UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENORS' MOTION TO AMEND PETITION TO INTERVENE

The Potomac Alliance and Citizens Energy Forum (Intervenors) hereby move to have added to the list of contentions in dispute in this proceeding the following:

SEISMICITY

The Intervenors contend that neither the Applicant nor the NRC Staff have demonstrated that the spent fuel pool will withstand the adverse effects of seismic events to which it may be subjected.

In addition, the intervenors move for a declaration by the Atomic Safety and Licensing Board (the Board) that each of the contentions in dispute in this proceeding be addressed and resolved not only with reference to the time frame bounded

by the date of termination of the operating license for the North Anna station, but also with reference to the time frame bounded by the point at which the materials to be stored in the spent fuel pool will cease to prevent significant radiation hazards. The Intervenors contend that they have met the requirements set out in 10 CFR §2.714(a) governing amendments to petitions to intervene, as shown by the discussion below.

The Intervenors make this motion fully cognizant of the advanced stage of this proceeding and the potential impact upon the parties' preparedness to participate at the hearing scheduled for July 9, 1979. Nevertheless, full consideration of the issues raised above, as well as all other issues relating to the safety and environmental impacts of the spent fuel pool if used as a permanent storage facility, has been ordered by the United States Court of Appeals for the District of Columbia Circuit in the case of Minnesota v. Nuclear Regulatory Commission, Nos. 78-1269, 2032 (D.C. Cir. May 23, 1979). As a result of this decision, the failure of the Board to analyze the long-term implications of the proposed modification would violate it duties (as representative of the Nuclear Regulatory Commission (NRC)) under the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 - §4361 and the Atomic Energy Act (42 U.S.C. §§2011 - 2296, and would vitiate any decision to issue the operating

license amendment sought by the Applicant.

In Minnesota, supra, the court reviewed a decision by the Atomic Safety and Licensing Board (ALAB)[1] affirming decisions by separate licensing boards to approve operating license amendments permitting expansion of spent fuel storage capacity at the plants in question through closer spacing of the fuel racks.[2] In other words, those proceedings were in all material respects identical to the instant proceeding. In those decisions the boards refused to consider the long-term (i.e., beyond the expiration of the operating license) safety and environmental implications of the proposed modifications, and were affirmed in this respect by the Appeal Board.

The Appeal Board, while acknowledging that all reasonably forseeable effects of a proposed action must be considered under NEPA,[3] ruled, and understandably so, that the long-term effects of the action would not be germane to the proceeding if it were determined that there was a reasonable probability that a superior alternative means of disposing of

---

1 / 7 NRC 41 (January 30, 1978).

2 / 6 NRC 436 (1977); 6 NRC 265 (1977).

3 / See generally Scientists' Institute for Public Information, Inc. v. AEC (481 F. 2d 1079, 1098, 3 ELR 20525, 20535 (D.C. Cir. 1973):

> "These wastes will pose an admitted hazard to human health for hundreds of years, and will have to be maintained in special repositories. The environmental problems attendant upon processing, transporting, and storing these wastes...warrant the most searching scrutiny under NEPA."

spent fuel would be developed before such long-term effects would accrue. Though expressing its own doubts as to the likelihood of such a technology appearing within the relevant time frame, the Appeal Board relied on an earlier "policy declaration" by the Commission itself in which it was stated that there were "reasonable assurances" that a new and superior technology for long-term storage "can be available" when needed. [1] Relying on this statement, the Appeal Board found it unnecessary to examine the long-term implications of expanding the capacities of the spent fuel storage pools in question, and affirmed.

To the extent that the Appeal Board's decision drew support from the Commission's policy statement, the court in Minnesota unvalidated the decision. First, the Commission's statement was not the product of a factual, administrative record, as is required under the Adminstrative Procedure Act. [2] Second, regardless of the policy statement's basis in fact, if any, it did not address the crucial question of whether the new waste disposal technology would be developed prior to the expiration of the operating licenses for the Vermont Yankee and Praire Island plants. [3]

---

1 / 42 Fed. Reg. 34391, 34393 (July 5, 1977)(Denial of petition for rulemaking).

2 / 5 U.S.C. §553.

3 / Thus, if the new disposal technology were determined, on the basis of a sufficient administrative record, to be probably available in 100 years, then the safety and environmental effects of spent fuel pool storage would have to be considered in the context of a 100 year period.

Application of the result in Minnesota, which is clearly controlling on this proceeding, presents the Board with three choices:

(1) it may seek submittals from the parties and reach a determination concerning the date at which a safe method for disposing of spent nuclear fuel will be "reasonable assured" to exist. The safety and environmental implications of the proposed modification would then have to be analyzed up to and through that date.

(2) it may assume without deciding that this new technology will not exist, and consider the proposed modification as if it were intended to provide long-term storage.

(3) it may postpone consideration of the proposed modification until the Commission has properly identified a point in time at which a safe means of permanent storage will likely become available, and then examine the proposed modification in the context of the time frame bounded by the expiration of the North Anna operating license.

The Intervenors assume that the Board would not opt for alternative #1, since the parties to this proceeding are not qualified to address the issue presented. Alternative # 2 may be an even less acceptable choice because the parties have not, and may not be able to present competent evidence as to the suitability of the North Anna spent fuel pool as a permanent nuclear waste repository. These considerations

militate in favor of alternative #3, or postponement of the balance of this proceeding pending completion of the rulemaking which the Commission was ordered to conduct by the Court of Appeals in Minnesota. While the Intervenors do not presume to tell the Board how to conduct its proceeding, the mandate of the Court of Appeals stands out with clarity: no licensing board may permit expansion of the capacity of any spent fuel pool unless it determines that this storage method is safe and environmentally satisfactory on a permanent basis, or that it is safe and environmentally satisfactory as an interim measure to be employed until such time, to be determined in accordance with the Administrative Procedure Act, as the development of a permanent method is reasonably assured. The Intervenors submit that because the Board is powerless to conduct this proceeding except in accordance with the above mandate, it must either postpone the evidentiary hearing now scheduled for July 9, 1979 or order modification of the issues in controversy such that they address the suitability of the North Anna spent fuel pool for permanent waste storage.

Respectfully submitted,

James B. Dougherty
Counsel for the Intervenors

Of counsel:

Gloria M. Gilman, Esq.
Lawrence S. Lempert, Esq.

Dated this 15th day
of June, 1979

CERTIFICATE OF SERVICE

I hereby certify that the foregoing INTERVENORS MOTION TO AMEND PETITION TO INTERVENE was served this 15th day of June, 1979, by deposit in the United States Mail, First Class, upon the following:

Valentine B. Deale, Esq.,
Chairman, Atomic Safety
and Licensing Board
1001 Connecticut Ave., NW
Washington, DC 20036

Mr. Ernest Hill
Lawrence Livermore Laboratory
University of California
P.O. Box 800, L-123
Livermore, CA 94550

Dr. Quentin J. Stober
Fisheries Research Institute
University of Washington
Seattle, WA 98195

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATTN: Chief, Docketing and
Serice Section

Michael W. Maupin, Esq.
Hunton & Williams
P.O. Box 1538
Richmond, VA 23212

Steven C. Goldberg, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555

James B. Dougherty

Counsel for the Potomac Alliance