

April 1, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
VIRGINIA ELECTRIC AND POWER CO.)	
dba DOMINION VIRGINIA POWER,)	
and OLD DOMINION ELECTRIC)	Docket No. 52-017-COL
COOPERATIVE)	
)	
(Combined License Application for)	
North Anna Unit 3))	

NRC STAFF ANSWER TO
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
MOTION TO REOPEN AND ADMIT NEW CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(3), the staff of the U.S. Nuclear Regulatory Commission (NRC Staff or Staff) hereby answers the Blue Ridge Environmental Defense League's (BREDL) "Motion to Reopen and Admit New Contention" (Reopening Motion) (ADAMS Accession No. ML14067A001) dated March 7, 2014. For the reasons set forth below, the NRC Staff opposes the Reopening Motion and the contention submitted therein (Proposed Contention 15) because the Reopening Motion fails to satisfy the requirements of 10 C.F.R. § 2.326 for reopening a closed record in a proceeding and fails to proffer an admissible contention as required by 10 C.F.R. § 2.309(f)(1).

Specifically, the Reopening Motion fails to satisfy the 10 C.F.R. § 2.326 reopening standards in that it fails to address a significant safety or environmental issue, as required by 10 C.F.R. § 2.326(a)(2), fails to demonstrate that a materially different result would be or would have been likely upon proving the claims in its contention, as required by 10 C.F.R. § 2.326(a)(3), and fails to attach supporting affidavits as required by § 2.326(b). Further, Proposed Contention 15 does not satisfy the contention admissibility requirements because it

fails to provide a specific statement of the issue of law or fact raised or controverted with a brief explanation of the basis, fails to demonstrate that the issue raised is within the scope of the proceeding, fails to demonstrate that the issue raised is material to the findings the NRC must make to support the action involved in the proceeding, fails to provide a concise statement of supporting facts or expert opinions together with references to specific sources, and fails to demonstrate that a genuine dispute exists with the applicant on a material issue of law or fact with references to specific portions of the application in dispute or identification of the alleged failure along with supporting reasons, as required by 10 C.F.R. § 2.309(f)(1)(i)-(vi).

BACKGROUND

On November 26, 2007, the Virginia Electric and Power Company, d/b/a Dominion Virginia Power, and Old Dominion Electric Cooperative (collectively, Dominion or Applicant) submitted their application for a combined license (COL) to construct and operate one new reactor at the North Anna site (Application). See Dominion Virginia Power; Notice of Hearing and Opportunity to Petition for Leave to Intervene on a Combined License for North Anna Unit 3, 73 Fed. Reg. 12,760 (Mar. 10, 2008). BREDL filed a petition for intervention and request for hearing on May 9, 2008, which the Atomic Safety and Licensing Board (Board) presiding over this proceeding granted on August 15, 2008. *Virginia Elec. and Power Co. (Combined License Application for North Anna Unit 3)*, LBP-08-15, 68 NRC 294, 299 n.1, 338 (2008). On April 6, 2011, in LBP-11-10, the Board dismissed all contentions pending before it at that time, but did not terminate the proceeding. *Virginia Elec. And Power Co. (Combined License Application for North Anna Unit 3)*, LBP-11-10, 73 NRC 424, 453 (2011). In LBP-11-22, the Board subsequently declined to reconsider its decision in LBP-11-10 in regard to termination of the proceeding. *Virginia Elec. and Power Co. (Combined License Application for North Anna Unit 3)*, LBP-11-22, 74 NRC 259, 285 (2011).

On August 23, 2011, an earthquake took place near Mineral, Virginia, centered approximately eleven miles from the North Anna facility. On September 22, 2011, BREDL

requested admission of Contention 14 based on the earthquake. Request to Admit Intervenor's New Contention (Sept. 22, 2011) (ADAMS Accession No. ML11265A350) (BREDL 2011 Request). On October 20, 2011, the Board granted a consent motion that Dominion filed on behalf of all the parties in which the parties requested the Board to hold Contention 14 in abeyance pending Dominion's expected submission of the results of its assessment of whether any changes should be made to the Application in light of the earthquake. Order (Granting Consent Motion to Hold BREDL's New Contention in Abeyance) at 2 (Oct. 20, 2011) (unpublished) (ADAMS Accession No. ML11293A207). That decision also stated that BREDL would have 30 days to amend its new contention based on any new information arising on or after the August 23, 2011, earthquake. *Id.*

On June 7, 2012, in response to a request for review of LBP-11-22, the Commission terminated the proceeding and remanded the proceeding to the Board "to exercise jurisdiction solely for the limited purpose of considering whether to reopen the record and admit BREDL's seismic contention." *Virginia Elec. and Power Co.* (Combined License Application for North Anna Unit 3), CLI-12-14, 75 NRC 692, 702 (2012), *reconsideration denied* CLI-12-17, 76 NRC 207, 212 (2012).

