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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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TELECONFERENCE

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

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Wednesday,  
July 2, 2008

BEFORE THE PANEL:  
RONALD M. SPRITZER, CHAIRMAN  
RICHARD F. COLE, JUDGE  
ALICE C. MIGNEREY, JUDGE  
  
SPECIAL ASSISTANT:  
ALAN ROSENTHAL, JUDGE

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## P R O C E E D I N G S

(10:06:51 a.m.)

CHAIRMAN SPRITZER: We are here in the matter of Virginia Electric & Power Company doing business as Dominion Virginia Power and Old Dominion Operative. This is docket number 52-017, also ASLP number 08-863-01-COL.

We are here on the petition to intervene and request for a hearing by the Blue Ridge Environmental Defense League. And, specifically, we are going to address their contention, the admissibility of their contentions. We're here to hear oral argument. This is not an evidentiary --this is no evidence produced. We are here to hear legal argument from the parties representative solely on the issue of the admissibility of the contention.

Let me identify the members of the Board. I've already identified myself. My name is Ron Spritzer. I am the Chairman. Would the two Board members briefly identify themselves.

JUDGE COLE: Yes. My name is Richard Cole. I'm an Environmental Engineer, and member of the Licensing Board.

JUDGE MIGNEREY: This is Alice Mignerey. I am a Nuclear Chemist and Environmental Chemist, and

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1 I'm a member of the Licensing Board.

2 CHAIRMAN SPRITZER: Before we continue,  
3 could I ask people who will not be speaking, or  
4 listening but won't be participating to mute their  
5 phones, if you have that capability. That would  
6 reduce the noise we have to listen to, and possible  
7 interference. It shouldn't interfere with your  
8 ability to listen. And since you won't be speaking,  
9 you don't need that capability.

10 We have a Judge who is functioning as a  
11 Special Assistant to the Board, Alan Rosenthal. We  
12 also may have two administrative judges listening by  
13 phone, Bill Murphy and Brian Hayjack. I don't know,  
14 are either one of you -- did either one of you get in?

15 JUDGE MURPHY: This is Bill Murphy.

16 CHAIRMAN SPRITZER: And, Brian, are you  
17 there?

18 JUDGE HAYJACK: Yes, I am.

19 CHAIRMAN SPRITZER: These are both  
20 administrative judges on the Atomic Safety and  
21 Licensing Board Panel. They are not members of the  
22 Board. They won't be participating. They are simply  
23 listening in, as are a number of members of the  
24 public. And, finally, we have in the room with us  
25 here, Bill Froehlich, who is another member of the

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1 panel, but who is not a judge on this particular  
2 Board, and won't be participating other than to listen  
3 in.

4 Okay. Let's go around one more time and  
5 make sure we have a representative of each  
6 participant. And would you please identify yourself  
7 and the party you represent, starting with Blue Ridge  
8 Environmental Defense League. I'll just refer to them  
9 as BREDL, for everybody's convenience, unless there's  
10 some problem with that. Would BREDL's representative  
11 please identify himself.

12 MR. ZELLER: Yes, Your Honor. This is  
13 Louis Zeller with the Blue Ridge Environmental Defense  
14 League representing the organization here today in  
15 that matter. We do prefer not BREDL, but the League,  
16 if you don't mind, sir.

17 CHAIRMAN SPRITZER: All right. Very good.  
18 I'll try and remember that. And next, I'll refer to  
19 you as Dominion Virginia Power rather than recite the  
20 whole corporate name. Would Dominion's representative  
21 please identify himself?

22 MR. LEWIS: Yes, good morning. This is  
23 David Lewis. I'm with the law firm Pillsbury,  
24 Winthrop, Shaw, Pittman, representing Dominion.

25 CHAIRMAN SPRITZER: And the NRC staff?

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1 MR. WEISMAN: Robert Weisman representing  
2 the NRC Staff.

3 CHAIRMAN SPRITZER: And the North Carolina  
4 Utilities Commission, you're actually not on the list  
5 of people to be participating, but you are a  
6 participant in the proceeding.

7 MS. JONES: Yes. It's Kimberly Jones, and  
8 I will just be monitoring today. Thank you.

9 CHAIRMAN SPRITZER: Sure. All right.  
10 I've covered the ground rules for the proceeding. As  
11 we've said to the participants in an order we issued  
12 earlier, we're only interested in hearing argument on  
13 the first three contentions.

14 Mr. Zeller, we gave you the option. We're  
15 giving you a total of 30 minutes. We've given you the  
16 option of reserving up to 10 minutes of that for  
17 rebuttal. Do you have a preference? Do you want to  
18 reserve any time for rebuttal?

19 MR. ZELLER: Yes, Your Honor. I would  
20 like to reserve 10 minutes for rebuttal, please.

21 CHAIRMAN SPRITZER: Okay. That will be  
22 fine. I'll try and keep time for you as best I can  
23 when you get started, which will be momentarily. Any  
24 of the Board members have anything else they'd like to  
25 say?

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1 All right. Why don't we begin with you,  
2 Mr. Zeller. Feel free to get started. We're here to  
3 hear your position.

4 MR. ZELLER: All right. Thank you. This  
5 is Lou Zeller, and I'm here to address the first three  
6 contentions as outlined by Chairman Spritzer. I will  
7 start in numerical order.

8 Contention One raised by our petition,  
9 potential Contention One is that Dominion lacks a  
10 realistic low-level radioactive waste plan. And, of  
11 course, as you know, no facility in the United States  
12 will be licensed, able to accept for disposal Class  
13 A -

14 JUDGE COLE: Mr. Zeller, this is Dr. Cole.  
15 We have read the filings summarizing your contention,  
16 and we have read the comments on your contention by  
17 the Staff, and by the Applicant. So, if you could, it  
18 would be helpful to address what they said about your  
19 petition, so that we might cut to the chase, as it  
20 were.

21 MR. ZELLER: Yes, I understand.

22 JUDGE COLE: Because with your limited  
23 amount of time, you don't have to repeat. We have  
24 read your petition.

25 MR. ZELLER: Okay. Assuming that all of

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1 the parties are familiar with all of the documents  
2 that we have submitted, I would say this; that NRC  
3 Staff in their response argues that the Petitioners  
4 failed to provide expert opinion or references to  
5 specific sources and documents. This was on page 19  
6 of the Staff's response. But Blue Ridge Environmental  
7 Defense League has provided, according to 10 CFR  
8 2.39(f)(1)(v), a concise Statement of Facts, which we  
9 believe supports our position. And, further,  
10 according to the regulation, provides information to  
11 show that a genuine dispute exists with the Applicant  
12 in this case, Dominion Virginia Power on a material  
13 issue of law or fact.

14 CHAIRMAN SPRITZER: What is that dispute,  
15 precisely? Particularly, can you tell us -- well, why  
16 don't you define as clearly as you can what you  
17 contend the factual matter is that is in dispute  
18 between you and the Applicant and the NRC Staff  
19 concerning Contention One.

20 MR. ZELLER: Okay. At the time of  
21 Dominion Virginia Power's original Early Site Permit,  
22 and in subsequent documents submitted into the record  
23 by the Applicant, there was no proposal for a major  
24 federal action that would have led to the generation  
25 of radioactive waste. Dominion maintained through

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1 that procedure that Dominion is not currently  
2 proposing construction and operation of new units.  
3 This was in the document submitted, in the  
4 Environmental Impact Statements, and as well as in  
5 public statements.

6 With the submission of the Combined  
7 Operating License application, the situation has  
8 changed, so there is a change in the facts before the  
9 Atomic Safety Licensing Board, and the Nuclear  
10 Regulatory Commission, and the fact that there is no  
11 place for the waste outlined to go to any place,  
12 except for an on-site storage. So either the waste  
13 plan for on-site storage needs to be altered, or  
14 another disposal needs to be identified, and it is  
15 not.

16 JUDGE ROSENTHAL: Mr. Zeller, this is  
17 Judge Rosenthal. Staff argues with respect to  
18 Contention One, among other things, that you have  
19 failed to identify any applicable requirement  
20 pertaining to the storage and disposal of low-level  
21 radioactive waste, much less how such a requirement  
22 might be material to the findings the NRC must make  
23 regarding the application.

24 Now, precisely what requirement do you  
25 find in the Commission's regulatory scheme that would

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1 counter this assertion by the staff, which is found on  
2 page 22 of its response?

