

to prolong the review of the turbine missile question further by filing yet another brief which, as is discussed below, raises no information which was not available to the UCS when it filed its original brief amicus curiae.

In ALAB-115, the Appeal Board discussed the practice of filing pleadings which supplement briefs previously filed on appeal. In that decision, the Appeal Board concluded that

"... the Bar is put on notice that we will not accept any supplementary submission addressed to issues presented in a case before us unless it either (1) has been explicitly requested by us; or (2) is accompanied by a motion for leave to file it which sets forth good reasons why the substance of the submission could not have been furnished to us in a more timely fashion." Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-115, 6 AEC 257 (1973).

Addressing these factors in turn, the Staff notes that the Appeal Board has not requested a reply brief from the UCS. As to the second factor, the UCS has not offered any reason for raising the issue of a possible conflict between Staff submissions at this late date. The UCS merely states that the substance of its pleading arises from a Staff position, as stated in its November 16, 1978 Response, which differs from the Staff position contained in its November 23, 1977 submittal to the Licensing Board with respect to the relationship of the generic study on turbine missile risk to the Staff's review of North Anna 1&2. The fact that UCS conveniently refers to the Staff's November 16, 1978 Response to their brief amicus curiae as the source of the apparent Staff inconsistency does not excuse UCS's lateness in coming forward with the argument that the matter deserves briefing, for the information

indicating that the Staff was possibly taking a position different from that taken during the initial licensing proceeding was first provided in the Staff's September 15, 1978 Response. Thus, the matter could have been addressed in the UCS's original brief on the turbine missile risks.

In the Staff's September 15, 1978 Response to the Appeal Board's decision of August 25, 1978 (ALAB-491), at pages 4-6, the Staff summarized its review of turbine missile risks at the North Anna 1&2 facility, and also described the Task Action Plan for Task A-37. On page 6 of that Response, the Staff concluded the following:

"... These measures, in the Staff's view, constitute an acceptable level of protection for North Anna. In the case of North Anna, it is the Staff's view that completion of Task A-37 will not result in additional requirements for that facility and we consider the matter resolved."

Thus, the UCS can hardly claim that it did not know until after the Staff's November 16 Response that the Staff had, since its November 1977 submittal to the Licensing Board, concluded that the generic study would not require the imposition of additional requirements for North Anna. However, UCS did not raise the issue of a possible inconsistency in the Staff position in its brief amicus curiae. The Staff must therefore assume that the UCS has only recently developed this concern regarding the differences in Staff submittals regarding the relationship of the generic study to the Staff's analysis of turbine missile risks. As the Appeal Board indicated in the Midland decision, supra, the failure to fully research a subject prior to filing a brief does not supply an adequate excuse for later filing a supplemental pleading which addresses a matter not previously thought of.

A second possible reason for permitting the UCS to file a supplemental brief on the turbine missile issue would be if the UCS were raising an issue which would be of interest to the Appeal Board because of its serious public health and safety implications. However, that clearly is not the case here. As discussed above, the UCS raises the sole issue of whether the Staff has made inconsistent submittals to the Licensing Board than it did to the Appeal Board. The UCS does not allege that the seeming inconsistency has any health or safety consequences, but merely that the inconsistency exists. The Staff contends that this excuse does not constitute a good reason for permitting the UCS to file yet another brief which would, in turn, have to be responded to by both the Staff and the Applicant.

The Staff acknowledges that it did take a different position with respect to the relevance of the generic turbine missile study in its September 1978 response than it did in its SER and in submittals to the ASLB. At the time that the SER was drafted, and that the Staff responded to the limited appearance statements by Mr. Pollard and to questions by the ASLB, the Staff had performed an adequate review of the risks of turbine missile accidents at North Anna, but recognized the possibility that the results of the generic study could create the need for additional requirements to be imposed on the North Anna facility. Accordingly, the Staff position at that time was that:

"We conclude that this requirement [proposed technical specifications regarding inspection, maintenance and testing procedures] will provide protection from turbine missiles adequate to permit plant operation until we have completed our generic study of design criteria for turbine missiles. When the results of this study are

available, we will determine if additional protection is required beyond that offered by the proposed plant design as supplemented by the technical specification requirements identified above. At that time, appropriate action will be taken." SER, Supplement No. 2, §10.7.

The Staff currently believes that, based on information developed through Task A-37, no additional requirements will have to be imposed on facilities such as North Anna. Accordingly, with respect to the issue of whether additional requirements will have to be imposed to protect against the risk of turbine missiles at North Anna, the Staff considers the matter to be resolved (See, Staff Response dated September 15, 1978, p.6). However, as the Staff stated in its SER and as was elaborated upon in its September 15, 1978 Response, the analysis of turbine missile risks which supported operation of North Anna was a site-specific analysis and was not based on Task A-37.

CONCLUSION

For the reasons stated herein, the Staff concludes that the UCS has not provided a good reason for being permitted to file a supplemental brief in this proceeding. Accordingly, the Staff urges the Appeal Board to deny the UCS request for leave to file a supplemental brief.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 5th day of December, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO UCS REQUEST FOR LEAVE TO FILE REPLY BRIEF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asteriks, through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of December, 1978:

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