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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of )  
 )  
VIRGINIA ELECTRIC AND POWER )  
COMPANY )  
 )  
(North Anna Power Station, )  
Units 1 and 2) )

Docket Nos. 50-338/339-OLA-1

(Proposed Amendment to Operating  
License to Allow Receipt and  
Storage of 500 Spent Fuel  
Assemblies from Surry Power  
Station, Units 1 and 2)

MOTION OF INTERVENOR LOUISA  
COUNTY TO STAY PROCEEDINGS

Intervenor Louisa County ("the County") hereby moves the Atomic Safety and Licensing Board ("the ASLB" or "the Board") to stay proceedings on the applications of Virginia Electric and Power Company ("Vepco") for license amendments that would permit Vepco to expand the spent fuel pool at the North Anna Power Station and to receive and store at North Anna fuel used at the Surry Power Station. The County requests that the matter be stayed until such time as the Nuclear Regulatory Commission ("the NRC" or "the Commission") has completed its "waste confidence" proceeding. <sup>1/</sup> In support of this motion, the County makes the following arguments.

1/ Storage and Disposal of Nuclear Waste, 44 Fed. Reg. 61,372 (1979).

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The Commission is now entering the final stages of its "waste confidence" proceeding, a proceeding designed to reassess whether there is reasonable assurance that safe waste disposal will be available at the end of the operating lives of existing nuclear power plants. This reassessment will result in a rule specifying, inter alia, the proper time frame to be used in conducting the environmental review of proposed licensing actions affecting the disposition of spent fuel. Since the waste confidence proceeding has not been completed and the proper time frame to be used in environmental reviews is therefore uncertain, it would be wasteful and premature to move ahead now on Vepco's license applications. Rather, the most efficient course, especially since the Commission's goal is to conclude the waste confidence proceeding within the next few months, would be to wait until the Commission issues a final rule defining once and for all the scope of the environmental review that must be undertaken when evaluating license amendments affecting storage of spent fuel.

Moreover, in Potomac Alliance v. U.S. Nuclear Regulatory Commission, 682 F.2d 1030 (D.C. Cir. 1982), the court made it clear that if the Commission does not conclude the waste confidence proceeding by June 30, 1983, its authority to proceed in spent fuel disposition cases will be "in jeopardy." The proceedings on Vepco's license amendment applications cannot be decided before June 30, 1983; the NRC staff has stated that its own analysis will not be complete before June. Accordingly, the

parties run a substantial risk that the resources invested in litigating Vepco's applications between now and the conclusion of the waste confidence rulemaking will be invested in vain, as it may well be the case that either (1) the Commission will have determined that the "reasonably foreseeable" environmental consequences of the amendment are different from the consequences considered by the Board prior to promulgation of the final rule or (2) the Commission will no longer have the power to issue the proposed amendment because the waste confidence proceeding will not have been concluded by the court's June 30, 1983 deadline. In either event, new proceedings will be required.

It is true that the Potomac Alliance court did not order a halt to continued NRC licensing action in spent fuel matters. The court's action, however, can hardly be construed as an endorsement of past Commission practice. Rather, the court found that the Commission's failure to address the permanent storage issue constituted a NEPA violation. Because the waste confidence proceedings were still underway, however, the court decided not to vacate the re-racking amendment already approved, allowing the Commission to determine how to proceed in future cases. In response to Potomac Alliance, the Commission has stated that spent fuel licensing "ma continue," not that it must continue. <sup>2/</sup> Assuming for the moment that the Commission's reading

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<sup>2/</sup> Licensing and Regulatory Policy and Procedures for Environmental Protection; Uranium Fuel Cycle Impacts, 47 Fed. Reg. 50,591 (1982).

of Potomac Alliance is correct, <sup>3/</sup> the conclusion to be drawn is that it is up to the Board, in its discretion, to determine whether to stay or to continue a particular spent fuel case.

Given the circumstances present here, this is a proper case for a stay. First, the case is still in its initial phases, so that neither the staff nor the parties have as yet expended substantial resources in developing their cases. Second, the staff has reported that its review will not be complete until some time in June 1983. A stay, therefore, would not prejudice Vepco because it would have little, if any, effect on the timing of the Board's initial decision in the case. Third, whatever "urgency" Vepco may feel is, in fact, of its own making, for Vepco has known for years that the Surry pool would be full in 1987. Vepco's claim of "urgency" cannot justify NRC actions that disserve NEPA and effectively preclude meaningful analysis of an issue of overwhelming importance to Louisa County. <sup>4/</sup>

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<sup>3/</sup> In view of NRC's obligation to comply with NEPA, the County believes that the proper response to Potomac Alliance and its predecessor, Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979), would be to either broaden the environmental review to consider the post-operating-life consequences of license amendments affecting the disposition of spent fuel or to halt all spent fuel licensing proceedings pending final Commission action on the waste confidence question.

<sup>4/</sup> One of Louisa County's primary purposes in enacting its Spent Fuel Ordinance was to forestall the possibility of the County's becoming a de facto permanent storage site for spent fuel. This pressing issue will never be addressed if Louisa County is forced to litigate Vepco's proposed amendments before the waste confidence proceeding is concluded.

Moreover, as the Chief Administrative Judge of the ASLB Panel has himself suggested, Commission procedure would be substantially more efficient if intervenors' contentions were not submitted until after the staff had completed its required reports. With all the necessary reports before the parties and the Board, "[t]he issues could be more easily and clearly alleged, as would the showing that an allegation was in fact without merit . . . [In addition,] the staff could complete its work in a more expeditious, less schizophrenic manner." <sup>5/</sup> This suggestion is particularly compelling here where the scope of the environmental report the staff is required to prepare will not be known until the waste confidence proceeding is concluded.

#### CONCLUSION

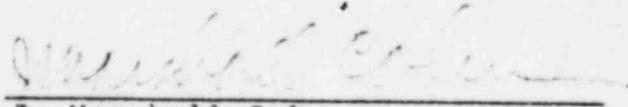
For the reasons set forth above, Louisa County moves the Board to stay proceedings on this matter until the Commission has issued a final "waste confidence" rule.

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<sup>5/</sup> Cotter, Nuclear Licensing: Innovation Through Evolution in Administrative Hearings, 34 Admin. L. Rev. 497, 526, 527 (1982). Where contentions are required to be filed in the early stages of a proceeding before the staff has completed its reports, "the boards and the parties go through a multi-stage process whereby the first statement of a contention is revised, revised again and revised yet again until the real issue is identified and clearly presented . . . [and] an overworked staff is required to prepare and present testimony and documentary evidence at hearings and at the same time furnish work on other documentary evidence such as the Safety Evaluation report." Id.

Respectfully submitted,

December 10, 1982

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CERTIFICATE OF SERVICE

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I hereby certify that I have this day served the foregoing Motion of Intervenor Louisa County To Stay Proceedings 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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