3 MR. ZELLER: Well, the fact that Dominion  
4 Virginia Power has now applied for a COL in which it  
5 actually proposes a new nuclear power plant at the  
6 site on Lake Anna, will generate large volumes of  
7 radioactive waste. This is new and significant  
8 information in itself, and the changed circumstances  
9 require supplement of the Environmental Impact  
10 Statement under 10 CFR 51.92.

11 CHAIRMAN SPRITZER: Well, they already -  
12 this is Judge Spritzer. By the way, let me just ask,  
13 is the Court Reporter still on the line?

14 THE REPORTER: Yes, I am. I disconnect my  
15 handset so I can get better sound.

16 CHAIRMAN SPRITZER: Oh, okay.

17 THE REPORTER: That's that dramatic delay.

18 CHAIRMAN SPRITZER: Okay. No problem.  
19 This is Judge Spritzer, again.

20 Let's assume -- I mean, I don't think  
21 there's any dispute here that there is no -- the  
22 facility in Barnwell is closed just a few days ago to  
23 waste from reactors in Virginia and various other  
24 states. But is there something you can point us to?  
25 You're asserting that they have some duty to submit a

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1 low-level radioactive waste management plan. I must  
2 say, I haven't been able to find any such requirement  
3 in the regulations. That's not, at least so far, but  
4 can you direct us to any specific regulation that  
5 would require a plan, if that's really -- you say they  
6 need to submit.

7 MR. ZELLER: Well, as I said, there is a  
8 need for -- under the rules and regulations, and  
9 within the Environmental Report, and in the  
10 application itself to dispose of radioactive waste,  
11 both to the air, to the water, and solid waste.

12 We recognize that this Contention raises  
13 a challenge to the generic assumptions and  
14 conclusions, but we respectfully submit that the  
15 information constitutes new and significant  
16 information not considered in any previous  
17 Environmental Impact Statement for radioactive waste  
18 disposal.

19 CHAIRMAN SPRITZER: This is Judge Spritzer  
20 again. They did --- in the EIS comments were  
21 submitted on this issue. It may even be that your  
22 organization was one of the ones that commented on  
23 this, saying that the EIS was defective because it  
24 didn't include information, or didn't acknowledge the  
25 fact that the Barnwell facility was going to close.

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1 And the response from the Staff which prepared the EIS  
2 was, basically, this is not the exact words, but to  
3 the effect that we think they're more than capable of  
4 managing any interim storage they may have to do until  
5 they can find an alternative disposal site.

6 JUDGE COLE: This is Dr. Cole. I think  
7 he's referring to the EIS associated with the Early  
8 Site Permit.

9 CHAIRMAN SPRITZER: Right. The one EIS  
10 that's been prepared, do you feel that that's  
11 deficient in some way, because it is in the EIS. They  
12 did cite it, and I believe the Staff, and maybe also  
13 Dominion cited it in their responses to your petition.  
14 Is it your position that that response is defective?

15 MR. ZELLER: Well, I guess in answer to  
16 your question - this is Lou Zeller again - that we  
17 seek admission of the Contention, because, as I said,  
18 there is a generic question here which would affect  
19 all of the pending and extant license applications for  
20 new nuclear power plants. The changing situation on  
21 the ground with the closure of Barnwell means that  
22 another, perhaps a generic resolution to this problem  
23 is in the offing, but we raise this Contention here to  
24 be sure that we've done it in a timely way, and that  
25 the -- to preserve our rights under this to make sure

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1 that this is plugged into the existing case.

2 So in order to not put too fine a point on  
3 it, not to whip sod between the generic issues which  
4 the Nuclear Regulatory Commission often uses to  
5 address a problem, that there is also the site-  
6 specific issues. And that's why we're raising this  
7 Contention here.

8 CHAIRMAN SPRITZER: Okay. This is Judge  
9 Spritzer, again. I think we understand your position  
10 on Contention One. One more question.

11 JUDGE COLE: Yes. This is Judge Cole.  
12 The situation with respect to the closing of Barnwell  
13 is a problem for all of the plants outside of the few  
14 states that can participate and continue to  
15 participate in Barnwell. And that problem is  
16 immediate right now for all those reactors outside  
17 now. Don't you think that that problem will be  
18 resolved before eight or ten years from now, when it's  
19 going to be a problem for Unit Three?

20 MR. ZELLER: This is Lou Zeller again. It  
21 may well be, but we don't know that here today on July  
22 the 2<sup>nd</sup>, 2008. We don't know how long it will take.  
23 If experience is any guide, the Low-Level Waste Policy  
24 Act was passed, I believe, in 1980, and there's still  
25 no resolution for a national low-level radioactive

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1 waste disposal method.

2 CHAIRMAN SPRITZER: Okay. This is Judge  
3 Spritzer again. Unless there are any further  
4 questions on this, you might want to move on to  
5 Contention Two. You've got about 10 minutes.

6 MR. ZELLER: Yes, thank you. Thank you,  
7 Chairman Spritzer. I appreciate that.

8 Okay. Contention Two is that Unit 3 would  
9 be built on top of a seismic fault.

10 JUDGE ROSENTHAL: This is Judge Rosenthal.  
11 My impression is that this might have been on the  
12 Early Site proceeding, that there was a determination  
13 that none of the seven seismic faults at or about the  
14 North Anna site are capable. Now, if that's the case,  
15 why is there an issue at this point with the unit  
16 being built at its proposed location?

17 It seems to me that you haven't --  
18 justifying that Contention, you haven't countered at  
19 all the testimony, as I understand it, regarding the  
20 non-capability nature of these faults.

21 MR. ZELLER: Yes, Your Honor. Thank you  
22 for clarifying that. This is Lou Zeller, again.

23 Well, the core of our concerns raised in  
24 Contention Two do center on seismic hazard in central  
25 Virginia, and Dominion Virginia Power's request for a

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1 variance for vibratory ground motion, technical term,  
2 at the North Anna Power Station.

3 JUDGE COLE: Mr. Zeller, this is Dr. Cole,  
4 again. In my study of the reason why that variance  
5 was suggested, it was because of new found information  
6 in preparation for the application for the COL, and  
7 they actually found a different location for capable  
8 material underneath the site, and so that would change  
9 the necessary horizontal and vertical spectra for  
10 seismic design.

11 That being the case, then with the new  
12 found information, it's then more accurate site  
13 information, and that's the reason for the variance,  
14 because the spectra they used for the ESP application  
15 was for a different elevation of capable material. So  
16 this was just new found information, and they're just  
17 bringing it up-to-date. Now, what's the problem with  
18 that?

19 MR. ZELLER: Part of the problem - this is  
20 Lou Zeller, again - that we have outlined, I believe,  
21 in our Contention is that the seismic data itself is  
22 based on, and the application itself really is based  
23 on a design control document which is referred to  
24 throughout the Combined Operating License application.

25 I won't belabor the point that we've

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1 raised in our filings that there are -- we pointed to  
2 several defects and several errors, identified with  
3 regards to the ability of a station at this plant to  
4 withstand seismic shock.

5 There is also the question - I guess I'd  
6 say the basement question is that the design control  
7 document for the Economically Simplified Boiling Water  
8 Reactor, the ESBWR, is still a pig in a poke. We  
9 don't know what that reactor will look like. In fact,  
10 it's still under modification.

11 JUDGE COLE: Yes, sir. This is Dr. Cole.  
12 I understand that, sir, but the generic spectra that  
13 was used for the application, apparently provides for  
14 larger values than is provided in either of the two  
15 site-specific spectra. That being the case then, it  
16 would be more conservative, because it's like an  
17 umbrella. What's wrong with my reasoning there, sir?

18 MR. ZELLER: Well, in our investigations -  
19 this is Lou Zeller, again - the information, for  
20 example, from the Virginia Department of Mines,  
21 Mineral and Energy talks about the historic -- well,  
22 actually, the history of seismic activity in the State  
23 of Virginia with a series of magnitude five or greater  
24 shocks during the past 200 years, as long as they have  
25 recorded this type of data.

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1                   There's a 13 percent probability for  
2 another magnitude five shock within the next 10 years,  
3 and a 29 percent probability within the next 25 years,  
4 which is well within the licensing period, the  
5 prospective licensing period of Unit 3 at the North  
6 Anna Station. The largest possible earthquakes which  
7 could occur in the Commonwealth are quite large.

