

NRG PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD



50-3386

In the matter of)	Docket Nos. 50-338SP
)	50-339SP
Virginia Electric and Power)	
Company (VEPCO))	Proposed
)	Amendment to Operating
(North Anna Power Station)	License NPF-4
Units 1 and 2))	

ORDER AND RECOMMENDATION ON PETITIONS
FOR LEAVE TO INTERVENE

1. On July 3, 1978, the Chairman of the Atomic Safety and Licensing Board Panel established this board to rule on petitions and/or requests for leave to intervene. The subject proceeding concerns VEPCO's requested amendment to the operating license of its North Anna Power Station for the purpose of expanding the capacity of the Power Station's spent fuel pool facility from 416 fuel assemblies to 966 fuel assemblies.

2. Two organizations filed timely petitions for leave to intervene, namely, Potomac Alliance and Citizens' Energy Forum.

POTOMAC ALLIANCE

3. According to its petition for leave to intervene sworn and subscribed to on June 21, 1978 and the amendment to its petition, together with three authorization forms, transmitted by letter dated August 24, 1978

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(hereinafter collectively referred to as "petition"), Potomac Alliance is a Washington, D. C. based organization with approximately 75 members living in Virginia and the District of Columbia. Potomac Alliance's petition states that at least three of its members live within a 45 mile radius of the North Anna Power Station and that many of its members use recreational areas within a 30-mile radius of the plant, including state parks, bicycle trails and historic sites.

4. In its petition, Potomac Alliance describes itself and its interest in relation to the present proceeding in the following terms (Amendment to Petition, pp. 1-2):

"... The Alliance's principal purpose is to oppose nuclear power and to promote safe, renewable, efficient and decentralized sources of energy. The Alliance's particular concern of relevance to this proceeding is with the potential health, safety and environmental problems associated with the storage and possible releases of radioactive materials as a result of the applicant's proposed modification of its spent fuel storage pool at the North Anna Nuclear Power Station, Units 1 and 2.

"Interests To Be Protected"

"The Petitioner is concerned that the proposed storage of substantially larger amounts of spent fuel in the northern Virginia area and to keep that spent fuel in the area for a substantially longer period than originally contemplated, significantly increases the risk to its members and the general public of exposure to radioactive waste products. These increased risks seriously jeopardize the health, safety and psychological well being of the citizens of and visitors to the Washington, D. C. and northern Virginia areas, and seriously affects the quality of the regional environment.

"VEPCO admits the total amount of radioactive material to be concentrated within the dimensions of the storage pool will be more than twice the amount originally planned. The possibility that a small fraction of this amount of radioactivity might be released into the atmosphere presents human health, environmental, and economic costs that are so great as to render unjustified any benefits that might be anticipated.

"No acceptable solutions for long-term storage of high-level wastes are in sight. At present there are no off-site facilities available to accept these wastes. The Alliance considers the lack of any long range waste storage plans (which in the original licensing and construction hearings were presumed to have been readied by this time) and the possibility that there may never be an acceptable solution, presents a threat of the gravest order. This threat may hang over the entire region for an indefinite period of time during storage, seriously affecting the quality of life and the environment. Thus, the North Anna proposal subjects the Petitioners and others to potential health, safety and environmental dangers not adequately considered in any previous hearing."

5. Potomac Alliance enumerated a total of thirty-eight contentions, nine of which appear in its original petition for leave to intervene and twenty-nine of which appear in the amendment to its petition. Tr. 59.

6. At the pre-hearing conference in Charlottesville, Virginia, on Friday, September 8, 1978, which was provided for by the board's order dated August 4, 1978 (43 FR 35561-2, August 10, 1978), Potomac Alliance's representative submitted the views of his organization as to why its petition qualifies under the Commission's regulation, entitled "Intervention," namely, 10 CFR §2.714, from the standpoint of meeting both the "interest" requirement and the "contention" requirement of the regulation.

