

EDO Principal Correspondence Control

FROM: DUE: 12/13/11

Danielle Brian
Project on Government Oversight (POGO)

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FINAL REPLY:

TO:

Chairman Jaczko

FOR SIGNATURE OF : ** PRI **

CRC NO: 11-0605

Chairman Jaczko

DESC:

Restart of North Anna Nuclear Power Station
(EDATS: SECY-2011-0593)

ROUTING:

Borchardt
Weber
Virgilio
Ash
Mamish
OGC/GC
McCree, RII
Burns, OGC
Bowman, OEDO

DATE: 11/14/11

ASSIGNED TO: CONTACT:

NRR Leeds

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Originating Organization: Project on Government Oversight (POGO)

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AUTHOR: Danielle Brian (POGO)

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ADDRESSEE: Gregory Jaczko

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PROJECT ON
GOVERNMENT OVERSIGHT

Exposing Corruption Exploring Solutions.

November 1, 2011

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
Washington, DC 20555-0001

Email: OPA.Resource@nrc.gov
Fax: 301-415-3716

Re: Restart of the North Anna Nuclear Power Station

Dear Chairman Jaczko:

I am writing to draw your attention to documents that may be relevant to the siting and licensing of the Dominion Virginia Power's North Anna Power Station and their implications for the plant's restart following the earthquake on August 23 of this year. Today, a great deal of this information remains under lock and key at the University of Virginia's library. In a conversation with a university librarian, the Project On Government Oversight (POGO) requested on October 26 that the university library furnish these documents. The librarian said she could not provide access to the records because, after 9/11, Nuclear Regulatory Commission (NRC) sealed many records involving safety and security vulnerabilities of nuclear power plants as being critical infrastructure information.¹ POGO also requested access to an index of the records but has not been provided with one.

We strongly urge the NRC to make these documents public. In addition, because the earthquake significantly exceeded the safety design basis of the site, the decision to restart the North Anna reactors should be subject to a license amendment and not simply an NRC staff decision under 10 CFR 50.59. Such an amendment would allow for public hearings and a formal decision by the NRC itself. As evidence that the current standards are below par, Dominion Virginia Power is currently seeking to build two additional reactors at this site, but the NRC is requiring them to have a significantly greater level of seismic protection than the current reactors.

As you know, North Anna's original two Westinghouse pressurized water reactors, which began operation in 1978 and 1980 and are approximately 11 miles from the earthquake's epicenter, experienced high frequency shaking that exceeded the plant's design basis by a factor of two.² It was subsequently reported that a back-up power generator failed. The earthquake also caused 25

¹ Peter Stockton, October 26, 2011, phone call with University of Virginia librarian.

² Nuclear Regulatory Commission, "VA Quake Frequently Asked Questions," September 19, 2011.

<http://www.nrc.gov/about-nrc/emerg-preparedness/virginia-quake-info/va-quake-faqs.pdf> (Downloaded November 1, 2011)

spent fuel casks, each weighing 115 tons, to move as much as 4.5 inches, and a crack in an interior containment wall, which was described by the reactors' operator as a "cosmetic" defect.³

To its credit, the NRC has yet to approve the restart of these reactors pending a more detailed review of their condition. We urge the NRC to also seriously consider the implications this event may have for 26 other reactors in eastern earthquake zones identified by the NRC for further scrutiny.⁴ The importance of this action is underscored by a recent statement made by Dr. Dale Klein, a recent NRC Chairman, who told Reuters, "I think what the East Coast earthquake demonstrated is the design parameters might be changing."⁵ The decision to restart North Anna, which could have significant implications for the safety regulations of dozens of reactors in and near earthquake zones in the eastern United States, should not be treated as a minor matter—the process should be fully open to the public.

The attached sensational May 11, 1977, Department of Justice (DOJ) Memorandum reveals that a criminal investigation into Virginia Electric and Power Co (VEPCO, the predecessor of Dominion Virginia Power) was launched into whether it obtained its license from the NRC by withholding information and making multiple material false statements concerning the presence of a geologic fault beneath the North Anna reactors.⁶ The fault was discovered by a geologist in 1970 and was reported to VEPCO, after verification by two other private geologists not employed by the construction contractor.⁷ Additionally, in 1971, an extension of the fault was discovered by VEPCO's construction contractor at the site where a second group of reactors was planned for construction,⁸ then under consideration by the Atomic Energy Commission (predecessor of the NRC) for an early site permit. The NRC granted a construction permit for reactors 1 and 2 that year, based on the Preliminary Safety Analysis report submitted by VEPCO,⁹ which did not identify the existence of the fault.

