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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 ) Docket Nos. 50-338/339-OLA-2  
VIRGINIA ELECTRIC AND )  
POWER COMPANY )  
  
(North Anna Power Station,  
Units 1 and 2)

APPLICANT'S RESPONSE TO CONTENTIONS  
OF INTERVENORS COUNTY OF LOUISA, VIRGINIA  
AND THE BOARD OF SUPERVISORS OF LOUISA COUNTY

I.

Introduction

Virginia Electric and Power Company (the Applicant) files this Response to Contentions of Intervenors County of Louisa, Virginia and the Board of Supervisors of Louisa County (Contentions). We will first emphasize precisely what the Applicant requests authorization to do, both in this proceeding and in proceeding OLA-1, because careful attention to the scope of each proposal is necessary in order to evaluate some of the contentions made by Louisa County and its Board of Supervisors (Louisa). We will then discuss briefly some of the guidelines customarily applied to determine whether particular contentions are admissible.

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A. The Application

In this proceeding the Applicant seeks amendments pursuant to 10 C.F.R. Part 50 to its North Anna Units 1 and 2 operating licenses that would authorize the installation of neutron-absorbing racks in the spent fuel pool serving those Units. The notice entitled North Anna Power Station, Units No. 1 and No. 2; Proposed Issuance of Amendments to Facility Operating Licenses, 47 Fed. Reg. 41893 (September 22, 1982) covers only "the expansion of fuel storage capacity for North Anna Units 1 and 2."

In addition the Applicant has applied under 10 C.F.R. Part 50 for amendments to its North Anna Units 1 and 2 operating licenses that would authorize the receipt and storage of 500 Surry Power Station spent fuel assemblies at North Anna. This Application is the subject of proceeding OLA-1. "Receipt and storage" is the description of Applicant's proposal that is used in the notice entitled North Anna Power Station, Units No. 1 and No. 2; Proposed Issuance of Amendments to Facility Operating Licenses, 47 Fed. Reg. 41892 (September 22, 1982), and that is the notice pursuant to which this Board was established, see Virginia Electric and Power Co.; Establishment of Atomic Safety and Licensing Board, 47 Fed. Reg. 49763 (November 2, 1982). Proceeding OLA-1 is not a proceeding for cask licensing under 10 C.F.R. Part 71, or for a route approval

under 10 C.F.R. Part 73, or for any other approval of transportation of fuel from Surry to North Anna.

B. Standards by which contentions should be judged.

Certain types of contentions are inadmissible on legal grounds. Contentions raising questions that are the subject of generic proceedings come within this category, see, e.g., Consumers Power Co. (Big Rock Point Nuclear Plant), LBP-80-4, 11 NRC 117, 124 (1980), as do contentions that are outside the scope of the proceeding or that seek to challenge a Commission rule, see Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 570 (1982), Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13,20 (1974).

Even if a contention is not inadmissible under one of these legal standards, its basis must be set forth with reasonable specificity. 10 C.F.R. § 2.714(b) (1982). In Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), supra at 570, the Board said that:

A contention must include a reasonably specific articulation of its rationale -- e.g., why the applicant's plans fall short of certain safety requirements, or will have a particular detrimental effect on the environment.

The Board in Commonwealth Edison Co. (Quad Cities Station, Units 1 and 2), LBP-81-53, 14 NRC 912, 916 (1981), required "a clear articulation of the theory of the contention,

sufficient that the Applicant can make an intelligent response."

Perhaps the most comprehensive statement of the standards by which contentions must be judged was set out by the Board in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 184 (1981), an operating license proceeding:

- (1) Have intervenors shown how the contention relates to specific sections of the FSAR or Environmental Report cited in the brief filed by Applicants or Staff?
- (2) Is the contention sufficiently specific so that Applicant has general notice of the issues on which it may bear the burden of proof at a hearing?
- (3) Is there either a reasonable explanation or plausible authority for factual assertions?
- (4) If a contention has been thoroughly litigated in the construction permit proceeding and has been challenged on that ground, is intervenor's allegation significantly different from the construction permit issue or has it shown sufficiently changed circumstances or policies to permit relitigation?
- (5) If all the facts alleged in the contention were proved, would those facts require imposition of a licensing condition or the denial of an operating license?
- (6) Has intervenor indicated enough familiarity with the subject of its contention so that its contribution to the proceeding may be expected to be helpful and so that minor shortcomings should be overlooked?

In summary, it is not enough that a contention be specific. Some rational basis for it must be articulated by the intervenor. It must give the Applicant sufficient notice. It must not seek to relitigate settled matters. It must be capable, if proved, of affecting the outcome.

