

October 17, 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 OPPOSITION TO BREDL’S NEW CONTENTION

Pursuant to 10 C.F.R. § 2.309(h), Virginia Electric and Power Company, dba Dominion Virginia Power (“Dominion”), hereby answers and opposes the Request to Admit Intervenor’s New Contention (“Request”), which the Blue Ridge Environmental Defense League (“BREDL”) filed on September 22, 2011.¹ The proposed new contention is inadmissible because it challenges matters resolved in the North Anna Early Site Permit (“ESP”) proceeding, impermissibly challenges the NRC rules requiring probabilistic seismic hazard analysis, and fails to demonstrate any genuine material dispute with Dominion’s application for a combined construction permit and operating license (“COL”). Further, a number of the claims on which the proposed contention appears to be based are untimely.

Dominion, with the consent of the BREDL and the NRC Staff, has moved to hold any ruling on this new contention in abeyance.² If granted, that Motion would provide BREDL an opportunity to amend its proposed contention after Dominion completes its assessment of

¹ BREDL seeks leave to file its new contention “with its chapter Peoples Alliance for Clean Energy” (PACE). Request at 1. The Board, however, previously denied PACE’s request to intervene. LBP-08-15, 68 N.R.C. 294, 338 (2008). See also id. at 304 (“we do not grant PACE standing in its own right because the Declarants fail to mention any affiliation they may have with PACE and do not authorize PACE to be their representative”) (footnote omitted). As the current Request provides no basis for late intervention by PACE, the reference to PACE should be disregarded.

² Consent Motion to Hold BREDL’s New Contention in Abeyance (Oct. 12, 2011).

whether any changes should be made to the Unit 3 application in light of the August 23, 2011 Mineral, Virginia earthquake. Accordingly, there is no need for the Board to rule on BREDL's currently proposed contention at this juncture. If BREDL later amends its proposed contention, Dominion will file a further answer at that time. If the Board does not grant the motion to hold a ruling on the currently proposed contention in abeyance, the currently proposed contention should be rejected for the reasons discussed herein.

I. PROCEDURAL BACKGROUND

This proceeding involves Dominion's application ("Application") for a COL to construct and operate a third reactor at the North Anna Power Station ("Unit 3").³ The Application references an ESP issued in 2007 that approves the North Anna site as suitable for additional units falling within certain parameters.⁴ The ESP was not based on a specific reactor design. Instead, it 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." LBP-08-15, 68 N.R.C. at 322 (footnote omitted).⁵

Under the NRC rules, this ESP resolves all site suitability issues (such as the topics addressed in Chapter 2 of a safety analysis report), with the exception of compliance with certain Combined License Action Items set forth in Appendix C of the ESP, variances⁶ sought in the Application, and any substantial new information on emergency planning. The ESP also resolves the environmental issues relating to the construction and operation of nuclear units at

³ See North Anna 3 Combined License Application (Rev. 0, Nov. 2007) (ADAMS Accession No. ML073320913).

⁴ ESP-003, Docket No. 52-008 (Nov. 27, 2007) (ADAMS Accession No. ML073180440).

⁵ The plant parameter envelope is described in sections 1.1.3 and 3.2 and Table 3.1-9 of the ESP Environmental Report ("ESP-ER").

⁶ A variance is a plant-specific departure from one or more of the site characteristics, design parameters, or terms and conditions of an early site permit. See 10 C.F.R. § 52.39(d).

the ESP site addressed in the NRC's Final Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site, NUREG-1811 (Dec. 2006) ("ESP-FEIS"), with the exception of issues that were deferred or identified as open items in the ESP-FEIS, and any environmental issue involving the construction or operation of the facility for which significant new information has been identified. See generally 10 C.F.R. § 52.39; see also Final Rule, Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 Fed. Reg. 49,352, 49,431 (Aug. 28, 2007).

