

Blue Ridge Environmental Defense League

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To: Chief, Rules and Directives Branch
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From: Louis A. Zeller

Re: Federal Register Vol. 73, No. 50, March 13, 2008, Page 13589: Dominion Nuclear Power, LLC, North Anna Power Station Combined License Application; Notice of Intent to Prepare and Environmental Impact Statement and Conduct Scoping Process

Date: May 16, 2008

On behalf of the Blue Ridge Environmental Defense League, I write to provide comments for the preparation of an environmental impact statement for a combined license for Unit 3 at the North Anna Power Station. This letter will supplement my oral remarks at the NRC's scoping meeting held April 16, 2008 in Mineral, Virginia.

NEPA Overview

The National Environmental Policy Act establishes the requirement for federal agencies to execute complete reviews of the impacts of human development on the environment. The law requires the Commission to prepare an EIS that carefully considers the environmental impacts of proposed decisions and alternatives for reducing or avoiding those impacts before taking action. Regulations which apply to licensing by the Commission are found in the Code of Federal Regulations Title X Section 51 which states: [10 CFR §51.10]

(a) The National Environmental Policy Act of 1969, as amended (NEPA) directs that, to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA,

(b) The Commission recognizes a continuing obligation to conduct its domestic licensing and related regulatory functions in a manner which is both receptive to environmental concerns and consistent with the Commission's responsibility as an independent regulatory agency for protecting the radiological health and safety of the public.

Further, the NRC must consider environmental impacts which are "reasonably foreseeable" and which have "catastrophic consequences, even if their probability of occurrence is low." However, the Commission has failed to comply with NEPA *to the fullest extent possible*; instead, it has taken unacceptable short-cuts and made end-runs around its own best counsel. The Commission could begin to rectify these failures during the current scoping process. We recommend the NRC take this opportunity.

Esse quam videre

Alternative Sites Analysis

The Commission must revisit the analysis which forms the basis for the combined license; i.e., the early site permit. The Chairman of the ASLB Panel for the North Anna Early Site Permit issue took issue with the analysis done by Dominion-Virginia Power and approved by the NRC staff. In his dissent, he wrote: “NRC’s alternative sites analysis was, in my judgment, inconsistent with both the letter and the spirit of NEPA.”¹

Although the ESP was approved by the Commission in November, its order contained the seed of poor judgment. The Commission may have perfected the record but it failed to perfect the permit when it sidestepped the issues raised by Judge Karlin in his dissent. In fact, the Commission admitted to the selfsame errors of judgment in its Memorandum and Order approving the EESP:²

The issue here, when distilled to its essence, is whether the level of detail in the Staff’s alternative site analysis was so narrow as to render the results “foreordained” or, instead, whether the level of detail was reasonable under NEPA’s “rule of reason”^[71] and “hard look”^[72] tests.

We agree with the dissent that the FEIS does not show that the Staff’s alternative site review at the candidate site level was sufficiently detailed. Indeed, the Staff witness conceded as much at the Evidentiary Hearing, stating, “I’ve got to admit, the way we state it in the EIS, we don’t clearly state that we have done an evaluation of the candidate sites,”^[73] and “we did not clearly state it in terms of us looking at [Dominion’s region of interest] for candidate sites.”^[74] As close as the Staff came to explaining this omission is to assert that, if the Staff had performed a candidate site study, it *would* have been “probably similar”^[75] to the 2002 study by Dominion and Bechtel which, Staff asserted, contained a discussion of candidate sites.^[76]

This omission creates the unfortunate – and, we believe, inaccurate -- appearance that the Staff avoided its obligation to take a “hard look” at the alternative sites issue and instead merely accepted Dominion’s analysis at face value. And this appearance is exacerbated by the fact that the Staff actually reviewed in depth *only* Dominion’s four proposed sites^[77] -- facts reminiscent of those in another adjudication thirty years ago, where the adequacy of the Staff’s alternative site review was similarly called into question.^[78]

But our own examination of the entire administrative record leads us to conclude that the Staff’s underlying review was sufficiently detailed to qualify as “reasonable” and a “hard look” under NEPA – even if the Staff’s description of that review in the FEIS was not. Our explanation below provides an additional detailed discussion as part of the record on the alternative site

¹ Separate Opinion by Judge Karlin Concurring in Part and Dissenting in Part, LBP-07-9, June 29, 2007

² CLI-07-27 November 20, 2007

review.^[79] We direct the Staff to include a similar level of detail in future FEIS analyses of alternative sites.

