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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD



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

Order Granting VEPCO's Motion
for Summary Disposition

1. This Order follows up the Board Decisions, dated August 6, 1979, wherein the Board granted VEPCO's motion for summary disposition and stated that the reasons supporting its decision would be forthcoming in a Board Order shortly. This is such Board order.

BACKGROUND

2. On May 11, 1979, VEPCO filed its Motion for Summary Disposition. At the time, the scheduled date for a hearing was June 26, 1979, as had been set by the Board's Notice of Hearing, dated May 4, 1979. VEPCO's motion thus met the time-of-filing requirement, as specified by the Commission regulation 10 CFR §2.749(a), of at least forty-five (45) days before the time fixed for hearing.

3. In keeping with 10 CFR §2.749(a), VEPCO annexed to its motion proper its "Statement of Material Facts As To Which There Is

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No Genuine Issue To Be Heard" and three supporting affidavits along with statements of qualifications of the affiants. The Statement of Material Facts enumerated one hundred seventy-nine (179) factual statements broken down according to the contentions previously accepted by the Board for hearing. This Statement was largely based on VEPCO's Summary of Proposed Modifications to the Spent Fuel Storage Pool Associated with Increasing Storage Capacity, as amended. The truth and correctness of this Summary was attested to in one of the three VEPCO affidavits, namely, the affidavit of H. Stephen McKay, VEPCO's Project Engineer responsible from the design and installation of the high density spent fuel racks for North Anna 1 and 2. A copy of VEPCO's Summary is attached to Mr. McKay's affidavit. Other supporting references than VEPCO's Summary relating to a material fact in VEPCO's Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard are noted therein.

4. Besides attesting to the truths and correctness of VEPCO's Summary, Mr. McKay's affidavit also attested to some sixty-six statements supplementary to VEPCO's Summary and bearing on one or another contention which had been scheduled for hearing. VEPCO's two other affidavits by qualified affiants, namely, Dr. Morris L. Brehmer and Robert W. Calder, mainly concerned Intervenors' contentions on Thermal Effects and Corrosion respectively.

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5. The contentions designated for hearing by the Board were spelled out in the Board's Order Granting Intervention, Providing for a Hearing and Designating Contentions of Intervenors, dated April 21, 1979, and in the Board's amendment to said order dated June 5, 1979. These contentions are briefly identified as follows:

THERMAL EFFECTS
RADIOACTIVE EMISSION
a) Accidents
b) Normal Operation
MISSILE ACCIDENTS
MATERIALS INTEGRITY
CORROSION
OCCUPATIONAL EXPOSURE
ALTERNATIVES
SERVICE WATER COOLING SYSTEM

6. The NRC Staff supported VEPCO's motion for summary disposition. The NRC Staff's answer to VEPCO's motion was in two parts, as follows: first, its Response to VEPCO Summary Disposition Motion, dated June 5, 1979, together with two affidavits on Thermal Effects, one affidavit on Radioactive Emission, one affidavit on Materials Integrity and Corrosion, one affidavit on Occupational Exposure, one affidavit on Alternatives and one affidavit correcting a figure in the Safety Evaluation, as well as statements of each affiant's qualifications; and second, its Supplemental Response to VEPCO Summary Disposition Motion, dated June 25, 1979, with three affidavits on Radioactive Emission (Accidents), one affidavit on Missile Accidents, and one affidavit on Service Water Cooling System, along with statements of qualifications of the affiants.

7. Intervenors Potomac Alliance and Citizens' Energy Forum (CEF), which were later consolidated, each opposed VEPCO's motion for summary disposition. Potomac Alliance's answer to the motion was in three parts: first, its Answer to VEPCO's Motion for Summary Disposition, dated June 5, 1979, together with its Statement of Material Facts As To Which There Is A Genuine Issue To Be Heard, dated June 5, 1979, plus a supporting affidavit of the same date by Potomac Alliance's attorney; second, its Supplemental Answer to VEPCO's Motion for Summary Disposition, dated June 25, 1979; and third, its Second Supplemental Answer to VEPCO's Motion for Summary Disposition, dated July 23, 1979, plus an affidavit by Phillip M. Weitzman of the same date along with a statement of the affiant's qualifications. CEF's separate answer to VEPCO's motion prior to consolidation with Potomac Alliance consisted of its Response to VEPCO's Motion for Summary Disposition and its Statement of Facts As To Which There Exists A Genuine Issue To Be Heard -- both dated June 5, 1979.