8                   To be safe, the seismic hazard studies for  
9 critical facilities, nuclear power plants and other  
10 facilities, such as reservoirs, I guess the answer to  
11 the question is no, is that -- and the question is are  
12 they the largest possible earthquakes that could occur  
13 in the Commonwealth? Some of the other information  
14 that we are aware of is that damaging earthquakes in  
15 Virginia are likely to be serious, more serious than  
16 in other areas of the country. Attenuation of  
17 earthquake vibrations is much lower in eastern sites  
18 because of the bedrock structures, and that areas of  
19 damage in the Eastern United States, as compared to  
20 the West United States, could be 10 times as large for  
21 comparable size shockwave of magnitude five or  
22 magnitude six.

23                   Charlottesville is identified within the  
24 periphery of the Central Virginia seismic zone. I'm  
25 not saying that Dominion Virginia Power has not done

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1 some investigations, but at this stage, we'd like to  
2 know what the Nuclear Regulatory Commission has done  
3 in terms of an independent assessment here. And that  
4 goes back to the reliability of the information  
5 submitted by Dominion Virginia Power.

6 Again, I won't belabor what I have already  
7 written in our initial petition, and subsequent  
8 filings, but we have a problem with the voracity of  
9 some of the information based on the history. And  
10 that goes back 20 and 30 years, actually, to the  
11 siting of Units 1 and 2 at North Anna.

12 CHAIRMAN SPRITZER: Can you identify what  
13 -- this is Judge Spritzer. Can you identify anything  
14 specific that you have a problem with the voracity of?  
15 It's kind of difficult for us to deal with a very  
16 general allegation that says don't trust the  
17 Applicant. Is there something specific you could  
18 point to on this issue?

19 MR. ZELLER: Yes, sir. We believe that  
20 the variance for vibratory ground motion should not be  
21 granted by the Atomic Safety Licensing Board, or the  
22 Nuclear Regulatory Commission. At the very least,  
23 they should stay within the parameters which were  
24 identified previously.

25 JUDGE COLE: Well, sir, the results of the

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1 variance would provide for, or information that's just  
2 not that much different than the earlier on-site  
3 spectra. Do you agree with that, or disagree?

4 MR. ZELLER: In terms of percentages,  
5 you're right, but I think that the -- if we are  
6 dancing that close to the edge of the water, then I  
7 think we should take a step or two back from that edge  
8 in order to provide an adequate margin of safety.

9 The previous information I was citing from  
10 the Department of Mines, Minerals, and Energy indicate  
11 that a much more serious earthquake than postulated  
12 perhaps in the design basis earthquake is quite  
13 possible in the State of Virginia, and that needs to  
14 be addressed. And it needs to be done independently  
15 from the documents submitted by Dominion Virginia  
16 Power.

17 JUDGE COLE: All right. Thank you, Mr.  
18 Zeller. This is Dr. Cole again.

19 Considerable time and effort was spent  
20 examining the seismic situation at the Early Site  
21 Permit hearing. In fact, they dedicated over 100  
22 pages in one of the Staff documents to seismicity.  
23 And the Board decision on Early Site Permit has five  
24 or six pages just on the seismicity situation.

25 MR. ZELLER: Right.

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1 JUDGE COLE: And both the Applicant and  
2 the Staff say that issue was handled at the Early Site  
3 Permit stage. And according to Commission  
4 regulations, then it's not fair game for the COL  
5 hearing. How would you respond to that?

6 MR. ZELLER: Well, going back to the  
7 docket number 52-008, we can see that the design  
8 considerations are necessary. This is from the FSER  
9 review items in the Early Site Permit application,  
10 Revision 5. But design considerations, that is the  
11 design of the plant itself, will determine, for  
12 example, the actual levels needed for the vertical and  
13 horizontal ratios to be determined.

14 The design considerations, as I said, are  
15 still up in the air, because we don't have a final  
16 ESBWR, so there are -- even though much work has been  
17 done, granted, we still don't know if reactor final  
18 design would look like, and how it will affect the  
19 site design in the final construction and operation.

20 JUDGE COLE: Again, this is Dr. Cole.  
21 Hasn't the Commission addressed how the Board should  
22 handle a situation like that, in that I believe what  
23 they say is when a design consideration comes up, that  
24 we should defer to the Staff review on that point,  
25 rather than litigate it. So is that issue now not

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1 ripe, or is it ripe for consideration now?

2 MR. ZELLER: Until the ESBWR is finalized,  
3 it would be difficult to say categorically that it has  
4 been done. An independent review on the part of the  
5 Nuclear Regulatory Commission I think is advised in  
6 this matter. I'm not sure if the Commission has on  
7 staff the people who could do such an independent  
8 review. I know I've seen discussions about internal  
9 staffing with various types of experts in this field  
10 and others. And I understand that that's not  
11 finalized yet, but I do think that there does need to  
12 be some internal expertise people on staff working for  
13 the Nuclear Regulatory Commission who could do an  
14 independent job here.

15 Going back to some of the Early Site  
16 Permit issues raised, for example, by Judge Karlin, in  
17 that the Early Site Permit has some deficiencies which  
18 are identified by Judge Karlin, and, in fact, should  
19 not have been issued. Now, I understand that the  
20 record was perfected, and that's parlance that the  
21 Nuclear Regulatory Commission itself uses. I don't  
22 agree with it. I believe that the permit should be  
23 perfected, not the record in this matter. But the  
24 issues, I think, are reflected in his comments.

25 JUDGE COLE: This is Dr. Cole, again. I

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1 don't believe Dr. Karlin addressed seismic issues.

2 MR. ZELLER: No, he did not, but he did  
3 address the Early Site Permit itself, which is, of  
4 course, the reference document for the Combined  
5 Operating License Application, as is the ESBWR.

6 JUDGE COLE: All right, sir. Dr. Cole.  
7 I understand your position, sir.

8 CHAIRMAN SPRITZER: This is Ron Spritzer  
9 again. Mr. Zeller, you've gone over your 20 minutes,  
10 but we've been peppering you with questions, so we'll  
11 give you five minutes more without cutting into your  
12 rebuttal time to talk about your Third Contention, if  
13 you're ready to proceed to that.

14 MR. ZELLER: All right. Thank you. Yes,  
15 I am, Your Honor.

16 Contention Three is about water. The  
17 question we would raise if this Contention is admitted  
18 is will North Anna operate in compliance with federal,  
19 state, and local water regulations for the expected  
20 operating life of 40 years?

21 We have provided information, and are  
22 prepared to provide more information about the cooling  
23 tower, which was modified in the Early Site Permitting  
24 process, but which we believe still leaves a lot to be  
25 desired because of the -- many of the issues regarding

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1 make-up water which I went into in some of the early  
2 documents. The operation of Unit 3, the wet/dry  
3 cooling, it's estimated that the minimum water level  
4 experienced during the drought of 2003 would drop to  
5 a dangerous level. Given the possibility of errors  
6 and the plausible variances in some of the input data  
7 in the development of these data, we do not believe  
8 this provides a sufficient margin of safety for  
9 operation.

10 JUDGE ROSENTHAL: Mr. Zeller, this is  
11 Judge Rosenthal. Two of the Staff's responses to your  
12 Contention Three were, first, that the issue you seek  
13 to raise was resolved in the ESP proceeding, and may  
14 no be re-litigated in this proceeding. Second, that  
15 to the extent that you seek a determination on whether  
16 operation of the Unit 3 would comply with the CWA,  
17 that that matter is beyond the scope of the  
18 proceeding. Now, what response do you have to those  
19 two specific claims on the part of the Staff; one,  
20 that it's not open to re-litigation; and, two, that  
21 it's beyond the scope of the proceeding?

22 MR. ZELLER: Well, within the EIS itself,  
23 we see that there's differences between the maximum  
24 water conservation mode, and the operation of the  
25 cooling system here. During periods of - and this

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1 comes from the EIS - during periods of favorable  
2 atmospheric conditions, more than one-third of  
3 rejected heat may be dissipated through the dry  
4 towers; that is the -

5 JUDGE ROSENTHAL: No, you're not - with  
6 due respect, this is Judge Rosenthal again - I would  
7 appreciate it if you would address my specific  
8 question, which is what is your response to the  
9 Staff's argument that this matter was resolved in the  
10 ESP proceeding, and may not be re-litigated. And,  
11 two, that the matter of compliance with the CWA is  
12 beyond the scope of the proceeding. So I would  
13 appreciate it if you would address those two arguments  
14 the Staff advances, rather than, once again, discuss  
15 what your view is of the merits of the cooling system  
16 issue.