We now turn to the contentions raised by Louisa.

## II.

### Discussion of Contentions

#### A. Contention I - Need for Proposed Action

At the outset, the Board should distinguish between the need for additional storage capacity and the acceptability of the particular manner of providing it that the Applicant has selected. Louisa cannot rationally contend that the Applicant does not need additional spent fuel storage capacity. Louisa acknowledges that the Applicant has "interim storage problems," Contentions at 16, and that even if the OLA-1 and OLA-2 proposals are approved, "Vepco will run out of storage space for both Surry and North Anna in 1993," Contentions at 17. Louisa points out that under the Nuclear Waste Policy Act of 1982, a permanent repository will not be available by 1993, id.; in fact the Act's target date for completion of a repository is 1998. Indeed, Louisa describes the exhaustion of Applicant's spent fuel storage capacity as

"inevitable." Id. Thus, a Contention that the Applicant does not need more storage space is inadmissible simply because it is at odds with Louisa's own assertions.

Nor is a Contention that there is no need for reracking North Anna admissible, because it does not raise a question that must be resolved in order to grant or deny the Applicant's application. An example will make this point clear. When an Environmental Impact Statement is prepared in connection with a license for a nuclear power plant, the threshold question is not whether a nuclear station is needed; it is whether the applicant needs additional generating capacity. So in this case the need question is not whether reracking is needed, it is whether more storage capacity is needed. If it is decided that new generating capacity, or new storage capacity, is needed, then the question is whether the proposed action is an acceptable way to provide it. This analysis reveals Louisa's so-called need Contention for what it really is, not a "need" argument at all but an "alternatives" argument. Louisa wants the Applicant to provide the needed capacity through use of an alternative other than the one the Applicant has selected. In summary, whether Applicant needs to have more storage space available in 1984 or 1989, there can be no question that such capacity is needed.

Louisa acknowledges as much, and the Contention should be denied.

To the extent this Contention is in fact an alternatives Contention, it seems to suggest the alternative of postponing the provision of additional capacity. Viewing it in this sense, we believe that action on it should be deferred for the reasons set out in Section E.1 of this Response in connection with other alternatives suggested by Louisa.

In any event, to the extent that this Contention questions the need for Applicant's nuclear stations, and it does precisely that in arguing that "Vepco's nuclear plants need not be operated at maximum capacity," Contentions at 3, it is inadmissible. That issue was resolved during the 1970's with the issuance of the Surry and North Anna operating licenses. Prior to the issuance of those licenses NRC prepared Environmental Impact Statements fully addressing the need for each station. See United States Atomic Energy Commission, Final Environmental Statement, North Anna Power Station, 8-18 (April 1973); United States Energy Commission, Final Environmental Impact Statement, Surry Power Station Unit 2 145-151 (June 1972). Those determinations are not to be reviewed in this proceeding. Section 51.53(c) of Part 10 says that:

Presiding officers shall not admit contentions proffered by any party concerning

need for power or alternative energy sources for the proposed plant in operating license hearings.

If § 51.53(c) is applicable to proceedings for operating licenses, then a fortiori it should control the question in a proceeding for an operating license amendment. Cf.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 46 n.4 (1978) and Consumers Power Co. (Big Rock Plant), ALAB-636, 13 NRC 312, 333 (1981) (a reasonable application of NEPA to spent fuel pool amendment does not require consideration of the continued operation of a plant whose operation has already been licensed).

B. Contention II - Consolidation

This Contention involves two questions. The first is a procedural question, namely whether the OLA-1 and OLA-2 proceedings should be consolidated in order to achieve the "proper dispatch of [the Commission's] business and . . . the ends of justice." See 10 C.F.R. § 2.716 (1982). The Board, in its Memorandum and Order of November 22, 1982, deferred action on Louisa's earlier request for consolidation pending its decision on contentions and on whether to hold a hearing at all in either proceeding.

The second question is a substantive one. Louisa County says that three matters--receipt and storage of Surry fuel at North Anna, expansion of the North Anna pool

and shipment of Surry fuel to North Anna--should be considered in a consolidated proceeding "to ensure that the cumulative environmental, health and safety, and common defense and security impacts are properly addressed." Contentions at 3.

With respect to questions of health, safety, defense and security, we know of no basis on which the Board may consider the effects of the proposal in OLA-1 in determining whether the approval sought in OLA-2 should be granted. Moreover, as we have demonstrated in the Applicant's Response to Louisa's OLA-1 Contentions, this Board has no jurisdiction over the health and safety aspects of shipment even in the OLA-1 proceeding, and it certainly has none in this proceeding. Such matters are beyond the scope of this proceeding. To the extent the Contention demands such an "integrated" health and safety review, it is inadmissible and should be denied.