7. At the conference, the representative of Potomac Alliance emphasized the interest of two of its members living in Charlottesville in canoeing on Lake Anna, on the shore of which VEPCO's North Anna Power Station is located, and in other lakes in the region for recreation. According to the Potomac Alliance's spokesman, they have an interest in "seeing to it that the quality of the water is maintained and that there is no contamination in the air." Tr. 45.

8. Additionally, they and another one of Potomac Alliance's members - a person living in Richmond - eat locally grown food, and accordingly, "there is obviously interest there, making sure that ground water, surface water, as well as the atmosphere are as unpolluted as possible". Tr. 45.

9. Potomac Alliance's spokesman generalized that the interest noted in the above paragraph "would apply to all of the other members in the event of some extraordinary accident in which we all might be affected". Tr. 45-46.

10. When the board observed that its focus is on the proposed increase in the spent fuel storage capacity, Potomac Alliance's spokesman, evidently acknowledging the merits of the limited scope of this focus, in effect asserted that there will be "a margin of increased danger, increased risk" (Tr. 47) and that such margin, whatever it may be, is what his organization is concerned about.

11. This representative of Potomac Alliance went on to tell the board at the pre-hearing conference as follows (Tr. 48):

"We don't want to raise any issues that have been adjudicated. Apparently the plant - obviously the plant had been adjudicated to be safe within margins. There is certainly a risk, but that risk has been found to be reasonable, and we don't want to raise that at this point.

"We do think, though, that they [VEPCO] are undertaking additional risks in this process. And while we don't require a call for reevaluation of the entire risk presented by the whole plant, we do think that there is an increase, and that it is important that we be allowed to intervene in this proceeding and if not help point them out and examine them, at least better understand them."

12. At the September 8 conference and in their earlier written responses to Potomac Alliance's petition, both VEPCO and the NRC Staff opposed the admission of Potomac Alliance as an intervenor. VEPCO contended that Potomac Alliance had not adequately shown an interest which will be affected by VEPCO's proposed expansion of the spent fuel pool capacity at the subject plants. Tr..84. The NRC Staff expressed its opinion, too, that Potomac Alliance did not satisfy the "interest" requirement of the Commission's regulation governing intervention. Tr. 68.

13. By the letter of September 15, 1978, transmitting to the board a motion to supplement its petition, together with affidavits of three of its members living within 45 miles of the North Anna Power Station, Potomac Alliance sought to reinforce its amended petition. No response from either VEPCO or the NRC Staff was forthcoming to this supplemental material, and none was required. Any question of whether Potomac Alliance's filing of September 15, 1978 was untimely is bypassed as the filed material has been taken into account, in the board's discretion, as a permissible extension to Potomac Alliance's oral statements at the conference.

14. Representatives of Potomac Alliance joined the tour of VEPCO's North Anna Power Station on Thursday, September 7, 1978, the tour having been arranged by the board for orientation purposes. The tour, which was open to limited representation of each of the parties, was the subject of a written announcement by the board on August 16, 1978. The

tour centered on the North Anna Power Station's spent fuel pool facility which was in its last stages of construction.

CITIZENS' ENERGY FORUM

15. Citizens' Energy Forum (CEF) filed a petition for leave to intervene dated June 21, 1978, a supplement to the petition dated July 10, 1978, and an amended petition and supplement served August 23, 1978 (hereinafter collectively referred to as "petition").

16. CEF's petition states that it is an educational, non-profit organization working toward a policy of safe and realistic alternatives to nuclear energy, that its members live within a 50-mile radius of the North Anna Power Station, and that four of its members - two couples - live on the shore of Lake Anna and a fifth member lives within 10 miles of the North Anna Power Station.

17. According to CEF's petition, one couple living on the shore of Lake Anna is "especially concerned with possible radioactive contamination of the groundwater from which their well is supplied" and believe that "their health could be adversely affected by such contamination of their drinking water." August 21, 1978 Supplement to Petition, page 1.

18. Another couple living on the same shore, is "concerned with the effects of the increased discharge and possible radioactive contamination of the waters of Lake Anna due to the increased waste storage proposed for the spent fuel at the facility." Id. The couple is also concerned with

"possible radioactive contamination of the air in their area due to accident or other circumstances associated with spent fuel storage." Id.

