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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 24 P1:13

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)

NPC STAFF BRIEF ON APPLICABILITY OF TABLE S-4
IN EVALUATING OPERATING LICENSE AMENDMENTS

I. INTRODUCTION

At the September 7, 1984 Supplemental Special Prehearing Conference the Licensing Board invited briefs from the Petitioner, Concerned Citizens of Louisa County ("Citizens" or Petitioner), and parties on the following question: (at Tr. 168-169)

Why or why not Table S-4 is applicable in an amendment to an operating license proceeding.

The NRC staff response to this question is set forth below.

II. BACKGROUND

In its Memorandum dated June 10, 1983 which concerned the Board's ruling on two jurisdictional issues, the Board stated as to the environmental aspects of one of the issues (at 6-1):^{1/}

^{1/} Issue 1 which the Board directed the parties and petitioners to brief stated:

1. Whether the Board may consider the health, safety and environment impacts of transshipment of spent fuel from Surry to North Anna.

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We conclude that, pursuant to NEPA, we have jurisdiction to consider the reasonably foreseeable environmental impacts of the transshipment of spent fuel from Surry to North Anna that fairly arise from the proposals to receive and store spent fuel assemblies at North Anna and to expand the spent fuel storage capacity at North Anna. See Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936, 938 (19/4). At this juncture in the proceeding, having insufficient information, we await the Staff's issuance of the environmental Impact Appraisal in August, 1983, which we trust will include a consideration of table S-4 as well as a consideration of other environmental impacts, if any. (If more time is needed to prepare the EIA, the Staff is requested to furnish its best estimate as to the date that document will be issued.) At this time, we express no opinion whether there are any environmental impacts of fuel transshipment which either have not been previously considered or were inadequately considered in the Surry FESs.

The NRC Staff's Environmental Assessment was forwarded to the Board, Parties and the Petitioner by letter of July 3, 1984. In the Assessment, the staff relied upon Table S-4 to evaluate the environmental impact of the transportation activity associated with the proposed transshipment of spent fuel from Surry to North Anna. Assessment at 27, 28.

At the Supplemental Special Prehearing Conference, Mr. Dougherty, representing Citizens, argued that Table S-4 applies to construction permit applications only and not to the instant operating license amendments. Tr. 94-95. This argument is addressed below.

III. DISCUSSION

A. Table S-4 Is Not Limited To The Construction Permit Phase of Licensing Proceedings

The basis relied upon by Citizens for the argument that Table S-4 can only be used at the construction permit stage is 10 C.F.R. § 51.52. There is nothing, however, in this section that supports Citizens' argument. Section 51.52 simply requires that every environmental report "prepared

for the construction permit stage of a light-water-cooled nuclear power reactor and submitted after February 4, 1975, shall contain a statement concerning transportation of fuel and radioactive wastes to and from the reactor." [emphasis added]. Section 51.52 provides that such statement shall either indicate compliance with certain conditions and the impacts set forth in Table S-4 or if such conditions are not satisfied and the Table S-4 values do not represent the transportation impacts of the proposed action a full description and complete analysis the environmental impacts of the transportation of fuel and wastes to and from the reactor (see paragraph (b)) is required. There is, however, no requirement in 10 C.F.R. § 51.52 or any other section of the Commission's regulations that limits the use of Table S-4 to the construction permit stage of the nuclear power reactor licensing process.

In fact, an applicant for a license to operate a nuclear power plant or an applicant for a renewal of an operating license must discuss in the supplement to the environmental report the matters set forth in § 51.52, including an indication of fit with the values of Table S-4. Section 51.53 provides in part, ". . . the applicant shall discuss the same matters described in §§ 51.45, 51.51 and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit." In other words, § 51.53 contemplates that an applicant for an operating license or renewal of an operating license check Table S-4 values, if such values were found appropriate and relied upon by the Commission at the earlier licensing stages, to determine if such values still represent the impacts of spent

fuel transportation to and from the reactor. Moreover, nothing in this section prevents an applicant for an operating license or renewal of an operating license from indicating that Table S-4 values are applicable for the requested license action where Table S-4 was not in existence at the earlier construction permit stage.^{2/}