In July, 2012, following the Commission's clarification of the status of the adjudicatory proceeding, the Board issued an order granting BREDL sixty days from the date when Dominion informs the Board and Parties that the seismic assessment is complete in which to move to reopen the proceeding on seismic issues. Order (Setting Time for Filing motion to Reopen the Proceeding), at 2 (July 26, 2012) (unpublished) (ADAMS Accession No. ML12208A268). The Board Order expressly identified each of the reopening standards of 10 C.F.R. § 2.326 BREDL would be required to satisfy in order to justify admission of a new contention. *Id.* at 2-3.

On May 28, 2013, BREDL submitted to the Board a "Request to Reopen and Admit New Contention" based on issues unrelated to the pending seismic analyses, but instead based on Dominion's letter to the NRC Staff describing its plans to incorporate a different nuclear reactor

design than the one then-referenced in its application. Request to Reopen and Admit New Contention (May 28, 2013) (ADAMS Accession No. ML13148A508) (BREDL 2013 Request). Although BREDL referenced a new contention in the title of its request to reopen the record, BREDL did not include a new contention along with the request. See *id.*

In a July 23, 2013, unpublished order, the Board cited the Commission decision in CLI-12-14 insofar as it remanded jurisdiction to the Board only “for the limited purpose of considering whether to reopen the record and admit BREDL’s seismic contention.” Order (Holding Motion to Reopen the Proceeding in Abeyance), at 2 (July 23, 2013) (ADAMS Accession No. ML13148A508) (unpublished) citing *North Anna*, CLI-12-14, 75 NRC at 702 (2012). The Board reiterated that, as constituted, it had jurisdiction only to rule on a petition to reopen that challenges the adequacy of applicant’s pending seismic analyses. *Id.* Since BREDL had not submitted a contention, the Board was unable to determine whether any portion of the petition fell within its limited grant of jurisdiction. *Id.* Because BREDL indicated in its 2013 Request that it intended to file one or more contentions dealing with seismic issues (BREDL 2013 Request at 1-2), the Board held the request in abeyance pending the submission of contentions. *Id.* The Board concluded by again reminding BREDL that a reopening petition must meet each of the strict requirements of 10 C.F.R. § 2.326, and referred to its July 26, 2012, Order in which it explicitly stated these requirements. *Id.* at 2-3.

On January 6, 2014, Dominion submitted a letter informing the Board and all parties in this proceeding of Dominion’s completion of its seismic assessment and an update to the North Anna Unit 3 COL application that incorporated the results of the assessment. Letter from David R. Lewis, Counsel for Dominion, to the Board and Parties (Jan. 6, 2014) (ADAMS Accession No. ML14006A286) (Seismic Update). Along with the letter, Dominion provided BREDL a DVD containing the December 2013 Seismic Update.

On March 7, 2014, BREDL submitted the instant Reopening Motion based on Dominion’s January 6, 2014, Seismic Update.

DISCUSSION

As set forth in detail below, BREDL's Reopening Motion fails to satisfy the 10 C.F.R. § 2.326 criteria for reopening a closed record to admit a new contention. BREDL's Reopening Motion also fails to satisfy the 10 C.F.R. § 2.309(f)(1) criteria for contention admissibility. For these reasons, the Reopening Motion should be dismissed.

I. LEGAL STANDARDS

A. Legal Standards for Reopening a Closed Record

To be accepted, a motion to reopen a closed record must meet each of the 10 C.F.R. § 2.326 requirements. That section states, in relevant part, that:

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised.

10 C.F.R. § 2.326. "[A] timely motion [to reopen] may be denied if it raises issues that are not of major significance to plant safety. . . ." See *Southern Nuclear Operating Co.* (Vogtle Elec. Generating Plant, Units 3 and 4), LBP-10-21, 72 NRC 616, 643 (2010) quoting *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973), *aff'd* CLI-11-8, 74 NRC 214 (2011). If, after considering the submissions before it, a Board is not convinced that a motion to reopen raises a matter of safety significance, it should

deny the motion.¹ *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), CLI-86-7, 23 NRC 233 (1986).²

Motions to reopen a closed record proffering new contentions must satisfy 10 C.F.R. § 2.326(d), which states that:

(d) [a] motion to reopen that relates to a contention not previously in controversy among the parties must also satisfy the § 2.309(c) requirements for new or amended contentions filed after the deadline in § 2.309(b).