8. By its Order Partially Granting VEPCO's Motion for Summary Disposition, dated June 18, 1979, the Board allowed both the NRC Staff and Potomac Alliance to file further comments on or before June 25, 1979 on that part of VEPCO's motion on which the Board had not acted. In the June 18 order, it was also noted that under the Board's consolidation order of June 6, 1979, Potomac Alliance also speaks in this proceeding

for Citizens Energy Forum (CEF), which was the only other intervenor in the proceeding.

9. Upon receipt of Potomac Alliance's Supplemental Answer to VEPCO's Motion for Summary Disposition, dated June 25, 1979, in response to the Board's invitation of June 18, the Board reconsidered Potomac Alliance's position as described in the latter's Supplemental Answer, pp. 1-2:

" . . . While VEPCO's responses to the discovery requests of the Alliance and Citizens Energy Forum (the Intervenor) have been received only within the past few days, the NRC Staff has notified the parties and the Board that it will not be able to submit its responses until several [days] after the date of this filing. The Alliance has therefore been severely handicapped in attempting to amass the facts necessary to develop its case, with the result that it cannot present by affidavit the facts essential to its opposition to VEPCO's motion. Under such circumstances it is appropriate for the Board to refuse to consider the motion or to deny it. See 10 CFR §2.749(c)."

The same general position had also been advanced by Potomac Alliance and CEF in their June 5 answers to VEPCO's motion for summary disposition.

10. The referenced citation 10 CFR §2.749(c) is as follows:

"(c) Should it appear from the affidavits of a party opposing the motion [i. e., for summary disposition] that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may refuse the application for summary disposition or may order a continuance to permit affidavits to be obtained or make such other order as is appropriate and a determination to that effect shall be made a matter of record."

11. As a result of its reconsideration of Potomac Alliance's asserted position of why it could not answer adequately VEPCO's motion for summary disposition, the Board extended the time for Potomac Alliance to supplement its answers to VEPCO's motion. In its Order Allowing Additional Time for Certain Answers and Resetting Time for Hearing, dated June 29, 1979, the Board permitted Potomac Alliance to on or before July 23, 1979 for supplementing its answers to said motion. At the same time, the Board announced that it would reconsider its order of June 18, 1979 partially granting VEPCO's motion for summary disposition and it rescheduled the Prehearing Conference and Hearing to begin immediately thereafter from July 9 to August 14, 1979. The June 29 order also allowed an additional five days for the parties to file answers to designated pending motions.

MERITS OF MOTION

12. VEPCO's timely Motion for Summary Disposition, together with its Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard and its three affidavits, satisfied the requirements of a motion for summary disposition as set forth in the Commission regulation 10 CFR §2.749 and provided the basis for granting the motion. The motion, together with its attachments, treated each of the contentions of the intervenors scheduled for hearing, demonstrated that there is no genuine issue of material fact worthy of a hearing, and showed why each of the contentions ought to be resolved in VEPCO's favor.

13. VEPCO's Motion for Summary Disposition was strongly supported by the NRC Staff with its own affidavits. The NRC Staff agreed that VEPCO had accurately summarized pertinent facts surrounding the

contentions, that the contentions ought to be resolved in VEPCO's favor, and that there is no need for a hearing.

14. Intervenors' answers to VEPCO's motion, namely, both Potomac Alliance's answer and the response of CEF prior to consolidation, were totally defective. The answers did not comply with Commission regulation 10 CFR §2.749(b); rather than set forth specific facts showing there was a genuine issue of fact, Intervenors relied on mere denials of VEPCO's claim; that there was no genuine issue about certain material facts; and Intervenors offered no meaningful factual data of their own. Without raising any genuine issue worthy of hearing, Intervenors rested their case against VEPCO's motion on generalities of disagreement, uninformed opinion and speculative argumentation.

