141

CCLC, 9/28/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CONCERNED CITIZENS OF LOUISA COUNTY'S REPLY BRIEF ON TABLE S-4 ISSUES

This brief replies to APPLICANT'S RESPONSE TO THE BOARD'S QUESTIONS ON TABLE S-4 and NRC STAFF BRIEF ON APPLICABILITY OF TABLE S-4 IN EVALUATING OPERATING LICENSE AMENDMENTS, both of which were filed with the Board on September 21, 1984. Citizens will first address VEPCO's argument, then the Staff's.

I. VEPCO's Argument

VEPCO's argument rests on the premise that NRC rules governing the contents of environmental impact statements are relevant to the required contents of environmental impact assessments.

> It follows that for guidance as to the content of an environmental impact assessment, the Staff may look to the requirements for environmental impact statements.

DS03

VEPCO brief at 5. This is a statement that Citizens will likely be quoting at a future stage of this proceeding, namely the stage at which we litigate the adequacy of the Staff's environmental impact assessment (see Citizens' contentions OLA-1 #5, OLA-2 #3). For if the rules governing EISs apply also to EIAs, the gross deficiencies in the Staff's EIA (e.g., its lack of a cost-benefit analysis) will be undeniably violative of NRC regulations, not to mention the case law and other authorities. But when the time comes to adjudicate the adequacy of the EIA, VEPCO will undoubtedly argue that the rules governing EISs are irrelevant, and that the EIA is more than adequate even though it is not even a shadow of an EIS. This have-your-cake-and-eat-it-too approach would allow the use of Table S-4 to squelch Citizens' right to examine the environmental effects of the proposed spent fuel shipments, but would not benefit Citizens or anyone else with the "hard look" at environmental effects that is normally a part of the EIS process.

Not surprisingly, VEPCO's far-reaching argument is unsupported by authority. It demonstrates the great leaps that must be made to justify the first-ever use by the Staff of Table S-4 within (1) an environmental impact assessment, or (2) an operating license amendment proceeding. And its potential for revolutionizing the existing standards of adequacy for EIAs is impossible to predict.

Next, VEPCO employs equally dubious reasoning to reach the same conclusion in a different way. Starting with the (essentially correct[1/]) proposition that if Table S-4 was not used at the CP stage, its use is authorized at the OL stage, VEPCO analogizes one step farther:

> if the use of Table S-4 would be dictated by Part 51 for an EIS involving the North Anna operating license, the Staff is quite clearly justified in using it here.

VEPCO brief at 8.

Overlooking (1) the fact that the use of Table S-4 is never "dictated" (its use is always optional), (2) the lack of authority for this assertion, and (3) the fact that the conclusion is simply wrong, as demonstrated in Citizens' opening brief at 9-13, we come to the key difficulty: the premise is faulty. **Table S-4 was never used for either North Anna or Surry, whether at the CP or OL stages.** VEPCO's elaborate hypothetical that assumes, among other things, that Table S-4 had been used for North Anna, has very little to do with this case. The fact is that the environmental effects of transporting the spent fuel in question have never been analyzed seriously, and would be unfair and illegal now to use Table S-4 to prevent such an analysis for all time.

Furthermore, it would make no sense. Citizens reemphasizes that Table S-4 is an integral component of the NRC's cost-benefit

---

1/ See Citizens' opening brief at 10-11.

methodology for new power plants. Nothing in VEPCO's or the Staff's briefs suggests otherwise. How, then, is the Staff now to prepare a cost-benefit analysis that means something?

II. The Staff's Argument

Much of the Staff's argument seems to be that even where Table S-4 was used at the CP stage, it is neverthess appropriate at the OL (or OL renewal) stage to "check [the] Table S-4 values," for "an indication of fit." Staff brief at 3. Not only is this assertion unsupported, it runs directly afoul of § 51.53, which **prohibits** reconsideration of environmental matters considered at the CP stage.[2/]

The balance of the Staff's argument goes generally to the point that nothing in the Commission's rules prevents the use of Table S-4 at the OL amendment stage, or within environmental impact assessments, or any other time or place, for that matter. Nor, Citizens surmises, is there anything in the Commission's rules that prevents the Staff from quoting Dickens in safety evaluation reports. But where does the Staff find the authority to use Table S-4 in an attempt to bar litigation of

---

2/ See Philadelphia Electric Co. (Limerick Generating Sta., Units 1 & 2), LBP-82-43A, 15 NRC 1423, 1459 (1982).

transportation-related contentions? Not in the regulations, and not in the case law. And where does the Staff find the authority to use Table S-4, for the first time ever, outide of a cost-benefit analysis, and outside of an environmental impact statement, and outside of either a CP or an OL proceeding? The Staff's view seems to be that through a creative application of its new-found "discretion" to rely on Table S-4 wherever and whenever it wants, it can stifle all future litigation of spent fuel transportation issues, period.

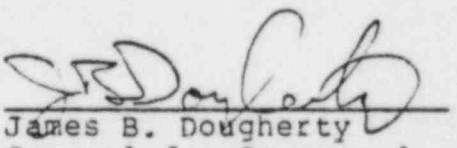
The Staff is incorrect in its assertion that Table S-4 was not intended by the Commission to apply to particular kinds of licensing proceedings. Staff brief at 5. Indeed, in language quoted by the Staff, brief at 5, the Commission stated expressly that the rule is intended to apply only to "particular licensing proceedings." And as Citizens demonstrated in its opening brief, the "particular proceedings" to which the Commission referred are CP proceedings, with a narrow exception for certain OL proceedings.

III. Conclusion

If VEPCO and the Staff are to prevail in their opposition to Citizens' request for a good faith environmental assessment of the proposed spent fuel shipments, they will have to do it either

by summary disposition or after the conclusion of an evidentiary hearing. This is because, as is evident from the Appeal Board decision in Oconee to McGuire,[3/] Table S-4 is inapplicable to license amendment proceedings. Therefore, Citizens requests the Board to reject this challenge to Citizens' contentions, and order that this proceeding get under way.

Respectfully submitted,



James B. Dougherty
Counsel for Concerned
Citizens of Louisa County

3045 Porter St. NW
Washington DC 20008
(202)362-7158

Date: September 28, 1984

3/ Counsel regrets that not only was the Oconee to McGuire proceeding erroneously referred to as "Catawba" in Citizens' opening brief at 17, but that the quotation at 16 from the Appeal Boards' opinion misspelled the word "allow." The quotation should have read as follows:

> This does not mean that an application for a license amendment to allow, e.g., transportation between facilities must invariably be granted. In common with any other proposal for handling spent fuel beyond the existing capacity of the on-site pool, it must, inter alia, undergo and survive an environmental analysis.

Duke Power Co. (Amendment to Materials License SNM-1773), ALAB-651, 14 NRC 307, 315 (1981).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I certify that copies of the foregoing CONCERNED CITIZENS OF LOUISA COUNTY REPLY BRIEF ON TABLE S-4 ISSUES were served, this 28st day of September, 1984, by deposit in the United States Mail, First Class, upon the following:

Secretary
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Sheldon J. Wolfe, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Dr. Jerry Kline
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Dr. George A. Ferguson
School of Engineering
Howard University
2300 5th Street, NW
Washington DC 20059

Henry J. McGurren, Esq.
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington DC 20555

Michael W. Maupin, Esq.
Hunton & Williams
P.O. Box 1535
Richmond VA 23212

James B. Dougherty