

April 18, 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 FOR CLARIFICATION OF LBP-11-10

Virginia Electric and Power Company, dba Dominion Virginia Power (“Dominion”), hereby moves for clarification of LBP-11-10, Memorandum and Order (Declining to Admit New Contentions 12 and 13) (April 6, 2011) (“LBP-11-10”). Specifically, Dominion requests that the Atomic Safety and Licensing Board (the “Board”) clarify that, with the issuance of LBP-11-10, the contested portion of this combined license (“COL”) proceeding was terminated. LBP-11-10 could be construed as suggesting that the contested portion of this proceeding will remain open until sometime after the NRC Staff issues the Safety Evaluation Report (“SER”) and the Supplemental Environmental Impact Statement (“SEIS”). LBP-11-10 at 36. Dominion respectfully submits that, by rejecting the last two proposed contentions of the sole intervenor, and with no other contentions pending before the Board, LBP-11-10 terminated the contested portion of this COL proceeding.

The proceeding’s background is fully described in LBP-11-10 (at pages 2-4). In June 2010, Dominion revised the North Anna COL application (“COLA”) to incorporate a different nuclear reactor design. LBP-11-10 at 3. In August 2010, the Board directed that any new contentions based on new information in Dominion’s June 2010 COLA revision be submitted no later than October 4, 2010. *Id.* at 4. Intervenor Blue Ridge Environmental Defense League

(“BREDL”) filed proposed Contentions 12 and 13 on October 2, 2010. Id. Dominion and the NRC Staff filed answers opposing the new contentions, and BREDL replied to those answers. Id. LBP-11-10 denied admission of those contentions. With respect to Contention 12, the Board ruled that two of the three asserted grounds supporting the contention were resolved in the early site permit (“ESP”) proceeding, and the third was untimely. Id. at 28. With respect to Contention 13, the Board ruled that the contention failed to satisfy the admissibility criteria contained in 10 C.F.R. § 2.309(f)(1). Id. at 35. As a result of the Board’s Order denying admission of Contentions 12 and 13, no contentions remain pending before the Board.

Commission precedent is clear that an order dismissing the last remaining contention in a proceeding ordinarily “terminate[s] the proceeding.” Amergen Energy Co., LLC (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 N.R.C. 737, 744 (2006) (holding that an exception to the ordinary rule exists where the sole remaining admitted contention is a contention of omission subsequently mooted by new applicant information, and the intervenor is afforded an opportunity to challenge the new information), citing 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 (2002). In other words, “there is no proceeding before the board related to the application . . . where a single intervenor left in a proceeding voluntarily or involuntarily has withdrawn from the proceeding.” Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-91-13, 34 N.R.C. 185, 188 (1991) (ruling that a licensing board does not have the authority to raise issues concerning an application *sua sponte* where there is no longer a proceeding before it) (footnote omitted).

Applying the Turkey Point and Oyster Creek decisions here, the Board’s ruling denying admission of Contentions 12 and 13 – the only remaining proposed contentions of the sole

intervenor BREDL – means that BREDL’s participation in the contested portion of this proceeding has “involuntarily” ceased, and the proceeding has terminated.

Examples of recent Commission and Licensing Board decisions demonstrate that the contested portion of an adjudicatory COL proceeding terminates upon resolution of the last contention of the last (if not sole) intervenor, even where NRC Staff licensing documents had not yet been issued. In the recently concluded contested portion of the Summer COL proceeding, the Licensing Board ruled on remand that petitioners’ sole remaining contention was not admissible, accordingly denied the intervention petition, and thus stated that “the proceeding is terminated.” South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Units 2 and 3) LBP-10-06, 71 N.R.C. ___, slip op. at 37 (Mar.17, 2010). The Commission affirmed LBP-10-16 and “terminated the contested portion of this proceeding.” Summer, CLI-10-21, 72 N.R.C. ___, slip op. at 2 (Aug. 27, 2010). Both the Summer Licensing Board and Commission decisions preceded the NRC Staff’s issuance of the Advanced FSER, which was issued on December 10, 2010, and the FSER, which is targeted June 2011. See Application Review Schedule for the [Summer COLA], available at <http://www.nrc.gov/reactors/new-reactors/col/summer/review-schedule.html>. Likewise, the Licensing Board’s decision preceded issuance of the Draft EIS, which the NRC Staff issued on April 16, 2010, and the Commission decision preceded the FEIS, which is targeted for April 2011. Id.

Similarly, in the Vogtle COL proceeding, the Licensing Board granted summary disposition on the only admitted contention in that proceeding, holding that its “order concludes the contested portion of this COL proceeding in that no admitted contentions remain for litigation.” Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-10-08, 71 N.R.C. ___, slip op. at 18 (May 19, 2010) (footnote omitted). The Vogtle

Licensing Board's decision preceded both the Advanced SER (targeted for December 2010) and the Draft SEIS (issued September 2010). See Application Review Schedule for the [Vogtle COLA], available at <http://www.nrc.gov/reactors/new-reactors/col/vogtle/review-schedule.html>.

