

September 6, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

September 06, 2006 (12:22pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

DOMINION NUCLEAR NORTH ANNA, LLC)

Docket No. 52-008

(Early Site Permit for North Anna ESP Site))

ASLBP No. 04-822-02-ESP

**DOMINION'S MOTION FOR LEAVE TO REPLY TO
INTERVENORS' RESPONSE TO DOMINION'S SECOND MOTION
FOR SUMMARY DISPOSITION OF CONTENTION EC 3.3.2**

Pursuant to 10 C.F.R. § 2.323(c), Dominion Nuclear North Anna, LLC ("Dominion") hereby moves for leave to file a reply to Intervenor's Response to Dominion's Second Motion for Summary Disposition of Contention 3.3.2 ("Response"), which Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, "Intervenor") filed on August 28, 2006. 10 C.F.R. § 2.323(c) permits the filing of a reply with the permission of the presiding officer upon a showing of compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

Here, in their Response, Intervenor has argued for the first time that reduced downstream flow resulting from evaporative loss in the cooling towers constitutes a "thermal impact" within the scope of Contention 3.3.2. Dominion could not reasonably have anticipated this argument, because the specific wording of the contention admitted by the Atomic Safety and Licensing Board ("Board") refers and is limited to "the impacts of the proposed reactors on the

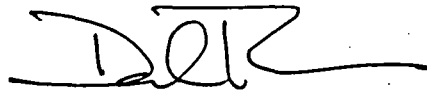
TEMPLATE = SECY - 041

SECY-02

striped bass at Lake Anna and downstream arising from increased water temperature,¹ and the Board specifically rejected those portions of Intervenor's contentions seeking to raise downstream flow as an issue in this adjudicatory proceeding.² Accordingly, compelling circumstances as defined in 10 C.F.R. § 2.323(c) exist and support this motion.

In accordance with 10 C.F.R. § 2.323(b), counsel for Dominion has discussed this motion with counsel for the other parties in this proceeding. Neither Intervenor nor the NRC Staff object to a reply limited to argument concerning the scope of the admitted contention.

Respectfully submitted,



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Dated September 6, 2006

¹ Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 N.R.C. 253, 276 (2004).

² Id. at 270-71.

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**DOMINION'S REPLY TO INTERVENORS' RESPONSE TO DOMINION'S
SECOND MOTION FOR SUMMARY DISPOSITION OF CONTENTION EC 3.3.2**

Dominion Nuclear North Anna, LLC ("Dominion") hereby replies to Intervenor's Response to Dominion's Second Motion for Summary Disposition of Contention 3.3.2 ("Response"), which Blue Ridge Environmental Defense League, Nuclear Information and Resource Service, and Public Citizen (collectively, "Intervenors") filed on August 28, 2006.³ In their Response, Intervenor's concede that the combination wet and dry cooling tower system would likely have insignificant effects on the temperature of water within Lake Anna (Response at 2) and would likely eliminate increases in the temperature of water released over the Lake Anna Dam to the North Anna River (Response at 3).⁴ Intervenor's argue, however, that reduced downstream flow resulting from evaporative loss in the cooling towers constitutes a "thermal impact" within the scope of Contention 3.3.2. As discussed below, Intervenor's interpretation of the scope of the contention is incorrect.

³ A separate motion for leave to file this reply pursuant to 10 C.F.R. § 2.323(c) is attached.

⁴ See also Response at 7 ("the revised proposal appears to have eliminated thermal impacts related to increased water temperatures within the Lake and downstream. . ."); *id.*, Exh. B at 2 ("With the proposed wet/dry cooling system for Unit 3, heated water in the lake will not be increased, as the heat is dissipated through the cooling towers with only a

When the Atomic Safety and Licensing Board (“Board”) admitted Contention 3.3.2, it specifically reworded the contention that it was admitting as follows:

EC 3.3.2 – IMPACTS ON STRIPED BASS IN LAKE ANNA

The ER does not adequately address the adverse impact of operating one or two additional reactors on the striped bass in Lake Anna and the North Anna River. In particular, the ER does not adequately consider the impacts of the proposed reactors on the striped bass at Lake Anna and downstream arising from increased water temperature.

Dominion Nuclear North Anna, LLC (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 N.R.C. 253, 276 (2004) (emphasis added). Thus, the particular issue admitted in this adjudicatory proceeding relates to the impacts on striped bass “arising from increased water temperature.”

Further, it is clear from the context of the original contention and Board’s ruling that Contention 3.3.2 is and was intended to be limited to impacts arising from increased water temperature. As originally proposed by Intervenors, Contention 3.3.2 alleged in pertinent part: “In particular, the ER does not adequately consider the four primary impacts of the proposed reactors to the fish and other aquatic life and Lake Anna and downstream: increased water temperature, impingement, entrainment, and downstream flow rates.” See id. at 270 (footnote omitted). Thus, Intervenors considered “increased water temperature” as an impact distinct from “downstream flow rates.”

In addition, the Intervenors provided separate bases discussing each of these alleged impacts, with basis (b) addressing “thermal impacts” and basis (d) addressing reduced stream flow. See Contentions of Blue Ridge Environmental Defense League, Nuclear Information and

minimal amount returned to the lake. Therefore, we do not expect changes in striped bass habitat with the proposed Unit 3 revision.”).

Resource Service, and Public Citizen Regarding Early Site Permit Application for Site of North Anna Nuclear Power Plant (May 3, 2004) at 33-35, 38-40. Basis (b), discussing “thermal impacts,” was focused on increases in the temperature of the lake. Id. at 33-35.

The Board’s rulings tracked this framework and admitted only the portion of the contention addressing impacts on striped bass arising from increased water temperature. With respect to the other alleged primary impacts, the Board ruled that “the Petitioners’ impingement and entrainment assertions . . . fail to identify any deficiency in the application . . . while their downstream impact assertions fail to raise and lack support regarding ESP-related concerns.” LBP-04-18, 60 N.R.C. at 271. The Board also rejected an additional contention – Contention 3.3.1 – which attempted to raise the impact on river flow downstream. Id. at 270. In admitting the portion of Contention 3.3.2 “as it concerns the adverse thermal impacts on the striped bass population” (id. at 271), the Board was clearly referring to the portion of the contention referring to increased water temperature, which Intervenor themselves characterized as the “thermal impacts” in basis (b) of the original contention. The Board could not have intended to include the issues of impingement, entrainment and downstream flow rates, because it specifically rejected the admissibility of these issues. Consistent with this intent, the Board reworded the sentence in the contention that had included reference to four primary impacts, removing all references to entrainment, impingement and downstream flow rates and leaving only the specific allegation relating to “increased water temperature.” Id. at 276.

In sum, the scope of this contention is established by the specific wording of the contention admitted by the Board, which refers specifically to effects “arising from increased water temperature.” Because the Board rejected Contention 3.3.1 and the portion of Contention

3.3.2 attempting to raise downstream flow issues, it is not reasonable to construe the admitted
Contention 3.3.2 as encompassing these very issues.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Dominion's Motion for Leave to Reply to Intervenor's Response to Dominion's Second Motion for Summary Disposition of Contention EC 3.3.2," and "Dominion's Reply to Intervenor's Response to Dominion's Second Motion for Summary Disposition of Contention EC 3.3.2," both dated September 6, 2006, were served on the persons listed below by deposit in the U.S. mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 6th day of September, 2006.

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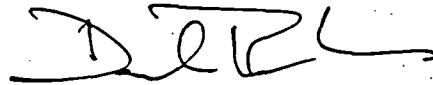
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