UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

NRC STAFF BRIEF IN OPPOSITION TO INTERVENORS' AMENDED STATEMENT OF EXCEPTIONS

Steven C. Goldberg
Counsel for NRC Staff

December 10, 1979

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont'd.)

TABLE OF AUTHORITIES

Cases

NRC Decisions

Statutes

Regulations

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

12/10/79

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

NRC STAFF BRIEF IN OPPOSITION TO INTERVENORS' AMENDED STATEMENT OF EXCEPTIONS

I. INTRODUCTION

On September 12, 1979, Intervenors filed an amended statement of exceptions to the August 6, 1979 ruling of the Licensing Board in the present proceeding. The Board's decision, inter alia, granted VEPCO's summary disposition motion in its entirety thereby dismissing the proceeding. The Board's decision was further explained in an August 17, 1979 "Order Denying Intervenors' Motion to Amend Petition to Intervene" and in an August 24, 1979 "Order Granting VEPCO's Motion for Summary Disposition." An untimely brief in support of the amended exceptions was filed on October 26, 1979.[1/] The Staff opposes the Intervenors' exceptions for the reasons given below.

II. STATEMENT OF CASE

This proceeding was instituted upon publication of a notice of the proposed issuance of an operating license amendment on May 22, 1978 (43 Fed. Reg. 21957). Timely petitions to intervene were filed by the Potomac Alliance (Alliance) and Citizens Energy Forum (CEF). Amended petitions, including a statement of contentions, were filed on August 2, 1978. A special prehearing conference was held on September 8, 1978 to consider the petitions. Both intervention

1/ Intervenors' motion to file its brief out-of-time was granted by Appeal Board Memorandum and Order of October 29, 1979.

petitions were denied for lack of standing by Board Order of December 8, 1978, as amended on December 19, 1978. On January 26, 1979, the Appeal Board reversed this ruling and remanded the matter to the Board for further proceedings.[2/]

Pursuant to a Board Order of March 13, 1979, a prehearing conference was convened on March 29, 1979 for the purpose of identifying the contentions to be admitted as matters in controversy. A written stipulation of contentions was executed and presented to the Board at the March 29, 1979 prehearing conference. The Board designated the admitted contentions in its Order of April 23, 1979.

In a "Notice of Hearing," dated May 4, 1979, the Board announced that the prehearing conference and evidentiary hearing in this proceeding would commence on June 26, 1979. The Licensee filed a Motion for Summary Disposition on May 11, 1979. On June 6, 1979 the Board rescheduled the commencement of the evidentiary hearing until July 9-13 following extension requests by the Staff and Intervenors. By separate Orders on that date, the Board also granted the unopposed motion of CEF to be consolidated with the Alliance and admitted an additional contention, denominated "Service Water Cooling System," upon the unopposed motion of the Alliance.

On June 15, 1979, Intervenor filed a motion before the Board seeking either to suspend the instant proceeding or expand the scope of the

---

2/ Appeal Board Decision, dated January 29, 1979.

contentions at issue to address the suitability of the North Anna spent fuel pool for permanent storage. Intervenors argued that the opinion of the Court of Appeals in Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979) dictated this result. The Licensee and the Staff filed briefs in opposition to the Intervenors' motion. This motion was denied in the Board's August 6, 1979 ruling, as fully explained in its Order of August 17, 1979.

On June 18, 1979, the Board granted VEPCO's summary disposition motion with respect to certain contentions[3/] and provided an additional opportunity for the Staff and Intervenors to address the contentions for which summary disposition had not been granted. In its filing of June 25, 1979, the Staff supported VEPCO's motion for summary disposition on the balance of the contentions. Intervenors restated their opposition to the motion on that same date.

On June 29, 1979, the Board issued an Order whereby it: rescheduled the hearing for August 14, 1979; indicated its intent to reconsider its June 18, 1979 Order partially granting summary disposition; and provided the Intervenors additional time to further supplement their answers to the summary disposition motion. Pursuant to that Order, Intervenors filed their second supplemental answer in opposition to the summary disposition motion on July 23, 1979. The Board granted summary disposition of all contentions in its "Board Decisions" of August 6, 1979 to which the instant exceptions were taken.

