LBP-08-23

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 November 7, 2008

ORDER
(Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board's Order of August 15, 2008)

On August 25, 2008, the Blue Ridge Environmental Defense League (BREDL) filed a "Motion for Leave to File for Reconsideration and Motion for Reconsideration in Part of Atomic Safety and Licensing Board's Order of August 15, 2008."[1] On August 28, 2008, the Board granted BREDL leave to file the Motion to Reconsider without deciding whether reconsideration should be granted, and directed that any party wishing to file a response do so within the time limit provided in 10 C.F.R. § 2.323(c).[2] Virginia Electric and Power Company dba Dominion Virginia Power and Old Dominion Electric Cooperative (collectively, Dominion), and the NRC

[1] We will hereafter refer to the second of BREDL's combined motions, its Motion for Reconsideration in Part of the August 15, 2008 Order, as the "Motion to Reconsider."

[2] Licensing Board Order (Granting the Blue Ridge Environmental Defense League Leave to File for Reconsideration) (Aug. 28, 2008) (unpublished).

Staff both filed timely responses opposing the motion.[3] Having reviewed the parties' submissions, we conclude that BREDL has failed to meet the high standard for granting reconsideration, and we accordingly deny its Motion to Reconsider.

BACKGROUND

On November 26, 2007, pursuant to Subpart C of 10 C.F.R. Part 52, Dominion filed a Combined Operating License (COL) Application to construct and operate an Economic Simplified Boiling Water Reactor at its existing North Anna Power Station site.[4] On March 10, 2008, the NRC published a notice of opportunity for hearing on the Application.[5] On May 9, 2008, BREDL submitted a Petition to Intervene and Request for Hearing.[6] The NRC Staff and Dominion each filed answers on June 3, 2008,[7] and BREDL replied on June 11, 2008.[8] The Board conducted a prehearing teleconference on July 2, 2008, to hear legal argument on the admissibility of BREDL's contentions.[9] The Board issued a Memorandum and Order on August 15, 2008 (Order), in which it found that BREDL has standing, admitted BREDL's first contention in part, determined that its remaining contentions were inadmissible, admitted

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[3] Dominion's Answer Opposing BREDL's Motion for Reconsideration (Sept. 4, 2008); NRC Staff's Response in Opposition to the Blue Ridge Environmental Defense League's Motion for Reconsideration (Sept. 4, 2008).

[4] See 73 Fed. Reg. 12,760 (Mar. 10, 2008).

[5] Id.

[6] Petition for Intervention and Request for Hearing by Blue Ridge Environmental Defense League (May 9, 2008) [hereinafter Petition].

[7] NRC Staff Answer to "Petition for Intervention and Request for Hearing by the Blue Ridge Environmental Defense League" (June 3, 2008); Dominion's Answer Opposing Petition for Intervention and Request for Hearing by the Blue Ridge Environmental Defense League (June 3, 2008).

[8] 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 (June 11, 2008).

[9] See Tr. at 1-59.

BREDL as a party, and granted BREDL's request for a hearing.[10] BREDL then timely filed the Motion to Reconsider, in which it raises two arguments. First, BREDL criticizes our decision to hold the oral argument on contention admissibility by teleconference, claiming this was inconsistent with Commission policy. Second, BREDL asks that we reconsider our ruling that Contentions Seven and Eight are inadmissible.

STANDARD OF REVIEW

A motion for reconsideration may not be filed except with leave of the Licensing Board, "upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not reasonably have been anticipated, that renders the decision invalid."[11] When the Commission revised its hearing procedures in 2004, it strengthened the standard for reconsideration motions, stating:

> This standard, which is a higher standard than the existing case law, is intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration, and the claim could not have been raised earlier. In the Commission's view, reconsideration should be an extraordinary action and should not be used as an opportunity to reargue facts and rationales which were (or should have been) discussed earlier.[12]

DISCUSSION

A. The Teleconference Procedure

BREDL argues that the Board should have conducted the oral argument on contention admissibility in person near the North Anna Site, rather than by teleconference.[13] BREDL does not ask for any specific relief concerning this issue, and the oral argument has already taken place and we have issued our ruling. The issue therefore appears to be moot. BREDL states,

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[10] LBP-08-15, 68 NRC __, __ (slip op. at 55) (Aug. 15, 2008).

