

April 10, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

April 11, 2007 (7:47am)

In the Matter of)
)
DOMINION NUCLEAR NORTH ANNA, LLC)
)
(Early Site Permit for North Anna ESP Site))

Docket No. 52-008

ASLBP No. 04-822-02-ESP

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**DOMINION'S RESPONSE TO QUESTIONS
IN THE LICENSING BOARD'S MARCH 20, 2007 ORDER**

Dominion Nuclear North Anna, LLC (Dominion) provides these responses to the questions posed in Section III.C of the Atomic Safety and Licensing Board's March 20, 2007 Order (Instructions for Submission of Written Materials and Setting of Topics and Procedures for Evidentiary Hearing). Dominion first quotes each question and then provides its answer immediately below.

1. Legal Question. Dominion is seeking to build up to sixteen new reactors on a site where a different licensee currently operates two reactors. The parties argue that the Board's questions related to whether NRC's limits on the routine radiological effluents from the existing reactors and the proposed ESP apply on a per reactor, per license, per unit, or per site basis are "in large measure a moot point because the more restrictive requirements in Appendix I and 40 C.F.R. Part 190 would apply." See Dominion's Response to the Licensing Board's February 7, 2007 Order (Issuing Environmental-Related Questions) at 13.

a. Please provide the legal authority for the proposition that "Under 40 CFR Part 190 compliance with dose limits is assessed against the entire site and all sources of radioactivity and external radiation, regardless of the number of power plants." See Staff Answers to Environmental Questions: Exhibit B at 28.

b. If there are two licensees on a single site and if each of them maintains its own radiological effluents below the requirements of Appendix I and 10 C.F.R. Part 190, but the total radiological effluents from the site exceed one or both of those site requirements, please explain the law as to whether and how either of the licensees is in violation of the regulations or their license.

Answer:

a. 40 C.F.R. Part 190 establishes limits on the combined annual dose that any member of the public may receive from uranium fuel cycle operations, which is defined as including generation of electricity by a light-water-cooled nuclear power plant. See 40 C.F.R. §§ 190.02(b), 190.10. Thus, these limits apply to the combined annual dose from nearby units or facilities within the definition of uranium fuel cycle operations, regardless of whether they are on the same site or on nearby sites. NRC Health Physics Position 140 suggests that units within 8 kilometers of each other would contribute to the 40 C.F.R. Part 190 limit. See <http://www.nrc.gov/about-nrc/radiation/hppos/hppos140.html>.

b. If the radiological effluents from a site at which two licensees conducted operations were to result in a member of the public receiving a combined annual dose in excess 10 C.F.R. Part 190 limits, each licensee would be in literal violation of 10 C.F.R. § 20.1301(e) and of its license (assuming that the license contains standard technical specifications). However, if the violation were caused by the mis-operation of one of the licensees, Dominion assumes that the NRC could, as a matter of equity and discretion, choose to proceed with enforcement against only the licensee whose actions caused the violation to occur.

The Appendix I design objectives apply on a per unit basis. See Dominion Memo on Safety Questions at 8 (Response to Legal Question 78). Compliance is enforced through technical specifications in each license requiring a radioactive effluent control program that includes limitations on doses to any member of the public conforming to Appendix I. See id. at 6-7 (Response to Legal Question 77). Because the Appendix I limits apply on a per unit basis, a licensee would only be in violation of its technical specifications if the dose from radioactive

effluent from any single unit were to exceed the Appendix I limits included in the technical specifications for that unit.

2. Legal Question. The NRC Environmental Justice policy states “If the percentage in the impacted area significantly exceeds that of the State or the County percentage for either the minority or low-income population then EJ will be considered in greater detail.” 69 Fed. Reg. 52040, 52048 (Aug. 24, 2004) (emphasis added). Here however, although the percentage of minority or low-income population in the impacted area appears to exceed the norm significantly, the Staff’s Final Environmental Impact Statement does not consider EJ in greater detail. See Staff Answer to Board Environmental Questions: Exhibit B at 22. Please explain whether and how this complies with Executive Order 12898 and the NRC policy.

