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**Date:** Wed, Nov 8, 2006 3:29 PM  
**Subject:** Your Letter of Nov. 7 2006 Replying to NRDC Concerns Regarding Proposed North Anna Units 3 and 4

November 8, 2006

The Honorable L. Preston Bryant, Jr.

Secretary of Natural Resources

Office of the Governor

Commonwealth of Virginia

Richmond, VA 23218

Dear Mr. Secretary:

Thank you for your prompt November 7th response to my email letter of Nov. 3 to the Governor regarding Dominion Power's pending Early Site Permit to locate an additional 9000 megawatts (thermal) of nuclear capacity in two units at its existing power station on Lake Anna. Unfortunately, your letter appears to have been crafted as a response to someone else's letter, and therefore fails to respond to almost all the specific points raised in our letter of Nov. 3 to Governor Kaine.

Putting aside the discourtesy of having received a letter clearly drafted for someone else, NRDC would appreciate receiving a written response to the specific environmental and energy security concerns enumerated in considerable detail in our Nov. 3 letter. For your convenience, I will summarize them again below in the form of specific questions regarding the issues your Nov. 7th response ignored, concerns that we feel are deserving of an immediate response:

(1) Will the Commonwealth prepare, as many citizens have requested, a comprehensive written, collated public response to the many concerns and issues -- including the thorny issues of Clean Water Act jurisdiction, monitoring, and lax enforcement -- that have been raised in the public comment process, AND then allow for a reasonable interval - a minimum of 90 days seems fair to us - for the public to examine VDEQ's responses and those of other agencies, BEFORE resuming consideration of Dominion's federal consistency certification under the CZMA for its North Anna Early Site Permit (ESP)?

(2) What is the Commonwealth's response to the public-process fairness problem that has arisen from the fact that since the public hearing in August 2006, Dominion has filed at least three further revisions to its Early Site Permit with the NRC, undermining the integrity and completeness of the public comment process conducted last summer by VDEQ and NRC?

(3) What is the Commonwealth's response to the VDEQ staff's own comments to the NRC that, if Dominion is bent on using water-cooling for its proposed 1500 MWe Unit 3, it has an alternative site at Surrey, VA on the lower James that must be assessed as far superior from the standpoint of withdrawing large volumes of cooling water, and dissipating the vast amounts of waste heat from additional reactors units (about 65 % of the energy from a nuclear plant is typically released to the environment in the form of waste heat)? What, if anything does the State intend to do to remedy this flaw in the environmental analysis supporting Dominion's current revision of its Early Site Permit prior to registering the state's concurrence that Dominion's proposed action is consistent with its environmental protection obligations under the CZMA?

(4) What is your response to the fact that if Dominion continues to insist on building the proposed Unit 3 at the Lake Anna site, it could, at some additional cost to its shareholders, abate concerns about further thermal pollution of the lake by revising its ESP to require a dry air-cooling tower for this unit - as it has already conceded will be necessary for the prospective Unit 4?

(5) What advantage, if any, for Virginia's citizens and environment does the Office of the Governor perceive by foregoing its bargaining leverage under the Coastal Zone Management Act (CZMA) on behalf of the public interest this early in the process? Presumably you must recognize that as legal matter, once the state "concur" - even with "conditions" attached -- with the environmental impacts of the project as currently described in Dominion's constantly mutating ESP, the state forecloses its legal rights and negotiating leverage under the CZMA to obtain further remedial changes in the design of the project that would limit or mitigate its environmental impacts.

(6) Similarly, once the ESP is granted, and absent a showing of significant new information becoming available that was not available previously, the NRC regards the "environmental" issues involved in siting and operating the plant(s) as closed. The bar to reopening these allegedly "resolved" issues is quite high. Why not reserve until a later date the state's rights to deploy this leverage on behalf of Virginia's environment, and to protect the interests of the half-million citizens who live around or recreate on Lake Anna?

(7) What is the pressing urgency to approve Dominion's currently preferred ESP for the North Anna Site? Early site approval will not serve to "lock in" Dominion's share of the federal subsidy, because under recently promulgated IRS rules, the future production tax credit will remain accessible to all new nuclear units that apply for construction/operating licenses before the end of 2008 and begin construction of the reactor building by January 1, 2014. There appears to be plenty of time to resolve the environmental impact issues of

Dominion's proposal via a transparent and fair public process that fully protects the natural resources of the CZMA , as well as the rights and interests of the many Virginia citizens that live around or recreate on Lake Anna. Why the rush to meet the Nov. 16th deadline?

