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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)	Docket Nos. 50-338/339
VIRGINIA ELECTRIC & POWER COMPANY)	OLA-1
)	(Receipt of Spent Fuel)
(North Anna Nuclear Power Station,)	OLA-2
Units 1 and 2))	(Expansion of Spent Fuel Pool)

NRC STAFF RESPONSE TO THE CONCERNED CITIZENS
OF LOUISA COUNTY "THIRD DRAFT OF CONTENTIONS"

I. INTRODUCTION

Pursuant to Licensing Board Order of October 25, 1983, Concerned Citizens of Louisa County ("Citizens") filed in the two above captioned proceedings a revised set of contentions entitled "Third Draft of Contentions" by cover letter dated July 30, 1984. Pursuant to the schedule established in the Board's October 25, 1983 Order, the Staff sets forth below its position regarding the proposed contentions for each proceeding.

II. DISCUSSION

A. Legal Principles Governing Admissibility of Contentions

Pursuant to 10 C.F.R. § 2.714(b), Intervenors are required to file "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." An Intervenor who fails to file at least one contention which satisfies the requirements of § 2.714(b) will not be permitted to participate as a party. A contention must be rejected where:

- (1) It constitutes an attack on applicable statutory requirements;
- (2) It challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) It is nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be;
- (4) It seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) It seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purpose of the basis requirement of 10 C.F.R. § 2.714(b) is (a) to assure that the matter sought to be put into question does not suffer from any of the infirmities set forth in Peach Bottom, supra, at 20-21, (b) to establish sufficient foundation to warrant further inquiry into the subject matter and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20.

At the early stages of a proceeding initial contentions need only identify the reasons for each contention. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 2), ALAB-590, 11 NRC 542, 548 (1980). In addition, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the bases therefor, a licensing board may not

reach the merits of contentions. Id.; Peach Bottom, supra at 20. Nevertheless, the bases for contentions must be sufficiently detailed and specific (a) to demonstrate that the issues raised are admissible and further inquiry into the matter is warranted and (b) to put the parties on notice as to what they will have to defend against or oppose. This is particularly important in a proceeding involving an application for an operating license or an amendment to an operating license, where a hearing is not mandatory, in order to assure that an asserted contention raises an issue which clearly is open to adjudication. See 10 C.F.R. 2.760(a) and App. A to Part 2, VIII; Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974); River Bend, ALAB-444, 6 NRC 760, 768-69 (1977).

In addition, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467 (1982). The NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or Staff." Id. at 468.

Finally, a licensing board has no duty to recast contentions offered by a petitioner to remedy the infirmities of the type described in Peach Bottom, supra, for which they may be rejected, in order to make inadmissible contentions meet the requirements of 10 C.F.R. § 2.714. Commonwealth Edison Co. (Zion Station Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). Should a board nevertheless elect to rewrite a

petitioner's inadmissible contentions so as to eliminate the infirmities which render the contentions inadmissible, the scope of the reworded contentions may be made no broader than the bases that were previously provided by the petitioner for the inadmissible contentions.

Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 NRC 1105, 1115-16 (1982).

B. Citizens' Proposed Contentions Concerning Receipt and Storage of Surry Spent Fuel at North Anna (OLA-1 Proceeding)

Contention 1

The proposed license amendment constitutes a major federal action significantly affecting the human environment, and thus may not be granted prior to the preparation of an environmental impact statement.

As bases for this contention Citizens states: 1) "transportation of spent fuel by truck creates a risk of accidents causing tremendous human health and environmental damage" (Petition at 1); 2) environmental costs include the risk of sabotage "the effects of which would be comparable to those of a serious traffic accident" (Petition at 2); and 3) risks of error by Virginia Electric & Power Company (VEPCO) employees "performing such tasks as sealing the shipping casks creates additional risks" (Petition at 2).

For the reasons discussed below none of these bases are adequate to support the contention.

