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August 27, 1979



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	
VIRGINIA ELECTRIC AND POWER COMPANY)	Doc. Nos. 50-338 SP
)	50-339 SP
(North Anna Power Station,)	
Units 1 and 2))	(Proposed Amendment to
)	Operating License NPF-4)

VEPCO'S ANSWER TO INTERVENORS'
STATEMENT OF EXCEPTIONS

This is a proceeding to license high-density spent fuel storage racks for North Anna Units 1 and 2, thereby increasing the capacity of the spent fuel storage pool from 400 to 966. The applicant, Virginia Electric and Power Company (Vepco), moved for summary disposition on all the issues, and the ASLB granted the motion on August 6, 1979, 44 Fed. Reg. 47657 (1979). The intervenors filed their "Intervenors' Statement of Exceptions" on August 21. By the terms of 10 CFR § 2.762, no response from Vepco is called for until after the intervenors file their brief in support of the exceptions (10 CFR § 2.762(b)).

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The intervenors' "statement of exceptions," however, is also a request for an extension of time:

Intervenors submit this statement of exceptions and concurrently request that they be permitted to revise the stated exceptions in light of future pronouncements by the Board in this connection, and that time limitations relating to the filing of a brief in support of exceptions and the filing of a request for a stay of the Board's order under [10 CFR § 2.788] be reestablished to relate back to the date on which the Board provides sufficient guidance as to the basis of its August 6 order to enable intervenors to present a substantive response thereto.

Intervenors' Statement of Exceptions at 2, ¶4. It is to this request for more time that Vepco wishes to respond now.

Vepco agrees with the intervenors that the time for their appeal under 10 CFR § 2.762 should run from the time the ASLB serves the initial decision giving its reasons for what it has done.¹ This seems to follow from § 2.762(a) itself, which requires that an appellant designate his exceptions with considerable specificity.

Vepco does not, on the other hand, believe that the intervenors should be given additional time to request

¹/The Board has now issued its full decision denying the intervenors' motion to change the issues in the proceeding in light of Minnesota v. NRC, Nos. 78-1269 & 78-2032 (D.C. Circuit May 23, 1979). See Order Denying Intervenors' Motion to Amend Petition to Intervene, August 17, 1979.

a stay under 10 CFR § 2.788.² To justify such an extension of time, the intervenor would have to show "good cause," 10 CFR § 2.711(a), and Vepco does not believe good cause exists in this case.

The intervenors apparently take the position that the absence of a decision explaining the ASLB's grant of summary disposition is "good cause" for extending the 10-day deadline of 10 CFR § 2.788(a). Such is not the case. There are four factors that a party who requests a stay is supposed to address:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties, and
- (4) Where the public interest lies.

10 CFR § 2.788(e). No single one of these four factors is, of itself, necessarily dispositive. Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-338, 4 NRC 10, 14-15 (1976). Of the four factors, three have to do with the effect of the decision on the parties and the public and can be addressed as soon as the result of the ASLB's decision is known; the effect of the

²/Whereas § 2.762 speaks of "initial decisions," § 2.788 covers stays of both decisions and "actions."

Board's action, and not the detailed reasons for it, is what is important.

Only one of the four factors has to do with the merits of the case; that one is the question whether the moving party has made a strong showing that it is likely to prevail on the merits. The intervenors in this case have not attempted to show why they must have an initial decision before they can demonstrate their likelihood of prevailing on the merits. Prevailing on the merits in this appeal means showing that summary disposition should not have been granted -- that is, that there exists one or more triable issues of material fact. It appears to Vepco that the way to make this showing, if indeed it can be made, is simply for the intervenors to refer to their answers to Vepco's motion for summary disposition. Or if the intervenors' point is that they were not given enough time to prepare a response to the motion for summary disposition (see Intervenor's Statement of Exceptions at 1, ¶ 1), they can surely make that showing now, without waiting for the Board to speak further.

As a matter of fact, Vepco believes there is good cause why an extension of time should not be granted. As the attached Affidavit of E. Ashby Baum (which was filed earlier in this proceeding) shows, it is desirable to have spent fuel racks permanently installed before September 15

this year, because in that way Vepco believes it can avoid a radiation exposure to its employees of approximately 13 man-rem.³ Vepco plans to take North Anna Unit 1 out of service about September 15, 1979, for its first refueling, and Vepco will be ready to begin moving spent fuel into the spent fuel storage pool approximately seven days after the unit is shut down. At that time Vepco plans to transfer 52 fuel elements to the pool for storage.

It is important that the racks be installed in the pool before any irradiated fuel is stored there. At present, since irradiated fuel has never been stored in the pool, the new racks can be installed while the pool contains no water, the workers will not be exposed to any radiation, and the old racks can be removed and disposed of without any special precautions. If Vepco has to install the racks after irradiated fuel has been stored in the pool, they will have to be installed with the assistance of divers while the pool is full of water. In addition, the workers will be exposed to radiation; based on its experience with the replacement of the Surry spent fuel racks, Vepco expects these workers to receive

3/See Vepco's Brief in Opposition to the Intervention of CEF and the Potomac Alliance, January 17, 1979, at 3-4; Affidavit of E. Ashby Baum, attached to Vepco's Answer to Petitions for Leave to Intervene (Including Alternative Motion for Consolidation), July 6, 1978, at 3; Affidavit of E. Ashby Baum, attached to Vepco's Response to Motions by NRC Staff and Intervenors to Reschedule Hearing, May 30, 1979.

approximately 13 man-rem. The old racks will also have been exposed to radioactive contaminants and will have to be disposed of in accordance with NRC regulations for the disposal of radioactive wastes. Finally, Vepco estimates that the additional cost to Vepco and its customers could be as much as \$400,000.

Thus, when the NRC Staff issued the license amendment authorizing the installation of the new racks after the ASLB granted summary disposition, Vepco began installing the high-density racks, and the work will soon be completed. Intervenor's request for additional time leaves open the possibility that they may ask for a stay shortly before the first refueling of North Anna 1, throwing Vepco's refueling plans into disarray. Vepco sees no reason why the intervenors could not have decided within the allotted 10 days whether their interests would be served by a stay; delaying that decision is an injustice to Vepco and its customers.

Intervenor's have prolonged the uncertainty by waiting until the last day for requesting a stay to file their request for more time. This tactic provides a sufficient basis in and of itself for denying the request. Louisiana Power & Light Co. (Waterford Steam Elec. Station, Unit 3), ALAB-117, 6 AEC 261, 261-262 (1973); 10 CFR Part 2, App. A, Part IX, ¶ (d)(3).

For the above reasons, Vepco does not object to the intervenors' request to have additional time to appeal under 10 CFR § 2.762, but Vepco does oppose the request for additional time to ask for a stay under 10 CFR § 2.788.

Respectfully submitted,

/s/ James N. Christman
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DATED: August 27, 1979

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Vepco's Answer to Intervenor's Statement of Exceptions upon each of the persons named below by first-class mail, postage prepaid.

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