15. In reaching its judgment about Potomac Alliance's answer, the Board refers to the following passage of the Commission regulation 10 CFR §2.749(b):

"(b) . . . When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denial or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of facts. If no such answer is filed, the decision sought, if appropriate, shall be rendered."

Applying the foregoing standard to Potomac Alliance's answer, the Board concluded that the answer afforded no basis for denying VEPCO's motion. In particular, the first part of Potomac Alliance's answer,

which was dated June 5, 1979, essentially made the following two points:

(1) Potomac Alliance was at the time not equipped to make any effective

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answer to VEPCO's motion and sought the Board either to deny the motion or to give Potomac Alliance more time to respond, invoking 10 CFR §2.749(c); and (2) with respect to a significant number of paragraphs enumerated in VEPCO's Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard, Potomac Alliance merely contradicted through its attorney's affidavit VEPCO's position and contended that there was a genuine issue to be heard with respect to the facts in said paragraphs. This first part of Potomac Alliance's three-part answer to VEPCO's motion partially occasioned the Board's later order to allow Potomac Alliance further time to prepare an answer; however, neither the first point of the first part of Potomac Alliance's answer nor the second point thereof raised any genuine issue of material fact worthy of trial under the standard of the Commission regulation quoted above.

16. CEF's answer of June 5 to VEPCO's motion for summary disposition focused on three contentions, namely, Thermal Effects, Radioactive Emission and Corrosion. The principal thrust of its answer was to emphasize CEF's dependence on VEPCO's and NRC Staff's answers to CEF's interrogatories in pending discovery procedure. Though the answer supported the Board's later move to allow more time for preparing an answer to VEPCO's motion, CEF's answer of June 5 itself did nothing

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to show why there ought to be a hearing about a material fact in genuine dispute. The answer did not satisfy the standard set out at Commission regulation 10 CFR §2.749(b).

17. The second part of Potomac Alliance's answer, which was dated June 25, 1979, centered on Potomac Alliance's plea of its handicap to do battle with VEPCO on a factual basis and stressed the status of Potomac Alliance's discovery endeavors, that is, that Potomac Alliance had just received answers to its interrogatories to VEPCO and it was expected to receive in a few days answers to its interrogatories to the NRC Staff. The Board's order allowing Potomac Alliance additional time to prepare its answer followed; but the second part of Potomac Alliance's answer in and of itself offered no statement of material fact to raise any of Potomac Alliance's dissatisfaction with VEPCO to a genuine issue worthy of hearing.

18. The third and final part of Potomac Alliance's answer to VEPCO's motion, dated July 23, 1979, addressed each of the contentions which had been scheduled for hearing and on which, according to VEPCO's motion, there is no need for a hearing as they involve no genuine issue

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of material facts. Intervenor's contentions and the Board's conclusions concerning the relation of these contentions to VEPCO's motion for summary disposition follow.

19. THERMAL EFFECTS CONTENTION. Intervenor contends that the possible consequences caused by the additional heat to be discharged as a result of the proposed modifications have not been adequately addressed by the NRC Staff and the Applicant. This contention embraces the rate of temperature rise in the spent fuel storage facility as a result of an accidental leak in the spent fuel pool. It further includes the affirmation that the spent fuel pool cooling system will be inadequate to prevent "hot spots" and possible boiling.

20. The foregoing Thermal Effects contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

VEPCO, with the support of Dr. Morris L. Brehmer's affidavit, has concluded that the additional heat to be discharged from the spent fuel pool because of the proposed modification is extremely limited and would have no significant effect upon the environment. The NRC Staff's Environmental Impact Appraisal of April 2, 1979 is in agreement.

