

August 22, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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 OBJECTION TO THE BLUE RIDGE ENVIRONMENTAL  
DEFENSE LEAGUE’S SUPPLEMENTAL COMMENTS RELATING TO  
PETITION TO SUSPEND PENDING LICENSING PROCEEDINGS**

**I. INTRODUCTION**

Virginia Electric and Power Company, dba Dominion Virginia Power (“Dominion”), hereby objects to the supplemental comments<sup>1</sup> that the Blue Ridge Environmental Defense League (“BREDL”) has filed in this proceeding purporting to supplement the previously submitted Emergency Petition to Suspend All Pending Reactor Licensing Decisions And Related Rulemaking Decisions Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Corrected April 18, 2011) (“Petition”). The Supplemental Comments are not authorized by any Commission regulation, and the deadline has passed for supplementing the Petition. Further, BREDL does not have standing to file these comments because it is no longer a party to this proceeding. Moreover, the Supplemental Comments include no new information that addresses the Commission’s standard for suspending a proceeding, nor do they make any attempt to address this proceeding specifically. Thus, the Commission should not consider the Supplemental Comments and should deny the Petition.

---

<sup>1</sup> Supplemental Comments by the Blue Ridge Environmental Defense League in Support of Emergency Petition Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011) (“Supplemental Comments”).

## **II. THE SUPPLEMENTAL COMMENTS ARE UNAUTHORIZED**

The Supplemental Comments should not be considered because they constitute an unauthorized filing. Petitions to the Commission to suspend proceedings are treated as motions under 10 C.F.R. § 2.323. AmerGen Energy Co., LLC et al. (Oyster Creek Nuclear Generating Station et al.), CLI-08-23, 68 N.R.C. 461, 476 (2008); Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-02-23, 56 N.R.C. 230, 237 (2002). 10 C.F.R. § 2.323 allows for an answer to a motion and no further filings. No other NRC regulation contemplates or allows for the filing of supplemental comments to motions pending before the Commission.

Moreover, the Secretary issued an Order (“Order”) on April 19, 2011 that “set a schedule for further briefing” in connection with the Petition. Order at 1. The Order directed that (1) “[a]ny supplements to the petition may be filed no later than Thursday, April 21, 2011” (id. at 1-2, footnote omitted) and (2) that “[a]ny person may file an answer to the petition, or a brief *amicus curiae*, no later than Monday, May 2, 2011.” Id. at 2. The Order does not authorize any additional filings relating to the Petition. The April 21, 2011 deadline for supplementing the Petition has clearly passed, and BREDL did not request an extension of that deadline or otherwise request leave to file its Supplemental Comments.

## **III. BECAUSE BREDL IS NO LONGER A PARTY TO THE NORTH ANNA COL PROCEEDING, IT IS NOT ENTITLED TO SEEK SUSPENSION OF THE PROCEEDING OR SUPPLEMENT THAT REQUEST**

As Dominion has previously argued, BREDL was not entitled to file the Petition in this proceeding because it is no longer a party. See Dominion’s Answer Opposing Petition to Suspend Pending Licensing Proceedings at 7-8 (May 2, 2011) (“Dominion Answer”). By the

same token that BREDL was not entitled to seek suspension of the proceeding, BREDL has no right to supplement that request.

#### **IV. THE SUPPLEMENTAL COMMENTS ARE IRRELEVANT AND MERITLESS**

Even if BREDL's Supplemental Comments were somehow authorized (which they are not), they are irrelevant because they make no attempt to address the standards that the Commission applies to suspension requests. As Dominion discussed in its answer opposing the Petition, the Commission considers suspension of licensing proceedings to be a "drastic" action that is not warranted absent "immediate threats to public health and safety." See Dominion Answer at 8, and cases cited therein. In addition, the Commission considers whether moving forward with proceedings would prove an obstacle to fair and efficient decision making, or prevent appropriate implementation of any rule or policy changes that might emerge from its ongoing evaluation of that event. See id. at 9. The Supplemental Comments make no effort to address these considerations. They certainly do not demonstrate that suspension is warranted by any immediate threats to public health and safety. Indeed, as the Supplemental Comments admit, the NRC's Fukushima Task Force has concluded that "continued operation and continued licensing activities do not pose an imminent risk to public health and safety."<sup>2</sup> The Supplemental Comments provide no explanation of how there could possibly be such a threat or need to suspend the North Anna Unit 3 COL proceeding where a final decision is not expected until late 2013, and plant operation is not contemplated until a number of years thereafter.