Transportation Accidents

The NRC staff pursuant to 10 C.F.R. Part 51 prepared an Environmental Assessment related to increasing spent fuel storage at North Anna Units 1 and 2 and the transshipment and receipt of Surry 1 and 2 spent fuel at North

Anna.^{1/} In this Environmental Assessment the NRC staff relied upon Table S-4 of 10 C.F.R. § 51.52 to demonstrate that the environmental impacts of transportation activity associated with the proposed trans-shipment of spent fuel from Surry to North Anna is not only within the scope of Table S-4 but that the environmental impacts would be less by a factor of 30 than that shown in Table S-4. Environmental Assessment at 27, 28. Citizens' assertion that different or greater environmental impacts must be used for the proposed action is a challenge to an NRC regulation (10 CFR § 51.52) that is proscribed by 10 C.F.R. § 2.758. The Staff used Table S-4 consistent with 10 C.F.R. § 51.52. This section provides in part:

(a)(6) The environmental impacts of transportation of fuel and waste to and from the reactor with respect to normal conditions of transport and possible accidents in transport are as set forth in Summary Table S-4 in paragraph (c) of this section; and the values in the table represent the contribution of the transportation to the environmental costs of licensing the reactor.

Citizens in essence are attacking the use of the environmental impacts that are quantified in Table S-4. The case law has made clear that Table S-4 values are applicable where, as here, spent fuel is being transported for storage at another reactor^{2/} and that a contention that questions such values impermissibly challenges NRC regulations.^{3/}

^{1/} Environmental Assessment by the Offices of Nuclear Reactor Regulation and Nuclear Material Safety and Safeguards Related to Increasing to Spent Fuel Storage and the Storage of Surry Spent Fuel at the North Anna Power Station, Units 1 and 2, Virginia Electric and Power Company and Old Dominion Electric Cooperative, Docket Nos. 50-338, 50-339, (hereinafter "Environmental Assessment").

^{2/} Duke Power Company et al. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 579 (1982).

^{3/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1501, 1511 (1982).

Accordingly, Citizens' assertions regarding the environmental impacts from transportation accidents impermissibly challenge 10 CFR § 51.52 and, therefor, cannot support Citizens' Contention 1.

Risk of Sabotage

Another environmental cost Citizens asserts as basis for Contention 1 is the risk of sabotage. Standing alone we believe that this assertion fails to satisfy the specificity requirements of 10 C.F.R. § 2.714.

Peach Bottom, supra, p.1, 8 AEC at 20-21. Citizens have provided no details as to a sabotage scenario and have, therefore, done nothing more than set forth a generalized assertion that the risks of sabotage have not been considered. Citizens have not identified any information which places in question the Staff's conclusion that the risk to transportation workers and the public from a possible terrorist attack on a spent fuel shipment is "very small."^{4/}

4/ See Safety Evaluation by Offices of Nuclear Reactor Regulation and Nuclear Materials Safety and Safeguards Related to Increasing the Spent Fuel Storage Capacity and the Storage of Surry Spent Fuel at North Anna Power Station, Units 1 and 2, Virginia Electric and Power Company and Old Dominion Cooperative, Docket Nos 50-338 and 50-339, at p. 4-4, see also Section 3.2.6.

See also 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, 318-19 (1981) (reversing the Licensing Board's initial decision and authorizing an amendment to allow the transportation of 200 spent fuel assemblies from applicant's Oconee Nuclear Station to the McGuire Nuclear Station for storage), where the Appeal Board noted with regard to spent fuel shipping casks and sabotage:

(1) that the casks "must comply with the stringent safety and other requirements which have already been prescribed by the Commission (10 C.F.R. Parts 71 and 73). Beyond that, spent fuel shipments also comply with Department of Transportation (DOT) requirements covering the packaging and movement of radioactive materials (49 C.F.R. Parts 171-79);"

Accordingly, Citizens' generalized reference to the risk of sabotage in transportation of spent fuel does not provide a sufficiently particularized basis to place in litigation proposed Contention 1.

Possibility of Error by VEPCO Employees

Finally, Citizens simply assert without any statement of basis that there is additional risk to the public due to the possibility of error by VEPCO employees when performing such tasks as sealing the shipping casks. Since Citizens have set forth no foundation for this assertion, the contention is nothing more than speculation.

For the above reasons Contention 1 fails to satisfy the specificity and basis requirements of 10 C.F.R. § 2.714 and should be rejected.

Contention 2

VEPCO has not shown that the shipping casks to be used to transport Surry spent fuel to North Anna meet NRC standards.