[11] 10 C.F.R. § 2.323(e).

[12] Final Rule: Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2207 (Jan. 14, 2004).

[13] Motion to Reconsider at 1-4.

however, that the Commission should "prohibit the conduct of telephonic hearing conferences."[14] We will therefore explain our reasons for deciding that a teleconference was appropriate in this case, so that the Commission will have a record of our position in the event of a future appeal concerning this issue.[15]

BREDL maintains that the decision to conduct the legal argument by teleconference "is not in keeping with the Commission's traditional approach to dealing with the public," that the public "has difficulty effectively participating in a telephonic hearing," and that "[t]elephonic hearings greatly reduce both the number [of] interested persons who may participate in the hearing process and the effectiveness of the participation of those who can call in."[16]

BREDL's argument confuses several distinct types of ASLBP proceedings. When boards conduct evidentiary hearings, they often do so in person near the site of the facility at

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[14] Id. at 4.

[15] We have not previously responded to BREDL's objection to the teleconference procedure because that objection was filed only two days before the argument date, which provided too little time for the Board to prepare a written ruling prior to the argument. On or about June 9, 2008, the law clerk assigned to this case contacted the participants to determine their availability for a teleconference. No participant, including BREDL, objected to the teleconference procedure at that time. We issued an Order on June 11, 2008, tentatively scheduling the teleconference for July 2, 2008. See Licensing Board Order (Tentatively Scheduling Teleconference for Oral Argument) (June 11, 2008) (unpublished) [hereinafter June 11 Order]. We issued another Order on June 20, 2008, establishing the format of the July 2, 2008 teleconference. See Licensing Board Order (Establishing Format of Oral Argument Scheduled for July 2, 2008) (June 20, 2008) (unpublished) [hereinafter June 20 Order]. Only on June 30, 2008, two days before the scheduled argument, did BREDL object to the teleconference procedure, claiming that, "[n]o one communicated to [BREDL's representative] that the call would be for the purpose [of] hearing oral arguments." Reply of the Blue Ridge Environmental Defense League to ASLBP Order Tentatively Scheduling Teleconference for Oral Argument (June 30, 2008) at 3. In fact, both the June 11 and June 20 Orders stated that the July 2, 2008 teleconference was "for the purpose of hearing oral argument on BREDL's petition to intervene and request for hearing."

[16] Motion to Reconsider at 2.

issue, although that general preference is not an absolute rule.[17] Similarly, when boards conduct limited appearance sessions under 10 C.F.R. § 2.315(a), in which members of the general public may make oral statements to the board, such sessions are generally conducted in person near the site. The sole purpose of the July 2, 2008 oral argument, however, was to hear legal argument from BREDL, Dominion, and the NRC Staff on whether BREDL's contentions satisfied the admissibility criteria of 10 C.F.R. § 2.309(f), and thus could serve as the basis of a future evidentiary hearing. We neither received evidence nor permitted public statements at the July 2 argument. We made this clear in our electronic message to the hearing participants of June 30, 2008, subsequently memorialized in our Order of July 1, 2008, which explained that only the individuals designated to represent each of the hearing participants would be permitted to address the Board, and "members of the public will not be permitted to speak, but are invited to listen to the Oral Argument by telephone."[18]

Neither NRC regulations nor agency policy mandate that oral arguments on contention admissibility be conducted in person near the site. Indeed, although licensing boards frequently hold oral arguments on contention admissibility, a board may instead elect to dispense with oral argument entirely.[19] As the Commission recently stated, "[o]ral argument on contention admissibility is not a 'right.'"[20] The Commission further explained that "our Boards have broad discretion to issue procedural orders to regulate the course of proceedings and the conduct of

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[17] See Licensing Board Order (Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site) (Apr. 5, 2004) (unpublished)).