3/ The Staff had supported summary disposition of these particular contentions by response of June 5, 1979. Intervenors opposed the Motion in its entirety in their response of that date.

III. ARGUMENT

1. The Licensing Board Did Not Err in Finding That There Existed No Genuine Issue of Material Fact With Respect to the Contention Labelled "Materials Integrity."[4/]

On May 11, 1979, VEPCO filed a Motion for Summary Disposition of the contentions at issue in the proceeding, including those which form the subject of exception 1. The motion was accompanied by a Statement of Material Facts as to Which There is No Genuine Issue to be Heard (Statement of Material Facts) relevant to each contention, and documentary reference to VEPCO's license amendment application and an affidavit of the project engineer for the spent fuel pool expansion. As relevant to exception 1, the Staff supported summary disposition by response of July 5, 1979 with supporting Staff affidavit.[5/]

With regard to the Materials Integrity contention, VEPCO pleaded sixteen (16) material facts as to which it alleged there was no genuine issue[6/] and in summary concluded that: "Storing 966 instead of 400 fuel assemblies in the spent fuel pool [would] not materially increase the corrosion of,

---

4/ This contention states: The 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: (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.

5/ The affidavit was prepared by G. B. Georgiev, Senior Materials Engineer, M. D. Houston, Reactor Engineer, and J. S. Wermiel, Reactor Engineer.

6/ See VEPCO Statement of Material Facts, paragraphs 78 through 86 and 127 through 134.

the stress upon, or other resultant problems with the fuel cladding, the racks, or the pool liner due to higher radiation levels." 7/

The Staff took the position that these paragraphs accurately summarize the salient facts not open to dispute. 8/ Further, on the basis of its evaluation the Staff found that the low neutron flux in the spent fuel pool and the rapid decrease of decay heat indicate that little if any effect would be produced upon the spent fuel assemblies or stainless steel pool components, as the Zircaloy cladding and other stainless steel components endure far greater radiation and temperature conditions in the reactor vessel with negligible effect. It was also its opinion that galvanic corrosion would not occur as all components are closely equivalent in electro-galvanic potential. Additionally, as only minimal general corrosion will occur, the Staff did not believe that the structural integrity of spent fuel pool components would be degraded. The incremental corrosion potential from the proposed modification was deemed negligible. The Staff further concluded that the existing spent fuel pool purification system would provide adequate purification capability and monitoring systems would detect an increase in corrosion residues, which could be remedied by more frequent replacement of filters and demineralizer resin beds. 9/

Based upon the foregoing, the Staff concluded that no genuine issues of material fact remain to be resolved with respect to increased corrosive

---

7/ See VEPCO's Statement of Material Facts at 21.

8/ See June 5, 1979 Staff response at 7 and supporting Staff affidavit.

9/ Id.; See also NRC Staff Safety Evaluation (SE), dated January 29, 1979, at §§2.2, 2.3, and 2.5.

effects upon the stored fuel and spent fuel pool components and that summary dispsotion should be granted of the Materials Integrity contention.[10/]

Intervenors filed several answers in opposition to the summary disposition motion on June 5, 25, and July 23, 1979. In contrast to the pleadings of VEPCO and the Staff, the Intervenors' first response merely asserted that the motion lacked merit without supporting affidavit or otherwise. It contained a summary statement of the material facts advanced in VEPCO's motion as to which it alleged there was a genuine issue to be heard. Significantly, it did not controvert any of the "statements" relative to the Materials Integrity contention. It contained no references to the record in the proceeding and, citing outstanding discovery, sought additional time within which to formulate a substantive response to the motion. Intervenors' second answer sought again to defer consideration of the motion. It did not address the merits of the motion. The third response represented an essentially argumentative rebuttal of the motion[11/] and was accompanied by the affidavit of an economic consultant on the "alternatives" contention discussed later.

10/ Id.

