

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)	December 17, 2009
Combined License)	
_____)	

**INTERVENOR’S ANSWER TO DOMINION’S MOTION FOR
RECONSIDERATION OF LBP-09-27**

In accordance with 10 CFR § 2.323(c), Blue Ridge Environmental Defense League with its chapter Peoples Alliance for Clean Energy (“Intervenor”) hereby files its answer in opposition to Dominion-Virginia Power’s motion for reconsideration.

Background

On May 9, 2008 and pursuant to 10 CFR § 2.309, BREDL filed a petition for intervention and request for hearing regarding the application for a combined operating and construction license filed by Virginia Electric and Power Company, doing business as Dominion Virginia Power (“Dominion”). On August 15, 2008 the ASLB issued a Memorandum and Order admitted Contention One as a contention of omission citing 10 C.F.R. § 2.309(f)(1)(vi), “the application fails to contain information on a relevant matter as required by law ...” In an attempt to cure the omission, Dominion offered “Submission 4 of the North Anna 3 Combined License Application”¹ (“Storage Plan”) which revised sections of the Final Safety Analysis Report and the Departures Report.

¹ Letter from Dominion Energy, Inc Vice President for Nuclear Development, Eugene Grecheck, to U.S. Nuclear Regulatory Commission, 21 May 2009, (ADAMS Accession No. ML0915206360)

(FSAR, Rev. 2, Part 7) On June 26, 2009, Intervenor submitted Amended Contention 10. On November 25, 2009, the Board issued an order admitting Contention 10 in part, concluding, “We admit Contention 10 insofar as it challenges Dominion’s claim that good fuel performance will reduce the volume of Class B and C waste.” LBP-09-27 at 34 (“ASLB Order”). On December 7, 2009 the applicant submitted Dominion’s Motion for Reconsideration of LBP-09-27 and Request to Hold Disclosure in Abeyance (“Motion for Reconsideration”).

Discussion

Under 10 CFR § 2.309(f)(1), a petitioner’s duty is to provide a specific statement of law or fact and a basis for its argument, show that the issue is within the scope and material to the proceeding, and back its argument with fact or expert opinion. The merits of the contention are subject only to subsequent proceedings. The Board stated as much: “[T]he proponent of a contention is not required to prove its case on the merits at the contention admissibility stage.” LBP-09-27 at 23

Dominion’s Motion for Reconsideration sets up a straw man argument which it then proceeds to knock down. Dominion states, “The Board reasoned that [because the Storage Plan incorporated departures], Dominion’s claim that good fuel performance will reduce the volume of Class B and C waste must be a departure from or supplement to the DCD...” Motion to Reconsider at 6. Dominion then argues that the Board’s decision is wrong “because it is based on an incorrect supposition that Dominion took a departure from the ESBWR DCD...” Motion to Reconsider at 7.

However, the Board’s decision to admit Contention 10 is not based solely on Dominion’s underestimated waste production, nor did Arnold Gundersen’s arguments

rely solely on the Departures Report. See Intervenor's Amended Contention Ten, Exhibit One, June 26, 2009. In fact, both the Storage Plan's "Departures" section and Dominion's response to NRC RAI 11.04-3 are attached to the May 21 letter from Dominion's Vice President for Nuclear Development to the NRC, cross-referenced and submitted as a whole. *Op. cit.* In Enclosure 3 to the letter,² Dominion states:

The following information completes Dominion's response to NRC Request for Additional Information (RAI) 11.04-3 provided in Dominion letter, Serial No. NA3-08-090R, dated September 4, 2008. In that initial response, Dominion described its intent to develop information responsive to the RAI and to provide that information in a future COLA submission.