19. The person living within 10 miles of the North Anna Power Station "is concerned with the possible effects of increased waste storage on agricultural products in the area of the facility, especially those products grown in his own home garden." Id.

20. The petition generally claims that CEF members living within a 50 mile radius of the North Anna Power Station "stand to be severely and adversely affected should the proposed compaction of spent fuel rods occur." July 10, 1978 Supplement to Petition. The petition, as supplemented, includes a list of twenty-four CEF members residing within such area.

21. According to CEF's spokesman at the conference on September 8, 1978, CEF consolidated its contentions into one document, entitled "Supplement to Petition for Leave to Intervene" and dated August 21, 1978. Its contentions numbered twenty-two. Tr. 13.

22. VEPCO takes the positions that it is willing to concede under what it describes as "very, very liberal" rules of the Commission in favor of intervention as construed by licensing boards and appeal boards (Tr. 77) that CEF has satisfied both the interest and the contention requirements. Tr. 81-82. The NRC Staff, which prior to the hearing had concluded that CEF's petition fell short of meeting the interest requirement, changed its position on the basis of an assertion at the conference by a person living some 10 miles from the North Anna Power Station that she had authorized

CEF to represent her interest, such interest being identified at paragraph 19 herein. Tr. 63-64.

23. No CEF representative was able to join the tour of VEPCO's North Anna Power Station on Thursday, September 7, 1978.

APPLICABLE REGULATIONS

24. There are two regulatory requirements under 10 CFR §2.714 which must be met by a petition for leave to intervene before it will be granted. The first requirement is the "interest" requirement and the second is the "contention" requirement.

25. The "interest" requirement of 10 CFR §2.714 is stated at subparagraph (a)(2) therein, as follows:

"The petition [for leave to intervene] shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d), and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene."

26. The referenced factors in paragraph (d) of 10 CFR §2.714 are as follows:

"(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

"(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

"(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest."

27. With respect to the "contention" requirement of 10 CFR §2.714, paragraph (b) states as follows:

"...the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party..."

CONCLUSION AND REASONS THEREFOR

28. In the board's judgment, neither Potomac Alliance nor Citizens' Energy Forum satisfied the "interest" requirement of the Commission's regulation on intervention at 10 CFR §2.714 (a)(2). Having reached that conclusion, the board passes no judgment on the contentions of the petitioners. Quite clearly, petitioners do not qualify for intervention merely by articulating one or more acceptable contentions without having established an interest within the applicable regulatory terms.

29. A liberal disposition toward intervention does not destroy the requirements of the regulation on intervention. More specifically, the permissiveness of the regulation on intervention in allowing petitioners freely to amend their petitions within broad limits, the practice of the NRC Staff of aiding the petitioners in the preparation of their petitions for leave to intervene, the board's own emphasis upon the regulatory requirements of intervention to forestall unawareness or misunderstanding by the petitioners of the apposite requirements, both in its order of August 4, 1978 and at the conference of September 8, 1978, and the board's initiation of the conference itself to give petitioners the opportunity to support their petitions in face of earlier written challenges of their validity by VEPCO and the NRC Staff

all were directed toward facilitating the presentation of successful petitions on the assumption that there were factual bases for meeting the intervention requirements. The record shows that intervention is obviously not a procedural action in this licensing proceeding or other licensing proceedings which the Commission or its licensing boards have sought to avoid.

30. The board is not persuaded that Potomac Alliance's petition described any adequate interest with sufficient particularity or that it satisfactorily represented how an acceptable interest might be affected by the results of the proceeding. Potomac Alliance's petition did not give satisfactory attention to the limited subject matter of the proposed amendment and of the prospective hearing, that is, the expansion of the spent fuel pool capacity and the impact which such expansion would have on a particular interest of the petitioner. The emphasis of the petition reflected simply a general interest in public health and safety and the well-being of the environment -- all broad statutory goals entrusted to the Nuclear Regulatory Commission for protection -- without meaningful particularity of petitioner's stake in any board decision.

