

July 2, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
VIRGINIA ELECTRIC AND POWER CO.)
dba DOMINION VIRGINIA POWER,)
and OLD DOMINION ELECTRIC) Docket No. 52-017
COOPERATIVE)
)
(North Anna Power Station, Unit 3))

NRC STAFF ANSWER TO
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
NEW CONTENTION ELEVEN

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h) and the Atomic Safety and Licensing Board (Board) order in this proceeding dated September 10, 2008,¹ the Staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer to the Blue Ridge Environmental Defense League (BREDL or Intervenor) filing entitled "Intervenor's New Contention Eleven," dated June 17, 2010. For the reasons set forth below, proposed Contention 11 should be dismissed for failure to comply with the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Additionally, the NRC Staff suggests that the Board, pursuant to its authority under 10 C.F.R. § 2.319(g) and (k), issue a supplemental scheduling order in this proceeding to govern the submission of late-filed contentions or requests for late intervention arising from the new information in the Applicants' revision to the Application.

¹ *Virginia Electric & Power Co.* (Combined License Application for North Anna Unit 3), at *2 (LBP Sept. 10, 2008) (unpublished order) (ML0825407920) (Order Establishing Schedule to Govern Further Proceedings).

BACKGROUND

On November 26, 2007, the Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), and Old Dominion Electric Cooperative (collectively, Applicants) filed an application for a combined license (COL) for North Anna Unit 3 (Application) with the Commission.² As filed in 2007, the Application referenced the General Electric/Hitachi application for certification of the Economic Simplified Boiling Water Reactor design (ESBWR). Application, Part 1 at 1, Rev. 0. On March 10, 2008, the Commission published a Notice of Hearing on the Application in which it provided members of the public sixty days from the date of publication to file a petition for leave to intervene in this proceeding. 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, 12,760-61 (Mar. 10, 2008) (Notice of Hearing).³

On May 9, 2008, BREDL filed a petition for intervention and request for a hearing ("Petition for Intervention and Request for Hearing by the Blue Ridge Environmental Defense League"). The Commission referred BREDL's petition to the Atomic Safety and Licensing Board Panel (ASLBP) for appropriate action. See Memorandum to E. Roy Hawkins, Chief Administrative Judge, ASLBP, from Annette L. Vietti-Cook, Secretary of the Commission (May 13, 2008) (ML0813407720) (Commission May 13, 2008, Memorandum). The Chief

² Notice of Receipt and Availability of Application for a Combined License Dominion Virginia Power-North Anna Unit 3, 72 Fed. Reg. 70,619 (Dec. 12, 2007). The NRC docketed the application on January 28, 2008. Dominion Virginia Power; Acceptance for Docketing of an Application for Combined License for North Anna Unit 3, 73 Fed. Reg. 6528 (Feb. 4, 2008).

³ On April 18, 2008, the Commission supplemented the Notice of Hearing. See Dominion Virginia Power; Supplement to Notice of Hearing and Opportunity to Petition for Leave To Intervene on a Combined License for North Anna Unit 3; Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguard Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation, 73 Fed. Reg. 21,162 (Apr. 18, 2008). The supplement provided additional information on the availability of the North Anna ESP, the ESBWR application, and the documents submitted on their respective dockets. *Id.* The Commission issued a correction to the Notice of Hearing on June 2, 2008. See "Virginia Electric and Power Company, d/b/a Dominion Virginia Power, and Old Dominion Electric Cooperative; Correction to Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for North Anna Unit 3," 73 Fed. Reg. 31,516 (June 2, 2008).

Administrative Judge subsequently designated this Board to preside over this proceeding. See Dominion Virginia Power; Establishment of Atomic Safety and Licensing Board, 73 Fed. Reg. 29,541 (May 21, 2008). On August 15, 2008, the Board issued an order admitting one contention, in part, and granting intervention. *Virginia Elec. and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electric Coop.* (North Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294 (2008).⁴