17 MR. ZELLER: Thank you, Judge. Well, the  
18 issues are not resolved, I guess is the plain answer  
19 to that. As I was saying, the operation of the  
20 cooling tower would drop, in fact, to dangerously  
21 close levels to the minimum in the situation.  
22 Remembering that there are two existing reactors, and  
23 the variance granted under the Clean Water Act to the  
24 NPDES permit for the existing reactors, and I  
25 understand that the NRC is not in a permitting

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1 position in that case, but it does affect the basis  
2 for the license granted by the Nuclear Regulatory  
3 Commission, nevertheless. So, given the possibility  
4 of errors and variances in the modeling input data, we  
5 believe that this does not provide sufficient or safe  
6 operating margin.

7 JUDGE ROSENTHAL: What you're saying -  
8 this is Judge Rosenthal, again - in essence, I guess,  
9 is that you do not like the way it was resolved in the  
10 ESP proceeding. But isn't the scheme here that issues  
11 of that kind were to be litigated in the ESP  
12 proceeding, and whatever conclusions were reached  
13 there were the end of the game on that particular  
14 issue?

15 Now, you may not be satisfied with the  
16 resolution of the water issues on the ESP proceeding  
17 level, but under the Commission's regulatory scheme,  
18 isn't that quite beside the point, your  
19 dissatisfaction? These were issues that were to be  
20 resolved, and from the Commission's standpoint have  
21 been resolved at a prior time.

22 MR. ZELLER: Thank you. This is Lou  
23 Zeller, again. Under NEPA Baseline Issues 2 and 3, I  
24 think what you're referring to, under which the Board  
25 must independently consider the final balance among

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1 conflicting factors contained in the record, and  
2 consider reasonable alternatives.

3 One of the problems identified at that  
4 time was the failure of the NRC Staff, itself, to  
5 require Dominion Virginia Power to look into  
6 alternative sites. The site at which we are talking  
7 about for the proposed Unit 3 on the Lake with two  
8 other existing reactors was not the only site. This  
9 was a critical deficiency identified by the previous  
10 Licensing Board panel, which we maintain has not been  
11 addressed. If the record has been perfected, there  
12 are still outstanding questions here, which affect not  
13 only the water usage in the lake, which I've already  
14 outlined. So no, we are not satisfied. And we  
15 believe the Contention should be admitted for that  
16 reason, and a more full record developed, and  
17 exploration of these issues, because there is expert  
18 opinion available, which we believe will show that the  
19 impacts to the lake are not within the requirements of  
20 the Atomic Energy Act, or the National Environmental  
21 Policy Act.

22 CHAIRMAN SPRITZER: All right. Thank you,  
23 Mr. Zeller. You've gone a bit over, but as I said, we  
24 will still give you the 10 minutes for rebuttal. But  
25 right now, we would like to hear from -- well, we

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1 divided 30 minutes between -- we gave 30 minutes total  
2 to the Staff and to Dominion. You are free, as we  
3 said, to decide who goes first, and how you're going  
4 to divide that 30 minutes; although, the original  
5 division was 15 minutes for each of you. I don't know  
6 if you've reallocated that or not.

7 MR. LEWIS: This is David Lewis. We  
8 haven't reallocated the time.

9 CHAIRMAN SPRITZER: All right. So 15  
10 minutes, and I'll try and keep track. About 11:00  
11 would be the limit.

12 MR. LEWIS: All right. Thank you. Again,  
13 this is David Lewis.

14 Let me talk briefly on Contention One. I  
15 think the focus of Mr. Zeller's argument is really on  
16 the environmental aspects, his particular assertion  
17 that there is new and significant information simply  
18 because we've filed a COLA. In fact, that seems to be  
19 the only basis on which he's claiming there's some new  
20 and significant information that would allow  
21 reconsideration of an issue considered in the ESP  
22 proceeding.

23 I would simply submit that the filing of  
24 a COLA cannot possibly constitute new and significant  
25 information under the NRC regulation. If that were

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1 true, it would swallow up the entire rule. There  
2 would never be any finality, and that would, in effect  
3 completely read out of the regulations the  
4 Commission's intent to resolve environmental issues in  
5 the state proceeding.

6 CHAIRMAN SPRITZER: Mr. Lewis, this is Ron  
7 Spritzer. With regard to Contention One, in  
8 Contentions Two and Three we have issues that clearly  
9 were considered in the ESP proceeding. With  
10 Contention One, though, as far as I've been able to  
11 determine from the decision in the ESP, from the ESP  
12 hearing, that was not -- there was no issue actually  
13 litigated with regard to low-level radioactive waste.  
14 I take it when you say the issue was resolved, that's  
15 because there was some discussion of it in the EIS?

16 MR. LEWIS: That's correct. It was not  
17 litigated, but the Commission's rules give finality  
18 and preclusion to issues that were addressed and  
19 resolved in a final Environmental Impact Statement  
20 absent the identification of new and significant  
21 information.

22 CHAIRMAN SPRITZER: That leads back to the  
23 question, though, what it does mean for something to  
24 be resolved? The Commission's regulations don't  
25 precisely define what that means. And, quite frankly,

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1 it's clear enough to me where you have that something  
2 has been resolved, it's been addressed in litigation  
3 before the Board, or before the Commission, but what  
4 is your -- what would you like us to -- how would you  
5 like us to define the term "resolved", when we have an  
6 issue like this that the Staff has addressed in either  
7 a Safety Analysis Report, or an EIS, but there's  
8 actually been no litigation? Are you saying any issue  
9 that the Staff mentioned even in passing is sufficient  
10 to be resolved?

11 MR. LEWIS: I don't know about mentioned  
12 in passing, but the NRC Staff in the FEIS evaluation  
13 the impacts of construction on operation of new units  
14 at North Anna. It's intent in the FEIS was to analyze  
15 all of the impacts of construction and operation to  
16 the extent practicable. The issues that examined  
17 included the impacts of fuel cycle activities, which  
18 include waste management. They also included the  
19 impacts of radiological impacts, occupational  
20 radiological impacts, and evaluated those impacts in  
21 the EIS.

22 The issues that are unresolved, I would  
23 submit to you, are the issues that the Staff  
24 specifically identified as being unresolved. They're  
25 identified in Appendix J.3 of the final Environmental

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1 Impact Statement. The Staff went through the  
2 exercise. In each of its sections, they prepared  
3 their Environmental Impact Statement using the  
4 Environmental Standard Review Plan, and every instance  
5 where they found there was some issue they could not  
6 evaluate further, they identified it as an unresolved  
7 issue in the EIS, and then they listed it in Appendix  
8 J.3 of the EIS to specifically place all persons on  
9 notice of those issues they could not resolve. And I  
10 would take that exactly at face value. Those are the  
11 unresolved issues. All others are resolved.

12 CHAIRMAN SPRITZER: All right. Anyone  
13 else have any questions on that point? Very good.

14 MR. LEWIS: Let me proceed to Contention  
15 Two, the seismic contention. I heard Mr. Zeller talk  
16 a lot about risk and studies, and earthquakes in other  
17 portions of Virginia, but the contention here is  
18 solely that Unit 3 will be built on a fault; and,  
19 therefore, the plant should not be built. That is the  
20 sole contention raised in Contention Two, the sole  
21 assertion.

22 That issue does not raise an issue that's  
23 permissible in this proceeding, because the faults  
24 that are underlie the North Anna site have ben  
25 determined in the ESP proceeding to be not capable.

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1 And absent some demonstration that that's wrong, all  
2 the discussions about other studies, and the variants,  
3 and the snippets that BREDL has taken from the ESP  
4 proceeding is irrelevant. The fact is that in the ESP  
5 proceeding, there was a determination that the unnamed  
6 fault under the North Anna site is not capable. If  
7 it's not capable, it cannot contribute to the seismic  
8 hazard under the NRC standards. And that disposes of  
9 this contention.

10 The variance that BREDL mentions has  
11 nothing to do with whether this fault is capable or  
12 not. And, by the way, just to clarify terminology,  
13 Judge Cole, you referred to capable material. So  
14 there's no misunderstanding, capable describes a  
15 tectonic source, and a tectonic source is capable that  
16 it can contribute to the seismic hazard.