[18] Licensing Board Order (Regarding Teleconference for Oral Argument) (July 1, 2008).

[19] See 10 C.F.R. § 2.331.

[20] Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Unit Nos. 2 and 3), CLI-08-07, 67 NRC 187, 191 (2008).

participants," and that "[a]s a general matter, we decline to interfere with the Board's day-to-day case management decisions, unless there has been an abuse of power."[21]

When a board decides to allow oral argument on contention admissibility, the argument may be held in a public place in the vicinity of the facility in question or in the ASLBP Hearing Room at NRC Headquarters in Rockville, Maryland. Another option is to hold a prehearing teleconference. If an oral argument is to be held in the vicinity of the facility in question, the public may attend the hearing. When a teleconference is conducted, boards may make additional telephone lines available so that interested members of the public might listen to the teleconference. In addition, a transcript of the hearing, whether it is held in person or by telephone, will be prepared and placed in ADAMS, where it may be reviewed by the public.

Because in this instance the Board's sole purpose was to hear legal argument from the parties' representatives, not to receive the testimony of witnesses or to review exhibits, there was no need for the Board to be in the same location as the participants' representatives. Moreover, the Board decided that it would be useful to hear argument on only three of BREDL's eight contentions.[22] For that reason, the Board decided that the added expense and delay of holding oral argument near the facility site was not justified, and that a teleconference would be sufficient. The Board provided in the Order scheduling the teleconference that "[i]n the event that a participant desires to have the conference audited by a person or persons at a different location, upon request . . . one additional telephone line will be made available to the participant for that purpose."[23] Although that offer generated no response at first, shortly before the argument date the Board received various e-mail messages from members of the general

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[21] Id. at 192.

[22] See June 20 Order.

[23] Licensing Board Order (Tentatively Scheduling Teleconference for Oral Argument) (June 11, 2008) (unpublished).

public who stated they were interested in the argument.[24] In response, the Board made additional telephone lines available.[25] A number of persons made use of those lines. In its Motion to Reconsider, BREDL presents no evidence to show that any member of the public who wanted to listen to the argument was unable to do so. Indeed, BREDL itself states that persons interested in the oral argument came from across the United States, so it is likely that more persons were able to listen to the teleconference than would have been able to attend an oral argument conducted near North Anna, Virginia.[26] Moreover, a transcript of the argument was placed in ADAMS, where any interested member of the public could read it.[27] Thus, sufficient opportunity was provided for the general public to understand and evaluate the participants' legal arguments.

BREDL claims that conducting oral argument on contention admissibility by teleconference is contrary to 10 C.F.R. § 2.328, which provides that "[e]xcept as may be requested under section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission."[28] The term "hearing" is not defined, but other provisions of 10 C.F.R. Part 2

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[24] Many of the messages also objected to conducting the argument by teleconference. We included these e-mail messages in ADAMS, together with the response of the ASLBP Chief Counsel explaining that the Board acted within its authority. See Ex Parte E-mails Regarding Telephonic Oral Argument in ASLBP Adjudications (July 1, 2008), ADAMS Accession No. ML081830849; Response to Ex Parte E-mails Regarding Teleconference, Part 2 (July 7, 2008), ADAMS Accession No. ML081900177.

[25] We notified the participants of that action by an electronic message on June 30, 2008 that was confirmed in our Order of July 1, 2008. Licensing Board Order (Regarding Teleconference for Oral Argument) (July 1, 2008).

[26] See Motion to Reconsider at 4.

[27] See Tr. at 1-59.