On May 18, 2010, Dominion informed the NRC Staff that it had selected the Mitsubishi Heavy Industries, Ltd., U.S. Advanced Pressurized Water Reactor (US-APWR) design to reference in its COL Application for North Anna Unit 3. See Letter from E.S. Grecheck, Dominion, to NRC (May 18, 2010) (ML101410207; enclosed with Letter from R.M. Weisman, NRC Staff Counsel, to Administrative Judges (June 1, 2010)). In its letter, Dominion indicated that it would revise its Application to incorporate by reference the US-APWR design control document (DCD), which is currently under NRC Staff review, on or before June 30, 2010. *Id.* On June 17, 2010, BREDL submitted Intervenor's New Contention 11. As of that date, however, the Applicants had not yet submitted to the NRC a revision to the Application incorporating by reference the US-APWR DCD. By letter dated June 28, 2010, the Applicants submitted such a revision to the Application to the NRC. See Letter from E.S. Grecheck, Dominion, to NRC, forwarding Submissions 6 (SUNSI version) and 7 (public version) of the North Anna COL Application.⁵

⁴ On November 18, 2008, BREDL filed "Intervenor's Request," in which it asserted legal and factual issues regarding the design certification rulemaking proceeding on the ESBWR design and its relation to this proceeding. BREDL did not request any particular relief in its November 2008 filing, and the Board, as recommended by the Staff, took no action on that filing. See NRC Staff Response to Intervenor's Request (Nov. 26, 2008); Dominion's Response to Intervenor's Request (Nov. 28, 2008).

⁵ The Staff notes that neither the June 28 Dominion letter nor the revision to the Application is now available in the Agencywide Documents Access and Management System (ADAMS). The Staff is reviewing the revision to ensure that it does not contain sensitive unclassified non-safeguards information (SUNSI), and will inform the Board and parties when this review is complete and the revision is available in ADAMS. By letter dated July 1, 2010, Counsel for the Applicant transmitted the June 28 Dominion letter and the public version of the revision to the Application (on DVD) to the Board and parties to this proceeding. Letter from D.R. Lewis, Applicants' Counsel, to Administrative Judges at 2 (July 1, 2010).

DISCUSSION

In its filing, BREDL proposes a new Contention 11, which relates to the Applicants' decision to revise the Application to incorporate the US-APWR DCD. In new Contention 11, BREDL asserts, in essence, that the change from the ESBWR DCD to the US-APWR DCD violates 10 C.F.R. Part 52 and deprives the interested public of its opportunity to participate in this COL proceeding. Intervenor's Proposed Contention 11 at 2. BREDL argues that the Commission should require the Applicants to start the application process over from the beginning and to submit a new application referencing the new (US-APWR) design. *Id.* The NRC Staff, as explained below, opposes admission of proposed new Contention 11.

The NRC Staff, however, first addresses a preliminary matter. The Staff notes that the Commission's Rules of Practice in 10 C.F.R. Part 2 already contemplate that an application may change during the course of the Staff review, and specifically provide for the treatment of late-filed contentions and petitions to intervene, and new or amended contentions. See 10 C.F.R. § 2.309(c) and (f)(2). The Board clearly has jurisdiction to take "appropriate action" in this regard. See Commission May 13, 2008, Memorandum at 1. In order to ensure that members of the public, including the Intervenors, are clearly informed of the time within which such late-filed or new and amended contentions should be filed before the Board with respect to the revision to the Application, the Board may wish to issue a supplemental scheduling order. Such an order could state that late-filed and new or amended contentions are due on a certain date after the revision becomes publicly available in ADAMS. The order could also provide an opportunity for interested persons to review the revision to Application and petition for late intervention.⁶

⁶ The Commission's policy for implementing its adjudicatory procedures under 10 C.F.R. Part 52 is that members of the public should be afforded an opportunity for hearing on each genuine issue in dispute that is material to the particular agency action subject to adjudication, but by the same token, applicants for a license should not have to litigate each such issue more than once. See *Statement of Policy on Conduct of New Reactor Licensing Proceedings*, CLI-08-07, 73 Fed. Reg. 20,963, 20,969 (Apr. 17, 2008).

Neither the Board's Scheduling Order dated September 10, 2008, nor the model milestones referenced therein, provide a time for filing late-filed or new or amended contentions with respect to a revision to the Application. See *Virginia Elec. and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electric Coop.* (Combined License Application for North Anna Unit 3), at *2 (LBP Sept. 10, 2008) (unpublished order) (ML0825407920) (Order Establishing Schedule to Govern Further Proceedings). Accordingly, a supplemental scheduling order appears warranted under the circumstances of this proceeding. This would ameliorate the Intervenor's concerns about ensuring effective public participation in the COL proceeding regarding the June 28 revision to the Application. Accordingly, the NRC Staff would support the Board's exercising its existing authority under 10 C.F.R. § 2.319(g) and (k) to issue such a supplemental scheduling order to govern the submission of late-filed and new or amended contentions based on any new information in the June 28, 2010, revision to the Application.⁷ The Staff now turns to proposed Contention 11.