17 The way the methodology works, the way the  
18 NRC's Seismic Hazard Analysis works is that you do a  
19 probabilistic seismic hazard analysis. You identify  
20 capable tectonic sources. You use those capable  
21 tectonic sources to establish a seismic response  
22 spectra in hard rock. At that point, you then  
23 extrapolate that response spectra to the top of  
24 competent material. You consider the attenuation or  
25 amplification over the soil column from hard rock, the

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1 top of competent material, and you come up with a  
2 seismic response spectrum at that control point, at  
3 the top of competent rock.

4 The only variance that we have sought is  
5 this extrapolation of the response spectrum at hard  
6 rock to be a response spectrum at the top of competent  
7 rock. The main reason for that minor, minor variance  
8 is that we had assumed in the ESP proceeding, since we  
9 did not have an exact footprint, that the top of  
10 competent rock would be at 250 feet elevation. When  
11 we actually did the exact footprint and did borings  
12 exactly where the seismic Category One structures is,  
13 we determined the top of competent rock was at 273  
14 feet. That makes the extrapolation a little different.  
15 You're extrapolating, considering amplification or  
16 attenuation over a slightly greater column, and so  
17 there was a very, very minute change in the response  
18 spectrum at the top of competent rock. Again, that  
19 has absolutely nothing to do with whether there is any  
20 capable fault underneath the site.

21 JUDGE COLE: This is Dr. Cole. Thank you  
22 for that. If I said "capable material", I misspoke.  
23 I meant competent material, or competent rock, as you  
24 pointed out.

25 MR. LEWIS: Yes. I have no doubt you knew

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1 that. I just wanted to clarify the record so it didn't  
2 remain that way.

3 Mr. Zeller mentions this variance, but I  
4 can aptly say that they have provided absolutely no  
5 basis -- I mean, their contention does not challenge  
6 the variance. Even if it did, there is absolutely no  
7 basis asserted by BREDL to accept that the variance is  
8 in any way incorrect or inconsistent with NRC  
9 standards.

10 Let me just turn to Contention Three, if  
11 there's no questions on Contention Two.

12 CHAIRMAN SPRITZER: This is Ron Spritzer,  
13 again. I have one general question on this. We're  
14 kind of getting into a new issue. I think the Staff  
15 pointed this out in their response here, when we're  
16 trying to define the relationship between ESP  
17 proceeding, and a COL proceeding, and what's resolved,  
18 and what's precluded.

19 What significance, if any, would you  
20 attach to the fact that the Federal Register notice  
21 for the COL proceeding -- let me back up. The Federal  
22 Register notice for the ESP proceeding, while it  
23 certainly laid out issues that were within the scope  
24 of the ESP proceeding, didn't give any warning, at  
25 least that I've been able to locate, to people that if

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1 they didn't raise - potential interveners - that if  
2 they didn't raise issues in the ESP proceeding, they'd  
3 be precluded from raising them in the future.

4 MR. LEWIS: I think adequate notice is  
5 provided completely by the NRC regulations. The NRC  
6 regulations are consistent, and clear, and were at the  
7 ESP proceeding that the purpose of the ESP proceeding  
8 was to resolve site suitability, and assert as many  
9 environmental issues as possible.

10 Further, BREDL cannot claim surprise.  
11 They were a participant in the ESP proceeding. They  
12 knew completely well that the purpose of the ESP  
13 proceeding was to resolve site suitability issues. I  
14 think many of our pleadings in that proceeding focused  
15 on this. In fact, I think our very first response to  
16 BREDL's petition in the ESP proceeding went through  
17 and discussed the purpose of the ESP proceeding, and  
18 the very fact that it was meant to resolve these sorts  
19 of issues so they would not have to be looked at  
20 later.

21 CHAIRMAN SPRITZER: Right.

22 MR. LEWIS: Now, BREDL is no stranger to  
23 this process.

24 CHAIRMAN SPRITZER: Okay.

25 JUDGE ROSENTHAL: This is Judge Rosenthal.

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1 That well may be so in terms of the League, but isn't  
2 it possible that other potential hearing requesters or  
3 interveners might have looked at the Notice of  
4 Opportunity for Hearing issued in connection with the  
5 ESP proceeding, and not drawn that impression? In  
6 other words, why isn't Judge Spritzer right in  
7 expressing some concern over the fact that the Notice  
8 of Opportunity itself issues back in 2003 did not make  
9 it clear that with respect to site suitability issues,  
10 anybody that had a concern better speak then, or  
11 forever hold their peace. To expect people, reading  
12 that notice, to immediately go to the NRC regulation  
13 to determine what the impact of the ESP proceeding  
14 might have, was a little much. It seems to me that  
15 the notice itself should have given at least some  
16 indication as to the long-term significance of the ESP  
17 proceeding.

18 MR. LEWIS: Judge Rosenthal, I would  
19 submit to you that it should be presumed that  
20 participants in NRC hearings are familiar with the NRC  
21 regulations, and read the NRC regulations, and  
22 understand the rules. And that -

23 JUDGE ROSENTHAL: Participants, perhaps,  
24 Mr. Lewis. I am talking about the members of the  
25 general public in the area of a proposed facility. I

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1 mean, I think, with all due respect, to expect them to  
2 be parsing closely the provisions of the NRC  
3 regulations, many of which are rather archaic, is a  
4 little much. Once the individual gets into a  
5 proceeding, to hold him, or her, or it accountable for  
6 being familiar with the terms of the regulations is  
7 quite a different matter. That's just my personal  
8 view.

9 MR. LEWIS: I understand, Judge Rosenthal.  
10 I would also submit, in the ESP proceeding, in fact,  
11 the petitioners in that case were a group of  
12 petitioners. The petitioners joined together, and so  
13 BREDL was joined with NIRS and public citizen, and  
14 marshaled their forces, so there was a group of  
15 interveners who jointly intervened and participated in  
16 that proceeding, representing presumably many of their  
17 members.

18 CHAIRMAN SPRITZER: This is Judge  
19 Spritzer, again. I could see some more greater force  
20 to your argument when we talk about issues like site  
21 geology that seem to squarely fit within site  
22 suitability. On the other hand, the closure of the  
23 Barnwell facility and its effect, if any, seems to me  
24 to be a little, at least to a non-expert in the field,  
25 seems a little far removed from the concept of site

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1 suitability, which is what the ESP proceeding is  
2 primarily concerned with.

3 It seems to have been the case here that  
4 the EIS, as you pointed out, went substantially  
5 beyond, and maybe it was required to do that under  
6 NEPA, but it seems to have gone well beyond what I  
7 would think of as site suitability, gotten into the  
8 fuel cycle, among other things, as you mentioned.

9 I guess the issue I'm kind of struggling  
10 with is how far should we go in terms of cutting  
11 people off, when they had no notice that the ESP,  
12 apart from whatever general knowledge of the  
13 regulations they might have, they had no notice in the  
14 Federal Register notice itself. And the issue wasn't  
15 addressed in the litigation, and seems somewhat far  
16 removed from site suitability.

17 MR. LEWIS: Well, I guess I can offer  
18 this, in addition. It's my recollection that before  
19 the intervention opportunity in the ESP proceeding,  
20 there was a public environmental scoping meeting,  
21 where the NRC Staff went out of its way to explain  
22 what the scope of the environmental review was, how  
23 the ESP process works, and its interaction with a  
24 later COL proceeding, and what the intervention  
25 opportunities were. That was a fairly widely

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1 participated meeting that was specifically conducted  
2 to inform the public of this process, their  
3 opportunities, the scope of the Environmental Impact  
4 Statement; specifically, that it would look at  
5 construction and operation. The NRC rules for ESP  
6 made it clear that the Environmental Impact Statement  
7 would look at the impacts of construction and  
8 operation, that it was the requirement for our  
9 environmental report.

10 The NRC Staff really went out of its way  
11 in the ESP proceeding to make sure that members of the  
12 public understood before there was any intervention  
13 opportunity, what the scope of this proceeding was,  
14 and what the opportunities were.

15 CHAIRMAN SPRITZER: Okay. Let me -- and  
16 we'll give you some time on Contention Three, but let  
17 me just ask one more on Contention One. If we decide  
18 that this issue wasn't resolved at the ESP stage, I  
19 take it you have some additional reasons why you think  
20 we should not admit it in the COL proceeding. If you  
21 could briefly outline what those are.

