

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of	)	Dockets No. 52-018, 52-019
Duke Energy Carolinas	)	
Combined License Application	)	October 28, 2011
For William States Lee III Units 1 and 2	)	
	)	
	)	

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**MOTION TO REINSTATE AND SUPPLEMENT  
THE BASIS FOR FUKUSHIMA TASK FORCE REPORT CONTENTION**

**INTRODUCTION**

Pursuant to 10 C.F.R. § 2.323(e), Blue Ridge Environmental Defense League (BREDL) hereby moves to reinstate and supplement the basis of its contention seeking consideration of the environmental implications of the Fukushima Task Force Report in the Environmental Report for the proposed construction and operation license for the William States Lee III nuclear power station. *See* Motion to Admit New Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dai-ichi Accident. The contention was rejected as premature by this Atomic Safety and Licensing Board (ASLB) in LBP-11-27, Memorandum and Order (Denying Motions to Reopen Closed Proceedings and Intervention Petition/Hearing Request as Premature), \_\_ NRC \_\_ (Oct. 18, 2011).

BREDL seeks to supplement the contention's basis to assert that the Commissioners of the U.S. Nuclear Regulatory Commission (NRC or Commission) have recognized the safety and environmental significance of the conclusions and

recommendations of the Fukushima Task Force Report by issuing an order directing the NRC Staff to strive to complete and implement the lessons learned from the Fukushima accident within five years or by 2016. SRM/SECY-11-0124, Memorandum from R.W. Borchardt, Executive Director for Operations to Annette L. Vietti-Cook, Secretary, re: Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report (October 18, 2011).<sup>1</sup> BREDL also requests the ASLB to rule that in light of SRM/SECY-11-0124, the contention is no longer premature under the standard established by the ASLB in LBP-11-27 and should be admitted.<sup>2</sup>

## **DISCUSSION**

In LBP-11-27, the ASLB interprets the Commission's decision in *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), et al., CLI-11-05, \_\_ NRC \_\_ (Sept. 9, 2011) to preclude admission of the BREDL's contention because "it remains much too early in the process of assessing the Fukushima event in the context of the operation of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation." *Id.* at 13. LBP-11-27 indicates, however, that the ASLB would consider the contention to be admissible if and when the Commission adopts the Task Force recommendations:

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<sup>1</sup> The SRM is posted on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2011/2011-0124srm.pdf>.

<sup>2</sup> BREDL also wishes to notify the ASLB that it believes that LBP-11-27 is based on an erroneous interpretation of the National Environmental Policy Act ("NEPA") and the Commission's decision in *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), et al., CLI-11-05, \_\_ NRC \_\_ (Sept. 9, 2011), and therefore intends to petition the Commission for review of LBP-11-27. BREDL will request the Commission to hold its petition for review in abeyance pending the outcome of this motion. *See, e.g., Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-1, 53 NRC 1, 3 (2001) (citing *International Uranium Corp.* (White Mesa Uranium Mill), CLI-97-9, 46 NRC 23, 24-25 (1997)).

It is difficult to fathom how the Commission could have stated more precisely and definitively that it remains much too early in the process of assessing the Fukushima event in the context of the operation of reactors in the United States to allow any informed conclusion regarding the possible safety or environmental implications of that event regarding such operation. *Of still greater importance given BREDL's entire reliance on the findings and recommendations of the Task Force, the Commission stressed with equal force and clarity that, while under active study, none of those findings and recommendations has been accepted.* Thus, they scarcely have been given the effect that, according to BREDL et al, gives rise to the environmental implications that undergird the contention that is sought to be admitted.

*Id.* (emphasis added).

BREDL respectfully submits that the ASLB's condition for admission of the contention is satisfied by a Staff Requirements Memorandum (SRM) that was issued by the Commission on October 18, 2011, the same day that LBP-11-27 was issued. SRM/SECY-11-0124.<sup>3</sup> In SRM/SECY-11-0124 the Commission ordered the NRC Staff to "strive to complete and implement the lessons learned from the Fukushima accident within five years or by 2016." While the SRM did not order the adoption of every single recommendation, it did endorse a significant number of them, including the sweeping Recommendation # 1 which would expand the scope of the adequate protection standard. Thus, the Commission has "accepted" the Task Force Report in significant respects. LBP-11-27, slip op. at 13.

Therefore BREDL requests the ASLB to take the following actions:

- 1) Order the reinstatement of the contention;
- 2) Permit the supplementation of the contention's basis to include (in addition to the language of the Task Force Report itself and the Declarations of Dr. Arjun Makhijani

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<sup>3</sup> There is no indication in LBP-11-27 that the ASLB was aware of the issuance of SRM/SECY-11-0124 at the time it issued LBP-11-27.

and Dr. Ross McCluney) SRM/SECY-11-0124 as an indication of the significance of the Task Force Report's conclusions and recommendations; and

- 3) Rule on the admissibility of the reinstated and revised contention in light of SRM/SECY-11-0124.

## CONCLUSION

Motions for reconsideration must show compelling circumstances which could not have been reasonably expected that render a decision invalid. For the foregoing reasons, BREDL's motion should be granted.

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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## CERTIFICATE PURSUANT TO 10 C.F.R. § 2.323(b)

I certify that on October 27, 2011, I contacted counsel for Duke Energy and NRC Staff and attempted to resolve the issues raised by this motion. Duke Energy stated that would not support the motion; NRC Staff reserved judgment on the motion and said they will respond to it in due course.

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.

Louis A. Zeller  
October 28, 2011

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Duke Energy Carolinas	)	
Combined License Application	)	ASLBP No. 08-865-03-COL-BD01
For William States Lee III Units 1 and 2	)	
	)	
	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the  
MOTION TO REINSTATE AND SUPPLEMENT  
THE BASIS FOR FUKUSHIMA TASK FORCE REPORT CONTENTION  
were served on the following persons via Electronic Information Exchange  
this 28<sup>th</sup> day of October, 2011.

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