Louisa also argues that "NEPA mandates comprehensive consideration of the effects of all federal actions." Contentions at 4. That is precisely the argument addressed in Duke Power Co. (Amendment to Materials License SNM-1773-Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307 (1981). There the Appeal Board stated the test for determining whether an agency's environmental review has to

cover only the proposed action or some larger plan of which the proposal may be but a part. The Board held that the review may be limited to the proposal alone if it has "independent utility" and if authorizing the proposal would not foreclose the agency's freedom to deny other parts of the larger plan. 14 NCR at 313. The Board concluded that reracking "had manifest independent utility." 14 NRC at 315. If the proposal in OLA-1 is denied, the reracking of the North Anna Units 1 and 2 pool will extend the time in which those Units can continue to operate. We would have thought that result is to Louisa's benefit, especially in light of its obvious concern about a North Anna shut-down. See Contentions at 6. In any case, the holding in Duke is clear. Louisa sets out no basis for challenging it here, and the Contention should be denied.

To the extent this Contention is merely a repetition of the County's position on consolidation as a procedural matter, action on it should be deferred in accordance with the Board's Memorandum and Order.

C. Contention III - Scope of Environmental Inquiry Required.

1. Subcontention A - The proposed action is a major Federal action significantly affecting the quality of the human environment.

Applicant believes that the proper disposition for this Contention is the one followed in Commonwealth Edison

Co. (Quad Cities Station, Units 1 and 2), LBP-81-53, 14 NRC 912 (1981). That case involved a spent fuel pool reracking. The Board noted that in no such case, and there had been several, had an environmental impact statement been required. 14 NRC at 914. It also observed, however, that such determinations are to be made on a case-by-case basis. Id. The Board noted that there was no "explicit allegation of significant impact on the environment" and that in ruling on contentions it did not yet have the results of the Staff's environmental review. Id. at 914-15. The Board, therefore, deferred ruling on the "major Federal action" contention until the Staff's review became available. Id. at 915.

The Quad Cities disposition is the appropriate one here. Louisa has merely made a bald allegation that the proposal, viewed either alone or in conjunction with transshipment and receipt and storage of Surry fuel at North Anna, is a "major Federal action." Contentions at 5. We do not yet know whether the Staff will treat the OLA-2 proposal as such or will simply prepare an environmental assessment. Pending the completion of the Staff's review, therefore, this Board should defer action on Subcontention III A.

2. Subcontention B1 - Applicant has not considered the environmental consequences for Louisa County of a North Anna shutdown.

This is a curious Subcontention. Louisa wants the Board to ignore the effects of a loss of full core reserve at Surry on the Applicant--and on the county where the Surry Power Station is located--but to consider carefully the effect on Louisa County of a loss of full core reserve at North Anna. Still, the Applicant believes that the thrust of this Subcontention is sufficiently clear and recommends that consideration of it be deferred until the Staff's environmental review is completed.

3. Subcontention B2 - Applicant has failed to consider the environmental consequences if spent fuel must remain at North Anna after the end of North Anna's operating life.

This Subcontention is inadmissible, because it is the subject of a current Commission rulemaking, see Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 68-69 (1981), Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 579 (1982). Indeed, the Commission has instructed its Boards not to address such issues in individual proceedings, See 44 Fed. Reg. 61372, 61373 (October 25, 1979).

D. Contention IV - Occupational exposure concerns

Applicant does not object to the admission of this Contention.

E. Contention V - Alternatives

1. Background.

The law applicable in this area is clear. If the Staff should correctly conclude that Applicant's proposal is not a "major Federal action significantly affecting the quality of the human environment" and that only an environmental assessment is required, then it would be unnecessary for the Staff or the Board to explore alternatives to the proposed action. Duke Power Co.

(Amendment to Materials License SNM-1773-Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307, 321-22 (1981); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979). Thus, if the Staff prepares an environmental assessment in this proceeding and this Board approves that course of action, none of the Subcontentions set out under this Contention V has any place in this proceeding. We recognize that the Board cannot determine whether an environmental assessment is adequate until the Staff's environmental review is complete. We believe, then, that it would be appropriate to defer consideration of some of the Subcontentions Louisa

has made on this subject. Some, however, merit denial now. We shall deal briefly with each.