I. LEGAL STANDARDS

The legal requirements governing the admissibility of contentions are well established and are set forth in 10 C.F.R. § 2.309(f) of the Commission's Rules of Practice. The standards in 10 C.F.R. § 2.309(f)(1) may be summarized as follows: An admissible contention must: (1) provide a specific statement of the legal or factual issue sought to be raised; (2) provide a brief explanation of the basis for the contention; (3) demonstrate that the issue raised is within the scope of the proceeding; (4) demonstrate that the issue raised is material to the findings the

⁷ The Staff notes that, generally, other licensing boards have allowed 30 days from the date of availability of new and material information for late-filed and new or amended contentions. See, e.g., *Luminant Generation Company, LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), at *5 (LBP Oct. 28, 2009) (unpublished order) (ML093010356) (Initial Scheduling Order); *South Texas Project Nuclear Operating Co.* (South Texas Project Units 3 and 4), at *8 (LBP Oct. 20, 2009) (unpublished order) (ML0929305230) (Initial Scheduling Order) ("A motion and proposed new contention...shall be deemed timely...if it is filed either within thirty (30) days of the date when the new and material information on which it is based first becomes available, or within forty (40) days of the issuance of the DEIS with respect to any new and material information contained therein"); *Southern Nuclear Operating Co.* (Vogtle Electric Generating Plant, Units 3 and 4), at *6n.6 (LBP Dec. 2, 2008) (unpublished order) (ML0833706081) (Initial Prehearing Order).

NRC must make to support the action that is involved in the proceeding; (5) provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and (6) provide sufficient information to show that a genuine dispute exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. See 10 C.F.R. § 2.309(f)(1).

Sound legal and policy considerations underlie the Commission's contention requirements. The purpose of the contention rule is to, "focus litigation on concrete issues and result in a clearer and more focused record for decision." 69 Fed. Reg. at 2202; *see also Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553-54 (1978); *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974); *Philadelphia Elec. Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC 13, 20 (1974). The Commission has emphasized that the rules on contention admissibility are "strict by design." *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)*, CLI-01-24, 54 NRC 349, 358 (2001), *pet. for reconsideration denied*, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. 69 Fed. Reg. at 2221; *see also, Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-99-10, 49 NRC 318, 325 (1999); *Arizona Pub. Serv. Co. et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3)*, CLI-91-12, 34 NRC 149, 155-56 (1991).

II. Intervenor's Proposed Contention

Intervenor proposed Contention 11, as follows, which the Staff opposes:

PROPOSED CONTENTION 11

The Applicant's mid-stream change of nuclear reactor technology for North Anna Unit 3 subverts the letter and intent of federal regulations for the licensing of a new nuclear power plant under

10 CFR Part 52 and deprives the interested public of its rightful opportunity to review and comment on the proceedings conducted by the NRC. The Commission should require the Applicant to re-start its application process from the beginning by submitting a new application referencing a new design certification rule.

Intervenor's New Contention 11 at 2. In support of its contention, Intervenor raises two arguments. First, that Applicants' revision hinders effective public participation in the COL proceeding. *Id.* Second, that Applicants' revision is in violation of various statutory and regulatory requirements. *Id.* at 2-7. In light of these assertions, the Intervenor requests that the Commission grant relief by requiring the Applicants to submit a new application or, alternatively, by completing the APWR design certification rulemaking before proceeding with review of the Application. *Id.* at 7.

Staff Response: Proposed Contention 11 should be rejected because it raises issues that are outside the scope of this proceeding in contravention of 10 C.F.R. § 2.309(f)(1)(iii), and does not provide adequate factual or expert support for its position as required under 10 C.F.R. § 2.309(f)(1)(v).

Intervenor contends that Applicants' June 28 revision will deprive the "interested public of its rightful opportunity to review and comment" on the COL proceeding. Intervenor's New Contention 11 at 2. Intervenor is concerned by the timing of Applicants' revision since only a "diminishing number of occasions for review and comment on the prospective" reactor remain open to the public. *Id.* at 3. Intervenor's concern in this regard is premature and not well-founded, since it will have the opportunity to challenge the revision under the regulations, as discussed below.

Intervenor also raises the concern that the revision to the Application will hinder effective public participation by making a "hash" out of the record in this proceeding, assuming that the Application would need to be "re-written, revised, cross-referenced, and annotated," making it difficult for the interested public to follow. Intervenor's New Contention 11 at 5.