[28] Reply of the Blue Ridge Environmental Defense League to ASLBP Order Tentatively Scheduling Teleconference for Oral Argument (June 30, 2008) at 2.

that also refer to a "hearing" suggest that it means an evidentiary hearing.[29] By contrast, the NRC's regulations do not expressly mandate how oral arguments on contention admissibility are to be conducted. In any event, the ASLBP, as previously explained, generally allows the public to attend or listen to oral arguments on contention admissibility and to review the argument transcript, and that policy was followed here. Thus, even assuming that Section 2.328 should be construed to apply not only to evidentiary hearings but also to oral arguments on contention admissibility, the July 2, 2008 teleconference was consistent with the Commission's policy that NRC proceedings should be open to the public.

BREDL cites an Appeal Board decision and other documents for the proposition that "the ASLB has long been aware that direct participation of local citizens in nuclear reactor licensing improves the safety of nuclear reactor operations and NRC oversight of the construction and licensing process."[30] We do not dispute this statement as a general matter, but it does not pertain to the narrow procedural issue presented here. The "direct participation of local citizens in nuclear reactor licensing" referred to in the materials BREDL cites is not a right to have all legal arguments on contention admissibility take place near the facility at issue, but rather the right of persons with standing to file contentions in licensing proceedings and litigate admissible contentions.[31] There is nothing inconsistent between, on the one hand, recognizing the value

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[29] See, e.g., 10 C.F.R. §§ 2.309(a), 2.310, 2.327(a).

[30] Motion to Reconsider at 2.

[31] For example, in Gulf States Utilities Co. (River Bend Units 1 and 2), ALAB-183, 7 AEC 222, 227-28 (1974), the Appeal Board stated that "[p]ublic participation in licensing proceedings not only 'can provide valuable assistance to the adjudicatory process,' but on frequent occasions demonstrably has done so." (Footnote omitted.) A report on the Three Mile Island accident, also cited by BREDL, states that intervenors have made "an important impact on safety in some instances – sometimes as a catalyst in the prehearing stage of proceedings, sometimes by forcing more thorough review of an issue or improved review procedures on a reluctant agency." 1 Three Mile Island: A Report to the Commissioners and the Public, at 143-44 (1980). The concurring opinion of Judge Farrar in Shaw Areva Mox Services (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC __, __ (slip op. at 44) (June 27, 2008), is similarly irrelevant to

of such public participation in the NRC licensing process; and, on the other, deciding that a particular stage of the litigation process, an oral argument on contention admissibility, may properly be conducted by teleconference.

Therefore, our decision to conduct the oral argument on contention admissibility by teleconference was consistent with NRC regulations and policy and reasonable in the circumstances of this case. Prohibiting licensing boards from conducting oral arguments by teleconference would prevent boards from making use of an efficient and useful procedure for cases such as this, in which the expense and delay of an in-person oral argument is not justified.

B. The Board's Ruling on Contentions Seven and Eight

BREDL asks that we reconsider our ruling that Contentions Seven and Eight are inadmissible.[32] Contention Seven alleged that "[t]he Environmental Report for the Dominion [COL Application] is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (i.e., 'spent') fuel that will be generated by the proposed reactors if built and operated."[33] BREDL states that, although Dominion might have intended to rely on the NRC's Waste Confidence Rule, that Rule applies only to currently operating reactors, not new reactors, and therefore Dominion was required to analyze the issue in its Environmental Report.[34] Contention Eight claims that, even if the Waste Confidence Rule applies to new reactors, the Commission should reconsider it "in light of significant and pertinent

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BREDL's disagreement with the teleconference procedure. In that case, Judge Farrar was concerned about the effect of the timing of the applicant's request for an operating license on the petitioner's ability to file timely, admissible contentions. No such problem is presented here.

[32] Motion for Reconsideration at 4-8.

[33] Petition at 21.

