

RAS 12822

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

DOCKETED 01/04/07

SERVED 01/04/07

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 4, 2007

SECOND REVISED SCHEDULING ORDER

This proceeding concerns the 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 (Units 3 and 4) on the site of two existing nuclear reactors in Louisa County, Virginia. This order revises prior scheduling orders¹ in this case to reflect the fact that the contested portion of the proceeding was terminated on October 24, 2006,² and thus that the matter will now proceed as an uncontested hearing mandated by Section 189a(1)(A) of the Atomic Energy Act (AEA), 42 U.S.C. § 2239(a)(1)(A) and 10 C.F.R. § 52.21.

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¹ See Initial Scheduling Order (Jan. 19, 2005) (unpublished); Revised Scheduling Order (March 1, 2006) (unpublished).

² LBP-06-24, 64 NRC _ (October 24, 2006).

Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, Intervenor) filed a petition to intervene. The predecessor Board admitted two of the Intervenor's contentions³ and the Staff elected to participate as a party.⁴

Subsequently, the proceeding was substantially delayed. On January 13, 2006, Dominion submitted a supplement to its application, proposing to change the cooling system for proposed Unit 3 and to increase the power level of each proposed unit (Units 3 and 4) from 4300 MWt to 4500 MWt.⁵ The Staff considered these to be "substantial changes" to the application,⁶ requiring the Staff (a) to supplement its previously issued Draft Environment Impact Statement (DEIS), (b) to allow the public to comment on the supplemental DEIS, (c) to give consideration to these comments, (d) to issue a Final EIS (FEIS) and (e) and to supplement its Final Safety Evaluation Report (FSER) on the revised application.⁷ Dominion and the Staff accurately estimated that the completion of these tasks would delay this proceeding by approximately one year. See Tr. at 451-53. The Staff issued the supplemental

³ LBP-04-18, 60 NRC 253, 274 (2004). The two admitted contentions were denominated EC 3.3.2 and EC 3.3.4.

⁴ See Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (Aug. 23, 2004), ADAMS Accession No. ML042380455.

⁵ See Letter from Eugene S. Grecheck, Vice President Nuclear Support Services at Dominion, to NRC (Jan. 13, 2006), ADAMS Accession No. ML060250396.

⁶ 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.

⁷ Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (Feb. 16, 2006), ADAMS Accession No. ML060530144.

FSER on November 15, 2006,⁸ and the supplemental FEIS on December 14, 2006.⁹

Meanwhile both of the admitted contentions were resolved, one by a settlement¹⁰ and the other by summary disposition.¹¹

In light of these developments, on December 14, 2006, the Board held a prehearing conference with the remaining parties, i.e., Dominion and the Staff, to discuss the best approach for conducting the uncontested mandatory hearing.

II. SCHEDULE

Based on our consultation with the parties and in accordance with 10 C.F.R. § 2.332, the Board establishes the following schedule for the remainder of this uncontested mandatory hearing:

1. Written Questions Primarily Related to Safety Matters

A. On or about January 18, 2007, the Board will issue written questions to the parties relating primarily to safety issues. The Board will endeavor to ask all of its safety related questions in this one wave.

B. On January 25, 2007, at 2PM EST, the Board will hold a prehearing conference with the parties. The primary purpose of the conference will be to allow the parties to obtain clarification concerning the questions previously issued by the Board to ensure that the parties will be able to answer the questions fully and fairly. If counsel wish to participate via telephone, they should so inform our law clerk at least 5 days prior to the conference

⁸ Letter from Robert M. Weisman, Counsel for NRC Staff, to Administrative Judges (Nov. 15, 2006). The ADAMS Accession No. for the supplement to the FSER is ML063170371.

⁹ Notice of Availability of [FEIS] for an [ESP] at the North Anna ESP Site. 71 Fed. Reg. 76705 (Dec. 21, 2006). The ADAMS Accession No. for the FEIS is ML063470314.

¹⁰ Contention EC 3.3.4 was settled and dismissed. See Licensing Board Order (Approving Settlement and Dismissal of Contention EC 3.3.4) (Jan. 6, 2005) (unpublished).

¹¹ See footnote 2.

to obtain the necessary call-in number.

C. On February 8, 2007, the parties will file written answers to the Board's questions of January 18, 2007. The answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that they are suitable for receipt into evidence without the necessity of the personal appearance of each expert or individual.¹²

2. Written Questions Primarily Related to Environmental Matters

A. On or about February 7, 2007, the Board will issue written questions to the parties relating primarily to environmental issues. The Board will endeavor to ask all of its environmental related questions in this one wave.

B. On February 14, 2007, at 2PM EST, the Board will hold a prehearing conference with the parties. The primary purpose of the conference will be to allow the parties to obtain clarification concerning the questions previously issued by the Board to ensure that the parties will be able to answer the questions fully and fairly. If counsel wish to participate via telephone, they should so inform our law clerk at least 5 days prior to the conference to obtain the necessary call-in number.

C. On March 1, 2007, the parties will file written answers to the Board's questions of February 7, 2007. The answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that they are suitable for receipt into evidence without the necessity of the personal appearance of each expert or individual.

3. Oral Limited Appearance Statement Session. On February 8, 2007, from 6:00 PM to

¹² This procedure - a single wave of questions on a given subject from the Board and a single wave of full and complete answers by each of the parties - is designed to expedite the process. If the parties cooperate, this will obviate or reduce the need for written follow-up questions.