11/ See page 8 thereof with regard to this contention. The sole substantive assertion in this last response was that: "[t]o the best of its knowledge, no one has responded to the Alliance's statement that the American Concrete Institute has established 150°F as an upper limit for concrete structures containing fluids." Id. However, this assertion does not raise a question as to a material fact for hearing. For if, as it appears, Intervenors' concern is with the integrity of the spent fuel pool itself, as distinct from the "materials" contained therein, this presents an issue outside the scope of the subject contention which is clearly limited by its terms to the "components and contents" of the pool. See n. 3 infra. Thus, this was not a matter that was directly addressed in party submissions in this proceeding. The spent fuel pool is a reinforced concrete seismic Category I structure with a stainless steel liner. SE, §2.2.

On the basis of the above filings, the Board granted VEPCO's summary disposition motion in its entirety. With respect to the Materials Integrity contention, the Board referenced the relevant portions of the motion papers and supporting affidavits and concluded that these contentions should be decided in favor of VEPCO. The Staff believes that this decision was correct particularly in view of the fact that the Intervenors introduced no information to controvert VEPCO's statement of material facts by affidavit or otherwise.

2. The Licensing Board Did Not Err in Finding That There Existed No Genuine Issue of Material Fact with Respect to the Contention Labelled "Alternatives." 12/

In their present appeal the Intervenors contend that the issue of alternatives to VEPCO's proposal was "ripe with unanswerable material issues" and that its economic consultant regarded the documents and affidavits tendered as "Wholly inadequate."13/ As relevant to the Alternatives contention, VEPCO pleaded twenty-three (23) material facts as to which it alleged there was no genuine issue. 14/ The pleading is supported by references to VEPCO's license amendment application, as amended, and

---

12/ The 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 onsite; (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 consturction of such pool, if necessary) for storage of spent fuel from Units 1 and 2.

13/ Brief at 13-14.

14/ See VEPCO Statement of Material Facts, paragraphs 157 through 171.

supporting affidavit of its project engineer. VEPCO found that the alternatives proposed by the Intervenor were unacceptable due primarily to either economic or time constraints. The Staff expressly concurred with the majority of these "statements" and indicated that it had no basis to question the reasonableness of the monetary and time estimates contained in the balance of the paragraphs.15/

In the Staff's Environmental Impact Appraisal (EIA), dated April 2, 1979, the following alternatives to the proposed modification were considered: (1) reprocessing of spent fuel; (2) storage at independent spent fuel storage installations; (3) offsite storage in spent fuel pools of other reactors; (4) lengthening the fuel cycles; (5) conservation measures; and (6) shutdown of the facility. EIA at §6.1-6.6. The Staff found that the proposed modification would have an insignificant environmental impact (EIA, §6.7), and would not result in a significant commitment of resources (EIA, §§7.3.2, 7.4). The Staff further concluded that the considered alternatives [which included construction of a new spent fuel pool onsite (proposed alternative (a))], as well as proposed alternatives (b) and (c), were unavailable within the necessary time-frame, were more expensive, and offered no environmental advantages over the proposed action. EIA, §6.7; Staff Affidavit of P. H. Leech.

15/ See Affidavit of P. H. Leech, the environmental project manager for the case, which accompanied the June 5, 1979 Staff response to the summary disposition motion.

The Intervenors adduced no substantial information to contradict the representations of either the Licensee or Staff with respect to this contention. Intervenors' second supplemental answer of July 23, 1979 to VEPCO's summary disposition motion was accompaneid by the affidavit of an economic consultant. The affidavit alleged that VEPCO hac not presented adequate information to determine whether its proposed modification was economically more advantageous than the three "alternatives" proferred by the Intervenors. The Board properly discounted the affidavit on the grounds that the Intervenors made no attempt to obtain details on the costs of the action to enable them to form a position on the economics of the proposed action and that, consequently, the Intervenors answers failed to "set forth facts showing that there is a genuine issue to be heard" pursuant to the requirement of 10 C.F.R. §2,749(b). August 24, 1979 Order at 19-20. Moreover, ample opportunity was afforded to the Intervenors to secure such necessary information if indeed information existed.[16/] The Staff believes that summary disposition of the Alternatives contention is amply supported by the record as the Staff's responsive filings on the motion demonstrate and should be sustained.

