

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	Docket Nos. 52-017
Virginia Electric and Power Company)	
d/b/a Dominion Virginia Power and)	ASLBP No. 08-863-01-COL
Old Dominion Electric Cooperative)	
North Anna Unit 3)	May 5, 2011
Combined License)	
_____)	

Intervenor’s Reply Regarding Dominion’s Motion for Clarification of LBP-11-10

Pursuant to the Board’s Order of April 22nd, the Blue Ridge Environmental Defense League (Intervenor) submits this response. Although the Order set ten days for response, because of family illness the Intervenor was unable to respond within the specified time. Nevertheless, the Intervenor hereby respectfully requests that its concise Reply be considered on its merits by this Board.

First, the Board's Order states that the proceeding is not terminated: “It appears that, under 10 C.F.R. § 2.318(a), the Board’s jurisdiction does not terminate under current conditions.” April 22, 2011 ORDER (Regarding Dominion’s Motion for Clarification of LBP-11-10) at 2. Second, the relevant rule clearly states when and how a proceeding may be terminated:

Unless the Commission orders otherwise, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences.... The presiding officer's jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.

10 CFR § 2.318(a) Commencement and termination of jurisdiction of presiding officer.

Further, on April 6th the Board found that the Dominion's exemption request, an issue addressed in Contention 13, nevertheless remains subject to litigation within the extant proceeding: "Whether the SSE exceedance in Dominion's exemption request does in fact comply with 10 C.F.R. Part 50, Appendix S and 10 C.F.R. § 100.23 is a question currently before the NRC Staff and is thus material to the NRC's licensing decision in this proceeding under 10 C.F.R. § 2.309(f)(1)(iv). Moreover, that exemption request could be subject to litigation in this COL proceeding, and thus is within the scope of the proceeding pursuant to 10 C.F.R. § 2.309(f)(1)(iii)." LBP-11-10, Memorandum and Order (Declining to Admit New Contentions 12 and 13), April 6, 2011, at 34.

Therefore, since there is no final decision and the matter remains open to further proceedings, the Board's order is correct; Dominion's request is improper and the Board's April 6th Order should stand.

Respectfully submitted,

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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May 5, 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of the
Intervenor's Reply Regarding Dominion's Motion for Clarification of LBP-11-10
were served on the following persons via Electronic Information Exchange this 5th day of
May, 2011.

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Signed in Glendale Springs
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A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is positioned above a horizontal line.

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