

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 MOTION TO DISMISS BREDL’S CONTENTION 10 AS MOOT

Pursuant to 10 C.F.R. § 2.323(a), Virginia Electric and Power Company, dba Dominion Virginia Power (“Dominion”), hereby moves this Atomic Safety and Licensing Board (the “Board”) for dismissal of Blue Ridge Environmental Defense League (“BREDL”) Contention 10, which challenged a claim in the previous version of Dominion’s application for a combined construction and operating license (“COL”) that good fuel performance may reduce the volume of Class B and C waste. Dominion moves this Board to dismiss BREDL Contention 10 because the particular statement challenged by that Contention has been eliminated in the recent revision to Dominion’s COL application, thus rendering the Contention moot.

On November 27, 2007, Dominion on behalf of itself and the Old Dominion Electric Cooperative applied for a combined license to construct and operate a new reactor at the North Anna Power Station (“North Anna Unit 3”).¹ The application initially proposed to build an ESBWR and included a Final Safety Analysis Report (“FSAR”) incorporating by reference standard design information from the ESBWR Design Control Document (“DCD”) under review for design certification. In a Memorandum and Order of August 15, 2008, the Board granted BREDL’s Petition for Intervention and Request for Hearing in this proceeding and admitted a

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

portion of BREDL's Contention 1 alleging that Dominion's FSAR omitted a plan for on-site storage of Class B and C waste. Virginia Electric and Power Co., et al. (North Anna Power Station Unit 3), LBP-08-15, 68 N.R.C. 294, 312-25 (2008).

On May 21, 2009, in response to BREDL's contention of omission, Dominion filed an amendment to its Application, which revised Section 11.4 of the FSAR to include Dominion's plan for managing Class B and C waste.² The revised FSAR Section 11.4.1 provided:

The 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 low-level 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.

Because the information contained in the COLA amendment mooted BREDL Contention 1, the Board granted a motion by Dominion to dismiss Contention 1. Order (Dismissing Contention 1 as Moot) (Aug. 19, 2009). However, while Dominion's motion was still pending, BREDL filed a new Contention 10 seeking to challenge the adequacy of Dominion's waste

² Letter from E. Grecheck to U.S. NRC, Combined License Application – Submission 4 (May 21, 2009), ADAMS Accession No. ML091540526 (“Amendment”). A copy of the pertinent portions of the Amendment was provided as Exhibit A to Dominion's Motion to Dismiss BREDL Contention 1 as Moot (June 1, 2009).

storage plan. Thereafter, the Board ruled that most of the claims in BREDL's Contention 10 were inadmissible but admitted the Contention insofar as it challenged Dominion's claim that good fuel performance will reduce the volume of Class B and C waste. Virginia Electric and Power Co., et al. (North Anna Power Station Unit 3), LBP-09-27, 70 N.R.C. ___, slip op. (Nov. 25, 2009).

On June 29, 2010, Dominion revised its application to replace the initially proposed ESBWR design with the Mitsubishi Heavy Industries U.S. Advanced Pressurized Water Reactor ("US-APWR") design.³ A copy of the revised application was delivered to the Board and parties on July 2, 2010. Because of the change in design, the revised application now proposes to store Class B and C waste in a dedicated Interim Radwaste Storage Facility ("IRSF"). As a result, the previous description in section 11.4 of the FSAR for managing Class B and C waste has been eliminated, and Section 11.4.2.3 of the revised FSAR now refers to an Appendix 11AA, providing requisite information on the IRSF. Neither revised section 11.4 nor Appendix 11AA make any reference to fuel performance. Instead, the capacity of the IRSF is based solely on the annual waste generation volume stipulated in US-APWR DCD Table 11.4-2, without credit for potential waste minimization techniques and methods other than dewatering. FSAR, App. 11AA, at 11-86.

Where "a contention is 'superseded by the subsequent issuance of licensing-related documents'...the contention must be disposed of or modified." Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 N.R.C. 373, 382 (2002) (footnote omitted). Here, the challenged reference to good fuel performance is

³ Letter from E. Grecheck to U.S NRC, Combined License Application – Submissions 6 and 7 (June 29, 2010).

no longer included in Dominion's waste management plan. Accordingly, Contention 10 should be dismissed as moot.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), counsel for Dominion certifies that he has consulted with the other parties in a sincere effort to resolve the issues raised in this motion.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

David R. Lewis
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Tel. (202) 663-8474

Lillian M. Cuoco
Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street, RS-2
Richmond, VA 23219
(804) 819-2684

Counsel for Dominion

Dated: 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)	

CERTIFICATE OF SERVICE

I hereby certify that “Dominion’s Motion to Dismiss BREDL’s Contention 10 as Moot” 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.

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

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rfc1@nrc.gov

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

Alan S. Rosenthal, Esq.
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

Secretary
Att’n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: secy@nrc.gov, hearingdocket@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

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

North Carolina Utilities Commission
Louis S. Watson, Jr.
Senior Staff Attorney
4325 Mail Service Center
Raleigh, NC 27699-4325
E-mail: swatson@ncuc.net

Robert M. Weisman, Esq.
Stephanie Liaw, Esq.
Anthony C. Wilson, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Robert.Weisman@nrc.gov;
Stephanie.Liaw@nrc.gov;
Anthony.Wilson@nrc.gov

James Patrick Guy II, Esq.
LeClairRyan
4201 Dominion Boulevard, Suite 200
Glen Allen, VA 23060
E-mail: James.Guy@leclairryan.com

/Signed electronically by David R. Lewis/

David R. Lewis