16/ The Commission's regulations on summary disposition recognize that a party opposing a motion may obtain a continuance from the Board if it cannot, for reasons stated in an affidavit, present by affidavit facts essential to justify its opposition. See 10 C.F.R. §2.749(c). In fact, consideration of this proposition led the Board to grant Intervenors a third opportunity to supplement their answer to VEPCO's summary disposition motion. This regulatory provision should not be applied to permit a party to stave off indefinitely its obligation to address the merits of a motion for summary disposition.

3. The Licensing Board Did Not Err in Finding That There Existed No Genuine Issue of Material Fact With Respect to the Contention Labelled "Service Water Cooling System." 17/

On April 4, 1979, VEPCO submitted a Licensee Event Report (LER) to the Commission which disclosed that previous calculations of the effects of increased service water and component cooling system temperature due to planned four unit operation had overlooked the spent fuel pool cooling system.18/ The Report noted that a preliminary analysis of the matter indicated that under one described set of circumstances the spent fuel pool temperature would exceed the established limit of 170°F in the Final Safety Analysis Report for the facility for the off-normal case. Intervenors' May 9, 1979 unopposed motion to amend its petition to introduce the Service Water Cooling System contention was granted by the Board on June 6, 1979. In its brief on appeal, Intervenors argue that the Board had a responsibility to investigate their contention on the record, to determine the gravity of the possible violation of prescribed temperature limits and to consider whether the "applicable technical specifications" should be changed.20/

17/ This contention states: 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.

18/ Report No. LER 79-44/01T-0. A copy of this Report and subsequent letters from C. M. Stallings, VEPCO, to J. P. O'Reilly, NRC, dated April 17, 1979 discussing the subject event and corrective action planned was attached to Intervenors' May 9, 1979 motion to amend its petition.

19/ Order Amending Order Granting Intervention, Providing for a Hearing and Designating Contentions of Intervenors.

20/ Brief at 16. Intervenors, it would appear, mistakenly assume that the temperature limits which must be maintained in the spent fuel pool under various conditions are requirements in the license's technical specifications. These are prescribed limits which form the basis for NRC review of the spent fuel pool cooling system but are not codified in the plant's technical specifications.

In its motion for summary disposition, VEPCO pleaded twenty-four (24) material facts respecting this contention to which it alleged there was no genuine issue.[21/] It concluded, in material part, that, on the basis of a reanalysis of the ability of its service water cooling system to support eventual four unit operation, resulting spent 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.[22/] In its June 25, 1979 supplemental response to VEPCO's summary dispsotion motion, the Staff agreed with this conclusion and indicated that this mode of operation is needed for only a short period of time just after refueling when the spent fuel decay heat load is at its greatest level. It further stated that, should only one cooler be available during this peak heat load period, the resulting pool water temperatures of 148°F for the normal case and 177°F for the abnormal case would be only slightly above the previously established limits and would not result in unacceptable operating conditions nor adversely affect the health and safety of the public.[23/]

21/ See VEPCO Statement of Material Facts, paragraphs 17 through 40.

22/ Id., para. 20. By letter of November 22, 1979 from S. C. Brown, VEPCO, to H. Denton, NRC, VEPCO indicated that it was conducting a feasibility study for utilizing the equipment involved in the design of proposed nuclear Units 3 and 4 in the design of coal units.

23/ See Supplemental response at 4-5 and accompanying affidavit of J. S. Wermiel.

In none of its several answers to VEPCO's summary disposition motion did Intervenors challenge its statement of material facts on this issue or otherwise controvert the positions of VEPCO or the Staff on this matter. Rather, in their opposition they simply assert that these views should be subjected to adjudication "at which Intervenors can assist the Board in drawing out VEPCO's and the Staff's views on the matter."[24/] Standing alone, this fails to provide an adequate basis to defeat summary disposition. The record in this case does not reflect a genuine issue of material fact to be resolved with respect to the ability of the spent fuel pool cooling system to maintain the spent fuel pool temperature within designated and acceptable limits, and, absent demonstration of facts to the contrary, the Board's granting of summary disposition and dismissal of this contention was proper and should be upheld.