Further, in its Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard, VEPCO set forth 53 material facts bearing on the contention of thermal effects; these facts embrace such subordinate subjects as discharge of heat to the environment, spent fuel pool cooling system analysis, leakage, and thermal hydraulic analysis. In its answer to VEPCO's motion, dated June 5, 1979, the NRC Staff, at page 4, concluded that VEPCO's statements of 53 material facts "accurately summarize the salient facts not open to dispute."

Potomac Alliance did not present a single specific factual allegation which placed any one of VEPCO's supported allegations concerning the Thermal Effects contention in genuine issue. Potomac Alliance's mere reference to a study of Sandia Laboratories (SAND-77-1372 (1978)), apparently on spent fuel pool coolant leakage, without, however, showing a specific relation of the study to VEPCO's spent fuel pool is of no account.

Similarly, Potomac Alliance's attempt to introduce considerations arising out of Minnesota v. NRC, Nos. 78-1269, 78-2032 (D.C. Cir. 1979) is rejected as irrelevant to this proceeding. See Board's Order Denying Intervenor's Motion To Amend Petition To Intervene, August 17, 1979, pp. 1-4.

The Board concluded that the additional heat to be discharged as a result of the proposed modification is not environmentally significant.

21. RADIOACTIVE EMISSION CONTENTION (a): Intervenor contends that VEPCO has neglected to address the additional liquid and gaseous radioactive emissions which will result from the increased fuel storage and the effects thereof. In CEF's [Intervenor's] opinion, applicant's analysis of radiation released, and of possible releases, in the event of those accidents considered in Section 9.1 through 9.4 of the application, are superficial and insubstantial in the Summary of the Proposed Modifications.

22. The foregoing Radioactive Emission contention (a) which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

There are a part a) and a part b) to the contention of Radioactive Emission, with the former relating to accidents and the latter to normal operation.

VEPCO analyzed a number of potential accidents, namely, the loss of the spent fuel pool cooling system, leakage, earthquakes and tornadoes, and fuel drop accidents, and in none of these accidents, did VEPCO's analysis show unacceptable results. The NRC Staff's independent evaluation reached the same conclusion.

Paragraphs 87 through 114 of VEPCO's Statement of Material Facts pertain to part a) of the Radioactive Emission contention and according to the NRC Staff, such paragraphs "accurately summarize the salient facts not open to dispute." NRC Staff Supplemental Response to VEPCO's Summary Disposition motion, dated June 25, 1979, p. 2.

Potomac Alliance did not place a single VEPCO statement pertinent to part a) of the subject contention into genuine issue. Again, its reliance on considerations flowing from Minnesota v. NRC is misplaced in this proceeding.

The Board concluded that none of the accidents analyzed by VEPCO and the NRC Staff would have unacceptable consequences.

23. RADIOACTIVE EMISSION CONTENTION (b): Intervenor contends that the Applicant has failed to analyze adequately the liquid and gaseous radioactive emissions that will result from the proposed increase

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in fuel storage capacity, and has failed to demonstrate that significant adverse environmental effects will not result from such emissions.

24. The foregoing Radioactive Emission contention (b) which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

In its Statement of Material Facts, VEPCO enumerated 33 material facts, paragraphs 54 through 86, pertinent to part b) of the Radioactive Emission contention. The NRC Staff states that these material facts "accurately summarize the salient facts not open to dispute." NRC Staff Response to VEPCO Summary Disposition Motion, dated June 5, 1979, p. 6.

Again, Potomac Alliance did not place a single VEPCO statement of material fact into genuine issue; it relied on an argumentative position and misplaced emphasis upon Minnesota v. NRC in this proceeding.

The Board is satisfied that the potential offsite radiological environmental impacts associated with the proposed modification are environmentally insignificant.

25. MISSILE ACCIDENT CONTENTION: Intervenor contends that the proposed modification of the spent fuel pool will increase the consequences of an accident involving missiles, and that the Applicant has not demonstrated that the pool, as modified, will withstand such accidents within the limits set forth in NRC Regulations.