Those contentions must also meet the admissibility requirements of 10 C.F.R. § 2.309(f). See *Dominion Nuclear Connecticut, Inc.* (Millstone Power Station, Unit 3), CLI-09-05, 69 NRC 115, 124 (2009).

B. Legal Standards for Admissible Contentions

NRC regulations require that to be admissible, BREDL's contention that it submits with its Reopening Motion must satisfy the general admissibility requirements governing all contentions submitted in NRC proceedings. The legal requirements governing the admissibility of contentions are well established and currently are set forth in 10 C.F.R. § 2.309(f)(1) of the Commission's Rules of Practice.

These requirements may be summarized as follows. An admissible contention must:

- (i) Provide a specific statement of the legal or factual issue sought to be raised;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised is within the scope of the proceeding;

¹ One recent Licensing Board did not address the issue of significance because that Licensing Board decided to deny a motion to reopen for failure to satisfy the other standards of 10 C.F.R. § 2.326. See *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-10-19, 72 NRC 529, 547-49 (2010) *aff'd* CLI-11-2, 73 NRC 333 (2011).

² The Commission did not codify the standards applicable to motions to reopen until 1986, when it promulgated 10 C.F.R. § 2.734, the forerunner to current 10 C.F.R. § 2.326. See *Criteria for Reopening Records in Formal Licensing Proceedings*, 51 Fed. Reg. 19,535, 19,539 (May 30, 1986). Before the Commission promulgated 10 C.F.R. § 2.743, its decisions and those of the Atomic Safety and Licensing Appeal Board laid down the reopening standards. See *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-886, 27 NRC 74 (1988) (balancing lateness of the motion against the gravity of the safety concern raised), citing *Perry*, CLI-86-7, 23 NRC 233.

- (iv) Demonstrate that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at the hearing; and
- (vi) Provide sufficient information to show that a genuine dispute with the applicant exists with regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in a case where the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief.

10 C.F.R. § 2.309(f)(1)(i) through (vi).

The purpose of these requirements is to “focus litigation on concrete issues and result in a clearer and more focused record for decision.” Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004); *see also Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553-54 (1978); *BPI v. AEC*, 502 F.2d 424, 428 (D.C. Cir. 1974); *Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974). The Commission has stated that it “should not have to expend resources to support the hearing process unless there is an issue that is appropriate for and susceptible to, resolution in an NRC hearing.” 69 Fed. Reg. at 2202. The Commission has emphasized that the rules on contention admissibility are “strict by design.” *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001), pet. for reconsideration denied, CLI-02-01, 55 NRC 1 (2002). Failure to comply with any of these requirements is grounds for the dismissal of a contention. 69 Fed. Reg. at 2221; *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). “Mere ‘notice pleading’ does not suffice.” *Amergen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 119 (2006). Where a COL application incorporates by reference an issued ESP, matters resolved in the

ESP are treated as resolved and are outside the scope of the COL proceeding unless the conditions of 10 C.F.R. § 52.39(a)(2) apply. 10 C.F.R. §§ 52.39(a)(2); 52.79(b)(1)-(2).

II. INTERVENOR'S PROPOSED NEW CONTENTION 15

In its Reopening Motion, BREDL states Proposed Contention 15 in two different ways—almost exactly as it stated proposed Contention 14.³ First, BREDL states “that [Dominion] has not presented a sound probabilistic basis for the magnitude of the possible adverse consequences and the likelihood of occurrence of each consequence for issuing a license to construct and operate North Anna Unit 3.” Reopening Motion at 1-2. Second, BREDL claims “that the design of North Anna Unit 3 is unsuitable for the site.” *Id.* at 10.⁴

To support Proposed Contention 15, BREDL asserts the following bases. BREDL states that Dominion must provide a probabilistic basis for and analysis of the likelihood of “possible” adverse consequences in its application. *Id.* BREDL speculates that data Dominion was required to submit to satisfy 10 C.F.R. § 100.23 “may have been hampered,” and mentions the failure of one sensor. *Id.* at 5. BREDL cites the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 (2006)) and the requirements of 10 C.F.R. § 51.92 for the proposition that new and significant information must be assessed and integrated into the NRC’s final environmental impact statement (FEIS) for North Anna Unit 3. *Id.* at 7. BREDL claims that “technical issues raised by the August 2011 quake are central to the safety determinations which [the] NRC must make” and states that “[t]echnical specifications include *inter alia* SCDF: Seismic core damage frequency.” *Id.* at 6, 7. BREDL further states that “‘In nuclear power plant seismic risk assessment, the site earthquake-induced vibratory ground motion is usually expressed in terms of the peak ground acceleration (PGA).’ Appendix A Seismic Core—Damage Frequency Estimates.” *Id.* at 7. BREDL also states that a seismic hazard analysis

³ See BREDL 2011 Request.

