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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD 84 OCT 16 11:39

Before Administrative Judges:  
Sheldon J. Wolfe, Chairman  
Dr. Jerry P. Kline  
Dr. George A. Ferguson

OFFICE OF SECRETARY  
DOCKETING

SERVED OCT 16 1984

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

NRC Docket Nos. 50-338 OLA-1  
50-339 OLA-1  
(ASLBP Docket No. 83-481-01 LA)  
  
NRC Docket Nos. 50-338 OLA-2  
50-339 OLA-2  
(ASLBP Docket No. 83-482-02 LA)

October 15, 1984

MEMORANDUM AND ORDER  
(Ruling On Contentions)

MEMORANDUM

I. Background

In Docket Nos. 50-338 OLA-1 and 50-339 OLA-1, the Applicant applies for an amendment to the North Anna, Units 1 and 2, operating licenses to permit the receipt and storage of 500 spent fuel assemblies from the Surry Power Station, Units 1 and 2 (Case OLA-1). In Docket Nos. 50-338 OLA-2 and 50-339 OLA-2, the Applicant applies for an amendment to the operating licenses to permit the expansion of the fuel pool storage capacity for North Anna Units, 1 and 2 (Case OLA-2).

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Concerned Citizens of Louisa County (CCLC) has filed petitions for leave to intervene in these two cases.<sup>1</sup>

By agreement of Counsel and/or Board directive, oral argument upon CCLC's proposed contentions was not heard during the course of the special prehearing conference held on February 16, 1983. (See Order of February 18, 1983, unpublished). In a letter dated October 20, 1983, the Applicant advised that all counsel were agreed that, once the Staff had issued its Environmental Analysis and Safety Evaluation Report, within certain time frames they would meet in an effort to agree upon a statement of contentions and that contentions that could not be agreed upon would be submitted to the Board. On July 3, 1984, the Staff issued its Proposed Finding Of No Significant Impact, the Environmental Assessment (EA), and the Safety Evaluation Report (SER) relating to the two requested amendments.

Under date of July 30, 1984, CCLC submitted five contentions relating to Case OLA-1 and three contentions relating to Case OLA-2. After Applicant and the Staff filed responses, a supplemental special

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In separate Notices of Hearing dated December 3, 1982, the Board, among other things, scheduled a joint special prehearing conference to be held on February 16, 1983 and noted that after this conference it might decide to consolidate the two cases. As reflected, *infra*, in Case OLA-1, a consolidated contention, as recast by the Board, is admitted as an issue in controversy and CCLC is admitted as a party-intervenor in that case. However, we reject as issues in controversy the contentions submitted in Case OLA-2, and deny CCLC's petition for leave to intervene in that case.

prehearing conference was held on September 7, 1984. Because CCLC orally argued in general with respect to its contentions that Table S-4 relied upon by the Staff in the EA was inapplicable and that the Staff should have issued instead a final environmental impact statement, the Board requested that counsel submit briefs as to whether there have been any licensing board, appeal board, Commission and federal court rulings on the question of whether Table S-4 applies only in construction permit proceedings or whether that Table is applicable also in operating license amendment cases. Counsel simultaneously filed briefs on October 21, 1984, and thereafter simultaneously filed reply briefs.

## II. Contentions

### A. Case OLA-1<sup>2</sup>

#### 1. Contention 1.

In substance, Contention 1 alleges that the proposed license amendment constitutes a major federal action significantly affecting the human environment and thus should not be granted prior to the preparation of an environmental impact statement. As bases for this

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During the course of the supplemental special prehearing conference, CCLC withdrew Contention 2. Further, on August 14, 1984, CCLC submitted a revised basis for Contention 4, with respect to which the Board issued a protective order on September 26, 1984. After reviewing physical protection system documents, which are subject to the protective order, CCLC will notify the Board that it withdraws this contention if it concludes that there are no inadequacies. (See Order of September 13, 1984, unpublished).

contention, petitioner CCLC asserts that the transportation of spent fuel by truck presents (a) a risk of accidents causing great health and environmental damage, (b) the risk of sabotage and (c) the risk of error by VEPCO employees in preparing the casks, which, for example, if not properly sealed, might break open in transit.