24/ See Intervenors' second supplemental answer of July 23, 1979 at 11.

4. The Licensing Board Did Not Err in Finding That, as a Matter of Law, VEPCO Was Entitled to Judgment With Respect to the Contention Labelled "Alternatives."

In their brief on appeal, Intervenors argue that the submission of VEPCO and the Staff with respect to its Alternatives contention (See n. 12 infra) were "so thin that the Board's award of summary disposition violated its independent duty under NEPA to investigate and resolve this contention [citation omitted]."[25/] In support of this argument, Intervenors cite §102(2)(E) of the National Environmental Policy Act (NEPA) (42 U.S.C. §4332) [26/] for the proposition that there is a responsibility to consider alternatives independent of the obligation to issue an environmental impact statement. They then allege, without elaboration, that the submissions of VEPCO and the Staff were inadequate to warrant summary disposition (Brief at 18). The Staff does not agree.

In the present proceeding the Staff issued an environmental impact appraisal (EIA) in connection with the instant action in which it concluded that the environmental impacts of the proposed action are negligible (EIA, §7.4), that it will not result in a significant commitment of resources (EIA, §§7.3.2, 7.4), and that an environmental impact statement is not required (EIA, §9). The EIA considered several alternatives, some of which encompass those proferred by the Intervenors.

25/ Brief at 18.

26/ That Section provides that ". . . all agencies of the Federal government shall...study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources...."

As noted in the discussion of exception 2 above, the Board properly found, on the basis of the party submissions, that there were no triable facts relevant to the alternatives contention. The Board also cited approvingly from the Appeal Board decision in the Trojan spent fuel expansion proceeding which found that, as a matter of law, there was no obligation to consider available alternatives to a similar spent fuel pool modification, given the fact that such action will neither harm the environment nor involve unresolved conflicts concerning alternative uses of available resources. Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979). As the Appeal Board observed therein, and the Licensing Board duly noted,[27/] "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." Id. at 266.

Even assuming the existence of an obligation to consider alternatives, such alternatives must, nonetheless, pass some threshold test of reasonableness. See, e.g., Vermont Yankee Nuclear Power Corp. v. NRDC, et al., 435 U.S. 519 (1978); NRDC v. Morton, 458 F.2d 827, 837 (D.C. Cir. 1972). The Staff believes that the alternatives considered in the EIA, which encompass Intervenors' proposed alternative (a), more than satisfy such obligation. The EIA, coupled with the Leech affidavit, demonstrates that the alternatives

---

27/ Board Order of August 24, 1979 at 20.

proferred by the Intervenor are not viable alternatives to the proposed action or otherwise preferable from an environmental standpoint. Cf. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978).

In sum, the Staff believes that the Board properly concluded that the Trojan decision, combined with the factual showing in the motion for summary disposition and Staff response thereto, warranted dismissal of this contention.

5. With Respect to Each of the Contentions at Issue in the Proceeding, the Licensing Board Adequately Explained or Specified the Factual and Legal Bases for its Granting of VEPCO's Motion for Summary Disposition.

Intervenors assert that the Board's Order of August 24, 1979 granting VEPCO's summary disposition motion failed to adequately articulate the grounds and rationale for the action taken and should be remanded to the Board.[28/] As relevant to this assertion, the Appeal Board has indicated that: "[W]e long ago reminded licensing boards of their duty not only to resolve contested issues but to 'articulate in reasonable detail the basis' for the course of action chosen [citation omitted]."[29/] While perhaps not as comprehensive as it could be, the Board's Order of August 24, 1979 contained an adequate explanation of the factual and legal bases for its grant of VEPCO's summary disposition motion to permit appellate review. This is particularly true where, as here, the material facts were, in the main, not controverted by affidavit or otherwise. Cf. 10 C.F.R. §2.749(b). The Board reviewed and summarized the relevant filings of the parties and referenced pertinent documentation and case law . As it addressed each issue, the Board explained its rationale for ruling in the manner it did. On balance, the Staff believes that the Board's Order of August 24, 1979 satisfies the criteria recognized by the Appeal Board in Seabrook with regard to the duty of a Licensing Board to articulate the basis for its decisions in reasonable detail.