This proposed contention is based on Citizens' assertion that VEPCO has not specified in its amendment application what spent fuel cask design it will use. However, VEPCO has indicated that the type of

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- (2) that DOT recently completed a study and based on the study confirmed that the packaging requirements were adequate to protect the public;
- (3) that as noted by the Staff the cask would be difficult to breach; and
- (4) that the Commission on June 3, 1980 reaffirmed, in a rule change affecting 10 C.F.R. § 73.37, that spent fuel can be shipped without constituting unreasonable risk to the public health and safety.

shipping cask that will be used is TN-8L.^{5/} The TN-8L cask has already received an NRC certificate of compliance (No. 9015).^{6/} Contrary to Citizens' belief, VEPCO's compliance with applicable requirements for cask design has, therefor, been demonstrated. Consequently, this proposed contention should be rejected for lack of basis.^{7/}

Contention 3

Neither VEPCO nor NRC Staff has adequately considered the alternative of constructing a dry cask storage facility at the Surry station.

Proposed Contention 3 is overly vague in its reference to adequate consideration of dry cask storage as an alternative to transshipment. In the basis section to Contention 3, Citizens simply lists several reasons why dry cask storage is a feasible alternative. Petition at 3, 4. This does not provide basis for the assertion that VEPCO and the NRC staff have not "adequately" considered the alternative. The Staff in its Environmental Assessment makes reference to and relies on the Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575) with regard to discussion of alternatives. See NRC Staff Environmental Assessment at 2, 3 and

^{5/} Letter from R. H. Leashing to Robert F. Burnett dated July 13, 1982, at page 1-1.

^{6/} NUREG-0383, Directory of Certificate of Compliance For Radiative Materials Packages, Rev. 6, September 1983.

^{7/} See Catawba, LBP-82-16, supra, n.2, 15 NRC at 570, where the Licensing Board stated that the mere allegation that an applicant will not comply with a particular Commission regulation fails to satisfy the specificity requirement of 10 C.F.R. § 2.714(b).

NUREG-0575 Vol. 1 at ES-12; 3-9; and 6-7. Citizens has not asserted how the Staff in its Environmental Assessment has failed to meet the requirements of the regulations regarding the discussion of alternatives.^{8/}

Furthermore, under § 51.30 alternatives need only be discussed "as required by 102(2)(E) of NEPA" or "as appropriate." The Appeal Board in Duke Power (ALAB-651, supra n. 6, 14 NRC 307, at 321, 322) stated with regard to the need to discuss alternatives:

Neither Section 102(2)(C) nor Section 102(2)(E) of NEPA obligates the federal agency to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended. 9 NRC at 266. Accord, Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2). ALAB-584, 11 NRC 451, 457-58 (1980); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 65 fn. 33 (July 17, 1981). To our mind, it simply cannot be seriously contended that the transportation by motor carrier of 300 spent fuel assemblies over the 170 mile distance separating Oconee and McGuire presents a substantial national resources commitment question.

Under this logic, consideration of alternatives to the transportation proposal before this Board might not even be required. The Staff has, however, discussed alternatives in its Environmental Assessment and Citizens has not asserted how that discussion fails to satisfy

^{8/} 10 C.F.R. § 51.30 provides, in part:

- (a) An environmental assessment shall identify the proposed action and include:
 - (1) A brief discussion of: . . .
 - (ii) alternatives as required by Section 102(2)(E) of NEPA;
 - (iii) the environmental impacts of the proposed action and alternatives as appropriate. . .

10 CFR § 51.30. Accordingly, this Contention fails to satisfy the specificity requirement of 10 C.F.R. § 2.714(b) and must be rejected.

Contention 4

VEPCO has not shown that its physical protection system satisfies NRC regulatory requirements.

This contention must be rejected as it is not supported by any basis. Citizens merely states as basis for the contention that information concerning VEPCO security measures are unavailable at the NRC Public Document Room. Unavailability of such information does not support the allegation that VEPCO has not satisfied the requirement of 10 C.F.R. § 73.37.^{9/} Accordingly, this contention fails to satisfy the specificity requirement of 10 C.F.R. § 2.714(b) and must be rejected. See also, Catawba, LBP-82-16, supra n. 2, 15 NRC at 570.

Contention 5

The Environmental Assessment prepared by the NRC staff is inadequate in the following respects:

- (a) it does not evaluate the risks of accidents (including sabotage) involving Surry - North Anna shipments;
- (b) it does not evaluate the consequences of credible accidents involving Surry - North Anna shipments;
- (c) it does not evaluate the alternative of constructing a dry cask storage facility at the Surry station.

