

RAS 13079

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: North Anna ESP Site
Pre-Hearing Conference

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

Location: (telephone conference)

Date: Wednesday, February 14, 2007

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

PREHEARING CONFERENCE

IN THE MATTER OF: ||

DOMINION NUCLEAR NORTH ||

Docket No. 52-008-ESP

ANNA, LLC ||

ASLBP No. 04-822-02-ESP

(Early Site Permit for ||

North Anna ESP Site) ||

U.S. Nuclear Regulatory Commission

ASLB Hearing Room, Two White Flint North

11545 Rockville Pike

Rockville, Maryland

Wednesday, February 14, 2007

The above-entitled matter came on for pre-hearing conference at 2:00 p.m.

BEFORE:

ALEX S. KARLIN Chair

RICHARD F. COLE Administrative Judge

THOMAS S. ELLEMAN Administrative Judge

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

(2:00 p.m.)

1
2
3 JUDGE KARLIN: Good afternoon. I'm Alex
4 Karlin, the Chair of this Atomic Safety and Licensing
5 Board.

6 Mr. Reporter, we're on the record now, so
7 if you would please transcribe that.

8 I'm not sure if anyone could get the back
9 door and close that. It appears to be open. That
10 would be great.

11 I just want to get on the record, you
12 know, what -- who we are, what's going on today, and
13 then we'll proceed.

14 This is the Atomic Safety and Licensing
15 Board convened in the matter of North Anna -- Dominion
16 Nuclear North Anna, LLC. It's an early site permit
17 application, Docket Number 52-008, ASLBP Number 04-
18 822-02-ESP.

19 Today's date is February 14th, and we are
20 having this session pursuant to the January 4th second
21 revised scheduling order that we issued in this case.

22 For the record, let's just introduce
23 ourselves and make sure everyone is here. Present
24 here in Rockville, myself, Alex Karlin, to my right
25 Dr. Cole, Richard Cole, and I believe Dr. Elleman,

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1 Thomas Elleman, is on the line.

2 JUDGE ELLEMAN: That's correct.

3 JUDGE KARLIN: Great. Great. We'll go
4 around the table and just ask everyone to introduce
5 themselves. Mr. Weisman, perhaps you could introduce
6 both the counsel and anyone who is participating or
7 sitting in by phone.

8 MR. WEISMAN: Thank you, Your Honor.

9 JUDGE KARLIN: All right. Thanks.

10 MR. WEISMAN: Bob Weisman representing the
11 NRC Staff. With me at counsel table is Patrick
12 Moulding. We have with us in the audience other
13 members of the Environmental Project Staff, and
14 listening by telephone are our contractors at the
15 Pacific Northwest National Laboratory.

16 JUDGE KARLIN: Great. Okay. Welcome.

17 Mr. Lewis, hi.

18 MR. LEWIS: My name is David Lewis. I'm
19 with the law firm of Pillsbury Winthrop Shaw Pittman.
20 With me is Robert Haemer, representing Dominion
21 Nuclear North Anna, and we have no other members on
22 the phone or in the audience.

23 JUDGE KARLIN: All right. Thanks to all
24 of you for coming on this icy day, happily I guess.
25 The Executive Director of the NRC has declared early

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1 dismissal starting at 3:00 p.m. this afternoon, so we
2 just made it under the wire I guess to get this
3 proceeding in. And if we can be quick, we might even
4 beat the 3:00 p.m. timeframe. If not, we're going to
5 keep going until we're done, hopefully, so that will
6 be an incentive to get -- to do this efficiently.

7 But anyway, thank you for coming on this
8 icy day.

9 I also want to introduce Meg Parish, who
10 is our lawyer and law clerk who is here assisting us
11 on this matter. As background, again, we had a
12 meeting on December 14th, where we talked about a good
13 way to try to conduct the mandatory hearing process.
14 Pursuant to that, we've come up with this idea of
15 issuing our questions and then having this opportunity
16 for the Staff and the applicant to seek clarification
17 on any of those questions.

18 We did that before with regard to the
19 safety questions and it seemed to work. And we have
20 received your answers to the safety questions. We
21 have not digested them. We're working on them and
22 studying them, but we appreciate getting those in in
23 a timely -- you all getting them in in a timely way.

24 We issued the environmental questions, as
25 you all know, about a week ago on the 7th of February,

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1 and the answers are due on March 1st, if I've got my
2 schedule correct. So the purpose -- the sole purpose
3 of this meeting is really for the applicant and the
4 Staff to get whatever clarification you might need or
5 might help you in terms of answering the questions,
6 not here to discuss objections or oral arguments and
7 this sort of thing, but clarification only.