⁴ BREDL restates the claims it submitted in proposed Contention 14. See BREDL 2011 Request at 4, 10.

(SHA) conducted in Generic Issue 199 showed a higher seismic hazard over most frequency ranges compared to an earlier Electric Power Research Institute/Seismicity Owners Group (EPRI-SOG) study.”⁵ BREDL claims that “probabilistic risk assessments [(PRAs)] conducted for the North Anna 3 combined license application (COLA) and other documents do not account for unexpected failure modes.” *Id.* BREDL quotes an article stating that the PRA method has difficulty “modeling common-cause or common mode failures.”⁶ BREDL cites a blog discussion regarding the August 23, 2011, earthquake and the Central Virginia Seismic Zone (CVSZ). *Id.* & note 15. BREDL complains that Dominion has applied for departures, variances, and exceptions in connection with its Application. *Id.* at 10. BREDL also claims the North Anna Unit 3 early site permit (ESP) is “outdated.” *Id.* BREDL notes that the earthquake “registered 5.8 Richter and horizontal acceleration caused earth to move 4½ inches under the 115-ton steel casks storing highly radioactive nuclear waste” and notes that “[t]he quake was felt by residents from Georgia to Maine and Illinois.” *Id.*

III. STAFF RESPONSE

BREDL’s Reopening Motion should be dismissed because it fails to satisfy three of the 10 C.F.R. § 2.326 criteria for reopening a closed record and fails to satisfy the 10 C.F.R. § 2.309(f)(1) criteria for contention admissibility. In regard to the reopening standards in 10 C.F.R. § 2.326, the Reopening Motion fails to 1) address a significant safety issue; 2) demonstrate that a materially different result would be or would have been likely should BREDL prove the claims in Proposed Contention 15; and 3) present affidavits by competent individuals with knowledge of the facts alleged setting forth the factual and/or technical bases for the movant’s claims. In regard to the contention standards in 10 C.F.R. § 2.309(f)(1), the

⁵ *Id.* at 8, citing Generic Issue 199 (GI-199) Implications of Updated Probabilistic Seismic Hazard Estimates in Central and Eastern United States on Existing Plants, Safety/Risk Assessment (Aug. 2010) (ADAMS Accession No. ML100270639).

⁶ *Id.* at 9, citing Ramana, M.V., “Beyond our imagination: Fukushima and the problem of assessing risk,” *Bulletin of the Atomic Scientists* (Apr. 19, 2011) <http://thebulletin.org/beyond-our-imagination-fukushima-and-problem-assessing-risk-0>.

Reopening Motion fails to 1) provide a specific statement of the issue of law or fact raised or controverted with a brief explanation of the basis; 2) demonstrate that the issue raised is within the scope of the proceeding and is material to the findings the NRC must make to support the action involved in the proceeding; and 3) provide a concise statement of the supporting facts or expert opinions together with references to specific sources and provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact with references to specific portions of the application in dispute or identification of the alleged failure along with supporting reasons.⁷

A. BREDL's Reopening Motion Fails to Satisfy the Requirements to Reopen a Closed Record

BREDL's Reopening Motion fails to satisfy the requirements in 10 C.F.R. § 2.326(a)(2), (3), and (b) for reopening the record. See *North Anna*, CLI-12-14, 75 NRC at 701-03. Specifically, BREDL's Reopening Motion fails to address a significant safety issue, as required by 10 C.F.R. § 2.326(a)(2) and fails to demonstrate that a "materially different result would be or would have been likely" upon proving the claims in its contention⁸ as required by 10 C.F.R. § 2.326(a)(3). BREDL also failed to attach supporting affidavits to its Reopening Motion as required by 10 C.F.R. § 2.326(b).⁹ As a preliminary matter, the Staff addresses the timeliness requirement for reopening in § 2.326(a)(1).

⁷ The NRC Staff notes that many of BREDL's arguments are similar to arguments it submitted in its September 22, 2011, Request to Admit Intervenor's New Contention. See BREDL 2011 Request; see also NRC Staff Answer to "Request to Admit Intervenor's New Contention" Filed by the Blue Ridge Environmental Defense League (Oct. 17, 2011) (ADAMS Accession No. ML11290A281) (NRC Staff 2011 Answer).

