UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy

November 20, 1984
(ALAB-790)

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

James B. Dougherty, Washington, D.C., for Concerned Citizens of Louisa County.

Michael W. Maupin, Patricia M. Schwarzschild and Marcia R. Gelman, Richmond, Virginia, for the Virginia Electric and Power Company.

Henry J. McGurren for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

Concerned Citizens of Louisa County (CCLC) has appealed under 10 CFR 2.714a from a portion of the Licensing Board's October 15, 1984 memorandum and order (unpublished) entered in two related proceedings involving proposed amendments to the operating licenses for the North Anna nuclear facility. In that order, the Board admitted CCLC as a party to one of those proceedings but denied it intervenor status in the other. Before us, CCLC urges that it was entitled to intervene in both. It appearing, however, that CCLC has sustained no present or potential injury in fact as a

consequence of the challenged action below, we dismiss the appeal.[1]

I.

The two license amendments in question are desired by the applicant Virginia Electric and Power Company (VEPCO) to ameliorate a severe spent fuel storage problem at its Surry nuclear facility located near Newport News, Virginia. The first of the amendments, referred to as "OLA-1", would permit the receipt and storage of 500 Surry spent fuel assemblies at VEPCO's North Anna nuclear facility, located in Louisa County, Virginia, approximately 100 miles from Surry. The second amendment, referred to as "OLA-2", would permit the expansion of the capacity of the North Anna spent fuel pool to enable it to accommodate the received Surry assemblies.[2]

Insofar as here relevant, CCLC sought intervention in the OLA-1 and OLA-2 proceedings on the strength of identical contentions:

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[1]We accordingly do not reach the merits of either CCLC's attack upon the October 15 order or the insistence of the applicant and the NRC staff that the order should be affirmed.

[2]This expansion would be accomplished by replacing the high density fuel racks currently installed in the North Anna pool with neutron absorber fuel racks. The change would increase storage capacity of the spent fuel pool from 966 to 1737 fuel assemblies. Environmental Assessment,

(Footnote Continued)

> 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[;]
>
> Neither VEPCO nor the NRC [s]taff has adequately considered the alternative of constructing a dry cask storage facility at the Surry station [; and]
>
> The Environmental Assessment prepared by the NRC [s]taff is inadequate in [that] . . . it does not evaluate the risks of accidents (including sabotage) involving Surry-North Anna shipments[,] . . . the consequences of [such] credible accidents . . . [, and] the alternative of constructing a dry cask storage facility at the Surry station.[3]

Further, in large measure, the bases assigned in each proceeding for the contentions were the same. According to CCLC, the packing and transportation of the Surry assemblies will entail substantial safety and environmental risks.[4] For this reason, CCLC maintained, the NRC staff was required by the National Environmental Policy Act of 1969[5] to prepare

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(Footnote Continued)
attached to July 3, 1984 letter from D. Hassel to Licensing Board, at 2.

[3]Attachment to letter from J. Dougherty to Licensing Board (July 30, 1984) (hereafter Contentions) at 1, 3, 4, 6, 7, 8.

[4]Id. at 1, 6.

[5]42 U.S.C. 4321. Section 102(2)(c) of that Act, 42 U.S.C. 4332(2)(c), requires a federal agency to prepare an environmental impact statement (EIS) "in every recommendation or report on proposals for legislation or other major Federal actions significantly affecting the quality of the human environment." A full EIS, however, is
(Footnote Continued)

a full environmental impact statement in which, among other things, it considered the alternative of constructing a dry cask storage facility at Surry.[6]

With regard to the North Anna spent fuel pool, CCLC did not contend that the proposed modification would pose safety risks; nor did it identify any significant environmental impact that conceivably might flow from the modification. CCLC did assert, however, that the two sought amendments were so closely related that they could not be separated for purposes of environmental analysis.[7]

In its October 15 order, the Licensing Board concluded that the contentions and assigned bases were sufficient to allow CCLC's intervention in the OLA-1 proceeding concerned with the receipt and storage at North Anna of the Surry spent fuel. It reached, however, the diametrically opposite result with respect to the OLA-2 proceeding. As the Board

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(Footnote Continued)
not always necessary. If, after an initial environmental assessment, the agency determines that no significant impact will result from a proposed action, without additional analysis it may publish a statement indicating that such is the case. This is what occurred in this instance. The NRC staff performed a single environmental assessment that considered both proposed license amendments and concluded that a complete EIS was unnecessary because neither amendment would have a significant environmental impact.

[6] Contentions at 3, 4-5, 7-9.

[7] Id. at 6.

saw it, the bases assigned for the contentions were inadequate to allow CCLC to be heard with regard to the proposed modification of the North Anna spent fuel pool. Thus, CCLC's petition to intervene in the OLA-2 proceeding was denied and, there being no other petitioners for intervention, the proceeding was dismissed.[8]

II.

It is well-settled that, "[i]n Commission practice as in judicial proceedings, only a party aggrieved may appeal."[9] In the unique circumstances of this proceeding, we are satisfied that CCLC cannot be deemed aggrieved by the rejection of its endeavor to intervene in the OLA-2 proceeding. Our conclusion in this regard rests upon the following factors:

1. As we have seen, none of the three contentions that CCLC advanced in the OLA-2 proceeding is founded upon a particularized claim that the modification of the North Anna spent fuel pool might pose a health and safety risk to CCLC members or have a significant environmental impact. Rather, it is clear from the bases assigned for the contentions that

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[8]Memorandum and Order of October 15, 1984, supra, at 9.

[9]Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 914 (1981), and cases there cited.

CCLC's entire focus is upon the risks assertedly associated with the packing and transportation of the Surry spent fuel assemblies. Having been admitted (on the footing of the very same three contentions) to the OLA-1 proceeding which is specifically addressed to the receipt and storage of the assemblies at North Anna, CCLC will have a full opportunity to litigate those concerns before any of the assemblies might be packed and transported.

2. Consequently, the only practical effect of the challenged action below is that the modification of the North Anna spent fuel pool might take place before the Licensing Board determines whether the receipt and storage of the Surry assemblies at North Anna should be authorized. Because, however, CCLC at least implicitly acknowledges that it would not have significant safety or environmental implications, the undertaking of the modification at this time perforce could occasion no harm to the organization or its members.

3. Finally, the OLA-2 authorization cannot affect to any extent either (a) CCLC's right to participate in the OLA-1 proceeding on the matters of concern to it; or (b) the outcome of that proceeding. As a matter of both fact and law, a modification of the North Anna spent fuel pool can and will have no bearing upon whether, over CCLC's objections, VEPCO is given the green light to transport the Surry assemblies for receipt and storage at North Anna. To

the contrary, the fate of the OLA-1 application necessarily will hinge entirely upon the results of the independent safety and environmental appraisal of the receipt and storage proposal.[10]

For the foregoing reasons, CCLC's appeal from the Licensing Board's October 15, 1984 memorandum and order is dismissed.[11]

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker
Secretary to the
Appeal Board

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[10] See Duke Power Co. (Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307, 313-15 (1981). In this connection, it matters not that CCLC maintains that the environmental effects of the two proposals should be "summed" (i.e., added together). For, to repeat, CCLC pointed to no impact of the spent fuel pool modification that might be added to the asserted environmental impact of the receipt and storage proposal.

[11] This action moots CCLC's request for a stay pendente lite of the Licensing Board's dismissal of the OLA-2 proceeding and resultant authorization of the issuance of the pool modification license amendment.