July 12, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. 52-017-COL
Dominion Virginia Power, et al.	)	
	)	ASLBP No. 08-863-01-COL
North Anna Power Station, Unit 3	)	

DOMINION'S OPPOSITION TO BREDL'S NEW CONTENTION 11

Pursuant to 10 C.F.R. § 2.309(h), Virginia Electric and Power Company, dba Dominion Virginia Power ("Dominion"), hereby answers and opposes "Intervenor's New Contention Eleven" ("Motion"), which the Blue Ridge Environmental Defense League ("BREDL") filed on June 17, 2010. BREDL's Motion should be denied because the new contention does not meet the standards of admissibility in 10 C.F.R. § 2.309(f)(1). In particular, BREDL's Motion does not identify a single regulation, precedent, or other type of support for its proposed contention. Instead, BREDL makes bald assertions as well as certain arguments that are outside the scope of this proceeding.

I. PROCEDURAL BACKGROUND

This proceeding involves the application ("Application"), submitted by Dominion on behalf of itself and Old Dominion Electric Cooperative on November 26, 2007 for a combined license ("COL") to construct and operate a third reactor at the North Anna Power Station.[1] This Application incorporated by reference the General Electric-Hitachi ESBWR design. BREDL

[1] See North Anna 3 Combined License Application (Rev. 0, Nov. 2007), ADAMS Accession No. ML073320913.

filed its "Petition for Intervention and Request for Hearing" on May 9, 2008 and was made a party to this proceeding on August 15, 2008.

On November 18, 2008, BREDL filed a "Request" with the Atomic Safety and Licensing Board ("ASLB" or "Board") stating its objection to the 10 C.F.R. Part 52 process that allows applicants for COLs to reference a design for which certification is pending. Appropriately, as Dominion and the NRC Staff recommended in their responses to BREDL's "Request," the Board took no action.

On May 18, 2010, Dominion informed the NRC Staff that it would be revising its Application to incorporate the Mitsubishi Heavy Industries U.S. Advanced Pressurized Water Reactor ("US-APWR") design instead of the ESBWR. BREDL submitted its Motion proposing Contention 11 on June 17, 2010. On June 29, 2010, Dominion submitted an amendment to its Application, referencing the US-APWR design.

II. APPLICABLE LEGAL STANDARDS

NRC regulations require that an admissible contention:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
>
> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
>
> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
>
> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. §§ 2.309(f)(1)(i)-(vi).[2] Dominion's Answer Opposing Petition for Intervention and Request for Hearing by [BREDL] (June 3, 2008) provides a further discussion of these standards, which will not be repeated here.

III. ARGUMENT

Contention 11 fails to satisfy the Commission's contention admissibility requirements because, instead of providing any support for the Contention, BREDL makes the same arguments it has made in the past, which are outside the scope of this proceeding. BREDL's proposed Contention states that the Commission should require Dominion to re-submit its entire Application, but BREDL does not provide a single reason that such relief is warranted under the Commission's regulations. Instead, BREDL simply expresses the same objections to the Part 52 process that it raised before this Board in 2008 – objections which led the Board to take no action in 2008, which have been reviewed and rejected by the Commission since then,[3] and which continue to warrant rejection of proposed Contention 11 today.

[2] The Commission's rules at 10 C.F.R. §§ 2.309(c) and 2.309(f)(2) establish additional standards that new contentions must meet after the initial deadline for contentions. Dominion, however, does not oppose BREDL's Contention 11 on timeliness grounds.

[3] See, e.g., Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-08-15, 68 N.R.C. 1, 3 (2008); Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 N.R.C. 317, 324, 330 (2009); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 3), CLI-09-4, 69 N.R.C. 80, 84-85 (2009); Luminant Generation Co., LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), Order (Apr. 27, 2009) ("Comanche Peak Order").

A. BREDL Fails to Provide Adequate Support for Contention 11

BREDL's new contention fails to comply with 10 C.F.R. §§ 2.309(f)(1) (ii), (v) and (vi), because BREDL does not provide any basis or support for its assertion that Dominion's change in reactor technology "subverts the letter and intent of federal regulations" or "deprives the public of its rightful opportunity to review and comment on the proceedings." Motion at 2. In its Motion, BREDL makes various assertions regarding Dominion's plan to amend its Application, but BREDL provides support for none of them.

In particular, BREDL does not identify a single statutory provision, regulation, or precedent that prohibits an applicant from amending a COL application to reflect changes in the selected reactor design. BREDL does assert vaguely that Dominion's amendment to its Application violates Section 189a of the Atomic Energy Act (42 U.S.C. § 2239(a)) and 10 C.F.R. Part 52 (Motion at 3), but it provides not a word of explanation regarding what provision of either Section 189a or Part 52 is violated or how the amendment violates those provisions.

Section 189a of the Atomic Energy Act provides for hearings on applications, including a mandatory hearing on an application for a construction permit. There is nothing in Section 189a prohibiting an amendment. Nor does Dominion's amended Application in any way frustrate or circumvent hearing rights, because the NRC rules clearly allow for new contentions based on new information. See 10 C.F.R. § 2.309(f)(2).[4] BREDL has already been admitted as a party to this proceeding, giving it full rights to participate.

Similarly, there is no provision in 10 C.F.R. Part 52 that prohibits an applicant from amending its COL application in any respect. As a general matter, the regulations in Part 52

[4] The NRC Staff suggests that the Board issue a supplemental scheduling order providing a date by which contentions based on new information in Dominion's amended application may be filed. NRC Staff Answer to Blue Ridge Environmental Defense League's New Contention 11 (July 2, 2010) at 4. Dominion supports this suggestion.

contemplate that there will be amendments to applications, as indicated by 10 C.F.R. § 52.3(b)(2). And contrary to BREDL's assertion that "a fundamental change in [Dominion's] license application [is] neither anticipated by nor provided for in the Commission's statutes and implementing regulations" (Motion at 4), the NRC regulations at 10 C.F.R. § 51.92 anticipate that there may be "substantial changes in the proposed action," even after the NRC Staff has prepared a final environmental impact statement.

