

June 11, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) Docket Nos. 52-017
Dominion Virginia Power)
North Anna Unit 3) ASLBP No. 08-863-01-COL
Combined License)

)

**REPLY OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE TO
DOMINION VIRGINIA POWER AND NRC STAFF ANSWERS TO OUR
PETITION FOR INTERVENTION AND REQUEST FOR HEARING**

Introduction

Pursuant to 10 C.F.R. § 2.309, the Blue Ridge Environmental Defense League (“BREDL”) hereby replies to the answer of Dominion Virginia Power (“DVP”) and the Nuclear Regulatory Commission Staff (“NRC Staff”) filed June 3, 2008 in response to our petition for intervention and request for hearing filed May 9, 2008.

Timeliness of this Reply

Severe electrical storms in North Carolina on June 10th affected our ability to submit this reply within the 7-day time required under 10 CFR 2.309(h)(2). We are grateful for the gracious consent of opposing counsel allowing us a one-day extension.

Background

This proceeding concerns the application for a combined license (“COL”) filed pursuant to 10 CFR Part 52 Subpart C by Dominion Virginia Power on November 26, 2007 and supplemented by letters dated January 17 and 28, 2008. The application was accepted for docketing on January 28, 2008. Notice of hearing and opportunity to

petition for leave to intervene was published in 73 Fed. Reg. 12760 on March 10, 2008.

BREDL filed a petition to intervene and request for hearing on May 9, 2008.

Discussion

The COLA makes reference to an early site permit which, under the regulations, allows the disposition of some but not all site issues. DVP's Answer states that, with the exception of certain COLA items, variances and emergency planning information, "This ESP resolves all site suitability issues..." DVP Answer at 3. Also, the COLA makes reference to the ESBWR design certification.

The DVP Answer cites NRC Statement of Policy on Conduct of New Reactor Licensing Proceedings CLI-08-07, 73 Fed. Reg. 20,963 (April 17, 2008). "We believe that a contention that raises an issue on a design matter addressed in the design certification application should be resolved in the design certification rulemaking proceeding, and not the COL proceeding."

However, DVP admits the ESBWR has received no such design certification. "Under NRC rules, the Commission treats as resolved those matters resolved in connection with the issuance of a design certification. Here, the Commission has not yet issued the Design Certification for the ESBWR." DVP Answer at 4 (references omitted)

Contention 1 is Admissible

DVP and the NRC Staff argue that BREDL is precluded from challenging the adequacy of DVP's Environmental Report with respect to its discussion of low level radioactive waste disposal because the environmental impacts of the fuel cycle and solid waste management for light water reactors were addressed in the ESP proceeding. DVP Response at 15, NRC Staff Response at 19. At the time of the ESP proceeding, however,

there was no proposal for major federal action that would have led to the generation of radioactive waste or other significant radiological impacts. The only proposal before the NRC was for the issuance of an ESP that would allow DVP to prepare the North Anna site and conduct “preliminary construction activities.” NUREG-1811, Final Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site, Vol. 1 at 1-8 (2006) (“FEIS”). The FEIS specifically states that: “Dominion is not currently proposing construction and operation of new units.” *Id.* While the FEIS did contain a discussion of the environmental impacts of waste disposal, the discussion was academic because there was no actual proposal to generate waste. BREDL participated in the hearing on the ESP to the extent possible given its limited resources, but could not reasonably be expected to invest massive resources in an abstract debate over environmental impacts that were not even proposed to occur.

The fact that DVP has now applied for a COL, in which it actually proposes to build and operate a new nuclear power plant that will generate large volumes of radioactive waste, constitutes new and significant information and changed circumstances that require supplementation of the FEIS under 10 C.F.R. § 51.92(a)(1) and (2) and *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989).

The Staff also argues that Contention 1 constitutes an impermissible attack on the regulations in Table S-3 and 10 C.F.R. § 51.51, which may not be challenged without a waiver request. NRC Staff Response at 18. BREDL recognizes that this contention raises a challenge to the generic assumptions and conclusions in Table S-3. However, BREDL respectfully submits that the information submitted in its contention constitutes new and significant information, not considered in any previous EIS for radioactive waste

disposal, that must be considered in the EIS for the proposed North Anna plant because it would have a significant effect on the outcome of DVP’s and the NRC’s analyses of the environmental impacts of licensing the proposed plant. *Marsh v. Oregon Natural Resources Council*, 490 U.S. at 374.

