May 17, 1979

LOCAL PDR

UNITES STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

VEPCO'S ANSWER TO THE STATEMENT OF OBJECTIONS OF CEF AND THE POTOMAC ALLIANCE

On May 2 and 3, 1979, respectively, the Potomac Alliance and Citizens' Energy Forum (CEF) filed objections to the Board's "Order Granting Intervention, Providing for a Hearing and Designating Contentions of Intervenors" of April 21, 1979. Assuming that the Board's order was mailed to the parties on the docket date of April 23, then both statements of objections are within the 5-day period (plus five days for mailing) of 10 CFR § 2.751a(d). The applicant, Virginia Electric and Power Company (Vepco) opposes the intervenors' requests that the Board revise its order, for the following reasons.

OBJECTIONS OF THE POTOMAC ALLIANCE

The Alliance made two objections:

(1) The Board erred in disallowing the contention of the Alliance labelled "Alternatives" and

found in Attachment C of a document entitled "Stipulation of Contentions" and signed by the parties March 29, 1979.

(2) The Board erred in disallowing the contention of the Alliance labelled "Emissions" and by directing that this contention be consolidated with a contention raised by the Citizens Energy Forum, Inc. (CEF) and managed thereafter by CEF.

Potomac Alliance's Statement of Objections at 1-2.

The "Alternatives" contention that was disallowed consisted of three proposed alternatives:

(a) The use of design features which increase the safety of the spent fuel pool, such as boral plates or radiation-absorbing safety curtains;

(b) The use of different rack configurations from that proposed by the Applicant;

(c) The derating of Units 1 and/or 2, in order to postpone the point at which additional spent fuel storage capacity will be needed.

The Board was correct in excluding these three alternatives from consideration. Neither Vepco nor the NRC Staff believed that they should be admitted. The reason they should not be admitted, Vepco believes, is that there is no reason to believe that any of the three would be environmentally better than the proposed modification. Alternatives (a) and (b), in particular, are issues of radiological health and safety rather than of environmental impact; if Vepco shows that it will meet the Commission's regulations governing health and safety, then it

need not explore alternative ways of doing the same thing, at least not unless the alternatives would be environmentally better. See Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-458, 7 NRC 155, 162-63 (Feb. 14, 1978). The Potomac Alliance has not given the Board any reason to believe that the alternatives would be environmentally better.

This is not to say, as the Alliance suggests the Board has done (Alliance Statement of Objections at 4), that the intervenor has the burden of proof. The Board has said in its subsequent Notice of Hearing that it is Vepco that has the burden of proof. An intervenor does, however, have the burden of going forward with respect to the issues raised by his contentions. Philadelphia Electric Co. (Limerick Generating Station, Units 1 & 2), ALAB-262, 1 NRC 163, 191 (1975); Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-226, 8 AEC 381, 388-89 (1974). An intervenor, in fact, must make a showing sufficient to require reasonable minds to inquire further. See Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 46 U.S.L.W. 4301, 4310 (Apr. 3, 1978), cited in Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), LBP-78-16, 7 NRC 811, 822 n.27 (May 4, 1978), aff'd, ALAB-484, 7 NRC 984 (June 7, 1978).

The same objection applies to the Alliance's alternative (c). Given the extremely small environmental impact of the high-density racks, it is simply not plausible to suppose that the derating

of the power station would be materially better for the environment. To argue otherwise, one has to take the position that the cost of derating is also very small, and this is tantamount to saying that the power to be produced by Units 1 and 2 is not really needed at all. But the "need for power" issue was litigated at the construction permit stage, and the Commission concluded that there is a need for the power. The Alliance has suggested no reason for changing that conclusion now.

The Alliance's second objection is to the Board's failure to let the Alliance separately pursue its "Emissions" contention:

> The Intervenor contends that the Applicant has failed to analyze adequately the liquid and gaseous radioactive emissions that will result from the proposed increase in fuel storage capacity, and has failed to demonstrate that significant adverse environmental effects will not result from such emissions.

CEF's "Emissions" contention, by comparison, is the following:

> Intervenor contends that Vepco has neglected to address the additional liquid and gaseous radioactive emissions that will result from the increased fuel storage, and the effect of these emissions on the biological community in the vicinity of the spent fuel pool has not been adequately addressed. Applicant's analyses of radiation released, and of possible releases in the event of those accidents considered in Sections 9.1 through 9.4 of the application, are superficial and insubstantial in the Summary of Proposed Modifications.