The Applicant, with respect to basis (b), and the Staff, with respect to bases (a) and (c), responded that, contrary to 10 C.F.R. § 2.714(b), these bases had not been set forth with reasonable specificity. We disagree - the purposes of the basis-for-contention requirement as set forth by the Appeal Board have been met by CCLC.<sup>3</sup> Certainly, Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention, and, in passing upon whether an intervention petition should be granted, it is not the function of a licensing board to review the merits of a contention.<sup>4</sup> Moreover, we do not understand that CCLC is challenging the values set forth in Table S-4. Rather it is urging that Table S-4 is inapplicable in operating license amendment cases, that said Table applies in construction permit cases and in certain operating permit cases but is to be used only for cost-benefit analyses purposes, and

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<sup>3</sup> See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

<sup>4</sup> Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

that the Staff should prepare and issue a detailed Environmental Impact Statement evaluating the effects upon the environment which would result from the proposed shipment of 500 spent fuel assemblies from Surry to North Anna. While, as requested, counsel have submitted briefs which have served to clarify their positions with respect to the applicability of Table S-4, inter alia, we do not at this stage decide the merits of this contention.

Contention 1, as hereafter rewritten by the Board and consolidated with Contentions 3 and 5, is admitted as an issue in controversy.

2. Contention 3.

In substance, Contention 3 alleges that neither Applicant nor Staff has adequately considered the alternative of constructing a dry cask storage facility at the Surry Station. CCLC's bases for this contention are that, contrary to the National Environmental Policy Act, 42 U.S.C. 4332(2)(E), consideration was not given to this alternative method which is feasible, can be effected in a timely manner, is the least expensive and safest method for at least 50 years, and can be used on or offsite.

The Staff responded that its EA had adequately discussed alternatives. Further, the Staff in substance urged that the National Environmental Policy Act does not obligate a federal agency to search out possible alternatives to a course which will neither harm the environment or bring into serious question the manner in which this

country's resources are being expended. The Applicant argues that the dictates of NEPA do not apply since CCLC has neither contended nor suggested that there are any unresolved conflicts over the alternative uses of available resources, and that in the absence of such an unresolved conflict, alternatives need not be analyzed where the environmental impacts are negligible.

We conclude that CCLC has set forth bases for this contention with reasonable specificity. As noted above, in our discussion with respect to Contention 1, we do not reach the merits of contentions at this stage of the proceeding. Accordingly, as hereafter rewritten by the Board and consolidated with Contentions 1 and 5, Contention 3 is admitted as an issue in controversy.

3. Contention 5.

Contention 5 as proposed by CCLC reflects in a summary fashion that which it proposed in Contentions 1 and 3. For the same reasons advanced in opposing Contentions 1 and 3, the Applicant and Staff have opposed the admission of Contention 5 as an issue in controversy. For purposes of clarity, succinctness, and a more efficient proceeding, the Board has rewritten Contention 5 and admits it as CCLC Consolidated Contention 1. Consolidated Contention 1 reads as follows:

The Staff's Environmental Assessment is inadequate and an Environmental Impact Statement should be prepared. The bases for this contention are two-fold. First, the Environmental Assessment, in relying upon the inapplicable values in Table S-4, did not evaluate the probability and consequences of accidents occurring during the transportation of spent fuel casks from the Surry Station to the North Anna Station or which might be occasioned by acts of sabotage or by error of

Applicant's employees in preparing the casks for shipment. Second, contrary to the National Environmental Policy Act, 42 U.S.C. 4332(2)(E), consideration was not given to the alternative method of constructing a dry cask storage facility at the Surry Station which is feasible, can be effected in a timely manner, is the least expensive and safest method for at least 50 years, and can be used on or offsite.

Accordingly, Consolidated Contention 1 is admitted as an issue in controversy and CCLC is admitted as a party-intervenor in Case OLA-1.