As required by NRC regulations, BREDL intends to submit a rulemaking petition to seek revision of Table S-3. (BREDL also intends to submit this rulemaking petition in connection with the proposed Bellefonte plant, on which BREDL has requested a hearing and submitted a similar contention.) In the meantime, BREDL seeks admission of this contention in order to protect its right to ensure that any generic resolution of BREDL’s concerns is made in a timely way and “plugged in” to the licensing decision in this particular case. *Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 101 (1983). See also *Commonwealth of Massachusetts v. NRC*, 522 F.3d 115 (1st Cir. 2008).¹

The NRC Staff also argues that the Petitioners “fail to provide an expert opinion or references to specific sources and documents on which they intend to rely to support

¹ In *Commonwealth of Massachusetts*, the First Circuit found that although the NRC may make generic determinations regarding the significance of environmental impacts and prohibit challenges to those generic determinations in individual proceedings, it nevertheless must “consider any new and significant information regarding environmental impacts before renewing a nuclear power plant’s operating license.” 511 F.3d at 127. Moreover, while the NRC may “channel” into a generic rulemaking the challenging party’s concerns about the effects of new and significant information on an individual licensing decision, the NRC may not refuse to provide “at least one path by which the [challenging party] may establish a connection” between the rulemaking and the licensing proceeding, thereby ensuring that the result of the rulemaking proceeding will be applied in the individual licensing case. *Id.* at 128. In order to ensure that a “connection” is maintained between any rulemaking petition that BREDL may bring and BREDL’s right to seek application of new and significant information to this license renewal proceeding, BREDL requests that this contention be admitted and held in abeyance pending the outcome of the generic proceeding.

their position.” NRC Staff Response at 19. As required by the regulations, BREDL has “provided a concise statement of the facts” which support its position and has also “provided sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact.” 10 C.F.R. § 2.309(f)(1)(v).

Contention Two is Admissible

We believe the record contains outstanding questions unresolved in the ESP regarding the seismic stability of the North Anna site which would not be resolved without admission of this contention.

The technical explanation of the DVP Answer to Petitioner Contention Two appears to be quite detailed but misses the point of Petitioner’s contention. Simply stated, horizontal and vertical spectra detailed in DVP’s Answer are measurements of potential ground motion or acceleration. It is widely known that horizontal acceleration is typically of higher concern than vertical acceleration because most structures are designed to withstand the constant vertical acceleration which is gravity. Regarding the presence of a geological fault at North Anna, DVP does admit that one underlies the site of Unit 3 but avers that there is “no relevance with respect to the existence of unnamed fault ‘a.’” DVP Answer at 23 Nevertheless, the fault is there. The question we wish to be answered by the Licensing Board is: Based on the information provided by DVP, has the NRC accurately determined the magnitude of the risk at the site and is it wise to build a third reactor there?

The record of the North Anna site does have unresolved questions. In 2003 a report on cross-hole seismic testing² found:

The computed compressional wave velocities (Vp) generally appear higher than would be anticipated given the observed soil/overburden profile. Possible explanations for the elevated Vp include the presence of higher velocity weathered bedrock within the overburden, saturation of the deeper test levels, and possible P-wave arrival time estimation inaccuracies caused by excessive noise interference.

Two years later, the investigation of the site continued. A DVP revision of the Final Safety Evaluation Report³ contained a Correction of Coordinates for the ESP Site Footprint which stated:

As discussed in a July 5, 2005 conference call with NRC Staff, upon further review, it has been determined that the coordinates identified in Figure 1 of the DSER Open Item 2.4-1 response contained errors.

A corrected version of the site footprint was attached but the recommended Application Revision was: “None. Figure 1 on the next page is not included in the North Anna ESP Application.” [id.]