In addition, the Application references a standard design for which a design certification application is under review. As amended, the Application references the U.S. Advanced Pressurized Water Reactor ("US-APWR").⁷

BREDL has been permitted to intervene in this proceeding.⁸ Although BREDL's previously admitted contentions have since been dismissed, the Board has declined to terminate this proceeding and ruled that BREDL may submit proposed new contentions based on new information without being required to satisfy the requirements for reopening a closed proceeding. LBP-11-22, 74 N.R.C. ___, slip op. at 14, 16, 35 (Sept. 1, 2011).⁹

On August 23, 2011, a Magnitude 5.8 earthquake occurred approximately 5 miles from Mineral, Virginia. The epicenter was approximately 11 miles west-southwest of North Anna Power Station. On September 22, 2011, BREDL submitted its current Request. It is not entirely clear what BREDL's proposed new contention is. At one point, BREDL states that "Intervenor's

⁷ See Letter from D. Lewis to ASLB (July 1, 2010) (notifying the Board and Parties of the amended Application and transmitting a copy on DVD); see also Letter from E. Grecheck to NRC, Combined License Application – Submissions 6 and 7 (June 28, 2010) (ADAMS Accession No. ML101820627).

⁸ LBP-08-15, 68 N.R.C. 294 (2008).

⁹ Dominion has petitioned the Commission for review of this ruling. Dominion's Petition for Review of LBP-11-22 (Sept. 16, 2011).

contention is that the applicant and the NRC have not presented a sound probabilistic basis for the magnitude of the possible adverse consequences and the likelihood of occurrence of each consequence for issuing a license to construct and operate North Anna Unit 3.” Request at 4. Later, BREDL states that “Intervenor’s new contention is that the geology of the North Anna site renders it unsuitable for construction of a new nuclear power reactor.” Id. at 10.

II. APPLICABLE LEGAL STANDARDS

A. Standards for New Contentions

Under the NRC rules, a new contention (other than one challenging new data or conclusions in an environmental impact statement – a situation not applicable here) may be added only by leave of the presiding officer, upon a showing that:

- (i) The information upon which the amended or new contention is based was not previously available;
- (ii) The information upon which the amended or new contention is based is materially different than information previously available; and
- (iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2). Further, 10 C.F.R. § 2.309(c) provides that an untimely contention will not be entertained absent a determination that the contention should be admitted based on a balancing of eight factors.

In this proceeding, the Board has held that the factors in 10 C.F.R. § 2.309(c) apply only to contentions that are deemed untimely under the standards in 10 C.F.R. § 2.309(f)(2). LBP-09-27, 70 N.R.C. 992, 998-99 (2009). Thus, under the law of this case,¹⁰ if BREDL’s contention

¹⁰ Dominion has previously taken the position that any new contention must meet the standards in both 10 C.F.R. § 2.309(f)(2) and 10 C.F.R. § 2.309(c). See, e.g., Dominion’s Answer Opposing BREDL’s Contention 10 (July 21, 2009) at 3-4 n.2. While Dominion respectfully submits that the Board’s ruling in LBP-09-27 is inconsistent with the language in 10 C.F.R. § 2.309(f)(2) allowing addition of new contentions only “upon a showing” of compliance with the standards in 10 C.F.R. § 2.309(f)(2)(i)-(iii) (which implies that 10 C.F.R. § 2.309(c) should not be construed as an exception to 10 C.F.R. § 2.309(f)(2)), Dominion accepts the Board’s prior ruling as the law of the case.

includes claims that do not meet the standards in 10 C.F.R. § 2.309(f)(2), such claims cannot be admitted unless BREDL demonstrates that the lateness factors in Section 2.309(c) are met.

Further, as the Board has previously held, if BREDL fails to address the Section 2.309(c) factors, the Board will not manufacture arguments for BREDL that it has not made itself.¹¹

Even if a petitioner satisfies the requirements of 10 C.F.R. § 2.309(f)(2) and 10 C.F.R. § 2.309(c), it must also demonstrate that its new contention satisfies the standards for admissibility in 10 C.F.R. § 2.309(f)(1)(i)-(vii). Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-12, 37 N.R.C. 355, 362-63 (1993). That rule requires that an admissible contention:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

In addition, as discussed in Dominion's Petition for Review of LBP-11-22 (*supra* note 9), Dominion believes that this proceeding should have been terminated when all of BREDL's previous contentions were resolved, and consequently, that any request to admit a new contention should be required to satisfy the standards for reopening in 10 C.F.R. § 2.326, which with respect to a new contention include satisfying the requirements in 10 C.F.R. § 2.309(c). *See* 10 C.F.R. § 2.326(d). However, in light of the Board's ruling declining to terminate this proceeding, Dominion merely notes this objection to preserve it, and will not brief this issue further.

