

VIRGINIA ELECTRIC AND POWER COMPANY
RICHMOND, VIRGINIA 23261

STANLEY RAGONE
PRESIDENT

September 4, 1979

Mr. Victor Stello, Jr.
Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docket No. 50-281
License No. DPR-37

Dear Mr. Stello:

Answer Protesting Civil Penalties

This is Virginia Electric and Power Company's answer protesting, pursuant to 10 CFR 2.205(b), the imposition of civil penalties proposed in your Notice of Proposed Imposition of Civil Penalties which Vepco received August 16, 1979. The penalties were proposed by your office because of an incident detailed in I&E Report No. 50-281/79-29, in which an employee at the Surry Power Station received an exposure to radiation in excess of 10 rem. As a result of that incident, you have proposed four civil penalties totalling \$15,000.

By this answer Virginia Electric and Power Company requests that the penalties be remitted in their full amount. Our reasons for this request are set out below.

In the recent case In the Matter of Atlantic Research Corporation, ALAB-542, 9 NRC ____ (May 2, 1979), now under review by the full Commission, the Atomic Safety and Licensing Appeal Board set aside the imposition of civil penalties against a company in a case in which the activities of the company's employee had caused him and another employee to receive excessive radiation doses. The lesson of Atlantic Research Corporation is that civil penalties under the Atomic Energy Act must serve a "discernible remedial purpose." They do so if they have the effect of deterring future violations of regulatory requirements by the licensee or other licensees or their employees. This will be the case if the violation of statute, regulation, or license was at least influenced by licensee action or inaction or if the licensee either failed promptly to take appropriate corrective action or otherwise demonstrated a lack of awareness of the necessity to ensure scrupulous compliance by its employees and agents with regulatory requirements.

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By the standards of Atlantic Research Corporation we believe Vepco is entitled to remission of the civil penalties in the peculiar circumstances of this particular case. As I&E Report 50-281/79-29 makes abundantly clear, this was a highly unusual case in which a single employee, acting on mistaken information, disregarded certain well-established station procedures, ignored two prominently displayed warning signs, and mistakenly entered a high-radiation area.

This happened despite the significant efforts Vepco had made to prevent just such an occurrence, some of which are described in Vepco's letter of October 29, 1976, responding to IE Circular No. 76-03 (Serial No. 247/091376 to Mr. Norman C. Moseley of I&E, Region II). The door to the area in which the exposure occurred was locked at the time and posted with a conspicuous warning sign. Station procedures require that anyone entering such an area first notify Health Physics, obtain a special radiation work permit, make a radiation survey, and obtain a dose rate indicating instrument. Vepco employees have long been required to undergo training in these procedures, as noted in our letter of October 29, 1976, mentioned above. Inspection Report No. 50-281/79-29 in no way suggests that Vepco did not do everything that could have reasonably been expected of it to prevent such an incident. And, as noted in the attached Response, which describes corrective action taken, a thorough review of the Health Physics Manual and existing administrative procedures by Vepco has revealed no changes that need to be made.

Nevertheless, as also shown in the attached Response, Vepco has taken steps to reinforce the existing procedures by means of a service desk in the area leading to the restricted controlled area. Also, as shown by Inspection Report No. 50-281/79-29, the station manager issued a memorandum to all superintendents and supervisors four days after the incident directing that all personnel with keys to any locked barricade for high radiation areas notify the assistant health physics supervisor before entering such an area. He also placed keys to the in-core instrumentation rooms under the control of the health physics supervisor. Administrative actions were taken against the employee involved; he was suspended without pay for five days and from licensed operations for three months, and he will be required to undergo retraining before returning to licensed operations.

Finally, we think you should know that, quite apart from the considerations we have set out above, we believe that the imposition of four separate penalties, totalling \$15,000, for a single incident is both a needless redundancy and an

evasion of the \$5,000 limit for each violation prescribed by section 234 of the Atomic Energy Act. In particular, imposing a \$4,000 penalty for violating 10 CFR 20.101(b)(1), which forbids a quarterly whole-body dose of greater than 3 rem, and another \$4,000 penalty for violating 10 CFR 20.201(b), which requires surveys as necessary to comply with the regulations, seems to us improper. Atlantic Research Corporation tells us that a licensee should not be penalized unless the penalty serves a discernible remedial purpose, and there is no conceivable remedial purpose to be served by penalizing several times for a single occurrence. Even if the licensee could reasonably have done more to prevent a certain incident, he could not have done anything to prevent a violation of a second regulation or procedure by the same incident, except perhaps by writing fewer procedures, a practice that I&E surely does not wish to encourage.

Veeco recognizes that the importance of preventing such incidents can hardly be overemphasized. Nevertheless, in light of the unique circumstances in this particular instance and the absence of any indication in the I&E Inspection Report that Veeco should have taken additional measures to prevent the incident, we believe that the reasoning of the Atlantic Research Corporation case demands a complete remission of the civil penalties.

Sincerely,



Stanley Ragone

Attachment