The ESBWR Radwaste Building provides storage space sized to hold the total combined volume of packaged Class A, B, and C low-level radioactive waste estimated to be generated during six months of plant operations. Such waste is normally promptly disposed of at licensed offsite processing and disposal facilities. In the event that an offsite facility is not available to accept Class B and C waste, the Radwaste Building has been configured to accommodate at least 10 years of packaged Class B and C waste and approximately three months (up to three shipments) of packaged Class A waste, considering routine operations and anticipated operational occurrences. This Class B and C waste storage capacity is based on a conservative estimate of the annual generation of lowlevel waste, without credit for potential waste minimization techniques and methods other than dewatering. In the event that an offsite facility is not available to accept Class B and C waste, a waste minimization plan will also be implemented. This plan will consider strategies to reduce generation of Class B and C waste, including reducing the in-service run length of resin beds, as well as resin selection, short-loading, and point of generation segregation techniques. Good fuel performance will also reduce fission products in reactor and spent fuel pool water, and hence the volume of Class B and C waste generated. Implementation of these techniques could substantially extend the capacity of the Class B and C storage area in the Radwaste Building. If additional storage capacity for Class B and C waste is required, further temporary storage would be developed in accordance with NUREG-0800, Standard Review Plan 11.4, Appendix 11.4-A.

(emphasis added) Dominion's assertion that the above-stated response is "nothing more than an observation of the obvious" (Motion for Reconsideration at 11) is at odds with its

² North Anna 3 COLA Submission 4, Enclosure 3, Revised Response to NRC RAI Letter No. 020, RAI 11.04-3, Page 2 of 3, 21 May 2009

stated intent to “develop information responsive to the RAI and to provide that information in a future COLA submission.”

Regarding the ASLB Order admitting Contention 10 in part, the Board’s decision is not based solely on Dominion’s underestimates of radioactive waste waste production. The Board’s ruling rests on many statements regarding specific legal or factual issues, alleged facts or expert opinions and genuine dispute concerning material issues. The ASLB Order states *inter alia*:

“We therefore conclude that Contention 10, to the extent it presents a genuine dispute with the adequacy of Dominion’s Storage Plan, is material to the NRC’s determination whether Dominion will adequately protect public health and safety and the environment.” LBP-09-27 at 18

“BREDL has provided a concise statement of the expert opinion on which it relies and has thus satisfied 10 C.F.R. § 2.309(f)(1)(v).” LBP-09-27 at 20

“[W]e do not understand Contention 10 to challenge only the Applicant’s claim that it made conservative assumptions in estimating the waste volumes that can be stored in the reconfigured Radwaste Building.” LBP-09-27 at 21

“BREDL’s expert and Dominion clearly have a factual dispute concerning that question, and this aspect of Contention 10 may be admitted because it is material to the findings the NRC must make to grant the license.” LBP-09-27 at 22

“We therefore conclude that BREDL has provided an expert opinion that is sufficient, at this stage of the proceeding, to support its attack upon Dominion’s claim of increased fuel efficiency.” LBP-09-27 at 24

“BREDL’s challenge to Dominion’s claim of improved fuel efficiency is not limited to a general claim of lack of conservatism, but rather disputes the accuracy of a specific part of Dominion’s plan for the onsite management of Class B and C waste. Blue Ridge Environmental Defense League has identified the part of Dominion’s FSAR in dispute and has provided the reasons supporting the dispute, as required by § 2.309(f)(1)(vi).” LBP-09-27 at 26

“Higher volumes of Class B and C waste than Dominion anticipates might lead to higher levels of radioactive effluents and associated radiation exposure. BREDL’s specific dispute with the COLA is therefore material to determining whether the COLA complies with NRC regulations.” LBP-09-27 at 27

“But we disagree with Dominion’s claim that BREDL is challenging the waste volume estimates in the DCD. On the contrary, Dominion’s claim that “[g]ood fuel performance will . . . reduce . . . the volume of Class B and C waste generated” appears in revised FSAR Section 11.4, which begins by stating that “[t]his section of the referenced DCD is incorporated by reference with the following departures and/or supplements.” (Emphasis added). Dominion then explains its plan for managing Class B and C waste in the absence of an offsite disposal facility, including the waste minimization plan that refers to good fuel performance and other waste minimization techniques. Thus, the waste minimization plan is either a departure from or supplement to the DCD, and challenges to that plan or any of its elements may properly be considered in a COL proceeding.” LBP-09-27 at 28 (emphasis added)

Conclusion

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. Therefore, Dominion’s Motion for Reconsideration should be denied.

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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CERTIFICATE OF SERVICE

**I hereby certify that copies of the
INTERVENOR’S ANSWER TO DOMINION’S MOTION FOR
RECONSIDERATION OF LBP-09-27**

were served on the following persons via Electronic Information Exchange this 17th day of December, 2009.

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Signed this day December 17, 2009 in
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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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