             of:    Office of the General Counsel

5                     Mail Stop - O-15 D21

6                     U.S. Nuclear Regulatory Commission

7                     Washington, D.C. 20555

8

9             On Behalf of Dominion Nuclear, LLC:

10                    DAVID R. LEWIS, ESQ.

11                    ROBERT B. HAEMER, ESQ.

12             of:    Pillsbury Winthrop Shaw Pittman LLP

13                    2300 N Street, N.W.

14                    Washington, D.C. 20037

15

16             On Behalf of the Intervenor:

17                    RICHARD A. PARRISH, ESQ.

18                    MORGAN W. BUTLER, ESQ.

19             of:    Southern Environmental Law Center

20                    201 West Main Street

21                    Charlottesville, Virginia 22902

22

23             ALSO PRESENT:

24                    KAREN S. VALLOCH, ASLBP Administrative Staff

25

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1 P-R-O-C-E-E-D-I-N-G-S

2 (11:00 a.m.)

3 JUDGE KARLIN: We are now on the record.

4 My name is Alex Karlin. I am the -- one of the Judges  
5 and the Chair of the Atomic Safety and Licensing Board  
6 in this matter, which is the matter of Dominion  
7 Nuclear North Anna, LLC. It's an early site permit  
8 application proceeding, Docket Number 52-008-ESP,  
9 ASLBP Number 04-822-02-ESP.

10 Today's date is September 26th. This  
11 prehearing conference call is being held pursuant to  
12 the order that we issued on September 6, '06, and it's  
13 essentially a status discussion and conference.

14 First, I will introduce the Board, the  
15 members of the Board and our staff, and then we'll go  
16 around the table and ask the parties and any other  
17 participants on the call to introduce themselves for  
18 the record.

19 Here in Rockville at the ASLBP offices in  
20 -- at the NRC, I'm here with Dr. Richard Cole, one of  
21 the other Judges in this case, and Karen Valloch, our  
22 Administrative Assistant in this matter. Dr. Elleman  
23 is participating from afar. Judge Elleman, introduce  
24 yourself, please.

25 JUDGE ELLEMAN: Yes. This is Judge Thomas

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1 Elleman from Raleigh, North Carolina.

2 JUDGE KARLIN: Great. Let's go around.  
3 Let's start perhaps with the Applicant. Mr. Lewis,  
4 could you identify for the record yourself and your  
5 participants?

6 MR. LEWIS: Yes. This is David Lewis from  
7 the law firm Pillsbury Winthrop Shaw Pittman,  
8 representing Dominion Nuclear North Anna, and also  
9 from my firm on the phone, but in a different  
10 location, is Robert Haemer.

11 JUDGE KARLIN: Welcome. Is your client --  
12 any of your clients on the phone as well?

13 MR. LEWIS: No, Judge Karlin.

14 JUDGE KARLIN: Okay. Fine. The  
15 Intervenors, Mr. Parrish, perhaps you could introduce  
16 your participants.

17 MR. PARRISH: Yes. This is Richard  
18 Parrish with the Southern Environmental Law Center,  
19 representing the Intervenors. And with me in a  
20 different location is my colleague, Morgan Butler.  
21 None of the actual -- none of the Intervenors  
22 themselves are on the call today.

23 JUDGE KARLIN: All right. Fine. And, Ms.  
24 Curran, Diane Curran, is not participating?

25 MR. PARRISH: Not able to make it today.

1 JUDGE KARLIN: All right. That's fine.  
2 And, Mr. Weisman, for the Staff, please.

3 MR. WEISMAN: Yes. Robert Weisman for the  
4 NRC Staff. With me today are Tyson Campbell, Jack  
5 Cushing, Nittan Patel, and Joe Colachino.

6 JUDGE KARLIN: Great. All right. Is  
7 there anyone else on the call, other than the Court  
8 Reporter? All right. Fine.

9 Just the basic ground rules, as everyone  
10 knows, this -- this prehearing conference call will be  
11 transcribed, and the transcription will be available,  
12 you know, several -- well, a week or 10 days after the  
13 call, available to the parties and to the public. I  
14 would ask -- and I'm the worst offender, but I would  
15 ask if we could identify ourselves as we begin  
16 speaking, so that the Court Reporter will have a  
17 better, easier time in reporting this accurately.

18 Okay. With that, again, I'm Alex Karlin.  
19 I will introduce -- identify myself. The purpose of  
20 this call is really to talk about the status of this  
21 matter. We had our last prehearing conference call  
22 more than six months ago in February of '06, and soon  
23 thereafter we issued a scheduling order, the revised  
24 scheduling order, of March 1, '06.