8 Our process I think will be the same as we
9 did with the -- on July -- on January 25th with regard
10 to the safety questions. We'll ask the applicant to
11 go first with, you know, maybe a unit of questions or
12 unit of -- first 10 or 20, whatever, and then we'll go
13 to the Staff and ask them to -- if they have any need
14 for clarification.

15 Again, listen carefully, if you would.
16 We're not going to issue an order about this. Same
17 process as before. Take notes, because we'll try to
18 give you a clarification right on the spot. And if we
19 are stumped on any particular matter, or need to have
20 a separate sidebar conference call, we'll save that
21 until the end, and then we'll adjourn briefly and
22 we'll have a call with Judge Elleman separately, and
23 then get -- you know, and then reconvene, you know,
24 right then and there.

25 I hope this will help with regard to the

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1 environmental questions. And before we proceed, let
2 me ask, are there any other suggestions or agenda
3 items that are burning and need to be put on the
4 record?

5 MR. WEISMAN: No, Your Honor.

6 JUDGE KARLIN: No? Okay. Good. Very
7 good.

8 Judge Elleman, Judge Cole, anything else
9 you want to add at this point?

10 JUDGE ELLEMAN: I have nothing.

11 JUDGE KARLIN: Okay.

12 JUDGE COLE: I have nothing.

13 JUDGE KARLIN: Fine. I might also
14 mention, we have -- I have studied -- we looked
15 briefly at the answers that you filed to the safety
16 questions. It looks like they're a good faith effort
17 to answer a lot of questions, and we appreciate that.

18 I might mention there is a difference in
19 the way the Staff and the applicant handled this. And
20 I haven't discussed this with my fellow members on the
21 Board, but there is a little bit of nuance here. The
22 Staff's answers provided an affidavit from each of the
23 answerers to the questions.

24 And I think that was a good and
25 appropriate way to do that, given that what we are

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1 hoping to have is documents which stand on their own
2 and do not have to have someone come in and testify in
3 person and vouch for them.

4 As far as I can tell, Mr. Lewis,
5 Dominion's response only had one affidavit at the end,
6 sort of an overall affidavit or declaration. I think
7 it would be important and necessary, in fact, if you
8 could do the same thing and have -- produce
9 declarations from each of the answerers. Could you do
10 that?

11 MR. LEWIS: Yes, we'll go back and do
12 that. It was really logistical.

13 JUDGE KARLIN: Right.

14 MR. LEWIS: And so I'd be glad to do that.

15 JUDGE KARLIN: Yes, that would be very
16 helpful, because otherwise I don't see how they can be
17 admitted without being vouched safe by a person coming
18 in in person and testifying, you know, so if we could
19 have those within, say, 10 days, the affidavits,
20 either the subject matter expert, or at least the
21 person who is swearing to the answer that is being
22 provided there --

23 MR. LEWIS: Okay.

24 JUDGE KARLIN: -- more specifically.

25 MR. LEWIS: We'll do that -- the same

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1 approach now with the environmental questions.

2 JUDGE KARLIN: Yes. Yes, if you could.
3 I think the Staff's approach was good on that. And if
4 you could follow that, that would be helpful.

5 Okay. With that, we'll go to the
6 environmental questions. Why don't we just start with
7 the -- starting with the applicant, Mr. Lewis, what is
8 the first set of questions you have -- need
9 clarification on?

10 MR. LEWIS: We only have three items, and
11 the first is 21.

12 JUDGE KARLIN: Okay, 21. And any others?

13 MR. LEWIS: The others -- the second one
14 is actually three questions, but it's the same item in
15 each case -- 78, 80, and 85 is one clarification.

16 JUDGE KARLIN: Okay.

17 MR. LEWIS: And then, 110 is the last one.

18 JUDGE KARLIN: Okay. All right. So that
19 gives us a -- 21, you got anything before 21, Mr.
20 Weisman?

21 MR. WEISMAN: No, Your Honor. We start
22 with 24.

23 JUDGE KARLIN: 24. Okay. And you only
24 have two or three as well, I suppose?

25 MR. WEISMAN: We have one other one, and

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1 that's 103(d).

2 JUDGE KARLIN: 103.

3 MR. WEISMAN: D.

4 JUDGE KARLIN: D. Okay, great. Well,
5 then, 21 it is. Mr. Lewis?

6 MR. LEWIS: Thank you, Judge Karlin. This
7 question asks about Table 2-2, and asks what was the
8 source of the information in that table. We just
9 wanted to make sure that the Board's question was
10 indeed intended to refer to Table 2-2, because the
11 last column of that table had a specific reference to
12 a source next to each item.

