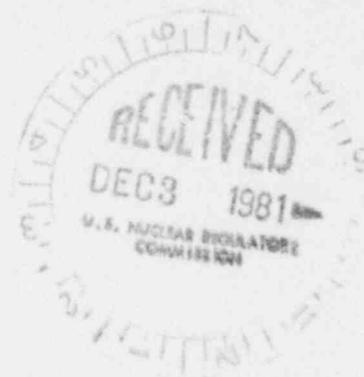


VIRGINIA ELECTRIC AND POWER COMPANY  
RICHMOND, VIRGINIA 23261

WILLIAM C. SPENCER  
VICE PRESIDENT

November 30, 1981



Mr. Harold R. Denton, Director  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Serial No. 643  
PSE&CS/JEE:bw

Docket No. 50-404

Dear Mr. Denton:

In accordance with 10 CFR 50.90 and 50.30, Virginia Electric and Power Company (Veeco) submits herewith three (3) originals and forty (40) copies of a request to amend Construction Permit No. CPPR-114 for the North Anna Power Station, Unit 3. The specific modifications requested are described below. The thrust of the request is to delete nonradiological water quality requirements that fall within the jurisdiction of the Environmental Protection Agency (EPA) or the states under the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 et seq.

Veeco believes that the granting of this amendment request is necessary because of the Atomic Safety and Licensing Appeal Board's decision in Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). In Yellow Creek, as you know, the Appeal Board held that the Nuclear Regulatory Commission (NRC) may not impose water quality requirements beyond those specified in the applicable National Pollutant Discharge Elimination System (NPDES) permit. As the Appeal Board pointed out, NRC's own "Policy Statement on Implementation of Section 511 of the FWPCA" declares that "[I]f and to the extent that there are applicable limitations or other requirements promulgated or imposed pursuant to the (Water Act), different limitations or requirements will not be imposed by NRC pursuant to NEPA as a condition of any permit or license." 8 NRC at 714.

The NPDES permit for North Anna, issued by the Virginia State Water Control Board in 1977, requires a comprehensive thermal monitoring program. The permit specifies the frequency of sampling, the location of monitoring stations, effluent limitations, and the type of waste heat treatment facility required at Lake Anna.

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Despite the comprehensive water quality requirements contained in the NPDES permit, the Construction Permit authorizing the construction of North Anna 3, issued by the NRC in 1974, compels Veeco to carry out a duplicative thermal monitoring and analysis program to determine whether Lake Anna will be able to accommodate the heat from North Anna 3, as well as from Units 1 and 2, without a significant deterioration of water quality. The permit requires not only data collection, but also a Construction Permit amendment seeking approval of the waste heat dissipation system being constructed, based on the results of those data. As Yellow Creek and subsequent cases reveal, these conditions are ultra vires. The law is clear that the NRC may not impose conditions on data collection and reporting additional to those specified in the NPDES permit, Yellow Creek, 8 NRC 713, and that the NRC must defer to final decisions of the EPA or the authorized state agency with respect to the type of cooling systems to be employed by nuclear power plants. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1 (1978); Consolidated Edison Company of New York, Inc. (Indian Point Station, Unit 2) CLI-81-7, Docket Nos. 50-247, 50-286 (1981). If the conditions in the Construction Permit are not deleted, the NRC would be imposing "a more extensive water quality monitoring program than the EPA [has] commanded," Yellow Creek, 8 NRC at 703, in contravention of 511(c)(2) of the Water Act.

For the aforementioned reasons, Veeco requests the deletion from Construction Permit No. CPPR-114 of the sections listed below:

<u>Page</u>	<u>Section</u>
3	3.E(1)(a) 3.E(1)(c)
4	3.E(3)

The conditions imposed in these sections are not only beyond the jurisdiction of the NRC, they are also unnecessary, since Veeco is required to comply with the NPDES permit in any event. Removing these nonradiological limitations from the Construction Permit will not result in any reduction in water quality.

