April 30, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of	)	
	)	
Dominion Virginia Power, et al.	)	Docket No. 52-017-COL
	)	
North Anna Power Station, Unit 3	)	

DOMINION'S ANSWER OPPOSING
BREDL MOTION FOR EXTENSION

I. Introduction

Virginia Electric and Power Company, dba Dominion Virginia Power ("Dominion"), hereby answers and opposes the "Motion Requesting an Amended Deadline to Petition for Leave to Intervene, Submit Hearing Requests and Contentions and Request for Expedited Consideration" ("Motion"), which the Blue Ridge Environmental Defense League ("BREDL") filed on April 28, 2008. The Motion, which seeks a two month delay of the intervention period in the combined construction permit and operating license ("COL") proceeding for North Anna Unit 3, is untimely and unjustified, and should therefore be denied. The COL application for North Anna Unit 3 was filed in November 2007 and has been publicly available for nearly five months. Thus, BREDL has had ample time to prepare any intervention petition. Further, BREDL is an experienced litigant in NRC proceedings and was a party in the North Anna Early Site Permit ("ESP") proceeding (represented by Counsel upon whom the decisions in that proceeding were served). Therefore, BREDL's claim regarding the unavailability of information on the ESP decisions is without merit.

II. Background

On November 27, 2007, Dominion, on behalf of itself and the Old Dominion Electric Cooperative (collectively, "Applicants"), filed an application for a COL for North Anna Unit 3. On December 12, 2007, the NRC published in the Federal Register a Notice of Receipt and Availability of Application for a Combined License, Dominion Virginia Power – North Anna Unit 3. 72 Fed. Reg. 70,619 (Dec. 12, 2007). This Notice informed the public how to access the application and also how to contact the NRC Public Document Room staff if there were problems accessing documents. Id.

On February 4, 2008, following completion of the NRC's sufficiency review and determination that the COL application was acceptable for docketing, the NRC published in the Federal Register a notice of Acceptance for Docketing of Combined License for North Anna Unit 3. 73 Fed. Reg. 6,528 (Feb. 4, 2008). On March 10, 2008, the NRC published a Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3. 73 Fed. Reg. 12,760 (Mar. 10, 2008). Both of these notices again explained how the application could be accessed and how to contact the Public Document Room staff if any problems accessing documents were encountered.

On the evening of April 16, 2008, the NRC held an open house and conducted an environmental scoping meeting at the Louisa County High School. At the outset of the scoping meeting, the NRC Staff gave a presentation which included information on how to participate in hearings, where documents could be viewed (including five public libraries), and agency points of contact. See Public Scoping Meeting, North Anna Power Station, Unit 3, Combined License Application, April 16, 2008 (ADAMS Accession No. ML081130659), slides 15-17. The NRC Staff also advised the participants that

additional information would be provided in a supplemental notice. BREDL's representative, Mr. Zeller, was in attendance.

On April 18, 2008, the NRC published a Supplement to the Notice of Hearing. 73 Fed. Reg. 21,162 (Apr. 18, 2008). This supplement provided additional information on how to access documents on the dockets of the North Anna ESP proceeding and ESBWR design certification proceeding, which were referenced in the North Anna Unit 3 COL application. It also provided instructions on how members of the public may request access to documents containing sensitive unclassified information. The Supplement explicitly declined to alter the schedule for hearing requests:

> Neither this supplement to the Notice of Hearing nor the following Order changes the time set in the Notice of Hearing for the filing of petitions for leave to intervene in the proceeding on the Dominion COL application. The last day for filing such a petition remains May 9, 2008.

73 Fed. Reg. at 21,163.

III. Discussion

As is evident from the NRC notices discussed above, the COL application for North Anna Unit 3 has been available for nearly five months, and each of the notices has repeatedly advised members of the public whom to contact in the Public Document Room if they encounter problems accessing documents. Thus, BREDL (and any other member of the public) have had ample opportunity to review the application and related documents to formulate any hearing requests.

Further, if BREDL felt there was any deficiency in the March 10, 2008 Notice of Hearing, it should have filed its motions within 10 days of that notice, as required by 10 C.F.R. § 2.323(b), and not – as BREDL has done – just a few days before hearing

requests are due. Since the Supplement to the Notice published on April 18 merely provided additional helpful information, that supplement cannot give rise to the current Motion.

Indeed, BREDL makes no showing that it has been prevented from preparing a hearing request or in any way disadvantaged by the original or supplemental notice. Rather, BREDL simply argues, incorrectly, that 10 C.F.R. § 2.309(b)(3) and the publication of the supplemental notice "compel the Commission to allow affected parties no less than 60 days to submit petitions requests based on the ESP, ESBWR and COL documents listed in the federal register notice of April 18, 2008." Motion at 3. Neither the NRC rules nor the supplemental notice "compel" such a result. Section 2.309(b)(3) merely requires a minimum 60-day intervention period in the notice of hearing, and contains no provisions that prevent the NRC from issuing supplemental information without restarting the clock. The NRC provided this 60-day intervention period in its March 10 notice and thus fully complied with Section 2.309(b)(3). And the April 18 supplemental notice explicitly stated that the deadline for intervention petitions would not change.

