



November 16, 2006

Annette L. Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemaking and Adjudications Staff

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**COMMENTS ON PROPOSED RULE ON LIMITED WORK AUTHORIZATIONS
(71 FED. REG. 61,330)**

Dominion Nuclear North Anna, LLC, (Dominion) submits these comments on the NRC's proposed rule, published in the Federal Register on October 17, 2006 (71 Fed. Reg. 61,330), that would amend provisions of the NRC regulations governing limited work authorizations (LWA). Dominion appreciates the effort of the Commission and NRC Staff to improve the efficiency of the licensing process for new plants, and supports the NRC's proposal to eliminate the need for NRC approval of those activities that do not constitute "construction." Dominion endorses the November 16, 2006 comments on this proposed rule submitted by the Nuclear Energy Institute (NEI), and submits the following additional comments:

- A. The Amendments Should Not Reduce the Authority That May Be Granted to Existing ESP Applicants.

The Commission should clarify that these amendments would not require any change to applications for early site permits (ESP) filed before the effective date of the rule, and would not reduce or limit the authority that such applicants would be entitled to receive upon issuance of their ESPs under the current regulations. While the proposed rule is generally intended to facilitate pre-construction activities, it includes provisions that would reduce the scope of activities that may be performed by an ESP holder, and also changes some of the requirements governing the contents of ESP applications seeking LWA authority, which if applied to pending ESP applications might significantly delay their issuance.

For example, under the current regulations at 10 C.F.R. § 52.25, an ESP applicant who has included a site redress plan in its application may upon receipt of its ESP (and subject to appropriate findings in the final environmental impact statement) perform the activities specified in 10 C.F.R. § 50.10(e)(1), which currently include the construction of nonsafety-related structures, systems and components. The proposed rule would eliminate this activity from the list that may be performed under an LWA, including an LWA granted as part of an ESP. In addition, to obtain an LWA, the proposed rule would require an ESP application to include certain information in the safety analysis report (discussed

later in these comments) and environmental report that is not required under the current regulations. See 71 Fed. Reg. at 61,348-49 (proposed sections 50.10(c)(3)(i), 51.49(c)). The proposed rule would also require a showing of technical qualifications not previously required. See 71 Fed. Reg. at 61,348, 61,335 (proposed sections 50.10(d)(1)(iii) and 52.24(a)(4)).

Dominion is concerned that if these changes to the rules are made prior to issuance of pending ESPs, those ESP applicants might be required to amend their applications, delaying issuance of the permits unnecessarily. In addition, Dominion is concerned that upon issuance of these ESPs, the authorized preconstruction activities might be more limited than under the current regulations, reducing the benefit of the ESP process that Dominion and other companies have pursued. Dominion submits that it would be unfair and inappropriate to make retroactive changes to the standards that pending ESP applicants must meet, or to limit the scope of permissible activities after such applications have been filed. As a matter of policy, such consequences would be a breach of trust and likely result in a chilling effect on future applicants willing to pilot new processes.

Accordingly, Dominion recommends that the Commission include an appropriate grandfather provision to protect pending ESP applicants from such unintended consequences. This provision should state that (1) nothing in the final rule shall require any change to an ESP application filed before the effective date of the rule, or any change to the NRC review of such application, and (2) the standards for and scope of activity constituting "construction" (as defined now or after the issuance of this rule) that may be authorized upon issuance of such ESPs shall continue to be governed by the provisions of 10 C.F.R. § 50.10(e)(1), 52.17(c) and 52.25(a) that were in effect when the applications were filed.

B. The Proposed Rule Unnecessarily Eliminates Flexibility in the Current Rules

Under the existing rules, if an ESP contains a site redress plan, LWA-1 activities are authorized by rule, and do not require a separate authorization. See 10 C.F.R. § 52.25(a). One of the benefits of this authorization in the existing rules is that the LWA-1 may be performed either by an ESP holder, or by an applicant for a COL referencing an ESP (i.e., the ESP holder and COL applicant do not have to be the same entity.) The proposed rule would unnecessarily eliminate the authorization in the existing rules, by deleting 10 C.F.R. § 52.25(a). As a consequence, the proposed rule would eliminate the flexibility with no corresponding benefit.

C. New Technical Requirements Are Vague and Unnecessary

The proposed rule would establish certain new technical requirements that are both vague and unnecessary. These provisions would detract from the efficiency

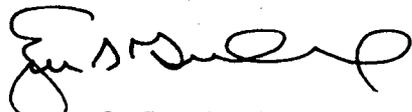
of the LWA process, particularly if applied retroactively to pending ESP applicants.

In particular, if an ESP application seeks LWA authority, the proposed rule would require the safety analysis report to include (1) a description of the activities to be performed; (2) a description of the design and construction information otherwise required to be submitted for a COL, but limited to the portions of the facility that are within the scope of the limited work authorization; and (3) a demonstration that activities conducted under the limited work authorization will be conducted in compliance with "technically relevant Commission requirements in 10 CFR Chapter I applicable to the design of those portions of the facility within the scope of the limited work authorization." 71 Fed. Reg. at 61,348 (proposed section 50.10(c)(3)(i)). The proposed rule would also require a finding that "the applicant is technically qualified to engage in any activities authorized." 71 Fed. Reg. at 61,348, 61,355 (proposed section 50.10(d)(1)(iii), 52.24(a)(4)). At the outset, the reference to "technically relevant Commission requirements in 10 CFR Chapter I" is unduly vague, as is the proposed requirement to provide design and construction information. If there are specific technical requirements that are deemed applicable, they should be justified and identified in the rule.

In any event, any safety analysis and finding of technical qualifications should be required only if the limited work authorization would allow safety-related activities (i.e., the construction of safety-related foundations), and such information and findings should apply only to these safety-related activities. There are simply no design, construction or technical requirements in the NRC's rules applicable to non-safety related construction work. Accordingly, the Commission should revise proposed section 50.10(d)(iii) so that it applies only to construction of safety related foundations, and should similarly revise proposed sections 50.10(d)(1)(iii) and 52.24(a)(4) so that the finding of technical qualifications applies only if, and to the extent that, "safety-related" activities are authorized. The Commission should make it explicitly clear that if an ESP or COL applicant applies for an LWA that merely allows excavation and non-safety related work (or if this rule is applied to pending ESP applications which have sought LWA-1 authority, which does not encompass work on safety-related foundations), none of the new technical requirements are applicable.

If you need any further information, please contact Mr. Joseph Hegner at 804-273-2770.

Sincerely,



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Vice President-Nuclear Support Services

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Subject: Dominion Comments on Proposed Rule Concerning Limited Work Authorizations

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