Try as it might, Vepco can see no significant difference between these two statments of the contention, and certainly no important difference insofar as what evidence is required to resolve the issue.

Accordingly, the Board was fully justified in consolidating the two contentions under the management of CEF. Section 2.714(e) of 10 CFR provides the following:

> (e) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, presiding officer or the designated atomic safety and licensing board may direct in the interests of: (1) Restricting irrelevant, duplicative or repetitive evidence and argument, (2) having common interests represented by a spokesman, and (3) retaining authority to determine priorities and control the compass of the hearing.

Also, § 2.715a says this:

> Sec. 2.715a. Consolidation of parties in construction permit or operating license proceedings. -- On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding for the issuance of a construction permit or an operating license for a production or utilization facility who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

Vepco suggests that the Alliance has not demonstrated that it will be prejudiced by the consolidation of the Emissions contentions under CEF management and, indeed, that at this stage of the proceeding there is no reason to think that it will be prejudiced. If in the future the Alliance finds that its rights are prejudiced (for example, that it is being hindered by CEF in the presentation

of evidence or otherwise), then it can ask for relief at that point with better basis than it now has.

OBJECTIONS OF CEF

CEF objects to the Board's treatment of four of its contentions: (1) Heavy Loads, (2) Leakage, (3) Generic Environmental Impact Statement, and (4) No Proven Need. With respect to the first of these, Heavy Loads, CEF says it wants to explore the potential of a spent fuel assembly dropped onto a fully loaded rack and also a dropped cask with pool perforation as a cause of a pool leak. CEF has not shown, however, why it cannot explore these concerns under the "Thermal Effects" contention (which in the Board's formulation embraces the rate of temperature rise in the pool as a result of an accidental leak) and the "Radioactive Emission" contention (which includes consideration of a fuel drop accident). Similarly, CEF has not explained why it cannot have its concerns about "Leakage" explored under the "Thermal Effects" and "Radioactive Emission" contentions.

As for the Generic Environmental Impact Statement contention, it is inadmissable as a matter of law. CEF's contention that "the NRC's policy of granting spent fuel compaction on a case-by-case basis without the benefit of a final generic environmental impact statement violates the National Environmental

Policy Act" is inadmissible on its face, because this licensing board lacks the power to overturn a Commission policy. The Commission has already decided the question against CEF. See Intent to Prepare Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, 40 Fed. Reg. 42801 (Sept. 16, 1975). The second part of the contention, that the NRC should not permit spent fuel compaction unless a reactor is threatened with shutdown, pending a final generic environmental impact statement" is likewise wrong as a matter of law, since the Commission, in the above statement of intent, has ruled that a weighing of several factors is to be done, only one of which is whether a deferral of the licensing action would result in substantial harm to the public interest. See 40 Fed. Reg. 42802. CEF's argument was also raised in the Trojan proceeding:

> Oregon [one of the intervenors] is more explicit: "*** license amendments authorizing increased on-site storage of spent fuel cannot be issued prior to completion of the generic environmental impact statement ('GEIS') described in such notice, unless deferral of an individual licensing action would result in substantial harm to the public interests".

Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC ___ (Mar. 21, 1979), slip op. at 13. The Appeal Board, however, disagreed:

> We find nothing in the terms of the notice which either expressly or implicitly lends support to the thesis that controlling significance must be given to the fifth factor, with the possible consequence that expansion of the spent fuel pool capacity may be authorized only if reactor shutdown is imminent due to a lack of available existing storage capacity. . . . [T]here are affirmative indications that the Commission's purpose was

> not to restrict pool capacity expansion authorizations to those situations in which, absent such an authorization, the reactor would have to shut down immediately for want of available on-site spent fuel storage space.

Id., slip op. at 13-14. CEF's contention is wrong as a matter of law.

As for "No Proven Need," it appears to be essentially the same contention as the Generic Environmental Impact Statement contention, above. CEF appears to be arguing, not that the absence of an immediate, pressing need, weighed against the other of the Commission's four factors, mandates the refusal of the license amendment, but rather that the absence of a pressing need by itself is sufficient basis to deny the amendment. As noted above, the Appeal Board has already rejected this argument.

For the above reasons, Vepco urges the Board to stand by its original Order of April 21, 1979, and deny the requests of the Potomac Alliance and CEF for modification of that Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of Vepco's Answer to the Statement of Objections of CEF and the Potomac Alliance on each of the persons named below by first-class mail, postage prepaid.

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