

## NAPSEISComment Resource

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**Sent:** Thursday, August 14, 2008 3:24 PM  
**To:** NorthAnnaCOLAEIS Resource  
**Cc:** Alicia Williamson  
**Subject:** Scoping Comments on NAPS COL-Docket No. 52-017  
**Attachments:** NRC North Anna Unit 3 COL EIS Scoping Comments.doc

A hard copy is in the mail.

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Chief, Rulemaking  
Directives and Editing Branch  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

RE: Request for Comments on the Nuclear Regulatory Commission's Virginia Electric and Power Company, D/B/A Dominion Virginia Power, and Old Dominion Electric Cooperative North Anna Nuclear Station Unit 3 Combined License Application; Correction and Supplement to Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process, *Federal Register* Vol. 73, No. 138, pages 41132-41133

Dear Sirs:

This is in response to the Nuclear Regulatory Commission (NRC) July 17, 2008 *Federal Register* notice, Virginia Electric and Power Company, D/B/A Dominion Virginia Power, and Old Dominion Electric Cooperative North Anna Nuclear Station Unit 3 Combined License Application; Correction and Supplement to Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process (73 FR 138, 41132-33).

### **Description of the NRC Notice**

According to the NRC notice, the notice corrects and supplements a previous Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Conduct Scoping Process (regarding an application for a combined license) published in the Federal Register on March 13, 2008 (73 FR 13589). The action is necessary:

1. to correctly identify the document the NRC staff intends to prepare, the applicants for the combined license (COL) and the matters that the scoping process is intended to accomplish;
2. to inform the public and other scoping participants that alternative sites will not be considered in the review of the staff of the U.S. Nuclear Regulatory Commission (NRC or Commission) or in the environmental impact statement (EIS) prepared in connection with the COL application; and
3. to reopen the scoping comment period so as to provide the public with an opportunity to participate in the environmental scoping process, as described in 10 CFR 51.29, in regard to the correctly identified matters that the scoping process is intended to accomplish.

On November 27, 2007, the NRC issued ESP-003 to Dominion Nuclear North Anna, LLC, for the North Anna Early Site Permit Site (ESP) (the site of proposed Unit 3). Furthermore, an application dated November 27, 2007, for a COL for North Anna Unit 3 submitted by Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Applicants) references the ESP for the North Anna ESP site, ESP-003. According to the NRC notice, for a COL application that references an ESP, the NRC staff, pursuant to 10 CFR 51.75(c), prepares a supplement to the ESP EIS (NUREG-1811) in accordance with 10 CFR 51.92(e). Accordingly, the purpose of the notice is to inform the public that the NRC staff will be preparing a supplement to NUREG-1811, the ESP Final EIS, in support of the review of the COL.

Pursuant to NRC regulations in 10 CFR 51.92(e), the scoping process for the supplemental EIS to the ESP Final EIS will be used to accomplish the following:

- (a) Identification of the economic, technical, and other benefits and costs of the proposed action, to the extent that the EIS for the ESP did not include an assessment of these benefits and costs;
- (b) Identification of other energy alternatives, to the extent that the EIS for the ESP did not include an assessment of energy alternatives;
- (c) Identification of the issues related to the impacts of construction and operation of the facility that were not resolved in the ESP proceeding; and
- (d) Identification of the issues related to the impacts of construction and operation that were resolved in the ESP proceeding but where new and significant information exists, including but not limited to, new and significant information demonstrating that the design of the facility falls outside the site characteristics and design parameters specified in the ESP.

In light of the above information, the NRC staff has decided to reopen the scoping comment period for thirty (30) days to enhance the ability of members of the public to participate in the scoping process.

## SCOPING COMMENTS

The following discussion pertains to the NRC's decision to prepare a supplemental EIS in support of the COL instead of an EIS. Inasmuch as a COL is a major federal action, a supplemental EIS would not provide the rigorous environmental analysis necessary to guide decision makers on a COL application. The NRC has repeatedly stated that *"to construct and operate a nuclear power plant, an ESP holder must obtain a CP and OL, or a COL, which are separate major federal actions which require their own environmental review in accordance with 10 CFR Part 51"* (references: ESP Final EIS, page 1-2, ESP Supplemental EIS, Executive Summary, page xviii, and ESP, DEIS, Executive Summary page xxi). The recent decision (published on July 17, 2008) to prepare a supplement to the Final ESP EIS to support the COL instead of another EIS for the COL is also inconsistent with the NRC's earlier position as reflected in Mr. William D. Beckner's July 6, 2005 letter responding to Mr. Adrian Heymer at the Nuclear Energy Institute. In that letter, Mr. Beckner stated *"We believe that a portion of the underlying basis for industry's view is not consistent with the NRC's regulations and the applicable case law interpreting the National Environmental Policy Act of 1969, as amended (NEPA). In particular, inasmuch as an ESP and a COL are major federal actions, an environmental assessment is not a sufficient environmental inquiry on which to base an action on an ESP or COL application. Accordingly, pursuant to 10 CFR 51.20, both actions require the preparation of an EIS."*