13 Anyway, it just struck us as curious --

14 JUDGE KARLIN: Okay.

15 MR. LEWIS: -- to make sure that it was
16 indeed that payment that was being referred to.

17 JUDGE KARLIN: Well, I think we need to
18 look at that table.

19 MR. LEWIS: The right-hand column is
20 entitled "Source," and there's a reference -- notable
21 references next to each entry, so --

22 JUDGE KARLIN: Table 2.2, page 2.31 of the
23 FEIS, and where is the reference to the source of
24 information? I'm sorry.

25 MR. LEWIS: My recollection is it's to the

1 right-hand column of the table under the heading.

2 JUDGE KARLIN: Oh, I see. You have the
3 source -- there's a column with source information.
4 Okay.

5 MR. LEWIS: And maybe --

6 JUDGE KARLIN: That seems to answer --

7 MR. LEWIS: I just wanted to make sure
8 that, in fact, this was the table you were referring
9 to, because that struck us as --

10 JUDGE KARLIN: You know, that -- I'm not
11 sure whether the reference of 2.2 is incorrect or --
12 but the page is there, so -- oh. Well, no, I think
13 what is the source of the information, 2.2, is
14 answered in the chart. I think that's a good point.

15 MR. LEWIS: Okay.

16 JUDGE KARLIN: I mean, it may be still a
17 valid question as -- what did the Staff do to --

18 MR. LEWIS: The second part.

19 JUDGE KARLIN: Yes, okay.

20 MR. LEWIS: It was just that disconnect.
21 I wanted to be sure --

22 JUDGE KARLIN: Good.

23 MR. LEWIS: -- we were --

24 JUDGE KARLIN: Yes, that question is --
25 we'll withdraw the first part, first question of

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1 number 21. Good point. Thank you.

2 All right. 24. Why don't we go to 24.

3 Mr. Weisman?

4 MR. WEISMAN: This is the question that
5 deals with projected population growth rates around
6 the site and in nearby counties.

7 JUDGE KARLIN: Right.

8 MR. WEISMAN: The Staff is understanding
9 Board question 24 as requesting an explanation of how
10 a decreasing annual growth rate in the vicinity of the
11 proposed North Anna ESP site is consistent with the
12 current high growth rates in Spotsylvania and Louisa
13 Counties.

14 JUDGE COLE: Yes.

15 MR. WEISMAN: Is that a correct
16 understanding of the question?

17 JUDGE COLE: Yes.

18 MR. WEISMAN: Very good.

19 JUDGE KARLIN: Yes. Great. Okay. Let's
20 go to your -- I think you have the next one, Mr.
21 Lewis. 78, 80, 85?

22 MR. LEWIS: Yes. All three of these
23 questions ask for certain information using a 90th
24 percentile chi over Q value. We wanted to make sure
25 the Board was aware when it asked this question that

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1 the safety analysis report had already calculated
2 basically what is a 95th percentile chi over Q value,
3 and whether the Board indeed wanted a third set of
4 values, or whether it would be okay to use the 90 --
5 more conservative 95th percentile value that has
6 already been computed and used in the SAR.

7 JUDGE KARLIN: I think the 95th, if it's
8 already available, would be fine.

9 MR. LEWIS: Thank you.

10 JUDGE KARLIN: And does that -- that
11 covers all three of those -- 78 --

12 MR. LEWIS: Yes, Judge Karlin.

13 JUDGE KARLIN: -- 80. Yes, I see the 90th
14 percent -- yes, okay. Yes, if you've already got a
15 95, that's even better. Good.

16 MR. LEWIS: Thank you.

17 JUDGE KARLIN: You don't need to calculate
18 anything extra.

19 103(d), is that the next one? Mr.
20 Weisman?

21 MR. WEISMAN: I believe so, Your Honor.

22 JUDGE KARLIN: All right.

23 MR. WEISMAN: 103(d) asks the question,
24 "Why weren't the definitions provided at the beginning
25 of the FEIS used when the Staff reached and

1 articulated its conclusions at numerous places as to
2 whether an impact was small, moderate, or large?" And
3 this is in regard to the alternatives -- the
4 alternatives of power generation here.