Furthermore, 10 C.F.R. § 51.95, which establishes the requirements of the NRC Staff's Supplement to its Final Environmental Impact Statement - operating license stage, does not prevent use of Table S-4. This section states that the Staff supplement "will only cover matters which differ from, or reflect significant new information concerning matters discussed in the final environmental impact statement". Accordingly, if Table S-4 was relied upon by the Staff at the construction permit stage, the Staff would again be required to refer to the values of Table S-4 to assure itself that such values encompass the impacts of transportation of spent fuel resulting from plant operation. Furthermore, Section 51.95 would not prevent the Staff from using Table S-4 values in its operating license supplement in the situation where Table S-4 was not in existence at the time the Staff published its final environmental impact statement for the construction permit.

Finally, nothing in the Commission's rules establishing the general requirements for NRC Staff Draft and Final Environmental Statements, 10 C.F.R. §§ 51.70-74; 51.90-94, requirements for Draft and Final impact statements for production and utilization facilities, 10 C.F.R. §§ 51.75, 51.95, or the contents of the Staff environmental assessments, 10 C.F.R. § 51.30, limits the use of Table S-4 to the construction permit review

^{2/} Use of Table S-4 did not become effective until February 5, 1975.

stage of licensing proceedings or prevents reliance on Table S-4 in a review concerning an amendment to an operating license.

In sum, there is nothing in 10 C.F.R. § 51.52 or any of the NRC regulations that would limit use of Table S-4 to particular environmental evaluations based on the stage of the licensing action.

Citizens also argues that the Statement of Considerations to the rule establishing Table S-4 supports an argument that Table S-4 can only be used at the construction permit stage. (Tr. 95) This reliance is misplaced. To the contrary it is clear from the Statement of Consideration that Table S-4 is a generic rule that can be applied to the environmental review at any licensing stage. The Commission stated (40 Fed. Reg. 1005):

The proposed amendment would allow applicants in their environmental reports, and the Commission in its detailed environmental statements, to account for the environmental effects of transportation of fuel and waste by using specified numeric values contained in an appended Summary table.

The Commission stated with respect to the Environmental Survey, which served as the primary data base for the S-4 rule (Id.):

The purpose of this proceeding was to determine certain elements to be factored into impact statements in particular licensing proceedings.

There is no limitation indicated by the Commission regarding use of Table S-4 with respect to particular phases of reactor licensing or amendments to reactor licenses.

Finally, in the section of the Statement of Considerations for the S-4 rule where the Commission discusses the scope of the S-4 rule and how it should be applied, there was no mention made of the applicability of Table S-4 based on the particular phase of a proceeding (i.e., operating license versus construction permit). The Commission simply noted the limits

of the analysis supporting the S-4 rule (i.e., transportation of spent fuel by air and impacts of sabotage were not covered by the survey) and the availability of the provisions of 10 C.F.R. § 2.758 allowing by petition a showing of inapplicability of Table S-4 upon demonstration of special circumstances in situations where "distances, population exposures, accident probabilities or other factors which are much greater than those discussed and analyzed in the Survey . . ." (Id. at 1007). Accordingly, the Commission's Statement of Considerations does not support Citizens' argued limitation on the applicability of Table S-4 to construction permit evaluations only.

In sum, there is nothing in the Commission's regulations or the Statement of Considerations for the Table S-4 rule that would preclude using the values of Table S-4 in environmental reviews at the operating license stage or for an amendment to an operating license.

B. To Limit Use of Table S-4 To the Construction Permit Stage of Licensing Proceedings Would Be Inconsistent With the Purpose of the S-4 Rule.

The purpose of the S-4 proceeding resulting in Table S-4 was to "quantify the associated environmental impact of transportation of fuel and wastes under an existing set of circumstances" to avoid consideration of such impacts on a case-by-case basis. Id. at 1006. The Commission stated (Id. at 1007, 1008):

Since the environmental impact of transportation of fuel and waste is currently considered in individual proceedings on a case-by case basis, the Commission believes that these cases can be expedited if given the benefit of the transportation rule. Accordingly, compliance with the new rule will be required upon the effective date.

