

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

August 11, 2010

ORDER

(Setting Deadline for Filing New Contentions Based on New Information in
the Applicant's June 29, 2010 Revision to the License Application)

On July 13, 2010, the Board issued an Order asking that the parties propose an "appropriate schedule for the filing of any new or amended contentions and/or new intervention petitions arising from . . . [the] June 29, 2010 revision to" the combined license application (COLA) of Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Applicant or Dominion) to construct and operate a third nuclear reactor at its North Anna Nuclear Power Station site.¹

¹ Licensing Board Order (Concerning the Schedule for Filing New Contentions based on Applicant's June 29, 2010 Revision to its License Application) (July 13, 2010) at 3 (unpublished). As the NRC Staff had previously noted, "[n]either the Board's Scheduling Order dated September 10, 2008, nor the model milestones referenced therein, provide a time for filing late-filed or new or amended contentions with respect to a revision to the Application." NRC Staff Answer to Blue Ridge Environmental Defense League's New Contention Eleven (July 2, 2010) at 5.

Dominion proposed recognizing contentions arising from new information in Dominion's revised COLA as timely filed as long they are proffered within thirty (30) days of online publication of the revised COLA by the NRC Staff.² The NRC Staff also preferred a thirty (30) day deadline from online publication of the revised COLA for new and/or amended contentions and late intervention petitions arising from new information in the revised COLA, but noted that it would not object to the Board permitting more time for these filings.³ Intervenor, Blue Ridge Environmental Defense League (BREDL), advocated a deadline of sixty (60) days from the NRC Staff's notification of the public availability of the revised COLA in the Federal Register.⁴

The Board has considered the positions of the parties and has determined to adopt BREDL's proposed sixty (60) day deadline for new contentions. This deadline will run from August 3, the date on which the NRC Staff first notified the Board and the parties that the revised Application is available in the Agency-wide Documents Access and Management

² Dominion's Proposal Regarding Schedule for New Contentions Arising from COLA Revision (July 23, 2010) at 1-2 [hereafter Dominion's Proposal].

³ NRC Staff Response to Board Order Dated July 13, 2010 (July 23, 2010) at 4 [hereafter Staff Response].

⁴ Intervenor's Response (July 24, 2010) at 4-5 [hereinafter Intervenor's Response]. Although dated July 23, 2010, BREDL's response was sent to the NRC's Electronic Information Exchange (EIE) at 12:11 a.m. on July 24, 2010, which was after the deadline of the Board's July 13, 2010 Order. BREDL acknowledged this, but asked the Board to order that a new copy of the revised COLA be sent to BREDL and accept BREDL's filing as timely, due to computer malfunctioning BREDL suffered as a result of attempting to view the DVD of Dominion's revised COLA. See Letter from Louis A. Zeller, Blue Ridge Environmental Defense League, to Atomic Safety and Licensing Board (July 26, 2010) at 1 (ADAMS Accession No. ML102070596) [hereinafter July 26, 2010 Letter from Louis A. Zeller to Licensing Board]. BREDL also suggests that this series of events entitles it to more time to review the revised COLA. Id. Dominion does not object to the Board regarding BREDL's response as timely, but insists that because BREDL should have received the revised COLA in early July, any deadline extension for new contentions due to BREDL's late July computer malfunctioning is unwarranted. Letter from David R. Lewis, Counsel for Dominion, to Atomic Safety and Licensing Board (July 30, 2010) at 2 (ADAMS Accession No. ML102110205) [hereinafter July 30, 2010 Letter from David R. Lewis to Licensing Board].

System (ADAMS).⁵ Thus, any new contentions arising from Dominion's COLA revisions are due on or before October 4, 2010. BREDL's request that the time period should run from the date the NRC Staff publishes a notice of availability in the Federal Register reflects BREDL's argument in support of its proposed Contention 11 that Dominion's revised Application amounts to a completely new application and that the NRC Staff should therefore publish a new Federal Register notice of the opportunity to petition for leave to intervene. We will address that argument in our ruling on BREDL's proposed Contention 11.⁶ For the purpose of starting the clock for the filing of new contentions based on new information in the revised Application, it is sufficient that it was publicly available on ADAMS as of August 3, 2010.

The NRC Staff states that "in general, other licensing boards have allowed 30 days from the date of availability of new and material information for late-filed and new or amended contentions."⁷ We decided to allow BREDL sixty days, however, because the June 29, 2010 revision to the COLA involves a more substantial change than the typical license application amendment: Dominion has substituted a different nuclear reactor design from the one it originally proposed to build. As a result, the COLA now incorporates by reference the Design Control Document (DCD) for the Mitsubishi Heavy Industries, Ltd., U.S. Advanced Pressurized Water Reactor, rather than the DCD for the General Electric-Hitachi Economic Simplified Boiling Water Reactor, which was referenced in the original COLA.⁸ In addition, according to BREDL, "[t]he compact disk mailed to the parties included 20,022 pages of documents, including 523

⁵ See Letter from Robert M. Weisman, Counsel for NRC Staff, to Atomic Safety and Licensing Board (Aug. 6, 2010) at 1-2 (ADAMS Accession No. ML102180386).

⁶ The Board will rule on the admissibility of proposed Contention 11, as well as on Dominion's Motion to Dismiss Contention 10, in a subsequent Order.

⁷ Staff Response at 2 (citations omitted).

