

April 28, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

_____)	
In the Matter of)	
Dominion Virginia Power)	
North Anna Unit 3)	Docket No. 52-017
Combined License)	
_____)	

**MOTION REQUESTING AN AMENDED DEADLINE TO PETITION FOR
LEAVE TO INTERVENE, SUBMIT HEARING REQUESTS AND
CONTENTIONS AND REQUEST FOR EXPEDITED CONSIDERATION**

INTRODUCTION

The Blue Ridge Environmental Defense League hereby requests that the Secretary of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) grant a new deadline for the filing of petitions for leave to intervene in the above matter. This motion is based on an inadequate Notice of Hearing and Opportunity to Petition for Leave to Intervene published on March 10, 2008 and a corrective Supplement to Notice of Hearing and Opportunity to Petition for Leave to Intervene published on April 18, 2008. See 73 FR 12760 and 73 CFR 21162

FACTUAL BACKGROUND

On February 29, 2008 the Commission filed “Dominion Virginia Power; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3.” 73 FR 12760 (March 10, 2008)

On March 12, 2008 the Commission filed “Dominion Nuclear Power, LLC; North Anna Power Station Combined License Application; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process.” 73 FR 13589 (March 13, 2008) The notice announced a public scoping meeting for the EIS which was to be held in Mineral, Virginia on April 16th and a deadline for written comments to be filed of May 16th.

On April 14, 2008 the Commission filed “Dominion Virginia Power; Supplement to Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3;” 73 FR 21162 (April 18, 2008) In the April 14th notice the Commission stated that it was providing “additional information on the availability” of documents “useful to persons who seek to intervene in the proceeding on the COL application.” The documents cited in the notice were from dockets for the North Anna early site permit (“ESP”), economic simplified boiling water reactor (“ESBWR”) and combined license (“COL”), Docket Nos. 52-008, 52-010 and 52-017, respectively. Further, the Commission stated that the filing deadline for petitions to intervene would be unchanged by the filing of the supplemental notice.

DISCUSSION

A. The Commission should allow a full 60 days after the publication of the most recent notice of opportunity for the interested public to petition for leave to intervene.

The April 14th supplemental notice of opportunity to petition for leave to intervene was published in the federal register thirty-nine days after the first notice. If allowed to stand, the interested public will have had only three weeks to review the necessary documents and file a petition to intervene. Administrative procedures for hearing requests, petitions to intervene, requirements for standing, and contentions require that the time from the publication of the notice to the time specified be *no less than 60 days*. 10 CFR § 2.309 The rule provides no maximum time in such matters. The stipulations of 10 CFR § 2.309(b)(3) and the publication of the supplemental notice in the federal register on April 18th compel the Commission to allow affected parties no less than 60 days to submit petition requests based on the ESP, ESBWR and COL documents listed in the federal register notice of April 18, 2008.

B. The concomitant proceedings of the environmental impact statement and the combined license have induced a hardship on the public which is contrary to the Commission's stated goals and guidance.

The Blue Ridge Environmental Defense League has been a party to Commission proceedings in the past and performs due diligence as a non-profit public interest organization. Moreover, we believe our actions during early site permits and other proceedings resulted in a more complete record and a better outcome. Nevertheless, the organization's resources are not unlimited and it is therefore committed to participating in the extant licensing proceeding *pro se*.

However, the Commission's scheduling of the North Anna COL has created real hardships which will prevent us and other members of the public from having a fair opportunity to participate as required under the rules. The Commission's contemporaneous publication of notices on March 10th, March 13th, April 2nd and April 18th and corresponding events including the EIS scoping hearing on April 16th, the petition for leave to intervene deadline of May 9th and the EIS written comment deadline of May 16th have all conspired against the letter and intent of the Commission's public involvement guidelines. See NRC Public Meetings, NUREG/BR-0297 which states:

The NRC has long recognized the importance and value of public communication and involvement as a key cornerstone of strong, fair regulation of the nuclear industry. As a result, the agency has sought, over time, with the assistance of members of the public and other stakeholders, to ensure full and fair consideration of issues that are brought to NRC's attention.

