

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman  
Dr. Richard F. Cole  
Dr. Alice C. Mignerey

In the Matter of

VIRGINIA ELECTRIC and POWER COMPANY  
d/b/a DOMINION VIRGINIA POWER and OLD  
DOMINION ELECTRIC COOPERATIVE

(Combined License Application  
for North Anna Unit 3)

Docket No. 52-017-COL

ASLBP No. 08-863-01-COL

September 10, 2008

ORDER

(Correcting Errors in August 15, 2008 Order)

The purpose of this Order is to correct several errors that appeared in the Board's August 15, 2008 Order (Ruling on Petitioner's Standing and Contentions and NCUC's Request to Participate as a Non-Party Interested State).

On page 3, lines 4 and 5 of footnote 12 describe the ESP Intervenors' Environmental Contention 3.3.4. The Board wrote, "EC 3.3.4 dealt with the Staff's failure to provide adequate consideration of the no-action alternative in its Environmental Review (ER)." This sentence should instead read, "EC 3.3.4 dealt with the Applicant's failure to provide adequate consideration of the no-action alternative in its Environmental Report (ER)."

The Board wrote on page 8, lines 7 and 8 of the Order, "We also note that Mr. Louis S. Watson, Jr., has been designated as BREDL's single representative." This sentence should instead read "Mr. Louis S. Watson, Jr., has been designated as NCUC's single representative." Moreover, the edited sentence should appear at the end of the subsequent paragraph, as follows:

With regard to NCUC's request to participate as a non-party interested State, we find that NCUC may participate in that manner under 10 C.F.R. § 2.315(c), which directs that an interested State that has not been admitted as a party

under Section 2.309 be provided “a reasonable opportunity to participate in a hearing.” Mr. Louis S. Watson, Jr., has been designated as NCUC’s single representative.

Footnote 44, although omitted above, should still appear in the corrected August 15, 2008 Order in the identical location.

On page 15, the paragraph that begins on that page, including footnotes, is revised to read:

The Commission expected that most safety and environmental issues related to the site would be resolved during the ESP proceeding.<sup>65</sup> An Environmental Impact Statement (EIS) must be prepared for an ESP.<sup>66</sup> The Commission explained that, because of this requirement, “only an environmental assessment need be prepared in connection with the application for a combined license” that references an ESP.<sup>67</sup> An environmental assessment is generally a shorter, less detailed document than an EIS.<sup>68</sup> The Commission also stated that the environmental review conducted during such a COL proceeding “must focus on the suitability of the site for the design and any other significant environmental issue not considered in any previous proceeding on the site or the design.”<sup>69</sup> Thus, the environmental analysis conducted at the COL stage is limited to those issues not taken into account in the EIS prepared for an ESP. However, an environmental contention may be admitted during the COL proceeding if it concerns a significant environmental issue that was not resolved in the ESP proceeding, or if it involves the impacts of construction and operation of the facility and significant new information has been identified.<sup>70</sup>

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<sup>65</sup> See 53 Fed. Reg. at 32,066.

<sup>66</sup> 10 C.F.R. § 52.18.

<sup>67</sup> 53 Fed. Reg. at 32,066. The NRC’s regulations now require that an EIS be prepared for a COL. 10 C.F.R. § 51.20(b)(2). The Commission explained that “[i]f there is no new and significant information for matters resolved at the ESP stage, then the staff will rely upon . . . the ESP EIS at the combined license stage and disclose the NRC conclusion for matters covered in the early site permit review. Such matters will not be subject to litigation at the combined license stage.” Final Rule: Licenses, Certifications and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,431-32 (Aug. 28, 2007).

<sup>68</sup> See Sierra Nevada Forest Protection Campaign v. Weingardt, 376 F.Supp.2d 984, 990 (E.D. Cal. 2005).

<sup>69</sup> 53 Fed. Reg. at 32,066 (emphasis added).

<sup>70</sup> 10 C.F.R. § 52.39(c)(1)(v).

On page 17, the Board wrote, "The Commission decided in 1974 that the doctrine of collateral estoppel should be applied in appropriate circumstances in NRC proceedings." The sentence should instead state, "The Appeals Board decided in 1974 that the doctrine of collateral estoppel should be applied in appropriate circumstances in NRC proceedings."

Footnote 73, which appears at the end of the sentence, is unchanged.

On page 35, the Board wrote, "BREDL underestimates the environmental issues that the NRC Staff must consider in the ESP proceeding." The sentence should read, "BREDL underestimates the environmental issues that the NRC Staff had to consider in the ESP proceeding."

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Ronald M. Spritzer, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 10, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
Virginia Electric and Power Company d/b/a )  
Dominion Virginia Power (DVP or Dominion) ) Docket No. 52-017-COL  
and Old Dominion Electric Cooperative (ODEC) )  
)  
(North Anna Nuclear Power Station, Unit 3) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (CORRECTING ERRORS IN AUGUST 15, 2008 ORDER) have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 52-017-COL  
LB ORDER (CORRECTING ERRORS IN AUGUST 15, 2008 ORDER)

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[Original signed by Christine M. Pierpoint]  
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Dated at Rockville, Maryland  
this 10<sup>th</sup> day of September 2008