DVP’s FSER Revision 5 also added a corrected version of site horizontal and vertical spectra, stating “Revision 4 of the North Anna ESP Application included an incorrect version of SSAR Figure 2.5-55A.” The Application Revision for this item stated: “In Revision 5 of the ESP Application, SSAR Figure 2.5-55A has been replaced with the correct version shown on the next page.” [Id. Page 4] What independent analysis did NRC do to determine which version was correct?

The FSER Revision 5 also contained a “Site-Specific Analysis of V/H Ratios” a vertical and horizontal spectral ratio analysis. The conclusion of this item stated:

² January 14, 2003 Letter from David Grumman to J. Allen Tice, Mactec Engineering Re: Report of Cross-hole Seismic Testing, North Anna ESP Project, North Anna Nuclear Facility, Lake Anna, Virginia, GEI Project No. 01-22089, MACTEC JOB NO. 30720-2-5400

³ DVP FSER Review Items/ESP Application Rev. 5, 25 July 2005, Serial No. 05-457, Docket No. 52-008, Page 2

“To maintain a hazard-consistent level in scaling the horizontal ground motions, the fractile level needed for the V/H ratio is between the 50th and 84th percentile. The exact percentile level would depend on frequency, site, design considerations, and judgment.” (emphasis added) [Id. Page 17]

These design considerations referred to above cannot be determined because the ESBWR design certification has not been issued.

Finally, regarding the NRC Staff Answer to Contention Two, the bases supporting our contention concern the physical site upon which North Anna Units 1 and 2 are located (and upon which Unit 3 would be located if the COL is approved), not the “NAPS Units 1 and 2 license proceeding.” NRC Staff Answer at page 24, footnote 21
Contention Three is Admissible

The question we would raise if this contention is admitted is: Will North Anna Unit 3 operate in compliance with federal, state and local water regulations for the expected operating life of 40 years?

Page 13 of BREDL’s Petition has an error in its layout, but the information provided is correct. We apologize for this mistake. The correctly formatted US Geological Service information should look as follows.

The river basin in which the NAPS is located has still not returned to normal conditions. The US Geological Survey reports that streamflows in the York River basin remain at about half their historical mean. Today, the North Anna River discharge near Partlow, Virginia (USGS Station No. 01670400) is at 43% of its long term median flow rate of 145 cfs. According to a US Geological Service statement on drought in Virginia,

In a typical year, highest streamflows occur during the winter months, decreasing through the spring and summer, with lowest streamflows occurring during the fall months.

USGS, Seasonal Streamflow Conditions and Historic Droughts in Virginia,

<http://va.water.usgs.gov/drought/histcond.htm>.

One can access the data from which we drew our streamflow conclusions at the USGS website, reproduced below.⁴ See York River Basin Station Number 01670400, below.

Real-Time Data for Virginia_ Streamflow accessed May 8, 2008

Station Number	Station name	Date/Time	Gage height feet	Discharge ft ³ /s	Tide elevation above NAVD, feet	Long-term median flow 5/8	Reservoir elevation above datum, feet
YORK RIVER BASIN							
01670400	NORTH ANNA RIVER NEAR PARTLOW, VA	05/08 13:15	3.89	62	--	145	--
01671020	NORTH ANNA RIVER AT HART CORNER NEAR DOSWELL, VA	05/08 12:45	3.48	113	--	237	--
01671025	NORTH ANNA RIVER ABOVE LITTLE RIVER NR DOSWELL, VA	05/08 12:45	4.18	110	--	216	--
01671100	LITTLE RIVER NEAR DOSWELL, VA	05/08 12:45	2.43	31	--	74.0	--
01672500	SOUTH ANNA RIVER NEAR ASHLAND, VA	05/08 12:45	2.44	144	--	254	--
01673000	PAMUNKEY RIVER NEAR HANOVER, VA	05/08 12:45	5.24	302	--	688	--
01673550	TOTOPOTOMOY CREEK NEAR STUDLEY, VA	05/08 12:45	2.13	14	--	25.0	--
01673638	COHOKE MILL CREEK NEAR LESTER MANOR, VA	05/08 13:15	3.88	3.9	--	7.50	--
01673800	PO RIVER NEAR SPOTSYLVANIA, VA	05/08 12:45	1.85	25	--	48.0	--
01674000	MATTAPONI RIVER NEAR BOWLING GREEN, VA	05/08 12:45	3.50	130	--	173	--
01674500	MATTAPONI RIVER NEAR BEULAHVILLE, VA	05/08 12:45	4.77	261	--	540	--

