



inadmissible. Indeed, in two recently issued Orders,<sup>3</sup> the Commission rejected essentially identical contentions as impermissible challenges to the Continued Storage Rule.

## II. THE PROPOSED CONTENTION IS INADMISSIBLE

BREDL's proposed Contention must be rejected as an impermissible challenge to the Continued Storage Rule. The Continued Storage Rule establishes how the environmental impact determinations in the GEIS are to be considered in the environmental reviews for specified licensing proceedings, including new reactor licensing proceedings such as North Anna Unit 3.

The Continued Storage Rule states:

The environmental reports described in §§ 51.50, 51.53, and 51.61 are not required to discuss the environmental impacts of spent nuclear fuel storage in a reactor facility storage pool or an ISFSI for the period following the term of the reactor operating license, reactor combined license, or ISFSI license. The impact determinations in NUREG-2157 regarding continued storage shall be deemed incorporated into the environmental impact statements described in §§ 51.75, 51.80(b), 51.95, and 51.97(a). The impact determinations in NUREG-2157 regarding continued storage shall be considered in the environmental assessments described in §§ 51.30(b) and 51.95(d), if the impacts of continued storage of spent fuel are relevant to the proposed action.

10 C.F.R. § 51.23(b). The environmental impact statements described in 10 C.F.R. § 51.75 include those supporting issuance of a combined license. Section 51.75(c), Combined license stage, was also amended in the Continued Storage rulemaking to provide:

As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG-2157 shall be deemed incorporated into the environmental impact statement.

10 C.F.R. § 51.75(c).

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<sup>3</sup> *Union Electric Company* (Callaway Nuclear Plant, Unit 1), CLI-15-11, 81 N.R.C. \_\_\_, slip op. (Apr. 23, 2015) (“CLI-15-11”); *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 N.R.C. \_\_\_, slip op. (Apr. 23, 2015) (“CLI-15-12”).

Contrary to the explicit direction provided in the Continued Storage Rule, BREDL's proposed Contention states:

While the text of the North Anna Unit 3 FSEIS is grossly outdated with respect to its discussion of spent fuel storage impacts, 10 C.F.R. § 51.23(b) provides that the Continued Spent Fuel Storage GEIS is incorporated by reference into the North Anna Unit 3 FEIS. For all of the reasons stated in BREDL et al.'s Comments on the Draft Waste Confidence GEIS, however, the Continued Spent Fuel Storage Rule and GEIS fail to provide the NRC with a lawful basis under NEPA for issuing a COL for North Anna Unit 3. As discussed in BREDL et al.'s comments on the Rule and GEIS, they suffer from the following failures[.]

Petition at 8. As the proposed Contention's bases, BREDL alleges seven failures of the GEIS that purportedly undermine the Continued Storage Rule. *Id.* at 8-10. Among other things, BREDL alleges that the GEIS fails to examine the probability and consequences of failure to site a repository, to quantify alleged uncertainties concerning the long-term or indefinite storage spent fuel storage conditions, to "fully consider" spent fuel pool leaks and fires, or to show how the environmental impacts associated with the Continued Spent Fuel Storage Rule will be quantified and incorporated into cost-benefit analyses for nuclear reactors. *Id.* Acknowledging that none of these bases specifically pertains to the proposed North Anna Unit 3, BREDL concedes that "the subject matter of the contention is generic" and notes that it has not petitioned for waiver of the Continued Storage Rule. *Id.* at 2 & n.3. In addition, BREDL asserts that it "does not seek to litigate the substantive content of its contention in an adjudicatory proceeding," and that the "sole purpose" of its contention "is to lodge a formal challenge to the NRC's . . . reliance . . . on the Continued Spent Fuel Storage Rule [and] GEIS" to ensure that "any court decision resulting from BREDL's appeal of the generic Continued Spent Fuel Storage Rule and GEIS will be applied to the individual North Anna Unit 3 license proceeding." *Id.* at 2. BREDL has filed what it calls a "place-holder" contention. *Id.* at 1. BREDL asserts that its contention raises a significant environmental issue, thus warranting reopening of the North Anna Unit 3

record because the SEIS “is not supported by an adequate analysis of the environmental impacts of spent fuel storage and disposal.” Motion at 4.

Controlling precedent requires that the Commission reject the proposed Contention out of hand. In the recently issued *Callaway* and *Fermi* decisions, the Commission ruled inadmissible contentions essentially identical to the one BREDL proffers here. Just like BREDL, the petitioner in the *Callaway* proceeding (for example) (1) moved to reopen the record to proffer a “placeholder contention” seeking to challenge the NRC Staff’s reliance on the Continued Storage Rule and GEIS in the environmental impact statement at issue in that proceeding, but did not seek waiver of the rule; (2) offered seven bases for its contention, all of which challenged the generic findings of the GEIS and not the application at issue in that proceeding; (3) argued that it did “not seek to litigate the substance of its contention;” and (4) stated that its reason for filing the contention was to ensure that any court decision on its appeal of the Continued Storage Rule and GEIS would be applied to the individual *Callaway* proceeding. CLI-15-11 at 3-4.

