

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 North Anna Unit 3 Combined License

Docket Nos. 52-017
ASLBP No. 08-863-01-COL
October 20, 2011

REPLY TO ANSWERS IN OPPOSITION TO NEW CONTENTION

Pursuant to 10 C.F.R. § 2.309(h)(2), the Blue Ridge Environmental Defense League with its chapter Peoples Alliance for Clean Energy (BREDL or Intervenor) hereby replies to answers filed by NRC Staff and Dominion-Virginia Power in this matter.

On September 22, 2011, BREDL filed a request to admit a new contention based on the recent earthquake near the North Anna power station. At the request of Dominion, BREDL agreed to a motion which states: "The parties have agreed that this proposed contention should be held in abeyance until Dominion completes its assessment of whether any changes should be made to the Unit 3 application in light of the August 23, 2011 Mineral Virginia earthquake, and if so, what those changes are." Dominion's seismic analysis is not expected to be complete before the third quarter of 2012. The NRC Staff counsel also authorized the motion which was filed by Dominion on October 12, 2011. *See* Consent Motion to Hold BREDL's New Contention in Abeyance.

However, on October 17, five days after the consent motion was filed, both NRC Staff and Dominion submitted briefs opposing admission of the new contention.¹ Given the consent motion, the critical circumstances and the potentially life-threatening issues involved, how can this be considered fair? Called to explain their action, NRC Staff counsel averred that they were taking a "belt and suspenders approach" because the Atomic Safety and Licensing Board had not yet issued its decision on accepting the motion. Belt and suspenders? NRC Staff's and Dominion's arguments are Dickensian in their sophistry.

"Shirking and sharking, in all their many varieties, have been sown broadcast by the ill-fated cause; and even those who have contemplated its history from the outermost circle of such evil, have been insensibly tempted into a loose way of letting bad things alone to take their own bad course, and a loose belief that if the world go wrong, it was, in some off-hand manner, never meant to go right."²

A belt and suspenders approach would be justified with regard to actual earthquake preparation and public safety; however, it is unseemly when employed to shut down a full exposition of the facts surrounding the Virginia earthquake of August 23.

For example, Dominion states: "It is not entirely clear what BREDL's proposed new contention is. At one point, BREDL states that 'Intervenor's contention is that the applicant and the NRC have 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.' Later, BREDL states that 'Intervenor's new contention is that the geology of the North Anna

¹ See "NRC Staff Answer to 'Request to Admit Intervenor's New Contention'" filed by Blue Ridge Environmental Defense League and "Dominion's Opposition to BREDL's New Contention."

² *Bleak House*, Chapter I, "The Court Rises," Charles Dickens

site renders it unsuitable for construction of a new nuclear power reactor.³ (citations omitted)

Pray, what is unclear? The original North Anna site was approved by duplicity and the August 23rd earthquake shook people out of their complacency.

Further, sheer volumes of paper are no substitute for sound judgment. The NRC Staff states: "The geological and seismic issues raised by proposed new Contention 14 were thoroughly resolved in the ESP-003 proceeding. See North Anna, LBP-08-15, 68 NRC at 309 ("[T]he seismic fault issue raised in this proposed contention was extensively evaluated and resolved in the ESP proceeding."). Specifically, ESP-003 incorporated NUREG-1835 which contains 111 pages detailing all aspects of the geology of the North Anna site. NUREG-1835, Safety Evaluation Report for an Early Site Permit (ESP) at the North Anna ESP Site (Initial Report), at 2-140 to 2-251 (Sept. 2005). In order to assess seismic risk, both the Applicant and the Staff catalogued the historic seismic activity of the region encompassing the North Anna site and modeled the probability of future seismic hazards. See *Id.* at 2-190 to 2-196. The Staff concluded that this large amount of data was sufficient to adequately characterize the overall seismic hazard of the site. *Id.* at 2-196."⁴

"Thus, in the midst of the mud and at the heart of the fog, sits the Lord High Chancellor in his High Court of Chancery. "Mr. Tangle," says the Lord High Chancellor, latterly something restless under the eloquence of that learned gentleman. "Mud," says Mr. Tangle. Mr. Tangle knows more of Jarndyce and Jarndyce than anybody. He is famous for it" supposed never to have read anything else since he left school. "Have you

³ Dominion's Opposition to BREDL's New Contention at 3-4

⁴ NRC Staff Answer to "Request to Admit Intervenor" New Contention filed by Blue Ridge Environmental Defense League at 13-14.

nearly concluded your argument?ø –Mlud, noô variety of pointsô feel it my duty
tsubmitô ludship,øis the reply that slides out of Mr. Tangle. –Several members of the bar
are still to be heard, I believe?øsays the Chancellor, with a slight smile. Eighteen of Mr.
Tangleø learned friends, each armed with a little summary of eighteen hundred sheets,
bob up like eighteen hammers in a pianoforte, make eighteen bows, and drop into their
eighteen places of obscurity.ö⁵

In addition, Dominion argues that because documents cited in our contention are
older than 30 days, they are not valid support. Dominion states: øIn particular, BREDLø
challenge to probabilistic seismic hazard analysis is based on a 1996 article arguing that
earthquakes cannot be predicted. BREDLø reliance on Generic Issue 199 and updates to
estimates of earthquake risk for existing units is based on an August 2010 assessment of
this generic issue for existing units. BREDLø assertions that probabilistic risk
assessment has limitations are based on an April 2011 article. Thus, all of this
information has been available for months or years.ö⁶ (citations omitted)

This is to say: øIf all the injustice it has committed, and all the misery it has caused,
could only be locked up with it, and the whole burnt away in a great funeral pyre,ô why
so much the better for other parties than the parties in Jarndyce and Jarndyce!ö

The central precipitating event for BREDLø new contention is the Virginia
earthquake of August 23, 2011. However, the NRC Staff states: øThe contention
includes no explanation of the basis for the claim that the August 23, 2011, earthquake
represents new and significant circumstances or information relevant to environmental
concerns, no demonstration that this claim is within the scope of the proceeding, no

⁵ Bleak House *Id.*

⁶ Dominionø Opposition to BREDLø New Contention at 14.

statement of alleged facts or expert opinions to support this claim, and no reference to specific portions of or omissions from the environmental documents that this claim disputes.⁷

Is the August 23rd earthquake not *prima facie* new and significant? Was it beyond imagination that an earthquake would shatter the Washington Monument and the National Cathedral? No expert opinion? In our contention we cited a paper entitled: *Beyond our imagination: Fukushima and the problem of assessing risk.* The author, M. V. Ramana, a physicist, is with the Nuclear Futures Laboratory and the Program on Science and Global Security at Princeton University.

We will proceed with the hearing on Wednesday fortnight, says the Chancellor. For the question at issue is only a question of costs, a mere bud on the forest tree of the parent suit, and really will come to a settlement one of these days.⁸

In conclusion, there are new and significant circumstances and new information relevant to environmental and safety concerns which would have bearing on the proposed construction and operation of a third nuclear reactor at North Anna. BREDL requests that its new contention be admitted and a hearing be held.

Respectfully submitted,



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⁷ NRC Staff Answer to Request to Admit Intervenor's New Contention filed by Blue Ridge Environmental Defense League at 21

⁸ Bleak House, *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that copies of the
REPLY TO ANSWERS IN OPPOSITION TO NEW CONTENTION
were served on the following persons via Electronic Information Exchange this 20th day
of October, 2011.

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Signed in Glendale Springs
this day, October 20, 2011

A handwritten signature in black ink that reads "Louis A. Zeller". The signature is written in a cursive style and is followed by a horizontal line.

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