(8) As it is now already November 8, 2006, any VDEQ collated response document replying to public concerns that is issued between now and an affirmative CZMA determination on Nov. 16th will constitute an obvious fait d'accompli -- a bad faith exercise of after-the-fact window dressing for a decision already made -- and therefore a clear abuse of the public comment-response process. In light of this frequently expressed concern, why have you not yet announced either a postponement of the CZMA response deadline, or a clear commitment to "object" on November 16, thereby automatically extending both the state's and the public's participation rights in this process?

(9) What is your response to the repeatedly articulated concern that competing public uses for surface and ground water in the North Anna watershed are not reflected in the NRC's environmental analysis underpinning Dominion's application for an Early Site Permit ?

(10) What is your response to the concern in my Nov. 3 letter that lack of a draft State Energy Plan has blinded the public policy process to the potential for less-costly, more secure and environmentally preferable alternatives to near-term construction of Dominion's proposed NAPS Unit Three?

(11) In an age of virulent terrorism and climate change, what is your response to the concerns enumerated in my Nov. 3 letter that concentrating four reactors and their vulnerable spent fuel pools at a cooling impoundment subject to the effects of both prolonged drought and terrorist assault would seem to constitute an unacceptable vulnerability in the state's long-term energy supply?

(12) What is your response to the concern, previously noted in NRDC's formal comments (previously filed with VDEQ and the NRC that were attached to my Nov. 3 letter to the governor) and in comments filed by the state's own DGIF, that the excessive thermal discharges and reduced flows implied by the current terms of Dominion's pending ESP would harm fish populations in the Lake Anna and downstream in the North Anna-Pamunkey river system?

(13) Finally, why did your response to NRDC and others focus exclusively on the steps underway to clarify the legal constructs that allegedly underpin Dominion's unregulated thermal discharges into the "hot side" of the Lake, while avoiding an equally important issue, namely, the excessive heating and evaporation, both already extant and prospective, of the "main body" of Lake Anna, which no one disputes is part of the surface waters of the United States and subject to regulation under the Clean Water Act?.

(14) What measures are you considering to protect the "main body" of the Lake such that on November 16th the state will, as you suggest, be able to concur "with conditions" that Dominion's ESP is consistent with the "enforceable policies" of the Virginia's Coastal Zone Management Program. Since one must presume these policies include

continued observance and enforcement of the federal Clean Water Act, why have you not already announced what these prospective protective measures are, so that concerned citizens, environmental organizations, independent experts, and other government agencies can assess for themselves whether or not they are sufficiently protective?

(15) Do you agree that it would seem far better to resolve these contentious issues now-through a multilateral consensus building dialogue in which the State, acting for the public interest in environmental protection, holds sway over a permit that a large private corporate entity, Dominion Resources, wants-rather than later, through costly and adversarial citizen-suit litigation under the Clean Water Act to compel competent enforcement in a manner that protects the North Anna watershed in compliance with applicable federal standards?

In light of: (a) the shortness of time before the impending Nov. 16th CZMA deadline; (b) the continuing revisions of Dominion's proposal after the August 16th public hearings that have not been subjected to public review and comment; (c) the lack of any substantive and timely public response from VDEQ since August 16 to any of the public concerns that have been raised; (d) the continuing lack of transparency surrounding the state's deliberations on this matter, and (e) preliminary evidence of malfeasance on the part of VDEQ employees bent on steering the CZMA process to an early conclusion producing concurrence with Dominion's proposal without the necessary guarantees of environmental protection; we therefore ask, in the interests of fairness and future comity between the parties, that the Commonwealth either:

(1) announce its intention to "object" on or before November 16 to Dominion's certification of its Early Site Permit as currently proposed, or else;

(2) immediately obtain and announce Dominion's assent to a postponement of the target CZMA certification date for at least three months, to permit the outstanding environmental issues surrounding Dominion's proposal to be resolved by negotiation, to the mutual satisfaction of all the parties concerned.

Indeed, we would find it entirely appropriate and welcome for your office to bring the concerned parties together in a dialogue to identify and agree upon appropriately protective and legally enforceable conditions (under statutes relevant to the protection of CZMA natural resources) to any future Commonwealth concurrence with Dominion's federal consistency certification for its North Anna ESP. We believe such a process is wholly supportive of the purpose of CZMA regulations designed to ensure that the terms of Dominion's permit are consistent with the "enforceable policies" of Virginia's Coastal Zone Management Program.

We look forward to your timely response to the concerns expressed in this letter.

Sincerely,

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