

RAS 12827

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

DOCKETED 01/05/07

Before Administrative Judges:

SERVED 01/05/07

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 5, 2007

ORDER

(Notice of Opportunity To Make Oral or Written Limited Appearance Statements)

This proceeding concerns the September 25, 2003 application of Dominion Nuclear North Anna, LLC for an early site permit (ESP) for the possible construction of two nuclear power reactors on the site of two existing nuclear reactors in Mineral, Virginia.

This Atomic Safety and Licensing Board hereby gives notice that, pursuant to 10 C.F.R. § 2.315(a), the Board will entertain oral limited appearance statements from members of the public regarding the North Anna ESP application. The limited appearance statement session will be held on February 8, 2007 from 6:00 PM to 11:00 PM EST at the Louisa County High School auditorium, 757 Davis Highway, Mineral, Virginia 23117.

I. Background and Scope of Proceeding

The Nuclear Regulatory Commission (Commission) has defined an ESP as "Commission approval... for a site or sites for one or more nuclear power facilities." 10 C.F.R. § 52.3(b). If an ESP application is approved, then, if the holder applies for a later construction

permit, “the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit.” 10 C.F.R. § 52.39(a)(2). The North Anna ESP application also includes a site redress plan, which, if approved, would allow the ESP holder to prepare the site for construction of the plant, as long as the activities will not result in any significant adverse environmental impact which cannot be redressed, and the applicant commits to redress the site if a construction permit is not issued. 10 C.F.R. § 52.25. See North Anna ESP Application, Revision 9, 4-1-1 (September 2006). The applicant may not undertake any other construction activities on the site, however, without having applied for and received a construction or combined operating license from the NRC. 10 C.F.R. § 52.3.

On December 2, 2003, the Commission published a notice of hearing with regard to Dominion’s North Anna 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 Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen filed a petition to intervene. The predecessor Board admitted two of the Intervenor’s contentions. See Dominion Nuclear North Anna LLC (North Anna ESP), LBP-04-18, 60 NRC 253, 274 (2004).

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. As a consequence, the application process was delayed by a year. The Staff issued a supplemental Final Safety Evaluation Report (FSER) on November 15, 2006, and a supplemental Final Environmental Impact Statement (FEIS) on December 14, 2006, addressing the changed application.

Both of the admitted contentions were resolved, one by a settlement and the other by summary disposition. Licensing Board Order (Approving Settlement and Dismissal of Contention EC 3.3.4) (Jan. 6, 2005) (unpublished); Dominion Nuclear North Anna LLC (North Anna ESP), LBP-06-24, 64 NRC __ (2006). This is now an uncontested proceeding mandated by Section 189a(1)(A) of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1)(A), and 10 C.F.R. § 52.21.

In an uncontested proceeding for an ESP, the Board must make findings on six issues. See 68 Fed. Reg. 67,489, 67,489 (December 2, 2003). They are as follows:

1. Safety Issue 1: The Director of the Office of New Reactors (NRR) is obligated to propose a finding as to whether issuance of the ESP will be inimical to the common defense and security or to the health and safety of the public. The Board must decide whether the application and the record of the proceeding contain sufficient information, and the review of application by the NRC Staff has been adequate to support a finding that the issuance of the ESP will NOT be inimical to the common defense and security or to the health and safety of the public.

2. Safety Issue 2: The Director of NRR is obligated to propose a finding as to whether, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public. The Board must decide whether the application and the record of the proceeding contain sufficient information, and the review of application by the NRC Staff has been adequate to support a finding that, taking into consideration the site criteria contained in 10 C.F.R. Part 100, a reactor, or reactors, having the characteristics that fall within the parameters for the site, can be constructed without undue risk to the health and safety of the public.

3. NEPA Issue: The Director of NRR is obligated to propose a finding as to whether, in accordance with the requirements of subpart A of 10 C.F.R. Part 51, the ESP should be issued as proposed. The Board must decide whether the review conducted by the Commission pursuant to NEPA has been adequate.

4. NEPA Baseline Issue 1: The Board must decide whether the requirements of Section 102(2)(A), (C) and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding.

5. NEPA Baseline Issue 2: The Board must independently consider the final balance among the conflicting factors contained in the record of the proceeding and must determine the appropriate action to be taken.

6. NEPA Baseline Issue 3: The Board must determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

II. Notice of Limited Appearance Statement Session

A. Date, Time, and Location of Oral Limited Appearance Statement Session

The oral limited appearance statement session will be from 6:00 PM to 11:00 PM EST on February 8, 2007, at the Louisa County High School auditorium, 757 Davis Highway, Mineral, Virginia 23117.

B. Participation Guidelines for Oral Limited Appearance Statements

Any person who is not currently a party will be permitted to make an oral statement setting forth his or her position on matters of concern related to this ESP application. The jurisdiction of this Board and the scope of this proceeding is limited to the six issues, listed above, that the Board must decide regarding the ESP application. Limited appearance statements will be transcribed, but are not under oath or affirmation and do not constitute testimony or evidence. The purpose of limited appearance statements is to allow members of

the public to alert the Board and the parties to areas of concern relating to the ESP application and to assist the Board in its consideration of the six issues.

Members of the public who plan to attend the limited appearance session are advised that security measures may be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. Signs can be no larger than 18 inches by 18 inches and may not be attached to sticks, held up, or moved about in the rooms. Policy Statement on Enhancing Public Participation in NRC Meetings, 67 Fed. Reg. 36,920, 36,923 (May 28, 2002).

In order to allow the maximum number of interested persons an opportunity to address the Board, the time allotted for each oral limited appearance statement normally will be no more than five minutes, and the allocated time may be further limited, depending on the number of written requests to make an oral statement that are submitted in accordance with section C below and/or the number of persons present at the designated time. At the outset of each statement, the speaker should identify himself or herself and specify any affiliation (such as employment, consultancy, or membership) with any of the parties.

C. Submitting a Request to Make an Oral Limited Appearance Statement

Persons who have submitted a timely written request to make an oral limited appearance statement will be given priority over those who have not filed such a request or who sign up to speak on the date of the session. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. Eastern Daylight Time on Monday, February 5, 2007. Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff

U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Fax: (301) 415-1101 (verification (301) 415-1966).

E-mail: hearingdocket@nrc.gov.

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Alex S. Karlin, Chairman, c/o: Margaret Parish, Esq., Law Clerk

Atomic Safety and Licensing Board Panel

Mail Stop T-3 E2C, U.S. Nuclear Regulatory Commission, Washington, D.C.

20555-0001.

Fax: (301) 415-5599 (verification (301) 415-6094).

E-mail: kvs@nrc.gov and map4@nrc.gov.

D. Written Limited Appearance Statements (In Lieu of Oral Statements)

A written limited appearance statement may be submitted to the Board regarding this proceeding. Such statements should be submitted by April 19, 2007, and should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

III. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852) or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC public document room reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

IV. Scheduling Information Updates

Any updated/revised scheduling information regarding the limited appearance session can be found by calling (800) 368-5642 or (301) 415-8200 or on the NRC Web site at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 5, 2007

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 ORDER (NOTICE OF OPPORTUNITY TO MAKE ORAL OR WRITTEN LIMITED APPEARANCE STATEMENTS) 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 ORDER (NOTICE OF OPPORTUNITY
TO MAKE ORAL OR WRITTEN LIMITED
APPEARANCE STATEMENTS)

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 Adria T. Byrdsong]
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 5th day of January 2007