⁸ The Commission in CLI-12-14 stated in footnote 66 that the denial or conditioning of a license would obviously be a "materially different result." *North Anna*, CLI-12-14, 75 NRC at 702, citing *Amergen Energy Company, LLC* (Oyster Creek Nuclear Generating Station), CLI-08-28, 68 NRC 658, 673 (2008). The Commission also suggested that BREDL might, alternatively, seek the addition of an ITAAC, a design modification, or the performance of additional analyses prior to license issuance. *Id.*

⁹ The Staff does not object to BREDL's Reopening Motion based on the requirements of 10 C.F.R. § 2.326(a)(1) and (2), since BREDL timely filed its motion within 60 days of Dominion's submission to the NRC of its completed seismic assessment and related update to its application, and the geological and seismological characteristics of the site and the adequacy of the seismic design are significant issues pending before the Staff.

i. The Staff Does Not Object to BREDL's Reopening Motion Based on Timeliness

BREDL filed its Reopening Motion within the time set in the Board's July 2012 Order, and therefore it is not late. In addition, since the Board in its October 2011 Order suspended the proceeding in regard to the BREDL 2011 Request, which was its original motion regarding the August 2011 earthquake, information upon which BREDL relies in its Reopening Motion and which was developed after the October 2011 Board Order may properly be considered. Nonetheless, BREDL relies upon some information regarding probabilistic risk assessment that was available in April 2011, and which BREDL could have raised earlier if BREDL believed this information relevant to some deficiency in the Application. Reopening Motion at 8, n.12. BREDL cited this information in its September 22, 2011, Request to Admit Intervenor's New Contention and the NRC Staff opposed it as not timely in its October 17, 2011, answer brief. See BREDL 2011 Request at 10; NRC Staff 2011 Answer at 10-12. Accordingly, the Board should not consider this information as primary support for Proposed Contention 15.

ii. BREDL Does Not Address a Significant Safety Issue

BREDL does not establish the existence of any safety issue insofar as the seismic design of North Anna Unit 3 is concerned, as the Staff discusses in detail below in connection with the contention admissibility standards. In this regard, BREDL's Reopening Motion is similar to the motions filed in the *Seabrook* and *Perry* proceedings. See *Seabrook*, ALAB-886, 27 NRC at 78 (stating that the movant failed to establish a safety issue regarding the RG-59 cable at issue there); *Perry*, CLI-86-7, 23 NRC at 235-36 (rejecting the movant's claim of significance regarding an earthquake that occurred approximately 10 miles from the facility). *Perry* is particularly instructive since the Perry intervenor had asserted that "the earthquake exceeded the design basis [safe shutdown earthquake (SSE)] in at least one respect," although the intervenor conceded this was not safety-significant. *Perry*, CLI-86-7, 23 NRC at 236.

BREDL does not explain how the August 2011 Mineral, Virginia earthquake reveals any deficiency in the design basis set forth for proposed North Anna Unit 3 in the Application. Reopening Motion at 9-11. Rather, BREDL complains that the early site permit for the North Anna site is the basis for the COL application and is “outdated,” but does not suggest any error in the information in the Applicant’s January 2014 seismic assessment and update to the Application.¹⁰ *Id.* at 10. Mere assertion of a failure to meet a safety regulation, by itself, does not establish a significant safety issue as required by 10 C.F.R. § 2.326(a)(2).¹¹ Accordingly, BREDL has not demonstrated the existence of a safety issue, much less a significant safety issue, and the Reopening Motion should be rejected for this reason alone. 10 C.F.R. § 2.326(a)(2).

iii. BREDL Does Not Demonstrate That a Materially Different Result Would Be Likely.

BREDL does not request any particular relief, although it seems clear that BREDL seeks denial of the Application. Reopening Motion at 1-2. Although BREDL’s Reopening Motion references the August 23, 2011, earthquake, and references articles and a blog discussion of the earthquake, it nowhere explains how Dominion’s Seismic Update is insufficient under the NRC’s regulations such that the Application warrants denial. *Id.* at 3. For this reason, BREDL has failed to explain how the granting of its Reopening Motion will likely result in a material change in the outcome in this proceeding as required by 10 C.F.R. § 2.326(a)(3).

¹⁰ *Id.* at 10. BREDL’s failure to assert even one deficiency in the current Application before the NRC would appear to eliminate the predicate to Commissioner Asselstine’s dissent in *Perry*, namely, that “[t]he Board was told that, in at least one respect, the 1986 Ohio earthquake exceeded the SSE for the Perry plant.” *Perry*, CLI-86-7, 23 NRC at 237 (dissenting views of Commissioner Asselstine).