Answer:

As discussed in Dominion’s Response to Environmental Questions (Question 25B), there are relatively few census block groups in the impact area with low income or minority populations exceeding the 20 percentage point criterion (see 69 Fed. Reg. at 52,048) used to identify such populations. In particular, there are no census block groups with a low income population as defined above within 60 kilometers of the ESP Site. The only two such populations within 80 kilometers of the ESP Site are in the Charlottesville and Richmond areas. (See ER Figure 2.5-15). There are no census block groups with minority populations in excess of the 20 percent criterion within 20 kilometers of the site. (See ER Figure 2.5-14). Apart from these relatively few and remote census blocks, the percentage of minority or low-income population in the impact area does not exceed the norm significantly.

For the construction or operation of the new units at North Anna to disproportionately affect minority/low-income populations, three things must be present: (1) the populations, (2) pathways that could introduce impacts to the population, and (3) adverse impacts. Because there were a few census blocks that contained low-income or minority populations exceeding the threshold criterion, the FEIS did examine the potential impacts on those populations to determine

whether there were disproportionately high adverse impacts, and thus fully complied with the NRC's Policy Statement.

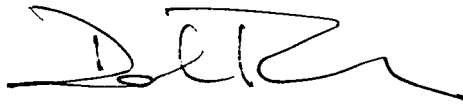
This EJ review is described in Section 4.7 (for construction impacts) and Section 5.7 (for operational impacts) of the FEIS (NUREG-1811). As described in these sections, the Staff first identified pathways by which human populations could be impacted. The Staff then interviewed resource agencies to determine if there were any populations that had dependencies or practices by which the identified pathways could introduce disproportionately high adverse impacts to receptors in those populations. Based on the interviews, no such dependencies or practices were identified. Finally, the NRC Staff determined that there would be no health-related or location-dependent adverse impacts as a result of the proposed ESP.

The CEQ advises agencies to reduce excessive paperwork "by discussing only briefly issues other than significant ones." 40 C.F.R. § 1502.2(b). Because no disproportionately high adverse impacts were identified, the discussion in sections 4.7 and 5.7 is properly brief, consistent with CEQ guidance. This does not signify any failure by the Staff to take the hard look at environmental impacts required by NEPA.

3. Factual Question. The original notice of hearing in this proceeding stated that "the Director, Office of Nuclear Reactor Regulation (NRR), NRC, will propose findings on the following issues" and proceeded to specify two issues pursuant to the Atomic Energy Act and one issue pursuant to the National Environmental Policy Act. 68 Fed. Reg. 67,489 (Dec 2, 2003). The NRR staff issued a final safety evaluation report and a final environmental impact statement, neither of which seem to be signed by the Director or state that they represent his findings. Please cite and provide the documents whereby the Director of NRR made or proposed the three specified findings.

Answer: It is Dominion's understanding that the responsibility for making findings in new reactor licensing proceedings has been delegated to the Director, Officer of New Reactors; that the SER and FEIS are prepared by the Staff on behalf of the Director; and that the Director's final findings are made in the ESP when it is issued. However, Dominion is not in a position to aver to the internal delegations of authority within the NRC. Dominion's counsel has consulted with counsel for the NRC Staff and understands that the NRC Staff will provide the necessary explanation.