In the same vein, BREDL makes no showing that it has been unable to access documents relating to the ESBWR design certification, or any necessary documents related to the North Anna ESP. BREDL is an experienced intervenor in NRC proceedings, having participated in multiple proceedings, and knows full well how to access documents from the NRC's website and from ADAMS. The NRC's website in

fact includes pages devoted specifically to the North Anna ESP[1] and to the ESBWR design certification,[2] which contain the applications and the NRC Staff review documents. The NRC webpage for the North Anna COL application also includes link to the ESP and ESBWR reference documents, and also states that DVDs of the various documents are available by contacting the Public Document Room staff.[3] Moreover, BREDL was a party to the North Anna ESP proceeding, and its counsel in that proceeding was served with the Licensing Board and Commission decisions. BREDL's suggestion that information on these decisions (Motion at 4) is unavailable is thus remarkable.

There is similarly no merit to BREDL's argument that the scheduling of the scoping meeting, intervention deadline, and deadline for comments on the EIS have "all conspired against the letter and intent of the Commission's public involvement guidelines." Motion at 4. As previously noted, BREDL has already had five months to review the application and prepare any hearing request or scoping comments. It should be noted that the "EIS written comment" deadline to which BREDL refers (id.) is not the deadline for comments on the draft EIS, which is not yet written, but simply another means in addition to the April 16 meeting (which BREDL attended) by which members of the public may submit scoping comments. Further, because the intervention period and the environmental scoping process both occur at the early stages of licensing proceedings, it is common for these activities to overlap. Thus, the activities about which

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[1] See http://www.nrc.gov/reactors/new-licensing/esp/north-anna.html.

[2] See http://www.nrc.gov/reactors/new-licensing/design-cert/esbwr.html.

[3] See http://www.nrc.gov/reactors/new-licensing/col/north-anna.html#refDocuments.

BREDL complains simply reflect the normal and reasonable demands expected of persons who wish to participate in licensing proceedings.[4]

Finally, there is no merit to BREDL's claim that there are some "missing" SECY papers that somehow pertain to unresolved issues in the North Anna ESP proceeding. See Motion at 5. SECY-07-0116 and SECY-07-0194, to which BREDL refers (id.), appear to be the predecisional and privileged transmittals of proposed orders and decisions from the Office of Commission Appellate Adjudication to the Commissioners for approval. The approved and issued Commission decisions are clearly available to BREDL (indeed, were served on its counsel). BREDL provides no explanation why it also needs NRC's internal deliberative communications, or why it thinks it is entitled to have such privileged material. In any event, if BREDL has any reason to believe it needs and is entitled to such documents, it could have sought them through a Freedom of Information Act request months ago.

In sum, BREDL's Motion is based on nothing more than vague and insubstantial claims. Here, the NRC Staff has expended considerable effort to inform the public of the hearing opportunity and availability of documents. The NRC has given BREDL and other members of the public five months to review the application and prepare any hearing request. The NRC has repeatedly informed the public whom to contact if there is any difficulty in obtaining documents. Thus, the NRC has clearly made the hearing

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[4] It is longstanding NRC policy that an intervenor in a licensing proceeding must come prepared to present, support and defend its case, and adhere to schedules. See, e.g., Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 N.R.C. 18, 21 (1998) ("parties to a proceeding . . . are expected to adhere to the time frames specified in the Rules of Practice in 10 C.F.R. Part 2 for filing and the scheduling orders in the proceeding"). Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 454 (1981) ("the fact that a party may . . . possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations"); Wisconsin Electric Power Co. (Point Beach Nuclear Power Plant, Unit 1), ALAB-696, 16 N.R.C. 1245, 1261 n.29 (1982).

opportunity fair and meaningful. Having done so, consistent with its Statement of Policy on Conduct of Adjudicatory Proceedings, the NRC should recognize that "applicants for a license are also entitled to a prompt resolution of disputes concerning their applications." CLI-98-12, 48 N.R.C. at 18. Accordingly, the Commission should enforce its schedule and deny BREDL's attempt at unwarranted delay.

IV. Conclusion

For all of the foregoing reasons, BREDL's Motion should be denied.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing"Dominion's Answer Opposing BREDL Motion for Extension," dated April 30, 2008, were served on the persons listed below in accordance with the Commission E-Filing rule, which the NRC promulgated in August 2007 (72 Fed. Reg. 49,139), and where indicated by an asterisk by electronic mail, this 30th day of April, 2008.

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