[34] Id. at 22.

unexpected events that raise substantial doubt about its continuing validity, i.e., the increased threat of terrorist attacks against U.S. facilities."[35]

Both contentions were virtually identical to contentions BREDL litigated in the North Anna Early Site Permit (ESP) proceeding (identified as EC 3.2.1 and 3.2.2 in the ESP proceeding).[36] The Board in that proceeding concluded that both contentions were inadmissible because they were attempts to challenge the Waste Confidence Rule, in violation of 10 C.F.R. § 2.335.[37] We therefore concluded in our August 15, 2008 Order that we were prohibited from considering Contentions Seven and Eight by 10 C.F.R. § 52.39, which provides that matters resolved in a proceeding on an ESP application are also resolved in a subsequent COL proceeding when the COL application references the ESP.[38] In addition, the doctrine of collateral estoppel barred BREDL from relitigating contentions that had previously been ruled inadmissible. Finally, we stated that even if we were not precluded by the earlier North Anna ESP proceeding from considering Contentions Seven and Eight, those contentions were inadmissible for the reasons given by the Licensing Board for the ESP proceeding.[39]

BREDL does not dispute that Contentions Seven and Eight are "similar in many respects" to contentions EC 3.2.1 and 3.2.2 in the ESP proceeding.[40] It contends, however, that it was denied a full and fair opportunity to litigate those contentions in the ESP proceeding, and

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[35] Id. at 27.

[36] See Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253 (2004).

[37] See id. at 270-72, 276.

[38] LBP-08-15, 68 NRC at __ (slip op. at 52-54). See 10 C.F.R. § 52.39(a)(2). There are exceptions to that general rule, including those listed in Section 52.39(c)(1), but none applies to Contentions Seven and Eight.

[39] Id. at 54.

[40] Motion to Reconsider at 5.

that this Board therefore erred in holding that it is precluded from litigating those contentions again in this COL proceeding.[41] BREDL states that it was denied a full and fair opportunity to litigate the earlier contentions because, in the ESP proceeding, "there was no discovery or argument in a court of record" and because "the issue has not been given a full and fair hearing."[42]

This argument fails for several reasons. First, as we explained in our ruling addressing the interpretation of 10 C.F.R. § 52.39, the preclusive effect of that provision does not require that an issue has been litigated in a referenced ESP proceeding, but only that it has been resolved at the earlier stage.[43] As we noted, the Commission intended to grant preclusive effect to issues resolved at the ESP stage even when traditional collateral estoppel principles would not apply because no litigation occurred.[44] The question of the admissibility of BREDL's contentions was resolved in the ESP proceeding, and accordingly it may not be relitigated here. BREDL states that our conclusion that actual litigation is not required under Section 52.39 is "illogical," but it fails to point to any relevant matter that we overlooked in reaching our interpretation of Section 52.39. Furthermore, the Commission itself reached the same conclusion. In promulgating the current 10 C.F.R. Part 52, the Commission stated, "[f]or an early site permit, the NRC prepares an EIS that resolves numerous issues within certain bounding conditions."[45] Thus, the Commission has confirmed that an issue may be resolved in an EIS even if the issue has not been litigated.

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[41] Id. at 6-8.

[42] Id. at 7.

[43] See LBP-08-15, 68 NRC at __ (slip op. at 10-18).

[44] Id. at 17.

[45] 72 Fed. Reg. 49,352, 49,431 (Aug. 28, 2007) (emphasis added).

Moreover, although actual litigation is required under traditional principles of collateral estoppel, that requirement was satisfied here because BREDL did in fact litigate the two ESP contentions (EC 3.2.1 and 3.2.2) that raised the same issues as Contentions Seven and Eight in this proceeding. A party need not necessarily have had discovery or an evidentiary hearing in order to have had a full and fair opportunity to litigate its position. In the ESP proceeding, BREDL and the other petitioners filed briefs in support of their contentions (some of which were admitted), participated in a two-day oral argument on the subject of the petitioners' standing and the admissibility of their contentions, and had the opportunity to appeal the ESP Board's ruling.[46] Thus, BREDL had a full and fair opportunity in the ESP proceeding to litigate the issue whether the contentions were admissible, and that is sufficient to preclude BREDL from relitigating their admissibility a second time in this proceeding.