26. The foregoing Missile Accident contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its

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motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

VEPCO has analyzed the risk of a tornado missile impacting the spent fuel pool and concluded it would not result in radiation doses exceeding the limits of 10 CFR Part 100. VEPCO also analyzed the risk of a turbine missile and found it to be extremely small. The NRC Staff analyses yield the same conclusions.

Paragraphs 116-117, 121-123, and 126 of VEPCO's Statement of Material Facts are relevant to the Missile Accidents contention, and according to the Staff, they "accurately summarize the salient facts not open to dispute." NRC Staff Supplemental Response to VEPCO Summary Disposition Motion, dated June 25, 1979, p. 3.

While Potomac Alliance generally insists that there is "need for a hearing of this contention" and that "the technical positions of VEPCO and the NRC Staff be subjected to verification in the crucible of a public and adjudicatory hearing," Potomac Alliance did nothing to place a material fact in genuine issue. General references to past pleadings and general argumentative postures are not enough to meet the standard of the Commission regulation 10 CFR §2.749(b).

The Board is persuaded that possible missile accidents relating to the proposed modification of the spent fuel pool do not afford an acceptable reason for denying the proposed modification.

27. MATERIALS INTEGRITY CONTENTION: Intervenor contends that increasing the inventory of radioactive materials in the spent fuel pool will increase the corrosion of, the stress upon, and resultant problems concerning the components and contents of the pool. The applicant has not adequately addressed such potential problems with respect to:

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(a) the fuel cladding, as a result of exposure to decay heat and increased radiation levels during extended periods of pool storage; and (b) the racks and pool liner, as a result of exposure to higher levels of radiation during pool storage.

26. The foregoing Materials Integrity contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with NRC Staff's answer to the motion. Pertinent considerations follow:

VEPCO cites Licensing Board and Appeal Board decisions to the effect that Zircaloy-clad fuel can be safely stored under water, and VEPCO does not expect the racks and pool liner to suffer unacceptable stress or corrosion over the life of the power station. The NRC Staff offers that little if any effect will be produced upon the spent fuel assemblies or stainless steel pool components. In the NRC Staff view, since only minimal general corrosion will occur, the structural integrity of the spent fuel pool components is not degraded.

In its Statement of Material Facts, paragraphs 78 through 86 and 127 through 134 bear upon both the above contention on Materials Integrity and the following contention on Corrosion. The NRC Staff takes the position that such paragraphs "accurately summarize the salient facts not open to dispute." NRC Staff's Response to VEPCO's Summary Disposition Motion, dated June 5, 1979, page 7. Of particular interest, Paragraph 127 states: "Storing 966 instead of 400 fuel assemblies in the spent fuel pool will not materially increase the corrosion of, the stress upon, or other resultant problems with the fuel cladding, the racks, or the pool liner due to higher radiation levels."

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Once more, Potomac Alliance does not specify information which balances the VEPSCO's statements of material facts.

The Board is satisfied as to the integrity of VEPSCO's materials.

29. CORROSION CONTENTION. Intervenor contends that there has been inadequate examination of the problems that may arise due to a potential incremental increase in the amount of corrosion upon the spent fuel assemblies and racks over the duration of the storage of fuel in the pool, including their eventual removal from the pool. Such problems include, but are not limited to, the ability of the spent fuel purification system to remove any potential incremental impurities.

30. The foregoing Corrosion contention which had been scheduled for hearing is decided in favor of VEPSCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion.

Pertinent considerations follow:

The two contentions of Material Integrity and Corrosion cover essentially the same ground, and Potomac Alliance and the NRC Staff treat them together.

In citing the Staff's Safety Evaluation which stresses adherence of the spent fuel storage rack material to commonly accepted material standards, VEPSCO notes there is neither reason nor evidence for supposing that the proposed modification will significantly increase corrosion. VEPSCO, with the benefit of its experience at Surry, also indicates the adequacy of the fuel pool purification system to handle its load.

