

June 13, 1979

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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 OL
)	50-339 OL
(North Anna Power Station,)	
Units 1 and 2))	(Reliance on nonsafety grade equipment)

VEPCO'S BRIEF ON NONSAFETY
GRADE EQUIPMENT

This Appeal Board, in its Memorandum and Order of April 12, 1979 (ALAB-538), directed the parties to brief the question whether it has jurisdiction to consider the "current practice of relying on nonsafety grade equipment to mitigate the severity of anticipated operational occurrences." The NRC Staff filed its "NRC Staff Brief in Response to ALAB-538" on May 11, 1979. This is Vepco's response to the Staff's brief.

Vepco believes that the NRC Staff has stated the law correctly. The Seabrook case decided only a few months ago, Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-513, 8 NRC 694, 695-96 (1978), tells us that an Appeal Board decision authorizing the issuance of construction permits becomes final (ending the Appeal Board's jurisdiction)

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when the time expires for the Commission to direct that the record be certified to it for final decision (see Staff Brief 4-6). The Appeal Board may still act on matters related to the issues over which the Appeal Board has retained jurisdiction, of course, but unrelated issues are solely within the province of the NRC Staff.

If new matters are brought to the Appeal Board's attention, the important question is whether they are related to the issues over which the Appeal Board has retained jurisdiction. The NRC Staff translates this "relatedness" test into a "reasonable nexus" standard, and that seems as good a test as any. There is no reason why a different principle should apply in an operating license, as opposed to a construction permit, proceeding. If the Appeal Board lacks jurisdiction, it lacks jurisdiction no matter what the nature of the proceeding (Staff brief 4 n.6, 6 n.8).

The question for the Appeal Board now is whether there is a reasonable nexus between the nonsafety grade equipment issue and any of the three issues over which the Board has retained jurisdiction in the North Anna 1 & 2 proceeding: radon releases, turbine missiles, and service water pumphouse settlement.

The NRC Staff deals with this question in section IV of its brief. The Staff's view is that there "may be" a

potential relationship between the nonsafety grade equipment issue and the turbine missile issue. The Staff reasons as follows:

"Nonsafety-grade equipment (the matter addressed by the April 2 Board Notification document) is used in the construction and operation of turbine systems. The April 2 document indicates that the Staff is evaluating its position whether non-safety grade equipment should properly be relied upon for mitigation of the severity of anticipated operational occurrences. To the extent that this information suggests inquiry into whether analysis of the turbine missile event includes reliance upon operation of nonsafety-grade equipment, a potential nexus exists between the April 2 document and the turbine missile issue pending before the Appeal Board."

(Staff brief 13 n.15.)

In Vepco's view, the nonsafety grade equipment issue lacks a reasonable nexus to the issues over which the Appeal Board has retained jurisdiction, including the turbine missile issue. First, the Staff's Board Notification of April 2, 1979, suggests that the problem with nonsafety grade equipment that concerns the Staff is an anticipated operational occurrence combined with an undesirable control system response that would result in violation of fuel damage criteria. The staff concludes that:

While operating experience indicates that there is no immediate safety significance to this issue, the General Design Criteria suggest that additional reviews to ensure adequate thermal margins is warranted [sic].

Memorandum from R. L. Tedesco to D. B. Vassallo, March 16, 1979, at 2 (emphasis added). It appears that what concerns the Staff is damage to the reactor core, not generation of turbine missiles.

Second, nothing in the Staff's brief of May 11, 1979, provides a basis for concluding that a reasonable nexus exists. It is Vepco's understanding that the two examples of nonsafety grade equipment failure that the Staff discusses in its brief (control rod insertion system and turbine bypass interlock) are not related to the turbine missile issue.

In short, Vepco's view, based on the relevant documents in the record, is that the Appeal Board lacks jurisdiction over the nonsafety grade equipment issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of
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