⁸ See id. (citations omitted).

pages of general information, a 3,000+ page FSAR, a 405 page ER, and 1,096 pages of Technical Specs.”⁹ Of course, the FSAR and ER are not entirely new. We understand that they were revised as necessary to take account of the new reactor design or other new information. Dominion also correctly notes that the DCD itself is not subject to challenge in this proceeding, so the fact that the FSAR now refers to a different DCD is insufficient, by itself, to support the filing of new contentions.¹⁰ Nevertheless, the new FSAR appears to contain extensive new information, in addition to referencing a different DCD.¹¹ In addition, the new ER also appears to contain new information. We believe, given the extensive volume of new material and the significant nature of the revision, that BREDL has reasonably requested sixty days to review the revised COLA, determine the new information that may properly be subject to challenge in this proceeding, and prepare any new contentions based on that new information.

In its Proposal submitted in response to the Board’s July 13, 2010 Order, Dominion stated that it mailed the Board and each of the parties a DVD containing the revised Application, and that therefore BREDL should have received an electronic copy of the revised Application on July 2, 2010.¹² Dominion argues that BREDL should be allowed only thirty days from the availability of the revised Application on ADAMS because BREDL should have begun reviewing the revised Application in early July, when it received Dominion’s DVD. Dominion contends that, if it granted BREDL sixty days from the availability of the revised Application on ADAMS,

⁹ Intervenor’s Response at 2.

¹⁰ See Dominion’s Opposition to BREDL’s New Contention 11 (July 12, 2010) at 6.

¹¹ Dominion explains that the revised Application “includes revision bars indicating where changes have occurred, as well as a revision summary table before each Part (e.g., the FSAR, the ER, etc.) of the amended application.” Id. Using these devices, the Board can make a rough estimate of the amount of new information in the FSAR and ER.

¹² Dominion’s Proposal at 1-2.

the Board would effectively allow BREDL ninety days from the date it should have begun reviewing the revised Application.¹³

BREDL responded by letter to the Board dated July 26, 2010, stating that the DVD was delivered to its office but was left outdoors; that the disk must have been damaged or otherwise “defective because it caused severe computer problems when [BREDL] attempted to read it”; and that BREDL still did not have a complete copy of the revised Application as of the date of its letter.¹⁴ Dominion responded to BREDL’s July 26, 2010 letter on July 30, 2010. It noted that on July 1, 2010, it had “served via the NRC’s Electronic Information Exchange (‘EIE’) a letter informing the Board and the parties of the revision to its application, and expressly stating that a copy of the amended application was being provided by overnight mail to BREDL.”¹⁵ Therefore, “BREDL should have been expecting delivery of the DVD on July 2, 2010,” and should have acted promptly to discover any problems with the DVD and request another copy if necessary.¹⁶ Thus, according to Dominion, the “delay in BREDL’s ability to review the amended application is a situation of its own making.”¹⁷

The Board believes, for the reasons previously stated, that BREDL has reasonably requested sixty days to review the revised COLA and file new contentions. We do not believe that the facts are sufficiently clear for the Board to mandate that this time period should begin to run when BREDL received the (allegedly defective) DVD. Unlike the date on which BREDL allegedly should have been able to begin review of the DVD, the date on which the revised

¹³ See id.

¹⁴ July 26, 2010 Letter from Louis A. Zeller to Licensing Board at 1.

¹⁵ July 30, 2010 Letter from David R. Lewis to Licensing Board at 1-2.

¹⁶ Id. at 2.

¹⁷ Id.

Application first became available on ADAMS provides a clearly defined point on which BREDL could indisputably begin its review of the revised COLA. We will therefore require that any new contention based on new information in the revised COLA be filed within sixty days of its availability on ADAMS.

The NRC Staff suggested that the Board's supplemental scheduling order should also govern the submission of new petitions to intervene (i.e., petitions from persons or entities other than BREDL, which is already a party to this proceeding) arising from new information in the revised Application.¹⁸ It is not clear whether the Board presently has authority to establish a schedule for new intervention petitions (as distinct from new contentions filed by BREDL, over which the Board clearly does have scheduling authority).¹⁹ Nevertheless, in the event a new intervention petition is referred to this Board, we would likely apply the same sixty day period described above to determine whether the new petition was filed within a reasonable period after new information in the revised Application became publicly available. We would also expect any such new petition to provide sufficient information for the Board to evaluate all of the factors listed in 10 C.F.R. § 2.309(c).

¹⁸ See Staff Response at 4.

¹⁹ The Chief Administrative Judge's Order designating the Board to preside over this proceeding described the proceeding as concerning "(1) a Petition to Intervene and Request for Hearing submitted by the Blue Ridge Environmental Defense League and the People's Alliance for Clean Energy, and (2) a Request of the North Carolina Utilities Commission for an Opportunity to Participate in any Hearing" See Dominion Virginia Power; Establishment of Atomic Safety and Licensing Board, 73 Fed. Reg. 29,541-42 (May 21, 2008). The Order makes no grant of authority with respect to future intervention petitions.

CONCLUSION

The Board's prior scheduling orders are amended to provide that BREDL shall file any new contentions based on new information in Dominion's June 29, 2010 revision to its COLA on or before October 4, 2010.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ronald M. Spritzer, Chairman
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Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

/RA/ E. Roy Hawkens for

Dr. Alice C. Mignerey
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 11, 2010

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 Nuclear Power Station, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Setting Deadline For Filing New Contentions Based On New Information In the Applicant's June 29, 2010 Revision To The License Application)** have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 52-017-COL

ORDER (Setting Deadline For Filing New Contentions Based On New Information In the Applicant's June 29, 2010 Revision To The License Application)

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 11th day of August 2010