25 And that was in contemplation of

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1 adjustments to the schedule that were a function of  
2 the Applicant revising its approach to the cooling  
3 system for Unit 3, as I understand it, and revisions  
4 to the EIS and to the SER that would be cascade from  
5 and triggered by those changes to the application.

6 So the first item on our agenda, I would  
7 think, is -- you know, is to get a -- get a report or  
8 information from the Staff, if we could, about where  
9 they stand with the final environmental impact  
10 statement and the supplemental SER. And we have their  
11 letter of -- so that's the first item on the agenda.

12 The second item on the agenda will be for  
13 the Board to discuss briefly the Motion for Summary  
14 Disposition. We're not here -- we're not going to  
15 hear oral argument on it, but we do want to let you  
16 know where we are on that Motion for Summary  
17 Disposition.

18 The third item, really, would just be to  
19 discuss any suggestions or receive any suggestions  
20 about mechanisms for efficiently managing this  
21 proceeding. And so those are really the only three  
22 things we want to cover.

23 I'll stop at this point and ask the  
24 parties if they have any other items that need to be  
25 covered, or that they urge be covered, or are

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1 suggested for the agenda. Any suggestions or ideas?  
2 Hearing none, we'll proceed.

3 First, Staff report, first item on the  
4 agenda. My review of the file indicates that you gave  
5 us a letter on May 9, '06, Mr. Weisman, and that gave  
6 us an updated status report of where you thought  
7 things were going. Is that the last submission you  
8 gave? And can you give us, you know, a status and  
9 update on that?

10 MR. WEISMAN: Yes, sir. I believe that  
11 that is the last -- this is Bob Weisman for the Staff.  
12 I believe that that's the last letter that we wrote  
13 you. We -- the Staff is in preparation of the  
14 supplement to the safety evaluation report. It is in  
15 printing now, and that will be scheduled to be issued  
16 approximately the 20th of November. As far as the  
17 SEIS goes --

18 JUDGE KARLIN: Right.

19 MR. WEISMAN: -- we issued a supplementary  
20 draft EIS on the 14th of July. The comment period for  
21 that SEIS expired on the 12th of September. The SEIS  
22 is now in preparation, and it is due out approximately  
23 the 29th of December. So it should be out by the end  
24 of the year.

25 JUDGE KARLIN: All right. Let me ask, I

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1 note that in your May 9th letter you -- you estimated  
2 that the SEIS, final SEIS would be out at the end of  
3 December. And so that seems to be no change and on  
4 schedule. That letter of May 9th also indicated the  
5 supplement to the final safety evaluation report would  
6 be out on August 15th, to be issued on August 15th.  
7 So I guess there's a delay on that of several months.

8 MR. WEISMAN: There was -- there was a  
9 delay in issuing the SER supplement. There were a  
10 couple of additional revisions to the application that  
11 the staff needed to take into account in the SER  
12 supplement. I don't have the dates when they came in,  
13 but Revision 6 to the application described the change  
14 to the cooling system and the power increase. That  
15 was I believe April 13th.

16 JUDGE KARLIN: Right.

17 MR. WEISMAN: Revisions 7 and 8 addressed  
18 some -- they incorporated information that addressed  
19 Staff's RAIs on Revision 6. And let me see if I can  
20 find out what the dates are for that, if I can confer  
21 with the Staff for just a moment.

22 JUDGE KARLIN: Well, we don't need to  
23 reconstruct, you know, that history. I mean, if there  
24 is a delay, then there is a delay. And your current  
25 estimate is that it will be November 20th when the

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1 supplement to the FSER is issued to the public, to us  
2 and the public?

3 MR. WEISMAN: Yes. Yes, Your Honor.

4 JUDGE KARLIN: Okay. Fine, fine. Are  
5 there any -- I guess that's -- those are the key  
6 events. Any questions by Judge Cole or Judge Elleman,  
7 or clarifications needed?

8 JUDGE COLE: No.

9 JUDGE ELLEMAN: This is Judge Elleman. I  
10 have none.

11 JUDGE KARLIN: Okay. All right. That's  
12 helpful. Thank you, Mr. Weisman. It would be helpful  
13 if you could submit to us, say within 10 days, I think  
14 just a notice that the schedule is adjusted from what  
15 you estimated in May -- on May 9th.