Proposed Contention 5 is essentially a summation of matters asserted in other contentions proposed by Citizens. For the reasons set for in

^{9/} We note that Michael W. Maupin, counsel for VEPCO transmitted to Mr. Dougherty, counsel for Citizens, a copy of VEPCO's Spent Fuel Transportation Plan by letter of August 3, 1984.

the response to proposed Contentions 1 and 3, the Staff opposes admission of proposed Contention 5.^{10/}

C. Citizens' Proposed Contentions Concerning Expansion of the Fuel Storage Capacity at North Anna (OLA-2 Proceeding)

Contention 1

The proposed license amendment constitutes a major federal action significantly affecting the human environment, and thus may not be granted prior to the preparation of an environmental impact statement.

This contention is identical to Contention 1 raised by Citizens in the OLA-1 proceeding. Accordingly, for the reasons set forth in the Staff's response to that Contention it should not be admitted in this proceeding. See Section B, above. Citizens did, however, assert one additional basis for this contention in this proceeding which it did not assert in the OLA-1 proceeding. Citizens asserts as additional basis that "the environmental impacts of the proposed license amendment cannot be evaluated apart from the environmental impacts of the Surry-to-North Anna spent fuel transshipment proposal which is being addressed in the companion licensing proceeding." Petition at 6. This contention raises a legal issue which is not related to the facts of these proceedings, since the Staff's Environmental Assessment considered the cumulative environmental impacts of both proposed actions. See Staff's Environmental

^{10/} Citizens attack the Staff's reliance on Table S-4 in that it contains no "site specific" discussion of the environmental affects of transportation. As noted by the Licensing Board in the Limerick decision there is no requirement for "site specific" consideration of environmental impacts of fuel shipments falling within the scope of Table S-4. Limerick, supra n. 3, 15 NRC at 1501.

Assessment at 29. This contention should, therefore, be rejected for lack of basis.

Contention 2

Neither VEPCO nor NRC Staff has adequately considered the alternative of constructing a dry cask storage facility at the Surry station.

This contention with its supporting bases is identical to Citizens' Contention 3 and supporting basis asserted in the OLA-1 proceeding. Accordingly, for the reasons set forth in the Staff's response to that contention, this OLA-2 contention should not be admitted.

Contention 3

The Environmental Assessment prepared by the NRC Staff is inadequate in the following respects:

- (a) it does not evaluate the risks of accidents (including sabotage) involving Surry - North Anna shipments;
- (b) it does not evaluate the consequences of credible accidents involving Surry - North Anna shipments;
- (c) it does not evaluate the alternative of constructing a dry cask storage facility at the Surry station.

This contention and its basis is identical to Citizens' Contention 5 and the supporting basis asserted in the OLA-1 proceeding. Accordingly, for the reasons set forth in the Staff's response to that contention, this OLA-2 contention should not be admitted.

III. CONCLUSION

For the foregoing reasons, the Staff submits that the proposed contentions of Citizens do not meet the requirements for admissibility under 10 C.F.R. § 2.714 and should be rejected.

Respectfully submitted,

Stephen H. Lewis

for Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of August, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket Nos. 50-338/339
VIRGINIA ELECTRIC & POWER COMPANY)	OLA-1
)	(Receipt of Spent Fuel)
(North Anna Nuclear Power Station,)	OLA-2
Units 1 and 2))	(Expansion of Spent Fuel Pool)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE CONCERNED CITIZENS OF LOUISA COUNTY "THIRD DRAFT OF CONTENTIONS" 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 asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 15th day of August, 1984:

Sheldon J. Wolfe, Chairman
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Dr. Jerry Kline
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Dr. George A. Ferguson
Administrative Judge
School of Engineering
Howard University
2300 - 5th Street, N.W.
Washington, D.C. 20059

Michael W. Maupin, Esq.
Marcia R. Gelman, Esq.
Patricia M. Schwarzschild, Esq.
Hunton & Williams
P. O. Box 1535
Richmond, VA 23212

Cynthia A. Lewis, Esq.
Robert Brager, Esq.
Virginia S. Albrecht, Esq.
Christopher H. Buckley, Jr., Esq.
J. Marshall Coleman, Esq.
Beveridge & Diamond, P.C.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

James B. Dougherty
3045 Porter Street, N.W.
Washington, D.C. 20008

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Bradley W. Jones, Esq.
Regional Counsel
USNRC, Region II
101 Marietta St., N.W.
Suite 2900
Atlanta, GA 30303*

Stephen H. Lewis

Stephen H. Lewis
Deputy Assistant Chief
Hearing Counsel