

SAFETY EVALUATION BY THE OFFICE OF NEW REACTORS
DIRECT TRANSFER OF EARLY SITE PERMIT NO. ESP-003
FROM DOMINION NUCLEAR NORTH ANNA, LLC (DNNA) TO
VIRGINIA ELECTRIC AND POWER COMPANY, DBA DOMINION VIRGINIA POWER (DVP)
AND OLD DOMINION ELECTRIC COOPERATIVE (ODEC)
AND CONFORMING AMENDMENT
NORTH ANNA ESP SITE
DOCKET NO. 52-008

1.0 INTRODUCTION

By application dated April 24, 2008 (Agencywide Documents and Access Management System (ADAMS) Accession No. ML081210412), hereafter referred to as the application, unless otherwise noted, Dominion Nuclear North Anna, LLC (DNNA) requested approval of the transfer of Early Site Permit No. ESP-003 for the North Anna ESP Site held by DNNA, to Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP) and Old Dominion Electric Cooperative (ODEC); and approval of a conforming amendment pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Sections 10 CFR 52.28, "Transfer of Early Site Permit," 10 CFR 50.80, "Transfer of Licenses," and 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit." The permit transfer involves the transfer of DNNA's 100 percent undivided ownership interest in the North Anna ESP Site to DVP and ODEC.

2.0 BACKGROUND

DNNA is the current holder of ESP-003 for the North Anna ESP Site. Both DNNA and DVP are subsidiaries of Dominion Resources, Inc. (DRI).

DVP was incorporated in 1909 as a Virginia public service corporation and is a regulated public utility engaged in the power generation and electric service delivery business within a 30,000 square-mile service area in Virginia and northeastern North Carolina. DVP supplies energy at retail to approximately 2.3 million customer accounts including government agencies, and to wholesale customers such as rural electric cooperatives and municipalities.

ODEC was incorporated in 1948 as a Virginia not-for-profit wholesale power supply cooperative engaged in the business of providing wholesale electric service to twelve member distribution cooperatives, which in turn are engaged in the retail sale of power to member consumers in 77 counties throughout Virginia, Delaware, Maryland and West Virginia.

DVP and ODEC are the owners of North Anna Power Station (NAPS), and DVP is the licensed operator of the existing nuclear units at that site. DVP and ODEC submitted a joint application on November 27, 2007, for a combined license (COL) for a new Unit 3 at NAPS. Transferring the ESP to DVP and ODEC will consolidate the responsibility for both the ESP and the COL application in entities that are seeking a license to own and operate the new unit, and will, according to the application, facilitate the licensing process.

To effectuate DVP's assumption of responsibilities for activities previously performed by DNNA, DNNA will be merged into DVP, with DVP being the surviving entity. As a result of this merger, DVP will assume all of DNNA's rights and obligations, including all obligations under the Early Site Permit. The merger will become effective after receipt of required regulatory approvals which include, in addition to requested ESP transfer order, approval of the merger by the Virginia State Corporation Commission and the North Carolina Utilities Commission.

The purpose of the proposed permit transfer is to allow DVP to take advantage of the incentives and rate treatment afforded regulated public utilities under new Virginia electricity regulations which provide incentives for utilities with native load obligations in the form of enhanced rates of return for the development of major new energy projects, including nuclear projects, approved by the Virginia State Corporation Commission. In addition, the legislation (House Bill 3068, Senate Bill 1416, Virginia Acts of Assembly, Chapters 888 and 933 (2007) allows for recovery of the cost of work in progress during the construction period.

On September 18, 2007, the Virginia State Corporation Commission issued an order approving DVP as the appropriate subsidiary of DRI to apply for a construction permit and operating license for a new nuclear generating facility at North Anna.

3.0 REGULATORY EVALUATION

In the application, DNNA, DVP, and ODEC requested the approval of the direct transfer of the Early Site Permit for the North Anna ESP Site from DNNA to DVP and ODEC pursuant to 10 CFR 52.28 and 10 CFR 50.80. As stated in 10 CFR 52.28, "An application to transfer an early site permit will be processed under 10 CFR 50.80." As stated in 10 CFR 50.80(a), "No license for a production or utilization facility (including, but not limited to, permits under this part and Part 52 of this chapter, and licenses under Parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through the transfer of control of the license to any person, unless the Commission gives its consent in writing."

In addition, the requirements of 10 CFR 50.80(b)(1)(ii) and (c) apply. Under 10 CFR 50.80(b)(1)(ii), an application for an ESP transfer shall include "as much of the information described in 10 CFR 52.16 and 10 CFR 52.17 of this chapter with respect to the identity and technical qualifications of the proposed transferee as would be required by those sections if the application were for an initial license." Pursuant to 10 CFR 50.80(c), "...the Commission will approve an application for the transfer of a license, if the Commission determines. (1) that the

proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.”

