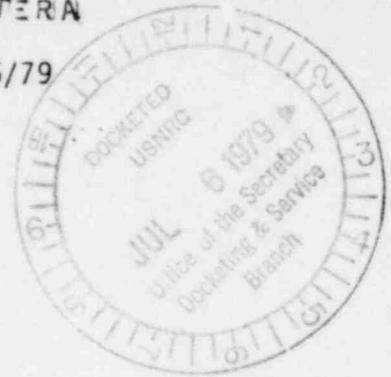


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

7/5/79



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
VIRGINIA ELECTRIC AND POWER COMPANY) Docket Nos. 50-338 SP
(North Anna Nuclear Power Station,) 50-339 SP
Units 1 and 2) (Proposed Amendment to Facility
Operating License NPF-4 to Permit
Storage Pool Modification)

NRC STAFF RESPONSE TO INTERVENORS'
MOTION TO AMEND PETITION TO INTERVENE

On June 15, 1979, joint intervenors Potomac Alliance and Citizens' Energy Forum (Joint Intervenors) filed a motion in the above-captioned proceeding seeking the introduction of a new contention on seismicity and a declaration by the Board that each of the admitted contentions be adjudicated "not only with reference to the time frame bounded by the date of termination of the operating license for the North Anna station, but also with reference to the time frame bounded by the point at which the materials to be stored in the spent fuel pool will cease to prevent /sic/ significant radiation hazards." Joint Intervenors posit their motion upon the recent opinion of the District of Columbia Circuit in Minnesota v. NRC, ___ F.2d. ___, Nos. 78-1269, 2032 (D.C. Cir. May 23, 1979). The NRC Staff opposes the instant motion on the grounds that it seeks the introduction of a new contention and an expansion of the scope of the existing contentions without addressing the requirements of 10 CFR §2.714 relative to untimely filings and is premised upon a misapplication of Minnesota.

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Joint Intervenors construe the opinion in Minnesota to mandate that: "no licensing board may permit expansion of the capacity of any spent fuel pool unless it determines that this storage method is safe and environmentally satisfactory on a permanent basis, or that it is safe and environmentally satisfactory as an interim measure to be employed until such time, to be determined in accordance with the Administrative Procedure Act, as the development of a permanent method is reasonably assured." Motion at 6. (emphasis in original). It then follows, according to Joint Intervenors, that this Board must either postpone the scheduled evidentiary hearing in this proceeding or modify the contentions in issue such that they address the suitability of the North Anna spent fuel pool for permanent waste storage. The Staff disagrees.

Minnesota involved an appeal from the decision of the Appeal Board (the Commission declined review) granting two separate spent fuel pool expansion applications. The court remanded the case to the Commission for such proceedings as it deems appropriate to determine" whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plant's operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates." Slip op. at 14. In so doing, the court endorsed the Commission's position that such a determination could be reached in the context of a "generic" proceeding such as rulemaking and then "apply its determination in subsequent adjudicatory proceedings." Id. at 10. Significantly, the court declined to vacate or stay the license amendments at issue (which it noted would effectively shut down the plants) Id. at 14, and neither explicitly nor implicitly directed that future individual

spent fuel pool expansion proceedings be prohibited or deferred until completion of the contemplated "generic" proceeding on waste disposal. Had the court desired to achieve this result, it could have so indicated. Moreover, the court was careful not to disagree with the Second Circuit's decision in NRDC v. NRC, 582 F.2d 166 (2nd Cir. 1978), affirming the conclusion that "Congress did not intend, in enacting the Atomic Energy Act, to require a demonstration that nuclear wastes could safely be disposed of before licensing of nuclear plants was permitted." (emphasis added.) Similarly, no such requirement should be implied by analogy in the Minnesota opinion. The decision of the D.C. Circuit itself in an analogous case is instructive. In the case of Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974), petitioners argued, in part, that it constituted a denial of due process when the Commission denied them the opportunity to litigate their challenges to the interim acceptance criteria (IAC) for emergency core cooling systems in an individual operating licensing proceeding to which they were a party and instead invited their participation in rule-making proceeding on the acceptability of the IAC being conducted simultaneously. The Court rejected this argument and held otherwise.

The licensing action taken in the instant matter would be subject to whatever conditions the Commission may later impose as a result of its future generic waste disposal proceeding. Alternatively, an interested party could seek appropriate legal action with respect to such action pursuant to 10 CFR §2.206 upon consideration of the outcome of the Commission's generic proceeding. This would serve as a post-decisional vehicle to assure the continuing validity of the licensing action taken herein.

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CONCLUSION

Based on the above, the Staff opposes Joint Intervenors' motion to amend.

Respectfully submitted,



Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of July, 1979.

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VIRGINIA ELECTRIC AND POWER COMPANY) (Proposed Amendment to Facility
) Operating License NPF-4 to Permit
(North Anna Nuclear Power Station,) Storage Pool Modification)
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION TO AMEND PETITION TO INTERVENE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of July, 1979.

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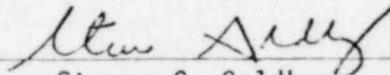
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