The situation here is analogous to cases in which federal courts have given collateral estoppel effect to judgments granting a motion to dismiss, when the party against which collateral estoppel is invoked had a full and fair opportunity to oppose the dismissal. For example, in Keystone Shipping Co. v. New England Power Co., 109 F.3d 46, 52 (1st Cir.1997), a state court had dismissed a claim on the ground that it was covered by an arbitration agreement, and a federal district court subsequently held that the state court judgment precluded relitigating the question of arbitrability. In affirming, the First Circuit explained:

> Keystone opposed NEP's motion to dismiss the Massachusetts state cause of action before the state court with briefs, affidavits, and at a motion hearing. Keystone feebly argues that the state court should not have disposed of its cause of action by motion, but instead should have conducted an evidentiary hearing. As NEP correctly notes, the Massachusetts court had before it the relevant contractual documents, read and heard the litigants' opposing views on what meaning and effect should be afforded to those documents and the history of the parties' arbitration efforts, and properly concluded that the arbitrability question could be decided on motion. Well-settled principles of law indicate that the arbitrability issue was actually litigated for preclusion purposes because it was "subject to an

[46] Dominion Nuclear North Anna, LLC, LBP-04-18, 60 NRC at 261.

> adversary presentation and consequent judgment" that was not "a product of the parties' consent and is a final decision on the merits."[47]

Similarly, it is sufficient here that BREDL had a full and fair opportunity to litigate the admissibility of contentions EC 3.2.1 and 3.2.2 before the ESP Board. The issue of the admissibility of contentions EC 3.2.1 and 3.2.2 was litigated to the same extent that the contention admissibility issue is litigated in any ASLBP proceeding. The denial of discovery and an evidentiary hearing on contentions EC 3.2.1 and 3.2.2 is merely the consequence of the ESP Board's ruling that those contentions were inadmissible. That necessary consequence is no reason to deny collateral estoppel effect to the ESP Board's rulings.

BREDL has not identified any changed circumstances or new information that would call into question the determination of the ESP Board that contentions EC 3.2.1 and 3.2.2 were inadmissible. BREDL cites as "current information" the statement of a United States Department of Energy official that "'63,000 metric tons of commercial irradiated nuclear fuel—enough to fill [the proposed high level waste repository at Yucca Mountain, Nevada] to its legal limit—will exist in the U.S. by the spring of 2010.'"[48] According to BREDL, North Anna Unit 3 will not begin operation until 2016, by which time BREDL believes there will no longer be space available for additional spent fuel at the proposed Yucca Mountain repository.[49] Even if BREDL is correct, that does not allow us to revisit the holding of the ESP Board that contentions EC 3.2.1 and 3.2.2 were impermissible attempts to challenge the Waste Confidence Rule. The ESP Board's ruling was not based on calculations concerning available space at Yucca

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[47] Keystone Shipping Co. v. New England Power Co., 109 F.3d 46, 52 (1st Cir. 1997) (citation omitted). See also Matosantos Commercial Corp. v. Applebee's Int'l, Inc., 245 F.3d 1203, 1211 (10th Cir. 2001) (rejecting argument that party did not have a full and fair opportunity to litigate an issue in district court because the decision was made pursuant to a motion to dismiss for lack of jurisdiction).

[48] Motion to Reconsider at 5 (quoting Petition at 24).

[49] Id.

