April 27, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. EA-12-051
All Power Reactor Licensees and Holders	)	
Of Construction Permits in Active or	)	ASLBP No. 12-918-01-EA
Deferred Status	)	

DOMINION'S ANSWER OPPOSING REQUESTS FOR HEARING

I. INTRODUCTION

Virginia Electric and Power Company (dba Dominion Virginia Power), Dominion Nuclear Connecticut, Inc., and Dominion Energy Kewaunee, Inc. (collectively, "Dominion"), as the licensees for the North Anna, Surry, Millstone, and Kewaunee power stations, hereby answer the requests ("Requests") submitted by Pilgrim Watch (PW)[1] and Beyond Nuclear (BN)[2] (collectively, "Petitioners") seeking a hearing on the Order to Modify Licenses with Regard to Reliable Spent Fuel Pool Instrumentation issued by the Commission on March 12, 2012 (the "Order").[3] The BN Request purports to adopt without any modification the substantive arguments advanced in the PW Request. As discussed below, the Requests should be denied because (1) Petitioners are seeking to raise issues outside of the scope of any proceeding related

---

[1] Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent [sic] Reliable Spent Fuel Pool Instrumentation (Apr. 2, 2012) ("PW Request"), as supplemented by the Pilgrim Watch Supplement to Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent [sic] Reliable Spent Fuel Pool Instrumentation (Apr. 12, 2012).

[2] Beyond Nuclear Pleading to Co-Petition in the Matter of Pilgrim Watch Request for Hearing Regarding Insufficiency of Order Modifying Licenses with Regard to Spent Fuel Pool Modifications (Apr. 3, 2012) ("BN Request").

[3] Consistent with 10 C.F.R. § 2.309(h)(1), this Answer to both the PW Request and the BN Request is filed within 25 days of their service. Because the BN Request adopts the PW Request and accompanying exhibits verbatim, Dominion is providing this consolidated response to both parties' submissions.

to the Order, (2) Petitioners do not have standing, and (3) Petitioners have not identified any admissible contention.[4]

II. BACKGROUND

On March 12, 2012, the Commission issued an Order immediately modifying the licenses of all licensees, including Dominion, who are power reactor licensees or construction permit holders, to require provisions for reliable spent fuel pool indications. See 77 Fed. Reg. 16,082 (Mar. 19, 2012). The Order imposes a series of requirements to "provide a greater capability" with respect to "a reliable means of remotely monitoring wide-range spent fuel pool levels to support effective prioritization of event mitigation and recovery actions in the event of a beyond-design-basis external event." Id. at 16,084.[5]

The Order states that "[i]n accordance with 10 CFR 2.202, the licensee or CP holder must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order." Id. at 16,085. "If a person other than the Licensee or CP holder requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d)." Id. at 16,086. If a hearing on the Order is held, "the issue to be considered at such hearing shall be whether this Order should be sustained." Id. at 16,085 (emphasis added).

---

[4] In addition to these deficiencies, the BN Request was untimely filed on April 3, 2012. The Order, issued on and dated March 12, 2012, required any hearing request to be filed within 20 days of the date of the Order. By these terms, the deadline for filing a hearing request was April 2, 2012. Although BN submits that "the Final Order and package did not become a public document until March 14, 2012" (BN Request at 2), BN does not deny that it in fact received the Order on March 12, 2012. The Order was distributed on the Commission's electronic distribution list (listserve) for multiple dockets on March 12, 2012, including EA-12-051. Mr. Paul Gunter of BN is shown among the EA-12-051 docket distribution list recipients of the Order as it was emailed by Commission staff on March 12, 2012. Thus, BN would have actually received the Order on March 12, 2012.

[5] The specific requirements, as applicable to licensees and construction permit holders identified in Attachment 1 to the Order, are set forth in Attachments 2 and 3 to the Order. 77 Fed. Reg. at 16,084.

III. DISCUSSION

A. The Requests Should Be Denied Because They Seek a Hearing on Issues Outside the Scope of the Proceeding

The Requests should be denied because the issues they seek to raise are outside the scope of the proceeding. The Requests assert that the Order "is insufficient to protect public health and safety and must be supplemented with a requirement for licensees to re-equip their spent fuel pools to low-density, open-frame design and storage of assemblies >5 years removed from the reactor core to the pool placed in dry casks." PW Request at 5. Moreover, the Requests contend that "[t]he Order's focus simply on spent fuel pool instrumentation fails to address the real problem." Id. at 3. As discussed above, the NRC has explicitly limited the scope of this proceeding to the question of whether the Order should be sustained, and Petitioners' Requests go far beyond this narrow question.