¹¹ See *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station) (CLI-12-6), 75 NRC 352, 367, 368 & n.85-86, 95 (2012) (“A litigant seeking to reopen a closed record necessarily faces a “heavy” burden. After a record has closed, finality attaches to the hearing process, and after that point, only timely, significant issues will be considered.”) citing *Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 287 (2009); 51 Fed. Reg. at 19539 (“The purpose of this rule is not to foreclose raising of important . . . issues, but to ensure that, once a record has been closed and all timely-raised issues have been resolved, finality will attach to the hearing process.”).

iv. BREDL Does Not Attach an Affidavit to Its Reopening Motion

Furthermore, BREDL fails to attach an affidavit setting forth the factual and/or technical bases for the claims in its contention. BREDL attaches to its Reopening Motion a geology professor's blog discussion and cites to articles discussing nuclear accidents and risk assessment. Reopening Motion at 3, 9, 14-22 citing Bailey, Christopher M. (Professor, Geology), *All Shook Up*, William and Mary W&M Blogs (Dec. 22, 2011) *available at* <http://blogs.wm.edu/author/cmbail/page/4/>. But this blog does not meet the formal requirements for an affidavit. It is not signed and does not include a statement that it is true and correct to the best of the affiant's knowledge and belief, both of which are required by 10 C.F.R. § 2.304(d). See Reopening Motion at 14-22. Moreover, the blog does not even mention the Application; it is not directed to the Application. *Id.* Without more explanation, the blog does not provide any basis to conclude that BREDL has satisfied the criterion in § 2.326(a)(3).

BREDL also states in its Reopening Motion that it "will rely on the expertise of Arnold Gundersen, who has reviewed this submittal but is unable to provide an affidavit because he is traveling." Reopening Motion at 9. Accordingly, BREDL admits that it did not provide Mr. Gundersen's affidavit, but did not request time in addition to the 60-day period the Board granted in which to complete the required affidavit. *Id.* As a result, BREDL has failed to meet the 10 C.F.R. § 2.326(b) requirement to provide affidavits that set forth the bases for why BREDL claims the Reopening Motion meets the requirements of 10 C.F.R. § 2.326(a).

For these reasons, BREDL's Reopening Motion fails to satisfy the reopening requirements of 10 C.F.R. §§ 2.326(a)(2), (3), and (b), and the Board should deny it.

B. BREDL's Reopening Motion Fails to Satisfy the Criteria for Admissible Contentions

i. 10 C.F.R. § 2.309(f)(1)(i)-(ii)

The overarching requirement for admissible contentions is that they must be "set forth with particularity." 10 C.F.R. § 2.309(f)(1). In its Reopening Motion, BREDL does not set forth

with particularity a specific statement of the issue of law or fact controverted, nor does it provide a brief explanation of the basis for Proposed Contention 15.

BREDL first claims that Dominion “has not presented a sound probabilistic basis for the magnitude of the possible adverse consequences and the likelihood of occurrence of each consequence for issuing a license to construct and operate North Anna Unit 3.” Reopening Motion at 1-2. BREDL also claims “that the design of North Anna Unit 3 is unsuitable for the site.” *Id.* at 10. The first claim challenges the way in which the Applicant conducted probabilistic analysis of seismic and geological hazards for North Anna Unit 3. In the first claim, BREDL seems to concede that such an analysis, if done properly, could obtain a result that would support the licensing of North Anna Unit 3. Yet, the second claim appears to assert that no level of analysis could support licensing of the referenced reactor technology in the application for North Anna Unit 3. The second claim, unlike the first claim, challenges the ultimate regulatory finding.

These two claims, due to their difference, each warrant different explanations as to their bases, and different supporting evidence. It is unclear which of these claims BREDL intends as its primary contention, and which portions of the supporting evidence are intended to support which claim. Because Proposed Contention 15 does not articulate the exact nature of the contention and its supporting basis, Proposed Contention 15 fails to meet the first two pleading requirements of 10 C.F.R. § 2.309(f)(1) and should be dismissed.

ii. 10 C.F.R. § 2.309(f)(1)(iii)-(iv)

For a contention to be admissible, 10 C.F.R. § 2.309(f)(1)(iii) requires the issues raised in the contention to be within the scope of the proceeding. Section 2.309(f)(1)(iv) requires an intervenor to demonstrate that the issues raised in the contention are material to the findings the NRC must make to support the action that is involved in the proceeding. Further, where a COL application incorporates by reference an issued ESP, matters resolved in the ESP are treated

as resolved and are outside the scope of the COL proceeding unless certain conditions described in 10 C.F.R. § 52.39(a)(2) apply.