Mountain, but on the plain intent of the Commission in promulgating the Waste Confidence Rule that it should apply to new as well as existing reactors, and the rule that licensing boards may not consider challenges to the Commission's regulations. If BREDL believes that the Waste Confidence Rule should be revised or abandoned because of limited capacity at Yucca Mountain, that request must be addressed to the Commission.[50]

Finally, BREDL has not expressly challenged the third reason we gave for rejecting Contentions Seven and Eight, which was that we would have agreed with the reasoning of the ESP Board even if we were not bound by Section 52.39 or collateral estoppel.[51] We note that since our August 15, 2008 Order, two other Licensing Boards have found inadmissible contentions filed by BREDL that raised the same issues as Contentions Seven and Eight in this proceeding, and have done so based on the same reasoning as that of the North Anna ESP Board.[52]

We therefore deny reconsideration of our ruling that Contentions Seven and Eight are inadmissible.

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[50] In that regard, the Commission recently announced proposals to revise its Waste Confidence Rule and its Waste Confidence Decision, and that it is accepting public comment on both proposals. See 73 Fed. Reg. 59,547 (Oct. 9, 2008); 73 Fed. Reg. 59,551 (Oct. 9, 2008). See also Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999) ("If Petitioners are dissatisfied with our generic approach to the problem, their remedy lies in the rulemaking process, not in this adjudication.").

[51] LBP-08-15, 68 NRC at __ (slip op. at 54).

[52] Duke Energy Carolinas, LLC (William States Lee III Nuclear Station, Units 1 and 2), LBP-08-17, 68 NRC __, __ (slip op. at 28-30) (Sept. 22, 2008); Tennessee Valley Authority (Bellefonte Nuclear Power Plant, Units 3 and 4), LBP-08-16, 68 NRC __, __ (slip op. at 61-62) (Sept. 12, 2008).

ORDER

For the foregoing reasons, it is this 7th day of November 2008, ORDERED that BREDL's Motion for Reconsideration in Part of Atomic Safety and Licensing Board's Order of August 15, 2008 is DENIED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/

Dr. Alice C. Mignerey
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 7, 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 (Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board's Order of August 15, 2008) (LBP-08-23) have been served upon the following persons by Electronic Information Exchange.

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

Administrative Judge
Ronald 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

Administrative Judge
Alan S. Rosenthal
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rsnthl@comcast.net

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop - O-15 D21
Washington, DC 20555-0001
Kathryn L. Winsberg, Esq.
Sara E. Brock, Esq.
Jody C. Martin, Esq
Marcia Carpentier, Esq.
Joseph Gillman, Paralegal
E-mail: Kathryn.winsberg@nrc.gov; sara.brock@nrc.gov; jody.martin@nrc.gov; mxc7@nrc.gov; jsg1@nrc.gov

DOCKET NO. 52-017-COL
LB ORDER (Denying the Motion of the Blue Ridge Environmental Defense League to Reconsider the Board's Order of August 15, 2008) (LBP-08-23)

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

North Carolina Utilities Commission
Louis S. Watson, Jr., Senior Staff Attorney
Kim Jones, Analyst
4325 Mail Service Center
Raleigh, NC 27699-4325
swatson@ncuc.net
kjones@ncuc.net

Old Dominion Electric Cooperative (ODEC)
4201 Dominion Boulevard, Suite 200
Glen Allen, Virginia 23060
James Patrick Guy II, Esq.
E-mail: james.guy@leclairryan.com

Morgan, Lewis & Bockius, LLP
1111 Pennsylvania, Ave. N.W.
Washington, D.C. 20004
Stephen J. Burdick, Esq.
E-mail: sburdick@morganlewis.com

Pillsbury Winthrop Shaw Pittman, LLP
2300 N. Street, N.W.
Washington, DC 20037-1128
David R. Lewis, Esq., Counsel for Dominion
Robert B. Haemer, Esq.
Jason B. Parker, Esq.
Stefanie M. Nelson, Esq.
Maria Webb, Paralegal
E-mail: David.Lewis@pillsbury.com;
jason.parker@pillsburylaw.com
robert.haemer@pillsburylaw.com;
stefanie.nelson@pillsburylaw.com
Maria.webb@pillsburylaw.com

Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
Louis A. Zeller
E-mail: BREDL@skybest.com

[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of November 2008