⁴ <http://waterdata.usgs.gov/va/nwis/current/?type=flow>

Regarding consumptive use data, the COLA describes *make-up flow rate* as the “expected rate of removal of water from Lake Anna to replace water losses from the closed-cycle cooling system,”⁵ i.e., make up flow rate is the rate of losses from evaporation, blowdown and drift. Unit 3 is to utilize a closed-cycle dry and wet tower cooling system which is expected to have a minimum make-up flow rate of 15,376 gpm in Maximum Water Conservation mode. *Id.* Therefore, Unit 3 alone in water conservation mode would have an annual consumptive use of 15,376 gpm x 8760 hours/year x 60 minutes/hour for a total of 8,081,625,600 gallons; i.e., over 8 billion gallons annually in water conservation mode.

Clean Water Act

The NRC Staff Answer states that “[T]he issue of compliance with CWA requirements is outside the scope of the proceeding.” However, Unit 3, if licensed, would become part of the North Anna Power Station. This modification of the facility would appear to require environmental reporting under 10 CFR 51.53(c), for an operating license renewal which includes “the applicant’s plans to modify the facility.” Facilities in operation as of June 30, 1995, i.e. Units 1 and 2, are subject to paragraphs 10 CFR 51.53(c)(3)(ii)(A-M). The relevant stipulations A, B, C, D & G require *inter alia* provision of Clean Water Act 316(a) and 316(b) determinations.

- (ii) The environmental report must contain analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in Appendix B to subpart A of this part. The required analyses are as follows:

⁵ COLA Part 3, Environmental Report, Table 3.0-2, Evaluation of ESP Design Parameters, page 3-20 (emphasis added)

(A) If the applicant's plant utilizes cooling towers or cooling ponds and withdraws make-up water from a river whose annual flow rate is less than $3.15 \times 10^{12} \text{ ft}^3/\text{year}$ ($9 \times 10^{10} \text{ m}^3/\text{year}$), an assessment of the impact of the proposed action on the flow of the river and related impacts on instream and riparian ecological communities must be provided. The applicant shall also provide an assessment of the impacts of the withdrawal of water from the river on alluvial aquifers during low flow.

(B) If the applicant's plant utilizes once-through cooling or cooling pond heat dissipation systems, the applicant shall provide a copy of current Clean Water Act 316(b) determinations and, if necessary, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant can not provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from heat shock and impingement and entrainment.

(C) If the applicant's plant uses Ranney wells or pumps more than 100 gallons (total onsite) of ground water per minute, an assessment of the impact of the proposed action on ground-water use must be provided.

(D) If the applicant's plant is located at an inland site and utilizes cooling ponds, an assessment of the impact of the proposed action on groundwater quality must be provided.

(G) If the applicant's plant uses a cooling pond, lake, or canal or discharges into a river having an annual average flow rate of less than $3.15 \times 10^{12} \text{ ft}^3/\text{year}$ ($9 \times 10^{10} \text{ m}^3/\text{year}$), an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

Further, 40 CFR 125.94 requires the US EPA to determine the best technology available for Phase II electric generating plants, allowing demonstrations of compliance to be done for safety requirements at nuclear facilities “based on consultation with the NRC.” 40 CFR 125.94

In conclusion, while the NRC may not have direct permitting responsibilities under the CWA, it cannot be said that the Act is outside the scope of the NRC proceeding.

