

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____ )	
In the Matter of )	Docket Nos. 52-017
Virginia Electric and Power Company )	
d/b/a Dominion Virginia Power and )	ASLBP No. 08-863-01-COL
Old Dominion Electric Cooperative )	
North Anna Unit 3 )	June 11, 2009
Combined License )	
_____ )	

**INTERVENOR’S REPLY TO MOTION TO DISMISS**

In accordance with 10 C.F.R. § 2.323, the Blue Ridge Environmental Defense League with its chapter Peoples Alliance for Clean Energy (“Intervenor”) hereby submits its reply to Dominion-Virginia Power’s (“Dominion”) motion to dismiss dated June 1, 2009.

Background

On August 15, 2008 the Atomic Safety and Licensing Board admitted Intervenor’s Contention One: “Dominion Lacks Realistic Low-level Radioactive Waste Plan,” a contention of omission. On May 21, 2009 Dominion submitted Revision 2 of the Final Safety Analysis Report to the NRC. This report was provided to Intervenor on May 27, 2009.

Argument

Dominion asserts that it has cured the omission identified by the Intervenor and, therefore, that the Contention should be dismissed. Indeed, the applicant has provided detailed new information in an amended FSAR:

FSAR Section 11.4.2.2.4 of the COLA amendment provides a detailed description of the container storage subsystem that Dominion will use within the Radwaste Building to store the LLRW. See Exhibit A at 11-9 to 11-10. The Class B and C waste will be stored in high

integrity container (“HICs”) shielded by shield bells surrounding each container and by a shield wall enclosing the storage area, which maintain the dose rates in surrounding areas, both within the building and externally, below the allowable limits. See Exhibit A at 11-9. With a design life of 300 years, the HICs are constructed of corrosion resistant materials. See id. Vented gases are filtered and monitored prior to release. The HICs are periodically inspected to ensure container integrity. See Exhibit A at 11-10. Fire protection is provided. See id.

Dominion Motion to Dismiss at 4. In support of its motion to dismiss, Dominion cites the ASLB: “If the Applicant cures the omission, the contention will become moot.”<sup>1</sup>

However, the full citation of the ASLB states:

Thus, for a contention of omission, the petitioner’s burden is only to show the facts necessary to establish that the application omits information that should have been included. The facts relied on need not show that the facility cannot be safely operated, but rather that the application is incomplete. If the Applicant cures the omission, the contention will become moot. Then, BREDL must timely file a new or amended contention if it intends to challenge the sufficiency of the new information supplied by the Applicant.<sup>2</sup>

Further, the Commission has held that: “a contention is ‘superseded by the subsequent issuance of licensing-related documents’ ...the contention must be disposed of or modified.”<sup>3</sup> (emphasis added) Therefore, at his time, the Intervenor has the option of filing a new or amended contention.

The combined license application of Dominion-Virginia Power still lacks a realistic, specific low-level radioactive waste management plan in its Final Safety and Analysis Report. The revised FSAR was unavailable to the Intervenor before May 27<sup>th</sup> and the information provided on is materially different from data available earlier.

### Conclusion

In view of the above, Contention 1 cannot be dismissed as moot. Intervenor plan to submit a new modified contention with supporting expert opinion regarding low-level

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<sup>1</sup> Dominion’s Motion to Dismiss BREDL Contention 1 as Moot at 3 quoting LBP-08-15 at 317

<sup>2</sup> ASLB North Anna Unit 3 COL Memorandum and Order, August 15, 2009 at 27

<sup>3</sup> McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 N.R.C. 373, 382 (2002)

radioactive waste management at the proposed North Anna Unit 3 before June 26, 2009.

Respectfully submitted,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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June 8, 2009

June 11, 2009

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Dominion Virginia Power )	
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**CERTIFICATE OF SERVICE**

**I hereby certify that copies of the June 11, 2009  
INTERVENOR'S REPLY TO MOTION TO DISMISS**  
were served on the following persons via Electronic Information Exchange  
this 11<sup>th</sup> day of June, 2009.

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Signed in Glendale Springs  
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A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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