¹¹ *See* Order (Denying Motion to Admit Proposed Contention Nine) (June 2, 2009) at 6. This ruling by the Board is consistent with longstanding precedent. Late contentions that fail to address these criteria are subject to summary dismissal. Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 N.R.C. 325, 347 & n.10 (1998); Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 N.R.C. 461, 465-66 (1985) ("[G]iven its failure even to address the . . . lateness factors, [a] [late] intervention petition [is] correctly denied because it [is] untimely"). "[T]he burden of persuasion on the lateness factors is on the tardy petitioner and . . . in order to discharge that burden, the petitioner must come to grips with those factors in the petition itself." *Id.* at 466 (footnote omitted). "Late petitioners properly have a substantial burden in justifying their tardiness." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273, 275 (1975). "[T]he late petitioner must address each of [the] five factors and affirmatively demonstrate that, on balance, they favor permitting his tardy admission to the proceeding." Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 N.R.C. 350, 352 (1980) (citations omitted).

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

10 C.F.R. § 2.309(f)(1)(i)-(vi).¹²

B. Standards for Contentions Addressing Issues Resolved in an ESP Proceeding

Under NRC regulations, "if the application for the . . . combined license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for . . . the early site permit" subject to certain limited exceptions. 10 C.F.R. § 52.39(a)(2). 10 C.F.R. § 52.39(c)(1) identifies these limited exceptions that may be considered in a hearing on a COL application:

- (i) The nuclear power reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;
- (ii) One or more of the terms and conditions of the early site permit have not been met;
- (iii) A variance requested under paragraph (d) of this section is unwarranted or should be modified;
- (iv) New or additional information is provided in the application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness; or
- (v) Any significant environmental issue that was not resolved in the early site permit proceeding, or any issue involving the impacts of construction and

¹² Dominion's Answer Opposing Petition for Intervention and Request for Hearing by [BREDL] (June 3, 2008) provides a further discussion of these standards, which will not be repeated here.

operation of the facility that was resolved in the early site permit proceeding for which significant new information has been identified.

10 C.F.R. § 52.39(c)(1)(i)-(v).

In LBP-08-15, this Board set forth the legal standard for evaluating whether an issue was “resolved” in the ESP proceeding:

Taking into account both the relevant language of the regulations and the Commission’s evident intent in promulgating those provisions, we agree with the Staff that a matter need not be actually litigated in order to be “resolved” in an ESP proceeding. If the matter was decided by the Staff in the ESP proceeding, concerns an issue that the Staff was required to resolve at that stage, and could have been litigated in the ESP proceeding, the matter is deemed “resolved” by the ESP proceeding even if the issue was not actually litigated. In reaching this conclusion, we note that 10 C.F.R. § 51.50(c)(1), quoted above, provides that the environmental report (ER) for the COL stage need not contain information or analyses concerning matters that were “resolved” in the EIS for the ESP. The EIS is prepared by the NRC Staff and is based, at least in part, on information in the ER. Thus, an issue can be “resolved” within the meaning of section 51.50(c)(1) even though there might have been no litigation concerning that issue, if the NRC Staff adequately addressed the matter in an EIS. The term “resolved” should be given the same meaning in section 52.39(a)(2), given that both provisions concern the relationship between ESP and COL proceedings.

...

We hasten to add, however, that in order for an issue to have been resolved during an ESP proceeding, the issue must have been examined and decided by the Staff, not just referred to without reaching a conclusion. Moreover, the issue must be one that was necessary for the Staff to resolve under the regulations governing ESPs (10 C.F.R. Part 52, Subpart A). Mere excursions by the Staff into issues that need not be resolved at the ESP stage are not sufficient to justify precluding parties from litigating those issues in a COL proceeding.

...

Therefore, we will treat BREDL’s contentions as resolved during the ESP proceeding for the North Anna site if (1) the subject of the contention was actually litigated and decided during the ESP proceeding; or (2) the subject of the contention, although not actually litigated, was decided by the Staff, was necessary for the Staff to resolve in the ESP proceeding, and was within the scope of that proceeding as defined in the Federal Register notice of opportunity for a hearing. We must treat any contention resolved during the ESP proceeding as resolved in this COL proceeding unless one of the exceptions listed in section 52.39 applies.

LBP-08-15, 68 N.R.C. at 309-11 (footnote omitted).