22 MR. LEWIS: On Contention One?

23 CHAIRMAN SPRITZER: On Contention One.

24 MR. LEWIS: Well -

25 CHAIRMAN SPRITZER: Why is anything -- and

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1 maybe you're the -- I understand, it's not disputed  
2 that the Barnwell facility is closed. What I've had  
3 a problem with understanding is why does that matter  
4 in the context of this COL proceeding? Your Unit 3,  
5 as I understand it, is not scheduled to start  
6 operation until 2015. It's very difficult to sit here  
7 today and know what disposal options will or will not  
8 be available.

9           It seems to me, it's somewhat speculative.  
10 Maybe you could outline for me what -- but, on the  
11 other hand, I take it the Applicant in a COL  
12 proceeding does have to satisfy the NRC somehow that  
13 the various waste streams generated by this new  
14 reactor will be handled in accordance with NRC  
15 regulations. Can you kind of just outline for me what  
16 the relevant regulatory requirements are, and how  
17 they're met?

18           MR. LEWIS: Yes. As part of the COL, we  
19 have to describe our solid waste management system.  
20 We have to explain what the systems are for treating  
21 waste. We have to describe the shielding of the  
22 systems. Almost all of those issues, however, are  
23 generic design issues that are addressed in the DCD.  
24 The DCD describes the RAD waste building, describes  
25 the solid waste management system, provides the

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1 shielding calculations. And most of that information  
2 is simply adopted and incorporated by reference in  
3 Dominion's COLA.

4 There is, in fact, substantial waste  
5 storage capability for Class B and C waste in that  
6 design. While the total waste storage capacity for  
7 all waste, including Class A waste is six months, the  
8 percentage of waste that constitutes Class B and C  
9 waste is actually only a tiny percentage of that,  
10 about 5 percent. So if you try and think about what  
11 six months of that total waste storage capability  
12 translates into, if you're just using that capability  
13 for Class B and C waste, it's, in fact, many years of  
14 waste storage capability in the existing design.

15 Beyond the fact that this is a resolved  
16 issue on the environmental front, and, therefore, we  
17 submit is impermissible, our other main objection to  
18 BREDL's contention is that simply didn't provide  
19 information demonstrating that it was a genuine  
20 material dispute. A material dispute, under the NRC's  
21 rules, is one that will affect the outcome of the  
22 proceeding. Therefore, the issue is, has BREDL  
23 provided information indicating that there's some  
24 deficiency of the application that would warrant  
25 denial of the application.

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1 CHAIRMAN SPRITZER: Right.

2 MR. LEWIS: Here they have not provided,  
3 as we've pointed out before, any expert opinion, or  
4 source, or reference, or identification of the non-  
5 compliance with the regulations, anything indicating  
6 that yes, this is really a material issue, one that is  
7 so significant that the application cannot be granted.

8 CHAIRMAN SPRITZER: Right. Okay. I think  
9 I understand your position. If you'd like to address  
10 Contention Three, we'll give you another five minutes.

11 MR. LEWIS: Thank you. I'll just address  
12 this briefly. I've heard Mr. Zeller refer to  
13 alternative sites. Nowhere in the four corners of  
14 their contention or their reply, and, in fact, is one  
15 of the issues that can't be examined, whether there's  
16 significant new information or not under the NRC  
17 rules. NRC made it very clear in the 2007 amendments  
18 that alternative sites is resolved with finality,  
19 period, but it's totally beyond the scope of the  
20 Contention Three that BREDL raised.

21 The aquatic impacts, the adequacy of the  
22 water supply, the thermal impacts were probably the  
23 most scrutinized and evaluated issue in the ESP  
24 proceeding. They were analyzed extensively. BREDL,  
25 in fact, litigated aspects of that. They litigated

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1 the thermal impacts. I can think of no better example  
2 of an issue that was thoroughly evaluated and resolved  
3 in the ESP proceeding than the water impacts.

4 BREDL, in one of their pleadings refers to  
5 the EPA's 316(b) regulations. It indicates that  
6 there's some determination that should be made with  
7 respect to the intake under 316(b) that sits rightly  
8 with the NRC. I just want to point out to you that  
9 they're referring to their Phase II 316(b) rules have  
10 been suspended, but there's certainly no issue at all  
11 that a plant that's using cooling towers has any  
12 316(b) issue. There's no question that a plant with  
13 cooling towers is using best available technology,  
14 even if that issue were still within the scope of this  
15 proceeding.

16 I guess the bottom line is, when BREDL was  
17 asked why is this an unresolved issue, Mr. Zeller  
18 referred to possibilities of errors in modeling things  
19 in the ESP proceeding. The vague references to  
20 possibilities certainly doesn't mean an unresolved  
21 issue. And, in fact, BREDL's reference to the  
22 modeling that was done at the ESP proceeding, in fact,  
23 indicates that what BREDL was trying to challenge is  
24 the determination that was made in the ESP proceeding,  
25 and there's simply no open issue that was left in that

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1 proceeding.

2 CHAIRMAN SPRITZER: Very good. Thank you,  
3 Mr. Lewis. We will now hear from the NRC Staff.

4 MR. WEISMAN: Thank you, Your Honor. Bob  
5 Weisman speaking for the NRC Staff. And I will first  
6 address Contention One, but I think I may be also  
7 addressing one of your questions.

8 The argument is that the League says that  
9 the discussion was academic in the ESP FEIS, and FER,  
10 Safety Evaluation Report. And a little bit of history  
11 I think is in order here.

12 You go all the way back to 1988 in the  
13 proposed rule for Part 52. There is a statement in  
14 the Federal Register Notice proposing that rule, but  
15 the overall purpose is to improve reactor safety, and  
16 to streamline the licensing process by permitting  
17 early resolution of environmental and safety issues  
18 related to the reactor site and design. That's at 53  
19 Federal Register, the first page is 32060, and this is  
20 on page 32061.

21 CHAIRMAN SPRITZER: I guess the question  
22 would be, when they refer to the reactor design, I  
23 think they're referring to the certified design  
24 process.

25 MR. WEISMAN: Yes, Your Honor.

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1                   CHAIRMAN SPRITZER:   And when they're  
2 referring to the site, they're talking about the ESP  
3 proceeding where we look at site suitability. I guess  
4 the problem at least I was having with the -- I  
5 understand the application of the regulation dealing  
6 with resolved issues to the second and third  
7 contentions where there was actual litigation and the  
8 issues being clearly related to site suitability.

9                   The first issue, however, the low-level  
10 radioactive waste management plan/closure of the  
11 Barnwell facility, how would you -- what is your  
12 argument as to why we should consider that to have  
13 been resolved at the ESP proceeding? It seems to me  
14 somewhat removed from site suitability, at least the  
15 common understanding of that term.

16                   MR. WEISMAN:   Yes, Your Honor.   And in  
17 this respect, I think it's important to maintain the  
18 understanding that proposed Contention One goes to two  
19 separate issues, an environmental issue, and a safety  
20 issue. The safety issue would not be resolved. That  
21 wasn't addressed in the ESP proceeding.

22                   CHAIRMAN SPRITZER:   Right.

23                   MR. WEISMAN:   But the environmental issue  
24 was addressed.

25                   CHAIRMAN SPRITZER:   Because it was

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1 addressed in the EIS?

2 MR. WEISMAN: Yes, sir. And it,  
3 therefore, should be considered resolved in this  
4 proceeding.

5 CHAIRMAN SPRITZER: This is Ron Spritzer,  
6 by the way, for the court reporter's benefit. I've  
7 been breaking my own rule of not consistently  
8 identifying myself. But is it your position that  
9 anything that is addressed in the EIS, and by  
10 regulation, an EIS has to be prepared at the ESP  
11 stage, so anything that you cover in the EIS, people  
12 get only -- the potential interveners get only one  
13 shot, and that's to challenge the EIS in the ESP  
14 proceeding, at least for anything that's actually  
15 discussed in the EIS.

16 MR. WEISMAN: Bob Weisman for the Staff.  
17 Yes, Your Honor, that's correct. And, in fact, the  
18 Commission has addressed that issue -

19 CHAIRMAN SPRITZER: Okay.

20 MR. WEISMAN: -- in the decision on the  
21 North Anna ESP. If you look at CLI 07-27, that's 66  
22 NRC 215 at page 259, the Commission says, "We,  
23 therefore, agree with the Staff that in the  
24 environmental context the contents of the SEIS bounds  
25 the reach of both issue preclusion and Staff inquiry

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1 into new and significant information in a future CP or  
2 COL proceeding", referencing an EST granted for the  
3 North Anna ESP site.