5 JUDGE KARLIN: Right.

6 MR. WEISMAN: Chapter 6. So the Staff
7 understands this question as referring to the
8 discussion of transportation impacts in Section 6.2,
9 because that may not -- that discussion may not so
10 clearly articulate those impact levels as defined at
11 the beginning of the document. Is the Staff's
12 understanding correct?

13 JUDGE KARLIN: I think -- no, I don't
14 think it's that narrow of a question. I think the
15 question was referencing a concern that a number of --
16 there's a definition provided, appropriate definition,
17 at the beginning of the FEIS, and then, the
18 terminology was used -- small, moderate, large.

19 And there seemed to be a number of places,
20 not just this example that's being given here, where
21 it was a more relativistic approach of impact was
22 being provided, i.e., while the impact here is small,
23 because compared to a coal mine, you know, it would be
24 a larger impact, so this impact is smaller. That's a
25 relativistic sort of standard, not necessarily the one

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1 that was defined at the beginning of the FEIS or in
2 the regs.

3 MR. WEISMAN: Okay. I believe that the
4 Staff -- I think the Staff understands the question.
5 I may need to consult when we're done with the project
6 managers, but we would try to identify instances where
7 it might appear that we hadn't used the appropriate
8 standard --

9 JUDGE KARLIN: Right.

10 MR. WEISMAN: -- and discuss that.

11 JUDGE KARLIN: Okay. Thank you.

12 And 110?

13 MR. LEWIS: Thank you. 110 pertains to
14 the analysis of the impacts from transporting
15 radioactive material in Section 6.2 of the FEIS at
16 Appendix G. The question asks at the end what
17 accident frequencies would be associated with the
18 activities related to construction and operation of
19 Units 3 and 4.

20 And we just wanted to confirm that that
21 last question is asking, what are the accident
22 frequencies associated with the analysis of the
23 transportation of radioactive materials and not a
24 broader question.

25 JUDGE KARLIN: Dr. Elleman, I think that

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1 might be one --

2 JUDGE ELLEMAN: It is one of mine. In
3 forming the question, I was interested in increased
4 accident frequencies that would be associated with all
5 vehicular traffic that was associated with the
6 construction. And so, no, it would not just be
7 transport of radioactive materials.

8 MR. LEWIS: Okay. That's what I wanted to
9 find out. I wasn't sure, because that was different
10 from the preamble.

11 JUDGE ELLEMAN: Yes.

12 MR. LEWIS: So it's any increased
13 transportation accidents associated with either
14 construction activities or operational activities --

15 JUDGE ELLEMAN: Or support activities of
16 any kind, yes.

17 MR. LEWIS: Thank you.

18 JUDGE KARLIN: All right. Any other
19 questions that you have of our questions?

20 MR. WEISMAN: I think, Your Honor, for the
21 Staff we would like to just briefly caucus with the
22 project managers and see if there's anything else we
23 need to ask.

24 JUDGE KARLIN: Okay. Well, we'll take a
25 -- I mean, they're right here in the audience, right?

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1 MR. WEISMAN: Yes.

2 JUDGE KARLIN: So, okay, yes, we'll take
3 a minute or two break and just go off the record here,
4 Mr. Court Reporter.

5 All right. Thank you.

6 MR. WEISMAN: Thank you, Your Honor.

7 (Whereupon, the proceedings in the
8 foregoing matter went off the record at
9 2:17 p.m. and went back on the record at
10 2:24 p.m.)

11 JUDGE KARLIN: Okay. Let's go back on the
12 record, Mr. Court Reporter.

13 Mr. Weisman, anything?

14 MR. WEISMAN: Yes, Judge Karlin. Thank
15 you.

16 JUDGE KARLIN: Okay.

17 MR. WEISMAN: On question 103(d) --

18 JUDGE KARLIN: Yes.

19 MR. WEISMAN: -- I misspoke. I said that
20 that was Chapter 6 was alternatives. It's fuel cycle,
21 so that point of -- wanted to make sure that's clear
22 on the record. Chapter 6 is about the fuel cycle.

23 So are we correct in understanding that
24 the Board's question there with respect to the small,
25 medium, moderate, or large, is with respect to

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1 Chapter 6 only?

2 JUDGE KARLIN: No, it's --

3 MR. WEISMAN: No.

4 JUDGE KARLIN: -- with respect to any
5 place in the EIS. I mean, I suspect the answer will
6 be, "Well, we used the right definitions throughout
7 the entire FEIS, of course," you know, but I think
8 there are some places where it appeared otherwise,
9 and, you know, we would like you to respond to that.

10 MR. WEISMAN: Okay. And it's those places
11 where there appears to be some kind of comparison
12 between an impact and an impact of something else.