It has long been recognized that the Commission has authority under the Atomic Energy Act to limit the scope of a hearing on an enforcement order to the issue of whether the order should be sustained. See Bellotti v. NRC, 725 F.2d 1380, 1381-82 (D.C. Cir. 1983); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-04-05, 59 N.R.C. 52, 56 (2004). Clearly, Petitioners' attempt to turn this proceeding into a hearing on whether the "NRC's assumptions about U.S. operator's capability to mitigate an accident at Pilgrim NPP, or similar reactors, are unrealistically optimistic" (PW Request at 11), as well as an "operator's ability to carry out mitigative measures . . . in an accident environment" (id.), is precisely the type of "interminable, free-ranging" expansion that would deluge the Commission and hamper its ability to impose focused compensatory measures. Bellotti, 725 F.2d at 1381. If successful, Petitioners would turn this focused regulatory proceeding into exactly the type of "amorphous

public extravaganzas" that Bellotti eschews. Id. at 1382-83. Thus, the issues which Petitioners seek to litigate are not appropriate matters for this proceeding.

Rather than addressing the question of whether the Order should be sustained, Petitioners attack the factual assumptions on which the Order is based and seek to supplement the Order with additional requirements. PW Request at 11. However, as the Commission has affirmed, "Bellotti . . . holds that NRC hearing petitioners may not seek additional measures going beyond the terms of the enforcement order triggering the hearing request." Maine Yankee, CLI-04-05, 59 N.R.C. at 58 (footnote omitted); see also Sequoyah Fuels Corp. (UF_6 Production Facility), CLI-86-19, 24 N.R.C. 508, 513-14 (1986). Similarly, a request to litigate the factual predicate of an order "is exactly the type of attempt to expand the scope of an enforcement proceeding that the narrowly drawn order in this instance is intended to and properly does preclude." Sequoyah, CLI-86-19, 24 N.R.C. at 513. Since Petitioners nowhere challenge whether the Order should be sustained, which is the only question within the scope of this proceeding, their request for a hearing must be denied.

B. The Requests Should Be Denied Because Petitioners Lack Standing

The Requests must also be denied because Petitioners have not demonstrated their standing to challenge the Order. A petitioner such as PW or BN is not affected when its only injury stems from the absence of additional measures in an enforcement order.

In order to be a party to an enforcement proceeding,[6] a petitioner must demonstrate that it "has an interest that may be affected by the proceeding, i.e., it has standing to participate." Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-94-12, 40 N.R.C. 64, 71 (1994). To

[6] Although the Order did not arise out of any violation, the NRC characterizes orders to modify licenses as enforcement orders under 10 C.F.R. § 2.202. See 77 Fed. Reg. at 16,084 (citing 10 C.F.R. § 2.202).

demonstrate standing, "a petitioner must (1) allege an injury in fact that is (2) fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision." Id. at 71-72.

Orders modifying a license require an "added dimension" to the standing analysis, as articulated in Bellotti, supra. Detroit Edison Co. (Fermi Power Plant Independent Spent Fuel Storage Installation), LBP-09-20, 70 N.R.C. 565, 575 (2009), aff'd, CLI-10-03, 71 N.R.C. 49 (2010). Bellotti holds that, where the NRC has limited the scope of the proceeding to the question of whether an order should be sustained (see 725 F.2d at 1382 & n.2), it has "preclud[ed] from intervention persons . . . who do not object to the Order but might seek further corrective measures." Bellotti, 725 F.2d at 1382 n.2. Thus, in such a context, "a petitioner cannot obtain a hearing by simply suggesting that the order should be strengthened in some way. Rather, a petitioner must show that he would be better off in the absence of any order at all." Fermi, LBP-09-20, 70 N.R.C. at 575.

Here, Petitioners have made no such showing. The injuries alleged by PW and BN are not fairly traceable to the Order or redressable in this proceeding. Petitioners' concerns with the sufficiency of the Order modifying facility licenses lie outside the scope of the opportunity for hearing on the Order where, as here, the issue specified for hearing is only "whether this Order should be sustained." 77 Fed. Reg. at 16,085. In essence, by asserting that they may be harmed by the failure of the content of the Order, i.e., the insufficiency of the requirements, Petitioners are asserting a claim that is not redressable in this proceeding. In the same vein, Petitioners are suffering no injury that is fairly traceable to the Order. Petitioners certainly are not injured by the added safety measures imposed by the Order. Rather, whatever purported injury that Petitioners believe they are suffering can only relate to the alleged need for measures outside the scope of this limited proceeding. If Petitioners wish to seek more stringent measures or contest

the implementation of the Order, then the proper vehicle is a petition under 10 C.F.R. §2.206. See Bellotti, 725 F.2d at 1382.

