

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ronald M. Spritzer, Chairman
Dr. Richard F. Cole
Dr. Alice C. Mignerey

In the Matter of

VIRGINIA ELECTRIC and POWER COMPANY
d/b/a DOMINION VIRGINIA POWER and OLD
DOMINION ELECTRIC COOPERATIVE

(Combined License Application
for North Anna Unit 3)

Docket No. 52-017-COL

ASLBP No. 08-863-01-COL

April 22, 2011

ORDER

(Regarding Dominion's Motion for Clarification of LBP-11-10)

The Board has received the Motion for Clarification of LBP-11-10, filed by Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion or Applicant). Although styled as a motion for clarification, the Motion is in substance a request that the Board terminate this adjudicatory proceeding, and it will be so treated by the Board.

The Board previously granted the request for a hearing by Intervenor, Blue Ridge Environmental Defense League (BREDL or Intervenor).¹ Because of the Board's ruling in LBP-10-17, however, which dismissed Contention 10 as moot,² and its ruling in LBP-11-10 declining to admit two new contentions,³ there are no contentions currently pending before the Board. At

¹ LBP-08-15, 68 NRC 294, 299, 338 (2008).

² LBP-10-17, 72 NRC __, __ (slip op. at 5, 19) (Sept. 2, 2010).

³ LBP-11-10, 73 NRC __, __ (slip op. at 1, 36) (Apr. 6, 2011).

the same time, as we noted in LBP-11-10, the NRC Staff has not yet issued the Supplemental Environmental Impact Statement or the Safety Evaluation Report, both of which could be the subject of new contentions.⁴

In their responses to Dominion's Motion, the Intervenor and the NRC Staff, in addition to responding to Dominion's arguments for terminating the proceeding, should explain whether applicable NRC regulations require termination of a proceeding in the circumstances present here. It appears that, under 10 C.F.R. § 2.318(a), the Board's jurisdiction does not terminate under current conditions. Intervenor and the NRC Staff should explain whether they contend this or any other relevant regulation or controlling Commission or Appeal Board decision mandates termination of a licensing board proceeding in the circumstances of this case. If the Board's jurisdiction is not automatically terminated by any regulation or controlling decision, Intervenor and the NRC Staff should explain the factors they believe the Board should consider in deciding whether termination is appropriate. They should further explain whether, if the Board were to terminate the proceeding at this point, the Intervenor would have a right of appeal under 10 C.F.R. §§ 2.311, 2.341, or any other provision. Finally, they should address the relevance to the termination issue, if any, of the Emergency Petition recently filed before the Commission in this and other proceedings.⁵

The due date for the responses to Dominion's Motion is hereby extended to ten (10) days from the date of this Order, to allow time for the Intervenor and the NRC Staff to address the issues we have raised. In addition, although Dominion would not ordinarily be permitted a

⁴ Id. at ___ (slip op. at 36).

⁵ See Emergency Petition to Suspend All Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Apr. 18, 2011).

reply in support of its Motion,⁶ we will allow Dominion to file a reply addressing the issues listed in this Order. Dominion's Reply shall be due ten (10) days after the due date for the filing of the responses of the Intervenor and the NRC Staff.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 22, 2011

⁶ See 10 C.F.R. § 2.323(c).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Virginia Electric and Power Company d/b/a)
Dominion Virginia Power (DVP or Dominion)) Docket No. 52-017-COL
and Old Dominion Electric Cooperative (ODEC))
)
(North Anna Power Station, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board “**ORDER (Regarding Dominion’s Motion for Clarification of LBP-11-10)**” have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 52-017-COL

ORDER (Regarding Dominion's Motion for Clarification of LBP-11-10)

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[Original signed by Linda D. Lewis] _____
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Dated at Rockville, Maryland
this 22nd day of April 2011