2. Subcontention A - Aluminum or temporary racks.

Consideration of this Subcontention should be deferred. If the Board wishes to dispose of the Contention now, the Board should deny it, because it suggests an alternative to the OLA-1 proposal, not to the reracking of North Anna.

3. Subcontention B - Constructing a new pool at Surry.

This Subcontention should be denied. Although construction of a new pool at another site is a possible alternative to reracking at North Anna it is clear on the face of this Subcontention that Louisa offers it as an alternative to the OLA-1 proposal. In addition, the facts cited by Louisa as to the cost of a new pool and the long time required to bring it on line are consistent in every respect with the Applicant's conclusion that this is not a reasonable alternative. Put another way, even if Louisa can prove what it alleges, it would not affect the outcome of this proceeding. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), supra, 14 NRC at 184.

4. Subcontention C - The dry cask option.

Consideration of this Subcontention should be deferred. If the Board is disposed to deal with the Contention now, the Board should deny it, because it suggests an alternative to the OLA-1 proposal, not to the reracking of North Anna.

5. Subcontention D - Foreign reprocessing.

This Subcontention should be denied now. The only basis for it cited by Louisa is a statement made by an employee of the United States Office of Science and Technology Policy. The entire quotation is as follows:

Marcum indicated that there were no impediments to U.S. utilities contracting to have spent fuel reprocessed in foreign plants, but his understanding was that there was currently no surplus capacity available.

"Bring back Buy-back", Nuclear News, 60-61 (October 1982) (Emphasis added.) The very quotation relied on by Louisa as its sole basis for the Subcontention refutes its suggestion that foreign reprocessing is a reasonable alternative.

6. Subcontention E - Extended burn-up.

Consideration of this Subcontention should be deferred. If the Board is disposed to deal with the Contention now, the Board should deny it, because it suggests an alternative to the OLA-1 proposal, not to the reracking of North Anna.

7. Subcontention F - Operation at reduced power.

This Subcontention should be denied, because it raises the question of the need for the power produced at the North Anna Station.

8. Subcontention G - Shutdown of North Anna.

This Subcontention should be denied for the reason set out above in connection with Subcontention F.

9. Subcontention H - "Buy-time alternatives."

There are four aspects to this Subcontention. Consideration of those numbered 1, 2 and 3 should be deferred. If the Board is disposed to deal with these aspects now, it should deny them, because they suggest alternatives to the proposal in OLA-1, not to the reracking of North Anna. Number 4, which is to operate Surry at a reduced capacity, should be denied for the reason set out in connection with Subcontention F. In addition, it too is an alternative to the OLA-1 proposal, not to the reracking of North Anna.

10. Subcontention I - Long-term alternatives.

The thrust of this Subcontention is that this proceeding cannot be disposed of unless the Applicant's plans for dealing with spent fuel during the period after the benefits of transshipment and reracking are exhausted have been comprehensively considered. That is precisely the argument made by the intervenors in the Duke Power Co. transshipment proceeding, which is described above in

connection with Contention II. The answer, of course, is that the proposals in OLA-1 and OLA-2 have independent utility regardless of the Applicant's plans for securing more spent fuel storage capacity after 1990. That point is settled as a matter of law. Moreover, granting the amendments sought in OLA-1 and OLA-2 will not foreclose the agency's ability to reject plans for the post-1990 period. Louisa's sole representation is that "Veeco must still develop additional interim storage capacity to bridge the gap between exhaustion of the North Anna pool's capacity and the availability of a federal repository to receive spent fuel." Contentions at 17-18. That is true. But it has nothing to do with this proceeding. Because of the clear guidance in Duke Power Co., the Board should deny this Subcontention.

11. Subcontention J - Comprehensive alternatives.

This Subcontention has four aspects. Numbers 1, 2, and 4 should be deferred. If the Board is disposed to deal with these aspects now, the Board should deny them, because they suggest alternatives to the proposal in OLA-1, not to the reracking of North Anna. Number 3, which is to reduce temporarily Surry's capacity, should be denied for the reasons set out in connection with Subcontention F.

F. Contention VI - Corrosion

The Applicant does not object to the admission of this Contention.

III.

Discovery

In the foregoing responses, we have recommended that consideration of several Contentions be deferred until the Staff's environmental review is complete. We urge that discovery nonetheless proceed on these matters now so that there will be no unnecessary delay if any of these Contentions is subsequently admitted.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

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Dated: February 1, 1983

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Applicant's Response to Contentions of Intervenor County of Louisa, Virginia and the Board of Supervisors of Louisa County upon each of the persons named below by depositing a copy in the United States mail, properly stamped and addressed to him at the address set out with his name:

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