III. ARGUMENT

A. BREDL's Contention Is Inadmissible Because It Seeks to Raise Matters Resolved in the ESP Proceeding

Although the precise focus of BREDL's contention is hard to ascertain, BREDL appears to be challenging the adequacy of the probabilistic seismic hazard analysis ("PSHA") that was performed in the ESP proceeding to establish the safe shutdown earthquake ("SSE") seismic response spectra for the site. This challenge is impermissible because the PSHA and derivation of the site's seismic response spectrum are matters that were resolved in the ESP proceeding. Thus, under 10 C.F.R. § 52.39(a)(2) and § 52.39(c)(1), these matters are beyond the scope of this COL proceeding.

In the North Anna ESP proceeding, Dominion performed seismic investigations sufficient to meet the regulatory requirements in 10 C.F.R. Part 100 and used the investigations to perform a PSHA and develop ground motion response spectra for the site. See Safety Evaluation Report for an Early Site Permit (ESP) at the North Anna ESP Site, NUREG-1835 (Sept. 2005) ("NUREG-1835") § 2.5.2.3.4 at 2-193 to 2-197 (regarding the PSHA), § 2.5.2.3.5 at 2-197 to 2-199 (regarding compliance with 10 C.F.R. § 100.23(d)), § 2.5.2.3.6 at 2-199 to 2-201 (regarding the SSE), and § 2.5.2.4 at 2-201 to 2-202 (concluding the North Anna ESP site is acceptable and meets the requirements of 10 C.F.R. § 100.23); see also North Anna Early Site Permit Application (Rev. 9, Sept. 2006) (ADAMS Accession No. ML062580096), Part 2 (Site Safety Analysis Report) ("SSAR"), § 2.5.2. The PSHA was also examined by the Atomic Safety and Licensing Board in the mandatory hearing in the ESP proceeding. See Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-07-9, 65 N.R.C. 539, 594-98, 599-601 (2007). Based on the PSHA, horizontal and vertical hard rock SSE spectra were established for the site in the ESP proceeding. See SSAR, Figure 2.5-48A; NUREG-1835,

Figure 2.5.2-6. These SSE seismic response spectra are established as a site characteristic in the ESP. See ESP-003 (supra note 4) at A-12 and A-14 (Figure 2).

Examination of the geology and seismic characteristics of the site, performance of the PSHA, and derivation of the SSE seismic response spectra were clearly matters that were within the scope of, and necessary for the NRC Staff to resolve in, the ESP proceeding. Under the NRC rules in effect when Dominion submitted its ESP application, that application was required to describe the seismic characteristics of the site¹³ and was subject to the standards set out in 10 C.F.R. Part 100.¹⁴ 10 C.F.R. § 100.23 establishes geologic and seismic siting criteria. 10 C.F.R. § 100.23(d) requires determination of the SSE ground motion for the site, and requires uncertainties to be addressed through appropriate analyses, such as a probabilistic seismic hazard analysis. Further, the licensing board in the mandatory ESP hearing was required to determine whether, taking into consideration the site criteria in 10 C.F.R. Part 100, a reactor or reactors having characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public.¹⁵ This issue was specified in the ESP Notice of Hearing. Dominion Nuclear North Anna, LLC; Notice of Hearing and Opportunity To Petition for Leave To Intervene; Early Site Permit for the North Anna ESP Site, 68 Fed. Reg. 67,489 (Dec. 2, 2003).

None of the exceptions in 10 C.F.R. § 52.39(c)(1) would allow these matters to the litigated anew in the COL proceeding. While Dominion has requested a variance for vibratory ground motion, that variance results from changing the elevation (control point) at which the SSE is defined and does not change the spectra in any significant respect. See LBP-08-15, 68

¹³ 10 C.F.R. § 52.17(a)(1)(vi) (2003).

¹⁴ 10 C.F.R. § 52.18 (2003).

¹⁵ 10 C.F.R. § 52.21.

N.R.C. at 327.¹⁶ Certainly, BREDL has provided no information explaining why it thinks these matters can be reopened in this COL proceeding.

B. BREDL’s Contention Impermissibly Challenges the NRC Rules

In addition to seeking to litigate matters resolved in the ESP proceeding, BREDL’s new contention appears to be challenging the use of probabilistic analysis generally. Such a challenge is barred as an impermissible attack on the NRC rules.