The Commission ruled the proffered *Callaway* contention inadmissible because it impermissibly challenged the Continued Storage Rule and was therefore outside the scope of the proceeding. CLI-15-11 at 4. The Commission also ruled that, because all of the contention’s bases challenged the generic findings in the GEIS and did not “pertain specifically to the *Callaway* license renewal application,” the contention failed to “provide sufficient information to determine a genuine dispute with the applicant on a material issue.” *Id.* Because the petitioner had not submitted an admissible contention, the Commission ruled that “it necessarily has not satisfied [the] reopening standards because it has not raised a significant environmental issue and has not demonstrated that a materially different result would be likely if the contention had been considered initially.” *Id.* at 4 n.17. In light of the *Callaway* petitioner’s recourse to the D.C.

Circuit for legal review of the Continued Storage Rule and GEIS, the Commission ruled that a “placeholder” contention was “not necessary to ensure that [petitioner’s] challenges to the Continued Storage Rule and GEIS receive a full and fair airing.” *Id.* at 5. The Commission also said that it would take “appropriate action consistent with the court’s direction . . . [s]hould the D.C. Circuit find any infirmities in the Continued Storage Rule or GEIS.” *Id.*

BREDL has proffered an essentially identical contention challenging the Continued Storage Rule with essentially the same seven generic bases as the contentions at issue in *Callaway* and *Fermi*. Consistent with this precedent, the Commission must reject BREDL’s proposed Contention. BREDL’s proposed Contention is beyond the scope of this combined license proceeding, 10 C.F.R. § 2.309(f)(1)(iii), because it impermissibly challenges the Continued Storage Rule. CLI-15-11 at 4. And not one of the proposed Contention’s bases pertains specifically to the proposed North Anna Unit 3. They all thus fail to raise a genuine dispute on a material issue of law or fact under 10 C.F.R. § 2.309(f)(1)(vi). *Id.* Because BREDL has failed to proffer an admissible contention, it necessarily has failed to meet the Commission’s reopening standards. *Id.* at 4 n.17. Finally, BREDL is seeking legal review of the Continued Storage Rule and GEIS before the D.C. Circuit. Petition at 2. Therefore, admitting a placeholder contention is not necessary to ensure that BREDL will have a full and fair airing of its concerns with the Continued Storage Rule and GEIS. CLI-15-11 at 5.

The Commission should also find that BREDL’s proposed Contention is untimely, and that BREDL has failed to demonstrate good cause for its untimely filing. Section 2.309(c) provides that a new or amended contention filed after the deadline for hearing requests and contentions will not be entertained, absent a determination that a participant has demonstrated good cause by showing that:

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

10 C.F.R. § 2.309(c)(1). BREDL claims that its proposed contention is timely because it is a “‘place-holder’ that depends on an event that will occur in the future: the U.S. Court of Appeals’ decision in *New York II*.” Petition at 11. BREDL’s arguments do not demonstrate the proposed contention’s timeliness.

The Commission approved the Continued Storage Rule on August 26, 2014,<sup>4</sup> and the Rule was published in the Federal Register on September 19, 2014. 79 Fed. Reg. 56,238. BREDL knew, when the Commission approved the Continued Storage Rule on August 26, 2014, that the Commission had determined to apply the conclusions in the Continued Storage GEIS in all COL proceedings. As the Continued Storage Rule stated, BREDL knew that the generic conclusions in the GEIS would be considered incorporated into the SEIS. Thus, if any part of BREDL’s contention were admissible (which it is not), BREDL could have raised its present challenge many months ago.

Indeed, three months ago, BREDL and several other organizations petitioned the Commission to order the supplementation of the environmental impact statements in this and other licensing proceedings, asserting that such supplementation was required in order for them to lodge “‘place-holder’” contentions to challenge the Continued Storage Rule and GEIS in each proceeding. *DTE Electric Company* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 N.R.C.

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<sup>4</sup> Staff Requirements –SECY-14-007 – Final Rule, Continued Storage of Spent Nuclear Fuel (Aug. 26, 2014) (ADAMS Accession No. ML14237A092).

\_\_\_, slip op. at 2-4 & n.7 (Apr. 23, 2015). The Commission rejected these petitions the day after BREDL filed its present petition. *Id.* at 4. The fact that BREDL filed its supplementation request shows that BREDL obviously had more than sufficient information available to it months ago to enable it to raise its present challenge with the Continued Storage Rule and GEIS. BREDL nowhere explains why it waited so long to file its present challenge, and the Commission should not excuse BREDL's untimeliness.

### III. CONCLUSION

Consistent with BREDL's "reasonable expectation that [the Contention] will be denied," Petition at 2, the Commission should reject it for all of the foregoing reasons.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

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Counsel for Dominion

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of	)	
	)	Docket No. 52-017-COL
Dominion Virginia Power	)	
	)	ASLBP No. 08-863-01-COL
North Anna Power Station, Unit 3	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Dominion’s Answer Opposing Blue Ridge Environmental Defense League’s Motion to Reopen and Petition to Intervene in the Combined License Proceeding for North Anna Power Station, Unit 3 has been served through the E-Filing system on the participants in the above-captioned proceeding, this 7th day of May 2015.

/Signed electronically by Timothy J. V. Walsh/

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Timothy J. V. Walsh