While we understand that the NRC's current rules implementing NEPA (10 CFR 51.92) allow the NRC to prepare a supplement to the ESP EIS to support the COL, over the past five years (since 2003 until March 13, 2008) the NRC has consistently maintained that an EIS would be prepared to support the COL. It was with this understanding that the Commonwealth reviewed and commented on the Draft EIS (March 3, 2005) and Supplemental EIS (September 8, 2006) for the ESP. During the ESP review process several environmental impact considerations were deferred to the COL stage of the licensing process. Following the 2006 amendments to the NRC rules, the Final ESP EIS which was published in December 2007 continued to assert that the ESP and COL are separate major federal actions requiring their own environmental review. Therefore, the Commonwealth had no reason to anticipate the NRC's recent change in its position on the type of NEPA document which would be prepared for the COL process.

## NEPA AND FEDERAL CONSISTENCY REVIEW AUTHORITIES

DEQ's roles with respect to the review of any environmental documents that may be prepared for the proposed action are described below. DEQ's Office of Environmental Impact Review (OEIR) will coordinate Virginia's review of environmental documents prepared pursuant to the National Environmental Policy Act and comment to the NRC on behalf of the Commonwealth. A similar review process pertains to federal consistency certifications (FCC) submitted pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended.

Pursuant to the CZMA, federal licensing or permit activities affecting Virginia's coastal resources or coastal uses must be consistent with the enforceable policies of the Virginia Coastal Resources Management Program (VCP) (also called the Virginia Coastal Zone Management Program) (see *Federal Consistency Regulations*, 15 CFR Part 930, sub-part D, Consistency for Activities Requiring a License or Permit). DEQ must be provided with a federal consistency certification which involves an analysis of the activities in light of the enforceable policies of the VCP (first enclosure), and a commitment to comply with the enforceable policies. In addition, we invite your attention to the advisory policies of the VCP (second enclosure).

Sections 930.57 and 930.58 of the *Federal Consistency Regulations* and Virginia's *Federal Consistency Information Package* available on DEQ's web site at <http://www.deq.virginia.gov/eir/federal.html>, give content requirements for a consistency certification.

We recommend that the submission of the federal consistency certification follows the completion of the NEPA review process to facilitate the resolution of issues before embarking on the consistency review. We believe that this approach will prevent unnecessary delays in the consistency review process which could result from changes made during the NEPA review.

### Environmental Review

The following state and local Virginia agencies are likely to be included in the coordinated review of submitted environmental documents (note: starred (\*) agencies administer one or more of the Enforceable Policies of the Virginia Coastal Resources Management Program.

- Department of Environmental Quality:
  - Office of Environmental Impact Review
  - Tidewater Regional Office\*
  - Water Division
  - Air Division\*
  - Waste Division
- Department of Game and Inland Fisheries\*
- Department of Conservation and Recreation:
  - Division of Chesapeake Bay Local Assistance\*
  - Division of Soil and Water Conservation\*
  - Division of Planning and Recreation Resources
- Department of Health\*
- Marine Resources Commission\*
- Department of Historic Resources
- Virginia Institute of Marine Science
- Department of Mines, Minerals, and Energy
- Department of Agriculture and Consumer Services

Chief, Rulemaking  
U.S. Nuclear Regulatory Commission

Department of Forestry  
Department of Transportation  
Hampton Roads Planning District Commission  
Affected Locality (ies)

In order to ensure an effective coordinated review of the EIS and the consistency certification, we will require about 24 copies of each document (6 hard copies and 18 CDs) when it is published. The document should include one or more U.S. Geological Survey topographic maps as part of its information. We recommend, as well, that project details be adequately described and analyzed. While this Office does not participate in scoping efforts beyond the advice given herein, other agencies may independently provide scoping comments to you concerning the preparation of the NEPA document for the proposed project.

If you have questions about the NEPA review process or the federal consistency review process, feel free to call me at (804) 698-4325 or John Fisher of this Office at (804) 698-4339.

Sincerely,

Ellie L. Irons, Manager  
Office of Environmental Impact Review

Enclosures

cc. Richard Weeks, DEQ  
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Robbie Rhur, DCR  
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