The affidavit of Messrs. Georgiev, Houston and Wermiel, presented with the NRC Staff's answer of June 5, 1979 to VEPCO's motion for summary disposition, is in point. It covers the contentions of both Materials Integrity and Corrosion and while dealing specifically with fuel cladding integrity and racks and pool liner, it also covers corrosion and the spent fuel pool purification system. The affidavit reinforces VEPCO's position.

Potomac Alliance's Second Supplemental Answer To VEPCO's Motion for Summary Disposition, dated July 23, 1979, had nothing specific to offer by way of raising a genuine issue of a material fact which would be worthy of a hearing.

The Board concluded there is no foundation for the contention on Corrosion.

31. OCCUPATIONAL EXPOSURE CONTENTION. Intervenor contends that the Applicant has not demonstrated that it will prevent the increased occupational radiation levels which will result from the spent fuel pool modification from leading to occupational doses in excess of those permitted under NRC Regulations.

32. The foregoing Occupational Exposure contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

VEPCO has concluded that occupational exposures will not exceed NRC limits. In agreement with VEPCO, the NRC Staff concluded that the health effects of incremental increase in some radiation exposure to plant personnel would be negligible.

In VEPCO's Statement of Facts, paragraph 135 through 156 "accurately summarize," according to the NRC Staff, "the salient facts not open to dispute." NRC Staff Response to VEPCO Summary Disposition motion, dated June 5, 1979, p. 8. Rather than specifically controvert any of VEPCO's statements of fact, Potomac Alliance persisted in its argumentative posture of general criticism, e. g., "No serious attempt has been made to quantify the expected radiation levels at North Anna, or to show how the admitted increases in radiation will be borne by the work force." Potomac Alliance Second Supplemental Answer to VEPCO's Motion for Summary Disposition, " dated July 23, 1979, p. 9.

The Board is moved to accept VEPCO's position, which is strongly supported by the NRC Staff, that the proposed modification in the spent fuel pool will not result in occupational exposure to radiation in excess of limits prescribed by NRC regulations.

33. ALTERNATIVES CONTENTION. Intervenor contends that neither the Applicant nor the Staff has adequately considered alternatives to the proposed action. The alternatives which should be considered are: (a) the construction of a new spent fuel pool on site; (b) the physical expansion of the existing spent fuel pool; (c) the use of the spent fuel pool at North Anna, Units 3 and 4 (including the completion of construction of such pool, if necessary) for storage of spent fuel from Units 1 and 2.

34. The foregoing Alternatives contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

VEPCO finds alternative (a) unacceptable at this time because of the high cost, the need for double handling the fuel, and the time required to design, license and construct such a facility. VEPCO finds alternative (b) as impracticable because there exist on all four sides of the existing pool structures necessary to the pool's operation, and alternative (b) would require their movement. Also, alternative (b) would necessitate movement of spent fuel already in the pool with all ensuing complications. Similarly, VEPCO notes that alternative (c), that is, use of the spent fuel pool at North Anna 3 and 4, would be unworkable because of the timing. VEPCO's Motion for Summary Disposition, dated May 11, 1979, p. 20. VEPCO also addresses the Alternatives contention in its Statement of Facts, from paragraphs 157 through 179.

The NRC Staff, which considered alternatives suggested in the contention and others, concluded that the alternatives encompassed by the contention "are unavailable within the necessary time-frame, are more expensive and offer no environmental advantage over the proposed action." NRC Staff Response to VEPCO Summary Disposition motion, dated June 5, 1979, p. 9.

Phillip M. Weitzman's affidavit, accompanying Potomac Alliance Second Supplemental Answer to VEPCO's Motion for Summary Disposition (July 23, 1979), pressed the position that the materials submitted by VEPCO did not provide an adequate "factual and analytical basis on which to determine whether VEPCO's proposed modification of the spent fuel pool at North Anna Units 1 and 2 is economically more advantageous than any of the three alternative proposals contained in the Potomac Alliance's contention labeled 'Alternatives'." Affidavit, dated July 23, 1979, p. 2.

