

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
Virginia Electric and Power Company)	Docket Nos. 52-017
d/b/a Dominion Virginia Power and)	
Old Dominion Electric Cooperative)	ASLBP No. 08-863-01-COL
North Anna Unit 3)	
Combined License)	July 23, 2010

INTERVENOR’S RESPONSE

The Blue Ridge Environmental Defense League with its chapter Peoples Alliance for Clean Energy (“BREDL” or “Intervenor”) hereby responds to the request of the Atomic Safety and Licensing Board Panel’s order of July 13, 2010 (“ASLB Order”). Per the ASLB Order, we have discussed this matter with the other parties in an attempt to provide a joint response without success. Therefore, we provide the following.

Intervenors are cognizant of the Board’s intention of soliciting information for the purpose of scheduling the extant proceedings and that the responses of the parties will be considered concurrently by the Board with the admissibility of Contention 11. Therefore, there are several issues to consider.

Filing of New Contentions

Following the ASLB Order, we received communication from Dominion’s representative. Dominion’s proposal stated that, “contentions based on new information in the amended COL would be considered timely if filed within 30 days from the date on which the NRC staff makes the amended application publicly available on its website or

on ADAMS.”¹ Via telephone BREDL replied that a 60-day period would allow proper consideration of the complex safety and environmental issues presented by the revised application. The discussion ended promptly.

A 60-day window for submitting new contentions based on new information is entirely reasonable. The compact disk mailed to the parties included 20,022 pages of documents, including 523 pages of general information, a 3,000+ page FSAR, a 405 page ER, and 1,096 pages of Technical Specs. Applicable regulations require that the application describe the design of the plant. 10 CFR § 52.79(a)(4). The previous COLA did not address the US-APWR, and the new 9,291 page Design Control Document is provided on the compact disk. In effect, this is a new application.

When a new combined license application is submitted, it is not sent to the public unless and until the NRC Staff has determined its completeness and that it meets standards for docketing. 10 CFR § 2.101(a). Only after such determination is made should the Intervenor or the public be required to consider this application. We rely on the NRC staff review to ensure that crucial requirements of the rules have not been overlooked. The Commission stated this clearly:

An application is neither accepted for full review by the NRC Staff nor automatically noticed for a possible hearing when it is submitted; instead, the Staff reviews it to ensure it contains the information and analyses required in a proper application to allow the Staffs full review of the proposed licensing action. If the application does not provide the necessary content, it is returned to the applicant for appropriate changes and possible resubmission. Until an application has been accepted by the NRC Staff, there is not certainty that there will be a proceeding in which a hearing may be requested.

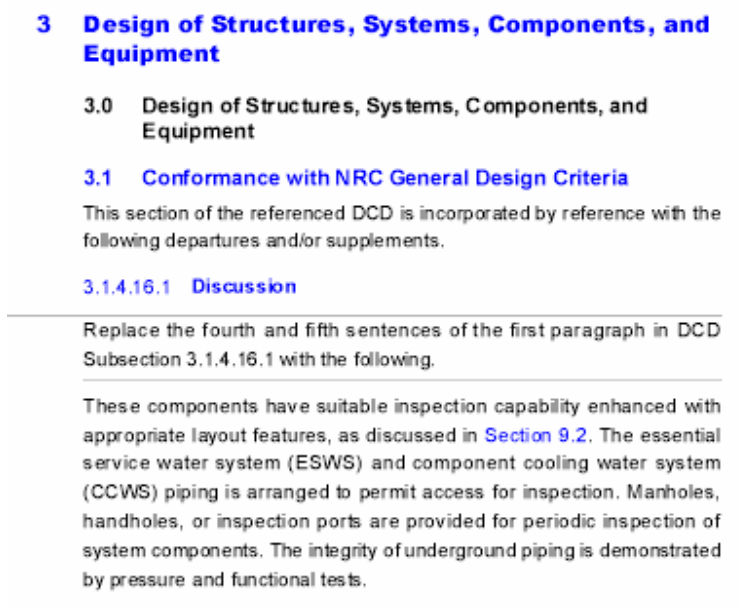
Millstone Nuclear Power Station Units 1 and 2, CLI-04-12, 59 NRC 237, 241-42 (2004)

After the notice of an opportunity to participate is published in the Federal Register,

¹ Email from David R. Lewis of Pillsbury Winthrop Shaw Pittman, LLP to Louis Zeller of Blue Ridge

interested members of the public get at least 60 days to file petitions to intervene and contentions. 10 CFR § 2.309. The interested public would be poorly served if the notice of this design change requested by Dominion were not published in the Federal Register.

As stated above, the compact disk provided to the Intervenor had over 20,000 pages of information. For example, a page from the revised application:



The sidebar system does not indicate if or where language has been ~~stricken~~ or added, such as is done with legislation.

The Design Change is a Major Action

There are significant design, engineering, and operating differences between Boiling Water Reactors (BWR's) and Pressurized Water Reactors (PWR's). These differences are physical differences brought on by the different theories upon which these types reactors were designed, engineered, and built to operate. The attached Declaration of Arnold Gundersen explains these technical issues in detail. He concludes:

“It is impossible in a short period of time to outline all the opposite and differing design,

engineering, and operating disparities between PWR and BWR nuclear power plants. As an engineer with more than 38-years nuclear engineering experience with both PWR's and BWR's, I am confident that the number of differences between the two reactor styles is enormous and the time required to analyze these differences will be significant."

Gundersen continues: "Clearly, the COLA in Docket No. 52-017 must be begun anew, or an entirely new docket should be opened. In my experience, having worked in licensing and knowing the extreme and distinct variations existing in the engineering design and operating capability of each type of plant, I believe it is critical to open a clean docket, so that no mix up of files and subsequent errors could occur that might ultimately negatively impact public health and safety."

Federal regulations state: "Most major licensing actions for nuclear facilities...entail pre-application filings which are docketed and are available to the public, and pre-application meetings between the applicant and the NRC staff which are open for observation to the public." 69 Fed. Reg. 2199. Without publication in the federal register, no such opportunity is available for the public "to observe and have a limited opportunity to ask questions," and therefore to "become familiar with an application and prepare an adequate request for hearing/petition for intervention and contentions." *Id.* Further, the Commission has the discretion to publish notices of opportunity for hearing in the Federal Register if circumstances indicate that such is desirable.

CONCLUSION

For the foregoing reasons, Intervenors and the general public should have 60 days to file petitions and new contentions after publication of a notice by the NRC in the

Federal Register.

Respectfully submitted,

A handwritten signature in black ink, reading "Louis A. Zeller", followed by a horizontal line.

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July 23, 2010

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CERTIFICATE OF SERVICE

**I hereby certify that copies of the
INTERVENOR'S RESPONSE**

were served on the following persons via Electronic Information Exchange this 23rd day of July, 2010.

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Signed in Glendale Springs
this day, July 23, 2010

A handwritten signature in black ink, reading "Louis A. Zeller", followed by a horizontal line.

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