Issues Unresolved by the ESP

In its response to our proposed contentions, the NRC Staff Answer at 11 states: “[T]he matters resolved in a proceeding on an ESP application are considered resolved in

subsequent proceedings in which the application references the ESP...” However, Petitioner believes many outstanding issues are unresolved as evidenced by the language of the DVP North Anna ESP record. The following are excerpted from the Atomic Safety and Licensing Board and Commission decisions in that ESP case. See LBP-07-9, 65 NRC 539 (2007) and CLI-07-27, 66 NRC 215 (2007)

MANDATORY HEARING: DECISION ON SAFETY ISSUE 1

Although unresolved issues exist and may be addressed if and when Dominion actually applies to construct Unit 3 and/or 4, the Board concludes that the application and the record contain information that is sufficient, and the review by the NRC Staff has been adequate, to support a finding that the issuance of the ESP would not be inimical to the common defense and security or to the health and safety of the public, subject to the permit conditions, COL Action Items, site characteristics and bounding parameters contained in Appendix A to the FSER, and the conditions specified in the Draft Permit. [LBP 07-09 at 542]

NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL IMPACTS

While the FEIS did not address one possible environmental impact, i.e., groundwater contamination (and resulting lake impacts) from proposed Units 3 and 4, proposed Permit Condition 4 requires measures to preclude such impacts and, in any event, it is clear that the issue of groundwater impacts must be addressed at the COL stage. In addition, although we have raised the question as to whether the Staff’s investigation and discussion of the impacts on minority and low-income populations satisfies the Commission’s policy on environmental justice, we believe, on balance, that the FEIS discussion on this matter did not violate NEPA § 102(2)(i). [LBP 07-09 at 543]

NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL JUSTICE (NRC)

The paucity of Environmental Justice analysis, investigation, and information in the FEIS raises doubts as to whether the Staff has complied with the NRC EJ Policy that requires that the Staff provide an EJ analysis “in greater detail” when the low-income or minority population thresholds are met. Under these circumstances, and given that the Commission will necessarily review any initial ESP decision such as this one, the Board suggests that the Commission consider addressing the somewhat novel question as to what it expects the Staff to do when, under the NRC EJ Policy, an EJ analysis “in greater detail” is required [LBP 07-09 at 546]

EARLY SITE PERMITS: REGULATORY STANDARDS

NRC regulations are unclear as to how the 25-mrem limit in 40 C.F.R. § 190.10 and 10 C.F.R. §20.1301(e) is to be allocated between an existing licensee on a site (VEPCO/ODEC) and an applicant considering the construction of additional nuclear reactors on the same site (Dominion). It is also unclear what rational

principle and legal standard the NRC Staff will use in allocating legal liability if the 25-mrem standard is exceeded. As a matter of regulatory clarity for the licensees and the public, it might be prudent for NRC to articulate this rational principle and/or allocate the 25-mrem limit of 10 C.F.R. § 190.10 in a permit condition at the outset. [LBP 07-09 at 546-7]

EARLY SITE PERMITS: ADEQUATE INFORMATION

While an ESP applicant is not required to provide “detailed design” information concerning each of the types of reactor designs covered by the application and may provide a “plant parameter envelope” instead, problems may arise when the ESP application does not include significant PPE values. It is unclear how this would meet the requirement that an ESP applicant provide “adequate information” or NRC’s bar on “partial ESPs.” It is also unclear how many holes or “unresolved issues” there can be in a PPE before it runs afoul of the Commission’s policy and when the Staff should decline to issue an ESP and advise the applicant to instead consider an Early Partial Decision on Site Suitability pursuant to 10 C.F.R. Part 2, Subpart F. [LBP 07-09 at 547]

Accordingly, I must also conclude that, under NEPA Baseline Issues 2 and 3, on balance the ESP should not be issued.

In closing, I note that I do not think that the denial of the ESP would necessarily require Dominion and the Staff to restart the process from scratch. It is not within the power of a Board to order or instruct the NRC Staff to redo the alternatives analysis in the FEIS and to issue a supplemental draft EIS and final EIS covering that subject. But if it were, I would do so. This would need to be done scrupulously and with public input, so that it did not simply lead to a predetermined reapproval of the North Anna site.

Alex S. Karlin, Chairman
[LBP 07-09 at 639]

RADIOLOGICAL DOSE

For light-water-cooled reactors (LWRs), section 20.1301(e) would be the limiting standard, because a licensee within the uranium fuel cycle could not release the 100-mrem limit permitted by section 20.1301(a) without necessarily violating the 25-mrem limit of section 20.1301(e) that applies to the entire site. Specific numerical guidelines for maintaining effluent releases ALARA for non-LWRs have not been developed. Unless and until such guidelines are implemented, whether a particular non-LWR design complies with ALARA requirements will be determined on a case-by-case basis in the context of a future COL or CF application referencing the ESP.