Potomac Alliance evidently made no attempt to secure details about VEPCO's estimates during the extra time allowed by the Board in its Order of June 29, 1979. The NRC Staff raised no question about

VEPCO's estimates. In any event, Potomac Alliance did not meet the Commission regulatory requirement that its "answer . . . must set forth facts showing that there is a genuine issue of fact," 10 CFR §2.749(b).

Regarding the contention on Alternatives, the Board refers to the Appeal Board's view that in spent fuel pool modification cases there is a limitation upon the NEPA mandate of exploring alternatives -- which limitation appears applicable here:

"[The intervenor] is confronted with the fact that the evidence establishes without contradiction that the process of installing the new racks in that pool and the operation of the pool with its expanded capacity will neither (1) entail more than negligible environmental impacts; nor (2) involve the commitment of available resources respecting which there are unresolved conflicts As we read it, the NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come into play in such circumstances -- in short, there is no obligation to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner to which this country's resources are being expended." Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC _____ (March 21, 1979) (slip opinion at 4-5; footnote omitted).

35. SERVICE WATER COOLING SYSTEM CONTENTION. The intervenor contends that the service water cooling system for the facility will be inadequate to support the component cooling system for the spent fuel pool if the proposed modification of the pool is permitted.

36. The foregoing Service Water Cooling System contention which had been scheduled for hearing is decided in favor of VEPCO on the basis of its motion for summary disposition along with the NRC Staff's answer to the motion. Pertinent considerations follow:

In its Statement of Facts under the subheading Spent Fuel Pool Cooling System Analysis, paragraphs 17 to 40, inclusive, VEPCO indicated how it analyzed its spent fuel cooling system, taking into account the proposed increase in fuel storage capacity. It reported that resulting fuel pool temperatures were found to be within the limits of 140°F for the normal case and 170°F for the abnormal case if one fuel pool cooling system pump and two coolers are used. The NRC Staff arrived at the same conclusion, and went further to note that should only one cooler be available during the specified peak load period, the resulting pool water temperatures of 148°F for the normal case and 177°F for the abnormal case "are only slightly above the previously established limits and will not result in unacceptable operating conditions nor adversely affect the health and safety of the public [Reference omitted]." NRC Staff Supplemental Response to VEPCO Summary Disposition Motion, dated June 25, 1979, pp. 4-5.

Once more, Potomac Alliance did not offer a single fact, by affidavit or otherwise, which would place its Service Water Cooling System contention into genuine issue worthy of a hearing. Potomac Alliance's persistent position in dealing with its contentions impressed the Board that it simply wanted a hearing in the nature of a public forum so that VEPCO and the NRC Staff would be put to the task of explaining over again their various premises on the occasion of examination by Potomac Alliance under circumstances where Potomac Alliance would have speculative questions to ask and no specific material facts to call upon.

The Board finds that VEPCO's service water cooling system is acceptable.

CONCLUSION AND ORDER

37. Pursuant to the Commission regulation 10 CFR §2.749, the Board concludes on the basis of the record in the proceeding that there is no genuine issue of any material fact and that VEPCO is entitled as a matter of law to a decision granting its motion of summary disposition.

38. Accordingly, it is hereby ordered that VEPCO's motion for summary disposition is granted, that the hearing previously scheduled for three separate dates concerning the Proposed Amendment To Facility Operating License NPF-4 To Permit Storage Pool Modification is permanently cancelled, and that the NRC Staff is authorized to permit VEPCO's proposed spent fuel storage modification and to adopt implementing measures necessary or convenient toward enabling VEPCO to effect such modification in a timely manner.

39. The two technical members of the Board, namely, Dr. Quentin J. Stober and Ernest E. Hill, participated in this decision, first summarily announced in Board Decisions, dated August 6, 1979, and in this Order explaining the decision. But for geographical distances and time considerations, Dr. Stober and Mr. Hill would have joined the Chairman in signing this Order.

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Done this *24th* day of August 1979 at Washington, D.C.

ATOMIC SAFETY AND LICENSING
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By


Valentine B. Deale, Chairman

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