

SAFETY EVALUATION BY THE OFFICE OF NEW REACTORS  
RELATED TO AMENDMENT NO. 2 TO EARLY SITE PERMIT NO. ESP-003  
VIRGINIA ELECTRIC AND POWER COMPANY, DBA DOMINION VIRGINIA POWER  
AND OLD DOMINION ELECTRIC COOPERATIVE  
NORTH ANNA ESP SITE  
DOCKET NO. 52-008

1.0 INTRODUCTION

By application dated September 2, 2010 (Agencywide Documents and Access Management System (ADAMS) accession number ML102500209), Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP) and Old Dominion Electric Cooperative (ODEC) requested approval of an amendment to Early Site Permit (ESP)-003 pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." DVP requested approval to delete permit condition 3.G, which prescribes the notification and certification requirements associated with beginning site preparation and preliminary construction activities at the site approved by ESP-003. Condition 3.G requires the permit holder to notify the U.S. Nuclear Regulatory Commission (NRC) Regional Administrator for Region II and the operator of the North Anna Power Station of the permit holder's plans to begin site preparation and preliminary construction activities described in the site redress plan activities 120 days prior to execution. Additionally, in making the required notification, the permit holder is required to certify that it has obtained all other permits, licenses, and certifications required for these activities.

2.0 BACKGROUND

By application dated April 24, 2008 (ADAMS accession number ML081210412), Dominion Nuclear North Anna, LLC (DNNA) requested approval of the transfer of ESP-003 for the North Anna Site, which DNNA then held, to Virginia Electric and Power Company, doing business as DVP, and ODEC. The application dated April 24, 2008, included a request for approval of a conforming amendment pursuant to Sections 10 CFR 52.28, "Transfer of early site permit," 10 CFR 50.80, "Transfer of licenses," and 10 CFR 50.90. In connection with the permit transfer, DNNA assigned 100 percent of its ownership interest in the North Anna ESP Site to DVP and ODEC.

By letter dated October 30, 2008, the NRC staff approved the proposed transfer of ESP-003 to DVP and ODEC. Additionally, the approved conforming amendment modified ESP-003 by eliminating two permit conditions because the transfer rendered the conditions moot (ADAMS accession number ML082820068). Ultimately, the changes made to the ESP did no more than accurately reflect the approved transfer action from DNNA to DVP and ODEC, which was merely administrative in nature and did not involve any safety issues.

Permit conditions 3.F, 3.G, 3.H, and 3.I were all reviewed and approved in accordance with the regulations in effect on September 25, 2003, which are identical to the rules in effect on the date the ESP application was docketed, consistent with 10 CFR 52.17(c)(2010). The application for the ESP-003 was docketed on October 23, 2003 (68 *FR* 61705, dated October 29, 2003). Moreover, the aforementioned permit conditions are only applicable to site preparation and preliminary construction activities approved pursuant to 10 CFR 50.10(e) (1)(2003) and the site redress plan incorporated into ESP-003.

The 2003 version of 10 CFR 52.25, "Extent of activities permitted," allowed a holder of an ESP that contains a site redress plan, such as DVP, to perform the activities at the site allowed by 10 CFR 50.10(e)(1) without prior separate authorization required by that section, provided that the final environmental impact statement prepared for the permit has concluded that the activities will not result in any significant adverse environmental impact which cannot be redressed. Thus, DVP possesses what is commonly referred to as a "limited work authorization (LWA)-1" for the site preparation or preliminary construction activities permitted under 10 CFR 50.10(c)(2003).

10 CFR 50.10(e)(1)(2003) allowed the holder of an ESP with an approved site redress plan, such as DVP, to conduct the following activities: preparation of the site for construction of the facility (including activities as clearing, grading, construction of temporary access roads and borrow areas); installation of temporary construction support facilities (including such items as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings); exterior utility and lighting systems; transmission lines; and sanitary sewerage treatment facilities. The 2003 version of the regulation also allowed the holder of the permit to put in place structures, systems, and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. The regulation then stated however, that no authorization to perform such activities may be granted unless the NRC staff has completed a final environmental impact statement.

Requirements to notify the NRC prior to the commencement of site preparation and preliminary construction activities at the North Anna ESP Site are located in Section 3.G of ESP-003. DVP asserts that the acquisition of all permits, licenses, and certifications under condition 3.G is potentially inefficient and may not be needed for certain preliminary activities, and therefore proposes to delete this condition from the ESP. DVP also asserts that the provision in condition 3.G, to provide notification 120 days prior to the start of preliminary activities, which includes the above certification, poses a potential undue burden on DVP. DVP does not propose an alternative to the notification requirement because it believes that the deletion of 3.G is administrative in nature and that the proposed deletion does not technically impact or change the scope of the ESP. The NRC staff's evaluation of the request is provided below.