Specifically, BREDL argues that probability calculations establish false assurances (Request at 3), earthquake prediction is not feasible (id.), and probabilistic risk assessments do not account for unexpected failure modes (id. at 9). The NRC’s rules at 10 C.F.R. § 100.23(d)(1) require that uncertainty inherent in estimates of the SSE be addressed through an appropriate analysis, such as a probabilistic seismic hazard analysis. BREDL’s suggestion that probabilistic seismic hazard analysis cannot be used is simply at odds with this NRC rule. A petitioner is not entitled to an adjudicatory hearing to attack NRC regulations. 10 C.F.R. § 2.335; Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 N.R.C. 328, 334 (1999).

C. BREDL’s Contention Is Impermissibly Vague, Unsupported, and Fails to Demonstrate Any Genuine, Material Dispute with the Application

BREDL’s new contention is also inadmissible because it does not meet any of the requirements in 10 C.F.R. § 2.309(f)(1). First, BREDL’s contention is unduly vague, thus failing to meet the requirement in 10 C.F.R. § 2.309(f)(1) to set forth its contention “with particularity”

¹⁶ The Board’s discussion of this variance related to the SSE spectra using the control point previously selected for the ESBWR. However, the current variance related to the SSE spectra using the control point selected for the US-APWR remains insignificant. See Letter from E. Grecheck to U.S. NRC, SRP 02.05.02; Supplemental Response to RAI Letter 53 (March 22, 2011), Markup of FSAR at 8-13 (Tables 2.0-202, Table 2.0-203, Figures 2.0-206 and 2.0-207) (ADAMS Accession No. ML110880254). See also Letter from E. Grecheck to U.S. NRC, SRP 02.05.02; Response to RAI Letter 53 (Jan. 28, 2011), Enclosure 1 (ADAMS Accession No. ML110340012).

or the requirement in 10 C.F.R. § 2.309(f)(1)(i) to include a “specific” statement of the issue to be controverted. Indeed, it is not clear which of BREDL’s claims -- i.e., the allegation that Dominion and the NRC have not presented a sound probabilistic basis (Request at 4) or the allegation that the geology of the North Anna site renders it unsuitable (id. at 10) – constitutes BREDL’s contention. In any event, both of these allegations are broad, generalized claims that do not provide reasonable notice of the specific issues sought to be litigated. The generalized discussion on pages 4-6 of BREDL’s Request likewise fails to provide a specific statement of the issue to be controverted. There, BREDL merely refers to 10 C.F.R. § 100.23 and claims that the August 23, 2011 earthquake is now part of the “nature” of the site. Request at 5. Nothing in that discussion presents any specific dispute with the COL application. To be admissible, a contention “must explain, with specificity, particular safety or legal reasons requiring rejection of the contested [application].” Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 N.R.C. 349, 359-60 (2001). BREDL has offered nothing of the sort.

Second, BREDL’s contention fails to meet the requirement in 10 C.F.R. § 2.309(f)(1)(iii), because BREDL does not demonstrate that the contention is within the scope of the proceeding. BREDL merely claims that this contention “is within the scope of the extant proceeding because it seeks compliance with the AEA, NEPA and NRC implementing regulations.” Request at 7. BREDL makes no attempt to explain why matters resolved in the ESP proceeding are within the scope of this COL proceeding.

For much the same reason, BREDL’s contention fails to meet the requirement in 10 C.F.R. § 2.309(f)(1)(iv) because BREDL does not demonstrate that the contention is material to the findings that the NRC must make in this COL proceeding. Here, BREDL asserts that the

issues raised by the August 23, 2011 earthquake “are central to the safety determinations which NRC must make” (Request at 7), but makes no attempt to relate those issues to findings that must be made in a COL proceeding where siting issues have been previously resolved by an ESP. BREDL alleges that technical specifications include seismic core damage frequency (Request at 8), but provides no support for this claim. BREDL does not identify any of the North Anna Unit 3 technical specifications, which are provided in Part 4 of the COL application, that relate to seismic core damage frequency, or any requirement to include such a technical specification. BREDL also refers generally to the requirement for a federal agency to supplement an environmental impact statement for a proposed action if these are significant new circumstances. Request at 8. BREDL, however, does not identify any environmental analysis that is affected by the recent earthquake.¹⁷

BREDL also fails to meet the requirement in 10 C.F.R. § 2.309(f)(1)(v) to provide a concise statement of alleged facts or expert opinion which support the contention, together with references to specific sources and documents on which BREDL intends to rely. BREDL provides no facts or expert opinion relating to the August 23, 2011 earthquake. See Request at 8-9. Instead, BREDL refers to Generic Issue 199 and updated risk estimates relating to the existing units (not the new Unit 3), and to alleged limitations on probabilistic risk assessment. None of these references relate to the August 23, 2011 earthquake or the PSHA used to establish the SSE seismic response spectra for the ESP site where Unit 3 will be located.