(emphases added) The final environmental impact statement (FEIS) does *not* show that the staff's alternative site review at the candidate site level was sufficiently detailed. The Staff witness *conceded* as much. The Staff reviewed *only* the sites proposed by Dominion. In light of these admissions, the Commission's conclusion is all the more stunning: "But our own examination of the entire administrative record leads us to conclude that the Staff's underlying review *was* sufficiently detailed to qualify as 'reasonable' and a 'hard look' under NEPA – even if the Staff's description of that review in the FEIS was not."

Guidance published by the Council on Environmental Quality clearly states that the convenience and the wishes of the applicant, in this case Dominion-Virginia Power, are secondary to legal mandates. In "Selection of Alternatives in Licensing and Permitting Situations"³ the CEQ stated:

Numerous comments have been received questioning an agency's obligation, under the National Environmental Policy Act, to evaluate alternatives to a proposed action developed by an applicant for a federal permit or license. This concern arises from a belief that projects conceived and developed by private parties should not be questioned or second-guessed by the government. There has been discussion of developing two standards to determining the range of alternatives to be evaluated: The "traditional" standard for projects which are initiated and developed by a Federal agency, and a second standard of evaluating only those alternatives presented by an applicant for a permit or license.

Neither NEPA nor the CEQ regulations make a distinction between actions initiated by a Federal agency and by applicants. Early NEPA case law, while emphasizing the need for a rigorous examination of alternatives, did [48 FR 34267] not specifically address this issue. In 1981, the Council addressed the question in its document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations".(46 FR 18026 (1981)) The answer indicated that the emphasis in determining the scope of alternatives should be on what is "reasonable". The Council said that, "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant."

The outstanding question's are: 1) Upon what basis did the Commission rule that the NRC staff's omission conveys an "inaccurate" impression? 2) In terms of equity, what may interested members of the public expect from the Commissions directive to the staff to "include a similar level of detail in future FEIS analyses of alternative sites." Similar to what? 3) Will future applicants for COL's be allowed to provide a prescriptive list of alternate sites which are then reviewed by the staff? 4) If the existing ESRP did not provide sufficient authority for the staff to require Dominion to do a better job in this case, how will the Commission's directive in this matter be implemented?

³ Guidance Regarding NEPA Regulations, memorandum published in the Federal Register 48 Fed. Reg. 34263 (1983)

Environmental Justice

The Nuclear Regulatory Commission has not fulfilled the environmental justice requirements embodied in Executive Order 12898 which requires the agency to review its programs, policies and activities to address disproportionately high impacts on minority and low-income populations. In 2002 the U.S. Commission on Civil Rights reported that federal agencies are failing to incorporate environmental justice mandates into their goals and identified this as a lack of leadership. The US Environmental Protection Agency has been called on the carpet by its Inspector General for failures to implement the order. NRC Commissioner Jaczko took issue with his fellow commissioners in the November decision to approve the North Anna ESP.⁴ In dissent, he wrote:

I concur with my colleagues on most of this decision, but dissent, in part, on the environmental justice portion of the Memorandum and Order. Environmental justice is a critical component of the agency's NEPA review. It seeks to ensure that environmental, social, economic and health issues are all appropriately considered in the context of minority and low-income populations where the impacts of actions may be remarkably different from the impacts on the majority. Although the staff obtained underlying data on minority and low-income populations and provided its conclusions on the potential environmental impacts on those populations in the Environmental Impact Statement (EIS), I do not believe that the Staff sufficiently explained how it reached its conclusions regarding environmental justice. Without such an explanation, I believe it is difficult for the Commission, or the public, to determine whether the Staff has examined environmental justice issues "in greater detail" - as we, in our Environmental Justice Policy Statement, directed the Staff to do. I fully support my colleagues' efforts in this Memorandum and Order to ensure that future environmental justice reviews are supported by a level of detail that would transparently describe the basis for the Staff's conclusions. I diverge from my colleagues on this issue in one respect: I would have also directed the Staff to prepare a Supplemental EIS that provides a supporting analysis for its conclusions prior to the issuance of this Early Site Permit. I recognize that requiring additional work in the environmental justice area would then impact the finality of this Early Site Permit. I also recognize that this could cause the applicant to adjust its future plans, even though it is the agency's, not the applicant's, responsibility to consider environmental justice issues. But as I have previously stated, this agency exists to serve the public. I have consistently demanded that applicants present thorough and high quality applications to this agency and it would be inconsistent for me not to demand the same in the Staff's review of those applications. Both are necessary for the NRC to be able to transparently demonstrate how we meet our mission. In this instance, I believe we could have provided a supplemental environmental justice analysis at the cost of a bit more time, but with the benefit of being certain that the agency had a thorough analysis supporting issuance of this Early Site Permit.

It is now incumbent on the NRC to rectify this error. The supplemental analysis outlined above would be a reasonable, practicable remedy. We hereby request that the NRC implement this process at the earliest possible date.

⁴ CLI-07-27 November 20, 2007, Commissioner Jaczko respectfully dissenting, in part

Water Supply Issues Plague North Anna

During the last decade, the Commonwealth of Virginia has experienced prolonged periods of drought. Streams reached record low flows in most of the state's river basins including the York which includes Lake Anna.⁵ In response to this problem, the General Assembly directed the State Water Control Board to develop a long-term statewide water control plan. Since 2005, the state's rules require local governments to develop water control plans which address water supply sources and water usage demands for a period of 30 to 50 years into the future. The addition of North Anna Unit 3 at North Anna will have a large negative impact on water supply during that time frame and would, as such, be a major factor in the water control plan. In response to drought conditions in Virginia and in accordance with 9 VAC 25-780, the Town of Louisa has entered into a long-term regional water planning process with a completion due date of November 2, 2011.

Unit 3 is to utilize a closed-cycle dry and wet tower cooling system which is expected to have an evaporation rate of 8,707 gallons per minute and a minimum make-up flow rate⁶ of 15,376 gpm in Maximum Water Conservation mode.⁷ Therefore, Unit 3 alone would have an annual consumptive use of over 8 billion gallons in water conservation mode. Thermoelectric power plants require huge amounts of water and the Surry and North Anna nuclear stations are the two top water users in Virginia. Together, they accounted for 44% of statewide surface water withdrawals; in 2001 the North Anna Power Station alone used 56% more surface water than all of Virginia's agricultural, commercial, manufacturing, mining and public water supply users *combined*.⁸

The NRC should now determine how to implement the modest recommendations of ASLB Judge Karlin who parted ways with the majority on water supply:⁹

My dissent is also based on the fact that section 8.2 of the FEIS, entitled "System Design Alternatives," and the NRC Staff, excluded, per se, even considering the alternative of asking or requiring Dominion's affiliates to install additional water conservation measures on the existing nuclear power reactor Units 1 and 2, to compensate or mitigate against the significant and adverse incremental impacts that will be caused by proposed Units 3 and 4.

⁵ *Status of Virginia's Water Resources*, A report to the Governor Mark Warner and the General Assembly of Virginia by the Department of Environmental Quality, January 2003

⁶ Make-up flow rate is the "expected rate of removal of water from Lake Anna to replace water losses from the closed-cycle cooling system," i.e., losses from evaporation, blowdown and drift." COLA, Evaluation of ESP Design Parameters

⁷ COLA Part 3, Environmental Report, Table 3.0-2

⁸ *Status of Virginia's Water Resources*, A report to the Governor Mark Warner and the General Assembly of Virginia by the Department of Environmental Quality, January 2003

⁹ Separate Opinion by Judge Karlin Concurring in Part and Dissenting in Part, LBP-07-9, June 29, 2007

Conclusion

The NRC should take steps to ensure that the requirements of NEPA are fully implemented within both the letter and the spirit of the law. I plan to submit further remarks up to the issuance of the draft EIS.

Respectfully submitted,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

Louis A. Zeller