

April 1, 2011

**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 STRIKE UNAUTHORIZED FILING**

Virginia Electric and Power Company, dba Dominion Virginia Power (“Dominion”), hereby moves to strike Intervenor’s Response to Board Questions (“Intervenor’s Response”), which the Blue Ridge Environmental Defense League (“BREDL”) filed on March 25, 2011. Intervenor’s Response is an unauthorized filing, improperly seeking to supplement the proposed contentions that BREDL submitted in October 2010.<sup>1</sup> BREDL refers to questions asked at the March 3, 2011 prehearing conference, but the Board did not afford BREDL any opportunity to supplement the argument presented at that conference or to submit further information attempting to bolster its contentions. Nor has BREDL otherwise demonstrated any good cause to justify its filing. Consequently, BREDL’s filing is improper and should be stricken. As 10 C.F.R. § 2.309(h)(3) provides, upon the filing of applicant’s and NRC Staff’s answers to contentions, and the intervenor’s reply, “[n]o other written answers or replies will be entertained.” See also Duke Energy Corp. (Oconee Nuclear Station, Units 1 and 2), LBP-98-33, 48 N.R.C. 381, 388 n.2 (1998) (ruling that intervenor’s supplemental filing was unauthorized and, in any event, did not support admission of contentions), aff’d, CLI-99-11, 49 N.R.C. 328 (1999); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 2 and 3),

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<sup>1</sup> Intervenor’s New Contentions (Oct. 2, 2010).

LBP-83-36, 18 N.R.C. 45, 50 (1983) (dismissing a late, unauthorized filing absent any good cause to justify its acceptance); Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 N.R.C. 470, 471 (1978) (unauthorized filing may be disregarded); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 N.R.C. 209, 211 (1976) (“The Board dislikes the gratuitous filing of unauthorized pleadings *extra* the Rules of Practice”).

Moreover, this sort of unauthorized filing is unfair because it denies both the applicant and the NRC Staff the opportunity to respond to claims or arguments that may be inaccurate or misleading, as is indeed the case here. For example, BREDL states:

The ESP plant parameter envelope does not encompass the COL design for the PWR proposed by Dominion-Virginia Power. The plant parameter envelope for the North Anna ESP considered reactors no larger than 4500 megawatts thermal power (MWt). North Anna Unit 3 was originally proposed as a boiling water reactor with a thermal power of 4500 MWt and an electrical output of 1520 MWe.

Intervenor’s Response at 1. As was previously explained in Dominion’s Opposition to BREDL’s New Contentions (Oct. 28, 2010) (“Dom. Opp.”) at 3, the ESP was not based on any specific design, but instead used a plant parameter envelope (“PPE”), which is “a set of values of plant design parameters that an ESP applicant expects will bound the design characteristics of the reactor or reactors that might be built at a selected site.” Dominion Virginia Power (North Anna Power Station, Unit 3), LBP-08-15, 68 N.R.C. 294, 322 (2008) (footnote omitted). The 4500 MWt thermal power assumed in the ESP PPE<sup>2</sup> bounds the 4451 MWt thermal rating of the US-APWR.<sup>3</sup> While the ESP-ER describes an operating unit with a maximum electrical capacity of about 1520 MWe,<sup>4</sup> the electrical rating of a unit was not specified as a PPE value<sup>5</sup> and was not

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<sup>2</sup> See NUREG-1811, Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site (Dec. 2006) (“ESP-EIS”), App. I at I-10.

<sup>3</sup> See Dom. Opp. at 12, citing COL-ER at 3-37 (Table 3.0-2).

<sup>4</sup> ESP-ER at 3-3-3.

used in the calculation of thermal impacts or consumptive water use.<sup>6</sup> In any event, the electrical “capacity” of the US-APWR, which refers to its expected net output, is approximately 1500 MWe<sup>7</sup> – smaller than described in the ESP-ER.

#### CERTIFICATION

Counsel for Dominion certifies that he has consulted with the parties as required by 10 C.F.R. § 2.323(b). The NRC Staff agrees that BREDL’s filing is unauthorized and does not object to Dominion’s request to strike it. BREDL opposes this Motion.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: April 1, 2011

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<sup>5</sup> See ESP-EIS, App. I; COL-ER, Table 3.0-2.

<sup>6</sup> As previously explained in Dom. Opp. at 11, the “PPE in the ESP proceeding specified a postulated Condenser/Heat Exchanger Duty (the waste heat rejected from the main condenser and auxiliary heat exchangers during normal plant duty at full station load), which was used to evaluate the impacts associated with dissipation of this waste heat (see ESP-ER at 3-5-13); and Table 3.0-2 of the COL-ER shows that this parameter continues to bound the new design. COL-ER at 3-20.”

<sup>7</sup> COL-ER at 10-13.

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CERTIFICATE OF SERVICE

I hereby certify that Dominion's Motion to Strike Unauthorized Filing, dated April 1, 2011, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 1<sup>st</sup> day of April, 2011.

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/Signed electronically by David R. Lewis/

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