The possibility that VEPCO covered up its knowledge of the fault was brought to DOJ's attention in 1975 by June Allen, chair of the North Anna Environmental Coalition, which had intervened in the licensing proceedings for the reactors.¹⁰

³ Nuclear Regulatory Commission, "Briefing on North Anna: Transcript of proceedings: Public Meeting," October 21, 2011, p. 16. <http://www.nrc.gov/reading-rm/doc-collections/commission/tr/2011/20111021.pdf> (Downloaded November 1, 2011)

⁴ Nuclear Regulatory Commission, "Proposed Generic Communication; Draft BRC Generic Letter 2011-XX: Seismic Risk Evaluations for Operating Reactors," Federal Register/Vol 76, No. 170/Thursday, September 1, 2011/Notices. <http://www.gpo.gov/fdsys/pkg/FR-2011-09-01/pdf/2011-22422.pdf> (Downloaded November 1, 2011)

⁵ Ayesha Rascoe and Roberta Rampton, "Update 3-Quake hit U.S. > plant sees without retrofits," *Reuters*, September 2, 2011. <http://af.reuters.com/article/energyOilNews/idAFN1E7810PC20110902> (Downloaded November 1, 2011)

⁶ The DOJ memo often refers to the Atomic Energy Commission as the NRC, even when referring to events before the NRC's creation in 1975. For the sake of simplicity, we will refer to the agency solely as the NRC.

⁷ Department of Justice, Memorandum from Bradford Whitman, Assistant Chief, Pollution Control Section, to Mr. James W. Moorman, Acting Assistant Attorney General, Land and Natural Resources, Division, regarding Recommending Against Prosecution of Virginia Electric Power Company for Failure to Disclose a Geological Fault (18 U.S.C. 1001), May 11, 1977, P. 3. (hereinafter Department of Justice Memorandum)

⁸ Department of Justice Memorandum, p. 3.

⁹ Department of Justice Memorandum, p. 4.

¹⁰ Department of Justice Memorandum, pp. 1.

By May 1973, all expert geologists hired by the construction contractor had verified the existence of the fault.¹¹ According to the DOJ memo, the president of VEPCO was informed about the problem, and he advised his staff to reveal this information by phone to the NRC in order “to avoid leaking the information to the general public.” That same month, two experts with specialized knowledge in the geology of the area submitted to VEPCO an independent report stating that the fault may require reactor design changes and relocation of the reactor plant site.¹²

In June 1973, the NRC project director for the North Anna reactors, along with two geologists from the NRC and U.S. Geological Survey, verified the existence of the fault—information which found its way rapidly up to the top of the NRC’s Office of Nuclear Reactor Regulation.

According to the DOJ memo: “We were stunned to learn at this late date that knowledge of the fault had gone far beyond the technical staff level,” including to the director of Nuclear Reactor Regulation, who “left it to the others as to how and when” to notify the Atomic Safety and Licensing Board (ASLB).¹³

However, a memo from the NRC staff to the ASLB led DOJ officials to conclude that “as of July 20, 1973, the [NRC] staff did not even intend to request the Board to reopen the hearings so that the public could be heard on a matter as vital as siting a nuclear power plant on top of a geological fault.”¹⁴

VEPCO decided not to issue a voluntary statement about the fault because “if this developed into a substantive issue, the [NRC] would, in fact, withhold the issuance of a construction permit.”¹⁵

According to DOJ investigators, this deliberate cover-up by VEPCO and the subsequent inaction of NRC’s Office of Reactor Regulation occurred even though “there was no doubt in the minds of any of the geologists that the feature discovered under Unit 3 was an extension of [the fault] earlier found under Units 1 and 2.”¹⁶

Despite the efforts to conceal this information from the ASLB and the public, local newspapers ran a story in early August 1973, that a fault was discovered at the North Anna site. VEPCO soon thereafter submitted a report, which concluded that the fault was older than one million years and did not pose a risk.¹⁷

By October 1973, the NRC staff, after receiving criticism from the Congressional Joint Committee on Atomic Energy, “moved for an evidentiary hearing on the fault...to show cause why the construction permit should not be suspended with respect to Units 1 and 2.”¹⁸

¹¹ Department of Justice Memorandum, pp. 5-6.

¹² Department of Justice Memorandum, p. 5.

¹³ Department of Justice Memorandum, p. 11.

¹⁴ Department of Justice Memorandum, p. 12.

¹⁵ Department of Justice Memorandum, p. 13.