The Commission's goal of providing "ample opportunities for members of the public to easily identify any such proceedings for which they may wish to request a hearing or file a petition to intervene"¹ is being thwarted in this case.

C. Early site permit documents which form the basis for the COL and which are necessary for the interested public's review have not been made public.

From the North Anna ESP record we know that there are unresolved issues which may now be addressed during the COL proceeding, questions which involve fundamental safety issues. The Atomic Safety and Licensing Board for the North Anna ESP concluded that "unresolved issues exist and may be addressed if and when Dominion

¹ <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>

actually applies to construct Unit 3 and/or 4.”² The Commission concurred stating that the unresolved issues “merit tracking and resolution during the safety review performed for a subsequent CF or COL application referencing the ESP.”³ But the published Board and Commission decisions only tell part of the story. An August 2, 2007 memo from Kenneth R. Hart, Acting Secretary, to the Office of Commission Appellate Adjudication cites SECY-07-0116 and a dissenting opinion regarding Dominion’s early site permit for North Anna.⁴ But SECY-07-0116 is not available. Turning to the 2007 Annual Report on Commission Adjudication, SECY-08-0009, we find a list of Commission Adjudicatory Decisions. Page 8 of the attachment to this document lists decision CLI-07-27 regarding the Dominion Nuclear North Anna ESP and cites the “Decision being challenged” as LBP-07-9 and a corresponding publication: SECY-07-0194. However, SECY-07-0194 is also unavailable.

The North Anna COL references its ESP and certain requirements of the final safety analysis report which are specific to the ESP. The ESP states:

The combined license (COL) action items set forth in Appendix C to this ESP are hereby incorporated into this ESP. These COL action items identify certain matters that an applicant submitting an application that references this ESP shall address in the final safety analysis report (FSAR). These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that it identifies and justifies the departure or omission in the FSAR.⁵

The NRC webpage listing SECY documents states:

Missing numbers in the listing indicate that these papers involve matters which the Commission has specifically agreed should be withheld: Classified,

² 65 NRC 539 (2007) LBP-07-9

³ 66 NRC 215 (2007) CLI 07-27 at 219

⁴ <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/meet/2007/m20070802a.html>

⁵ ESP-003, 3.C

Safeguards, Allegation, Investigation, Security-Related, Proprietary, Privacy Act Information, Federal/State/Foreign Government and International Agency-Controlled Information, Adjudicatory, Enforcement, Lawyer-Client or Legal Work Product, and limited sensitive matters which contain a specific withhold recommendation and supporting justification.⁶

Both SECY-07-0116 and 07-0194 are missing from this list.

CONCLUSION

For the foregoing reasons, the Secretary should grant a new deadline for submitting hearing requests until 60 days after the publication of the most recent notice, specifically, the “Dominion Virginia Power; Supplement to Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3” published April 18, 2008 in the federal register.

Finally, because petitions and hearing requests are now due on May 9th, the Blue Ridge Environmental Defense League requests that the Secretary to give this supplemental motion expedited consideration.

Respectfully submitted,



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April 28, 2008

⁶ Commission Papers (SECY) for 2007, last found April 24, 2008 at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2007/>

Certificate of Counsel

I certify that on April 28, 2008, I contacted counsel for the Applicant David R. Lewis, Esq. at Pillsbury Winthrop Shaw Pittman LLP who told me that they would not consent to the motion. On April 28, I also contacted counsel for the NRC Staff Renee V. Holmes, Esq. who offered no comment on this motion.

_____/signed electronically by Louis A. Zeller/_____
April 28, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the April 28, 2008 MOTION REQUESTING AN AMENDED DEADLINE TO PETITION FOR LEAVE TO INTERVENE, SUBMIT HEARING REQUESTS AND CONTENTIONS AND REQUEST FOR EXPEDITED CONSIDERATION was served on the following persons via Electronic Information Exchange this 28th day of April, 2008. Further, I certify that a NOTICE OF APPEARANCE FOR LOUIS A. ZELLER was filed in like manner to the parties on April 28, 2008:

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