In the Reopening Motion, BREDL contends that assertedly deficient site seismic information is within the scope of the North Anna Unit 3 COL proceeding because the Commission must make a finding in the general sense under the Atomic Energy Act of 1954 (AEA) and NRC regulations and must analyze the environmental impacts of the plant under the National Environmental Policy Act (NEPA). AEA, 42 U.S.C. § 703 (2006); NEPA, 42 U.S.C. § 4321 (2006).

While the NRC must comply with NEPA to issue a COL, and the Applicant must comply with the AEA and NRC regulations for the NRC to issue a COL, BREDL does not describe any issue within the scope of the proceeding that might preclude the NRC from issuing a COL for North Anna Unit 3. This proceeding involves the COL application for North Anna Unit 3. Where a COL application incorporates by reference an issued ESP, as Dominion has done in this proceeding, matters resolved in the ESP are treated as resolved, and are outside the scope of the COL proceeding unless certain conditions apply. See 10 C.F.R. § 52.39(a)(2). Further, matters relating to the already-issued operating licenses for North Anna Units 1 and 2 are outside the scope of this COL proceeding for North Anna Unit 3.

BREDL asserts that the design and seismic hazard analysis for North Anna Unit 3 is unsuitable for the North Anna site and claims that the North Anna Unit 3 ESP is “outdated.” Reopening Motion at 8, 10. BREDL also makes unsupported assertions that the North Anna plant, presumably referring to the currently operating Units 1 and 2, is the “seventh riskiest of all nuclear reactors in the U.S.” *Id.* at 8. BREDL copies a picture of damage to the National Cathedral in Washington, DC, as an indication—without basis—of potential future structural damage that could occur at North Anna Unit 3. *Id.* at 11. Yet BREDL fails to explain how the exceptions listed in 10 C.F.R. § 52.39(a)(2) apply to allow site seismic issues resolved in the earlier ESP proceeding to be revisited in the COL proceeding.

BREDL also fails to explain how its assertions regarding the currently operating North Anna Units 1 and 2 are relevant to the North Anna Unit 3 COL proceeding. BREDL states incorrectly that “the August 2011 quake apparently generated horizontal acceleration 100% over the existing North Anna standard, causing numerous problems such as an electronic sensor failure of eight seconds before power was restored.” *Id.* at 5. Further, BREDL claims that “to comply with 10 C.F.R. § 100.23, these data were essential to the determination of the geological seismological and engineering characteristics of the North Anna Unit 3 site.” *Id.* BREDL provides no explanation of how its unsupported claims regarding the horizontal acceleration standard for North Anna Units 1 and 2 indicate a problem with the North Anna Unit 3 application and Seismic Update. *Id.*

Because BREDL’s claims in its Reopening Motion that relate either to site seismic issues resolved in the ESP proceeding or to North Anna Units 1 and 2 are not within the scope of the North Anna Unit 3 COL application proceeding, these claims cannot be material to the findings that the NRC must make to support the North Anna Unit 3 COL application proceeding. Specifically, when a COL application references an ESP, the relevant question is whether the applicant provided information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the ESP, and whether any variance requested from the ESP complies with regulatory requirements. 10 C.F.R. §§ 52.39(a)(2); 52.79(b)(1)-(2). In Proposed Contention 15, BREDL has not identified any insufficiencies in the ESP and at North Anna Units 1 and 2 let alone explained how they indicate any deficiency in the North Anna Unit 3 COL Application and Seismic Update.

Without more explanation, the claims in BREDL’s contention relating to sufficiency of the North Anna Unit 3 ESP and North Anna Units 1 and 2 are outside the scope of this proceeding and are not material to the findings the NRC must make to support the action that is involved in this proceeding. Therefore, these claims are not adequate bases for Proposed Contention 15.

iii. 10 C.F.R. § 2.309(f)(1)(v)-(vi)

Section 2.309(f)(1)(v) requires that the intervenor provide a concise statement of the alleged facts or expert opinions which support the intervenor's position on the issue and on which the intervenor intends to rely at hearing, together with references to the specific sources and documents on which the intervenor intends to rely to support its position on the issue. Section 2.309(f)(1)(vi) requires an intervenor to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact by referring to specific portions of the application that the intervenor disputes or by referring to specific omissions in the application of items required by law. BREDL has failed to meet both of these requirements.