4.0 TECHNICAL EVALUATION

4.1 Technical Qualifications

DNNA and DVP are both subsidiaries of DRI. According to the application, DNNA will be merged into DVP, with DVP being the surviving entity. As a result of this merger, DVP will assume all of DNNA’s rights and obligations, including all rights and obligations under the ESP. DVP and ODEC are the owners of NAPS and DVP is the licensed operator of the existing nuclear units at that site. DVP and ODEC submitted a joint application on November 27, 2007, for a COL for a new Unit 3 at NAPS. Transferring the ESP to DVP and ODEC will consolidate the responsibility for both the ESP and the COL application in entities that are seeking a license to own and operate the new unit, and will facilitate the licensing process. Since the application for the transfer of the ESP (1) simply involves the merger of the current permit holder into a sibling company; (2) will not result in substantive changes to the ESP; and (3) involves no change to the technical information required by 10 CFR 52.16 and 10 CFR 52.17 provided in the original ESP application; the proposed transferees are technically qualified to hold the ESP.

4.2 Financial Qualifications

Demonstration of financial qualifications is not required of applicants for a transfer of an ESP pursuant to 10 CFR 50.80(b)(1)(ii).

4.3 Decommissioning Funding Assurance

The regulations in 10 CFR Part 52, Subpart A, “Early Site Permits,” and in particular Section 52.16, “Contents of Applications; General Information,” and Section 52.17, “Contents of Applications; Technical Information,” do not contain any requirement for decommissioning funding assurance. Since none of the authorized activities (preconstruction and site preparation activities) under an ESP entail the use of radioactive materials, there is nothing to decommission. Thus, a decommissioning funding assurance review is not applicable in connection with this application.

4.4 Antitrust Review

Under 10 CFR 50.80(b)(1)(ii), an application for the transfer of an ESP shall include as much of the information described in 10 CFR 52.16 and 52.17 as would be required by those sections if the application were for an initial license. Those sections do not require any information relating to the consideration of antitrust issues. Accordingly, no antitrust review is being conducted in connection with this ESP transfer application.

4.5 Foreign Ownership, Control, or Domination

Section 103 of the Atomic Energy Act of 1954, as amended (the Act), prohibits the NRC from issuing a license to “...any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign

government.” NRC’s regulation, 10 CFR 50.38, “Ineligibility of Certain Applicants,” contains language to implement this prohibition. This prohibition applies to ESP since an ESP is issued under Section 103 of the Act.

DVP is a Virginia public service corporation with its principal place of business in Richmond, Virginia. The directors and principal officers of DVP are all citizens of the United States. The application further states that DVP is not owned, controlled, or dominated by an alien or foreign corporation or foreign government. The NRC does not know or have reason to believe otherwise.

ODEC is a Virginia not-for-profit corporation with its principal place of business in Glen Allen, Virginia. The directors and principal officers of ODEC are all citizens of the United States. The application further states that ODEC is not owned, controlled, or dominated by an alien or foreign corporation, or foreign government. The NRC does not know or have reason to believe otherwise.

4.6 Nuclear Insurance and Indemnity

A holder of an ESP is not required to have financial protection under the Price Anderson Act or the Commission’s regulations. Thus, no insurance review is necessary in connection with this application.

5.0 CONFORMING AMENDMENT

5.1 Background

The applicants have requested approval of a proposed conforming amendment to the ESP. The requested changes reflect the proposed transfer from DNNA to DVP and ODEC, deleting references to DNNA in the permit and substituting DVP and ODEC as appropriate.

Two permit conditions are to be removed from the ESP since the transfer would render them moot.

The first permit condition currently requires DNNA, if DNNA decided to proceed with construction, to enter into an agreement with DVP, with the prior approval of the Virginia State Corporation Commission, to purchase or lease the ESP site in order to provide for control of said exclusion area. With the transfer of the ESP, there will no longer be any need for a condition directed to DNNA, which would cease to exist.

The second permit condition currently requires DNNA, before commencing any site redress activities, to obtain the appropriate regulatory approvals of an agreement between DVP and DNNA authorizing DNNA to conduct activities subject to DNNA’s obligation to perform such site redress as may be required under the ESP’s Site Redress Plan. Under the permit condition, DNNA would also be required to provide to the NRC a guaranty by DRI of \$10 million as financial assurance for DNNA’s obligation to comply with the Site Redress Plan. With the transfer of the ESP, there would no longer be any need for a condition directed to DNNA which would cease to exist.

5.2 Discussion

The changes to be made to the ESP do no more than accurately reflect the approved transfer action. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

5.3 Conclusions – Evaluation of the Conforming Amendment

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by virtue of ESP activities undertaken in the proposed manner; (2) such activities will be conducted in compliance with the Commission's regulations; and (3) the issuance of the amendment will not inimical to the common defense and security or to the health and safety of public.

5.4 State Consultation

In accordance with the Commission's regulations, the NRC notified the appropriate official of the Commonwealth of Virginia, Mr. Les Foldesi, Director, Division of Radiation Health, of the proposed issuance of the amendment. The State official had no technical comments.

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of an ESP issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

7.0 CONCLUSIONS

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, DVP and ODEC are qualified to hold the Early Site Permit, ESP-003, and the transfer of the ESP as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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Date: October 6, 2008