Likewise, BREDL's apparent reference to 10 C.F.R. § 2.101(a-1)(2) (see Motion at 5)[5] provides no support for the Contention. Nor again does BREDL provide any explanation of how Dominion's amendment violates this provision. 10 C.F.R. § 2.101(a-1)(2) pertains to early consideration of site suitability issues and explains how an applicant may submit an application in parts, none of which applies to this proceeding. A bald assertion with nothing to support it cannot form the basis of an admissible contention. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-7, 47 N.R.C. 142, 180 (1998).

BREDL further asserts that there are "[a] diminishing number of occasions for review and comment on the prospective North Anna APWR" (Motion at 3, emphasis added), but provides no support for this assertion or explanation of how it supports admission of proposed Contention 11. BREDL refers to the statements in Dominion's May 18, 2010 letter indicating that the Staff's review of the application was well advanced (Motion at 3), but obviously the NRC Staff will have to conduct additional review of the portions of the Application that have changed as a result of the amendment, and BREDL will have no less of an opportunity to participate. In particular, the NRC's regulations specifically allow for late intervention and new contentions to be filed based on new information. See 10 C.F.R. §§ 2.309(c),(f)(2). Therefore,

[5] BREDL mistakenly refers to 10 C.F.R. § 2.101(2). Motion at 5.

BREDL and any other interested member of the public will have every necessary opportunity to raise issues regarding the amendment in this proceeding. The regulations also contemplate supplementation of an EIS if there are substantial changes to a proposed action or new and significant circumstances (see 10 C.F.R. § 51.92), and if such a supplement is necessary, BREDL may again participate.

Nor does BREDL provide any support for its assertion that Dominion's revised application will be difficult for the NRC Staff and the public to follow. See Motion at 5. As a threshold matter, BREDL's claim is entirely speculative, because BREDL submitted Contention 11 before even seeing the amended Application. In actuality, Dominion's amended Application includes revision bars indicating where changes have occurred, as well as a revision summary table before each Part (e.g., the FSAR, the ER, etc.) of the amended application. Moreover, to a considerable extent, the revisions to the Application incorporate standard design information from the US-APWR Design Control Document – information that is not subject to challenge in this COL proceeding. In any case, however, BREDL provides no support, through regulation, case law, or otherwise, for the notion that any difficulty it might have in following the amendment would require Dominion to re-submit its Application and begin the review process anew. Moreover, BREDL's claim that the Staff may find the revised Application difficult to follow is not cognizable. The manner in which the Staff conducts its review is outside the scope of this proceeding. See AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 N.R.C. 461, 476-77, 481-82, 486 (2008); Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-03-11, 58 N.R.C. 47, 66 (2003). BREDL identifies no regulation providing any reason that the relief it seeks is warranted.

B. Contention 11 is Outside the Scope of This Proceeding

Contention 11 is also inadmissible under 10 C.F.R. §§ 2.309(f)(1)(iii) and (iv), which require demonstration that the issue raised in the contention is within the scope of the proceeding, and that the issue raised in the contention is material to the findings the NRC must make. Here, Contention 11 does not seek to raise any issue material to the findings that the NRC must make.

Moreover, rather than providing any support for its claim that a change in reactor technology is prohibited, BREDL's argument in fact devolves to the well-rejected claim that the NRC must complete the US-APWR design certification rulemaking before proceeding with the COL application. See Motion at 7. BREDL's argument challenges the NRC rule at 10 C.F.R. § 52.55(c), which permits COL applicants to reference a design for which certification is pending, and such challenges to the NRC rules are prohibited in an adjudicatory proceeding. 10 C.F.R. § 2.335(a). Moreover, BREDL's claim has been soundly rejected by the Commission. In Harris, CLI-09-8, the Commission held that "[t]he design certification rulemaking and individual COL adjudicatory proceedings may proceed simultaneously, and issues raised in an adjudicatory proceeding that are appropriately addressed in the generic design certification rulemaking are to be referred to the rulemaking for resolution." CLI-09-8, 69 N.R.C. at 329. The Commission has also denied several similar motions to hold COL proceedings in abeyance pending a design certification. See Fermi, CLI-09-4, 69 N.R.C. at 84-85; Comanche Peak Order.

Further, the decision to accept an application for review is an administrative matter reserved for the NRC Staff and not subject to adjudicatory challenge. Curators of the University of Missouri, CLI-95-8, 41 N.R.C. 386, 395-96 (1995); Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), LBP-98-26, 48 N.R.C. 232, 242, aff'd, CLI-98-25,

48 N.R.C. 325, 349, 352 (1998), aff'd sub nom., Nat'l Whistleblower Ctr. v. NRC, 208 F.3d 256 (D.C. Cir. 2000), cert. denied, 531 U.S. 1070 (2001). By extension, the decision on whether an amendment to an application should be accepted and reviewed should be treated in the same manner. Indeed, such a decision is most appropriately left to the NRC Staff, because requiring Dominion to start the COL application process from the beginning with a whole new NRC Staff review would result in a significant waste of the NRC Staff's resources (as well as Dominion's), as there are large portions of Dominion's Application that have not significantly changed.

IV. CONCLUSION

For the foregoing reasons, BREDL's Motion should be denied.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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CERTIFICATE OF SERVICE

I hereby certify that "Dominion's Opposition to BREDL's New Contention 11," dated July 12, 2010, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 12th day of July 2010.

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