Respectfully submitted,



Lillian M. Cuoco
Senior Counsel
Dominion Resources Services, Inc.
Rope Ferry Road
Waterford, CT 06385
Tel. (860) 444-5316

David R. Lewis
Robert B. Haemer
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Tel. (202) 663-8474

Counsel for Dominion Nuclear North Anna, LLC

Dated April 10, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
DOMINION NUCLEAR NORTH ANNA, LLC) Docket No. 52-008
)
(Early Site Permit for North Anna ESP Site)) ASLBP No. 04-822-02-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "Dominion's Pre-hearing Statement," dated April 10, 2007; (2) Dominion's Pre-Filed Testimony of Marvin L. Smith, Stephen D. Routh, Dr. William R. Lettis, Dr. Robin K. McGuire, and Dr. John R. Davie on Safety Matters (including attached Statements of Qualifications and Declarations of each witness); (3) Dominion's Pre-Filed Testimony of Marvin L. Smith, Karen K. Patterson, and Jon A. Cudworth on Environmental Matters (including attached Statements of Qualifications and Declarations of each witness); (4) Dominion's Witness List on Topics in Section II.D of March 20, 2007 Order; (5) Dominion's Response to Questions in the Licensing Board's March 20, 2007 Order," dated April 10, 2007; (6) a CD containing the North Anna Early Site Permit Application, Rev. 9 (Sept. 2006); and (7) accompanying cover letter were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, or with respect to Judge Elleman by overnight mail, this 10th day of April, 2007. In addition, where indicated by an asterisk, copies of these documents, other than the CD, were served by electronic mail, this same date.

*Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ASK2@nrc.gov

*Administrative Judge
Dr. Thomas S. Elleman
5207 Creedmoor Road
Raleigh, NC 27612
TSE@nrc.gov
elleman@eos.ncsu.edu

*Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
RFC1@nrc.gov

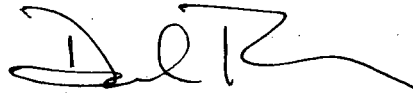
*Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
secy@nrc.gov, hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*Robert M. Weisman, Esq.
*Brooke D. Poole, Esq
*Patrick A. Moulding, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
rmw@nrc.gov; bpd@nrc.gov; pam3@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

*Marcia Carpentier, Esq.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
MXC7@nrc.gov



David R. Lewis



Pillsbury
Winthrop
Shaw
Pittman_{LLP}

2300 N Street, N.W.
Washington, D.C. 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

DAVID R. LEWIS
202-663-8474
david.lewis@pillsburylaw.com

April 10, 2007

Administrative Judge
Alex S. Karlin, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Administrative Judge
Dr. Richard F. Cole
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Administrative Judge
Dr. Thomas S. Elleman
5207 Creedmoor Road
Raleigh, NC 27612

In the Matter of
Dominion Nuclear North Anna, LLC
(Early Site Permit for North Anna ESP Site)
Docket No. 52-008; ASLBP No. 04-822-02-ESP

Gentlemen:

Attached, please find the following documents filed by Dominion Nuclear North Anna LLC today, as required by your March 20, 2007 Order in this proceeding:

Dominion's Pre-Hearing Statement;

Dominion's Pre-Filed Testimony of Marvin L. Smith, Stephen D. Routh, Dr. William R. Lettis, Dr. Robin K. McGuire, and Dr. John R. Davie on Safety Matters (including attached Statements of Qualifications and Declarations of each witness);

Dominion's Pre-Filed Testimony of Marvin L. Smith, Karen K. Patterson, and Jon A. Cudworth on Environmental Matters (including attached Statements of Qualifications and Declarations of each witness);

Dominion's Witness List on Topics in Section II.D of March 20, 2007 Order; and

Dominion's Response to Questions in the Licensing Board's March 20, 2007 Order.

April 10, 2007
Page 2

In addition, Dominion is pre-filing the North Anna Early Site Permit Application, Revision 9 (September 2006) as an exhibit upon which Dominion intends to rely in support of its prefiled testimony and positions. For the convenience of the Board and parties, a CD containing this document is attached, and four paper copies are being delivered separately to the Board.

Finally, in accordance with paragraph III.A.5 of the Order, an electronic copy of Dominion's Exhibit List is being provided by email to the Board's law clerk.

Sincerely,

A handwritten signature in black ink, appearing to read 'DRL', with a long horizontal flourish extending to the right.

David R. Lewis
Counsel for Dominion Nuclear North Anna, LLC

Enclosures
cc: Service List