31. Similarly, the broadly stated health, safety and environmental interests of CEF, particularly associated with twenty-four CEF members living within 50 miles radius of VEPCO's nuclear power plant -- four of whom live on the shore of Lake Anna and one of whom lives within 10 miles of the plant -- are readily identified as general public considerations within the responsibility of the Commission and its staff. The relative

geographical proximity to the VEPCO plant of the residences of some of the CEF members does not elevate its "concerns" to an "interest" within the meaning of the judicial standard for intervention. On the subject of intervention as of right, the Commission in Matter of Portland General Electric Company, 4 NRC 610 (1976) stated at page 613 that the "applicability of judicial standing rules to questions of standing to intervene in administrative proceedings is clearly permissible", and it further stated at page 613:

"To have 'standing' in court, one must satisfy two tests. First, one must allege some injury that has occurred or will probably result from the action involved. Under this 'injury in fact test' a mere academic interest in a matter, without any real impact on the person asserting it, will not confer standing..."

The board's view is that the "interest" described by CEF is essentially an academic interest which was not sufficiently particularized to afford a basis for judicial standing.

32. More specifically, the bare recital that five of CEF's members living on the shore of Lake Anna or within ten miles of the North Anna Power Station are "concerned" about possible radioactive contamination of one or another part of the environment or products thereof as a result of the proposed increase of waste storage at the Power Station does not meet the interest requirement of setting forth with particularity the interest of the petitioner and of setting forth how a particular interest may be affected by the results of the proceeding. Briefly, it is not enough simply to call out neighboring waters, air and agricultural products and to allege that these elements of the environment might or will be adversely affected to

some undefined extent and in some undetermined manner by the expansion of the spent fuel pool capacity. How the expansion of the spent fuel pool capacity might or will bring about environmental contamination, and the extent of such contamination, would appear to deserve to be described with reasonable specificity. Otherwise, intervention becomes sustainable merely on the basis of general assertions of interest in health, safety and the environment and on the basis of general allegations of cause and effect relationships without meaningful supporting allegations of specific facts establishing a reasonable nexus between cause on the one hand and effect on the other.

33. Having decided that neither Potomac Alliance nor Citizens' Energy Forum (CEF) may intervene as a matter of right, it remains for the board to decide whether one or both may intervene as a matter of the board's discretion under the guidelines noted by the Commission in the Matter of Portland General Electric Company, id. After reviewing the record from the standpoint of whether discretionary intervention would likely result in a useful contribution to the proceeding, the board is of the opinion that the petitioners have not shown any significant ability to contribute on substantial issues of law or fact which the NRC Staff might not otherwise properly raise in its evaluation of the proposed amendment to VEPCO's operating license.

ORDER AND RECOMMENDATION

For the foregoing reasons, the board orders that the petition for leave to intervene of Potomac Alliance and the petition for leave to intervene of Citizens' Energy Forum (CEF) are hereby denied.

The board recommends that --

(a) in its evaluation of VEPCO's proposal to expand the spent fuel pool capacity of the North Anna Power Station, the NRC Staff consider the contentions of both petitioners as though the contentions had been presented in limited appearances;

(b) the NRC Staff reduce to writing in question form for written answer by VEPCO such contention or contentions, in part or in any combination, which the NRC Staff deems relevant to the proceeding; and

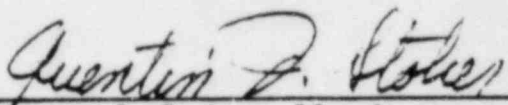
(c) the NRC Staff make its questions and VEPCO's written answers directly available to the two petitioners and to appropriate news agencies for the information of the respective memberships of the two petitioners and for the information of members of the public living in or about the general vicinity of VEPCO's North Anna Power Station.

Pursuant to 10 CFR §2.714a, this order may be appealed to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the order. The appeal shall be asserted by the filing of a

notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal.

Dated at Washington, D. C. this 8th day of December 1978.

ATOMIC SAFETY AND LICENSING BOARD



Quentin J. Stober, Member



Ernest E. Hill, Member



Valentine B. Deale, Chairman