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BEFORE THE COMMISSION

Proposed Amendment to  
Operating License NPF-4

This proceeding involves Vepco's application to expand the capacity of the spent fuel pool at the North Anna Power Station, Units 1 and 2, by installing high-density spent fuel storage racks. The Atomic Safety and Licensing Board granted

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summary disposition of all issues, and the Appeal Board affirmed in ALAB-584. The high-density racks have been installed, and spent fuel is stored in them now.

The Alliance petition raises a single question of law:

Whether the Appeal Board erred in concluding that prior to issuing an OL amendment allowing SFP modification the Commission is not required under the National Environmental Policy Act (NEPA) to consider fully the health, safety and environmental consequences which may result from the action subsequent to the expiration of the OL.

Alliance petition 2 (footnote omitted). As the Alliance points out, this issue was raised before both the Licensing Board and the Appeal Board. As it did before those two boards, the Alliance argues before this Commission that the North Anna operating license amendment may not yet legally be issued because of State of Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979). The Commission has dealt with State of Minnesota v. NRC by instituting the "Waste Confidence" proceeding, announced at 44 Fed. Reg. 61372 (Oct. 25, 1979).

#### WHY ALAB-584 WAS CORRECTLY DECIDED

The Appeal Board decided in ALAB-584 that the issuance of the fuel pool expansion amendment in this case need not await the outcome of the Waste Confidence proceeding. The Alliance offers two reasons why it thinks the Appeal Board was wrong. The first, it claims, is that the Commission has never said that fuel pool expansions may continue to be

licensed before the Waste Confidence proceeding is finished (Alliance petition 5-6).

Here the Alliance is simply wrong. The Appeal Board correctly observed that the Commission had already decided the question, not once but two times, as one can see by looking at ALAB-584, slip op. at 29-31, and the documents cited there. Particularly telling is the Commission's denial of an intervenor's petition in the Big Rock Point proceeding this past January, wherein the Commission rejected the argument that all individual spent fuel pool modification proceedings "must be suspended until the rulemaking is completed."\*

The Alliance's second reason why it thinks ALAB-584 was wrong is that it conflicts with the National Environmental Policy Act, as interpreted in State of Minnesota v. NRC. This is really just an argument that the Commission itself was wrong in denying the Big Rock Point intervenor's petition, but the Alliance offers nothing that throws into question the Commis-

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\*The Alliance argues that the denial of the Big Rock Point petition is irrelevant because the Big Rock Point intervenors sought a "suspension," whereas the Alliance seeks only a "postponement." Apparently the Alliance believes that the Commission's denial of the Big Rock Point petition addressed only the trivial question whether license amendment proceedings could go forward on issues other than the one in State of Minnesota. But a reading of the Big Rock Point petition and the Commission's response reveals that the same issue was involved there as the Alliance seeks to raise here.

sion's reasoning when it denied that petition.\*

WHY COMMISSION REVIEW SHOULD NOT BE EXERCISED

There are a number of reasons why Commission review of ALAB-584 should not be exercised. The principal one is that the Alliance's only issue is one the Commission decided six months ago in its announcement of the Waste Confidence proceeding and again four months ago in Big Rock Point. Nothing has changed, yet the Alliance wants the issue decided a third time.

Moreover, Commission review is not warranted because the State of Minnesota v. NRC issue is simply not important in this case. The environmental impact of the expanded fuel storage capacity\*\*, if any, will not begin for years, because Vepco will not be using the expanded storage capacity at North Anna

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\*The Alliance's argument is that the remedy in State of Minnesota v. NRC, which did not include reversing the issuance of the license amendments, is irrelevant to other proceedings, because what the court did was balance the equities and decide that the consequences of a reversal would be too severe. This interpretation of State of Minnesota is entirely speculative, and, even if it is correct, the Alliance does not establish that the equities in the North Anna case are materially different from those in State of Minnesota.

\*\*The originally licensed capacity was 416 fuel assemblies, though there was actually room for only 400. The expanded capacity is 966.

until 1983<sup>\*</sup> or later, by which time the dispute will probably have been resolved by the Waste Confidence proceeding. And since the Commission has said that ongoing licensing proceedings will be subject to any final determinations that result from the Waste Confidence proceeding, see 44 Fed. Reg. 61372, 61373 (Oct. 25, 1979), there is no reason to review the North Anna decision now.

Section 2.786(b)(4)(i) of 10 CFR says that the Commission will ordinarily not grant a petition for review unless it appears that the case involves "an important matter that could significantly affect the environment, the public health and safety, or the common defense and security, . . . involves an important procedural issue, or otherwise raises important questions of public policy." There is no such matter involved in this proceeding.

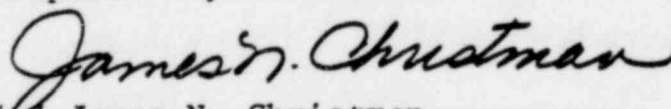
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\* The 1983 date comes from Vepco's license amendment application, "Summary of Proposed Modifications to the Spent Fuel Storage Pool Associated with Increasing Storage Capacity for North Anna Power Station Unit Nos. 1 and 2," dated April 1978. Figure 1-1 on page 3 of that document shows that the 400th and 416th fuel storage cells would be filled in 1983.

This projected date, however, depended on the assumption that North Anna Unit 2 would first load fuel in December 1978. In fact, North Anna 2 is more than a year behind that schedule. Vepco's present estimate is that the 417th fuel storage cell will not be filled until the spring of 1985.

For the foregoing reasons, the Potomac Alliance's petition for review should be denied.

Respectfully submitted,



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DATED: April 28, 1980



CERTIFICATE OF SERVICE

I hereby certify that I have this day served Vepco's Answer  
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upon each of the persons named below:

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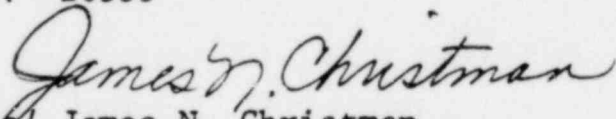
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