4 And in that regard, I would just like to  
5 mention that the Applicant said that the only  
6 unresolved issues remaining to be disposed of are  
7 those listed in Appendix J. The Staff would disagree  
8 with that. If there is an issue that is not resolved,  
9 it's not listed in Appendix J, it would be the FEIS  
10 that is the controlling document, just as the  
11 Commission stated in its decision.

12 JUDGE ROSENTHAL: Mr. Weisman, this is  
13 Judge Rosenthal. I have a concern with respect to the  
14 Notice of Opportunity for Hearing that was issued with  
15 regard to this, the COL proceeding. I find not a  
16 single mention in that Notice of Opportunity for  
17 Hearing with regard to previous ESP proceeding, not  
18 mentioned at all.

19 Now, if, as you insist, and the Applicant  
20 insists, the ESP proceeding has such an impact upon  
21 what is open consideration in this COL proceeding, I  
22 am at a loss to understand why it was not an absolute  
23 requirement that this Notice of Opportunity for  
24 Hearing first make reference to the ESP proceeding;  
25 and, two, make it clear what as a result of that

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1 proceeding was not on the table.

2 Now, I appreciate the fact that the League  
3 was a participant in the ESP proceeding, and maybe it  
4 was other organizations were involved with it, but  
5 these notices are addressed to the world at-large, and  
6 most particularly to all of the people that reside in  
7 and about the facility in question, and thus, have  
8 standing. And it seems to me that, quite frankly,  
9 that this notice was grossly deficient, possibility  
10 legally deficient, failing to, as part of its  
11 background statement, to allude to the ESP proceeding,  
12 and to indicate what was on the table here as a result  
13 thereof.

14 I would note in contrast that the Notice  
15 of Opportunity issued back in 2003 with regard to the  
16 ESP proceeding went into considerable detail as to  
17 what issues were on the table in that proceeding.

18 MR. WEISMAN: Yes, Your Honor. I don't  
19 have it in front of me, but the Staff - I'm sorry -  
20 the Commission issued a supplement to the Notice of  
21 Hearing in this proceeding that explicitly culls out  
22 the ESP. Since I don't have it in front of you, I  
23 can't read the language to you.

24 JUDGE ROSENTHAL: Well, did it then extend  
25 the time for the -- I'm not aware -

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1 MR. WEISMAN: No, Your Honor. It did not  
2 extend the time for filing.

3 JUDGE ROSENTHAL: Well, then what -- it  
4 seems to me in that circumstance that it doesn't cure  
5 the defect. Now, I must say that it comes as a  
6 surprise to me this morning that there was such  
7 notice, and our law clerk, who is sitting next to me,  
8 professes, I think, an ignorance of its existence. I  
9 don't understand what its relevance is, if it didn't  
10 have the effect of extending time for the filing of  
11 petitions or requests for hearing, petitions for  
12 intervention.

13 MR. WEISMAN: Well, Your Honor, that  
14 notice explicitly dealt with the question of whether  
15 or not there should be an extension of time for filing  
16 contentions, and determined that there should be no  
17 such extension. It was signed out by the Secretary of  
18 the Commission.

19 JUDGE ROSENTHAL: All right. But then I  
20 get back to the question of why isn't the notice that  
21 was issued defective in that it didn't provide  
22 information that was relevant in terms of the making  
23 of a decision as to whether to seek a hearing in a  
24 particular proceeding. You're telling me well, it was  
25 cured later, but in being cured later, no relief was

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1 provided to individuals who might have been misled by  
2 the content of the notice that was issued that  
3 triggered the period for the filing of a hearing  
4 request.

5 MR. WEISMAN: I guess I would say in  
6 response, Your Honor, that the supplement to the  
7 Notice of Hearing clearly put the public on notice.

8 JUDGE ROSENTHAL: But it didn't -- I hate  
9 to continue to press this point. It may be put the  
10 public on notice. It should have been provided to them  
11 earlier, but what it didn't do was to extend the  
12 period of time in which to file contentions.

13 Now, let me just ask you this simple  
14 question. Would you agree that the notice as issued  
15 on March the 10<sup>th</sup>, 2008 was deficient, its failure to  
16 make any reference to the ESP proceeding?

17 MR. WEISMAN: Your Honor, I think that I  
18 would disagree that it was deficient. The notice did  
19 refer to the ESP. It just did not give a specific  
20 reference the ESP could be found on the website -

21 JUDGE ROSENTHAL: All right. I would like  
22 to know where -

23 MR. WEISMAN: -- on the NRC website.

24 JUDGE ROSENTHAL: Do you have the notice  
25 before you?

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1 MR. WEISMAN: I do not have that notice  
2 before me right now.

3 JUDGE ROSENTHAL: I didn't find any  
4 specific reference to the ESP in that notice. And if  
5 you can find one, I would appreciate it being supplied  
6 in a supplemental memorandum.

7 MR. WEISMAN: Yes, Your Honor. I can --  
8 if we can take a very short recess, I have the notice  
9 in my office, and I could go fetch it and speak to  
10 that right now.

11 CHAIRMAN SPRITZER: Mr. Weisman, why don't  
12 you -- I think we would prefer to follow Judge  
13 Rosenthal's suggestion and send it to us separately.

14 MR. WEISMAN: Yes, Your Honor.

15 CHAIRMAN SPRITZER: We're kind of -- one  
16 of our members is kind of pressed for time here.

17 MR. WEISMAN: Yes, Your Honor.

18 CHAIRMAN SPRITZER: Sorry about that, but  
19 let's proceed, if we can. On Contention One, let's  
20 get beyond the question of whether this was foreclosed  
21 by the ESP proceeding. I'm trying to understand. On  
22 the one hand, I take it you would agree that there is  
23 no specific requirement that an Applicant for a COL  
24 submit something called a "Low-Level Radioactive Waste  
25 Management Plan." Is that a requirement of the

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1 regulations anywhere that you're aware of?

2 MR. WEISMAN: There's no requirement in  
3 Section 52.79.

4 CHAIRMAN SPRITZER: Well, anywhere that  
5 would apply to the COL application submitted by  
6 Dominion.

7 MR. WEISMAN: No, sir.

8 CHAIRMAN SPRITZER: Okay. On the other  
9 hand, I take it you do look at this issue somehow;  
10 that is, if an Applicant clearly did not have adequate  
11 storage capacity on site for waste that it's clearly  
12 going to generate in the course of its operation,  
13 would that be an issue that would be relevant in the  
14 COL proceeding somehow?

15 MR. WEISMAN: Yes, Your Honor. The Staff  
16 will review the Applicant's ability to store that  
17 waste.

18 CHAIRMAN SPRITZER: And is that part of  
19 the Part 52 regulations, or my understanding is they  
20 also have to get some sort of permit or license under  
21 10 CFR Part 30.

22 MR. WEISMAN: Typically, the Part -- the  
23 way it has always been done is that the operating  
24 license includes part of licenses for Part 30, Part  
25 40, and Part 70 with respect to the different

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1 materials that an Applicant seeks to possess. I  
2 believe that this would be part of the review to  
3 support the issuance of a Part 30 license, and the  
4 requirements, as stated in the Staff brief, are in  
5 Part 20 for storage of material. The Staff will  
6 certainly review those matters, and the Staff may well  
7 ask questions about storage of those materials.

8 CHAIRMAN SPRITZER: All right. So we've  
9 got a Contention here that's backed by appropriate  
10 factual evidence that says based on the fact we no  
11 longer have the Barnwell facility, we can now show you  
12 that this facility lacks adequate storage capacity for  
13 low-level waste, or radioactive waste, generally.  
14 That would sound, to me, to be something closer to an  
15 admissible contention, where we had a dispute that was  
16 material to some finding you have to make, the Staff  
17 has to make, ultimately, the Commission, in order to  
18 issue the license. Does that sound correct to you?

19 MR. WEISMAN: Your Honor, I would say that  
20 neither the Staff, nor the Applicant, nor the Board  
21 can supply the basis for a contention proposed by  
22 Petitioners.

23 CHAIRMAN SPRITZER: Oh, I'm not suggesting  
24 we can. I'm just trying to figure out how this issue  
25 might relate, if at all, to any issue that would be

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1 material. I'm not saying they submitted any such  
2 evidence, at all. And, obviously, I recognize we  
3 can't supply it for them.

4 MR. WEISMAN: I guess in response to that,  
5 all I can say, Your Honor, is it's, obviously,  
6 possible to write a good contention on a wide variety  
7 of matters that would come before the Board.