28/ Brief at 19-21.

29/ Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-422, 6 NRC 33, 41 (1977), CLI-78-1, 7 NRC 1 (1978), aff'd sub nom. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978).

6. The Licensing Board did Not Err in Denying Intervenors' Motion to Amend Petition to Intervene and in Determining to Take No Action on Account of the Decision of the United States Court of Appeals in Minnesota v. NRC.

On June 14, 1979, Intervenor filed a motion before the Board seeking either to suspend the instant proceeding or expand the scope of the contentions at issue to address the suitability of the North Anna spent fuel pool for permanent storage. Intervenors argued that the opinion of the Court of Appeals in Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979) dictated this result. The Licensee and the Staff filed briefs in opposition to the Intervenors' motion. This motion was denied in the Board's August 6, 1979 ruling, as fully explained in its Order of August 19, 1979.[30/]

The Minnesota decision 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 2004-09, 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." 602 F.2d at 418.

30/ At least one Licensing Board has denied a similarly grounded motion, Commonwealth Edison Co. (Zion Station, Units 1 and 2). Licensing Board Memorandum and Order Denying the State of Illinois' Motion for Stay of Proceedings, (unpublished) (August 27, 1979).

In its decision of August 17, 1979, the Board cited approvingly from the court's endorsement of the Commission's position in that case that it could properly reach the required determination in the context of a "'generic' proceeding such as rulemaking, and then apply its determinations in subsequent adjudicatory proceedings." 602 F.2d at 416. The Board noted that this was the procedure chosen by the Commission thereby rendering inappropriate action by individual Licensing Boards based on their own consideration of Minnesota on nuclear waste management.[30a/] In this regard, the Board relied upon the Commission's policy pronouncement, entitled "Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts from Spent Fuel Reprocessing and Radioactive Waste Management." 44 Fed. Reg. 45362 (August 2, 1979). This pronouncement declared, among other things, the Commission's intent to conduct a generic proceeding to ascertain the outlook for availability of safe waste disposal methods. The pronouncement expressly noted that such proceeding was immediately occasioned by the D. C. Circuit's decision in Minnesota. 44 Fed. Reg. at 45362 and n. 26. The Commission indicated that it would announce the procedures governing this proceeding and its precise scope at a later date. Id. In its brief on appeal, Intervenors argue that the Board erroneously denied its motion to amend its petition grounded on the Minnesota opinion which decision, they assert, "makes it clear that prior to approval of an operating license amendment permitting expansion of the capacity of a spent fuel pool, NEPA requires a determination

---

30a/ Board Order of August 17, 1979 at 3.

that the amendment provides a safe and environmentally acceptable means of spent fuel storage until an alternative technique can reasonably be expected to become available."[31/] The Staff believes that the Commission's recent action respecting the Minnesota remand mandates affirmance of the Board's ruling on this issue.

Subsequent to the filing of exceptions in this matter, the Commission announced its initiation of a generic rulemaking proceeding on the issue of waste management disposal in response to the Minnesota remand. See Notice of Proposed Rulemaking published at 44 Fed. Reg. 61372 (October 25, 1979). In a manner dispositive of Intervenors' exception 6 involved herein, the Commission explained the appropriate handling of the matter at issue in individual proceedings:

> During this [generic] proceeding the safety implications and environmental impacts of radioactive waste storage on-site for the duration of a license will continue to be subjects for adjudication in individual facility licensing proceedings. The Commission has decided, however, that during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. These issues are most appropriately addressed in a generic proceeding of the character here envisaged. Furthermore, the court in the State of Minnesota case by remanding this matter to the Commission but not vacating or revoking the facility licenses involved, has supported the Commission's conclusion that licensing practices need not be altered during this proceeding. However, all licensing proceedings now underway will be subject to whatever final determinations are reached in this proceeding. 44 Fed. Reg. at 61373.