Intervenor fails to raise a concern within the scope of this proceeding, the purpose of which is to consider the Application for a combined license for North Anna Unit 3. 10 C.F.R. § 2.309(f)(1)(iii); Notice of Hearing at 12760. With respect to Intervenor's first concern regarding public participation, the Staff agrees with Intervenor that public participation should not be hindered in light of Applicants' revision to the COL Application. The Commission's Rules of Practice in 10 C.F.R. Part 2 provide a framework for such public participation, in its standards for new and late-filed contentions. 10 C.F.R. § 2.309(f)(2) and (c).⁸

Intervenor's second concern, regarding the complexity of the revised Application, is speculative, as the revision to the Application had not yet been submitted at the time of the Intervenor's filing. In any event, however, simply because the revised Application may be confusing does not indicate that the public's right to participate will be impaired. A petitioner has an "ironclad obligation" to examine the application and other publicly available documents to uncover any information which could serve as the basis for a contention. *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 338 (1999) ("It is reasonable to expect a person or organization seeking to participate in a proceeding to study the portions of the application addressing the issues of concern and identify exactly what these concerns are"). Thus, Intervenor's concerns about the Application's being complex fail to raise a concern that is within the scope of this proceeding. Intervenor is responsible for examining the June 28 revision to formulate its contentions. Even if reviewing the record becomes a significant burden, an intervenor "must be prepared to expend the necessary effort." *USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 456 (2006). Whether Applicants' revision to the Application affects the complexity of the record is outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

⁸ Additionally, the Board has the authority to set a schedule for such new and late-filed contentions in a case management order. See *supra* at 4-5.

Further, the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff. See *U.S. Department of Energy* (High-Level Waste Repository), CLI-08-20, 68 NRC 272, 274-75 (2008). In *U.S. Department of Energy*, the Commission ruled that it is within the Staff's discretion to determine whether an application submitted to the agency – in that case, for authorization to construct a repository to store high level waste – is complete and acceptable for docketing and contains sufficient information for the Staff to begin its review. *Id.* Under the same rationale, this discretion extends to handling the submission of a revision to an application for a combined license.⁹ See *id.* Thus, the issue raised by Intervenor is beyond the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

Intervenor also contends that Applicants' revision is in violation of the following: Section 189a of the Atomic Energy Act (AEA), 42 U.S.C. § 2239; the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321-4347; 10 C.F.R. Part 52; and 10 C.F.R. § 2.101(a-1)(2). Intervenor's New Contention 11 at 2-5. In asserting these violations of statutes and NRC regulations, Intervenor fails to raise an issue within the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

Intervenor does not point to a specific provision in either NEPA or in 10 C.F.R. Part 52 that is violated by Applicants' revision, but generally asserts that such an action is "contrary to policies and procedures" set forth therein. Intervenor's New Contention 11 at 3-4. Intervenor also contends that there is no regulatory or statutory mechanism for the Applicants' revision to the Application, concluding that such an action is "neither anticipated by nor provided for in Commission statutes and implementing regulations." *Id.* at 4. As discussed above, the decision to docket, and the subsequent handling of an application, is within the discretion of the Staff and

⁹ The Staff intends to perform an initial evaluation of the June 28 revision to the Application to ensure that sufficient information is provided for a timely review by the Staff. However, this will not involve a docketing decision, as the Staff has already established a docket for the Application. If the Staff needs more information, it will issue the appropriate RAIs in accordance with the normal review process. See *Duke Energy Corp.*, CLI-99-11, 49 NRC at 336 ("[RAIs] are a routine means for our staff to request clarification or further discussion of particular items in the application.") Based on the results of this initial evaluation, the Staff will develop a schedule for the completion of its review of the Application.

not within the scope of this proceeding. Moreover, the NRC's regulatory framework does anticipate and provide for actions such as Applicants' revision to the Application.

Section 52.3(b)(2) of the Commission regulations provides for the submission of amendments to applications for COLs. 10 C.F.R. § 52.3(b)(2). Section 52.3(b) does not otherwise limit the content of amendments or revisions to COL applications. *Id.* Intervenor does not discuss this regulation, and does not assert that Applicants have violated it.