8 CHAIRMAN SPRITZER: This just isn't one of  
9 them.

10 MR. WEISMAN: This isn't one of them.

11 CHAIRMAN SPRITZER: All right. Thank you.  
12 I may have cut you off, and put you back on Contention  
13 One. Did you want to say something about either Two  
14 or Three?

15 MR. WEISMAN: I would like to briefly  
16 address Contention Two. BREDL - I'm sorry - the  
17 League points to a matter regarding the so-called VH  
18 ratios, the ratio of vertical spectra to horizontal  
19 spectra, but those matters have to do with ground  
20 motion. Since unnamed Fault A is not a capable fault  
21 as set forth in the SER and NUREG-1835 for the ESP  
22 application, there isn't any connection between that  
23 unnamed fault at the site and the VH ratios, which the  
24 WIG mentioned in its oral argument. I haven't seen --  
25 the Staff does not believe there's any information in

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1 the petition or the reply to connect unnamed Fault A  
2 to those ratios. That's all I have on Contention Two,  
3 proposed Contention Two.

4 CHAIRMAN SPRITZER: Do you have anything  
5 on Contention Three?

6 MR. WEISMAN: I think that I would just  
7 mention that these issues have been fully raised.  
8 These environmental issues were fully raised and  
9 considered in the ESP proceeding. I really don't have  
10 anything to add.

11 CHAIRMAN SPRITZER: All right. Would it  
12 be fair to say that -- well, to your knowledge, does  
13 the Commission ever, or the Staff ever get into trying  
14 to predict whether someone, an Applicant is going to  
15 be able to obtain a permit, what the terms of a permit  
16 might be under the Clean Water Act? That sounds to me  
17 like something we would -- that the Commission would  
18 not do, or the Staff would not do, but let me just ask  
19 a question that I already think I know the answer to.  
20 Is there any situation in which that occurs, that  
21 you're aware of?

22 MR. WEISMAN: That is a good question,  
23 Your Honor, and the Staff does sometimes consider a  
24 legal limit say on a contaminant concentration, for  
25 instance, in an outflow. But it doesn't consider --

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1       it doesn't try to predict what the terms of a permit  
2       will be.   Rather, it considers what would be the  
3       environmental impact of that effluent, whether it's  
4       water use, whether it's consumption of water, whether  
5       it's contaminants in water, the Staff discusses what  
6       the environmental impacts might be from those matters.

7                   CHAIRMAN   SPRITZER:   And would that  
8       normally be in the EIS?

9                   MR. WEISMAN:   Yes, Your Honor.

10                  CHAIRMAN   SPRITZER:   Very good.   Does  
11       anyone else have any questions for the Staff?   All  
12       right.   Thank you.

13                  Mr. Zeller, you now have 10 minutes for  
14       rebuttal. I would like to remind you that please  
15       confine your rebuttal to responding to what Dominion  
16       and the Staff has had to say, rather than raising  
17       completely new points or arguments.

18                  MR. ZELLER:   Yes.   Thank you, Your Honor.  
19       This is Lou Zeller.

20                  To begin with the point that was just  
21       discussed, the ground motion, the vertical-horizontal  
22       ratio, and whatnot, that information is part of the  
23       problem that we have identified, and would continue to  
24       elaborate on with expert opinion.

25                  It's interesting that the environmental

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1 impact is, in fact, the issues that we are talking  
2 about here with regards to the environmental impact,  
3 and the prospective construction and operation  
4 license. So I do believe that there are grounds here  
5 for a NEPA contention.

6 With regards to issue number two, the risk  
7 studies, and the faults, and whether a fault is  
8 capable or not, again, is an issue which is, I think,  
9 fundamental to both the NEPA issues, as well as the  
10 safety of the plant, itself. So I don't want to go  
11 into much more detail about that right now, but we  
12 would be happy to submit further information about  
13 this elaborating our concerns, perhaps in a more  
14 concise way.

15 And, finally, I think I have identified  
16 within our Contention One, the low-level waste  
17 contention, I would just capstone on that saying that  
18 the Applicant should at least analyze impacts of the  
19 possible alternatives for the low-level waste  
20 disposal, and that's not been done. And, so, I look  
21 forward to having this contention admitted, and those  
22 issues permitted for a more complete record, if  
23 nothing else, and to make a determination that there  
24 is some kind of a realistic plan here.

25 In closing, I would say that it's not a

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1 new issue, but it has to do with public confidence,  
2 and the Nuclear Regulatory Commission's ability to  
3 license nuclear reactors in the 21<sup>st</sup> century. And I do  
4 think that there are reforms that are necessary, there  
5 are subsidies for nuclear power reactors, and safety  
6 problems at nuclear power plants which pose a threat  
7 to the community in the central Virginia area. And,  
8 therefore, I do think, I would recommend to the Board  
9 that it go beyond the minimum requirements, that it  
10 truly explore some of the contentions that we have  
11 raised, if only to demonstrate that it is doing the  
12 best job that it can, not to just go through the  
13 motions and dismiss contentions because they are not  
14 perfectly presented, or in some procedural way able to  
15 be disposed of. I do think there are real issues  
16 here, whether we have stated them as well as we could.  
17 We can always do a better job, and we look forward to  
18 doing that.

19 CHAIRMAN SPRITZER: All right. Thank you,  
20 Mr. Zeller. And unless any members have any further  
21 questions, I think we are at the end of our  
22 conference.

23 MR. WEISMAN: Your Honor, this is Bob  
24 Weisman for the Staff. I'd just like to correct  
25 something. I misspoke before. Judge Rosenthal is, in

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1 fact, correct, that the Notice of Hearing does not  
2 mention the ESP, and I wanted to correct that for the  
3 record.

4 CHAIRMAN SPRITZER: Very good.

5 MR. LEWIS: Judge Spritzer, this is David  
6 Lewis. Would you like the citation to the  
7 supplemental notice?

8 CHAIRMAN SPRITZER: Yes.

9 MR. LEWIS: It's 73 Federal Register  
10 21162, April 18<sup>th</sup>, 2008. And, in addition, there's a  
11 Commission order dated May 1<sup>st</sup>, 2008, which addressed  
12 whether the period for contentions should be extended.

13 CHAIRMAN SPRITZER: Right. All right.  
14 Anything else?

15 MR. MARIOTTE: Your Honor, this is Michael  
16 Mariotte from Nuclear Information Resource Service.  
17 May I ask a question, not a substantive question?

18 CHAIRMAN SPRITZER: We really have been  
19 quite strict in limiting non-participants to not  
20 participating.

21 MR. MARIOTTE: Well, it's sort of a  
22 procedural thing.

23 CHAIRMAN SPRITZER: All right. If you  
24 could make it very quick.

25 MR. MARIOTTE: When was this pre-

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1 conference notice to the public?

2 CHAIRMAN SPRITZER: I think that's  
3 something you can get on ADAMS. We have all of our  
4 orders are available on ADAMS. I'm not going to go  
5 through a history of this.

6 MR. MARIOTTE: Okay. I just wanted to  
7 find out when this particular one was noticed.

8 CHAIRMAN SPRITZER: I believe it was June  
9 11<sup>th</sup>, but you should check ADAMS and make sure they  
10 have the correct dates.

11 MR. MARIOTTE: Okay. Thank you.

12 CHAIRMAN SPRITZER: Okay. Thank you for  
13 your participation. It's been informative, and helped  
14 us understand the issues somewhat better. And we will  
15 now conclude the teleconference. Thank you.

16 MR. LEWIS: Thank you, Judge Spritzer.

17 MR. ZELLER: Thank you.

18 (Whereupon, the proceedings went off the  
19 record at 11:30:21 a.m.)

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CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:                   North Anna Unit 3

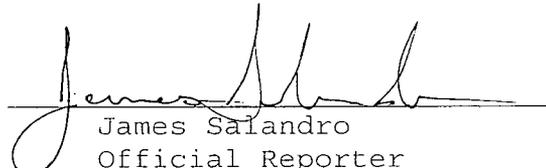
Name of Proceeding: Pre-hearing Conference

Docket Number:                   52-017;

ASLBP No.: 08-0863-01-COL

Location:                           (Telephone Conference)

were held as herein appears, and that this is the  
original transcript thereof for the file of the United  
States Nuclear Regulatory Commission taken by me and,  
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James Salandro  
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