Instead, most of the Supplemental Comments are devoted to argument that the NRC must consider the Task Force Report as new and significant information required to be evaluated

---

<sup>2</sup> Recommendations for Enhancing Reactor Safety in the 21<sup>st</sup> Century, The Near Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) at vii, 18 ("Task Force Report").

under the National Environmental Policy Act (“NEPA”), but even this argument fails to explain why the North Anna Unit 3 COL proceeding should be suspended. The draft supplemental environmental impact statement (“SEIS”) for the North Anna Unit 3 COL application (as revised in June 2010 to adopt the US-APWR design) is not scheduled to be issued until next year, at which time BREDL will have the opportunity to submit comments if it believes that any new and significant information has been ignored; and the final SEIS is not scheduled to be issued until October 2012. Thus, there is ample time to consider any implications of the Fukushima Daiichi accident, if there are any, and absolutely no reason to suspend the proceeding.

Moreover, if anything, the Supplemental Comments demonstrate just how lacking in merit petitioners’ NEPA argument is. The suggestion that Task Force recommendations must be evaluated as severe accident mitigation alternatives (SAMAs) without considering cost (see Supplemental Comments at 14-15) is simply at odds with the Commission’s regulations implementing NEPA, which expressly provide that (with certain exceptions not applicable here) an applicant’s environmental report and the NRC Staff’s EIS should include consideration of the economic, technical and other benefits and costs of the proposed action and alternatives. 10 C.F.R. §§ 51.49(c), 51.71(d). Any suggestion to the contrary is an impermissible challenge to the NRC rules, barred by 10 C.F.R. §2.335(a). Further, Commission case law also makes it clear that the goal of SAMA analysis “is only to determine what safety enhancements are cost-effective to implement.” Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), CLI-10-11, 71 N.R.C. \_\_\_, slip op. at 39 (Mar. 26, 2010).

Finally, the Supplemental Comments make absolutely no attempt to relate any of the Task Force recommendations to North Anna Unit 3, or to show that there is any deficiency in the North Anna Unit 3 Environmental Report (Rev. 3, June 2010) (“ER”). Indeed, the only

discussion of the environmental report appears to have been copied from comments intended for another proceeding and do not even pertain to North Anna. The Supplemental Comments inaccurately assert that the environmental documents associated with the proposed North Anna reactor do not address the radiological consequences of design basis accidents. Supplemental Comments at 13. Contrary to that assertion, section 7.1.4 and Tables 7.1-3 through Table 7.1-12 of the ER present the radiological consequences of the design basis accidents (and section 7.2 presents the consequences of severe accidents). The Supplemental Comments refer to section 7.1.1 as indicating that the reactor can be operated without undue risk to the health and safety of the public, and to section 7.1.4 as concluding that any health effects resulting from design basis accidents are negligible (see Supplemental Comments at 13), but these sections of the North Anna ER do not contain such statements. Instead, these references in the Supplemental Comments appear to relate to the environmental report for Virgil C Summer, Units 2 and 3. The Supplemental Comments state that this conclusion is based on a review of design basis accidents considered in the AP 1000 Design Control Document (id. at 13), but the proposed North Anna Unit 3 is a US-APWR.

The Supplemental Comments refer to the Task Force recommendation that licensees reevaluate seismic and flooding hazards and if necessary update the design basis (Supplemental Comments at 16, citing Task Force Report at 30 (Recommendation 2.1)); but the Supplemental Comments conveniently fail to mention that with respect to this recommendation (which is applicable only to existing licensees):

[t]he Task Force concludes that all of the current early site permits already meet the requirements of detailed recommendation 2.1, relating to the design-basis seismic and flooding analysis, and all of the current COL and design certification applicants are addressing them adequately in the context of the updated state-of-the-art and regulatory guidance used by the staff in its reviews.