BREDL makes a number of specific claims, none of which have the support required by 10 C.F.R. § 2.309(f)(1)(v) or demonstrate a genuine dispute with the North Anna Unit 3 Application and Seismic Update as required by 10 C.F.R. § 2.309(f)(1)(vi). BREDL describes aspects of the August 23, 2011, earthquake and asserts that the North Anna Unit 3 Application is generally insufficient without citing any part of the Application and Seismic Update as insufficient or otherwise lacking required information. BREDL also fails to cite to relevant facts and expert opinions that would support its claims.

BREDL states that

[t]echnical specifications include *inter alia* SCDF: Seismic core damage frequency. ACDF is the probability of damage to the core resulting from a seismic initiating event. 'In nuclear power plant seismic risk assessment, the site earthquake-induced vibratory ground motion is usually expressed in terms of the peak ground acceleration (PGA).' Appendix A Seismic Core—Damage Frequency Estimates.

Id. NRC regulations do not require an applicant to address core damage frequency in its technical specifications, unless it submits risk-informed technical specifications. Dominion did not submit risk-informed technical specifications and thus is not required under NRC regulations

to address core damage frequency in its technical specifications. BREDL cites to an “Appendix A,” but does not specify what document they are referencing.

BREDL claims that “probabilistic risk assessments [PRAs] conducted for the North Anna [Unit] 3 COLA and other documents do not account for unexpected failure modes.” *Id.* at 8. BREDL quotes an article stating that the PRA method has difficulty “modeling common-cause or common mode failures.” *Id.* at 9 (internal quotation marks omitted). Yet BREDL again fails to reference an NRC requirement that Dominion must account for all “unexpected failure modes” or where Dominion’s Seismic Update to its application for Unit 3 contains flawed PRA.¹² *Id.*

BREDL states that the earthquake “registered 5.8 Richter and horizontal acceleration caused earth to move 4½ inches under the 115-ton steel casks storing highly radioactive nuclear waste” and that “[t]he quake was felt by residents from Georgia to Maine and Illinois.” *Id.* BREDL fails to cite any support for these assertions and fails to state how these assertions indicate a regulatory deficiency in the Application or Seismic Update.

BREDL cites the 10 C.F.R. § 51.92 requirement that new and significant information must be assessed and integrated into the NRC’s final environmental impact statement (FEIS) for North Anna Unit 3. Reopening Motion at 7. Yet BREDL provides no explanation of any new and significant information in the Seismic Update that must be but was not properly assessed in the FEIS for North Anna Unit 3.

BREDL states that Dominion has applied for “departures, variances, and exceptions” in connection with its application. *Id.* at 10. However, Dominion is permitted under the NRC’s regulations to apply for departures, variances, and exemptions. BREDL fails to explain how these requests are improper.

BREDL cites a blog discussion of the August 23, 2011, earthquake and events that could possibly occur in the Central Virginia Seismic Zone (CVSZ). *Id.* at 9 & note 15. Yet

¹² As indicated above, this information should be disregarded as untimely filed in BREDL’s 2011 Request.

BREDL fails again to state or explain how these discussions indicate that Dominion has omitted or submitted flawed required information in its Application and Seismic Update for North Anna Unit 3.

In each instance listed above BREDL fails to provide adequate support and fails to state specifically what part of Dominion's Application and Seismic Update fails to meet a regulatory requirement. Therefore, the Reopening Motion and Proposed Contention 15 fails to meet the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1)(v) and (vi) and should be dismissed.

CONCLUSION

As set forth in the foregoing discussion, BREDL's Reopening Motion and Proposed Contention 15 fails to satisfy the 10 C.F.R. § 2.326 criteria for reopening a closed record to admit a new contention and fails to satisfy the 10 C.F.R. § 2.309(f)(1) criteria for contention admissibility. For these reasons, the Reopening Motion should be dismissed.

Respectfully submitted,

/Signed (electronically) by/

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**/Executed in Accord with 10 C.F.R.
§ 2.304(d)/**

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Dated at Rockville, Maryland
This 1st day of April, 2014.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
VIRGINIA ELECTRIC AND POWER CO.)	
dba DOMINION VIRGINIA POWER,)	
and OLD DOMINION ELECTRIC)	Docket No. 52-017-COL
COOPERATIVE)	
)	
(Combined License Application for)	
North Anna Unit 3))	

CERTIFICATE OF SERVICE

I hereby certify that the "NRC STAFF ANSWER TO THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S MOTION TO REOPEN AND ADMIT NEW CONTENTION" has been filed through the E-Filing system this 1st day of April, 2014.

/Signed (electronically) by/

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