

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

August 19, 2009

ORDER

(Dismissing Contention 1 as Moot)

This proceeding concerns the combined license application filed by Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Dominion or Applicant) for North Anna Unit 3, to be located at the North Anna Power Station in Louisa County, Virginia. Before the Board is Dominion's Motion to Dismiss Contention 1 as moot. We grant the Motion because Dominion has submitted information to resolve the omission that was the basis of our decision to admit Contention 1. However, we reserve decision on proposed Contention 10 filed by the Intervenor, the Blue Ridge Environmental Defense League (BREDL), which challenges the adequacy of the new information Dominion has submitted. Briefing with respect to the new contention is complete, and we will rule on the admissibility of that contention in a separate order.

On November 26, 2007, pursuant to Subpart C of 10 C.F.R. Part 52, Dominion filed a combined license application (COLA) to construct and operate an Economic Simplified Boiling

Water Reactor at its existing North Anna Power Station site.¹ On March 10, 2008, the NRC published a notice of opportunity for hearing on the Application, requiring any contentions to be filed within sixty days.² On May 9, 2008, BREDL submitted a Petition to Intervene and Request for Hearing, which included eight contentions.³ The NRC Staff and Dominion each filed answers opposing the Petition,⁴ and BREDL replied.⁵ The Board conducted a prehearing teleconference on July 2, 2008, to hear legal argument on the admissibility of BREDL's contentions. The Board issued a Memorandum and Order on August 15, 2008, in which it found that BREDL has standing, admitted BREDL's first contention in part, determined that BREDL's remaining contentions were inadmissible, admitted BREDL as a party, and granted BREDL's request for a hearing.⁶

The admitted portion of Contention 1 alleged that the Applicant should have explained its current plan for the management of low-level radioactive waste (LLRW) given the lack of an offsite disposal facility.⁷ We construed Contention 1 as a contention of omission, or a

¹ See Dominion Virginia Power; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3, 73 Fed. Reg. 12,760 (Mar. 10, 2008).

² *Id.* at 12,761.

³ Petition for Intervention and Request for Hearing by the Blue Ridge Environmental Defense League (May 9, 2008) [hereinafter Petition].

⁴ 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).

⁵ 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).

⁶ LBP-08-15, 68 NRC 294, 338 (2008).

⁷ Petition at 5-7.

contention that alleges, in the words of 10 C.F.R. § 2.309(f)(1)(vi), that “the application fails to contain information on a relevant matter as required by law . . . and the supporting reasons for the petitioner’s belief.”⁸ The Board further explained that,

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.⁹

In its Motion to Dismiss Contention 1 as Moot, Dominion states that it “filed an amendment to its COLA on May 21, 2009, providing its plan for managing Class B and C LLRW if an offsite facility is not available to accept such wastes.”¹⁰ In response, BREDL did not challenge Dominion’s claim that it has amended the COLA to include a management plan for Class B and C wastes. Rather, BREDL argued that Dominion “still lacks a realistic, specific low-level radioactive waste management plan in its Final Safety and Analysis Report” and noted that it could file a new or amended contention concerning that issue.¹¹ BREDL informed the Board that it intended to submit “a new modified contention with supporting expert opinion regarding low-level radioactive waste management at the proposed North Anna Unit 3 before June 26, 2009.”¹²

BREDL in fact submitted its proposed new contention (Contention 10) on June 26,

⁸ LBP-08-15, 68 NRC at 313-14; see also Pa’ina Hawaii, LLC, LBP-06-12, 63 NRC 403, 413 (2006), petition for reconsideration denied, CLI-06-25, 64 NRC 128 (2006) (dismissing applicant’s appeal as untimely).

⁹ LBP-08-15, 68 NRC at 317-18 (internal footnotes and citation omitted).

¹⁰ Dominion’s Motion to Dismiss BREDL Contention 1 as Moot (June 1, 2009) at 2.

¹¹ Intervenor’s Reply to Motion to Dismiss (June 11, 2009) at 2.

¹² Id. at 2-3.

2009.¹³ In Contention 10, BREDL disputes the adequacy of Dominion's plan for the management of Class B and C wastes in the absence of an offsite disposal facility. However, it is no longer true that the COLA lacks a plan for the management of such wastes in the absence of a disposal facility. The dispute has shifted from the COLA's lack of a plan to the adequacy of the plan. The contention of omission that the Board previously admitted has therefore become moot. Accordingly, we will dismiss Contention 1.

The dismissal, however, should not be construed as terminating this case. On the contrary, we retain jurisdiction to decide whether to admit proposed Contention 10. See 10 C.F.R. § 2.318(a). Resolution of that issue requires a more detailed analysis than is necessary to dismiss Contention 1 as moot. We will therefore decide that question in a separate order.

CONCLUSION

Contention 1 is dismissed as moot.

It is so ORDERED.

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
August 19, 2009

¹³ Intervenor's Amended Contention 10 (June 26, 2009).

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 (DISMISSING CONTENTION 1 AS MOOT) have been served upon the following persons by Electronic Information Exchange.

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LB ORDER (DISMISSING CONTENTION 1 AS MOOT)

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[Original signed by Christine M. Pierpoint]
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Dated at Rockville, Maryland
this 19th day of August 2009