Finally, BREDL fails to meet the requirement in 10 C.F.R. § 2.309(f)(1)(vi) to provide sufficient information to show that a genuine dispute exists with the applicant on a material

¹⁷ The NRC Staff has not yet issued the draft supplemental environmental impact statement that it is preparing to address the change in the referenced standard plant design. Thus, there is currently no basis to challenge the Staff’s environmental review.

issue. As this provision of the NRC rules indicates, the information must include references to specific portions of the application that the petitioner disputes, and supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, identification of each failure and the supporting reasons for the petitioner's belief. 10 C.F.R. § 2.309(f)(1)(vi). BREDL does not identify any portion of the COL application that it disputes. See Request at 10. Indeed, there is not a single reference to any specific portion of the application anywhere in the Request. Nor does BREDL provide any information indicating that the August 23, 2011 earthquake would change any conclusion in the application in any material respect. The Rules of Practice bar contentions where petitioners have what amounts only to generalized suspicions, hoping to substantiate them later, or simply a desire for more time and more information in order to identify a genuine material dispute for litigation. Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2), CLI-03-17, 58 N.R.C. 419, 424 (2003).

The NRC requires that a petitioner read the pertinent portions of the license application and supporting documents, state the applicant's position, the petitioner's opposing view, and explain why it has a disagreement with the applicant. Final Rule, Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process, 54 Fed. Reg. 33,168, 33,170 (Aug. 11, 1989); Millstone, CLI-01-24, 54 N.R.C. at 358. BREDL has not come close to fulfilling that requirement here. It has failed to offer any reason to dispute any portion of the Application. As a result, the Contention must be rejected because BREDL has wholly failed to “explain why the application is deficient.” 54 Fed. Reg. at 33,170. See also Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3), CLI-91-12, 34 N.R.C. 149, 156 (1991).

D. Many of BREDL's Claims Are Untimely

While the August 23, 2011 earthquake constitutes new information, almost all of the claims that BREDL makes in support of its new contention are based on previously available information. Thus, these claims are untimely and should not be accepted.

In particular, BREDL's challenge to probabilistic seismic hazard analysis is based on a 1996 article arguing that earthquakes cannot be predicted. Request at 3 n.4. BREDL's reliance on Generic Issue 199 and updates to estimates of earthquake risk for existing units (*id.* at 8-9) is based on an August 2010 assessment of this generic issue for existing units. *Id.* at 9 n.8. BREDL's assertions that probabilistic risk assessment has limitations are based on an April 2011 article. *See id.* at 9 nn. 9-11. Thus, all of this information has been available for months or years.

As the Commission has held, there is no good cause to admit a late-filed contention "when the factual predicate for that contention is available from other sources in a timely manner." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C.1041, 1043 (1983). An intervenor cannot establish good cause for filing a late contention when the information on which the contention is based was publicly available "for some time" prior to the filing of the contention. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-828, 23 N.R.C. 13, 21 (1986). *See also* Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), CLI-11-02, 73 N.R.C. ____, slip op. at 13 (Mar. 10, 2011) ("The tardy filing of a contention may be excusable only where the facts upon which the amended or new contention is based were previously unavailable.") (emphasis added) (footnote omitted).

Thus, even if BREDL's challenges to probabilistic seismic hazard analysis or risk assessment were otherwise admissible (which, as discussed above, they are not), they should still be rejected as untimely. The August 23, 2011 earthquake does not provide good cause for claims that are based on other information that has been available for considerable time, and BREDL has made no showing that the factors in 10 C.F.R. § 2.309(c) weigh in favor of admitting these untimely claims.

IV. CONCLUSION

As previously discussed, Dominion has, with the consent of the parties, moved to hold any ruling on this contention in abeyance. If the Board does not grant that Motion, BREDL's Request to admit a new contention should be denied for the reasons stated above.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Dated: October 17, 2011

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CERTIFICATE OF SERVICE

I hereby certify that Dominion's Opposition to BREDL's New Contention, dated October 17, 2011, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 17th day of October 2011.

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