As for NEPA, Intervenor does not identify how the June 28 revision violates any provision in that statute. Intervenor's contention is premature, since the Applicants had not yet submitted any supplement to the Environmental Report when the Intervenor filed proposed Contention 11. As discussed above, the Commission's regulations provide for filing of new or amended contentions. 10 C.F.R. § 2.309(f)(2) and (c). Thus, proposed Contention 11 is not within the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

Intervenor also asserts that Applicants' revision to the Application violates Section 189a of the Atomic Energy Act. Intervenor's New Contention 11 at 3. Though Intervenor does not mention which specific provision is violated, Intervenor appears to refer to Sections 185b and 189a.(1)(A). *Id.* Section 185b states that the Commission shall issue a combined license after holding a public hearing under Section 189a.(1)(A), if the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the Atomic Energy Act, and the Commission's regulations. Atomic Energy Act of 1954, as amended, §§ 185b, 189a.(1)(A), 42 U.S.C. §§ 2235b, 2239(a)(1)(A). Intervenor does not specify how this hearing process is "subverted" by the revision to the Application. Further, as stated above, the NRC's regulations provide a framework for filing new and late contentions, based on new and materially different information.¹⁰ 10 C.F.R. § 2.309(f)(2) and (c).

¹⁰ Should the Board issue a supplemental scheduling order as suggested by the Staff, such an action may to some extent ameliorate Intervenor's concerns about effective public participation in this regard.

Intervenor also fails to provide adequate support for the contention that Applicants' revision violates statutory and regulatory requirements. 10 C.F.R. § 2.309(f)(1)(v). As support for its contention, Intervenor quotes from portions of an NRC Staff document, SECY-08-0142. Intervenor's New Contention 11 at 4-5, quoting SECY-08-0142, Change in Staff Position Concerning Information in Plant-Specific Technical Specifications that Combined License Applications Must Provide to Support Issuance of Combined Licenses (Sept. 25, 2008) (ML082520748). Intervenor also appears to quote 10 C.F.R. § 2.101(a-1)(2) in support of its contention that Applicants' revision violates Commission regulations. Intervenor's New Contention 11 at 5, quoting 10 C.F.R. § 2.101(a-1)(2). However, Intervenor does not identify anything in SECY-08-0142 or 10 C.F.R. § 2.101(a-1)(2) relating to proposed North Anna Unit 3. Generalized references to documents that are not linked to the claims made in a contention lead to the proper conclusion that the contention is factually unsupported. *See, e.g., USEC, Inc.* (American Centrifuge Plant), CLI-06-10, 63 NRC 451, 478-479 (2006). Simply attaching material or documents as a basis for a contention, without setting forth an explanation of that information's significance, is inadequate to support the admission of the contention. *Southern Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 153-54, (2009) (citing *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 205-206 (2003)). The Intervenor did not explain the significance of § 2.101(a-1) or SECY-08-0142 here. Moreover, § 2.101(a-1) governs early consideration of site suitability issues, which the Applicants did not request. Accordingly, Intervenor's citation to SECY-08-0142 and § 2.101(a-1) does not provide adequate support for the contention. 10 C.F.R. § 2.309(f)(1)(v).

Intervenor also fails to offer adequate expert support in quoting from Congressional testimony of a representative of the Union of Concerned Scientists. *See* 10 C.F.R. § 2.309(f)(1)(v). Intervenor cites to a portion of the testimony on alleged mismanagement and ineffective oversight at the NRC for the conclusion that the future of the nuclear industry is bleak, warning that the NRC needs to "take immediate steps to avoid the pitfalls of the Interior

Department's Minerals Management Service . . . which became too accommodating to its licensees." Intervenor's New Contention 11 at 5-6 (quoting *Nuclear Power in a Warming World: Solution or Illusion?*: Hearing before the H. Select Comm. on Energy Independence and Global Warming, 110th Cong. 6-7 (2008) (statement of David A. Lochbaum, Director, Nuclear Safety Project, Union of Concerned Scientists)).

The testimony has no bearing on the June 28 revision to the Application, and does not support Intervenor's contention that Applicants' revision of the Application constitutes a statutory or regulatory violation. Intervenor has an obligation to provide an explanation as to why particular sections of referenced documents provide a basis for the contention. *Vogtle*, LBP-09-3, 69 NRC at 153-54, citing *Fansteel*, CLI-03-13, 58 NRC at 205-206. Intervenor has not done so here. Thus, Intervenor fails to provide adequate support for the contention that Applicants' revised Application is in violation of statutory or regulatory requirements. 10 C.F.R. § 2.309(f)(1)(v).

