

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. Jerry R. Kline
Dr. George A. Ferguson

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In the Matter of VIRGINIA ELECTRIC AND POWER COMPANY (North Anna Power Station, Units 1 & 2)	}	ASLB Docket No. 83-481-01 LA (NRC Docket No. 50-338 OLA-1 No. 50-339 OLA-1)
		ASLB Docket No. 83-482-02 LA (NRC Docket No. 50-338 OLA-2 No. 50-339 OLA-2)
		June 10, 1983

MEMORANDUM

(Re Two Issues Briefed By Order Of The Board)

In the Order of February 18, 1983 (unpublished), the Board directed that two issues be briefed by Applicant, Staff, County of Louisa and the Board of Supervisors of the County of Louisa, Virginia (Louisa County), and by Concerned Citizens of Louisa County (Concerned Citizens).¹ These issues are discussed below.

- I. Whether the Board may consider the health, safety and environmental impacts of the transshipment of spent fuel from Surry to North Anna.

¹ Initial briefs were filed on April 1, 1983. Reply briefs were filed by all but Concerned Citizens on April 15, 1983.

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A. Health and Safety Impacts

The Staff, Applicant and Concerned Citizens are agreed that the Board may not consider the health and safety impacts of the transport of spent fuel from Surry Units 1 and 2 to North Anna Units 1 and 2 because VEPCO already has authority to transship spent fuel from Surry to a facility authorized to receive it. They cite 10 C.F.R. § 70.42 which provides that any Part 70 licensee may transfer special nuclear material to any person authorized to receive it. They also cite the Surry operating licenses (Nos. DPR-32 and DPR-37, pars. 2.B and 2.C) which have authorized VEPCO, pursuant to Parts 30 and 70, to possess any byproduct and special nuclear material which may be produced in connection with the operation of the facilities, and they conclude that VEPCO has a general license to deliver spent fuel to a carrier for transport provided it uses a spent fuel cask which has been issued a Certificate of Compliance by the NRC and complies with other packaging requirements of § 71.12. Moreover, they rely upon the fact that, pursuant to § 73.37(b)(7), on July 28, 1982, VEPCO obtained route approvals from the NRC for the transshipment of spent fuel from Surry to North Anna.

Further, we note that Staff and Applicant agree that this Board is not authorized to consider the health and safety impacts of the transportation of the Surry spent fuel to North Anna because we must respect the limiting terms of notices of hearing published by the Commission. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980). The two Notices of Proposed Issuance of Amendment to Facility Operating Licenses issued on September 22, 1982 (47 Fed. Reg. 41892 and 41893) authorize the Board

in proceeding OLA-1 to consider an amendment to the North Anna operating license to permit the "receipt and storage" of 500 spent fuel assemblies from Surry, and, in proceeding OLA-2, to consider "the expansion of fuel storage capacity for North Anna Units 1 and 2." They urge that a licensing board can neither enlarge nor contract the jurisdiction conferred by the Commission. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-235, 8 AEC 645, 647 (1974).

Applicant also argues that the health and safety impacts of transshipment to Barnwell, South Carolina, were considered in the two Final Environmental Statements when Surry was licensed to operate and should not now be reconsidered.

While implicitly conceding that the two notices do not expressly clothe this Board with the authority to consider the health and safety impacts of the transportation of spent fuel from Surry to North Anna, Louisa County urges, among other things, that this Board has jurisdiction over health and safety issues fairly raised by the application for an amendment to the North Anna operating license to permit the "receipt and storage" of 500 spent fuel assemblies from Surry. In support of its position, Louisa County cites Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 324 n.22 (1981). Therein, the Appeal Board rejected the argument that the notice of hearing foreclosed consideration of anything other than the proposed modification of the spent fuel pool. In substance the Appeal Board held that a hearing may encompass environmental as well as health and safety issues "fairly raised" by an application to amend an operating license. We deem that health and safety impacts of the transportation of the spent fuel assemblies are issues fairly raised by the notice of hearing

in proceeding OLA-1. Further, we do not understand that Louisa County is requesting that we review the merits of the Surry operating license amendments and, at least in part, modify, suspend or revoke these amendments - if that was its purpose, its recourse would be to file a request pursuant to 10 C.F.R. § 2.206. Instead, we understand that Louisa County requests that we consider the health and safety impacts of the transport of spent fuel from Surry to North Anna, which have never been considered before with North Anna being the destination, and that, thereafter, we should either deny the proposed operating license amendment to receive and store at North Anna spent fuel assemblies from Surry or authorize the issuance of the amendment subject to conditions with respect to transportation of spent fuel. Finally, Louisa County points out, inter alia, that the two Surry Final Environmental Statements issued in 1972 did not consider the health and safety impacts of the now proposed transshipment of spent fuel to North Anna.

We find that Louisa County's arguments are well-taken and conclude that we may consider the health and safety impacts of the transport of spent fuel from Surry to North Anna. We trust that the Staff's issuance of the Safety Evaluation Report in August, 1983, will include a consideration of the health and safety impacts of the transshipment of spent fuel from Surry to North Anna. (If more time is needed to prepare the SER, the Staff is requested to furnish its best estimate as to the date that document will be issued.)