The result of making the above deletions would be to revise Section 3.E of the Construction Permit to read as follows (the words added to the present language are underlined; deletions are not indicated):

- E. This Construction Permit is subject to the following conditions for the protection of the environment:

- (1) The applicant shall continue and modify, as necessary, the monitoring programs described in Section 6.2 of the AEC Regulatory Staff's Final Environmental Statement for the facility, dated April 1973 (FES), and the following nonradiological monitoring program:
  - (a) As required by paragraph 86 of the Initial Decision, the applicant shall conduct a terrestrial monitoring program along the lines described by the staff in the North Anna Power Station Environmental Protection Plan (Unit 1 & Unit 2, Environmental Technical Specifications, Part 2).\*
- (2) If harmful effects or evidence of irreversible damage are detected by the monitoring programs, the applicant shall provide an analysis and a proposed course of action to alleviate the problem. Any data, findings, or other reports developed pursuant to the monitoring requirement contained in the Virginia State Water Control Board Section 401 certificate dated August 29, 1973, and discussed in paragraph 90 of the Initial Decision, will be reported and made available immediately as it occurs to the AEC Regulatory staff.
- (3) The applicant shall endeavor to minimize the impacts of the transmission line to be constructed from the station, and include the procedures listed under item 8.b.3 in the summary of the FES.

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\*Note that the proposed revision to Section E(1)(a) would refer to the Environmental Protection Plan instead of to Section 6 of the FES and the possibility of further consideration in the North Anna 1 and 2 proceeding initiated pursuant to Section B of Appendix D to 10 CFR Part 50. This proposed revision is prompted not by the Yellow Creek Decision, but by changed circumstances that make the present language of E(1)(a) out-of-date. To be specific, the North Anna 1 and 2 "Section B" proceeding has long since been completed and the controlling document for purposes of environmental monitoring is now the Environmental Protection Plan. Like the other changes we are requesting, this is purely a ministerial action designed to bring the language of the Construction Permit up-to-date.

- (4) The applicant shall comply with the limitations of the Virginia Water Control Board Section 401 certification dated August 29, 1973, which limitations are hereby incorporated by reference in this Construction Permit.

As the Commission has noted in past instances in which it has granted amendments to facility operating licenses based on Yellow Creek,\* since the amendment applies only to the deletion of nonradiological environmental specifications, it does not involve significant new safety information not considered by a previous Commission safety review of the facility; it does not involve a significant increase in the probability or consequences of an accident; it does not involve a significant decrease in a safety margin; and therefore, it does not involve a significant hazards consideration. 45 Fed. Reg. 20491 (1980). The amendment should thus not necessitate prior public notice in the Federal Register or the opportunity for a hearing. 10 CFR 50.58(b), 50.91. Moreover, since the deletions are merely ministerial actions required as a matter of law, and since granting the amendment will not involve a significant change in types or significant increase in amounts of effluents, no environmental assessment should be necessary. 10 CFR 51.5(b)(2).

Because the application for amendment of the Construction Permit is pro forma and administrative in nature, Vepco has determined that this is a Class II Amendment in accordance with 10 CFR 170.22, and accordingly encloses a check for one-thousand two-hundred dollars (\$1,200).

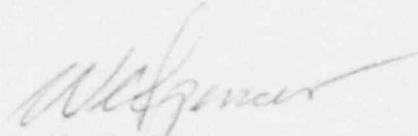
Expedited consideration of this amendment application is requested because the deadline for complying with Section 3.E(3) is June 1982. In order that we may establish telephone contacts and

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\*The Commission has granted such license amendment requests for Florida Power & Light Company, 46 Fed. Reg. 16378 (1981), Marine Yankee Atomic Power Company 45 Fed. Reg. 11633 (1980), and for Virginia Electric and Power Company, 46 Fed. Reg. 3692 (1981).

promptly provide the Staff with any additional information concerning this amendment request, please advise us of the names of the NRC Staff technical and legal personnel who will be processing this application.

Very truly yours,



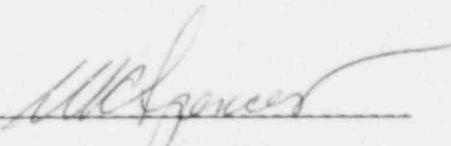
W. C. Spencer

Enclosures

cc: Mr. Robert L. Tedesco  
Division of Licensing

COMMONWEALTH OF VIRGINIA) )  
CITY OF RICHMOND ) ) ss.

William C. Spencer, being first duly sworn, deposes and says: That he is a Vice President of Virginia Electric and Power Company, the Licensee herein; that he has executed the foregoing document; that the statements made in this said document are true and correct to the best of his knowledge, information, and belief, and that he is authorized to execute the document on behalf of said Licensee.

  
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W. C. Spencer

Acknowledged before me this 30<sup>th</sup> day of November, 19 81.

My commission expires 2-26, 19 85

Ann C. McDev (Seal)  
Notary