### 3.0 TECHNICAL EVALUATION

When DVP received its ESP on November 27, 2007, the NRC staff approved DVP's site redress plan for LWA-1 activities. As part of implementing the planned site preparation and preliminary construction activities, the ESP included several conditions that DVP would need to satisfy in order to execute or modify the approved site redress plan. DVP has proposed to delete permit condition 3.G because it (1) effectively requires DVP to notify itself; (2) creates an inefficient

process that limits schedule flexibility and could cause schedule delays; and (3) is out of sync with the acquisition of other permits since they may be partially granted or granted shortly before the scheduled start of a LWA-1 activity. DVP provided the following justification for deletion of the aforementioned permit condition:

The proposed amendment deletes ESP condition 3.G, which prescribes the notification conditions associated with the implementation of activities authorized under the permit. The change is administrative in nature and does not have a technical impact, or change the intent or scope of the ESP. In addition, the proposed amendment does not change ESP condition 3.H, which requires Dominion to provide a certification or waiver under Section 401 of the Federal Water Pollution Control Act before commencement of authorized activities.

On October 9, 2007 (ADAMS accession number ML070160238), the NRC published revisions to its LWA rule for nuclear power plants. The revisions were made, in part, to address stakeholders' concerns that LWA-1 activities would need to start two years in advance of activities then defined in the regulations under 10 CFR 50.10(b) that have a nexus to radiological health and safety or common defense and security. Additionally, the stakeholders indicated that the NRC approval of LWA-1 activities precluded them from using modern construction techniques and needlessly added 18 months to the estimated construction schedules for new plants. The NRC optimized the LWA process, in part, by eliminating the LWA-1 authorization formerly described in 10 CFR 50.10(e)(1). Thus, only certain limited activities that have a nexus to the NRC's radiological health and safety mission would require approval from the agency in the form of a LWA.

In the publication of these revisions to the LWA rule, the NRC staff indicated that approval of full scope redress plans for ESP holders prior to the effective date of the rule would be unaffected by the revisions. However, an ESP holder, such as DVP, could request an amendment to its ESP to narrow the scope of the redress plan consistent with the new LWA requirements. In this instance, DVP is only requesting that the notification requirements associated with the approved LWA-1 activities under condition 3.G be deleted from its permit.

While it is permissible to narrow the scope of the activities performed based upon the new regulations in 10 CFR 50.10, DVP remains committed to the full scope of the site redress plan and to obtaining the necessary federal, state, and local approvals associated with the LWA-1 activities. Moreover, in revising its regulations, the NRC's redefinition of what is considered to be construction now reflects the agency's regulatory jurisdiction. In so doing, the activities previously approved under former 10 CFR 50.10(e)(1) have been determined to be outside of the scope of NRC's jurisdiction and are no longer regulated by the agency because these activities do not have a reasonable nexus to radiological health and safety or common defense and security. Thus, approval of what were previously known as LWA-1 activities is no longer required.

The licensee's commitment to obtaining the necessary federal, state, and local approvals for the preliminary activities on a scheduled basis and adherence to the site redress plan, in light the fact that these activities have been redefined under the current regulations, will not affect radiological public health and safety. The NRC staff has determined that the proposed revision to ESP-003 condition is acceptable and it will not present a decrease in oversight and control of

the preliminary construction and site preparation activities by the licensee. The NRC staff concludes that deleting condition 3.G from the permit will enable the licensee to proceed with site preparation and preliminary construction activities in an effective and efficient manner consistent with all necessary approvals on its predetermined schedule without impairing the NRC staff's oversight. Therefore, the proposed revision is acceptable to the NRC staff.

In addition, the initial *Federal Register* notice issued in connection with the proposed amendment stated that the Commission would make a final determination on the issue of no significant hazards consideration regardless of whether a hearing was requested on the proposed amendment (75 FR 74105 and 75 FR 74106 dated November 30, 2010). This statement, however, is inconsistent with a Commission regulation in 10 CFR 50.91(a)(3), which provides that the Commission "...will not make and will not publish a final determination on no significant hazards consideration unless it receives a request for a hearing..." on an amendment request under consideration. Since the Commission did not receive a request for a hearing on this amendment, it is not making a final determination on whether the amendment involves no significant hazards consideration.

#### 4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the NRC notified the appropriate official of the Commonwealth of Virginia, of the proposed issuance of the amendment. The State official had no technical comments.

#### 5.0 ENVIRONMENTAL CONSIDERATION

The proposed amendment is administrative in nature and changes reporting requirements. Accordingly, the action involved meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with approval of the application.

#### 6.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the application dated September 2, 2010, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I; (2) there is reasonable assurance that the site remains in conformity with the Act and the rules and regulations of the Commission; (3) the activities authorized by the ESP will be conducted in compliance with the Commission's regulations; and (4) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

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