¹⁶ Department of Justice Memorandum, p. 10.

¹⁷ Department of Justice Memorandum, p. 13.

¹⁸ Department of Justice Memorandum, p. 13.

In April 1974, the ASLB concluded that the North Anna Reactors were not being constructed on an active earthquake fault.¹⁹

In January 1975, VEPCO was found by the NRC to have submitted multiple “material false statements” regarding the fault beneath the North Anna site and was levied a penalty of \$60,000, which VEPCO advocated be paid by its customers rather than its stockholders.²⁰ A year later, the penalty was reduced by the NRC to \$32,500²¹ even though NRC staff argued it should have been raised to \$90,000.²² In November 1976 criticism by the NRC of its staff’s conduct in this cover-up was made in an obscure footnote.²³

By 1977 when the DOJ conducted its investigation, the cost for the reactors was more than \$2 billion (\$10.2 billion in 2011 dollars).²⁴ This had grown from the \$730 million (\$3.7 million in 2011 dollars) that VEPCO spent in 1974. According to the DOJ, “Abandonment of the site at this point would have been intolerable from both a financial and public relations standpoint for all persons involved.”²⁵ However, by November of that year an earthquake occurred about 30 miles southwest of the reactor site.²⁶

The DOJ concluded that they could not proceed with a criminal prosecution of VEPCO, and that:

...we would have a much stronger case against VEPCO but for the actions of the NRC in sanctioning the continued construction by VEPCO and concealing on its own part from the ASLB the discovery of a fault.

...

VEPCO would call as witnesses virtually the entire Office of Regulation of the NRC to testify that they were well aware of the fault and had determined not to take any immediate action to halt construction or to reopen the hearings.

...

[T]he possibility of successful criminal prosecution of VEPCO... is dictated largely by the actions of the Commission itself which in the best light can be characterized as ill-considered and inept, and perhaps more realistically, as demonstrating a pervasive bias against public scrutiny which a project of this importance deserves and is entitled under federal law. Had it not been for the persistent efforts by Mrs. Allen and her group, it is entirely likely that the NRC would not even have convened a full adjudicatory hearing on the fault question or have assessed penalties against VEPCO. I deeply regret that criminal

¹⁹ Associated Press, “AEC Finds in Favor of Va. A-Plant,” *The Washington Post*, April 17, 1974.

²⁰ Hal Willard, “Possible North Anna Fine, VEPCO: Let Users Pay,” May 30, 1975.

²¹ Hal Willard, “Nuclear Agency Fines Vepco,” *Washington Post*, November 11, 1976.

²² William H. Jones, “Vepco’s Fine Said Too Low,” *Washington Post*, January 25, 1976.

²³ Joanne Omang, “Nuclear Agency Staff Criticized in Footnote,” *The Washington Post*, October 4, 1977.

²⁴ Statement of June Allen, Chair, North Anna Environmental Coalition, Hearing before the U.S. Senate Environment and Public Works Subcommittee on Nuclear Regulation, 95th Congress, October 13, 1977.

²⁵ Department of Justice Memorandum, p. 14.

²⁶ Ron Shaffer, “Quake Felt in Va. In A-Plant Vicinity,” *Washington Post*, November 16, 1974.

sanctions may not be brought against VEPCO for misconduct in an area of such major importance as the civil construction of nuclear reactors.²⁷

Nearly 35 years later, these concerns still have great resonance, and should not be swept under the rug. The NRC should promptly release the documents at the University of Virginia so the public can determine their relevance to current safety decisions. The fact that a recent destructive earthquake was twice as great as the design basis for reactors whose siting and licensing was the product of a regulatory failure underscores the importance of an amended license and heightened transparency.

Sincerely,



Danielle Brian
Executive Director

Enclosure: 1

cc: The Honorable Kristine L. Svinicki
 The Honorable George E. Apostolakis
 The Honorable William D. Magwood IV
 The Honorable William C. Ostendorff
 The Honorable Barbara Boxer, Chairman, Senate Committee on Environment and
 Public Works
 The Honorable James M. Inhofe, Ranking Minority, Senate Committee on
 Environment and Public Works
 The Honorable Sheldon Whitehouse, Chairman, Senate Environment and Public Works
 Subcommittee on Oversight
 The Honorable Fred Upton, Chairman, House Committee on Energy and Commerce
 The Honorable Henry A. Waxman, Ranking Minority Member, House Committee on
 Energy and Commerce
 The Honorable Edward J. Markey, Minority Member, House Committee on Energy and
 Commerce

²⁷ Department of Justice Memorandum, p. 15.