13 JUDGE KARLIN: Right. That's primarily
14 where that -- the relativistic, you know, small,
15 medium, large, you know, comes in.

16 MR. WEISMAN: All right. I think that --
17 I think with that the Staff will be able to answer the
18 question.

19 JUDGE KARLIN: Okay. All right.
20 Appreciate that.

21 Before we -- I think we're done, then,
22 with clarification issues.

23 And where do we go from here? I always
24 try to, you know, look ahead. Where are we? We're
25 looking for answers from the parties on March 1st I

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1 think we've got that, right, under the second revised
2 scheduling order.

3 And then, our plan is to issue and try to
4 issue an order out on March 20th, which would set out
5 topics for the evidentiary hearing, and giving you
6 until April 10th to prefile testimony and exhibits
7 relating to these issues.

8 We thought -- and, Judge Elleman, we're
9 springing this on you, but Judge Cole and I talked
10 about it. Hopefully, you'll agree that it might be
11 useful to give you all the opportunity -- the parties
12 the opportunity to, when you submit your answers to
13 the environmental questions on March 1st, if you want
14 to propose topics for the evidentiary hearing, you
15 know, we would welcome or invite that if you want to
16 suggest some areas where you would want to put
17 witnesses on, or you think we ought to -- you know,
18 based on our questions you might discern a pattern and
19 approach where you might say, well, maybe we should
20 propose this, that, or the other.

21 We see it that it's primarily our
22 responsibility to define what needs to be covered in
23 the evidentiary hearing, but we welcome any proposals
24 you might want to make about different presentations
25 or panels of witnesses who we might want to question.

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1 So we invite you to consider that.

2 Judge Elleman, is that okay?

3 JUDGE ELLEMAN: I support doing that, yes.

4 JUDGE KARLIN: Okay. Yes. You know, so
5 March 1st, along with your answers to the
6 environmental questions, if you have proposed topics
7 for the evidentiary hearing, we would be glad to
8 consider them, and you could submit them at that time.

9 Backing up a little bit, we obviously have
10 to make this decision on the record.

11 The record, as we see it, will consist of
12 your answers to the questions which we posed that are
13 duly supported by sworn affidavit. The record will
14 also include your written testimony that you submit on
15 April 10th, and the record will then also cover
16 anything that occurs during the evidentiary hearing.

17 I think in the evidentiary hearing I think
18 you should assume that you need to get all your
19 evidence in, and all the record in that you need to
20 carry your burden of proof, by the written
21 submissions, by April 10th.

22 The evidentiary hearing is probably going
23 to be a small -- let's hope somewhat small subset of
24 all of the above, and we will only entertain or bring
25 in -- our plan is only to bring in witnesses where we

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1 have questions to the witness, where we are troubled
2 by some issue or have some problem with something, and
3 we want to probe that a little bit.

4 But you want to get on the record
5 everything you need by your submissions of April 10th.
6 This is something like the Subpart L process that we
7 just went through in the Vermont Yankee case, and
8 whatever burdens that need to be carried need to be
9 carried by the written prefiled testimony that is
10 submitted and the exhibits that go along with that,
11 and the answers to the questions you've done.

12 Is that helpful? Any questions about
13 that? Mr. Lewis or Mr. Weisman?

14 MR. LEWIS: No, I was just going to say
15 that I presume both the application and the SER and
16 FEIS will be exhibits, and also be on the record.

17 JUDGE KARLIN: Only if you put them in.

18 MR. LEWIS: Yes.

19 JUDGE KARLIN: So, no, I think -- I think,
20 in fact, the regs do prescribe that they need to be
21 in. I think Staff is obliged perhaps --

22 MR. WEISMAN: Yes.

23 JUDGE KARLIN: -- to put them in.

24 MR. WEISMAN: And the Staff certainly
25 intends to offer them into evidence.

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1 JUDGE KARLIN: Yes. Yes, I think there
2 are regs on that, but you're right. Those will be
3 part of the record, assuming you do what needs to be
4 done, yes.

5 Okay. Well, with that, thank you again
6 for coming in on such a cold and crummy day, and it's
7 -- we'll now stand adjourned. Thank you. We're
8 adjourned.

9 (Whereupon, at 2:29 p.m., the proceedings
10 in the foregoing matter were 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: North Anna ESP Site
Pre-Hearing Conference
Docket Number: 52-008-ESP; 04-822-02-ESP
Location: (Teleconference)

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.



Eric Mollen
Official Reporter
Neal R. Gross & Co., Inc.

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