16 MR. WEISMAN: Yes, Your Honor.

17 JUDGE KARLIN: Okay. I appreciate that.  
18 I think we have some order that asks for updates, you  
19 know, soon after any change becomes apparent. We were  
20 kind of looking for the August 15th supplemental FSER,  
21 and I didn't know what had happened, and so this is  
22 helpful, to know there's a bit of a delay there.

23 MR. WEISMAN: My apologies, Your Honor.

24 JUDGE KARLIN: No problem.

25 MR. WEISMAN: We'll send that letter in

1 right away.

2 JUDGE KARLIN: Thank you. Thank you.

3 Okay. With that, we turn to the Motion  
4 for Summary Disposition. And we -- that was filed on  
5 August 7th, and answers were filed at the end of  
6 August, and then there was a reply. Not normally  
7 appropriate but there was unopposed reply, so that was  
8 received.

9 We're not here to receive oral argument on  
10 that motion, but the Board, the Judges, have conferred  
11 and discussed this. And we thought it would be  
12 valuable to tell us where we're going with this --  
13 this Motion for Summary Disposition. And I think this  
14 will help the proceeding run more efficiently going  
15 down the rest of this year and the beginning of next  
16 year.

17 It is our intent, after looking at this  
18 carefully, to grant the Motion for Summary  
19 Disposition. We will be issuing a written ruling to  
20 that effect in several weeks. For various reasons, we  
21 can't get that out, you know, in the next week or so.

22 It's our general impression that  
23 Revision 6 represented a fundamental change to the  
24 cooling system for Unit 3, going from a once-through  
25 cooling system which would discharge heated water into

1 the lake and the waste water system, to a closed  
2 system which -- with towers that would cool the water  
3 before it was discharged, and would end up with  
4 virtually no elevated temperature.

5 Looking at the pleadings, we see that the  
6 Intervenors can see there's a negligible increase in  
7 temperature represented by the discharges as they  
8 would occur under the changed system. And it's our  
9 ruling that the contention EC 3.3.2 focuses on impacts  
10 "arising from increased water temperature discharges,"  
11 and that is the fundamental reason why we would grant  
12 the Motion for Summary Disposition.

13 We recognize the Intervenors have cited to  
14 our footnote 15 in our June 15, '05, order where we  
15 made reference to synergistic impacts of flow and  
16 temperature are within the scope. We think it's clear  
17 that in context what we meant was that the release of  
18 heated water would induce additional evaporative  
19 losses and, thus, perhaps reduced flow.

20 We did not intend that footnote to cover  
21 the current situation where evaporative losses are  
22 occurring in the cooling towers, and there is no  
23 discharge of water with a "increased temperature."  
24 For those reasons, we are concluding that the Motion  
25 for Summary Disposition will be granted.

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1           As I said, we're not likely to issue the  
2 written ruling for several weeks. It might be three  
3 or four weeks. But we wanted to announce it now, so  
4 the parties can proceed and plan. Two timing points  
5 we would make. One is any appeal time from that  
6 ruling will run from the date of the written ruling  
7 and not from today. So you can rest somewhat easy on  
8 that ground. If you seek to appeal, that will not  
9 begin to run until you see our written ruling a little  
10 bit later.

11           Second, we also note the revised  
12 scheduling order, Article 2, Section 2, has a 30-day  
13 timeframe for certain activities. And without  
14 prejudging new or amended contentions, one way or the  
15 other or any timeliness thereof, we would suggest no  
16 one should wait until the final written ruling for  
17 moving on -- pursuant to revised scheduling order  
18 Article 2, Section 2.

19           With that, we can pretty much proceed to  
20 the third item, which would say where we are going  
21 from here, what efficiencies we can achieve. With the  
22 -- with the proceeding at this point we'll be  
23 converting to -- unless something else happens -- an  
24 uncontested mandatory hearing. At that point, we will  
25 be looking to the dates of the FSER and the FEIS as

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1 triggering the four- to six-month timeframe for us  
2 issuing an initial decision on the mandatory hearing  
3 issues.

4 We're looking at the July 26, '06, ruling  
5 by the Commission in the other two ESP mandatory  
6 hearing cases. That's CLI-06-20, and I commend the  
7 parties to look at that. And, you know, we need to  
8 plan our inquiries, which might very well include  
9 thermal discharges and water flow discharges on our  
10 own in the mandatory hearing context.

11 We are going to plan our activities around  
12 the -- I guess the last date to occur will be the  
13 FEIS, and that will be the end of this year. So,  
14 ideally, we will get an initial decision out by June,  
15 July 1st, that sort of thing. That's what we're  
16 shooting for anyway.