Task Force Report at 71. Thus, the Task Force report provides no basis for any further assessment of the seismic or flooding hazards for North Anna. Similarly, the reference to tsunami hazards (Supplemental Comments at 16) has no bearing on North Anna, which is an inland location in excess of 100 miles from the coast. The reference to requiring reliable hardened vent designs in BWR facilities with Mark I and II containments (Supplemental Comments at 17) is likewise inapplicable to the US-APWR. And while there are some Task Force recommendations that the Commission may consider applying to new plants, the Supplemental Comments make no attempt to show that any such recommendations would represent a potentially cost-beneficial SAMA for the US-APWR or North Anna Unit 3. For example, while the Supplemental Comments refer to the Task Force Recommendation to enhance spent fuel pool makeup capability and instrumentation (Supplemental Comments at 17), they make no attempt to address the US-APWR design, which includes the capability to deliver gravity-driven flow to the spent fuel pool from the Emergency Feedwater Pits (in addition to cooling capability provided by the two safety-related trains of the spent fuel pit cooling and purification system (SFPCS), designed to withstand natural phenomena). US-APWR DCD (Rev. 3) at §§ 9.1.3.1, 9.1.3.3.2. In sum, the Supplemental Comments do not come close to demonstrating the need for any further environmental analysis, and they certainly do not demonstrate any need to suspend a proceeding not scheduled for completion until 2013.

## **V. CONCLUSION**

In conclusion, the Supplemental Comments are nothing more than an unauthorized filing by an entity that is not a party to this proceeding that makes no argument that might lead the

Commission to suspend this proceeding. Consequently, the Commission should disregard the Supplemental Comments and move expeditiously to deny the Petition.

Respectfully Submitted,

/Signed electronically by David R. Lewis/

---

David R. Lewis  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
Tel. (202) 663-8474

Lillian M. Cuoco  
Senior Counsel  
Dominion Resources Services, Inc.  
120 Tredegar Street, RS-2  
Richmond, VA 23219  
Tel. (804) 819-2684

Counsel for Dominion

Dated: August 22, 2011

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Before the Commission

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	)	

**CERTIFICATE OF SERVICE**

I hereby certify that Dominion's Objection to the Blue Ridge Environmental Defense League's Supplemental Comments Relating to Petition to Suspend Pending Licensing Proceedings, dated August 22, 2011, was provided to the Electronic Information Exchange for service to those individuals on the service list in this proceeding, this 22nd day of August, 2011.

Secretary  
Att'n: Rulemakings and Adjudications Staff  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Email: [secy@nrc.gov](mailto:secy@nrc.gov), [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Office of Commission Appellate  
Adjudication  
Mail Stop O-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

Ronald M. Spritzer, Esq. Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [rms4@nrc.gov](mailto:rms4@nrc.gov)

Dr. Richard F. Cole  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [rfc1@nrc.gov](mailto:rfc1@nrc.gov)

Dr. Alice C. Mignerey  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [acm3@nrc.gov](mailto:acm3@nrc.gov)

Alan S. Rosenthal, Esq.  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [rsnthl@comcast.net](mailto:rsnthl@comcast.net)



Louis A. Zeller  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, NC 28629  
E-mail: BREDL@skybest.com

John D. Runkle, Esq.  
Attorney at Law  
Post Office Box 3793  
Chapel Hill, NC 27515  
jrunkle@pricecreek.com

North Carolina Utilities Commission  
Louis S. Watson, Jr.  
Senior Staff Attorney  
4325 Mail Service Center  
Raleigh, NC 27699-4325  
E-mail: swatson@ncuc.net

Robert M. Weisman, Esq.  
Anthony C. Wilson, Esq.  
Marcia Carpentier, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: Robert.Weisman@nrc.gov;  
Anthony.Wilson@nrc.gov;  
Marcia.Carpentier@nrc.gov

James Patrick Guy II, Esq.  
LeClair Ryan  
4201 Dominion Boulevard, Suite 200  
Glen Allen, VA 23060  
E-mail: James.Guy@leclairryan.com

/Signed electronically by David R. Lewis/

---

David R. Lewis