In making its determination on the postulated source terms, the Staff did not, and need not, authorize the proposed reactors to release radioactivity in the amounts used in connection with the dose estimates. Rather, the Staff used conservative estimates to conclude that two new units bounded by the postulated source terms could comply with applicable radiation standards found in 10 C.F.R. Part 20. However, actual compliance with applicable radiation standards is deferred at the ESP stage, and can only be determined in a COL or CF proceeding, when the applicant must proffer necessary design information and proposed operational programs.

If a COL or CP applicant chooses to pursue a new reactor design before the

Commission has set specific standards applicable to that type of reactor, then the applicant will be subject to the existing requirement of 10 C.F.R. § 20.1301(a)(1), and will further be required to demonstrate that its emissions will be ALARA pursuant to 10 C.F.R. §~ 50.34a, 50.36a, and 20.1101. While the design objectives found in Appendix I could potentially serve as guidance to the Staff in performing its review in this area, they would not bind such a CP or COL applicant. [CLI 07-27 at 218]

(Emphases added) Pursuant to NEPA Baseline Issue 2, the ASLB “must independently consider the final balance among the conflicting factors contained in the record of the proceeding and must determine the appropriate action to be taken.” The omissions and unresolved issues detailed above and subsequently smoothed over appear to reveal an agency which is more prone to perfecting the record instead of perfecting the license. The Licensing Board now has an opportunity to demonstrate its independence and its commitment to resolving these issues and others raised in our Petition. Nuclear power cannot suffer any more accidents or near misses.

Contention 7 is Admissible.

DVP and the NRC Staff argue that Contention 7 is an inadmissible challenge to the FEIS for the North Anna ESP, as well as an inadmissible challenge to the Waste Confidence Rule. For the same reasons that are discussed in BREDL’s Reply with respect to Contention 1, DVP and the Staff are incorrect. The fact that DVP has now applied for a COL constitutes changed circumstances and new information warranting supplementation of the FEIS for the ESP. In addition, BREDL intends to submit a rulemaking petition to seek reconsideration of the Waste Confidence Rule. In the meantime, BREDL requests the Licensing Board to admit Contention 7 and hold it in abeyance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis A. Zeller", followed by a horizontal line for a signature.

Louis A. Zeller
Blue Ridge Environmental Defense League
PO Box 88 Glendale Springs, NC 28629
(336) 982-2691
bredl@skybest.com

June 11, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) Docket Nos. 52-017
Dominion Virginia Power)
North Anna Unit 3) ASLBP No. 08-863-01-COL
Combined License)

)

CERTIFICATE OF SERVICE

I hereby certify that copies of the June 11, 2008
**REPLY OF THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE TO
DOMINION VIRGINIA POWER AND NRC STAFF ANSWERS TO OUR
PETITION FOR INTERVENTION AND REQUEST FOR HEARING**

was served on the following persons via Electronic Information Exchange this 11th day of June, 2008.

Administrative Judge
Ronald M. Spritzer, Chair
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rms4@nrc.gov

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rfc1@nrc.gov

Administrative Judge
Alice C. Mignerey
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: acm3@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop 0-16C1
US Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

Office of Commission Appellate
Adjudication
US Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Dominion Resources Services, Inc.
120 Tredegar Street, RS-2
Richmond, VA 23219
Lillian M. Cuoco, Esq
Senior Counsel.
E-mail: Lillian_Cuoco@dom.com

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
David R. Lewis, Esq.
Counsel for Dominion
E-mail: david.lewis@pillsbury.com
Maria Webb, Paralegal
E-mail: maria.webb@pillsburylaw.com

Robert M. Weisman, Esq.
Counsel for NRC Staff
US Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Robert.Weisman@nrc.gov

_____*/signed electronically/*_____
Louis A. Zeller, Representative for BREDL
Blue Ridge Environmental Defense League
PO Box 88 Glendale Springs, NC 28629
(336) 982-2691
E-mail: BREDL@skybest.com

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