B. Case OLA-2

1. Contentions 1, 2 and 3.

Contentions 1, 2 and 3 in this case are identical to Contentions 1, 3 and 5 proposed by CCLC in Case OLA-1. However, with respect to Contention 1, CCLC additionally argues that the environmental impacts of the proposed amendment modifying the North Anna spent fuel pool cannot be evaluated apart from the environmental impacts associated with the proposed amendment to ship Surry-to-North Anna spent fuel; that, since the two modifications were requested almost simultaneously, it is clear that the North Anna spent fuel modification was basically designed to accommodate the 500 spent fuel assemblies shipped from Surry; and that the effects of the two proposed modifications must be summed in order to evaluate the significance of both proposed actions.

With respect to Contention 1, Applicant argues that the proposed amendment to modify the spent fuel pool capacity has a manifest independent utility - i.e. that even if no spent fuel assembly was ever shipped from Surry, the North Anna enlarged spent fuel pool would accommodate its own spent fuel assemblies and thus would extend the full

core reserve loss date from 1989 to 1998. It urges that the approval of the spent fuel modification request would in no way prejudice the resolution of the separate and distinct transshipment of spent fuel issue involved in Case OLA-1. Thus, Applicant submits (and Staff concurs) that the Appeal Board's two part test has been met.<sup>5</sup> As discussed above, at this stage of the proceeding we do not consider the merits of a contention. However, additionally, Applicant urges in substance that there is no basis set forth with reasonable specificity in support of Contention 1. We agree that Contention 1 lacks a basis. While CCLC urges that environmental effects of the two proposed modifications must be summed in order to evaluate the significance of both proposed actions, there can be no summing inasmuch as CCLC has not filed a contention objecting on the merits, either technical or environmental, to the spent fuel modification.

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In Duke Power Company (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, 313 (1981), the Appeal Board stated:

. . . it is settled that the agency may confine its scrutiny to the portion of the plan for which approval is sought so long as (1) that portion has independent utility; and (2) as a result, the approval does not foreclose the agency from later withholding approval of subsequent portions of the overall plan . . . .



Moreover, in that Contentions 2 and 3 either are directed solely to the transshipment of Surry spent fuel assemblies or to an alternative thereto, Applicant also urges that these two contentions lack bases. In sum, the Staff concurs. We agree that these two contentions lack bases.

We do not admit as issues in controversy Contentions 1, 2 and 3 in Case OLA-2 because they lack bases, and we deny CCLC's petition for leave to intervene in that case.

#### ORDER

1. In Case OLA-1, Consolidated Contention 1, as recast by the Board, is admitted as an issue in controversy and Concerned Citizens of Louisa County is admitted as an intervening party. Pursuant to § 2.714a, Applicant and/or the NRC Staff may appeal this part of the Order to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of this Order.

2. In Case OLA-2, the contentions of Concerned Citizens of Louisa County are not admitted as issues in controversy, the petition for leave to intervene is denied, and the case is dismissed. Pursuant to § 2.714a, Concerned Citizens of Louisa County may appeal this part of the Order to the Atomic Safety and Licensing Appeal Board within ten (10) days after the service of this Order.

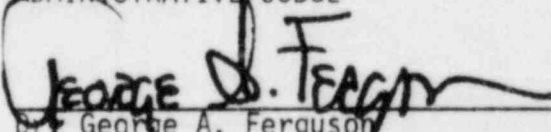
3. With respect to Case OLA-1, within ten (10) days after the service of this Order, the parties shall confer and advise this

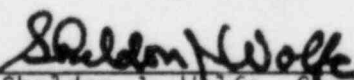
Board whether, pursuant to § 2.749, any party plans to file a motion for summary disposition. Taking into account any necessity for discovery, the parties shall suggest to the Board a due date for the filing of any motions for summary disposition.

4. With respect to Case OLA-2, the Director of Nuclear Reactor Regulations is authorized to issue an amendment to Facility Operating Licenses No. NPF-4 and No. NPF-7 which revises the technical specifications to permit the expansion of the spent fuel storage capacity for North Anna Units Nos. 1 and 2 from 966 to 1737 fuel assemblies and identifies a new nominal center-to-center spacing between fuel assemblies of 10-9/16 inches.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
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J. Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
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George A. Ferguson  
ADMINISTRATIVE JUDGE

  
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Sheldon J. Wolfe, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 15th day of October, 1984.