11:00 PM EST, the Board will hold an oral limited appearance statement session in this matter in accordance with 10 C.F.R. § 2.315(a). During this session members of the public will be permitted to make short oral statements setting forth their position on matters of concern relating to this proceeding. This session will be held at the Louisa County High School auditorium, 757 Davis Highway, Mineral, Virginia 23117. Prior to this session, the Board will publish a notice in the Federal Register specifying the procedures to be followed.

4. Conduct of Oral Evidentiary Hearing

A. On or about March 20, 2007, the Board will issue an order specifying the topics to be covered, the written testimony and exhibits to be filed, and the procedures to be followed in the oral evidentiary hearing. Each party, including the Staff, will, at its own expense and effort, assure that each person for whom it submits written testimony personally attends the oral evidentiary hearing and is available to testify and respond to questions. In addition, the Board's order may specify, either by name or by designation,¹³ additional witnesses who must appear and testify in person during the oral hearing.¹⁴

B. On April 10, 2007, the parties will file their respective written testimony and exhibits. The prefiled written testimony shall identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the personal appearance of the expert or individual.¹⁵

¹³ See Rule 30(b)(6) of the Federal Rules of Civil Procedure.

¹⁴ The need for written testimony and/or oral testimony in-person during the evidentiary hearing may be reduced if the parties answers to the Board's prior written questions resolve the Board's concerns and establish a sufficient record.

¹⁵ After reviewing the prefiled written testimony and exhibits the Board may advise the party that oral testimony from a given subject matter expert or individual is not needed and that

C. On April 18, 2007, at 2:00 PM EDT, the Board will hold a prehearing conference with the parties to cover any final matters appropriate for the fair and efficient conduct of the oral evidentiary hearing. If counsel wish to participate via telephone, they should so inform our law clerk at least 5 days prior to the conference to obtain the necessary call-in number.

D. Commencing on April 24, 2007 at 9:00 AM EDT, the Board will conduct the oral evidentiary hearing in this matter. In accordance with Commission policy, the hearing will be held in the Louisa County Public Meeting Room, Louisa County Office Building, 1 Woolfolk Avenue, Louisa, Virginia 23093.¹⁶ The hearing will continue, from day to day (excluding weekends), until it is completed, or until May 4, 2007, whichever comes first.¹⁷

E. The parties should be mindful that it is the Applicant, not the Staff, who is the proponent of the ESP and who has the burden of proof.¹⁸ The Board can only make its

he or she need not appear in person at the oral hearing.

¹⁶ "It is the Commission's policy and practice to begin the evidentiary hearing in the vicinity of the proposed facility." 10 C.F.R. Part 2, Appendix A Section I(a) "Statement of General Policy and Procedure for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing is Required Under Section 189a of the Atomic Energy Act of 1954, as Amended" (Mandatory Hearing Policy). Although this appendix was deleted as a part of an overall revision to Part 2, see 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004) it is still authoritative on certain issues. See Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site) CLI-05-17, 62 NRC 5, 35 n.40 (2005).

¹⁷ Assuming all witnesses appear promptly, the Board intends to complete the oral evidentiary hearing in four working days, or less. However, counsel and witnesses are advised to reserve the entire period from April 23 to May 4, 2007 for the proceeding. Given the current uncertainty as to which witnesses will need to testify, this block of time may allow the Board to be more flexible and to take the witnesses' individual schedules into account when we set the sequence and timing of their testimony.

¹⁸ 10 C.F.R. § 2.325. See also Mandatory Hearing Policy Section V(f)(2).

decision based on evidence in the record.¹⁹ It is the duty of the Applicant/proponent to ensure that the evidentiary record contains evidence sufficient to allow the Board to decide the six fundamental questions specified in Appendix A hereto in the manner proposed by the Applicant. If the Applicant or Staff deem it necessary to meet this burden, they may submit prefiled written testimony, exhibits and statements of position in addition to that requested in the Board's order.

5. Proposed Findings of Fact and Conclusions of Law. On May 11, 2007, the parties shall submit their respective proposed findings of fact and conclusions of law. These shall address, at a minimum, the six fundamental questions specified in Appendix A. The parties should, to the maximum extent possible, support each proposed finding of fact with citations to evidence in the record (e.g., testimony or exhibits) and should likewise support proposed conclusions of law with citations to the relevant statutes, regulations, and caselaw.
6. Briefing of Legal Questions. In addition to the foregoing, the Board may ask the parties to brief various legal issues relevant to the conduct of this mandatory hearing and our

¹⁹ See Exelon, CLI-05-17, 62 NRC at 41 (citing Radiation Safety and Regulation: Hearings Before the Joint Comm. On Atomic Energy, 87th Cong. 313 (Statement of AEC Commissioner Loren K. Olson)).

resolution of the six fundamental questions. We may incorporate our legal questions into the safety or environmental questions, or may raise them separately.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²⁰

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 4, 2007

²⁰ Copies of this order were sent this date by Internet e-mail transmission to counsel for (1) Dominion and (2) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DOMINION NUCLEAR) Docket No. 52-008-ESP
NORTH ANNA, LLC)
)
(Early Site Permit for North Anna ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB SECOND 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.
Patrick A. Moulding, Esq.
Brooke D. Poole, 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

Docket No. 52-008-ESP
LB SECOND REVISED SCHEDULING ORDER

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

Margaret Parish, 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 4th day of January 2007