Moreover, when intervenors in the Vogtle proceeding submitted a new contention to the Licensing Board two-and-a-half months after the Vogtle Licensing Board's decision in LBP-10-8, the Licensing Board ruled that it did not have jurisdiction to consider the new contention because its prior decision had terminated the proceeding, and therefore it referred the new contention to the Commission. Vogtle, Memorandum (Referring Request to Admit New Contention to the Commission), at 2 (Aug. 17, 2010).¹ The Board noted that a mandatory/uncontested hearing must still be conducted, but that the Commission has indicated it will preside over that uncontested adjudicatory proceeding.² Id. at 2.

The Commission agreed that "the contested proceeding ha[d] been terminated, and jurisdiction over the filing [lay] with the Commission." Vogtle, Order at 1 (Aug. 25, 2010). The Commission thus referred the matter to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action. Id. The Chief Administrative Judge established a licensing board (consisting of the same members as the initial Vogtle Board) to consider the new contention. 75 Fed. Reg. 53,985 (Sept. 2, 2010). The new Board then denied the motion to admit the new contention, "which once again terminates the contested portion of this COL

¹ Similarly, in the COL proceeding for the William States Lee III Nuclear Station, when BREDL proposed an additional contention after the Board had denied its earlier petition to intervene for failure to plead any admissible contention, the Licensing Board denied the new request because it no longer had jurisdiction. Duke Energy Carolinas, LLC (Combined License Application for William States Lee III Nuclear Station, Units 1 and 2), Memorandum and Order (Regarding BREDL's New Contention 11) (April 29, 2011).

² See Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site), CLI-07-24, 66 N.R.C. 38, 38 & n.2 (2007). See also Memorandum from A. Vietti-Cook to S. Burns, Staff Requirements – SECY-10-0082 – Mandatory Hearing Process for Combined License Application Proceedings Under 10 C.F.R. Part 52 (Dec. 23, 2010) (ADAMS Accession No. ML103570203).

proceeding before the Board.” Southern Nuclear Operating Co. (Vogle Electric Generating Plant, Units 3 and 4), LBP-10-21, 72 N.R.C. ___, slip op. at 2 (Nov. 30, 2010).

More recently, in the Comanche Peak COL proceeding, where the Licensing Board dismissed remaining contentions as moot, the Board found “no remaining matters to be adjudicated in this proceeding on either or both of the preceding grounds” and “therefore ORDER[ed] that this matter be terminated.” Luminant Generation Co., LLC (Comanche Peak Nuclear Power Plant, Units 3 and 4), LBP-11-04, 73 N.R.C. ___, slip op. at 40 (Feb. 24, 2011).

As a final example, the Licensing Board presiding over the North Anna early site permit (“ESP”) proceeding terminated the contested portion of that adjudicatory proceeding upon granting applicant’s request for summary disposition of the sole remaining contention.

Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-06-24, 64 N.R.C. 360 (2006). The North Anna ESP Licensing Board terminated the contested portion of the proceeding while noting that the NRC Staff’s licensing documents had yet to be issued:

Once final and effective, this Order terminates the (1) contested portion of this proceeding; (2) the party status of the Intervenors, [BREDL], [NIRS], and Public Citizen; and (3) the duty of the parties and the NRC Staff to update mandatory disclosures and the hearing file under 10 C.F.R. §§ 2.336 and 2.1203. The mandatory hearing portion of this proceeding will proceed, and awaits the NRC Staff issuance of its final (supplemental) safety evaluation report and final (supplemental) environmental impact statement.

LBP-06-24, 64 N.R.C. at 365.

In summary, the case law is clear that, in the ordinary course, the contested portion of a licensing proceeding terminates upon resolution of the last contention of the last remaining intervenor. Dominion respectfully submits that, with the Board’s decision denying admission to

proposed Contentions 12 and 13, the last contentions of the sole intervenor have been resolved, and therefore the contested portion of this proceeding has terminated.³

CONCLUSION

For the foregoing reasons, Dominion respectfully requests that the Board clarify that the contested portion of this combined license (“COL”) proceeding was terminated with the issuance of LBP-11-10.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), Counsel for Dominion certifies that he has consulted with the NRC Staff and BREDL. The NRC Staff supports the motion and is considering filing a supporting answer. BREDL reserves the right to respond to the motion.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

David R. Lewis
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
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
Tel. (804) 819-2684

Counsel for Dominion

Dated: April 18, 2011

³ Any future effort to reopen the proceeding to admit new contentions concerning future NRC Staff licensing documents would fall under the Commission’s jurisdiction. The Commission could address the reopening issue on its own or (as in Vogtle) refer the matter to the Chief Administrative Judge for appropriate action.

**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 for Clarification of LBP-11-10, dated April 18, 2011, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 18th day of April, 2011.

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

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

John D. Runkle, Esq.
Attorney at Law
Post Office Box 3793
Chapel Hill, NC 27515
jrunkle@pricecreek.com

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

/Signed electronically by David R. Lewis/

David R. Lewis