Such purpose was found appropriate by the Supreme Court in Baltimore Gas and Electric Company, et al. v. NRDC, 76 L Ed 2d 437 (1983) which

involved another generic rule, the Commission's Table S-3. The Court stated at 449:

[9, 10] As Vermont Yankee made clear, NEPA does not require agencies to adopt any particular internal decisionmaking structure. Here, the agency has chosen to evaluate generically the environmental impact of the fuel cycle and inform individual licensing boards, through the Table S-3 rule, of its evaluation. The generic method chosen by the agency is clearly an appropriate method of conducting the hard look required by NEPA. See Vermont Yankee, supra, at 535, n 13, 55 L Ed 2d 460, 98 S Ct. 1197. The environmental effects of much of the fuel cycle are not plant specific, for any plant, regardless of its particular attributes, will create additional wastes that must be stored in a common long-term repository. Administrative efficiency and consistency of decision are both furthered by a generic determination of these effects without needless repetition of the litigation in individual proceedings, which are subject to review by the Commission in any event. See generally Ecology Action v AEC, 492 F2d 998, 1002, n 5 (CA2 1974) (Friendly, J.) (quoting Administrative Conference Proposed Recommendation 73-6).

The Staff submits that the same reasoning supports the generic application of Table S-4 here.

C. Citizens' Argued Limitation On the Applicability of Table S-4 Is Not Supported By Any Case Law.

A review of NRC and Federal case law can find no support for the proposition that Table S-4 should only be applied in environmental evaluations at the construction permit stage of reactor licensing proceedings. The case law, in fact, places no such limitation on the use Table S-4 values in environmental reviews. In the Catawba proceeding which involved a request by Duke Power Company for an operating license for Catawba Units 1 and 2 and authority to store at the Catawba facility irradiated fuel from other Duke facilities,^{3/} the Licensing Board rejected an intervenor's contention which challenged the use of Table S-4 stating that

^{3/} Duke Power Company Operating Licensing Application for Catawba Units 1 and 2, dated March 31, 1981, at page 11-12, (Vol. 1)

Table S-4 values would be applicable to the impacts of transportation of spent fuel from one reactor to another.

We are disallowing Contention 14 because, as we read it, it seeks to avoid application of the Table S-4 values about transportation impacts solely on the ground that the spent fuel would be destined for the Catawba storage pool, instead of the hypothetical reprocessing plant referred to in the Table S-4 rule (10 C.F.R. 51.20(g)(1)). The contention does not postulate why the impacts of transporting to these different types of destinations would be different. We think they would be substantially the same and therefore that the Table S-4 values would apply.

Duke Power Company (Catawba Nuclear Station Units 1 and 2), LBP-82-16, 15 NRC 566, 579 (1982).^{4/}

A Licensing Board in another operating licensing proceeding, Limerick, similarly found Table S-4 values appropriate for use at the operating phase of a reactor licensing proceeding.^{5/}

The NRC staff submits that Table S-4 is a generic rule which establishes values applicable to environmental evaluations regardless of the stage of the licensing application process.

IV. CONCLUSION

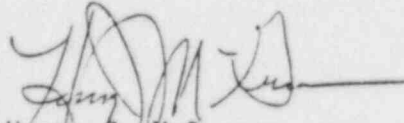
For the reasons set forth above, Table S-4 values are appropriate for use in environmental evaluations at the operating phase of the Nuclear Reactor Licensing application process and accordingly, were appropriate for use in the Staff's Environmental Assessment concerning the amendments to

^{4/} See also Duke Power Company (Catawba Nuclear Station Units 1 and 2), LBP-83-8B, 17 NRC 291, 292 (1983).

^{5/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1501, 1511 (1982).

the North Anna Power Station, Units 1 and 2 operating licenses for receipt and storage of Surry spent fuel and increase in storage capacity at the north Anna Power Station.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Henry D. McGurren", with a horizontal line extending to the right.

Henry D. McGurren
Counsel for NRC Staff

dated at Bethesda, Maryland
this 21st day of September, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF BRIEF ON APPLICABILITY OF TABLE S-4 IN EVALUATING OPERATING LICENSE AMENDMENTS" 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 21st day of September, 1984:

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A handwritten signature in black ink, appearing to read 'H. McGurren', written over a horizontal line.

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