Finally, Petitioners have made no showing of individualized interest with respect to Dominion's plants. PW submits that many of its members live in the vicinity of the Pilgrim Nuclear Power Station, but makes no attempt to address standing to challenge the Order as it applies to any other plant. PW Request at 2. BN alleges that it has members who "live, work and recreate within the 50-mile Emergency Planning Zone for nuclear power plants with spent fuel pools subject to EA-12-051 who feel that their health and safety is adversely impacted by EA-12-050 [sic] as currently written . . . ." BN Request at 1-2. BN fails to identify any specific members as required by 10 C.F.R. § 2.309(d). Further, these vague references to the distance of unspecified individuals to unspecified plants are inadequate to support standing, as the "proximity presumption" is inapplicable in cases involving enforcement orders. See Nuclear Fuel Services, Inc. (Special Nuclear Facility), LBP-07-16, 66 N.R.C. 277, 293-94 (2007). Accordingly, Petitioners have failed to demonstrate their standing to challenge the Order, and certainly have made no showing whatsoever of any cognizable interest in its application to any of Dominion's units.

C. The Requests Should Be Denied Because Petitioners Identify No Admissible Contention

Finally, the Requests should be denied because Petitioners identify no contention meeting the admissibility standards in 10 C.F.R. § 2.309(f)(1). Because the sufficiency of the Order is beyond the scope of this proceeding, the sole contention raised by Petitioners fails to satisfy 10 C.F.R. § 2.309(f)(1)(iii) or (iv). Further, even if the sufficiency of the Order were within the scope of the proceeding, which it is not, the contention would still be inadmissible under 10

C.F.R. § 2.309(f)(1)(v)-(vi), because of a lack of requisite support demonstrating the existence of a genuine dispute. The contention raised in the PW Request appears focused on operating boiling water reactors (indeed, PW captions its request as pertaining to "Operating Boiling Water Licensees"), not pressurized water reactors like Dominion's operating units.[7] Indeed, the documents on which PW appears to rely are in large measure pleadings in the Pilgrim license renewal proceeding. PW Request at 4-5.

Further, those documents have already been considered by the Commission, and none of them warranted any relief. The Commonwealth of Massachusetts' 2005 hearing request/rulemaking petition (see PW Request at 4) and the 2005 National Academy of Sciences Report (see PW Request at 12-15) were carefully considered by the Commission in its decision denying the Commonwealth's request for rulemaking to require analysis of measures to further mitigate spent fuel pool accident risk in license renewal proceedings. 73 Fed. Reg. 46,204 (Aug. 8, 2008), aff'd, New York v. NRC, 589 F.3d 551 (2d Cir. 2009) (per curiam). The June 1, 2011 Report by Gordon Thompson (see PW Request at 4, 8-10) was considered by the Licensing Board in the Pilgrim license renewal proceeding, which found inter alia that the Thompson Report did not raise any significant new information and was too speculative to demonstrate a genuine dispute in that proceeding. Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station), LBP-11-35, 74 N.R.C. __, slip op. at 65-66 (Nov. 28, 2011), aff'd, CLI-12-06, 75 N.R.C.__, slip op. at 19-26 (Mar. 8, 2012). Since none of these documents which PW now seeks to recycle previously raised a significant or material concern, it is hard to fathom how they can now demonstrate any insufficiency in the Order.

[7] The only boiling water reactor owned by Dominion is the permanently shut-down, defueled Millstone Unit 1. Because it is no longer licensed to operate, that unit is not subject to the Order.

More importantly, neither Request makes any effort to relate any of this information to Dominion's units. The Requests make no showing that Dominion's nuclear units present any unacceptable risk. Accordingly, even if the sufficiency of the Order were within the scope of the proceeding (which it is not), the Requests provide no basis for challenging the sufficiency of the Order as applied to Dominion's units (or indeed to any other reactor).

IV. CONCLUSION

For all of the above stated reasons, the Requests should be denied.

Respectfully submitted,

/Signed electronically by David R. Lewis/

David R. Lewis
Stephen L. Markus
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1122
Tel. (202) 663-8474
Email: david.lewis@pillsburylaw.com

Lillian M. Cuoco
Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street, RS-2
Richmond, VA 23219
Tel.(804) 819-2684
Email: lillian.cuoco@dom.com

Counsel for Dominion

Dated: April 27, 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	Docket No. EA-12-051
All Power Reactor Licensees and Holders	)	
Of Construction Permits in Active or	)	ASLBP No. 12-918-01-EA-BD01
Deferred Status	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of "Dominion's Answer Opposing Requests for Hearing," dated April 27, 2012, was provided to the Electronic Information Exchange for service on the individuals listed below, this 27th day of April, 2012.

Secretary
Att'n: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAMAIL@nrc.gov

Administrative Judge
Alan S. Rosenthal, Chair
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: alan.rosenthal@nrc.gov;
Rsnthl@verizon.net

Administrative Judge
E. Roy Hawkens
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: roy.hawkens@nrc.gov

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: anthony.baratta@nrc.gov

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ogcmailcenter@nrc.gov

Ms. Mary Lampert
148 Washington Street
Duxbury, MA 02332
mary.lampert@comcast.net

Paul Gunter
Beyond Nuclear
6930 Carroll Avenue, Suite 400
Takoma Park, MD 20912
E-mail: paul@beyondnuclear.com

/Signed electronically by/

David R. Lewis