

RELATED CORRESPONDENCE

DOCKETED
December 31, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 JAN -3 A9:55

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
OFFICE OF SECRETARY
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BRANCH

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

NRC STAFF RESPONSE TO CCLC MOTION
PURSUANT TO 10 C.F.R. § 2.720(h)(2)(ii)

I. INTRODUCTION

On December 15, 1984, the Intervenor, Concerned Citizens of Louisa County (CCLC), filed a motion pursuant to 10 C.F.R. § 2.720(h)(2)(ii) requesting the Licensing Board to direct the NRC staff to respond to interrogatories and a request for production of documents that were attached to the motion. For the reasons set forth below, the NRC staff opposes the motion.

II. DISCUSSION

It is well accepted that "[d]iscovery against the staff is on a different footing" from discovery against other parties to operating license proceedings. Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980). The Board in Susquehanna explained:

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With limited exceptions, Commission regulations make staff documents that are relevant to licensing proceedings routinely available in the NRC Public Document Room. 10 CFR. 2.790(a). The contemplation is that these "should reasonably disclose the basis for the staff's position," [citation omitted] thereby reducing any need for formal discovery. Reflective of that policy, the Rules of Practice limit documentary discovery against the staff to items not reasonably obtainable from other sources, 10 CFR 2.744; require a showing of "exceptional circumstances" to depose staff personnel, 10 CFR 2.720(h) and 2.730a(j); and allow interrogatories addressed to the staff only "where the information is necessary to a proper decision in the case and not obtainable elsewhere." (citation omitted) See 10 CFR 2.720(h)(2)(ii). In addition, the licensing board's advance permission is needed to depose staff members or to require the staff to answer written interrogatories. Ibid.


The Staff has reviewed CCLC's motion and discovery requests in light of the foregoing requirements, particularly those in 10 C.F.R. § 2.720(h)(2)(ii), under which interrogatory responses from the Staff may be required only on a "finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source. . ." Id.

Based on this review the Staff has determined that CCLC has not made a showing that "the answers to its interrogatories are necessary to a proper decision" or that "the answers to the interrogatories are not reasonably obtainable from any other source." Accordingly, CCLC's request must fail. However, the Staff has determined to answer voluntarily certain of the subject interrogatories. While the Staff does not waive its right to assert applicable objections to any interrogatory to which answers are not being provided based upon § 2.720(h)(2)(ii), the Staff believes that this procedure reduces the number of discovery pleadings and serves to expedite the discovery process.

Applying these considerations, the Staff intends to answer interrogatories numbered 1, 2, 3 and 4a-d (the information requested by 4e and f is clearly available from other sources), 5, 6, 7 and 8. The Staff furthermore will make available for inspection and copying any relevant documents that it intends to rely on in its case on Consolidated Contention 1 to the extent such documents are not already publicly available or available in the NRC Public Document Room. The Staff does not intend to respond to interrogatories number 4e and f on the grounds that a showing under § 2.720(h)(2)(ii) could not be made. The Staff intends to respond to the interrogatories identified above by January 18, 1984.

III. CONCLUSION

For the reasons set forth above, the NRC staff opposes the instant motion.


Henry J. McGurren
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 31st day of December, 1984

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OFFICE OF SECRETARY
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CCLC MOTION PURSUANT TO 10 C.F.R. § 2.720(h)(2)(ii) " 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 31st day of December, 1984:

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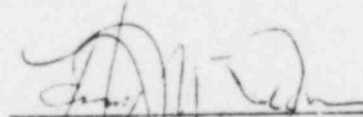
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