B. Environmental Impacts

The Applicant, Staff, Louisa County and Concerned Citizens agree that, pursuant to the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. §§ 4321 et seq., this Board has jurisdiction to consider the reasonably foreseeable environmental impacts of the transshipment of spent fuel from Surry to North Anna that fairly arise from the proposals to receive and store 500 spent fuel assemblies at North Anna and to expand the spent fuel storage capacity at North Anna.

However, the Staff and Applicant maintain that NEPA does not require that this Board again consider the environmental impacts which had been previously considered in the final environmental statements at the operating license stage for Surry Units 1 and 2 and which had been factored into the NEPA cost-benefit analysis for that facility.² They argue that a reconsideration of these environmental impacts would constitute double counting of the same impacts and a replowing of the same ground. Further, they argue that, since the Surry FESs (Tables 11.3) concluded that the effects of the annual potential radiation exposure to the population resulting from the transportation of spent fuel from Surry to Barnwell, South Carolina would be only a small fraction of natural background, these environmental analyses also adequately account for the environmental impacts of shipping spent fuel from Surry for intermediate storage at North Anna.

Louisa County and the Concerned Citizens contend that there would be no double counting. Louisa County asserts that an EIS should be issued since the Surry FESs exclusively addressed the radiological impacts of shipments of spent fuel over a specific route from Surry

² These final environmental statements were issued respectively in May and June, 1972, prior to the existence of Table S-4.

to Barnwell, South Carolina and did not consider other environmental impacts. Concerned Citizens argue that various environmental impacts of the now proposed transshipment of spent fuel should be analyzed in an EIS since they were not considered in the Surry FESs, and that, to the extent that there was some discussion of spent fuel transportation in the Surry FESs, that discussion was based on obsolete data, outmoded thinking, and invalid assumptions.

We are not persuaded by the Applicant's and the Staff's arguments which fail to bridge the crevasse. The Surry FESs were issued prior to the existence of Table S-4 and we are unaware whether the standards considered by the Staff were similar to the values subsequently prescribed in Table S-4. Moreover, even assuming such a similarity, the environmental impacts considered in the Surry FESs were only factored into the NEPA cost-benefit analyses for the Surry Units 1 and 2. On the other hand, with respect to the arguments of Louisa County and the Concerned Citizens, we note that none of the alleged previously unconsidered environmental impacts adverted to by them have been submitted in the form of proposed contentions and set forth with reasonable specificity.

We conclude that, pursuant to NEPA, we have jurisdiction to consider the reasonably foreseeable environmental impacts of the transshipment of spent fuel from Surry to North Anna that fairly arise from the proposals to receive and store spent fuel assemblies at North Anna and to expand the spent fuel storage capacity at North Anna. See Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 938 (1974). At this juncture in the proceeding, having insufficient information, we await the Staff's issuance of the

Environmental Impact Appraisal in August, 1983, which we trust will include a consideration of Table S-4 as well as a consideration of other environmental impacts, if any. (If more time is needed to prepare the EIA, the Staff is requested to furnish its best estimate as to the date that document will be issued.) At this time, we express no opinion whether there are any environmental impacts of fuel transshipment which either have not been previously considered or were inadequately considered in the Surry FESs. After the issuance of the EIA, pursuant to Duke Power Company et al. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ____ (August 19, 1982), Louisa County and Concerned Citizens may assert in a timely manner new contentions founded upon information in that document. The bases for each such contention must be set forth with reasonable specificity as required by 10 C.F.R. § 2.714(b).

II. Whether alternatives to the proposed action must be considered under Section 102(2)(E) of NEPA despite the absence of need for EIS.

Applicant's position is that alternatives need not be considered if environmental impacts of the proposed action are insignificant and if the proposed action presents no unresolved conflict over the commitment of available resources. The Staff's position is that Section 102(2)(E) of NEPA, 42 U.S.C. 4332(2)(E),³ is not limited

³ This section provides that all agencies of the Federal government shall:

(E) study, develop, and describe appropriate alternatives to

to major federal actions with significant effects on the environment and may require consideration of alternatives even when an EIS is not required; however, the Staff suggests that a consideration of alternatives to the proposed spent fuel pool expansion be deferred until after the issuance of its Environmental Impact Appraisal. Concerned Citizens and Louisa County urge that this section of NEPA requires a study of alternatives in any action which involves unresolved conflicts concerning alternative uses of available resources even if environmental effects are not significant. However, Louisa County concurs with the Staff in suggesting that the Board should defer its decision on the alternatives question until after the Staff has issued the EIA.

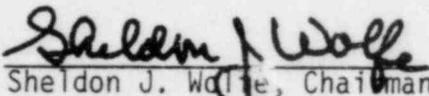
The Staff's position is well-taken, being based upon two Appeal Board decisions.⁴ We will defer ruling upon the question before us until after the EIA has been issued and the opportunity has been given to defend or challenge the content and conclusions of that document.

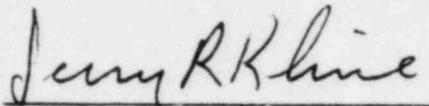
recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.

⁴ Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312, 332 (1981); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 457 (1980).

Judge Ferguson joins but was unavailable to sign this Memorandum.

THE ATOMIC SAFETY AND LICENSING BOARD


Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE


Dr. Jerry R. Kline
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 10th day of June, 1983.