Intervenor presents two alternative requests for relief: (1) that the NRC require the Applicants to "re-start [their] application process from the beginning" by submitting a new application and re-noticing it under federal administrative procedures, or, (2) at a minimum, for the NRC to conduct its COL licensing proceeding only after completion of the APWR design certification rulemaking. Intervenor's New Contention 11 at 2, 7.

Intervenor's first request, that the NRC require the Applicants to submit a new application, is an impermissible challenge to the Staff's discretionary authority to decide matters related to docketing and acceptance of applications and revisions to applications. See *U.S. Department of Energy*, 68 NRC at 274-75. It is, therefore, outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii). Similarly, Intervenor's request that the NRC re-notice the Application is also outside the scope of this proceeding. *Id.* While the Board, as discussed above, possesses the authority to issue a supplemental scheduling order regarding the application of § 2.309(c) and (f)(2) here, these sections govern the order of procedure for late-filed and new or

amended contentions regarding the revision to the Application, and do not require a new Notice of Hearing on the entire Application.

In the alternative, Intervenor argues that the NRC should hold this COL proceeding in abeyance until the US-APWR design certification proceeding is concluded. Intervenor's New Contention 11 at 7. Part 52 specifically allows an applicant to reference a certified design that has been docketed but not approved. 10 C.F.R. § 52.55(c). The Commission has denied other requests asking that a COL proceeding be stayed pending completion of a design certification rulemaking, pointing out that 10 C.F.R. § 52.55(c) envisions COL adjudications during the pendency of design certification reviews. See *Progress Energy Carolinas* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 NRC 1, 3 (2008); *Detroit Edison Co.* (Fermi Unit 3), CLI-09-04, 69 NRC 80, 84-85 (2009); *Luminant Generation Co., LLC* (Comanche Peak Nuclear Power Plant, Units 3 and 4), (Apr. 27, 2009) (unpublished order) (ML091170518).

The Commission has directed licensing boards to refer contentions on design certification issues to the Staff for consideration in the design certification rulemaking, and to hold those contentions in abeyance, if they are otherwise admissible. See Final Policy Statement, 73 Fed. Reg. 20,963 at 20,972 (Apr. 17, 2009) (citing *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 345 (1999), quoting *Potomac Elec. Power Co.* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)). In any event, Intervenor does not raise a contention about the APWR design certification itself, but about the fact that the COL proceeding and APWR design certification rulemaking are occurring simultaneously. Design certification rulemaking and individual COL adjudicatory proceedings may proceed at the same time. *Shearon Harris*, CLI-09-08, 69 NRC at 329. Intervenor's request that the design certification rulemaking be completed prior to the COL proceeding is outside the scope of this proceeding. 10 C.F.R. § 2.309(f)(1)(iii).

Intervenor's request to suspend this proceeding until the APWR design certification rulemaking is concluded should be denied.

CONCLUSION

For the reasons set forth herein, Proposed Contention 11 should be denied and a supplemental scheduling order issued.

Respectfully submitted,

/signed (electronically) by/

Robert M. Weisman
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1696
Robert.Weisman@nrc.gov

/Executed in accord with 10 C.F.R. § 2.304(d)/

Stephanie Liaw
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-2472
Stephanie.Liaw@nrc.gov

/Executed in accord with 10 C.F.R. § 2.304(d)/

Anthony C. Wilson
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-3699
Anthony.Wilson@nrc.gov

Dated at Rockville, Maryland
this 2nd day of July, 2010

UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I hereby certify that a copy of "NRC STAFF ANSWER TO THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S NEW CONTENTION ELEVEN" has been served upon the following persons by Electronic Information Exchange this 2nd day of July, 2010:

Administrative Judge
Ronald M. Spritzer, Chair
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: rms4@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: rfc1@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

Administrative Judge
Alice C. Mignerey
Atomic Safety and Licensing Board Panel
Mail Stop – T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: acm3@nrc.gov

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

Pillsbury Winthrop Shaw Pittman, LLP
2300 N. Street, N.W.
Washington, DC 20037-1128
David R. Lewis, Esq.
Counsel for Dominion
Maria Webb, Paralegal
E-mail: David.Lewis@pillsbury.com
E-mail: Maria.Webb@pillsburylaw.com

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

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

/signed (electronically) by/
Robert M. Weisman
U.S. Nuclear Regulatory Commission
Mail Stop O-15 D21
Washington, DC 20555-0001
(301) 415-1696
Robert.Weisman@nrc.gov