17 Are there any questions or points that  
18 need to be raised before we close the call?

19 MR. WEISMAN: Your Honor, this is Bob  
20 Weisman for the Staff.

21 JUDGE KARLIN: Yes.

22 MR. WEISMAN: And in view of your intended  
23 ruling on the Motion for Summary Disposition, is there  
24 still a need for updates to the hearing file and  
25 mandatory disclosures?

1 JUDGE KARLIN: Until we issue our written  
2 ruling, yes, please. We will then address that in our  
3 written ruling. Okay?

4 MR. WEISMAN: Thank you, Your Honor.

5 JUDGE KARLIN: All right.

6 MR. LEWIS: Judge Karlin?

7 JUDGE KARLIN: Yes.

8 MR. LEWIS: This is David Lewis. Do you  
9 want to discuss how the parties will proceed forward  
10 on the uncontested issues and what the likely timing  
11 will be beyond the ultimate decision?

12 JUDGE KARLIN: I don't think we're ready  
13 for that. We probably will need to schedule another  
14 conference call for that kind of planning and  
15 discussion, maybe in a month or two.

16 MR. LEWIS: Okay.

17 JUDGE KARLIN: Do you have any particular  
18 suggestions or ideas?

19 MR. LEWIS: There were a couple of things  
20 that had occurred to me. One is that once the  
21 supplemental SER is issued on November 20th, perhaps  
22 any -- any Board questions on that document could  
23 start at that point, just to make advantageous use of  
24 that month before the FEIS is out.

25 And, second, I have been watching what's

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1 been done in the other proceedings with filing of  
2 proposed findings and briefs and things, which appear  
3 to me to be perhaps a somewhat cumbersome procedure,  
4 and was thinking about suggesting that perhaps both  
5 the Applicant and the Staff simply file prefiled  
6 testimony 30 days after the initial documents are out,  
7 so after the initial SER is issued or -- or not the  
8 initial SER, after the supplemental SER is issued, the  
9 Applicant and the Staff would both file prefiled  
10 testimony.

11 The Applicant would introduce the -- their  
12 application, the safety analysis report, and provide  
13 an overview, and the Staff would do the same with its  
14 review document, the SER, and provide an overview.

15 JUDGE KARLIN: Okay. No, I think you're  
16 going a little bit further than we want to do at this  
17 -- at this call. But I think, rest assured that --  
18 and when the -- if the FSER or supplemental FSER get  
19 -- comes out a month or two before the EIS, we will --  
20 we will start reading it and paying attention and  
21 preparing ourselves for questions and a mandatory  
22 proceeding on the FSER, and not wait until the EIS is  
23 out.

24 But we will certainly do that, and I think  
25 we all need to turn and think about that. We may end

1 up having two separate hearings, you know, breaking it  
2 apart. We are studying what the other ESP boards are  
3 doing in mandatory hearings, and we'll learn from them  
4 and hopefully do even better. I'm not sure where that  
5 will go, but I think we'll try to -- we are going to  
6 learn from what they're doing and watch what they're  
7 doing. So that is a good data point to be familiar  
8 with.

9 MR. LEWIS: That's my objective, Judge  
10 Karlin. There just seemed to be a lot going on in  
11 other proceedings, and it was very back-end loaded.  
12 And right now I'm not sure how in this case we're --  
13 what filings we're going to make, and so to the extent  
14 we could get that earlier it would be helpful.

15 JUDGE KARLIN: Well, we may -- we may --  
16 as I say, we'll probably have a conference call in a  
17 month or two to focus on those -- those precise issues  
18 and see if we have some -- a schedule, because if we  
19 convert to -- as we convert to an uncontested hearing,  
20 mandatory hearing, then the scheduling order becomes  
21 problematic or will definitely need revision, because  
22 it focuses on the contested hearing almost entirely.  
23 And we now would -- we would have to turn to a  
24 different approach for the mandatory process.

25 So very good. Anything else anyone has at

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1 the moment?

2 (No response.)

3 Okay. Well, I appreciate your  
4 participating on the call. With that, we will stand  
5 adjourned. Thank you.

6 (Whereupon, at 11:20 a.m., the  
7 proceedings in the foregoing matter were  
8 adjourned.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Dominion Nuclear

North Anna ESP

Docket Number: 52-008-ESP;

ASLBP No. 04-822-02-ESP

Location: (Telephone conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Lindsey Barnes  
Official Reporter  
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