Thus, the Staff submits that the Board properly denied Intervenors' motion regarding waste management consideration in this proceeding.

31/ Brief at 23.

7. The Licensing Board Did Not Err in Granting VEPCO's Motion for Summary Disposition and the Hearing Schedule Established for the Proceeding Was Not So Unduly Abbreviated that Intervenors Were Illegally Rendered Unable to Conduct Adequate Discovery or Otherwise Present an Adequate Defense to VEPCO's Motion.

In their brief on appeal, Intervenors contend that the hearing schedule established by the Board following its admission of contentions in the proceeding was unduly abbreviated and constituted a denial of due process.[32/] As relevant to this claim, the Appeal Board has recognized that scheduling is a matter of Licensing Board discretion which will not be interfered with absent a "truly exceptional situation." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-293, 2 NRC 660 (1975). A scheduling decision should be reversed upon a finding that a licensing board abused its discretion by setting a hearing schedule that deprived a party of its right to procedural due process. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-468, 7 NRC 465, 468 (1978); Public Service Co. of Ind., (Marble Hill Generating Station, Units 1 and 2), ALAB 459, 7 NRC 179, 188 (1978). The Staff submits that the Intervenors had ample time to develop their direct case and that the Board did not abuse its discretion in establishing a hearing schedule in this proceeding.

In the Staff's view, Intervenors had adequate opportunity to prosecute their contentions and to formulate a substantive response to VEPCO's summary disposition motion. The Staff believes that Intervenors had ample time to obtain information relevant to their contentions both prior to, and following, their formal admission as issues. The application and supporting documentation were filed with the Commission in May 1, 1978. The review was contained in the SE and EIA which were available in January and April, 1979, respectively.

32/ Brief at 35.

If Intervenors needed further relevant information, they could have requested it. The parties agreed to permit informal discovery at least as early as their meeting to negotiate contentions on March 14, 1979. Presumptively there is some factual basis for the contentions at the time of their advancement (August 1978).

Intervenors did avail themselves of discovery. VEPCO's responses to Intervenors' interrogatories were served on June 21, 1979. Staff responses to Intervenors' interrogatories were served on June 29 and July 14, 1979. Intervenors were given three opportunities (June 5, 25 and July 23) to respond to the motion for summary disposition, by which time their discovery requests were fully answered. Thus, it is difficult to appreciate the allegation that the hearing schedule, twice postponed, was so abbreviated as to effectively compromise case preparation and constitute reversible error.

CONCLUSION

In light of the above, the Staff urges rejection of the amended statement of exceptions and affirmation of the Board rulings on appeal.

Respectfully submitted,

Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of December, 1979.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF BRIEF IN OPPOSITION TO INTERVENORS' AMENDED STATEMENT OF EXCEPTIONS" 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 10th day of December, 1979.

*Alan S. Rosenthal, Chairman
Atomic Safety and Licensing
Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

* Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Lawrence R. Quarles
Apartment 51
Kendal at Longwood
Kennett Square, Pennsylvania 19348

Valentine B. Deale, Esq., Chairman
Atomic Safety and Licensing Board
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

Mr. Ernest Hill
Lawrence Livermore Laboratory
University of California
P. O. Box 800, L-123
Livermore, California 94550

Dr. Quentin J. Stober
Fisheries Research Institute
University of Washington
Seattle, Washington 98195

Michael W. Maupin, Esq.
Hunton & Williams
P. O. Box 1538
Richmond, Virginia 23212

Mr. Irwin B. Kroot
Citizens' Energy Forum
P. O. Box 138
McLean, Virginia 22101

James B. Dougherty, Esq.
Potomac Alliance
1416 S Street, N. W.
Washington, D. C. 20009

Anthony J. Gambardella, Esq.
Office of the Attorney General
11 South 12th Street, Suite 308
Richmond, Virginia 23219

Atomic Safety and Licensing Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Appeal Panel (5)*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regualtory Commission
Washington, D. C. 20555

Steven C. Goldberg
Counsel for NRC Staff